

CHARTERED SECRETARY

THE JOURNAL FOR CORPORATE PROFESSIONALS



Focus on...

GST



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

Website : www.icsi.edu

Proudly World Class



This Independence Day, claim your freedom from Compromises. Why make an either-or choice when BoardApp offers you both -World-Class Standards; and solutions tailored to your India-specific needs.

Proudly World Class

- ✓ Ease of Use & Adoption
- ✓ Security
- ✓ Support & Service
- ✓ Technology
- ✓ Performance
- ✓ Quality

Proudly Indian

- ✓ Secretarial Standards for Board Meetings
- ✓ Secretarial Standards for Circular Resolutions
- ✓ Hybrid (Manual + Digital) mode during transition
- ✓ Integration with Secretarial & Functional Processes



To request for a trial , register on <http://boardapp.prosares.com/register>



Board App

Available
On Premise

Available
On Cloud



Brought To You By



Prosares Solutions Pvt Ltd

info@prosares.com

+91-9833585902

Exclusive Marketing Partners



Zeulantis Solutions

info@zeulantis.com

+91-9967014014

Chartered Secretary Welcomes the New Secretary of the Institute



CS Dinesh C. Arora

CS Dinesh C. Arora, a Fellow Member of the Institute, has joined as Secretary, Institute of Company Secretaries of India, on July 21, 2016. An accomplished professional CS Dinesh C. Arora is also a qualified Chartered Accountant and a Cost Accountant.

He has wide experience of 25 years of working in a global environment with multi products & multi locations Fortune 500 MNCs and leading Corporate Houses in Manufacturing, IT, Financial Services, FMCG & Education Sectors. He has vast experience in Strategic & Business Planning, Budgeting & Forecasting, Funds Raising, IPO & Private Equity Management, Opex/Capex Management, Fiscal & Tax Planning, Legal Drafting (Documents and Contracts), Mergers & Acquisitions, Treasury and Risk Management.

Before taking charge as Secretary, ICSI, CS Dinesh C. Arora was spearheading the process of proposed IPO & M&A as 'Company Secretary & CFO' with Resonance Eduventures Ltd., Kota (Rajasthan) - a leader mainly in the education space of Engineering and Medical Entrance.

Prior to Resonance, his experience of working with large Corporate Houses includes Karvy, Saint Gobain and Godfrey Phillips.

Widely travelled in India and abroad CS Dinesh C. Arora has delivered lectures on Leadership, Achievement Motivation, The Power of Belief, Independent Directors, The Process of proposed IPO, Due Diligence, Transforming Role of a Company Secretary and Mission CSR at various National and International Forums. He is focused, hardworking, self-motivated and an effective team player with excellent communication and interpersonal skills.



**International
Corporate
Governance
Day**
Power of Best Practices



**GLOBAL CONGRUENCE
ON
INTERNATIONAL CORPORATE
GOVERNANCE DAY**

awaits your presence.

An event which brings International Forums, best of minds
at one place to revolutionize the

INTERNATIONAL CORPORATE GOVERNANCE DAY

Pack and Embark to Hyderabad, Telangana, India
8-9 December, 2016

ICSI invites International Research Papers for its Global Congruence on International Corporate Governance Day on or before 30 October 2016. For details visit www.icsi.edu



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

For details, please contact: Tel: 011-45341028 • E-mail: icgc@icsi.edu • Website: www.icsi.edu

The Council

President

- ▶ Mamta Binani

Vice President

- ▶ Shyam Agrawal (Dr.)

Members

(in alphabetical order)

- ▶ Ahalada Rao V.
- ▶ Amardeep Singh Bhatia
- ▶ Ashish C. Doshi
- ▶ Ashish Garg
- ▶ Atul H Mehta
- ▶ Gopalakrishna Hegde
- ▶ Gopal Krishan Agarwal
- ▶ Mahavir Lunawat
- ▶ Makarand M. Lele
- ▶ Rajesh Sharma
- ▶ Rajiv Bajaj
- ▶ Ramasubramaniam C.
- ▶ Ranjeet Kumar Pandey
- ▶ S. K. Agrawala
- ▶ Satwinder Singh
- ▶ Vijay Kumar Jhalani
- ▶ Vineet K. Chaudhary
- ▶ Yamal Ashwinkumar Vyas

Secretary

- ▶ Dinesh C. Arora (w.e.f. 21.07.2016)

Editorial Advisory Board

Chairman

- ▶ S K Agrawala

Members

(in alphabetical order)

- ▶ Ashu Gupta (Ms.)
- ▶ Deepak Kukreja
- ▶ D K Jain (Dr.)
- ▶ D P Gupta
- ▶ Gourav Vallabh (Prof.)
- ▶ G R Bhatia
- ▶ H M Choraria
- ▶ N K Jain
- ▶ Puttaparthi Jagannatham
- ▶ Pradeep K Mittal
- ▶ Prithvi Haldea
- ▶ R Radhakrishnan
- ▶ Sanjeev Kapoor
- ▶ Tridib Kumar Barat

Editor & Publisher

- ▶ S.K. Dixit (Dr.)

Consulting Editor

- ▶ V. Gopalan

Legal Correspondent

- ▶ T. K. A. Padmanabhan

CONTENTS



ISSN 0972-1983

CHARTERED SECRETARY®

[Registered under Trade Marks Act, 1999]

Vol. : XLVI • No. 08 • Pg 1-152 • August - 2016

1 FROM THE PRESIDENT	16
2 ARTICLES	21
3 RESEARCH CORNER	101
3 LEGAL WORLD	113
4 FROM THE GOVERNMENT	121
5 NEWS FROM THE INSTITUTE	129
6 MISCELLANEOUS CORNER	139

QR Code/Weblink of Chartered Secretary Journal
<https://www.icsi.edu/JournalsBulletins/CharteredSecretary.aspx>



Annual Subscription

Inland : Rs. 1000 (Rs. 500 for Students of the ICSI)
Foreign : \$100; £60 (surface mail) Single Copy : Rs. 100

'Chartered Secretary' is normally published in the second week of every month. ■ Non-receipt of any issue should be notified within that month. ■ Articles on subjects of interest to company secretaries are welcome. ■ Views expressed by contributors are their own and the Institute does not accept any responsibility. ■ The Institute is not in any way responsible for the result of any action taken on the basis of the advertisement published in the journal. ■ All rights reserved. ■ No part of the journal may be reproduced or copied in any form by any means without the written permission of the Institute. ■ The write ups of this issue are also available on the website of the Institute www.icsi.edu.

Edited, Printed & Published by

Dr. S.K. Dixit for The Institute of Company Secretaries of India,
'ICSI House', 22, Institutional Area, Lodi Road, New Delhi-110 003.
Phones : 41504444, 45341000, Grams : 'COMPSEC'
Fax : 91-11-24626727
E-Mail : info@icsi.edu
Website : <http://www.icsi.edu>

Mode of Citation: CSJ (2016)(08)/--- (Page No.)



Designed & Printed by

International Print-o-Pac Limited

C-4 to C-1 I, Hosiery Complex, Phase-II Extension, NOIDA - 201 305 (U.P.) INDIA
Tel.: +91 (0) 120 - 4192100, Fax: +91 (0) 120 - 4192199
Website: www.ipindia.com

08



01



02



03



04



05



06



07



08



09



10



11



12



13

- 01 >> Meeting of ICSI delegation with Hon'ble Union Minister of State for Finance and Corporate Affairs – Group photo – Standing from Left: CS Ranjeet Pandey, CS Vineet K. Chaudhary, CS Rajiv Bajaj, Arjun Ram Meghwal (Hon'ble Union Minister of State for Finance and Corporate Affairs), CS Mamta Binani and Preeti Kaushik Banerjee.
- 03 >> Meeting of ICSI delegation with Hon'ble, Minister for Home, Health & FW, Industries, PWD & Power, Government of Delhi – CS Mamta Binani seen presenting a memento to Satyender Jain (Hon'ble, Minister for Home, Health & FW, Industries, PWD & Power, Government of Delhi). Others standing from Left: CS Vineet K. Chaudhary, CS (Dr.) Shyam Agrawal, CS Ranjeet Pandey, CS Manish Gupta and CS Sonia Baijal.
- 09 >> Release of ICSI publication titled Corporate Bankruptcy – A Primer – Standing from Left: CS S M Sundaram, CS Saurabh Kalra, CS Vineet K Chaudhary, CS Mamta Binani, Hon'ble Justice S J Mukhopadhaya, Hon'ble Justice M M Kumar, CS U K Chaudhary (President, NCLT Bar Association) and CS Dinesh C. Arora.
- 11 >> CS Mamta Binani presenting a memento to Hon'ble Justice S J Mukhopadhaya. CS Vineet K Chaudhary is also present on the occasion.

- 02 >> CS (Dr.) Shyam Agrawal seen presenting ICSI publication titled Rajasthan - Ease of Doing Business for MSME Sector to Vasundhara Raje (Hon'ble Chief Minister of Rajasthan) while Kiran Maheshwari (Hon'ble Minister of PHED, Govt. of Rajasthan) looks on.
- 4-8 >> Symposium on Companies Act, 2013: NCLT & NCLAT – Law and Practice jointly organised by ICSI and NCLT Bar Association – Address by: CS Mamta Binani, CS Vineet Chaudhary, Hon'ble Justice S J Mukhopadhaya (Chairperson, NCLAT), Hon'ble Justice M M Kumar (President, NCLT) and CS Dinesh C. Arora (Secretary, ICSI).
- 10 >> Launch of International Business Taxation Course – On the dais from left with information brochure: CS Saurabh Kalra, CS Vineet K Chaudhary, CS Satwinder Singh, CS Mamta Binani, Hon'ble Justice S J Mukhopadhaya, Hon'ble Justice M M Kumar, CS U K Chaudhary and CS Dinesh C. Arora. On the occasion Certificate Course in Valuation, Diploma in Internal Audit, E- learning Module on Banking Terminologies were also launched and E book Pratibimb was released.
- 12 >> CS U K Chaudhary presenting a memento to Hon'ble Justice M M Kumar.
- 13 >> CS Nesar Ahmad and Alok Dhir jointly presenting a memento to Balbinder Singh (Member, NCLAT).



- 14 >>> NIRC – Bhilwara Chapter –Seminar on Emerging Prospects for Company Secretaries – CS (Dr.) Shyam Agrawal addressing. Others sitting from Left: CS Nitin Mehta, CS V S Tapadia, Vijay Kumar Jhalani and CS R K Jain.
- 16 >>> Workshop on Company Law for officials of CCI – Group photo of the participants with CS Mamta Binani and M M Juneja (Addl. DG, CCI).
- 18 >>> WIRC - Bhopal Chapter –Two days Annual Conference on Emerging Trends – Standing from Left: CS Pranay Patel, CS Vivek Nayak, CS Pradeep Mutreja, CS DPS Dhakad, CS Vineet K. Chaudhary, CS Mamta Binani, CA Ashish Goyal (Lead Business Development, NSE), CS Ashish Garg, CS Amit K. Jain, CS P.K.Rai, CS Avadhesh Parashar, CS Yogesh Khakre and CS Piyush Bindal.
- 20 >>> SIRC – Hyderabad Chapter – Members’ Meeting – CS Mamta Binani addressing - Others sitting from Left: CS Kavitha Rani Sakhamuri, CS Mahadev Tirunagari, CS V Ahalada Rao and CS Ramakrishna Gupta.

- 15 >>> Inauguration of Accounting Standards Board of ICSI – Group photo of Board Members and ICSI Officials.
- 17 >>> ICSI WIRC Annual Regional Conference – 2016 on Company Secretary as an Entrepreneur hosted by Indore Chapter– Release of souvenir by the dignitaries present.
- 19 >>> 11th International Professional Development Fellowship Programme held at Greece – Group photo of Indian delegation..
- 21 >>> A view of the invitees, dignitaries and delegates at the Members’ Meeting.



22



23



24



25



26



27



28



29

- 22 >> NIRC - Rajasthan State Conference on New Era of Opportunities for Company Secretaries (Host: Jaipur Chapter, Co-Host: Alwar, Ajmer and Kota Chapters) – Sitting on the dais from Left: CS Mahendra Khandelwal, CS Sanjay Kumar Gupta (RoC, Jaipur (Rajasthan)), D C Jain (IPS, Additional Director General Police (Vigilance), Jaipur), CS (Dr.) Shyam Agrawal, CS Manish Gupta, CS Rajiv Bajaj and CS Deepak Arora.
- 24 >> Meeting of ICSI delegation with President and Vice President of ICoAI – CS Mamta Binani presenting a memento to CMA Manas Kumar Thakur(President, ICoAI).
- 26 >> WIRC - Surat Chapter – Programme on TDS 2016 – B Panda (Commissioner, IT) Addressing.
- 28 >> NIRC – Faridabad Chapter – Seminar on Corporate Social Responsibility - Chief Guest Nesar Ahmad being presented a memento by CS Praveen Ranka. Others standing from Left: CS Ajay Goel (Group Head and CS, GC Rieber Group of Norway), CS P C Jain and CS N K Goel.

- 23 >> Secretarial Standards Board of ICSI – Group photo of Members and ICSI officials.
- 25 >> Meeting of ICSI delegation with President and Vice President of ICoAI – CS Mamta Binani presenting a memento to CMA Sanjay Gupta (Vice President, ICoAI).
- 27 >> SIRC – Salem Chapter - Programme on Capital Market - Chief Guest Josekutty V.E. (Deputy RoC, Coimbatore) addressing.
- 29 >> NIRC - Ludhiana Chapter – Programme on Critical Aspects of the Companies Act, 2013– CS Ranjeet Pandey being welcomed by CS Harsh Kumar Goyal. Others standing From Left: CS Rajeev Bhambri and CS Nesar Ahmad.



30



31



32



33



34



35



36



37



38

- 30 >> ICSI – CCGRT – Three days residential unique workshop for Company Secretaries on Gearing up for exploring opportunities before NCLT – Group photo of faculty members and participants.
- 32 >> EIRC – Regional PCS Conference on Company Secretary Ek Marg Darshak-Release of EIRC Newsletter - Standing from Left: CS Siddhartha Murarka, CS Santosh Kumar Agrawala, R C Meena (RD (ER), MCA), CS Mamta Binani, CS Sandip Kumar Kejriwal, CS Vineet K Chaudhary and CS Gautam Dugar.
- 34 >> NIRC – Seminar on Goods & Services Tax -Inaugural Session –Sitting on the dais from Left: CS Nitesh Sinha, CS Satwinder Singh, CS Bimal Jain, CS Manish Gupta, CS Upender Gupta (Commissioner, GST, CBEC), CS Ranjeet Pandey and CS Pradeep Debnath.
- 35 >> WIRC - Vadodara Chapter -Lecture Meeting on an Overview of Draft Model GST Law - CS D. S. Mahajani (GM (Taxation) & CS, Transpek - Silox Industry Pvt. Ltd., Vadodara) addressing. A view of the participants.
- 36 >> SIRC - Mysore Chapter – Two days Research Symposium on Companies Act jointly with CCGRT – Group photo – Standing from Left: CS Sharath Mahendra Kumar (Columnist-eMagazine), CS Pracheta M, CS Phani Datta D N (Member-eMagazine Editorial Team), CS Ramakrishna Gupta, CS Bhansali M C, CS (Dr.) Shyam Agrawal, CS Dattatri H M (Chief Editor – eMagazine), CS Ahalada Rao V, CS Sarina C H (Member-eMagazine Editorial Team), CS Ajay Madaiah B B (Member-Editorial Team & Chairman-PDP Committee) and CS Abhishek Bharadwaj (Member-e Magazine Editorial Team).

- 31 >> ICSI – CCGRT – Inauguration of 'Moot Court' by M K Shrawat (Member, Judicial, NCLT, Mumbai) at CCGRT. Standing from Left: CS Makarand Lele, Dr. Rajesh Agrawal, CS N L Bhatia, M K Shrawat, CS Kaushik Jhaveri, Suhas Sawant (Assistant Director, NCLT, Mumbai), CS Ahalada Rao V and CS Ashish Doshi.
- 33 >> EIRC – Programme on Corporate Governance – New Dimensions of Board Practices and Responsibilities –CS Sandip Kr. Kejriwal addressing at the inaugural session. Others sitting from Left: Souvik Banerjee (Additional Director& Head – Economic Affairs & Policy, ICC), Suprabhat Lala (Deputy Chief Regulation, NSE of India Limited), Dr (Prof) Asish Bhattacharyya (Member, Core Group of Experts, NFCG),Chief Guest V S Sundaresan (CGM, SEBI), Atanu Sen, (Chairman – ICC National Expert Committee on Banking, Finance & Insurance and former MD & CEO, SBI Life Insurance), Guest of Honour R C Meena (RD, MCA), A K Rastogi (ED & CS, NTPC Ltd) and CA Anirban Datta (Chairman, EIRC, The ICAI.)
- 38 >> EIRC – Meeting with newly appointed Members of NCLT – Sitting from Left: Vijai Pratap Singh (member – J), Manorama Kumari (Member - J) and S Vijayraghavan (Member- TJ), NCLT with CS Mamta Binani, CS Anil Kumar Murarka, CS S K Agrawala, CS Sandip K Kejriwal, CS Siddhartha Murarka, DVNS Sarma and Dr. Tapas Kumar Roy.



39 >> National Seminar on Laws and Economics of Competition jointly with CCI – Aditya Prasad Padhi (IAS, Chief Secretary, Govt. of Odisha) addressing. Others sitting from Left: CS Vineet K Chaudhary, Soumya Ranjan Patnaik (Chief Editor, The Sambad, Bhubaneswar), CS Mamta Binani, S L Bunkar (Member, CCI) and CS Ashok Kumar Mishra.

40 >> S L Bunkar (Member, CCI) addressing.

42 >> WIRC – two Days' Workshop on Company Secretaries – Capacity Building – On the dais from Left: CS Rohit Gokhale, CS Swati Yash Bhatt, CS Devendra Deshpande, CS Makarand Lele, CS Kamlesh Joshi, CS Mahesh Athavale, Vijay Jhalani, CS J Shridhar, CS Rishikesh Vyas, CS Ashish Karodia, CS Hrishikesh Wagh and CS Pawan Chandak.

41 >> WIRC – Capacity Building workshop on Critical and Emerging Areas for Company Secretaries – On the dais from left: Guest of Honour V. Nallasenapathy, (Member (Technical), NCLT), CS Kamlesh Joshi, Chief Guest A K Chaturvedi (RD, MCA (WR)), CS (Dr.) S.D. Israni and CS NPS Chawla.

44-46 >> WIRC – Indore Chapter – Glimpses of Swachhata Bharat Abhiyan - MLA of Indore Mahendra Hardia, CS Ashish Garg, CS Manoj Bhandari, CS Anurag Gangrade and CS Pinky Shrivastava are seen in the pictures while observing Swachhata Bharat Abhiyan by the Chapter.

43 >> SIRC –A view of group reading on GST.

Student Month Celebrations – July 2016



Glimpses of some of the activities conducted during the Student Month Celebrations – 2016 by the Regional Councils and Chapters. The activities during the celebrations included Van Mahotsav Divas, Career Awareness Programmes, CS Olympiad, Cultural Programmes and Get-togethers, Commencement of Full Time Integrated Courses, Class Room Teaching, other Academic Activities including Webcasts and E-Governance Programmes, Orientation Programmes, Guidance Lessons, Campus Placement Programmes, Swachh Bharat Mission, Skill Development Programmes, etc.

Student Month Celebrations – July 2016



Empowered Committee's GST Bill needs considerable changes after passing of Constitutional Amendments >>> P-23

T.N. Pandey

It is heartening to find that the constitutional amendments concerning GST will be a reality. However, after this, considerable work will be needed to make it an effective law. In the article, relating to GST Bill, important aspects concerning the proposed law, including its rationale are discussed. Further by analyzing one Chapter (Chapter XV) relating to inspection, search, seizure and arrest, the author has highlighted the aspects, which need serious attention. According to him, similar analysis of other Chapters will reveal similar deficiencies.

Goods and Services Tax Act : Meaning and Scope of the Words 'Goods' and 'Service' >>> P-28

Pradeep K Mittal

The GST will subsume two major indirect taxes namely sales tax/ value added tax imposed on sale of goods and service tax levied on provision of various services. Hence under the proposed GST the two terms of prime importance are 'goods' and 'service'. This Article seeks to explain the meaning of these two terms in the light of several decided cases.

Understanding Integrated Goods and Services Tax (Model IGST Act) >>> P-31

Dr. Sanjiv Agarwal

India is on the verge of migrating to Goods and Services Tax (GST) which is considered as the biggest tax reform in India so far. India will adopt a dual GST model which envisages two GSTs – Central GST and State GST. Apart from these two forms of GST, it is proposed that in case of inter-state supply of goods and or services, Integrated Goods and Services Tax (IGST) shall be levied. This would be a tax which will replace Central Sales Tax (CST) currently in force. IGST will be tax on supply of goods and services in the course of inter-state trade or commerce which will be apportioned between Union and States in the manner provided by the Parliament. For the purpose of IGST, import of goods and services shall also be deemed to be inter-state supply. The model law IGST which is now in public domain contains provisions relating to supply of goods, place of supply, levy & collection, payment of tax etc. which have been discussed in the article.

Time of Supply & Place of Supply of Goods and/ or Services – Paradigm Transformation under GST >>> P-39

Bimal Jain & Isha Bansal

GST is going to be big game changer and under proposed GST regime, all the major taxes levied under the indirect taxation i.e. Central Excise, Service tax, VAT/CST etc., would be brought under the ambit of GST. Hence, the prevailing concepts of manufacturing of goods/ provision of services/sale of goods would no longer be relevant as tax would be levied on 'supply' of goods and/or services and common base has to be arrived at for levy & collection of GST in all cases. Further, the proposed GST framework will work on the principle of destination based consumption tax, which will pose a

real challenge to build up a mechanism to determine tax jurisdictions for the smooth implementation of GST. Thus, under GST regime, the principles of time of supply and place of supply, undoubtedly, would play the crucial role. This article summaries the principles of 'time of supply' and 'place of supply', as prescribed in the Model GST Law, which was put on public domain on June 14, 2016, in a lucid manner with illustrations for easy digest.

GST – One for All >>> P-46

Ahalada Rao V & D. Vijaya Kiranmayi

GST is the solution for simpler, efficient and effective tax system in the country, which lines up total indirect tax structure of all streams into one single payable tax. Acceptability of GST depends on the rate of GST. Administration and fixation of Revenue Neutral Rate of GST is completely in the hands of GST Council constituted under Article 279A of the Constitution (Proposed to be inserted after approval of Model GST Law), in which all State Finance Ministers and Central Finance Minister are the members. GST gives the scope for development in India, and helps to change its status from developing country to developed country. The Government has taken remarkable decisions and done amendments by removing 1% additional tax on inter-state sales and five-year compensation to the states for any revenue loss to remove the hurdles in implementation of GST. It is a strong signal for strengthening the healthy relationship between the state and centre and also in sharing of funds. GST will also have a Dispute Settlement Authority to mitigate the tensions between the Centre and State smoothly.

Supply under Model GST Law >>> P-51

Raghavan R, S Rahul Jain & Karthik IVRN

GST is being pegged as the most transformational law of our times. India is at the cusp of creating one of the largest unified markets the world has ever seen by providing players of all sizes a uniform level playing field. On the day GST is implemented, the days of Excise Duty, Service Tax, Entry Tax, Octroi, VAT and many other legislations will all vanish with the simple change of a Date. Keeping this in mind, the opportune moment to understand the intricacies of the model law has come. GST law revolves around the word SUPPLY. In our article we have shed light on the term Supply, its meaning, various inclusions and their possible implications in view of the model GST law.

Salient Features and Analysis of Draft Model GST Law >>> P-56

C. Sanjeeva Rao

"GST is acronym for Goods and Services Tax. The biggest reform in the Indian Economy and history of Indirect Taxes structure through 122nd Constitution Amendment Bill. By bringing the Bill into Act, the fortune of the Country's business will change. GST will be with a motto - One Country, One Market and One Tax. Traders and manufacturers shall be relieved from the cumbersome procedure in issuance of statutory forms such as C-declaration Forms, F-Forms, and way bills etc. There will not be any double taxation i.e. tax on tax. With introduction of the GST there shall be ease in doing business. The GST bill contains 25 Chapters; 162 Sections (CGST & SGST); Four Schedules; GST Valuation Rules, 2016 (Comprises 8 Rules); Integrated Goods and Service Tax (IGST) comprises 11 chapters, 33 sections. Chapter on Settlement Commission is common for all (CGST,SGST and IGST)."

Business Process to be followed in GST Regime (Registration and Related Provisions) ➤ P-61

Prof R Balakrishnan

Goods and Services Tax when implemented would be a game changing reform for our economy by developing a common market and reducing the cascading effect of tax on the cost of goods and services and it would impact the Tax Structure, Tax Incidence, Tax Computation, Tax Payment, Compliance, Credit Utilization and Reporting leading to a complete overhaul of the current indirect tax system. The GST will have a far reaching impact on almost all the aspects of the business operations of the corporate and business community such as pricing of products and services; supply chain optimization; IT, accounting and tax compliance systems and related areas. This article examines the various business processes to be followed by the corporate and business community relating to the registration, grant of registration on an automated basis or otherwise, with least interface with the tax authorities along with rejection and cancellation provisions with an overview of required returns and payments so that when the implementation of GST takes place the industry and trade is ready for a take-off by understanding the proposed forthcoming regulations.

Goods and Services Tax ➤ P-65

B.S. Seethapathi Rao

Goods and Service Tax is the biggest tax reform proposed in the Tax structure of our country after independence. One should understand the GST as it is going to affect in a very significant manner. Knowingly or unknowingly the effects in the present day indirect tax structure which is causing the tax on tax (cascading effect) have been levied in the country since long time. In this era of globalization to compete with the developed countries it is needless to say that our indirect tax regime has to be restructured into a transparent new shape which is going to be GST. In light of the aforesaid circumstances the proposed GST would direct the entities in ease of doing business and ease of complying under the single head of taxation i.e. GST.

GST – A Boon for the Nation ➤ P-69

Pramod S. Shah

GST, by its design, is intended to make the system of levy and collection of indirect taxes to be transparent. It is expected that tax evasion would be largely reduced. The GST Law also seeks bring about, accountability and efficiency in the tax administration and reduce the arbitrage opportunities available to tax avoidance and evasion.

Scheme of Levy of Tax on Goods in GST Regime ➤ P-74

P.V. Subba Rao

In the proposed GST regime, the present levy of tax on manufacture & removal and sale of goods will be replaced by levy on supply of goods. CGST and SGST will be levied on common base simultaneously. Inter State supply of goods, including stock transfers will be charged to tax under IGST. Import of goods into the country will be treated as inter State supply of goods. Transactions of barter will also be taxed. Transactions of works contract, lease and hotel & restaurant, which are presently treated as deemed sale of goods, will be treated as supply of services. Intangible goods will be treated as supply of services. For determination of quantum of tax payable,

concepts relating to place of supply, time of supply and value of supply must be thoroughly understood. There is provision for Tax Collection at Source (TCS) in respect of e-commerce transactions.

Goods and Services Tax - A proposed paradigm to Empower Indian Economy ➤ P-77

Mukesh Kumar Karna & Kalyani Karna

GST is considered to act as a panacea for Indian economy. It will replace a slew of Central and State Taxes and will remove the bottlenecks to support ease of doing business in India. It will help the corporations to focus on their core business activities and to produce goods at competitive prices both for domestic and international markets. The current indirect tax structure is complex and it does not present easy portrait of indirect tax structure. GST will act as an overhaul to the current indirect tax regime. The reduction in compliances and tax burden will attract the foreign investors and it will act as a catalyst to quantify the dream of "Make in India".

Goods & Services Tax Act - Special Traits Required by Company Secretaries ➤ P-82

K. K. Rao

With the introduction of GST, Company Secretaries will have to be more effective on various areas especially Charge of TDS, Filing of Annual Returns and Adjustment of Taxes or Input credit availment etc. Now Company Secretaries have a chance to increase the Company's reputation by using GST Scorecard through proper compliance and monitoring the performance of a company. Company Secretaries in employment or in practice not only to look after the compliance matters but will have additional responsibility of looking at accounting procedures and track of financial transactions. There is no doubt that with the introduction of GST the scope of work will increase by way of monthly return, Annual return and Final return etc. This article on GST would highlight the special traits required for the Company Secretaries besides normal compliance. Proper tax planning, avoidance of taking wrong credit, prompt payment of taxes and filing of returns and other aspects are highlighted in this articles which is specially structured for the profession of Company Secretaries.

GST: The Issues, Concerns and Impact ➤ P-85

Gopal Chandra Mondal & Dr. Renu Verma

GST seems to be the big business reforms keeping in mind the current scenario and existing rules, regulations and laws. With the passage of 122nd Constitutional Amendment Bill in Rajya Sabha unanimously on August 3, 2016, GST is now going to be a reality in India with effect from April 1, 2017. Keeping alcohol, petroleum, electricity and real estate out of the ambit of GST regime would adversely impact the relevant sectors of the economy, which hurts not only the make-in-India initiatives but also negates the GDP growth in India. Indian tax administrators should keep tabs on how prices of the goods and services move after imposition of the new tax. Centre has agreed of the States long demand of 100% compensation for 5 consecutive years for any revenue losses and the deletion of additional 1% tax on interstate supply of goods.

Emerging issues in Business Taxation ➤ P-92

Prof. Dr. Badar Alam Iqbal

The present paper is an attempt to provide knowledge about the prevalent business tax rates across the world and how India is

lagging behind in terms of business tax rates. The paper further describes if GST is implemented what would be the tax rates for business across the country and how far the same is rationalised in global context.

GST Goals and CS Roles

» P-96

P K Singh

GST is one of the biggest Indirect Tax Reforms, expected to simplify tax regime, broadening the tax base, eliminate tax cascades, reduce price of Goods, and enhance export. Under GST tax collection will improve and growth in tax collection will accelerate the growth of Country. GST will be advantageous for all and will support ease of doing business in India which will help sustenance to make in India and this will create job opportunities. GST will increase not only the scope of practice of Company Secretaries but also create job opportunities for Company Secretaries in employment. The Roles of Company Secretaries under GST is enormous and will further increase with recognition under Sections 42 and 50 of Model GST Law. An increased role derives with it more responsibilities so Company Secretaries should make themselves ready to substantiate the Government's faith on the profession of Company Secretaries.

RESEARCH CORNER

101

An Analytical Study of Corporate Social Responsibility: A Legal Perspective with Emphasis on Indian Scenario

» P-103

Bharatsinh Chandrasinh Parmar

Business activities alongside the beneficial aspects also generate harmful impacts for the society and environment. The development coupled with negative effects emanating from business is unwarranted, disliked and rejected by the society. There is ever increasing social pressure on business to take care of society and environment. The response of business to mitigate this societal pressure through its activities came to be recognised as Corporate Social Responsibility (CSR). CSR is a strategy of a company to integrate social, environmental and economic concerns in its values and operations to improve the welfare of society and stakeholders. This paper aims to understand the conceptual substance of CSR, development of CSR in India, contribution of Indian Corporates towards CSR, study the relevant provisions of the Companies Act, 2013 and CSR Policy Rules, and examine the relationship between CSR & Financial Performance of the company.

**All India Research Paper Competition
On Goods and Services Tax**

» P-111

LEGAL WORLD

113

▶ LMJ: 10:08:2016 Supreme Court sets out and explains the scope of jurisdiction of the Company court in sanctioning a scheme of amalgamation. ▶ LW: 50:08:2016 We find detailed discussion for coming to a particular conclusion in the order,

which was passed by the Whole Time Member of the SEBI and therefore, we do not see any reason for the SAT to disturb the said finding without mentioning any strong and justifiable reason for coming to a different conclusion. [SC] ▶ LW: 51:08:2016 The winding up proceedings before the Company Court cannot continue after a reference has been registered by the BIFR and an enquiry initiated under Section 16 of the SICA. [SC] ▶ LW: 52:08:2016 We have no hesitation in concluding that an order passed by the Company Court is binding on the Recovery Officer attached to DRT. [SC] LW: 53:08:2016 The diffidence of respondent does not prevent us from making a suitable order of reference to a sole arbitrator for adjudication of all outstanding disputes between the two corporations especially because the alternative to such arbitration is a long drawn expensive and cumbersome trial of the suit filed by the appellant before a civil court and the difficulties that beset the execution of an award made under a non-statutory administrative mechanism. [SC]

FROM THE GOVERNMENT

121

▶ Issuance of rupee bonds to overseas Investor by Indian companies - Clarification regarding applicability of provision of Chapter III of the Companies Act, 2013 ▶ Relaxation of additional Fees and extension of last date of in filing AOC- 4, AOC-4 (XBRL), AOC-4 (CFS) and MGT-7 under the Companies Act, 2013-regarding. ▶ Companies (Accounts) Amendment Rules, 2016. ▶ Companies (Incorporation) Third Amendment Rules, 2016 ▶ Designated Special Court for speedy trial of offences punishable under the Companies Act, 2013 ▶ National Company Law Appellate Tribunal Rules, 2016 ▶ National Company Law Tribunal Rules, 2016 ▶ Requirement of section 381(1)(a) of the Companies Act, 2013 to apply to a foreign company which is an airlines company subject to following exceptions and modifications ▶ Companies (Share Capital and Debentures) Third Amendment Rules, 2016

OTHER HIGHLIGHTS

129

▶ Company Secretaries Benevolent Fund
▶ Form D
▶ CG Corner
▶ 17th National Conference of PCS
▶ Ethics & Code of Conduct Corner
▶ Ethics & Sustainability Corner
▶ Brain Teasers
▶ GST Corner
▶ Readers' Write
▶ CS Examinations- Time Table & Programme



**Before you are a leader, success is all about growing 'yourself'.
When you become a leader, success is all about growing 'others'.**

— Jack Welch



Esteemed Professional Colleagues

Greetings from ICSI..!!

The month of August seems to be a clamorous month and may be written in history of India as Rajya Sabha has finally ended almost a decade old wait by giving its approval to Constitution (122nd Amendment) Bill, 2014, the landmark Indirect Tax reform i.e. Goods and Services Tax (GST). GST is the boldest tax reform since opening up of economy 25 years ago by a rare political consensus, where all 203 members present in the Upper House voted in favour of this legislation. GST, originally mooted in the year 2000, is the monumental tax reform for whole nation, which seeks to replace a slew of Centre taxes and levies in 29 states, which will make India 'one unified common market'. However, it is only the beginning of a long process to rewrite India's mosaic tax regime keeping the April 2017 deadline. In my view, the doing away with additional 1% tax is an acclamatory step towards ripping out impediment in the credit chain and would simplify the tax process of India without fail. Economists are also of the view that the move could snowball India's economic growth by up to 2 percentage points. They opine that the passage of the GST Bill will set the stage for improved business conditions and progressively enhanced tax revenues.

With this development on GST front, it is time to take the wheel on GST Governance. GST Governance, the Governance that concerns with the process in guiding citizens regarding their tax responsibilities will lead them to be more concerned about their contribution to the Nation building. Effectiveness and efficiency of GST Governance are vital to exalt the reliability from society. Another aspect of GST Governance is overall implementation of compliance strategy and focus on the audit. Good tax governance is central to sustainable development as well as economic prosperity for developing countries.

Therefore, when whole country is eyeing on implementation of GST, the Institute has decided to mark the month of August, 2016 as 'GST Awareness Month'. The month will serve neoteric activities like awareness programs on GST, webinars, sharing of knowledge material and alike to focus on challenges and opportunities under GST. The Institute had solicited suggestions on the draft model and is also in the process of finalizing and sending these to Ministry of Finance. Keeping fingers crossed for the outcome of GST passage this monsoon session, I am now making headway for taking a stock of the developments taken place in the Institute during this month:

Joining of the Secretary of the Institute

CS Dinesh Chandra Arora, a Fellow Member of the Institute of Company Secretaries of India, has joined the Institute as the Secretary w.e.f. 21 July, 2016. Mr. Dinesh Chandra Arora, a member of our esteemed Institute is an accomplished professional and is also a qualified Chartered Accountant as well as Cost Accountant. I, on behalf of Team ICSI, extend our heartiest congratulations to him and wish him all the best for his future endeavours and plans for the Institute.

Meetings

The Institute met following dignitaries with a view to explore opportunities for joint participation in flagship Government initiatives:

- Sh. CR Chaudhary, Hon'ble Minister of State for Consumer Affairs, Food and Public Distribution
- Smt. Vasundhara Raje, Hon'ble Chief Minister of Rajasthan
- Sh. Satyendra Jain, Hon'ble Minister Health, Industries, Home,

- Public Work Department, Power, Government of Delhi
- Sh. Upender Gupta, Commissioner (GST), Central Board of Excise and Customs

Representations

Taking forward our initiatives for exploring opportunities for contribution by our revered profession, the Institute made representations to:

- Ministry of Labour and Employment
- Ministry of Housing and Urban Poverty Alleviation
- Ministry of Health and Family Welfare
- Ministry of Shipping
- Ministry of Finance
- Government of Andhra Pradesh, Assam, Arunachal Pradesh, Delhi, Jharkhand, Odisha and Rajasthan
- Central Drugs Standard Control Organization
- Securities and Exchange Board of India

Welcoming New Minister of State for Finance and Corporate Affairs

The Institute and whole ICSI fraternity welcomes and congratulates new Union Minister of State for Finance and Corporate Affairs, Shri Arjun Ram Meghwal, a former IAS officer and renowned law maker. On behalf of all esteemed members, we bid welcome to him to acknowledge our whole-hearted support to future policy initiatives to be taken by him. Having already been awarded with 'the Best Parliamentarian Award' in the year 2013, we place our trust in his vision for economic development and growth of India Inc.

ICGN Annual Conference- USA

Established in 1995, the International Corporate Governance Network (ICGN) is an investor-led organisation of governance professionals with members including institutional investors and is based in 47 countries. ICSI representatives attended ICGN and their ESG Course at San Francisco, USA held at San Francisco, USA from June 27 to July 01, 2016. The Conference brought together academia and market practitioners and witnessed lively and thought-provoking deliberations on a broad range of global governance allied themes.

Notification of NCLT Rules 2016 and NCLT Appellate Tribunal Rules 2016

The Ministry of Corporate Affairs has notified National Company Law Tribunal Rules, 2016 and National Company Law Appellate Tribunal Rules 2016 vide notification dated July 21, 2016 effective from the date of their publication in the Official Gazette. The Company Secretaries in Practice are authorised to appear and present the case before NCLT and NCLAT. The Institute plans to organise capacity building programmes to equip the Members on practical aspects of appearing before Tribunal. This is my humble appeal to the esteemed members to capitalize on this treasured opportunity and equip themselves to appear before NCLT and NCLAT.

Symposium on Companies Act, 2013: NCLT & NCLAT – Law & Practice

As NCLT and NCLAT are already functional to take up cases earlier dealt by CLB as well as adjudicating cases under the Insolvency and Bankruptcy Code, 2016; it was observed that it will be salubrious for the members to organise a Symposium on the theme to provide a learning platform and to prepare for the opportunities and challenges of tomorrow. Therefore, the Institute jointly in association with the NCLT Bar Association organised a Symposium on Companies Act,

2013: NCLT & NCLAT – Law & Practice on 23 July, 2016 in New Delhi.

National Seminar on Laws & Economics of Competition organized jointly with Competition Commission of India

As an initiative under the MoU signed with the CCI, the Institute organised its first joint seminar on Competition Laws on 15 July, 2016. The key deliberations at the seminar shot the breeze on laws and economics of Competition, anti-competitive agreements, abuse of dominance, regulation of combinations, enforcement mechanism under Competition Law NCLT–Law and Practice.

Workshop on Corporate Laws & Regulations, 2016

With a view to update CS professionals about the recent amendments in Corporate laws, the Institute joined hands with the PHD Chamber, as an associate partner in organizing workshop series on 'Corporate Laws & Regulations, 2016 (Recent Amendments)', the first two workshops in the series were conducted at PHD House, New Delhi on July 21 and 22.

Secretarial Standards Board

The Institute convened 105th meeting of the Secretarial Standards Board on 23-24 July, 2016, predominantly to discuss the proposed revisions in Guidance Notes on Meetings of Board of Directors and General Meetings. Such revisions are in line with revised SS-1 and SS-2 submitted to Ministry of Corporate Affairs for approval u/s 118(10) of the Companies Act, 2013. Core groups were also formed to expedite process of drafting/updation of Secretarial Standards on Dividend, Board's Report and Registers & Records.

Auditing Standards Board

In our pursuit to be a global leader in Corporate Governance, I am elated to share with you that the Auditing Standards Board has been constituted and its first meeting was recently convened at New Delhi to discuss the scope and objectives of this Board. The Board at present is focusing on building the Auditing and Assurance Standards framework and I trust that the constitution of this Board would require the quality in the area of audit work performed by the Members and inculcate best auditing practices in them.

Suggestion Submitted to SEBI

The Institute submitted its views and Suggestions on SEBI Consultative Paper on 'Amendments to SEBI (Portfolio Managers) Regulations, 1993 pursuant to introduction of Section 9A in the Income Tax Act, 1961' to SEBI.

Meeting with Designated Non-Financial Business Professions (DNFBP) Committee

The Institute represented at the Meeting of DNFBP Committee held at LokNayak, Bhawan, New Delhi on July 04, 2016. During the meeting, deliberations were made on the Anti Money Laundering Act and the threat and vulnerability assessment for National Risk Assessment (NRA) exercise to assess the risks of various sectors of economy.

Recognition of Company Secretary under Guidelines for Grant of Unified License (Virtual Network Operators)

I am pleased to announce this new professional opportunity for esteemed members. Recently, Guidelines for Grant of Unified License (Virtual Network Operators) issued by the Ministry of Communication and Information Technology authorise a Company Secretary professional to certify the Certificate of Registration along with Articles

of Association, Memorandum of Understanding, Details of Promoters/ Partner/Shareholder Foreign Direct Investment in the company for the purpose of Application to Department of Telecommunications for Grant of Unified License (Virtual Network Operators)/Authorisation for Additional Services. I request you all to grab this opportunity.

Income Declaration Scheme 2016

The Institute is supporting the initiative of Income Declaration Scheme, 2016 by arranging for better dissemination of this Scheme. With a view to disseminate information about the scheme among the CS fraternity and advise general public about it, the Institute has uploaded the information about the scheme on its website.

Knowledge Series on the Draft Model GST Law

We are happy to inform that with the objective of educating and sensitizing the industry on the provisions contained in the Model GST Law, the Institute has joined hands with PHD Chamber as an associate partner in conducting a Knowledge Series on the Draft Model GST Law. The two sessions on this series were conducted on July 22 and 29 at PHD House, New Delhi.

Suggestion Submitted on draft Real Estate (Regulation and Development) Rules, 2016

The Institute submitted its suggestions regarding the Draft Real Estate (Regulation and Development) Rules, 2016 issued by Ministry of Housing and Urban Poverty Alleviation, Government of India.

Suggestions Submitted to SEBI

The Institute submitted its views and suggestions on SEBI Consultative Paper on 'Amendments to SEBI (Portfolio Managers) Regulations, 1993 pursuant to introduction of Section 9A in the Income Tax Act, 1961 to SEBI on July 18, 2016.

Student Month Celebrations

July has become a memorable month of the year 2016 as the Institute reached out to the student community through a series of programmes for social cause and increasing awareness. The slogan for Student Month 'Udaan-We Fuel your Growth' reflects that the Institute shall always strive for the intellectual growth of its stakeholders. A gist of the activities undertaken during this month is as under:

- **Van Mahotsav Divas**

The Student Month started with the celebration of 'Van Mahotsav Divas' on 1st July, 2016 in which almost all the Regional / Chapter Offices had participated. About 60 Regional/ Chapter Offices Celebrated the Van Mahotsav Divas at the respective locations which was intended to create awareness among the stakeholders on adopting sustainable development.

- **Interactive Portal on Student Month**

An interactive portal covering various activities of Student month has been launched by the Institute.

- **Career Awareness Programmes (CAPs)**

More than 400 Career Awareness Programmes were conducted in various Colleges across the country to create awareness about the profession of Company Secretaries by the Regional/ Chapter Offices.

- **Full Time Integrated Course**

Fresh batch of Full Time Integrated Course has been commenced at ICSI-CCGRT, Navi Mumbai. The Institute is ensuring quality education to students through Quality Study Material, Class Room Teaching, Training Programmes etc. to take our glorious profession to the next level.

- **Competitions for Students**

Various Elocution Competitions, Quiz Contests, Moot Court Competitions, Essay Writing Competitions etc. were organised during the Student Month to give an opportunity and offer a platform to evince their intrinsic talents to turn them into a complete professional and human being.

- **Renewed Thrust on Class Room Teaching**

I am delighted to share that Regional Councils & Chapters have given renewed thrust on Class Room Teaching activities. For the complacency of the students, the classes have been started on a uniform date on 7 July, 2016 imparting coaching for December, 2016 Examinations at more than 50 Regional/Chapter Offices.

- **Webcasts and E-Governance Programmes**

Webcasts are an exemplary mode of imparting personalized education to our dear students. By joining the webcasts organised by the Institute from time to time, students are expected to develop their general skills and knowledge in the core subject areas. Keeping this in mind, e-Governance Programmes and webcasts were organized during the Student Month and also uploaded on 'Youtube' for the convenience of students.

- **Orientation Programmes, Guidance Sessions and Campus Placement**

Apart from Orientation Programmes for students undergoing training, Campus Placements/Training Mela's have been organised by many Regional/Chapter Offices.

- **Reaching out to the Parents**

Since, the students join CS Course at such a young age, the Institute recognises contribution of parents in perking them up during their lifetime, particularly the course of their career. Therefore, Student-Parent Induction Programmes were organised during the Student Month by more than 20 Regional/ Chapter offices.

- **Skill Development**

Keeping in view, the thrust given by Government in the area of Skill Development, a Mega student programme titled 'Yuva Kaushal' was organised at Hyderabad on 15 July, 2016.

- **Communication/Soft Skills for Students**

Training programmes on enabling Communication/Soft Skills and motivational Talks were organised for the benefit of students. Its objective is to make CS students acquire such skills that contribute in sharpening their skills as a professional.

- **Samadhan Divas**

The Institute has planned a special day for grievance redressal 'Samadhan Divas' wherein each and every office of ICSI and Call

Centre ensured zero pendency of complaints received through the Grievance Portal at www.icsi.edu, CS Touch Portal and Ticket Management System of Call Centre.

- **Swachh Bharat Mission**

Cleanliness drives were organised in the Regional/Chapter Offices of the Institute as part of the 'Swachh Bharat Abhiyan' project of Government of India. More than 50 Chapters participated in the special campaigns accomplished by the Institute.

- **Release of e-book Pratibimb-Transcending Barriers**

'Pratibimb-Transcending Barriers' a series of reflections on soft skills and human behavior is yet another initiative by the ICSI towards development of personal and professional excellence of esteemed members and students. The first Chapter of this e-book 'The Fine Art of Articulation-Learning to Present' has been released.

- **CS Study Centre Scheme**

During the month of July, 2016, the 24th Study Centre was opened at Jamnagar, Gujarat. Till date, such study centres have been opened at Jalgaon, Bilaspur, Shillong, Bhilai, Hubli-Dharwad, Moradabad, Srikakulam, Vizianagram, Ujjain, Rourkela, Silliguri, Tirunelveli, Rohtak, Mathura, Tirupati, Solapur, Jhansi, Rampur, Muzaffarnagar, Jorhat, Gorakhpur, Chennai, Udumpe and Jamnagar.

- **CS Olympiad**

The first 'CS Olympiad' is scheduled to be held on 15 September, 2016 and 4 October, 2016 for prospective students of CS Course. The Institute has also launched a dedicated portal, namely www.csolympiad.info

- **Student Conference**

The National Level Student Conference was organized at Bangalore during 30 and 31 July, 2016 to celebrate magnificent conclusion of the Student Month.

- **Launch of Two Certificate Courses**

With an objective to polish and enrich the skills of esteemed members in carrying out valuation assignment relevant in today's business environment, the Institute has launched Certificate Courses in 'Valuation' and 'Internal Audit' jointly with National Institute of Financial Management, Faridabad. Details of these courses may be accessed from our website.

- **Launch of E- learning Module on Banking Terminologies**

The Institute has launched a short term yet all-encompassing e-learning Module on Banking Terminologies. To further corroborate the learning under the Module on Banking Terminologies, the Institute also released a book on Banking Terminologies.

- **Launch of Short term Course in International Business Taxation**

The Institute has launched a 15 days Online Course on International Business Taxation for its members to facilitate them to acquire specialized knowledge in the area of International

Taxation.

- **Convocation 2016**

The Institute organised Convocation at Mumbai on 2 July, 2016 for awarding the certificate of membership to the members admitted during the period from October 01, 2015 to March 31, 2016 and to award prizes/medals to meritorious students (National) and winner students of national level competitions. More than 700 members received their Associate Membership Certificate and 12 meritorious students received awards (National) on the occasion.

- **Training of Peer Reviewers**

During the month of July, three training Programmes for Peer Reviewers were conducted at Nagpur, Vadodara and Bengaluru during the month of July.

- **Professional iTellect: Webinar on Corporate Governance**

As a part of knowledge and Capacity Building initiative 'Professional iTellect', the Institute conducted the following webinars:

- Cyber Law and Data Protection by Mr. Pawan Duggal, Senior Advocate, Supreme Court of India
- Brexit and its Impact on Indian Economy by Dr. Gourav Vallabh, Professor (Finance), XLRI, Jamshedpur
- Corporate Frauds by Mr. Chetan Dalal, Managing Director, Chetan Dalal Investigation and Management Company.

- **Training Workshop for Officers of Competition Commission of India**

The Institute organised a customized training workshop on 7-8 July, 2016, for the officers of Competition Commission of India on Company Law specifically covering provisions of Companies Act, 2013.

- **Change Management Awareness Programmes**

An IT Induction training programme on "Email/Exchange Usage & Helpdesk Usage/Standardisation of replying on the emails" was organized for the officials of the Institute on July 20, 2016. Further in order to create the awareness on the ITIL framework among the Information Technology officials of the Institute, a 2 days full time ITIL Foundation Training was organised on July 23- 24, 2016.

- **Epilogue**

Our Genie: Our Subconscious Mind, the Autopilot

*Whatever the mind can conceive and believe,
it can achieve. --Napoleon Hill*

This quotation from Napoleon Hill's 'Think and Grow Rich' is deeply illuminative. Through this book, he not only professes secrets of financial riches, but, making our 'lives' richer. Oprah Winfrey, too professed "You don't become what you want, you become what you believe". Beliefs hold intimate relationship with our super-powerful subconscious mind, Law of Cause and Effects, Law of Attractions and Law of Success. When you choose to believe in something, these powerful elements and laws step in to deliver our wishes.

Over 50 years ago, a little known American author and entrepreneur, Dr. Joseph Murphy wrote an epic best-seller 'The Power of Your Subconscious Mind' to suggest techniques to dole out the power of beliefs living in our sub-conscious mind. He vindicated that we don't

have to acquire this power externally; it power already exists within us. We just have to align our subconscious mind with our conscious goals. Our conscious mind is just like a 'gardener' and subconscious mind is a 'garden', whatever seeds the conscious gardener plants, the fruits grow in the garden, either in a bountiful yield of prosperity and success or an infertile wasteland producing offshoots such as failure and negative vibrations. So, we should let us plant fertile seeds to yield positive results of abundance, good fortune, prosperity, opulence, riches, excellent health, bountiful knowledge, power, position, and promising relationships as well.



Doctors firmly believe that 75 per cent of ailments usher in our subconscious mind only. Dr. James Esdaile, a Scottish surgeon of 1800's understood this principle immensely, therefore, during surgery, he used to hypnotize subconscious mind of his patients much before discovery of anesthesia. His success rate was ten times more than his colleagues as his hypnotized patients hardly felt any pain and anxiety. Astonishingly, in 161 surgeries performed by Dr. Esdaile, the mortality rate was just 5 per cent against the average of 50 per cent at that time.

Relating the chain, interestingly in the last week, I happened to come across New York Times Magazine Cover Story published in the year 2014, which exemplified a radical experiment in 1981 which demonstrates the effect our attitudes and beliefs can have on our mind and body. It narrated that a Harvard Professor, Ellen Langer, conducted an experiment to test whether people can actually become younger by 'thinking' that they are younger. She sent 100 people in their 70's from Boston area on a 10 day long vacation to a resort where whole set-up was resembling 1959's, the time when the subjects were decades younger. The men in the experimental group were told to "make a psychological attempt to be the person they were 22 years ago". She played 50's music, displayed 50's magazines and newspapers, and had the subjects dressed as they did 22 years ago. The professor, in fact instructed these people to "act as if" they were back in 1950's. After these 10 days, these people were re-tested. Miraculously, the group felt much younger, suppler, showed greater manual dexterity and sat taller...just as Langer had expected. Most improbable, their sight improved. What had undergone a change that took years off their apparent age?.....nothing but their thinking, their sub-conscious mind that readily accepted the concept of 'being younger'. So my dear friends, this scientifically backed experiment proves that our conscious mind may set limits for us, but,

overlooking these limits by giving charge to our subconscious mind may accomplish everything that seems impossible.

Further, have we ever noticed the attitude of the person who is yet learning to drive a car. In the beginning, he is too conscious to talk as he is still directing his conscious mind while driving. After a few weeks, driving becomes natural to and the he can easily use his cell phone or indulge in conversation with the person sitting next. This happens, because the mental programming for driving has been moved to the subconscious mind from to set the conscious mind free.

Therefore, start hypnotizing our subconscious mind to quit bad habits, Stop pain, Improve Health, Sports Performance, Creativity, Self Confidence, Mind Development, Sexual Health, and Spirituality.

How to Program Your Subconscious Mind for Success

Take this way, we are in a car driven by a chauffeur and every time he asks us about destination we wish to go, we simply say, "I don't know. Take me wherever you want to." But, reaching destination of chauffeur's choice, we start complaining and saying: "what a boring place, I never wanted to be here, take me somewhere else." And again, we are not sure of where you want to go. Imagine the confusion we would create? This happened due to our failure to steer clear instructions given to our chauffeur. Our mind and subconscious mind work the same way. Our subconscious mind is the driver here and gets its instructions from the conscious mind in the form of our conscious thoughts and beliefs. Let's strive to give our subconscious absolutely positive and crystal clear instructions and it will take us to whatever height we want to attain in life by providing it inputs in the shape of:

- Our spoken words
- Our minds pictures
- Our thoughts
- Our desires
- Things we read about

Freud said, "We learn as children how to react emotionally and this is carried into adulthood. When we are children, we do not know what we are going to need in adulthood to cope. Therefore, as adults, we (often) react impulsively as kids." These old childhood programs are still influencing our behavior as adults. When we understand the subconscious mind and the laws it obeys, we can change these childhood programs and act maturely. We will become the master of our genie in true spirit.

And before I sign off, kindly accept my heartiest wishes for 70th Independence Day, Raksha Banda and Janmashtmi. As an Indian by heart and soul, I feel proud and elated whenever these lyrics oscillate my mind "**Sare Jahan Se Acha.....Hindustan Hamara**".....Let's all celebrate spirit of our Independence and become Proud Indians.

Happy Reading!!

Best wishes

Yours sincerely

Mamta Binani

August 05, 2016
New Delhi

(CS MAMTA BINANI)
president@icsi.edu

1

ARTICLES



- EMPOWERED COMMITTEE'S GST BILL NEEDS CONSIDERABLE CHANGES AFTER PASSING OF CONSTITUTIONAL AMENDMENTS
- GOODS AND SERVICES TAX ACT : MEANING AND SCOPE OF THE WORDS 'GOODS' AND 'SERVICE'
- UNDERSTANDING INTEGRATED GOODS AND SERVICES TAX (MODEL IGST ACT)
- TIME OF SUPPLY & PLACE OF SUPPLY OF GOODS AND/ OR SERVICES – PARADIGM TRANSFORMATION UNDER GST
- GST – ONE FOR ALL
- SUPPLY UNDER MODEL GST LAW
- SALIENT FEATURES AND ANALYSIS OF DRAFT MODEL GST LAW
- BUSINESS PROCESS TO BE FOLLOWED IN GST REGIME (REGISTRATION AND RELATED PROVISIONS)
- GOODS AND SERVICES TAX
- GST – A BOON FOR THE NATION
- SCHEME OF LEVY OF TAX ON GOODS IN GST REGIME
- GOODS AND SERVICES TAX - A PROPOSED PARADIGM TO EMPOWER INDIAN ECONOMY
- GOODS & SERVICES TAX ACT - SPECIAL TRAITS REQUIRED BY COMPANY SECRETARIES
- GST: THE ISSUES, CONCERNS AND IMPACT
- EMERGING ISSUES IN BUSINESS TAXATION
- GST GOALS AND CS ROLES



Institute Of Directors, India presents



16th LONDON GLOBAL CONVENTION 2016

on Corporate Governance & Sustainability

17 - 20 (Mon-Thu), October 2016, Millennium Hotel Mayfair, London

Theme:

Board's Evolving Role in an uncertain Global Economy

also presentation of



GLOBAL BUSINESS MEET at House of Lords

Special Training Film on 'FALSE ASSURANCE' at Chartered Accountants' Hall, ICAEW

GALAXY OF SPEAKERS



The Rt. Hon. Priti Patel, MP
Hon'ble Cabinet Minister & Secretary of State for International Development, Govt. of UK



Hon. Baroness Verma
House of Lords, UK



HE Abdulrahman Ghanem
Alnuta'wee
United Arab Emirates
Ambassador to the UK and Iceland



HE Marwan Jassim Al Sarkal
CEO, Shajrah Investment and Development Authority
Shurooq



Ravi Parthasarathy
Chairman
Infrastructure Leasing & Financial Services Limited



Keith Skeoch
CEO, Standard Life plc



Mamta Binani
President, Institute of Company Secretaries of India



Dr. Tayeb Kamali
former Vice Chancellor
Higher Colleges of Technology (HCT), UAE

CONFERENCE HIGHLIGHTS

- Changing Role of the Boards - Global Trends
- Enhancing Effectiveness of Tomorrow's Boards
- Global Perspectives on Corporate Governance at the Cross Roads
- Good Corporate Governance for Business Excellence
- Sustainable Innovation for Developing Business Eco - Systems
- Sustainability - The New Business Paradigm
- Showcasing Global Best Corporate Governance and Sustainability Practices

Special Fee for ICSI MEMBERS

Rs 27,000

(Excl. of ST / Non Residential)

Also get 10 Program Credit Hours

In Partnership with



In Association with



INSTITUTE OF DIRECTORS
M-56 A, Market, Greater Kailash - II, New Delhi - 110048
T: +91-11- 41636294, 41636717 • F: 91-11- 41008705
E: info@iodonline.com • sushil@iodonline.com

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA
22, Institutional Area Lodi Road, New Delhi-110 003
T: +91-11-45341031, 45341042
F: 91-11-24626727 • E: sonu.lakhani@icsi.edu.

Limited Seats Register Today
www.iodonline.com

Empowered Committee's GST Bill needs considerable changes after passing of Constitutional Amendments



T.N. Pandey

Advocate, Noida, U.P.

pandeytn@gmail.com

The Goods and Services Tax legislation (GST) once again sprang into life after the tax reform proposal got overwhelming support from the empowered committee of State Finance Ministers, which met at Kolkata in June, 2016, attended to by 29 Finance Ministers (22 by themselves and 7 through their authorized representatives). This gave the ruling NDA Govt. fresh hopes of getting the Bill passed along with the Constitution amendment by Rajya Sabha in the monsoon session of the Parliament, which started from 18th July, 2016. A draft of model GST law prepared by the Empowered Committee of FMs was also placed in public domain for deliberations.

RATIONALE FOR GST

The main advantage of GST is removal

The present article makes a critical appraisal of the deficiencies in Chapter-XV on four important aspects viz. inspection, search, seizure and arrest affecting the liberties of tax payers.

of multilevel taxation. GST is a tax on goods and services with comprehensive and continuous chain of set-off benefits from the producer's point and service provider's point upto the retailer's level. It is essentially a tax only on value addition at each stage and a supplier at each stage is permitted to set-off, through a tax credit mechanism, the GST paid on the purchase of goods and services as available for set-off on the GST to be paid on the supply of goods and services. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

The unified tax will take the form of a 'Dual' GST, to be levied concurrently by both the Central and State Govts. Some countries, like Brazil and Canada, are already having a dual GST regime.

How dual GST Scheme will work?

Under the dual GST system, the taxable base will be subject to the following taxes:-

- * Central Goods and Services Tax (CGST)
 - * State Goods and Services Tax (SGST)
- At the federal level, the CGST will primarily subsume the following taxes:-
- * Central excise duty (CENVAT)
 - * Service Tax
 - * Additional duties of customs in lieu of Excise (CVD)
 - * Special Additional Duties of customs in lieu of sales tax/VAT
 - * Central Sales Tax
- Following State taxes and levies would, to begin with, be subsumed

under States GST:

- [i] VAT/Sales tax
- [ii] Entertainment tax (unless it is levied by the local bodies).
- [iii] Luxury tax
- [iv] Taxes on lottery, betting and gambling
- [v] State Cesses and Surcharges insofar as they relate to supply of goods and services.
- [vi] Entry tax not in lieu of octroi.

ANALYSIS OF THE PROPOSED LAW

[A] Structure

The draft Bill comprises 27 chapters (two chapters having numbers as XIA & XIB) and 178 clauses ending with clause 162E because of addition of

*Former Chairman, CBDT & Special Secretary, Ministry of Finance.

alphabets A, B, C, etc., to some clauses. Besides these, there are 4 schedules dealing with the following matters:-

Schedule	Subject
Schedule-I	Matters to be treated as supply without consideration
Schedule-II	Matters to be treated as supply of goods or services
Schedule-III	Liability to be registered
Schedule-IV	Activities or transactions in respect of which the Central Govt., a State Govt. or any local authority shall not be treated as a taxable person [indicative list]

The Govt. has also issued GST Valuation (Determination of Value of supply of Goods and Services) Rules, 2016 [8 set of Rules] & Integrated Goods & Services Tax Act (2016 IGST). These areas are not covered under this discussion in detail.

[A-i] An issue that arises in the context of the structuring of the Bill is as to why from the very beginning, the numbering should be followed by alphabets and not by straight numbering without addition of alphabets.

[B] Contents

Apparently, in a short write-up, like this, all subjects covered by various chapters and sections (supra) cannot be discussed. However, some aspects are mentioned to give an idea about the contents of some of the provisions.

[a] Registration of dealers

Registration is required when a dealer's aggregate turnover in a F.Y. exceeds Rs.9 lakh. However, if a dealer is stationed in North Eastern States, including Sikkim, the limit gets reduced to Rs.4 lakh. The dealer has to get registered in the State from where taxable goods and services are supplied. A person, though not registerable in terms of Schedule-III, may still get himself registered voluntarily and in that, all the provisions of the Act, as are applicable to a registered taxable person, shall apply to him.

[aa] Registration has to be done in the State from where taxable goods or services are supplied.

[aaa] A person, desirous of registration, shall have to give details of his (Income-tax) PAN or some other evidence of his identity, as may be prescribed, if he is a non-resident and has no PAN.

[b] Liability to tax

The liability to tax will arise if the aggregate turnover exceeds Rs.10 lakh. For N.E. States (including Sikkim), this limit is above Rs.5 lakh.

[c] Taxable event

The taxable event under GST regime will be supply of goods or services. Supply includes all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or

agreed to be made for a consideration. It also includes importation of service, whether or not for a consideration.

Point of taxation

Central & State GST will be payable on the happening of the following events:-

- [i] Where the goods are movable, the date on which the goods are removed for supply to the recipient;
- [ii] In the case of immovable properties, it will be the date on which the goods are made available to the concerned person;
- [iii] Date of issue of invoice by the supplier;
- [iv] When payment is given to the supplier;
- [vi] Date when the receipt of goods is acknowledged by book entries by the recipient.

[d] Payment of tax

Any tax, interest, penalty, fee, etc., shall be paid via internet banking or by using credit/debit cards of NEFT or RTGS. This amount shall be credited to the electronic cash ledger of dealer.

