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Exam Code : TAX

Taxation

SEMESTER - VI

COMMERCE



KRISHNA KANTA HANDIQUI STATE OPEN UNIVERSITY

Subject Experts

Professor Nayan Barua, Gauhati University

Professor H.C. Gautam, Gauhati University

Dr. S. K. Mahapatra, Gauhati University

Course Coordinators : Dr. Devajeet Goswami, Dr. Dipankar Malakar, Commerce, KKHSOU

SLM Preparation Team

UNITS	CONTRIBUTORS
1& 2	Dr. Ramen Barman, Gauhati Commerce College
3	Dr. H.C. Gautam, Gauhati University
4,5,6,8,9,10,11,12,13 &14	Mr. Sanjib Ghimire, KKHSOU
7	Dr. Leena B. Dam, Symboisis Centre of Management Studies, Pune

Editorial Team

Content	:	Professor H.C. Gautam, Gauhati University
Structure, Format & Graphics	:	Dr. Devajeet Goswami, Dr. Dipankar Malakar, Commerce, KKHSOU

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BACHELOR OF COMMERCE

TAXATION

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COURSE INTRODUCTION

The course "*Taxation*" of B. Com 6th Semester will focus on the different aspects related to tax system, tax planning and management, types of taxes etc. Taxes are the main source of revenue for the government and it is used for the development of the state. The course deals with both direct and indirect taxes. Regarding the direct tax, the Income Tax Act has been covered; and with respect to indirect taxes GST Act and Customs Act has been covered. This course has been designed to give the learners adequate knowledge in the areas of taxation.

While going through a unit, you will notice that some along-side boxes, which have been included to help you know some of the difficult, unseen terms. Some ''ACTIVITY'' (s) has been included to help you to apply your own thoughts. Again, we have included some relevant concepts in ''LET US KNOW'' along with the text. At the end of sections, you will get ''CHECK YOUR PROGRESS'' questions. These have been designed to self-check your progress of study. It will be better if you solve the problems put in these boxes immediately after you go through the sections of the units and then match your answers with ''ANSWERS TO CHECK YOUR PROGRESS'' given at the end of each unit.

UNIT 1 : INTRODUCTION TO DIRECT TAX

UNIT STRUCTURE

1.1 Learning Objectives

1.2 Introduction

1.3 Direct and Indirect Tax

1.4 Basic Concepts of Income Tax

- 1.4.1 Concept of Income
- 1.4.2 Meaning of Person
- 1.4.3 Meaning of Assessee
- 1.4.4 Meaning of Financial Year, Assessment Year and Previous Year
- 1.4.5 Gross Total Income
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- 1.4.7 Incomes which do not form part of total income

1.5 Meaning of Income Tax

1.6 Basis of Charge

1.7 Residential Status and Tax Liability

- 1.7.1 Residential Status of an Individual

1.8 Let Us Sum Up

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1.10 Answers To Check Your Progress

1.11 Model Questions

1.1 LEARNING OBJECTIVES

After going through this unit, you will able to:

- define the terms income, gross total income and total income
- illustrate the meaning of financial year, assessment year and previous year for income tax purpose
- explain the meaning of income tax and basis of charge
- describe the residential status of an individual for income tax purpose.

1.2 INTRODUCTION

We know that to run a family or organization money is required. In the same way the government requires money to perform various functions. It has to maintain law and order; safeguard the security of the country from foreign aggression, promote of the welfare of the people and implement programmes for economic development of the nation. Therefore government has to earn income or collect money for execution of its functions. In this connection, taxes collected forms the major source of revenue for the government.

Taxation refers to the practice of collecting money from the public for incurring public expenditures. The act of collecting taxes is not new. Taxation has existed since the birth of early civilization. In ancient times taxes were either material or money like goods or services in the primitive society. The subjects used to pay a share of their income to the Head of a tribe or to the King who in return provided them with the administration security from foreign aggression and other civic amenities.

Taxation has passed through different stages with passage of time, and tax's functions and objectives also have changed from the ancient communities to medieval societies to modern societies also. Hence the tax system has evolved with the evolution of the functions of the modern state.

In India, taxation has been in force in one form or another from ancient times. We find references of variety of tax measures in both Manu Smriti and Arthasastra. Chanakya has described about the system of tax administration in the Mauryan Empire.

In the present time, taxation is not just a medium of generating revenue for the government to meet the public expenditures, but it has evolved as a tool for redistribution of income and wealth in the society. It also serves as a means of economic development and plays a significant role in stabilization of income. Taxation assists in reducing the economic problems which a country may face, like unemployment, inflation, and depression.

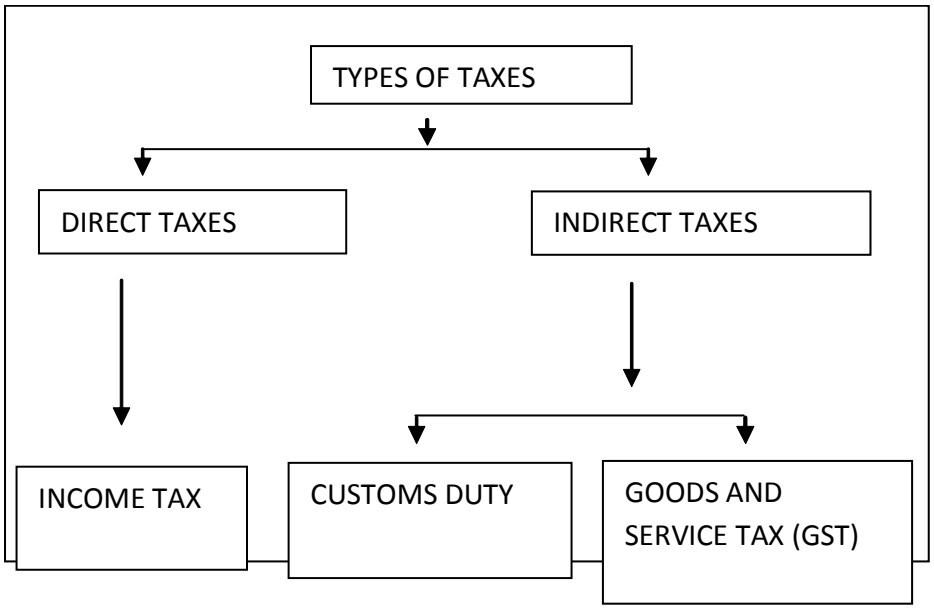
1.3 DIRECT AND INDIRECT TAX

Before we discuss the basic concepts of income tax, we need to understand the meaning of Tax and its types.

Tax is a fee charged by the Government on a product, income or activity. Taxes are levied by the Government so as raise revenue to meet expenses towards security, health-care, education, infrastructure facilities etc. Only the Government has the authority to levy and collect taxes. The Constitution of India has given the power to both Central and the State Government to level and collect taxes. There are two types of taxes- direct taxes and indirect taxes.

Direct Taxes: If tax is levied directly on the income or wealth of a person, then, it is a direct tax e.g. Income-tax.

Indirect Taxes: If tax is levied on the price of a good or service, then, it is an indirect tax e.g. Goods and Services Tax (GST) or Custom Duty.



Differences between Direct Tax and Indirect Tax

Sl. No.	Direct Tax	Indirect Tax
1	Direct tax is imposed on income or wealth.	Indirect tax is imposed on goods and services.
2	The burden of tax cannot be shifted in case of direct taxes	The burden of tax can be shifted in case of indirect taxes
3	Example of direct tax is Income Tax	Example of indirect tax are GST, Customs Duty etc.
4	Direct tax is progressive in nature- higher rate of tax are levied on higher income	Indirect tax is regressive in nature i.e., all persons equally bear the burden of tax, irrespective of their ability to pay.
5	Rates of taxes may differ from person to person	Rates of taxes do not differ from person to person
6	The revenue collected through direct taxes goes to Central Government of India	The revenue collected through indirect taxes is shared between Central Government and the State Governments of India

Income tax is one of the forms of direct taxes. The levy of income tax in India is governed by the Income Tax Act, 1961 and Income Tax Rules, 1962. It is charged on the Total Income and to derive the total income one must know certain concepts of the Income Tax Act, such as residential status, assessment year, previous year, assessee etc.

1.4 BASIC CONCEPTS OF INCOME TAX

Before we discuss the basic concepts of income tax, let us have a brief discussion about the history of Income Tax India. In India, the introduction of Income tax can be traced back to 1860. It was introduced for the first time in 1860. In 1918, a new Income Tax Act was passed and again it was replaced by another Act in 1922. This Act remained in force up to the assessment year 1961-62 with numerous amendments.

The present Income Tax Act came into existence in 1961 after the

report of the Direct Taxes Administration Enquiry Committee in 1959. The Income Tax Act, 1961 has been brought into force with effect from 1st April, 1962. It applies to the whole of India and Sikkim (including Jammu and Kashmir). Since 1962 several amendments of far-reaching consequences have been made in the Income Tax Act by the Union.

An income tax is a tax levied on the income of a person. Various income tax systems exist, with varying degrees of tax incidence. The tax is levied on the income of companies is called a corporate tax. On the other hand, individual income taxes often tax the total income of the individual (with some deductions permitted), while corporate income taxes often tax net income (the difference between gross receipts, expenses, and additional write-offs). The following are different concepts that related to the income tax :

1.4.1 Concept of Income

Tax is charged on income. Therefore, it is necessary to know the definition of income. Income Tax Act, 1961 does not explain the word 'Income'. Section 2(24) of the Act has given a, inclusive list of incomes for the purpose of the Act. Any receipt which comes within the scope of Section 2(24) is considered as income and the receiver is taxed on that amount. Income, in common parlance, means a periodical monetary receipt/ return coming in with some sort of regularity and from definite source. Income tax, as the word itself signifies, is a tax on income. But the Act does not adequately define the term 'income'. Its meaning is more or less similar to the layman's understanding of its being equal to money or money's worth periodically received from a definite source. It may be taken to denote anything which comes in and that too, from some outside source. Income may be received in cash or in kind which is equivalent to cash. Wherever an assessee earns an income, he/she is taxed on such income.

1.4.2 Meaning of Person

The general meaning of the term 'person' is a man or woman or an individual. In the context of income tax the term 'persons' has a special meaning. The meaning of the term 'person' has been incorporated in the Income Tax Act 1961 in Section 2(31). It has first categorised, the term 'persons' in the following way:

(i) An Individual;

(ii) A Hindu Undivided Family (HUF);

(iii) A Company

(iv) A Firm;

(v) An Association of Persons (AOP) or a Body of Individuals (BOI), whether incorporated or not;

(vi) A Local Authority;

(vii) Every Artificial Juridical Person not falling within any of the preceding sub-clauses.

Let us explain these below:

(i) An Individual means a human being. The individual may be a man, woman or a minor child. The income of a minor is included in the income of parent who has higher income after deduction of Rs. 1,500 for each child. The assessment of lunatic or idiot or minor whose income is taxable in his own hands is done in accordance with the provisions of Section 160.

(ii) Hindu Undivided Family (HUF): 'Hindu Undivided Family' has not been defined under the Income-Tax Act and therefore, the definition given under the Hindu Law is accepted under the Income-Tax Act. As per the Hindu law, it means a family which consists of all persons lineally descended from a common ancestor including their wives and unmarried daughters.

(iii) Company: Section 2(17) defines company in the following way:

a) any Indian company,

b) any body corporate incorporated under the laws of a foreign country,

c) any institution, association or a body which is assessed or was assessable a company ,

d) any institution, association or a body, which is declared by general or special order of the Central Board of Direct Taxes to be company.

(iv) A firm: A firm is a taxable entity separate and distinct from its partners.

Association of Persons: This term is also not defined in Income Tax Act. In ordinary sense, an association of persons means two or more persons who join for a common purpose with a view to earn an income without forming a partnership firm. They may be assessed as an Association of Persons (AOP).

(v) Body of Individuals (BOI): Body of Individuals means a group of persons who carry on some activity with the objective of earning some income. It shall consist of individuals only. Entities like companies or firms cannot be members of a body of individuals. Income-tax shall not be payable by an assessee in respect of the receipt of share of income by him from BOI and on which the tax has already been paid by such BOI.

(vi) A Local Authority: The term local authority means any authority formed under any law for the local management of any area. They include:

(a) Panchayat as referred to in clause (d) of Article 243 of the Constitution; or

(b) Municipality as referred to in Article 243P of the Constitution; or

(c) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local funds; or

(d) Cantonment Board as defined in Section 3 of the Cantonments Act, 1924.

(vii) Artificial Juridical Persons: Artificial juridical persons are entities which are not natural persons but are separate entities in the eyes of law. Such artificial juridical persons cannot be sued directly in a court of law but they can be sued through persons managing them. For example, Lord Jagannath Madir, Tirupati Mandir etc. Such places of worship have their income from subscriptions, donations, offerings, etc. Such incomes are taxable under the Income Tax Act. However, under the Income Tax Act, they have been provided exemption from payment of tax under separate provisions of the Act, if certain conditions mentioned therein are satisfied.

In addition to the above, all other artificial persons, with a juristic personality, if they do not fall within any of the preceding categories mentioned above will also fall under this category of persons. For example; Krishna Kanta Handique State Open University, Gauhati University, etc.



CHECK YOUR PROGRESS

Q 1: Determine the category of 'Persons' of the following cases :

(i) State Bank of India : ……

(ii) Delhi University : ……

(iii) LG Ltd : ……

(iv) LICI : ……

(v) M/s. Das Enterprise: ……

(vi) A joint family consisting of Boby, Raina, Vinod, Smita, and Jems: ……

(vii) Guwahati Municipal Corporation:

(viii) DHSK Commerce College : ……

(ix) Mr. G Gogoi : ……

1.4.3 Meaning of Assessee

According to Section 2(7) of the Income Tax Act, 1961, an assessee means a person by whom any tax or any other sum of money is payable under this Act and it includes

(i) every person in respect of whom any proceeding under this Act has been taken:
   (a) for the assessment of his income; or
   (b) for the assessment of the income of any other person in respect of which he is assessable; or
   (c) to determine the amount of loss sustained by him or such other person; or
   (d) to determine the amount of money due to him or to such other person;

(ii) every person who is deemed to be an assessee under any provision of this Act; or

(iii) every person who is deemed to be an assessee in default under any provision of this Act.

Illustration

Examine the following statements:

(a) Mr. A, aged 45 years, is carrying on business. His income from business is Rs. 5,00,000/- for the assessment year 2020-21. He did not file his return of income. Will Mr. A be termed as an assessee?

(b) Mr. B, aged 53 years, is the owner of a house property. His income from house property for the assessment year 2020-21 is Rs. 80,000. He files his return of income even though his taxable income is less than Rs. 2,50,000. Will Mr. B be treated as an assessee?

(c) Mrs. Mayabati is the wife of Mr. Naren. Mr. Naren is the owner of a house property. His income from house property is Rs.1,80,000 for the previous year 2019-20. Mr. Naren died on 25th April, 2020 before submitting his return of income for the

assessment year 2020-21. Will Mayabati be treated as an assessee?

(d) Mr. D is the legal representative of E who is a lunatic. Mr. E has income from house property which is more than the taxable amount for the assessment year 2020-21. Will D be treated as an assessee?

(e) The Principal of a college did not deduct income tax at source from the salary of the teachers of the college although the incomes from salary of most of the teachers are above the exemption limit. Will the Principal of the college be treated as an assessee?

Solution:

(a) Mr. A will be treated as assessee because his income is more than the exempted limit (Rs.2,50,000) and hence he is liable to pay tax on his own income.

(b) Mr. B be treated as an assessee because he has filed his return of income even though his taxable income is less than Rs. 2,50,000 (exempted limit).

(c) Mrs. Mayabati will be treated as an assessee because she is the legal representative of her husband Late Narendra Kumar. As a legal representative she will be liable to pay tax on the house property income of her husband.

(d) D will be treated as an assessee as he is the legal representative of E who is a lunatic. D will be required to pay tax on the house property income of E.

(e) The Principal of the college who did not deduct income tax at source from the salary of the teachers of the college although the income from salary of most of the teachers are above the exemption limit, the Principal of the college will be treated as an assessee in default.

1.4.4 Meaning of Financial year, Assessment year and Previous year

It is essential to know the meaning of time period for income tax purpose. In India, the Government maintains its accounts for a period of 12 months from 1st April to 31st March every year. This period from 1st April to 31st March each year is known as financial year. The financial year for a non-government entity and non-corporate entity may be a different one.

According to Section 2(9), 'Assessment year'' means the period of 12 months commencing on the 1st day of April every year end with 31st March next year.

In so far as income tax is concerned, income earned in a particular financial year (beginning from 1st April of a year and ending on 31st March of the subsequent year) is taxable in the next financial year.

Previous year is the particular financial year in which the income is earned. It is also known as income year. According to Section 3 of the Income Tax Act, ''Previous Year'' means the financial year immediately preceding the assessment year. The next financial year in which the said income is taxable is known as the assessment year. It should be noted that the previous year may not always be a period of 12 months. In the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year

When a person earns income in the previous year (suppose Financial Year 2019-20) the same will be charged to tax in the Assessment Year 2020-21 (i.e. from 01.04.2020 to 31.03.21). The rate at which income is taxable in a particular assessment year will be the rate as existing on 1st April of that Assessment Year.

(a) Previous year in case of continuing business: In case of continuing business, previous year is the financial year proceeding the assessment year. As such for the assessment year 2020-2021, the previous year is 1-4-2019 to 31-3-2020.

(b) In case of newly started business: The Previous year in case of a newly started business shall be the period between commencement of business and 31st March next financial year. For example; Mr. Anand started a business and commenced its operations on Diwali, 2019, the previous year in relation to assessment year 2020-2021 shall be the period from Diwali 2019 to 31st March 2020.

(c) In case of a newly created source of income: In such case the previous year shall be the period between the day on which such source comes into existence and 31st March next financial year. For example a person completes a new house and lets it out, on 1-7-2019 the previous year for this newly created source shall be the period from 1-7-2019 to 31-3-2020.

Income earned in a particular financial year (beginning from 1st April of a year and ending on 31st March of the subsequent year) is taxable in the next financial year. The particular financial year in which the income is earned is known as previous year and the next financial year in which the said income is taxable is known as the assessment year.

When a person earns income in the previous year (say, financial year 2019-20) the same will be charged to tax in the assessment year 2020-21 (i.e. from 01.04.20 to 31.03.21). The rate at which income is taxable in a particular assessment year will be the rate as existing on 1st April of that assessment year.

Now, take note of the following event and ascertain the assessment year:

(i) Mr. Bora started a factory on 14-04-2019.

(ii) Dr. S. Baishya was appointed and joined as accountant in the University on 14-9-2019.

(iii) Mr. S. Krishna received a Commission of Rs. 15,000 on 12-11-2019.

You should remember that for the purpose of ascertaining the assessment year, it is important to find out the previous year first and then find out the assessment year.

(i) Previous year for the factory of Mr. Bora will be from 14-4-2019 to 31-3-20. Therefore, the Assessment Year will be 2020-21.

(ii) Previous year for Dr. S. Baishya will be from 14-9-2019 to 31-3-20. Therefore, the Assessment Year will be 2020-21.

(iii) Previous year for Mr. S. Krishna will be from 12-11-2019 to 31-3-20. Therefore, the Assessment Year will be 2020-21.

1.4.5 Gross Total Income

For the purpose of assessment of tax, it is necessary to conceptualize the terms 'Gross Total Income' and 'Total Income'. Gross Total Income means the total income computed in accordance with the provisions of the Income Tax Act, before making any deduction available under Sections 80C to 80U depending on the category of assessee.

Gross total income is computed in the following manner:

First taxable income under all heads of income is computed. On the other hand, if there are losses from some sources, such losses are set-off against incomes under other heads, wherever permissible under the law. Thereafter, carried forward losses, unabsorbed depreciation, etc. are set-off according to the provisions of the Income Tax Act. The final figure of taxable income under each head is then aggregated. The resultant sum is known as 'Gross Total Income'.

1.4.6 Total Income

Total income [Sec. 2(45)] means the total amount of income referred in Section 5 of the Income Tax Act, computed in the manner laid down in the Act. Under Section 5, different incomes of an assessee are included in his/her total income on the basis of his residential status. The computation of these incomes is done according to the provisions of different sections of the Act under the heads of Salaries, Income from House Property, Profits and Gains of Business or Profession, Capital Gains and Income from other Sources.

In other words, total income means the amount left after making the deductions under Section 80C to 80U from the gross total income.

1.4.7 Income which do not form of Total Income

In the foregoing paragraph you have found that income tax is levied on incomes earned during the assessment year. You have also learnt that tax is imposed on the basis of the residential status of the assessee. But it is not that an assessee is required to pay tax on all the incomes. Some incomes are exempt from income tax under the various provisions of the Income Tax Act. Such incomes are called Exempted Incomes or Tax Free Incomes. Exempted Incomes or Tax-free incomes are covered under Section 10 of the Income Tax Act. In order to claim exemption under this section, it is the duty of the assessee to prove that an item of receipt falls within the exempted category.

The important incomes which are exempted from income tax are listed below:

1. Agricultural income,
2. Income received by a member of the Hindu Undivided Family either out of the income of the H.U.F. or out of the income of the estate belonging to the H.U.F.

3. Share of income of a partner in the total income of the firm, which is separately assessed to tax.
4. The following types of interest received by a non-resident-
   (i) Interest on such securities or bonds as the Central Government may specify in this behalf.
   (ii) Interest on deposits standing in a Non-Resident (External) Account in any bank in India.
   (iii) Interest on certain notified savings certificates, such as National Savings Certificate.
5. Income of a foreign company by way of fees for technical services received in pursuance of an agreement entered into with the Central Government for providing services in India or outside India in projects connected with security of India.
6. Death-cum Retirement Gratuity is exempt from tax subject to the conditions and extent stated in that section.
7. Commuted pension is exempt from tax subject to the conditions and extent stated in that section.
8. Encashment earned leave received by an employee is exempt from tax subject to the conditions and extent stated in that section.
9. Retrenchment compensation received by an employee is exempt from tax subject to the conditions and extent stated in that section.
10. Compensation received by any victim of Bhopal Gas Leak Disaster .
11. Any lumpsum received by an employee who has completed 10 years of service or completed 45 years of age on voluntary retirement .
12. Any sum received under a life insurance policy including the sum allocated by way of bonus on such policy except the amount received under an insurance policy, if the premium payable does not exceeds 20% of the actual capital sum assured.

13. Refund from the statutory provident fund received by an employee.
14. Refund or payment from a recognised provident fund received by an employee with certain conditions.
15. House rent allowance received by an employee subject to certain limit and subject to the conditions and extent stated in that section.
16. Special allowances are exempt from tax subject to the conditions and extent stated in that section.
17. Interest, premium or bonus on certain specified securities and deposits subject to the conditions and extent stated in that section or as defined by the Central Government.
18. Scholarship granted to meet the cost of education.
19. Daily allowances received by MPs, MLAs and MLCs and other allowances received by MPs.
20. Literary, scientific and artistic work and other awards instituted by the Central Government or by any State Government.
21. Pension received by an individual who has been in the service of the Central or State Government and has been awarded "Param Vir Chakra" or "Maha Vir Chakra" or "Vir Chakra" or such other gallantry award as the Central Government may, by notification in the official gazette, specify in this behalf, and (ii) family pension received by any member of the family of such individual as referred to in clause(i), will be exempt from tax with effect from 1-4-2000.
22. As per Section 10 (19) of the Income Tax Act, family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including para military forces) of the Union, where the death of such member has occured in the course of operational duties, in such circumstances and subject to such conditions as prescribed with effect from 1-4-2005.

23. As per Section 10 (19A) of the Income Tax Act, the annual value of any one place in the occupation of former ruler of an Indian State is exempt from tax.
24. As per Section 10 (20) of the Income Tax Act, income of a local authority which is chargeable under the head (i) Income from House Property or (ii) Capital Gains or (iii) Income from Other Sources or (iv) income from a business carried on by it which accrues or arises from the supply of commodities or services (not being water or electricity) within its jurisdiction or from the supply of water or electricity within or outside its jurisdiction is fully exempt from tax.
25. From the assessment year 1999-2000, under Section 10 (23C), the income of an educational institution existing for educational purposes, and not for the purpose of earning profits, is exempt from tax.
26. The income of hospitals and other medical institutions existing solely for philanthropic purposes, and not for purposes of profit, is exempt from tax under Section 10 (23C).
27. As per Section 10 (23A) of the Income Tax Act, income of professional institutes like the Indian Medical Association is exempt from tax.
28. As per Section 10 (23BBA) of the Income Tax Act, income of any authority established for the administration of any public religious or charitable trusts or endowments (including mutts, temples, wakfs, churches, gurudwaras) is exempt from Income Tax.
29. As per Section 10 (23D) of the Income Tax Act, income of a notified mutual fund set up by a public sector bank or a public sector financial institution or authorised by the Securities and Exchange Board of India or the Reserve Bank of India, such as the State Bank of India Mutual Fund, Canara Bank Mutual Fund, the Punjab National Bank Mutual Fund the LIC Mutual Fund and the General Insurance Corporation Mutual Fund, etc. is exempt from tax.

30. As per Section 10 (23AAB) of the Income Tax Act, any income of a fund set up by the LIC on or after 1.8.1996 under pension fund scheme to which contribution is made by any person for receiving pension from such fund, and which is approved by the Controller of Insurance, is exempt from tax.

31. As per Section 10 (26) of the Income Tax Act, any income of a member of a scheduled tribe residing in any area specified in this behalf, if it is earned from any source in that area or income received by way of dividend or interest on securities, even if it arises from a source in areas not specified above, is exempt from tax.

32. As per section 13A of the Income Tax Act, any income of political parties, duly registered, falling under the head ''Income from house property'' or ''Income from other sources'' or voluntary contributions received by them from any persons are exempt from income tax subject to the fulfilment of the following conditions:

    (a) The political party is registered, with the Election Commission of India.

    (b) It should keep and maintain proper books of account and other documents as would enable the assessing officer to properly deduce income.

    (c) Its accounts should be audited by a qualified chartered accountant.

    (d) It should keep proper records of persons, as to their names and addresses, who have made voluntary contributions exceeding Rs. 20,000.

33. Income of certain specified national charitable funds, such as the Prime Minister's National Relief Fund, the Prime Minister's Fund (Promotion of Folk Art), the Prime Minister's Aid to Students Fund, the National Foundation for Communal Harmony or any other charitable fund notified by the Government of India is exempt from tax.

34. Income of trade unions, registered under the Trade Unions Act of 1926, viz., income from house property, and income from other sources is exempt from tax.
35. As per Section 10 (32) of the Income Tax Act, if the income of an individual includes the income of his minor child, he can claim exemption upto Rs. 1,500 in respect of each minor child's income, provided the income of the minor child included in the income of the individual exceeds Rs. 1,500.
36. The income of notified news agency set up in India solely for collection and distribution of news is exempt from income tax, provided the following conditions are satisfied:
    (i) The news agency applies its income solely for collection and distribution of news.
    (ii) It does not distribute its income in any manner among its members.
37. Income of housing authorities like State Housing Boards or other statutory authorities set up for the purpose of meeting the need for housing accommodation or for the purpose of planning and development of cities, towns and villages is exempt from tax.
38. Any income derived by a statutory marketing authority from the letting of godowns or warehouses for storage, processing or for facilitating the marketing of commodities is exempt from tax.
39. Income of Khadi and Village Industries Board set up under the State or Provincial Act is exempt from tax.
40. As per Section 10 (21) of the Income Tax Act, any income of an approved scientific research association is exempt from tax, provided its income is applied solely for its purpose.
41. Any income of a venture capital company or venture capital fund set up to raise funds of investment in venture capital undertakings is exempt from tax under Section 10 (23B) of the Income Tax Act with effect from the assessment year 2000-01.

42. Any income of a corporation established by the Central or State Government for promoting the interest of the members of the minority community as notified is exempt from tax.
43. Any income of a corporation established by government or a body wholly financed by the government for promoting the interests of the members of Scheduled Castes or Scheduled Tribes or Other Backward Classes or any of them is exempt from tax.
44. As per Section 10 (23G) of the Income Tax Act, income by way of dividends, interest or long-term capital gains of any Infrastructure Capital Fund or Infrastructure Capital Company is exempt from tax.
45. As per Section 10 (30) of the Income Tax Act, if an assessee, engaged in the business of growing and manufacturing tea in India, receives any subsidy from the Tea Board under a notified scheme for replantation or replacement for tea bushes or for rejuvenation or consolidation of areas used for cultivation of tea in India is exempt from tax.
46. As per Section 10 (31) of the Income Tax Act, subsidy received by an assessee engaged in the business of growing and manufacturing rubber, coffee, cardamom or such other plantation crops as may be notified by the central Government is exempt from tax, provided the subsidy is received from the concerned Board, it (i.e., the subsidy) is used for re-plantation or replacement of rubber plants, coffee plants or cardamom plants or for rejuvenation or consolidation of areas, and the assessee furnishes to the assessing officer, along with the return of income, a certificate from the concerned Board stating the amount of subsidy received during the previous year.
47. As per Section 10 (34) of the Income Tax Act, dividend income referred to in Section 115-0 of the Income Tax Act, received from a domestic company (i.e., Indian Company) which has declared, distributed or paid the dividend on or after 1.4.2003

is exempt from tax with effect from the assessment year 2004-05.

48. As per Section 10 (35) of the Income Tax Act, income received from the units of Unit Trust of India, and the income received from the units of mutual funds specified under Section 10 (23D) of the Income Tax Act are exempt from tax with effect from the assessment year 2004-05.

49. As per Section 10 (38) of the Income Tax Act, long term capital gains on transfer of equity shares or units of equity oriented mutual fund is not chargeable to tax from the assessment year 2005-06 if such transaction is covered by Securities Transaction Tax.

1.5 MEANING OF INCOME TAX

After understanding the meaning of income, let us proceed to define the meaning of income tax. It is an annual tax levied in every assessment year at the prescribed rates, on every person, in respect of his/her total income for the relevant previous year. The total income is determined with reference to the person's residential status and the place of accrual or receipt of income. Income Tax Act is a statute through the execution of which the Central Government earns its revenue from the income of the person concerned.

There are certain advantages of Income Tax. Some of these are mentioned below.

(i) Principle of ability to pay is applied when income tax is levied.

(ii) Income tax fulfils the canons of equity and justice in the distribution of tax burden over the people.

(iii) It is easy to locate the burden of Income Tax, since incidence of Income Tax is difficult to shift forward and backward.

(iv) It is a powerful tool for reducing inequalities in the distribution of income and wealth.



CHECK YOUR PROGRESS 2

Q 2: Define the terms-

a) Total Income b) Income Tax

a) ……

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b) ……

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1.6 BASIS OF CHARGE

After conceptualizing the terms 'Gross Total Income' and 'Total income', let us explain the term 'Basis of Charge'. To "Charge" means to levy tax. Basis of charge means the foundations on which a tax can be levied.

The following are the basis of charge according to Section 4 of the Income Tax Act, 1961:

(a) Income-tax shall be charged at the rate or rates prescribed by the Finance Act enacted every year.

(b) The income, that is taxed, must pertain to the previous year and not to the assessment year.

(c) The charge is on every person as defined under Section 2(31) of the Income Tax Act, 1961.

(d) Besides, the tax that is chargeable on the income of the previous year, current income may also be taxed in specified situations.

(e) Each year of assessment is a self-contained period and the assessment of one year may or may not have a bearing on the assessment of the other.

(f) The scope of taxability of an income will depend on the residential status of the assessee as per the provisions of Section 6 of the Income Tax Act, 1961.

1.7 RESIDENTIAL STATUS AND TAX LIABILITY

After knowing the meaning of income and income tax, you should know the meaning of 'Residential Status' as used for the purpose of income tax. We know that a person has his/her residential address. But Income Tax Authorities do not assess the income for calculating tax amount on the basis of such residential address. Therefore, it is essential to know the provision of the Income Tax Act regarding the residential status of the assessee.

According to Section 5 of Income Tax Act, 1961, the tax liability of an assessee for a particular Assessment Year is to be computed with reference to place of accrual/receipts, time of accrual/receipts of income by such assessee in that particular previous year relevant to the Assessment Year. Residential status of an assessee is the principal factor to determine whether a particular income received at particular place at particular point of time will be taken into consideration for determining the tax liability. It should be noted that the residential status of an assessee is ascertained only for the purpose of ascertaining the tax liability of an assessee.

Although there are seven categories of 'Persons' under Section 2(31) of the Income Tax Act, 1961, from the point of view of residence, taxable entities are divided into the following five categories:

(i) An Individual;

(ii) A Hindu Undivided Family (HUF);

(iii) A Firm or an Association of Persons (AOP);

(iv) A Joint stock company; and

(v) Every other person.

To determine the residential status of an assessee (individual) the following factors are considered:

(a) Assessment Year and Previous Year,

(b) Nationality and

(c) Physical Presence in India.

According to Section 6 of Income Tax Act 1961, the residential status of an assessee may be:

(1) Resident in India; or

(2) Non-Resident in India.

Again, in the case of an individual assessee who is resident in India, his/her status may be:

(i) Resident and Ordinarily Resident; or

(ii) Resident but not Ordinarily Resident.

Again, in the case of an individual assessee who is resident in India, his/her status may be:

(i) Resident and Ordinarily Resident; or

(ii) Resident but not Ordinarily Resident.

