Volume-33 April -2017 Pages 1-27

SBS Wiki

monthly e-Journal

By

SBS and Company LLP
Chartered Accountants

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FEMA

OVERVIEW ABOUT THE MTSS AND RELATED FEMA REGULATIONS

Contributed by CA Murali Krishna G

In view of the NRI Inflows into India, playing pivotal role for India's Foreign Exchange, an attempt is made to provide brief introduction about the MTSS Scheme through which such remittances are being received into the India.

What is MTSS?

Money Transfer Service Scheme (MTSS) is a quick and easy way of transferring personal remittances from abroad to beneficiaries in India. Under MTSS the remitters and the beneficiaries are individuals only. The MTSS is having statutory recognition under Payment and Settlement Systems Act, 2007 and rules made thereunder

Permitted nature of remittances

Only inward personal remittances into India such as remittances towards family maintenance and remittances favouring foreign tourists visiting India are **permissible.** No outward remittance from India is permissible under MTSS

Donations/ contributions to charitable institutions/trusts, trade related remittances, remittance towards purchase of property, investments or credit to NRE Accounts **shall not be made** through this arrangement.

Nature of Players Involved in the MTSS

The system envisages a tie-up between reputed money transfer companies abroad known as Overseas Principals and agents in India known as Indian Agents who would disburse funds to beneficiaries in India at ongoing exchange rates. The Indian Agents can in turn also appoint sub-agents to expand their network.

Prominent Overseas Principals under this scheme areWestern Union Financial Services Incorporated, USA ("Western Union or WU"), Wall Street Exchange Centre LLC, UAE ("Instant Cash"), UAE Exchange Centre LLC, UAE ("Xpress Money"), Royal Exchange (USA) Inc., USA, and MoneyGram Payment Systems Inc, USA("MoneyGram or MoneyGram International") etc. Many Indian Agents have tied up with these players for quick remittances of Foreign Currency into India.

Entry Norms for Indian Agents

The applicant, in order to become an Indian Agent, should be an Authorised Dealer Category-I bank or an Authorised Dealer Category-II or a Full Fledged Money Changer (FFMC), or a Scheduled Commercial Bank or the Department of Posts and should have minimum Net Owned Funds of Rs.50 lakh.

Guidelines for Overseas Principals

Indian Agents entering into arrangements with Overseas Principals, need to have adequate volume of business, track record and outreach etc.

Applicant Indian Agents should submit the following documents/ comply with the following requirements, in respect of their Overseas Principals:

a) The Overseas Principal should obtain necessary authorisation from the Department of Payment and Settlement Systems, Reserve Bank of India under the provisions of the Payment and Settlement Systems Act (PSS Act), 2007 to commence/ operate a payment system. Prior to such authorization, the RBI will verify the background and antecedents of the Overseas Principal with the help of Govt. of India,
b) The Overseas Principal should be a registered entity, licenced by the Central Bank / Government or financial regulatory authority of the country concerned for carrying on Money Transfer Activities. The country of registration of the Overseas Principal should be AML compliant.
c) The minimum net-worth of Overseas Principals should be at least USD 1 million as per the latest audited balance sheet, which should be maintained at all times. However, the Reserve Bank may consider relaxing the minimum Net Worth criterion in case of Overseas Principals incorporated in FATF member countries and are supervised by the concerned Central Bank/ Government or financial regulatory authority.
d) The Overseas Principal should be well established in the money transfer business with a track record of operations in well regulated markets.
e) The arrangement with Overseas Principal should result in considerably increasing access to formal money transfer facilities at both ends.
f) The Overseas Principal should be registered with the overseas trade / Industry bodies.
g) The Overseas Principal should have a good rating from one of the international credit rating agencies.
h) The Overseas Principal should submit confidential reports from at least two of its bankers.
i) The Overseas Principal should submit a report certified by independent Chartered Accountants, regarding steps taken to comply with anti-money laundering norms in the home/ host country.
j) The Overseas Principals will be fully responsible for the activities of their Agents and Sub Agents in India.
k) Proper records of remitters as also beneficiaries pertaining to all pay-outs in India are to be maintained by the Overseas Principals. All records must be made accessible on demand to the Reserve Bank or other agencies of the Government of India, viz., Ministry of Finance, Ministry of Home Affairs, FIU-IND, etc. Full details of the remitters and the beneficiaries should be provided by the Overseas Principals, if called for.