[e] Refund of tax paid

This is dealt with chapter X of the Bill containing clauses 38 to 41. These, inter-alia, provide that:-

- * An application for it is to be made in the form (to be prescribed) before the expiry of 2 years from the relevant date;
- * A refund of unutilized input tax credit can be claimed.
- ** "Refund" includes refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services, which are exported out of India, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under sub-section (2).

[f] TCS online sale of goods of services

Every e-commerce operator engaged in facilitating the supply of any goods and/or services (like Amazon, Flipkart, etc.) shall collect tax at source at the time of credit or at the time of payment, whichever is earlier.

[g] TDS

The bill provides that the Central or a State Govt. may mandate certain departments (viz. local authority, Govt. agencies) to deduct tax at the rate of one percent on notified goods or services, where the total value of such supply under contract exceeds Rs.10 lakh.

[h] Returns

Various returns such as first return, monthly return, annual return, final return, TDS return, return for input service distribution and return for composition scheme are to be filed.

[h-i] The valuation has to be done according to the Valuation Rules.

- [j] Besides the above, GST will also contains subjects concerning assessments, audit, appeals, revisions, advance rulings, settlement of cases, utilization of input credits, transitional provisions and miscellaneous provisions. For their understanding, provisions in the Bill can be referred to.

CRITICAL APPRAISAL OF SOME CLAUSES OF THE BILL

Regretfully, it is noticed that there are many aspects in the Bill that need reconsideration. However, because of space constraint, the deficiencies in Chapter XV only are being considered. This Chapter contains provisions relating to 4 important aspects concerning inspection, search, seizure and arrest, affecting the liberties of taxpayers. The relevant provisions have been covered in 6 clauses only in the chapter namely clauses 60 to 65. These are considered in later discussion.

[a] Inspection

The clauses relating to inspection, prima-facie, are 3 namely (i) 60 (a&b), 61 [concerning inspection of goods in transit] & 64 (access to business premises). Section 60 vide clauses (a) & (b) provides that a person, not below the rank of Joint Commissioner, can be authorized by [GST/SGST] for inspection, where there is reason to believe that:-

- [a] taxable person has suppressed any transaction relating to supply of goods and/or services or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under the Act or has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act; or
- [b] any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or in any other place is keeping goods, which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act.

However, there is no restriction in regard to time of inspection, which can be carried out even at odd hours disregarding the convenience of the taxpayers, causing them harassment and hardship.

- [a-i] In the I.T. Act, 1961 (Act), section 133A relating to survey, which is akin to inspection (supra), provides that the authority authorized to conduct survey 'may enter into any place of business or profession....only during the hours at which such place is open for the conduct of business or profession and in the case of any other place, only after sunrise and before sunset'. Such safeguard needs to be provided in GST law also for inspections.

[b] Search

Sub-clauses (2) & (3) of clause 60 provide for authority to carry out search. It is apparently summarily drafted without necessary safeguards. The relevant sub-clause (2) reads thus:-

“(2) Where the CGST/SGST officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorize in writing any other CGST/SGST officer to search and seize or may himself search and seize such goods, documents or books or things:

Provided that the goods, documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act”.

- [b-i] The concept of 'search' in tax laws of the country has travelled from the Code of Criminal Procedure, where sections 93 to 105 in chapter VII deal with search warrants to searches in tax laws. These have been justified on the ground that though these constitute serious invasion of individual rights and liberties of the citizens [Balwant Singh v. R.D. Shah, Director of Inspection (1969) 71 ITR 550 (Del)], these serve public good and the larger interests of the public should receive precedence over the private rights and that social good had to prevail over individual rights – vide Ramjibhai Kalidas v. I.G. Desai, ITO (1971) 80 ITR 721 (SC). Hence, searches have been held to be constitutionally valid.

- [b-ii] Safeguards provided under the I.T. Act
But, the I.T. law provides safeguard before the searches can be conducted. These are:-
- [a] The authority, empowered to authorize search, must in consequence of information in his possession, has reason to believe that –
- *a search is necessary;
 - *the required object cannot otherwise be obtained without undue delay or damage to the revenue's interest; and
 - *records his reasons in writing.
- [b] the authorizing authority must process the information before authorizing a search.
- [c] Application of mind by the authorizing officer is imperative.
- [d] Entertaining a reasonable belief about existence of requisite ingredients necessary for a valid authorization of a search.
- [e] Recording of such reasons in writing is mandated so as to assist the court when vires of action u/s 132 for search are called into question.
- [f] Judicial scrutiny of a search and seizure action, including awarding damages and costs can be undertaken by courts.
- [b-iiia] The most important condition is that the authority, ordering search, must have 'reason to believe'. This comprises of two words as under:-
- [a] 'reason' to mean justification; and
- [b] 'believe' means to accept as true.

The word 'reason' is defined in the Shorter Oxford Dictionary as 'a statement of fact employed as an argument to justify or condemn some Act; whereas, the word 'conclusion' has been defined as 'judgement arrived at by reasoning, an inference; deduction, etc.'

A number of reasons considered in relation to each other assume the shape of a conclusion.

Therefore, 'reason to believe' means existence of both the elements – 'reason' as well as 'belief'.

The formation of opinion is subjective but reason is objective. Though the formation of the opinion is subjective, the existence of circumstances or the facts or the information relevant to the inference is the sine qua non for action. The satisfaction must be demonstrable and, if questioned, it has to be proved.

[b-iiib] The existence of reasons to believe is supposed to be a check, a limitation, upon the powers of the concerned authority. Recording of reason is a safeguard for the assessee against any discriminatory and arbitrary issue of notice. The provisions of section 165(1) of the Code of Criminal Procedure, 1973, applicable to searches under the I.T. Act, require recording of reasons for authorizing searches. Moreover, when reasons for authorising the search are recorded in writing, it becomes easier to ascertain the existence of information and formation of belief, if challenged in a court of law.

[b-iiic] There is nothing in GST Bill on the lines stated earlier. Hence, the provisions drafted in a summary manner may, besides not meeting the judicial norms can cause considerable hardship to the taxpayers by their misuse. Hence, the same need review and if not in the Act, such safeguards be provided in the Rules.

[c] Seizure

The provisions relating to seizure are also obscure. There are no safeguards in regard to power for breaking open any almirah, box, receptacle, etc. Proper rules for exercise of such power also need to be framed as under the I.T. Act and additions in legal provisions as stated earlier seem imperative.

[d] Power to arrest

Chapter XV also confers power of arrest on GST authorities vide clause 62 of the bill. These too seem to be summarily drafted. Prima-facie, giving power of arrest to Commissioner, GST or Commissioner, SGST, to be carried out by them through his authorized officer is harsh and apparently unfair.

[ia] The offences, for which arrest can be made, are those punishable under clause (i) or (ii) of sub-clauses (1) or (2) of clause 73. Some of these provisions are mentioned later.

Clause 73(1)

This mentions a number of situations, when arrests can be made namely supplying goods and or service without invoice, non-payment of tax collected to the Govt. account, fraudulently obtaining refund, obstructing or preventing any officer in the discharge of his duties, failure to supply information called for under the Act and many other similar situations. The punishment has been provided in clauses (i) to (iii) of clause (1) (supra).

Clause 73(2)

This relates to punishment for repeated commitment of an offence.

[1b] The power of arrest in regard to matters, which are mostly of civil nature and that too, to the officers, who implement GST is prima-facie uncalled for and likely to be misused. The I.T. Act, 1961 too provides for offences mentioned in Chapter XVII of the Act, to be punished, but it does not authorize the I.T. authorities themselves to make arrest. Further, there is a saving provision in s.278AA in the Act, which provides that no person shall be punishable for any offence mentioned in certain sections of the Act if he proves that there was reasonable cause for his failure. There is no such provision in the GST Bill. Only in clause 73(k), there is a mention of reasonable belief. A provision on the lines in the I.T. Act needs to be incorporated in the GST law also.

[2] Clause 64 confers power for accessing business premises to inspect books of account, etc., but the level of officer, who can do such inspection, has not been specified. Junior ministerial staff persons should not be authorized for this purpose.

[3] Chapter XVI relates to offences and penalties and lists out 20 situations, where penalties can be imposed. Some of the situations mentioned in Chapter XVI relating to penalties also figure in Chapter XVII relating to prosecution. How will a differentiation be made whether a person falling within the clauses of both the chapters will be selected for imposing penalty or for prosecution needs to be clarified?

[4] Appreciable aspects of the Bill

The model law provides for –

*Dispute Resolution Mechanism

*The GST Council, which will resolve disputes on policy that includes tax rates

*National Appellate Tribunal, which will adjudicate, inter-alia, technical disputes relating to assessments.

*Settlement Commission [about which the position is not yet fully clear] to settle disputes consequent to implementation of GST law and waiver of interest, penalty and provide immunity from prosecution.

*Advance Rulings procedure, which will provide certainty to assessee going in for these in regard to their tax matters.

[5] Advantages of GST

These have been pronounced repeatedly from the Govt.'s side and by trade industry and commerce bodies and associations. According to an advertisement issued by ASSOCHAM sometime back, the enactment of a uniform GST legislation will result in benefits such as:-

*Make India a common market, leading to expansion of trade and commerce, which will accelerate economic growth.

*Remove cascading effect of taxes.

*Lead to integration of multiple taxes.

*Facilitate ease of doing business.

*Provide encouragement to local and foreign investment.

*Lead to moderate tax rate with wider tax base

*Abolition of tax barriers like CST, entry taxes, etc., will result in free flow of goods across the country, leading to supply chain efficiency, cost cutting and economies of scale and

improvement in turnover.

*Electronic processing of tax returns, refunds and payments by GSTNET without human intervention, will reduce corruption and tax evasion.

*Use of digital tax administration process and wide tax base, covering all goods and services will reduce scope for black money generation with consequent increase in capital formation and productive use of national resources.

[6] Problematic areas

[i] Tax rate should be prescribed by the Constitution

The most unreasonable demand of the main opposite party in Rajya Sabha is to put a cap on the tax rate in the Constitution. This is an unworkable situation because each time rate is to be changed, the Constitution will have to be amended, which, besides affecting the sanctity of the Constitution, will put unnecessary strain on Legislative bodies in changing the prescribed rate, serving no useful purpose. No other tax rates are prescribed by the Constitution. The issue then is why only GST rate be prescribed by the Constitution? A favourable feature in this context is that all the States have opposed Rate Cap in the Constitution and there seems to be no option for the Congress Party but to fall in line with them, else, it may get isolated. At the time of writing this piece, it appears that agreement has been reached for mentioning the rate in the GST Act.

[ii] Regarding Dispute Resolution Mechanism

A ST Council is to be set up, designated as 'Goods and Services Tax Council' under Article 279A of the Constitution of India. The Council will comprise of members from the Centre and States, who will have weighted representation and will decide on matters relating to law and rate. However, the Congress Party has been opposing this. The structure proposed envisages that disputes between the Centre and the States be settled through the GST Council. The voting structure of the Council is such that no side will have undue power. However, the Congress Party desired independent dispute settlement mechanism, which, apparently does not seem called for. An agreement on this matter also seems to have been reached.

[iii] The third controversial issue relates to 1% inter-state tax. There seems to be agreement that this could be dropped provided the States are compensated. While backing the Centre on the important issue of a cap on tax rate, the States have ring-fenced their interest by demanding full compensation for any revenue loss for 5 years and ensuring that the tax burden on people should come down. The compensation has to be for 5 years and not upto 5 years. The final wording would ensure that the States shall be reimbursed in full for any revenue loss for 5 years since coming into force of the GST law.

[iv] States have also strongly pitched for keeping tax administration of businesses with a turnover of upto Rs.1.5 crore with themselves. They say that dual control of administration could hurt small traders. The Centre, however, has proposed a mechanism, according to which, both tax administrations (Centre and State) through mutual understanding can carry out different functions irrespective of any threshold cap. States, however, are

not in favour of this new mechanism as well.

- [v] Attempts are afloat to work out a revenue neutral rate, keeping in mind that there is no revenue loss to both the Centre and the States.
- [7] Media reports show that the Congress Party has toned down its opposition on grounds (ii) & (iii) (supra) and hopefully, it would do so regarding 1st condition also, making the road clear for the enactment of GST agreeing to Constitutional amendment also.

[8] Concluding comments

The position in regard to various aspects discussed earlier could be summed up thus:-

*GST rate in Constitution: States open to the rate being included in GST Bill, but not in Constitution amendment. The Congress Party is expected to agree to this.

*Dispute Settlement: GST Council should decide on the issue.

*1% inter-state tax: Can be dropped, but States should be compensated.

*GST rate: Burden on consumer should come down.

*Compensation: States should be fully compensated for 5 years.

*Dual control: States should have right over businesses with turnover of upto Rs.1.5 crore.

- [8.1] The empowered committee of State FMs, which met FM – Arun Jaitley – on 26th July, 2016, reached a consensus on key aspects of the Constitution amendment Bill that is likely to be moved in the Rajya Sabha. The committee also decided to keep the main GST rate low.
- [8.2] After the Constitutional amendment is passed, the lawmakers will have to pass three more legislations – the Central GST, State GSTs and Integrated GST.
- [8.3] It has been a long arduous journey for GST legislation. It needs to come to an end, hopefully with Congress Party finally agreeing to its enactment along-with amendment of the Constitution. As far as rates are concerned, a Govt. panel headed by Chief Economic Adviser, Arvind Subramanian, has recommended three broad rates for GST: 17-18% as the standard rate for most goods and services, 12% for essential items and 40% for luxury items and tobacco. Precious metals be taxed at 2-6%.
- [8.4] However, as the earlier discussion will show, the Bill has been loosely drafted and it will need a tightening up from legal angles to avoid unfruitful litigation, be taxpayer friendly and not result in loss of revenue legitimately due to the Centre and the States.
- [9] By the time this write-up will appear in print, the issues relating to GST will, hopefully, get resolved to the satisfaction of everyone.

STOP PRESS

At the time of concluding this write-up, a report appearing in the Economic Times of 29th July, 2016 shows that 'consensus on GST Statute Bill has been reached. The Constitution amendment Bill for framing the law for setting up the goods and services tax regime may be passed in this session of the Parliament. But the GST Bill may have to wait till the winter session due to lack of consensus between the Centre and States on the proposed 18% rate. Once the amendment Bill is passed, the Finance Ministry will initiate further negotiations with the Empowered Committee of State FMs and the GST Council with the aim of arriving at a consensus on the GST rate.

CS

Goods and Services Tax Act : Meaning and Scope of the Words ‘Goods’ and ‘Service’



Pradeep K Mittal*, FCS

PKMG Law Chambers
Delhi

pkmittal171@gmail.com

The introduction of GST will be the biggest tax reform in the history of independent India. GST is expected to simplify tax administration, ensure ‘Ease of Doing Business’ and promote ‘Make in India’. If properly administered, it will accelerate GDP growth. This is the time when businesses ought to try and align their business model/structure with the proposed tax structure to plug potential tax losses, improve profitability, increase profitability and ultimately accelerate the rate of growth of our Nation.

In the field of GST, the most important term is “supply” as GST is payable when there is an occurrence of “supply”. Since the taxable event is “supply” one has to understand the shade, color, intent and meaning of the word “supply”. Section 2(92) of Goods and Services Tax, 2016 (hereinafter called Act) defines “supply”

(2) Schedule-II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as supply of goods or a supply of services;

(2A): Where a person acting as an agent.....

.....

Section 3 which defines the word “supply” uses the word “include” and, therefore, one has to find out as to whether the definition is inclusive or exhaustive or the example given in section 3 read with various Schedules, are the only form of “supply” or else there could be many other form of “supply”. The Supreme Court in the case of Regional Director v. High Land Coffee Works MANU/SC/0607/1991 : 1991 (3) SCC 617 has, while defining the word “include” observed as under:

The GST will subsume two major indirect taxes namely sales tax/value added tax imposed on sale of goods and service tax levied on provision of various services. Hence under the proposed GST the two terms of prime importance are ‘goods’ and ‘service’. This Article seeks to explain the meaning of these two terms in the light of several decided cases.

to say that the supply shall have the meaning as assigned to it under Section 3 of Act.

Section 3 of the Act says that ‘supply’ shall include-

“(1)(a):all forms of supply of goods and/ or services 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;

(b) importation of service, whether or not for a consideration and whether or not in the course of furtherance of business, and

(c) a supply specified in Schedule -I made or agreed to be made without consideration.

“The word include in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. The word include is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. [See (i) Stroud s Judicial Dictionary, 5th edn. Vol. 3, p. 1263 and (ii) C.I.T. v. Taj Mahal Hotel, (iii) State of Bombay v. Hospital Mazdoor Sabha.]”

*Past Central Council Member, the Institute of Company Secretaries of India.

In the field of GST, the most important term is “supply” as GST is payable when there is an occurrence of “supply”. Since the taxable event is “supply” one has to understand the shade, color, intent and meaning of the word “supply”.

The above view has been reiterated in C.I.T. v. T.T.K. Health Care Ltd. MANU/SC/7293/2007: (2007) 11 SCC 796.

Further, the Supreme Court in the case of Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union MANU/SC/1574/2007: (2007) 4 SCC 685 observed as under:

“It is trite to say that when in the definition clause given in any statute the word “means” is used, what follows is intended to speak exhaustively. When the phrase “means” is used in the definition, to borrow the words of Lord Esher M.R. in Gough v. Gough (1891) 2 Q.B. 665 it is a “hard and fast” definition and no meaning other than that which is put in the definition can be assigned to the same. (Also see: P. Kasilingam and Ors. v. P.S.G. College of Technology and Ors. MANU/SC/0265/1995). On the other hand, when the word “includes” is used in the definition, the legislature does not intend to restrict the definition; makes the definition enumerative but not exhaustive.

Section 3(1)(a) says that supply would mean all forms of supply of goods and/or services 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. It is very important to understand the meaning of two words “goods” or “services

GOODS - MEANING

Section 2(88) of the Act define “service” to mean anything other than the “goods”. Really speaking, this definition does not define anything and, therefore, one needs to look to various shades, color and dimension of the word “Goods”. Section 2(48) of the GST Act defines “goods” thus:

“Goods” means “every kind of movable property other than actionable claim and money but includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply.”

Explanation: For the purpose of this Clause, the term “moveable property” shall not include any intangible property.

Article 366(12) of the Constitution of India gives an inclusive definition of 'goods' which says that 'Goods' includes all materials, commodities and articles;

Here once again the definition uses the expressions : “ ‘Goods’ means”. It, therefore, means that the definition is not inclusive but exhaustive. In other words, the goods could be of various types of movable property and could not encompass any other item or things within its fold except what is specifically mentioned in the definition itself.

In order to decide as to whether a particular transaction shall be exigible to GST, it should either be “goods” or “service”. First of all, one needs to understand the meaning, scope and intent the word “goods”.

Section 2(7) of the Sale of Goods Act defines the “goods” as follows :-

“Goods” means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.”

The Supreme Court in the case of CST, MP. v. MPEB MANU/SC/0156/1968: AIR 1970 SC 732, was required to consider whether “electricity” would be goods and after careful analysis, the Court held that “electricity” would be goods. The Court observed at page 736, paragraph 9 that:-

“.....The term “movable property” when considered with reference to “goods” as defined for the purposes of sales tax cannot be taken in a narrow sense and merely because electric entry is not tangible or cannot be moved or touched like, for instance, a piece of wood or a book, it cannot cease to be movable property when it has all the attributes of such property.....”

The Supreme Court in the case of H Anraj Vs. Government of Tamil Nadu MANU/SC/0318/1985 has defined the “goods” in the following words:-

22.: Section 2(7) of the Sale of Goods Act defines 'goods' as meaning 'every kind of movable property other than actionable claims and money'. Clearly, the expression 'movable property' is used in contradistinctions with 'immovable property'. Section 3 of the Transfer of Property Act gives a negative definition of immovable property saying that it does not include standing timber,, growing crops or grass and is, therefore not of much assistance; but Section 3(26) of the General Clauses Act, 1897 defines 'immovable property' by stating that it "shall include land, benefit to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth", while 'movable property' is defined in Section 3(36) thus:

"Movable property" shall mean property of every description, except immovable property.

It is thus clear that when Section 2(7) of the Sale of Goods Act defines 'goods' as meaning 'every kind of movable property other than actionable claims and money', the expression 'movable property' occurring therein must mean property of every description except immovable property. Now it is obvious that lottery tickets can by no stretch of imagination be regarded as immovable property but would, therefore, be movable property and as such these will fall within the expression "goods". Of course, questions whether these tickets constitute "goods" properly so called or are slips of paper or memoranda merely evidencing the right to claim a prize by chance and whether these are actionable claims and hence excluded from the concept of goods will be considered presently. But it cannot be disputed that as opposed to immovable property these tickets would be movable property and would normally qualify to fall within the expression "goods".

In a nutshell, the Supreme Court, in the above case, has observed that what is not a “immoveable property” shall be “moveable property” and further observed that lottery ticket shall be “goods” and further observed that once it is held to be a “moveable property”, the same shall be, liable to tax.

In the case of Vikas Sales Corporation. Vs.: Commissioner of Commercial Taxes and Anr. MANU/SC/0519/1996 1997(57)ECC1 the question was whether “REP Licenses” or “Replenishment Licenses” were goods so that sales tax could be levied on their transfer. The REP Licenses gave permission to an exporter to take credit for the exports made. The Supreme

The definition uses the expressions :
 “‘Goods’ means”. It, therefore, means that the definition is not inclusive but exhaustive. In other words, the goods could be of various types of movable property and could not encompass any other item or things within its fold except what is specifically mentioned in the definition itself.

Court considered the definition of "goods" as given in the Constitution of India, in the Sales of Goods Act 1930, the Central Sales Tax Act, 1956 the Tamil Nadu General Sales Tax Act, 1959, the Karnataka Sales Tax Act, 1957, as well as the Kerala General Sales Tax Act, 1963 and observed that all these definitions provided that goods mean, inter alia, all kinds of moveable property.

The Supreme Court further considered the definition of property in several authorities and it was concluded that the material on record showed a uniform emphasis on the expansive manner in which the expression 'property' was understood. It was noted that debts, contracts and other choses in action were chattels no less than furniture or stock in trade. Similarly, patents, copyrights and other rights in rem were also included within the meaning of moveable property.

In the Dictionary of Commercial law by A.M. Hudson (1983 Edition.) the difference is clearly brought out. The definition reads thus:

'Property' -In commercial law - this may carry its ordinary meaning of the subject-matter of ownership. But elsewhere, as in the sale of goods it may be used as a synonym for ownership and lesser rights in goods". Hence, when used in the definition of 'goods' in the different sales tax statutes, the word 'property' means the subject matter of ownership. The same word in the context of a 'sale' means the transfer of the ownership in goods.

ACTIONABLE CLAIM -MEANING

Since the definition of "goods" excludes "actionable claim" and "money", one has to understand the meaning of "actionable claim" which, in turn, has been defined in section 3 of Transfer of Property Act, 1882 as meaning;

"A Claim to any debt, other than a debt secured by mortgage of Immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent."

An actionable claim would include a right to recover insurance money or a partner's right to sue for an account of a dissolved partnership or the right to claim the benefit of a contract not coupled with any liability (see Union of India v. Sarada Mills MANU/SC/0410/1972; [1973]2SCR464). A claim for arrears of rent has also been held to be an actionable claim (State of Bihar v. Maharajahdiraja Sir Kameshwar Singh MANU/SC/0019/1952; [1952]1SCR889). A right to the credit in a provident fund account has also been held to an actionable claim (Official Trustee, Bengal v. L. Chippendale, MANU/WB/0116/1943AIR 1944 Cal 335 .

The Constitution Bench of the Supreme Court in the case of Sunrise Associates v. Govt of NCT of Delhi MANU/SC/8124/2006 has observed that distinct elements are deducible from the definition of 'actionable claim' in section 3 of the Transfer of Property Act. An actionable claim is, of course, as its nomenclature suggests, only a claim.

At the same time, in terms of the Explanation attached to the definition of "goods under section 2 (48), the word "goods" excludes from its purview, "intangible property". Intangible property is that which a person or corporation can own and can transfer ownership to another person or corporation, but has no physical substance like for example, corporate intellectual property rights, goodwill, brand identity, or knowledge/intellectual property.

MEANING OF 'SERVICE'

After having understood the meaning of "goods", let us understand the meaning of the word "Service". Under the Finance, 1994, section 65 deals with the definition of various "taxable service". Under the existing law i.e. Finance Act, 1994, the levy of service tax is attracted when a taxable service is provided by a defined service provider to a defined service receiver. Unless a service can be regarded as being taxable and being provided by a defined service provider to a defined service receiver, it cannot be taxed. Section 65B(44) of Finance Act, 1994, defines 'service' as follows:-

"Service means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

- (a) an activity which constitutes merely:-
 - (i) transfer of title in goods or immoveable property by way of sale, gift or in any other manner; or
 - (ii) a provision of service by an employee to the employer in the course of or in relation to this employment;
 - (iii) fees taken in any court of tribunal established under any law for the time being in force;"

The Supreme Court in the case of All India Federation of Tax Practitioners v. Union of India 2007(10) STT 166 has observed in relation " service" as under:-

- a) ' goods' has to be understood in contradistinction to the word " service".
- b) Service Tax is a VAT which in turn is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable only on services provided within the country. Service Tax is a value added tax.
- c) Just as Excise Duty is a tax on value addition on goods, service tax is on value addition by rendition of services;

Existing section 66B of the Finance Act, 1994 provides that there shall be levied tax on services provided or agreed to be provided in a taxable territory by one person to another person. Thus, there has to be two different persons (i) receiver of service and (ii) provider of service. It is very often seen that many body corporates have separate divisions within the same legal entity. These divisions are separate profit centers and profit for each division is determined separately. One Division raises Debit Note on another division for the activities performed by that Division. In this case, the Division is not a separate entity, although it may have obtained separate tax registration for compliance of law. That does not make each division on separate juridical person and the services rendered by one division to another division cannot be considered as service under Section 65B(44). The CESTAT has consistently held so. In the case of Precot Mills Ltd v. CCE 2006 (5) STT 35 Bangalore, the Tribunal has observed that if one does service to one self, there is no question of leviability of Service Tax.

CS

Understanding Integrated Goods and Services Tax (Model IGST Act)



Dr. Sanjiv Agarwal*, FCS

Managing Partner
Agarwal Sanjiv & Company
Chartered Accountants
Jaipur

asandco@gmail.com

RECOMMENDATIONS OF EMPOWERED COMMITTEE (FIRST DISCUSSION PAPER)

According to First Discussion Paper on Goods and Services Tax in India by the Empowered Committee of State Finance Ministers (2009), IGST model has been recommended for taxation of inter-state transaction of goods and services.

Accordingly, the scope of IGST Model is that Centre would levy IGST which would be CGST plus SGST on all inter-State transactions of taxable goods and services with appropriate provision for consignment or stock transfer of goods

- b) No upfront payment of tax or substantial blockage of funds for the inter-State seller or buyer.
- c) No refund claim in exporting State, as ITC is used up while paying the tax.
- d) Self-monitoring model.
- e) Level of computerization is limited to inter-State dealers and Central and State Governments should be able to computerize their processes expeditiously.
- f) As all inter-State dealers will be e-registered and correspondence with them will be by e-mail, the compliance level will improve substantially.
- g) Model can take 'Business to Business' as well as 'Business to Consumer'

The article analyses the provisions explaining various meanings, inter-state and intra-state transactions, supply, charging provision and place of supply of goods and services with reference to Integrated Goods and Services Tax (IGST).

and services. The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information will also be submitted to the Central Agency which will act as a clearing house mechanism, verify the claims and inform the respective governments to transfer the funds.

The major advantages of IGST Model are:

- a) Maintenance of uninterrupted ITC chain on inter-State transactions.

transactions into account.

This article analyzes the provisions explaining various meanings, inter-state and intra-state transactions, supply, charging provision and place of supply of goods and services with reference to IGST.

TAXONOMY OF MODEL IGST LAW

The IGST Act comprises of the following:

- 11 Chapters
- 33 Sections
- 8 Definitions

This legislation is called the integrated Goods and Services Tax Act, 2016 (in short IGST), an Act to levy, collect and administer IGST in India.

*Also ACIS (UK). Former Chairman, NIRC of ICSI.

UNDERSTANDING INTEGRATED GOODS AND SERVICES TAX (MODEL IGST ACT)

This Act shall be applicable to whole of India, i.e., including the State of Jammu & Kashmir. Presently, Service Tax does not apply to State of Jammu & Kashmir but Central Excise Act, 1944 applies to that state. What is meant by 'India' is defined in section 2(35) of Goods and Services Tax Act, 2016.

The Act after being legislated shall come into force from a date which will be notified by the Central Government by way of a notification. It may also appoint different dates for enforcement of different provisions of the Act.

DEFINITIONS (SECTION 2)

There are seven definitions in section 2, viz.,

- Appropriate State
- Government
- Integrated Goods and Services Tax (IGST)
- Input Tax
- Input Tax Credit
- Supply
- Output tax

It has been specifically provided that words and expressions not defined in the Act shall have the same meaning as assigned to them in the Central GST Act, 2016. Section 27 of IGST Act provides that certain provisions of the CGST Act shall apply to IGST.

WHAT IS INTEGRATED GST

According to section 2(c), "**Integrated Goods and Services Tax**" (IGST) means tax levied under this Act on the supply of any goods and/or services in the course of inter-State trade or commerce.

Explanation 1.- A supply of goods and/or services in the course of import into the territory of India shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

Explanation 2. - An export of goods and/or services shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

IGST or integrated goods and services tax would mean the tax levied under IGST Act on the supply of any goods and / or services in the course of inter-state trade or commerce.

'Goods' and 'services' are defined in the Constitution of India itself vide 122nd Amendment. CGST Act in its section 2(50) also defines IGST as tax levied under the IGST Act.

IGST shall also apply to import of goods and services into India. The explanation stipulates that any supply of goods or services in the course of import of goods or services into Indian territory shall be deemed to be supply of goods / services in the course of inter-state trade or commerce and hence liable the IGST.

It has also been proposed that like import transactions, export of goods and services shall be deemed to be supply in course of inter-state trade or commerce.

Interstate trade or commerce will, therefore include supply of goods / services in the course of –

- Inter-state trade or commerce
- Import into Indian territory (deemed to be inter-state)
- Export (deemed to be inter-state)

Thus, IGST shall apply to inter-state transactions and import as well as export transactions (deemed to be inter-state transactions) relating to supply of goods and / or services.

Appropriate State [Section 2(a)]

Appropriate State has been defined as follows –

"Appropriate State", in relation to a taxable person, means that State where he is registered or liable to be registered under section 19 of the Central Goods and Services Tax Act, 2016.

Explanation: For the purpose of this Act, "State" includes Union Territory with Legislature.

It may be noted that the term 'appropriate state' shall be used only in reference to a taxable person as is done in the Central Sales Tax Act, 1956. This is defined in section 2(a) of the Central Sales Tax Act, 1956. It identifies the state to the place of business (es) of the taxable person. State shall also include Union Territory having legislature.

Section 19 of CGST Act provides for registration of persons whereby every person who is liable to be registered under Schedule III of this Act shall apply for registration in every such State in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed.

Thus, appropriate state shall be in relation to the taxable person and shall mean a state–

- (i) where taxable person is registered, or
- (ii) where taxable person is liable to be registered u/s 19 of CGST Act, and
- (iii) includes a Union Territory with legislature

Government [Section 2(b)]

'Government' means the Central Government.

Government would mean only the Central Government (and not any state or other Government).

However, in Model GST Act, section 2(49) defines 'government' differently where it includes Central Government departments, State Government & its departments, and Union Territory & its departments. Here, even the departments of Central Government are excluded.

Supply [Section 2(f)]

The term 'supply' has been defined to mean the same as defined in section 3 of the CGST Act which provides for meaning and scope of supply.

This section provides for the meaning and scope of supply of goods and services. There is no concept of supply of goods and services in the present law. In the proposed law, supply of goods or services shall include the following:

- Sale
- Transfer
- Barter

- Exchange
- License
- Rental
- lease or disposal, and
- Importation of services
- Supply as per Schedule-I (supply without consideration)

In relation to 'supply' for the purpose of GST, following points shall be noted -

- supply shall be goods and / or services
- supply should be made or agreed to be made
- supply should be for a consideration
- supply should be made by person
- supply should be made in the course of or furtherance of business
- supply shall include importation of service, irrespective of whether for consideration or not and whether in the course of or furtherance of business or not.
- supply shall include supply as per Schedule-I made without a consideration

It also includes a supply which is made or agreed to be made without a consideration and specified in Schedule-I to the Act, i.e., matters to be treated as supply without consideration which are as follows:

- Permanent transfer/disposal of business assets.
- Temporary application of business assets to a private or non-business use.
- Services put to a private or non-business use.
- Self supply of goods and/or services.
- Assets retained after deregistration.
- Supply of goods / services by a taxable person to another taxable or non-taxable person in the course or furtherance of business.

It may however, be noted that supply of goods by a registered person to a job worker as per section 43A dealing with special procedure for removal of goods will not be treated as supply of goods.

Schedule II to Model GST law shall govern supply of goods or services in relation to transfer, land and building treatment or process, transfer of business assets, certain specified services etc.

The provision empowers the Central or State Governments to specify by notification, the treatment of transactions. On the recommendation of the GST Council, such notification may notify that the transaction be treated –

- as supply of goods and not as a supply of services
- as supply of services and not as supply of goods
- neither as supply of goods nor as supply of services

As Schedule-I includes matters to be treated as supply without consideration, the scope of 'supply' becomes much wider or unlimited. It shall cover services put to any private or non-business use and supply of goods or services by a taxable person to another taxable or non-taxable person in the course of or furtherance of business. (e.g., free gifts or samples, free services to friends etc.).

Chapter II (section 3 and 3A) of the IGST, Act provide for the provisions for determining supply of goods and services in the

course of inter-state and intra-state trade or commerce Chapter IV (sections 5 and 6) provide for determining place of supply of goods and place of supply of services respectively.

SUPPLY OF GOODS / SERVICES IN INTER-STATE TRADE OR COMMERCE

Section 3 of the IGST Act provides for principles for determining supply of goods and /or services in the course of inter-state trade or commerce. Accordingly,

- Subject to the provisions of section 5, a supply of goods shall be deemed to take place in the course of inter-State trade or commerce if the location of the supplier and the place of such supply are in different States.
- Subject to the provisions of section 6, a supply of services shall be deemed to take place in the course of inter-State trade or commerce if the location of the service provider and the place of supply of service are in different States.

This section corresponds to sections 3 to 5 of CST Act, 1956. The provisions of section 3 shall determine as to when supply of goods or services shall take place or shall be deemed to have taken place, subject to provisions of section 5 in case of place of supply of goods and section 6 in place of supply of services in the course of inter-state trade or commerce.

Supply of goods and / or services shall be deemed to take place in the course of inter-state trade or commerce if –

- In case of goods, location of supplier and the place of supply of goods are in different states
- In case of services, location of service provider and place of supply of service are in different states.

Thus, for a supply to be inter-state, it will be seen that –

- Supply shall be of goods / services
- in course of trade or commerce
- Location of supplier / service provider and place of supply should be in different states
- Supply should be in course of business or its furtherance.

SUPPLY OF GOODS AND/OR SERVICES IN THE COURSE OF INTRA-STATE TRADE OR COMMERCE

Services 3A of the IGST Act provides for the supply of goods and / or services in the course of intra-state trade or commerce as follows –

- Subject to the provisions of section 5, intra-state supply of goods means any supply where the location of the supplier and the place of supply are in the same State.
- Subject to the provisions of section 6, intra-state supply of services means any supply where the location of the supplier and the place of supply are in the same State.

Accordingly, whereas place of supply of goods or services shall be determined in terms of section 5 and 6 respectively, intra-state supply shall mean-

UNDERSTANDING INTEGRATED GOODS AND SERVICES TAX (MODEL IGST ACT)

- (i) in case of goods – any supply of goods where location of the supplier and place of supply are located in the same state.
- (ii) in case of services – any supply of services where the location of supplier and place of supply are in the same state.

These principles can be better understood by the following matrix illustration –

SUPPLY OF GOODS / SERVICES

Section	Supplier	Place of supply	Supply Type
3	State A	State B (Other than State A)	Inter-State
3A	State A	State A (Same State)	Intra-State

It may be noted that 'Goods' and 'Services' have been defined in section 2(48) and 2(88) of GST Act respectively.

Once we move on to GST regime, efforts will also be required to align financial statements and accounting or tax accounting standards to meet the challenges thrown by the GST regime. The manner of recognizing revenue will change for the tax purposes as there are bound to be mismatches between figures of 'sale' and 'supply'. Similarly, work - in-progress or in-transit figures will be hit because of GST in view of 'time of supply' provisions. While removal of goods may not be relevant, supply of goods will have to be recognized as earlier of event of dispatch, receipt, payment or invoicing, as the case may be.

LEVY AND COLLECTION OF TAX

Chapter III of the Model IGST Act provides for levy and collection of tax (IGST) vide section 4. Section 4 is the charging section for levy of IGST corresponding to section 6 of CST Act, 1956 dealing with liability to tax on inter-state sales.

For the purpose of charging IGST, following points are important -

- (i) Tax to be levied shall be called IGST
- (ii) IGST shall be levied on all supplies of goods and / or services made in course of inter-state trade on commerce
- (iii) Rate of IGST shall be as per Schedule to the Act (yet to be prescribed)
- (iv) IGST shall be collected in the prescribed manner for which rules shall be prescribed.
- (v) IGST shall be payable by every taxable person. As per IGST Act, who is a taxable person is defined in section 9 of CGST Act, i.e., a person who carries on any business at any place in India and who is registered or required to be for payment of tax.
- (vi) Payment of IGST shall be made by service receiver in cases where it is notified that IGST is payable under reverse charge basis. In such cases, service receiver shall be treated as if he is person liable for paying IGST in relation to such service.
- (vii) There will be certain exemptions subject to conditions if any, in relation to supply of specified goods or service which or services which will be specified in Schedule to Act, i.e., on such supplies, no tax shall be payable.

It may be noted that sub-section (1) on levy of IGST shall be subject to provisions of sub-section (3) and (4) as these are over

riding provisions.

Sub-section (3) which provides for payment of IGST under Reverse Charge Mechanism (RCM) provides that reverse charge shall apply subject to the following –

- (i) GST Council shall have to recommend the RCM.
- (ii) Central Government shall notify the RCM by way of a notification after GST Council has recommended
- (iii) RCM may be notified for specified categories of supplies of goods and / or services
- (iv) In RCM, tax shall be paid by the person receiving such goods and/ or services
- (v) In RCM, all the provisions of IGST Act shall apply to such person as if he is the person liable for paying the tax in relation to such goods and / or services.

Sub-section (4) provides for exemption from payment of IGST by way of a notification. Central Government may notify that no tax shall be payable by any taxable person in respect of such supplies of goods and / or services as specified in the Schedule (to be provided) in the Act. Such exemption may be subject to such conditions as may be notified.

PLACE OF SUPPLY OF GOODS

The concept of place of 'supply of goods' is new in indirect taxation as presently 'place of removal' is relevant in central excise and 'sale' is relevant for value added tax. With GST, place of removal will no longer be relevant which has been a subject matter of interpretation and litigation in the present law.

Section 5 of Model IGST law provides for provisions to determine the place of supply of goods only. Supply of goods may or may not involve movement of goods and supply of goods may take place under different situations and for different type of goods by supplier or receiver itself.

PLACE OF SUPPLY MATRIX

S u b - section	Situation	Place of Supply
2	Where supply involves movement of goods	Location of goods when movement of goods terminate for delivery to recipient
2A	Where goods are delivered on directions of third person (transfer of documents)	Principal place of business of third person who shall be deemed to have received the goods
3	Where no movement of goods is involved	Location of goods at the time of delivery to the recipient
4	Where goods are assembled / installed at site	Place of installation or assembly
5	Where goods are supplied on board a conveyance	Location at which goods are taken on board.
6	Residual situation not falling in above specified ones	To be determined by law on recommendation of the Council

These provisions are discussed hereunder-

1) Where supply involves movement of goods (sub-section 2)

Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

In this case, movement of goods can be by any person-supplier, receiver or any other person, say a goods transport agency but the supply of goods must involve movement thereof. Here the criteria are the location of goods where such movement terminates for delivery to the recipient. Generally, it will be the location of receiver of goods.

2) Delivery based place of supply (sub-section 2A)

Where the goods are delivered by the supplier to a recipient or any other person, on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.

Goods may be delivered to receiver or his agent or on his direction to any other person. It may be before or during the movement of goods and such delivery may be actual or by way of transfer of documents of title on goods. In case of such delivery of goods to third person, it shall be deemed that the place of supply of goods shall be the location of principal place of business of such person taking the delivery of goods.

Principal place of business is defined in section 2(78) of the Model GST law. Accordingly, it means the place of business in the certificate of registration where the taxable person keeps and maintains the accounts and records as specified in law. (i.e., section 42 of GST Act). It may be noted that place of supply under sub-sections (1) and (2) may be different.

3) Where no movement is involved (sub-section-3)

Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient.

In cases where no movement of goods is involved, either by supplier or by the recipient, place of supply of goods, the location of goods itself at the time of delivery will constitute the place of supply of goods.

4) Goods which are assembled / installed (sub-section 4)

Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

Where the goods are supplied for assembly, installation (or even commissioning, erection, fabrication etc.) at site, place of supply of goods in question shall be the location of site where goods are supplied and used for assembly etc.

5) Goods supplied on board a conveyance (sub-section 5)

UNDERSTANDING INTEGRATED GOODS AND SERVICES TAX (MODEL IGST ACT)

Where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

For supplies on board a conveyance (e.g. train, aircraft, vessel, motor vehicle etc.), since conveyance is a moving subject, place of supply shall be the location where goods are taken on board. For example, in a Shatabdi train from New Delhi to Dehradun, food is supplied or taken at board at New Delhi. The place of supply shall be New Delhi irrespective of where goods are consumed or where the train terminates. This provision is different from sub-section (1) where goods move from one place to another and goods are subject. Suppose there is a flight between New Delhi and New York with a stopover at Dubai and goods (say food items and fuel) are supplied at New Delhi as well as Dubai airports. In this case, place of supply will be New Delhi for goods supplied at New Delhi and Dubai for goods supplied at Dubai Airport. In sub-section (5), it is not so.

6) Residual provision (sub-section 6)

Where the place of supply of goods cannot be determined in terms of sub-section (2), (3), (4) and (5), the same shall be determined by law made by the Parliament in accordance with the recommendation of the Council.

This is a residual clause providing that if the supply of goods cannot be determined as per sub-sections (2), (3), (4) and (5) of section (5), it shall be determined as per law which of course, is going to be made by the Parliament on the recommendation of the GST council.

There appears to be a drafting error in sub-section (6) as it refers to sub-sections (2), (3), (4) and (5) but omits reference to sub-section (2A). The provision of sub-section (6) should apply to all sub-sections (2) to (5) including (2A).

PLACE OF SUPPLY OF SERVICES

Determination of place of supply of services is important for Goods and Services Tax. Section 3 and 3A of IGST Act lay down principles for determining supply of goods and/ or services in the course of inter-state and intra-state trade or commerce. These provisions are subject to section 6 on place of supply of services.

Two terms are important for determination of place of supply of services viz., 'service' and 'supply'. 'Service' in terms of section 2(88) of GST Act means anything other than goods. 'Supply' is defined in section 3 of the CGST Act, 2016.

Under the present law, Place of Provision of Services Rules, 2012 govern the determination of place of provision of services. These rules shall be replaced by section (6) of the model law.

PLACE OF SUPPLY FOR IGST

Section 6 deals with determination of place of supply of services. This contain 13 sub-sections and stipulates different situations in which place of supply of services shall be ascertained.

In case of B2B (business to business) supply of services, the primary factor for determining the place of supply will be the

location of the service recipient, subject to certain exceptions.

As per sub-section (3), generally place of supply of services made to a registered person shall be the location of services receiver, except for services mentioned in sub-sections (4) to (15).

The provisions of section (6) will take into account the present Place of Provision of Services Rules, 2012 and as such, no separate rules are likely to be prescribed.

Unlike the present provisions to determine place of provision of service, where there is a general rule of destination based place (recipient) and a rule prescribing for order of rules to be applied, and a residual rule, section 6 of IGST law contains 15 sub-sections. While sub-sections 4 to 15 prescribe the determination of place of supply of specific services, sub-section (2) and (3) are the general principles for determination of supply is respect of registered person and other persons who are not registered persons. Sub-section 4 to 15 shall apply to both, registered persons and persons other than registered persons. As per sub-section (1), place of supply of services shall be determined in terms of section (6).

Sub-section of section 6	Supply of service to	Place of supply	Except
2	Registered person	Location of recipient (i.e. registered person)	Services listed in sub-section 4 to 15 of section 6
3	Any person, other than registered person	Location of recipient where address on record exists ; In other cases, location of supplier	Services listed in sub-section 4 to 15 of section 6

'Address on record' is defined in section 2(3) of the GST Act as the address of the recipient as available in the records of the supplier. The address therefore, shall be reckoned as that available with supplier and not as shown by the recipient. The supplier's address on record, if not correct may pose challenges to both the parties.

PLACE OF SUPPLY OF SPECIFIC SERVICES

Place of supply of specific services shall be determined as per following table –

PLACE OF SUPPLY OF SERVICE

Sub-section	Service	Place of supply to Registered person	Place of supply to Other person
(4)	(a) in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work, or (b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called and including a house boat or any other vessel, or (c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property, or (d) any services ancillary to the services in clause (a), (b) and (c) above. (See note 1 below)	Location at which the immovable property or boat or vessel is located or intended to be located.	Location at which the immovable property or boat or vessel is located or intended to be located.

REGISTERED / UNREGISTERED PERSON

Unlike the present place of provision of service norms, place of supply of services for IGST shall be determined on the basis of status of person who is recipient (i.e. whether he is registered or not. 'Registered person' is not defined either in CGST law or IGST law but taxable person has been defined. Going by the definition of taxable person in section 9 of the GST Act, it includes both, registered person and one who is required to be registered. So, we can assume that for place of supply, registered person is a taxable person who is registered u/s 19 and Schedule-III and other than registered person is a taxable person who is required to be registered but not so registered.

GENERAL RULE

As a general rule, the place of supply of service shall be determined as follows –

(5)	The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery	Location where the services are actually performed.	Location where the services are actually performed.
(6)	The place of supply of services in relation to training and performance appraisal	Location of such person	Location where the services are actually performed
(7)	The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto.	Place where the event is actually held or where the park or such other place is located.	Place where the event is actually held or where the park or such other place is located.
(8)	The place of supply of services provided by way of- (a) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or (b) services ancillary to organization of any of the above events or services, or assigning of sponsorship of any of the above events. (See Note to below 2)	Location of such person.	Place where the event is actually held.
(9)	The place of supply of services by way of transportation of goods, including by mail or courier	Location of such person	Location at which such goods are handed over for their transportation.
(10)	The place of supply of passenger transportation service [Where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (2) or (3), as the case may be.] (See Note 3 below)	Location of such person	Place where the passenger embarks on the conveyance for a continuous journey.
(11)	The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle.	Location of the first scheduled point of departure of that conveyance for the journey.	Location of the first scheduled point of departure of that conveyance for the journey.
(12)	The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall- (a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna. (b) in case of mobile connection for telecommunication and internet services provided on post-paid basis. (c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means. (If such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on record of the supplier of services shall be the place of supply of such service.)	Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services. Location of billing address of the recipient of services on record of the supplier of services; Location where such pre-payment is received or such vouchers are sold:	Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services. Location of billing address of the recipient of services on record of the supplier of services; Location where such pre-payment is received or such vouchers are sold:
(13)	The place of supply of banking and other financial services including stock broking services to any person. If the service is not linked to the account of the recipient of services.	Location of the recipient of services on the records of the supplier of services. Location of the supplier of services.	Location of the recipient of services on the records of the supplier of services. Location of the supplier of services.
(14)	The place of supply of insurance services	Location of such person	Location of the recipient of services on the records of the supplier of services.

(15)	The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for identifiable States.	Located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.	Located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.
------	---	--	--

Note 1

Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

Note 2

Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

Note 3

The return journey shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

It would, therefore be obligatory for the supplier / recipient of service to (i) get registered, and (ii) identify the category of service [if falling under sub-sections (4) to (15)] to apply relevant provision failing which section 2 or 3 shall apply. CS

There cannot be any other better gift for Diwali and New Year than

HRD & LABOUR LAW REFERENCER CUM DAY PLANNER, 2017

Comprising over 175+ ready drafted employment communications with explanations to meet everyday requirement of the employer and employee relationship i.e. model appointment letters, agreements, service rules, charge-sheets, warnings, office orders, notices, standing orders, salient features of all the important labour laws, etc.

Prepared by experienced lawyers and Management consultants, this is essentially everyday companion for Company Directors, General Managers, HRD Executives /Company Secretaries and all those who are managing people at work.

Each copy with (free) Annual Check-list for compliances is available for Rs.525 besides Rs.50 towards postal/courier charges (if not purchased personally).

For requirement in bulk for your nears and dears, special concession will be given.
Contact Rameshwar Das : 011-2984 2222



LABOUR LAW REPORTER, A-43, Lajpat Nagar – 2, New Delhi – 110 024

Ph. 011-29830000, 29840000, E-mail : info@labourlawreporter.co.in, Website : www.labourlawreporter.com

Time of Supply & Place of Supply of Goods and / or Services – Paradigm Transformation under GST



Bimal Jain*, FCS

Executive Director
A2Z Taxcorp LLP
Tax and Law Practitioners
Delhi

bimaljain@hotmail.com



Isha Bansal

Senior Associate
A2Z Taxcorp LLP
Tax and Law Practitioners
Delhi

ishabansal@a2ztaxcorp.com

The much talked about “Goods and Services tax (“GST”) regime – the Single biggest tax reform since Independence” has been creating a buzz amongst all stake holders, eagerly pinning hopes on the ongoing monsoon session of the Parliament to see passage of 122nd Constitutional Amendment Bill on GST, which will pave the way for GST in the country.

GST is a destination based consumption tax levied at multiple stages of production and distribution of goods and services, with taxes on inputs credited against taxes on output. GST is going to be big game changer and under proposed GST regime, all the major taxes levied under the indirect taxation i.e. Central Excise, Service tax, VAT/CST etc., would be

prevailing in India, with a destination-based consumption tax levy. Whenever there is a supply of goods, it may be comparatively easier to identify the place of supply, however, in case of supply of services, it would lead to chaos if no mechanism is established since there is no physical movement unlike goods.

Thus, under GST regime, the principles of time of supply and place of supply, undoubtedly, would play the crucial role. GST will have a far-reaching impact on almost all the realms of business operations in our country and to prepare for the same, Model GST Law has been put on public domain on June 14, 2016, enabling the Trade and Industry to plan the transition from the existing indirect tax regime to GST regime.

GST is a destination based consumption tax levied at multiple stages of production and distribution of goods and services, with taxes on inputs credited against taxes on output. GST is going to be a big game changer and under the proposed GST regime tax would be levied on ‘supply’ of goods and/or services and common base has to be arrived at for levy and collection of GST in all cases. The principles of time of supply and place of supply of goods and /or services under the GST regime, undoubtedly, would play a crucial role which have been explained in this article.

brought under the ambit of GST. Hence, the prevailing concepts of manufacturing of goods/ provision of services/ sale of goods would no longer be relevant as tax would be levied on ‘supply’ of goods and/or services and common base has to be arrived at for levy & collection of GST in all cases.

Closely linked to the taxable event of ‘supply’, are the principles governing the place of supply to determine the taxing jurisdiction as GST essentially seeks to replace an origin-based tax levy currently

TAXABLE EVENT

Meaning of the term ‘supply’ plays a crucial role, being the taxable event under GST. The broad contours of the term ‘supply’ as provided under Section 3 of the Model Central GST (“CGST”)/State GST (“SGST”) Act, 2016 [also applicable for the Model Integrated GST (“IGST”) Act, 2016 vide Section 2(f) thereof] has been defined in extensive manner to cover not only the goods & services as specified for consideration (like sale, transfer, barter,

*Chairman, Indirect Tax Committee, PHDCCI; Member Indirect Tax Committee, FICCI/ASSOCHAM & Special Invitee of Indirect Tax Committee of ICAI/ICSI.

exchange etc.), but supplies as mentioned in Schedule I, even without consideration (like permanent transfer/disposal of business assets, supply of goods and/or services by a taxable person to another person taxable/ non-taxable person in the course of furtherance of business etc.).

TIME OF SUPPLY OR POINT OF TAXATION (“POT”)

POT is referred to the point of time, when a transaction is to be taxed. Thus, we need to understand when liability to pay CGST/SGST and IGST will arise. Let us first understand the POT under present regime of indirect taxation summarised hereunder:

Manufacturing of Goods	Incidence of Excise duty arises on manufacture/production of goods in India but liability to pay Excise duty is on accrual basis and arises at the time of removal of excisable goods from factory
Rendering of Services	Payment of tax is, broadly, earliest of following i.e. receipt of payment or issue of invoice, if invoice raised within stipulated time period otherwise, completion of service
Sale of Goods	VAT/CST, as the case may be on Intra-State or Inter-State sale of goods arises on transfer of property in goods including deemed sale in terms of Article 366(29A) of the Constitution and to be paid on accrual basis

UNDERSTANDING PROVISIONS OF ‘TIME OF SUPPLY’ UNDER THE MODEL GST LAW

For determining time of supply for goods and services, separate provisions have been prescribed under Chapter-IV of Model CGST/SGST Act, 2016 (“Model CGST/SGST Act”), applicable to levy of IGST vide Clause 27 of Chapter-IX of the Model IGST Act, 2016 (“Model IGST Act”).

I: Time of supply of goods

- A. For normal supply: CGST/SGST and IGST on the goods shall be payable at the earliest of the following dates on which:
- Goods are removed for supply to the recipient (for goods required to be removed);
 - Goods are made available to the recipient (for goods not required to be removed);
 - Invoice is issued by supplier;
 - Payment is received by supplier;
 - Recipient shows receipt of goods in his books of account (“BOA”).

The chart provided below captures multiple combinations of dates for ease of understanding the time of supply of goods in normal cases, as under:

Case	Date of removal of goods	Date of issue of Invoice	Date of receipt of payment	Date of receipt of payment in books of Recipient	Time of supply of goods
I	July 1	July 20	August 10	July 27	July 1
II	July 1	July 28	June 25	July 27	June 25
III	August 5	July 5	July 25	July 27	July 5
IV	July 30	July 30	August 15	July 27	July 27
V	July 1	August 5	Part amount received on June 30 and balance amount on July 20	July 27	June 30 for part amount received and July 1 for balance amount

- B. For continuous supply of goods:

Situation	Time of supply
Successive statements of accounts or successive payments are involved	Date of expiry of the period to which such successive statements of accounts or successive payments relate
No successive statements of account	Date of issue of invoice (or any other document) or Date of receipt of payment Whichever is earlier

- C. For supply of goods under reverse charge: Time of supply shall be the earliest of the following dates of:
- Receipt of goods,
 - Payment,
 - Receipt of invoice,
 - Debit in BOA.
- E. Where goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place: Time of supply shall be earliest of the following:
- Time when it becomes known that the supply has taken place, or
 - Six months from date of removal.
- F. In cases other than above: The time of supply shall be:
- Where periodical return has to be filed, the date on which such return is to be filed, or
 - In any other case, date on which CGST/SGST and IGST is paid.

Analysis: Manifestly, taxability and collection provisions in respect of goods have been drastically changed under GST regime as compared to present scenario, which requires proper understanding and transformation for the dealers to levy GST.

Further, taxable event for supply of goods shall depend on number of factors like removal date, payment date, date of receipt of goods, etc. Therefore,

- Whenever supplier of goods receives advance, POT will arise;
- Goods in transit also shall be considered as time of supply if they are accounted in BOA;
- In case of goods are being sent or taken on approval or sale or return or similar terms before it is known whether a supply will take place, time limit for supply has been reduced from 12 to 6 months.

II: Time of supply of services

A. CGST/SGST and IGST on the services shall be payable at the earliest of the following:

	Situation	Time of supply
1.	Invoice issued within prescribed period	Date of issue of invoice or Receipt of payment Whichever is earlier
2.	Invoice not issued within prescribed period	Date of completion of the provision of service or Receipt of payment Whichever is earlier
3.	Not falling under (1) or (2) above	Date on which the recipient shows the receipt of services in his BOA

For the purpose of clarity, let us take an example where XYZ has provided taxable services on August 1 to ABC. A chart has been created with multiple combinations for easy understanding:

	Particulars	Date of completion of service	Date of Invoice	Date of receipt of payment	Date of entry in BOA of Recipient	Time of supply
I	Invoice issued within the prescribed period	August 1	August 20	September 10	August 27	August 20
II		August 1	August 28	August 25	August 27	August 25
III	Invoice not issued within the prescribed period	August 1	September 5	August 25	August 27	August 1
IV		September 1	September 5	July 30	August 27	July 30

C. For continuous supply of services:

Situation	Time of supply
Where due date of payment is ascertainable from the contract	Date on which the payment is liable to be made by recipient of service, whether or not any invoice has been issued or any payment has been received by the supplier
Where due date of payment is not ascertainable from the contract	Each such time when the supplier of service- Receives the payment or Issues an invoice Whichever is earlier
Where the payment is linked to the completion of an event	Time of completion of that event

- E. Supply of services under reverse charge: Time of supply shall be determined in same manner as in case of goods discussed supra.
- F. Where supply of services ceases under a contract before the completion of supply: Such services shall be deemed to have been provided at the time when the supply ceases.
- G. In other cases: Time of supply shall be determined in same manner as in case of goods discussed supra.

Analysis: Most of the provisions in respect of supply of services have been kept similar to the provisions prevailing under the present indirect taxation regime which is governed by the Point of Taxation Rules, 2011 (“POTR”). It may be noted that, taxability of supply of services under reverse charge has been made in line with provisions applicable for associated enterprises under the present indirect taxation regime i.e. Rule 7 of POTR.

III: Change in rate of tax in respect of supply of services

Where there is a change in the effective rate of tax in respect of services, time of supply, shall be determined in the following manner:

- Where taxable service has been provided before the change in effective rate of tax:

TIME OF SUPPLY & PLACE OF SUPPLY OF GOODS AND/ OR SERVICES – PARADIGM TRANSFORMATION UNDER GST

S. No.	Date of supply of taxable service	Date of issuance of invoice	Date of receipt of payment	Time of supply shall be	Applicable Rate
1.	BEFORE the change in effective rate of tax	AFTER the change in effective rate of tax	AFTER the change in effective rate of tax	Date of issuance of invoice or Date of receipt of payment, whichever is earlier	New Rate
2.		BEFORE the change in effective rate of tax	AFTER the change in effective rate of tax	Date of issuance of invoice	Old Rate
3.		AFTER the change in effective rate of tax	BEFORE the change in effective rate of tax	Date of receipt of payment	Old Rate

- Where taxable service has been provided after the change in effective rate of tax:

Sl. No.	Date of supply of taxable service	Date of issuance of invoice	Date of receipt of payment	Time of supply shall be	Applicable Rate
1.	AFTER the change in effective rate of tax	BEFORE the change in effective rate of tax	AFTER the change in effective rate of tax	Date of receipt of payment	New Rate
2.	AFTER the change in effective rate of tax	BEFORE the change in effective rate of tax	BEFORE the change in effective rate of tax	Date of issuance of invoice or Date of receipt of payment, whichever is earlier	Old Rate
3.		AFTER the change in effective rate of tax	BEFORE the change in effective rate of tax	Date of issuance of invoice	New Rate

Analysis

Provisions so prescribed above in respect of change in rate of tax in respect of supply of services are similar to the provisions of existing Rule 4 of POTR. However, the stated provisions seem to be applicable only in case of change in rate of tax for supply of services. Hence, in respect of supply of goods, it appears that scenarios of rate change will be governed by the provisions for time of supply of goods as prescribed under Section 12 of the Model CGST/SGST Act, 2016.

PLACE OF SUPPLY OF GOODS AND/ OR SERVICES

At first place, the importance of determination of place of supply, lies in identification of nature of supply as 'Inter-State' or 'Intra-State', based on which CGST & SGST/ IGST would be applicable. Similarly, principles of place of supply hold importance for determining imports and exports of goods and/or services, for which one of the condition is that place of supply should be in India (for imports) and out of India (for exports).

NEED FOR THE PRINCIPLES OF PLACE OF SUPPLY IN GST

Taxpayer: To determine the nature of sale i.e. Intra-State/ Inter-State/ Import/ Export

Government: To determine the State where State component of GST would accrue.

Principles for determining place of supply of goods:

Section 5 of the Model IGST Act is applicable 'only' with respect to transactions of supply involving 'goods', as place of provisions of services are to be governed by section 6 thereof. The principles of place of supply for goods are tabulated herein below for ease understanding:

Scenario	Place of supply
When movement of goods is involved	Location of goods where movement terminates for delivery
When goods are supplied by transfer of documents during movement of goods (Bill to Ship to Model)	Principal place of business of third person on whose direction goods were supplied to another person.
When movement of goods is not involved (like sale of goods at showroom)	Location of goods at the time of delivery
When goods are assembled or installed at site	Place of such installation or assembly
When goods are supplied on board a conveyance (like food supplied by Indian Railways on journey)	Location at which such goods are taken on board

Analysis:

The principles of place of supply of goods are formulated on destination principle which is a departure from present Excise/ Sales tax

provisions where taxes are paid in origin State.

PRINCIPLES FOR DETERMINING PLACE OF SUPPLY OF SERVICES

At present, the place of supply is not of much relevance in the context of taxable services rendered within India, since Service tax is a Central levy. At the same time, for determining export/import of services from India/into India, the Place of Provision of Services Rules, 2012 (“POP Rules”) governs the taxing jurisdiction. However, under GST era, principles of place of supply would be crucial even in the case of Inter-State supply of services within India to determine claim of different States’ SGST portion of IGST in the same transaction.

