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MESSAGE FROM THE PRESIDENT

“Successful and unsuccessful people do not vary greatly in their abilities. They vary in their desires to reach their potential.”

– John Maxwell

The road to success is long and full of barriers along the way. Remember, on your journey towards success you're bound to make a stop at setback, but the key is not to stay there for too long and keep moving ahead. Knowing and believing in your own potential can be the part of your journey to being successful. Once you embrace the mantra of *“Believe in you”*, both your motivation and potential levels move high. When you think you can't reach your potential, you may not even try. The pursuit of success will inevitably lead to failure if it's approached reluctantly.

I know this part of the year is exciting time for all of you as it is examination time and you are engrossed in studies and revision. At this point of time you require serene, salubrious and sublime environment for attaining excellence in the examination.

It may so happen that you lack motivation for a few topics, as you may find it difficult to comprehend. However, don't lose your confidence and first take a look at what you are capable of doing and don't focus on what you can't do. Thus, start off with what you can do and you will learn more as you go ahead.

In order to succeed you need to work hard every day and stay motivated. Starting your day feeling determined can help you work throughout the day and achieve your goal. No one can be perfect all the time, but a progressive approach is the only way that can assist you to improve. Give your undivided attention towards what you are doing and it will definitely yield positive results. In the end, I would like to conclude with a famous quote of Abraham Lincoln, *“The best way to predict your future is to create it.”*

My best wishes for your future endeavor.

Regards

CS Ranjeet Pandey

President, ICSI



Income-Tax Act, 1961- An Overview

This article unveils the basic aspects of the Income- tax Act, 1961.

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Background

In India, the system of direct taxation, as it is known today, has been in force in one form or another even from ancient times. There are references both in Manu Smriti and Arthasastra to a variety of tax measures.

Manu, the ancient sage and law-giver, stated that the king could levy taxes, according to Sastras. The wise sage advised that taxes should be related to the income and expenditure of the subject. He, however, cautioned the king against excessive taxation and stated that both extremes should be avoided namely either complete absence of taxes or exorbitant taxation. According to him, the king should arrange the collection of taxes in such a manner that the subjects did not feel the pinch of paying taxes. He laid down that traders and artisans should pay 1/5th of their profits in silver and gold, while the agriculturists were to pay 1/6th, 1/8th and 1/10th of their produce depending upon their circumstances. The detailed analysis given by Manu on the subject clearly shows the existence of a well-planned taxation system, even in ancient times. Not only this, taxes were also levied on various classes of people like actors, dancers, singers and even dancing girls. Taxes were paid in the shape of gold-coins, cattle, grains, raw-materials and also by rendering personal service.

It is Kautilya's Arthasastra, which deals with the system of taxation in a real elaborate and planned manner. It has also described in great detail the

system of tax administration in the Mauryan Empire. It is remarkable that the present day tax system is in many ways similar to the system of taxation in vogue about 2300 years ago.

Arthashastra mentioned that each tax was specific and there was no scope for arbitrariness. Tax collectors determined the schedule of each payment, and its time, manner and quantity being all pre-determined. The land revenue was fixed at 1/6 share of the produce and import and export duties were determined on ad-valorem basis. The import duties on foreign goods were roughly 20% of their value. Similarly, tolls, road cess, ferry charges and other levies were all fixed.

Kautilya also laid down that during war or emergencies like famine or floods, etc., the taxation system should be made more stringent and the king could also raise war loans. The land revenue could be raised from 1/6th to 1/4th during the emergencies. The people engaged in commerce were to pay big donations to war efforts.

Kautilya's concept of taxation emphasised equity and justice in taxation. The affluent had to pay higher taxes as compared to the poor.

History of Income Tax in India

In India, this tax was introduced for the first time in 1860, by Sir James Wilson in order to meet the losses sustained by the Government on account of the Military Mutiny of 1857. In 1918, a new income tax was passed and again it was replaced by another new Act which was passed in 1922. This Act

remained in force up to the assessment year 1961-62 with numerous amendments. In consultation with the Ministry of Law finally, the Income-tax Act, 1961 (Act) was passed. The Act has been brought into force with 1st April, 1962. It applies to the whole of India and Sikkim (including Jammu and Kashmir). Since 1962 several amendments of far-reaching nature have been made in the Act by the Union Budget every year.

Meaning of Tax

A tax is a compulsory financial charge or some other type of levy imposed upon a taxpayer (an individual or other legal entity) by a governmental organization in order to fund various public expenditures. The legal definition and the economic definition of 'taxes' differ in some ways such as economists do not regard many transfers to governments as taxes. The Government earns its core revenue by levying taxes. This income is utilised for the welfare of the economy, like defence, education, hospitals, etc.

What is Income-tax

An income-tax is a tax that governments impose on income generated by businesses and individuals within their jurisdiction. By law, taxpayers must file an income tax return annually to determine their tax obligations. In India, we follow progressive income tax system in which higher-income earners pay a higher tax rate compared to their lower-income counterparts. It is a direct tax whose burden to pay cannot be shifted to any other person. It is charged differently for different individuals like individuals, partnership firm, company, etc. The primary sources of income as per income tax are:

- ◆ Income from salary
- ◆ Income from house property
- ◆ Profits and gains of business or profession
- ◆ Capital gains income
- ◆ Income from other sources

Income tax provides various deductions from income before computing the tax on income.

Important Definitions under the Income-tax Act, 1961

Assessee

As per section 2(7), an assessee is a person who is liable to pay the taxes under any provision of the Act. Assessee can also be a person with respect of whom any proceedings have been initiated or whose income has been assessed under the Act. Assessee is any person who is deemed assessee under any of the provisions of the Act or an assessee in default under any provisions of the Act.