1.7.1 Residential Status of an Individual

(i) As Resident in India: According to Section 6(1) of the Income Tax Act, an individual is said to be resident in India in any previous year if he satisfies at least one of the following two basic conditions:

Basic condition

(i) That he is in India in the previous year for a period of 182 days or more; or

(ii) That he is in India for a period of 60 days or more during the previous year and 365 days or more during 4 years immediately preceding the previous year.

Note: The aforesaid rule of residence is subject to the following exceptions:

(a) 1990-91 onwards : An Indian citizen who leaves India during the previous year for the purpose of employment outside India or an Indian citizen who leaves

India during the previous year as a member of the crew of an Indian ship, the period of 60 days mentioned in second basic condition will be 182 days instead of 60 days.

(b) 1995-96 onwards: An Indian citizen or a person of Indian origin who comes on a visit of India during the previous year, the period of 60 days mentioned in second basic condition will be 182 days instead of 60 days.

(ii) As Resident and Ordinarily Resident in India [Section 6(1), 6(6)(a)]:

An individual is considered as Resident and Ordinarily Resident in India if he satisfies one of the following two basic conditions and both the additional conditions:

Basic conditions:

(i) That he is in India in the previous year for a period of 182 days or more; or

(ii) That he is in India for a period of 60 days or more during the previous year and 365 days or more during 4 years immediately preceding the previous year.

Additional conditions:

(a) That the individual has been resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous year [ascertained according to basic condition stated above].

(b) That the individual has been in India for a period of 730 days or more during 7 years immediately preceding the relevant previous year.

(iii) As Resident but not Ordinarily Resident in India [Section 6(1), 6(6)(a)]:

According to Section 6(1)6(6)(a) of the Income Tax Act, an individual will be considered as Resident but not Ordinarily Resident in India on the fulfilment of any one of the following two basic conditions:

Basic conditions:

(i) If he is in India in the previous year for a period of 182 days or more; or

(ii) If he is India for a period of 60 days or more during the previous year and 365 days or more during 4 year immediately preceding the previous year.

Note: The period of 60 days will be taken as 182 days in some specified cases.

An individual who satisfies any of the above basic conditions

but does not satisfy both the following two additional conditions, he will be treated as Resident but not Ordinarily Resident in India:

(a) That the individual has been resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous year [ascertained according to basic condition stated above]; and

(b) That the individual has been in India for a period of 730 days or more during 7 years immediately preceding the relevant previous year.

(iv) Non-Resident in India:

An individual is considered as Non-Resident in India if he does not satisfy any of the following basic conditions:

(i) That he is in India in the previous year for a period of 182 days or less; and

(ii) That he is in India for a period of 60 days or less during the previous year and 365 days or less during 4 years immediately preceding the previous year.



CHECK YOUR PROGRESS

Q 3: What are the different factors considered to determine the residential status of an assessee (individual)?

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Illustration 1. Mr. A Dihingia, an Indian citizen, is an employee of Axis Bank and posted at Dibrugarh. He has been transferred to Axis Bank at London. He left India, for the first time for london, on August 18, 2018 for joining his duties there. During the previous year 2019-20, he came to India and his stay was for 185 days.

Determine the residential status of Mr. A Dihingia for the assessment year 2020-21.

Solution:

Step I: Assessment Year 2020-21.

Step II: Previous Year 2019-20.

Step III: Calculation of Assessee's (Mr. A Dihingia's) physical presence in India during the previous year: 185 days.

Step IV: Testing the fulfilment of basic conditions: Mr. A Dihingia's physical presence in India during the previous year 2019-20 is 185 days. So he fulfils one of the basic conditions of stay in India i.e.182 days for persons leaving India for employment.

Step V: Testing the fulfilment of additional conditions:

Additional condition (i): As Mr. A Dihingia has left India for the first time in 2018, he has been resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous year.

Additional condition (ii): As Mr. A Dihingia has left India for the first time in 2018, he has been in India for a period of 730 days or more during 7 years immediately preceding the relevant previous year.

Mr. A Dihingia, therefore, fulfilled the basic conditions and both the additional conditions. Hence, he will be treated as resident and ordinarily resident in India for the assessment year 2020-21.



CHECK YOUR PROGRESS

Q 4: Who is a Non-resident in India?

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1.8 LET US SUM UP

In this unit we have discussed the following:

- The present Income Tax Act came into existence in 1961.
- The tax is levied on the income of companies is called a corporate tax.
- The receiver is taxed on that amount which comes within the scope of Section 2(24) of Income Tax Act.
- An assessee means a person by whom any tax or any other sum of money is payable under Income Tax Act.
- Artificial juridical persons are entities which are not natural persons but are separate entities in the eyes of law.
- Assessment year means the period of 12 months commencing on the 1st day of April every year end with 31st March next year.
- Gross Total Income means the total income computed in accordance with the provisions of the Income Tax Act, before making any deduction available under Sections 80C to 80U depending on the category of assessee.
- To "Charge" means to levy tax.
- To determine the residential status of an assessee (individual) the following factors are considered:
  (a) Assessment Year and Previous Year, (b) Nationality and
  (c) Physical Presence in India.



1.9 FURTHER READING

1) B B Dam, S Sikidar, R Barman, B Bora: Direct and Indirect Taxes, Capital Publishing Company, G S Road, Guwahati;

2. V K Singhania, K Singhania, Taxmann.

1.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: (i) State Bank of India: A company.

(ii) Delhi University: Artificial Juridical Person.

(iii) LG Ltd: A company.

(iv) LICI: A company.

(v) M/s. Das Enterprise: A Firm.

(vi) A joint family consisting of Boby, Raina, Vinod, Smita, and Jems: A HUF.

(vii) Guwahati Municipal Corporation: Artificial Juridical Person.

(viii) DHSK Commerce College: Artificial Juridical Person.

(ix) Mr. G Gogoi: An Individual.

Ans to Q No 2: (a) Total Income: Total income means the amount left after making the deductions under Section 80C to 80U from the gross total income



(b) Income Tax: Income tax is an annual tax levied in every assessment year at the prescribed rates, on every person, in respect of his/her total income for the relevant previous year.

Ans to Q No 3: To determine the residential status of an assessee (individual) the following factors are considered:

(a) Assessment Year and Previous Year,

(b) Nationality and

(c) Physical Presence in India.

Ans to Q No 4: An individual is considered as Non-Resident in India if he does not satisfy any of the following basic conditions:

(i) That he is in India in the previous year for a period of 182 days or less; and

(ii) That he is in India for a period of 60 days or less during the previous year and 365 days or less during 4 years immediately preceding the previous year.



1.11 MODEL QUESTIONS

Q 1: State whether the following statements are 'True' or 'False':

(i) Krishna Kanta Handique State Open University is an association of persons.

(ii) Whenever an assessee earns an income, he/she is taxed on such income.

(iii) Income from temporary source is also regarded as income for Income tax purpose.

(iv) An individual is considered non-resident in India for tax purposes if he fulfils both the basic and additional conditions as laid down in section 6 of the Income Tax Act, 1961.

(v) Nationality of an assessee has no relation with the concept of residential status.

(vi) If a company is incorporated in India, it is considered as resident in India.

(vii) Previous year and assessment year are always different.

Q 2: Define Income, Gross Total Income and Total Income.

Q 3: What is 'Previous Year' under the Income Tax Act, 1961 ?

Q 4: What do you mean by assessment year?

Q 5: Write a short note on financial year.

Q 6: Which Finance Act is applicable for the Assessment Year 2020-21

Q 7: A Firm has set up its business on 15th April, 2018, though it commenced its operations from 4th May, 2019. What would be its first previous year?

Q 8: Write short note:

a) Basis of charge

b) Financial year

c) Assessment Year

d) Previous Year.

Q 9: Ascertain the period of previous year and assessment year in the following cases:

(i) Ratul started a grocery business on 01-01-2019.

(ii) Dr. K. Gogoi received appointment letter on 13.03.2019 and he joined the service on 01.06. 2019.

(iii) Arrear salary of the year 2018-19 was received on 05.04.2019 by Mr. Hari.

Q 10: Mention any four cases where both the previous year and assessment year is the same.

Q 11: Give four examples of "Exempted Incomes".

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UNIT 2 : HEADS OF INCOME UNDER INCOME TAX ACT

UNIT STRUCTURE

2.1 Learning Objectives

2.2 Introduction

2.3 Heads of Income

2.4 Salaries

2.5 Income from House Property

2.6 Profits and Gains of Business and Profession

2.7 Capital Gains

2.8 Income from Other Sources

2.9 Let Us Sum Up

2.10 Further Reading

2.11 Answers To Check Your Progress

2.12 Model Questions

2.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- explain the different heads of income tax
- discuss about salaries, income from house property
- discuss about profits and gains of business and profession
- explain about capital gains and income from other sources
- describe the exempted incomes.

2.2 INTRODUCTION

In Unit 1 we have discussed different concepts like income, person, assessee etc related in calculation of income tax. In this Unit we shall focus on various heads of income as per Income Tax Act and those incomes which are exempted income from income tax.

Every citizen in this country has some duty towards the nation. It is the duty to honour the legislative provisions which binds them. In the same

way it is the duty of every person to pay the tax as per rule. In other words every person, whose taxable income for the previous year exceeds the taxable limit is liable to pay income tax. Income tax liability for a particular assessment year is computed on the total income of the previous financial year of an assessee at the rates in force for the respective category of persons during the previous financial year. Further, all incomes are not subject to tax. But for the purpose of levy of income tax, incomes are classified according to some heads. In this unit therefore, we will focus on various heads of income and the incomes which are not subject to tax.

2.3 HEADS OF INCOME

'Income' of an assessee for the purpose of charging of income tax and computation of total income, has been classified into five major heads. This classification of income into various heads is very important for income tax purposes. It is important to note here that an item of income will be liable to tax only if it can be classified under one of these heads of income as prescribed under the Income Tax Act. The Income Tax Act specifies the manner of computation of income separately in respect of each head of income, and those provisions will have to be applied for computing the income under each heads of income.

There are five heads of income for the purpose of charging of income tax. These heads are:

A. Income from Salaries
B. Income from House Property
C. Profits and Gains of Business and Profession
D. Capital Gains
E. Income from Other Sources

2.4 SALARIES

Income from salaries is described in Sections 15 to 17 of the Income Tax Act. Salary is the amount paid by an employer to his employee in consideration of his services. Under Section, 15, the following incomes are

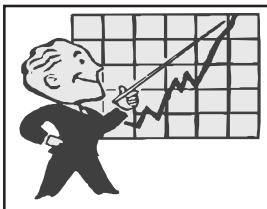
taxable under the head 'Salaries':

(a) Any salary due from an employer or former employer to an assessee in the previous year, whether paid or not;

(b) Any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due in that previous year or before it became due to him; and

(c) Any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income tax for any earlier previous year.

If any salary is paid in advance, it is also included in the total income of that person for that previous year and so it shall not be included again in the total income of that person when the salary becomes due.



CHECK YOUR PROGRESS

Q 1: What are the various heads of income as per Income Tax Act?

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2.5 INCOME FROM HOUSE PROPERTY

Income from house property is described in Sections 22 to 27 of the Income Tax Act. Section 22 of the Income Tax Act provides:

''The annual value of property consisting of any building or land appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purpose of any business or profession carried on by him, the profits of which are chargeable to income tax, shall be chargeable to income tax under the head 'Income from House Property''.

The annual value of property consisting of any building or land appurtenant thereto is chargeable to tax under the head ''Income from House Property''.

An income from house property is chargeable to tax under the head ''Income from House Property'' if the following three conditions are satisfied:

(i) The property should consist of any building or land appurtenant thereto.

(ii) The property should belong to the assessee.

(iii) The property should not be used by the owner for carrying on his business or profession.

2.6 PROFITS AND GAINS OF BUSINESS AND PROFESSION

Income from profits and gains of business and profession is described in Sections 28 to 44D of the Income Tax Act.

The term business is different than profession as explained below—

Business: According to Section 2(13) of the Income-tax Act, the term 'Business' means any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. In simple language, business means any economic activity carried on with the objective of making profits.

Profession: Profession is an occupation for earning a livelihood or for gains, requiring either purely intellectual skill or manual skill controlled by intellectual skill. In other words, profession refers to all such human activities which require intellectual skill and technical expertise. Activities of doctors, architects, chartered accountants, lawyers, engineers, tax consultants, etc. are some of the examples of profession. Profession includes vocation also.

Under the head ''Profits and Gains of Business and Profession'', the following incomes are chargeable to tax:

(a) The profits and gains of any business and profession carried on by the assessee at any time during the previous year.

(b) Any compensation or other payment due to or received by any person, managing (i) the affairs of an Indian company, or (ii) the affairs in India of any other company or (iii) holding an agency in India of the business of any person, for the termination of his office or agency or for the modification of the terms of office or agency under any law in force.

(c) Any income derived by a trade, professional or similar association from specific services rendered to its members.

(d) Profit made on sale of licences, i.e., import entitlements, granted under the Imports and Exports (Control) Act of 1947.

(e) Cash assistance against exports received or receivable by a person under any scheme of the Government of India.

(f) Any customs duty or excise duty drawback (i.e., refund) repaid or repayable to any person against exports under the relevant rules.

(g) The value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is taxable under this head. For example, if a patient, in addition to the payment of medical fees, also makes a gift to a doctor who has treated him, the market value of the gift is taxable under this head as the professional income of the doctor.

(h) Any interest, salary, commission, bonus or remuneration due to or received by a partner from his firm is also treated as the business income of the partner.

(i) The income tax law is not concerned with the legality or illegality of the business. So, profits from illegal businesses, such as illicit trafficking in drugs, illicit trafficking in liquors, smuggling, etc. are taxable under this head.

(j) Deemed business profits are taxable under this head.

It is to be noted that the profits and gains of business and profession should be computed by taking into consideration the various allowable deductions in respect of expenditures and losses. The deductions in respect of certain expenditures and losses have been expressly provided in Sections 30 to 37 of the Income Tax Act. Besides the expenditures and losses expressly allowed under above stated sections, there are also certain other expenditure and losses, incurred by the assessee in the course of his business or profession, which are also allowed as deductions, while computing his income from profits and gains of business and profession, on the ground of ordinary commercial principles, unless they are expressly disallowed under any other provisions of the Income Tax Act.



CHECK YOUR PROGRESS

Q 2: Mention any four types of incomes chargeable under the head ''Profits and Gains of Business and Profession''.

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2.7 CAPITAL GAINS

Income from Capital Gains is described in sections 45 to 55A of the Income Tax Act. Section 45 (1) of the Income Tax Act defines the term ''Capital gains'' as profits or gains arising from the transfer of a 'capital asset' effected in the previous year are chargeable to tax under the head ''Capital Gains''. The capital gains are chargeable to tax only when the following conditions are satisfied:

1. There is capital asset – short-term or long-term.
2. There is the transfer of that capital asset by the assessee.
3. The transfer of the capital asset is affected during the previous year.
4. There arises profit or gain on the transfer of the capital asset.
5. The profit or gain on the transfer of capital asset is not exempt from tax under Sections 54, 54B, 54D, 54EC, 54F, 54G and 54GA of the Income Tax Act.

For examples,

(i) Mr. L K Gogoi is a dealer in property. His business is to purchase Flats and sell them to prospective customers. For him, house property is stock-in-trade. It cannot be treated as a ''capital asset'', even if house property is an immovable property. Any income earned by him on sale of stock-in-trade (i.e., Flats) would be chargeable to tax as business income.

(ii) Dr. R K Kalita is an employee of K K H State Open University. He is the owner of two flats in Guwahati were purchased by him in the month of March, 2003 for Rs. 8,00,000 each. He sold one of the flats for Rs. 12, 00,000 on 25th February, 2010. For Dr. R K Kalita flats are capital

assets and not stock-in-trade as he is not a dealer in flats/house property. The gain of (Rs. 12,00,000- Rs. 8,00,000) Rs. 4,00,000 – Rs. which has arisen on sale of flat, is taxable under the head ''Capital gains''.

Capital gains are of two types. They are:

(i) Short-term capital gains; and

(ii) Long-term capital gains.

i) Short-term capital gains: Short-term capital gains are capital gains arising from the transfer of short-term capital assets. Short-term capital assets are those capital assets which are held by the transferor for a period of not more than 36 months immediately preceeding the date of its transfer. If the capital asset is in the form of shares, debentures in a company, etc. the period will be for not more than 12 months immediately preceeding the date of its transfer. Short -term capital gains is taxable like any other income and is included in the total income of the assessee for determination of tax liability.

For the computation of short-term capital gains, the following particulars are required**:**

(a) Full value of consideration received or accruing as a result of the transfer of the short-term capital asset or the fair market value of the short-term capital asset transferred.

(b) Cost of acquisition of the short-term capital asset.

(c) Cost of improvement to the short-term capital asset.

(d) Expenditure, such as stamp duty, legal fees, brokerage, commission, etc. incurred wholly and exclusively in connection with the transfer of the short-term capital asset.

From the full value of consideration receivable or accruing as a result of the transfer of the short-term capital asset or the fair market value of the short-term capital asset, the cost of acquisition of the short-term capital asset and the cost of improvement to the short-term capital asset and the expenditure wholly and exclusively incurred in connection with the transfer of the short-term capital asset are deducted. The balance is termed as short-term capital gains. From the balance, exemptions for short-term capital

gains provided under Sections 54B, 54D, 54G and 54GA are deducted. The resulting balance is taken as the taxable amount of short-term capital gains.

Illustration

(i) Mr. Reboti purchased a flat on 10–10–2017 for Rs. 15, 00,000 and spent Rs. 1, 00,000 on its improvement. On 26–10–2019, he sold the house for Rs. 19, 00,000 and incurred Rs. 20,000 as expenses on transfer.

Computation of Income from Capital Gains of Mr. Reboti for the Assessment Year 2020–21.

As Mr. Reboti held the flat for a period of less than 36 months, it will be treated as a short term capital asset. Hence, no indexation is required to be made. Therefore, computation of Income from Capital Gains of Mr. Reboti for the Assessment Year 2020-21 would be as under.

Rs.	Rs.	
Sales Consideration		19, 00,000
Less: Expenses on transfer	20,000	
Less: Cost of Acquisition	15, 00,000	
Less*:* Cost of Improvement	1, 00,000	16, 20,000
Short- term Capital Gains:		2, 80,000

(ii) Mr. Kumar purchased 1000 shares of face value of Rs. 10 each at par on 10-5-2019, he sold these shares on 15-2-2020 for Rs. 45,000 and incurred Rs. 1000 on brokerage and other expenses.

As Mr. Kumar held the shares for less than 12 months, it is a short-term capital asset Therefore; computation of Income from Capital Gains of Mr. Kumar for the Assessment year 2020-21 would be as under.

		Rs.
Sales Consideration of 1000 shares		45,000
Less: Cost of acquisition	10,000	
Expenses on transfer	1,000	11,000
Short term Capital Gains		34,000

(ii) Long-term capital gains: Long-term capital *gains* are capital gains arising from the transfer of long-term capital assets. In other words, long-term capital gains are the capital gains that arise from the transfer of a capital asset which has been held by the assessee for more than

36 months *(or for more than 12 months, if the capital asset is shares, debentures in a company, units of UTI etc.)* immediately preceeding the date of transfer.

For the computation of the long-term capital gains, the following particulars are required:

(a) Full value of consideration received or accruing as a result of the transfer of long-term capital asset or the fair market value of the long-term capital asset.

(b) Indexed cost of acquisition of the long-term capital asset.

(c) Indexed cost of improvements to the long-term capital asset.

(d) Expenditure incurred wholly and exclusively in connection with the transfer of long-term capital asset.

The indexed cost of acquisition of the long-term capital asset can be arrived at as follows**:**

(Cost inflation index for the year of sale of the capital asset ÷ Cost inflation index of the year in which the capital asset was acquired or the cost inflation index for 2001-02, whichever is later) x Cost of acquisition of the capital asset

Example: (i) An Asset was purchased in December, 2001 for Rs. 2, 80,000.

(ii) The asset was sold in January, 2020 for Rs. 10, 00,000.

(iii) Cost inflation index for 2001-02: 100

(iv) Cost inflation index for 2019-20: 280

Therefore,

The indexed cost of acquisition of the asset = (280 ÷ 100) x Rs. 2, 80,000

= Rs. 7, 84,000

The indexed cost of improvements to the capital asset can be arrived at as follows:

(Cost inflation index for the year of sale of the capital asset ÷ Cost inflation index of the year in which the capital asset was improved) x Cost of improvements of the capital asset.

Computation of Long Term Capital Gains:

Firstly: Calculate the full value of consideration received as a result of the transfer of the long term capital asset.

Secondly: Deduct the following from the amount as ascertained as above:

(i) Expenditure incurred wholly and exclusively in connection with such transfer;

(ii) Indexed cost of the acquisition of the asset transferred;

(iii) Indexed cost of acquisition of the improved of the asset transferred;

Thirdly: From the balance, deduct exemptions for long term capital gains provided under Sections 54, 54B, 54D, 54EC, 54F, 54G and 54GA.

The resulting balance is taken as the taxable long term capital gains.

Note: Long –term capital gains can also be ascertained without indexation at the option of the assessee.

Exemption under Section 54 from Long term Capital Gains:

Now let us discuss on the exemptions from long-term capital gains. Section 54 provides exemption to capital gains arising from the transfer of a residential house property being building or land appurtenant thereto, the income of which is chargeable under the head ‘‘Income from house property’’.

However, exemption under Section 54 can be claimed only by an individual or a Hindu undivided family. In other words, no other person is eligible for claiming exemption under Section 54.

Under Section 54, exemption is available only if the capital asset which is transferred is a residential house property (*i.e.,* building or land appurtenant thereto)ò whose income is taxable under the head ‘‘Income from house property’’. The appurtenant is available whether the residential house property is self-occupied (in such a case income of house property is *nil* or negative) or let out.

The house property which is transferred should be a long-term capital asset.

In order to claim the exemption the taxpayer will have to purchase a residential house property (old or new) or construct a residential house property (‘‘new residential property’’). The new residential house property should be purchased or constructed within a period of one year before, or within 2 years after, the date of transfer of the residential house property.

Where a new residential property is constructed, the construction should be completed within a period of 3 years from the date of transfer of residential house property. However, the date of commencement of construction is irrelevant. Construction may be commenced even before the transfer of house. The amount of exemption is equal to:

a. the amount of capital gain generated on transfer to residential house property; or

b. the amount invested in purchasing or constructing (including the amount deposited in the specified deposit scheme) a new residential property, whichever is lower.

Illustration

Mr. Ghiladhari had purchased a residential house property on 12-6-2001 for Rs. 1, 20,000. He had spent Rs. 70,000 on improvement of the house during the year 2009-10 on 4-8-2009; he sold the house for Rs. 13, 85,000. His expenses on transfer amounted to Rs. 15,000.

Compute the amount 'Capital Gains' for the Assessment year 2020-21.

Given,

Previous Year	Cost Inflation Index (CII)
2001-02	100
2009-10	148
2019-20	280

Solution: As Mr. Ghiladhari held the residential house for more than 36 months, it is a long-term capital asset

	Rs.	Rs.
Sales Consideration		13, 85,000
Less: Expenses on transfer	15,000	
Less: Indexed cost of acquisition		
(Rs. $1,20,000 \times \frac{280}{100}$)	3, 36,000	
Less: Indexed cost of improvement	1, 32,432	2, 03,568
(Rs. $70,000 \times \frac{280}{148}$)		
Long term Capital Gains:	11, 81,432	

(ii) Long term capital gains ascertained above will be taxable subject to deduction of exemptions under Sections 54, 54B, 54D, 54EC, 54F, 54G and 54GA of the Income Tax Act.

2.8 INCOME FROM OTHER SOURCES

These are incorporated in Section 56 to 59 of the Act.

Income from other sources is a residuary head of income. Any income which is taxable under the Income Tax Act, but does not fall under any of the preceding four heads of income, viz., income from salaries, income from house property, profits and gains of business or profession and capital gains, are taxable under this head.

Incomes Chargeable Under the Head Income from Other Sources:

The various incomes chargeable under the head ''Income from Other Sources'' can be grouped under two categories, viz., (i) specified or specific incomes as per Section 56(2) of the Income Tax Act and (2) the other incomes as per Section 56(1) of the Income Tax Act.

Specified or Specific Incomes:

The various specified incomes, as per Section 56(2) of the Income Tax Act, are:

(1) Dividend on shares of companies.

(2) Any winnings from lotteries, cross word puzzles, races including horse races, card games and any other games of the nature of gambling or betting.

(3) Income from interest on securities, if such income (i.e., the interest on securities) is not taxed under the head ''Income from Business or Profession.''

(4) Any income from letting on hire machinery, plant or furniture, if such income is not taxed under the head ''Income from Business or Profession''.

(5) Any income from letting of building on hire along with machinery or plant or furniture fitted thereto, if the letting of the building cannot be separated from the letting of machinery or plant or furniture, and if such income is not taxed under the head ''Income from Business or Profession.''

Other Incomes:

The other incomes, as per Section 56(1) of the Income Tax Act, are:

(1) Dividends on shares of co-operative societies.

(2) Interest on securities issued by co-operative societies.

(3) Interest on bank deposits.

(4) Interest on deposits with companies and others.

(5) Interest on advances given to others.

(6) Interest received on securities issued by a foreign government or by a foreign company.

(7) Interest received by an employee on his own contribution to unrecognised provident fund.

(8) Any fees, commission or remuneration received by an employee from a person other than his employer.

(9) Any annuity received under a will, trust deed or contract.

(10) Income of a sub-tenant from sub-letting the whole or part of house property.

(11) Royalty received by the owner of mines and copyrights.

(12) Directors' fees.

(13) Gratuity received by a director of a company who is not an employee of the company.

(14) Commission received by a director of a company for underwriting shares of a new issue.

(15) Commission received by a director of a company for giving guarantee to a bank.

(16) Rent of land not appurtenant to (i.e., not connected with) any building.

(17) Income from markets, ferries, fisheries, etc.

(18) Agricultural income derived from land situated in a foreign country.

(19) Income from leasehold property (i.e., property acquired on lease).

(20) Ground rent received.

(21) Any salary or pension received from a foreign Government.

(22) Income from undisclosed sources.

(23) Income from private tuition, remuneration for confidential work such as evaluation of answer script, remuneration as scrutinizer, as head examiner etc. received by a school, college or university teacher.

(24) Salary of M.P., M.L.A. or M.L.C.

(25) Pension received by the dependent family members of the deceased employee.

The following are some examples of incomes from various heads of income under the Income Tax Act:

Nature of income

Head of income

(1) Receipt of bonus by an employee from his employer: Income from Salary.

(2) Receipt of prize money from an open competition: Income from other sources.

(3) Earning from pan shop: Income from Business or Profession.

(4) Profit on sale of shares: Capital gain

(5) Receipt of house rent: Income from house property.

(6) Receipt of interest on securities: Income from other sources.

(7) Remuneration as examiner: Income from other sources.

(8) Receipt of pension from former employer: Income from Salary.

(9) Receipt of Man of the Match award: Income from other sources.

(10) Receipt of education allowance for children from employer:**:** Income from Salary

(11) Receipt of dearness allowance from employer: Income from Salary

(12) Income from Private Tuition by a private tutor: Income from Business or Profession.

(13) Receipt of salary from the firm by a Partner: Income from Business or Profession.

(14) Income from Private Tuition by a teacher working as a full time employee: Income from other sources.

(15) Receipt as rent for land: Income from other sources.

(16) Receipt as bribe: Income from other sources.

(17) Contribution by the employer in the provident fund account of the employee: Income from Salary.

(18) Receipt as medical allowance from the employer: Income from Salary.

(20) Earning from bank interest: Income from other sources.

(21) Earning from sale of land: Capital gain.



2.9 LET US SUM UP

In this unit we have discussed the following:

- 'Income' of an assessee for the purpose of charging of income tax and computation of total income, has been classified into five major heads-
  a. Income from Salaries
  b. Income from House Property
  c. Profits and Gains of Business and Profession
  d. Capital Gains
  e. Income from Other Sources.
- Salary is the amount paid by an employer to his employee in consideration of his services.
- The annual value of property consisting of any building or land appurtenant thereto is chargeable to tax under the head ''Income from House Property''.
- Income from profits and gains of business and profession is described in Sections 28 to 44D of the Income Tax Act.
- Income from Capital Gains is described in sections 45 to 55A of the Income Tax Act.
- Income from other sources is a residuary head of income incorporated in Section 56 to 59 of the Income Tax Act.



2.10 FURTHER READING

1) B B Dam, S Sikidar, R Barman, B Bora: Direct and Indirect Taxes,Capital Publishing Company, G S Road, Guwahati.
2) V K Singhania, K Singhania, Taxmann.

2.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: There are five heads of income for the purpose of charging of income tax. These heads are: Income from Salaries, Income from House Property, Profits and Gains of Business or Profession, Capital Gains and Income from Other Sources.

Ans to Q No 2: Under the head ''Profits and Gains of Business or Profession'', the following incomes are chargeable to tax:

(a) The profits and gains of any business or profession carried on by the assessee at any time during the previous year.

(b) Any income derived by a trade, professional or similar association from specific services rendered to its members.

(c) Profit made on sale of licences, i.e., import entitlements, granted under the Imports and Exports (Control) Act of 1947.

(d) Cash assistance against exports received or receivable by a person under any scheme of the Government of India.

Ans to Q No 3: Specified Incomes:

(1) Dividend on shares of companies.

(2) Any winnings from lotteries, cross word puzzies, races including horse races, card games and any other games of the nature of gambling or betting.

Other Incomes:

(1) Dividends on shares of co-operative societies.

(2) Interest on bank deposits.



2.12 MODEL QUESTIONS

Q 1: Fill in the blanks with appropriate word/words:

(i) Receipts from lottery are taxable under the head _____.

(ii) Capital asset can be both _____ term and _____ term.

(iii) Profit made from the sale of export licences comes under the head income _____.

(iv) The Income Tax Law is not concerned about the _____ of the business income.

(v) Indexation of the cost of capital asset is required to be done in case of _____.

Q 2: State True or False—

(i) The property used by the owner for carrying on his business or profession is chargeable to tax under the head ''Income from House Property''.

(ii) Income of Khadi and Village Industries Board set up under the State or Provincial Act is exempt from tax.

(iii) If any salary is paid in advance, it is also included in the total income of that person for that previous year.

(iv) Refund from the statutory provident fund received by an employee is taxable.

Q 3: State the various heads of 'income' as per Income-tax Act.

Q 4: Write short notes:

a) Business b) Profession c) Capital gains

Q 5: Mention five income which are chargeable to tax under the head 'Profits and gains of Business or Profession.

Q 6: What do you mean by Short term and Long term capital gains?

Q 7: Give four examples of "Incomes from other sources".

Q 8: Give four examples of "Exempted Incomes".

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UNIT 3 : COMPUTATION OF TAX LIABILITY

UNIT STRUCTURE

3.1 Learning Objectives

3.2 Introduction

3.3 Meaning of Salary

- 3.3.1 Features of Income from Salary
- 3.3.2 Basis of Charge
- 3.3.3 Computation of Income from Salaries
- 3.3.4 Income Year and Assessment year for Computation of Income from Salary
- 3.3.5 Profits in Lieu of Salary

3.4 Allowances to Employees

3.5 Various Items Considered For Computation of Income from Salary

3.6 Deduction U/s. 80C

3.7 Let Us Sum Up

3.8 Further Reading

3.9 Answers To Check Your Progress

3.10 Model Questions

3.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the meaning of salary
- discuss the features, basis of salary
- discuss about the allowances to employees
- explain the deduction u/s. 80C.

3.2 INTRODUCTION

Salary is nothing but an amount that a person receives for his service from his employer. The Government receives money to do various functions on behalf of the society as a whole from the contribution of such income in

the form of tax. In this unit we shall discuss computation of taxable income and tax liability from income from salary. In this Unit we shall focus on various allowances allowable to employees as well as deduction u/s 80C etc in computation of income from salary.

3.3 MEANING OF SALARY

Salary is the amount received or receivable by a person from his employer as a consideration for the services rendered by him for a certain period of time. Therefore, salary is a periodical and regular income of an employee received from an employer. The employer may be the Government, a local authority, a corporation, a company, a firm, an institution or an individual. The amount received from any employer is taxed under the head "income from salaries". To constitute a receipt as salary, the basic essence is that there must be a contractual relationship as employer and employee to establish a nexus between payment and employment.

3.3.1 Features of Income from Salary

The following are the features of income from salary:

(a) It is a regular income.

(b) It is received for and after the services rendered.

(c) There should exist a relationship between the employer and employee as a payer and the recipient.

(d) Salaries are chargeable to tax on due basis or receipt basis whichever is earlier.

(e) Salaries shall be expressed in monetary units.

3.3.2 Basis of Charge

According to Section 15 of Income Tax Act the following salary shall be charged to tax under the head ''Income from Salaries''.

(a) Salary due from the present or former employer to the employee in the previous year, whether paid or not;

(b) Salary paid by the present or former employer in the previous year before it becomes due;

(c) Arrear of salary paid to an employee by the present or former employer in the previous year, not charged to tax any earlier previous year.

It is clear from the above that the following forms of salaries are chargeable to tax in the previous year:

(i) Salary is taxable on due or receipt basis whichever is earlier,

(ii) Salary received in advance,

(iii) Salary from present and former employer and

(iv) Arrears of salary.