Receipt of Cross Border Remittances by Indian Residents/ foreign tourists

A cap of USD 2500 has been placed on individual remittance under the scheme. Amounts up to Rs.50,000/- may be paid in cash to a beneficiary in India. Any amount exceeding this limit shall be paid by means of account payee cheque/ demand draft/ payment order, etc., or credited directly to the beneficiary's bank account only.

However, in exceptional circumstances, where the beneficiary is a foreign tourist, higher amounts may be disbursed in cash. Full details of such transactions should be kept on record for scrutiny by the auditors/ inspectors.

Only 30 remittances can be received by a single individual beneficiary under the scheme during a calendar year.

To facilitate receipt of foreign inward remittances directly into bank account of the beneficiary, the foreign inward remittances received under MTSS can be transferred to the KYC compliant beneficiary bank account through electronic mode, such as NEFT, IMPS etc.

Foreign inward remittances received by the bank acting as Indian Agent under MTSS, may also be electronically credited directly to the account of the beneficiary, held with a bank other than the Indian Agent Bank

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INCOME TAX

AMENDMENT TO SECTION 11 - PROSPECTIVE OR RETROSPECTIVE

Contributed by CA Ramprasad T

Section 11of the Income-tax Act, 1961 ("Act") provides for exemption of income derived from property held under a trust or legal obligation wholly for charitable purposes to the extent of income applied for such purposes in India. Such trust or legal obligation can accumulate or set apart not exceeding 15% of the income from such property subject to exceptions provided in subsection 2 of section 11.

Section 2(15) defines "Charitable Purposes". It includes relief of poor, education, medical relief, Yoga [1], preservation of environment[2] including watersheds, forests and wildlife and preservation of monuments or places or object of artistic or historic interest and advancement of any other object of general public utility.

Section 11(1)(d) provides that income in the form of voluntary contributions made with a specific direction that they shall form part of corpus of the trust or institution are not subject to application. In nutshell corpus donations are not income of the trust or institution.

Explanation to Section 11(2) provides that the amount credited or paid out of accumulated income to any trust or institution registered U/S 12AA or any fund or institution or other educational institution or any hospital or other medical institution referred to in (iv)/(v)/ (vi)/(via) of Section 10(23C)shall not be treated as application of income for charitable purpose either during the period of accumulation or thereafter.

By reading the provisions of section 11(1)(d) and explanation to section 11(2) together one may conclude that it is allowed for a trust or institute to donate out of current year income to another trust or institution registered U/S 12AA/10(23C) and claim it as application of income.

The above view was supported by Gujrat HC Judgement[3] where the Court held that the provisions of section 11(1)(a) can be said to have been met out where a donor -trust, which is charitable and religious trust, donates its income to another charitable and religious trust even though such contribution is towards corpus of donee- trust or institution. Further the Court held that instruction no. 1132 issued by the CBDT on 05-01-1978 squarely covers the facts of the present case.

New Proposal by Finance Bill 2017: -

A new explanation (Explanation 2) inserted to the section 11(1) w.e.f 01-04-2018. It provides that any amount credited or paid out of income referred to in Section 11(1) (a) or (b) to any other trust or institution registered U/ S 12AA, being contribution with specific direction that they shall form part of corpus of the trust or institution shall not be treated as application of income for charitable or religious purpose.

[1] FA 2015
[2] FA (2) 2009
[3] CIT vs Saraladevi Sarabhai Trust No.2 48 Taxman 388

The reason behind the amendment is avoid the double benefit being that in the hands of donor trust it is treated as application of income and in the hands of donee such receipt is not income for the purpose of application.

However, donations with no specific directions to the recipient continue to be eligible as application of income.

The new proposal in Finance Bill 2017 is prospective in nature. To support this view reliance can be place on Supreme Court Judgement[4] and ITAT JAIPUR[5] where in it was held that *"of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation." The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. One principle of law is known as lexprospicit non respicit: law looks forward not backward.*

Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect;

While interpreting whether amendment to be applied retrospectively or prospectively one has to consider the notes on clauses appended to the Finance Bill.

The Memorandum to Finance Bill 2017 provided that new explanation to section 11 will take effect from 1st April 2018 and apply in relation to the assessment year 2018-19 and subsequent years.

Therefore, the proposed amendment brought by Finance Bill 2017 by insertion of new explanation to section 11(1) will apply prospectively.