Assessment

Assessment is primarily a process of determining the correctness of income declared by the assessee and calculating the amount of tax payable by him and further procedure of imposing that tax liability on that person.

Assessment Year

Assessment year is the 12 months' period commencing on 1st of April till 31st March of next year. It is the year in which the income of previous year is assessed.

Person

As per section 2(31) of the Act, a person would be any one who is an individual, HUF (Hindu undivided family), a company, a firm, an association of person or body of individuals, a Local Authority, and every artificial and juridical person who is not included in any of the above mentioned category.

Income

The definition of 'income' as per section 2 (24) is inclusive but not exhaustive. It consists of the following :

- ◆ Any illegal income arising to the assessee
- ◆ Any income that is received at irregular intervals
- ◆ Any taxable income that have been received from a source outside India
- ◆ Any benefit that can be measured in money
- ◆ Any subsidy or relief or reimbursement

- ♦ Gift the value of which exceed Rs.50,000 without any consideration by an individual or HUF.
- ♦ Any prize
- ♦ Causal incomes like winning from lotteries or horse race gambling etc.
- ♦ Cash received by an individual on export under a government scheme
- ♦ Profit, salary or bonus received as a result of a partnership in a firm
- ♦ Benefits received in a business

Capital Gains

Capital Gains are the profits or gains earned by an assessee by selling or transferring a capital asset, which was held as an investment. Any property, which is held by an assessee for business or profession, is termed as capital gains.

Income from Other Sources

Any other form of income, which is not categorized in the above-mentioned clauses, can be sorted in this category. Interest income from bank deposits, lottery awards, card games, gambling or other sports awards are included in this category. These incomes are attributed in Section 56(2) of the Income-tax Act and are chargeable for income tax.

Tax Deductions

Though the taxes on the above mentioned source of income can be harsh on the taxpayers bank balance, the government also offers certain provisions through which one can save tax. The Income tax deductions assist in trimming down the taxable income by lowering the overall tax liabilities and aids in saving tax. However; amount of deduction varies depending upon the kind of tax deduction claimed.

Components of Income-Tax

Income-tax Law in India mainly comprises of Income-tax Act, 1961, Income- tax Rules 1962, Annual Finance Act, Judicial, and Circulars and Notifications. The Ministry of Finance is the governing authority. The Income-tax law helps the Government in proper implementation and collection of the taxes. Components of Income-tax law are:

- ♦ *The Income- tax Act* – The Indian Tax System is administered by the Income- tax Act, 1961. It defines the levy, collection and recovery of income- tax. It comprises of 298 sections and XIV Schedules, which changes according to the additions and deletions proposed by the Annual Finance Act.

Sources of Income for taxability under Income-tax Act, 1961

Income from Salary

The first head is income from salary. This clause essentially assimilates any remuneration, which is received by an individual in terms of services provided by him based on a contract of employment. This amount qualifies to be considered for income tax only if there is an employer-employee relationship between the payer and the payee respectively. Salary also should include the basic wages or salary, advance salary, pension, commission, gratuity, perquisites as well as the annual bonus.

Income from House Property

The second head is income from house property. Sections 22 to 27 are dedicated to the provisions for the computation of the total standard income of a person from the house property or land that he or she owns. An interesting aspect is that the charge is derived out of the property or land and not on the amount of rent received. However, if the property is utilized for letting out the normal course of business, then the income from the rent will be considered.

Profits and Gains of Business or Profession

The third head is profits and gains of business or profession in which the computation of the total income will be attributed from the income earned from the profits of business or profession. The difference between the expenses and revenue earned will be chargeable. Here is a list of the income chargeable under the head:

- ♦ Profits earned by the assessee during the assessment year
- ♦ Profits on income by an organization
- ♦ Profits on sale of a certain license

- ♦ **Annual Finance Act** – Every year, a budget is presented in the Parliament of India by the Finance Minister. This budget contains the proposed policies related to commercial areas and taxation. A Finance Bill is introduced in the Parliament containing all the proposals. This Bill is converted into the Finance Act, once approved by the Parliament and by the President of India.
- ♦ **Income- tax Rules, 1962** – The Central Board of Direct Taxes (CBDT) administers efficient implementation and working of the direct taxes in the country. The CBDT frames standard rules for efficient achievement of the purpose of the Income-tax Act. These rules are referred as Income Tax Rules, 1962.
- ♦ **Judicial (Case law)** – For a complete understanding of the Income-tax Law, it is very crucial to study the judicial laws. Judicial laws provide decisions for those issues that may come up at the time of implementation of the Act. The Supreme Court is the first court in the country and the decisions made by it are followed.
- ♦ **Circulars and Notifications** – The CBDT issues circulars for clarifying any doubts related to the provision of the Act. The primary purpose of these circulars is to provide clarity to the assessee and the officers. It bounds the department, whereas the assessee can take advantage of the circulars as they are not bound by them.

Conclusion

To conclude, the above discourse is just glimpses of the Income-tax Act. This Act aims to reduce the tax liability for a large percentage of the Indian population as well as encourage a greater number of income earners to pay tax.

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KNOWLEDGE UPDATE

COMPANY LAWS

Companies (Prospectus and Allotment of Securities) (Third Amendment) Rules, 2019

Central Government, vide Notification No. G.S.R. 376(E) dated 22nd May, 2019, has amended the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Companies (Appointment and Qualification of Directors) (Second Amendment) Rules, 2019

Central Government, vide Notification No. G.S.R. 368(E) dated 16th May, 2019, has amended the Companies (Appointment and Qualification of Directors) Rules, 2014 by inserting rule 12B which requires directors of company to file e-form ACTIVE.