Section 6 of the Model IGST Act is applicable ‘only’ with respect to transactions of supply involving ‘services’, as place of provisions of goods are to be governed by s 5 thereof, discussed supra. The provisions can broadly be divided into following 3 categories:

- General Rule - B2B and B2C
- Specific Rules for identified situations
- Place of supply of services are different for B2B and B2C Supplies for certain specified services

The principles of place of supply for services are tabulated hereinbelow for ease understanding:

S. No.	Services	Place of supply of services
1	General Rule	B2B supplies: location of recipient B2C supplies: location of recipient where address on record exists, If not, then the location of supplier of services
	Analysis: The provisions of general rule (i.e. the default rule) are drawn on similar line as existing Rule 3 of the POP Rules. However, treatment would vary in B2B and B2C supplies.	
Specific Rules for identified situations & different treatment for certain B2B and B2C of specified services		
1.	Immovable property related services	Current regime: Location of immovable property - Rule 5 of the POP Rules GST regime: Location of immovable property Where property / vessel located in more than one state- proportionate allocation amongst states as per the contract or on reasonable basis
	Analysis: At present, Rule 5 of the POP Rules applies only to services which relate directly to specific sites of land or property. However, Section 6(4) of the Model IGST Act has extended its arms to cover any sort of services, direct or indirect, relating to immovable property. Additional services proposed to be covered:- - Accommodation in a house boat or vessel - Accommodation for organizing any marriage or reception or matters related therewith, functions etc. including services provided in relation to such function at such property - Ancillary services	
2	Performance based services	Current regime: Rule 4 of the POP Rules Place of actual performance--> Where goods are required to be made physically available or where physical presence of the recipient is required Location of goods --> Where services provided from a remote location by way of electronic means GST regime: Place of actual performance --> Specific services covered such as supply of restaurant and catering services, health service etc.- place of performance Services in relation to training and performance appraisal- B2B supply: location of recipient B2C supply: place of performance
	Analysis: There is a deviation from present rules to the extent of training and performance appraisal services provided to a registered person. Presently such services are governed by Rule 4(b) of the POP Rules and place of performance is the place of provision of services. But, under GST, in such cases, place of supply would be the location of recipient.	
3	Event based services	Admission and ancillary services: Current regime--> Place where event held (r 6 of the POP Rules) GST regime--> Place where event held or where the park/ other place is located Organization of event and services in relation to such event and ancillary services or assigning of sponsorship: Current regime --> Place where event held (r 6 of the POP Rules) GST regime --> B2B supply: location of recipient B2C supply: where event is held Proportionate value of services to be considered where the event is held in more than one State and a consolidated amount is charged

	Analysis: Unlike present regime, different treatment has been prescribed for admission and organisation services.	
4	Goods transportation services	Current regime (other than by way of mail or courier): Place of destination of the goods- Rule 10 of the POP Rules GST regime: B2B supply: location of recipient B2C supply: location at which such goods are handed over for their transportation
	Analysis: At present Rule 10 of the POP Rules is applicable for determining place of provision of services of transportation of goods, other than by way of mail or courier. But, section 6(9) of the Model IGST Act, also includes mail or courier while discussing the provisions for determining place of supply of transportation services of goods. Further, unlike present regime, place of supply shifts from destination of goods to location of recipient (when supplied to registered person)/ location at which such goods are handed over for their transportation (when supplied to others).	
5	Passenger transportation services	Current regime: Place where the passenger embarks on the conveyance for a continuous journey – Rule 11 of the POP Rules GST regime: B2B supply: location of recipient B2C supply: Place where the passenger embarks on the conveyance for a continuous journey
	Analysis: The stated principle in case of B2C supply is a deviation from destination concept. Further, provisions under the EU Directive (for European Union) are different wherein in terms of Article 48, tax is levied based on distances covered. For example: In the Indian scenario, suppose the price of a bus ticket for a trip from Mumbai (Maharashtra) to Chennai (Tamil Nadu) through Bangalore will be taxed proportionate to the distances travelled in each of these States.	
6	Services on board a conveyance	Current regime: First scheduled point of departure of that conveyance for the journey - Rule 12 of the POP Rules GST regime: Location of the first scheduled point of departure of that conveyance for the journey
	Analysis: Provisions under Section 6(11) of the Model IGST Act, regarding place of supply of services on board a conveyance, are similar to existing Rule 12 of the POP Rules, in more simplified manner.	
7	Telecommunication services including data transfer, broadcasting, cable and DTH services	Fixed line/ leased circuit □ Place of installation of the fixed line/leased circuit Mobile connection – Post paid □ Billing address of the recipient on record of the supplier Mobile connection – Pre paid (through physical voucher) □ Location where pre-payment is received/ vouchers are sold Mobile connection – Pre paid (Electronic mode) □ Location of the recipient of services on record of the supplier
	Analysis: The Model GST law has incorporated separate place of supply provisions for telecommunication services including data transfer, broadcasting, cable and DTH television services to any person. Indeed such separate provisions are desired under GST considering wide telecom network throughout the Country and equally wide customer base across India. Further, there are also the scenarios where customer is on roaming and thus, changing locations. However, the provisions under Section 6(12) of the Model IGST Act are little complex to understand and follow specially for a sector like telecom sector.	
8	Banking and other financial services	Current regime (Services to account holders): location of the service provider - Rule 9(a) of the POP Rules GST regime: When service is linked to the account of the recipient □ location of recipient When service is not linked to the account of the recipient □ location of the supplier
	Analysis: Unlike present regime where Rule 9(a) of the POP Rules, only covers services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders, Section 6(13) of the Model IGST Act, covers entire banking and other financial services including stock broking services provided to any person in its ambit. However taxing treatment to both would still be different.	
9	Insurance services	B2B supply: location of recipient B2C supply: location of recipient on the records of the supplier
10	Advertisement services to the Central Government, a State Government, a statutory body or a local authority	Location of each of such States Where services are provided in more than one state- proportionate allocation amongst states as per the contract or on reasonable basis.

Although there are specified rules for variety of services but the provisions lack clarity in various aspects. These principles will play crucial role to determine nature of service i.e. Intra-State/ Inter-State including imports and exports, lawmakers, therefore, need to evolve sound principles to avoid any detrimental impacts on Trade, in specific, and the economy, as a whole.

Further, it seems that there are numerous parameters given under the Model GST Law, for determining 'time of supply' and 'place of

supply' for goods & services, which may be a major challenge initially for successful transition.

We are hoping that in the ongoing monsoon session, the 122nd Constitutional Amendment Bill, 2014 on GST will finally see the light of the day and the Government will soon come out with much awaited GST considering the suggestion that will be provided by the Trade & Industry for suitable modification in the final GST Model Law.

CS

Disclaimer: The contents of this document are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the authors nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this document nor for any actions taken in reliance thereon.

Readers are advised to consult the professional for understanding applicability of this newsletter in the respective scenarios. While due care has been taken in preparing this document, the existence of mistakes and omissions herein is not ruled out. No part of this document should be distributed or copied (except for personal, non-commercial use) without our written permission.

CONVOCATION-2016

Convocations to award certificate of Associate membership of the Institute to members admitted during the period from 1st October, 2015 to 31st March, 2016 were held at four different regions as per details given below

Region	Date	Venue	Chief Guest and Guest of Honour	Number of members who received certificate of membership at the event
Eastern	11 th June, 2016	Kalamandir, 48, Shakespeare Sarani, Kolkata	Chief Guest Shri Vivek Kumar, IAS Principal Secretary, Higher Education, West Bengal	240
Northern	18 th June, 2016		Session-I Chief Guest Dr. Abhishek Jain, IAS Labour Commissioner-cum-Director Employment, Director Rural Development and Director Panchayati Raj, Government of Himachal Pradesh, Shimla Session-II Chief Guest Ms. Meenakshi Lekhi Hon'ble Member of Parliament Guest of Honour Shri Ashok Barat Managing Director & CEO Forbes & Company Limited	1017
Southern	25 th June, 2016	Dwaraka Auditorium, Lions Edifice Hall, D G Vaishnav College, No.833, EVR Periyar Salai, Arumbakkam, Chennai	Chief Guest Padma Shri (CA) T. N. Manoharan Chairman, Canara Bank	198
Western	2 nd July, 2016	Ravindra Natya Mandir, Near Siddhi Vinayak Temple, Sayani Road, Prabhadevi, Mumbai	Session-I Chief Guest Dr. Anup K Singh Director General, NIRMA University, Ahmedabad Session-II Chief Guest Prof. S. Parasuraman Director, Tata Institute of Social Sciences (TISS), Mumbai	719

22 meritorious students also received awards (National) on these occasions

GST – One for All



Ahalada Rao V*, FCS

Ahalada Rao V and Associates
Company Secretaries
Hyderabad

ahaladarao.associates@gmail.com



D. Vijaya Kiranmayi, ACS

Practising Company Secretary
Hyderabad

acskiranmayi@gmail.com

INTRODUCTION

The concept of goods and services tax popularly known as GST, will shift and replace the current indirect taxes with single centralized taxation system resulting in a simpler, efficient and effective tax system in the country.

The GST will have a 'dual' structure, which means it will have two components- the Central GST and the State GST. They will both have separate powers to legislate and administer their respective taxes, thus equally empowering both.

Taxes such as excise duty, service, central sales tax, VAT (value added tax), entry tax or octroi will all be subsumed by the GST under a single umbrella.

measure of levy including valuation provisions, basis of classification etc. would be uniform across these statutes as far as practicable.

- The Central GST and the State GST would be applicable to all transactions of goods and services except the exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits.
- The administration of the Central GST would be with the Centre and for State GST with the States.
- The taxpayer would need to submit periodical returns to both the Central GST authority and to the concerned State GST authorities.
- Administration of GST will be the

The concept of GST is not new to the world. Keeping in view the governance, accountability and for making a single line of tax system undoubtedly there is a need for GST in India. The salient features, impact and relevance and what could be the probable role of company secretaries in GST regime have all been explained in this article.

SALIENT FEATURES OF PROPOSED GST

- Consistent with the federal structure of the country, the GST will have two components: one levied by the Centre (hereinafter referred to as Central GST), and the other levied by the States (hereinafter referred to as State GST). This dual GST model would be implemented through multiple statutes (one for CGST and SGST statute for every State). However, the basic features of law such as chargeability, definition of taxable event and taxable person,

responsibility of the GST Council, constituted as per Article 279A of the Constitution.

- Keeping in mind the need of taxpayers convenience, functions such as assessment, enforcement, scrutiny and audit would be undertaken by the authority which is collecting the tax, with information sharing between the Centre and the States.
- To the extent feasible, uniform procedure for collection of both Central GST and State GST would be prescribed in the respective legislation for Central GST and State GST.

*Central Council Member, ICSI.

IMPACT AND RELEVANCE OF GST

GST is a solution provider by lining up total indirect tax structure of all streams into one single tax payable by the companies. The impact of this will be on the all multinational companies and facilitates for ease of doing business and adds factor to the globalization and liberalization.

Article 279A empowers the GST Council to make recommendation to the Union and States on the rates including floor rates with bands of goods and services tax.

Acceptability of GST depends on the rate of GST.

Article 279A – Goods and Services Tax Council (GSTC)

Article 279A lays down the constitution of GST Council, operative parts w.r.t. the rates, normal rates, special rates of the GST, Voting methodology.

The detailed provisions are as under:

- (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and Twenty-second Amendment) Act, 2014, by order, constitute a Council to be called the Goods and Services Tax Council (GSTC).
- (2) The Goods and Services Tax Council (GSTC) shall consist of the following members, namely:—
 - (a) Chairperson- Union Finance Minister;
 - (b) Member From Central Govt- Union Minister of State in charge of Revenue or Finance;
 - (c) Members from State Govt – Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.
- (3) The Members of the Goods and Services Tax Council (GSTC) referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide. (ie Vice Chairperson will be from Member from State Govt)
- (4) The Goods and Services Tax Council (GSTC) shall make Recommendations to the Union and the States on—
 - (a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;
 - (b) the goods and services that may be subjected to, or exempted from the goods and services tax;
 - (c) model Goods and Services Tax Laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern the place of supply;
 - (d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
 - (e) the rates including floor rates with bands of goods and services tax;
 - (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
 - (g) Special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
 - (h) any other matter relating to the goods and services tax, as the Council may decide.
- (5) The Goods and Services Tax Council (GSTC) shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.
- (6) While discharging the functions conferred by this article, the Goods and Services Tax Council (GSTC) shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.
- (7) One half of the total number of Members of the Goods and Services Tax Council (GSTC) shall constitute the quorum at its meetings.
- (8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.
- (9) Every decision of the Goods and Services Tax Council (GSTC) shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—
 - (a) the vote of the Central Government shall have a weightage of one third of the total votes cast, and
 - (b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.
(Refer : Illustration at the end for better understanding)
- (10) No act or proceedings of the Goods and Services Tax Council (GSTC) shall be invalid merely by reason of—
 - (a) any vacancy in, or any defect in, the constitution of the Council; or
 - (b) any defect in the appointment of a person as a member of the Council; or
 - (c) any procedural irregularity of the Council not affecting the merits of the case.
- (11) The Goods and Services Tax Council may decide about the modalities to resolve disputes arising out of its recommendation.

Illustration for Clause 9 of Proposed Article 279A:

The “weighted votes of the members present and voting” in favour of a proposal in the Goods and Services Tax Council (GSTC) shall be determined as under:—

$$WT = WC + WS$$

Where,

$$WT = WC + WS = (WST/SP) \times SF$$

Wherein—

WT = Total weighted votes of all members in favour of a proposal.

WC = Weighted vote of the Union = 1/3 i.e., 33.33% if the Union is in favour of the proposal and be taken as “0” if, Union is not in favour of a proposal.

WS = Weighted votes of the States in favour of a proposal.

GST – ONE FOR ALL

SP = Number of States present and voting.

WST = Weighted votes of all States present and voting i.e. $\frac{2}{3}$, i.e., 66.67%

SF = Number of States voting in favour of a proposal.

By analyzing the above article, it is clearly understood that due weightage is given to the states in representation and voting process also. The tax rates system may vary from state to state based on geographical, economical conditions and income of the state, thus special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand are laid down. Further the provision special rates are also inserted for enabling the council to vary the rates from state to state.

GST will have impact on the following:

1. All the taxes (viz. excise duty, service tax, octroi, luxury tax, etc) will be consolidated resulting in one tax.
2. A new classification of producing states and consuming states will be emerged - resulting producing state will get compensation whereas consuming states will earn revenue.
3. Expensive goods may become inexpensive because of reduction of taxes and duties like VAT, Excise duty etc.
4. Essential food items which are currently out of the tax regime, may continue to be available at cheaper rates and hence, essential goods supply prices may not change.
5. Processed food will continue to be taxed and available at cheaper rates, as the applicable GST is likely to be lower than the current combined tax on such products.
6. Petroleum products are proposed to be kept out of the GST for first two years, as a result prices likely to change and resulting variant in the prices across the states.
7. Cost of services will be high with the introduction of GST, as existing service tax applicable to almost all services. Services, in particular, premiums on insurance, investments and other financial services cost will be higher and expensive.
8. Sale of goods and services and all online purchases will attract GST at the first point of transaction with the likely rollout of uniform Goods and Services Tax (GST) regime from 1st April, 2017.
9. The GST, which will subsume excise, service tax and local levies, will be imposed at the first point of transaction in case of supply of goods, services or online sale. This clears the air on applicability of GST in e-commerce in cases where goods are sold in one state but delivered in another state. The e-commerce companies will be required to file a statement to the tax department providing details of all suppliers made through the online platform.
10. As the GST helps in reducing the cost of production and allows free supply of goods the manufacturing companies will be greatly benefited and consequently helps the prestigious project of Government of India 'Make in India' by attracting more investments.

HURDLES IN IMPLEMENTATION OF GST

- a. Increase in cost of compliance

- b. Understanding the state and centre relationship
- c. Increase of inflation in initial years
- d. Unification of goods and services and removal of distinction between them
- e. Passing the resolution in GST council where the voting is with involvement of states, which may consume more time with respective State Governments approvals from time to time.
- f. Awareness of the GST to the common man explaining the benefits till real the cost of the goods are available at cheaper rates
- g. Impact of expensive cost of services on the common man.

VIEWES OF THE STATE FINANCE MINISTERS ON THE GST BILL

As per the GST bill, the power to make laws in respect of supplies in the course of inter-State trade or commerce will be vested only with the Union government. States will have the right to levy GST on intra-State transactions including on services. However after the recent meeting of empowered committee with state finance ministers held on 26th July, 2016 the extracts of views of the state finance ministers as per the sources of print and electronic media is as under:

- As there is a considerable difference between the Revenue Neutral Rate (RNR) for goods and services tax proposed and the actual rate levied today, none of the state finance ministers were in the favour of the same. The power to recommend the RNR is vested with GST Council.
- It is proposed strongly for five-year compensation to be paid to the states for any revenue loss.
- Flow of Funds to the states from consolidated funds of India
- Businesses earning less than Rs 1.5 crore turnovers will be under state control, and those above that will be jointly controlled by the State and Centre.
- Threshold annual turnover for levy of the tax will be at Rs. 10 lakh. The limit will be Rs. 5 lakh in North East and Sikkim.
- Removal of 1% additional tax on inter-state sales

All the above views as understood through media, if accepted by the centre, will definitely impact towards the positive development of a new system in the tax regime and helps in attaining economical growth in its course of time. It is a strong signal for strengthening the healthy relationship between the state and centre and also in sharing of funds. GST will also have a Dispute Settlement authority to mitigate the tensions between the Centre and State smoothly.

Further, the media reported that the Cabinet approved changes to the GST Constitutional Amendment Bill that provides full compensation to states for initial five years after the implementation of the new indirect tax regime. Finance Minister Mr. Arun Jaitley had earlier agreed to include state compensation for all revenue losses for five years in the Bill.

The GST bill will give full compensation to states for the first three years and 75 per cent and 50 per cent for the next two years respectively. The government is planning to roll out the GST bill by April 1, 2017.

MODEL GST LAW

The model GST law, has 162 clauses and 4 schedules, has also suggested a jail terms of up to 5 years and fine for violation of the provisions of the statute. The law also provides for setting up of an authority for Advance Ruling, Consumer Welfare Fund a “Composition levy” for entities with turnover of Rs. 50 lakh and self assessment by a tax payer.

INITIATIVES TAKEN BY THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

The Institute of Company Secretaries of India has taken various steps to empower its members with day to day reforms taken by the Government, to blend Company Secretary in Practice or in employment with the current changes. In view of the current reform in indirect taxes through GST, our institute has taken the following steps to make Company Secretary a part of the same:

1. Made representation to the Empowered Committee to State Finance Minister requesting for recognizing Company Secretaries under GST
2. Planned dedicated workshops for its members in Goods and Services tax
3. Planned a certificate course on GST, to strengthen their capacities in the area
4. Capacity building programmes through webinars
5. Various training programmes.
6. Conducting continuous training and development programmes, and so on.

ROLE OF A COMPANY SECRETARY

Company Secretaries are playing a pivotal role in corporate management as well as in practice. Various State Governments have recognized the important role being played by the Practicing Company Secretaries and authorised them to do VAT Audit and to appear before the Appellate Authority as the Authorised Representative. Securities Exchange Board of India has recognized Company Secretaries as auditor/internal auditor and the Companies Act, 2013 also recognizes the Company Secretaries for carrying out the Secretarial Audit of prescribed class of Companies.

Company Secretary is a competent professional and is provided exhaustive exposure by the institute through compulsory coaching, examination, rigorous training and continuing professional development programmes and is governed by the Code of Conduct contained in the Company Secretaries Act, 1980.

Company Secretaries are well equipped and competent to carry out the certifications and should also be authorised to certify and act as authorized representative, at par with other professionals.

Company Secretaries can be authorised Representative in the following areas under GST:

- A. Issue Certificate certifying the fact of non-passing of the GST burden (Report for GST on refund process)
- B. Act as Authorised Representative in the matter of registration under Goods and Services Tax Act (Report on GST Registration)

- C. Act as an Authorised Representative for acting as an agent for the taxpayer (Report on GST Payment Process)

Company Secretary can further extend its services in the following areas:

Under Model GST Law - Empowered Committee of State Finance Minister

1. U/s 42: Accounts and other records:

Every registered taxable person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit to the proper officer a copy of the audited statement of accounts, the reconciliation statement under sub-section (2) of section 30 and such other documents in the form and manner as may be prescribed in this behalf.

2. U/s 50 : Special Audit:

- (1) If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of [Deputy/Assistant Commissioner] having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the [Commissioner], direct such taxable person by notice in writing to get his records including books of account examined and audited Page 70 of 190 by a chartered accountant or a cost accountant as may be nominated by the [Commissioner] in this behalf.

3. U/s 64: Access to business premises:

- (2) Every person in charge of premises referred to in sub-section (1) shall, on demand, make available to the officer authorized under sub-section (1) or the audit party deputed by the Additional/Joint Commissioner of CGST or SGST or the Comptroller and Auditor General of India or a cost accountant or chartered accountant nominated under section 50, as the case may be,- (i) the records as prepared or maintained by the registered taxable person and declared to the CGST/SGST officer as may be prescribed; (ii) trial balance or its equivalent; (iii) Statements of annual financial accounts, duly audited, wherever required; (iv) cost audit report, if any, under section 148 of the Companies Act, 2013 (18 of 2013); (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961); and (vi) any other relevant record, for the scrutiny of the officer or audit party or the cost accountant or chartered accountant, as the case may be, within a reasonable time, not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.

Though in the above areas, the word Company Secretary is not appearing, the Company Secretary shall take it as a challenge and present before GST authorities, the work, by their actions and deeds. As

the representation** already allowed for Practicing Company Secretaries, the same may be expressed by pointing out the lacunae, deficiencies and giving valuable suggestions to the clients from time to time in course of such assignments. The regular appearances by Company Secretary will definitely impact both administrative and quasi judicial authorities, the strength of CS Profession.

The members who are in practice from day one can extend services to the client in preparing the relevant documents and advising the client, though later part of audit done by co-professionals it shall be taken as matter of spirit and in terms of governance, ethics and values.

CS in employment as responsible officer of the company need to involve in this area along with secretarial works so that the value to the employment, company, profession and to country will enhance. Involvement of CS in employment in the GST paves the way for strategic thinking for the business development so that CS will become connected with all segments right from strategy, marketing, compliances, administration and so on. With this the elevation in employment and significance in company and governance in the board level, investors' level, stakeholder level and at regulatory level will be achieved by 360 degrees.

WHY GOVERNMENT/ REGULATORS SHALL LIBERALIZE SERVICES OF GST TO ALL PROFESSIONALS?

The concept of services through professionals is mainly for achieving the following objectives:

1. Extending support to the industry
2. Providing a specialized services at reasonable cost
3. Inculcating discipline in the work culture
4. Using independence, integrity and ethics as integral part of the system
5. Helping the regulators for discharging their duties
6. Self governance (more governance less administration)

The above list goes on.....

By restricting to one or two professionals the concept for which the professionals are engaged will be diluted, apart from this, the monopoly of the services will be emerged.

Further the Global investors always look for the following:

1. Single point of service.
2. Accountability and Responsibility
3. Transparency
4. Code of Conduct
5. Expert Knowledge

Like this list goes on.....

Though specialized areas and audits(viz. Statutory Audit, Cost Audit and Secretarial Audit) are parked for the respective professionals and other Central Laws and State Laws liberalized the services to all the professionals. With the above move the following results can be achieved:

1. Facilitates Global Investors consequently, more investment will be attracted in India.
2. As the role players in GST right from sole proprietary to the corporate, the work will be distributed uniformly.
3. In the tier two and tier three cities, the accessibility to the tax payers with all these professional will be connected
4. In initial years the teething troubles in implementation of GST will be smoothen by wide spread of professionals across the country.
5. Since the cost of services of such professional is integral part of cost of goods, consequently the cost will be lesser.
6. The common man will be benefited with such reasonable cost
7. The regulators can interact with all professionals for effective implementation of GST.
8. The inflation impact which will be higher in the initial years will be well explained, educated and awareness can be created by such professionals across the country, and the remedial measures and actions can be implemented effectively and efficiently.
9. The governance level, values level, and ethics level, will be established at higher level by enhancing Indian image for speedy and effective implementation of GST.

CONCLUSION

The concept of GST is not new to the world. Keeping in view of the governance, accountability and for making a single line of tax system undoubtedly there is a need for GST in India. The image of the country in global level will definitely enhance with the implementation of GST. Further India needs to change the status from developing country to developed country with path breaking systems out of which GST is one. The professionals like CS need to act actively in understanding and implementing GST. The presence at each state level through ICSI, will help the common man in creating awareness, making advocacy and effective implementation. The governance of Institute (ICSI) of this country will definitely help the governments for execution of GST resulting in more governance and less administration.

REFERENCES

CONSTITUTION OF INDIA AMENDMENT BILL
www.empcom.gov.in
www.icsi.edu
www.quora.com
www.ey.com

Model GST LAW, Empowered Committee of state finance ministers, June, 2016

CS

Supply under Model GST Law



Raghavan R

Partner
Lakshmikumaran & Sridharan
Chennai

raghavan.r@lakshmishri.com



S Rahul Jain

Principal Associate
Lakshmikumaran & Sridharan
Chennai

rahul.jain@lakshmishri.com



Karthik IVRN

Associate
Lakshmikumaran & Sridharan
Chennai

karthikivrn@lakshmishri.com

INTRODUCTION

The Constitution of India vide Article 245 empowers governments both at Centre and States to make laws. Article 246 draws a line on the subject matters on which the Parliament and the States can make laws. Goods and Services Tax ("GST" or "model law" or "model GST law") is aimed at taxing goods and services by both Centre and State Governments simultaneously. The constitution as it stands today, does not empower Centre and States to levy and collect such a Tax. The Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 has been introduced for amending the Constitution to enable such simultaneous levy and collection of GST by both Centre and the States. For this purpose, it has been proposed that Article 246A, 269A, 279A, 366(12A), 366(26A)

for levy under Central Excise, Service Tax and Customs is Manufacture, Service and Import/Export respectively. Under GST the taxable event as envisaged under Section 7 of the model law would be Supply.

Although the committee empowered by our lawmakers have borrowed concepts incorporated in the model GST law from legislations around the world, they have managed to give it the Indian flavour. This article is aimed at providing an insight on this new buzz word called "Supply".

DEFINITION OF SUPPLY UNDER GST

"3(1) Supply includes

Unveiling of the model GST law has paved the way for a new buzz word called "Supply", just like the taxable event for levy under Central Excise, Service Tax and Customs is Manufacture, Service and Import/Export respectively. This article is aimed at providing an insight on this new buzz word called "Supply".

and 366(26B) be added while Articles 248, 249, 250, 269, 270, 271, 286, 368, Sixth and Seventh Schedules to the Constitution be amended and Article 268A be omitted.

With the successful passing of The Constitution (122nd Amendment) Bill, 2014 in Lok Sabha the clamour on GST has gotten louder than ever. To douse all confusion and give more clarity with regard to extent and scope of the proposed law an empowered committee was set up for deliberating on all matters concerning GST. This committee was also entrusted with the responsibility of bringing out a draft GST Bill.

Unveiling of the model GST law has paved way for a new buzz word. It is called "SUPPLY". Just like how the taxable event

- (a) all forms of supply of goods and/or services 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,
 - (b) importation of service, whether or not for a consideration and whether or not in the course or furtherance of business, and
 - (c) a supply specified in Schedule I, made or agreed to be made without a consideration.
- (2) Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.

(2A) Where a person acting as an agent who, for an agreed commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and agent shall be deemed to be a supply.

(3) Subject to sub-section (2), the Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as— (i) a supply of goods and not as a supply of services; or (ii) a supply of services and not as a supply of goods; or (iii) neither a supply of goods nor a supply of services.

(4) Notwithstanding anything contained in sub-section (1), the supply of any branded service by an aggregator, as defined in section 43B, under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator.”

SUPPLY: UNDERSTANDING ITS MEANING AND SCOPE

For the purposes of the proposed law the word Supply would not only carry its natural meaning but also include within its scope all of the descriptions and references contained therein. A brief analysis of the various inclusions have been discussed hereunder.

ANALYSIS ON SECTION 3(1)(A)

Section 3(1)(a) says, a taxable event of “supply” would have occurred if all the following ingredients are present in a transaction:-

1. All forms of supply (such as Sale/ Transfer/ Barter/ Exchange/ License/ Rental/ Lease/ Disposal);
2. Made or agreed to be made;
3. For a consideration;
4. By a person;
5. In the course or furtherance of Business.

ALL FORMS OF SUPPLY

The various forms mentioned above are only illustrative in nature and have not been defined under the model GST law. We would have to go back to various other legislations such as State VAT Acts, Transfer of Property Act and so on to understand their meaning.

MADE OR AGREED TO BE MADE

The word Supply has not been defined under the Constitution. Its meaning and scope has been outlined under Section 3 of the model GST law. Thus, the only place where a reference can be drawn to what aspects of supply are taxable is confined to model GST law. Since the proposed GST law provides for taxing supplies made or agreed to be made we can conclude that both actual supplies and merely agreeing to supply would be taxable.

FOR A CONSIDERATION

Consideration has been defined in section 2(28) as :-

“(28) “consideration” in relation to the supply of goods and/or services to any person, includes

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person;
- (b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person:

Provided that a deposit, whether refundable or not, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply.”

From the above definition, It is worth noting that a general definition of Consideration has not been provided. Consideration has been defined only in the context of supply of goods and/or services to any person. With reference to such context, the definition is an inclusive one. Hence the model law leaves the door open to go beyond the said definition and understand its legal meaning as given in Section 2(d) of The Indian Contract Act, 1872.

We often come across situations where deposits are sought for supply of goods or services; these include electricity deposit, telephone deposit, earnest deposits etc. These types of transactions often lead us to a question, Are deposits also Consideration? This has been addressed by insertion of a proviso to Section 2(28) which says, as long as the deposits are not applied (i.e., used) for provision of such goods and/or services for which it was given, it would not amount to consideration.

Service Tax Law suggests, that for a valid consideration there should be a nexus between consideration vis-à-vis provision of services. Cases reported in foreign countries such as Tolsma (ECJ-C-16/93) have held that, when a guitarist playing on a pavement receives money from passers-by it would not amount to supply as there is no nexus between the consideration received and supply. Taking cue from such decided cases, it would be safe to say that this school of thought will continue to apply even in the context of the model GST law. Thus nexus between consideration and supply will remain as an essential requirement even under GST.

BY A PERSON

Model GST law has defined the word person to include all possibilities. A plain reading of Section 3(1)(a) gives us an impression that the clause does not refer to another person. This provokes us to raise a question, “is self-supply also liable to GST?” To answer this, we have to go back to the definition of consideration discussed above. It is common logic that there cannot be any consideration to one-self. To reiterate this logic, reliance can also be placed on Section 2(d) of the Indian Contract Act, 1872 which also requires two persons for flow of consideration.

IN THE COURSE OR FURTHERANCE OF BUSINESS

Just as supply and consideration, even the word business has been defined in an inclusive way. Presently, VAT laws across states also

define business in an inclusive manner. Following are some major additions in the model GST law that deserve reader's attention.

- Under GST, business would include any profession or vocation. The words profession and vocation have not been defined in the Act.
- Currently only some states such as Assam, Chhattisgarh, Delhi, Goa, Jammu & Kashmir, Orissa, Rajasthan, Sikkim and Uttarakhand contain provisions to classify transactions with no regularity also to mean business. However, now under GST, transactions having no volume, frequency, continuity or regularity will be considered a business across the country.
- Supply or acquisition of goods including capital assets and services in connection with commencement or closure of business would also be considered as a business.
- Any provision of any facilities or benefits to its members by a club, association, society or any such.
- Admission to any premises of any person for a consideration.
- Any services supplied by a person as the holder of an office which has been accepted by him in the course of furtherance of his trade, profession or vocation. Eg: Services provided by a CA/ CS when appointed as a liquidator.

The words "in the course of business" has been the subject matter of a lot of litigation over the years. Assessee have contended and won under various State VAT Acts like in the case of Monsanto Chemicals 51 STC 278, K Behanan Thomas 39 STC 325, Sri Ram Sahai 14 STC 275 and Jeewanlal 89 STC 515, that sale proceeds realized in the course of closure of business should not form part of taxable turnover as it is not received in the course of business. Pursuant to such cases some states like Maharashtra, Rajasthan and Uttar Pradesh went on to amend their respective VAT Laws to plug this perceived loophole. However, it is still a matter of concern for many other States. With a view to eliminate all litigations on this front definition of business clearly outlines that any supply in connection with closure of business would also be included in its meaning.

ANALYSIS ON SECTION 3(1)(B)

Section 3(1)(b) of the model GST law revolves around the words "importation of service". Extract of the relevant provision is as under:- "(52) the supply of any service shall be treated as an "import of service" if,

- (a) the supplier of service is located outside India,
- (b) the recipient of service is located in India,
- (c) the place of supply of service is in India, and
- (d) the supplier of service and the recipient of service are not merely establishments of a distinct person;

Explanation 1.- An establishment of a person in India and any of his other establishment outside India shall be treated as establishments of distinct persons.

Explanation 2.- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory."

BRANCH, AGENCY, REPRESENTATIONAL OFFICE

Branch office is a location other than the main office where business is conducted. In other words it is extension of the main entity which

may be located in the same city, state, country or another country.

Agency is an organisation, person, bureau or such other entity providing or receiving goods and/or services on behalf of another person (i.e., the principal).

Representative office is an office established by a company/ any other person to conduct marketing and other non-transactional operations, generally in a foreign country where a branch office or subsidiary is not allowed to be set up.

IMPORT OF SERVICES

To classify a service received from outside India as import of services one needs to satisfy all the above conditions. While the first three conditions are simple, the last condition requires some understanding.

Clause (d) of the above definition has to be read along with Explanations 1 & 2. It reads, when services are provided by an establishment outside India to another establishment of the same person in India then it would be considered as a supply of service between establishments of the distinct person. Such an activity would squarely fall under the ambit of supply. Being a transaction between establishments of a distinct person such a supply would not be regarded as import of services as a result of the above definition.

Integrated Goods and Services Tax Act, 2016 ("IGST Act") envisages levy of IGST only on supplies made inter-state. Section 3 read with Section 2(1)(c) of the IGST Act includes supplies imported into the territory of India in the ambit of inter-state supply. Hence, such a transaction would fall out of the ambit of the IGST Act. Further more, Section 3A of the IGST Act defines intra-state supply to mean any supply where the location of the supplier and the place of supply are in the same state. Since the transaction in question is also not an intra-state supply even CGST/ SGST would not apply. Hence, such a transaction would become tax free.

In all other cases, where the definition of import of services is satisfied, tax would have to be paid under IGST Act whether or not such a service involves consideration and whether or not it is in course or furtherance of business.

ANALYSIS ON SECTION 3(1)(C)

Section 3(1)(c) talks about supplies specified in Schedule I, made or agreed to be made without consideration. However, the heading of Schedule I reads as "Matters to be treated as supply without a consideration".

On one hand 3(1)(c) assumes transactions mentioned in Schedule I to be supplies and such supplies are to be treated as without a consideration. Whereas heading of the schedule has been worded in a way that transaction outlined in the schedule are supplies as a result of its inclusion in such schedule and otherwise not a supply. Hence, a conflict of interest is apparent from this portion of law and needs clarification by the lawmakers.

Following are the transactions contained in Schedule I:-

1. Permanent transfer/ disposal of business assets.

ANALYSIS

“Business assets” or “Asset” haven’t been defined under the model law. However, it has to be understood in its general meaning as anything held with an intention of being used for the purpose of producing goods or providing services and not held for sale in the ordinary course of business. Business assets are to be construed as such assets used in Business. In this manner we can arrive at the business assets under GST to include;

Goods - goods includes movable property, securities, growing crops, grass and such other things that can be severed before supply. However, goods would not include money and actionable claims.

Capital Goods –For the purposes of the model GST Act, definition of capital goods has been adopted from Rule 2(a), CENVAT Credit Rules, 2004 with minor modifications.

Services -Anything other than goods including intangible property and actionable claim but not money would now be considered as services under GST.

IMMOVABLE PROPERTY

No specific mention has been made with relation to immovable property. A plain reading of the above definitions would lead us to believe that immovable property would be covered under the services definition. General understanding is that GST is a levy on goods and/or services and would not include within its ambit any transfer of immovable property as such. Further, taxes getting subsumed post GST do not include taxes on immovable properties such as property tax, stamp duties etc. However, services provided in relation to such transfer, such as real estate agency services or construction services etc., would be classified under services for the purpose of levy under GST.

GOODWILL

Goodwill is a sum paid for the established reputation a business carries and regarded as a quantifiable asset and calculated when the business is sold. Therefore a view can be taken that goodwill payment is not for any goods and thus would fall under the definition of Services making it liable for payment of GST.

2. Temporary application of business assets to a private or non-business use.

Analysis

There could be instances wherein;

- An employee uses company phone to make private calls.
- Office laptop used to watch movies or browse internet.
- Use of office guest house/ auditorium to conduct a private function.
- Use of official motor vehicles for private use of employees. And many more such instances.

All the cases above would be treated as a supply without consideration as per Section 3(1)(c). Logic being, when goods and/or services are being used partly for the purpose of business and partly for other purposes, credit shall be restricted only to so much of the input tax as attributable to the purposes of his business.

3. Services put to a private or non-business use.

Analysis

For instance, foreign tour expenses of Director’s wife or expenses incurred for Director’s son’s education would be services put to a private or non-business use by the company. In such cases the activity would be regarded as supply without consideration. Logic for this also would be the same. Credits availed on services put to a non business use should be paid back.

4. Assets retained after deregistration.

Analysis

Logic in this case also remains the same. Credit availed should be restored to the government. Some interesting illustrations under this clause would include;

- Assets retained by partner after dissolution of partnership
- Deregistration in one state and Assets transferred to other state
- Deregistration on account of amalgamation/ merger/ demerger/ business transfer etc.

5. Supply of goods and/or Services by a taxable person to another taxable or non-taxable person in the course or furtherance of business

Provided that the supply of goods by a registered taxable person to a job-worker in terms of section 43A shall not be treated as supply of goods.

Analysis

One illustration that fits the description of this clause is Stock transfers. Manufacturers across the country have a practice of carrying out production in one state and effecting sales in multiple states through establishment of depots. Goods produced in manufacturing state are stock transferred to various states against Form F without any sales tax liability.

Under the model GST law, supply of goods and/or services to a taxable or a non taxable person will be liable to tax. Therefore all such stock transfers would fall under this category and will now be liable to tax. This will impact the cash flows and working capital requirement of the company. However, Tax paid by depots at the time of stock transfer will be available as credit.

Analysis on Section 3(2)

Section 3(2) of the model GST law prescribes instances which are to be treated as supply of goods or services. It is given by the heading “Matters to be treated as supply of goods or services”. Schedule II has been summarised hereunder;

TRANSACTIONS DEEMED TO BE SUPPLY OF GOODS

- Any transfer of title in the goods or an agreement providing for such transfer at a later date on payment of full consideration;
- Transfer of business assets whether or not for a consideration;
- With a view to recover debt, goods of a person liquidated by any person vested with such power. One such instance can be sale of hypothecated goods by banks to recover their loan amount;
- Transfer of goods forming part of business assets to any other person by a person who ceases to be a taxable person under

the model law except when the business as such is transferred to another person as a going concern or when the business is carried on by a personal representative of the person who ceases to be taxable; and

- Supply of good by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

TRANSACTIONS DEEMED TO BE SUPPLY OF SERVICES

- Any transfer of goods or right in goods or of undivided share in goods without transfer of title thereof is a deemed supply;
- Any transaction in the nature of lease, tenancy, easement, licence to occupy land;
- Any renting or leasing out of building including commercial, industrial or residential complex for purposes of business or commerce either wholly or partly;
- Any process or treatment undertaken on other persons goods;
- Transfer of business assets held when put to a non-business use whether or not for a consideration;
- Renting of immovable property;
- Construction Services except where the entire consideration has been received after issuance of completion certificate by a competent authority;
- Temporary transfer or permitting the use or enjoyment of any intellectual property right;
- Any activity in the form of development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of Information Technology software;
- To do an act, agreeing to the obligation to refrain from an act or tolerate an act/ situation;
- Works contract including transfer of property of goods (whether as goods or in some other form) involved in the execution of a works contract;
- Transfer of right to use any goods for any purpose for cash, deferred payment or other valuable consideration; and
- Supply of goods being food or any other article for human consumption (other than alcoholic liquor for human consumption), whether or not for cash, deferred payment or other valuable consideration.

ANALYSIS ON SECTION 3(2A)

The key ingredients under Section 3(2A) are as under;

- Principal-Agent relationship;
- Brokerage or Commission;
- Supply/Receipt of goods and/or services by agent;
- On behalf of Principal

In such cases where all the above conditions are satisfied, there will be a deemed supply between such principal and agent. In case of supply of goods and/or services, GST is payable by Agent to Principal. In case of receipt of goods and/or services, GST tax payable by Principal to Agent.

Further, it should be noted that the word Principal has been defined under the model GST law to mean any person on whose behalf an agent carries on the business of supply or receipt of goods and/or services. Likewise, the word Agent also has been defined to mean a person who carries on the business of supply or receipt of goods and/

or services on behalf of another person and includes a factor, broker, commission agent and any other agent by whatever name called.

Both the definitions of Principal and Agent begin with the word “means”. Hence, these words are to be construed in the meaning as given in the model GST law alone.

ANALYSIS ON SECTION 3(3)

By way of this clause, the Central Government or State Government may upon recommendations of the GST council¹ and subject to Schedule II, specify transactions that are to be treated as;

- Supply of goods and not as supply of services; or
- Supply of services and not as supply of goods; or
- Neither a supply of goods nor a supply of services.

ANALYSIS ON SECTION 3(4)

Fast changing technology has made it possible for customers to access an entire market place with the touch of a button. A number of players have emerged in the recent past claiming a stake in India’s multi-billion dollar online retail market. In keeping with such fast evolving technology and ways of providing services to customers, the model GST law has provided for Section 3(4).

This clause aims at bringing under the tax net with all certainty, services provided by online e-commerce players including aggregators such as Amazon, Flipkart and Snapdeal. A closer look at Section 3(4) reveals the following conditions to be fulfilled for such transactions to be deemed as supply of service by an aggregator;

- Supply of any branded service;
- By an aggregator; and
- Under a brand name or a trade name owned by him.

Section 43B of the model law defines the terms “branded services”, “aggregator”, “brand name and trade name”, “electronic commerce” and “electronic commerce operator”. These definitions are wide enough to bring within the tax net all forms of online services provided by whether aggregators or not.

CONCLUSION

It is clear from the above discussion that the model GST law as it stands today can be subjected to a lot of discussion. Perhaps, the government notifying GST Rules will answer a lot questions and may settle discussions. This only time will tell.

However, it is safe to say that concept of Supply has been conceived in the widest possible sense. Traditional concepts of indirect taxation that have shaped our thinking over the past few decades have now been amplified multi-fold. Time has come to un-learn and re-learn. [ICS](#)

Disclaimer : The interpretations views and opinions expressed in this article are those of the authors alone and do not necessarily reflect the official position of any other person. This article has been written for the exclusive use of ICSI and not been published anywhere else. This article has been entirely written based on the model GST law released by the Government of India and no other source except as otherwise as stated has been used.

¹ The 122nd Constitutional Amendment Bill proposes to add Article 279A to enable the formation of GST council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits. This council is proposed to be chaired by Union Finance Minister and have representatives of various state as its members.

Salient Features and Analysis of Draft Model GST Law



C. Sanjeeva Rao

Advocate & Tax Consultant
Visakhapatnam

taxadvice28@rediffmail.com

The Central Government has hosted the Draft Model GST Law on public domain, in a way, signalling that the GST might come with effect from 01-04-2017. It is important that trade should understand the provisions mainly on the incidence of tax, taxable event, invoicing etc. in the Draft Model GST law including the intention of the legislature along with the probable impact on the business operations. Here some of the salient features are summarized for the benefit of trade and tax professionals .

confusion and the definition includes every term which shall be coined as sale. Even the supply which is made or agreed to be made without a consideration will also amount to sale.

Any transfer of title to goods is a supply of goods, transfer of right to use goods [section 4(8) of APVAT Act, 2005], Hire purchase transactions, transfer of business assets are also brought under the ambit of term 'supply' as per Schedule II.

DEFINITION OF 'BUSINESS'

CHAPTER III AND SECTION 7

It is important that the trade should understand the provisions of the model law on GST mainly on the incidence of tax, taxable event, invoicing etc. including the intention of the legislature along with the probable impact on the business operations. Some of the salient features of the model law are summarized for the benefit of trade and tax professionals.

Under section 2(17) the term 'business' includes any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not is for a pecuniary benefit.

Analysis: That means any activity or similar activity in connection with trade, commerce, manufacturer, profession, vocation even without for a pecuniary benefit i.e. monetary benefit will constitute business. To bring into the ambit or purview of 'business', there is no necessity of monetary consideration. The definition of business has been widened to bring all the transactions into it.

DEFINITION OF 'SUPPLY'

Under section 2(92) read with section 3 'supply' includes all forms of supply of goods and/or services such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Schedule I specified the supply.

Analysis: Supply is the term replaced for the term sale; no scope has been left for any

PRESCRIBE THE LEVY OF, AND EXEMPTION FROM GST

Intra State supplies shall attract the CGST/SGST by the Central Government or State Government as per the Scheduled Rates which are yet to be prescribed and the same shall be collected in such manner as may be prescribed in the GST Valuation (Determination of the Value of supply of Goods and Services) Rules, 2016.

Analysis: Local supplies shall attract the CGST/SGST and shall be levied and collected by the respective Government Agencies as per the scheduled rates which are yet to be notified and prescribed.

REVERSE CHARGE BASIS

Under section 7(3) like in service tax, on the recommendation of the GST Council, the Central or State Government may by notification specify the categories of supply of goods and/or services on which the tax is payable on reverse

charge basis.

COMPOSITION LEVY

Section 8 starts with a non-obstante clause and is independent in nature. There is a composition scheme just like in VAT laws, where under a registered taxable person [section 2(96) read with section 9] whose aggregate turnover in a financial year does not exceed ₹50 lakhs, shall be permitted on the recommendation of GST Council, to pay composition tax. The benefit of composition levy shall not be available to a registered taxable person who effects/renders interstate supplies and/or services. (First Proviso).

The registered taxable person opting for composition levy shall not collect the tax from the recipient to whom goods are supplied and/or services rendered. (Second Proviso) No input tax credit (ITC) shall be allowed to the registered taxable person who opted for composition levy. [Sub-section (2)]

THRESHOLD LIMIT TO PAY TAX – TAXABLE PERSON [SECTION 9 READ WITH SCHEDULE III]

A registered taxable person is liable to pay tax when his aggregate turnover exceeds ₹10 lakhs in a financial year. However, a person carrying business in any of the North Eastern States including Sikkim, is required to pay tax if his aggregate turnover exceeds ₹5 lakhs.

The Central Government, State Government or any Local Authority shall be regarded as a taxable person in respect of activities or transactions in which they are engaged as public authorities other than the activities or transactions as specified in Schedule IV to the Model GST law, like activities of issuance of passport, visa, birth certificate etc.

The following persons shall not be considered as taxable person for the purposes of the GST law:

- Rendering of services by employee to employer for remuneration, salary.
- Any person engaged in the business of exclusively supplying goods and/or services that are not liable to tax under this GST law.
- Any person, liable to pay tax under section 7(3), receiving services of value not exceeding (amount yet to be prescribed) in a year for personal use, other than for use in the course or furtherance of his business.

TIME OF SUPPLY OF GOODS

The provisions of section 12 of the Model GST Act is akin to the provisions contained in Service Tax (Point of Taxation) Rules, 2012. It prescribes the liability to pay CGST/SGST and provides that : (a) the time of supply of goods shall be the earliest of the date on which the goods are removed by the supplier for supply to the recipient; (b) the date on which the goods are made available to the recipient; (c) the date on which the supplier issues the invoice; (d) the date on which the supplier receives the payment; (e) the date on which the recipient shows the receipt of the goods in his books of account.

TIME OF SUPPLY OF SERVICES

Section 13 of the Model GST law prescribes the liability to pay CGST/SGST as under – (a) the time of supply of services; (b) the date on which the supplier issues the invoice; (d) the date on which the supplier receives the payment; (e) the date on which the recipient shows the receipt of the

services in his books of account

PLACE OF SUPPLY OF GOODS AND/OR SERVICES

The proposed GST will work on the principles of destination based consumption tax. The place of supply rule plays an important role to build up a mechanism to determine taxable jurisdictions for the smooth implementation of GST.

VALUE OF TAXABLE SUPPLY

Section 15 provides that the value of a supply of goods and/or services shall be the transaction value, that is the price actually paid or payable for said supply of goods and/or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. The transaction value includes freight or transportation charges incurred to bring the goods, royalties and licence fee, any taxes, duties, fees and charges levied under any statute but other than SGST or CGST or IGST Acts [just like section 2(28) of APVAT Act, 2005], commission, packing, any reimbursable expenditure.

INPUT TAX CREDIT

Section 16 provides the procedure for claiming the input tax credit. As per section 35 the input tax credit shall be credited to the electronic credit ledger of the registered taxable person.

- As per Section 16(11) the entitlement of input tax credit shall be for the registered taxable person who is in possession of the tax invoice, debit note, supplementary invoice or such other taxpaying document.
- The registered taxable person should receive the goods and/or services.
- The tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply.
- The registered taxable person has furnished the return under section 27.

Under section 35(5)(a) the amount of input tax credit on account of IGST available in the electronic ledger shall first be utilized towards payment of IGST and the amount remaining, if any, may be utilized towards the payment of CGST and SGST, in that order.

Under section 35(5)(b) the amount of input tax credit on account of CGST available in the electronic credit ledger shall first be utilized towards payment of CGST and the amount remaining, if any may be utilized towards the payment of IGST.

Under section 35(5)(c) the input tax credit on account of CGST shall not be utilized towards payment of SGST.

INPUT TAX CREDIT FOR INPUTS SENT FOR JOB WORK

Section 16A provides that the input tax credit will be available to the principal on inputs sent to a job worker for job work if the said inputs, after completion of job-work, are received back by him within 180 days of their being sent out.

REGISTRATION

Every person who is liable to be registered under the Model GST law should apply for registration in every such State under section 19 in which he is liable to tax within 30 days from the date on which he becomes liable to registration. The salient features are:

- If the person is registered under an earlier law, it shall not be necessary for him to apply for fresh registration and he shall follow the procedure as may be prescribed in this behalf.
- Voluntary Registration is permissible.
- The pre-requisite for application for registration is PAN issued under the Income-tax Act, 1961.
- A non-taxable person is also eligible for registration on the basis of documents as may be prescribed.
- Unique Identity Number shall be allotted to UNO or UN(P&I) Act, 1947, Consulate or Embassy of Foreign Countries and any other person or class or persons as may be notified by the CBEC/Commissioner.
- Cancellation of Registration and Revocation of cancelled Registration is permissible under the law; before resorting to the cancellation, the applicant shall be given an opportunity of being heard.

TAX INVOICE

Section 23 speaks about the proforma of tax invoice. It says that a tax invoice should show the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed.

Under the Model GST law a supplementary or revised invoice is permissible, which under the VAT Acts is not permissible.

Section 23A of Model GST law provides that the tax component should be indicated on the face of tax invoice and other related documents. Hitherto no such restriction was prescribed under the Acts.

CREDIT AND DEBIT NOTES – SECTION 24

The credit and debit notes should be made on or before thirtieth day of September following the end of the financial year in which such supply was made or the date of filing of the relevant annual return, whichever is earlier. From this it appears that the provision is like filing of revised return in Form VAT 213 within six months from the date of filing of original VAT 200 return.

TURNOVER – SECTION 2(104)

The term 'turnover' includes taxable and non-taxable supplies, exempt supplies and export of goods and/or services, interstate supplies of goods and/or services.

RETURNS

Section 27 prescribes filing of the return by a registered taxable person for every calendar month or part thereof in such form and in such manner as may be prescribed, electronically, showing inward and outward supplies, input tax credit availed, tax payable, tax paid and other particulars as may be prescribed within 20 days after the end of such month.

MATCHING, REVERSAL AND RECLAIM OF INPUT TAX CREDIT – SECTION 29

The details of every inward supply furnished, should be matched with the corresponding details of outward supply; the claim of input tax credit relating to inward supply should match with the details of corresponding

outward supply.

ANNUAL RETURN

Section 30 provides for filing of the annual return by every registered taxable person for every financial year electronically on or before 31st December following the end of such financial year. This has been foreseen by the CCT of Andhra Pradesh and accordingly the APVAT Act, 2005 was amended vide Act 4 of 2016.

Section 31 provides for filing of Final return by every registered taxable person in the case of cancellation of registration within 3 months of the date of cancellation or date of cancellation order, whichever is later.

TAX RETURN PREPARERS

Section 34 has provided the role of tax return preparers. But it is surprising to note that the definition Chapter has not defined the term 'tax return preparers'. The Model GST law had defined the Authorised Representative, Chartered Accountant, Cost Accountant. The Constitution of India had provided place for Advocates, Chartered Accountants, Cost Accountant, and Company Secretaries. But, Tax Return Preparers have not been enumerated. Thus, a tax return preparer does not have legal sanction.

PAYMENT OF TAX, INTEREST, PENALTY AND OTHER AMOUNTS – SECTION 35

The deposit of tax, interest, penalty, fee or any other amount by a registered taxable person should be made by internet banking or by using credit/debit cards or through National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) or by any other mode.

The rate under composition scheme shall not be less than 1% as may be notified. The tax @1% shall be on the aggregate turnover i.e. comprising of exempted supplies, non-taxable supplies, and export supplies.

TDS – SECTION 37

The Central or State Government may mandate,- (a) a department or establishment of the Central or State Government, or (b) Local Authority, or (c) Government Agencies, or (d) such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council to deduct tax at the rate of 1% from the payment made or credited to the supplier, where the total value of such supply, under a contract, exceeds ₹10 lakhs. The tax should be deducted within 10th of next month. Delay in payment of deducted tax would attract late fee of ₹100/- per day.

INTEREST ON DELAYED PAYMENT OF TAX -SECTION 36

Every registered taxable person, who fails to pay tax or any part thereof within the prescribed period, shall have to pay interest at such rate as may be notified.

ASSESSMENT

Every registered taxable person shall self assess the tax payable by him under the Act. Returns furnished by taxable person would be subject to scrutiny by Department by way of audit. Department may carryout best

judgment assessment in case of non-filers of returns and unregistered person.

There are provisions for audit, recovery of tax, interest on late payment of tax, imposition of penalties, sanction of refunds, detention and confiscation of goods, interest on delayed refunds, arrest and prosecution.

Provisions for appeals and reviews have also been provided.

The facility of Advance Ruling would be available. Chapter XX contains provisions relating to Settlement Commission.

CONSUMER WELFARE FUND

The Model GST Law has provided in section 40 for the consumer welfare fund. But, the definition Chapter does not defined the word "consumer" .

TRANSITIONAL PROVISIONS – SECTION 141

Smooth migration from existing VAT regime to new GST regime needs proper transitional provisions. Following transitional provisions have been provided in the law.

- a. Existing dealer may migrate to GST by issuing provisional GST Registration Certificate - section 142
- b. CENVAT Credit/input tax credit (VAT) carried forward in return is to be allowed or a mechanism should be created for automatic transfer from the existing return to such form to be prescribed by the GST law.
- c. Unavailed CENVAT Credit/Input tax credit on capital goods, not carried forward in return will be allowed to be carried forward.
- d. Credit of taxes in respect of inputs held in stock to be allowed as credit to the persons who are not liable to be registered under existing regime.
- e. Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of a contract is possible,
- f. Pending refund claims to be disposed of under the existing law i.e. VAT
- g. Special treatment of long term construction/works contracts/ongoing contracts etc.
- h. There is a provision for resolving the issues in migration from the existing VAT to ensuing GST.

REFUND

Application for refund of any excess tax paid should be made before the expiry of two years from the relevant date in such form and in such manner as may be prescribed.

The limitation of two years shall not apply where such tax or interest or the amount referred above has been paid under protest. A registered taxable person may also claim refund of any unutilized input tax credit at the end of any tax period subject to the conditions specified (unlike VAT where the claim should be made at the end of financial year i.e. in VAT return of March).

E-COMMERCE

Every e-commerce operator who directly or indirectly owns, operates or manages an electronic platform that is engaged in facilitating the supply of any goods and/or services or in providing any information or any other services incidental to or in connection therewith (like Amazon, Flipkart, Snapdeal, QuickR, paytm etc. but not including persons engaged in supply of such goods and/or services on their behalf) ought to collect tax at source on online sales of goods and/or services.

ISSUANCE OF NOTIFICATION FROM RETROSPECTIVE EFFECT

The Central/State Government may, on the recommendation of the Council, make rules, including rules conferring the power to issue notifications with retrospect effect under those rules, to carry into effect the purposes of this Act.

ACCOUNTS AND OTHER RECORDS

As per section 42 of the Model GST law, the accounts should be maintained and kept at the principal place of business, and also, if the registered taxable person has more than one place of business, then at each place of business such accounts and records should be kept and maintained separately in electronic form. 'Electronic form' means as defined in Information Technology Act, 2000. The period of retention of accounts is sixty months from the last date of filing of Annual Return for the year pertaining to such accounts and records. (Section 43).

Section 43A provides a special procedure for removal of goods to a job worker for job work with the permission by the Commissioner, without payment of tax.

AUDIT – SECTION 49

Like VAT provisions, section 49 of Model GST law has empowered the Commissioner or any officer authorised by him, to undertake audit of the business transaction of any taxable person.

Special audit : With the prior approval of the Commissioner the assessing officer can direct a taxable person by notice in writing to get his records including books of account examined and audited by a CA or Cost Accountant as may be nominated.

Sales Tax Practitioners (STPs) or Tax Practitioners have not been given place in the Model GST law in section 50(1). They are the major stake holders and ground force, and as per section 86(2)(d) such person shall be eligible to appear before the authorities including Appellate Forums on the recommendation of the Council.

POWER OF INSPECTION, SEARCH AND SEIZURE – SECTION 60

The Joint Commissioner is to be vested with the power of conducting the inspection, search and seizure of the documents or books of account.

OFFENCES AND PENALTY – SECTION 66

- (a) The maximum penalty that can be levied is limited to ₹25,000/-; (b) Short payment of tax shall attract a penalty of ₹10,000/- or 10% of the tax short paid, whichever is higher (c) In case of evasion of tax the penalty would be ₹10,000/- or an amount equivalent to the tax evaded or the tax not deducted or short deducted or deducted but not paid to the Government or input tax credit availed of or passed on or distributed irregularly or the refund fraudulently claimed.

DOCUMENTS - SECTION 107

'Documents ' include: (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or

‘ GST compliance rating is not required to be given much importance or incorporation in the GST Act, as there is an apprehension that the taxable person who is being assigned GST compliance rating, may also be subjected to raids, surveys etc. ’

not); or (b) a facsimile copy of a document; or (c) a statement contained in a document and included in a printed material produced by a computer.; (d) any information stored electronically in any device or media including any hard copies made of such information.

GST COMPLIANCE RATING – SECTION 116

Every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Act. The GST compliance rating score shall be updated at periodic intervals and intimated to the taxable person and also placed in the public domain in the manner prescribed.

RECOGNITION TO PROFESSIONALS

Section 86 is silent about the tax practitioners, but as per clause (d) of sub-section (2) of section 86 “any person who has acquired such qualifications as the Central Government (or the State Government) may, on the recommendation of the Council, prescribe for the purpose, can be recognized for representing assesseees.

Like section 288(2)(v) and (vi) of Income-tax Act, 1961 read with rules 50 and 51 of Income-tax Rules, 1962 and Section 66(e) read with Rule 65 of APVAT Act and Rules, 2005, Section 42(3) of APVAT Act, 2005 has already empowered the Government(Central/State Government) recognize to a person who has acquired such qualifications to appear before the adjudicating authorities and Tribunal (and not High Court/Supreme Court).

RECTIFICATION OF MISTAKES

Section 129 provides for rectification of mistakes or errors apparent from record. The application for rectification should be made within six months from the date of issue of such decision or orders or summons or notice or certificate or any other document.

SUGGESTIONS ON MODEL GST LAW (CHAPTER XXIII - MISCELLANEOUS)

Section 116: GST- Compliance rating

Every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Act. The GST compliance rating score shall be updated at periodic intervals and intimated to the taxable person and also placed in the public domain in the manner prescribed. Such compliance rating is not required to be given much importance or incorporation in the GST Act, as there is an apprehension that the taxable person who is being assigned GST compliance rating, may also be subjected to raids, surveys etc. There has been an instance where an assessee who was identified and accredited as best tax payer by the

Income-tax Department as well as Commercial Taxes Department, was subjected to raid of his business premises in the very same year of such recognition .. Keeping this in mind it is felt that such rating is not required.

Section 117: Obligation to furnish information return

The requirements of this section are akin to annual information return under the Income-tax Act. But, penalty is leviable under section 118 at Rs.100/- per day of delay in furnishing of such AIR by the various authorities specified in clauses (a) to (n). It may be noted that except the authority specified in clause (a) every other authority is a Government Agency or Government Undertaking. It is not appropriate to levy penalty on the Government Agencies. In any case e, the penalty should be restricted to a maximum of Rs.10000 only.

Section 121: Test purchase of goods and/or services

This is a welcome provision to avoid unnecessary hardship to the dealers/ taxable person. The authorities or CGST/SGST officer should also have a list of goods and its fair market value (i.e. the rate or value for which the goods shall be sold in the market). If required the list should be made available to the taxable person also.

Section 129: Rectification of mistakes or errors apparent from record

The Model GST law has provided six months to make rectification of mistakes or errors apparent from record. The period is not sufficient. It should be made three years from the date of receipt of the assessment order, just like section 154 in the Income-tax Act, 1961.

Section 131: Levy of fees

This section is yet to prescribe the fee for obtaining copies. Only taxes are levied and not fees and therefore the wording should be amended to read ‘copy fee’ instead of ‘Levy of fees’.

Section 136: Service of notice in certain circumstances

An order, summons, notice or other communication shall be served by any one of the following methods, namely facsimile message, sending communication through e-mail to the email of the taxable person; dash board on the web site of the taxable person and sending message on the registered mobile number of the taxable person. However these methods are not acceptable as per the decision of the Andhra Pradesh High Court in re. SOA Software Engineering (I) P. Ltd s. CTO [(2013) 57 APSTJ 103].

Therefore the notices or summons or orders or any other communication should be served on the taxable person or on the authorised person of the taxable person through registered post or in person through messenger or notice server of the CGST/SGST department. CS

Disclaimer:- The contents of this article is for the educative information and does not constitute or purport to be an advice or opinion in any manner. The information provided is not intended to create an attorney-client relationship and is not for advertising or soliciting. The author does not intend in any manner to solicit work through this piece. This article is intended only to share information and ideas based on recent regulatory changes. He is not responsible for any error or mistake or omission in this piece of information or for any action taken or not taken based on the contents of this material.

Business Process to be followed in GST Regime (Registration and Related Provisions)



Prof R Balakrishnan, FCS

Pune

bala.hitsafrica@gmail.com

INTRODUCTION

In a welcome measure the Government of India has made public the proposed law relating to the levy and collection of Goods and Services Tax (GST regime) which is expected to be implemented in 2017. Given the passage of the Constitution (122nd) Amendment Bill on Goods and Services Tax in the Lok Sabha, the proposed GST law would replace all the indirect taxes levied on goods and services by the Centre and States. For being ready for the GST regime and its smooth working, the Government of India has released the draft business report inviting suggestions from all the stake

service tax laws would be automatically registered and the concerned unit would be informed by e-mail / SMS. Then the existing units would be required to update the additional information whichever is required upon registration. Each person is required to obtain separate registration in each of State, online and the registration is valid for Central Goods & Service Tax (CGST), Inter-state Goods & Service Tax (IGST), State Goods & Service Tax (SGST) and additional tax.

REGISTRATION NUMBER

The registration number would be of 15 digits - State wise PAN based 15 digits

Registration of persons engaged in the business of sale of goods and rendering of services under the GST regime is proposed to be on an automated basis with lease interface with the Departmental authorities. This article throws light on registration and related aspects.

holders. The model GST Law - Goods and Services Tax Act 2016- has also been released by the Government.

CSTIN and the structure is as under:-

State Code	P A N											Entity code	blank	Check Digit
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

REGISTRATION

The proposed GST law intends to grant registration on an automated basis, with least interface with the tax authorities. The process also provides for grant of automatic registration in case of non-response from tax authorities within the specified time. The following are the proposed provisions relating to registration.

(1st and 2nd digit – State code as per Indian Census 2011 – 3rd to 12th digits – PAN – 13th digit – alpha numeric 1 to 9 and then A to Z – 14th digit – blank for future use and 15th digit – check digit.

GRANTING OF REGISTRATION

EXISTING REGISTERED UNITS UNDER CENTRAL EXCISE, SERVICE TAX AND VAT

It is proposed that the existing registered units under VAT, central excise and

Registration would be granted to persons as defined under Income Tax Act of 1961 as per which, person includes (i) an individual, (ii) Hindu Undivided Family (HUF), (iii) a company registered under the Companies Act, (iv) a firm, (v) an association of persons (AOP) or a body corporate of individuals whether incorporated or not, (vi) a local authority

BUSINESS PROCESS TO BE FOLLOWED IN GST REGIME (REGISTRATION AND RELATED PROVISIONS)

and (vii) every artificial person, not falling in any of the above categories.

CATEGORIES OF REGISTRATION

Registration would be granted to the following categories as under:

NORMAL TAX PAYER / REGULAR

The authorities are in the process of fixing threshold limits of turnover for obtaining registration which is expected to be Rs. 25 lacs, though not fixed as on date. Any person could obtain registration who has crossed the threshold limits or opt for registration even though turnover is less than the threshold limit.

Multiple registrations within one State may be permitted to business verticals of a taxable person at his option. This is subject to two different business verticals. However, no input tax credit (ITC) / refund could be adjusted between such business verticals even though it is of same legal entity.