CHECK YOUR PROGRESS

A.) State True or False—

i) Salary is a periodical and regular income of an employee received from an employer. (T/F)

ii) Salary is taxable on due or receipt basis whichever is earlier. (T/F)

iii) Salaries shall be expressed in monetary units. (T/F)

iv) The amount received from any employer is not taxed under the head ‘‘income from salaries’’. (T/F)

3.3.3 Computation of Income from Salaries

For computation of ‘Income from Salaries’ the first step is to calculate the gross salary. The following components of Salary, *inter alia*, are considered while calculating the gross salary:

(a) Basic pay/wages;

(b) Annuity;

(c) Pension;

(d) Gratuity;

(e) Fees, commission, perquisites;

(f) Profits in lieu of or in addition to salary and wages;

(g) Sum received by encashment of leave not availed;

(h) the annual accretion to the balance at the credit of an employee participating in a recognized provident fund to the extent to which it is chargeable to tax under Rule 6 of part A of the Fourth Schedule;

(i) Transferred balance in a recognized provident fund to the extent it is taxable vide rule 11(4) of part A of the Fourth Schedule;

(j) Contribution by Central Govt. under pension scheme referred to in Section 80CCD;

(k) Income-tax paid by the employer on behalf of the employee when the salary is paid as 'tax-free'.

Among the above receipts, there are certain incomes, which are either fully exempted or exempted up to a certain limit. The aggregate of above incomes, after the exemption(s) available, if any, is known as 'Gross Salary'.

From the gross salary ascertained as above, the following three deductions, are allowed under Section 16 of the Income Tax Act, 1961.

(i) Standard deduction [Section 16(ia)];

(ii) Deduction for entertainment allowance [Section 16(ii)]; and

(iii) Deduction on account of any sum paid as tax on employment known as Professional Tax [Section 16(iii)].

The amount arrived at, after allowing the above deductions, is the 'Income from Salaries'.

The income from salary can be computed with the help of the following chart

Particulars	Rs.	Rs.
(i) Basic salary (ii) Allowances (Taxable portion) (iii) Value of perquisites (iv) Profits in lieu of salary		
Gross Salary *Less :* Deductions under Section 16 :		

(i) Standard Deducation u/s 16 (ia)		
(i) Entertainment allowance u/s 16 (ii)		
(ii) Professional tax/ Tax on Employment u/s 16 (iii)		
Income from Salary		

3.3.4 Income Year and Assessment year for Computation of Income from Salary

The income earned by the individual during the preceeding year or previous year or the year immediately preceeding the year in which the tax is assessed, is charged to tax in the assessment year. To illustrate, if the income year is 2019-2020, then the assessment year is 2020-21. A period of 12 months starting from 1st April, in which Assessing Officer assesses the income of assessee is called assessment year. If the current assessment year is 2020-21, therefore, the relevant previous year is 2019-20. In other words, salary received or due during the previous year 2019-20 will be charged to tax in the assessment year 2020-21.

3.3.5 Profits in Lieu of Salary

The following payments are included in ''profits in lieu of salary'' according to Section 17(3) of the Income Tax Act, 1961:

(1) Compensation due to or received from present or former employer because of
   (a) changes in terms and conditions of employment.
   (b) termination from the employment.
   (c) retrenchment.

   However, the amount of retrenchment compensation is exempt from tax to the employee U/S 10(10B) of Income Tax Act.

(2) Amount received from insurance company with bonus under the ''Keyman Insurance Policy''.

(3) Employee's contribution and interest thereon included in the unrecognised provident fund and unapproved superannuation

fund received at the time of retirement/termination/resignation.

(4) The following amounts in excess of exempted amount U/S 10 of the Income Tax Act:
   (a) Gratuity,
   (b) House rent allowance,
   (c) Pension,
   (d) Recognised provident fund,
   (e) Statutory provident fund,
   (f) Approved superannuation fund.

(5) Salary for notice period, when an employee is removed from service.

(6) Compensation due to or received on voluntary retirement. This compensation is exempted from tax U/s 10 (10C) to a certain extent.

Illustration:

Supriya joined ICICI Bank as Manager on 1st April, 2019 in the pay scale of Rs. 20,000 – Rs.1, 000 – Rs.22, 000 – EB – Rs.2, 000 – Rs.42, 000.

Ascertain his basic salary for the assessment year 2020-21. Salary becomes due on the last day of every month and is paid on the 10th of next month.

Solution:

Computation of Basic Salary of Supriya

Assessment Year 2020-21

Previous year 2020-21

From 1st April 2019 to 31st March 2020 for 12 months @ Rs.22, 000=Rs.2, 64,000

Total Basic Salary **Rs. 2, 64,000**

Illustration:

Riju joined HDFC as Branch Manager on 1st January, 2017 in the pay scale of Rs. 10,000 – Rs.500 – Rs.11, 000 – EB – Rs.1, 000 – Rs.21, 000.

Ascertain his basic salary for the assessment year 2020-21. Salary becomes due on the last day of every month and is paid on the 10th of next month.

Solution:

Date of Increment: 1st January each year.

There are increments of Rs. 500 till Riju attains Basic Pay of Rs. 11,000.

There after there are increments of Rs. 1,000 till Riju attains Basic Pay of Rs. 21,000.

Basic Pay on 01.01.2017 = Rs 10,000

Basic Pay on 01.01.2018 (Rs 10,000 + Rs. 500) = Rs 10,500

Basic Pay on 01.01.2019 (Rs 10,500 + Rs. 500) = Rs 11,000

Basic Pay on 01.01.2020 (Rs 11,000 + Rs. 1,000) = Rs 12,000

Computation of Basic Salary of Riju

Assessment Year 2020-21

Previous year 2019-20

Rs. From 1st April to 31st December 2019 for 9 months @ Rs.11,000=99,000

From 1st January, to 31st March, 2020 for 3 months @ Rs.12,000 =36,000

Total Basic Salary 1,35,000

Illustration:

Dr. R K Das is working in GNRC Ltd, Guwahati. He received a sum of Rs.5, 00,000 as salary and Rs. 50,000 as non-practicing allowance from his employer during the previous year 2019-20. The following deductions were made by his employer from his above mentioned salary:

Contribution to Provident Fund	Rs. 15,000
Life insurance premium (Salary Savings Scheme)	Rs. 6,000
Recovery of Car Loan	Rs. 40,000
Recovery of House Building Advance	Rs. 50,000
Income tax (TDS)	Rs. 20,000
Professional Tax	Rs. 25,000

Calculate his Gross salary for the previous year 2019-20 relevant to the Assessment Year 2010-11 for tax purposes:

Solution:

In the above case the assessee receives net salary after certain deductions are made from his gross salary by the employer. In computing income from salary for income tax purpose, deductions made from gross salary are to be *added back* to *Net salary received*.

Computation of Salary of Dr. R K Das

Assessment Year 2020-21

Previous year 2019-20

		Rs.	Rs.
Net Salary received		5, 00,000	
Non-practicing allowance		50,000	5,50,000
Add:	Deduction from salary:		
	Contribution to PF	15,000	
	Life Insurance Premium (SSS)	6,000	
	Repayment of Car Loan	40,000	
	Repayment of Housing Loan	50,000	
	Income Tax (TDS)	20,000	
	Professional Tax	25,000	1,56,000
Gross Salary			**7, 06,000**

3.4 ALLOWANCES TO EMPLOYEES

In addition to basic salary, employees may be paid some other amounts for meeting specific expenses. Such amount paid in cash is termed as allowances such as Dearness Allowance, City Compensatory Allowance and House Rent Allowance etc. For income tax purpose, allowances are classified into the following types:

(A) Fully Exempted Allowances

(B) Partly Exempted Allowances i.e. Partly Taxable Allowances

(C) Fully Taxable Allowances

(A) Fully Exempted Allowances:

Fully Exempted Allowances are those allowances which are not taxable under Income Tax Act and rules. The following allowances are fully exempt from tax:

(a) Allowances paid as Compensatory Allowance under Article 222(2) of the Constitution to a Judge.

(b) Allowance to Govt. employees posted outside India [vide section 10(7)]

(c) Allowance to High Court & Supreme Court Judges

(d) Allowances paid by the UNO.

(B) Partly Exempted Allowances:

Partly Exempted Allowances are Partly Taxable Allowances. A portion of such allowance is exempted and the remaining portion is taxable. The taxable portion is taken into account while calculating the amount of taxable salary. The exemption limit varies for different kinds of allowances. Sometimes, the exemption is granted on the fulfillment of certain conditions. Different types of partly exempted allowances together with exemption limits are given below: *[Sec. 10 (14) / Rule 2BB]*

(i) Allowances which are exempted upto a specific limit:

There are a number of allowances received by the employees from their employer for which exemptions allowed has no relevance with the actual amount spent for that purpose by the concerned employee. These are exempted up to the limit prescribed or the amount received whichever is less under the Income Tax Act and the notifications issued there under. Some of these allowances are:

(1) Some Compensatory allowance:

a) Special Compensatory allowance like Composite Hill Compensatory Allowance or High Altitude Allowance or Uncongenial Climate Allowance or Snowbound Area Allowance or Avalanche Allowance.

b) Special compensatory allowances like Border Area Allowance, Remote Area Allowance, Difficult Area Allowance and Disturbed Area Allowance.

(2) Special Compensatory (Tribal Areas/ Schedule Areas/ Agency Area) allowance.

(3) Allowance granted to an employee working in transport systems to meet personal expenses during duty in the course of running such transport from one place to another (where such employee is not in receipt of daily allowance).

(4) Children education allowance.

(5) Allowance granted to meet hostel expenditure up to a maximum of two children.

(6) Compensatory field area allowance.

(7) Compensatory modified field area allowance.

(8) Special allowance in the nature of counter insurgency allowance in specified areas.

(9) Transport allowance.

(10) Transport allowance granted to an employee, who is blind or orthopedically handicapped with disability of lower extremities.

(11) Underground allowance granted to an employee who is working in incongenial, unnatural climate in under ground coal mines.

(12) Any special allowance in the Nature of high altitude (incongenial climate) allowance granted to the members of the armed forces operating in high altitude areas.

(13) Any special allowance granted to the members of the armed forces in the nature of special compulsory highly active field area allowance.

(14) Any Special allowance granted to the members of the armed forces in the nature of island (duty) allowance. [Andaman & Nicobar and Lakshadeep Group of Islands].

Illustration: 15. Prof. S. Sharma is an employee of a Central University and having three children who are studying in schools and residing in school hostel. During the previous year 2019-20, in addition to his Basic salary and D.A., he received the following allowances from his employer:

(a) Children Education Allowance Rs. 700 per month for each child.

(b) Hostel expenditure allowance Rs.500 per month for each child.

Prof. S. Sharma actually paid Rs. 1,000 per month for each child for

tuition fees. He also paid Rs. 2,000 per month as hostel expenditure for each of his children.

Examine the taxability of the amount of Children Education Allowance and Hostel expenditure allowance received by Prof. S. Sharma for the Assessment Year 2020-21.

Solution:

i) Children Education Allowance:

Exemption available only for two children: Rs. 100 per month per children = Rs. 100 x 12 x 2 = Rs. 2,400

(a) Children Education Allowance received Rs. 700 per month for each three children = Rs. 700 x 12 x 3 =Rs.25, 200 (b)

Excess amount of Children Education Allowance received:

(b) –- (a) or, Rs.25, 200 - Rs. 2,400 = Rs. 22,800

Hence Rs. 22,800 is taxable and added to his total income from salary.

ii) Children Hostel Allowance:

Exemption available only for two children: Rs. 300 per month per children = Rs. 300 x 12 x 2 = Rs. 7,200

(c) Children Hostel Allowance received Rs. 500 per month for each child for three children = Rs. 500 x 12 x 3 = Rs.18,000

(d) Excess amount of Children Hostel Allowance received:

(d) –- (c) or, Rs.18, 000 - Rs. 7,200 = Rs. 10,800

Hence, Rs. 10,800 is taxable and added to his total income from salary.

Actual expenditure incurred for tuition fee and hostel expenses is not considered while ascertaining the taxable/exempted amount of such allowances.

(C) Fully Taxable Allowances:

All other allowances, by whatever name called, excepting those discussed under the heads (A) Fully exempted; and (B) Partly exempted allowances, are fully taxable. Some of such allowances are:

(1) Dearness Allowance (DA)/ Dearness Pay (DP)

(2) City Compensatory Allowance (CCA)

(3) Fixed Medical Allowance

(4) Lunch Allowance

(5) Tiffin allowance

(6) Overtime Allowance

(7) Servant Allowance

(8) Warden Allowance

(9) Non-practicing Allowance

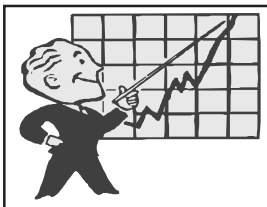
(10) Family Allowance

(11) Bachelor Allowance

(12) Rural Allowance

(13) Project Allowance

(14) Deputation Allowance



CHECK YOUR PROGRESS

A) Match the following:

(a) Fully Exempted Allowances	i) Family Allowance
(b) Partly Exempted Allowances i.e. Partly Taxable Allowances	ii) Allowance to High Court & Supreme Court Judges
(c) Fully Taxable Allowances	iii) Transport allowance

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Illustration: Mr. Vikram, an employee of ICICI Bank, Guwahati, furnishes the following particulars of his income for the previous year 2010-11:

	Rs.
(i) Basic salary	20,000 p.m.
(ii) Dearness allowance (60% of which forms part of salary for retirement benefits)	4,000 p.m.
(iii) Lunch Allowance	500 p.m.
(iv) Medical Allowance	500 p.m.
(v) City Compensatory Allowance	300 p.m.
(vi) House Rent Allowance	3,000 p.m.

Mr. Vikram resided in his own house at Guwahati.

Compute the gross income from salary of Mr. Vikram for the Assessment year 2020-11.

Solution:

Computation of gross income from salary of Sri Subham Das for the Assessment year 2020-21 relevant to the previous year 2019-20:

	Rs.
Basic Salary @ Rs. 20,000 p.m.	2, 40,000
Dearness Allowance @ Rs. 4,000 p.m.	48,000
Lunch Allowance @ Rs. 500 p.m.	6,000
Medical Allowance @ Rs. 500 p.m.	6,000
City Compensatory Allowance @ Rs. 300 p.m.	3,600
House Rent Allowance @ Rs. 3,000 p.m.	36,000
Gross income from salary	**3, 39,600**

Note: *House Rent Allowance received by* Mr. Vikram *is fully taxable as he resided in his own house.*

3.5 VARIOUS ITEMS CONSIDERED FOR COMPUTATION OF INCOME FROM SALARY

The following list provides you a summary of taxable value of different items for tax purpose.

A: TAXABLE VALUE OF DIFFERENT PAYMENTS RECEIVED:

- Basic salary (fully taxable)
- Dearness allowance (fully taxable)
- Dearness pay (fully taxable)
- Interim Relief (fully taxable)
- Advance salary (fully taxable)
- Arrears of salary (fully taxable, if not taxed earlier),
- Salary in lieu of notice (fully taxable)
- Fees (fully taxable)
- Commission (fully taxable)
- Bonus (fully taxable)
- Annuity from employer and remuneration for extra work (fully taxable)
- Gratuity [exempt up to a certain limit under section 10(10)]

- Leave encashment [exempt up to a certain limit under section 10(10AA)]
- Uncommuted pension (fully taxable)
- Commuted pension [exempt fully or partly under section 10(10A)]
- Annual accretion to credit balance in provident fund (exempt in some cases upto a certain limit)
- Contribution made by the Central Government under pension scheme referred to in Section 80CCD [exempt upto 10% of salary)
- Retrenchment compensation (exempt up to a certain limit)
- Voluntary payment (fully taxable if payment is made with reference to service rendered)
- Salary to a foreign citizen (exempt in some cases)
- Payment received at the time of voluntary retirement (exempt upto a certain limit)
- Any other cash payment of salary (fully taxable)

B: TAXABLE AMOUNT OF DIFFERENT ALLOWANCES RECEIVED:

- City compensatory allowance (fully taxable)
- Tiffin allowance (fully taxable)
- Fixed medical allowance (fully taxable)
- Servant allowance (fully taxable)
- High cost of living allowance (fully taxable)
- Project allowance (fully taxable)
- House rent allowance [exempt up to a certain limit under Section 10(13A)]
- Entertainment allowance (include entire amount)
- Uniform allowance [exempt to the extent utilised]
- Special allowance [exempt in some cases under Section 10(14)]
- Foreign allowance [exempt in some cases under Section10 (7)]
- Allowances to a High Court Judge (not taxable)
- Allowances from UNO (not taxable)
- Allowance to a foreign technician (exempt in some cases)
- Compensatory allowance under article 222 (2) of the Constitution (not taxable)

- Any other allowance (by whatever name called) received in cash (fully taxable)

C: TAXABLE VALUE OF DIFFERENT PERQUISITES

- Rent-free house (taxable in all case)
- Accommodation at concessional rent (taxable in all cases)
- Accommodation in a Hotel (taxable in all cases)
- Gas, electricity and water supply (taxable in some cases)
- Free education (taxable in some cases)
- Free domestic servant (taxable in some cases)
- Interest free/concessional loan (taxable in all cases)
- Use of movable assets (taxable in all cases)
- Sale of movable assets by employer to employee at nominal price (taxable in all cases)
- Leave travel concession (taxable in some cases)
- Medical expenditure reimbursement in excess of Rs. 15,000/-
- Motor car (taxable in cases of specified employees)
- Transport facility (taxable in cases of specified employee)
- Lunch/refreshment (taxable in all cases, if the value of each lunch/ dinner exceeds Rs. 50)
- Gift in kind in excess of Rs. 5,000 (taxable in all cases)
- Gift in cash [Any amount] (taxable in all cases)
- Credit card (taxable in all cases)
- Club facility (taxable in all cases)
- Any other perquisite (Taxable in all cases, not being telephone/mobile phone)

D: ALLOWABLE DEDUCTION UNDER SECTION 16

- Entertainment allowance (deductible in case of Government employees only as per the limit)
- Professional tax (Actual amount paid)

E: INCOME FROM SALARY:

INCOME FROM SALARY = (A + B + C) – D

Note: Total of Amounts under A, B and C above less Total of D will be the amount of Taxable Income from Salary.

3.6 DEDUCTION U/S. 80C

A salaried individual is allowed deduction from his income from salary in respect of specified Investments/ payments and savings made by him during the previous year before ascertaining his taxable income.

Computation of deduction U/s. 80C:

The deduction u/s. 80C is ascertained by following the steps detailed below:

Step 1: Gross Qualifying amount;

Step 2: Net Qualifying amount;

Step 3: Amount of deduction.

These are explained below:

Step 1 : Calculation of Gross qualifying amount:

Gross Qualifying amount of deduction is the sum total of some specified Investments/ payments and savings made by individual. The following are such specified Investments/ payments and savings which have certain maximum level.

i) Life Insurance Premium:

ii) Contribution to Unit Linked Insurance Plan:

iii) Contribution in LIC Mutual Fund, Unit Linked Insurance Plan

iv) Contribution or Deposits in Public Provident Fund (PPF):

v) Amount deposited in annuity scheme of LIC or any other Insurance Company

vi) Payment in Deferred Annuity Scheme.

vii) Deposits in Notified Pension Fund Schemes.

viii) Amount of Contribution towards an Approved Superannuation Fund.

ix) Deposits in Provident Fund of Employees

x) Investment in National Savings Certificates (NSC) VIII issue

xi) Amount credited as interest on National Savings Certificate (VIII issue.

xii) Deposits in connection with construction of the House Property

xiii) Payment of Instalments of allotted house and/ or on repayment of Loan taken for construction or purchase of house property

xiv) Payment for Children's Education

xv) Investments in companies providing Infrastructure Facilities

xvi) Amount Deposited in notified units of Mutual Fund or UTI.

xvii) Term deposit in a Bank

(xviii) Deduction in respect of contribution to certain pension funds (Section 80CCC)

(xix) Deduction in respect of contribution to Pension Scheme of the Central Govt. (Section 80CCD)

Note:

1) According to the provisions of Sec 80CCE, the aggregate amount of deductions under Sec 80c, sec 80CCC and 80CCD shall not, in any case, exceed Rs. 1,00,000.

2) The amount of deduction under Sec 80C cannot exceed the taxable income.

Illustration: Following details are furnished by Anuj Bora, an Indian citizen for the year ending 31-3-2019.

	Rs.
Salary (net of tax, rent of house provided by employer and Anuj Bora's contribution to Provident Fund)	2, 46,000
Anuj Bora's contribution to Provident Fund	39,000
Employer's contribution to Provident Fund	39,000
Rent of residential accommodation provided by employer and deducted out of salary	12,000
Professional Tax deducted at source	3,000
Interest credited to Provident Fund @ 8% per annum	32,000
Leave Travel Allowance received	10,000
Actual expenses incurred on Leave Travel	1,000
Rent free house provided to employee:	
Rent paid on house in Mumbai	72,000
Bonus equal to two month salary (paid separately, not included in the net salary)	
Remote Locality Allowance @ Rs. 1,000 p.m. [Notified to be exempted upto Rs. 200 p.m.]	

Running Allowances 2,000 p.m.

Children Education Allowance for 3 children @ Rs. 500 p.m. each (one of his children is living in hostel)

Entertainment Allowances 500 p.m.

Amount contributed to PPF Rs. 50,000

Purchase of NSC VIII issue Rs. 30,000

Solution:

Computation of Taxable Income from Salary of* Anuj Bora, *for the Assessment Year 2010-11 relevant to the previous year 2009-10.

	Rs.	Rs.
Net Salary received	2, 46,000	
Add: Professional Tax deducted at source	3,000	
Add: Contribution to P. F.	39,000	
Add: Rent of residential house provided by employer and deducted out of salary	12,000	
Gross Salary		3, 00,000
Employer's contribution to Provident Fund		39000
Less: Exempted up to 12% of salary [12% of Rs. 3, 00,000]		36,000
	3,000	
Leave travel allowance (Note 2)		9,000
Bonus equal to two month salary [Rs. 3, 00,000 x 2/12]		50,000
Remote Locality Allowance @ Rs. 1,000 p.m.	12,000	
Less: Notified to be exempted up to Rs. 200 p.m.	2,400	9,600
Running Allowance Rs. 2,000 p.m.	24,000	
Less: Exempted up to 70%	16,800	7,200
Children Education Allowance for 3 children @ Rs. 500 p.m. each		18,000
Less: Exempted Rs. [Rs.100x12x2]	2,400	15,600
Entertainment Allowance Rs. 500 per month		6,000
Perquisite in respect of accommodation provided at concessional rate [See note 1]		46,530

Income from Salary		**4, 46,930**
(ia) Standard Deduction		40,000
Deduction u/s 16(iii) Professional Tax paid		3,000
Net Income from salary		**4, 03,930**
Deduction u/s 80C:		
Own contribution to RPF	39,000	
Purchase of NSC VIII issue	30,000	
Amount deposited in PPF	50,000	
Total	**1,19,000**	
Deduction u/s 80C shall be restricted to		1,00,000
Total Income		**3, 03,930**



3.7 LET US SUM UP

In this unit we have discussed the following:

- The amount received from any employer is taxed under the head ‘‘income from salaries’’.
- Salary is nothing but an amount that a person receives for his service from his employer.
- For income tax purpose, allowances are classified into as fully exempted allowances, partly exempted allowances i.e. partly taxable allowances and fully taxable allowances.
- Salaries shall be expressed in monetary units.
- Salaries are chargeable to tax on due basis or receipt basis whichever is earlier.
- The income earned by the individual during the preceeding year or previous year or the year immediately preceeding the year in which the tax is assessed, is charged to tax in the assessment year.



3.8 FURTHER READING

1) B B Dam, S Sikidar, R Barman, B Bora: Direct and Indirect Taxes, Capital Publishing Company, G S Road, Guwahati;

2) V K Singhania, K Singhania, Taxmann.



3.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: (i) T (ii) T

(iii) T (iv) F

Ans to Q No 2: (a) - i)

(b) - iii)

(c) - ii)



3.10 MODEL QUESTIONS

Q 1: What do you mean by salary? What are the different features of income from salary?

Q 2: What are the different forms of salaries which are chargeable to tax in the previous year?

Q 3: Mr. Ramen, an employee of ABC Co., Tezpur, furnishes the following particulars of his income for the previous year 2010-11:

	Rs.
(i) Basic salary	15,000 p.m.
(ii) Dearness allowance	5,000 p.m.
(60% of which forms part of salary for retirement benefits)	
(iii) Medical Allowance	300 p.m.

(iv) City Compensatory Allowance 300 p.m.

(v) House Rent Allowance 5,000 p.m.

(vi) Children Education Allowance 500 p. m.

Mr. Ramen resided in his own house at Tezpur.

Compute the gross income from salary of Mr. Ramen for the Assessment year 2020-21.

Q 4: Match the following:

a. Dearness allowance	i. Professional tax
b. Allowances to a High Court Judge	ii. Section 80CCD
c. Uncommuted pension	iii. Fully Taxable
d. Contribution made by the Central Government under pension scheme	iv. Keyman Insurance Policy
e. Amount received from insurance company with bonus	v. Not Taxable
d. Allowable deduction under Section 16	vi. Fully Taxable

*** ***** ***

UNIT 4 : TAX PLANNING-I

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 Meaning and Concept of Tax Planning

4.4 Tax Planning and Tax Management

4.5 Tax Planning, Tax Evasion and Tax Avoidance

4.6 Tax Planning and Diversion of Income/Application of Income

4.7 Tax Planning considerations in relation to business

4.8 Let Us Sum Up

4.9 Further Reading

4.10 Answers To Check Your Progress

4.11 Model Questions

4.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- explain the meaning and concept of tax planning
- differentiate between tax planning, tax management, tax avoidance and tax evasion
- differentiate between tax planning ,diversion of income and application of income
- discuss the various tax planning considerations in relation to business.

4.2 INTRODUCTION

We always look for various ways to reduce our tax liability. We often tend to non-disclosure of income or evade our taxes, which is illegal. However, reducing a tax liability is not always a bad or illegal exercise. We can reduce our tax legally, if we go for proper tax planning. It is a way to reduce tax liability by taking full advantage of various exemptions, deductions, rebates & reliefs provided by the Act. Tax planning is legal. However,

application of tax planning to reduce our taxes requires a thorough understanding of the principles, practices and procedures of tax laws and the ability to apply such knowledge to various practical situations. In this chapter, we shall discuss about tax planning, tax planning and tax management, tax evasion and avoidance. We shall also discuss about the various spheres where a new business or an existing business can go for tax planning to ensure that the incidence of tax is reduced to the extent possible, by taking advantage of the various allowances, deductions and other tax concessions provided under the Income Tax Law.

4.3 MEANING AND CONCEPT OF TAX PLANNING

Tax planning is basically an intelligent arrangement of one's financial affairs in such a way that the benefit of various tax provisions available and permitted under the Act is fully availed without violating it. It is in some way a practice of saving tax. Tax planning involves planning and it is a very stimulating intellectual exercise. A tax payer may engage in tax planning with two basic approaches:

a. Reducing taxable income availing the tax benefits, exemptions, deductions etc.

b. Deferring payment of taxes to the extent possible.

Tax planning is legitimate as it is within the framework of tax laws. It is basically an application of the various provisions of tax laws to reduce the tax impact on the assessee to the minimum with the help of deductions, exemptions, rebates, reliefs etc. Tax planning requires latest knowledge of tax laws, circulars issued by the CBDT and various decisions of the Courts. Tax Planning is a system which in its implementation is designed to achieve a specific result. Tax planning aims to reduce the outflow of cash resources made available to the Government by way of taxes so that the same may be effectively utilised for the benefit of the individual or the business, as the case may be.

4.4 Tax Planning and Tax Management

Tax management is a basically a practice to comply with the provisions of tax laws. Tax management is a narrower term in comparison to tax planning. Actually is a part of tax planning. It is a continuous process and is an important aspect of tax planning. Tax management is concerned with filing of various returns in time, compliance of the applicable provisions of law and avoiding of levy of interest and penalties etc. It is an exercise by which defaults are avoided and legal compliance is secured. The filing of returns with all proper documentary evidence for the various claims, rebates, reliefs, deductions and computation of income and tax liability would come under the purview of tax management. The assessee is exposed to certain unpleasant consequences if obligations cast under the tax laws are not duly discharged. Such consequences take shape of levy of interest, penalty, prosecutions, forfeiture of certain rights etc. Therefore any effort in tax planning is incomplete unless proper discharge of responsibilities is made. Tax management includes:

a) Compiling and preserving data and supporting documents evidencing transactions, claims etc.

b) Making timely payment of taxes.

c) Fulfilling compliances under various tax laws.

d) Following procedural requirements.

e) Timely filing of returns.

f) Responding to notices received from the authorities.

g) Preserving record for the prescribed number of years.

The difference between 'Tax Planning' and 'Tax Management'.

Tax Planning	*Tax Management*
(i) It is a way to reduce tax liability by taking full advantages provided by the Act through various exemptions, deductions, rebates & relief.	(i) It is a procedure to comply with the provisions of tax laws.
(ii) The Objective of Tax Planning is to minimize the tax liability.	(ii) The objective of Tax Management is to comply with the provisions of Tax Law

	and its allied rules.
(iii) Tax Planning also includes Tax Management.	(iii) Tax Management deals with filing of Return in time, getting the accounts audited, deducting tax at source etc.
(iv) It is futuristic and positive in nature. The planning is made today to avail benefits in future.	(iv) It is a continuous approach, which is concerned with past (rectification, revisions etc.), present(filing of return, etc.) & future (corrective action).
(v) Tax Planning helps in minimizing Tax Liability in Short-Term and in Long Term.	(v) Tax Management helps in avoiding payment of interest, penalty, prosecution etc.
(vi) Tax Planning is optional.	(vi) Tax Management is essential for every assessee.

4.5 TAX PLANNING, TAX EVASION AND TAX AVOIDANCE

Tax Avoidance:

Tax avoidance is a method of taking advantage of the loopholes in the tax law of the country to avoid paying taxes. It minimizes tax liability using complex and often critical provisions of the Act. Tax avoidance uses legal means to avoid taxes but is not encouraged because it is an exploitation of the legal provision of the tax law which was not intended or considered while framing the law. Suggestions from the tax experts and taxpayers and continuous evaluation of the various provisions of the Income Tax Act may help in the removal of such loopholes and may thus reduce the incidences of tax avoidance.

One can consider their residential status in some safe tax havens where tax rates are low or where special incentives are given for certain activities which are not available in the assessee's own place of residence, in order to avoid paying taxes. In addition, they may also change their business structure or establish an offshore company in tax havens, etc.

Having considered the meaning of each of the above methods of

reducing tax liability we may now consider the differences between each one of them.

Tax Avoidance vs. Tax Planning:

a. Tax planning contributes to the nation building by investing in certain activities which are normally not ventured into. On the other hand, tax avoidance is simply paying less tax or not paying tax at all without any contribution to the society.

b. While tax planning is perfectly legal and encouraged by the government, tax avoidance is somewhat legal but not always encouraged.

c. Tax planning is not risky at all while tax avoidance involves a lot of risk.

d. Tax planning is using the exemptions and reliefs specifically provided in the Act which is meant to be used to reduce tax liability but tax avoidance is using the unintended, hidden and often unspecified tax provisions to reduce tax liability.

Tax Evasion:

Tax Evasion is another method of evading taxes used by assessees. This method is resorted to with the motive of defrauding. Tax is evaded by concealing income, by showing lesser income and other providing false and incomplete information to the taxing authorities. Tax evasion is always done intentionally by maintaining different sets of books of accounts, carrying on transactions in cash with no invoices, carrying on transactions in a dummy name, preparing false invoices, paying lesser taxes than what is being assessed, etc.

Tax evasion may be resorted to with an intention of defrauding. It may also be resorted because of high rates of tax, absence of taxpayer-friendly tax policies and absence of adequate tax incentives. Tax evasion is mostly adopted by people having black money. They conceal their income and as a result evade taxes.

It results in loss of revenue to the state exchequer. It is one of the reasons for the rise in inflation. Tax evasion is considered a civil offence in the country, i.e., illegal and immoral. It is a growing menace in the country as more and more people are stashing money abroad in tax havens and thus avoiding paying of taxes. Assets are kept hidden and undeclared so

that tax can be evaded. This menace can be stopped by having a strict and efficient tax system in the nation so that tax evaders can be easily located and can be penalized for such illegal action.

Tax Planning vs. Tax Evasion:

1. Tax planning involves the use of provisions in the law to reduce tax liability whereas tax evasion is using unethical ways to reduce taxes.
2. Tax planning is legal whereas tax evasion is illegal.
3. Tax planning benefits the society as well as the individual while tax evasion is considered harmful for the development of the nation and may be the root cause of all social evils like corruption, poverty, underdevelopment and black money.
4. Tax evasion is considered as a crime while tax planning is not.

Thus, we can say that although all the above methods are used for reducing tax liability, tax planning is the best of all methods as it uses perfectly legal means to reduce tax liability. On one hand, the assessee can enjoy his income to the fullest and on the other hand he can also contribute to the society.

Tax Avoidance vs. Tax Evasion:

1. While in tax avoidance one discloses all material facts, under tax evasion there is often incomplete or false information being disclosed by the assessee.
2. Tax avoidance is reducing of tax liability by using the loopholes in the Act, while tax evasion is evading of taxes by fraudulent means like misrepresenting or concealing information or not paying tax at all.
3. Tax avoidance exploits the tax laws but is not considered illegal always as it works within the ambit of law although it is not intended by the law makers nor encouraged, while tax evasion is definitely illegal as it uses illegal methods to reduce tax liability and evade taxes which the tax payer legally owes.