Companies (Incorporation) (Fifth Amendment) Rules, 2019

Central Government, vide Notification No. GSR 357(E) dated 10th May, 2019, has amended the Companies (Incorporation) Rules, 2014 by substituting rule 8.

National Company Law Tribunal (Second Amendment) Rules, 2019

Central Government, vide Notification No. GSR 351(E) dated 8th May, 2019, has amended National Company Law Tribunal Rules, 2016.

Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) (Amendment) Rules, 2019

Central Government, vide Notification No. GSR 343(E) dated 1st May, 2019, has amended the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

Companies (Removal of Names of Companies from the Register of Companies) (Amendment) Rules, 2019

Central Government, vide Notification dated 8th May, 2019, has amended the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

National Financial Reporting Authority (Meeting for Transaction of Business) Rules, 2019

Central Government, vide Notification dated 22nd May, 2019, has notified the National Financial Reporting Authority (Meeting for Transaction of Business) Rules, 2019.



GST : Overview and Way Forward

This article aims at providing the overview of GST and a way forward.

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Introduction

With the advent of goods and services tax (GST), there had been a surge of panic through the entire industry in India. The reason was quite obvious as when the Government took the decision to roll out GST on 1st of July, 2017, many things which were considered the backbone of GST, were in disarray. That is the reason why, in spite of a year and half has been passed since the roll out, GST is still in its shell and struggling to stand firm. Since the roll out there were many instances of rate cuts, exemptions, clarifications, FAQs, documents and notifications.

GST being the need of an hour had to wait for 14 long years since 2003, when Kelkar Task Force on Indirect Tax had suggested a comprehensive goods and services tax (GST) based on VAT principle. To overcome challenges of old multilayer arbitrary tax scheme, need was felt to have a single tax all over the nation to administer taxes while making revenue collection more efficient, mitigate cascading effects of multiple indirect taxes and to have a single national market. To achieve this, GST was advocated.

GST was first introduced in France in 1954 and till now 160 countries across the world have adopted it. The GST model adopted by India is different from the rest of the countries.

Most of the countries have single GST model

where only centre has power to levy and collect indirect taxes and distribution to states. Other few countries have dual GST model where centre and state both levy and collect taxes with single tax rate. But India being federal country and also politically influenced, concurrent dual GST model with four tier rate structure was the most appropriate choice, where dual levy imposed concurrently by the Centre and States but independently. Considering the wide gap between the poorer and the richest people of India, single tax rate would not have been the best option as goods or services either would have become very cheap which means loss of revenue to the Government or very expensive which means rising inflation. The current four tier rate structure is closely matched with pre- GST effective tax rates.

GST has been introduced with many features, which were absent in the old indirect tax regime, which helped in curbing the black money, widening of the tax base, elimination of cascading effects and automated compliance. More appropriately, curbing domestic black money was the main intent behind introducing GST in India of the government, the mandatory paper trail that GST will create will go a long way in improving tax compliance. Usage of PAN and Aadhar will be more frequent and will be required to file GST returns, this will help department to track transactions, which it is unable to do today.

Going forward with the more sought after tax regime, India will be “one nation one tax” in true sense.

Broad Features of GST

Consumption Based tax – It means, state where goods or services are consumed, that state will collect taxes as opposed to the old regime which was origin based.

Uniformity in rates all over India – Every state will impose same rate of taxes as was not the case earlier under VAT regime.

Distinct Entity – Here, more than one establishment of same persons in a state is to be treated as establishment of distinct person. Earlier, branch stock transfer used to happen under issue of Form and no tax was payable on such transfer but under GST it is a taxable event.

GST Network – Being the technology backbone for GST, it is one stop solution for all indirect tax requirements unlike the old indirect tax system where there were multiple sites. It is unique in its nature as it is common and shared IT infrastructure between centre and states and uniform interface for the tax payer. Due to this strong IT infrastructure and service backbone, all entities whether Bank, tax payers, Centre and State Governments, Banks and RBI are all wired to a common interface. Credit settlement between centre and state/union territories is possible only through such uniform network.

GST Council – GST being one nation one tax, Centre and States both need to work jointly. Hence, constitution of one apex body was no exception. States and Centre had to pool in their constitutional powers to tax and share the responsibility to oversee and govern implementation of GST in India. It is laudable on the part of GST council to arrive at the decisions relentlessly despite the differences in political philosophy between the political parties in different states.

Input Tax Credit – Credit of the taxes paid at earlier stages can be claimed which will ultimately reduce final stage prices in the hands of customer, leading to reduction of cascading of taxes. Input tax credit system under GST can be asserted as self

balancing system because the conditions mentioned under the Act before claiming such credit, makes both the buyer and seller complete the formalities. Input tax credit is allowed only in those cases where there are taxes paid on output. There is a unique mechanism for matching of input tax credit claimed by the recipient and tax paid by the supplier, which was never prevalent under central tax laws. The absence of this matching system resulted in denial of huge eligible input tax credit in the hands of the recipient for the want of proof of tax payment at the suppliers end.

Returns – Procedure under GST is the manifestation of transparent business practices as the business transactions uploaded by one person are verified by the other, leading to ethical business practices. Unless and until pending returns are filed, tax payer cannot file return for the current period and this results into auto compliance. Three monthly returns and one annual return are required to be filed by a normal tax payer. Out of three, two returns are auto populated which makes return filing simple and leads to time and cost savings.

Payment of Taxes – It shall be made for the previous tax period first and then for the current period which will ensure self compliance by the tax payer. Features of GST are made in such a way that there will be less government intervention.

Refund Mechanism – It is essential in tax administration, as it facilitates trade through the release of blocked funds for working capital. The claim and sanctioning procedure is completely online and time bound. There is a facility of claiming provisional refund only to those persons who are compliant with laws in all respect.