COMPOUNDING REGISTRATION

The person whose turnover is below certain specified limit, but above the threshold limit could opt for compounding registration. Once such specified limit is crossed, such compounding registration dealer would be automatically considered as normal tax payer. Though the limit has not been specified as on date in the business process report, it is expected to be up to Rs. 75 Lacs.

CASUAL DEALER REGISTRATION

If any person who does not have registration in a particular State but likes to obtain temporary registration for limited period, the registration would be granted till the time, it is required and it would be cancelled after seven days of expiry of such validity period. This particular facility would be beneficial to the participants in any exhibition, event etc.

Unique Identification Number (ID) for specified organizations

Unique identification number for specified organizations like UN, Government, Public Sector Undertakings (PSUs) are likely to be granted where there would be no incidence of tax or when there are B2B transactions between any dealer and Government authorities.

Input service distribution (for services)

In cases where any person has got multiple units but is availing services at one unit only or in its corporate office the amount of GST would have to be distributed to other units. In such a situation, separate registration will have to be obtained by those units (where GST distribution takes place)

Suo-motu registration for enforcement cases (by Tax Authorities)

In cases when enforcement authorities visit the non-registered dealer and upon visit and investigation, the non-registered dealer deposits the amount with the Government, he would be considered as a registered dealer and the authorities would grant registration suo-motu.

Non-resident supplier

If any non-resident person being the recipient of supply of the goods in India / State and such non-resident person does not have permanent establishment in India / State, the person could be granted registration under this category and such non-resident person needs to fulfil the requirements as in the case of a casual tax payer.

REGISTRATION PROCEDURE

Details required in the registration application form

The registration application form would require the following details

Sr. No	Brief details
I	Name of the applicant
II	Trade name
III	Address of principal place of business
IV	Address for correspondence (E mail, Mobile, landline etc.)
V	Constitution of business
VI	Permanent Account No (PAN)
VII	State code
VIII	Option for composition
IX	Date of commencement of business
X	Date of which liability to tax pay arises
XI	Reason for liability to obtain registration (Drop down would be provided)
XII	Details of existing registration if any
XIII	Nature of business
XIV	Details of bank account
XV	Details of goods / commodities supplied by the business
XVI	Details of services supplied by the business
XVII	Details of additional place of business
XVIII	Details of proprietor / all partners / karta / managing director and whole time director / member of managing committee of associations / board of trustees – name, PAN, passport no. UID no, contact details and residential address
XIX	Details of authorized signatories, name, PAN, passport no. UID no, contact details and residential address
XX	Details of authorized representative (TRP / CA / Advocate etc.,)
X XI	State specific information
XXII	Photograph

Time limit for making application for registration

Registration application is required to be made within 30 days of the liability. However, registration would be granted from the date of application which means that for any transaction prior to the date of application, tax would be payable but at the same time ITC credit might not be allowed. There is also a provision in MVAT in

Manual application could always be made and at the same time, on line application on GST portal could be done and the application is required to be signed by using the digital signature. If one does not have the digital signature, there is also a provision to submit the signed copies duly scanned through online.

condoning the delay and allowing such credit upon making the application for condoning the delay and seeking grant of credit.

Online application on GST portal

Manual application could always be made and at the same time, on line application on GST portal could be done and the application is required to be signed by using the digital signature. If one does not have the digital signature, there is also a provision to submit the signed copies duly scanned through online.

Processing of application for registration

Once the application is submitted, the same would be processed within 3 working days by both CGST and SCGST authorities and they may raise any queries within a period of 7 days. If no queries are raised by the authorities, then the registration is deemed to have been granted.

If queries are raised by the authorities, they are required to be replied within 7 days' time. Once the registration is granted with queries or no queries, the authorities would inform the GSTN number by sending e-mail or SMS

Cancellation of registration

The registration could be cancelled by the authorities, only after issuing a speaking order in writing and such order is subject to appeal to higher authorities.

Login ID / password

The authorities would also provide the login id and the temporary password upon GST registration to the authorized signatory. The temporary password could then be changed /modified by the authorized signatory.

Requirement of displaying the registration certificate

The law requires display of the GST registration certificate at a conspicuous place at the office of the principal place of business of the taxpayer.

DEFINITION OF GROSS TURNOVER

As of now, no definition of 'gross turnover' has been given but it is expected that the definition of gross turnover would be provided in the forthcoming GST Act and it might include the following:-

Sr. No	Details
1	Intra State branch transfer
2	Transfers between multiple business verticals registered separately within the state
3	Intra-State captive consumption
4	Intra-State job work
5	Temporary renewal – goods sent for repairs, calibrations, testing etc.
6	Goods supplied on returnable basis
7	Free supply of goods and services

REJECTION OF REGISTRATION

Rejection of registration application by either by the Central or by the State shall be deemed to be rejection by the other authority (ies) as well.

PROVISION RELATING TO RATING OF THE TAX PAYER AND BLACK LISTING

Perhaps, for the first time in the history of Indian tax laws, rating of taxpayer and black listing is being provided. Risk profiling would be done by the tax authorities having regard to the following aspects

Rating of the Tax Payer

- Promptness in e-return filing
- Discrepancies detected where the dealer had to make corrections
- Making prompt payment in lieu of reversed ITC

Black listing

The tax payer will be black listed and such trigger would be forwarded to all customers to whom supplies are made by such person and black listing would be done on the following eventualities-

- continuous default for 3 months in paying ITC that has been reversed
- continuous default for 3 months in paying or any 3 months period over a period of 12 months in uploading sales details leading to reversal of ITC for others
- defaulters of even a single event would be flagged and put in public domain as being a potential black listed dealer so as to alert the buyers
- continuous short reporting of sales beyond a prescribed limit of 5% of total sales for period of 6 months.

Effective date of black listing and its impact

The effective date of black listing would be prospective only from month next to blacklisting and impact of the black listing would be as under:-

- black listed GSTINs cannot upload-in purchase details
- corresponding denial of ITC to be supported by suitable provisions in the law

BUSINESS PROCESS TO BE FOLLOWED IN GST REGIME (REGISTRATION AND RELATED PROVISIONS)

- ITC reversal in the hands of the buyer should take place for disowning of any tax invoice with date prior to effect of blacklisting of the seller

Once blacklisting is lifted, buyers could avail unclaimed ITC subject to the dealer uploading sales details along with tax and interest.

RETURNS AND PAYMENT OF BUSINESS PROCESS REPORT

The Model law has prescribed various forms of return / payment ledger as reflected in the following Table:

Business Process Report - Returns and Payment

Sr No	Return ledger	Return	Cut off date	Remarks / comments
1	GSTR-1	Outward supplies made by taxpayer (other than compounding taxpayer & ISD)	10th of the next month	If any supplies are under reported to the extent of 5% then such tax payer will be exposed for black listing. Any amendment thereto not under GSTR-1 but under separate columns provided in GSTR-3
2	GSTR-2	Inward supplies received by a tax payer (other than a compounding tax payer & ISD)	15th of the next month	It will be auto populated based on the suppliers GSTR-1. However, additional entries also can be uploaded. Any mis-match to be reconciled with 2 days i.e. by 17th or alternatively within 2 months; if not reconciled within 2 months then ITC will have be reversed along with interest and such amount will be credited and interest will be refunded after matching the transactions after 2 months but prior to annual return i.e. before filing GSTR-8
3	GSTR-3	Monthly return (other than a compounding tax payer & ISD)	20th of the next month	TR-3 will be auto populated from details of GSTR-1 and GSTR-2
4	GSTR-4	Quarterly return for compounding taxpayer	18th of the next month	This return needs to be filed by compounding tax payer till the time such dealer opts for normal tax payer or crosses the specified limit
5	GSTR-5	Periodic return by non-resident foreign taxpayer	7 days after the date of expiry of registration; if the period is for more than one month, monthly returns would be filed and thereafter return for the remaining period would be filed within a period of 7 days	Registration will be granted for specified period and after such specified period is over the return has to be filed within 7 days of such period. However if such specified period is more than 1 month, the return has to be filed on or before 20th of the subsequent month
6	GSTR-6	Return for input service distributor (ISD)	15th of the next month	This return will be in line with the present ISD return. However GST invoice will be issued for transferring the ITC
7	GSTR-7	Return for tax deducted at source	10th of the next month	Tax will have to be deducted on works contract and supplies to specified agencies including government agencies
8	GSTR-8	Annual return	By 31st December of next FY	Annual; also auto populated where the summary of GSTR-3 of all the months will be auto populated and necessary corrections will be made after reconciling books of account. This report will be certified by CA/CMA
9	Ledger-1	ITC ledger of tax payer	Continuous	This register will be maintained by the GSTN on real time basis
10	Ledger -2	Cash ledger of tax payer	Continuous	This register will be maintained by the GSTN on real time basis
11	Ledger-3	Tax ledger for tax payer	continuous	This register will be maintained by the GSTN on real time basis

CONCLUSION

When goods and services tax is introduced and fully implemented, apart from full allowance of credit, there will be many more advantages and benefits such as reduction in prices, increase in Government revenue, less compliance and procedural cost, move towards a unified GST in line with international practice and much more. Let us look forward for the earlier implementation and in the meantime the industry and trade should be ready for a take-off by understanding the proposed laws and regulations.

CS

Goods and Services Tax



B.S. Seethapathi Rao*

BSR Associates
Tax Consultants
Kakinada

seethapathirao@yahoo.co.in

Given the passage of the Constitution (122nd) Amendment Bill, 2014 for Goods and Services Tax (GST) in the Lok Sabha on 6th May, 2015, the Government of India seems committed to replace all the indirect taxes levied on goods and services by the Centre and States and implement GST by 2017. With GST, it is anticipated that the tax base will be comprehensive and all goods and services will be taxable, with minimum exemptions.

GST will be a major tax reform for Indian economy by reducing the cascading effect of tax on the cost of goods and services. It will impact the tax structure, tax incidence, tax computation, tax payment, compliance, credit utilization and reporting leading to a complete overhaul of the current indirect tax system.

Thus exports would be zero-rated, and imports would attract the tax in the same manner as domestic goods and services.

The advantages of levying GST are as below:

- Wider tax base, necessary for lowering the tax rates and eliminating classification disputes
- Elimination of multiplicity of taxes and their cascading effects
- Harmonization of Center and State tax administrations, which would reduce duplication and compliance costs
- Automation of compliance procedures to reduce errors and increase efficiency
- In the light of the Model GST

Going by the current developments and happenings in and outside the Parliament it appears certain that the GST will replace sales tax/value added tax, excise duty and service tax from April 2017. This article explains the salient features of the proposed GST as contained in the Model GST law released by the Government.

GST will be a value added tax, levied at all points in the supply chain with credit allowed for any tax paid on inputs acquired for use in making the supply. It would apply to both goods and services in a comprehensive manner with exemptions restricted to a minimum. It is proposed that GST be levied concurrently by the Centre (CGST) and the States (SGST) and is expected that the base and other essential design features would be common between CGST and SGST, across SGSTs for the individual States. Both CGST and SGST would be levied on the basis of the destination principle.

Law released recently by the Finance Ministry the its provisions are summarized for an easy understanding.

TAXES THAT WILL BE SUBSUMED IN GST

GST would be levied on all the transactions of goods and services made for a consideration. This new levy would replace almost all of the indirect taxes. In particular, it would replace the following indirect taxes:

*Joint Secretary AIFTP (South Zone) State, Vice President
(E.G. Dist) APTPCA, Guntur.

AT CENTRAL LEVEL

S.No	Indirect Taxes
1	Central Excise Duty (including Additional Duties of Excise)
2	Service Tax
3	CVD (levied on imports in lieu of Excise duty)
4	Central Sales Tax
5	SACD (levied on imports in lieu of VAT)
6	Excise Duty levied on Medicinal and Toiletries preparations,
7	Surcharges and cesses

At State level

S.No	Indirect Taxes
1	VAT / Sales Tax
2	Entertainment tax (unless it is levied by the local bodies)
3	Luxury Tax
4	Taxes on lottery, betting and gambling
5	Entry tax not in lieu of Octroi
6	Cesses and Surcharges

However, certain items / sectors would be outside the GST regime. Products such as alcohol, petroleum products would remain outside GST regime.

Further, Land and properties may remain outside since they are neither goods nor services.

The three components of GST are as under:

I. Integrated Goods And Services Tax Act, 2016 , (IGST)

The tax levied under Integrated Goods and Services Tax (IGST) and administered by the Central Government will be on (a). Import of Goods and Services from Abroad and (b). Export of Goods and Services to outside India,

II. Central Goods And Services Tax Act, 2016 , (CGST)

The tax levied under Central Goods and Services Tax (CGST), administered by the Central Government will be in respect of (a) inter-State Supply if the supply involves the movement of goods from one State to another and (b) inter-State supply if the service provider and the service recipient are located in different State.

III. State Goods And Services Tax Act,2016, (SGST)

The tax will be levied under Central Goods and Services Tax (SGST) , administered by the State Government- (a) where the movement of goods commences and terminated in the same State and (b) if the service provider and the service recipient are located in the same State.

TAXABLE EVENT WOULD BE 'SUPPLY' UNDER GST

Concepts with regard to taxable events learnt over the years such as manufacturing, sale, service, etc. would cease to exist under GST and all supplies would be subject to GST. As anticipated, the meaning of the term 'supply' is defined in the provisions and the same would include all forms of supply (goods/services) such as sale, transfer, barter, exchange, license, import of service, etc. Also, a few supplies without any consideration would be subject to GST. Here, it would be worthwhile to note that non-taxability of the barter system under the current VAT regime has now been covered in the definition of supply to make it taxable. Valuation of the same would prove to be a challenge to the department as well as industry.

PLACE OF SUPPLY "A CONCEPTUAL CHANGE"

Currently, most of the indirect taxes are 'origin based taxes' and payable to the exchequer where the supplier/service provider is located. However, GST being a 'destination-based tax', it would be crucial to determine the place where goods/services are supplied/consumed.

With this intention, place of supply for goods and for services are separately defined in the law itself, wherein for

- Goods the place of supply is the place where goods are delivered, and
- Services the place of supply is the place where the service recipient is located subject to exceptions.

Also, specific provisions are inserted to determine the place of supply for telecommunication services, insurance services, banking and financial services, etc.

Furthermore, recent ambiguity with regard to place of provision of service for "intermediary" and "online database access or retrieval service" under service tax provided by service providers to overseas entities, which is subject to service tax can qualify as export under GST since the place of supply would be based on the place where the recipient is located. However, the place of supply for the banking sector, which is currently based on the location of the service provider would shift to the location of the service receiver, which would lead to stringent KYC norms and increase state-level compliances for banks substantially.

Furthermore, the following issues would arise in determining the place of supply in case of intangibles, bill-to/ship-to model, sale in transit, e-transactions, etc. as the receiver could be located in one State and the actual goods/services might be consumed in another State.

VALUATION MECHANISM UNDER GST

Under the current regime, respective legislations have issued Valuation Rules to determine the value for the purpose of respective levies such as service tax, excise, customs, etc. Similarly under GST, Valuation Rules are framed to determine

Typically, the time of supply of goods would be removal of goods or receipt of payment or issuance of invoice or date on which the buyer shows receipt of goods – whichever is earlier; whereas the time of supply of services would be issuance of invoice or receipt of payment or date on which the recipient shows receipt of services – whichever is earlier.

the value for levying GST. As per the Rules, GST would be payable on transaction value, which is the price actually paid or payable for the said supply of goods and/or services between unrelated parties.

Also, there are a few inclusions in the transaction value such as free supplies by recipient to the supplier in connection with the supply, royalty/license fees payable as condition of supply, any taxes/duties charged under any statute other than GST, etc. It is worthwhile to note that any discounts given after supply is effected would also be subject to GST.

However, issues relating to valuation on supplies to self (i.e. branches/agents) would arise as in such cases GST is to be levied on transaction value and typically, an entity may not supply the goods/services on transaction value to its own branches/agents.

TIME OF SUPPLY OF GOODS AND SERVICES

Under the current regime, taxes are payable based on taxable events defined such as excise is payable on removal of manufactured goods, VAT is applicable on sale of goods, service tax is applicable when service is deemed to be provided as per the Point of Taxation Rules, 2011. Similarly under GST, the concept of Point of Taxation Rules, 2011 is extended and the concept of time of supply is mentioned in the provisions to determine the timing for payment of GST. Typically, the time of supply of goods would be removal of goods or receipt of payment or issuance of invoice or date on which the buyer shows receipt of goods – whichever is earlier; whereas the time of supply of services would be issuance of invoice or receipt of payment or date on which the recipient shows receipt of services – whichever is earlier.

It is worthwhile to note that parameters are prescribed to determine the 'time' of supply. Thus, determining the 'time' of supply and further maintaining reconciliation between the revenue as per financials and as per GST Law could pose a major challenge for businesses.

INPUT TAX CREDITS UNDER GST

Under the current regime, there are restrictions in claiming credits, i.e. under service tax and excise – construction, staff welfare, car hire, etc. cannot be claimed as credit. Also, under VAT, there are reversals/reduction in credit on account of stock transfers outside the state, procurement of items ineligible for credit, etc. The principle of GST to have a seamless flow of credits may be

violated as there are provisions that lay restrictions on the claim of credit – such as goods/services used for personal consumption cannot be claimed, goods/services used for construction of immovable property, etc. and would lead to a cascading effect of taxes.

Every Taxable person shall subject to such conditions and restrictions as may be prescribed in this behalf, be entitled to take credit of input tax and may deduct the amount of admissible credit in respect of a tax period from the output tax for the same period and pay the remaining amount to the "Appropriate Government".

Where the input tax credit in respect of a tax period exceeds the output tax for the same period, such excess credit may be carried forward for adjustment against the output tax of the subsequent tax period.

RATE OF GST NOT SPECIFIED IN THE LAW

The Model GST Law does not specify the rate of GST. A relatively new concept of a compliance rating system is introduced. A rating score would be assigned to an assessee based on prescribed parameters. The rating would be updated at periodic intervals and intimated to the taxable persons and such rating scores could also be placed in the public domain.

As key provisions have elaborated on the modus operandi under GST, it is essential to analyze the impact of the provisions in the light of the transactions undertaken by businesses. Considering the entire regime of indirect taxes is overhauled, the change would impact each and every business vertical:

- Purchase: In terms of selection of vendors, location of vendors for procurements, managing inventory, etc.
- Finance: In terms of analysis of the business model, impact on pricing of goods/services, working capital, capital budgeting, etc.
- Taxation: In terms of ascertaining the impact of the law on business transactions, managing compliances, prepare SOPs, etc.
- Information technology: To upgrade to IT systems, check the reports to be generated under GST regime, user trainings, etc.
- Supply chain: To manage logistics, lead time of customers, location planning, etc.
- Sales/Marketing: To design the strategy under GST

As the Model GST Law is out in the public domain, the date of implantation of GST may not be far and it is expected that once the Constitutional Amendment Bill is passed in the Rajya Sabha the road map on GST from the government, including the process of transition would be announced. Hence, it is advisable to work towards analyzing the impact of the law on your business operations on an immediate basis as ascertaining the impact, preparing price structures, revamping operations, etc. would be all time consuming exercise.

REGISTRATION

1. Every person who is liable to be registered under Schedule III of the Act shall get himself registered with in thirty days

GOODS AND SERVICES TAX

- from the date on which he became liable to registration in such manner as may be prescribed.
2. A person having multiple business verticals in a State may obtain a separate registration for each business verticals in the State subject to such conditions as may be prescribed.
 3. A person, though not liable to be registered under Schedule III may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.
 4. Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 in order to eligible for grant of registration under sub-section (1), (2) or (3),
 5. Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may proceed to register such person in the manner as may be prescribed.
 6. The registration shall be granted after due verification in the manner and within such period as may be prescribed.
 7. A registration shall be deemed to have been granted after the prescribed period, if no deficiency has been communicated to the applicant by the proper officer within that period.
 8. Notwithstanding anything contained in sub-section (7) , any rejection of application for registration under the CGST Act / SGST Act shall be deemed to be a rejection of application for registration under the SGST Act / CGST Act.
5. Every registered taxable person shall furnish a return for every tax period under sub-section (1), whether or not any supplies of goods and/or services have been effected during such tax period.
 6. Every person required to deduct tax at source shall furnish a return, electronically, in such form and in such manner as may be prescribed, for the month in which such deductions have been made along with the payment of tax so deducted, within ten days after the end of such month.
 7. If any taxable person after furnishing a return under sub-section (1) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be filed for the month or quarter, as the case may be, during which such omission or incorrect particulars are noticed, subject to payment of interest, where applicable and as specified in the Act. Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for filing of return for the month of November or any earlier month mentioned in Section 34 or 35 or second quarter, as the case may be, following the end of the financial year, or the actual date of filing of relevant annual return, whichever is earlier.

RETURNS

1. Every registered taxable person shall, for every tax period, furnish a return, electronically, of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and other particulars as may be prescribed within twenty days after the end of such tax period.
2. A registered taxable person paying tax under the provisions of section 8 of this Act shall furnish a return for each quarter, electronically, in such form and in such manner as may be prescribed, within eighteen days after the end of such quarter. Provided further that a registered taxable person shall not be allowed to furnish return for a tax period if return for any previous tax period has not been furnished by him.
3. Every taxable person, who is required to furnish a return under sub-section (1), shall pay to the credit of the appropriate Government the tax due as per such return not later than the last date on which he is required to furnish such return.
4. A return furnished under sub-section (1) by a taxable person without payment of full tax due as per such return shall not be treated as a valid return for allowing input tax credit in respect of supplies made by such person.


ANNUAL RETURN

1. Every registered taxable person, other than a casual or non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and in such manner as may be prescribed on or before the thirty first day of December following the end of such financial year.
2. Every taxable person who is required to get his accounts audited under sub-section (4) of Section 32 shall furnish, electronically, the annual return along with the audited copy of the annual accounts and a reconciliation statement, reconciling the value of supplies declared in the returns furnished for the year with audited annual financial statement, and such other particulars as may be prescribed.

FINAL RETURN

Every registered taxable person who applies for cancellation of registration shall furnish a final return along with the application for cancellation of registration in such form and in such manner as may be prescribed.

LEVY OF LATE FEE

Any registered taxable person who fails to furnish the details of outward or inward supplies or return required under this Act by the due date shall be liable to a late fee of rupees one hundred for every day during which such failure continues subject to a maximum of rupees five thousand. 

GST – A Boon for the Nation



Pramod S. Shah*, FCS

Founder Partner
Pramod S. Shah & Associates
Practising Company Secretaries
Mumbai

pramodshah361@gmail.com

INTRODUCTION

The Goods and Services Tax (GST), a comprehensive tax to be levied on manufacture, sale and consumption of goods and services, is one of the most ambitious indirect tax reforms in the country since independence. It seeks to address challenges with the current indirect tax regime by broadening the tax base, eliminating cascading of taxes, increasing compliance, and reducing economic distortions caused by inter-state variations in taxes. It is expected to bring incremental GDP growth of the country.

GST will subsume central indirect taxes like excise duty, countervailing duty and service tax, as also State levies like value added tax, octroi, entry tax and luxury tax. The final consumer will bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages. Administrative responsibility would generally rest with a single authority to levy tax on goods and services. Exports would be zero-rated and

would come up. Once this background legal framework is ready along with setting up of GST Council as envisaged in the Constitution Amendment Bill, the GST can be realised. The three draft legislations lay down the fine print of the uniform indirect tax regime.

Goods and Services Tax (GST) is one of the biggest indirect tax reforms in the country since independence slated to be made applicable in the country from April 2017. It is expected to bring about a 2% incremental GDP growth of the country. Hence GST is the need of the hour.

WHAT IS GST

The economic case for GST is straightforward. Income is taxed irrespective of the source and use; therefore, consumption should also be taxed on the same principle.

GST is one of the widely accepted indirect taxation systems prevalent in more than 150 countries across the globe. Globally, GST

GST, by its design, is intended to make the system of levy and collection of indirect taxes to be transparent. It is expected that tax evasion would be largely reduced. The GST Law also seeks to bring about, accountability and efficiency in the tax administration and reduce the arbitrage opportunities available to tax avoidance and evasion.

imports would be charged to same taxes as domestic goods and services adhering to the destination principle.

According to the 122nd Constitutional Amendment, Parliament and State Legislatures will have concurrent powers to make laws on GST. The GST Council consisting of the Union Finance Minister, Union Minister of State for Revenue, and State Finance Ministers will recommend rates of tax, period of levy of additional tax, principles of supply, special provisions to certain States etc.

After the constitutional amendment, three bills- on the Centre's GST (CGST), State's GST (SGST) and Integrated GST (IGST)

has been structured as a destination based comprehensive tax levied at a specified rate on sale and consumption of goods and services within a country.

GST is a tax on goods and services with comprehensive and continuous chain of set-off benefits from the producer's point and service provider's point up to the retailer's level. It is essentially a tax only on value addition at each stage, and a supplier at each stage is permitted to set-off, through a tax credit mechanism, the GST paid on the purchase of goods and services as available for set-off on the GST to be paid on the supply of goods and services. The final consumer will thus bear only the GST

*Former Chairman of WIRC & Ex- Central Council Member of ICSI.

GST is a tax on goods and services with comprehensive and continuous chain of set-off benefits from the producer's point and service provider's point up to the retailer's level. It is essentially a tax only on value addition at each stage, and a supplier at each stage is permitted to set-off, through a tax credit mechanism, the GST paid on the purchase of goods and services as available for set-off on the GST to be paid on the supply of goods and services. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off

benefits at all the previous stages. charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

WHY WE NEED GST

Presently in terms of Article 246 and Schedule VII of the Constitution of India we have got three lists, the Union List, the State List and the Concurrent List. Under the Union list only the Central Government can levy taxes. In respect of the items contained in the State List only the State Government can levy taxes. Under the Concurrent List both the Centre as well as the State Governments can levy taxes.

A look at the Central Taxes reveals a list that includes Customs duty, Central Excise, Service Tax and to top it all we have education cess and secondary higher education cess. We have got product specific cess like automobile cess, research and development cess, etc., all central levies driven by Union List.

Coming to the State List we have value added tax (VAT) along with Central Sales Tax (CST), entry levy tax, octroi, entertainment tax, luxury tax and at the same time local body tax in some States such as Maharashtra. We have thus multiple taxes both at the Central and State Level.

India Inc. is looking at some simplification, clarification and uniformity in indirect taxes. Hence GST is the need of the hour.

The introduction of GST would be a significant step in the reform of indirect taxation in India. Amalgamating several Central and State taxes into a single tax would mitigate cascading or double taxation, facilitating a common national market. The simplicity of the tax should lead to easier administration and enforcement. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated to be around 25%-30%.

The tax rate under GST may be nominal or zero for the time being. It has been proposed to insulate the revenues of the States from the impact of GST, with the expectation that in due course, GST will be levied on petroleum and petroleum products. The government has assured States of compensation for any revenue losses incurred by them from the date

of introduction of GST for a period of three years.

As India is a federal republic GST would be implemented concurrently by the Central Government and State Governments.

BRIEF HISTORY

In 2000, the Vajpayee Government set up a committee headed by Asim Dasgupta, the (Finance Minister of the Government of West Bengal) to design a model for GST and oversee IT preparations.

An announcement was made by P. Chidambaram, the Union Finance Minister, during the central budget of 2006-07 on 28th February 2006, that GST would be introduced from April 1, 2010 and that the Empowered Committee of State Finance Ministers, on his request, would work with the Central Government to prepare a road map for introduction of GST in India.

After this announcement, the Empowered Committee of State Finance Ministers decided to set up a Joint Working Group on May 10, 2007, with the Adviser to the Union Finance Minister and the Member-Secretary of Empowered Committee as co-convenors and the concerned Joint Secretaries of the Department of Revenue of Union Finance Ministry and all Finance Secretaries of the States as its members. The Joint Working Group, after intensive internal discussions as well as interaction with experts and representatives of Chambers of Commerce and Industry, submitted its report to the Empowered Committee on November 19, 2007.

This report was then discussed in detail in the meeting of Empowered Committee on November 28, 2007. On the basis of this discussion and the written observations of the States, certain modifications were made, and a final version of the views of Empowered Committee at that stage was prepared and was sent to the Government of India (April 30, 2008). The comments of the Government of India were received on December 12, 2008 and were duly considered by the Empowered Committee (December 16, 2008).

SALIENT FEATURES OF GST

- GST would be applicable on supply of goods or services as against the present concept of tax on the manufacture of goods or on sale of goods or on provision of services.
- GST would be a destination based tax as against the present concept of origin based tax.
- It would be a dual tax with the Centre and the States simultaneously levying it on a common base. The GST to be levied by the Centre would be called Central GST (CGST) and that to be levied by the States would be called State GST (SGST).
- An Integrated GST (IGST) would be levied on inter-State supply (including stock transfers) of goods or services. This would be collected by the Centre so that the credit chain is not disrupted.
- Import of goods or services would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties.
- For an initial period of two years or as further extended on the recommendation of the Goods & Services Tax Council (GSTC), only vatiable Additional Tax not exceeding 1% on inter-State supply of goods would be levied and collected by the Centre and assigned to the originating State. The Select Committee of the Rajya Sabha has

recommended that this tax should be levied only when the supply is made for a consideration.

- CGST, SGST & IGST would be levied at rates to be mutually agreed upon by the Centre and the States under the aegis of the GSTC.
- GST would replace the following taxes currently levied and collected by the Centre: Central Excise duty, Duties of Excise (Medicinal and Toilet Preparations), Additional Duties of Excise (Goods of Special Importance), Additional Duties of Excise (Textiles and Textile Products), Additional Duties of Customs (commonly known as CVD), Special Additional Duty of Customs (SAD) g) Service Tax, Cesses and surcharges insofar as far as they relate to supply of goods or services.
- State taxes that would be subsumed in the GST are: State VAT, Central Sales Tax, Purchase Tax, Luxury Tax, Entry Tax (All forms), Entertainment Tax (not levied by the local bodies), Taxes on advertisements, Taxes on lotteries, betting and gambling, State cesses and surcharges insofar as far as they relate to supply of goods or services.
- GST would apply to all goods and services except Alcohol for human consumption, Electricity and Real Estate.
- GST on petroleum products would be applicable from a date to be recommended by the GSTC. Tobacco and tobacco products would be subject to GST. In addition, the Centre would continue to levy Central Excise duty.
- A common threshold exemption would apply to both CGST and SGST. Taxpayers with a turnover below it would be exempt from GST. A compounding option (i.e. to pay tax at a flat rate without credits) would be available to small taxpayers below a certain threshold. The threshold exemption and compounding scheme would be optional.
- The list of exempted goods and services would be kept to a minimum and it would be harmonized for the Centre and the States as far as possible.
- Exports would be zero-rated.
- Credit of CGST paid on inputs may be used only for paying CGST on the output and the credit of SGST paid on inputs may be used only for paying SGST. In other words, the two streams of input tax credit (ITC) cannot be cross utilised, except in specified circumstances of inter-State supplies, for payment of IGST. The credit would be permitted to be utilised in the following manner: (a) ITC of CGST allowed for payment of CGST; (b) ITC of SGST allowed for payment of SGST; (c) ITC of CGST allowed for payment of CGST & IGST in that order; (d) ITC of SGST allowed for payment of SGST & IGST in that order; (e) ITC of IGST allowed for payment of IGST, CGST & SGST in that order.
- ITC of Additional Tax would not be permitted.
- Accounts would be settled periodically between the Centre and the State to ensure that the credit of SGST used for payment of IGST is transferred by the Exporting State to the Centre. Similarly the IGST used for payment of SGST would be transferred by the Centre to the Importing State.
- The laws, regulations and procedures for levy and collection of CGST

and SGST would be harmonized to the extent possible.

WHAT WOULD BE 'SERVICE' UNDER GST SCENARIO

Under the 122nd Constitutional Amendment Bill the term, "Services" means anything other than goods. This broad definition of the term 'service' will altogether remove the disputes as to whether something is goods or services (unless Government proposes different rates for GST on goods or services or both). Double taxation is the main problem in our indirect taxes system. Comparing Excise and Service Tax it can be seen that double taxation is applicable on software, designing, erection and commissioning equipment along with supply of goods. "Double Taxation" disputes are persisting for excise and service tax.

Comparing Service Tax and VAT it can be seen that there are multiple line items wherein double taxation is applicable. Starting with construction, before completion both VAT as well as Service Tax are chargeable.

Only a few countries follow the cubic model and separate legislations are made by the Central and State Governments for their tax collection, procedures, administration and amount of tax to be collected, etc. India too can follow the concurrent dual GST model, wherein both the State as well as the Centre will levy taxes on both goods and services, provided there is political will for the same.

BENEFITS OF GST

For business and industry

- Easy compliance
- Removal of cascading effect
- Improved competitiveness

For Central and State Governments

- Simple and easy to administer
- Better controls on leakage
- Consolidation of tax base
- Higher revenue efficiency

For the consumer

- Single and Transparent tax proportionate to the value of goods and services
- Reduction of prices

ROLE OF PCS UNDER THE GST LAW

A Company Secretary is well versed in all laws by virtue of his academic knowledge and practical training and particularly the ability to understand the laws. Indirect taxes/GST would be more procedural and it will be easier to understand and be an expert therein. Company secretaries can play an important role as advisors and facilitators for due compliances of laws relating to Goods and Services tax to the general business community and corporate world as well. Company secretaries can render the following types of services to clients:-

(i) Advisory services or strategic advisor

A company secretary can well interpret the law of Indirect taxes or proposed GST law and provide comprehensive guidance and advisory to the business. Company secretaries are more suited for the

services because of their knowledge of laws and good communication skills.

(ii) Tax Planning

Company secretary is competent to understand the impact of laws and its various alternatives based on proper tax planning of indirect taxes/GST.

(iii) Procedural Compliances

As Company Secretaries are already playing the role of Compliance Officers under various other laws, they would be the most appropriate professionals for compliance management under the GST regime.

(iv) Book/Record Keeping

Like other tax laws indirect taxes/ GST would require proper record keeping and accounting; systematic recording of credit of input/input service and its proper utilisation is necessary for this success of GST. Company secretary must learn and be equipped to perform this task.

(v) Representation / Appellate work

Company Secretaries are eminently suited to represent clients before various authorities under the GST regime because of their practical exposure and ability. Because of legal drafting skills, the Company Secretaries can effectively handle the appellate work. At present, company secretaries are recognised under various State VAT legislations to perform various functions. Similarly under the excise laws and service tax laws, the Company secretaries have been performing functions which can be classified under following heads:-

- Acting as authorised representative before Central Excise Authorities.
- Valuation and classification of goods.
- Assessment of duty and obtaining refunds.
- Complying with formalities for removal of excisable goods for home consumption and exports CENVAT procedures.
- Advising on search, seizure etc.
- Documentation.

As per the proposed administrative structure, as recommended by the Task force on GST, a case for uniformity in the procedures has been made out so as to reduce compliance and administrative cost, which would in turn result in improved voluntary compliance.

REGISTRATION UNDER GST

Section 19 of the Draft GST Act, 2016 relating to registration reads thus:

- (1) Every person who is liable to be registered under Schedule III of this Act shall apply for registration in every such State in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:
Provided that if the person, other than an Input Service Distributor, is registered under an earlier law, it shall not be necessary for him to apply for fresh registration under this section and he shall follow the procedure as may be prescribed in this behalf.
- (2) Notwithstanding anything contained in sub-section (1), a person having multiple business verticals in a State may obtain a separate registration for each business vertical, subject to such conditions as may be prescribed.
- (3) A person, though not liable to be registered under Schedule III, may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.
- (4) Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961) in order to be eligible for grant

of registration under subsection (1), (2) or (3).

- (4A) Notwithstanding anything contained in sub-section (4), a non-resident taxable person may be granted registration under sub-section (1) on the basis of any other document as may be prescribed.
- (5) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action that is, or may be taken under this Act, or under any other law for the time being in force, proceed to register such person in the manner as may be prescribed.
- (6) Notwithstanding anything contained in sub-section (1), any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be notified by the Board / Commissioner, shall obtain a Unique Identity Number, in the manner prescribed, for the purpose(s) notified, including refund of taxes on the notified supplies of goods and/or services received by them.
- (7) The registration or the Unique Identity Number, shall be granted or, as the case may be, rejected after due verification in the manner and within such period as may be prescribed.
- (8) The proper officer shall not reject the application for registration or the Unique Identity Number without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.
- (8A) A certificate of registration shall be issued in the prescribed form, with effective date as may be prescribed.
- (9) A registration or an Unique Identity Number shall be deemed to have been granted after the period prescribed under sub-section (7), if no deficiency has been communicated to the applicant by the proper officer within that period.
- (10) Notwithstanding anything contained in sub-section (7), any rejection of application for registration or the Unique Identity Number under the CGST Act / SGST Act shall be deemed to be a rejection of application for registration under the SGST Act / CGST Act.
- (11) The grant of registration or the Unique Identity Number under the CGST Act / SGST Act shall be deemed to be a grant of registration or the Unique Identity Number under the SGST/CGST Act provided that the application for registration or the Unique Identity Number has not been rejected under SGST/CGST Act within the time specified in subsection (7).
- (12) The Central or a State Government may, on the recommendation of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

RATE OF TAX

There should be a uniform rate of GST applicable to both goods and services.

The tax structure should be simple and should have minimal rates. FICCI is of the view that (a) there should be one Standard Rate (RNR) applicable on all goods and services; (b) a common list of goods and services under a Concessional Rate (e.g., for basic necessities like grains, pulses, cereals, edible oils and public utilities); and, (c) a common list of exempted goods and services.

As far as threshold limits are concerned, it is understood (as per the First Discussion Paper on GST issued by the EC) that different threshold levels are proposed for the CGST - Goods (Rs. 1.50 crore p.a.), CGST-Services (appropriately high) and SGST (Rs. 10 lakhs p.a.). In addition, a Composition Scheme has been suggested with a gross turnover limit of Rs. 50 lakhs p.a.

UNIFIED ADJUDICATION AND APPELLATE AUTHORITY

It is expected that there will be uniform provisions for both SGST and CGST with respect to classification, valuation, input credits etc. Any dispute that may arise would typically encompass both CGST and SGST. Hence, there cannot be separate adjudication of the same dispute by the Central Government and State Governments. It is hence imperative that the existing adjudication mechanisms be unified to handle the litigation and the decisions of such authorities be made binding on both the administrations.

A professional administration of taxes and uniformity in approach is mandatory; this will minimise the scope for diverse interpretations and proceedings and simultaneously, aid the evolution of a uniform fiscal law across the country. This is critical if the GST is to succeed.

GST NETWORK AND REMOVAL OF CHECK POSTS / ELIMINATION OF ENTRY PERMITS

The current system of entry permits/way bills not only increases transaction costs but also delays the business cycle. The GST Network is expected to facilitate the introduction of online information input at each check post and thereby eliminating the cumbersome procedure of entry permits/way bills.

The GST Network (GSTN) will need to be a robust automated system for registrations, movement of goods, returns and payments. However, before the advent of the GST, current systems should be revamped in order to create databases for procedures such as registrations that can be replicated in the GSTN. It is therefore desirable that States adopt common GSTN based procedures for registration, payment etc.

CONCERNS OF PETROLEUM INDUSTRY

Input (goods and services) consumed in exploration and production of crude oil and natural gas will be under the GST regime while crude oil and natural gas will be outside GST.

Crude oil, which is input for refinery will be outside the purview of GST whereas other inputs for refineries will be under GST.

Crude Oil, Natural gas, MS, HSD, and ATF will be outside GST and will remain under existing taxation system. Other Petroleum products, such as Naphtha, Light Diesel Oil, Kerosene, furnace oil, etc. will be under the GST regime.

The above will lead to:

- avoidable multiple tax regimes for petroleum sector
- Extra burden on the consumer and add to the tax burden on the Petroleum sector/ Economy.
- will result in more compliance work for Governments and the Petroleum Industry

ALCOHOL INDUSTRY NEED FOR RECONSIDERATION

- To include alcoholic beverages under the GST regime based on the recommendations of the JWG, the FC and the DoR. International precedents and adverse impact of exclusion should be considered objectively.

- State excise may continue on the products at current rates less GST
- CGST collections on supplies of Alcohol may be apportioned to States
- State excise rates to be adjusted based on estimates of SGST collections and the CGST allocations to States to maintain revenue neutrality for States

RECENT DEVELOPMENTS ON THE GST

Five Committees have been constituted by the Empowered Committee of State Finance Ministers (EC) to deal with the various aspects of work relating to the introduction of GST. The Committees are:

- Committee on the Problem of Dual Control, Threshold and Exemptions in GST Regime;
- Committee on Revenue Neutral Rates for State GST & Central GST and Place of Supply Rules (A Sub-Committee has been constituted to examine issues relating to the Place of Supply Rules);
- Committee on IGST & GST on Imports (A Sub-Committee has been set up to examine issues pertaining to IGST model);
- Committee to examine Business Processes under GST Regime (Three Sub-Committees have been constituted to examine issues pertaining to Registration & Returns, Refunds and Payments);
- Committee to draft model GST Law (Three Sub-Committees have been constituted to draft various aspects of the model law)

The first four Committees have submitted their final reports which have been approved by the Empowered Committee and are under consideration of the Government of India. The three Sub-Committees constituted to draft model law have also submitted their reports to the main Committee where these three reports are being discussed for finalization. The EC has asked the Committee on the Problem of Dual Control, Threshold and Exemptions in GST Regime to rework on the limits of threshold exemption and compounding threshold. The Reports on four business processes, viz. registration, return, payment and refunds have recently been put in public domain for comments and feedback of stakeholders. Interactive workshops for trade and industry were conducted at various places for educating them. The feedback so received is being examined to carry out necessary changes in these four reports. GSTN is a private company constituted under Section 25 of the Companies Act, 1956 has been set up by the Government. GSTN would provide three front end services, namely registration, payment and return to taxpayers. It will also assist some States with the development of back end modules. GSTN has already appointed M/s Infosys as Managed Service Provider at a total project cost of around Rs 1380 crores for a period of five years.

CONCLUSION

GST, by its design, encourages the system to be transparent. There is an inbuilt system of Input Tax Credit i.e., the tax paid at earlier stage of the production distribution chain will be set off at the final stage of sale of goods and services. Also the rate arbitrage between the inter-state and intra-state supplies will get eliminated. Thus it is expected that tax evasion would be largely reduced. The GST Law shall bring transparency, accountability and efficiency in the tax administration and reduce the arbitrage opportunities available to tax avoidance and evasion.

Scheme of Levy of Tax on Goods in GST Regime



P.V. Subba Rao

Advocate and VAT Consultant
Hyderabad

paramatmuni@yahoo.com

It is well known that even in 400 B.C., Kautilya (better known as Chanakya) in his “Artha Sastra” specified the points and rates of tax leviable on various goods. There were import and export duties in the name of “sulka”, octroi and gate tolls were levied in the name of “dwarabahirikadeya”, road cess in the name of “vartani”, royalty in the name of “prakriya” etc. Sales tax on goods in modern India as a fiscal measure is the outcome of the developments of the last century only. Government of India Act, 1935 has for the first time empowered the States to impose sales tax on goods. The erstwhile Bombay State was the first State to impose a selective tax on the sale of tobacco in 1938. This was followed by levy of tax on the retail sales of petrol and lubricants in 1939 in Central Province and Berar (Madhya Pradesh). However the erstwhile Madras State was the first State to impose a multi-point sales tax on goods in the year 1939 in the form of a General Sales Tax.

The country would be moving towards

on the common base. These may be seen in the Annexure.

The word levy refers to a charge like a tax, fine, or other fee, that is imposed on something. It would also mean the act of imposing or collecting the charge. Let us now deal with levy of tax on goods in the proposed GST regime, as understood from the Model GST Law officially released by the Empowered Committee of State Finance Ministers on 14.6.2016. . Section 2 (48) in the Model GST Law defines goods as follows

Section 2 (48): “goods” means every kind of movable property other than actionable claim and money but includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply;

Explanation.— For the purpose of this clause, the term ‘moveable property’ shall not include

GST would be a destination based consumption tax, as against the present system of origin based tax. The Centre and States would simultaneously levy GST on a common base and therefore it would be a dual GST. IGST will be levied on inter State supply of goods and/or services.

implementation of Goods and Services Tax (GST) regime. Central Government and State Governments will have separate GST Acts ie., CGST and SGST Acts, under which tax would be levied on intra State supplies. In addition, there would be IGST for levying tax on inter State supplies, which would be exclusively administered by the Centre. GST would be a destination based consumption tax, as against the present system of origin based tax. Centre and States would simultaneously levy GST on a common base and therefore it would be a dual GST. IGST will be levied on inter State supply of goods and/or services. Empowered Committee of State Finance Ministers has provided FAQs. In that, FAQ No.10 gives examples of simultaneous levy of CGST and SGST

any intangible property.”

Section 2 (59) is to the following effect:-

“intangible property” means any property other than tangible property;”

Section 2 (88) defines ‘Services’ to mean anything other than goods; Explanation: Services include intangible property and actionable claim but does not include money.”

The major difference between the present tax law and the proposed GST law is that intangible goods like patents, trademarks, software, copyright etc., are treated as ‘goods’ in the present tax regime but all such intangible property is proposed to be treated

The major difference between the present tax law and the proposed GST law is that intangible goods like patents, trademarks, software, copyright etc., are treated as 'goods' in the present tax regime but all such intangible property is proposed to be treated as 'services' in the GST regime.

as 'services' in the GST regime. GST would be leviable on 'supply' of goods or services as against the present system of levy of tax on the manufacture & removal of goods or on sale or purchase of goods or on provision of services. It appears IGST will also be levied on inter State transfer of taxable goods. Presently transfer of goods otherwise than as a result of sale from one State to another State falling under section 6-A of Central Sales Tax Act, 1956 is exempt from tax, if covered by declaration Form 'F'. IGST also will be levied on import of goods into the country and as such import would be treated as inter-State supply of goods. Presently, import sales of goods falling under section 5 (2) of CST Act are not taxable. Of course, there would be levy of customs duties on imports also. Threshold limit for levy of tax is Rs.10 lakhs and for North Eastern States and Sikkim, the limit is Rs.5 lakhs. The significant features of the GST are as under:

1. For the purpose of levy of tax there should be a taxable person, taxable event, taxable point, taxable base and taxable goods.
2. Section 7 (2) in model GST law mandates that C/SGST shall be paid by every taxable person, who is defined in Section 2 (96) as follows:-
"2 (96) "taxable person" shall have the meaning as assigned to it in section 9 of this Act;" Section 9 also extensively deals with, who is a taxable person. Essentially he is a person, who is doing 'business' as defined in Section 2 (17). Similarly Section 4 (2) of IGST law provides that tax shall be paid by a taxable person.
3. Taxable event is the 'supply', which is defined in Section 2 (92), which is as follows:-
"2 (92) "supply" shall have the meaning as assigned to it in section 3;" Section 3 extensively deals with meaning and scope of supply. It includes sale, transfer, barter, exchange, license, rental, lease etc. Schedules I and II also enumerate various kinds of supplies. GST would be applicable on supply of goods as against the present system of levy of duty or tax on the manufacture or on sale of goods. The levy is therefore on supply of goods. It should be noted that even transactions of simple transfer, barter and exchange amount to supply for the purposes of GST law.
4. Taxable point is the time of supply of goods as defined in Section 2 (101) and section 12. Liability to pay GST on the goods shall arise at the time of supply of goods as determined in terms of the provisions in section 12. There are multi-situations for ascertaining the time of supply.
5. Taxable base is generally understood as measure of tax or turnover. It is the base on which tax is levied. Section 15 deals with 'value of taxable supply'. As per this section, it is the transaction value. What it comprises of, has been elaborately mentioned in this section. It doesn't include C/SGST or IGST. 'Subsidies' are also included in the value. For example, a fertilizer manufacturer sells a bag of fertilizer to farmer for Rs.200. The manufacturer receives say Rs.100 per bag towards subsidy from the Central Government. Total consideration received is Rs.300. However it has been held by the judiciary that as the subsidy has been received from a person other than the purchaser, subsidy doesn't form part of sale price or turnover or sale consideration. Accordingly, presently VAT is levied only on Rs.200. In GST, entire amount of Rs.300 will be taxed. Discount or incentive allowed after supply of goods, and which is not known at or before the time of supply cannot be deducted. GST Valuation Rules are also to be referred for the purpose.
6. Taxable goods – The word 'Goods' is defined in section 2 (48). In the present tax regime, intangible property is treated as goods. However in GST regime 'goods' doesn't include any intangible property like software, copy right etc. Intangible property is included in services, vide Section 2 (88). Goods which are not exempt are taxable goods. There would be a list of goods, which is exempt from GST.
7. Section 7 provides for levy and collection of GST on all intra State supplies of goods at the rate specified in the relevant Schedule to the Act. Sub Section (3) thereunder also provides that the Central or a State Government, may on the recommendation of the GST Council, by notification, specify categories of supply of goods, the tax on which is payable on reverse charge basis.
8. Section 8 provides for levy of tax under composition scheme on a taxable person, whose aggregate turnover in a financial year does not exceed Rs.50 lakhs. Rate of tax shall not be less than 1%. Such person shall not make any inter State supplies of goods and/or services. He shall not collect any tax from the recipient of goods. He is also not eligible for Input Tax Credit. This provision is intended for small dealers.
9. Section 4 in IGST law provides for levy and collection of IGST on supplies of goods made in the course of inter-State trade or commerce at the rate specified in the Schedule to the Act. Sub-section (3) thereunder provides for levy of tax on reverse charge basis.
10. As per Explanation 1 under Section 2 (1) (c) of IGST law, a supply of goods in the course of import into the territory of India shall be deemed to be a supply of goods in the course of inter State trade or commerce. Thus all imports of goods into India are subject to levy of GST.
11. There would be levy of tax on inter State stock transfers.
12. Under section 3 (2A), transaction between principal and agent shall be deemed to be a supply and accordingly, tax would be levied on such transactions.
13. Alcohol for human consumption, electricity and real estate would be outside the net of GST.
14. Tobacco and tobacco products would be subject to GST. In addition to GST, there would be levy of Central Excise Duty by the Centre on these goods.
15. For the present there would be no GST on petroleum products. GST would be applicable on these goods from a date to be recommended by the GST Council.
16. 'Works contract' is defined in section 2 (107). As per Schedule II, para 5, clauses (f), (g) & (h), transactions of works contracts, lease (transfer of right to use goods) transactions and supply of food and drink in hotels, restaurants etc., will be treated as 'supply of service'. In the present VAT regime, all these transactions, to the extent they represent supply of goods, are treated as deemed sale of goods, subject to various terms and conditions.
17. Development of IT Software is treated as supply of service, vide Schedule II 5 (d). In the present VAT regime, tax is levied on the

- sale of software, which is intangible goods.
18. Supply of goods by unincorporated associations or body of persons to members, like clubs, will be treated as supply of goods, vide Schedule II para 6 (a).
 19. For the purpose of levy of tax on goods, place of supply is important. Based on place of supply, levy of C/SGST or IGST will be decided. As per Article 286 of the Constitution of India, Parliament is empowered to formulate principles for determining the place of supply of goods and when a supply of goods takes place in the course of inter State trade or commerce. Accordingly, Sections 5 and 6 of IGST Act provide for principles to determine when and where such supply of goods takes place. In terms of such provisions and principles, the nature of transaction i.e., intra State supply or inter State supply will be decided and accordingly tax will be levied either under C/SGST or IGST
 20. Section 5 (5) of IGST Act settles long pending dispute. It reads as follows:-
 “Where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.”
 In the present tax scenario, if in Telangana Express (train) which runs from Hyderabad to New Delhi, through the States of Telangana, Maharashtra, Madhya Pradesh, Uttar Pradesh and New Delhi, food and drinks are sold to passengers, the question has always been in which State VAT has to be levied because they are sold continuously throughout the journey. In the proposed GST law, place of supply would be the location at which such goods are taken on board.
 21. Under Section 10 of GST Act, Central/State Government has power to grant exemption from tax on the supply of goods. However a notification could be issued only on the recommendation of GST Council. It is to be seen whether there should be simultaneous exemption under both the Acts or either Centre or State alone could grant exemption.
 22. Transactions of e-commerce are brought into tax net. Chapter XI B deals with these transactions i.e., online sales. Section 43 C provides for Tax Collection at Source (TCS) by the electronic commerce operator, from out of the payments made to the supplier of goods and/or services at the notified rate. Supplier can claim credit of the same while discharging his liability. Authority not below the rank of a Joint Commissioner can require the operator to furnish the required information. Electronic commerce operator is defined as follows under clause (e)”-
 “Section 43 B (e) ‘electronic commerce operator’ shall include every person who, directly or indirectly, owns, operates or manages an electronic platform that is engaged in facilitating the supply of any goods and/or services or in providing any information or any other services incidental to or in connection there with but shall not include persons engaged in supply of such goods and/or services on their own behalf.”
 23. Presently in VAT Acts of several States, there is levy of purchase tax on the purchase of taxable goods, particularly agricultural commodities in certain contingencies. GST doesn’t provide for levy of tax on sale or purchase of goods. There is levy of GST on supply of goods. We have to wait and see as to how the States would bring levy on the receipt of agricultural commodities. We have to see whether they will somehow bring it under reverse charge mechanism.
 24. Though not relatable to goods, it needs mention that ‘admission, for a consideration, of persons to any premises’ would amount to

‘business’ as per section 2 (17) of the Model GST Law. Section 6 of IGST Act determines the place of supply of services in relation to lodging accommodation like hotel, house boat etc., function halls, restaurants, entertainment houses like cinema theatres, amusement parks, conferences, beauty parlours, fitness centres etc. Presently tax on supply of food and drinks in a restaurant is levied under VAT law. Luxury tax is levied on accommodation provided in Hotels, lodging houses and corporate hospitals. Entertainments tax is levied under Entertainments Tax Act on admission to cinema theatres, amusement parks etc. All such taxes will be replaced by levy of GST on the ‘services’ supplied.

ANNEXURE

(Extract from FAQs furnished by Empowered Committee)

Q 10: How would a particular transaction of goods and services be taxed simultaneously under Central GST (CGST) and State GST (SGST)?
 Ans: The Central GST and the State GST would be levied simultaneously on every transaction of supply of goods and services except the exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits. Further, both would be levied on the same price or value unlike State VAT which is levied on the value of the goods inclusive of CENVAT. While the location of the supplier and the recipient within the country is immaterial for the purpose of CGST, SGST would be chargeable only when the supplier and the recipient are both located within the State.

Illustration I: Suppose hypothetically that the rate of CGST is 10% and that of SGST is 10%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company which is also located within the same State for, say Rs. 100, the dealer would charge CGST of Rs. 10 and SGST of Rs. 10 in addition to the basic price of the goods. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not actually pay Rs. 20 (Rs. 10 + Rs. 10) in cash as he would be entitled to set-off this liability against the CGST or SGST paid on his purchases (say, inputs). But for paying CGST he would be allowed to use only the credit of CGST paid on his purchases while for SGST he can utilize the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

Illustration II: Suppose, again hypothetically, that the rate of CGST is 10% and that of SGST is 10%. When an advertising company located in Mumbai supplies advertising services to a company manufacturing soap also located within the State of Maharashtra for, let us say Rs. 100, the ad company would charge CGST of Rs. 10 as well as SGST of Rs. 10 to the basic value of the service. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not again actually pay Rs. 20 (Rs. 10+Rs. 10) in cash as it would be entitled to set-off this liability against the CGST or SGST paid on his purchase (say, of inputs such as stationery, office equipment, services of an artist etc). But for paying CGST he would be allowed to use only the credit of CGST paid on its purchase while for SGST he can utilise the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

CS

Goods and Services Tax - A proposed paradigm to Empower Indian Economy



Mukesh Kumar Karna, FCS

Company Secretary, Mukesh Karna & Associates
Delhi

csmukeshkarna@gmail.com



Kalyani Karna

Cost Accountant, Kalyani & Co.,
Delhi

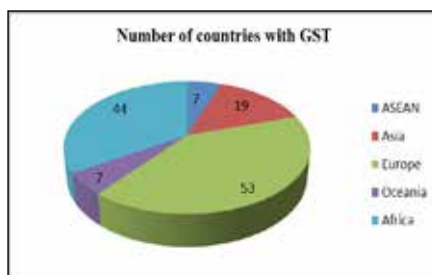
cwakalyani@gmail.com

INTRODUCTION

An overview of GST at global landscape

Goods and Services Tax was first introduced in France in 1954. Afterwards, it was adopted by a number of countries (160 at present). Recently, it was introduced in Malaysia from April 2015.

Number of countries under GST regime as per their region:



INITIALISATION OF GST IN INDIA

Article 366(12A) of the Constitution, defines Goods and Services Tax (GST) to mean any tax on supply of goods or services or both except taxes on the supply of the alcoholic liquor for human consumption.

UPA Government was the first to conceive the idea of GST in 2006 to integrate the widespread taxes and to act as a watershed for the businesses. The idea of Goods and Services tax was mooted to remove the bottlenecks in indirect tax structure. The major limitations were the cascading effect of CENVAT portion, and non-uniformity of VAT rate. The then Union Finance Minister in the Central Budget (2007-08) announced that GST would be introduced with effect from April

GST will replace a slew of Central and State taxes and will remove the bottlenecks to facilitate ease of doing business in India. It will help corporations to focus on their core business activities and produce goods at competitive prices both for domestic and international markets. However, the introduction of GST will affect the demand of price sensitive goods. The purpose of this article is to present a concrete and concise view about the foundation of goods and services tax, its applicability, and implications.

Some of the countries with higher GDPs and their GST rates are listed below:

Country	Year of implementation	GDP (USD)	Current Rate
Canada	1991	50,344	5%
Australia	2000	61,789	10%
Switzerland	1995	83,326	8%
Singapore	1993	46241	7%
Japan	1989	45,903	5%

(Source: Royal Malaysian Custom Department)

1, 2010 and requested the Empowered Committee of State Finance Ministers to prepare a road map for introduction of GST in India. The Empowered Committee released its First Discussion Paper in 2009 which was divided into four sections. Section 1 begins with how the GST can bring about the improvement over VAT. Section 2 describes the process of preparation for GST. Section 3 is related with the structure of GST model in detail. Section 4 concludes with an Annexure on Frequently Asked Questions and Answers.

CONCURRENT DUAL GST MODEL

India is going to adopt concurrent dual GST model due to several reasons. In concurrent dual GST model, tax on goods and services will be levied by the both, Central Government and State Government. Under the new system, a transaction of sale within the State shall have two taxes, SGST (State Goods and Services Tax) – which will go to the State and CGST (Central Goods and Services Tax) – which will go to the Central Government. The sale from one State to another and stock transfers will be charged to IGST (Integrated Goods and Services Tax) – which will go to the Central Government. CGST, SGST, and IGST would be levied at rates to be mutually agreed upon by the Centre and the States. Additional tax at the rate of 1% (proposed) for initial two years will be levied in the case of IGST and will be directed to the State from where the inter-state transaction originated. The initial period of two years can be further extended on the recommendation of the GST Council.

CURRENT TAX STRUCTURE AND TAXES TO BE SUBSUMED IN GST

GST is India's biggest and maiden tax reform since independence to iron out the wrinkles in tax structure due to myriad prevailing taxes. GST Model is designed in order to bring uniformity and integrity of tax regime.

CURRENT STRUCTURE OF INDIRECT TAXES



TAXES TO BE SUBSUMED UNDER GST TAX REGIME

The GST shall subsume all the indirect taxes, except the Basic Customs Duty that will continue to be charged even after the introduction of GST. The following taxes will be subsumed under GST:



NOTE:

- Central Surcharges and Cesses in the nature of taxes on goods/services like cess on rubber, tea, coffee, national calamity contingent duty etc.
- Alcoholic liquor for human consumption is not under the purview of GST. Petroleum and petroleum products will come under the purview of GST only after the notification in future date.
- CVD refers to countervailing duty or additional custom duty. SAD refers to special additional duty of customs.

The following taxes are not proposed to be subsumed in GST.

- Stamp duty
- Taxes on transaction of securities in stock exchange
- Taxes on land, building, and mineral rights
- Excise duty on alcohols, and liquor
- Taxes on profession and trade
- Electricity duty
- Basic custom duty
- Safeguard duty
- Octroi
- Taxes on vehicles
- Entertainment taxes levied by local bodies
- Tolls
- Taxes on goods and passengers carried by road or on inland waterways

HOW GST WILL WORK

Situation 1: Intra State sales (within the state)

In the case of sale within the state, Central GST (CGST) as well as state GST (SGST) will be applicable. The tax revenue will go to both the Central Government and the State Government. For example, if a dealer A of Delhi sales goods to B of Delhi for Rs 10,000 the tax payable under GST will be (assuming CGST and SGST as 10% each):

Particulars	Amount (Rs.)
Selling price	10,000
CGST @ 10%	1,000
SGST @ 10%	1,000
Invoice price	12,000
Tax collection by State Government	1,000
Tax collection by Central Government	1,000

The amount of CGST collected will be paid to Central Government and SGST collected will go to the Delhi Government.

Situation 2: Intra State resale of goods

This implies that the goods are first sold to the dealer within the State and again it is resold to another dealer in the same state. In this situation, the sale prices might differ. The dealer who will be reselling the goods will charge more. Again this transaction is within the same State, Central GST and State GST will be applicable but the amount of tax liability will increase. The dealer who is reselling the goods will get the credit of input CGST and input SGST paid. The remaining amount of taxes will go to the respective governments. There will be no credit transfer among the central and State Government. (Assuming CGST and SGST as 10% each):

Goods sold from dealer A to B (both A and B are in Delhi)	
Particulars	Amount (Rs.)
Selling price	10,000
CGST@10%	1,000
SGST@10%	1,000
Invoice price	12,000
Goods sold from dealer B to C (both B and C are in Delhi)	
Selling price	12,000 (10,000 plus profit 2,000)
CGST@10%	1,200
SGST@10%	1,200
Invoice price	14,400
Input tax credit available to B	
SGST	1,000
CGST	1,000
SGST payable (1,200-1,000) by B	200
CGST payable (1,200-1,000) by B	200
Net tax collection	
Central Government (1,000+200)	1,200
State Government (1,000+200)	1,200

Situation 3: First sale within the State and resale outside State

In the case of first sale within the State, CGST and SGST will be levied in similar fashion as above. But when these goods will be sold outside state, IGST will be applicable and it will go to Central Government. Article 269A refers to GST on supplies in the course of inter-State trade or commerce which includes stock transfer.

Goods sold from dealer A to B (both A and B are in Delhi)	
Particulars	Amount (Rs.)
Selling price	10,000
CGST@10%	1,000
SGST@10%	1,000
Invoice price	12,000
Goods sold from dealer B to C (B in Delhi and C in Haryana)	
Selling price	12,000 (10,000 plus profit 2,000)
IGST@20%	2,400
Additional tax@1%	120
Invoice price	14,520
Net tax payable by B	
CGST	1,000
SGST	1,000
IGST	2,400
Additional tax	120

Tax liability when there is any amount of CGST (assume Rs.1,200) and SGST (assume Rs.1,400) in input tax credit account of B	
SGST (1,400-1,000)	Nil
CGST (1,200-1,000)	Nil
IGST (2,400-400-200)	1,800

Input credit of CGST may be used only for paying CGST on the output and the credit of SGST paid on inputs may be used only for paying SGST. Input tax credit (ITC) cannot be cross utilised. For the payment of IGST, the balance left in the ITC account of CGST and SGST can be utilised.

CRUX OF GST

Against IGST, both the input taxes are taken as credit. This amount to a loss to the Central Government, the State Government compensates the Central Government by transferring the credit to the Central Government.

Situation 4: First sale inter-state (to other state) and resale within the State

In this case, goods are moving from Delhi to Haryana. Since it is an interstate sale, IGST will be levied. The collection will go to the Central Government. Later, the goods are resold from one place to another place in Haryana. Therefore, CGST and SGST will be levied. Any shortfall in revenue collection by the state will be met by Central Government for stipulated time period.