CHECK YOUR PROGRESS

Q 1: What do you mean by tax planning?.

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Q 2: Mention two difference between tax planning and tax evasion?.

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4.6 TAX PLANNING AND DIVERSION OF INCOME/ APPLICATION OF INCOME

The concept of diversion of income by overriding title signifies diversion of income at source by an overriding title before it reaches an assessee. Such a diversion can take place either under a legal compulsion or under a contractual obligation or otherwise. An obligation to apply the income in a particular way before it has accrued or arisen to the assessee results in the diversion of the income. On the other hand, an obligation to apply income which has accrued or arisen or has been received amounts merely to the apportionment or application of the income and not to its diversion. Sometimes the dividing line between diversion by overriding title and the application of income after it has accrued is somewhat thin.

When income or a portion of income is diverted at the source by an overriding title before it started flowing into the channel which was to reach the assessee concerned it could be excluded from his assessable income. Wherever there is such diversion of income, such diverted income, cannot be included in the total income of the assessee who claims that there has been a diversion. On the other hand, where income has accrued or arisen in the hands of the assessee, its subsequent application in any way will not affect the tax liability.

There is a very thin line of difference between Diversion of income & Application of income. In order to decide whether a particular disbursement amounts to diversion or application of income, the true test is to probe into and decide whether the amount sought to be deducted, in truth, did not

reach the assessee as his own income.

Diversion of income: Where by virtue of an obligation, income is diverted before it reaches to the assessee, it is known as diversion of income & it is not taxable (i.e. even if the assessee were to collect the income he does so on behalf of the person to whom it is payable).

Example: A, B and C are co-authors of a book. The publisher of the book gave the whole royalty of 6,00,000 to A.

A paid 2,00,000 to B and C each. Such payment is not application of income but diversion of income.

Application of income: Whereas, application of income means to discharge an obligation (which is gratuitous or self-imposed) after such income reaches the assessee & hence it is taxable.

For the purpose of tax planning, the concept of 'diversion of income' would be better scope for exploitation than the concept of 'application of income'. Because, where income is diverted, it is not taxed in the hands of the person who claims such diversion. On the other hand, the concept of application of income envisages first the accruing or arising of income and when once it has come within the grasp of the Income Tax Act, 1961 it is liable to income-tax whatever may be its destination or whomever it may be applied for.

4.7 TAX PLANNING CONSIDERATIONS IN RELATION TO BUSINESS

For a new business, the areas where tax planning is relevant are as follows:

a) Form of the organisation
b) Nature of the business
c) Financial Structure
d) Acquisition of plant and machinery and other fixed assets
e) Setting up and commencement of business

a) Form of Business Organisation: The choice of the appropriate form of business organisation will have to be thought of and decided by the person who intends to carry on business or profession at the beginning

itself, because a change in the form of business organisation after the commencement of the business, may attract liability to tax. A new business can be organised under any of the following forms:

(i) Sole proprietorship

(ii) Hindu undivided family

(iii) Association of persons or Body of Individuals

(iv) Partnership firm/LLP

(v) Company

(vi) Co-operative society

The selection of a particular form of organisation would depend not only on the tax aspect but on other considerations also, e.g., financial requirements and resources, requirement of limited liability and many other practical considerations.

However, depending upon the taxable status and level of tax liability of the owners, a selection can be made from the various forms available for setting up a new unit.

(i) Sole Proprietorship: In the case of a sole proprietorship concern, remuneration paid to proprietor is not allowed as deduction from business profits of the sole proprietorship firm. Whereas remuneration paid by partnership firm/LLP to its working partner is allowed as deduction subject to sec 40(b) As a result, the taxable income from business would get reduced and correspondingly, the incidence of tax would also be reduced.Under sole proprietorship, the entire income of a business unit gets assessed in the hands of the same person along with other income, while the entire loss and other allowances shall be available for set off in his hands against other income. This may have some advantage in the initial years, after which the possibility of converting it into company/firm may be considered; on such conversion, the questions of possible capital gains tax, etc., will have to be considered.

(ii) Hindu Undivided Family 'HUF': The HUF is treated as a separate entity under the Income Tax Act. Since the law does

not specifically provide for the disallowance of such expenses, it is advantageous to carry on a business through the HUF wherever possible. The income of the family is computed and first taxed in the hands of the family at the rates applicable to it. The income of the family may, thereafter, be divided amongst the members of the family and the members, in such cases, do not attract any liability to tax in view of the specific exemption granted under section 10(2) of the Income-tax Act, 1961. Thus, if a business is carried on by a Hindu undivided family, the advantages which are available in the case of a company could be fully availed of and in addition, the members of the family would not become liable to tax when they receive any portion of the family's income.

(iii) **Partnership and LLP:** All firms and LLPs will be taxed at a flat rate of 30**%.** If the total income exceeds 1 crore, surcharge @ 12% is applicable. There will be no initial exemption and the entire income will be taxed. In computing the taxable income of a firm, certain prescribed deductions in respect of interest and remuneration have to be allowed. The share income of a firm in the hands of the partners of the firm is fully exempt under section 10(2A). Also, partnership firms carrying on eligible business can declare income on presumptive basis as per the provisions of section 44AD@8% of gross receipts (6% in case gross receipts are received by an account payee cheque/bank draft/ use of ECS through bank account). Partnership firms carrying on notified profession can declare income on presumptive basis@50% of gross receipts as per the provisions of section 44ADA.

(iv) **Company:** Within the company form of organisation, however, several alternatives exist. On the basis of the ownership and control, a company can either be organised as a widely held company, i.e. a company in which the public are substantially interested u/s 2(18) of the Income-tax Act, 1961. Alternatively, it can be organised as a closely held company. Depending upon

the choice of the form of organisation of the company, the following important tax consequences would have to be considered from the view point of tax planning:

(1) The General tax rate of domestic company is 30% and if turnover is upto ‘250 crores in F/Y 16/17 then General tax rate is 25%.

(2) The general tax rate of foreign company is 40%.

(3) The surcharge on domestic company is 7% if Total Income exceeds 1 crore and 12% if Total Income exceeds 10 crores.

(4) The surcharge on foreign company is 2% if Total Income exceeds 1 crore and 5% if Total Income exceeds 10 crores.

(5) The provisions of section 79 regarding restrictions on carry forward of losses in the event of substantial change in the shareholding of the company also become applicable if the company is one in which the public are not substantially interested. This aspect would assume particular significance in the case of closely held companies where losses are made and shareholdings are transferred before such losses are fully absorbed.

(6) Domestic companies have to pay CDT @ 15% plus surcharge @12% plus cess @ 4% on dividend declared, distributed or paid u/s 115O.

(7) MAT provisions are applicable to companies. It so happens that in case of companies enjoying tax holiday benefits still have to pay tax under MAT provisions, credit of which also cumulated for number of years without being used causing significant outflow of funds in the initial years.

b) Nature of Business: Besides the form of organisation, the choice of the nature of the business also calls for appropriate planning with reference to the various special benefits available under the taxation laws to the particular kinds of industries which are not available to other kinds. Some of these benefits are of such a substantial nature

that they constitute one of the major factors in the determination of the nature of the business.

Broadly, business for this purpose may be divided into two categories—trading and manufacturing business. There could be a third category involving combination of both. Deduction is available under section 10AA to newly established units in Special Economic Zones. A taxpayer carrying on manufacturing or industrial activities would be in a position to avail of the various concessions such as Depreciation allowance u/s 32, Spectrum expenditure u/s 35ABA, Telecom licence u/s 35ABB, Preliminary expenses u/s 35D and Mining expenditure u/s 35E.

Tax holiday benefit under section 80-IAC would be available in case of eligible start-up, under section 80- IBA in case of developing and building housing projects and under section 80LA in case of offshore banking unit and IFSC located in Special Economic Zone.

While deciding the nature of the business, the benefit of tax exemption or treatment available in respect of certain types of income such as agricultural concessional income, new industrial undertakings, ships, business of repairs to ocean going vessels, business of exploration, etc. of mineral oils, etc. should also be taken into account.

c) Financial Structure: Choice in the matter of financing a new unit or business would be between capital and borrowings. New units being set up by existing units or companies would have the possibility of using retained profits. In the case of a company, the means of finance are as follows:

(i) Share capital.

(ii) Debentures.

(iii) Other borrowings

(iv) Generation of funds through profits.

While the return on share capital is a charge on the profits after tax, the return on loans to the lenders is a charge on the profits before tax. Thus, recourse to borrowings would offer a tax advantage which will be reflected in a higher rate of return on the owner's capital.

d) Acquisition of Fixed Assets: Assets can be bought or hired. If these are bought and are depreciable, e.g. building, plant and machinery and furniture, the assessee can claim depreciation on the cost and over the years. The entire cost can be claimed as deduction against the profit. If hired, however, the charge for hire becomes an admissible deduction. Having regard to the fact that the acquisition of an asset requires a larger immediate outlay than what is necessary in the case of hiring, the company may opt for hiring in some cases rather than for straight acquisition. For example, taking the business premises on rent rather than purchasing the same may be a better proposition.

But in the case of plant and machinery, two additional considerations may arise. New plant and machinery in certain industries may enable a company to claim deduction on account of depreciation and additional depreciation which may outweigh other considerations. Similarly, if there can be a new industrial undertaking, substantial tax benefits may be available by way of tax holiday benefit, etc. but that would require employment of new plant and machinery to a large extent.

These considerations are out and out tax considerations which may prompt an assessee to make two choices

(i) not to hire plant and machinery but to purchase them and (ii) not to purchase second hand plant and machinery but to purchase them new.

In appropriate cases, the assessee may go in for second hand imported plant and machinery, satisfying the conditions laid down. In cases where an assessee opts to go for old plant and machinery, the limit regarding the use of old plant and machinery, as laid down in Section 80-IAC should be taken into consideration.

The assessee engaged in the specified business mentioned in section 35AD can avail the benefit of deduction of capital expenditure incurred wholly and exclusively of the purpose of such specified business. Capital expenditure incurred prior to commencement of business shall be allowed as deduction during the previous year in which the assessee commences operation of the specified business

if, such expenditure incurred is capitalized in the books of accounts of the assessee on the date of commencement of its operation. However, such deduction is not available in respect of capital expenditure incurred on acquisition of any land, goodwill or financial instrument.

e) Setting up and Commencement of Production: Setting up of business in the context of the Income-tax Act, 1961 is a concept entirely confined to that Act. It is not the same as the commencement of the business and these two concepts have been clearly distinguished for income-tax purpose. Between the date of the setting up and date of commencement, there may be a gap during which the assessee may be incurring expenses of a revenue nature.

Under the taxation laws, the expenditure incurred prior to the date of setting up is not normally admissible for income-tax purposes. But if those are incurred on and from the date of setting up, but before commencement of the business, they may be allowed as deduction for tax purposes provided of course they are revenue in nature and are incurred wholly and exclusively for the purposes of business. It is well settled position by various judicial rulings that a business is set up as soon as it is ready to commence production and it is not necessary that actual production should be so commenced. Thus, in the case of a company established for manufacturing plastics, the business is set up as soon as acquiring of raw material is commenced even if at that time the plant and machinery may not have been installed so that actual manufacturing operations may commence.



CHECK YOUR PROGRESS

Q 3: What do you mean by diversion of income?

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Q 4: Mention the areas where tax planning is relevant for a new business.

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4.8 LET US SUM UP

In this unit we have discussed the following aspects-

- Tax planning is an intelligent arrangement of one's financial affairs in such a way that the benefit of various tax provisions available and permitted under the Act is fully availed without violating it.
- Tax planning is legitimate as it is within the framework of tax laws.
- It is an application of the various provisions of tax laws to reduce the tax impact on the assessee to the minimum with the help of deductions, exemptions, rebates, reliefs etc.
- Tax planning requires latest knowledge of tax laws, circulars issued by the CBDT and various decisions of the Courts.
- Tax management is a narrower term in comparison to tax planning.
- Tax avoidance is a method of taking advantage of the loopholes in the tax law of the country to avoid paying taxes.
- Tax Evasion is an illegal method of evading taxes.



4.9 FURTHER READING

1) Direct Tax Laws & International Taxation by T. N. Manoharan, Snow White Publications.
2) Direct Taxes Law & Practice -With Special Reference To Tax Planning (61st Edition A.Y. 2019-20) by Vinod K. Singhania & Kapil Singhania.
3) Income Tax Act, 1961, Bare Act.
4) Income Tax Act by Girish Ahuja & Ravi Gupta.

4.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Tax planning is an intelligent arrangement of one's financial affairs in such a way that the benefit of various tax provisions available and permitted under the Act is fully availed without violating it. It is in some way a practice of saving tax.

Ans to Q No 2: 1) Tax planning involves the use of provisions in the law to reduce tax liability whereas tax evasion is using unethical ways to reduce taxes.

2) Tax planning is legal whereas tax evasion is illegal.

Ans to Q No 3: The concept of diversion of income by overriding title signifies diversion of income at source by an overriding title before it reaches an assessee. Such a diversion can take place either under a legal compulsion or under a contractual obligation or otherwise. An obligation to apply the income in a particular way before it has accrued or arisen to the assessee results in the diversion of the income



Ans to Q No 4: For a new business, the areas where tax planning is relevant are as follows:

a) Form of the organisation

b) Nature of the business

c) Financial Structure

d) Acquisition of plant and machinery and other fixed assets

e) Setting up and commencement of business.



4.11 MODEL QUESTIONS

Q 1: Define Tax Planning.

Q 2: What do you mean by tax management? State the differences between tax planning and tax management.

Q 3: Write a brief note on tax avoidance.

Q 4: How is tax planning different from tax avoidance and tax evasion? Discuss.

Q 5: Discuss the various tax planning considerations in relation to a new business.

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UNIT 5 : TAX PLANNING-II

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 Tax Planning for Managerial Decision-

- 5.3.1 Make or Buy Decision
- 5.3.2 Own or Lease
- 5.3.3 Amalgamation and merger

5.4 Let Us Sum Up

5.5 Further Reading

5.6 Answers To Check Your Progress

5.7 Model Questions

5.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the relevance and application of tax planning in various managerial decisions such as Make or Buy Decision, Own or Lease, Amalgamation and Merger

5.2 INTRODUCTION

In our previous unit, we discussed in details about tax planning. We learned that tax planning is basically an intelligent arrangement of one's financial affairs in such a way that the benefit of various tax provisions available and permitted under the Act is fully availed without violating it. Tax planning is legitimate as it is within the framework of tax laws. We also discussed about the various tax planning considerations in relation to business. A new business cab do tax planning in the areas such as form of the organisation; nature of the business; financial structure; acquisition of plant and machinery and other fixed assets and setting up and commencement of business.

In this unit, we shall discuss the relevance and application of tax planning in various managerial decisions such as Make or Buy Decision, Own or Lease, Amalgamation and Merger.

5.3 TAX PLANNING FOR MANAGERIAL DECISION

In an organisation, the manager has to make decisions considering various factors and tax is also one of those factors. Tax factors do influence the managerial decisions and to illustrate this point, tax implications that are relevant while taking some specific management decisions are explained below:

5.3.1 Make or buy decision

In a situation where the management has an alternative to make or buy a product or part/component of a product, it can compare the variable cost of making it with its purchase price in the market before taking the final decision. The article is brought if the cost of making it is greater than the buying it. Alternatively, if the decision to make involves establishment of a separate industrial unit for this purpose, a decision may be taken on the basis of total cost rather than variable cost. In such an event, the assessee would also be in a position to get the tax benefits arising from allowances such as depreciation, tax holiday benefit and deduction in respect of profits from new industrial undertakings, wherever applicable.

The basis of taking make or buy decision should be ‘saving after tax’. The net saving is ascertained after deducting from gross savings, income-tax payable on the amount of saving. The long-term advantages arising out of a decision to make should also be given due weightage in arriving at a decision.

Further, while ascertaining the variable cost of the product (in case of both make or buy decision) all taxes such as GST, customs duty etc., payable in the process of manufacture should be taken into account and in determining purchase price of the product. All

taxes to be borne by the purchaser should be added for the purpose of comparison and cost purchasing.

5.3.2 Own or lease

The decision regarding owing or leasing an asset is another important area where tax factor comes into effect. Leasing has its own advantages and disadvantages. There are many factors which are required to be considered before making 'own or lease' decision such as cost of asset to be owned, rent of the asset to be taken on lease, source of financing the asset, risk involved in the alternatives, impact of tax concessions such as depreciation, tax holiday benefit, etc.

Leasing can also provide important tax advantages. If the asset is taken on lease, the firm can deduct for income-tax purposes, the entire rental payment. If the rate of tax is 30%, then, the effective rent obligation is reduced to that extent. Another tax advantage of the lease is that the life of the lease can be shortened compared to the depreciable life otherwise allowed if the assessee purchased the asset. Thus, there is a delay in playing taxes and in effect an interest free loan by the Government to the extent of the delay in taxes.

5.3.3 Amalgamation and merger

Following decisions could be taken by the management considering the tax factor relating to amalgamation and merger of business:

1. Since the unabsorbed losses and unabsorbed depreciation cannot be allowed to be carried forward and set off in the hands of the amalgamated company, except in the cases prescribed under Section 72A of the Act, it is proposed:
   a. that the scheme of the amalgamation can be put off till such time the full benefit of set off is availed of by the amalgamating company; and

b. that the loss carrying company should absorb or take over the business of the profit-making company. In other words, the profit making company should merge itself with the loss incurring company. This would help in carrying to carry forward the benefits of all unabsorbed losses and depreciation to be set off against the profits derived from the business of the profit-making company.

2. A company whose shares are not quoted on a recognised stock exchange may avail the benefit of amalgamation by amalgamating itself with another company whose shares are quoted on a recognised stock exchange. This would help its shareholders to take the advantage of the quoted price of their shares in the stock exchange while determining their liability for wealth tax purposes.

3. A loss incurring company and a profit-making company may merge in order to reduce the overall incidence of liabilities to tax under the Income Tax Act,1961.

There is a recent trend of going in for reverse merger. It means that the profit making company merges into the sick company thereby becoming eligible to carry forward of losses etc. without the aid of Section 72A of the Act. The profit making or healthy company extincts and looses its name and the surviving sick company retains its name. It is actually device to bypassing merger under Section 72A of the Act and is being increasingly popular now a days.



CHECK YOUR PROGRESS

Q 1: State two areas for tax planning of managerial decisions.

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Q 2: State two decisions that could be taken by the management considering the tax factor relating to amalgamation and merger of business.

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5.4 LET US SUM UP

In this unit, we discussed on the following:

- In an organisation, the manager has to make decisions considering various factors and tax is also one of those factors
- In a situation where the management has an alternative to make or buy a product or part/component of a product, it can compare the variable cost of making it with its purchase price in the market before taking the final decision.
- All taxes to be borne by the purchaser should be added for the purpose of comparison and cost purchasing.
- The decision regarding owing or leasing an asset is another important area where tax factor comes into effect.
- Leasing can also provide important tax advantages
- Reverse merger means that the profit making company merges into the sick company thereby becoming eligible to carry forward of losses etc. without the aid of Section 72A of the Act.



5.5 FURTHER READING

1) Direct Tax Laws & International Taxation by T. N. Manoharan, Snow White Publications

2) Direct Taxes Law & Practice -With Special Reference To Tax Planning (61st Edition A.Y. 2019-20) by Vinod K. Singhania & Kapil Singhania.

3) Income Tax Act, 1961, Bare Act.

4) Income Tax Act by Girish Ahuja & Ravi Gupta.



5.6 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: a) Own or Lease

b) Amalgamation and merger

Ans to Q No 1: 1) A company whose shares are not quoted on a recognised stock exchange may avail the benefit of amalgamation by amalgamating itself with another company whose shares are quoted on a recognised stock exchange. This would help its shareholders to take the advantage of the quoted price of their shares in the stock exchange while determining their liability for wealth tax purposes.

2) A loss incurring company and a profit-making company may merge in order to reduce the overall incidence of liabilities to tax under the Income Tax Act,1961.

5.7 MODEL QUESTIONS

Q 1: Discuss briefly the tax planning considerations with respect to managerial decisions.

Q 2: Write short note on tax planning with respect to make or buy decision.

Q 3: Write briefly about tax planning with respect to amalgamation and merger.

Q 4: Write a brief note on tax planning with respect to lease or own decision in a business.

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UNIT 6 : TAX MANAGEMENT

UNIT STRUCTURE

6.1 Learning Objectives
6.2 Introduction
6.3 Meaning and Concept of Tax Management
6.4 Tax Management regarding Tax Deducted at Source
6.5 Tax Management regarding Filing of Return of Income
6.6 Tax Planning considerations in respect of Salary Income
6.7 Assessment Procedure
6.8 Let Us Sum Up
6.9 Further Reading
6.10 Answers To Check Your Progress
6.11 Model Questions

6.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- explain the meaning and concept of tax management
- explain about tax management regarding tax deducted at source
- explain about tax management regarding filing of return of income
- discuss about the various assessment procedures under the Income Tax Act.

6.2 INTRODUCTION

We have already had a detail discussion on Tax Planning in our previous two units: Unit 4 and Unit 5. We also had a brief discussion about tax management in Unit 4. In this Unit, we shall continue our discussion on Tax Management. Tax management consists of steps taken to comply with Income Tax law e.g. maintaining of books of account, computing the income, deposit of tax, filing of returns etc. In this Unit, we shall discuss various issues involved in tax management of an assessee covering the areas such as deduction of tax at source, advance payment of tax, filing of returns of income and assessment procedure.

6.3 MEANING AND CONCEPT OF TAX MANAGEMENT

Tax management refers to compliance with the income tax rules and regulations. Tax management covers matters relating topenalties, prosecution, appeal, tax revision or settlement of tax cases. The objectives of tax management are to ensure compliance with tax laws at the specified time and in the specified manner as also to ensure that the tax cost isminimized. The functions of tax management include tax planning, organizing thepersonnel to ensure tax compliance and directing and coordinating the compliancewith all the provisions of tax laws.

In this Unit, we shall discuss various issues involved in tax management of an assessee covering the areas such as deduction of tax at source, advance payment of tax, filing of Returns of Income under various sections of the Income Tax Act, 1961.

The important areas of tax management are discussed below:

1. Tax Deducted at Source
2. Collection of tax at source: In some special cases, some persons responsible for collecting the tax at source from the buyers
3. Payment of advance tax
4. Maintenance of Books of Accounts: Maintaining books of accounts and other relevant documents so that the tax can be computed accurately and verified by the Assessing Officer. Maintenance of account books, vouchers, bills, correspondence and agreements, etc. is a part of tax management.
5. Audit of books of accounts: If the turnover of the business for the previous year 2015-16 exceeds one crore rupees, the audit of books of accounts is compulsory as per income tax rules.
6. Furnishing the return of income: The tax manager must ensure that the return of income is furnished on time otherwise the assesse will lose the right to carry forward and set off the losses and become liable to pay interest, penalty, prosecution or fine or both.

7. Documentation and maintenance of tax records: An assessee should keep complete and updated tax files so that the documentary evidences can be made available in case of all queries. Tax files include filed returns, Form 16, documentary evidence in support of deductions, rebate and relief, court orders, etc.
8. Review of orders of Income Tax Department: Review the assessment orders and other orders received from the tax department is an important function of tax management. If there is any mistake in the order, application for rectification can be made. If the order is prejudicial to the interest of the assessee he can file an appeal, revision or an application for settlement of case can be made.

6.4 TAX MANAGEMENT REGARDING TAX DEDUCTED AT SOURCE

The provisions of the Income Tax Act, 1961 requires the tax payer to follow the principle "pay as you earn". The system of tax deducted at source (TDS) is an outcomes of that principle. The concept of TDS was introduced with an aim to collect tax from the very source of income. As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government. The deductee from whose income tax has been deducted at source would be entitled to get credit of the amount so deducted on the basis of Form 26AS or TDS certificate issued by the deductor. Thus, TDSis also a form of advance tax where taxes are collected by the person who is disbursing theincome. Persons who can deduct tax at source of income are:

1. In case of payment made under government employment, the Drawing and Disbursing Officer;
2. The employer paying salary to his employees or the Principal Officer;
3. In case of individual, the borrower himself;
4. In case of a company, it is the company including the Principal Officer;
5. In case of any other type of payments, the payer himself: if the payer is a company, the Principal Officer will be responsible for TDS.

Tax has to be deducted at the rate specified in relevant Sections of the Income Tax Act, 1961. Deductor must have the Permanent Account Number (PAN) of payee. Tax is deducted at source in case of the following payments:

1. Salaries (Section 192),
2. Interest on securities (Section 193),
3. Dividends (Section 194),
4. Interest other than interest on securities (Section 194A),
5. Winnings from lotteries or crossword puzzles (Section 194B),
6. Winnings from race horses (Section 194BB),
7. Payment to contractors or sub-contractors (Section 194C),
8. Insurance commission (Section 194D),
9. Payment to non-resident sportsman, payment to sports association (Section 194E),
10. Payment in respect of deposits under National Savings Scheme, etc. (Section 194EE),
11. Payment on account of repurchase of units by mutual funds or Unit Trust of India (Section 194F),
12. Payment of commission, etc. on sale of lottery tickets (Section 194G),
13. Commission or brokerage (Section 194H),
14. Rent (Section 194I),
15. Fees for professional or technical services (Section 194J),
16. Income in respect of units of UTI and mutual funds (Section 194K),
17. Payment of compensation on acquisition of certain immovable properties (Section 194LA)

Apart from this tax is also deducted at source from payment to non-residents, units purchased in foreign currency, long term capital gain from foreign currency, income of Foreign Institutional Investors (FII) from securities, etc.

Sums deducted by an office of the government shall be paid to the credit of the central government on the same day where the tax is paid without production of an income tax challan and, on or before seven days from the end of the month in which the deduction is made where income tax challan is accompanied.

Sums deducted by deductors other than an office of the government shall be paid to the credit of the central government on or before 30th of April where income is paid in the month of March and in any other case, on or before seven days from the end of the month in which deduction is made.

Every deductor, deducting tax, shall deliver or cause to be delivered, to the Director General of Income Tax (DGIT) or the person or agency authorised by the DGIT, the annual return of deduction of tax in specified forms by the end of the month of June falling in the financial year immediately following the previous year.

In case of deduction of tax under Section 192, certificate of tax deducted at source is to be furnished to the employee or payee by the employer in Form No. 16 annually by 31st of May of the financial year immediately following the financial year in which the income was paid and tax deducted; and in other cases certificate is to be furnished in Form No. 16A quarterly within fifteen days from the due date for furnishing the statement of tax deducted at source under rule 31A.

In short the process of TDS includes the following steps:

1. Payer deducts tax from payment.
2. Payer deposit tax to government.
3. Payer files return of TDS.
4. Payer issues TDS certificates to payee.
5. Payee claims refund of TDS in his Income Tax Return (ITR).

If the deductor fails to pay the amount of tax so deducted to the credit of the central government, he/she shall be liable to pay simple interest under Section 201(1A) on the amount of such tax from the date on which such tax was deducted to the date such tax is actually paid at the rate specified from time to time.

TDS on Salary income

Tax Deducted at Source (TDS) holds a special importance in tax management of a salaried individual. Section 192 of the Act makes it clear that any person responsible for paying any income chargeable under the head "Salaries" shall at the time of payment, deduct income - tax on the estimated income of the employee under the head "Salaries" for that financial

year. The tax is to be deducted at the average of income tax computed on the basis of the rates in force for the financial year in which the payment is made. In other words, the total tax to be deducted, on the estimated income of the employee for the relevant financial year, is divided by the number of months of his employment during the financial year. The amount so arrived at is the monthly deduction of tax at source. TDS provisions relating to payment of salary are materially different from provisions for other payments, in respect of the manner of determining the amount to be deducted. In respect of all other payments, the person deducting tax has to deduct a fixed percentage of gross amount payable, irrespective of payee's income tax liability. However, in respect of salary payment, the employer has to make an honest estimate of income under the head salary and deduct tax at the appropriate rate, on the income so estimated. In view of this, tax planning in respect of TDS becomes more important on the part of the employees. Since the monthly tax to be deducted is the average of income tax computed for the relevant financial year, the employee should take care of all the deductions and benefits available under the Act after considering the amendments made in the Finance Act of the respective year.



CHECK YOUR PROGRESS

Q 1: What do you mean by Tax Management?

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Q 2: Write the meaning of Tax Deducted at Source.

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6.5 TAX MANAGEMENT REGARDING FILING OF RETURN OF INCOME

The provisions of Income Tax Act, 1961 requires the tax payer to file a return of income in the prescribed form and within the prescribed time as specified in section 139 of the Act.

Rule 12 provides following Form for filing return of income for different assessee:

ITR - 1 (Sahaj) For Individuals having Income from Salaries, one house property (does not have any brought forward loss), other sources [Interest (does not have any loss under the head) etc. but except winnings from lottery or income from race horses] and having total income uptoRs. 50 lakhs

ITR - 2 For Individuals and HUFs not carrying out business or profession under any proprietorship

ITR - 3 For individuals and HUFs having income from a proprietary business or profession

ITR - 4 (Sugam) For presumptive income from Business & Profession

ITR - 5 For person other than (i) Individual; (ii) HUF; (iii) Company; & (iv) Person filing Form ITR-7

ITR - 6 For Companies other than companies claiming exemption u/s 11

ITR - 7 For persons including companies required to furnish return u/s 139(4A) or 139(4B) or 139(4C) or 139(4D) or 139(4F)

ITR - V Income Tax Return Verification Form [Where the data of the aforesaid Return of Income has transmitted electronically without digital signature]

Time limit for filing return of income

A return should be filed on or before the following due date (of respective assessment year):

Assessee	Due Date
Where the assessee is required to furnish a report in Form 3CEB u/s 92E pertaining to international transaction(s)	30th November
Where the assesse is a company not having international transactions(s)	30th September
Any other assessee	
- Where accounts of the assesse are required to be audited under any law	30th September
- Where the assessee is a working partner in a firm	

and the accounts of the firm are required to be audited under any law	30th September
- In any other case	31st July

In case of an individual assesse, tax management regarding filing of return of income could be done in the following manner:

1. In case, the gross taxable income after exemptions, but before deductions, exceeds the basic limit, or if a tax refund has to be claimed, the tax return needs to be filed. This limit is Rs 2.5 lakh for general taxpayers (below 60 years), Rs 3 lakh for senior citizens (above 60 years) and Rs 5 lakh for very senior citizens (above 80 years).
2. Verification of tax details reflected in TDS Certificates(Form 16 and Form 16A) and other taxes (advance tax and self-assessment tax) paid and credited to taxpayers' PAN; by checking the same onlinethrough Form 26AS. The tax authorities consider this document as the sole proof of taxes paid by the tax payer. Once the return is filed, the tax department's system reconciles the details in the return with the amounts appearing in the taxpayer's Form 26AS.
3. In case of an individual assesse, four types of return are available for filing return of income. Careful selection of the correctform of return on the basis of type of income,is important.
4. Filing the return of income on or before due date to avoid penalty of Rs. 5,000/- under Sec 234F.

6.6 TAX PLANNING CONSIDERATIONS IN RESPECT OF SALARY INCOME

From our previous discussions on tax planning, we can say that tax planning in case of salaried employees is a systematic planning made by the employees to attract minimum liability to tax and or postponement of the tax liability for the subsequent period by availing of various deductions, exemptions, allowances, rebates and reliefs provided, in the context of existing tax laws.

The tax planning considerations in case of salary income may be looked into in the following manner:

- Tax on salaries can be reduced to minimum if the total salary is split into basic pay, different allowances (which are not taxable or which are partially exempt from tax) and perquisites.
- It should be ensured that, under the terms of employment, dearness allowance and dearness pay form part of basic salary. This will minimise tax incidence on house rent allowance, entertainment allowance, gratuity and commuted pension.
- A tax-payer should properly assess the incidence of tax and choose between going in for house rent allowance or rent free furnished or unfurnished accommodation. House rent allowance is exempt undersection 10 (13A) of the Income Tax Act within the limits prescribed byRule 2A of the Income Tax Rules, 1962.
- There are several employees' welfare schemes such as recognisedprovident fund, approved superannuation fund, gratuity fund etc.Payments received from such funds by the employees are totally exemptor exempt up to significant amounts.
- Employees should go in for free medical facilities instead of a fixedmedical allowance, since medical allowance is taxable.
- The concessions in respect of leave travel facility should be claimed to the maximum possible extentwithout attracting any incidence of tax.
- Employees should go in for free medical facilities instead of a fixed medical allowance, since medical allowance is taxable.
- In computing the total income of an assessee, certain deductions arepermissible under Chapter VIA of the Income Tax Act, from the gross totalincome. These deductions are available in the form of tax free investments and deductions in respect of certain expenditures incurred by the assessee towardsmedical treatment, higher education etc. for the relevant financial year. Theyinclude deductions under Section 80C to 80U of the Act. Section 80C coversdeductions on account of payments and or investments made in specifiedinvestment avenues. The tax-payer need to avail the deductions specified under Section 80C to 80U of the Income Tax Act to the maximum possible extent.