Audit under GST – It is of three types, turnover based, by tax authorities and special audit. Under GST for the proper functioning of self assessment system, the tool of Audit is established. First time audit will be undertaken by the department under GST.

E-Way Bill – It is not a new concept; under old indirect tax regime it was prevalent under the name of road transport / way bill. Under GST, it is different as it is governed by same set of rules applicable throughout the country. E-way bill is issued for

discouraging the practice of bogus billing and for the seamless movement/tracking of movement of goods.

Anti-Profiteering Measure – It was built into GST law for ensuring that any benefit of reduction in tax rates or the benefit of input tax credit shall be passed on to the consumers by way of commensurate reduction in prices. An Authority established to examine the implementation of this measure, recently slapped with huge penalty to those entities that made excessive profits under GST and contributed to rising of inflation.

Removal of Cascading Effect – It means removal of tax on tax. With only few exceptions like petroleum products, potable alcohol, diesel, petrol, electricity, real estate which are outside the periphery of GST, cascading is rooted out to a great extent with grant of seamless credit across India.

Composition Scheme – With the introduction of GST, surge of panic went through the small industry in particular with respect to the amount of compliances specified thereunder. Government has introduced this scheme to bring relief to the small businesses so that they need not be burdened with the compliance provisions under the law. Small tax payers can get rid of tedious GST formalities and pay GST at the fix rate of turnover.

Gestation Period – For any idea to develop from its conception till the final success, it needs to undergo a period of gestation. Same is the case with GST which is undergoing constant change. Industry needs to adjust with the compliances under the new law and also government's constant attempts to move goods from higher tax rate bracket to the lower. Once the gestation period is over, country will soon experience the change in the form of increased level of global competitiveness, ease of doing business, boost to Make In India campaign, comprehensive tax policy, etc.

Way Forward

It has hardly been over a year since the GST is introduced in India, to deliberate about the success or failure. Considering the India's politics more contentious, its population less educated and larger informal sector, the current structure of GST is so far can be said, more successful, otherwise there would have been a call for outright repeal.

While India's GDP did slip downward, effect being attributed to roll-out of GST but ultimately it retains its fastest growing economy tag.

The Government has constantly been open to receive any feedback from the industry and make suitable changes, trying to meet the two ends. Current indirect tax policy is one of the biggest hindrances which have adversely affected the domestic manufacturing sector as well as flow of foreign direct investment hence introduction of GST is important to alleviate the situation.

Conclusion

The ideal system of taxation would be the one which will tax the goods only on value addition, which is easy to comply, compatible to attract foreign reserve, uniform throughout the country, ensures more economic growth, higher output and more employment opportunities, keeping the long term prospects in mind, the Government of India has evolved the current indirect tax structure.

References : Advance Tax Laws and Practice – ICSI Study Material



INVITATION FOR CONTRIBUTING AN ARTICLE

Readers are invited to contribute article/s for the Journal. The article should be on a topic of current relevance on Corporate Law, Tax Law, or on any other matter or issue relating to Economic or Commercial Laws. The article should be original and of around 5-6 pages in word file (approx. 2000 words). Send your articles at email id :

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and

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along with your student registration number, photograph and contact number. The shortlisted articles shall be published in the Journal.



Input Service Distributor and Cross Charge Mechanism under GST : An Analysis

In this article, an attempt has been made to explain the concept of input service distributor (ISD), cross charge mechanism, and an explanation to what is the best method to adopt in various situations.

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Introduction

Goods and Services Tax (GST) is a levy on supply of goods or services. For the purpose of applicability of GST, the transactions are divided into the following :

- ♦ *Intra State Transactions* – Intra state transactions are those where the location of supplier and place of supply are in same state and there will be a levy of Central Goods and Services Tax Act, 2017 (CGST Act) and the State Goods and Services Tax Act, 2017 (SGST Act) of the State in which the supplier is located.
- ♦ *Inter State Transactions* – Inter state transactions are those where the location of supplier and place of supply are in different states or transactions of cross border (supplier is located in India and recipient located outside India or vice versa). In case of inter-state transactions, integrated goods and services tax (IGST) will be levied and place of supply shall be determined in accordance with sections 10, 11, 12 and 13 of the Integrated Goods and Services Tax Act, 2017 (IGST Act).

Input Tax Credit

The term input tax has been defined under section 2(62) of CGST Act. Accordingly, the term 'input tax' in relation to registered person means Central

tax, State tax, integrated tax or union territory tax charged on any supply of goods or services or both made to him and includes the following :

- ♦ Integrated goods and services tax paid on import of goods
- ♦ Central tax, State tax and integrated tax payable under reverse charge but does not include the tax paid under the composition levy

'Input tax credit', as per section 2(63) of the CGST Act, means the credit of input tax.

Legal Glitch on Utilization of One State's SGST With the Other

Input tax is defined to include the State tax, Central tax, or Integrated tax charged on all supplies received by registered taxable person in the course or furtherance of business or commerce. The term 'State tax' is defined under section 2(104) of CGST Act as the tax levied under any SGST Act. Though it is mentioned under the input tax definition that the State tax is eligible for credit, but on perusal of the respective SGST Act, the term 'State tax' is defined to mean *the tax levied under the Act* which means that a State input tax credit can be adjusted against that respective State output tax liability only but not with any other State output tax liability. This legal glitch is a hurdle for the concept of free flow of input tax credit. This interpretational issue has been referred to the **Delhi High Court** for examination

in the case of ***D Pauls Travels & Tours Ltd v. UOI***¹ and the matter is pending for final disposal. As of now, there is a glitch that one State SGST may not be adjusted against another State SGST and *vice versa*.