Goods sold from dealer A to B (A and B are in Delhi and Haryana)	
Particulars	Amount (Rs.)
Selling price	10,000
IGST@20%	2,000
Additional tax@1%	100
Invoice price	12,100
Goods sold from dealer B to C (B and C in Haryana)	
Selling price	12,000 (10,000 plus profit 2,000)
CGST@10%	1,200
SGST@10%	1,200
Invoice price	14,400
Net tax payable by B	
CGST (1,200-1,200)	Nil
SGST (1,200-800)	400

ITC of IGST allowed for payment of IGST, CGST & SGST. It will be utilised for the payment of IGST first then CGST and lastly adjusted towards SGST. ITC of Additional Tax would not be permitted.

Situation 5: Import of goods

The proposed GST Model will not subsume basic custom duty. The applicability of GST in the case of import can be seen from the following example:

Particulars	Amount (Rs)
Cost of imported goods	10,000
Add: Basic custom duty@10%	1,000
Total value	11,000

Add: SGST@10%	1,100
Add: CGST@10%	1,100
Total cost of imported goods	13,200
Imported goods sold after import within the same state	
Cost to the importer	11,000
Add: Profit	4,000
Sale price	15,000
Add: SGST@10%	1,500
Add: CGST@10%	1,500
Invoice price	18,000
Tax credit to importer	
CGST	1,100
SGST	1,100
Net tax payable by importer	
CGST (1,500-1,100)	400
SGST (1,500-1,100)	400

Additional custom duty or countervailing duty (CVD) and special additional duty (SAD) will be subsumed in Goods and Services tax.

HOW THE PROPOSED GST MODEL WILL EMPOWER INDIA

GST is a holistic approach to bring uniformity in the tax regime. GST Model will be empowering the Indian tax structure in the following ways:

Uniformity in rate of tax

It will bring uniformity in computing taxes for goods and services.

Elimination of cascading effect of tax

It will help in elimination of cascading effect of tax. The excise portion of the tax will be removed and the cascading effect of tax due to the excise part will be eliminated.

Appropriate allocation of taxes

The introduction of GST will ensure appropriate allocation of taxes to Central and State funds. GST implementation will enable the State Government to get revenue from tax on services. Currently, the tax collection from the services goes to Central Government.

Simplification of accounting and taxation process

There will be single registration to suffice the compliances of CGST and SGST.

Relaxation to small businesses

It will provide shelter to small businesses also. Businesses with turnover less than Rs 1.5 crore for goods and Rs.10 lakh for services will be out of the umbrella of GST.

Lesser compliance and procedural cost

There will be single registration for SGST and CGST. There is separate registration for excise and service tax at present which will be removed under GST. It will reduce compliance cost too and will provide comfort for the tax payers.

Reduction in prices of Goods

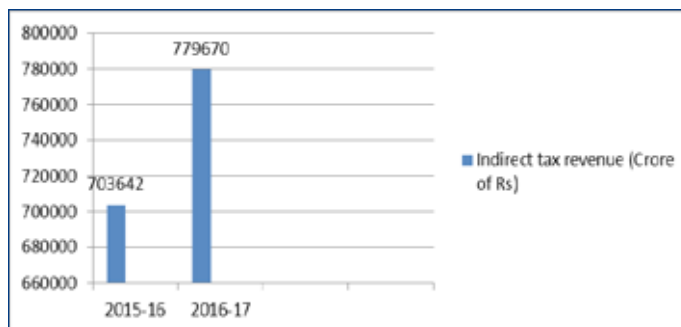
The excise portion of the tax will be removed and the cascading effect of tax due to the excise part will be eliminated. It will reduce the selling prices of the goods. Under proposed GST regime, the distributor will prefer 'with invoice sale' as against 'without invoice sale' mainly because that would generate more profit for

the distributor. Let us take an example to see the implication of introducing GST in tax regime.

Sale from manufacture to wholesaler			
Particulars	Without GST	With GST	Effect
Cost of production	Rs 10,000	Rs 10,000	
Add: Profit @10% of cost	1,000	1,000	
Manufacturer's price	11,000	11,000	
Add: Excise duty @12.5%	1,375	---	
TOTAL VALUE	12,375	11,000	The product is available to the wholesaler at lower price due to elimination of excise.
Add: VAT@10% (12,375 X 10%)	1,237.50	---	Here, VAT is applicable on price 11,000 and on excise duty 1,375. This causes cascading effect of tax.
Add: SGST@10%		1,100	
Add: CGST@10%		1,100	
INVOICE PRICE	13,612.50	13,200	The invoice price to the wholesaler is lower with the introduction of GST.

INCREASE IN GOVERNMENT REVENUES

As per the Budget documents, gross tax revenue for the current fiscal year is Rs 14,59,611 crore. It is estimated that gross tax revenue will reach to Rs 16,30,888 crore in 2016-17 showing a growth of 11.73 per cent. However, the gross revenue from the indirect tax in the current fiscal year is Rs 7,03,642 crore and it is estimated to be Rs 7,79,670 crore for next fiscal year. (Source: RBI/Economic Times). The government also estimates non tax-revenue collection to be Rs 3,22,921 crore in 2016-17 as against Rs 2,58,576 crore in the current fiscal year.

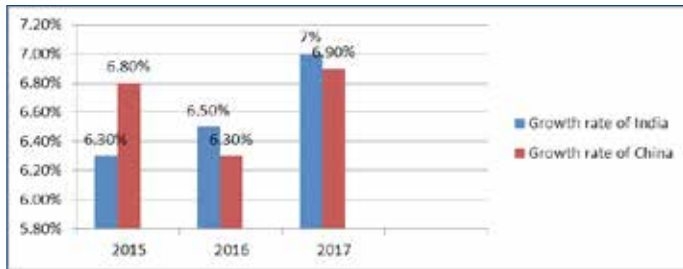


SUPPORTIVE TO GROWTH RATE OF INDIA

According to International Monetary Fund (IMF), the Indian economy will grow at the rate of 6.5% against the 6.3% expected in China. World Bank report envisages that India will overtake the Chinese growth rate in 2017 with 7% against China's 6.9%.

Year	Growth rate of India	Growth rate of China
2015	6.30%	6.80%
2016	6.50%	6.30%
2017 (expected)	7%	6.90%

(Source: International Monetary Fund and Bloomberg)



The implementation of GST is one of the important factors to increase the growth rate. The global investors are interested in the fastest growing economy. Government claims that the introduction of GST will boost the GDP of India by 1-2%.

CATALYST FOR MAKE IN INDIA

GST will work as wonders for the dream of Make in India. Seven taxes levied by Central Government and eight taxes levied by State Government are proposed to be integrated into GST. It will reduce the cost of production and lesser complications to start business and will attract the investors. GST roll out will be receptive to foreign investments. According to Department of Industrial Policy and Promotion (DIPP), the total foreign direct investments in India for FY 2015-16 stood US\$ 40 billion.

START UP INDIA

India has moved to fastest growing start up base and secured third position worldwide in technology driven start-up businesses following United States (first position), and United Kingdom (second position) [Source: NASSCOM Report 2015]. The start-ups have reached to 4,200 and it is expected that it will be 10,000 in number by the year 2020. These start-ups will fuel the growth of our society and economy. The current indirect tax regime is deterrent for the start-ups due to non-unified tax regime, numerous tax formalities, and levy of non-refundable taxes like central sales tax, entry tax, entertainment tax etc. The introduction of GST will lower the burden of tax compliances, and simple administration will boost the start-ups.

ENABLE FASTER MOVEMENT OF GOODS ACROSS THE COUNTRY

The logistic costs can be reduced by up to 20% with the implementation of GST. (Source: Zee News). Currently, 30-40% of trucks remain idle due to trade barriers like entry tax, local body taxes, and other formalities. Due to current inter-state tax regime, company has to maintain warehouses in most of states and forwarding agents in different agents. These costs will be reduced with the roll out of GST. The introduction of GST will help in faster movement of goods across the country.

CONCLUSION

The implementation of GST will lower the burden of multiple compliances and costs to the taxpayers. The reduction in compliances and tax burden will attract foreign investors and it will act as a catalyst to quantify the dream of "Make in India". The current indirect tax structure is complex and it does not provide easy understanding. GST will completely overhaul the current indirect tax regime. The impact of implementation of GST in several countries showed that GST leads to lower inflation and improved tax to GDP ratio (Ambit Capital Research, 2015). However, the evidence suggests that unified GST will provide more benefit for economy as compared to a dual GST model. GST is capable of reducing the overall tax burden on goods. GST is considered to act as a panacea for Indian economy. It will replace a slew of central and state taxes and will remove the bottlenecks to facilitate the ease of doing business in India. It will help the corporations to focus on their core business activities and produce goods at competitive prices both for domestic and international markets. However, the introduction of GST will affect the demand of price sensitive goods. The working and operation of GST will be complicated and will create havoc initially. The cost of services will be higher due to higher GST rate (proposed) than the service tax rate but the prices of goods will be lowered due to elimination of excise duty. Businesses can deal with the changing tax structure due to the introduction of GST with the help of task force comprising of experts. Businesses need to restructure their pricing policies and reschedule their working capital requirement at the verge of new proposed GST Model. CS

References:

www.gstindia.com; www.dor.gov.in; www.taxguru.com; www.icmai.in; www.cbec.gov.in; www.indiaonline.com; www.iamwire.com; www.ibef.org; www.zeenewsindia.com; www.empcom.gov.in

E- LEARNING MODULE ON BANKING TERMINOLOGIES

The Institute has launched short term yet all-encompassing e-learning module on Banking Terminologies. The learning under the module is offered through video sessions framed to guide the comprehensive understanding and apt know-how about the banking terminologies and allied areas. To further substantiate the learning under the Module, there is also a user friendly informative reading material. You may please subscribe for the same through e-cart available on icsi website (www.icsi.edu). Fee for the Module is:-

ICSI Members: Rs. 2500/-
 ICSI Students: Rs. 1000/-
 Others: Rs. 4500/-

Goods & Services Tax Act - Special Traits Required by Company Secretaries



K. K. Rao*, FCS

Practising Cost Accountant
Hyderabad

kkrao2008@gmail.com

New legislation awaiting clearance from the Parliament by way of GST bill 2016, when passed would pave way for the economy in a new mode, pace and direction. Besides replacing central legislation like Central Excise Act 1944 and Central Sales Tax Act 1956 and local sales tax/vat laws of different states, there is a basic difference in the approach to the new legislation. The systems procedures and methods followed by the country over a period of more than half a century would undergo dramatic change and there is lot of expertise required on the part of the Company Secretary - be in employment as KMP or in practice in the capacity of 'Tax Consultant' the name given to all the persons by the GSTN including CA, CMA and CS along with Sales Tax/Service Tax Practitioners. The need of

GST was implemented successfully and in a vast country like ours, there will be some teething problems initially to be encountered by one and all but, over a period of time dust would settle down for the benefit of all.

The incidence of payment of central excise duty is on manufacture, for service tax it is the service rendered and for sales tax/VAT it is sale. Now all the three would be subsumed into a new concept of 'supply'. The entire GST is on the principle of 'supply' of goods and services. The concept of composition though retained in the new Act also. The GST Act inter alia envisages the incidence of supply of goods/services, even if no invoice is issued, no advance is paid/received but if the goods have been taken into books of

The GST Bill 2016, when passed would pave the way for the economy in a new mode, pace and direction. The systems procedures and methods followed by the country over a period of more than half a century would undergo dramatic change and there is lot of expertise required on the part of the Company Secretary - be in employment as KMP or in practice in the capacity of 'Tax Consultant' the name given to all the persons by the GSTN including CA, CMA and CS along with Sales Tax/Service Tax Practitioners. The need of the hour is to learn about the GST which would rule the country for times to come. The article discusses the special traits to be required by company secretaries in the GST regime.

the hour is to unlearn the half century legislation like central excise and sales tax law and learn about the GST which would rule the country for times to come. The greatest advantage of GST is one Act, one rate and one return applicable throughout the country in all the states uniformly and avoiding cascading effect by giving credit to the inputs be it goods or services. In a small country like Malaysia

account. When the management makes general checks about the liability, they may confine to the extent that no invoice is issued nor payment received/paid then there is a possibility of overlooking the transaction from the liability. However, Section 12 of the proposed GST Act vide clause (d), pins the responsibility that the incidence of tax would be, when the goods have been taken in the books

*Past Chairman, Hyderabad Chapter of ICSI.

of the recipient. This indicates that unless the KMP is having thorough control over the materials movements/procurement also and is in knowledge of the advances/payments, he will not be able to discharge the liability to properly account for the receipt of the goods. Further, there is new concept of TDS which is not present in either of the Central Excise and Service Tax. With introduction of TDS in GST, that would not only lead to detailed and elaborate record keeping but also good track of the flow of financial transactions.

Government in anticipation and in the direction of GST has already introduced a new concept of Annual Return under service tax, in the current year to be filed by November 2016. In the new GST Annual Return, the assessee is required to reconcile all the purchases/sales of goods and services which were shown in the individual monthly returns with that of the amounts shown in the Annual Accounts filed with the MCA. This is a new responsibility cast on the assessees. The differences in the sales/purchases need to be properly identified and reconciled with the audited accounts. This would throw more emphasis on the items classified under miscellaneous, casual or suspense heads which are to be reconciled and tax to be paid, wherever applicable to avoid prosecution.

When Finance Act 1994 has introduced the concept of service tax, government was very liberal and considerate to the extent that tax is expected to be paid only on receipt of consideration for the services rendered. When no amount is received, there was no incidence of payment of tax to government. Later government came out with imposition of service tax on advances received with effect from 16.6.2005. However, by introduction of Point of Taxation Rules 2011, government has shifted it to accrual basis from the receipt basis. Under the said Rules, when service is provided, invoice is issued or advance is received, tax is required to be paid at the first happening of any of the three events. Now the GST Act further steps ahead and indicates that tax incidence is crystallised when accounting entry takes places even if the three events did not happen. When the Company Secretary, under the tag of KMP, is to discharge the GST tax liability, then he is required to show more interest in the accounting transactions and is required to keep an eye on the material transactions also, which he was hitherto not required to spend time on that account.

The GSTN is geared to administer the GST more effectively and the tools have been sharpened by electronic means. All the transactions will be on computer and record keeping and maintenance of input credit records will be computerised. This will facilitate the speed, transparency and ease of completion of the transactions. Under the circumstances, Company Secretary needs to develop effective tools to exercise control over the GST transactions in such a way that he will not lag behind.

When the Company Secretary is also the CFO, under the GST then the special trait required by the CS is about the financial liquidity. In view of the introduction of tax on supply of materials, this is going to be another burden on the company. So far under the existing legislation, there is no tax required to be paid on advances paid for supply of materials. However, with the introduction of GST, all advances paid for supply of materials would require payment of GST as well as collection of tax at source under section 43(c) of the proposed Act. The system would be instrumental in raising of inflationary levels on macro level and in micro level, the company's

funds position would get affected. The severity of the problem would get multiplied when there is default of supply and the advances remain unadjusted for a long period. Though the existing law or the proposed GST Act do not clearly indicate as to how the outstanding unadjusted advances will be dealt with, as seen from the practice, despite constant pursuance if the advance is not adjusted and is required to be written off say after three years, then there is lot accounting work involved to make adjustment of the tax paid on advances as well as TDS. Company Secretary along with CFO is to pay special attention in respect of such cases at the time of finalisation of accounts and their display in the Annual accounts so as to give the true and correct picture.

Under the new GST ACT returns are to be filed periodically- by 10th of succeeding month all sales invoices to be uploaded, by 15th of succeeding month all purchase invoices to be uploaded and by 20th of succeeding month the GST return is to be uploaded. In case of delay in filing the return penalty is imposed and as such all-out efforts are to be made to adhere to the dates. Here comes some difficulties in respect of the transactions which expose the company's trade secrets and sales/purchase policies exposed to the world at large. When the company is facing stiff competition, the possibility of purchase price/sales prices with the customers are available with the GSTN and any iota of leakage would damage the business prospects of the entity which may even collapse, if not properly handled. The skill, knowledge and capabilities of the Company Secretary in employment would be put to test in handling these types of situations which are sensitive.

Government through the mechanism of Cost Audit Branch of Ministry of Corporate Affairs has been collecting the manufacturing cost and sale price of some of the products of some specified regulated industries. Say for example, the cost of manufacturing some of the essential drugs and pharmaceuticals are collected by the government through the cost audit and the selling price of the drugs is regulated by DPCO where the gap between the cost of production and sales price is wide by way of profit. This system is available for very limited regulated six industries like - telecommunications, pharmaceuticals, electricity, petroleum, sugar and fertiliser industries. With the introduction of GST, when properly implemented, government will have complete details of the cost of manufacture and the price at which the products are sold of all the products and services across the country. This indirect advantage that is derived by the government in implementation of GST and should it be necessary and when government feels, in public interest, it would be in a position to fix the prices mandatorily. Further the general statistics of manufacture, export/import of all goods and services would be authentically available with the government for taking policy decisions.

Special significant feature of GST Act is a new concept of compliance rating score. In other words, rating of the assessee will be given by the GST department and is available to the public. Like the credit score of CIBIL ICRA etc., this GST rating would help in establishing the good corporate governance of the company. Any company in the forefront of all facets of CSR, Corporate Governance and other good credentials, cannot afford to fare at a very bad level in respect of GST. The role of Company Secretary in employment is vital and effective that he monitors the legal requirements, discharges the legal obligations cast upon the company by GST law and maintains high compliance scoring. Similarly if the CS is in practice, he will be registered with the

GSTN as Tax Consultant and advises his clients for getting the high rating, which is possible by proper planning and execution.

Company Secretary either in employment or in practice as a 'tax consultant' for GST need to be aware about the factors that would affect the credit rating and score. Timely filing of returns, prompt payment of taxes without interest and penalties, proper availment of input credit, filing of annual return within time, proper reconciliation of the annual turnover with the monthly filed GST returns, wherever applicable getting the GST records audited by a Practising Chartered Accountant or Practising Cost Accountant and submitting the audit report, attending to the queries, if any, raised by the Central as well as State authorities, cooperating with the audit team, getting the audit objections cleared etc. would get a high rating for the assessee/company. High rating of the company would also place it at a high pedestal on par with credit rating, CIBIL rating, etc. which would in turn boost the confidence of the shareholders in particular and all stake holders in general. Good credit rating by the GSTN would prompt the buyers/sellers to deal with the company and in turn help the bankers to lend finance, discounting the bills etc. in a more prominent and effective way. This would in turn help boost up of sale of goods dealt with by the company or services provided by it and the entity would prosper.

Company Secretary, so far tuned to serve only corporates and they do follow the etiquette by following dress code, board room manners etc. in a more sophisticated manner by wearing the neck tie and blazer and smart phone. However, now the time has come that they should remold themselves to serve the common man - illiterate business man who is non-corporate entity and is in need of the services for dealing with GST. This approach, when practiced would take them to the core economy and they need not come to urban areas for their employment or practice. Sitting in their place - a tiny village also they may be able to serve the clients on computer, as all the GST transactions are on line including litigation. The GSTN has geared to send the messages on the mobile of the assessee and tax consultants for all occasions including non-filing, late filing, short payment, wrong credit taken, compounding or otherwise, show cause notice issued, appeal rejected, order passed etc. That means Company Secretary is required to be alert in capturing the information obtained from various sources, assimilate and be ready with action plan to deal with the GSTN.

Most important aspect of Company Secretary's attention is to devote time. Now that the Company Secretaries works have increased multifold under Companies Act, 2013 in comparison to the previous Act of 1956 with increased focus on corporate governance, corporate social responsibility, etc. in addition to attaining to the works relating to Board Meetings, AGM, filing of returns and Annual Accounts. However, with the introduction of GST, the devotion of time by the professionals would be more and spread evenly throughout the year. Monthly returns are required to be prepared, monitored and filed - 10th, 15th and 20th and annual returns and audit reports. In other words in small and medium sized companies where Company Secretary is looking after the functions of finance and accounts, they would be more occupied with works related to GST. Further Practising Company Secretaries are entitled to appear before the CESTAT on behalf of the assessee and the cases would continue throughout the year. With the opening up of more and more CESTAT benches across the country, there is lot of scope for the Practising Company

Secretaries besides appearing in the NCLT cases. The basic difference between NCLT and CESTAT is that the cases relating to corporates only would be taken up in NCLT whereas the clients in CESTAT cases include non-corporate clients also. The former deals with Companies Act 2013 only whereas the latter deals with cases under Central Excise and Service Tax in the existing set up and with the introduction of GST, the scope would be wide open under the National Appellate Tribunal where Company Secretaries can contribute significantly towards the nation building. **CS**

REVISION IN THE ANNUAL MEMBERSHIP FEE, ENTRANCE FEE AND CERTIFICATE OF PRACTICE FEE FOR ASSOCIATE AND FELLOW MEMBERS W.E.F. 1ST APRIL, 2017

The Council of the Institute has decided revision in Annual Membership fee, Entrance fee and Certificate of Practice fee for Associate and Fellow Members w.e.f. 1st April, 2017, as under:

Particulars	Associate		Fellow	
	Existing fee	Proposed fee	Existing fee	Proposed fee
Annual Membership fee	Rs. 1125	Rs. 2500	Rs. 1500	Rs. 3000
Entrance fee	Rs. 1500	Rs. 2000	Rs. 1000	Rs. 2000
Certificate of Practice fee	Rs. 1000	Rs. 2000	Rs. 1000	Rs. 2000

The existing facility for payment of fee in advance/concessional fee shall remain in vogue for the revised fee structure.


Indian Institute of Corporate Affairs
Partners in Knowledge. Governance. Transformation.
 Ministry of Corporate Affairs, Government of India

Certificate Course in Competition Law November 2016 - January 2017 <ul style="list-style-type: none"> • Duration: 3 Months • Total Modules : 3 • In person classes at New Delhi and Mumbai; attend online classes from anywhere 	Advanced Professional Course in Competition Law and Market Regulation November 2016 - April 2017 <ul style="list-style-type: none"> • Duration: 6 Months • Total Modules : 6 • In person classes at New Delhi and Mumbai; attend online classes from anywhere
As per Sec 35 of Competition Act 2002, Company Secretaries may appear before the Competition Commission of India!	
<ul style="list-style-type: none"> • Fee waiver (50%) on course fee for first 15 students • Early bird discount upto 31st August 2016 for both courses • Group discount for registration of 4 or more participants upto last date 	
<ul style="list-style-type: none"> 🎧 Learning in hybrid mode: in-person and virtual classes. 📺 Realtime, Interactive Online Classes on Saturdays: access to recorded lecture also. 🏆 Certification by a Government Institution. 	
Last Date of registration : 14th October 2016	
For Details: www.iica.in	
T:+91 124-2640016/32/35 E: apc2016.iica@gmail.com	

GST: The Issues, Concerns and Impact



Gopal Chandra Mondal, ACS

Chief Financial Officer (CFO)
IDFC Foundation
New Delhi

gopal.mondal@idfc.com



Dr. Renu Verma

Associate Dean - Academics
IBS, Gurgaon

renuverma@ibsindia.org

BACKGROUND

For nearly a decade now, we have been discussing much about the marriage between the Centre and State through the implementation of the long awaited Goods and Services tax (GST). The uncertainty about the date of marriage remains a big question as the recent conclusion of the second leg of the budget session expired on May 13, 2016. The single biggest tax reform since Independence, encompassing both goods and services, has been creating a buzz amongst all stakeholders and is to be implemented by the Centre, 29 States and 2 Union Territories. GST is going to be a game changer in a large and complex federal system through a constitutional

system of origin based tax levied at multiple stages of production and distribution of goods and services, with taxes on inputs credit against taxes on output. It is essentially a value added tax on goods and services on each stage of the supply chain. GST aims to simplify the current indirect tax regime by bringing Central and State levies under a single head, with uniform tax rates across goods and services.

INTERNATIONAL ASPECT OF GST

According to the World Bank report, more than 160 countries have already

From the experience of Singapore in 1994 and Malaysia in 2015, a spike in inflation was seen when they introduced the GST. Indian tax administrators should keep tabs on how prices move after imposition of the tax. Centre has agreed to compensate States 100 per cent for five consecutive years any revenue loss consequent to introduction of GST. The additional 1 per cent tax on interstate supply of goods should be abolished.

amendment which would potentially affect 2-2.5 million tax entities in India. The implementation of GST would help in reducing the cascading effect of taxes on the cost of goods and services by creating a common market and marshalling the latest technology to use in modern global tax history. It will have an impact on business operations, tax structure, tax incidence, tax computation, supply chain management, credit utilisation and compliance system etc., leading to a complete overhaul of the current indirect tax system.

GST is a multi-stage destination based consumption tax instead of the present

introduced GST/ National Level VAT. Typically GST is a unified tax system in most of the Countries but some countries such as Canada and Brazil have dual GST. France was the first country to introduce GST in the year 1954 and Malaysia is the last country to join the race with effect from April 1, 2015. Standard rate of most of the Countries ranges between 16%-20%. As per KPMG international indirect tax survey 2014 out of 132 countries that have implemented GST, Hungary has the highest tax rate of GST (27%) whereas Aruba has the lowest rate (1.5%). The standard rates of GST in other countries are provided in the table below.

The industry expectation from the new tax regime is that the Government will bring the necessary changes such as allowing credit on all expenses related to business without any corresponding nexus with output services/goods and aligning the provisions for admissibility of credit on input/capital goods/services so as to bring parity in credit availment across goods and services.

Country	Year of implementation	Standard Rate
France	April 10, 1954	20%
United Kingdom	April 01, 1973	20%
South Korea	1977	10%
Japan	April 01, 1989	8% (to be raised to 10% in 2017)
Canada	January 01, 1991	HST (PST + GST) 15%/ 14%/ 13%
Singapore	April 01, 1994	7%
Australia	July 01, 2000	10%
Malaysia	April 01, 2015	6%

PRESENT TAXATION SYSTEM AND ITS LIMITATIONS

(1) A study shows that presently an Indian truck driver clocks an average distance of 280 km per day as against the world average of 400 km per day and 700 km per day in US. The truck drivers in India spend 60% of their time off the roads, negotiating check posts & toll plazas -there are 650 odd check posts in the country and various categories of taxes.

Introduction of GST will help in improving the Indian truck productivity and efficiency as after the introduction of GST the State barrier and check post concept would be abolished. There would be a common market in which the supply of goods and services can be made at any point of time from one place to another without any barrier.

(2) A foreign company was advised by its tax planners to hold on its investment for a proposed manufacturing plant till the time country rolls out the GST regime. With an investment of around Rs. 100 Cr. the company would have saved Rs. 10 Cr. to Rs. 15 Cr. through the seamless input tax credits under the GST regime.

Similarly, many companies in corporate India are getting jittery on increasing working capital without complete visibility on tax rates and coverage of goods and services in the proposed GST regime.

The present CENVAT credit rules are more restrictive and ambiguous and even the eligible criteria for availing credit largely differs for manufacturers and service providers.

The industry expectation from the new tax regime is that the Government will bring the necessary changes such as allowing credit on all expenses related to business without any corresponding nexus with output services/goods and aligning the provisions for admissibility of credit on input/capital goods/services so as to bring parity in credit availment across goods and services.

Such initiatives in the new regime will reduce the current level of litigations and provide boost to Make-in-India campaign by the present Government and also neutralise the effect of any increase in tax/ duty rates.

(3) India has a unique system of taxation by having multiplicity of taxes on the same transactions, which does not prevail in any part of the world. For example, works contract, supply of foods in restaurant and software etc. are being subject to State VAT as deemed sale of goods under Article 366(29A) of the Constitution of India.

However, of late, on all such transactions, service tax has also been levied by the Central Government. In other words, such transactions are being subject to both State and Central taxation. The moot question is whether such transactions should be subject to dual taxation? If yes, what should be the value for VAT and Services tax? Based on the various court judgments, it is now clear that both levies are valid but the valuation still remains a matter of controversy.

Introduction of GST will help to avoid such multiplicity of taxes and the GST would be applicable on supply of goods or services or both.

(4) Based on the principles of federalism, the Constitution of India authorizes both Central Government and State Government to levy taxes under Union List 1 and Union List 2 respectively. The Central Government and State Governments levy the following taxes:-

Central Government Taxes	State Government Taxes
• Customs Duty	• Value Added Tax (VAT)
• Excise Duty	• Entry Tax
• Service Tax	• Octroi charged by Municipality
• Product Specific Cess like Automobile Cess	• Local Body Tax
• Research and Development Cess	• Entertainment Tax
• Swachh Bharat Cess	• Luxury Tax
• Central Sales Tax	• State cess & surcharge
	• Stamp Duty & Registration Fees

Note: States collect and retain the Central Sales Tax (CST). Local body taxes are not subsumed within SGST.

The credits of taxes paid to Central Government are not available to States and vice-versa which creates cascading effect (i.e. tax on tax). CST @ 2% on inter-state sales of goods adds to the cost of the purchasing dealer of buying State because of non-creditable input tax, which restricts the growth of economic development and inflates the cost of the goods. However, such non-creditable input can partially be avoided through branch/stock transfer. But such incentive gets substantially offset by the incremental cost of logistics and warehouse of goods in multiple locations. There are also a number of inter-state taxes such as entry tax and octroi etc., which impact the cost of goods.

Under the GST, all these taxes would be subsumed into one

tax, which would create a positive synergy in the market.

- (5) Curbing the black money is a big issue for the present Government. From day one, the present Government has been taking various initiatives to carve out the black money. The new legislation of Black Money Act will be a serious deterrent to generation of black money in future.

GST would help the Government to fight against corruption as it is extended to as many goods and services as possible which would be less intrusive and more self-policing. Self – policing is always a powerful tool in GST regime because of the seamless input tax credit; each dealer has to be registered with the tax department in the value added/tax chain. Besides, tax evasion will be detected because of the dual monitoring structure by State as well as Central Government.

- (6) No input tax credit for payment of State VAT and Excise duty on capital equipment is allowed for various sectors (such as telecommunications, transportation, infrastructure and construction sectors) other than manufacturing sectors. The current taxation system discourages investments in capital equipment sector because of absence of set off or input tax credit which leads to increasing in cost of capital goods and reduces investment, employment and output.

GST could provide seamless and efficient crediting of taxes paid on capital goods resulting in cheaper capital goods, increase in demand, raising investment and growth.

IMPORTANT FEATURES OF GST

- A comprehensive tax on goods and services
- Multi-point tax on value added at each stage
- Tax is only cost to the end customer
- Consumption based tax not origin based
- No cascading due to input credit mechanism
- Self-policing or voluntary compliances
- Reduction of tax evasion widens the taxation base
- Enormous scope for augmenting revenue
- Lower taxes lead to better compliance and higher revenues
- Good opportunity to jointly work for better enforcement
- Uniform tax rate across the entire common market
- Reduces distribution cost as there is not tax barrier among the States
- GST has the potential to spur growth and increase the GDP
- Makes exports more competitive

GST MODEL

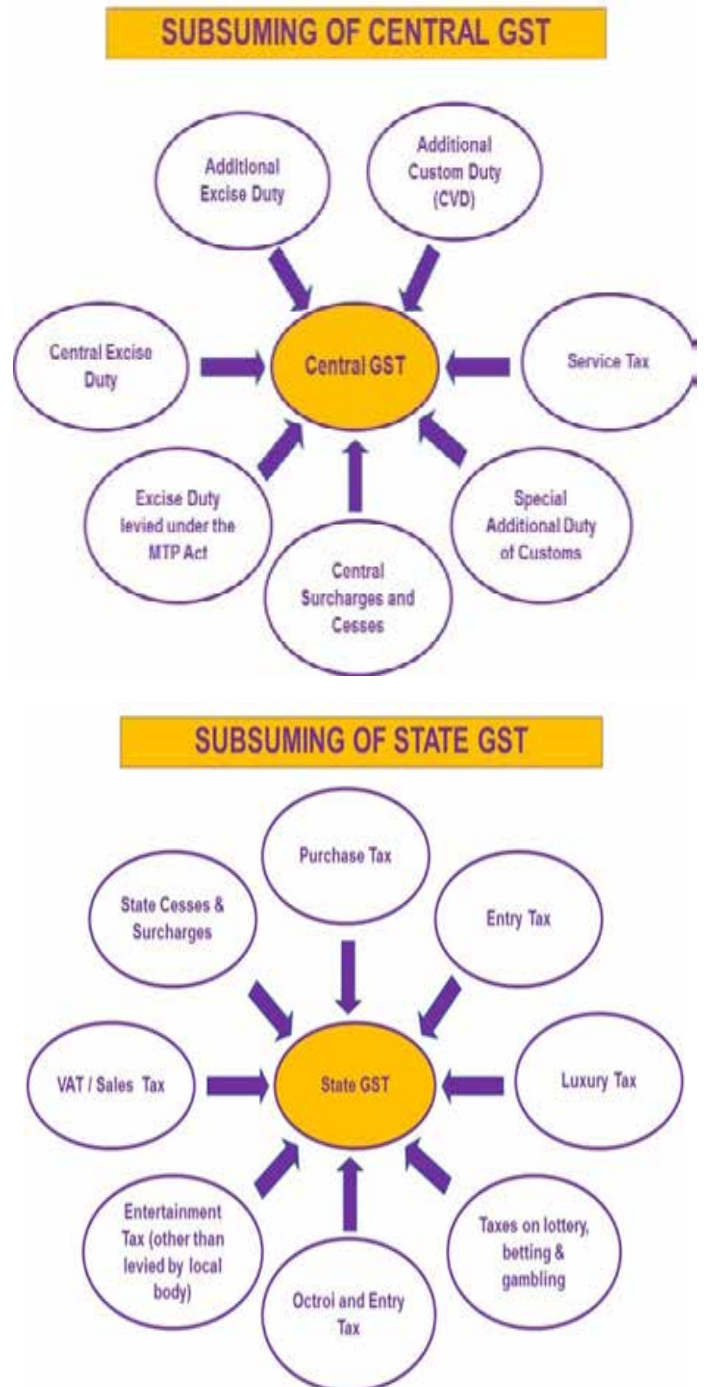
The initial proposal for a unified GST won't be a preferred model for federal country like India where the Central and States have their own fiscal autonomy under Union List I & II of the Indian Constitution. Keeping in mind the fiscal autonomy of the State, Union Government has adopted a dual GST model comprising of Central GST (CGST) and State GST (SGST). The Centre will administer CGST and 29 States will administer their respective SGST. The SGST & CGST would be paid to the account of State Govt. and Central Government respectively.

Moreover, to remove the present problem of cascading effect of

Central Sales Tax (CST) and keeping in mind the consumption based tax principle, it is recommended to introduce the 'Integrated Goods and Services Tax (IGST)' which will be the sum total of CGST and SGST. IGST would be administered by Centre and be implemented through single statute. The IGST (CGST+SGST) would have to be paid to the account of Central Govt.

SUBSUMING OF TAXES

The various taxes levied by State and Centre on supply of goods and services would be subsumed in the new tax regime as depicted in the exhibit below:



Keeping in mind the fiscal autonomy of the State, Union Government has adopted a dual GST model comprising of Central GST (CGST) and State GST (SGST). The Centre will administer CGST and 29 States will administer their respective SGST. The SGST & CGST would be paid to the account of State Govt. and Central Government respectively.

GOODS AND SERVICES OUTSIDE THE PURVIEW OF GST

The following goods and services are kept out of the ambit of GST.

- Petroleum products (petroleum crude oil, High speed diesel, motor Spirit, Natural Gas and Aviation turbine fuel etc.)
- Tax on alcoholic liquor for human consumption
- Tax on entertainment and amusement levied and collected by Panchayat /Municipality/District Council (Local body of State)
- Stamp duty
- Customs duty
- Taxes on consumption or sale of electricity.

Note: Petroleum products and natural gas are within the ambit of GST but will be kept in abeyance until GST council decides.

RATE OF GST

The proposed GST Council would be the supreme authority to examine the rates of taxes, exemption list and threshold limits. So far as the recommendations of various committees are concerned, the expected rate of GST would be around 18-20% in India. The 13th Finance Commission Task Force recommended a 12% combined rate of GST, whereas the sub-panel of Empowered Committee (EC) of the State recommended combined rate at 26.68% and the select committee of Rajya Sabha (RS) recommended combined rate not exceeding 20% as per the summary table below.

INDIA: GST RATE SUGGESTED BY VARIOUS PANEL



Note: RS means Rajya Sabha

The Chief Economic Advisor led committee has recently submitted the proposed rate of GST to the Finance Minister as set out in the table below. The Committee has addressed some of the concerns of the taxpayers' community by its recommendations like abandoning the band rate of SGST, scrapping 1% additional tax on inter-state supply of goods and lowering the number of exemptions etc.

DR. ARVIND SUBRAMANIAN COMMITTEE REPORT

Summary of Recommended Rate Options (in %)					
	RNR	Rate on precious metals	"Low" rate (goods)	"Standard" rate (goods and services)	"High/Demerit rate or Non-GST excise (goods)
Preferred	15	6	12	16.9	40
		4		17.3	
		2		17.7	
Alternative	15.5	6	12	18.0	40
		4		18.4	
		2		18.9	

Source: Committee's calculations

Note: All rates are the sum of rates at Centre and States

CONSTITUTION (122ND AMENDMENT) BILL



The key features of the Bill are:

- ☆ Concurrent jurisdiction for levy of GST by the Centre and the States – proposed Article 246A
- ☆ Authority for Centre to levy and collect of IGST on supplies in the course of inter-state trade or commerce including imports – proposed Article 269A
- ☆ Authority for Centre to levy non-vatable Additional Tax @1% – to be retained by originating State
- ☆ GST defined as any tax on supply of goods or services or both other than on alcohol for human consumption – proposed Article 366 (12A)
- ☆ Goods includes all materials, commodities & articles – Article 366(12)
- ☆ Services means anything other than goods- proposed Article 366 (26A)
- ☆ Goods and Services Tax Council (GSTC) – proposed Article 279A
- ☆ Compensation for loss of revenue to States for five years



IMPACT ON COMMON MAN

How the proposed tax would impact common people is given in the illustration below wherein the comparison between the present and proposed GST tax module is presented in Intra-State and Inter-State Sales:-

Intra -State Sales : Present Scenario

Manufacturer (UP)		Wholesaler (UP)		Retailer (UP)		CUSTOMER (UP)	
Product Cost	100	Buying Price	128	Buying Price	141	 	
Excise Duty @ 12.5%	13	Excise Duty @ 12.5%	-	Excise Duty @ 12.15%	-		
VAT @ 14% of Rs. 113/-	16	Input Credit VAT@ 14%	-16	Input Credit VAT @ 14%	-17		
Selling Price to Wholeseller	128	Cost of Sales	112	Cost of Sales	124		
		Add:Profit Margin @10%	11	Add : Profit Margin@10%	12		
Double taxation:		Total cost of Sales	123	Total cost of Sales	136		
VAT @ 14% of Rs.13/-	2	Add: VAT @ 14%	17	Add: VAT @ 14%	19		
		Selling Price to Retailer	141	Selling Price to Customer	155		
Tax collected by the Govt:	29	Tax collected by the Govt.	1	Tax collected by the Govt:	2		32

GST Scenario

Manufacturer (UP)		Wholesaler (UP)		Retailer (UP)		CUSTOMER (UP)
Product Cost	100	Buying Price	120	Buying Price	132	 
CGST @ 10%	10	Input Credit CGST @ 10%	-10	Input Credit CGST @ 10%	-11	
SGST @ 10%	10	Input Credit SGST @ 10%	-10	Input Credit SGST @ 10%	-11	
Selling Price to Wholeseller	120	Cost of Sales	100	Cost of Sales	110	
		Add : Profit Margin@10%	10	Add : Profit Margin@10%	11	
		Total cost of Sales	110	Total cost of Sales	121	
		Add : CGST @ 10%	11	Add : CGST @ 10%	12	
		Add : SGST @ 10%	11	Add : SGST @ 10%	12	
		Selling Price to Retailer	132	Selling Price to Customer	145	
Tax collected by the Govt:	20	Tax collected by the Govt.	2	Tax collected by the Govt:	2	

The GST rate is assumed @ 10% each for both CGST and SGST.

In both the above scenario a chain circle within the State consisting of manufacturer, wholesaler, retailer and end use-customer is presented. The wholesalers purchase goods from manufacturer after paying a tax of INR 28 (excise INR 12+ VAT INR 16) out of which the wholesaler takes input credit of INR 16 only and the remaining INR 12/- indirectly influences to increase the cost of the product. Similarly, the retailer also takes the benefit/credit of the tax paid by him while buying product from the wholesaler and selling the same to the end-use customer within the same State after charging the local sales tax i.e. Value Added Tax (VAT).

On the other hand, in case of GST scenario at every stage the registered buyers are enjoying the seamless input tax credit and paying the differential tax to the government at the time of sales in cash. The taxes are borne by the end –use customer and it is a cost for them.


The highlights of the above comparison are given as under:-

- Under the present tax regime, VAT (not all taxes) levied by the State and the excise levied by Central are eligible for input tax credit for the purchasing dealer respectively within their own legislative framework. But the cross utilisation of state taxes with central taxes and vice-versa are not allowed because of the federal structure of the country where both are equally empowered to levy taxes to maintain their fiscal autonomy. In the above example, wholesaler is getting the state input tax credit except for the excise duty charged by the Manufacturer


and thereby causing a double taxation (INR 2) effect, which increases the price of the product.

- Under the new tax regime the end use customer will get benefit as he has to spend only INR 145/- as against the INR 155/- under the present current tax system due to seamless input tax credit facility in GST regime.
- The government will collect less tax on goods under the new tax regime because of:
 - the seamless tax credit either it is State levy or Central levy,
 - lesser rate tax i.e. proposed rate of 20% (SGST @ 10%+ CGST @ 10%) as against presently 26.50% (excise @ 12.5%+ VAT @ 14%)
 - no impact of cascading effect.
- Since the total GST rate has been assumed @ 20% (comprising 10% each for CGST and SGST), the cost of services would be up primarily because of increasing of rate of tax from 14.5% (15% from June 1, 2016) to 20% in the proposed tax regime. In other words, service sector will have to bear the additional tax in the new tax regime.

**Inter-State Sale
Present Scenario**

Manufacturer (UP)		Wholesaler (Maharashtra)		Retailer (Karnataka)		CUSTOMER (Karnataka)
Product Cost	100	Buying Price	115	Buying Price	129	 INR 159
Excise Duty @ 12.5%	13	Input Credit Excise @ 12.5%	-	Input Credit CST @ 2%	-	
CST @ 2%	2	Input Credit CST @ 2%	-	Cost of Sales	129	
Selling Price to Wholesaler	115	Cost of Sales	115	Add: Profit Margin @ 10%	13	
		Add : Profit Margin @ 10%	11	Total cost of Sales	142	
		Total cost of Sales	126	Add VAT @ 12.5%	18	
		Add: CST @ 2%	3	Selling Price to Customer	159	
		Selling Price to Retailer	129			
Tax collected by the Govt:	15	Tax collected by the Govt:	3	Tax collected by the Govt:	18	36

GST Scenario

Manufacturer (UP)		Wholesaler (Maharashtra)		Retailer (Karnataka)		CUSTOMER (Karnataka)
Product Cost	100	Buying Price	120	Buying Price	132	 INR 145
IGST :		Input Credit IGST :		Input Credit IGST :		
CGST @ 10%	10	CGST @ 10%	-10	CGST @ 10%	-11	
SGST @ 10%	10	SGST @ 10%	-10	SGST @ 10%	-11	
Selling Price to Wholesaler	120	Cost of Sales	100	Cost of Sales	110	
		Add : Profit Margin	10	Add : Profit Margin	11	
		Total Cost of Sales	110	Total cost of Sales	121	
		IGST :		Add : CGST @ 10%	12	
		Add : CGST @ 10%	11	Add : SGST @ 10%	12	
		Add : SGST @ 10%	11	Selling Price to Customer	145	
Tax collected by Govt	20	Tax collected by the Govt.	2	Tax collected by the Govt:	2	24

The IGST rate is assumed @ 20 % (10% for CGST and 10% for SGST).

In both the above scenario a chain circle across different states consisting of manufacturer in UP, wholesaler in Maharashtra; retailer and end use customer in Karnataka is presented. The wholesaler in Maharashtra purchases goods from UP after paying a tax of INR 15 (excise duty INR 13 + CST INR 2) which indirectly increases the cost of the product as he can't take the benefit/credit of tax paid at the time of purchase. Similarly, the retailer also can't take the benefit/credit of the tax paid by him while buying product from the wholesaler, thereby further increasing the cost of the product and selling the product to the end-use customer within the same State after charging the local sales tax.

On the other hand, in case of GST scenario at every stage, the buyers are getting benefit/credit of input tax credit and paying the differential tax to the government at the time of sale in cash.

The highlights of the above comparison are given as under:-

- Under the current tax regime, in case of inter-State sales or purchase the buyer and seller are residing in different States. The buyer can't take the input tax credit as the buyer State sales tax department are not getting credit. The wholesaler in Maharashtra is paying INR 15 as tax and can't claim tax credit. The Department of selling state is the beneficiary of the CST because of the origin base principle of tax.
- The end-use customer has to spend INR 159/- because of double taxation effect and the buyer is unable to take the input tax credit.
- Under the new tax regime the end-use customer will get benefit as he has to spend only INR 145/- as against the INR 159/- under the present current tax system due to seamless input tax credit facility even in case of inter-state sale or purchase of goods .
- The government will collect less tax under the new tax regime because of:
 - (1) The seamless input tax credit facility
 - (2) No impact of cascading effect

- Since the total GST rate has been assumed at 20% (comprising 10% each for CGST and SGST), the cost of services would be up primarily because of increase in rate of tax from 14.5% (15% from June 1, 2016) to 20% in the proposed tax regime. In other words, service sector will have to bear the additional tax in the new tax regime.

IMPACT ON INDIAN ECONOMY

Internationally preferred	Unified GST is preferred internationally and will lead to ease of doing business. India will adopt the model of dual GST because of the federal structure of the country.
GDP growth	Expected increase in Gross Domestic Product (GDP) by 1-2% after the implementation of GST.
Goods cheaper, services expensive	<ul style="list-style-type: none"> • Many products would become cheaper, except goods on which lower rate of excise duty is charged (e.g. mob phones, pharma products) • Services like eating out, travelling etc. would become more expensive
Inflation	If GST rate is higher, effect on inflation is anticipated. We have seen similar experience in Malaysia where the GST was recently introduced in April 1, 2015.
Increased tax base	Due to wide coverage on all goods and services and increase in number of tax payers.
Fiscal deficit	GST is expected to reduce fiscal deficit
Black money	GST would help the Government to fight against black money and would create a mutual trust between Centre and States.

ISSUES AND CONCERNS

- Additional tax @ 1% on inter-state supply should be abolished as the Central Government has already committed full compensation to the States for 5 years.
- The proposed rate of tax under GST regime
- The negative list & exemption of goods or services or both
- Concern about the administrative control of Centre and States on the same transaction without difficulty to the assesses
- GST defined as any tax on supply of goods or services or both. The term 'supply' has not been defined in the Constitution

Amendment Bill

- (f) Keeping electricity out of ambit of the proposed GST would inflate the cost of power to consumers by 6-18%.


CONCLUSION

GST seems to be the only panacea keeping in mind the current scenario and existing rules, regulations and laws. The most important part is that nobody is against the proposed new regime. Most of the States (including the State administered by Congress) and Central Government are in favour of implementation of this important legislation. Keeping alcohol, petroleum, electricity and real estate out of the ambit of GST regime would adversely impact the relevant sectors of the economy, which hurts not only the make-in-India initiatives but also negates the GDP growth. From the experience of Singapore in 1994 and Malaysia in 2015, a spike in inflation was seen when they introduced the GST. Indian tax administrators should keep tabs on how prices move after imposition of the tax. Centre has agreed to 100% compensate for 5 consecutive years to States for any revenue losses. The additional

1% tax on interstate supply of goods should be abolished.

National and International community are eagerly looking on the coming monsoon session of Rajya Sabha (Upper House of Parliament) in July 2016, when it will have 53 newly elected members, 1/5 of its total strength, in place of exiting retiring members. Besides, the outcome of the current assembly election results in four States and one Union Territory has brought a new hope on passage of the GST legislation in the Rajya Sabha during the coming monsoon session of Parliament.

REFERENCES:

- (1) International Indirect Tax & GST conference – PHD Chamber of Commerce
- (2) Report on the Revenue Neutral Rate and Structure of Rates for the Goods and Services Tax (GST): December 4, 2015
- (3) Article on the Financial Express: Braking the GST impasse- Shalini Mathur, Director, EY 

EXTENSION OF LAST DATE OF PAYMENT OF THE ANNUAL SUBSCRIPTION FOR LICENTIATE FOR 2016-17

The payment of Licentiate Subscription for the year 2016-17 became due for payment w.e.f. 1st April, 2016. The last date for payment of the same was 30th June, 2016 which has now been extended upto 31st August, 2016. The annual Licentiate subscription payable is Rs.1,000/- per year.

Online payment of licentiate subscription is not available at present. The Licentiates who want to renew their enrollment as Licentiate, are requested to remit at the Institute's Headquarters or Regional/ Chapter offices a sum of Rs.1000/- (Rupees One thousand only) through cheque at par or Demand Draft payable at New Delhi drawn in favour of "The Institute of Company Secretaries of India" indicating their Name and Licentiate number on the reverse of the Cheque/ Demand Draft and the details of remittance may please be intimated at email id neeru.pandey@icsi.edu. The payment may please be made so as to reach the Institute on or before 31st August, 2016.

In case the Licentiate subscription for 2016-17 has already been remitted, please send the particulars of the remittance at email id neeru.pandey@icsi.edu to link up the same and update the records.

For queries, if any, please write to Ms. Neeru Pandey, at email id neeru.pandey@icsi.edu or contact at telephone No. 011-45341065.

17th National Conference of Practising Company Secretaries

Theme

PCS @ Startup - Accelerate - Outpace

Days & Dates

Friday & Saturday - August 12-13, 2016

Venue

**Welcome Heritage Glenview Resort
Kasauli, Himachal Pradesh**

Coverage

- **Goods and Services Tax**
- **Financial Risk Management**
- **Insolvency and Bankruptcy Laws**
- **Real Estate Act**
- **NCLT, Companies (Amendment) Bill, 2016, Competition Law etc.**
- **Ease of Doing Business in India - Facilitations and Obstructions**

Emerging Issues in Business Taxation



Prof. Dr. Badar Alam Iqbal*

Department of Commerce
Aligarh Muslim University
Aligarh (UP)

ba.iqbal.cm@amu.ac.in

INTRODUCTION

The concepts of corporate taxation refers to tax corporate where economic gains take place and where value is added by the corporate sector. The corporate taxes are of paramount significance for every country of the world irrespective of developed and developing. This is because the major source to every country's government for financing their respective development in general and infrastructure in particular is tax revenue. Therefore, taxation is the strategic component for promotion of the growth and development.

There has been an increasing trend in tax avoidance worldwide. As a result there has also been decline in the revenue generation. Accordingly, the need of the hour is to rationalize the global tax structure especially the direct tax structure. Recently, the most significant economic

1990-91	2.5
2000-01	3.3
2007-08	3.6
2008-09	3.3
2009-10	2.7
2011-12	2.9
2012-13	2.9
2013-14	2.8

Source: OECD; Paris.

There has been a declining trend in the corporate tax rates world over during the period 2009-10 and 2014-15 {Table 2}. The highest corporate tax rate is in North America as high as 33.25 per cent and the lowest corporate tax rate is in Asia i.e. on average 21.9 per cent in 2014-15. The US has highest tax rate. The fall in tax rates is the largest in case of Asia and the lowest fall is in respect of OECD countries.

The present paper is an attempt to provide knowledge about the prevalent business tax rates across the world and how India is lagging behind in terms of business tax rates. The paper further describes if GST is implemented what would be the tax rates for business across the country and how far the same is rationalised in global context.

decision which has been taken in the G-20 summit (Antalya) was to recommend a package of steps to curb increasing trend of tax avoidance by business community. The average revenue from corporate incomes and gains declined from 3.6 per cent to 2.8 per cent of the GDP between the years 2007 and 2014. Corporate income tax as percentage to GDP started increasing from 2.1 per cent in 1965-66 till 3.6 per cent in 2007-08. Thereafter, the percentage went down to 2.8 per cent in 2013-14 {Table 1}.

Table 1
OECD NATIONS AVERAGE TAXES
(CORPORATE INCOME) AS % TO GDP 1965-66 to 2013-14

Year	Corporate Income TAX
1965-66	2.1
1980-81	2.3

In terms of individual country, the highest corporate tax rate is in case of UAE as much as 55 per cent and the lowest is in case of India i.e. 34.6 per cent during the fiscal year 2014-15 {Table 3}. The most significant observation is that only three known countries namely the US, UAE and India are figuring among the countries having highest corporate tax rates.

Table 2
Regional pattern of Corporate Tax Rates between 2009-10 and 2014-15

Region	Tax rate in 2009-10	2014-15
Asia average	25.73	21.91
OECD Nations	25.64	24.77
Europe	21.64	20.24
North America	36.50	33.25
Latin America	27.96	26.61

Source: Trading Economics; KPMG.

Adjunct Professor, School of Economics and Finance
Monarch University Zug (SWITZERLAND)

Table 3
Countries Having Highest Corporate Tax Rates in 2014-15

Name of the Country	Tax rates in %
UAE	55.0
Chad	40.0
US	39.1
Puerto Rico	39.0
Suriname	36.0
Argentina	35.0
Congo	35.0
Equ. Guinea	35.0
Gabon	35.0
Guinea	35.0
Malta	35.0
Sudan	35.0
Zambia	35.0
Guam	35.0
India	34.6

Source: Trading Economics; KPMG.

G-20 AND TAXATION ISSUES

The most vital economic decision which was taken at the recent G-20 summit at Antalya was unanimous endorsement of a package of steps to reform the world tax regime in order to curb increasing trend of tax avoidance. Taxation base erodes when MNCs exploit the differences in respect of procedures and rules between different nations to reduce their tax outgo, resulting into loss of revenue of the governments. Any change in the existing procedures and rules could be prospective. The tax collectors of nations would require intensive training to cope with the new procedures and rules, and should ensure that there are no arbitrations. All the nations must follow and adhere on the plans and policies without leaving loopholes that MNCs could exploit. Hence, this will need cooperation, as taxation is a sovereign right. This may go a long way in helping countries governments to meet their expenditure and may accelerate economic growth and development.

What the G-20 resolution wants to communicate is widespread and consistent, continued and diverse implementation would be critical both in nature and contents, in the effective and efficient of the mechanism in respect of the exchange of data and information on cross-border taxation rulings. Hence, there is an immediate need for timely implementation of the procedures and rules and should encourage all the developing economies to adhere on them.

GLOBAL SCENARIO OF GST

A synoptic look at the Goods and Services Tax (GST) rate across globe can be seen from table 4.

Table 4
World GST Scenario in 2015

Name of the Country	Year of Introduction of GST	Goods and Services Tax Rates
Canada	June 1905	5 %
France	April 1954	Standard rate: 20 % reduced rate: 5.5 % and 10 %, super reduced rate 2.1 %
UK	January 1973	Standard rate: 20 % reduced rate 5 %
Japan	April 1989	Standard rate 8 %
Australia	July 2000	10 %

Malaysia	April 2015	6 %
India	April 2016 (Proposed)	Suggested revenue neutral rate of 27 %

Source: Compiled by Deloitte.

It is clearly evident from Table 4 that Canada had introduced GST as back as June 1905; the oldest country in introducing GST in the world. Gradually, the France, United Kingdom, Japan had realised the significance of the GST and accordingly they had introduced GST in different years of 20th Century. Australia and Malaysia have introduced GST in the beginning of 21st Century. India is the latest example of introducing GST.

INDIA AND GST

Indian government is trying hard to introduce Goods and Services Tax (GST). In this direction, Indian government is taking very primitive measures to attain its target of rolling out GST, which could prove to be the biggest and most significant tax reform since the initiation of liberalization regime. The Empowered Committee of State Finance Ministers on GST has been negotiating across the nation to resolve strategic issues and concerns that country's State Government have raised in respect of introduction of Consumption Tax (CT).

The most vital, strategic and burning issue which needs to be resolved for the different stakeholders is the GST rate. Earlier, a sub-group of the EC had opined that a revenue neutral rate of 27 per cent, the tax rate at which the State Governments would not suffer any loss of existing revenue. If Indian government agrees to the rate of 27 per cent, India would be among the highest GST taxed jurisdiction in the global map.

SILVER LINING

It is believed that the rolling out of GST could benefit firms by not simplifying the indirect taxation structure, but may also help them to cut down logistics cost by a margin of 20 per cent. Accordingly, logistics costs of major sectors of the economy could go down by 1.5 to 2 per cent over a three or four years' time since the date and the year of implementation of GST, that could be nearly 20 per cent lower than the current expenditure on logistics (Table 5).

Table 5
Sector- wise Savings in Logistics Cost on GST Implementation from April 1, 2016

Parameters as a % of Sales	FMCG	Consumer Durables	Pharma	Automobiles (MHCVs)
Current logistic costs	8-9 %	7-8 %	5.5-6 %	5-6 %
Direct logistics cost reduction post GST	0.8 -1.2 %	1.5-1.9 %	0.5-0.9 %	0.1-0.5 %
Additional savings in logistics costs with check post dismantling	0.6-0.7 %	0.5-0.6 %	0.4-0.6 %	0.5-0.7 %
Total potential savings in logistics costs	1.4-1.8 %	2.1-2.5 %	1.0-1.4 %	0.7-1.1 %

Source: Indian Express; New Delhi; June 10, 2015.

OTHER BENEFITS

The other benefits are as under:

- Elimination of cascading effect of taxes as comprehensive and cohesive input tax credit becomes available;
- Pushing out of the 2 per cent CST for companies who move goods across

- the states in the country;
- Optimization of warehouses as well as consolidation of inventories for companies that have set up multiple warehouses across the states to avoid CST;
 - Whereas most states have replaced the octrio gates with a local body tax, it has still not declined the waiting time for vehicles; And
 - While the GST would subsume such tax, a dismantling of check posts would discard need for buffer inventories.

The political clouds over the implementation of GST have not been wiped out, but Indian government has come out with a case more compelling for the opposition and industry. A designated committee has opined standard GST rate at an attractive and somewhat globally competitive range of 17-18 per cent {Table 6}.

Table 6

Acquiring Competitiveness in GST/VAT* in %

Region/Country	GST/VAT Rates in %
EU#	19-25
UK	20
China	17
Australia	10
Canada	5
Singapore	7
Indonesia	10
India^	17-18

Source: the Financial Express; New Delhi; December 5, 2015.

* All are the standard rates applicable to most items.

VAT rates vary between 28 EU countries; among major countries; Germany levies VAT at 19 %; France at 20 %; among the non-VAT countries, the US levies sales taxes at 0-7 %.

^Standard rate proposed by Arvind Subramanian Panel

The most significant inference drawn from Table 6 is that proposed GST rate suggested by the Subramanian panel is almost at par with China which is the most comparable country with India. The EU and UK are having higher GST rate than China and India. The lowest GST rate is in case of Canada.

SUBRAMANIAN COMMITTEE

The committee headed by Subramanian, has come out with major mandate to elaborate the revenue-neutral rate (RNR) for GST and keep it at 15-15.5 per cent along with a sound and strong bias against keeping exemptions and preferences for the lower end of that, after approaching the target in three different manners {Table 7}. The RNR would retain the revenue levels for the central and State Governments, therefore, retain the revenue levels for the central and State Governments, and again therefore, not fan inflation, would manifest itself in components of rates. Apart from the standard rate, there could be a lower rate of 12 per cent for essential products and a demerit rate of prohibitive 40 per cent on tobacco goods, aerated beverages, luxury cars and the like. The rates, of course, will consist of both the centre and state segments with a slightly larger share for the states. In the case of the standard rate for example, a 17 per cent rate would include the state's 9 per cent. Precious metals which presently have concessional rates of nearly 1 per cent, the committee suggested, could be subjected to higher levies (up to 6 %) to avoid the standard GST rate inching up to 20 per cent, an eventuality that could distort the economy and lead to inflationary pressure.

Table 7

GST Rate Options Suggested by Subramanian Committee in 2015 in %

PREFERRED

Item	% Rate
RNR*	15
Rate on Precious Metals	6 4 2
Low rate (Goods)	12
Standard rate (Goods & Services)	16.9 17.3 17.7
High/demerit rate or non-GST excise goods	40

ALTERNATIVE

Item	% Rate
RNR	15.5
Rate of Precious metals	6 4 2
Low rate of goods	12
Standard rate (Goods and Services)	18.0 18.4 18.9

· Revenue Neutral rate-All rates the sum of rates for the Centre and States

Source: The Financial Express; New Delhi; December 5, 2015

According to taxation experts, the proposed GST rates are still on the higher side, when compared to developed nations on the one hand and on the other hand some emerging market economies. The Pan-India GST mechanism which would militate against cascading of taxation may have a 'self-policing' trait and may further give a 'historic opportunity to Make in India by Making One India'.

A COMPARISON

It would be in fitness of things if we compare the current tax structure with suggested GST tax structure by different panels and then the picture would be more clear {Table 8}.

Table 8

The Current Rate Tax Structure

In States	In Centre
VAT 4.5 % 12.5 %	Median Excise Duty 12 % Service Tax 14 % June 2015

GST Rate or RNR Suggested by various Panels

Lower rate for Goods	Standard Rate for Goods	Services
Centre 6 % States 6 % Combined 12 %	Centre 10 % GST 10 % Combined 20 %	Centre 8 % States 8 % Combined 16%

13th Finance Commission Task Force

Centre	5 %
States	7 %
Combined	12 %

Empowered Committee Sub-Panel on November 11, 2014

Centre	12.77 %
--------	---------

States	13.91 %
Combined	26.88 %

Source: Business Standard; New Delhi; May 13, 2015

Presently, the Centre excise duty rate is 12 per cent on most of the products. Value-added-tax (VAT) is 12 per cent in most of the states. These two tax rates combine at 24.5 per cent. Added to this, there are other purchasing taxes in some states of the country and a Central Sales Tax of 2 per cent on inter-states movement of goods. Keeping in mind these, a goods tax rate at 27 per cent looks too high, since VAT also provides input credit and also does excise duty in most of the cases. Services tax would be around 14 per cent from June 2015 and making it 27 per cent will again be on too high side.

According to International Cooperative's Corporate and Indirect Tax Rate Survey of 2014 which was carried out on 132 countries of the world, the highest GST rate is 27 per cent in Hungary and the lowest rate of 1.5 per cent is in case of Aruba. There are 10 countries of the world wherein the range of GST is between 27 per cent and 18 per cent.

The most pertinent issue to be pointed out here is to ensure that states should not have revenue loss in the post GST scenario as most of the country's states are passing through a critical and acute fiscal stress, revenue loss. To keep pace with it, the Government has made out constitutional amendment Bill under which the Central Government would fully compensate states for revenue loss arising out of implementation of GST for first three years, then taper of 75 per cent in the fourth year and 50 per cent in the fifth year.

ANOTHER VIEW POINT

Presently, the prime focus of the Indian Government is to attract more and more foreign investment for financing the increasing need of growth and development on the one hand and on the other hand to meet out the gap of current account deficit (CAD). This prime aim could be attained only when the foreign investors are induced towards the beneficial rate of return i.e. ROI for their investments. For this, GST rate on goods and services is sinquanon. Therefore, Indian Government compelled to take into account the GST rates applicable in the world market while settling the RNR. Presently, the GST/VAT rate world over is in the range of 6 per cent to 25 per cent.

Keeping in mind the consideration of world parameters is of paramount significance. The country requires looking at its economic needs also while fixing of the RNR. The very purpose of collecting taxes is for making expenditure on hospitals, roads, infrastructure, and defence and so on. Therefore, to keep and sustain the higher level of economic and social development of the country, it is the need of the country's government to fix the RNR which must match up the government's revenue identical to the present tax rate structure (Table 9). This means the cumulative duty applied on goods is around 26.56 per cent in the present scenario and 12.36 per cent on services. Under GST regime the services shall also be subject to full rate of GST. Added to these, various exemptions available presently will be wiped out. Hence, tax base shall increase in totality which is the need of the hour. What is needed now is to fix RNR between the ranges of 20 per cent to 24 per cent. It is opined that the economic need of the country's government could meet and the same is also beneficial for the industry.