6.7 ASSESSMENT PROCEDURE

Assessment means to assess the income of the assessee i.e. to decide the income and tax liability of the assessee on the basis of return filed, information gathered or to the best of judgment of income tax department. The various types of assessment that are carried out under Income tax act will be discussed below.

i. Self-assessment u/s 140A

In case of self-assessment, the tax payer himself determines his taxable income and tax liability and pay tax accordingly. After assessment of tax liability, any amount paid under this section shall be deemed to have been paid towards such assessment. If a taxpayer fails to pay whole or any part of such tax or interest or both in accordance with the provisions of sec. 140A, he shall be deemed to be an assessee in default.

ii. Assessment by Income Tax Department

After submission of return or on non-submission of return by the assessee, assessment is made by the Income tax department. The Assessing Officer can assess the income of the assessee in any of the following manner:

a. Intimation u/s 143(1);

b. Scrutiny Assessment u/s 143(3);

c. Best Judgment Assessment u/s 144;

For making assessment, the Assessing Officer can make an inquiry u/s 142 of the Income Tax Act for the purpose of obtaining full information in respect of the income (or loss) of any person, as he considers necessary. However, the assessee must be given an opportunity of being heard in respect of any material gathered on the basis of any inquiry u/s 142(2) or any audit u/s 142(2A) and is proposed to be utilised for the purpose of the assessment.

a) Intimation u/s 143(1)

Where a return has been filed u/s 139 or in response to a notice u/s 142(1), such return shall be processed in the following manner, namely:-

a. the total income or loss shall be computed after making the following adjustment:
   i. any arithmetical error in the return;
   ii. an incorrect claim, if such incorrect claim is apparent from any information in the return;
   iii. disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished after the due date;
   iv. disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
   v. disallowance of deduction claimed u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE, if the return is furnished after the due date;
b. the tax, interest and fee, if any, shall be computed on the total income computed above;
c. the sum payable by (or the amount of refund due to), the assessee shall be determined after adjustment of the tax, interest and fee, if any, by any TDS, TCS, advance tax paid, any relief, tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee;
d. an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee; and
e. the amount of refund due to the assessee in pursuance of the determination shall be granted to the assessee.
f. An intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest or fee is payable by, or no refund is due to, him.

However, no intimation shall be sent after the expiry of 1 year from the end of the financial year in which the return is made. The period of limitation will run from the date of filing of latest revised return.

b) Scrutiny Assessment u/s 143(3)

Where a return has been furnished u/s 139 or in response to a notice u/s 142(1) and the Assessing Officer considers it necessary to ensure that

the assessee has not understated his income; or declared excessive loss; or under paid the tax, he can make a scrutiny in this regard and gather such information and evidence as he deems fit. And on the basis of such information and evidence so collected, he shall pass an assessment order. Such order shall be treated as regular assessment order. The Assessing Officer shall serve on the assessee a notice requiring the assessee, on a date specified in the notice, to produce, or cause to be produced, any evidence on which assessee may rely, in support of the return. However no notice shall be served on the assessee after the expiry of 6 months from the end of the financial year in which the return is furnished. After collecting such information and hearing such evidence as the assesseeproduces in response to the notice u/s 143(2) and after taking into account all relevant materials, which the Assessing Officer has gathered; The Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee and determine the sum payable by him or refund of any amount due to him on the basis of such assessment. The scrutiny assessment u/s 143(3) should be completed within 12 months from the end of the relevant assessment year.

c) Best Judgement Assessment u/s 144

Under this section, assessment shall be made by the Assessing Officer to the best of his judgment after considering all relevant materials which he has gathered. Assessing Officer cannot reduce the tax liability of the assessee by assessment under this section. Assessment under this section shall be made in the following situations -

i. If the person fails to file the return u/s 139(1), 139(4) or 139(5); or
ii. If the person fails to comply with the terms of notice u/s 142(1); or
iii. If the person fails to comply with the directions u/s 142(2A) requiring him to get his accounts audited; or
iv. If the person fails to comply with the terms of notice u/s 143(2), requiring his presence or production of evidence and documents.

The assessment u/s 144 can only be made after giving the assessee a reasonable opportunity of being heard. Such opportunity shall be given by serving a "Show cause notice" calling upon the assessee to show cause(s),

on a date and time specified in the notice, why the assessment should not be completed to the best of judgment of the Assessing Officer. However, such opportunity need not be given, where notice u/s 142(1) has already been issued.The time limit for completion of assessment is 12 months from the end of relevant assessment year.



CHECK YOUR PROGRESS

Q 3: Who can file an ITR 1?

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Q 4: What do you mean by Best Judgement Assessment u/s 144?

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6.8 LET US SUM UP

In this unit, we have discussed the following:

- Tax management refers to compliance with the income tax rules and regulations.
- Tax management covers matters relating topenalties, prosecution, appeal, tax revision or settlement of tax cases.
- The important areas of tax management are discussed below:
  1. Tax Deducted at Source
  2. Collection of tax at source
  3. Payment of advance tax
  4. Maintenance of Books of Accounts
  5. Audit of books of accounts
  6. Furnishing the return of income
  7. Documentation and maintenance of tax records
  8. Review of orders of Income Tax Department

- The concept of TDS was introduced with an aim to collect tax from the very source of income. As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government.
- Except the Salary Income, TDS has to be deducted at the rate specified in relevant Sections of the Income Tax Act, 1961.
- In respect of salary payment, the employer has to make an honest estimate of income under the head salary and deduct tax at the appropriate rate, on the income so estimated.
- The provisions of Income Tax Act, 1961 requires the tax payer to file a return of income in the prescribed form and within the prescribed time as specified in section 139 of the Act. Rule 12 provides various Form for filing return of income for different assessee.
- Assessment means to assess the income of the assessee i.e. to decide the income and tax liability of the assessee on the basis of return filed, information gathered or to the best of judgment of income tax department.
- The various types of assessment that are carried out under Income tax Act are:
  - i. Self-assessment u/s 140A;
  - ii. Intimation u/s 143(1);
  - iii. Scrutiny Assessment u/s 143(3);
  - iv. Best Judgment Assessment u/s 144;



6.9 FURTHER READING

1) Direct Tax Laws & International Taxation by T. N. Manoharan, Snow White Publications.

2) Direct Taxes Law & Practice -With Special Reference To Tax Planning (61st Edition A.Y. 2019-20) by Vinod K. Singhania & KapilSinghania

3) Income Tax Act, 1961, Bare Act.

4) Income Tax Act by Girish Ahuja & Ravi Gupta.

6.10 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Tax management refers to compliance with the income tax rules and regulations. Tax management covers matters relating topenalties, prosecution, appeal, tax revision or settlement of tax cases. The objectives of tax management are to ensure compliance with tax laws at the specified time and in the specified manner as also to ensure that the tax cost isminimized.

Ans to Q No 2: As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government. The deductee from whose income tax has been deducted at source would be entitled to get credit of the amount so deducted on the basis of Form 26AS or TDS certificate issued by the deductor.



Ans to Q No 3: An Individual having Income from Salaries, one house property (does not have any brought forward loss), other sources [Interest (does not have any loss under the head) etc. but except winnings from lottery or income from race horses] and having total income uptoRs. 50 lakhs; can fie his income tax return in ITR 1.

Ans to Q No 4: The assessment made u/s 144 by the Assessing Officer to the best of his judgment after considering all relevant materials which he has gathered, is known as Best Judgement Assessment. Assessment under this section shall be made in the following situations -

i. If the person fails to file the return u/s 139(1), 139(4) or 139(5); or

ii. If the person fails to comply with the terms of notice u/s 142(1); or

iii. If the person fails to comply with the directions u/s 142(2A) requiring him to get his accounts audited; or

iv. If the person fails to comply with the terms of notice u/s 143(2), requiring his presence or production of evidence and documents.



6.11 MODEL QUESTIONS

Q 1: Write briefly about tax management discussing its important areas.

Q 2: Discuss briefly about Tax Deducted at Source.

Q 3: Write a brief note on TDS on Salary Income.

Q 4: Discuss the various types of Forms for filing the return of Income by different types of assessee.

Q 5: Write a brief note on tax management regarding filing of return of income in case of an individual assesse.

Q 6: Discuss the various tax planning considerations in case of salary income.

Q 7: Explain the assessment procedure under the Income Tax Act.

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UNIT 7 : TAX ADMINISTRATION

UNIT STRUCTURE

7.1 Learning Objectives

7.2 Introduction

7.3 Income Tax Authorities

7.4 Appointment and Powers of Various Income Tax Authorities

7.5 Let Us Sum Up

7.6 Further Reading

7.7 Answers To Check Your Progress

7.8 Model Questions

7.1 LEARNING OBJECTIVES

After going through this unit, you will able to:

- explain the concept tax deducted at source
- explain the meaning of advance payment of tax
- describe the meaning of tax evasion and tax avoidance
- describe the powers and functions of income tax authorities.

7.2 INTRODUCTION

In earlier unit you have found that income tax laws are incorporated in the Income Tax Act 1961. Any enactment and amendments in it by the Parliament are to be implemented and administered by the executives through proper official machinery. Income tax laws are also administered through well structured machinery as defined in the Income Tax Act 1961 in the rules made under it. Tax is paid out of the income earned and it is natural human instinct to pay less tax. Again tax is essential for the Government as it is the major source of its income. Hence there is the need of efficient tax authorities to properly implement the provisions of the IT Act.

In this unit we shall summaries all these discussion under different heads in this Unit as ‘Tax deduction at source’, ‘Advance payment of tax’,

'Tax evasion', and 'Tax avoidance'. We shall then discuss about the income tax authorities and their power and functions.

7.3 INCOME TAX AUTHORITIES

Under Section 116 of the Income Tax Act, the following income-tax authorities have been constituted to discharge executive and administrative functions:

(i) The Central Board of Direct Taxes constituted under the Central Board of Revenue Act, 1963.

(ii) Directors General of Income Tax or Chief Commissioners of Income Tax.

(iii) Directors of Income Tax or Commissioners of Income Tax or Commissioners of Income Tax (appeals).

(iv) Additional Directors of Income Tax, Additional Commissioners of Income Tax or Additional Commissioners of Income Tax (Appeals).

(v) Joint Directors of Income Tax or Joint Commissioners of Income Tax.

(vi) Deputy Directors of Income Tax or Deputy Commissioners of Income Tax or Deputy Commissioners of Income Tax (Appeals).

(vii) Assistant Directors of Income Tax or Assistant Commissioners of Income Tax.

(viii) Income Tax Officers.

(ix) Tax Recovery Officers.

(x) Inspectors of Income Tax.

On the basis of the nature of duties and functions, the various authorities stated above can be classified into the following three categories:

1. Administrative authorities
2. Assessing Officers and
3. Appellate Authority.

1. The following are the Administrative authorities as per the Act:
   (a) Central Board of Direct Taxes;
   (b) Directors-General of Income Tax;
   (c) Chief Commissioner or Chief Commissioners of Income Tax;
   (d) Deputy Directors of Income Tax; or

(e) Deputy Commissioners of Income Tax

2. The following are the Assessing Officers as per the Act:
   (a) Assistant Commissioner;
   (b) Assistant Director,
   (c) Deputy Director;
   (d) Deputy Commissioner; or
   (e) Income Tax Officer.
3. The Appellate Authority as per the Act is:
   (a) Commissioner of Income Tax (Appeals)

7.4 APPOINTMENT AND POWERS OF VARIOUS INCOME TAX AUTHORITIES

Appointment of Tax Authorities:

The Central Government may appoint such persons as it thinks fit to be income tax authorities [Section 117]. However, the Central Government may authorise the Board, or any Director General, Chief Commissioner, Director or Commissioner to appoint income tax authorities below the rank of Assistant Commissioner/Deputy Commissioner. An income tax authority authorised by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions. All these appointments can be made subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts.

Powers of Tax Authorities:

The following are the powers of different Tax Authorities:

(a) The Central Board of Direct Taxes: It was constituted under the Central Board of Revenue Act, 1963. It works under the Ministry of Finance. It is the highest executive authority in the sphere of direct taxes. Main powers and functions assigned to this authority are as under:

   (i) To exercise Control over other Income Tax Authorities.
   (ii) To issue necessary orders, instruction and information to subordinate authorities as per the provisions contained in sections

2(17), 2(18), 11() (c), 35(3), 35D(3), 36(1) (iv), 44AA, 80RRA, 80U, 118, 119, 120, 124(2), 127, 132(1), 138, 139A(4), 197(2A), 200, 228A, 246, 273A(2), 279, 288, 293B and 295 of the Income Tax Act, 1961.

(b) Powers of Director General/Director: The Director General/Director appointed by the Central Government. They are required to perform such function as may be assigned by the Central Board of Direct taxes. The Director General/Director enjoys the following powers under different provisions of the Act:

(1) Enquiry and investigation into concealment;

(2) Search and Seizure;

(3) Requisition of books of account;

(4) Making survey;

(5) Making any enquiry;

(6) Giving instructions to the Income Tax Officers.

(c) Powers of Commissioners of Income-tax: The Commissioners of income tax are appointed by the Central Government. They are appointed to head the income tax administration of a specified area, generally a state or a region. As the head of the administration, a Commissioner of income tax enjoys both administrative as well as judicial powers. Following are the functions of Commissioners of income tax:

(i) to appoint of Income Tax Officers (Class II) and Inspectors of income tax;

(ii) to issue instruction to subordinate authorities;

(iii) to assign jurisdiction of Inspecting Assistant Commissioner and Income Tax Officers;

(iv) shifting of jurisdiction;

(v) to order the search and seizure;

(vi) to grant sanction for reopening assessment after the expiry of 4 years;

(vii) to authorise the Income Tax Officers to recover any arrear of tax due from an assessee;

(viii) to direct the Income Tax Officers to prefer appeal to the Appellate Tribunal against the Appellate Assistant Commissioner;

(ix) to order for revision of orders passed by the Income Tax Officer which is prejudicial to the revenue ;

(x) to award or withdraw recognition to provident fund;

(xi) to reduce or waive the penalty in some cases under the provisions of the Income Tax Act.

(d) Powers of Income Tax Officers: There are two types of Income Tax Officers – Class I and Class II. Income Tax Officers of Class I service are appointed by the Central Government. The Income Tax Officers of Class II service is appointed by the Commissioner of Income Tax. Powers and functions of Income Tax Officers are varied and many. The following are some of the powers and functions of Income Tax Officers:

(i) discovery and production of evidence;

(ii) power in respect of search and seizure ;

(iii) power to call for information;

(iv) power to make assessment;

(v) power to impose penalty ;

(vi) power to inspect registers of companies;

(vii) to allot permanent account number (PAN);

(viii) to re-assess escaped income ;

(ix) to grant approval for deduction of tax at source at lower rate;

(x) to demand advance payment of tax;

(xi) to grant refund etc.

(d) Powers of Inspectors of Income Tax: The Inspectors of Income Tax are appointed by the Commissioner of Income Tax. Inspectors of Income Tax have to perform such functions as are assigned to them by the Commissioner or any other authority, under which they are appointed to work.

The Inspectors of Income Tax are appointed by the Commissioner of Income Tax. They have to perform such functions as are assigned by the Commissioner and any other authority.



7.5 LET US SUM UP

In this unit, we have discussed the following:

- Tax deducted at source is one of the modes of collecting Income-tax from the assessees.
- The advance tax is payable on the current income minus the tax deductible at source or collectible out of any income included in the current income.
- Tax evasion means downright defrauding of revenue through illegal act and deliberate suppression through falsification of the facts relating to one's true tax liability.
- Tax avoidance is an art of dodging tax without breaking the law.
- The Central Government may appoint such persons as it thinks fit to be income tax authorities [Section 117].
- The Inspectors of Income Tax are appointed by the Commissioner of Income Tax.



7.6 FURTHER READING

1) B B Dam, S Sikidar, R Barman, B Bora: Direct and Indirect Taxes, Capital Publishing Company, G S Road, Guwahati.

2) V K Singhania, K Singhania, Taxmann.



7.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Advance tax or 'Pay as you earn scheme' is basically a device to ensure a steady flow of income to the government exchequer without having to wait for actual receipt of tax revenue on completion of the assessment.

Ans to Q No 2: (i) by non-submission of return, resulting either in escape from the assessment altogether or in making of an inadequate assessment of income,

(ii) by submitting fraudulent returns,

(iii) by deliberately maintaining inaccurate books of accounts

7.8 MODEL QUESTIONS

Q 1: What do you mean by Tax Avoidance?

Q 2: Explain the term Tax Evasion?

Q 3: What are the causes of Tax Avoidance?

Q 4: What are the causes of Tax Evasion?

Q 5: Give two examples of tax evasion.

Q 6: State the names of any four Income Tax Authorities.

Q 7: Who is an Assessing officer?

Q 8: Mention the powers of Central Board of Direct Taxes.

Q 9: State the powers of Inspectors of Income Tax.

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UNIT 8 : INTRODUCTION TO INDIRECT TAXATION

UNIT STRUCTURE

8.1 Learning Objectives

8.2 Introduction

8.3 Concept of Indirect Taxes

8.4 Features of Indirect Taxes

8.5 Constitutional Provisions regarding taxation-Pre GST

8.6 Constitutional Background-Post GST

8.7 Features of GST

8.8 Advantages of GST

8.9 Let Us Sum Up

8.10 Further Reading

8.11 Answers To Check Your Progress

8.12 Model Questions

8.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- discuss the concept of indirect taxes
- discuss the features and advantages of indirect taxes
- discuss the various Constitutional Provisions regarding Pre GST taxation
- discuss the Constitutional Background regarding Post GST taxation.

8.2 INTRODUCTION

In the preceding units of this course, we discussed in detail about the direct taxes. Now we shall discuss in detail about the indirect taxes applicable in India. We have already understood that taxes are the major sources of revenue for the Government. As per the data provided by the Ministry of Finance, GOI, the budget estimates of gross tax revenue for the year 2018-19 is Rs. 22,71,241 crores. Approximately 49% of the total tax revenues are collected from indirect taxes. Goods and Service Tax (GST)

and Custom Duty are the major indirect taxes applicable in India. GST has been implemented in India since July 2017. France was the first country to implement GST in the year 1954. In the last 63 years, more than 160 countries across the world have adopted GST. We shall discuss in details about both GST and Customs Duty in the succeeding units.

In this unit, we shall discuss about concept of indirect taxes, features of indirect taxes, constitutional background, an overview of indirect taxes in India, genesis of GST in India etc.

8.3 CONCEPT OF INDIRECT TAXES

The taxes that we pay on goods and services consumed by us, basically constitute the Indirect Taxes. They are called indirect taxes because the burden of such tax is passed on from one person to another unlike direct taxes which are supposed to be borne by the persons on whom these taxes are levied. In indirect taxes, immediate burden is on one person and ultimate burden is on some other person i.e., the person who ultimately consumes. Indirect taxes are also called consumption taxes. They are regressive in nature because they are not based on the principle of ability to pay.

Indirect taxes are levied on consumption, expenditure, privilege, or right but not on income or property. A number of indirect taxes were levied in India, namely, excise duty, customs duty, service tax, central sales tax (CST), value added tax (VAT), entry tax, purchase tax, entertainment tax, tax on lottery, betting and gambling, luxury tax, tax on advertisements, etc.

However, indirect taxation in India has witnessed a paradigm shift on July 01, 2017 with the introduction of a unified indirect tax regime wherein a large number of Central and State indirect taxes have been amalgamated into a single tax – Goods and Services Tax (GST). The introduction of GST is a very significant step in the field of indirect tax reforms in India. Goods and Service Tax (GST) and Customs Duty are the two primary types of Indirect Taxes.

8.4 FEATURES OF INDIRECT TAXES

The following are the important features of Indirect Taxes

1. **Taxable Event**: The indirect taxes are levied on commodities at the time of manufacture or purchase or sale or import/export thereof of and provision of services.
2. **Regressive in nature**: The indirect taxes do not depend on paying capacity as tax payable on commodity is same whether it is purchased by a poor man or rich person.
3. **Shifting of Tax Burden**: In case of indirect taxes, the tax burden is shifted by the supplier to the buyer or recipient of goods or services.
4. **Less psychological resistance**: Since the price of commodity or service is already inclusive of indirect taxes, the customer i.e. the ultimate tax payer does not feel a direct pinch while paying indirect taxes and hence, resistance to indirect taxes is much less compared to resistance to direct taxes.
5. **Inflationary**: The indirect tax on goods and services increases its price. This leads to inflationary trend.
6. **Promotes social welfare**: Products like alcohol, tobacco, etc. which are harmful to health are taxed at higher rate. This practice not only discourages consumption of such goods but also increases the revenue of the State.
7. **Source of Revenue**: Indirect Taxes contribute as a major source of revenue for the Government. In India, the contribution of indirect taxes to total tax revenue is more than 50%.



CHECK YOUR PROGRESS

Q 1: Define Indirect Taxes.

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Q 2: Mention two features of Indirect Taxes.

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8.5 CONSTITUTIONAL PROVISIONS REGARDING TAXATION-PRE GST

The power to levy and collect taxes should be granted by the constitution of India. Without the constitutional powers, nobody can levy and collect taxes. The significant provisions of the constitution regarding taxation prior to June 2017 were as follows:

Article 265: No tax shall be levied or collected except by authority of law. The term "authority of law" means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.

Article 246: It gives the respective authority to Union and State Governments for levying tax. Where, Parliament may make laws for the whole of India or any part of the territory of India, the State Legislature may make laws for whole or part of the State.

Seventh Schedule (to Article 246): The Seventh Schedule contains three lists which enumerate the matters under which the Union and the State Governments have the authority to make laws.

(*a*) List I (Union List): The **Central Government** has the exclusive right to make laws in respect of any matter covered in this list. Parliament makes law in this regard. Some of the items in List I are defence of India, naval, military and air forces, atomic energy and mineral resources, central bureau of intelligence and investigation, railways, highways, currency, RBI, post office saving bank, taxes on income other than agricultural income, duties of customs, corporation tax, etc.

(*b*) List II (State List): It contains the matters in respect of which the State Government has the exclusive right to make laws. These matters include public order, police, local government, public health and sanitation, hospital, burials and burial grounds, cremation ground, libraries, water, fisheries, betting and gambling, etc.

(*c*) List III (Concurrent List): It contains the matters in respect of which both Central & State Governments have powers to make laws. This list includes criminal laws, criminal procedure, marriage and divorce,

contracts including partnership, agency, bankruptcy and insolvency, trust and trustees, trade unions, industrial and labour disputes, etc.

From the above discussion, we can figure out some of the major taxes under Union and State lists:-

Union List

- Taxes on Income other than Agricultural Income
- Customs including export duties
- Excise on Tobacco and other goods manufactured in India except alcoholic liquors for human consumption, opium, narcotic drugs
- Corporation Tax
- Taxes on interstate trade of goods other than newspapers
- Taxes on interstate consignment of goods
- Any other matter not included in List II or III

State List

- Taxes on agricultural income
- Excise duty on alcoholic liquors, opium and narcotics
- Octroi or Entry Tax
- Tax on intra state trade of goods other than newspapers
- Tax on advertisements other than that in newspapers
- Tax on goods and passengers carried by road or inland waterways
- Tax on professionals, trades, callings and employment

8.6 CONSTITUTIONAL BACKGROUND-POST GST

GST was introduced by the Constitution (122nd Amendment) Bill, 2014 after it received the assent of the President of India on 8th September, 2016 and became Constitution (101st Amendment) Act, 2016.

It was enacted with following significant amendments:

(a) Concurrent powers on Parliament and State Legislatures to make laws governing goods and services. It means there will be dual control of State and Central authorities for all assessees.

(b) As per Article 246A, the power to levy GST has been given to the Parliament as well as to Legislature of every State.

a. CGST – enacted by Central Government of India.

b. IGST – enacted by Central Government of India.

c. SGST – enacted by respective State Governments

d. UTGST – enacted by Central Government of India

(c) IGST will be apportioned between Centre and the States in the manner provided by Parliament by Law as per the recommendation of the GST Council.

(d) GST will be levied on all supply of goods and services except alcoholic liquor for human consumption.

(e) The explanation to Article 269A of Constitution of India provides that the import of goods or services will be deemed as supply of goods or services or both in the course of inter-State trade or commerce. In case of import of goods IGST will be levied along with the Basic Customs duty. It means IGST is levied in replacement of CVD + Spl. CVD. In case of import of services only IGST will be levied.

(f) Principles for determining the place of supply and when a supply takes place in the course of inter-state trade or commerce shall be decided by the Parliament.

(g) The power to levy Central Excise duty on goods manufactured or produced in India is available in respect of the following products:

a. Petroleum crude;

b. High speed diesel;

c. Motor spirit (commonly known as petrol);

d. Natural gas;

e. Aviation turbine fuel; and

f. Tobacco and tobacco products.

However, once GST is imposed there will be no duty on manufacture of these goods.

(h) The power to impose tax on sale of the following products is still provided to the State Governments:

a. Petroleum crude;

b. High speed diesel;

c. Motor spirit (commonly known as petrol);

d. Natural gas;

e. Aviation turbine fuel; and

f. Alcoholic liquor for human consumption.

GST covers all the goods except alcoholic liquor for human consumption. The Excise duty and Sales tax on Alcoholic liquor for human consumption will continue to be collected by the State Governments. Accordingly, the following bills became an Act on 12th April 2017:

- Central Goods and Services Tax Bill, 2017
- Integrated Goods and Services Tax Bill, 2017
- Union Territory Goods and Services Tax Bill, 2017
- Goods and Services Tax (Compensation to States) Bill, 2017

The Goods and Services Tax (GST) has been implemented in India w.e.f. 1st July, 2017. GST is the most historic indirect tax reform in India since Independence, which aims at creating a single, unified Indian market throughout the Nation. It is a comprehensive destination based indirect tax levy on goods as well as services at the national level. Its main objective is to consolidate multiple indirect tax levies into a single tax thus subsuming number of tax levies, overcoming the limitations of previous indirect tax structure, and creating efficiencies in tax administration and converted the nation into one market.

GST is a consumption based tax which is levied on the basis of "Destination principle." The concept relates to taxing the supply of goods or services at the point of consumption. It is a comprehensive tax regime covering both goods and services, and is collected on value-added at each stage of the supply chain. Further, GST paid on the procurement of goods and services can be set off against that payable on the supply of goods or services. The essence of GST is in removing the cascading effects i.e., tax on tax of both Central and State taxes by allowing setting-off of taxes throughout the value chain, right from the original producer and service provider's point up to the consumer level.

In the earlier indirect tax era, there were many indirect taxes levied by both state and center. Excise duty was leviable by Centre on the goods manufactured in India and Service Tax on services provided in India. States were collecting Value Added Tax (VAT) on sale of goods. Every state had a

separate set of act & rules. Central Sales Tax (CST) was applicable on interstate sale of goods and was taxed by Centre and collected by State. Apart from these, there were numerous indirect taxes that were levied by state and centre. GST consolidated multiple indirect tax levies into a single tax thus subsuming an array of tax levies. However, Basic Customs Duty continues to be levied on imports.

8.7 FEATURES OF GST

(i) GST is applicable on "supply" of goods or services as against the previous concept of separate tax on the manufacture of goods or on sale of goods or on provision of services.

(ii) GST is based on the principle of destination based consumption taxation as against the previous principle of origin-based taxation.

(iii) The GST implemented in India is a dual GST with the Centre and the States simultaneoulsy levying it one a common base. The GST levied by the Centre is called Central GST (central tax - CGST) and that levied by the States [including Union territories with legislature] are called State GST (state tax - SGST). Union territories without legislature levy Union territory GST (union territory tax - UTGST).

(iv) An Integrated GST (integrated tax - IGST) is 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.

(v) Import of goods are treated as inter-State supplies and shall be subject to IGST in addition to the applicable customs duties.

(vi) CGST, SGST/UTGST & IGST are levied at rates to be mutually agreed upon by the Centre and the States under the aegis of the GST Council.

(viii) GST has replaced the following taxes levied and collected by the Centre :

(a) Central Excise Duty;

(b) Duties of Excise (Medicinal and Toilet Preparations);

(c) Additional Duties of Excise (Goods of Special Importance);

(d) Additional Duties of Excise (Textiles and Textile Products);

(e) Additional Duties of Customs (commonly known as CVD);

(f) Special Additional Duty of Customs (SAD);

(g) Service Tax;

(h) Cesses and surcharges in so far as they relate to supply of goods or services.

(ix) State taxes that have been subsumed within the GST are:

(i) State VAT;

(ii) Central Sales Tax;

(iii) Purchase Tax;

(iv) Luxury Tax;

(v) Entry Tax (All forms);

(vi) Entertainment Tax (except those levied by the local bodies);

(vii) Taxes on advertisements;

(viii) Taxes on lotteries, betting and gambling;

(ix) State cesses and surcharges insofar as they relate to supply of goods or services.

(x) GST applies to all goods and services except Alcohol for human consumption.

8.8 ADVANTAGES OF GST

One of the most important advantages of GST is that it removes cascading on taxes. GST has offered various advantages over the previous indirect taxation system. It has resulted benefits to all the stakeholders of industry, Government and the consumers. It is expected to lower the cost of goods and services, and thereby boost the economy and make the products and services competitive in the global markets.

Advantages offered by GST are as follows:

A. To Citizens:

(i) Simpler tax system (one tax rate throughout the country)

(ii) Reduction in prices of goods and services due to elimination of cascading effect (i.e. no tax on tax)

(iii) Uniform prices throughout the country

(iv) Transparency in taxation system

(v) Increase in employment opportunities (because of implementation of GST business need more persons to handle their accounting work and other paper work as GST make provision for monthly and quarterly return filing

B. To Trade/Industry:

(i) Reduction in multiplicity of taxes: (around 17 taxes at central level as well as state level have been abolished and one tax- GST has been introduced. This has really given benefit to the businesses).

(ii) Mitigation of cascading/double taxation

(iii) More efficient neutralization of taxes especially for exports

(iv) Development of common national market

(v) Simpler tax regime-fewer rates and exemptions

C. Central/State Governments:

(i) A unified common national market to boost Foreign Investment and "Make in India" campaign

(ii) Boost to export/manufacturing activity, generation of more employment, leading to reduced poverty and increased GDP growth

(iii) Improving the overall investment climate in the country which will benefit the development of states

(iv) Uniform SGST and IGST rates to reduce the incentive for tax evasion

(v) Reduction in compliance costs as no requirement of multiple record keeping



CHECK YOUR PROGRESS

Q 3: Mention two advantages of GST to the final consumer.

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Q 4: Mention the item not covered under the GST Act.

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8.9 LET US SUM UP

In this unit, we have discussed the following:

- About the indirect taxes, its meaning and features
- The Constitutional Provisions regarding indirect taxation prior to GST
- The Constitutional Background for introducing the GST Act.
- The taxes that we pay on goods and services consumed by us, basically constitute the Indirect Taxes. They are called indirect taxes because the burden of such tax is passed on from one person to another unlike direct taxes which are supposed to be borne by the persons on whom these taxes are levied.
- Indirect taxes are also called consumption taxes. They are regressive in nature because they are not based on the principle of ability to pay.
- A number of indirect taxes were levied in India, namely, excise duty, customs duty, service tax, central sales tax (CST), value added tax (VAT), entry tax, purchase tax, entertainment tax, tax on lottery, betting and gambling, luxury tax, tax on advertisements, etc.



8.10 FURTHER READING

1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.
2) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.
3) GST: A Transformational Tax Reform by V. S. Krishnan.
4) Goods and Services Tax (GST) in India by B. Viswanathan.

8.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: The taxes that we pay on goods and services consumed by us, basically constitute the Indirect Taxes. They are called indirect taxes because the burden of such tax is passed on from one person to another unlike direct taxes which are supposed to be borne by the persons on whom these taxes are levied.

Ans to Q No 2: 1) Taxable Event: The indirect taxes are levied on commodities at the time of manufacture or purchase or sale or import/ export thereof of and provision of services.

2) Regressive in nature: The indirect taxes do not depend on paying capacity as tax payable on commodity is same whether it is purchased by a poor man or rich person.

Ans to Q No 3: (i) Reduction in prices of goods and services due to elimination of cascading effect (i.e. no tax on tax)

(ii) Uniform prices throughout the country

Ans to Q No 4: GST covers all the goods except alcoholic liquor for human consumption.



8.12 MODEL QUESTIONS

Q 1: Discuss the meaning and concept of Indirect Taxes.

Q 2: Explain the features of Indirect Taxes.

Q 3: Discuss the Constitutional Provisions regarding indirect taxation prior to introduction of GST Act.

Q 4: Discuss Constitutional Background post GST implementation in India.

Q 5: Discuss the various features of GST.

Q 6: Discuss the advantages of GST.

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UNIT 9 : PRE-GST INDIRECT TAXES

UNIT STRUCTURE

9.1 Learning Objectives

9.2 Introduction

9.3 History of Indirect Taxes in India

9.4 Value Added Tax (VAT)

9.5 Central Sales Tax (CST)

9.6 Service Tax

9.7 Excise Duty

9.8 Custom Duty

9.9 Let Us Sum Up

9.10 Further Reading

9.11 Answer to Check Your Progress

9.12 Model Questions

9.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- explain the history of Indirect Taxation in India
- discuss the various pre-GST taxes levied in India.