Example - A registered person, located in Maharashtra State, visits Gujarat for official purpose and have incurred the accommodation expenses in a hotel located in Gujarat. As the supply being intra state because the person supplying the service and place of supply are in Gujarat, the hotel will charge the CGST and Gujarat SGST. The registered person located in Maharashtra may not be in a position to avail input tax credit by complying the Maharashtra SGST Act.

Input Service Distributor

Definition

The term 'input service distributor' has been defined under section 2 (61) of the CGST Act which is reproduced as under :

'(61) "Input service distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of Central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office.'

In view of this definition, an office of a company can act as input service distributor by way of accumulating the input tax credit on various services received by the company and transferring the credit to other registered units under same PAN. This is similar to the concept of input service distributor under service tax regime. Though GST laws proposes to levy tax on supply of goods or services without any distinction, input tax credit relating to goods cannot be distributed under the concept of input service distributor.

Conditions to be Satisfied for Distribution of Input Tax Credit (Section 20)

Input service distributor may distribute the credit subject to the following conditions:

- While distributing the credit, input service distributor shall issue a document to the recipient branch indicating that it is issued only for distribution of input tax credit.
- The amount of the credit distributed shall not exceed the amount of credit available for distribution.
- If the credit is attributable to only a particular branch, then the same shall be distributed only to that branch.
- If the credit is attributable to more than one branch, then the same shall be distributed on pro rata based on the turnover in the *relevant period* in a state or union territory to the aggregate of the total turnover of all branches to whom the input tax is attributable.

'Term relevant period' – The term relevant period means if the recipient branches of the credit have any turnover during the preceding financial year, then the turnover of the preceding financial year is to be considered, or if any of the recipient branches doesn't have any turnover in the previous financial year, then the turnover of the preceding quarter in which details of all the recipient branches are available, is to be considered.

Manner of Distribution of Credit under Input Service Distributor Rules (Rule 39)

Rule 39 of CGST Rules, 2017 lays down the procedure for distribution of input tax credit by input service distributor. On perusal of this rule, it provides the manner in which the input tax relating to Central tax, State tax and integrated tax shall be distributed. Two important conditions to be satisfied are as follows :

- Input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient.
- Input tax credit on account of Central tax and State tax shall be distributed in the following manner :
 - ◆ In respect of a recipient located in the same State in which the input service distributor is located, be distributed as

1. Refer taxmann.com.

input tax credit of Central tax and State tax or union territory tax respectively.

- ◆ In respect of a recipient located in a State other than that of the input service distributor, be distributed as integrated tax.

In view of the above referred manner in which credit is distributed, let us consider the following examples to understand the implications.

Example : Say, a company is having office in Maharashtra, Uttar Pradesh and Gujarat. The office in Maharashtra has obtained registration under input service distributor. The office in Uttar Pradesh has incurred a location or performance specific expenditure viz. hotel expenditure in Mumbai. In such case, the hotel charges Central tax and State tax of Mumbai. The Maharashtra office (input service distributor) can take credit of the said expenditure and transfer the same as integrated tax to Uttar Pradesh.

If the said expenditure is incurred in Delhi, the hotel will charge Central tax and State tax of Delhi. In such case, neither the office in Uttar Pradesh nor the Maharashtra office (input service distributor) can take input tax credit of the same. If the company has office even in Delhi also, then the hotel expenditure incurred in Delhi is not for the purpose of Delhi office business and in the absence of input service distributor registration for Delhi office, the said expenditure cannot be claimed as input tax credit.

Limitations under Input Service Distributor

From the above discussed examples, it can be concluded that there are two limitations under the concept of input service distributor:

- Credit relating to goods cannot be distributed under this concept.
- There is a legal glitch that prevents the input service distributor to distribute the credit relating to State tax charged on intra-state supplies that are supplied in a State other than that in which the input service distributor is located.

Cross Charge

As discussed in the introduction, GST is a levy on supply of goods and services or both. The word 'supply' is defined under section 7 of CGST Act which states that the expression "supply" includes –

- (i) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business, and
- (ii) import of services for a consideration whether or not in the course or furtherance of business.

The activities specified in Schedule I are made or agreed to be made without a consideration; and the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

'Supply' is defined in an inclusive manner which includes all kinds of supply of goods or services undertaken for a consideration by a person in the course or furtherance of business. However, it also includes activities listed in the Schedule I even in the absence of consideration. On perusal of the activities listed in the Schedule I, the one relevant in the present context is supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business. It means that any supply of goods or services or both between branches of different states/Union territories in the course or furtherance of business is treated as supply and the transaction shall be valued as per the valuation rules 28, 30 and 31.

Activities listed in Schedule I satisfy the consumption based tax system, *i.e.*, the tax shall flow to the state in which the goods or services are consumed. If the same is not treated as supply, then the State in which the supplier is located will be suffering from the revenue loss because when the sale ultimately happens with a third party, the revenue will flow to the state in which the recipient branch is located but the supplier branch shall avail the input tax credit which shall be borne by the state in which the supplier branch is located.

Treatment of Cross Charge

In general, the effective tax treatment shall be, the supplier branch shall supply the goods or services by charging the recipient branch and accordingly pay the GST amount to the government, the recipient branch shall avail the input tax credit of the same.

Elimination of Legal Glitch of Utilizing Input Tax Credit of One State's SGST With the Other under Cross Charge

Under this concept there is a scope for elimination of legal glitch of utilizing input tax credit of one state SGST with the other state. If one state's branch of an entity have incurred immovable related expenses in other state then it would have paid CGST and SGST of the other state, which it cannot utilize as such as input tax credit, hence, the branch in other state shall utilize this input tax credit by giving its GSTIN in the invoice, and which in turn invoice the first branch under the head of 'Business support services' by charging IGST. However, where the services are pertaining to two or more branches then the same shall be invoiced in accordance with the provisions of section 20 of the CGST Act because the legislative intent is clear that it is to be distributed based on the turnover only.