Table 9
Proposed Revenue Neutral Rate (RNR)

CGST	12.77 per cent
SGST	13.91 per cent
Total	26.68 per cent

Existing Tax Structure on Goods

Value of goods (assumed)	RS.100
Excise duty (12.5 %)- (A)	12.5 per cent
Total	112.5
VAT (12.5 %)-(B)	14.06
Total Tax (A+B)	26.56

Source: The Financial Express; New Delhi; May 15, 2015.

G-20 AND INDIA'S TAX REGIME

In taking part in the BEPS project, Indian government got success in regard to profit shifting by MNCs. Thereafter, the Government strengthened its case of lifting corporate veils in deals which trade in Indian assets overseas and collect tax due on the value created in the economy. A multilateral pact obviates the need for India to rework bilateral treaties with tax havens so that tax avoidance could be minimised.

Under G-20 obligation, India has signed the Automatic Information Exchange Pact (AIEP) which will enforce from 2017 or end of 2018. India's efforts are welcome by Tax Justice Network (TJN). According to TJN survey, India fully shares taxpayer related data and information with other economies of the world. It is pertinent to point out here that India has ratified the five most critical and relevant international treaties in regard to needed financial transparency.

India wants greater ambition in respect to the G-20s fight against tax evaders. According to TJN's Financial Secrecy Index, nations on their respective levels of transparency and information sharing, India's rank is 45th and the silver lining is that India is better than Switzerland, Hong Kong and the US as these economies are highly secretive in nature and contents. The 45th place shows that India is more serious and concerned about its fight against tax havens. What is required is that country's tax administration must be effective, efficient, innovative and transparent.

The leaders of G-20 are of the view that countries tax policies and procedures must keep pace with world business or international business and create enterprises having lower level of disputes. It is being said by the global tax consultant that India has come out with new global tax rules and procedures, then why the country is not coming out with a programme of reforming domestic tax laws and procedures.

CONCLUSION

From above analysis it is clearly evident that there has been an increasing trend of tax avoidance on the one hand and on the other tax rates are on the decline. These trends are creating major problem of revenue loss. Hence, the need of the day is to rationalise tax structure further and reforms must be done on domestic horizon. The GST must be made simple and good to cater the needs for which it is being carried out. The reforms should be carried on the lines suggested by G-20 countries.

REFERENCES

- Iqbal, BA (2016); Emerging Issues in GST; Management Accountant; Kolkata; April 2016.
 Khattar, G; (2015); RNR Should be in the Range of 20-24 %; the Financial Express; New Delhi; May 12.
 Ramakrishnan, H; (2015); Big Tax Break for India; the Economic Times; New Delhi; November 19.
 Rao; M.G; (2015); Use GST Bill Breather to set it Right; the Financial Express; New Delhi; May 19.
 Srinivasan; S; (2015); Be Pragmatic and Forget GST Now; the Business Line; December 11.
 Upadhyay & Dhasmana; (2015); which is the best GST Rate? The Business Standard; New Delhi; May 13.

CS

GST Goals and CS Roles



P K Singh, FCS

Company Secretary in Practice
Hyderabad

cacspksingh@gmail.com

GST GOALS

INTRODUCTION

The Goods and Services Tax (GST), is expected to provide the benefits of simplification of tax regime, broadening of tax base, elimination of tax cascades, enhancing export competitiveness, ensuring greater regional equity and improvement of transparency. GST, which subsumes most of the Indirect Taxes to create one rate and integrate the Country into a single market, is the biggest tax reform that is being undertaken since independence of India. GST is proposed to be a comprehensive indirect tax levy on manufacture, sale and consumption of goods as well as services at the national level and it is harmonized consumption tax system in India. The tax system under

will accelerate the growth of Country.

ADVANTAGES ON IMPLEMENTATION OF GST

Without any doubt, GST is one of the biggest Indirect Taxes reform initiatives taken by Government and it will lead to economic integration of India. We believe that following might be the Government's visions to think about the reform on Indirect Taxes:

1. **ECONOMIC INTEGRATION AND GDP GROWTH:** It is expected that the introduction of GST will increase the tax base but lowers down the effective tax rates and will also remove the multiple point taxation.

GST is one the biggest Indirect Tax Reforms, expected to simplify tax regime which will be advantageous for all and will support ease of doing business in India. This in turn will create job opportunities. GST will increase not only the scope of practice of Company Secretaries but also create job opportunities for Company Secretaries in employment. The Role of Company Secretaries under GST regime is enormous and will further increase with recognition under Section 42 and 50 of Model GST Law. An increased role derives with it more responsibilities, so Company Secretaries should get ready to substantiate Government's faith on the profession of Company Secretaries.

GST will be world class and definitely the tax collections will improve, gives Government to do more works for the development of the Country.

GST will lead to the abolition of various Central and State indirect taxes and eliminate the cascading effects of multiple layers of indirect taxation in India to boost export and growth in revenue collection

This will lead to higher amount of revenue to both the States and Union. Uniform GST across the Country will make India a common market and it will expand trade and commerce, increase export and will accelerate economic growth. GST is expected to bring economic integration in the Country and will boost GDP growth, bringing down the fiscal deficit.

2. **CASCADING EFFECT OF INDIRECT TAXES:** Amalgamating several Central and State Governments Taxes into a single tax would mitigate cascading or double taxation. GST will remove cascading effect of taxes embedded seamless from cost of goods and services and will provide seamless credit throughout value chain. This will significantly reduce cost of indigenous goods.
3. **PROMOTE 'MAKE IN INDIA' CONCEPT:** 'Make in India' has many obstacles in its pathway, the key indirect tax reform that would go a long way in promoting the 'Make in India' concept. One such obstacle is 'cascades' of tax on tax. Because of the GST tax structure, most of the obstacles of indirect taxes will resolve and worldwide corporates will infuse more money in 'Make in India' concept and India will gain in business to China and Asian Counterparts. 'Make in India' is an important initiative to promote manufacturing and generate employment subject to successful implementation of fiscal setup both at Centre and States and GST is one such important fiscal setup. Therefore, GST will promote "Make in India" concept of Central Government.
4. **REDUCE COST OF TAX COMPLIANCE:** Integration of existing multiple taxes into single simplified GST tax will significantly reduce cost of tax compliance because only limited records, returns will be required and reporting to only one department of GST will simply reduce various types of cost of the assesseees.
5. **FACILITATE 'EASE OF DOING BUSINESS':** Ease of doing business is the major focus area of the Government which is also the main ingredient of ambitious Make in India concept. With the improvement in ease of doing business, people will come and make in India. India's ranking on the Doing Business Index of the World Bank has improved significantly from 140th in 2014 to 130th in 2016. The transaction and compliance cost of doing business will come down under GST and simplification of Indirect Tax as GST will facilitate 'Ease of Doing Business' in India.
6. **MORE MONEY TO BACKWARD STATES:** In the present Indirect Taxation regime, manufacturing States tax collections are higher than consuming States and so manufacturing states have more money for the development of state because of sharing of tax revenue. GST will ensure that tax collections in other States also rise because GST is consumption based tax. Being consumption based tax, tax collection will go to the states in which the goods will be consumed and not where it is manufactured. Therefore, GST will be another advantage to the backward states because more taxes will accrue to States where the population is higher.
7. **INCREASE INVESTMENT IN INDIA LEADS TO CREATE JOB OPPORTUNITIES:** Stable and transparent tax regime will encourage local and foreign investment in India creating significant job opportunities. The International Monetary Fund, Managing Director, Ms. Christine Lagarde rightly said "GST move will help create jobs, increase revenue to finance health, education etc. and promote domestic manufacturing."
8. **REDUCE CORRUPTION AND TAX EVASION:** Corruption is one of the major problems that India is overwhelmed with. We cannot expect anything substantial unless there exists a political will to root it out. GST will be a step towards corruption free Services. All Traders will insist on taking bills for all their purchases, Electronic processing of tax returns, refunds and payment of GSTNET without human intervention will reduce corruption and tax evasion.
9. **LEADING TO SUPPLY CHAIN EFFICIENCY:** Abolition of tax barriers like CST and Entry tax will allow free flow of goods across the Country without additional tax cost leading to supply chain efficiency and economy of scale in manufacturing. Logistics Industry can trim significant costs and harassment of logistics staffs massively reduce at check points because long and winding queues at border check-points and other entry points negatively impacts on Logistics Industry and their staffs and time bound perishable products wastage will also reduce at its minimum level.
10. **REDUCE PRICE OF GOODS:** With wider tax base under GST the tax rate is expected to be kept at moderate level hence price of goods will come down in the medium term and apart from the various reasons of reduction of price of the product, one of the major reasons of reduction of price of the product is reduction in logistics cost which means overall reduction on the price of products which is finally consumes by the consumers.
11. **REDUCE SCOPE OF BLACK MONEY GENERATION:** Use of digital tax administration process and wide tax base under GST covering all goods and services will reduce scope for black money generation with consequent increase in capital formation and productive use of national resources.
12. **EXPAND TAX NET:** Presently a lot of sectors do not come under the purview of indirect taxes and particularly the unorganized sector is not currently incentivized to register under tax net. In GST regime, all inputs will largely have an in-build GST component. To claim tax credit, they will need a tax invoice from input providers. Hence, smaller unorganized players, operating for large industries in the whole value chain of product manufacturing and their final sale will be compelled to get themselves registered under the GST regime. GST will be dual monitoring structure of Centre and State so probability of detecting evasion will increase.

CS ROLES FOR GST

INTRODUCTION

General faith of Central Government, State Governments and large Public are increasing day by day on Company Secretaries because of the ICSI Code of Conduct on Members, knowledge, hard work, eager to do something for the Country and No compromise attitude of Company Secretaries with corrupt practices. The young breed of Company Secretaries are excited and working hard to decode the GST because they truly believe that they are having potential competence to take over GST because of syllabus of Indirect taxes of ICSI, rigorous training including on indirect taxes/GST and above all, desire to participate in Country's growth and to play an active role for smooth implementation of GST and acceleration of tax collections under GST.

WHY COMPANY SECRETARIES ARE SO EXCITED ABOUT GST?

This is a general phenomenon; everybody is saying that I am the

best. We discussed various professionals in the field of Accounts, Auditing, Taxation, Finance and Laws. All said the same thing that we are competent to deal with GST in much better than anyone. We don't have doubt on their professional competency and knowledge but while meeting with Company Secretaries and particularly Young Company Secretaries, We were astonished to see the zeal on their faces while talking about the GST. They are eager to discuss on this subject and some are really disappointed that CS's are not treated at par under Section 42 (Tax Audit provisions under GST) and 50 (Special Audit) of Model GST Law. But despite that they are ready to take a challenge and wanted to be a GST Consultant and prove their mettle with hope that Government will recognize them at par with other equivalent professionals because they are equally competent as far as GST is concerned.

Pleased with the positive attitudes of Company Secretaries a simple question was asked to them: "Why Company Secretaries are competent to be a GST professional?" The responses received may be summarized as under:

- Expert understanding of Laws and Good interpretation skills
- They love to read and understand law subject in much better manner
- Good soft and English communication skills- Oral and written
- Strictly follow the code of conducts and ethics of ICSI
- Eager to prove their abilities on taxation
- To play an active role for nation building
- tough evaluation of Indirect Taxes subject in examinations
- Able to encourage corporate to adopt GST in honest manner to get its benefit.

ROLE OF CS UNDER GST LAW

The Role of Company Secretaries under GST is enormous and it will increase once Company Secretaries will be recognized under section 42 (Tax Audit) and 50 (Special Audit) of Model GST Law. Based on the Model GST Law, the role of Company Secretaries to provide services to clients can be as under:

(i) Educating Entrepreneurs and Restructuring their Business System

To minimize tax and smooth implementation of GST, the business would require restructuring their system and Company Secretary can provide service to proper restructuring business while keeping in mind that present system of business will not be disturbed and at the same time get maximum benefits of Tax under GST.

(ii) Procedural Compliances

The procedural compliances would be:

- Registration
- Computation and payment of taxes
- Filing of Returns
- Assessment

Company Secretaries are already doing these services under various laws so they will feel comfortable to provide these services.

(iii) GST Record keeping

Young Company Secretaries focused on accounting are now

well trained as how to keep proper record of accounts. Record keeping is one of the important tasks to implement GST in business. Record keeping will support to fulfill procedural compliances in easy manner.

(iv) Interpretation/Advisory/Consulting services

To interpret laws, company secretaries are having special skills and already proved their competency under various laws. A Company Secretary can interpret GST in much better manner and can be an expert of GST. This is a lucrative area and requires independent expert knowledge. Being a Corporate laws advisor, Company Secretaries are having an edge in this service.

(v) Tax planning and Internal Audit

Tax Planning requires expert knowledge of GST and good interpretation skills of professionals. Under the tax planning, the focus is to minimize the tax impact on business based on the provisions of GST Law. Some of the clients are interested to do the Internal Audit of records and compliances of GST. At least once in a year, Internal audit to be done and this service can be performed by CS who already has practical exposure of various types of Entities as an Internal Auditor.

(vi) Representation with GST Authorities

Model GST Law allowed Company Secretaries to appear before the GST Authorities and Company Secretaries can justify these services based on their performance and practical approach because of their communication skills and interpretation and good knowledge of Laws.

TASKS OF CS FOR GST

Some of the tasks of Company Secretaries on GST could be as under:

1. Support To Government To Implement GST

Government has to interact with stakeholders and identify the requirements and expectations of the stakeholders. In this regard, Government may face various challenges to implement GST and CS can play an important role in drafting of Law and various Rules, Schedules, Returns etc. under GST. While designing the website for the GST, a CS can support IT professionals towards requirements of law, rules etc. Major hurdle to implement GST is knowledge of the Government staff and a CS can provide a better training and technical classes to the Government staff.

2. Educate Entrepreneurs and Their Staff

CS on job can educate the Entrepreneurs and their staff regarding the pros and cons of GST, wherever they are providing Secretarial and legal services. To educate top management is of utmost importance and CS being a part of top management is an added advantage. A CS can convince and educate top management about requirements and compliances under GST and its restructuring of business to get maximum advantages of GST Law. With CS support, the top management is able to know, how to minimize tax impact on the organization and in organizations where top management is aware of the benefits of GST, then rest of the

staff of that organization can smoothly swift to GST regime. Regular interaction with concerned staff and continuous updates on GST issues will keep organizations on top of GST compliances.

3. Spread Awareness in General Public to Take Original Invoice from Traders

CS Being a reputed and respected professional is bound to play his role in nation building. CS will be on mission to educate the general public or so called common man of the Country because without the improved knowledge of the general public or common man, the objectives of the GST will not fulfill because most of the transactions at the retail business are done on duplicate bills. These types of transactions must stop otherwise revenue collection of GST will not increase as expected. Here a CS can play a role to educate common man just the way they are educating the shareholders and protecting their interests. Government can assign this special role to Company Secretaries to educate general public or common man of the Country.

4. GST Governance and Disclosure

Company Secretaries being Governance Professional who believe in proper and transparent disclosures in the Annual report, knowhow to implement GST Governance in industries/dealers/traders for their betterment but also for the Government and Public. To curb black money and minimize its circulation, GST Governance is required to be followed and here CS can advise Government about the GST Governance Rules applicable to industries/ dealers/ traders about how to fulfill the requirements of disclosure of GST Governance to industries/dealers/traders etc.

5. Communication of Benefits of GST to International Clients and Communities to attract them to Invest in India

Company Secretaries are dealing with FEMA and inbound and outbound investment and most of them are having international exposure. Company Secretaries as GST expert will give boost to the foreign investment because they can be more elaborate about the taxation system of Country to foreign investors.

6. To update Government on regular basis on GST matters

Company Secretaries are committed to GST and they believe that Governance requires not only in the Corporate Sector but also in all sectors for the proper disclosure of laws and computations. GST is new law and it requires regular update from professionals like CS to take further decision on the matters of GST.

This is the utmost responsibility of the Company Secretaries to be in regular touch with mother ICSI for the updates and demands of the Industries and ICSI will communicate to the concerned Ministry about the CSs suggestions based on practical exposures.

7. Rigorous training to ICSI members and students on GST

ICSI has already taken the initiatives to train its members and students on GST and we must appreciate the efforts taken by the members of Central Council in this regard. As we are aware

that GST is new law and it requires a lot of efforts from Members and Students for proper delivery and justification of services to clients. The rigorous and regular workshops, seminars, webinars and text updates are the demand of time from ICSI.

8. GST questions linked to Olympiad to spread knowledge of gst in schools

ICSI took a commendable initiative called as Olympiad in schools and GST related questions should be added and this is our responsibility to teach the future generation of our Country about GST and taxation systems of the Country so that they become honest tax payers and will understand why tax revenue is required for the growth of the Country.


WAY FORWARD

To do sectorwise study to find out problems faced by sectors on GST

ICSI created a Core Committee which needs to focus specifically for the study on GST to suggest Centre and States Government on various issues faced by industries. Example is the present problems faced by the e-commerce sector. Online Companies would look forward to an integrated and uniform approach for tax laws and regulatory policies. E-commerce sector expects that GST will roll out clearly in order to unlock issues faced by the e-commerce sector. This industry is expecting the government to simplify tax regime for startups to foster innovation and create conducive ecosystem for entrepreneurs in the country. Likewise, other sectors of the Industry problems will sort out by the members of Core Committee of the ICSI and time to time intimate to the Centre and States Government with suggested solutions.

Sector wise study will give clear picture about the GST impact on the particular industry and it will be easy for the Government to take future decision based on the study of ICSI Team.

CONCLUSION

Apart from the Tasks of CS on GST, Government Visions on GST will also be a part of CS Tasks of GST along with the other tasks given above. GST will boost the economy because of growth in revenue collection and increase in investment. GST is equally welcome law for the professionals because it will increase the scope of the area of practice and service and offer opportunities to professionals to play a role in nation building. Obviously it is a win-win situation for Industries/dealers/traders because of simplification of tax systems and cost cutting of products and consumer will enjoy the reduction of price of goods so GST will give a lot to all segments of Civil Societies, Industries, Professionals and Government hence, we must come up with open heart in support of GST Bill and further its implementation. There is a feel that to get more revenue and for real independence of professionals for Tax Audit under GST, a check and balance mechanism should be forced by the Government and a suitable rotation policy should be added in the GST Law which shall be practiced by auditing as well as representatives by all peer professionals of statutory bodies and rotation of services after a defined period shall be introduced amongst the said professionals will bring the quality, competitiveness and single point of service to all stakeholders. This will help the economy to grow and will attract more global investors to investment in India. 

SECRETARIAL STANDARD ON DIVIDEND

To integrate, harmonise and standardise the diverse secretarial practices on Dividend, ICSI had issued Secretarial Standard on Dividend in 2003. After the applicability of Companies Act, 2013 and Rules thereon, the said Standard on Dividend needs to be reformulated. Besides several practical difficulties and interpretational issues w.r.t. Dividend are being faced by corporates. Consequently ICSI decided to re-formulate the Secretarial Standard on Dividend, in consonance with present law and assimilating the best governance practices.

During the discussions at 105th meeting of the Secretarial Standards Board (SSB) of ICSI held recently, few queries/issues/grey areas were identified on the above mentioned topic, some of which are listed below for your reference. You are requested to share with us the areas of difficulty, concern or ambiguity experienced by you, which in your opinion, need to be addressed in the Secretarial Standard on Dividend.

The queries/issues/grey areas identified are as under:

Sl. No.	Heading under the Existing draft of SS on Dividend and issues/queries related thereto
1.	Ascertainment of amount available for payment/distribution as Dividend <ul style="list-style-type: none"> Declaration of interim dividend in excess of company's profits for the current quarter
2.	Declaration of Dividend <ul style="list-style-type: none"> Declaration of dividend through circular resolution Clarity on declaration and payment of dividend to Preference Shareholders Dealing with the situations of declaration of dividend without having distributable profits Declaration of dividend from Promoter's own wealth or his personal assets
3.	Entitlement to Dividend <ul style="list-style-type: none"> Waiver/deferment of dividend by the Shareholder Whether dividend can be paid only to a class of shareholders like non-promoters/public shareholders Whether a company can declare different rates of dividend on shares having voting rights and non-voting rights When dividend is declared for promoter group/directors, can this be considered as Related Party Transaction (RPT) Can lien be imposed on payment of dividend in pursuance to shareholders agreement Adjustment of dividend against calls due on shares
4.	Dividend in Abeyance <ul style="list-style-type: none"> Guidance and clarity on: Dividend to be kept in abeyance/operation of law/ withholding the dividend on orders from Statutory Authorities How to deal with the situation of pending legal cases where the title of shares is yet to be decided and the interim orders, if any, does not speak about the treatment of dividend
5.	Payment of Dividend <ul style="list-style-type: none"> Companies need to transfer the amount of dividend declared within 5 days to separate bank accounts, however no clarity on the inclusion of Sunday, intermediate holidays and bank strikes, if any Payment of dividend on partly paid shares
6.	Unpaid Dividend <ul style="list-style-type: none"> Clarity on computation of seven years for transferring unpaid dividend to IEPF Treatment of dividend on the pledged shares and shares lying in the suspense account
7.	Revocation of Dividend <ul style="list-style-type: none"> Can dividend once declared be revoked, if yes, who has the authority to revoke it
8.	Others <ul style="list-style-type: none"> Whether distribution of gift/coupons etc. by a company be treated as deemed dividend Can dividend amount be converted into shares

Kindly send your suggestions to ssb@icsi.edu on or before Thursday, 25th August 2016.

2

RESEARCH CORNER



- AN ANALYTICAL STUDY OF CORPORATE SOCIAL RESPONSIBILITY: A LEGAL PERSPECTIVE WITH EMPHASIS ON INDIAN SCENARIO
- ICSI – CCGRT ANNOUNCES UNIQUE ALL INDIA RESEARCH PAPER COMPETITION ON GOODS AND SERVICES TAX



THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

Website : www.icsi.edu

Registrations Open for Online Course(s)

Last Date for receipt of Online application - August 22, 2016

Batch Commences on September 1, 2016

The Institute offers Post Membership Qualification (PMQ) Courses to its members with the foremost aim of enabling them to acquire more skills and knowledge to render quality focused services in diversified areas. In line with newly fangled rising areas of professional learning, the Institute has joined hands with National Institute of Financial Management, Faridabad (NIFM), an autonomous Institution of Ministry of Finance, Government of India to launch the following courses:

Diploma in Internal Audit (DIA)

Section 138 of the Companies Act, 2013 introduced the concept of internal audit to the forefront and has widened its scope to a great extent. The Company Secretaries being Governance professionals are aptly suitable to perform the role of internal auditors. Therefore, with a view to further develop the skills of Company Secretaries to conduct internal audit including compliance and operational audits, the Institute has launched Diploma in Internal Audit (DIA). This course will open a vast area of opportunities for Company Secretaries in the field of internal auditing.

Certificate Course in Valuation

Section 247 of the Companies Act, 2013 recognises the concept of registered valuers wherein the professionals will be empanelled to carry out the valuation. Therefore, to enhance the skills of Company Secretaries in carrying out the valuation assignment, the Institute has launched a Certificate Course in Valuation which offers an intensive training to enhance the skills of Company Secretaries relevant in today's business environment.

Fee Structure and Other Modalities

These comprehensive course(s) with duration of 3 Months are very well located for the professionals with Webinar classes on weekends and online evaluation.

The inclusive learning is supported by case studies and online material for self study offered to the participant(s).

Registration Fees- Rs. 12,500 + Service Tax per participant (to be paid online).

The details of first batch commencing from September 1, 2016 are available at www.icsi.edu. The registrations are on first come first serve basis.

Members are requested to register for the course(s) and avail benefit of the same. For any query, please contact Directorate of Professional Development, Perspective Planning and Studies at academics@icsi.edu or 011-45341027.

An Analytical Study of Corporate Social Responsibility: A Legal Perspective with Emphasis on Indian Scenario



**Bharatsinh Chandrasinh
Parmar, ACS**

Vadodara

bharatpcs@gmail.com

INTRODUCTION

Corporate Social Responsibility (CSR) represents an ideology whereby companies along with shouldering economic obligation for profitability also consider the interests of society as well as environment by taking responsibility for the negative impacts of business activities. Companies encourage societal growth and eliminate practices that harm the community, environment. It is praiseworthy that, leading Indian corporates have set an example of voluntarily and proactively engaging in CSR activities by integrating CSR in business practices.

THE OBJECTIVES OF THIS RESEARCH ARE TO STUDY THE

1. concept of CSR,
2. relevant provisions of the Companies Act, 2013(the Act) and Companies(Corporate Social Responsibility Policy) Rules, 2014,
3. companies' CSR activities vis-a-vis Schedule VII of the Act and CSR spent.
4. correlation between CSR and Financial performance of companies.

HYPOTHESIS

The following hypotheses are formulated:

1. Indian companies show a positive response towards CSR.
2. CSR initiative has competence to contribute towards the solution of India's multifaceted socio-economic problems.
3. Adoption of CSR practices in letter and spirit fulfills its legislative objectives.

RESEARCH METHODOLOGY

The present study is a doctrinal research using descriptive research design. It is purely based on secondary data which is collected from different scholars'/ researchers' articles published in journals/ periodicals/ conference/working papers and websites. Further, to examine the Indian CSR-scenario, the Annual Reports of selected of the SENSEX 30 Companies available on the website of the Bombay Stock Exchange have been investigated and other relevant information has been collected from the Ministry of Company Affairs' and other related websites. Sources have been acknowledged and cited.

DELIMITATION OF THE STUDY

To study the Indian-CSR-scenario, the researcher examined Annual Reports (2014-15) of selected "S&P BSE SENSEX-30 Companies only".

LITERATURE REVIEW

Srivastava, Negi et.al. (2012) described three social responsibility models viz. Archie B. Carroll's model, focusing on business' Economic responsibility i.e. generation of surplus for rewarding the investors and further expansion and diversification, Legal i.e. compliance with laws, Ethical i.e. norms society expects from business and Discretionary responsibility i.e. voluntary contribution of business to social causes. Halal's model arguing that social issues may become conflicting beyond a specific scale of economic activity so there must be coordination between economic and ethical decisions to protect the interests of the company and shareholders. And lastly, Ackerman's model directing recognition of social problem, appointment of specialist

staff and implementation of strategy.¹

Vikramjit Kaur (2012) recorded that today companies are adopting CSR because of changing social expectations, increasing consumer affluence, media influence where mistakes of companies can be easily detected and to avail benefits like risk management, brand identification, licence to operate and thereby trying to become a good corporate citizen.²

Prabhakar and Mishra (2013) presented a lucid historical background of CSR in India and observed that in India it is practiced since ancient time as social duty or charity. In 1900s it took the form of philanthropic donations to charity, service to the community, enhancing employee welfare and promoting religious conduct. After independence many corporate houses practiced it voluntarily. The Authors further referred to the survey of Tata Energy Research Institute (TERI) summarising the four Models of CSR viz. Ethical Model (1930-1950) championed by M.K.Gandhi which focuses on promotion of trusteeship and voluntary commitment by companies to public welfare, Statist Model (1950-1970s) championed by Jawaharlal Nehru at the time of mixed and socialist economy which states that State ownership and legal requirements determine Corporate responsibility, Liberal Model (1970s-1990s) championed by Milton Friedman which states that business has to obey laws and generate wealth so that social ends can be achieved through taxation and charity, Stakeholder Model (1990-Present) championed by R. Edward Freeman which focuses on expectation on Companies to respond to the needs of stakeholders-customers, employees, and communities i.e. serving as per the triple bottom line approach.³

Sharma and Kiran (2013) trying to map the theoretical and practical perspective on CSR discussed the Carroll (1991) Pyramid of CSR where starting from the bottom comes the Economic responsibility i.e. to be profitable – the foundation for all others/do what is required by shareholders, Legal responsibility i.e. to obey the laws – play by the rules of the game right/ do what is required by stakeholders, Ethical responsibility i.e. to be ethical -an obligation to do what is right/ do what is expected by stakeholders, and lastly the Philanthropic responsibility i.e.to be a good corporate citizen – improving quality of life/ do what is desired by stakeholders.⁴

Uvais and Cholasseri (2013) reported that during 1960s and 1970s the civil rights movement, consumerism, and environmentalism affected society's expectations of business and the constant pressure from employees, suppliers, community groups, NGOs, and government compelled the business world to be more proactive in ceasing to cause societal problems and starting to participate in solving the same, i.e. corporations should go beyond their economic and legal responsibilities and accept responsibilities related to the betterment of society. The Authors distinguished CSR from ethics in a sense that CSR encompasses the economic, legal, ethical, and discretionary responsibilities of

organizations while business ethics by and large focuses on the moral judgments and behaviour of individuals and groups within organizations. The Authors documented that the issues that drive corporates towards CSR include shrinking government resources and distrust of regulations leading to exploration of voluntary and non-regulatory initiatives, growing demand for corporate disclosure from stakeholders, growing influence on the purchasing decisions of customers, changing investors criteria to assess companies' performance based on ethical concerns, attitude of employees to look for employers whose philosophies and operating practices match their own principles and stakeholders' pressure for conduct of business in a socially responsible manner.⁵

Chotaliya and Trivedi (2014) understood CSR as a top down approach in organisational hierarchy involving employee participation, and further identified CSR activities as responsibilities of company towards company itself, employees, shareholders, state, environment and consumers, which results in building positive corporate image in society.⁶

Maan (2014) enumerated challenges in implementing CSR, viz. lack of awareness of general public in CSR activities, dearth of NGOs and trained staff to effectively contribute to the CSR, lack of transparency on the part of companies which don't make adequate disclosures regarding their programmes, audit issues, impact assessment and utilization of funds, narrow perception towards CSR initiatives i.e just as donor-driven, lack of consensus on implementing CSR issues resulting in duplication of activities. These factors limit company's abilities to undertake impact assessment of their initiatives over time to time.⁷

Nadaf and Nadaf (2014) discussed the history, drivers, benefits, challenges of CSR in India and concluded that CSR must be practiced with enthusiasm and not half-heartedly so as to cast prolific effect on society.⁸

Nitin Kumar (2014) reported that CSR is not a new concept in India as traditionally several merchants were involved in community services through donations/charity etc. Since public prefer socially responsible companies, corporates participating in CSR initiatives are on rise. The Author further documented how CSR is beneficial to various stakeholders i.e. the Company gets benefits like reduction in operating cost and improvement in financial performance, better productivity/quality, increased customer loyalty and hence sales and brand-image, quality workforce – product safety and decreased liability, and reduction in regulatory interference. Community development programmes and environmental protection initiatives are other benefits to the society at large.⁹

Sood (2015) reported that many SMEs practise 'silent social responsibility'. SMEs can contribute through conservation of natural

1 Amit Kumar Srivastava, Gayatri Negi, Vipul Mishra, and Shradha Pandey, "Corporate Social Responsibility: A Case Study of TATA Group" 3 IOSRJBM 18-19 (2012) available at <http://iosrjournals.org/iosr-jbmpapersvol3-issue5D0351727.pdf> (last visited on April 07, 2016)

2 Vikramjit kaur, "Corporate Social Responsibility (CSR): Overview of Indian Corporates" 3 IJMSSR 49 (2012) available at <http://www.ijcjournals.org/ijmssrDec201210.pdf> (last visited on April 07, 2016)

3 Rajeev Prabhakar and Sonam Mishra, "A Study of Corporate Social Responsibility in Indian Organization: An-Introspection" Proceedings of 21st International Business Research Conference 10 - 11 June, 2013, Ryerson University, Toronto, Canada, ISBN: 978-1-922069-25-2 available at http://1370168444_430-Sonam-httpwww.wbiworldconpro.com/uploads/canada-conference-2013management1370168444_430-Sonam.pdf (last visited on April 07, 2016)

4 Anupam Sharma and Ravi Kiran, "Corporate Social Responsibility: Driving Forces and Challenges" 2 IJBRD 19 (2013) available at <https://www.sciencetarget.com/JournalIndex.php/IJBRDarticleviewFile18250> (last visited on April 07, 2016)

5 Uvais.M and Hafeefa Cholasseri, "Corporate Social Responsibility: Dimensions and Challenges In India" 2 IJESI 28-30 (2013) available at [http://www.ijesi.orgpapersVol\(2\)3%20\(Version-4\)D232732.pdf](http://www.ijesi.orgpapersVol(2)3%20(Version-4)D232732.pdf) (last visited on April 07, 2016)

6 Ekta M. Chotaliya and P. K. Trivedi, "Corporate Social Responsibility: Cornerstone of Enduring Business Success" 2 IJBM 20 (2014) available at <http://www.ijset.net/journal444.pdf> (last visited on January 02, 2016)

8 Yasmin Begum R. Nadaf and Shamshuddin M. Nadaf, "Corporate Social Responsibility: Issues Challenges and Strategies for Indian Firms" 16 IOSR-JBM 53 (2014) available at <http://www.abhinavjournal.com> (last visited on January 02, 2016)

resources/protection of environment/eradication of illiteracy/adult education/spreading awareness in rural areas about health care etc. The Author drawn attention on the fact that quality up gradation of technology/management and marketing of SMEs should also be addressed along with their social and environmental impacts. The Author further reported that SMEs face stiff competition from the large corporations which outsource certain activities for which SMEs are potential solution providers to large firms.¹⁰

Gupta (2016) focused on statutory provisions, tax implications of CSR and also attempted to analyse the relationship between CSR & Corporate Financial Performance (CFP) and reported that CSR programmes positively affect the financial performance of the company and further that social expenditure is dependent on financial performance of the company.¹¹

The literature review reveals that CSR over a period of time has undergone drastic change, companies now-a-days are taking keen interests in CSR initiatives moving beyond just philanthropy or charity and inculcating societal, environmental issues in business practices.

DEFINITION

The term has been described by different authorities. The World Business Council for Sustainable Development defines CSR as "Corporate Social Responsibility is the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large."¹²

INDIAN LEGAL PERSPECTIVE OF CSR – THE COMPANIES ACT, 2013

Section 135 makes provisions for CSR & Schedule VII describes CSR activities. Accordingly, every company having:

Net worth-Rs. 500 crores/more-or

Turnover-Rs. 1000 crores/more-or

Net profit-Rs. 5 crores/more during "any [THREE] financial years" shall constitute a CSR Committee consisting of three/more directors (at least one shall be an independent) & the Board's report shall disclose the composition. [As per Rule 5 of Companies (CSR) Rules, 2014, an unlisted public company/a private company not required to appoint independent director u/s 149(4) of the Act, shall have its CSR Committee without such director, a private company having only two directors on its Board shall constitute its CSR Committee with two such directors. CSR Committee of a foreign company shall comprise of at least two persons of which one person shall be as specified u/s 380(1) (d) of the Act and another nominated by the foreign company].

CSR Committee shall-

- 10 Dr. Manish Sood, "Corporate Social Responsibility and the Role of SME's in India" 5 IJLTET 279 (2015) available at <http://www.ijltet.org/wp-content/uploads/20150140.pdf> (last visited on February 12, 2016)
- 11 Meenu Gupta, "Impact of Social Responsibility on Financial Performance & Tax Implications: Indian Scenario" 46 CS 65-71 (2016).
- 12 Available at <http://www.wbcsd.org/work-program/business-role/previous-work/corporate-social-responsibility.aspx> (last visited on April 15, 2016)
- 13 Ministry of Corporate Affairs' General Circular No. 01/2016 dtd. 12/01/2016, FAQ 2, available at [FAQ_CSR http://www.mca.gov.in/Ministrypdf/FAQ_CSR.pdf](http://www.mca.gov.in/Ministrypdf/FAQ_CSR.pdf) (last visited on March 23, 2016)

- Formulate/recommend to Board, a CSR Policy indicating CSR activities to be undertaken by the Company as specified in Schedule VII
- Recommend amount of expenditure to be incurred on CSR activities
- Monitor the CSR policy

The Board shall-

- Approve the CSR policy and disclose contents in Board's Report and place on the company's website
- Ensure that CSR-activities are undertaken
- Ensure that CSR amount-i.e. at least 2% of average net profits made during the three immediately preceding financial years- is spent. If it fails, the Board shall in its report specify the reasons for not spending the amount. For spending the CSR amount, the company shall give preference to local areas and areas around it where it operates. Average net profit shall be calculated u/s 198(i.e. PROFIT BEFORE TAXATION (PBT)).14

SCHEDULE VII OF THE ACT

It prescribes CSR activities relating to-Eradication of Poverty-hunger/Education/Addressing gender discrimination/Environment/National heritage-arts-culture/those beneficial to Armed forces-veterans/Sports/Welfare of SC-ST-Minority-Women/Technology incubators/Rural development. Amount spent on these categories will qualify for CSR.

THE COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) RULES, 2014

The Central Government has notified the Companies (Corporate Social Responsibility Policy) Rules, 2014 & Format for the Annual Report on CSR activities to be included in Board's Report. The rules inter alia clarifies the following-

- R 2(1)(c) - 'CSR' means and includes but is not limited to (i) Projects/programs relating to activities specified in Schedule VII to the Act or (ii) Projects/programs relating to activities undertaken by the board of directors of a company(subject to the condition that the same covers subjects enumerated in Schedule VII of the Act.

R 4-CSR Activities shall be undertaken

- as per CSR Policy excluding activities in pursuance of its normal course of business,
- through a registered trust/society/ a company established by the company/its holding/subsidiary/associate company u/s-8 of the Act or otherwise. The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered CSR activities. Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years but such expenditure shall not exceed five percent of total CSR expenditure of the company in one financial year. Contribution to any political party u/s182 of the Act shall not be considered as CSR activity.

14 Ibid.

R 6- CSR Policy should include a list of CSR projects/programmes and monitoring process,

R 7- CSR expenditure does not include expenditure on item not in conformity/not in line with activities which fall within the purview of Schedule VII of the Act.

R 8- Board's Report shall include an annual report on CSR.

INDIAN CSR SCENARIO-SELECTED SENSEX 30 COMPANIES

To study the current Indian-CSR-scenario, the researcher examined data of 'SENSEX 30' Companies' from the respective Annual Reports 2014-15.¹⁵ The perusal/analysis of which revealed that-

- The response of some companies towards CSR is remarkable that they have spent more than 2%, the statutory contribution,
- There are companies which suffered LOSS even though they have voluntarily spent on CSR,
- Companies have allocated statutory 2% CSR-amount, however some could not spend and gave reasons in Annual Reports, like-
 - Spent in following year upon receiving pending documentation,
 - Projects having span of 4-5 years are undertaken hence spend will increase in subsequent years,
 - Lower fund requirement from the implementing agencies,
 - Company will make concerted efforts to spend the prescribed CSR amount in the subsequent years.
- Companies execute CSR activities through own trusts/other NGOs.

Further, to check as to how far the sectors prescribed by Schedule VII of the Act are represented by Companies' CSR activities, the researcher examined the CSR activities vis-a-vis Schedule VII in respect of selected 15 Companies as under-

Sr. No.	Sch.VII CSR Activity areas	Companies involved (amongst selected 15)
1	(i) Poverty, Hunger, Sanitation, Health care, Drinking water etc.....	Tata Steel/Cipla/ITC/Adani/Reliance/Hero/BHEL/Bajaj auto/Infosys/L&T/HDFC Bank/Asian Paints/ONGC/NTPC/Axis bank{15/15}
2	(ii) Education, skills, Livelihood enhancement...	Tata Steel/Cipla/ITC/Adani/Reliance/Hero/BHEL/Bajaj auto/Infosys/L&T/HDFC Bank/Asian Paints/ONGC/NTPC/Axis bank{15/15}
3	(iii) Gender Equality, Women empowerment.....	Tata Steel/ Cipla/ITC/Adani/Reliance/BHEL/Bajaj auto/ONGC/NTPC/Axis bank{10/15}

4	(iv) Environmental sustainability.....	Tata Steel/ Cipla/ITC/Adani/Reliance/Hero/BHEL/Bajaj auto/L&T/HDFC Bank/Infosys/Asian Paints /ONGC/NTPC/Axis bank{15/15}
5	(v) National heritage, Art-Culture, handicrafts.....	Tata Steel/ITC/Reliance/BHEL/Bajaj auto/Infosys/ONGC/NTPC{8/15}
6	(vi) Armed forces, Veterans, War widows benefits.....	Bajaj auto/ONGC{02/15}
7	(vii) Sports.....	Tata Steel/ITC/Adani/Reliance/Bajaj auto/ONGC/NTPC{07/15}
8	(viii)Contribution-PM National Relief Fund/Welfare of SC/ST/OBC/Minorities/ Women.	Tata Steel/ Cipla/ITC/Adani/Bajaj auto/L&T/ONGC/Axis bank{08/15}
9	(ix) Contribution -Technology incubators.....	ONGC{01/15}
10	(x) Rural development.....	Tata Steel/ Cipla/ITC/Adani/Reliance/BHEL/Bajaj auto/Infosys/HDFC Bank/ONGC/Axis bank{11/15}

Table 1 Companies' CSR activities vis-a-vis Sch.VII.

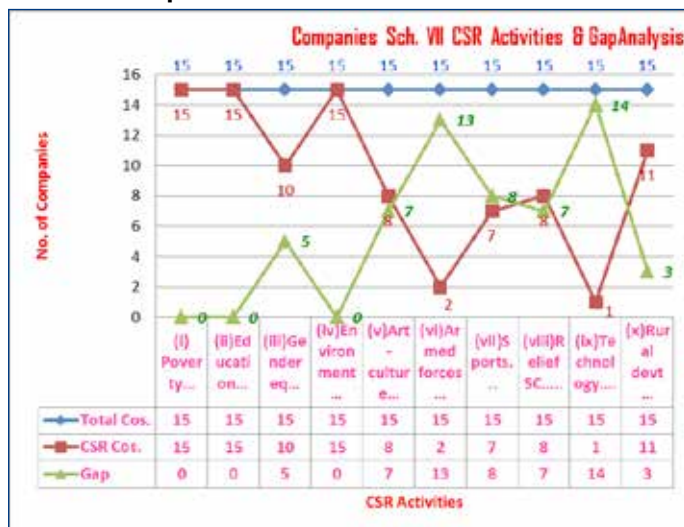


Figure 1 Companies' CSR activities vis-a-vis Sch.VII.

Table 1 & Figure 1 represent the Company-wise CSR activities as compared with the CSR activity areas as per Schedule VII. The analysis reveals that Sectors represented by Clauses (i),(ii) &(iv) of Schedule VII, viz. Poverty eradication.....,Education...& Environmental clauses respectively are fairly covered by all the selected 15 companies. More than half of the selected companies are involved in CSR sectors prescribed under Cl. (iii), (v), (vii). (viii) and (x) i.e. Gender equality.....,Art-Culture.....,Sports.....,Community devt... & Rural development. This shows a larger gap in selection of CSR sectors by companies. Sch. VII (vi) Armed forces benefits.....& (ix) Technology incubators.....are the areas least adopted by companies representing huge gap in CSR

¹⁵ Available at <http://www.bseindia.com>(last visited on March 25, 2016)

appropriation. In order to fulfil the objectives of CSR provisions in letter and spirit, companies must align CSR activities to take care of all the areas specified by Schedule VII so as to achieve a balanced and inclusive growth.

CORPORATE FINANCIAL PERFORMANCE (CFP) & CSR

To supplement the extant research literature and examine the correlation between CFP and CSR, the researcher analysed the Average net profits of preceding three years prior to 2014-15 and CSR spent during 2014-15 of the selected 15 of the SENSEX 30 companies¹⁶, using the Pearson Correlation Coefficient formula.

The Pearson Correlation Coefficient is used to measure the strength of a linear association between two variables, where the value $r = 1$ means a perfect positive correlation and the value $r = -1$ means a perfect negative correlation.¹⁷

Sr. No.	Company	3-Yrs Average Net Profit(ANP)- Rs. Crores-X	CSR-Spent (CSRS)2014-15 Rs. Crores-Y	(XY) Rs. Crores	X ² Rs. Crores	Y ² Rs. Crores
1	Tata Steel	8412.82	171.46(against 168.26 @2%)	1442462.11	70775540.35	29398.53
2	Cipla	1743.21	13.43(Unspent 21.43)	23411.31	3038781.10	180.36
3	ITC	10646.11	214.06(against 212.92 @2%)	2278906.30	113339658.13	45821.68
4	Adani Ports & SEZ	1790	35.90(against 35.79@ 2%)	64261	3204100	1288.81
5	Reliance Inds	26648	761(against 532.96@ 2%)	20279128	710115904	579121
6	Hero MotoCor P	2202	2.41(Unspent 41.63)	5306.82	4848804	5.80
7	BHEL	8222.33	102.06(Unspent 62.94)	839170.99	67606710.62	10416.24
8	Bajaj Auto	4316.49	42.91(Unspent 43.42)	185220.58	18632085.92	1841.26
9	Infosys	12133	239.54(Unspent 3.46-spet in April 2015)	2906338.82	147209689	57379.41
10	Larsen- Toubro	5310.29	76.54(Unspent 29.67)	406449.59	28199179.88	5858.37
11	HDFC Bank	9856.35	118.55(Unspent 78.58)	1168470.29	97147635.32	14054.10
12	Asian Paints	1493.73	19.01(Unspent 10.86)	28395.80	2231229.31	361.38
13	Axis Bank	6688.67	123.22(Unspent 10.55)	824177.91	44738306.36	15183.16
14	ONGC	33030	495.23(Unspent 165.38)	16357446.9	1090980900	245252.75
15	NTPC	14173.78	205.18(Unspent 78.30)	2908176.18	200896039.48	42098.83
Total		146666.78	2620.5	49717322.6	2602964563	1048261.68

TABLE 2 CSR-CFP

Pearson Correlation Coefficient

$$r = \frac{N\sum xy - (\sum x)(\sum y)}{\sqrt{[N\sum x^2 - (\sum x)^2][N\sum y^2 - (\sum y)^2]}}$$

$$\sqrt{[N\sum x^2 - (\sum x)^2][N\sum y^2 - (\sum y)^2]}$$

Where-

N=No. of Companies

$\sum xy$ =Sum of the products of ANP&CSRS

$\sum x$ =Sum of ANP

$\sum y$ =Sum of CSRS

$\sum x^2$ =Sum of squared ANP

$\sum y^2$ =Sum of squared CSRS

$$r = \frac{15 \times 49717322.6 - (146666.78)(2620.5)}{\sqrt{[15 \times 49717322.6 - (146666.78)^2][15 \times 2602964563 - (2620.5)^2]}}$$

¹⁶ Id.

¹⁷ Available at <http://www.socscistatistics.com/tests/pearson/> (last visited on March 24, 2016)

$$r = \frac{\sqrt{[15 \times 2602964563 - (146666.78)^2][15 \times 1048261.68 - (2620.5)^2]}}{745759839 - 384340296.99}$$

$$r = \frac{\sqrt{[39044468445 - 21511144355.56][15723925.2 - 6867020.25]}}{361419542.01}$$

$$r = \frac{\sqrt{[17533324089.44][8856904.95]}}{361419542.01}$$

$$r = \frac{[132413.45][2976.05]}{361419542.01}$$

$$r = \frac{394069047.87}{0.92\{>0/\text{Positive value}\}}$$

Since the value of 'r' is Greater than Zero/ Positive, there is a Positive correlation between two variables CFP&CSR, i.e. CSR has positive relationship with CFP of the company.

CSR-SPENT & GAP ANALYSIS

To examine the gap between the CSR amount companies are statutorily bound to spend and the amount companies have actually spent on CSR during the year 2014-2015, the researcher has examined the data of these selected 15 companies as under-

Sr. No.	Company	Statutory CSR-2014-15 Rs.Crores/ (100%)	Spent 2014-15 Rs. Crores/ (% of Statutory CSR)	Unspent 2014-15 Rs. Crores/ (% of Statutory CSR)	Gap 2014-15 Rs. Crores/ (%) {C-D}
A	B	C	D	E	F
1	Tata Steel	168.26	171.46 (101.90%)	Nil	-3.2 (-1.9%)
2	Cipla	34.86	13.43 (38.52%)	21.43 (61.48%)	21.43 (61.48%)
3	ITC	212.92	214.06 (100.53%)	Nil	-1.14 (-0.53%)
4	Adani Ports & SEZ	35.79	35.90 (100.30%)	Nil	-0.11 (-0.30%)
5	Reliance Inds	532.96	761 (142.78%)	Nil	-228.4 (-42.78%)
6	Hero MotCo	44.04	2.41 (5.47%)	41.63 (94.53%)	41.63 (94.53%)
7	BHEL	165(actual)	102.06 (61.85%)	62.94 (38.15%)	62.94 (38.15%)
8	Bajaj Auto	86.33	42.91 (49.70%)	43.42 (50.30%)	43.42 (50.30%)
9	Infosys	243	239.54 (98.57%)	3.46 (1.43%)	3.46 (1.43%)
10	Larsen & Toubro	106.21	76.54 (72.06%)	29.67 (27.94%)	29.67 (27.94%)
11	HDFC Bank	197.13	118.55 (60.13%)	78.58 (39.87%)	78.58 (39.87%)
12	Asian Paints	29.87	19.01 (63.64%)	10.86 (36.36%)	10.86 (36.36%)
13	Axis Bank	133.77	123.22 (92.11%)	10.55 (7.89%)	10.55 (7.89%)
14	ONGC	660.61	495.23 (74.96%)	165.38 (25.04%)	165.38 (25.04%)
15	NTPC	283.48	205.18 (72.37%)	78.30 (27.63%)	78.30 (27.63%)

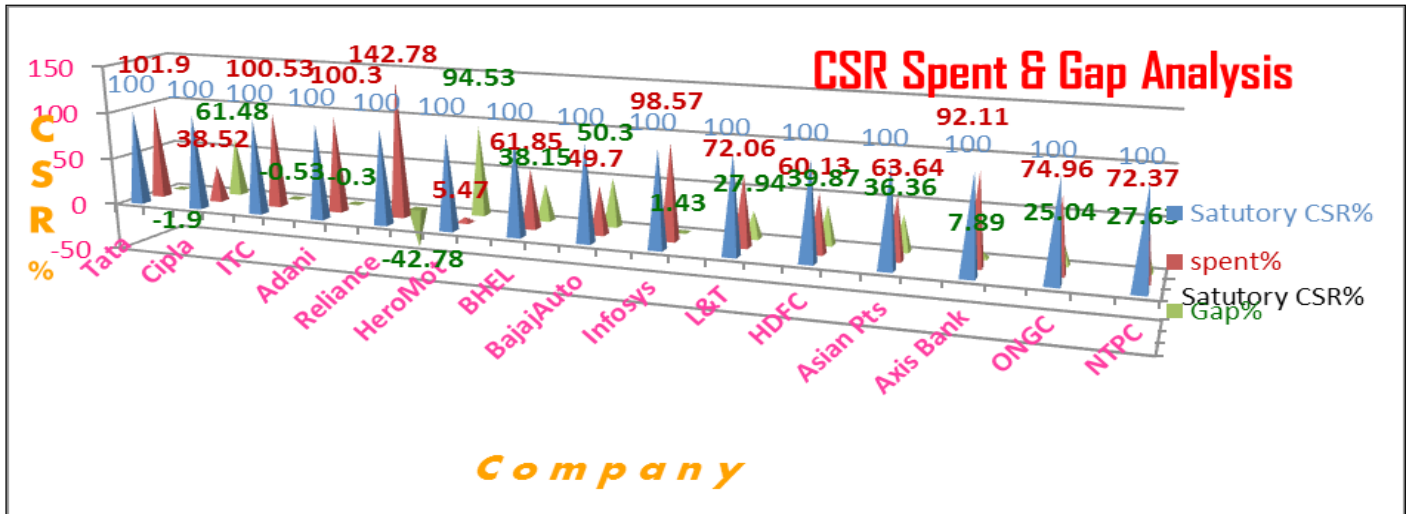
Table 3 CSR-Spent/Gap**Figure 2: Analysis of CSR-amount spent and Gap due to unspent portion.**

Table 3 depicts the Statutory CSR amount, Amount Spent & Gap arising there from, and Figure 2 is the graphical representation of the same. The analysis shows that 4 of the selected 15 companies have spent more than the statutory CSR i.e. a premium level contribution. Two companies have spent more than 90% of Statutory CSR leading to a tiny gap. Three companies have spent between 70-75% of Statutory CSR leading to a moderate gap. Three companies have spent about 60-64% of Statutory CSR leading to a larger gap. One company has spent 49% & another one 38% of Statutory CSR leading to a considerable gap. One company has spent a little 5% of Statutory CSR depicting a huge gap.

The gap represents the amount ought to have statutorily spent on CSR during the year but which has actually not been spent accordingly. Section 135(5) of the Act mandates that the Board shall ensure that the company spends this statutory CSR-amount in every financial year, failing which the Board shall specify the reasons for not spending the amount in its report made u/s 134(3)(o). In compliance with these provisions the selected companies of the study have given reasons in the Annual Reports. But the cause of worry for both the companies and regulators is that the unspent amount must not keep on accumulating year by year, otherwise the real purpose of CSR provisions might be vitiated.

FINDINGS, SUGGESTIONS AND CONCLUSION:

Aforesaid analysis/findings reveal that leading Indian Corporates are positively participating in CSR practices. If done the right way, India has the potential to become a leader and a trend-setter in this domain and stand on the threshold of an age in which its united strengths will be harnessed, to provide for its people, a significantly better quality of life than ever before. Nevertheless, to bridge the gaps of CSR programme implementation in letter and spirit, the following are some worthy suggestions-

- Create broader awareness about CSR in different strata of general public,
- Spread CSR activities throughout all the sectors prescribed by Schedule VII of the Act so as to achieve an inclusive and balanced growth,
- Ensure that the requisite statutory CSR amount for the year is being spent in that very year so as to stop the accumulation of appropriated but unspent CSR-amount
- Strategic partnerships between Corporates, NGOs and Government for CSR execution may be formed,
- Corporates need to engage in CSR activities with strategic approach keeping in view their core business preferences and not just as a philanthropic attitude,
- Independent evaluation of CSR projects may also be done to measure the efficiency in implementation
- Some certification mechanism (like ISO) may be initiated to tag the companies as “CSR compliant”, which may distinguish the company’s brand value and serve as an encouragement/inspiration for effective CSR execution.

ROLE OF COMPANY SECRETARY-

U/S 2(51)(ii) of the Act, Company Secretary is one of the ‘key managerial personnel’ which assumes great responsibilities for various legal compliances. Being a compliance officer he acts as a mediator between the stakeholders and the Board of Directors. He should ensure that CSR issues are properly channelized/ deliberated through the CSR Committee Meetings, Audit Committee Meetings

& Board Meetings. Proper legal compliance with respect to the convening and constituting of these meetings, viz. Notice, Agenda, Resolutions, Minutes etc must be ensured. He is required to coordinate the CSR related activities amongst various departments/ agencies involved in the CSR projects, like the Finance & Accounts department, Personnel department, outside agencies/NGOs if involved and so on. He should keep ready the necessary documents for the Statutory and Secretarial Audit relevant to the CSR activities. He should ensure proper and timely disclosure of the required information to the regulators.

To conclude, the study revealed that traditionally India practiced CSR since late 1800s, with socially responsible business practices like philanthropic donations to charity, service to the community, enhancing employee welfare and promoting religious conduct. Today, CSR in India has become an integral part of the corporate strategy and companies incorporate CSR initiative in their annual report, devise specific policies/strategies/goals for CSR programs and set aside budgets to support them. However, in SMEs highly competitive environment is seen as a reason not to adopt what is perceived as expensive CSR. In India inclusive growth is yet a dream-in-making and the government has limited resources to tackle the challenge. Beneath this paradox, CSR has opened up several areas for businesses to contribute towards societal development. Aligning with it, leading Indian corporates are involved in CSR programs. Since the scale is enormous effective partnerships between Corporates, NGOs and the Government can lift India's social development at a faster pace. The statutory-CSR regime in India is in a nascent stage surrounded by many problems; hence a fine alignment is an indispensable factor. Ostensibly, praiseworthy is the fact that India has successfully made, Indian corporates, socially responsible.

SCOPE FOR FURTHER RESEARCH:

The present study is helpful to know the current status of Indian CSR scenario and the gaps in implementation. However, since the study has been conducted on the basis of one year data of 15 of the SENSEX 30 companies, the results must not be considered in a generalized context. Further research-study, both doctrinal & empirical, can be undertaken based on more companies' performance, more than one year data, sector/industry/area-wise or comparative analysis, which may give its own result.

REFERENCES

- Ekta M. Chotaliya and P. K. Trivedi, "Corporate Social Responsibility: Cornerstone of Enduring Business Success" The International Journal Of Business & Management (IJBM) Vol 2, Issue 9, September 2014, p.20 available at http://www.theijbm.com/force_download.phpfile_path=wp-content(last visited on April 08, 2016)
- <http://www.bseindia.com> (last visited on March 25, 2016)
- <http://www.socscistatistics.com/tests/pearson> (last visited on March 24, 2016)
- <http://www.wbcsd.org/work-program/business-role/previous-work/corporate-social-responsibility.aspx> (last visited on April 15, 2016)
- Maan Praveen, "CSR-Key Issues and Challenges in India" International Journal of Science, Environment (IJSET) Vol. 3 No.6 2014, pp.2043-44 available at <http://www.ijset.net/journal444.pdf> (last visited on January 02, 2016)
- Meenu Gupta, "Impact of Social Responsibility on Financial Performance & Tax Implications: Indian Scenario" Chartered Secretary (CS) Vol. 46 No. 2 February 2016, pp. 65-71.
- Ministry of Corporate Affairs' General Circular No. 01/2016 dtd 12/01/2016, FAQ available at http://www.mca.gov.in/MinistrypdfFAQ_CSR.pdf (last visited on March 23, 2016)
- Nitinkumar, "Corporate Social Responsibility: An Analysis of Impact And

Challenges in India" Abhinav International Monthly Referred Journal of Research In Management & Technology (AIMRJRM T) Vol. 3 Issue 5 May 2014, pp.100-101 available at <http://www.abhinavjournal.com> (last visited on January 02, 2016)

- Prabhakar Rajeev and Ms. Sonam Mishra, " A Study of Corporate Social Responsibility in Indian Organization: An-Introspection" Proceedings of 21st International Business Research Conference 10 - 11 June, 2013, Ryerson University, Toronto, Canada, ISBN: 978-1-922069-25-2 available at 1370168444_430-Sonam-httpwww.wbiworldconpro.com/uploads/canada-conference-2013management1370168444_430-Sonam.pdf (last visited on April 07, 2016)
- Sharma Anupam and Ravi Kiran, "Corporate Social Responsibility: Driving Forces and Challenges" International Journal of Business Research and Development (IJBRD) Vol.2 No.1 2013 p. 19 available at <http://www.sciencetarget.com/Journalindex.php/IJBRD/articleviewFile18250> (last visited on April 07, 2016)
- Sood Manish(Dr.), "Corporate Social Responsibility and the Role of SME's in India", International Journal of Latest Trends in Engineering and Technology (IJLTET) Vol 5, Issue 1, January 2015 p.279 available at <http://www.ijltet.org/wpcontent/uploads/20150140.Pdf> (last visited on February 12, 2016)
- Srivastava Amit Kumar, Gayatri Negi, Vipul Mishra, and Shraddha Pandey, " Corporate Social Responsibility: A Case Study of TATA Group" IOSR Journal of Business and Management (IOSRJBM) Vol. 3 Issue 5 Sept,-Oct. 2012 pp.18-19 available at <http://iosrjournals.org/iosr-jbpm/papers/vol3-issue5D0351727.pdf> (last visited on April 07, 2016)
- Uvais. M and Hafeefa Cholasserri, "Corporate Social Responsibility: Dimensions and Challenges In India" International Journal of Engineering Science Invention (IJESI) Vol. 2 Issue 3 March 2013, pp. 28-30 available at [http://www.ijesi.org/papers/Vol\(2\)3%20\(Version-4\)D232732.pdf](http://www.ijesi.org/papers/Vol(2)3%20(Version-4)D232732.pdf) (last visited on April 07, 2016)
- Vikramjit kaur, " Corporate Social Responsibility (CSR): Overview of Indian Corporates" International Journal of Management and Social Sciences Research (IJMSSR) Vol.1 No.3 December 2012 p. 49 available at <http://www.irjournals.org/ijmssr/Dec201210.pdf> (last visited on April 07, 2016)
- Yasmin Begum R. Nadaf and Shamshuddin M. Nadaf, " Corporate Social Responsibility: Issues Challenges and Strategies for Indian Firms" IOSR Journal of Business and Management (IOSR-JBM) Vol. 16 Issue 5 May 2014 p. 53 available at <http://www.iosrjournals.org/>(last visited on January 02, 2016)_____XXXXX__

CS

The Institute of Company Secretaries of India
Organising
"Emancipate Women Prodigy to Rule the Roost"
-A NATIONAL WOMEN EMPOWERMENT PROGRAM

Hosted by ICSI- Hyderabad Chapter
on
Friday, & Saturday, 7 – 8 October 2016
at
Hyderabad
Venue and other details will be
communicated shortly
All Women Company Secretaries are requested to block their dates



PCH- 4

ICSI – CCGRT

ANNOUNCES

Unique

All India Research Paper Competition On Goods and Services Tax



ICSI-CCGRT is pleased to announce **unique** “All India Research Paper Competition on “Goods and Services Tax” with an objective of creating proclivity towards research among its Members, both in employment and practice.

The purpose of research is to identify specific questions and try to find out a comprehensive and definitive answer. Since research in all disciplines and subjects, must begin with a clearly defined goal, this study is also designed keeping those objectives in mind.

PROLOGUE

The Goods and Services tax is the biggest indirect tax reform since 1947 and it has potential to lead the economic integration of India. With the passage of GST Bill there will be only one centralized tax and will replace plethora of indirect taxes currently in existence. The purpose of GST is to streamline the process of taxation and to make it convenient and more effective. The GST will possess a dual structure, meaning thereby, that it will comprise of two components- the Central GST and the State GST. They will both have separate powers to legislate and administer their respective taxes. Taxes like, Excise duty; Service tax; VAT (value added tax); Entry tax; Octroi; Purchase tax etc.

The rationale behind launching of GST is to bring uniformity, decrease the cascading effect of these taxes by providing input tax credit. Will have a holistic tax base with minimum exemptions, which in turn, will assist industry in reaping benefits of common procedures and claim credit for taxes paid.

OBJECTIVES:

a) To have an overview of GST

- b) To develop an understanding with reference to important terms, such as, “actionable claim”, “address of delivery”, “agent”, “aggregate turnover” etc.
- c) To understand possible implementation hurdles for GST.
- d) To ascertain the impact of GST on India’s economic development.
- e) To know the role of Governance Professionals in complying with GST guidelines.
- f) To evaluate the impact of GST on foreign trade from the viewpoint of companies actively engaged in exports and imports, especially levying of taxes when the raw materials imported from foreign land passes through various stages and states of India.
- g) To identify the loopholes in the GST structure and ways to plug them.
- h) To understand the ways of dealing with the grievances pertaining to GST.

THEMES ON WHICH RESEARCH PAPERS ARE INVITED

- GST and its impact on Supply Chain.
- GST- Does One Size Fits for All.
- Subsuming of various taxes currently levied by Central & State Govt.- A Reality or Rigmale.
- Messiah or Menace for the organizations in Manufacturing and Services Sector of India.
- Tax Rebates under GST.
- The Efficacy of GST Council in settlement of disputes between the Centre and the States.
- Impact of GST on Foreign Companies.
- GST and its impact on Make-in-India initiative.
- Impact on Government’s Tax Collections and resulting impact into various development related activities, especially infrastructure development.
- GST and its impact on other Laws and Regulations.
- GST and its impact on GDP / National Income
- GST and its impact on FDI.
- GST Inflation.

RESEARCH PAPER / MANUSCRIPT GUIDELINES

- Original papers are invited from Company Secretaries in employment & practice, Academicians, Research Scholars and other Professionals.
- The paper must be accompanied with the author's name(s), affiliations(s), full postal address, email ID, and telephone/ fax number along with the title of the paper on the front page.
- Full text of the paper should be submitted in MS Word using Times New Roman, font size 12 on A4 size paper in 1.5 spacing, with a maximum of 5000 words.