9.2 INTRODUCTION

Prior to the GST Act, various indirect taxes were in existence in India. The various major indirect taxes that were applicable in India were VAT, Service Tax, Excise Duty and Custom Duty. Both Central Government and State Governments distributed the power to levy those taxes separately.Excise duty was levied by Centre on the goods manufactured in India and Service Tax on services provided in India. States were collecting Value Added Tax (VAT) on sale of goods. Every state had a separate set of act & rules. Central Sales Tax (CST) was applicable on interstate sale of goods and was taxed by Centre and collected by State. Apart from these, there were numerous indirect taxes that were levied by state and centre.

GST consolidated multiple indirect tax levies into a single tax thus subsuming an array of tax levies. After the implementation of the GST Act, the pre-GST taxes were subsumed in GST. However, Basic Customs Duty continues to be levied on imports. In this unit, we shall discuss the major indirect taxes that were applicable prior to the implementation of the GST Act.

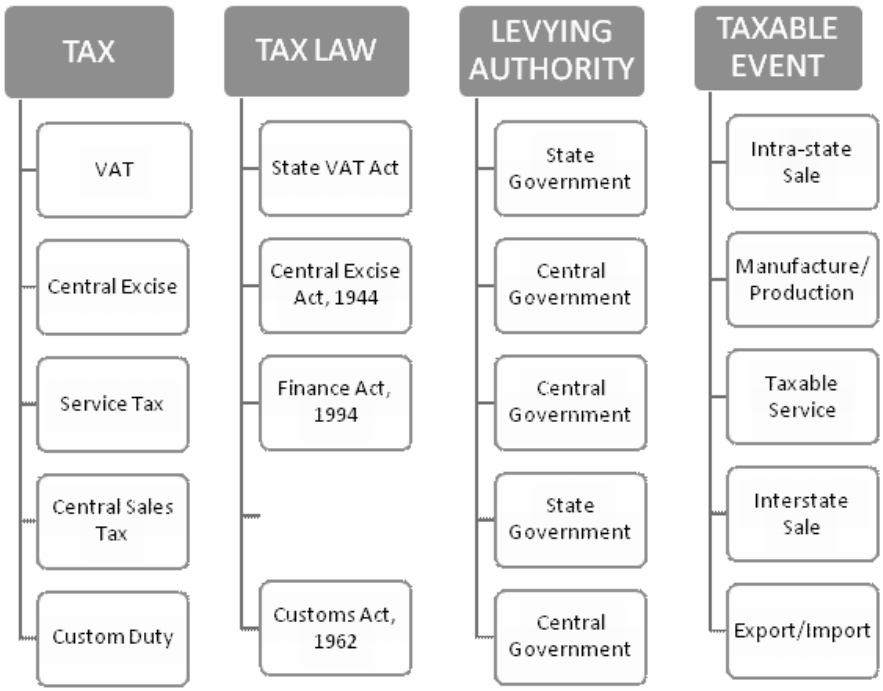
9.3 HISTORY OF INDIRECT TAXES IN INDIA

The practice of taxation has been very old in India as instances of tax administration during Mauryan Rule has been reported by Kautilya in "Arthasashtra". At that time, taxes were collected in kind. Kautilya had enumerated that kings could collect taxes on the manufacture of textiles, alcoholic drink and textiles.

The genesis of pre-GST indirect tax administration in India could be identified in the excise duty, which was introduced by the British in India. During the early period of 20th Centrury, the British Rule in India imposed Excise Duty on salt, sugar, Motor Spirit etc. With the passage of time, excise duty were levied on more and more items and in 1944, the Central Excise Act was formulated. Even after the independence, the Excise Act was not abolished as it was identified as a source of revenue for the government for the development of the society.

Prior to GST, the structure of Indirect Taxes in India was based on the Seventh Schedule of the Constitution of India. This Seventh Schedule has three lists i.e. Union list, in which the Central Government is empowered to make laws, State list, in which the concerned State Governments only can make laws and Concurrent list, in which the Central as well as State Governments can make the laws.

A diagrammatic representation of the pre-GST taxes applicable in India has been shown below:



Regarding the VAT and Sales Tax, each State was having its own tax laws on sale/purchase of goods. While the Central Government was collecting excise duty at the manufacturing stage on goodsexcept for on alcohol for human consumption, narcotics and narcotic drugs, etc. on which state excise was being imposed. Even after the implementation of GST, states continue to levy tax of state excise duty and sales tax on liquors. States have exclusive powers to collect tax on both intra state and interstate sales. Service tax was levied and collected by Union Government exclusively. There were plenty of taxes collected by State governments on various subjects like luxury tax, purchase tax, entry tax and so on.

Till 1987, Central Excise was collected on the gross value which resulted in cascading effect. MODVAT scheme was introduced to reduce cascading effect. MODVAT Scheme was replaced by CENVAT Credit scheme was extended to service tax later on. Further, Centre was able to convince the states to introduce VAT on local sales.

The process continued from 2003 to 2008 by which all the states in India became VAT states. In 2003, Haryana was the only state to introduce VAT. In 2005, majority of the states introduced VAT, the rest followed in the later years.

After the enactment of the GST Act, 2017, which came into force with effect from 1st of July 2017, there is uniformity in collection of tax throughout the country.Before GST, there were number of indirect taxes (at centre and state level) being levied on goods and services. Because of this there were multiplicities of taxes being levied on same goods or services. Further rate of taxes were different in different states on the same goods. Further same goods were bearing taxes from the side of centre and state. As the taxes were being levied by different governments, the businesses were not allowed to take the benefit of taxes (paid at the time of purchase) against their tax liability.

Thus, in the pre GST regime, the chain of Input Tax Credit (ITC) was not seamless. That is from manufacturing to ultimate sale there were stages when credit of earlier tax paid was not available and as a result there was instances when tax being levied on taxes (known as cascading effect). So there was need to carry out some reform in this area of ITC and this problem has paved way to GST.

9.4 VALUE ADDED TAX (VAT)

Value Added Tax (VAT) was a tax on the value added to a commodity or service at each stage of production and distribution process or chain. The Indirect Taxation Enquiry Committee defined Value Added Tax as "Value Added Tax in comprehensive form is a tax on all goods and services (except export and Government services), its special characteristics being that it falls on the value added at each stage from the stage of production to retail stage."

According to Section 2(56) of the Assam Value Added Tax Act 2003, "Value Added Tax means a tax on sale of any goods at every point in the series of sales made by the registered dealer with the provisions of credit of input tax paid at the points of previous purchases thereof."

Value Added Tax could be understood as "the value that a producer (whether a manufacturer, distributor or advertising agent) adds to his raw materials or purchases before selling the new or improved product or service. VAT in simple terms could be defined "as a tax on the value addition at

different stages of manufacturing and distribution of goods and services".

It was a multi-point sales tax (exports being zero rated) which was levied on every sale with the facility of set off tax paid on purchases. It was levied only on the incremental value added at each stage unlike the turnover tax which was levied on the gross turnover of the dealer.

VAT was an indirect tax on consumption. The final and total burden of the tax was fully borne by the domestic consumer. VAT replaced the local state sales tax including additional taxes.

There were three types of VAT. They were: (i) Production Type VAT, (ii) Income Type VAT and (iii) Consumption Type VAT.

These are discussed below:

(i) Production Type VAT: While calculating the value added by a firm, the value of capital goods e.g. machinery, building etc. is not deducted from the sales of the firm. Moreover, no depreciation is deducted. Only the value of non capital purchases is deducted. In short, Input tax credit is not available on tax paid on capital goods. Therefore,

Production Type VAT = Gross receipts - Cost of intermediate goods

(ii) Income Type VAT: While calculating the value added by a firm, this system allows the deduction of full value of non capital goods and the amount of depreciation of capital goods occurred during the year. For tax paid on capital goods, credit will be spread to the life of capital assets. Therefore,

Income Type VAT =Gross receipts - Cost of intermediate goods - Depreciation

(iii) Consumption Type VAT: While calculating the value added by a firm under this system, the firm is allowed to deduct the full value of capital goods along with non capital inputs. For tax paid on capital goods, full credit is given in the year of purchase.It allowsno adjustment for depreciation, if did so, it would be deducting the price of the capital goods twice.The base for taxation is restricted to the value of production of consumer goods only. Therefore,

Consumption Type VAT = Gross receipts - Cost of intermediate goods - Cost of capital goods.



CHECK YOUR PROGRESS

Q 1: Define VAT.

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Q 2: Mention two pre-GST taxes applicable in India.

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9.5 CENTRAL SALES TAX (CST)

Central sales tax (CST) was a tax on sales of goods levied by the Central Government of India. It extended to the whole of India. The Central Sales Tax was levied under this act by the Central Government but, it was collected by that state government from where the goods were sold. The tax thus collected was given to the same state government which collected the tax. In case of Union Territories the tax collected was deposited in the consolidated fund of India. Every dealer who made an inter-state sale must be a registered dealer and a certificate of registration had to be displayed at all places of his business. There was no exemption limit of turnover for the levy of central sales tax.

CST was applicable only in the case of inter-state sales and not on sales made within the state or import/export of sales. The inter-state nature of transaction was to be determined as defined in Section 3(a)/(b). If sale/ purchase occasions movement of goods from one State to another State, it was an interstate sale. Thus, consignments to agents or transfer of goods to branch or other offices were not a sale. A sale, effected by transfer of documents of title to goods when goods were in inter-state movement, was also an inter-state sale. Under this act, the goods were classified as:

- Declared goods or goods of special importance in inter-state trade or commerce and
- Other goods.

The rates of tax on declared goods were lower as compared to the rate of tax on goods in the second category. However, goods that were sold

within a state, but while travelling through another state was not considered as inter-state sales.

The rules regarding submission of returns, payment of tax, appeals etc. were not given in the Act. For this purpose, the rules followed by a state in respect of its own sales tax law shall be followed for purpose of this Act also. Even though the central sales tax had been framed by the central government but, the state governments were allowed to frame such rules, subject to such notification and alteration as it deem fit.

9.6 SERVICE TAX

The Service tax was introduced during the financial year 1994-95 on the recommendation of Dr. Raja Chelliah Committee on tax reforms. There was no separate Act for Service Tax. The provisions of service tax were contained in Chapter V of the Finance Act, 1994. The power to change service tax vested with the Central Government. Initially it was imposed at a uniform rate of 5% on 3 services. However under the Finance Act, 2012 the concept of Positive list of Taxable services was replaced with a negative list. As such, all services except as notified in Negative list or exemption list were subject to applicability of service tax.

Service tax was administered by the Central Board of Excise and Customs (CBEC) which was under the control of the Department of Revenue, Ministry of Finance. CBEC administered the service tax through the Central Excise Department. A separate cell called the service tax cell, under each Commissionrates of central excise were created for the purpose.

Service Tax was introduced in India to generate a considerable amount of revenue from the booming service sector which was previously not within the purview of tax administration. Service Tax was levied at the rate of twelve percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Service Tax was destination based consumption tax in the sense that it was applicable on commercial activities and was not a charge on the

business but on the consumer and would be leviable only on services provided within the country. The liability to pay service tax arised upon issuance of invoice or receipt of paymentorcompletion of the provision of service whichever was earlier.

9.7 EXCISE DUTY

The Central Excise Act, 1944 (which prior to 1996, had been known as the Central Excises and Salt Act 1944) was the main law relating to duties of Excise on goods manufactured or produced in India and on Salt. This Act had replaced not less than 10 separate Excise Acts and 11 sets of statutory rules besides 5 Acts relating to Salt. Thus the Central Excise Act, 1944 was a comprehensive Excise duty enactment administered by the Union Government.

The power to levy Central Excise duty was derived from Constitution. The Indian Parliament has exclusive powers to make laws with respect to any of matters enumerated in List I in the Seventh Schedule to Constitution. (Called 'Union List'). Entry No. 84 of list I of Seventh Schedule to the Constitution reads as follows : "Duties of excise on tobacco and other goods manufactured or produced in India, except alcoholic liquors for human consumption, opium, narcotics, but including medical and toilet preparations containing alcohol, opium or narcotics. "The Products under List II (State List) or List III (Concurrent List) of the VII Schedule of the Constitution of India were not covered by Central Excise. The products like opium, narcotic drugs, and alcoholic liquors for human consumption were outside the scope of Central Excise. The medicinal and toilet items which contain alcohol were also covered by central excise and subject to duty of excise.

The Central Excise duty liability arose when there was manufacture of goods which were moveable, marketable, and found a mention in the First or Second Schedule to the Central Excise Tariff Act 1985.

The levy of central excise was applicable on the manufacture of goods. Though the taxable event of manufacture happened at a particular point of time, the levy and collection was postponed to removal of goods

from the place of manufacture/factory for administrative convenience and practical compliance.

9.8 CUSTOMS DUTY

Customs Duty is an indirect tax, imposed under the Customs Act formulated in 1962. The Customs Act, 1962 is the basic statute which governs entry or exit of different categories of vessels, aircrafts, goods, passengers etc., into or outside the country. The Act extends to whole of India.

The Customs Act, 1962, not only regulates the levy and collection of duties, but also, serves equally importantpurposes, like :

i) Regulation of Imports & Exports

ii) Protection of Domestic Industry

iii) Prevention of smuggling

iv) Conservation and augmentation of foreign exchange

Section 12 of the Customs Act, 1962 that provides duties of customs to be levied at such rates as may be specified under the Customs Tariff Act, 1975 or other applicable Acts on goods imported into or exported from India.

Goods become liable for customs duty when they are Imported into India or Exported out of India. Duty is levied at the stage where the declaration of such liability is made and the persons / properties in respect of the goods is identified. If the Central Government is satisfied that it is necessary in the public interest to do so, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (pre-clearance) as may be specified in such notification, goods of the specified description, from the whole or any part of the customs duty leviable thereon. An exemption notification cannot be withdrawn and duty cannot be demanded with retrospective method.



CHECK YOUR PROGRESS

Q 3: Which committee recommended the introduction of Service Tax in India?

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Q 4: What do you mean by Customs Duty?

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9.9 LET US SUM UP

In this unit, we have discussed the following:

- The various major indirect taxes that were applicable in India prior to GST were VAT, Service Tax, Excise Duty and Custom Duty.
- Prior to GST, the structure of Indirect Taxes in India was based on the Seventh Schedule of the Constitution of India.
- The Seventh Schedule has three lists i.e. Union list, in which the Central Government is empowered to make laws, State list, in which the concerned State Governments only can make laws and Concurrent list, in which the Central as well as State Governments can make the laws.
- In pre GST regime, the chain of Input Tax Credit (ITC) was not seamless.
- Value Added Tax (VAT) was a tax on the value added to a commodity or service at each stage of production and distribution process or chain.
- VAT was an indirect tax on consumption. The final and total burden of the tax was fully borne by the domestic consumer. VAT replaced the local state sales tax including additional taxes.
- There were three types of VAT. They were: (i) Production Type VAT, (ii) Income Type VAT and (iii) Consumption Type VAT.

- The Service tax was introduced during the financial year 1994-95 on the recommendation of Dr. Raja Chelliah Committee on tax reforms.
- There was no separate Act for levy and collection of Service Tax in India.
- Service tax was administered by the Central Board of Excise and Customs (CBEC) which was under the control of the Department of Revenue, Ministry of Finance.
- The Central Excise Act, 1944 (which prior to 1996, had been known as the Central Excises and Salt Act 1944) was the main law relating to duties of Excise on goods manufactured or produced in India and on Salt.
- The Central Excise duty liability arose when there was manufacture of goods which were moveable, marketable, and found a mention in the First or Second Schedule to the Central Excise Tariff Act 1985.
- Customs Duty is an indirect tax, imposed under the Customs Act formulated in 1962.
- Section 12 of the Customs Act, 1962 that provides duties of customs to be levied at such rates as may be specified under the Customs Tariff Act, 1975 or other applicable Acts on goods imported into or exported from India.
- Goods become liable for customs duty when they are Imported into India or Exported out of India.



9.10 FURTHER READING

1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.
2) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.
3) GST: A Transformational Tax Reform by V. S. Krishnan.
4) Goods and Services Tax (GST) in India by B. Viswanathan.

9.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: According to Section 2(56) of the Assam Value Added Tax Act 2003, "Value Added Tax means a tax on sale of any goods at every point in the series of sales made by the registered dealer with the provisions of credit of input tax paid at the points of previous purchases thereof."

Ans to Q No 2: VAT and Service Tax.

Ans to Q No 3: Dr. Raja Chelliah Committee

Ans to Q No 4: Customs Duty is an indirect tax, imposed under the Customs Act formulated in 1962.Section 12 of the Customs Act, 1962 that provides duties of customs to be levied at such rates as may be specified under the Customs Tariff Act, 1975 or other applicable Acts on goods imported into or exported from India.Goods become liable for customs duty when they are Imported into India or Exported out of India.

9.12 MODEL QUESTIONS

Q 1: Write a brief history of indirect taxes in India.

Q 2: Define VAT. Write a brief note on VAT.

Q 3: Discuss briefly the Central Sales Tax.

Q 4: Explain the Excise Duty in detail.

Q 5: Write a brief note on Service Tax.

Q 6: Discuss briefly the Customs Duty.

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UNIT 10 : STRUCTURE OF GST IN INDIA

UNIT STRUCTURE

10.1 Learning Objectives

10.2 Introduction

10.3 History of GST in India

10.4 GST Council

10.5 Dual GST Model

- 10.5.1 CGST
- 10.5.2 SGST
- 10.5.3 UTGST
- 10.5.4 IGST

10.6 GST Network

10.7 Let Us Sum Up

10.8 Further Reading

10.9 Answers to Check Your Progress

10.10 Model Questions

10.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- describe the history of GST in India
- explain about the GST Council
- explain the Dual GST Model implemented in India
- explain about the GST Network.

10.2 INTRODUCTION

In our previous Unit, we have discussed about the various taxes that were applicable before the implementation of GST. The pre-GST taxes have been merged together into a single taxation system.In this chapter, we shall discuss the brief history of GST in India, major taxes that have been abolished and also those which have not been abolished after the advent of GST. We shall also have a discussion on the model of GST

adopted in India. Further, we shall have a brief discussion about GST Council and GSTN.

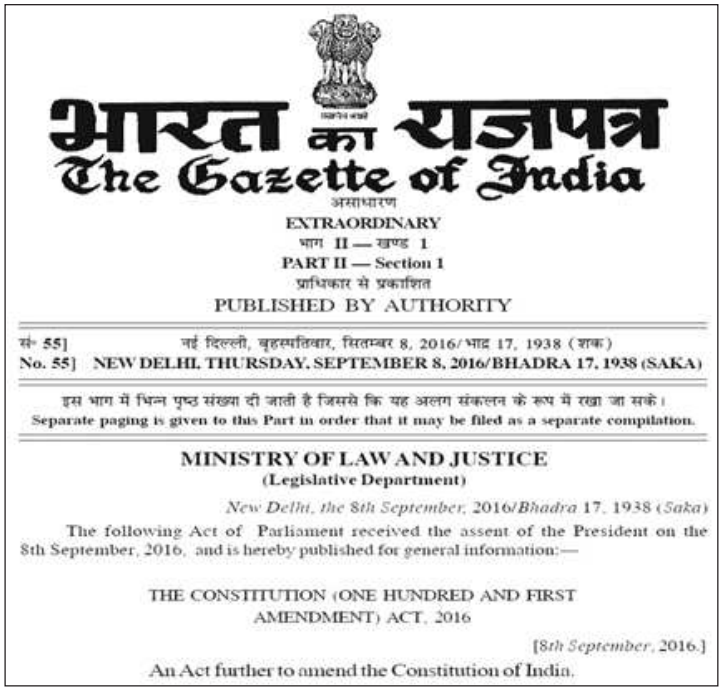
10.3 HISTORY OF GST IN INDIA

France was the first country to implement GST in the year 1954. In the last 63 years, more than 160 countries across the world have adopted GST. In India, the Kelkar Task Force on Fiscal Responsibility and Budget Management (FRBM) recommended in 2005 introduction of a comprehensive tax on all goods and service replacing Central level VAT and State level VATs. It recommended replacing all indirect taxes except the customs duty with value added tax on all goods and services with complete set off in all stages of making of a product.

Earlier, in the year 2000, the then Prime Minister introduced the concept of GST andset up a committee to design a GST model for the country. In 2003, the CentralGovernment formed a taskforce on Fiscal Responsibility and Budget Management,which in 2004 recommended GST to replace the existing tax regime by introducing a comprehensive tax on all goods and services replacing Central levelVAT and State level VATs. It recommended replacing all indirect taxes except the customs duty with value added tax on all goods and services with complete set off in all stages of the value chain. An announcement was made by the then Union Finance Minister in Budget (2006-07) to the effect that GST would be introduced with effect from April 1, 2010 and that the EC, on his request, would work with the Central Government to prepare a road map for introduction of GST in India. After this announcement, the EC decided to set up a Joint Working Group in May 10, 2007, with the then Adviser to the Union Finance Minister and Member-Secretary of the Empowered Committee as its Co-conveners and four Joint Secretaries of the Department of Revenue of Union Finance Ministry and all Finance Secretaries of the States as its members. This Joint Working Group got itself divided into three Sub-Groups and had several rounds of internal discussions as well as interaction with experts and representatives of Chambers of Commerce & Industry. On the basis of these discussions and interaction, the Sub-Groups submitted their reports

which were then integrated and consolidated into the report of Joint Working Group (November 19, 2007).

The GST Bill with certain amendments was passed in both the Lok Sabha and the Rajya Sabha in August, 2016. Further the bill was ratified by required number of States and received assent of the President on 8 September, 2016 and has since been enacted as Constitution (101st Amendment) Act, 2016 w.e.f. 16.09.2016.



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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 8th September, 2016/Bhadra 17, 1938 (Saka)

The following Act of Parliament received the assent of the President on the 8th September, 2016, and is hereby published for general information:—

THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016

[*8th September*, 2016.]

An Act further to amend the Constitution of India.

In order to introduce GST, the following important changes have been introduced in the Constitution by the 101st Amendment Act:

a) Insertion of new article 246A which makes enabling provisions for theUnion and States with respect to the GST legislation. It further specifies thatParliament has exclusive power to make laws with respect to GST on inter-Statesupplies.

b) Article 268A of the Constitution has been omitted. The said articleempowered the Government of India to levy taxes on services. As tax on services has been brought under GST, such a provision was no longer required.

c) Article 269A has been inserted which provides for goods and services tax on supplies in the course of inter-State trade or commerce which

shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. It also provides that Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

d) Article 270 has been amended to provide for distribution of goods andservices tax collected by the Union between the Union and the States.

e) Article 271 has been amended which restricts power of the Parliament to levy surcharge under GST. In effect, surcharge cannot be imposed on goods and services which are subject to tax under Article 246A.

f) Article 279A has been inserted to provide for the constitution and mandate of GST Council.

g) Article 366 has been amended to exclude alcoholic liquor for human consumption from the ambit of GST, and services have been defined.

h) Article 368 has been amended to provide for a special procedure which requires the ratification of the Bill by the legislatures of not less than one half of the States in addition to the method of voting provided for amendment of the Constitution. Thus, any modification in GST Council shall also require the ratification by the legislatures of one half of the States.

i) Entries in List I and List II have been either substituted or omitted to restrict power to tax goods or services specified in these Lists or to take away powers to tax goods and services which have been subsumed in GST.

j) Parliament shall, by law, on the recommendation of the Goods and Services

Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for five years.

k) In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a datenotified on the recommendation of the Goods and Services Tax Council.

10.4 GST COUNCIL

As provided for in Article 279A of the Constitution, the Goods and Services Tax Council (the Council) was notified with effect from 12.09.2016. The Council is comprised of the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers as members. It shall make recommendations to the Union and the States on the following issues:

a) the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed under GST;
b) the goods and services that may be subjected to or exempted from the GST;
c) model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;
d) the threshold limit of turnover below which the goods and services may be exempted from GST;
e) the rates including floor rates with bands of GST;
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 North- East States, J&K, Himachal Pradesh and Uttarakhand; and
h) any other matter relating to the GST, as the Council may decide.

The Council 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. While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonized structure of goods and services tax and for the development of a harmonized national market for goods and services.

One half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings. The Goods and Services Tax Council shall determine the procedure in the performance of its functions. Every decision of the Goods and Services Tax Council 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.



CHECK YOUR PROGRESS

Q 1: Which country first introduced GST?

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Q 2: Under which amendment GST was introduced in the Constitution of India?

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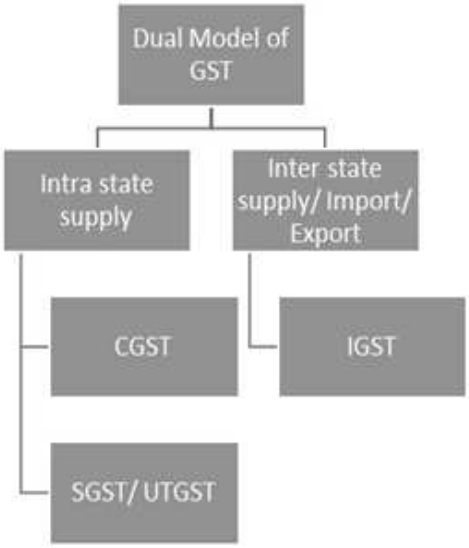
10.5 DUAL GST MODEL

India has adopted dual GST model becauseof its unique federal nature. Under this model, tax is levied concurrently by theCentre as well as the States on a common base, i.e. supply of goods or services orboth. GST to be levied by the Centre would be called Central GST (Central tax /CGST) and that to be levied by the States would be called State GST (State Tax / SGST). State GST (State Tax / SGST) would be called UTGST (Union territorytax) in Union Territories without legislature. CGST & SGST / UTGST shall belevied on all taxable intra-State supplies. While CGST, UTGST and SGST are charged for intra State supply of goods and/or services,IGST (Integrated Goods and Service Tax) is chargeable for:

(a) Inter-State supplies (supply between two different States),

(b) Imports, and

(c) Exports



To determine whether Central Goods & Services Tax (CGST), State Goods & Services Tax (SGST) or Integrated Goods & Services Tax (IGST) will be applicable in a taxable transaction, it is important to first know if the transaction is an Intra State or an Inter-State supply.

- **Intra-State supply of goods or services** is when the location of the supplier and the place of supply i.e., location of the buyer are in the same state. In Intra-State transactions, a seller has to collect **both CGST and SGST** from the buyer. The CGST gets deposited with Central Government and SGST gets deposited with State Government.
- **Inter-State supply of goods or services** is when the location of the supplier and the place of supply are in different states. Also, in cases of export or import of goods or services or when the supply of goods or services is made to or by a SEZ unit, the transaction is assumed to be Inter-State. In an Inter-State transaction, a seller has to collect **IGST** from the buyer.

10.5.1 CGST

Under GST, CGST is a tax levied on Intra State supplies of both goods and services by the Central Government and will be governed by the CGST Act. SGST will also be levied on the same Intra State supply but will be governed by the State Government.

This implies that both the Central and the State governments will agree on combining their levies with an appropriate proportion for revenue sharing between them. However, it is clearly mentioned in Section 8 of the GST Act that the taxes be levied on all Intra-State supplies of goods and/or services but the rate of tax shall not be exceeding 14%, each.

10.5.2 SGST

Under GST, SGST is a tax levied on Intra State supplies of both goods and services by the State Government and will be governed by the SGST Act. As explained above, CGST will also be levied on the same Intra State supply but will be governed by the Central Government. However, any tax liability obtained under SGST can be set off against SGST or IGST input tax credit only.

An example for CGST and SGST:

Let's assume that Sanjib is a dealer in Assam who sold goods to Shyam in Assam worth Rs. 1,00,000. The GST rate is 18% comprising of CGST rate of 9% and SGST rate of 9%. In such case, the dealer collects Rs. 18,000 of which Rs. 9000 will go to the Central Government and Rs. 9000 will go to the Assam Government.

10.5.3 IGST

The Inter-State supply of goods or services shall be subjected to integrated GST (Integrated tax / IGST). The IGST model is a unique contribution of India in the field of VAT. The IGST Model envisages that Centre would levy IGST (Integrated Goods and Service Tax) which would be CGST plus SGST on all inter-State supply of goods

or services or both. The inter-State supplier 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 person based in the destination State 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.
b) No upfront payment of tax or substantial blockage of funds for the inter-State supplier or recipient.
c) No refund claim in exporting State, as ITC is used up while paying the tax.
d) Self-monitoring model.
e) Model takes 'Business to Business'as well as 'Business to Consumer' transactions into account.

10.6 GST Network

Goods and Services Tax Network (GSTN) has been set up by the Government as a private company under erstwhile Section 25 of the Companies Act, 1956. GSTN provides three front end services to the taxpayers namely registration, payment and return. Besides providing these services to the taxpayers, GSTN developed back-end IT modules for 27 States who have opted for the same. Infosys has been appointed as Managed Service Provider (MSP). GSTN has selected 73 IT, ITeS and financial technology companies and 1 Commissioner of Commercial Taxes (CCT, Karnataka), to be called GST Suvidha Providers (GSPs). GSPs would develop applications to be used by taxpayers for interacting with the GSTN.

Central Government holds 24.5 percent stake in GSTN while the state government holds 24.5 percent. The remaining 51 per cent are held by non Government financial institutions, HDFC and HDFC Bank holds 20%, ICICI Bank holds 10%, NSE Strategic Investment holds 10% and LIC Housing Finance holds 10%. The GST Council in its 27th meeting held on 04.05.2018 has approved the change in shareholding pattern of GSTN. Considering the nature of 'state function' performed by GSTN, the GST Council felt that GSTN be converted into a fully owned Government company. Accordingly, the Council approved acquisition of entire 51 per cent of equity held by non-Governmental institutions in GSTN amounting to Rs. 5.1 crore, equally by the Centre and the State Governments.

The design of GST systems is based on role based access. The taxpayer can access his own data through identified applications like registration, return, view ledger etc. The tax official having jurisdiction, as per GST law, can access the data. Data can be accessed by audit authorities as per law. No other entity can have any access to data available with GSTN



CHECK YOUR PROGRESS

Q 3: What do you mean by Intra State supply of goods ?

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Q 4: What do you mean by GSTN ?

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10.7 LET US SUM UP

In this unit we have discussed the following –

- France was the first country to implement GST in the year 1954.
- In India, the Kelkar Task Force on Fiscal Responsibility and Budget Management (FRBM) recommended in 2005 introduction of a

comprehensive tax on all goods and service replacing Central level VAT and State level VATs.

- The GST Bill with certain amendments was passed in both the LokSabha and the RajyaSabha in August, 2016.
- The bill received assent of the President on 8 September, 2016 and has since been enacted as Constitution (101st Amendment) Act, 2016 w.e.f. 16.09.2016.
- The GST Council is comprised of the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers as members.
- India has adopted dual GST model because of its unique federal nature. Under this model, tax is levied concurrently by the Centre as well as the States on a common base, i.e. supply of goods or services or both.
- The CGST, UTGST and SGST are charged for intra State supply of goods and/or services, whileIGST (Integrated Goods and Service Tax) is chargeable for:
  - Inter-State supplies (supply between two different States),
  - Imports, and
  - Exports
- GSTN provides three front end services to the taxpayers namely registration, payment and return.



10.8 FURTHER READING

1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.
2) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.
3) GST: A Transformational Tax Reform by V. S. Krishnan.
4) Goods and Services Tax (GST) in India by B. Viswanathan.

10.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: France

Ans to Q No 2: 101st Amendment

Ans to Q No 3: Intra-State supply of goods or services is when the location of the supplier and the place of supply i.e., location of the buyer are in the same state.

Ans to Q No 4: Goods and Services Tax Network (GSTN) has been set up by the Government as a private company under erstwhile Section 25 of the Companies Act, 1956. GSTN provides three front end services to the taxpayers namely registration, payment and return.

10.10 MODEL QUESTIONS

Q 1: Write a brief note on history of GST in India.

Q 2: Discuss the various issues in which GST Council makes recommendations to the Centre and the States.

Q 3: Write a brief note on dual GST model adopted in India.

Q 4: Discuss briefly about GSTN.

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UNIT 11 : IMPORTANT TERMS AND DEFINITIONS UNDER GST ACT, 2017

UNIT STRUCTURE

11.1 Learning Objectives

11.2 Introduction

11.3 Important terms and definitions under GST act

11.4 Let Us Sum Up

11.5 Further Reading

11.6 Answer to check tour progress

11.7 Model Questions

11.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the meaning of important terms used in GST Act, 2017

11.2 INTRODUCTION

In the previous units i.e. Unit 8, Unit 9 and Unit 10, we have learned about the introductory part of the Goods and Services Tax (GST) Act, 2017. It is an indirect tax (or consumption tax) imposed in India on the supply of goods and services. Legislative provisions are incorporated in the Act using certain terms. The meaning of each of these terms is important to understand otherwise there are chances of wrong interpretation of the terms.The Act also uses certain terms which need to be defined. In this unit we will learn the meaning and definition of some important terms used in the Act.

11.3 IMPORTANT TERMS AND DEFINITIONS UNDER GST ACT

Some of the important terms and definitions under GST Act, 2017are discussed below -

i) **SUPPLY:** The term, "supply" has been inclusively defined in the section 7 of the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.
5. Supply should be a taxable supply.
6. Supply should be made within the taxable territory.

Exceptions:

(1) Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration.