Example : A company having branches at Mumbai, Gujarat, and Punjab, being the head office. Branch at Punjab have incurred accommodation expenses in Gujarat and have paid CGST and Gujarat SGST. The credit relating to the transaction may not be available due to the technical glitch as explained above, this amounts to block of credits. Hence, under this option the Gujarat branch shall invoice the Punjab branch under 'Business support services' head and transfer the equal credit to the Punjab branch, Gujarat branch shall utilize the credit charged by the hotel resulting into no blockage of credits. The whole essence of the transaction shall turn out to be like- Mumbai branch shall book the accommodation in a hotel by giving its GSTIN and shall claim the credit of the same and shall invoice to Punjab by charging IGST under business support services, hence, there will be no blockage of credits. However, if the same Punjab office incurs the similar expenditure in Tamil Nadu

then the credit may not be available under cross charge and input Service Distributor as well.

Conclusion: Based on the facts, the relevant method can be applied by considering the following;

- When a company having multiple registrations in various states but procures various input services in a single state then ISD is beneficial.
- When a company having multiple registrations in various States and procures various input services across various States, cross valuation is beneficial because in case of ISD, SGST of the state in which ISD is registered is only eligible for credit.
- Company desirous of distributing the credit relating to goods (e.g. Stationery), as ISD is restricted to services only, the credit relating to goods commonly used can be distributed under cross charge only.

Valuation of Supply of Services Between Head Office and Respective State Location

As per the section 15 of the CGST Act, 2017 value of supply, in case of distinct person, shall be determined as per rule 28 of CGST Rules which prescribes the methods to determine the value. As per rule 28, head office shall be required to discharge GST on the following value, as may be applicable and available in serial order :

- ◆ Open market value of such supply
- ◆ Value of supply of like kind or quality
- ◆ 110% of cost of acquisition of such goods or cost of provision of such services or
- ◆ Any other reasonable means

Where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be open market value of the goods or services.

Illustrative Example to Explain the Cross Charge Mechanism

ABC Ltd. has head office in Maharashtra along with two depots in Gujarat and Uttar Pradesh (UP). ABC Ltd. has following data and wants to determine the cross – charge value to be charged to other units :

EXTRACT OF PROFIT AND LOSS ACCOUNT OF ABC LIMITED FOR THE MONTH OF MAY 2018

Particulars	Amount in lakh (Rs.) (All Figures are Assumed)	Received at	Related to	Considered for HO Amount in lakh (Rs.)	Considered for cross charge valuation Amount in lakh (Rs.)
Income					
Sales – Maharashtra	400	Maha	Maha	400 ¹	Nil
Sales – Gujarat	500	Gujarat	Gujarat	Nil	Nil
Sales – UP	600	UP	UP	Nil	Nil
Interest received on loan given	2	Maha	Common	Exempt from GST – Not considered for cross charges. ⁵	
Dividend received	1	Maha	Common	Exempt from GST – Not considered for cross charges.	
Total Income	1,503				
Expenses					
Purchase of raw materials & Direct cost- Gujarat	250	Gujarat	Gujarat	Nil ²	Nil
Purchase of raw materials & direct cost- UP	235	UP	UP	Nil ³	Nil
Employee cost- Gujarat	190	Gujarat	Gujarat	Nil ²	Nil
Employee cost- UP	175	UP	UP	Nil ³	Nil
Employee cost	110	All locations	All locations	Nil	Nil
Advertisement	70	Maha	UP	NIL	70.00 ⁴
Human resources expenses	80	Maha	Common	21.60	58.40
Secretarial	50	Maha	Common	13.50	36.50
Meeting and events/ brand promotion	40	Maha	Common	11.00	29.00
Audit fee	10	Maha	Common	02.50	07.50
Legal and professional fees	22	Maha	Common	05.94	16.06
Lodging & Boarding expenses	12	Maha	Maha	12	Nil
Interest on loan taken	35	Maha	Common	Exempt from GST – Not considered for cross charges. ⁵	
Rent	8	UP	UP	Nil	Nil
Total Expenses	1,287				
Net profit	216				

Notes:

1. This expense is related to and borne by Head office, Maharashtra and thus, same should not be charged to other units.
2. These expenses are directly attributable to Gujarat unit and are borne by Gujarat unit only. Thus, question of cross charging by Head office does not arise.
3. These expenses are directly attributable to Uttar Pradesh unit and are borne by Uttar Pradesh unit only. Thus, question of cross charging by Head office does not arise.
4. There could some expenses which are directly related to any specific units but the same have been borne by the Head office. In such cases, instead of distributing the ITC on such expenses as per the specific ratio, it shall be directly apportioned to the concerned unit. In the instant case, advertisement expenses of Rs.70 lakhs is borne by Head office but it directly related to Uttar Pradesh unit and hence, such cost shall be directly charged to Uttar Pradesh as whole without any allocation to the other establishments.
5. Interest on loan is exempted supply under GST regime which means no GST would have been charged by lender on such expenses. In our view, such exempted supply should not be considered for cross charging. If such interest is considered in calculation then there may be GST liability on such exempted supply also as Head office would be making outward supply in the form of Business Support Service which is taxable supply.

Identification of Basis for Cross Charging

The basis for cross charging would be very subjective and depends upon the industry practice. However, a standard approach could be taking taxable turnover made by concerned units which is also akin to the manner of distribution of common credits by ISD under CGST Act.

Units	Taxable turnover in lakhs (Rs.)	Ratio (%)
Head Office – Maharashtra	400	27.00
Gujarat Unit	500	33.00
Uttar Pradesh Unit	600	40.00
Total	1500	100.00

Calculation of cross charge value- Head office shall raise the tax invoice on Gujarat and Uttar Pradesh units considering below mentioned taxable values.