CS Ahalada Rao V
Chairman, Research Committee,
ICSI

CS Ashish Garg
Chairman, Core Committee,
GST, ICSI

CS Ashish Doshi
Chairman, ICSI-CCGRT
Management Committee

- The text should be typed double-spaced only on one side of A4 size paper in MS Word, Times New Roman, 12 font size with one-inch margins all around.
- The author/s’ name should not appear anywhere else on the body of the manuscript to facilitate the blind review process. The research paper should be in clear, coherent and concise English.
- Tables / Exhibits should be numbered consecutively in Arabic numerals and should be referred to in the text as Table 1, Table 2 / Exhibit 1, Exhibit 2 etc.
- All notes must be serially numbered. These should be given at the bottom of the page as footnotes.
- The following should also accompany the manuscripts on separate sheets: (i) An abstract of approximately 150 words with a maximum of five key words, and (ii) A brief biographical sketch (60-80 words) of the author/s describing current designation and affiliation, specialization, number of books and articles in refereed journals, membership number of ICSI and other membership on editorial boards and companies, etc.
- The research papers should reach the Competition Committee on or before 30th of September, 2016 by 12 noon (IST).

Participants should email their research papers on the following email id: ccgrt@icsi.edu

FURTHER INFORMATION FOR AUTHORS / PARTICIPANTS

- The decision of the Reviewing Committee will be final and binding on the participants.
- The Institute of Company Secretaries of India reserves the right to publish or refer the selected papers for various publications viz; Souvenirs, Books, Study materials published by the institute or in any seminar / conference / workshop / Research Programs conducted by institute either on its own or jointly with other organizations and also in regular course of activities of ICSI. Further, the authors whose papers will be selected will receive Program Credit Hours (PCH).
- ICSI reserves all intellectual property rights including in particular copyright, trade mark, design and other intellectual rights. The authors are not entitled for any remuneration or compensation or royalty except honorarium paid by ICSI. The participants / authors shall submit the Declaration Form to the institute at the time of submission of paper.
- The papers will be scrutinized by an Expert Committee.

For any query / assistance, kindly contact at: ccgrt@icsi.edu/+91-22-41021515/1501

4 PCH will be awarded to the authors, whose research papers will be selected.

3

LEGAL WORLD



- MIHEER H. MAFATLAL V. MAFATLAL INDUSTRIES LTD [SC]
- SEBI V. OPEE STOCK-LINK LTD & ANR [SC]
- MADURA COATS LTD V. MODI RUBBER LTD & ANR [SC]
- ANITA INTERNATIONAL V. TUNGABADRA SUGAR WORKS MAZDOOR SANGH & ORS [SC]
- NORTHERN COALFIELDS LTD V. HEAVY ENGINEERING CORPORATION LTD. & ANR [SC]



THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

Website : www.icsi.edu

ATTENTION MEMBERS & STUDENTS

PRATIBIMB-TRANSCENDING BARRIERS

An e-book on Soft skills and Human Behaviour

In the cutting edge competitive world, one needs to sharpen one's professional and personal skills. One has to develop, practice and continuously sharpen qualities like time management, personal presentation, communication, team work, attitude and confidence along with the technical skills in the respective areas. This requires a professional guidance to balance the acquisition of these intrinsic values.

With a view to advance the soft skills of Company Secretaries, the Institute commences a series of "Pratibimb-Transcending Barriers: An e-book series on Soft skills and Human Behaviour." This series comprises of a comprehensive one stop learning initiative towards development of personal and professional excellence of members and students.

As a part of this initiative, the first chapter titled "The fine art of articulation-learning to present" has been successfully released and is available on ICSI website. The chapter contains anecdotes, video clips and the speeches along with links to additional reading materials to make it truly comprehensive one stop learning solution on the subject.

We are sure of your professional and personal advancement through this initiative.

Keep watching the series of Pratibimb at ICSI website to unfold the hidden key of success and advance your soft skills to lead professional excellence and proficiency.



Landmark Judgement

CS: LMJ: 10/08/2016

MIHEER H. MAFATLAL v. MAFATLAL INDUSTRIES LTD [SC]

Civil Appeal No.11879 of 1996

N.P.Singh & S.B. Majmudar, JJ. [Decided on 11/09/1961]

Equivalent citations: JT 1996 (8) 205; (1996) 87 Comp Cas 792; AIR 1997 SC 506.

Companies Act, 1956- Section 391-394- amalgamation of companies- company court's jurisdiction- Supreme Court explains the scope.

Brief facts:

The transferor-company Mafatlal Fine Spinning and Manufacturing Co. Ltd [MFL] amalgamated with the transferee company Mafatlal Industries Limited ('MIL') under a scheme of amalgamation. The learned Single Judge granted requisite sanction to the applicant transferee-company MIL to amalgamate in it the transferor-company MFL under Section 391(2) of the Companies Act, 1956 (hereinafter referred to as 'the Act'). Bombay High Court sanctioned the scheme presented by MFL while the transferee company MIL presented the scheme before the Gujarat High Court. Overruling the objections raised by the appellant the single judge sanctioned the scheme which was confirmed by the Division bench on appeal. The appellant challenged the judgement of the Division Bench on various grounds before the Supreme Court, which rejected all the objections.

While examining the objections in the light of the jurisdiction of the company court while sanctioning a scheme of amalgamation, the Supreme Court exhaustively dealt with the scope of the company court's jurisdiction, with which we are concerned with.

Decision: Appeal dismissed.

Reason:

It will be necessary to view the limited scope of the jurisdiction of the Company Court which is called upon to sanction the Scheme of Amalgamation as per the provisions of Section 391 read with Section

393 of the Act.

In the present proceedings we will be concerned with the Sections 391 and 393 of the Act. The aforesaid provisions of the Act show that compromise or arrangement can be proposed between a company and its creditors or any class of them or between a company and its members or any class of them. Such a compromise would also take in its sweep any scheme of amalgamation/merger or one company with another. When such a scheme is put forward by a company for the sanction of the Court in the first instance the Court has to direct holding of meetings of creditors or class of creditors or members or class of members who are concerned with such a scheme and once the majority in number representing three-fourths in value of creditors or class of creditors or members or class of members, as the case may be, present or voting either in person or by proxy at such a meeting accord their approval to any compromise or arrangement thus put to vote, and once binding to all creditors or class of creditors or members or class of members, as the case may be, which would also necessarily mean that even to dissenting creditors or class of creditors or dissenting members or class of members such sanctioned scheme even though approved by a majority of the concerned creditors or members the Court has to be satisfied that the company or any other person moving such an application for sanction under sub-Section (2) of Section 391 has disclosed all the relevant matters mentioned in the provision to sub-section (2) of that Section.

So far as the meetings of the creditors or members, or their respective classes for whom the Scheme is proposed are concerned, it is enjoined by Section 391(1) (a) that the requisite information as contemplated by the said provision is also required to be placed for consideration of the concerned voters so that the parties concerned before whom the scheme is placed for voting can take an informed and objective decision whether to vote for the scheme or against it.

On a conjoint reading of the relevant provisions of Sections 391 and 393 it becomes at once clear that the Company Court which is called upon to sanction such a scheme has not merely to go by the ipse dixit of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy. This is implicit in the very concept of compromise or arrangement which is required to receive the imprimatur of a court of law. No court of law would ever countenance any scheme of compromise or arrangement arrived at between the parties and which might be supported by the requisite majority if the Court finds that it is an unconscionable or an illegal scheme or is otherwise unfair or unjust to the class of shareholders or creditors for whom it is meant. Consequently it cannot be said that a Company Court before whom an application is moved for sanctioning such a scheme which might have got requisite majority support of the creditors or members or any class of them for whom the scheme is mooted by the concerned company, has to act merely as rubber stamp and must almost automatically put its seal of approval on such a scheme. It is trite to say that once the scheme gets sanctioned by the Court it would bind even the dissenting minority shareholders or creditors. Therefore, the fairness of the scheme qua them also has to be kept in view by the Company Court its sanction. It is, of course, true that so far as the Company Court is concerned as per the statutory provisions of Sections 391 and 393 of the Act the question of voidability of the scheme will have to be judged subject to the rider that a scheme sanctioned by majority will remain binding to a dissenting minority of creditors or members as the case may be, even though they have not consented to such scheme and to that extent absence of their consent

will have to effect the scheme. It can be postulated that even in case of such a Scheme of Compromise and Arrangement put up for sanction of a Company Court it will have to be seen whether the proposed scheme is lawful and just and fair to the whole class of creditors or members including the dissenting minority to whom it is offered for approval and which has been approved by such class of persons with requisite majority vote.

However further question remains whether the Court has jurisdiction like an appellate authority to minutely scrutinise the scheme and to arrive at an independent conclusion whether the scheme should be permitted to go through or not when the majority of the creditors or members or their respective classes have approved the this aspect the nature of compromise or arrangement between the company and the creditors and members has to be kept in view. It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire.

The supervisory jurisdiction of the Company Court can also be called out from the provisions of Section 392 of the Act. Of course this Section deals with post-sanction supervision. But the said provision itself clearly earmarks the field in which the sanction of the Court operates. It is obvious that the supervisor cannot ever be treated as the author or a policy maker. Consequently the propriety and the merits of the compromise or arrangement have to be judged by the compromise or arrangement have to be judged by the parties who as *sui juris* with their open eyes and fully informed about the pros and cons of the Scheme arrive at their own reasoned judgment and agree to be bound by such compromise or arrangement.

The Court cannot, therefore, undertake the exercise of scrutinising the scheme placed for its sanction with a view to finding out whether a better scheme could have been adopted by the parties. This exercise remains only for the parties and is in the realm of commercial democracy permeating the activities of the concerned creditors and members of the company who in their best commercial economic interest by majority agree to give green signal to such a compromise or arrangement. The aforesaid statutory scheme which is clearly discernible from the relevant provisions of the Act, as seen above, has been subjected to a series of decisions of different High Courts and this Court as well as by the Courts in England which had also occasion to consider schemes under pari material English Company Law. We will briefly refer to the relevant decisions on the point.

After referring to several authoritative rulings i.e. In Re. Alabama, New Orleans Texas and Pacific Junction Railway Company reported in 1891 (1) Chancery Division 213; Anglo-continental Supply Co. Ltd. Re. (1992) 2 Ch. 723; In Re. Mankam Investments Ltd. and others (1995) 4 Comp LJ 330 (Cal.); and Hindustan Lever Employees' Union v. Hindustan Lever Ltd. and others 1995 Supp. (1) SCC 499 the court summed up the broad contours of company court's jurisdiction as under:

1 The sanctioning court has to see to it that all the requisite statutory

procedure for supporting such a scheme has been complied with and that the requisite meeting as contemplated by Section 391(1) (a) have been held.

2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391 sub-section (2).
3. That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just fair to the class as whole so as to legitimately blind even the dissenting members of that class.
4. That all the necessary material indicated by Section 393(1) (a) is placed before the voters at the concerned meetings as contemplated by Section 391 sub-Section (1).
5. That all the requisite material contemplated by the provision of sub-Section (2) of Section 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.
6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.
7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.
8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.
9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.

The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a Scheme of Compromise and Arrangement are not exhaustive but only broadly illustrative of the contours of the Court's jurisdiction.

LW: 50:08:2016

SEBI v. OPEE STOCK-LINK LTD & ANR [SC]

Civil Appeal No. 2252 of 2010 with Civil Appeal Nos. 2285,

2286, 2294 & 2303 of 2010

Anil R. Dave & R. Banumathi, JJ. [Decided on 11/07/2016]

SEBI Act- section 15Z- cornering of shares in IPO through benami demat accounts- Supreme Court upholds the penalty and punishment imposed by SEBI on the erring stock brokers.

Brief facts:

These are the cases which reflect the manner of getting excessive number of shares in an irregular manner, which would adversely affect Retail Individual Investors (RII), who are the persons with relatively less means and who desire to invest their hard earned money into shares of companies, whereby they also make an effort to participate in the progress of the economy. We are concerned with issue of shares in the nature of IPO made by Jet Airways Limited and Infrastructure Development Finance Company Limited, which had been over-subscribed.

Investigations was made by the officials of the SEBI and in pursuance of the said investigation it was revealed that in the matter of the IPO of the aforesaid two companies, shares which were meant for RIIs had been cornered through hundreds of benami/fictitious demat account holders.

As modus operandi was quite similar in applications for shares made in respect of both the companies and parties concerned are common, we have referred to the issue of Jet Airways India Limited. It was found by the SEBI that respondent in Appeal No. 20 of 2009 before the SAT had received 12,053 shares out of which 3272 shares were transferred before the day of listing of shares of the company with the stock exchange, 3598 shares on the day of listing and 5183 shares after the day of listing. The said shares were purchased through off market transactions from 553 demat account holders, who had been allotted shares of the said company. The shares of the company were listed on 14th March, 2005.

The said 553 demat account holders sold the shares to the said respondent at the rate of Rs. 1170/- per share, though the market value of the said shares was much more than Rs. 1170/- per share. The said shares were thereafter sold by the said respondent at a higher price. Upon investigation, it was also found that most of those 553 demat account holders were not genuine persons.

The Whole Time Member [WTM] of the SEBI came to the conclusion that the dealings of the respondents were not fair and were in violation of the Act as well as the Regulations, and imposed penalty on the respondents. On appeal, SAT set aside the order of the WTM. SEBI challenged the order of SAT before the Supreme Court.

Decision: Appeals allowed.

Reason:

We do not find any substance in the submissions made on behalf of the respondents to the effect that the price of the shares of Jet Airways India Ltd. paid by the respondents to the demat account holders was reasonable. Even according to the submission made by the learned counsel, value of the said shares, during the said period varied from Rs.1172/- to Rs. 1339/- and in such circumstances, nobody would believe that all the demat account holders would sell their shares at the same rate, viz. Rs. 1170/- per share to the respondents. These transactions are, therefore, definitely of fishy nature.

The submission to the effect that no Retail Individual Investor had made any complaint to the SEBI is not at all relevant because the SEBI need not act only on the basis of a complaint received. If from its independent sources, the SEBI, after due enquiry comes to know about some illegality or irregularity, the SEBI has to act in the manner as it acted in the instant case. The fact, however, remains that because of the undue advantage which the respondents got, some small investors or RII must have not got the shares, which they ought to have been allotted.

We do not agree with the submission that a common address given by several demat account holders would not show any irregularity, because normally a person would give his own address when he is opening his demat account. Rarely, a person would give someone else's address if he is not having any permanent address or is likely to shift his residence. In the instant case, not one or a few, but several demat holders had given one particular address and it is also pertinent to note that upon initiation of an inquiry at the instance of the SEBI, most of the demat accounts had been closed by the demat account holders.

The submission was also to the effect that the shares could have been sold before they were listed with a stock exchange and such a sale cannot be said to be an illegality. Looking at the fact that number of persons, having common address of their demat accounts, selling their shares at the same price to a particular person before listing of shares of a company with a stock exchange is not a normal thing. In the facts and circumstances of the case, we do not accept the said submission made by the learned counsel appearing for the respondents.

The submission made to the effect that the Tribunal is a final fact finding authority cannot be disputed. According to the learned counsel, the facts found by the SAT should not be disbelieved by this Court. However, for coming to a definite conclusion contrary to the findings arrived at by the lower authority, the appellate authority, in the instant case, the SAT, ought to have recorded specific reasons for arriving at a different conclusion, but we do not find any sound reason for coming to a different conclusion in the impugned order. On the other hand, we find detailed discussion for coming to a particular conclusion in the order, which was passed by the Whole Time Member of the SEBI and therefore, we do not see any reason for the SAT to disturb the said finding without mentioning any strong and justifiable reason for coming to a different conclusion.

LW: 51:08:2016

MADURA COATS LTD v. MODI RUBBER LTD & ANR [SC]

Civil Appeal No. 1475 of 2006

J. S. Khehar, M.B. Lokur & C. Nagappan, JJ. [Decided on 29/06/2016]

Companies Act read with SICA – winding up order passed- reference to BIFR made during the winding up proceedings – reference registered after the passing of the winding up order- on appeal division bench set aside the winding up order- whether tenable- Held, Yes.

Brief facts:

The appellant (Madura Coats) is aggrieved by the judgment and order

dated 20th May, 2004 passed by the Division Bench of the Allahabad High Court in Special Appeal No. 420 of 2004. By the impugned judgment and order the Division Bench of the High Court allowed the Special Appeal of the respondent and stayed further proceedings before the Company Court consequent upon a winding up order passed against the respondent (Modi Rubber) till a final decision is taken on a reference made by Modi Rubber to the Board for Industrial and Financial Reconstruction.

Company Petition No.1 of 2002 was filed by Madura Coats in the Allahabad High Court for winding up Modi Rubber on the allegation that Modi Rubber was unable to pay its huge undisputed debts. Modi Rubber who entered appearance but took several adjournments in the matter on one pretext or the other and eventually, after two years of adjournments, the Company Court declined to grant any further adjournment to Modi Rubber and passed an order on 12th March, 2004 holding that it was just and equitable that the company be wound up. An Official Liquidator was appointed to take charge of the assets of the company and to submit a report along with the inventory.

Feeling aggrieved by the winding up order, Modi Rubber preferred an appeal before the Division Bench of the High Court. Before the Division Bench it was brought out for the first time that a reference to the BIFR had been made on 3rd February, 2004 which was received by the BIFR on 4th February, 2004. Thereafter, the application was scrutinized and on 17th March, 2004 the reference made by Modi Rubber was registered as Case No. 153 of 2004. It will be seen that while the application for making a reference was sent to the BIFR before the winding up order was passed by the Company Court, the reference was actually registered after the winding up order was passed by the Company Court.

The Division bench allowed the appeal and passed the impugned judgement which is under challenge before the Supreme Court.

Decision: Appeal dismissed.

Reason:

The correctness of the impugned judgment and order will need to be tested on these facts and the law placed before us in connection with the reference made to the larger Bench. On hearing learned counsel for the parties on these facts, we are of the opinion that different situations can arise in the interplay between the Companies Act and the SICA in the matter of winding up of a company and these situations have already been dealt with by this Court at one time or another.

One such situation is where winding up proceedings are pending and a reference is made to the BIFR. This situation occurred in *Real Value Appliances Ltd. v. Canara Bank*(1998) 5 SCC 554, where winding up proceedings were pending and the appointment of a provisional liquidator was under challenge. At that stage, steps were taken by Real Value for making a reference under the SICA to the BIFR. Under these circumstances, one of the questions agitated for consideration by this Court was whether on the registration of a reference, the Division Bench of the High Court could pass orders in an appeal against an interim order passed by the Company Court.

While referring to the provisions of the SICA, this Court concluded that once a reference is registered after scrutiny, it is mandatory for the BIFR to conduct an enquiry. It was also held that the SICA is intended to revive and rehabilitate a sick industry before it can be wound up under the Companies Act. The legislative intention is to ensure that no proceedings against the assets of the company are taken before any decision is taken by the BIFR because if the assets are sold or the company is wound up, it may

become difficult to later restore the status quo ante. It was held that it is for this reason that the enquiry under the SICA must be treated to have commenced as soon as the registration of the reference is completed after scrutiny and that action against the company's assets must remain stayed in view of Section 22 of the SICA till a final decision is taken by the BIFR.

Another facet of this situation is when proceedings are pending both before the BIFR and the Company Court but no order of winding up has been passed against the company. In such a situation (though we are not directly concerned with it) this Court took the view in *Tata Motors Ltd v. Pharmaceutical Products of India Ltd.* (2008) 7 SCC 619, that the provisions of SICA would prevail over the provisions of the Companies Act.

Another situation is where a winding up order is passed by the Company Court but it is stayed in appeal. In *Rishabh Agro Industries Ltd. v. P.N.B. Capital Service Ltd.* (2000) 5 SCC 515, the company was ordered to be wound up but this order was stayed by the Division Bench of the concerned High Court. Thereafter the company made a reference to the BIFR under the SICA.

From the above it is quite clear that different situations can arise in the process of winding up a company under the Companies Act but whatever be the situation, whenever a reference is made to the BIFR under the SICA, the provisions of the SICA would come into play and they would prevail over the provisions of the Companies Act and proceedings under the Companies Act must give way to proceedings under the SICA.

In this state of the law, in so far as the present appeal is concerned, we do not find any error in the view taken by the High Court in concluding that the winding up proceedings before the Company Court cannot continue after a reference has been registered by the BIFR and an enquiry initiated under Section 16 of the SICA. The present appeal is squarely covered by the primacy given to the provisions of the SICA over the Companies Act as delineated in *Real Value*, *Rishabh Agro* and *Tata Motors*. Consequently, the High Court was right in concluding that the provisions of Section 22 of the SICA would come into play and that the Company Court could not proceed further in the matter pending a final decision in the reference under the SICA.

Quite apart from the above, we are also of opinion that in view of the subsequent developments and the fact that Madura Coats had participated before the BIFR and has taken its dues in terms of the rehabilitation scheme approved and sanctioned by the BIFR, nothing really survives for consideration in this appeal. Strictly speaking, we have merely undertaken an academic exercise pursuant to a reference made to a larger Bench.

LW: 52:08:2016

ANITA INTERNATIONAL v. TUNGABADRA SUGAR WORKS MAZDOOR SANGH & ORS [SC]

Civil Appeal Nos. 6042-6048 of 2011 with Civil Appeal Nos. 5501-5502 of 2016 (Arising out of SLP(C) Nos. 7490-7491 of 2014)

Jagdish Singh Khehar & Adarsh Kumar Goel, JJ. [Decided on 04/07/2016]

Companies Act read with RDB Act - company under liquidation- OL appointed- creditor bank approaches

DRT- claim allowed- recovery officer sells the assets of the company- objections of the OL overlooked- whether sale is liable to be set aside-Held, Yes.

Brief facts:

Facts are complicated. Relevant material facts are that the Deve Sugars Ltd (the company) was ordered to be wound up proceedings before the Madras High Court. The official liquidator took possession of the assets of the company located in the State of Karnataka. State bank of Mysore, which had granted loans to the company, filed recovery proceeding before the DRT Bangalore, with the permission of the Madras High Court. While granting permission, the court imposed a condition that official liquidator is impleaded and no coercive steps are taken against the assets of the company during or after the conclusion of the proceedings before the Tribunal.

DRT allowed the claim of the bank and recovery officer issued a recovery certificate. The assets of the company was sold in the public auction and the Appellant was the successful bidder. The sale was challenged by the OL that his request for sale deferment was not considered by the recovery officer. Also the workers union (Respondent 1 herein) challenged the sale before the Karnataka High Court alleging that the dues of the worker were not accorded priority.

Ultimately the Madras High Court, after hearing the parties set aside the sale made to the appellant and directed the recovery officer to conduct a fresh sale, which is under challenge before the Supreme Court.

Decision: Appeal dismissed.

Reason:

We have given our thoughtful consideration to the complicated sequence of facts projected before us, as also, the legal submissions advanced at the hands of learned counsel for the rival parties. We shall now endeavour to record our conclusions, with reference to the issues canvassed.

The applications filed by the Official Liquidator and others were considered collectively (with Company Application Nos. 2740-2742 of 2007) and were rejected by a common order dated 3.3.2009, whereby all the applicants were relegated to their remedy of appeal under the RDB Act. A challenge raised to the above order dated 3.3.2009, by way of an intra- court appeal, was allowed by the High Court, on 17.9.2009. It is this order, which is subject matter of challenge before this Court. Stated concisely, the High Court expressed the view, that the proceedings before the Recovery Officer, including the sale of the properties of Deve Sugars Ltd. on 11.8.2005 and the confirmation thereof on 12.9.2005, had been conducted in disregard of the order of the Company Court in the High Court at Madras, dated 10.3.2000 (in Company Application Nos. 1251-1253 of 1999). The sale and confirmation of the properties of Deve Sugars Ltd. in favour of Anita International were accordingly set aside.

The principal debate raised before this Court, revolves around the cause and effect of the order dated 10.3.2000, passed by the Company Court in the High Court at Madras.

The issue under consideration is, whether or not, an order passed by the Company Court (in the present case, the order dated 10.3.2000) was binding on the Recovery Officer? And, whether the proceedings conducted by the Recovery Officer, in violation of the above order, were sustainable in law? We have no hesitation in concluding that an order passed by the Company Court is binding on the Recovery Officer. We are of the view,

that the acceptance of the bid of Anita International by the Recovery Officer on 11.8.2005, and the confirmation of the sale in its favour on 12.9.2005, were clearly impermissible, and therefore, deserve to be set aside.

Despite our above conclusion, it is imperative for us to notice, that for recovery of a debt due to a bank or a financial institution, the concerned bank or financial institution, can legitimately initiate proceedings, by filing a winding up petition before the jurisdictional Company Court, or alternatively, intervene in a pending winding up petition. Since there is no bar restraining a bank or a financial institution from approaching a Company Court, by filing a winding up petition, it is not possible to conclude, that the jurisdictional Company Court, is not possessed with the determinative authority/ competence to entertain a claim raised by such bank or financial institution. In view of the above, it is not possible for us to accept, as was suggested on behalf of the appellants, that the order passed by the Company Court in the High Court at Madras dated 10.3.2000, lacked the jurisdictional authority. Since we have concluded that the Company Court which passed the order dated 10.3.2000 did not lack jurisdiction, we hereby hold, that in the facts of this case, the above order dated 10.3.2000 was neither invalid nor void.

For all the reasons recorded hereinabove, we find no merit in the instant appeals. The same are accordingly dismissed. While affirming the impugned order passed by the High Court, we confirm the setting aside of the sale made by the Recovery Officer in favour of the appellant – Anita International on 11.8.2005, and the confirmation thereof by the order of the Recovery Officer dated 12.9.2005.



LW: 53:08:2016

NORTHERN COALFIELDS LTD v. HEAVY ENGINEERING CORPORATION LTD. & ANR [SC]

Civil Appeal No. 6296 of 2016 [Arising out of SLP(C) No. 27646 of 2008]

T.S. Thakur & R. Banumathi, JJ. [Decided on 13/07/2016]

Arbitration and conciliation Act,1996- Dispute between two PSUs- Government's dispute redressal mechanism COD failed- one PSU filed civil suit – High court stayed the suit on the ground that permission from COD was not taken- whether tenable-Held, No. Court appointed the arbitrator to resolve the dispute.

Brief facts:

This is yet another case that brings to fore a sad state of affairs when it comes to resolving disputes between two Government owned corporations. What adds to the enigma of apathy towards realism in official circles is the fact that the respondent-corporation has with considerable tenacity opposed the move aimed at a quick and effective resolution of the conflict and resultant quietus to the controversy by a reference of the disputes to arbitration in terms of the Arbitration and Conciliation Act, 1996.

The disputes between the appellant and respondents were referred for settlement in terms of the Permanent Machinery for Arbitration as early as in the year 1993/1994. It is also not in dispute that as on the date of the said reference the Committee on Disputes was already set up but no permission for a reference was taken. That the Arbitrator made an award under the Permanent Machinery of Arbitration which was questioned in appeals before the Law Secretary who made some alterations in the same is also admitted. That the award so made has not been accepted by the appellants is also common ground in as much as the appellant has filed a suit challenging an arbitral award in Civil Suit No. 1709 of 2000 in which the appellant claimed a declaration that the contracts were rendered null and void on account on the breach of Clause 3 thereof. The appellant also sought a declaration that the respondent company was not entitled to claim any relief under the said contract nor was respondent No.2 entitled to do so and that the so called arbitral award was vitiated on the face of record hence liable to be set aside. That such a suit could be filed but could not be proceeded with till such time the COD granted permission is also beyond dispute as on the date of the institution of the suit the direction of this Court in ONGC group of cases still held the field. Such permission could be obtained within 30 days which was not sacrosanct but the institution of the suit itself could not be faulted as a litigant was in terms of the direction of this Court entitled to institute the proceedings to save limitation. The High Court has, all the same, rejected the plaint on the ground that permission from COD was not obtained.

The present appeal calls in question the correctness of the above judgments and orders.

Decision: Appeal allowed.

Reason:

In doing so the High Court obviously understood the direction of this Court to mean as though absence of such permission was a fatal defect which it was not. The orders of this Court to which we have made a reference earlier unequivocally make it clear that filing of the suit in itself was not barred. What was restrained was further progress in the suit till such time permission from the COD was obtained. In as much as the High Court considered the absence of permission from COD to be a mandatory legal requirement for the institution of the suit it committed a mistake. No such legal requirement could be read into the judgment of this Court nor has any such requirement been pointed out by learned Solicitor General appearing before us.

The question then is whether the requirement of the clearance of COD could be insisted upon even at this stage. Our answer is in the negative. We say so because COD stands abrogated/dissolved and the orders directing constitution of such a Committee reversed. Since there is no COD at present there is no question of either obtaining or insisting upon any clearance from the same. The upshot of the above discussion is that the orders passed by the High Court rejecting the plaint on the ground that the same was not preceded or accompanied by permission from COD is unsustainable, are hence, liable to be set aside.

That brings us to the question whether we ought to remand the matter back to the Civil Court for adjudication and if that were not a desirable course of action whether adjudication of the matters in dispute by way of arbitration would be a better option. It was argued that the respondent has an award in its favour made in terms of the Permanent Machinery of Arbitration and that so long as that award stands there is no need for any fresh or further arbitration on the claims already adjudicated upon under the said mechanism. The argument appears to be attractive at first blush but does not survive a closer scrutiny. That is so because an arbitral award under the Permanent Machinery of Arbitration may give quietus to the controversy if the same is accepted by the parties to the dispute. In cases, however, a party does not accept the award, as is the position in the case at hand, the arbitral award may not put an end to the controversy. Such an award being outside the framework of the law governing arbitration will not be legally enforceable in a court of law. In fairness to learned Additional Solicitor General, we must mention that he did not dispute that the award made by the arbitrator under the Permanent Machinery of Arbitration was outside the statute regulating arbitration in this country and was not, therefore, executable in law. What he argued was that since both sides to the disputes were Government Corporations the Government could adopt administrative mechanism for recovering the amount held payable to the respondent. That does not, in our opinion, answer the question. Remedies which are available to the Government on the administrative side cannot substitute remedies that are available to a losing party according to the law of the land. The appellant has lost before the arbitrators in terms of the Permanent Machinery of Arbitration and is stoutly disputing its liability on several grounds. The dispute regarding liability of the appellant under the contract, therefore, continues to loom large so long as it is not resolved finally and effectually in accordance with law. No such effective adjudication recognized by law has so far taken place. That being so, the right of the appellant to demand such an adjudication cannot be denied simply because it happens to be a Government owned company for even when the appellant is a Government Company, it has its legal character as an entity separate from the Government. Just because it had resorted to the permanent procedure or taken part in the proceedings there can be no estoppel against its seeking redress in accordance with law. That is precisely what it did when it filed a suit for declaration that the award was bad for a variety of reasons and also that the contract stood annulled on account of the breach committed by the respondents.

The respondent, however, somewhat diffident in making a concession that the claim could be referred for a fresh round of arbitration in accordance with provisions of Arbitration and Conciliation Act, 1996. That diffidence does not prevent us from making a suitable order of reference to a sole arbitrator for adjudication of all outstanding disputes between the two corporations especially because the alternative to such arbitration is a long drawn expensive and cumbersome trial of the suit filed by the appellant before a civil court and the difficulties that beset the execution of an award made under a non-statutory administrative mechanism. Both these courses are unattractive with no prospects of an early fruition even after the parties have fought each other for nearly twenty years.

In the result we allow this appeal and set aside the judgment and order passed by the High Court. We further direct that all disputes relating to and arising out of the contracts executed between the appellant company and the respondent corporation shall stand referred for adjudication to Hon'ble Mr. Justice K.G. Balakrishnan, Former Chief Justice of this Court, who is hereby appointed as Sole Arbitrator to adjudicate upon all claims and counter claims which the parties may choose to file before him.

4

FROM THE GOVERNMENT



- Issuance of rupee bonds to overseas Investor by Indian companies - Clarification regarding applicability of provision of Chapter III of the Companies Act, 2013
- Relaxation of additional Fees and extension of last date of in filing AOC- 4, AOC-4 (XBRL), AOC-4 (CFS) and MGT-7 under the Companies Act, 2013-regarding.
- Companies (Accounts) Amendment Rules, 2016.
- Companies (Incorporation) Third Amendment Rules, 2016
- Designated Special Court for speedy trial of offences punishable under the Companies Act, 2013
- National Company Law Appellate Tribunal Rules, 2016
- National Company Law Tribunal Rules, 2016
- Requirement of section 381(1)(a) of the Companies Act, 2013 to apply to a foreign company which is an airlines company subject to following exceptions and modifications
- Companies (Share Capital and Debentures) Third Amendment Rules, 2016

44th

***National Convention of
Company Secretaries***

Theme

Powering Governance - Empowering Stakeholders

CS - The Governance Professionals

Days

Thursday-Friday-Saturday

Dates

November 17-18-19, 2016

Venue

***Mahatma Mandir, Sector 13C
Gandhinagar Gujarat***





Corporate Laws

01 Issuance of rupee bonds to overseas Investor by Indian companies - Clarification regarding applicability of provision of Chapter III of the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide General Circular No: 09/2016, No. 1/21 /2013-CL-V, dated 03.08.2016.]

The Ministry has received references from stakeholders seeking clarity on applicability of provisions of Chapter-III of the Companies Act, 2013 (Act) and rule 18 of Companies (Share Capital and Debenture) Rules, 2014 to the issue of rupee bonds by Indian companies exclusively to persons resident outside India in accordance with applicable sectoral regulatory provisions.

The matter has been examined in the Ministry in consultation with Reserve Bank of India. The matter relating to issue of rupee denominated bonds to overseas investors is being regulated by RBI as part of ECB Policy framework. It is, accordingly, clarified that unless otherwise provided in the circular/ directions/ regulations issued by Reserve Bank of India, provisions of Chapter III of the Act and rule 18 of Companies (Share Capital and Debenture) Rules, 2014 would not apply to issue of rupee denominated bonds made exclusively to persons resident outside India in accordance with applicable sectoral regulatory provisions as stated above. Necessary changes in Companies (Share Capital and Debenture) Rules, 2014 in this regard are being made.

This issues with the approval of the competent authority.

K.M.S. Narayanan
Assistant Director

02 Relaxation of additional Fees and extension of last date of in filing AOC-4, AOC-4 (XBRL), AOC-4 (CFS) and MGT-7 under the Companies Act, 2013-regarding.

[Issued by the Ministry of Corporate Affairs vide General Circular No. 8, dated 29.07.2016.]

The Ministry have revised form AOC-4 which would be deployed shortly, Further, Form AOC-4 (XBRL) and Form AOC-4 (CFS) are also under revision and this may be available for deployment by end of August, 2016.

- As per the relevant provisions of the Companies Act, 2013, the financial statements and Annual Returns will have to be filed by

the Companies within 30 days and 60 days of conclusion of AGM or the last day by which AGM ought to have been held, as the case may be.

- In the light of the above and keeping in view that some time could be required for companies to get familiarised with filing of the new forms, it has been decided to allow companies to file financial statements and Annual Returns on or before 29.10.2016 where due date for holding of the Annual General Meeting is on or after 01.04.2016, without payment of additional filing fee.
- This issues with the approval of the competent authority.

K.M.S. Narayanan
Assistant Director

03 Companies (Accounts) Amendment Rules, 2016.

[Issued by the Ministry of Corporate Affairs vide G.S.R. 742(E), dated 27.07.2016. Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), dated 27.07.2016]

In exercise of the powers conferred by sub-sections (1) and (3) of section 128, sub section (3) of section 129, section 133, section 134 and section 138 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Accounts) Rules, 2014, namely:

- These rules may be called the Companies (Accounts) Amendment Rules, 2016.
 - They shall come into force on the date of their publication in the Official Gazette.
- In the Companies (Accounts) Rules, 2014, (hereinafter referred to as principal rules), in rule 6, for the second proviso, the following proviso shall be substituted namely:

“Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:

 - it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;
 - it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and
 - its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.”
- In rule 8 of the principal rules, in sub-rule (1), for the words “and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented”, the words “and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report” shall be substituted.

4. In rule 13 of the principal rules, in sub-rule (1),-(a) in the opening portion, the words "or a firm of internal auditors", the words "which may be either an individual or a partnership firm or a body corporate" shall be substituted;
 - (b) In the Explanation, for item (ii), the following item shall be substituted, namely:

'(ii) the term "Chartered Accountant" or "Cost Accountant" shall mean a "Chartered Accountant" or a "Cost Accountant", as the case may be, whether engaged in practice or not'.
5. In the principal rules, in Annexure,
 - (a) for form AOC-1, the following form AOC-1 shall be substituted, namely:.....*
 - (b) for form AOC-4, the following form AOC-4 shall be substituted, namely:.....*

Amardeep Singh Bhatia
Joint Secretary

*Not reproduced here for want of space. Readers may log on to mca.gov.in for the Forms.

04 Companies (Incorporation) Third Amendment Rules, 2016

[Issued by the Ministry of Corporate Affairs vide F.No. 1/13/2013-CL-V, dated 27.07.2016. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the companies Act, 2013 (18 of 2013), the central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Incorporation) Third Amendment Rules, 2016.
 - (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules), in rule 3, for sub-rule (2), the following shall be substituted, namely:—
 - (2) A natural person shall not be member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company".
3. In the principal rules, in rule 8,-
 - (a) in sub-rule (2) for clause (ii), the following shall be substituted namely:-

"...(ii) it includes the name of a trade mark registered or a trade mark which is subject of an application for registration under the Trade Marks Act, 1999 and the rules framed thereunder unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;"
 - (b) in sub-rule (6), in clause(n), the comma between the words 'financial' and 'corporation' shall be omitted.
4. In the principal rules, in rule 13, after sub-rule (2), the following Explanation shall be inserted, namely:-

"Explanation.- For the purposes of sub-rule (1) and sub-rule (2), the type written or printed particulars of the subscribers and witnesses shall be allowed as if it is written by the subscriber and witness respectively so long as the subscriber and the witness as the case may be appends

his or her signature or thumb impression, as the case may be."

5. In the principal rules, in rule 16,-
 - (1) in sub-rule (1),-
 - (a) in clause (m), the following Explanation shall be inserted, namely:-

"Explanation.- In case the subscriber is already holding a valid DIN, and the particulars provided therein have been updated as on the date of application, and the declaration to this effect is given in the application, the proof of identity and residence need not be attached."
 - (b) "clause (q) shall be omitted;
 - (ii) in sub-rule (2) in clause (g), the words " or partnership firm" shall be omitted.
6. In the principal rules, for rule 26, the following rule shall be substituted, namely:-

"26. Publication of name by company.- (1) Every company which has a website for conducting online business or otherwise, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the landing/home page of the said website.

(2) The Central Government may as and when required, notify the other documents on which the name of the company shall be printed."
7. In the principal rules, in rule 28, in sub-rule (2), after the second proviso, the following proviso shall be inserted, namely:-

"Provided also that on completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed."
8. In the principal rules, in rule 29, for sub-rule (1), the following shall be substituted, namely:-

"(I) The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon:

Provided that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be."
9. In the principal rules, in rule 30,-
 - (A) in sub-rule (1), after clause (i), the following shall be inserted namely:-

"(j) a copy of the No Objection Certificate from the Reserve Bank of India where the applicant is a registered Non-Banking Financial Company"
 - (B) in sub-rule (6), in clause (c) the words "and to the Securities and Exchange Board in the case of listed companies" shall be omitted;
 - (C) in sub-rule (10), after the proviso, the following Explanation shall be inserted, namely:-

"Explanation.- On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed."
10. In the principal rules, after rule 36, the following rule shall be

inserted, namely:-

"37. Conversion of unlimited liability company into a limited liability company by shares or guarantee.- (1) Without prejudice to any other provision in the Companies Act for effecting the conversion of an unlimited liability company with or without share capital into limited liability company by shares or guarantee, such a company shall pass a special resolution in a general meeting and thereafter, an application shall be filed in Form No. INC-27 in the manner provided in sub-rules (2) and (3).

- (2) The Company shall within seven days from the date of passing of the special resolution in a general meeting, publish a notice, in Form No. INC-27A of such proposed conversion in two newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situate and shall also place the same on the website of the Company, if any, indicating clearly the proposal of conversion of the company into a company limited by shares or guarantee, and seeking objections if any, from the persons interested in its affairs to such conversion and cause a copy of such notice to be dispatched to its creditors and debentures holders made as on the date of notice of the general meeting by registered post or by speed post or through courier with proof of dispatch. The notice shall also state that the objections, if any, may be intimated to the Registrar and to the company within twenty-one days of the date of publication of the notice, duly indicating nature of interest and grounds of opposition.
- (3) The Company shall within forty five days of passing of the special resolution file an application as prescribed in sub rule (1) for its conversion into a company limited by shares or guarantee alongwith the fees as provided in the Companies (Registration offices and Fees) Rules, 2014, by attaching the following documents, namely:-
- notice of the general meeting along with explanatory statement
 - copy of the resolution passed in the general meeting;
 - copy of the newspaper publication;
 - a copy of altered Memorandum of Association as well as Articles of Association duly certified by any one of the Directors duly authorised in this behalf or Company Secretary of the Company, if any.
 - declaration signed by not less than two Directors of the Company, including Managing Director, if any, that such conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the Company before conversion (except to the extent that the liability of the members shall become limited).
 - a complete list of creditors and debenture holders, to whom individual notices have been sent under sub-rule (2) setting forth the following details, namely:-
 - the names and address of every creditor and debenture holder of the Company;
 - the nature and respective amounts due to them in respect of debts, claims or liabilities;
 - declaration by a Director of the Company that notice as required under sub-rule (2) has been dispatched to all the creditors and debenture holders with proof of dispatch.
 - a declaration signed by not less than two Directors of the Company, one of whom shall be a Managing Director where there is one, to the effect that they have made a full enquiry into the affairs of the Company and, having done so, have

formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency are proper estimates of the values of such debts and claims and that there are no other debts or claims against the company to their knowledge.

- a declaration of solvency signed by at least two Directors of the Company, one of whom shall be the Managing Director, where there is one to the effect that the Board of Directors of the Company have made a full inquiry into the affairs of the company, as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration, through a resolution, passed in a duly convened meeting or by circulation.
 - The company shall also obtain a certificate from the Auditors that the company is solvent and that it is a going concern as on the date of passing of resolution by the Board certifying solvency as per clause (h) above.
 - No Objection Certificate from sectoral regulator, if applicable,
 - No Objection Certificate from all secured creditors, if any.
- (4) Declaration signed by not less than two Directors including Managing Director, where there is one, that no complaints are pending against the company from the members or investors and no inquiry, inspection or investigation is pending against the company or its Directors or officers.
- (5) The Registrar shall, after considering the application and objections if any, received by the Registrar and after ensuring that the company has satisfactorily addressed the objections received by the company, suitably decide whether the approval for conversion should or should not be granted.
- (6) The certificate of incorporation consequent to conversion of unlimited liability company to into a company limited by shares or guarantee be in Form INC-11A issued to the company upon grant of approval for conversion.
- (7) Conditions to be complied with subsequent to conversion.-**
- Company shall not change its name for a period of one year from the date of such conversion.
 - The company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations or contracts incurred or entered into before conversion.
Explanation: For the purpose of this clause, past debts, liabilities, obligations or contracts does not include secured debts due to banks and financial institutions.
- (8) An Unlimited Liability Company shall not be eligible for conversion into a company limited by shares or guarantee in case-**
- its net worth is negative, or
 - an application is pending under the provisions of the Companies Act 1956 or the Companies Act, 2013 for striking off its name, or
 - the company is in default of any of its Annual Returns or financial statements under the provisions of the Companies Act, 1956 or the Companies Act, 2013, or
 - a petition for winding up is pending against the company, or
 - the company has not received amount due on calls in arrears, from its directors, for a period of not less than six months from the due date; or
 - an inquiry, inspection or investigation is pending against the

company.

- (9) The Registrar of Companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects.
10. In the principal rules, Form No. INC-10 shall be omitted.
11. In the principal rules, for Form No. INC-11, the following forms shall be substituted, namely:-

.....*

Amardeep Singh Bhatia
Joint Secretary

*Not reproduced here for want of space. Readers may log on to mca.gov.in for the Forms.

05 Designated Special Court for speedy trial of offences punishable under the Companies Act, 2013

[Issued by the Ministry of Corporate Affairs vide F. No. 01/12/2009-CL-I (Vol.IV), S.O. 2554(E), dated 27.07.2016. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

In exercise of the powers conferred by sub-section (1) of section 435 of the Companies Act, 2013 (18 of 2013), the Central Government hereby, with the concurrence of the Chief Justice of the High Court of Delhi, designates the following Court as Special Court for the purposes of providing speedy trial of offences punishable under the Companies Act, 2013 with imprisonment of two years or more under the Companies Act, 2013, namely:-

TABLE

Sl. No. (1)	Existing Court (2)	Jurisdiction as Special Court (3)
1	Court of Additional Sessions Judge-03, South-West District, Dwarka	National Capital Territory of Delhi

2. The aforesaid Court mentioned in column number (2) shall exercise the jurisdiction as Special Court in respect of jurisdiction mentioned in column number (3).

Amardeep Singh Bhatia
Joint Secretary

06 National Company Law Appellate Tribunal Rules, 2016

[Issued by the Ministry of Corporate Affairs vide F. No. 1/30/2013-CL-V, G.S.R. 717(E), dated 21.07.2016. Published in The Gazette of India Extraordinary Part II - Section 3(i), dated 22.07.2016]

In exercise of the powers conferred by section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:-

- 1. Short title and commencement.**- (1) These rules may be called the National Company Law Appellate Tribunal Rules, 2016.
- (2) They shall come into force on the date of their publication in the Official Gazette.

.....*

Amardeep Singh Bhatia
Joint Secretary

*Not reproduced here for want of space. Readers may log on to mca.gov.in for complete text of the Rules.

07 National Company Law Tribunal Rules, 2016

[Issued by the Ministry of Corporate Affairs vide F. No. 1/30/2013/CL-VI(i), G.S.R. 716(E), dated 21.07.2016. Published in The Gazette of India Extraordinary Part-II Section 3(i), dated 22.07.2016]

In exercise of the powers conferred by section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:-

- 1. Short title and Commencement** – (1) These rules may be called the National Company Law Tribunal Rules, 2016.
- (2) They shall come into force on the date of their publication in the Official Gazette.

.....*

Amardeep Singh Bhatia
Joint Secretary

*Not reproduced here for want of space. Readers may log on to mca.gov.in for complete text of the Rules.

08 Requirement of section 381(1)(a) of the Companies Act, 2013 to apply to a foreign company which is an airlines company subject to following exceptions and modifications

[Issued by the Ministry of Corporate Affairs vide F. No. 1/23/2013-CL-V, S.O. 2463(E), dated 19.07.2016. To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

In exercise of the powers conferred by sub-section (1) of section 381 of the Companies Act, 2013 (18 of 2013) (hereinafter referred to as "the Act") and in supersession of the notification number G.S.R 59, dated 06.01.1959 issued under sub-section (1) of section 594 of the Companies Act, 1956 (1 of 1956), in so far as it relates to the foreign company which is an airlines company, the Central Government hereby directs that the requirement of clause (a) of sub-section (1) of section 381 of the Act shall apply to a foreign company which is an airlines company (hereinafter referred to as "the company") having a share capital, subject to the following exceptions and modifications, namely:-

1. It shall be deemed sufficient compliance of the provisions of clause (a) of sub-section (1) of section 381 of the Act, if in respect of the period ending on or after the 31st March, 2016, a company submits to the appropriate Registrar of Companies in India,—
- (i) documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law for the time being in force in that country:

Provided that where such documents are not in English language, there shall be annexed to it a certified translation thereof in the English language.

- (ii) in respect of its Indian Business operations, a statement

of receipts and payments for the financial year, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India.

- (iii) the documents required to be filed with Registrar of Companies under sub-rule (2) of rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014.
2. Notwithstanding anything contained in the above paragraphs, the company shall, if so required by notice in writing from the Central Government, furnish to the Central Government such information with regard to its accounts as the Central Government may require.
3. This notification shall come into force on the date of its publication in the Official Gazette.

Amardeep Singh Bhatia
Joint Secretary

09 Companies (Share Capital and Debentures) Third Amendment Rules, 2016

[Issued by the Ministry of Corporate Affairs vide F. No. 01/04/2013 CL-V (part-II), G.S.R. 704(E), dated 19.07.2016. Published in The Gazette of India Extraordinary [Part II - Section 3(i), dated 19.07.2016]

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Share Capital and Debentures) Third Amendment Rules, 2016.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Companies (Share Capital and Debentures) Rules, 2014, (herein after referred to as the principal rules), in rule 4, in sub-rule (1), after sub-clause (g), the following proviso shall be inserted, namely:-
"Provided that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial year in which such default was made good."
3. In the principal rules, in rule 8, in sub-rule (4), after the first proviso, the following proviso shall be inserted, namely :-
"Provided further that a startup company, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding fifty per cent of its paid up capital upto five years from the date of its incorporation or registration."
4. In the principal rules, in rule 12, in sub-rule(1), in clause (c), after sub-clause (ii), the following proviso shall be inserted, namely:-
"Provided that in case of a startup company, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry Government of India, Government of India, the conditions mentioned in sub-clause (i) and (ii) shall not apply upto five years from the date of its incorporation or

registration."

5. In the principal rules, in rule 13, in sub-rule (2),-
- (i) clause (c) shall be omitted.
- (ii) for clause (h), the following clause shall be substituted, namely:-
"(h) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined-
- (i) either upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer, or
- (ii) at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares:
- Provided that the company shall take a decision on sub-clauses (i) or (ii) at the time of offer of convertible security itself and make such disclosure under sub-clause (v) of clause (d) of sub-rule (2) of this rule."
6. In the principal rules, in rule 15, after the words "or a company redeems any redeemable preference shares", the words "or a company not having share capital increases number of its members" shall be inserted.
7. In the principal rules, in rule 18,-
- (A) in sub-rule (1),-
- (a) for clause (b), the following clause shall be substituted, namely:-
"(b) Such an issue of debentures shall be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon.;"
- (b) in clause (d), for sub-clause (i), the following sub-clause shall be substituted, namely. -
"(i) any specific movable property of the company or its holding company or subsidiaries or associate companies or otherwise.;"
- (B) in sub-rule (7),-
- (a) in clause (b), in sub-clause (ii) and (iii) for the words "of the value of debentures" wherever they occur, the words "of the value of outstanding debentures" shall be substituted;
in clause (b), after sub-clause (iii), the following proviso shall be inserted, namely:-
"Provided that where a company intends to redeem its debentures prematurely, it may provide for transfer of such amount in Debenture Redemption Reserve as is necessary for redemption of such debentures even if it exceeds the limits specified in this sub-rule."

Amardeep Singh Bhatia
Joint Secretary

*TAKING A SHORTCUT NEVER PAYS OFF.
STAYING INVESTED FOR LONGER MAY HELP YOU
REAP BETTER RETURNS.*

BSE
INVESTORS' PROTECTION FUND



Make sure you invest for long-term to gain from the benefits of compounding and avoid the pitfalls of market fluctuations.

Call 022 22728097

to report any market irregularity.
Issued in Public interest by BSE Investor Protection Fund.

Trade at a speed of 6 microseconds on BSE, the world's fastest exchange.

Website: www.bseindia.com | Follow us on: [f/BSEIndia](https://www.facebook.com/BSEIndia) | [@BSEIndia](https://twitter.com/BSEIndia) | [in/BSEIndia](https://www.linkedin.com/company/BSEIndia) | [/BSEIndia](https://www.instagram.com/BSEIndia)

Disclaimer: Issued in public interest by BSE investor protection fund.

5

NEWS FROM THE INSTITUTE & REGIONS



- Company Secretaries Benevolent Fund
- Form-D Application for Issue/Renewal/Restoration of COP
- List of Practising Members/Companies Registered for Imparting Training
- Regional News



Certificate Programme on Capital Market



ICSI-NISM jointly announces its "Certificate Program on Capital Market Course"

The programme will provide a comprehensive understanding about Capital Market. It is intended for those who want to begin his/her career in Capital Market.

Programme Highlights

- Comprehensive curriculum, updated regularly
- Sessions will be taken by academicians, practitioners, Practitioners and experts in the field
- Discussion of contemporary Issues
- Guest lectures from Senior Professionals and experts on Capital Market
- Visit to premier capital market institutions
- Exposure to Simulations Lab
- Access to Collection of books on capital market and other subjects at NISM and ICSI-CCGRT library

Eligibility criteria

Preferably graduate in Economics, Commerce, Science, B.E, B. Tech, BBA or equivalent from recognized university or Executive or Professional level passed or currently pursuing from The Institute of Company Secretaries of India (ICSI) or equivalent from Institute of Cost Accountants of India (ICMAI) / The Institute of Chartered Accounts of India (ICAI). Special preference will be given to Company Secretary pursuing students.

Registration

The application form may be downloaded from ICSI website (www.icsi.edu/ccgrrt) and the duly filled in application form shall be sent to ICSI-CCGRT along with application fee of INR 250 by Demand draft drawn in favour of "ICSI-CCGRT" and payable at Navi Mumbai. The applicant is also required to submit self-attested copies of mark sheet & certificates from class 10th /matriculation/equivalent onwards in support of qualification and other necessary documents as mentioned in the application form.

Fee (Non-Residential)

Fees for this course is INR 40,000 (Rupees Forty Thousand Only) + Service Tax @ 14% + Swachh Bharat Cess @ 0.50% + Krishi Kalyan Cess @ 0.50%. Total Fee is ₹ 46,000/-.

In case the candidate is sponsored by Corporate or Employer the fee per candidate will be INR 60,000/- plus tax + plus Service Tax @ 14% and Swachh Bharat Cess @ 0.50% and Krishi Kalyan Cess @ 0.50%.

The fee can be paid by Demand Draft can be drawn in favour of "ICSI-CCGRT" and payable at Navi Mumbai.

Important Dates about the Course

1. The application form with necessary enclosures should reach ICSI-CCGRT on or before 06th August, 2016.
2. Last date of Fees paid (full payment): 09th August, 2016
3. Commencement of Programme: 11th August, 2016
4. Concluded of Programme : 29th September, 2016

Contact Person

Dr. S Manikandan, Assistant Professor, ICSI-CCGRT; Email: s.manikandan@icsi.edu, Tel: 022-41021501/15/34, Contact Timing :- 10:00am to 05:00 pm (Monday to Saturday)

Programme Duration:

August 11, 2016 to September 29th 2016 (5 hours a day, 6 days a week i.e. Monday to Saturday)
Venue of the Programme: - The programme will be offered at ICSI-CCGRT. It is conveniently connected by railways and roads to various parts of Mumbai.

For further Information please visit www.icsi.edu/ccgrrt

Company Secretaries Benevolent Fund



MEMBERS ENROLLED REGIONWISE AS LIFE MEMBERS OF THE COMPANY SECRETARIES BENEVOLENT FUND*

Region	LM No.	Name	Membership No.	City
EIRC				
1	11374	MS. HARSH LATA	ACS - 45154	DHANBAD
2	11375	SH. PRAVIN CHHAJER	ACS - 25787	GUWAHATI
3	11383	MR. SHYAM SUNDAR PANDIA	ACS - 41298	GUWAHATI
4	11385	MRS. RITU RITOLIA	ACS - 23976	DHANBAD
5	11404	SH. RAKESH AGARWALLA	FCS - 7674	GUWAHATI
NIRC				
6	11379	MR. SUNNY CHADHA	FCS - 8740	JALANDHAR
7	11388	MS. RAINA GABA	ACS - 44338	NEW DELHI
8	11391	MR. GOPAL KANDPAL	ACS - 46114	NAINITAL DISTT
9	11395	MR. PAWAN KUMAR	ACS - 46059	NEW DELHI
10	11401	MS. NEHA VIJAY	ACS - 44036	NEW DELHI
11	11402	MR. LALIT MODI	ACS - 37353	KOTA
12	11405	MS. SHAZAN ALI	FCS - 8748	DELHI
13	11406	MR. SHIVAM SINGHAL	ACS - 41948	GHAZIABAD
SIRC				
14	11376	SH. V SUBRAMANIAN	FCS - 1767	CHENNAI
15	11378	MR. SUDHIR GAONKAR	ACS - 34203	BANGALORE
16	11386	MR. KIRAN BHIMAPPA DESAI	ACS - 34875	BANGALORE
17	11390	MR. SUNIL KUMAR KACHAM	ACS - 46155	WARANGAL DISTT.
WIRC				
18	11392	MS. PRATIMA GOTTUMUKKALA	ACS - 46151	HYDERABAD
19	11393	MR. BALAJI M	ACS - 46093	BANGALORE
20	11394	MS. ARUNDHATI DINESH	ACS - 46148	BANGALORE
21	11397	MR. V M UNNIKISHNAN	ACS - 46106	THRISSUR
22	11400	MS. DEEPTI JAYANT NIKAM	ACS - 46256	BANGALORE
23	11403	MR. DENNIS	ACS - 46308	BANGALORE
24	11373	MR. BHUSHAN RAVINDRA JOSHI	ACS - 40085	VADODARA
25	11377	MRS. AMRUTA PRATHMESH OKE	ACS - 22615	MUMBAI
26	11380	MS. APURVA HEMANT VINOD	ACS - 35310	GANDHINAGAR
27	11381	MR. MANOJ PARIDA	ACS - 39909	THANE
28	11382	MR. NARENDRA SONI	ACS - 37287	PUNE
29	11384	MS. PRIYA KHANDELWAL	ACS - 33871	BHAYANDAR (W),THANE
30	11387	MS. KOMAL KHADARIA	ACS - 30230	SURAT
31	11389	MS. RITU HARDEEP LAMBA	ACS - 21920	RAIPUR
32	11396	SH. SANJAYA RAJU KUNDER	FCS - 6365	MUMBAI
33	11398	MS. ASHWINI SANJAY PARANJAPE	ACS - 42898	PUNE
34	11399	SH. M V BALAJEE	FCS - 5885	MUMBAI
35	11407	MR. PRAVEEN RAMKISHOR SIKCHI	ACS - 46260	MUMBAI

*Enrolled during the period from 21/06/2016 to 20/07/2016.

FORM – D
APPLICATION FOR THE ISSUE/RENEWAL/RESTORATION
OF CERTIFICATE OF PRACTICE
See Reg. 10, 13 & 14

To
 The Secretary to the Council of
 The Institute of Company Secretaries of India
 'ICSI HOUSE', 22, Institutional Area, Lodi Road, New Delhi
 -110 003
 Sir,

I furnish below my particulars :

(i) Membership
 Number FCS/ACS:

(ii) Name in full
 (in block letters) Surname Middle Name Name

(iii) Date of Birth:

iv) Professional
 Address:

(v) Phone Nos. (Resi.) (Off.)

(vi) Mobile No Email id

(vii) Website of the member, if any

(viii) Additions to or change in qualifications, if any

Submitted for (tick whichever is applicable):
 (a) Issue _____ (b) Renewal _____ (c)
 Restoration _____

(a) Particulars of Certificate of Practice issued / surrendered/
 Cancelled earlier

Sl. No.	Certificate of Practice No.	Date of issue of CP	Date of surrender / Cancellation of CP

(b) Unique Code Number
 (i) Individual/Proprietorship concern (ii) Partnership firm

3. Area of Practice

Sl. No.	Area of Practice	Please tick (If Applicable)
1	Corporate Law	
2	Financial Service and Consultancy	
3	Securities/Commodities Exchange Market	
4	Finance including Project/Working Capital/Loan Syndication(Specify the areas handling)	
5	Corporate Restructuring (Handling Merger, acquisitions, demerger issues etc). Specify the areas handling as drafting of scheme, appearing before various regulatory bodies for approval of scheme, getting the scheme implemented, legal compliances with various regulatory bodies etc)	
6	Excise/CUSTOMS (Filling of returns, Handling assessment, appearing before the appellate authority)	
7	Sales Tax/VAT Practice (Filling of returns, Handling assessment, appearing before the appellate authority)	

8	Income Tax Practice (Filling of returns, Handling assessment, appearing before the appellate authority)		
9	Company Law Practice (Filling of returns, Handling assessment, appearing before the appellate authority)		
10	Foreign Exchange Management (Specify the areas being handled i.e. filling of various forms/returns, appearing before RBI etc)		
11	Foreign Collaborations & Joint Ventures		
12	Intellectual Property Rights (Specify the areas being handled)		
13	Depositories		
14	Monopolies/Restrictive Trade Practices/Competition Law		
15	Consumer Protection Laws		
16	Arbitration and Conciliation		
17	Import and Export Policy & Procedure		
18	Environment Laws(Specify the areas)		
19	Labour & Industrial Laws (Specify the areas)		
20	Societies/Trusts/Co-operative Societies & NCTs (Non Co-operative Trust Societies)		
21	Financial Consultancy		
22	Other Economic Laws		
23	SEBI / Securities Appellate Tribunal		
24	Banking and Insurance		
25	Any Other Service (Please specify)		

4. i. I state that I am/shall be engaged in the profession of Company Secretary only on whole-time basis and not in any other profession, business, occupation or employment. I am not enrolled as an Advocate on the rolls of any Bar Council and do not hold certificate of practice from any professional body including ICAI and the IC-WAI.
- ii. I state that as and when I cease to be in practice, I shall duly inform the Council and shall surrender forthwith the certificate of practice as required by the Company Secretaries Act, 1980, and the regulations made thereunder, as amended from time to time.
- iii a. I hereby undertake that, I shall adhere to the mandatory ceiling as regards issuing of Secretarial Audit Report (pursuant to Section 204 of the Companies Act, 2013) and certification/ signing of Annual Return (pursuant to Section 92 of the Companies Act, 2013) in terms of the GUIDELINES FOR ISSUING SECRETARIAL AUDIT REPORT, SIGNING AND CERTIFICATION OF ANNUAL RETURN respectively issued by the Institute from time to time.
- iii b. Accordingly, I state that I have issued _____ Secretarial

Audit Report and certified _____ Annual Returns during the financial year 2015-16*.

- iv. I state that I have issued / did not issue _____ advertisements during the year 20__ in accordance with the **Guidelines for Advertisement by Company Secretary in Practice** issued by the Institute*.
- v. I state that I issued _____ Corporate Governance compliance certificates under Clause 49 of the Listing agreement during the year 20____ ... *
- vi. I state that I have / have not undertaken _____ Audits under Section 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 during the year 20... - ... *
- vii. I state that I have / have not maintained a register of attestation/certification services rendered by me/my firm in accordance with the **Guidelines for Requirement of Maintenance of a Register of Attestation/Certification Services Rendered by Practising Company Secretary/ Firm of Practising Company Secretaries** issued by the Institute*.
- viii. I hereby declare that I have complied with KYC norms issued by the Council of the ICSI.
- ix. I undertake to subject myself to peer review as and when directed by the Peer Review Board.
5. I send herewith Bank draft drawn on _____ Bank _____ Branch bearing No. _____ dated _____ / online payment vide acknowledgement No. _____ dated _____ / Cash payment at ROs/Chapters vide Acknowledgement No. _____ dated _____ for Rs. _____ towards annual certificate of practice fee for the year ending 31st March _____.
6. I hereby declare that I attended the following professional development programmes held during the financial year _____:

Sr. No.	Name of Programme	Organised by	Place	Date	Duration*	No. of Program Credit Hours Secured**	Details of Certificate for Program Credit Hours ***

* Please specify whether full day/half day/number of hour

** Extra sheet can be attached....

*** The extracts from ICSI portal about the Credit hours with self certification

7. I further declare that the particulars furnished above are true and correct.

Yours faithfully,

(Signature)

Place:

Date :

***Encl.

* Applicable in case renewal or restoration of Certificate of

Practice

** Rs. 1000/- Annual Certificate of Practice Fee (Rs. 500/- if applied during October-March)

- Copy of the relieving letter in case earlier in employment.
- Copy of Form DIR 12 regarding cessation of employment in case working earlier as Company Secretary.
- Copy of letter of cancellation of Certificate of Practice of other professional bodies if applicable.