(2) Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

ii) **AGENT:** According to section 2(5) of the GST Act, 2017, "agent" means a person, including a factor, broker, commission agent, arhatia,del credere agent, an auctioneer or any other mercantile agent, by whatever namecalled, who carries on the business of supply or receipt of goods or services or both onbehalf of another.

iii) **AGGREGATE TURNOVER:** According to section 2(6) of the GST Act,2017, "aggregate turnover" means the aggregate value of all taxable supplies(excluding the value of inward supplies on which tax is payable by a person on reversecharge basis), exempt supplies, exports of goods or services or both and inter-Statesupplies of persons having the same Permanent Account Number, to be computed on allIndia basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

iv) **AGRICULTURIST:** According to section 2(7) of the GST Act 2017, "agriculturist" means an individual or a Hindu Undivided Family who undertakes cultivation of land-

(a) by own labour, or

(b) by the labour of family, or

(c) by servants on wages payable in cash or kind or by hired labour underpersonal supervision or the personal supervision of any member of the family.

v) ASSESSMENT: According to section 2(11) of the GST Act, 2017,"assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

vi) AUDIT: According to section 2(13) of the GST Act, 2017, "audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder.

vii) BUSINESS: According to section 2(17)of theGST Act,2017,"business" includes--

a. any trade, commerce, manufacture, profession, vocation, adventure,wager or any other similar activity, whether or not it is for a pecuniary benefit;

b. any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

c. any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

d. supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

e. provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

f. admission, for a consideration, of persons to any premises;

g. servicessupplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

h. Services provided by a race club by way of totalisator or a licence to book maker in such club; and

i. Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

viii) BUSINESS VERTICAL: According to section 2(18) of the GST, Act, 2017, "business vertical" means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.

Explanation.- For the purposes of this clause, factors that should be considered in determining whether goods or services are related include--

(a) The nature of the goods or services;

(b) The nature of the production processes;

(c) The type or class of customers for the goods or services;

(d) The methods used to distribute the goods or supply of services; and

(e) The nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;

ix) CAPITAL GOODS: According to section 2(19) of the GST Act,2017,"capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

x) CASUAL TAXABLE PERSON: According to section 2(20) of the GST Act, 2017, "casual taxable person" means a person who occasionally undertakestransactions involving supply of goods or services or both in the course or furtheranceof business, whether as principal, agent

or in any other capacity, in a State or a Unionterritory where he has no fixed place of business;

xi) CENTRAL TAX: According to section 2(21) of the GST Act, 2017, "central tax" means the central goods and services tax levied undersection 9;

xii) CESS: According to section 2(21) of the GST Act, 2017, "cess" shall have the same meaning as assigned to it in the Goods andServices Tax (Compensation to States) Act;

xiii) COMPOSITE SUPPLY: According to section 2(30) of the GST Act, 2017, "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration- Where goods are packed and transported with insurance,the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

xiv) CONSIDERATION: According to section 2(31) of the GST Act, 2017, "consideration" in relation to the supply of goods or services or bothincludes-

a. any payment made or to be made, whether in money or otherwise, inrespect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shallnot include any subsidy given by the Central Government or a StateGovernment;

b. the monetary value of any act or forbearance, in respect of, inresponse to, or for the inducement of, the supply of goods or services orboth, whether by the recipient or by any other person but shall not includeany subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods orservices or both shall not be considered as payment made for such

supply unless the supplier applies such deposit as consideration for the said supply;

xv) CONTINUOUS SUPPLY OF GOODS: According to section 2(32) of the GST Act, 2017,"continuous supply of goods" means a supply of goods which isprovided, or agreed to be provided, continuously or on recurrent basis, under acontract, whether or not by means of a wire, cable, pipeline or other conduit, andfor which the supplier invoices the recipient on a regular or periodic basis andincludes supply of such goods as the Government may, subject to such conditions,as it may, by notification, specify;

xvi) CONTINUOUS SUPPLY OF SERVICES: According to section 2(33) of the GST Act, 2017, "continuous supply of services" means a supply of services which isprovided, or agreed to be provided, continuously or on recurrent basis, under a contract,for a period exceeding three months with periodic payment obligations and includessupply of such services as the Government may, subject to such conditions, as it may,by notification, specify;\\

xvii) CONVEYANCE: According to section 2(34) of the GST Act, 2017, "conveyance" includes a vessel, an aircraft and a vehicle;

xviii) DEBIT NOTE : According to section 2(38) of the GST Act 2017"debit note" means a document issued by a registered person under sub-section (3) of section 34.

xix) CREDIT NOTE : According to section 2(37) of the GST Act 2017"credit note" means a document issued by a registered person under sub-section (1) of section 34.

xx) DRAWBACK: According to section 2(42) of the GST Act, 2017, "drawback" in relation to any goods manufactured in India and exported,means the rebate of duty, tax or cess chargeable on any imported inputs or on anydomestic inputs or input services used in the manufacture of such goods;

xxi) EXEMPT SUPPLY: According to section 2(47) of the GST act 2017"exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax

under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

xxii) **GOODS:** According to section 2(52) of the GST Act, 2017,"goods" means every kind of movable property other than money andsecurities but includes actionable claim, growing crops, grass and things attached toor forming part of the land which are agreed to be severed before supply or under a contract of supply.

xxiii) **INPUT SERVICE:** According to section 2(60) of the GST Act, 2017, "input service" means any service used or intended to be used by a supplierin the course or furtherance of business.

xxiv) **INPUT SERVICE DISTRIBUTOR:** According to section 2(61) of the GST Act, 2017, "Input Service Distributor" means an office of the supplier of goods orservices or both which receives tax invoices issued under section 31 towards thereceipt of input services and issues a prescribed document for the purposes ofdistributing the credit of central tax, State tax, integrated tax or Union territory tax paidon the said services to a supplier of taxable goods or services or both having the samePermanent Account Number as that of the said office.

xxv) **INPUT TAX:** According to the section 2(62) of the GST Act, 2017, "input tax" in relation to a registered person, means the central tax, State tax,integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes-

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy.

xxvi) JOB WORK: According to section 2(68) of the GST Act, 2017, "job work" means any treatment or process undertaken by a person ongoods belonging to another registered person and the expression "job worker" shallbe construed accordingly.

xxvii) LOCATION OF THE RECIPIENT OF SERVICES: According to section 2(70) of the GST Act, 2017, "location of the recipient of services" means,-

(a) where a supply is received at a place of business for which theregistration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of businessfor which registration has been obtained (a fixed establishment elsewhere), thelocation of such fixed establishment;

(c) where a supply is received at more than one establishment, whether theplace of business or fixed establishment, the location of the establishment mostdirectly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient.

xxviii) LOCATION OF THE SUPPLIER OF SERVICES: According to section 2(71) of the GST Act, 2017, "location of the supplier of services" means,-

a. where a supply is made from a place of business for which theregistration has been obtained, the location of such place of business;

b. where a supply is made from a place other than the place of businessfor which registration has been obtained (a fixed establishment elsewhere), thelocation of such fixed establishment;

c. where a supply is made from more than one establishment, whether theplace of business or fixed establishment, the location of the establishment mostdirectly concerned with the provisions

of the supply; and

d. in absence of such places, the location of the usual place of residence of the supplier.

xxix) MANUFACTURE: According to section 2(72) of the GST Act, 2017 "manufacture" means processing of raw material or inputs in any mannerthat results in emergence of a new product having a distinct name, character and useand the term "manufacturer" shall be construed accordingly.

xxx) MARKET VALUE: According to section 2(73) of the GST Act, 2017,"market value" shall mean the full amount which a recipient of a supply isrequired to pay in order to obtain the goods or services or both of like kind and qualityat or about the same time and at the same commercial level where the recipient and the supplier are not related.

xxxi) MIXED SUPPLY: According to section 2(74) of the GST Act 2017 "mixed supply" means two or more individual supplies of goods or services,or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration- A supply of a package consisting of canned foods, sweets,chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

xxxii) INWARD SUPPLY: According to section 2 (67) of the GST Act, 2017, "inward supply" in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration.

xxxiii) OUTWARD SUPPLY : According to section 2(83) of the GST Act, 2017, "outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, agreed to be made by such person in the course or furtherance of business.

xxxiv) PERSON : According to section 2 (84) of the GST act , 2017, "person" includes-

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a firm;

(e) a Limited Liability Partnership;

(f) an association of persons or a body of individuals, whether incorporatedor not, in India or outside India;

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;

(h) any body corporate incorporated by or under the laws of a countryoutside India;

(i) a co-operative society registered under any law relating to co-operative societies;

(j) a local authority;

(k) Central Government or a State Government;

(l) society as defined under the Societies Registration Act, 1860;

(m) trust; and

(n) every artificial juridical person, not falling within any of the above

xxxv) PLACE OF BUSINESS: According to section 2 (85) of the GST Act, 2017,"place of business" includes--

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through anagent, by whatever name called.

xxxvi) PLACE OF SUPPLY: According to section 2(86) of the GST Act, 2017,"place of supply" means the place of supply as referred to in

Chapter V ofthe Integrated Goods and Services Tax Act;

xxxvii) RECIPIENT: According to section 2(93) of the GST Act, 2017, "recipient" of supply of goods or services or both, means-

(a) where a consideration is payable for the supply of goods or services orboth, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the personto whom the goods are delivered or made available, or to whom possession oruse of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, theperson to whom the service is rendered,and any reference to a person to whom a supply is made shall be construed as areference to the recipient of the supply and shall include an agent acting as such onbehalf of the recipient in relation to the goods or services or both supplied.

xxxviii) REMOVAL: According to section 2(96) of the GST Act, 2017, "removal" in relation to goods, means-

(a) despatch of the goods for delivery by the supplier thereof or by anyother person acting on behalf of such supplier; or

(b) collection of the goods by the recipient thereof or by any other personacting on behalf of such recipient;

xxxix) REVERSE CHARGE: According to section 2(98) of the GST Act, 2017, "reverse charge" means the liability to pay tax by the recipient of supply ofgoods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act.

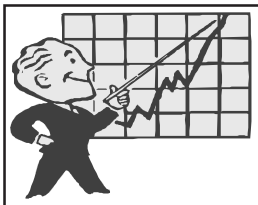
xi) SERVICES: According to section 2(102) of the GST Act, 2017, "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

xii) SUPPLIER: According to section 2(105) of the GST Act, 2017, "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

xiii) TURNOVER IN STATE: According to section 2(112) of the GST Act, 2017, "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.

xiiii) VOUCHER: According to section 2(118) of the GST Act, 2017, "voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

xiiv) WORKS CONTRACT: According to section 2(119) of the GST Act, 2017, "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.



CHECK YOUR PROGRESS

Q 1: Define goods under the GST Act?

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Q 2: Give the meaning of the term 'Supply' under the GST Act.

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11.4 LET US SUM UP

In this unit, we have discussed the following:

- the important terms and definitions under the GST Act, 2017.



11.5 FURTHER READING

1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.

2) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.

3) GST: A Transformational Tax Reform by V. S. Krishnan.

4) Goods and Services Tax (GST) in India by B. Viswanathan.

11.6 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: According to section 2(52) of the GST Act, 2017, "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Ans to Q No 2: The term, "supply" has been inclusively defined in the section 7 of the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted

to characterize a transaction as supply:

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.
5. Supply should be a taxable supply.
6. Supply should be made within the taxable territory.



11.7 MODEL QUESTIONS

Q 1: Define the term 'person' under the GST Act.

Q 2: What do you mean by works contract?

Q 3: Give the meaning of manufacture under the GST Act.

Q 4: Define input tax.

Q 5: What do you mean by continuous supply of goods?

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UNIT 12 : LEVY AND COLLECTION OF TAX UNDER GST

UNIT STRUCTURE

12.1 Learning Objectives

12.2 Introduction

12.3 Scope of Supply

12.4 Rates structure of GST

12.5 Composite and Mixed Supply

12.6 Composition Scheme under GST Act

12.7 Let Us Sum Up

12.8 Further Reading

12.9 Answers to Check Your Progress

12.10 Model Questions

12.1 LEARNING OBJECTIVES

After going through this unit, you will able to-

- explain the provisions relating to levy and collection of GST
- explain the scope of Supply
- explain the concept of composite and mixed supply
- describe the composition scheme under GST.

12.2 INTRODUCTION

The GST Act is an Act to make a provision for levy and collection of tax on intra-State/inter –State supply of goods or services or both. Prior to the introduction of GST, taxable events for levy of various taxes under indirect taxation were different. For example: in case of excise duty, the taxable event was manufacture or production of goods in India, for service, the taxable event was provision of service and under VAT/CST it was sale of goods. To replace such multiplicity, GST has brought a single and unified taxable event which is supply, i.e., taxes would be levied and collected on the supply of goods or services or both.

In this Unit, we shall discuss about the various provisions of the GST Act relating to levy and collection of GST.

12.3 SCOPE OF SUPPLY

Under GST, the various taxable events in erstwhile indirect taxes, like manufacture, sale, rendering of service, purchase, entry into a territory of state etc. have been included in just one event i.e. 'supply'. The definition of 'supply' as contained in Section 7 of the CGST Act is an inclusive definition and does not define the term exhaustively. It defines the scope of supply in an inclusive manner. The scope of Supply as per Section 7 of the CGST Act, 2017 is as follows

As per Section 7(1) **Supply includes**	**As per Section 7(2)** **Supply excludes**
(a) all forms of supply of goods or services or both 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; (b) import of services for a consideration whether or not in the course or furtherance of business; (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.	(a) activities or transactions specified in Schedule III; or (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, **Note:** Activities specified in Schedule III (i.e. Negative list): 1. Services by employee to employer in the course of or in relation to his employment. 2. Services by court or Tribunal 3. Services by Member of Parliament and others

	4. Services by funeral, burial etc. 5. Sale of land/Building 6. Actionable claim other than lottery, betting and gambling.

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Hence, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business as defined in the Act. Sale of goods or service even as a vocation is a supply under GST. Therefore, even if a famous politician paints paintings for charity and sells the paintings even as a one-time occurrence, the sale would constitute supply. Section 7(1)(a) of CGST Act, 2017 statesall forms of supply of goods or services or both such as made or agreed to be made for a consideration by a person in the course or furtherance of business;

(i) sale,
(ii) transfer,
(iii) barter,
(iv) exchange,
(v) licence,
(vi) rental,
(vii) lease or
(viii) disposal

12.4 RATES STRUCTURE OF GST

Section 9(1) of CGST Act, 2017 provides that there shall be levied of tax called Central Goods and Services Tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the CGST Act, 2017 and at such rates, not exceeding 20%, as may be notified by the Government on the recommendation of the Council and collected in such

manner as may be prescribed and shall be paid by the taxable person.

It means maximum GST rate not exceeding 40% (i.e. CGST 20% and SGST 20%) on all intra-state supplies of goods or services.

Section 5(1) of IGST Act, 2017, provides that there shall be levied of a tax called Integrated Goods and Services Tax (IGST) on all inter-State supplies of goods or services or both at such rates not exceeding 40%.

IGST on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975.

According to Section 9(3) of CGST Act, 2017 the Government may, on the recommendation of the GST Council, may notify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis (similar provision under section 5(3) of IGST Act, 2017).

Section 9(4) of CGST Act, 2017, central tax (i.e. CGST) in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient (Similar provision under section 5(4) of IGST Act, 2017). This provision suspended till 31.03.2018.

Note: Reverse charge provisions would not be applicable if the aggregate value of such supplies of goods or services or both received by a taxable person from any or all the suppliers, who are not registered, does not exceeds 5,000 in a day (Vide Notification No. 8/2017 Dt. 28.06.2017).

Section 9(5) of CGST Act, 2017 Electronic Commerce Operator (ECO) is liable to pay tax. If ECO does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax. Provided further that where an ECO does not have a representative in the taxable territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax (similar provision under section 5(5) of IGST Act, 2017)



CHECK YOUR PROGRESS

Q 1: What is the taxable event for levy of GST under the GST Act ?

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Q 2: State the rate of GST under CGST Act.

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12.5 COMPOSITE AND MIXED SUPPLY

Composite and Mixed Supplies has been defined in Section 8 of the CGST Act, 2017. Composite supply is when two or more goods are sold in a combination, it becomes difficult to identify the rate of tax to be levied. For such goods or services, CGST Act, 2017 has provided with two terms:

(i) Composite supply and

(ii) Mixed supply.

Composite supply is similar to the concept of "bundled service" as under service tax laws in the existing regime. Both Composite supply and Mixed supply consist of two or more taxable supplies of goods or services or both but the main difference between the two is that Composite supply is naturally bundled i.e., goods or services are usually provided together in normal course of business and cannot be separated. Whereas in Mixed supply, the goods or services can be sold separately.

a) Composite Supply: Composite supply consists of two or more goods/ services, which is naturally supplied with each other in the ordinary course of business and one of them is a principal supply. The items cannot be supplied separately.

Note: Principal supply means the supply of goods or services, which constitute the predominant element of a composite supply and to which another supply is ancillary/secondary. Following two conditions are necessary for composite supply: (a) Supply of two or more goods or

services together, AND (b) It should be a natural bundle and they cannot be separated.

b) **Mixed Supply**: In Mixed supply two or more individual supplies combination of goods or services with each other for a single price. Each of these items can be supplied separately and is not dependent on each other. In other words, the combination of goods or services are not bundled due to natural necessities, and they can be supplied individually in the ordinary course of business. For tax liability purpose, mixed supply consisting of two or more supplies shall be treated as a supply of that item which has the **highest tax rate.**

12.6 COMPOSITION SCHEME UNDER GST ACT

The Government of India provides for simplified and easy of doing business scheme for payment of taxes and filling of returns to certain categories of taxable person. As a result such taxable person is not required to maintain elaborate records and filing detailed returns. Section 10 of the CGST Act, provides for composition levy to such person. **Composition scheme** gives an option to small businesses under which they can opt to pay a fixed percentage of turnover as TAX in lieu of Normal Tax and be relieved from the detailed compliance of the GST law.Small taxpayers with anaggregate turnover in a preceding financial year up to ***1 crore (75 lakhs for northeastern states and Himachal Pardesh)*** shall be eligible for composition levy. Suppliers opting for composition levy need not worry about the classification of their goods or services or both, the rate of GST applicable on the same, etc. They are not required to raise any tax invoice, but simply need to issue a Bill of Supply wherein no tax will be charged from the recipient.

At the end of a quarter, the registered person opting for composition levy would pay a certain specified percentage of his turnover of the quarter as tax, without availing the benefit of input tax credit. Persons making inter-State supplies of goods/making supplies of goods through e-commerce operators who are required to collect tax at source shall not be eligible for composition scheme. The provisions relating to composition levy are

contained in section 10 of CGST Act, 2017 and Chapter-II [Composition Rules] of Central Goods and Services Tax (CGST) Rules, 2017.

Persons not entitled to avail Composition Scheme:

The Section 10(2) of the CGST Act, 2017 specifies the benefit of composition scheme shall not be granted if a taxable person is:

a. engaged in the supply of services (other than restaurant and outdoor catering service);

b. engaged in making any supply of goods which are not leviable to tax under this Act;

c. engaged in making any inter-state outward supplies of goods;

d. engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and

e. a manufacturer of such goods as may be notified by the Government on the recommendations of the Council.



CHECK YOUR PROGRESS

Q 3: Who is eligible to avail composition scheme under GST Act ?

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Q 4: What do you mean by mixed supply ?

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12.7 LET US SUM UP

In this unit, we have discussed the following:

- The GST Act is an Act to make a provision for levy and collection of tax on intra-State/inter –State supply of goods or services or both.

- GST has brought a single and unified taxable event which is supply, i.e., taxes would be levied and collected on the supply of goods or services or both.
- The definition of 'supply' as contained in Section 7 of the CGST Act is an inclusive definition and does not define the term exhaustively.
- Small taxpayers with an aggregate turnover in a preceding financial year up to ***1 crore (75 lakhs for northeastern states and Himachal Pardesh)*** shall be eligible for composition levy.



12.8 FURTHER READING

1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.
2) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.
3) GST: A Transformational Tax Reform by V. S. Krishnan.
4) Goods and Services Tax (GST) in India by B. Viswanathan.



12.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Supply

Ans to Q No 2: 20%.

Ans to Q No 3: Small taxpayers with an aggregate turnover in a preceding financial year up to ***1 crore (75 lakhs for northeastern states and Himachal Pardesh)*** shall be eligible for composition levy.

Ans to Q No 4: Mixed supply means combination of two or more individual supplies of goods or services with each other for a single price. Each of these items can be supplied separately and is not dependent on each other.

12.10 MODEL QUESTIONS

Q 1: Discuss the scope of supply under the GST Act.

Q 2: Discuss briefly the rate structure of GST.

Q 3: Explain composite and mixed supply under the GST Act.

Q 4: Discuss the composition scheme under the GST Act.

Q 5: State the persons who are not entitled to avail Composition Scheme.

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UNIT 13 : REGISTRATION UNDER GST ACT

UNIT STRUCTURE

13.1 Learning Objectives

13.2 Introduction

13.3 Advantages of Registration

13.4 Persons Liable for Registration (Section 22)

13.5 Persons not liable for registration (Section 23)

13.6 Compulsory Registration under the GST (Section 24)

13.7 Procedure for registration under GST Law

13.8 Deemed Registration

13.9 Registration Number under GST Law

13.10 Amendment of registration under GST Law

13.11 Cancellation of Registration under GST Law

13.12 Revocation of Cancellation of Registration under GST Law

13.13 Steps in registration under GST

13.14 Separate registration for multiple places of business within a State or a Union territory

13.15 Let Us Sum Up

13.16 Further Reading

13.17 Answers To Check Your Progress

13.18 Model Questions

13.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- discuss the advantages for getting registered under GST Act
- know the registration requirement under the GST Act
- the procedure of registration under the GST Act
- know the persons who are liable for registration
- explain the provisions relating to amendment and cancellation of registration under the GST Act.

13.2 INTRODUCTION

Business entities need to be registered under the GST Act to be part of its tax regime. The registration is essential requirement for various reasons besides identification of the tax payers. Chapter VI of the CGST Act, 2017 comprising of section 22 to 30 deals with the provisions relating to the registration. Section 22 of Central Goods & Services Tax Act, 2017 mandates that every person who has an aggregate turnover of more than Rs 20 Lakhs in the relevant financial year, is liable to be registered under the Act. Under GST Act, without registration, a person can neither collect tax from his customers nor claim any credit of tax paid by him.

On being registered under the GST Law, the business entities will obtain a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail input tax credit for the taxes on his inward supplies. The registration under GST is to be taken State-wise.

In his unit, we shall go through the various provisions relating to registration under the GST Act, 2017. The learners will be able to know the registration requirement, its procedure, advantages of GST registration, provisions relating to amendment / cancellation of the registration etc.

13.3 ADVANTAGES OF REGISTRATION

Registration under Goods and Services Tax (GST) regime will confer following advantages to the business:

1) Legally recognized as supplier of goods or services or both.
2) Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.
3) Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.
4) Getting eligible to avail various other benefits and privileges rendered under the GST laws.

13.4 PERSONS LIABLE FOR REGISTRATION (SECTION 22)

Following persons are liable for registration under the GST Law:

(1) Every supplier making a taxable supply of goods or services or both in the State shall be liable to be registered under this Act if his aggregate turnover in a financial year exceeds ten lakhs rupees.

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.



LET US KNOW

According to Section 22(1) of the CGST Act, 2017 every supplier of goods and/ or services is required to obtain registration in the State/UT from where he makes the taxable supply if his aggregate turnover exceeds 20 lakhs during a Financial Year. However, the limit of 20 lakhs will be reduced to 10 lakhs if the person is carrying out business in any of the Special Category States as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution namely, States of Arunachal Pradesh, Assam, Jammu

and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.

13.5 PERSONS NOT LIABLE FOR REGISTRATION (SECTION 23)

The following persons shall not be liable to registration under this law, namely:-

-

(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(c) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.



CHECK YOUR PROGRESS

Q 1: Mention two advantages of registration under GST Act.

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Q 2: State two persons liable for registration under GST Act.

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Q 3: State two persons not liable for registration under GST Act.

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13.6 COMPULSORY REGISTRATION UNDER THE GST (SECTION 24)

The following categories of persons shall be required to be compulsorily registered under this Act,–

(i) persons making any inter-State taxable supply;

(ii) casual taxable persons making taxable supply;

(iii) persons who are required to pay tax under reverse charge;

(iv) person who are required to pay tax under sub-section (5) of section 9;

(v) non-resident taxable persons making taxable supply;

(vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;

(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

(viii) Input Service Distributor, whether or not separately registered under this Act;

(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

(x) every electronic commerce operator;

(xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and

(xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

13.7 PROCEDURE FOR REGISTRATION UNDER GST LAW

(1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory 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 a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Explanation - Every person who makes a supply from the territorial waters of India shall obtain registration in the State where the nearest point of the appropriate baseline is located in the State.

(2) A person seeking registration under this Act shall be granted a single registration:

Provided that a person having multiple business verticals in the State may be granted 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 section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) Every person shall have a Permanent Account Number issued under the Income Act, 1961 in order to be eligible for grant of registration:
Provided that a person who is required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

(7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

(8) 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 which may be taken under this Act or under any other law for

the time being in force, proceed to register such person in such manner as may be prescribed.

(9) Notwithstanding anything contained in sub-section (1),--

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

(10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

(11) A certificate of registration shall be issued in such form and with effect from the date as may be prescribed.

(12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10) communicated to the applicant within that period.

13.8 DEEMED REGISTRATION

Section 26 of the CGST Act provides that:

1. The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the
   Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.
2. Not with standing anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union

Territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act.



CHECK YOUR PROGRESS

Q 4: State two persons who are required to be compulsorily registered under the GST Act.

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Q 5: What do you mean by deemed registration under the GST Act?

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13.9 REGISTRATION NUMBER UNDER GST LAW

The registration in GST is PAN based and State specific. Supplier has to register in each of such State or Union territory from where he has effected supply. But within a State an entity with different branches would have single registration wherein it can declare one place as principal place of business and other branches as additional place of business. In GST registration, the supplier is allotted a 15-digit GST identification number called "GSTIN" and a certificate of registration incorporating there in this GSTIN is made available to the applicant on the GSTN common portal. The first 2 digits of the GSTIN is the State code, next 10 digits are the PAN of the legal entity, the next two digits are for entity code, and the last digit is check sum number. Registration under GST is not tax specific which means that there is a single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses.

13.10 AMENDMENT OF REGISTRATION UNDER GST LAW

Section 28 of the GST Act provides that:

(1) Every registered person and a person to whom a Unique Identity

Number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration or subsequent thereto, in such form and manner and within such period as may be prescribed.

(2) The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed:

Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed:

Provided further that the proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.

(3) Any rejection or approval of amendments under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a rejection or approval under this Act.

13.11 CANCELLATION OF REGISTRATION UNDER GST LAW

Section 29 of the GST Act provides that:

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,--

a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

b) there is any change in the constitution of the business; or

c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,--

a) a registered person has contravened such provisions of the Act or the rules made there under as may be prescribed; or

b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made there under for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

13.12 REVOCATION OF CANCELLATION OF REGISTRATION UNDER GST LAW

Section 30 of the GST Act provides that:

(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

13.13 STEPS IN REGISTRATION UNDER GST

Step1: Filing of online application:

Every person, other than

(i) a non-resident taxable person,

(ii) a person required to deduct tax at source under section 51,

(iii) a person required to collect tax at source under section 52 and

(iv) a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017)

Who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as ?the applicant?) shall, before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in **Part A** of **FORM GST REG-01** on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:.

Provided that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

Step2: PAN Validation:

The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes. The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number. And the e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address. On successful verification of the Permanent Account Number, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

Step3: Online application in Part B and acknowledgement receipt:

Using the reference number generated under step 2, the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner. On receipt of an application under sub-rule (4), an acknowledgement shall be issued

electronically to the applicant in FORM GST REG-02.

Step 4: Verification of the application and approval:

The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of three working days from the date of submission of the application.

Step 5: Issue of registration certificate:

Subject to the provisions of sub-section (12) of section 25, where the application for grant of registration has been approved under rule 9, a certificate of registration in FORM GST REG-06 showing the principal place of business and additional place or places of business shall be made available to the applicant on the common portal and a Goods and Services Tax Identification Number shall be assigned.

Step 6: Furnishing of Bank Account Details:

After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall as soon as may be, but not later than forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision

13.14 SEPARATE REGISTRATION FOR MULTIPLE PLACES OF BUSINESS WITHIN A STATE OR A UNION TERRITORY

(1) Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place of business under subsection (2) of section 25 shall be granted separate registration in respect of each such place of business subject to the following conditions, namely:-

(a) such person has more than one place of business as defined in clause (85) of section 2;

(b) such person shall not pay tax under section 10 for any of his places of business if he is paying tax under section 9 for any other place of business;

(c) all separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.

Explanation. - For the purposes of clause (b), it is hereby clarified that where any place of business of a registered person that has been granted a separate registration becomes ineligible to pay tax under section 10, all other registered places of business of the said person shall become ineligible to pay tax under the said section.

(2) A registered person opting to obtain separate registration for a place of business shall submit a separate application in **FORM GST REG-01** in respect of such place of business.

(3) The provisions of rule 9 and rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this rule.



CHECK YOUR PROGRESS

Q 6: What do you mean by GST TIN?

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13.15 LET US SUM UP

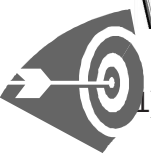
In this unit we have discussed the following:

- Business entities need to be registered under the GST Act to be part of its tax regime

- On being registered under the GST Law, the business entities will obtain a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail input tax credit for the taxes on his inward supplies.
- In GST registration, the supplier is allotted a 15-digit GST identification number called "GSTIN" and a certificate of registration incorporating there in this GSTIN is made available to the applicant on the GSTN common portal.
- The process for registration under GST is online.
- Registration under GST is not tax specific which means that there is a single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses.



13.16 FURTHER READING



1) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.
2) Goods and Services Tax GST by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.
3) GST: A Transformational Tax Reform by V. S. Krishnan.
4) Goods and Services Tax (GST) in India by B. Viswanathan.

13.17 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: (1) Legal recognition as supplier of goods or services or both.

(2) Proper accoun/75 for payment of GST due on supply of goods or services or both by the business.

Ans to Q No 2: (1) Every supplier making a taxable supply of goods or services or both in the State shall be liable to be registered under this Act if his aggregate turnover in a financial year exceeds ten lakhs rupees.

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

Ans to Q No 3: (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

Ans to Q No 4: (i) persons making any inter-State taxable supply;

(ii) casual taxable persons making taxable supply;

Ans to Q No 5: The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the

Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.

Ans to Q No 6: The registration in GST is PAN based and State specific. In GST registration, the supplier is allotted a 15-digit GST identification number called "GSTIN" and a certificate of registration incorporating there in this GSTIN is made available to the applicant on the GSTN common portal. The first 2 digits of the GSTIN is the State code, next 10 digits are the PAN of the legal entity, the next two digits are for entity code, and the last digit is check sum number.



13.18 MODEL QUESTIONS

Q 1: What do you mean by registration under the GST Act?

Q 2: Discuss the advantages of registration under the GST Act.

Q 3: Who are liable for registration under the GST Act?

Q 4: Discuss the various advantages of registration under the GST Act.

Q 5: Mention the Persons not liable for registration under the GST Act.

Q 6: Mention the Persons liable for compulsory registration under the GST Act.

Q 7: Discuss the Procedure for registration under GST Law.

Q 8: Write a brief note on registration number under GST Law.

Q 9: Discuss the procedure for amendment of registration under GST Law.

Q 10: Discuss the procedure for cancellation of registration under GST Law.

Q 11: Discuss the procedure for revocation of Cancellation of Registration under GST Law.

Q 12: Discuss the steps in registration under GST Law.

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UNIT 14: INTRODUCTION TO CUSTOMS LAW

UNIT STRUCTURE

14.1 Learning Objectives

14.2 Introduction

14.3 About the Customs Law

14.4 Objectives of Customs Duty

14.5 Important Definitions under Customs Act, 1962

14.6 Types of Customs Duty

14.7 Principles Governing Levy of Customs Duty

14.8 Basic Principles of Classification of Goods and Valuation of Goods

14.9 Customs Authorities

14.10 Let Us Sum Up

14.11 Further Reading

14.12 Answers to Check Your Progress

14.13 Model Questions

14.1 LEARNING OBJECTIVES

After going through this, you will be able to:

- discuss the history of customs law in India
- explain the objectives of customs duty
- discuss the important definitions under Customs Act, 1962
- explain the types of customs duty
- explain the principles governing levy of customs duty
- explain the basic principles of classification of goods and valuation of goods under customs law.

14.2 INTRODUCTION

The various indirect taxes that were applicable in India prior to introduction of the GST, have been subsumed under the GST Act. However, the Basic Customs Duty has not been subsumed under the same and hence

still continue to be levied along with GST. In this Unit, we shall discuss about the basics and important aspects of Customs Law. We shall have an idea about the levy and collection of Customs Duties, types of Custom Duties, basic principles of classification of goods and valuation of goods and Customs Authorities. We shall also discuss the important terms and definitions used in the Customs Act.

14.3 ABOUT THE CUSTOMS LAW

The history of customs duty in India is not of a recent origin. It is among the oldest forms of tax that were levied during the ancient period. In the 4th century B.C., Kautilya in his Arthashastra laid down certain principles for the collection of tools on merchandise, which was imported or exported. Kautiliya had referred to 'shulka' consisting of import duty and export duty that was collected at the city gates on goods coming in and going out respectively.Further, the ancient "custom" of gifting a part of merchandise by the merchant to the king while entering his kingdom came to be formalized by the modern States into customs duty which was imposed on the goods imported into or exported out of the country. Developing economies including India use customs duty as an important source of revenue and also use the Customs Act as a regulatory instrument to curb smuggling. In addition, there are more than twenty allied Acts which are enforced by the Indian Customs at various ports including airports.