Particulars		Gujarat unit	Uttar Pradesh
	Directly attributable cost	-	70.00
Add:	Apportionment of common expenses	66.66	80.80
	Total Cost	66.66	150.80
Add:	10% Mark Up	6.66	15.08
	Taxable Value (110% of Cost)	73.32	165.88

Conclusion

GST law requires State wise registration and treats each registration as distinct person. The common expenses may be either distributed via ISD or may be charged via cross charge. Both the options attract their respective compliances which shall be adhered to with all the provisions of the GST law which at times may be cumbersome also especially with regards to maintenance of accounts and record along with audit provisions under GST regime. However, for supplies made between distinct taxable persons, cross charge is the only option. While ISD mechanism provides for the manner of distribution of credits, it also increases the compliance burden as monthly returns need to be filed for entities registered as an ISD. Cross charge mechanism offers flexibility and is also, the only mechanism that can be employed for distribution of credits related to goods and capital goods. Both mechanisms have their pros and cons and need to be evaluated carefully before a decision is taken.



Concentration – Success Mantra for Life

In this article, the author elucidates most common factors or practices that influence ability to concentrate the mind through meditation. The author believes that concentration is a success mantra for life.

Contributed by Brahmakumaris

Om Shanti Retreat Centre Gurugram

Introduction

Sun, the magnanimous star of the solar system emits about 3.86×10^{26} watts of energy. To put this into a crazy context, every second the sun produces the same energy as about a trillion 1 megaton bombs! In one second, our sun produces enough energy for almost 5,00,000 years of the current needs of our so-called civilization. Most of that energy goes off into space, but about 1.74×10^{17} watts strikes the earth, which is still a huge amount, isn't it? But ever wondered why does not the Earth burn away? How is the plant Mercury surviving being so close to the Sun? The reason is lack of concentration. We know how a magnifying glass could burn a piece of paper, when the rays of the sun were focused through it. The fire could start only when the sun's rays were concentrated to a small point. When the magnifying glass was moved too far away or too close to the paper, the rays were not focused enough and nothing happened. Frightening to imagine, but if there were a lens to focus the Sun's rays on whole of the Earth, you could image what would be the state of our planet. This experience describes vividly the Power of Concentration, also described as focused attention. To understand it further, let's go back to our chemistry labs. We used to study and use acids which were broadly of 2 types- diluted & concentrated. Here, concentrated acid means which has more molecules of acid and less of that of water. And the contrary is true for diluted acid.

Concentration of Mind

In terms of number of thoughts, concentration of

mind is a state in which we have majority of thoughts regarding what we want to be focused on and less number of thoughts about other things. Thoughts claim our attention incessantly, and waste our time and energy on unimportant and useless matters. They actually rule our life. We have become so used to this slavery, that we take it for granted, and have become unconscious of this habit, except on certain occasions. For instance, while breathing we do not need to pay attention to each inhalation and exhalation. We become conscious of the process of breathing, only when we have some difficulty with breathing, such as when our nose is clogged, or when we are in an unventilated room, or when we are running at a high speed for long distance and are feeling short of breath. It is the same with thinking. We become conscious of the constant onslaught of our thoughts, and of our inability to calm them down, only when we need to concentrate, solve a problem, or study. We are also acutely aware of them when we have worries or fears.

In terms of energy of thoughts, concentration of mind is a state where the energy of the mind (thoughts) is not scattered, but directed on something particular. It is said- when our mind goes energy flows. When our mind is focused and our energies are not dissipated on irrelevant activities or thoughts, we can accomplish more in less time.

Look at the following familiar situation. You need to focus on something really urgent for your work. You start your work with full attention. After a while you feel hungry and go to the kitchen to eat something. You return to the task, and then hear some people talking outside. You listen to them

for several moments and then bring your attention back to the work. After a while you feel restless and switch on the radio to listen to some music. You continue to work for a little while, and then remember something that happened yesterday, and you start thinking about it. When you look at your watch, you are amazed to find out that one complete hour has passed and you have hardly done anything.

This is what happens when one lacks concentration. Imagine what you could have accomplished, if you could control your attention and focus your mind! This is why developing concentration is essential to anyone who aspires to take charge of his or her life. This skill is essential for every kind of success.

Then, how we develop such a concentration that allows our mind to stop jumping from one thing to another and remain focused on whatever we have at hand? Though most people acknowledge the fact that good concentration is a great asset, yet most of them do nothing to strengthen it, because they don't know how, and because they lack the motivation. Just like developing physical strength, requires healthy eating and exercising daily to the gym in a systematic manner to make our body tuned, it is the same with concentration. Reading, studying and trying to pay attention to what we do, develop some of this ability, but practicing exercises diligently each day is something what makes a difference- it is like training our mind in a mental gym. For this we need to understand the nature of our mind, some factors that influence thoughts- their quality, quantity and frequency, consume the right food for thought and practice some mental exercises, more effectively known as MEDITATION.

Common Practices that Influence Our Ability to Concentrate

Following are some most common factors or practises that influence our ability to concentrate:

Interest or concern – Sometimes you can find strong powers of concentration in yourself, especially when you are watching a 3 hour long movie or your favourite TV show- you become

oblivious to your surroundings, and lose any sense of time because these are things of your interest. Have you noticed how children don't even hear you when they are playing? They become fully engrossed in their game, almost oblivious to everything else. In other cases, when we are not much interested in something but we are really and earnestly concerned about the outcome like- to excel in your studies, pass an important exam, solve a problem, complete a project or meet a deadline- this power becomes available to you. This is kind of conditional concentration, but developing it in a systematic way brings it under your control, and grants you the ability to use it intentionally, whenever you need it. So, the 1st key to develop concentration is to develop interest in whatever we do, or rather make whatever you do interesting. Also, we have to find the real reason to do it. Look for a gain in what-so-ever and how-so-ever mundane task you are supposed to do.