EXTENSION IN THE LAST DATE FOR PAYMENT OF ANNUAL MEMBERSHIP AND CERTIFICATE OF PRACTICE FEE FOR THE YEAR 2016-17

The annual membership and certificate of practice fee for the year 2016-17 became due for payment w.e.f. 1st April, 2016. The last date for payment of fee was 30th June, 2016 which has been extended upto 31st August, 2016.

The membership and certificate of practice fee payable is as follows:

1. Annual Associate Membership fee Rs.1125/- (*)
2. Annual Fellow Membership fee Rs.1500/- (*)
3. Annual Certificate of Practice fee Rs.1000/- (**)*

A member who is of the age of sixty years or above can claim 50% concession and a member who is of the age of seventy years or above can claim 75% concession in the payment of Associate/Fellow Annual Membership fee subject to the furnishing of declaration in writing duly signed that the member is not in any gainful employment or in practice.

**The certificate of practice fee must be accompanied by a declaration in form D duly completed in all respects and signed. The requisite form 'D' is available on the website of Institute www.icsi.edu and also printed elsewhere in the journal.

MODE OF REMITTANCE OF FEE

The fee can be remitted by way of:

- (i) Online mode through payment gateway of the Institute's website (www.icsi.edu)
- (ii) Cheque at par/Demand draft or Pay order payable at New Delhi (indicating on the reverse name and membership number) drawn in favour of 'The Institute of Company Secretaries of India' or in cash at the Institute's Headquarter or Regional/Chapter offices. For queries, if any, the members may please write to Mr. Jitendra Kumar, Executive Assistant at email id jitendra.kumar@icsi.edu or contact at telephone No. 011-45341087.



List of Practising Members Registered For The Purpose of Imparting Training During The Month of June, 2016

AAFTAB FATEMA
H.NO. 1117, OPPOSITE HIRANWALAN MOSQUE, TOPKHANA HAZURI, GHAT GATE
Pincode:302003, JAIPUR

AAYUSH MITTAL
33A, TARA CHAND DUTTA STREET, 3RD FLOOR, Pincode:700073, KOLKATA

ABHISHEK VARSHNEY
93-B, POCKET A-3, MAYUR VIHAR, PHASE -III Pincode:110096, DELHI

AKANKSHA SINGHAL
17/08, MURAI MOHALLA, CHHAWANI, Pincode:452001, INDORE

ALI ASGHAR
H.NO 4-1-526/B FLAT NO 201 2ND FLOOR, HAMEED ENCLAVE, BEHIND G.P.O ABIDS,
URDU GALLI TROOP BAZAR Pincode:500001, HYDERABAD

AMAR NATH JAISWAL
RZ -38, FF, SOUTH EXTNSION PART II, NEAR JAGRAN CHOWK, UTTAM NAGAR WEST
Pincode:110059, NEW DELHI

ANUBHUTI VIJAY
B 90, SHAKUN VILLA, RIDHI SIDHI NAGAR, BUNDI ROAD Pincode:324008, KOTA

ARCHANA BAID
PODDAR COURT,, 18 RABINDRA SARANI, GATE NO.2, 3RD FLOOR, ROOM NO.317,
Pincode:700001, KOLKATA

ASHUTOSH SHARMA
447, SECTOR 22A,, Pincode:160022, CHANDIGARH

BARNITA JAIN
A-2, 132,, RADHEY SHYAM PARK, SAHIBABAD Pincode:201005, GHAZIABAD

DARSHIT NAVINBHAI AHYA
729, STAR PLAZA, FULCHAB CHOWK, Pincode:360001, RAJKOT

DIPAK KUMAR SINGH
D-175, FIRST FLOOR, LAXMI NAGAR, Pincode:110092, DELHI

ISHA DEEPAK SHAH
198/A, JAYA NIWAS,, GR. FLOOR, BLOCK-1, GUJARAT SOCIETY SION WEST
Pincode:400022, MUMBAI

ISHA HIRAWAT
14, KIRTI NAGAR, NR. SHYAM NAGAR CIRCLE, SODALA Pincode:302019, JAIPUR

JAISAL MOHATTA
C-702, ANGEL RESIDENCY,, NR. TERAPANTH BHAWAN,, CITYLIGHT Pincode:395007,
SURAT

KARAN NARANG
1ST FLOOR, N V COMPLEX
POLICE LINES, NEAR HOTEL M-1, Pincode:144003, JALANDHAR

KUSHMANJALI SHARMA
DEVI PURA ROAD, SHEETLA CHOWK, Pincode:332001, SIKAR

MADHAVI CHOUDHARY
8-7-114/44, BOWENPALLY, Pincode:500011, SECUNDERABAD

MANGESH ANANDRAO NARVEKAR
HOUSE NO. 406, 3RD FLOOR, MATOSHREE PLAZA, VENUS CORNER Pincode:416001,
KOLHAPUR

MANJU PATHAK KHULBE
1365, DELHI ADMN FLATS, GULABI BAGH, DELHI Pincode:110007, DELHI

MEENU VERMA
J-178 B, VISHNU GARDEN, Pincode:110018, NEW DELHI

NEHA JAIN
X 3325 STREET NO.2, RAGHUBAR PURA NO.2, GANDDHI NAGAR Pincode:110031, DELHI

NITESH TANEJA
37/22, INDUSTRIAL ESTATE, Pincode:131001, SONEPAT

PANKAJ KUMAR SHARMA
SUNDRU, GEHRWIN, JHANDUTTA Pincode:174034, BILASPUR

PARAG MADHUKAR PHANSE
15, HARIGANGA APARTMENT, 1227 - DECCAN GYMKHANA, F. C. ROAD Pincode:411004,
PUNE

PRAKASH CHOUDHARY
38/T/1, SATYA SADHAN DHAR LANE, PATUAPARA, LILUAH Pincode:711204, HOWRAH

PRAKASH PENTAREDDY
DOOR NO: 4-23-66/A-1, MUTHYALA REDDY NAGAR, 1, LANE, AMARAVATHI ROAD,
GUNTUR TOWN Pincode:522002, GUNTUR DISTT

PRINCE KUNAL
S/O MEERA SINGH, CHUTKULANAND GALI, CHANDMARI ROAD, NEAR SHIV MANDDIR,
KANKARBAGH Pincode:800020

PRITIKA SURANA
FLATNO.202, WING 48, DHEERAJ DREAMS CHS, NEAR BHANDUP STATION WEST, LBS
MARG, BHANDUP (WEST) Pincode:400078, MUMBAI

PRIYA AGARWAL
718, SHIVAJI MARG, ALAM GIRI GANJ, NEAR MATHKI CHOWK Pincode:243001, BAREILLY

PUNIT SINGH NEGI
6 B/4C, K -BLOCK, GALI NO. 6, MAHIPALPUR Pincode:110037, NEW DELHI

RAGHAV PANCHAL
33, AASHISH NAGAR, NEAR BENGALI SQUARE, RING ROAD Pincode:452016, INDORE

RAHUL JAIN
VPO MEHLAN, WAYA BAGRU, Pincode:303007, DIST. JAIPUR

RASHMI GUPTA
A -408, GROUND FLOOR, SECTOR 19 Pincode:201301, NOIDA

RITU RAJ
202 KINJAL MAHAVIR VIHAR,, HATKESH, MIRA BHAYNDER ROAD, MIRA ROAD E
Pincode:401107, THANE

RUCHITA MILAN SHAH
416, SHOPZONE, ABOVE COLORS SHOP, M.G. ROAD, GHATKOPAR (W), Pincode:400086,
MUMBAI

S RAJAGURU
M-13,, ELLIS NAGAR HOUSING BOARD, Pincode:625016, MADURAI

SALONI MANDLIYA
304, J V COMPLEX, 13-Feb, RACE COURSE ROAD Pincode:452001, INDORE

SANJAY AVADHANI
6, 4TH MAIN ROAD, MARUTI EXTENSION, Pincode:560021, BANGALORE

SOUMITRA BHOOSHAN MUJUMDAR
H - 504, AMRUTKALASH SOCIETY, SHAHU COLONY LANE NO - 9, KARVENAGAR
Pincode:411052, PUNE

SOURABH AGARWAL
P-201, CII SCHEME VII (M) 1ST FLOOR, FLAT NO. 11, RIDDHI SIDDHI APARTMENT,
Pincode:700054, KOLKATA

SWATI GUPTA
3/2, ROY LANE, 3RD FLOOR, NEAR GANESH TALKIES, Pincode:700007, KOLKATA

SWETA PATWARI
20-B, ABDUL HAMID STREET, (BRITISH INDIA ST.), GROUND FLOOR, ROOM NO. 28
Pincode:700069, KOLKATA

TUSHAR SANTOSH TENDULKAR
FLAT NO. B/406, SAMARTH ANGAN, GANPAT NAGAR, KIRKATWADI
SINHGAD ROAD Pincode:411041, PUNE

VANDITA JAY DOSHI, 806 A
KHUSHAL HERITAGE, NEAR DISCOVERY BUILDING, TATA STEEL, DATTAPADA ROAD,
BORIVALI (E) Pincode:400066, MUMBAI

VEDASHRI SHRIRANG BHILARE
OFFICE NO.5, MANI BHUVAN, 54, HUGHES ROAD, NEXT TO GHANASINGH, JEWELLERS,
OPPOSITE DHARAM PALACE Pincode:400007, MUMBAI

YASHAWANT KUMAR GUPTA
44 A-E BLOCK EXTENSION, SHYAM VIHAR PHASE -I, Pincode:110043, NEW DELHI



List of Companies Registered for Imparting Training during the month of June, 2016

A&A DUKAAN FINANCIAL SERVICES PVT LTD
NO. 14/43, HAMEEDIA CENTRE., 3RD FLOOR, HADDOWS ROAD,
NUNGAMBAKKAM, CHENNAI-RO(59)

AGROCEL INDUSTRIES PRIVATE LIMITED
4TH FLOOR, DOCTOR HOUSE OPP.GENERAL HOSPITAL, BHUJ-
KUTCH, AHMEDABAD(61)

APOLLO HOSPITALS INTERNATIONAL LIMITED
PLOT NO. 1A, BHAT GIDC ESTATE, BHAT, GANDHINAGAR - 382428,
AHMEDABAD(61)

CHECKMATE SERVICES PVT LTD
GF 6-9 AMAAN TOWERS, SUVAS COLONY, FATHEGUNJ,
VADODARA(62)

CIAL INFRASTRUCTURES LIMITED
KOLAARA ESTATE, N H BYEPASS, EDAPPALLY, KOCHI, ERNAKULAM,
KOCHI(43)

CMS IT SERVICES PRIVATE LIMITED
CMS HOUSE, PLOT NO 91, STREET NO 7, MIDC, MAROL, ANDHERI
(EAST), MUMBAI-RO(79)

CONTINENTAL AUTOMOTIVE COMPONENTS (INDIA) PVT LTD
53B BOMMASANDRA INDUSTRIAL AREA PHASE 1, HOSUR ROAD,
BANGALORE - 560099, BANGALORE(41)

DIGGI MULTITRADE LIMITED
D-106, CRYSTAL PLAZA, OPP INFINITI MALL ANDHERI WEST,
MUMBAI-RO(79)

DIVINE INFRACON PRIVATE LIMITED
PLOT NO. 4, SECTOR-13, DWARKA CITY CENTRE, DWARKA, NEW
DELHI-110075, DELHI-RO(39)

INDIA EXPOSITION MART LTD
PLOT NO 1, 210, ATLANTIC PLAZA, 2ND FLOOR, LSC, MAYUR VIHAR
PHASE 1, DELHI-RO(39)

INDIRA SECURITIES PVT. LTD.
204-205, AMARDARSHAN, 28/2, OLD PALASIA, NEAR SAKET PAAN
CORNER, INDORE(66)

KNACK PACKAGING PRIVATE LIMITED
206, NANDISHWAR FLATS, OPP. SUDARSHAN TOWER, NR.
SOMESHWARA PARK-III, THALTEJ, AHMEDABAD(61)

MAHINDRA INSURANCE BROKERS LIMITED
SADHANA HOUSE GROUND FLOOR BEHIND MAHINDRA TOWERS,
570, PANDURANG BUDHKAR MARG, BDD CHAWLS, WORLI,
MUMBAI-RO(79)

MONTECARLO LIMITED
706, SHILP BUILDING, 7TH FLOOR, OPP. GIRISH COLD DRINK,
NEAR MUNICIPAL MARKET, NAVRANGPURA, C.G. ROAD,
AHMEDABAD(61)

OSRAM INDIA PRIVATE LIMITED
459B, EPIP- HSIIDC INDUSTRIAL ESTATE KUNDLI, SONIPAT(93)

OZONE PHARMACEUTICALS LIMITED
1 LSC BLOCK A-3, JANAKPURI, DELHI-RO(39)

PREMIUM TRANSMISSION LIMITED
PREMIUM HOUSE, OLD PUNE-MUMBAI ROAD. CHINCHWAD,

PUNE - 411019, PUNE(68)

PREMIUM TRANSMISSION LIMITED
PREMIUM HOUSE, OLD PUNE MUMBAI HIGHWAY, CHINCHWAD,
PUNE - 411019, PUNE(68)

PRIME GOLD-SAIL JVC LIMITED
5/2, PUNJABI BAGH EXTN, CLUB ROAD, NEW DELHI110026, DELHI-
RO(39)

PRINTOGRAPHY SYSTEMS (INDIA) PRIVATE LIMITED
13/D, KURLA INDUSTRIAL ESTATE, NARI SEVA SADAN RD.,
NARAYAN NAGAR, GHATKOPAR (WEST), MUMBAI-400086,
MUMBAI-RO(79)

PROJECT MASTER ELECTRICALS PRIVATE LIMITED
105, NEW HEERA PANNA INDUSTRIAL EST,
GOREGAON(EAST)-400063, MUMBAI-RO(79)

PULSE PHARMACEUTICALS PVT LTD
4F10, 5TH FLOOR, BALLAD ESTATES, TARANAKA, HYDERABAD(44)

R M V & ASSOCIATES LLP
201, SARTHIK SQUARE, SARKHEJ-GANDHINAGAR HIGHWAY,
BODAKDEV, AHMEDABAD(61)

S R I MARBO INDIA PRIVATE LIMITED
225, PARAS TRADE CENTRE, GWAL PAHARI, GURGAON - 122003,
GURGAON(37)

SECURITRANS INDIA PRIVATE LIMITED
10, DDA COMPLEX, NAGAL RAYA, NEW DELHI, DELHI-RO(39)

SHATAKSHI MUDRA INVESTMENT PRIVATE LIMITED
5/5, CLIVE ROW, 4TH FLOOR, KOLKATA-RO(19)

SRINISONS WIRING SYSTEMS PVT LTD
PLOT NO 76-77A, SEC-5, IMT MANESAR, GURGAON, HARYANA,
GURGAON(37)

STRYKER INDIA PRIVATE LIMITED
10TH FLOOR, WING A, VATIKA BUSINESS PARK (BLOCK 2),
SECTOR-49, SOHNA ROAD, GURGAON, HARYANA - 122002,
GURGAON(37)

SUMILON INDSUTRIES LIMITED
6/121 VAIRAGINIWADI, DELHIGATE, SURAT-395002, SURAT(69)

WISE INVERSTMENTS PRIVATE LIMITED
19, SYNAGOGUE STREET, CITY CENTRE, 5TH FLOOR, UNIT NO-511,
KOLKATA WB 700001, KOLKATA-RO(19)

ZEN LEFIN PRIVATE LIMITED
NO. 222/14, GOKALDAS CHAMBERS, 2A-2ND FLOOR, 5TH MAIN
ROAD, SADASHIVANAGAR, BELLARY ROAD, BANGALORE(41)

CONTINENTAL SECURITIES LIMITED
301, METRO PLAZA, PARIVAHAN MARG, GOPAL BARI, JAIPUR(24)
GUJARAT INDUSTRIES POWER COMPANY LIMITED
P.O. PETROCHEMICALS - 391 346., DIST. VADODARA.,
VADODARA(62)

GUJARAT POLY-AVX ELECTRONICS LIMITED
7, JAMSHEDJI TATA ROAD, CHURCHGATE, RECLAMATION,
MUMBAI, MUMBAI-RO(79)

NARMADA GELATINES LIMITED
28 CARAVS, 15 CIVIL LINES, JABALPUR

ORCHID PHARMA LIMITED
ORCHID TOWERS, 313, VALLUVARKOTTAM HIGH ROAD,
NUNGAMBAKKAM, CHENNAI-RO(59)

SYLPH EDUCATION SOLUTIONS LIMITED
ST-4, PRESS HOUSE, 22 PRESS COMPLEX, A. B ROAD, INDORE(66)




NEWS FROM THE REGIONS


EASTERN INDIA REGIONAL COUNCIL

Programme	QR Code/Web link
12th Regional PCS Conference of ICSI-EIRC on 16th July, 2016 at HHI, Kolkata.	NA
ICSI-EIRC's joint programme with ICC on Corporate Governance on 23rd July, 2016 at The Gateway Hotel, Kolkata.	


BHUBANESWAR CHAPTER

Programme	QR Code/Web link
Programme on Bankruptcy Code on 05/07/2016	 https://www.icsi.edu/bhubaneswar/NewsEvents.aspx
Celebration of Swachh Bharat Abhijan on 27/07/2016	

RANCHI CHAPTER

Programme	QR Code/Web link
Investor Awareness Programme held on 31.07.2016	 www.icsi.edu/portals/21/IAP_Ranchi_on_31.07.16.pdf



NORTHERN INDIA REGIONAL COUNCIL

Programme	QR Code/Web link
Haryana State Conference (Host: Yamunanagar, Sonapat & Karnal-Panipat Chapters and Co-Host: Chandigarh Chapter) on Recent Legislative Changes and Professional Opportunities held on 9.07.2016	 http://www.icsi.edu/Portals/70/News%20from%20NIRCaug2016.pdf
Valedictory Session of 15 days Master Class Room Study Sessions on NCLT & NCLAT held on 11.07.2016	
PCS Help Line on "Related Party Transaction" held on 13.07.2016	
Workshop on Insolvency and Bankruptcy Code, 2016 held on Campus Placement* for 240th & 241st batch of MSOP participants (on the verge of getting CS Membership)	
Campus Placement* for 240th & 241st batch of MSOP participants (on the verge of getting CS Membership) held on 22.07.2016	
Empowerment Session on Start up & Stand up held on Rajasthan State Conference (Host: Jaipur Chapter and Co-Host: Alwar, Ajmer and Kota Chapters) on New Era of Opportunities for Company Secretaries held on 23.07.2016	
PCS Help Line on "Filing of Income Tax Return" held on 27.07.2016	
One day seminar on Goods & Services Tax (GST) held on 30.07.2016	
Cultural Evening (dedicated to CSBF) for Members and their families held on 31.07.2016	


BHILWARA CHAPTER

Programme	QR Code/Web link
Seminar-cum-PDP "Emerging Prospects for Company Secretaries" held on 17.7.2016	NA
Investor Awareness Programme Investment Opportunities in Capital Market held on 17.7.2016	


FARIDABAD CHAPTER

Programme	QR Code/Web link
Health Check up Camp with QRG Central Hospital & Seminar on Corporate Social Responsibility held on 10th July, 2016	 http://www.icsi.edu/Portals/5/Press_Release-ICSI-Health_check_up_camp_with_QRG_Seminar_PDP_By%20Faridabad%20Chapter.pdf
Full Day Seminar-cum-PDP on 'Capital Markets' held on 25.6.2016,	 http://www.icsi.edu/Portals/5/Seminar_on_Capital_Markets-_Press_release_25.6.2016.pdf

LUDHIANA CHAPTER

Programme	QR Code/Web link
Seminar held on 16.07.2016 on "Practical Aspects of Dealing in Oppression and Mismanagement Matters" and "Critical Aspects of the Companies Act, 2013"	 http://www.icsi.edu/Portals/12/Seminar_Report_16July.16.pdf


SOUTHERN INDIA REGIONAL COUNCIL

Programme	QR Code/Web link
Group reading on "MODEL GST LAWS" on 13, 14, 16 & 20, 21, 22 of July 2016 at ICSI-SIRC House, Chennai.	 https://www.icsi.edu/Webmodules/PROCEEDINGS_FOR_GROUP_GST.docx


BENGALURU CHAPTER

Programme	QR Code/Web link
Half Day Seminars	 http://bit.ly/29Nt6vC
PCS Day Celebrations	 http://bit.ly/29ONnUQ
Capital Market Celebrations	 http://bit.ly/2a1xr0R
Yoga Day Celebrations	 http://bit.ly/29TTyat


KOCHI CHAPTER

Programme	QR Code/Web link
Study Circle Meeting held on 13.7.2016 on Allotment of Securities by Pvt and Unlisted Public Companies	 http://www.icsi.edu/kochi/NewsEvents.aspx
Study Circle Meeting on New SEBI Listing Regulations held on 29.6.2016	
Joint Programme on KrishiKalyanCess held on 2.7.2016	

MYSORE CHAPTER

Programme	QR Code/Web link
Release of 150th Edition of Mysore eMagazine by Vice president, ICSI	 http://www.icsi.edu/mysore/ChapterActivities/SeminarPDP.aspx
Two Days Research Symposium on Companies Act 2013 Jointly with CCGRT -	


PALAKKAD CHAPTER

Programme	QR Code/Web link
Seminar on Companies Act held on 6.7.2016	 http://www.icsi.edu/palakkad/NewsEvents.aspx



SALEM CHAPTER

Programme	QR Code/Web link
PCS Day Celebration - Group Discussion	 http://www.icsi.edu/salem/Activities/StudyCircleMeetGroupDiscussion.aspx
ICSI Capital Markets Week Celebration - Seminar	 http://www.icsi.edu/salem/Activities/SeminarPDPs.aspx
Interactive Session with Deputy Registrar of Companies	 http://www.icsi.edu/salem/Activities/StudentsMeetGuidancePgmLectureInteractiveSession.aspx
Investor Awareness Programme	 http://www.icsi.edu/salem/Activities/InvestorAwarenessProgramme.aspx


WESTERN INDIA REGIONAL COUNCIL

Programme	QR Code/Web link
Two Days' Workshop on "Company Secretaries - Capacity Building" on 22.7.2016 and 23.7.2016	 https://www.icsi.edu/Portals/72/Year%202016/Chartered%20Secretary/July%202016%20Chartered%20Secretary.pdf
1st Capacity Building Workshop on Critical and Emerging Areas for Company Secretaries on 24.7.2016	
PCS Study Circle Meeting on Related Party Transactions under Companies Act,2013 30.7.2016	


AHMEDABAD CHAPTER

Programme	QR Code/Web link
SCM on "CS as a Legal Manager held on 23.7.2016	 http://www.icsi.edu/Portals/25/jULY-21.07.2016%20TO%2031.07.2016.pdf
Van Mahotsav celebrated on 1.7.2016	 http://www.icsi.edu/Portals/25/Presentations/1.07.2016%20to%2010.07.2016%20(1).pdf


INDORE CHAPTER

Programme	QR Code/Web link
ICSI-WIRC Annual Regional Conference 25-26 .2016	 www.icsi.edu/indore
Interaction with RoC-MP 05 .7.2016	

SURAT CHAPTER

Programme	QR Code/Web link
Session on "IDS 2016 (Income Disclosure Scheme) held on 16.7.2016	 http://www.icsi.edu/Portals/35/PICTURE/On%2016th%20July%202016-1.jpg

VADODARA CHAPTER

Programme	QR Code/Web link
Lecture Meeting held on 23.7.2016 at Vadodara on an Overview of Draft Model GST Law	 http://www.icsi.edu/Portals/37/Write-up_23072016.pdf

COMPANY SECRETARIES BENEVOLENT FUND



The Company Secretaries Benevolent Fund (CSBF) provides safety net to Company Secretaries who are members of the Fund and their family members in distress.

CSBF

- Registered under the Societies Registration Act, 1860
- Recognised under Section 12A of the Income Tax Act, 1961
- Subscription / Contribution to Fund qualifies for the deduction under section 80G of the Income Tax Act, 1961
- Has a membership of about 11,000

Eligibility

A member of the Institute of Company Secretaries of India is eligible for the membership of the CSBF.

How to join

- By making an application in Form A (available at www.icsi.edu/csbf) along with one time subscription of ₹ 7,500/-.
- One can submit Form A and also the subscription amount of ₹ 7500 ONLINE through Institute's web portal: www.icsi.edu. Alternatively, he can submit Form A, along with a Demand Draft or Cheque for ₹ 7500 drawn in favour of 'Company Secretaries Benevolent Fund', at any of the Offices of the Institute/ Regional Offices/Chapters.

Benefits

- ₹ 5,00,000 in the event of death of a member under the age of 60 years
- Upto ₹ 2,00,000 in the event of death of a member above the age of 60 years
- Upto ₹ 40,000 per child (upto two children) for education of minor children of a deceased member in deserving cases
- Upto ₹ 60,000 for medical expenses in deserving cases
- Limited benefits for Company Secretaries who are not members of the CSBF

Contact

For further information/clarification, please write at email id csbf@icsi.edu or contact Mr. Saurabh Bansal, Executive on telephone no.011-45341088.

For more details please visit www.icsi.edu/csbf

6

MISCELLANEOUS CORNER



- GST Corner
- Ethics & Code of Conduct Corner
- Ethics and Sustainability Corner
- CG Corner
- 17th National Conference of Practising Company Secretaries
- Brain Teasers
- Readers' Write



ICSI WELCOMES GST

With the passage of this Constitution Amendment (122nd) Bill in Rajya Sabha on August 03 2016, we have moved a step closer to GST regime, ICSI welcomes one of the most significant tax reforms in the history of India.

The changes made in the Bill at Rajya Sabha will have to be subsequently ratified by Lok Sabha and subsequent approval of atleast 50% of the State Assemblies. It will then be moved to the President for assent. We expect the draft law on GST, after considering suggestions from various stakeholders, to be placed in the Winter Session of the Parliament and are optimistic about getting the GST law in place by April next year.

The passing of the Bill is a proactive step towards the development of Indian economy bringing us one step closer to being at par with the global economy. It shall be the most comprehensive single tax system for the economy proving to be a great boost in the direction of attracting investments and furtherance of "Make in India" initiative.

Various amendments like scrapping of 1% additional tax proposed to be levied on inter-state transactions to compensate manufacturing states, formulation of a standing Dispute Resolution Mechanism etc. have been proposed to be put in place. The Government has also assured that revenue neutral rate will be worked out by the GST Council, comprising of members from the Centre and States. GST regime shall enhance transparency in the indirect tax framework and is expected to bring down the rate of inflation.

The Institute is celebrating August 2016 as "GST Awareness Month".

We request all the members of the Institute engaged professionally or scholastically in area of indirect taxes including VAT, Service Tax etc. to contribute towards this great opportunity and prepare for the upcoming new tax regime and extend whole hearted support. We also request our young members to develop their expertise in this hugely potential area.

The institute has decided to bring out a publication showcasing the reach and strength of the profession of Company Secretaries. In this connection, we would be very keen to know about our members working in the field of indirect taxes and we also take this opportunity to request you to apprise us of your significant contribution/achievements in terms of research studies, articles, publications etc. in the area of indirect taxes including GST to Directorate of Professional Development, Perspective Planning and Studies at academics@icsi.edu.

PROFESSIONAL AND OTHER MISCONDUCT UNDER THE FIRST AND SECOND SCHEDULE(S) TO THE COMPANY SECRETARIES ACT, 1980, IN RELATION TO THE MEMBERS OF THE INSTITUTE GENERALLY

- Pursuant to Section 22 of the Company Secretaries Act, 1980 (the Act), the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.
- There are two Schedules to the Company Secretaries Act, 1980, namely; the First Schedule and the Second Schedule contain professional and other misconduct in relation to Company Secretaries.
- First Schedule is divided into four parts and Second Schedule is divided into three parts -
 - Part I of the First Schedule and Part I of the Second Schedule are applicable to Company Secretaries in Practice.
 - Part II of the First Schedule is applicable to members of the Institute in service.
 - Part III of the First Schedule and Part II of the Second Schedule are applicable to members of the Institute generally.
 - Part IV of First Schedule and Part III of the Second Schedule deals with other misconduct in relation to members of the Institute generally.
- This write-up elaborates Part III – from item (1) to (3) of the First Schedule and Part II-from items (1) to (4)of the Second Schedule to the Act on Professional Misconduct in relation to the members of the Institute generally and Part IV - from items (1) &(2) of the First Schedule and Part III of the Second Schedule on Other Misconduct in relation to the members of the Institute generally.

A) Part III of the First Schedule to the Act which deals with Professional misconduct in relation to members of the Institute generally “A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he – “(1) not being a Fellow of the Institute, acts as a Fellow of the Institute;”

This clause prohibits a member to act as a Fellow of the Institute while in fact he is not a Fellow member. An Associate is entitled to have his name entered in the Register as a Fellow as per regulation 4 (2) of the Company Secretaries Regulations, 1982 which requires standing of five years as an Associate and a certain level of experience.

“(2) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board

of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;”

It is a duty of a member to supply information called for or to supply the requirements as asked for by the Council or any of its Committee and other authorities such as Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority. Non-compliance with this clause would tantamount to breach of code of conduct.

“(3) while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.”

A member of the Institute, whether in practice or not, shall be guilty of professional misconduct if he gives any information which he knows it to be false, while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of the First Schedule to the Act.

B) Part IV of the First Schedule to the Act which deals with Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct under Part IV of the First Schedule, if: -

“(1) he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;”

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, under Part IV of the First Schedule, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months.

“(2) in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.”

If a member of the Institute in the opinion of the Council brings disrepute to the profession or the institute as a result of his act/ omission whether the same relates to his professional work or not or such act/ omission does not fall under any of the items of the First and Second Schedule of the Act, the member shall be deemed to be guilty of other misconduct. However, such cases are to be decided by the Council keeping in view the facts and circumstances of each case.

C) Part II of the Second Schedule to the Act which deals with

Professional misconduct in relation to members of the Institute generally

A member of the Institute whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

“(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;”

A member of the Institute, whether he is in practice or not, is expected to abide by all the provisions of the Company Secretaries Act, 1980 (including Rules made thereunder); the Company Secretaries Regulations, 1982 and Guidelines issued by the Council from time to time. In case he breaches any of them, he shall be deemed to be guilty of professional misconduct under this item (1) of the Part II of the Second Schedule.

It is necessary for all the members to go through the provisions of the Company Secretaries Act, 1980 and the Regulations made thereunder and make themselves fully acquainted with the guidelines issued by the Council from time to time and to follow them in true letter and spirit.

“(2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, except as and when required by any law for the time being in force or except as permitted by the employer;”

A member of the Institute who is in employment with any company, firm or person, is expected to maintain the relationship of trust and confidence with his employer.

Such a member is expected to keep secret all the confidential information, which he has acquired in the course of his employment and not to disclose the same to others, under any circumstances, directly or indirectly. If any such member of the Institute, whether in practice or not, discloses such information, he shall be guilty of professional misconduct.

Such confidential information may be a technical secret, important policy decision, business strategy or any other matter having bearing on the interest of the employer and if disclosed, it might be harmful or may have potential to cause harm to the employer.

“(3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;”

All the members of the Institute whether in practice or not, are expected to furnish correct particulars in any information, statement, return or form, which they submit to the Institute, Council or any of its Committees, Director (Discipline), Disciplinary Committee, Quality Review Board or the Appellate Authority.

In case a member, whether in practice or not, submitted any information, statement, return or form to the Institute, Council or any of its Committees, Director (Discipline), Disciplinary Committee, Quality Review Board or the Appellate Authority, includes therein any particulars which the member knows them to be false, in such case, the member shall be deemed to be guilty of professional

misconduct.

“(4) defalcates or embezzles moneys received in his professional capacity.”

This item covers defalcation or embezzlement of moneys received by a member of the Institute in his professional capacity, whether in practice or not. Misappropriation of funds received in his professional capacity by a member of the Institute, would amount to misconduct under this clause.

D) Part III of the Second Schedule to the Act which deals with Other misconduct in relation to members of the Institute in generally

“A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.”

In case a member of the Institute, whether in practice or not, is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months, he shall be deemed to be guilty of other misconduct.

This write-up has been prepared and published for the reference of the members of the Institute. These views may be subject to judicial interpretation.

Attention Members - Online donation to CSBF on a click now

For making donations to CSBF online, please click www.icsi.in/ICSIDonation You may also visit ICSI website www.icsi.edu and click at “For donations to CSBF – click here”.

For queries if any, you may write or call-

(Mr. Saurabh Bansal)

Executive, CSBF cell

ICSI House, 22 Institutional Area

Lodi Road, New Delhi – 110003

Phone: 011-45341088, Fax: 011-24626727

Email: saurabh.bansal@icsi.edu

csbf@icsi.edu

Note: Donation to the CSBF qualifies for the deduction under section 80G of the Income Tax Act, 1961. The online receipt serves this purpose as well.

BALANCING LOVE AND LAW FOR SUSTAINABILITY

(Contributed by Brahma Kumaris, Om Shanti Retreat Centre, Gurgaon)

“The love of God does not supersede His laws and His commandments, and the effect of God’s laws and commandments does not diminish the purpose and effect of His love.”- Anonymous

Love and Law are the two sides of a coin. Neither of them can be compromised, be it to get through the day to day activities in daily life of an individual or the sustainable development of a nation or worldwide progress. It is difficult to imagine a world with no love and law. Without love, there would be no purpose of life. The human touch would go away and the world would not be a place worth living. Similarly without law, there would be no system, no controls and this would lead to anarchy. Where on one hand law guides and shapes everything in the world by its do’s and don’t’s, on the other hand love is the factor that provides liveliness to life. Today, the world is experiencing them one at a time i.e. where there is love they are unable to follow laws and where they follow laws they restrict themselves from love. Hence, the biggest challenge faced by many today is that how to keep a balance of these two factors which are perceived to be opposites by majority today. To love lawfully and practice laws love fully is what everyone seeks for, and is also the need of the hour.

The main reason for not experiencing this balance is, not understanding the real meaning of ‘love’ and ‘law’. Often, love is misunderstood as a weakness of an individual and law is considered to be something binding and restricting. People believe that laws will become paralysed with the presence of love; while to practice love, laws need to be broken. Due to the incapability of walking along in life with both the factors hand in hand, they tend to choose either of the two.

Today, if asked whether the new generation follows laws, or does it understand the language of love, majority would stand amongst the ones saying a big ‘NO’ for both the questions. Have we ever wondered why? As a result of the confusion between love and law and inability of their elders to keep a balance, they are drifted to using neither of the two. Today the upcoming generation neither likes discipline and laws, nor understands the value of love. Generations have been blaming each other for not following what is to be followed. The elderly blame their younger generation for not teaching the kids properly while the young ones blame the previous generations for not progressing with the fast moving time. Why have we trapped ourselves in this blame game and what is the solution out?

We all know that everything in this world has value, till it is used in proper quantity and at the proper time and place. Similarly practicing love and law with its real understanding and in the required amount and place, is the key to balance them. Let us go deeper to understand what is love and law in the correct sense.

Love is the only language common to every living entity on earth, be it humans, animals or any other species, irrespective of the country, caste, religion or any other barrier. It is first language that we understand, the day we are born. No one teaches us how to love because it’s our own nature. A new born does not know how to speak,

nor does he understand words, but feels secure and happy the moment he is in the lap of his mother or father. This love becomes strength for the child. A pet who may not know our language, also understands a touch full of love by his master. It enables an animal to be so faithful to a human being that in his presence no one can cause harm to his master. Hence love is the seed to many other values. History has many incidences where love has won wars. It is said that love is such a power that can shake mountains. Let us think, why even then, we say that we are unable to get our work done through love? Or dealing with love does not work in today’s world? Definitely somewhere our understanding or way of practicing love is incomplete.

Love is a pure feeling of the self. It is our true nature. It only knows how to give and construct. It never desires anything in return. It is not the attachment or attraction to the others, but is the pure affection towards them. It is the affection that one has for others, irrespective of who the other one is. This affection does not support them in the wrong, but encourages them to again walk on the right path if they have gone on the wrong one. Love becomes a ray of light for a person who has lost hope. But the irony today is that we are unable to experience this true feeling of our own self because we are hardly connected to ourselves. Most of the time, we look out searching for love in the materialistic world, unaware of our inner treasures. Due to materialization of love, it transforms into attachment or attraction. These assumed but false forms of love do much harm to the society, as along with them, comes the feeling of partiality, insecurity, rebellion and in extreme cases may even lead to hatred. We are not unaware of various incidences today where lovers do not even hesitate in doing heinous deeds like murder in the name of love. Sadly, they lack the understanding of the law of love.

The biggest law of nature is Love, while love has its own laws. Both are interdependent and inseparable. Talking of law, it the essential force that drives this universe. Everything including nature has its own laws. We are aware of the amount of devastation that occurs with the slightest deviation of nature from its laws. In one’s life, laws are like the string tied to a kite. At once, it may seem that the string is restricting the kite to fly high, but we all know the fact. If the string is cut and the kite is left to fly on its own, it will eventually come down. This is the importance of laws in our life. They are not bondages, but the strings of strength that support us and guide us to always rise and achieve new heights. A person who spreads love and whose actions are always lawful automatically receives everyone’s love and appreciation. Laws are the roots of one’s personality and the water needed to strengthen the roots is love. Law cannot function without love as it would induce fear. If a child is shouted upon, to teach the smallest discipline of life, it is doubtful whether the child learns the discipline taught in this way or not, but it is certain that he learns to shout whenever he wants to teach something to someone else. Hence in the process of teaching discipline, we unknowingly teach the innocent child, that discipline can’t be imbibed with love and this viscous chain continues. Also he would permanently generate a feeling of fear for his parents, which may even compel him to lie in future. A person, who only follows laws

without love, becomes unapproachable and is not appreciated either. A person, who is very lovely in nature, would be of no inspiration to the self or others if the foundation of laws and discipline is weak.

So to have a complete personality and be able to do justice with all kind of jobs and relations linked to us, a perfect balance of love and law is required. For this, we need to stop searching outside and start connecting to the self, as there lays the treasure. We all know that everything in this world is temporary, including this body of ours. But what is permanent is the energy that drives this body. That is the real me- the Self. The self which is also know by the term 'soul' is the embodiment of virtues like peace, love, happiness, purity, power, co-operation etc, but due to lack of self awareness we are unable to experience these qualities. All these years the inner virtues have been locked inside us and the only key to open these, is self awareness or 'soul-consciousness'. The opposite of this state is 'body-consciousness' which has become so natural these days that we spend our entire life thinking that 'I am this' and 'I am that' but towards the end we tend to ponder who was the actual 'I' all these years! Is it necessary to wake up at the end of life? Why not experience our true self during the wonderful journey of our life.

Connecting to the self is a journey of the soul from external world to the internal space. Knowledge and introspection are the tools to help in this journey. After we get the knowledge of who we actually are i.e. we are all souls; we need to practice those qualities in the daily life. Being in soul consciousness automatically changes our vision towards others. We realize that, similar to me, others are also a pure energy, full of virtues but unfortunately unaware of their capabilities. It is with this insight, that we start experiencing love in its true form, unadulterated by any form of attachment or desire. We stop blaming others or the world, for whatever bad happens to us. When we obey all the laws of our true nature i.e. being in the state of love, peace, happiness, power etc, we regain the inner strength to walk on the path of righteousness and lead a disciplined life. Initially, by practicing our original virtues in our day to day activities, we need to make effort to protect our laws and build our personality, balanced with love and law. Later, this personality protects us in every situation. For instance, if we are known to be a person of values, always doing things in the right manner and if a situation of blame arises in front of us, this impression of our good conduct would speak out the truth for us and others would not find it difficult to disbelieve the blame being put on us. Thus, by being in the state of soul-consciousness a character is built. Life becomes an embodiment of virtues.

Like the property of a rose or sandalwood is to spread fragrance. It does not need to make effort to fill the environment with its beautiful smell. Similarly a soul-conscious person naturally radiates all the virtues in the surroundings. Others can feel the aura of positivity in the presence of that individual. His life becomes an inspiration to others. Such self transformation is the only tool to bring about a sustainable transformation of the society. If we wish to see a world with a perfect balance of love and law, with every individual living in harmony with others and with nature and every one self disciplined and controlled, we need to start with ourselves. Like we plan for all the important jobs to be done in a day, we need to take out time for ourselves daily. Sit with ourselves and introspect. This technique of connecting to the self and unlocking the hidden virtues is what we call 'Meditation'. Like regular exercise keeps the body healthy, meditation is the exercise of mind which keeps the mind fresh and healthy. Like a diseased person finds it difficult to balance his own body, similarly a diseased mind i.e. a mind trapped in the vices of ego, anger, attachment, jealousy etc, finds

it difficult to keep a balance of the essential virtues in life. Meditation helps in re-strengthening the soul and regaining this lost balance.

If every individual in the world re-strengthens itself, there would not be much effort required to shape the future of a peaceful and united world, where everything would be in harmony, and no one would be complaining about lack of love or law in the society. Thus a sustainable future would be achieved. Enough time has been lost blaming; let's start our inner journey to have a perfect balance of love and law to ensure a sustainable bright future of the earth.



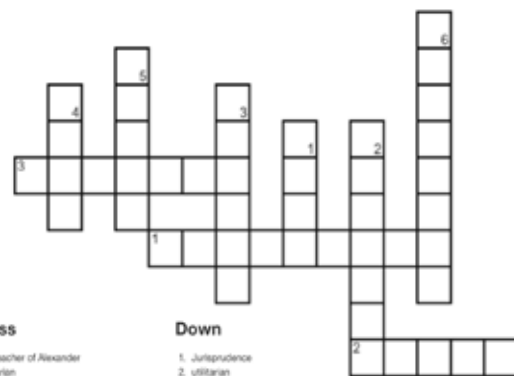
BRAIN - TEASERS!

(Win Prizes)

To win prizes, a person has to send replies to both (i.e. Legal Jargons & Case Study). Three prizes – a first, a second and a third carrying Rs. 2000, Rs. 1500 and Rs. 1000 respectively will be awarded to the best entries in order of merit. The decision of the Institute will be final and binding and no query/clarification whatsoever will be entertained. The names of the winners will be published in one of the future issues of the Journal. Please send your replies to ak.sil@icsi.edu latest by 25th of August 2016 highlighting **Replies to August 2016 Brain Teasers Column.**

Brain Teasers August 2016

Philosophers and legal minds



Across

1. the teacher of Alexander
2. utilitarian
3. Jurisprudence

Down

1. Jurisprudence
2. utilitarian
3. Jurisprudence
4. positivism
5. the Greek teacher of a great mind
6. the Greek started it all

CASE STUDY

In present days of troubled times & relationships with neighbouring and distant lands alike.

- a) How would a dispute arising out of a dishonour of an instrument recognisable as a Negotiable Instrument, stand? When drawn by
 - i) an Indian resident to a foreign Payee based in a hostile nation on an Indian bank (Drawee),
 - ii) an Indian to an Indian payee drawn on a bank based in a hostile nation,
- b) Does nationality or situs matter in NI disputes.
- c) What are the steps to be followed to raise a dispute?

Please restrict the scope of your discussions to Promissory notes, Bill of exchange and Cheques.



41st REGIONAL CONFERENCE OF COMPANY SECRETARIES

UNDER THE AUSPICES OF KOCHI CHAPTER

8 PCH for
ICSI Members

16 PDP for
ICSI Students

"Rewarding Arena; Reaping Benefits - CS - Growing by Leaps and Bounds"

Days & Dates: Friday & Saturday, October 14 & 15, 2016
Hotel Ramada Resorts, P V Sreedharan Road, Kumbalam,
Ernakulam, Kerala.

Speakers:

Eminent speakers with comprehensive exposure will lead technical sessions and interact with the participants.

Members are requested to block their dates and avail early bird benefits.

Delegate fees

Registration for	Regular fees	Early Bird fee till 17 th September 2016	Early Bird fee from 18 th September 2016 to 30 th September 2016
Members	Rs 3500/-	Rs 2500/-	Rs 3000/-
Students	Rs 1500/-	Rs 1000/-	Rs 1250/-
Corporate Members	Rs 2500/-	Rs 2000/-	Rs 2000/-

CS Sivakumar P
Chairman, ICSI-SIRC

CORPORATE GOVERNANCE CORNER

DEVELOPMENTS – JULY 2016

The Commonsense Corporate Governance Principles, Washington

The Commonsense Principles of Corporate Governance were developed, and are released by a group of executives leading prominent public corporations and investors in the U.S. The group includes Warren Buffett, CEO of Berkshire Hathaway, and Jamie Dimon, CEO of JPMorgan Chase & Co. The principles were issued on 25th July 2016 by the Group.

The Commonsense Corporate Governance Principles support strong independent boards, transparency, and long-term value creation, and in the process, build increased shareholder confidence. These principles are intended to provide a basic framework for sound, long-term-oriented governance.

Some of the key principles outlined include:

- No board should be beholden to the CEO or management. Every board should meet regularly without the CEO present, and every board should have active and direct engagement with executives below the CEO level;
- Diverse boards make better decisions, so every board should have members with complementary and diverse skills, backgrounds and experiences;
- Every board needs a strong leader who is independent of management. The board's independent directors usually are in the best position to evaluate whether the roles of chairman and CEO should be separate or combined;
- Companies should not feel obligated to provide earnings guidance and should only do so if they believe that providing such guidance is beneficial to shareholders;
- A common accounting standard is critical for corporate transparency, so while companies may use non-Generally Accepted Accounting Principles ("GAAP") to explain and clarify their results, they never should do so in such a way as to obscure GAAP reported results;
- The company's institutional investors making decisions on proxy issues important to long-term value creation should have access to the company, its management and, in some circumstances, the board.

The Commonsense Principles of Corporate Governance is available at the link http://www.governanceprinciples.org/wp-content/uploads/2016/07/GovernancePrinciples_Principles.pdf

Source: <http://globenewswire.com/news-release/2016/07/25/858599/0/en/NACD-Appraises-Commonsense-Corporate-Governance-Principles.html>

New Corporate Governance Code, Muscat

Oman's new Code of Corporate Governance came into effect from July 21, 2016. The new code will replace the 2010 Code of Corporate Governance for Public Listed Companies ('the Old Code'). As well as amending various rules in the Old Code, principles contained in the New Code expand on the role of the Board in relation to corporate governance and contain an example Code of Professional Conduct. All Boards of Muscat Securities Market listed companies ('MSM Listed') are required to draft their own internal Code of Professional Conduct which should be adhered to at all times.

The new code places emphasis on transparency, accountability, fairness and responsibility in the boards and managements of all listed companies.

The new code stipulates that all board members of listed companies shall be non-executive directors. The percentage of independent directors to the total number of board members shall not be less than one-third, with a minimum of two independent directors.

Moreover, directors who have been elected for the first time or re-elected must undergo some qualification in corporate governance and sustainability through training programmes at the company's expense.

Other major changes include compulsory formation of a nomination and remuneration committee and emphasis on the competence and effectiveness of directors. The new code states that the board shall establish a nomination and remuneration committee with the aim of assisting the general meeting in the nomination of proficient directors and the election of the most eligible. The company shall also develop a proper remuneration and incentives policy to attract competent executives with proper wages and remuneration.

Source: <http://www.muscatdaily.com/Archive/Business/New-Corporate-Governance-Code-comes-into-effect-today-4rk5>

REMEMBER!!

12 August – International Youth Day
21 August – National Senior Citizens Day
29 August – National Sports Day

FEEDBACK & SUGGESTIONS

Readers may give their feedback and suggestions on this page to Ms. Banu Dandona, Joint Director, ICSI (banu.dandona@icsi.edu)

Disclaimer:

The contents under 'Corporate Governance Corner' have been collated from different sources. Readers are advised to cross check from original sources.

READERS' WRITE

THE 'GUNPOWDER' FRAUD

What is gunpowder? It is a mixture of easily available ingredients such as, charcoal, saltpetre and sulphur. In the olden days, these were routinely used in kitchens, for harmless cooking purposes. Saltpetre or potassium nitrate was used in cooking meat, charcoal was used as fuel, and sulphur was used as a substance to intensify the heat. The point to be noted is that, individually they were relatively harmless and in fact useful, but combined together they formed a dangerous explosive substance which was used not in kitchens but in battlefields. This is what forensic auditors need to be mindful of.

Seemingly unimportant control risks could be individually harmless and perhaps useful in the ordinary course of business, but collectively, they could become a major risk factor. If somehow a wrongdoer gets awareness of these weaknesses, he may be able to perpetrate a fraud which would be devastating and explosive – the 'Gunpowder Effect'.

Control weaknesses may be spread over and easily hidden among myriad procedures. The auditor may have to spend some time weeding out those which are genuinely harmless and shortlist those which could be dangerous collectively. The point to be noted is that control weaknesses may appear small, or not so serious, or perhaps could be explained away, as they are often, as only temporary that will disappear when new systems (often an ERP), new procedures, etc. are to be shortly implemented. But, the auditor should not make the mistake of viewing each of them in isolation. All the audit observations must be minutely observed from a distance as well as from close quarters, to enable a macro-micro view and thereby facilitate forming an opinion. The following real life incident is a good case in point.

ABC a large sized trading company had its head office in Delhi and branch offices across the country. Each branch had its own accounting unit, with a unit finance head and an independent auditor. All unit finance heads reported to the Group CFO based in Delhi. The branch and head office auditors did not have any major earth shaking findings to report, but there were some audit observations that were seemingly innocuous and unrelated. Three of them were:

- Inefficiency in IT control implementation. The IT audit which had been recently carried out stated that though the controls defined were adequate, there was considerable inefficiency in implementation of the defined security controls. A lot of improvement was needed in implementing data security, applications and access control, network security, password encryption and usage controls. The report also pointed that above all, the users were not trained nor fully familiar with their roles and duties. When the auditors expressed their

concern, the company management reassured them by explaining that these were temporary issues which would be eliminated when they would migrate to a different application, which was already approved and was just a matter of time before becoming operational. Till such time, it was agreed that IT audits and internal checks were to be increased and training intensified. The management did not see any serious exposure on this count.

- Policy of write offs and writebacks: Being a high turnover trading company, the company had huge receivables and bad debts were not unusual. In order to avoid disclosing bad debts in the accounts, the company had a practice of adjusting old outstanding receivables against old unpaid creditors. The company had a separate account where such excess receivables and payables balances were adjusted; these included both domestic and overseas balances. The branch defended this practice on the ground that most of the receivables written off were small amounts less than Rs. 10,000 and as against that they had such a lot of old unpaid creditors which would have to be written back anyway. Since the volume of turnover of ABC was large, exceeding Rs 10,000 crores the auditors too agreed that this was not materially significant; they however maintained in their report the suggestion that this practice be discontinued and cautioned that special care be taken no amounts should be written back till it was certain that they were indeed not payable.
- Blank Signed RTGS forms. The company kept at the branches some pre- signed RTGS forms for use in an emergency. Undoubtedly there were situations when cash was required or payments had to be made urgently. Each time it was not easy to get the signatures, so after some thought it was decided that some blank RTGS forms would be signed and kept at the branch. The auditors did raise an issue but the CFO explained that eventually all such payments would get reflected in the bank statement and therefore no one would be able to get away by using such forms.. He admitted that there was never a verification done for such blank RTGS forms unused but in all these years there had been no such unauthorized payment.

However all these seemingly unrelated, and described as trivial matters, were the recipe of Gunpowder being mixed!

One day, Shilpa, the Pune branch finance head received an email from the Group CFO asking her to urgently make an RTGS payment of Rs 8 lacs to one, ERP International immediately. It was a simple and routine directive that should normally have been executed smoothly. But Shilpa had run out of blank signed

RTGS forms; so she called up the CFO to get his assistance. During the conversation when Shilpa referred to his email payment directive of Rs 8 lacs to ERP International, the CFO denied that he had sent such an email and that he was not aware of any such payable to the said party. All hell broke loose thereafter. The CFO was furious and asked Shilpa not to make that payment. An external investigator was called in.

The investigation revealed amazing results. The CFO was the first person to be held responsible for this attempted fraud. The completely lackadaisical approach in implementing IT controls permitted password sharing freely among employees for all email accounts. The CFO himself often asked his subordinates to send, open or download emails and attachments. Obviously his password was known to all employees, both present and even those that had moved on. The password had not been changed for the last 10 years. This was the first ingredient of the 'Gunpowder'. The second ingredient was the availability of blank signed RTGS forms over which there was no control. Utilisation of such RTGS forms for payments, and particularly those made on CFO's email authorisation were never questioned by anyone at Pune, either by the staff or the auditors. The third ingredient was the availability of a decoy payee - ERP International. ERP International was an acronym of Excess Receivables and Payables Account for Global Debtors and Creditors. They earlier used the full form, but over the years it was shortened to ERP International and the accumulated unpaid balances of old creditors was brought forward as ERP International, Rs 35,23,000 in the year that Shilpa joined this company. Shilpa did not know the history of this account and presumed it to be an unpaid creditor brought forward. During the last two years since she had joined this company she had effected payments worth Rs. 27 lacs in varying amounts based on CFO's authorization. These payment instructions had come through such email directives, ostensibly from the CFO in the past, and because

of that, they were considered sacrosanct and never questioned. The fraud had been perpetrated by a senior accountant Raval in the CFO's Office. Raval had the CFO's password so he could easily send such email instructions. It was he who had opened an account called ERP International in a bank as a proprietary concern owned by him.

How did Raval think of this astute fraud? It was fairly simple. All the necessary ingredients for a 'Gunpowder Fraud' were available - free access of the CFO's email account, availability of a 'siphoning out' facility through the medium of unpaid dues of ERP International, and the facility and signed instruments of payment available conveniently. When he cleverly used all of these together, the impact was explosive. The company lost Rs 27 lacs and the last amount of Rs 8 lacs lying in ERP International would have also been siphoned off, had Shilpa not spoken personally to the CFO by sheer coincidence.

"Nothing is insignificant until it is proved to be insignificant" is a maxim that is often applicable in many audit situations. Auditors often come across situations of control weaknesses of varying intensities. Some of these weaknesses could have serious risk implications while others may not be that serious. While undertaking any risk assessment, auditors tend to concentrate on the serious risk implications and usually do not give more than a casual look to the trivial and smaller weaknesses and control deficiencies. This is a reasonable method of assessing the overall risk. However, there are exceptional situations, where these seemingly small control weaknesses may certainly be insignificant individually but collectively a grave threat.

– CHETAN DALAL
(Managing Director

Chetan Dalal Investigation and Management Company)

SPECIAL ISSUES OF CHARTERED SECRETARY

It is proposed to bring out the following special issues of Chartered Secretary during the remaining period of 2016:

1. Insolvency Law (September, 2016 issue)
2. LODR (October, 2016 issue)
3. Competition Law (November 2016 issue) and
4. Social Audit and CSR (December 2016 issue).

Members and others having expertise on the aforesaid subjects are welcome to contribute articles for consideration by the Editorial Advisory Board for publication in the said special issues.

The articles may kindly be forwarded to:

The Director (Publications), the ICSI, 22, Institutional Area, Lodhi Road, New Delhi – 110003.

e-mail: ak.sil@icsi.edu

GST UPDATES

- Prime Minister appeals to all political parties to support GST in all party meeting held on the eve of monsoon session of Parliament.
- The Goods and Services Tax (GST) Constitutional Bill is passed in the Rajya Sabha.
- GST Bill will again be passed by Lok Sabha as the original Bill passed by it is being amended.
- Issue of compensation to manufacturing states such as Tamil Nadu, Gujarat and Maharashtra for potential loss of revenue by 1% tax on inter-state movement of goods discussed in Empowered Committee and all states have agreed to withdraw this additional tax.
- GST may help improve tax to GDP ratio in the country, while giving buoyancy to Government's tax collection efforts.
- The proposed GST Law is expected to support the Government's overall initiative of ease of doing business and offer a simplified tax regime to businesses.
- A meeting of the Empowered Group of Finance Ministers of States with Finance Minister held on July, 26 and inter alia decided that Constitutional Bill should not have rate cap, states should be compensated for 5 years and single control based on threshold limits.
- The Government has accepted a key demand of Congress to remove 1 percent additional tax on inter-state supply of goods and is likely to provide some assurance on 'legal ring fencing' of the tax rate instead of having a cap in the Constitution.
- The States unanimously turned down a proposal by the Centre for dual administrative control of small traders with an annual turnover of less than Rs. 1.5 crore which is under consideration.

GST in News

- The proposed GST structure provides for dispute settlement through GST Council to settle disputes.
- The Congress has been demanding the overall rate be capped at 18 percent and an additional one percent tax designed to compensate manufacturing states that fear loss of revenue be scrapped.
- The Centre may lose over Rs. 1.5 lakh crore revenue from cesses and surcharge if the Goods and Services Tax (GST) is rolled out in 2017-18.
- Analysts expect Nifty to hit 8,000 if GST Bill fails in monsoon session and hit to 9,000 mark if it sails through.
- GST to favourably impact logistics, auto and FMCG sector.

Salient Features of GST Model Law

The following are some more key features of the Model GST Law:

- **Destination based Tax**
GST would be a destination based consumption tax as against the present concept of Origin based tax. The tax base will shift from manufacture / sale / service provision to 'supply' of goods or services.
- **GST compliance rating score**
Every taxable person shall be assigned a GST compliance rating score. The GST compliance rating score shall be updated periodically and intimated to the taxable person. This will be a part of public domain.
- **TDS**
When the total value of a contractual supply exceeds Rs. 10 lakh, the individual Departments may be required to deduct the taxes at source.
- **TCS on online sales of goods & service**
All e-commerce establishments should collect tax at the time of credit/payment. The amount should be deposited to the respective

state government, within ten days of the end of the month in which the product/service was supplied.

- **Refund**
A person can claim refund of any tax and interest by making an application in that regard to the prescribed officer of IGST/CGST/SGST within two years.
- **Input Tax Credit**
Credit of CGST paid on inputs may be used only for paying CGST on the Output and the credit of SGST paid on inputs may be used only for paying SGST. In other words, the two streams of input tax credit cannot be mixed except in specified circumstances of inter-State sales.

Meaning of Supply

Supply of goods or services shall include:

- lease or disposal, and
- Importation of services
- Supply as per Schedule-I (supply without consideration)
- In relation to 'supply' for the purpose of GST, following points may be noted -
 - supply shall be goods and / or services
 - supply should be made or agreed to be made
 - supply should be for a consideration
 - supply should be made by person
 - supply should be made in the course of or furtherance of business
 - supply shall include importation of service, irrespective of whether for consideration or not and whether in the course of or furtherance of business or not.
- supply shall include supply as per Schedule-I made without a consideration

Matters to be treated as supply without consideration (Schedule I)

- Permanent transfer/disposal of business assets.
- Temporary application of business assets to a private or non-business use.
- Services put to a private or non-business use.
- Self supply of goods and/or services.
- Assets retained after deregistration.
Supply of goods / services by a taxable person to another taxable or non-taxable person in the course or furtherance of business. Once supply is determined, place of supply and time of supply of goods and / or services will be relevant for taxation purpose.

GST: Some Interesting Facts

- GST will not replace all the indirect taxes but shall subsume majority of the indirect taxes.
- India will have a dual GST structure wherein both, Union and States will levy GST viz. Central GST (CGST) and State GST (SGST)
- Both CGST and SGST shall be levied simultaneously.
- GST will become the major contributor of indirect tax on goods and services, agriculture still remaining untaxed.
- Tax-GDP ratio and the GDP are likely to improve once GST is implemented.

Opportunities for Members

GST will offer tremendous professional opportunities for members, both in employment and practice as GST will be a new law for all stakeholders providing advisory, implementation and knowledge management opportunities.



COMPUTER-BASED EXAMINATION FOR FOUNDATION PROGRAMME DECEMBER, 2016 TIME-TABLE AND PROGRAMME

Day and Date of Examination	Subjects		Batch No.	Examination Timings	
				From	To
Saturday, 3rd December, 2016	Paper-1	Business Environment and Entrepreneurship AND	I	9.30 A.M.	11.00 A.M.
			II	12.00 Noon	1.30 P.M.
	Paper-2	Business Management, Ethics and Communication	III	2.30 P.M.	4.00 P.M.
			IV	5.00 P.M.	6.30 P.M.
Sunday 4th December, 2016	Paper-3	Business Economics AND	I	9.30 A.M.	11.00 A.M.
			II	12.00 Noon	1.30 P.M.
	Paper-4	Fundamentals of Accounting and Auditing	III	2.30 P.M.	4.00 P.M.
			IV	5.00 P.M.	6.30 P.M.

EXAMINATION TIMING : 2:00 P.M. TO 5:00 P.M.

Date and Day	Executive Programme	Professional Programme
21.12.2016 Wednesday	Cost and Management Accounting (Module-I)* OMR Based	Advanced Company Law and Practice (Module – I)
22.12.2016 Thursday	Tax Laws and Practice (Module-I)* OMR Based	Secretarial Audit, Compliance Management and Due Diligence (Module – I)
23.12.2016 Friday	Industrial, Labour and General Laws (Module-II)* OMR Based	Corporate Restructuring, Valuation and Insolvency (Module – I)
24.12.2016 Saturday	Company Law (Module-I)	Information Technology and Systems Audit (Module – II)
25.12.2016 Sunday	NO EXAMINATION	NO EXAMINATION
26.12.2016 Monday	Economic and Commercial Laws (Module-I)	Financial, Treasury and Forex Management (Module – II)
27.12.2016 Tuesday	Company Accounts and Auditing Practices (Module-II)	Ethics, Governance and Sustainability (Module – II)
28.12.2016 Wednesday	Capital Markets and Securities Laws (Module-II)	Advanced Tax Laws and Practice (Module – III)
29.12.2016 Thursday	NO EXAMINATION	Drafting, Appearances and Pleadings (Module – III)
30.12.2016 Friday	NO EXAMINATION	Elective 1 out of below 5 subjects (Module – III)
		(i) Banking Law and Practice
		(ii) Capital, Commodity and Money Market
		(iii) Insurance Law and Practice
		(iv) Intellectual Property Rights – Law and Practice
		(v) International Business-Laws and Practices

*(Examination for three papers, i.e., (i) Cost and Management Accounting; (ii) Tax Laws and Practice; and (iii) Industrial, Labour and General Laws be held in OMR Mode on 21st, 22nd and 23rd December, 2016 respectively)

The World's Most Successful Board Portal



With 140,000+ users globally, Diligent Boards™ is the Most Used Board Communications and Collaboration Tool in the World

Combining pioneering features, unparalleled technology and remarkable performance, Diligent Boards enables users to:

- ▶ Digitally compile, distribute and access board materials via simple and intuitive interface
- ▶ Work online or offline from any global location
- ▶ Benefit from world-class, market leading security features
- ▶ Utilize award-winning 24/7 service from Diligent experts

SCHEDULE A DEMO:

- ▶ **+91 96865 71285**
- ▶ **info@diligent.com**
- ▶ **diligent.com/ICSI**



Diligent is a trademark of Diligent Corporation, registered in the United States. All third-party trademarks are the property of their respective owners. ©2016 Diligent Corporation. All rights reserved.

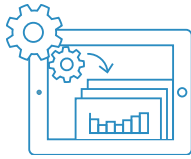


Boardvantage

Going paperless with
your board has never
been easier



Organisations around the globe are experiencing the benefits of the Boardvantage board portal called MeetX. You can too.



Automate the board meeting process

With dedicated workflows and support for last-minute updates, MeetX automates boardbook creation and distribution. Board members view the particulars of the current meeting or quickly reference relevant items from previous meetings. Any updates are flagged with visual cues.



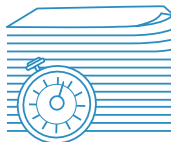
Go beyond boardbook access

When it comes to eSigning consents, voting on resolutions, or filling out self-assessments, MeetX makes all board process paperless.



Make online-to-offline transparent

MeetX auto-syncs its content so board members have ready access to their documents, private notes, approvals, and surveys, whether online or offline. Even annotations made offline sync back to the server when the board member is back online.



Cut cost, time and paper

With MeetX, you no longer have to print, ship and track board materials, and no one has to lug them around.

In 50 countries and half the Fortune 500

Request a free demo at boardvantage.com/demo.

boardvantage.com/hk

Unit 2-3, 20F, Fu Fai Commercial Centre, 27 Hillier Street,
Sheung Wan, Hong Kong
+852 2108 4600 | sales@boardvantage.com