The Custom Duty in its present form dates back to 1786, when Bruisers formed the first Revenue Board in Calcutta. In 1808, a new Trade Board was introduced for export and import of goods from India. Once again, in 1859 Customs Duties Act was introduced in which provincial import duties were replaced by uniform Tariff Act and was applicable to all Indian territories within the country.

In the subsequent year several changes in the Custom Policy took place and are as follow:

- Sea Customs Act was passed by Government in 1878.
- Indian Tariff Act was passed in 1894.

- Air Customs having been covered under the India Aircrafts Act of 1911,
- Land Customs Act was passed in 1924.

After Independence, the Sea Customs Act and other allied enactments were repealed by a consolidating and amending legislation entitled the Customs Act, 1962 (CA). Similarly the Act of 1934 was repealed by the Customs Tariff Act, 1975(CTA).

Custom Duty in India is imposed under the Customs Duty Act, 1962 by the Constitution of India under the Article 265, which states that "no tax shall be levied or collected except by authority of law.

The Indian Customs Duties are major source of revenue for the Union Government and constitute around 30% of its tax revenues. Custom duty not only raises money for the Central Government but also helps the government to prevent the illegal imports and illegal exports of goods from India. The Central government has emergency powers to increase import or export duties whenever necessary after a notification in the session of Parliament.

The Customs Law as a whole constitute the following:

(1) The Customs Act, 1962	This is a consolidating enactment providing levy of import and export duties of customs on goods imported into or exported from India through sea, air or land. It provides for the provisions of levy and collection of duty, importation or exportation, transit and transhipment, prohibition on importation or exportation of goods, warehousing, duty drawback, appeals, settlement commission, advance rulings, offences and penalties etc.
(2) The Customs Tariff Act, 1975	The Act contains various types of custom duties to be levied on the importation and exportation of the articles. It contains two Schedules - Schedule I known as, 'Import Tariff and Schedule II known as, 'Export Tariff.'

	'Import Tariff consists of 98 Chapters grouped under 21 Sections. This Schedule refers to goods liable to import duty of customs. 'Export Tariff refers to goods liable to export duty of customs.
(3) Rules	Section 156 of the Customs Act, 1962 empowers the Central Government to make rules consistent with this Act. Such rules may provide for matters relating to the manner of determining the price of imported goods, duty drawback, baggage, detention and confiscation of goods etc.
(4) Regulations	Section 157 of the customs Act, 1962 empowers the Central Board of Excise and Customs to make regulations consistent with the Act and the rules, generally to carry out the purposes of the Act. For example, Import Manifest Vessels Regulation, Boat Note Regulations, Export Manifest Vessel Regulations have been framed in this regard.
(5) Notification under Customs Act	Notification, as per Article 13(3) (a) of the Constitution of India, means 'a written or printed matter that give notice'. Central Government has been empowered to issue notifications under various sections of the Customs act, 1962.

14.4 OBJECTIVES OF CUSTOMS DUTY

The customs duty is levied, primarily, for the following purpose:

- Restricting Imports for conserving foreign exchange.
- Protecting Indian Industry from undue competition.
- Prohibiting imports and exports of goods for achieving the policy objectives of the Government.
- Regulating export.

- Co-coordinating legal provisions with other laws dealing with foreign exchange such as Foreign Trade Act,Foreign Exchange Regulation Act, Conservation of Foreign Exchange and Prevention of Smuggling Act, etc.

14.5 IMPORTANT DEFINITIONS UNDER CUSTOMS ACT, 1962

Some of the important definitions under Section 2 of the Customs Act, 1962 has been provided below:

i) **"Baggage"** includes unaccompanied baggage but does not include motor vehicles.

ii) **"Bill of entry"** means a bill of entry referred to in section 46, i.e. entry of goods for importation [Section 2(4)].

iii) **"Bill of export"** means a bill of export referred to in section 50 i.e. entry of goods for exportation [Section 2(5).

iv) **"Coastal goods"** means goods, other than imported goods, transported in a vessel from one port in India to another [Section 2(7)];

v) **"Conveyance"** includes a vessel, an aircraft and a vehicle.

vi) **"Customs area"** means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities; Customs area includes warehouse [Section 2(11)].

vii) **"Dutiable goods"** means any goods which are chargeable to duty and on which duty has not been paid.

viii) **"Entry"** in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under section 84.

ix) **"Exporter"** in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter.

x) **"Foreign-going vessel or aircraft"** means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outsideIndia, whether

touching any intermediate port or airport in India or not, and includes - (i) any navalvessel of a foreign Government taking part in any naval exercises; (ii) any vessel engaged in fishingor any other operations outside the territorial waters of India; (iii) any vessel or aircraft proceeding to aplace outside India for any purpose whatsoever.

xi) **"Goods"** includes - (a) vessels, aircrafts and vehicles (b) stores (c) baggage (d) currency and negotiableinstruments and (e) any other kind of movable property.

xii) **"Imported goods"** means any goods brought into India from a place outside India but does not includegoods which have been cleared for home consumption.

xiii) **"Foreign-going vessel or aircraft"** means any vessel or aircraft for the time being engaged in thecarriage of goods or passengers between any port or airport in India and any port or airport outsideIndia, whether touching any intermediate port or airport in India or not, and includes - (i) any navalvessel of a foreign Government taking part in any naval exercises; (ii) any vessel engaged in fishingor any other operations outside the territorial waters of India; (iii) any vessel or aircraft proceeding to aplace outside India for any purpose whatsoever.

xiv) **"Importer"** in relation to any goods at any time between their importation and the time when they arecleared for home consumption, includes any owner, beneficial owner or any person holding himself outto be the importer.

xv) **"India"** - India includes territorial waters of India. The territorial water of India extends to 12 nauticalmiles into sea from the appropriate base line. [Section 2 (27)]

Goods are deemed to have been imported if the vessel enters the imaginary line on the sea i.e. 12th nautical miles. India includes not only surface of the sea into territorial water but also the air space above and the ground at the bottom of the sea.

xvi) **"Indian Customs Waters"** means the waters extending into the sea up to the limit of contiguous zoneof India and includes any bay, gulf, harbour, creek or tidal river.

xvii) **"Prohibited goods"** means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

xviii) **"Stores"** means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

xix) **"Smuggling"**, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

14.6 TYPES OF CUSTOMS DUTY

The various types of Duties under the Customs Act, 1962 are as follows:

1) BASIC CUSTOM DUTY:

Basic custom duty is levied under section 12 of the Customs Act, 1962 read with section 2 of the Custom Tariff Act 1975. The duties of custom shall be levied at such rates as may be specified under the Customs Tariff Act 1975 or any other law for the time being in force. On goods imported into or exported from India as per the provisions of Section 12 of the Customs Act, 1962.

The rates of Custom duty are specified in first and second schedule of Section 2 of customs tariff act 1975 (First Schedule enlist the goods liable to import duty and Second Schedule enlist the goods liable to export duty).

There are different rates for different goods but general basic rate is 10%.

The basic custom duty may have two rates: (A) Standard rates (B) Preferential rates:

(A) Standard Rates: Standard rate is charged where there is no provision for preferential treatment.

(B) Preferential Rates: If the goods are imported from the area notified by the government as preferential area duty to be charged as

preferential rates. Preferential rate is applied only where the owner of the article (importer) claims at the time of importation, with supporting evidence, that the goods are chargeable with the preferential rate of duty and if importer fails to claim with supporting evidence then duty to be charged as standard rates.

The Basic duty may exempted by a notification under section 25.

2. INTEGRATED TAX [SECTION 3 (7) OF THE CUSTOMS TARIFF ACT, 1975]

Any article which is imported into India shall be liable to integrated tax in addition to custom duties as chargeable. The highest rate at which it has been levied is 28% (as decided at the 14th GST Council meeting).

3. GOODS AND SERVICES TAX COMPENSATION CESS [SECTION 3 (9) OF CUSTOM TARIFF ACT 1975].

GST Compensation cess is tax levied under section 8 of GST Compensation ToState Act 2017. It is levied on intra state supply of goods and service and interstate supply of goods and service to provide compensation to the states for loss of revenue due to implementation of GST Act in India. Provided that GST compensationcess would be applicable only on supply of those goods and services that have been notified by the Central Government.

Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) CessAct, 2017 on a like article on its supply in India, on the value of the imported article as determined under subsection (10).

4. ADDITIONAL DUTY OF CUSTOMS (SECTION 3 OF CUSTOMS TARIFF ACT, 1975)

This duty, commonly referred to as countervailing duty (CVD), is levied on imported goods in terms of section 3 of the Customs Tariff Act, 1975 and is equal to the Central Excise duty leviable on the like goods if produced or manufactured in India. In cases where like article is not so produced or manufactured in India, this duty will be at such rate which is leviable on the class or description of articles to which the imported article

belongs. If there is more than one rate of excise duty, then the rate to be applied will be the highest. This duty is calculated on a value base of aggregate of value of the goods including landing charges and basic customs duty.

In the case of alcoholic liquors, the additional duty at present is chargeable at a uniform rate as specified by the Central Government irrespective of varying rates in force in the States.

5. SPECIAL ADDITIONAL DUTY

It is levied to offset the effect of sales tax, VAT, local tax or other charges leviable on articles on its sale, purchase or transaction in India. It is leviable on imported goods even if article was not sold in India. The Central Government may levy additional duty to counter balance the sales tax, value added tax, local tax or any other charges leviable in the like article on its sale, purchase or transportation in India. The rate shall be notified by the Central Government which cannot exceed 4%. The value of the imported article shall, be the aggregate of the value determined under section 14(1) of the Customs Act, 1962 and any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to such additional duty of custom under section 3(1) and section 3(3).

Thus additional duty of custom will be levied on only few products not liable to GST.

Note: Due to introduction of GST, the applicability of additional duty of customs is very limited. GST is levied on all supplies of goods and /or services except supply of alcoholic liquor for human consumption. Further, GST on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. Thus, additional duty of customs will be levied only on the few products not leviable to GST.

6. PROTECTIVE DUTY (SECTION 6 & 7 OF CUSTOMS TARIFF ACT 1975)

Protective duties are levied by the Central Government on being satisfied that circumstances exist whichrenders it necessary to protect industries established in India. As per section 7(1), the protective duty shall be effective only up to and inclusive of the date if any, specified in the First Schedule. Section 7(2) provides that the Central Government may reduce or increase the duty by notification in the Official Gazette. However, such duty shall be altered only if it is satisfied, after such inquiry as it thinks necessary,that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it to a similar article manufactured in India. If there is any increase in the duty as specified above, then the Central Government is required to place such notification in the Parliament for its approval.

7. SAFEGUARD DUTY (SECTION 8 OF CUSTOM TARIFF ACT, 1975)

The Central Government may impose safeguard duty on specified imported goods, if it is satisfied that the goods are being imported in large quantities and they are causing serious injury to domestic industry. The safeguard duty is imposed for the purpose of protecting the interests of any domestic industry in India aiming to make it more competitive.

Conditions:

1. Safeguard duty is product specific.
2. It is in addition to any other duty.
3. Education cess and secondary and higher education cess is not payable on safeguard duty.

Total period of levy of safeguard duty is 10 years. If the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected.

Exemptions from safeguard duty:

1. If an article originating from developing country and share of imports of that article from that country does not exceed 3% of the total imports of that article in India it should be exempted from safeguard duty.

2. If an article originating from more than one developing countries and aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India then it should be exempted from safeguard duty.

Articles imported by 100% EOU or units in a free trade zone or Special Economic zone safeguard duty shall not be applicable unless specifically made applicable in the notification.

Under section 8B (2), the Central Government is also empowered to impose provisional safeguard duty pending determination of the final duty. This provisional duty may be imposed on the basis of preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry. Provided that provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

Emergency power to impose or enhance export duties [Section 8 of Customs Tariff Act]: Central Government empowered to impose/enhance the export duties: The Central Government may impose or enhance export duties by making amendment to the Second Schedule by issue of a notification in the Official Gazette.

Conditions:

1. The goods may or may not be specified in the Second Schedule.
2. The Central Government is satisfied that circumstances exist, which render it necessary for the imposition or enhancement of export duties.

If the above conditions are satisfied, the Central Government may impose or enhance export duties.

Emergency Power to impose or enhance import duties (section 8 (a) of Customs Tariff Act): Central Government empowered to impose/ enhance the import duties: The Central Government may impose orenhance import duties by making amendment to the First Schedule by issue of a notification in the Official Gazette.

Conditions:

1. The goods should be specified in the First Schedule.
2. The Central Government is satisfied that circumstances exist, which render it necessary for the enhancement of import duties.

Proviso to sub-section (1) provides that the Central Government shall not issue any notification under this section unless the earlier notification amending the rate of duty has been placed before the Parliament and the same has been passed with or without modifications.

Important points

1. Safeguard duty is product specific and anti dumping duty is country specific
2. Refund of anti dumping duty is subject to doctrine of unjust enrichment. [Automotive Tyre Manufacturers Association, 2011(SC)]
3. Education cess and Secondary and Higher Education cess are not payable on Safeguard duty, countervailing duty on subsidized articles, anti dumping duty and any other protective duty.

8. COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES [SECTION 9 OF CUSTOMS TARIFF ACT 1975].

Section 9(1) provides that the countervailing duty on subsidized articles is imposed if any country directly or indirectly, pays subsidy upon the manufacture or production or exportation of any article. Such subsidy includes subsidy on transportation of such article.

Conditions:

1. Such articles are imported into India.
2. The importation may or may not be from the country of manufacture.

The article may be in the same condition as when exported from the country of manufacture.

Subsidy on articles shall be deemed to be exists if:

There is financial contribution by a government or any public body in the exporting or producing country. Such contribution may include direct transfer of funds like grants, loans, equity infusion and waiver of revenue etc. There is any form of income or price support granted by the government which results in increased export of such articles or reduced import of that

article into that country. Governments make payments to a funding mechanism or entrust a private body to provide funds on behalf of the government.

The amount of countervailing duty shall not exceed the amount of subsidy paid as discussed.

Conditions:

1. This duty is in addition to any other duty chargeable under this act.
2. Countervailing duty shall not be levied unless it is determined that subsidy relates to export performance.
3. The subsidy relates to the use of domestic goods over imported goods in the export article.
4. The subsidy has been conferred on a limited number of persons engaged in manufacturing, production or export of articles.

Countervailing duty shall be in force for a period of 5 years from the date of its imposition unless revoked earlier by the government. However the government may extend this period if in a review it is of opinion that such cessation is likely to lead to continuation or recurrence of such subsidization and injury.

However, the extension can be for a maximum period of 5 years. If the review is not completed before the expiry of the period of imposition (5 years) then the duty may continue to remain in force pending the outcome of such review for a further period not exceeding 1 year.

9. PROVISIONAL COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES:

When the amount of subsidy is not determined central government may impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally estimated by it. If on determination government finds that it is less than the subsidy provisionally determined it may reduce such duty and also may refund the excess duty collected.

Retrospective imposition of countervailing duty [Section 9 (4)]

If the Central Government is of opinion that domestic industries are injured due to massive imports of articles benefited from subsidy in short period of time and such injury is difficult to repair and in order to preclude

recurrence of such injury it is necessary to levy countervailing duty with retrospective effect the Central government may impose countervailing duty with retrospective effect. The retrospective date from which the duty is payable shall not be beyond 90 days from the date of notification.

Note that no education cess or secondary and higher education cess is applicable on subsidized goods.

10. ANTI-DUMPING DUTY (SECTION 9 OF CUSTOMS TARIFF ACT, 1975)

Dumping: Dumping means exporting goods to India, at prices lower than the price in the domestic market of the exporting country, subject to certain adjustments.

When the export price of a product imported into India is less than the normal value of like articles sold in the domestic market of the exporter the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article. Anti-dumping duty is country specific i.e. it is imposed on imports from a particular country.

Normal value means comparable price in the ordinary course of trade, in the exporting country, after making adjustments to the extent of conditions of sale, taxation, etc.

Computation of Anti-dumping duty: The anti-dumping duty is margin of dumping or injury margin whichever is lower.

Margin of dumping: Difference between export price and normal value of an article.

Normal Value means: comparable price in the ordinary course of trade, in the exporting country, after making adjustments to the extent of conditions of sale, taxation, etc.

Injury Margin: It means difference between fair selling price of domestic industry and landed cost of imported product.

Fair Selling price: Price at which the industry have expected to charge under normal circumstances in the

Indian market.

11. PROVISIONAL ANTI-DUMPING DUTY

The Central Government may impose Anti-dumping duty on provisional basis if determination of normal value and margin of dumping of an article is pending in accordance with the provisions of this section and rules made there under and if such anti-dumping duty exceeds the margin as so determined,-

Central Government shall reduce the anti-dumping duty and shall also refund the excess duty so collected.

Determination of Anti-dumping duty retrospectively: If the Central Government, in respect of the dumped article under inquiry, is of the opinion that:

1. There is a history of dumping which cause injury
2. The injury is caused by massive dumping of an article imported in a relatively short time and is like to seriously undermine remedial effect of anti-dumping duty liable to be levied.
3. The central government may by notification in the official gazette levy anti-dumping duty retrospectively from a date prior to the date of imposition of duty, but not beyond ninety days from the date of notification.

Period of Duty: The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition.

However, if the Central Government is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.

Rules relating to anti-dumping duty: The Central Government will determine and ascertain the margin of dumping as referred to in sub-section (1) or sub- section (2) from time to time after carrying out necessary inquiry. Central Government, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner:

1. In which articles liable for anti-dumping duty may be identified,
2. In which the export price, the normal value, the margin of dumping in relation to such articles may be determined and

For the assessment and collection of such anti-dumping duty [sub-section (6)].

Records to be furnished for determination of margin of dumping: The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer.

However, where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

Refund of anti-dumping duty:

Section 9AA provides that where upon determination by an officer authorised in this behalf by the Central Government under clause (ii) of sub-section (2), an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under sub- section (1) of section 9A on any article, in excess of theactual margin of dumping in relation to such article, the Central Government shall, as soon as may be, reducesuch anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and such importer shall be entitled to refund of such excess duty.



CHECK YOUR PROGRESS

Q 1: Define Stores under Customs Act.

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Q 2: What do you mean by Protective Duty?

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14.7 PRINCIPLES GOVERNING LEVY OF CUSTOMS DUTY

Customs duty is levied on imports into India and export out of India. The power to levy customs duty is derived from Entry 83 of Union List of the Seventh Schedule to the Constitution of India, which reads as, "Duty of Customs including export duties".

Thus, the power to make laws in respect of Customs duty vests with the Central Government. Section 12 of Customs Act, often called charging section, provides that duties of customs shall be levied at such rates as may be specified under 'The Customs Tariff Act, 1975', or any other law for the time being in force, on goods imported into, or exported from, India. On analysis of Section 12, we derive the following points:

(i) Customs duty is imposed on goods when such goods are imported into or exported out of India;

(ii) The levy is subject to other provisions under this Act or any other law;

(iii) The rates of duty are as specified under the Tariff Act, 1975 or any other law;

(iv) Even goods belonging to Government are subject to levy, though they may be exempted by some notifications under Section 25.

Custom Tariff Act, 1975 has two schedules. Schedule I prescribe tariff rates for imported goods, known as
"Import Tariff" and Schedule II contains tariff for export goods known as "Export Tariff".

The Supreme Court of India has given the landmark judgments in cases of Union of India v Apar Industries Ltd (1999) and further in the case of Garden Silk Mills Ltd v Union of India (1999). The import of goods will commence when they cross the territorial waters but continues and is completed when they become part of the mass of goods within the country, and the taxable event being reached at the time when goods reach the Customs barriers and Bill of Entry for home consumption is filed.

"India" includes the territorial waters of India [Section 2(27)]. "Territorial Waters" according to section 3(2) of The Territorial Waters,

Continental Shelf, Exclusive Economic Zones and other Maritime Zones Act, 1976, means the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline." Indian customs waters are now extended to the Exclusive Economic Zone.

Therefore, the 'taxable event' under the Customs Act requires the following ingredients essentially:

1. Goods must be in physical form.
2. Must be brought by human beings for specific purpose.
3. Resulting in entry into India but at the customs barrier.

(A) Taxable event for Imported Goods

In the case of Kiran Spinning Mills (1999) the Hon'ble Supreme Court of India held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters of India. Crossing customs barrier: when goods are imported into India even after the goods are unloaded from the ship, and even after the goods are assessed to duty subsequent to the filing of a bill of entry, the goods cannot be regarded as having crossed the customs barrier until the duty is paid and the goods are brought out of the limits of the customs station.

Hence, taxable event in case of imported goods can be summed up in the following lines:

The taxable event occur in the course of imports under the customs law with reference to the principles laid down by the Supreme Court in the cases of Garden Silk Mills Ltd. v Union of India; and Kiran Spinning Mills v CC:

i. Unloading of imported goods at the Customs Port- is not a taxable event
ii. Date of entry into Indian Territorial Waters-is not a taxable event
iii. Date on which the goods cross the customs barrier - is a taxable event
iv. Date of presentation of bill of entry-is not a taxable event

(B) Taxable event for Warehoused Goods

The taxable event in case of warehoused goods is when goods are cleared from customs bonded warehouse, by submitting EX-bond bill of entry. As per Section 1 5(1)(b) of the Customs Act, 1962, when goods have been deposited into a warehouse, and they are removed there from for home consumption, the relevant date for determination of rate of duty is the date of presentation of ex-bond bill of entry (i.e. Sub-bill of Entry) for home consumption.

(C) Taxable event for Exported Goods

As per section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted -EsajeeTayaballyKapasi(1995)(SC) and loading of the goods for exportation took place under Section 51 of the Customs Act, 1962. In the case of any other goods, on the date of payment of duty.

Therefore, export duty rate prevailing as on the date of entry outwards granted to the vessel by the Customs Officer is relevant.

14.8 BASIC PRINCIPLES OF CLASSIFICATION OF GOODS AND VALUATION OF GOODS

i) Classification of Goods under the Customs Act, 1962

Section 12(1) of Customs Act 1962 provides levy of duties of customs on goods imported into or exported from India. In order to assess the amount of duty payable on goods imported into or exported from India, they need to be classified within the ambit of the Schedule to the Customs Tariff Act. The correct classification of goods is necessary to ascertain the rare of custom duty which goods are subject to. Classification enables categorising the goods in to groups / sub-groups, in order to apply a single rate of duty on each group / sub-group. This classification is based on the concept of Harmonised System of Nomenclature (HSN). HSN is an internationally accepted coding system and the same was formulated and thereby enunciated under the General Agreement on Tariffs & Trade (GATT).

This Harmonised system is both a multi-purpose six digit nomenclature and a structured nomenclature based on a series of sub divided 4 digit headings. At the six digit level there are 5019 headings, at 5 digit, 3558 headings and at 4 digit, 241 headings. The purpose of such structuring is to enable different digit levels being utilised for different purposes like classification of goods for customs, compilation of trade statistics, utilisation of transport tariff, etc. Each heading of the system is identified by a 4 digit code. The first two digits of the heading indicate the chapter while the next two digits indicate the position of the heading in the chapter. Eg: Coding 53.09 represents 'yarn of other vegetable textile fibres, paper yarn'. Here, 53 denotes the chapter and 09 denotes the heading. Further, all the headings except 311 headings are subdivided into two or more sub-headings and whenever necessary they are subdivided into two or more 2 dash sub-headings which are identified by 6 digit code.

For example, the code for vanilla is 0905, which means it comes under heading 09.05, here the fifth and sixth digits are zero. So vanilla has not been sub-divided. The Hs for 'maize and other corn oil' is 1515.20 which means that 'maize and other corn oil is included in the first one dash sub heading (fifth digit is 2) but has not been sub-divided further (sixth digit is 'Zero'). Again 'Fescus seed' is coded as 1209.23. This is a case of 2 dash sub headings, the last two digits being 2 and 3.

The rates for Customs Duty alongside the classification (Groups / Sub-groups) are laid down in Customs Tariff Act, 1975 as under:

a) First Schedule : applicable on Imports

b) Second Schedule : applicable on Exports

ii) Valuation of goods for Customs Duty

The method of valuation of goods for both import and export for the purposes of levy of customs duty on the basis of value has been set out under Section 14 of the Customs Act, 1962. Section 14(1) provides that the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the

time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf :

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,-

(i) the circumstances in which the buyer and the seller shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section :

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Not with standing anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation. - For the purposes of this section -

(a) "rate of exchange" means the rate of exchange -

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and ''Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).]

Methods of Valuation

The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, based on WTO Valuation Agreement (earlier GATT Valuation Code), consist of rules providing six methods of valuation.

i. The methods of valuation for customs methods are as follows -

ii. Transaction Value of Imported goods [Section 14(1) and Rule 3(1)]

iii. Transaction Value of Identical Goods [Rule 4]

iv. Transaction Value of Similar Goods [Rule 5]

v. Deductive Value which is based on identical or similar imported goods sold in India [Rule 7]

vi. Computed value which is based on cost of manufacture of goods plus profits [Rule 8]

vii. Residual method based on reasonable means and data available [Rule 9]

These methods are to be applied in sequential order, i.e. if method one cannot be applied, then method two comes into force and when method two also cannot be applied, method three should be used and so on. The only exception is that the 'Computed value' method may be used before 'deductive value method, if the importer requests and Assessing Officer permits.

14.9 CUSTOMS AUTHORITIES

Customs officers are assigned with the collection of import and export duties including cesses coupled with the regulation of movement of goods

and services in and out of the country. Customs Authorities are empowered to determine classification, valuation, refund claims and the tax/duty payable. They are also empowered to grant various permissions under rules and impose fines, penalties, etc., and confiscate offending goods.

a) Appointment of Customs Officers

The following classes of officers of customs shall be appointed to administer the Customs Law, namely:-

i) Chief Commissioners of Customs;
ii) Commissioners of Customs;
iii) Commissioners of Customs (Appeals);
iv) Joint Commissioners of Customs;
v) Deputy Commissioners of Customs;
vi) Assistant Commissioners of Customs;
vii) Such other class of officers of customs as may be appointed for the purposes of this Act.

Among the other classes of officers of customs, the following officers have been appointed:

(i) Appraisers of Customs, who do the assessment work of import and export goods, including classification, valuation and examination of the goods; and

(ii) Preventive Officers of Customs, who do the executive duties such as,

(a) Boarding and checking ships and aircrafts;
(b) Clearing passengers and crew and their baggage;
(c) Supervision and control over loading and unloading of cargo;
(d) Preventing smuggling by checking suspect;
(e) Interrogating suspects/witnesses and investigation.

(iii) Ministerial Officers, who maintain records, keep accounts, etc.

(iv) Chemical Examiner, who tests samples of imported or export cargo for determination of true character of the goods for proper classification and value, necessary for determination of customs duty.

b) Powers of officers of customs. -

i) The Commissioner of Customs has the power to -

- approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;
- specify the limits of any customs area.

ii) The Commissioner of Customs has power to appoint, in or near any customs port, a boarding station for the purpose of boarding of, or disembarkation from, vessels by officers of customs.

iii) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

iv) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

v) Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108.

The Customs Officers are authorised to declare warehousing stations, allow setting up warehouses (Public / Private). They have the power to search any vessel / conveyance / person; seizure of goods; and arrest.

The Customs Officers are required to curb illicit financial flows, infringement of Intellectual Property Rights and smuggling of firearms, narcotic drugs, fake currency and various other goods subject to physical controls and barriers. The complexities of the Customs Officer's duties lie in the maximisation of revenue while preventing attempts at smuggling without disturbing or obstructing the pace of movement of goods or services. Owing to changes caused in recent times by vast technological advancement, liberalization and globalization, it is indeed a challenging task to strike the right balance between facilitation and enforcement.

Customs officers have an exceptionally important role in the economic development of the country as the customs duties have not only

been a significant source of revenue, but also a crucial instrument for regulating cross border trade. Customs officers also need to address the country's security concerns by curbing money laundering, IPR infringement and smuggling firearms, narcotics, fake currency, etc. Due to the changes caused by technological advancement, liberalization and globalization, it is a challenging task to strike the right balance between passenger facilitation and enforcement of Law.



CHECK YOUR PROGRESS

Q 3: Mention the conditions for taxable events under Customs Act, 1962.

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Q 4: State two powers of Customs Officer.

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14.10 LET US SUM UP

In this unit, we have discussed the following:

- The Basic Customs Duty levied under the Customs Law has not been subsumed under the GST and hence still continue to be levied along with GST.
- Custom Duty in India is imposed under the Customs Duty Act, 1962 by the Constitution of India under the Article 265, which states that "no tax shall be levied or collected except by authority of law".
- The various types of Duties under the Customs Act, 1962 are as follows:
  - i) Basic Custom Duty
  - ii) Integrated Tax [Section 3 (7) of the Customs Tariff Act, 1975]

iii) Goods and Services Tax Compensation Cess [Section 3 (9) of Custom Tariff Act 1975]

iv) Additional Duty of Customs (Section 3 of Customs Tariff Act, 1975)

v) Special Additional Duty

vi) Protective Duty (Section 6 & 7 of Customs Tariff Act 1975)

vii) Safeguard Duty (Section 8 of Custom Tariff Act, 1975)

viii) Countervailing Duty on Subsidized Articles [Section 9 of Customs Tariff Act 1975]

ix) Provisional Countervailing Duty on Subsidized Articles

x) Anti-Dumping Duty (Section 9 of Customs Tariff Act, 1975)

xi) Provisional Anti-Dumping Duty

- The power to levy customs duty is derived from Entry 83 of Union List of the Seventh Schedule to the Constitution of India, which reads as, "Duty of Customs including export duties".
- The power to make laws in respect of Customs duty vests with the Central Government.
- Section 12 of Customs Act, often called charging section, provides that duties of customs shall be levied at such rates as may be specified under 'The Customs Tariff Act, 1975', or any other law for the time being in force, on goods imported into, or exported from, India.
- The method of valuation of goods for both import and export for the purposes of levy of customs duty on the basis of value has been set out under Section 14 of the Customs Act, 1962.



14.11 FURTHER READING

1) The Customs Act, 1962, Bare Act.

2) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.

3) Customs Law Practice & Procedures by V.S. Datey Taxmann Publications

14.12 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: "Stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

Ans to Q No 2: Protective duties are levied by the Central Government on being satisfied that circumstances exist which renders it necessary to protect industries established in India. As per section 7(1), the protective duty shall be effective only up to and inclusive of the date if any, specified in the First Schedule.

Ans to Q No 3: The 'taxable event' under the Customs Act requires the following ingredients essentially:

1. Goods must be in physical form.
2. Must be brought by human beings for specific purpose.
3. Resulting in entry into India but at the customs barrier.

Ans to Q No 4: i) The Commissioner of Customs has the power to -

- approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;
- specify the limits of any customs area.

ii) The Commissioner of Customs has power to appoint, in or near any customs port, a boarding station for the purpose of boarding of, or disembarkation from, vessels by officers of customs.



14.13 MODEL QUESTIONS

Q 1: Discuss briefly about the Customs Law in India.

Q 2: State the objectives of levy of Customs Duty.

Q 3: Explain the various types of Customs Duty.

Q 4: Discuss the principles governing levy of Customs Duty.

Q 5: Write briefly about classification of goods under Customs Act, 1962.

Q 6: Discuss briefly about valuation of goods under Customs Law.

*** ***** ***



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5) Direct Taxes Law & Practice -With Special Reference To Tax Planning (61st Edition A.Y. 2019-20) by Vinod K. Singhania & Kapil Singhania.
6) Goods and Services Tax GST by by H.C. Mehrotra & V.P. Agarwal, Sahitya Bhawan Publications.
7) GST: A Transformational Tax Reform by V. S. Krishnan.
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9) Income Tax Act, 1961, Bare Act.
10) Income Tax Act by Girish Ahuja & Ravi Gupta.
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12) Taxmann's GST Acts with Rules & Forms [Bare Act] by Taxmann Publication.
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Learner's Feedback on Course

Dear Learner,

Regarding the course as mentioned above, we would like to know your opinions and comments so as to improve the quality of self learning materials in future. Please respond to the following statements by ticking the number you feel most reflect your opinion. After completion of the additional comments, please detach the page and send/mail the same to us at the address given below.

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1. Approximately how many hours did you spend for studying the units in the course? | | | |
2. Please give your opinions (by √ mark) to the following items based on your reading of the block:

Sl. No.	Statements	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
I.	The SLMs of the course fulfil the learning objectives set out in the beginning of each unit					
II.	The units of the SLM could satisfy my academic needs and expectations					
III.	The Unit writers have excellent knowledge about the course contents					
IV.	Language and contents of the units were presented at a level which I could readily understand					
V.	Ample opportunity for participation in the activities provided in the units					
VI.	Used enough Illustrations (Diagrams, tables etc.) for conceptual clarity					
VII.	Quality of content is engaging, relevant, and up-to-date					
VIII.	The self check questions are very helpful					
IX.	The Possible/model questions and the answers to check my progress have benefited me a lot					

Additional Comments: *(Please feel free to provide your open comments)*

1. Which aspects of the SLM, according to you, worked well?

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2. What sort of changes/improvements do you feel KKHSOU could implement to improve the overall quality of the SLM?

Thank you for taking the time to complete this form.

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