Language of mind – If this article would have been for a Hindi speaking audience- it would have been in Hindi, if for a Manipuri speaking audience- it would have been written in Manipuri, if for a Tamil speaking audience- then in Tamil... this clearly indicates that for communication purpose, we must adhere to a language which the audience understands. In case of communication with mind, do we know the language of mind? If we want the mind to understand and follow what we are trying to instruct or load it with, then we must definitely communicate to the mind in that language. The language that mind understands is that of images, music, sounds, motion, colors etc. What we try to feed it often is text, text and text- whether in form of files, documents, papers, emails, and many more. Therefore, to enhance concentration, either we can use more of those things that mind understands or in the case of serious business matters, use visualization power of mind to convert the loads of text into something mind can visualize in form of images and sounds. This will not just enhance concentration, but also memory. This power of visualization, which is directly proportional to the power of concentration is a tool used and developed through meditation. Thus, the more we practise meditation, the better we have our hands-on in this art and science.

Involving mind & intellect – Concentration in Hindi is known as *dhyaan*. Have you ever heard your mother telling you- *aankh se dekho, aankh se padho, kaan se suno...* Never! It has always been said- *dhyaan se dekho, dhyaan se padho, dhyaan se suno...* Now, where does this *dhyaan* come from? Which body part is it? Actually, *dhyaan* or concentration is a stage where our mind and intellect is focused on the same thing/ task. Hence, it is not the fault of mind alone, if we aren't able to concentrate. Thus, to bring the two together on the same platform and to keep them conjoint on the same task, needs a little practice. This is easily achieved through meditation which not just trains the mind to stay in a thought for longer but also sharpens the intellect through positive feedings, which is why all parents now-a-days want their children to learn meditation!

Ambience (place, light, sound and posture) – All of these play an important role in concentration.

- *The place* we choose to work and the vibrations that the place carries matter a lot. You must have noticed that when you study on bed or work in a place which is usually your leisure place or your couch, you need longer hours to do the same amount of work which you could have done in lesser time if you had selected a table- chair sitting or a study place. This is because what we most commonly do in a particular place creates a vibrational energy of that place which stays there for a relatively longer time even when we have stopped doing that task there or have even moved away from the place. And when this task is repeated, the vibrational energy of that place becomes a noticeable feature. This is why we look for our bed to have the most satisfying sleep or go to a temple or place of worship for a prayer.
- *Light* is also an important factor when it comes to concentration. Our body has certain sensors to make out what the body has to do, and some of these sensors lie outside the body. One of it is light. When the lights are dimmed, it is often sensed by the body as an indication to go to the sleep mode or energy- saver mode of the mind, in which concentration is definitely the last thing it would like to do.
- When we are concentrating, as already discussed, we are talking to our mind. But if the external noises are too loud, our mind can't properly hear what it is speaking to itself. Or rather, our mind gets too bewildered in juggling between internal and external sounds.
- Another sensor that our body has inbuilt in itself is the posture. As soon as we lay down, the mind gets the signal through the body that it needs rest. So it becomes difficult to concentrate on something that the mind usually finds boring, in such a condition. However, concentrating on a movie in such a position seems easy as in that case other factors such as language of the mind are fulfilled and that keeps the minds engaged to prevent from dosing off.

Conclusion

Meditation is a technique which allows the mind to listen to itself more clearly and subside the unwanted thoughts or noises in the mind. Its gradual practise helps us to create a powerful vibrational energy field around ourselves so that the energy fields of other people and places do not have a greater impact on ourselves. The practise of keeping our mind alert in meditation empowers it such that it can tune into the alert mode even when the surroundings are having a distractive or drowsy effect. Also, it can help the mind to swiftly go to rest mode by slowing down the thoughts, when it needs to sleep, allowing a sound sleep, which otherwise is not in the fortune of many who twist and roll for hours merely trying to sleep. Thus, meditation helps us gain total control on ourselves through our mind and enables it to choose the mode it needs.



KNOWLEDGE UPDATE

INSOLVENCY AND BANKRUPTCY LAW

Discussion Paper on Amendments to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

IBBI, vide Notification dated 12th May, 2019, has issued discussion paper to amend the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

SEBI LAW

Participation of Mutual Funds in Commodity Derivatives Market in India

In order to promote institutional participation in exchange traded commodity derivatives (ETCDs), SEBI has permitted Category III Alternative Investment Funds to participate in exchange traded commodity derivatives vide Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2017/61 dated June 21, 2017

Discussion Paper on Review of Buy-Back of Securities

Vide Circular dated 22nd May, 2019, SEBI has come out with discussion paper on review of buy-back of securities. The objective of this discussion paper is to seek comments/views from the public on suggestions relating to review of conditions for buy-back of securities.

Consultation Paper on Review of SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations, 2015

SEBI, vide Circular dated 20th May, 2019, has come out with consultation paper on review of SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations, 2015. The objective of this consultative paper is to seek public comments on the proposals relating to SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations, 2015 with a view to, inter-alia, broadening the universe of issuers, strengthening investor protection measures and simplifying and easing the process for issuance of debt securities under these Regulations.

Consultation Paper on Innovators Growth Platform (IGP) Norms for Companies Listed on IGP to Trade Under Regular Category of Main Board of Recognized Stock Exchanges

SEBI, vide Circular dated 20th May, 2019, has come out with consultation paper on innovators growth platform (IGP) norms for companies listed on IGP to trade under regular category of main board of recognized stock exchanges.



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