[4]CIT vs Vatika Township (p) Ltd 227 Taxman 121
[5]MahimaShiksha Samiti, Jaipur vs. ACIT,(Exemption), Jaipur dated 03/03/2017

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INCOME TAX

DOMESTIC TRANSFER PRICING

Contributed by CA Suresh Babu S

Introduction of SDT Provisions (Sec 92BA) in 2012:

The Finance Act (FA) 2012 has extended the scope of existing Transfer Pricing (TP) regulations as was applicable to 'international transactions' (Int. Tr) to 'specified domestic transactions' (SDT) with effect from A.Y. 2013-14. The Explanatory Memorandum to Finance Bill 2012 clarifies that the genesis of these provisions lie in suggestion made by the Supreme Court (SC) in the case of CIT v. Glaxo Smitkline Asia (P) Ltd. (2010) 195 Taxman 35 (SC) (Glaxo's case). In this case, the SC observed that there was a need to extend TP regulations (as applicable to Int. Tr) to domestic transactions. This was in view of the fact that certain provisions of the Income tax Act, 1961 (ITA) like s. 40A(2) and s. 80-IA(10) refer to 'fair market value' (FMV) of related party transactions and complications arise where FMV is required to be determined for applying provisions of ITA. The SC suggested that Ministry of Finance should consider appropriate provisions in law to make TP regulations applicable to such related party domestic transactions so that the Tax Authority can apply any of the generally accepted methods of determination of arms' length price (ALP) and the Tax Authority's constraint of relevant documents can also be removed by making it compulsory for the taxpayer to maintain such documents and obtain audit report from Chartered Accountant.

Section 40A(2)(b):

Section 40A(2) of the Income-tax Act, 1961 (**'the Act'**) empowers the Assessing Officer (**'AO'**) to disallow excessive or unreasonable expenditure of the taxpayer, paid or payable to a specified related individual or associate concern (hereinafter also referred to as '**related parties**'). The important criteria for the application of this section to the expenditure will be to establish the relationship or association between the Taxpayer and the Payee. The related parties are listed out in Section 40A(2)(b) with reference to the different classes of taxpayers.

The coverage of Section ('Sec')40A(2)(b) is wide and covers persons related to the taxpayer under direct or indirect relationships. Hence, it is important to identify all specified related parties and relevant expenditure with them for compliance. Such determination includes the concepts of **'relative'** and **'a person having substantial interest in the business or profession'.** The specified related parties, for the purpose of Sec 40 A(2) are unique to the Sec 40A (2)(b) independently defines the relationship and the minimum holding thresholds required to establish relationship between parties. The scope of the relations or associations covered in the section are analysed in detail below:

Definition of 'Relative':

Sec 2(*41*) defines "relative", in relation to an individual to mean his/her

- Spouse (husband or wife);
- Siblings (brother or sister);
- Parents (any lineal ascendant); and
- Children (any lineal descendant).

Meaning of 'Substantial Interest':

The meaning of the term Substantial Interest (for short hereinafter referred as 'SI') is defined in the explanation to Sec 40A (2)(b) with reference to the companies and other assessee's as below:

- A person is deemed to have a substantial interest in a business or profession of a company, if at any time during the previous year, the person is the beneficial owner of shares carrying 20% or more of the voting power. The shares exclude shares entitled to a fixed rate of dividend whether with or without a right to participate in profits such as preference shares;
- A person is deemed to have a substantial interest in a business or profession of any other assessee, if the person at any time during the previous year is, beneficially entitled to 20% or more of the profits of such business or profession.
- The above definition in the explanation is similar to the definition in "Sec 2(32) –person who has a substantial interest in the company"

S. 92BA includes following transaction which necessarily require two legal entities:-

- Transactions covered by s. 40A(2).
- Transactions as are referred to in s. 80-IA(10) as also other sections in Chapter VI-A or s. 10AA to which provisions of s. 80-IA(10) are made applicable.

S. 92BA also includes following transactions which are necessarily restricted Between two units of the same legal entity.

- Transactions referred to in s. 80A(6) and s. 80-IA(8) viz. transactions of Transfer of goods / services from or to unit which is eligible for profit linked Incentive deduction under Chapter VI-A and s. 10AA to or from other units of the same taxpayer.

Thus taxpayers were required to maintain TP documentation and file form 3CEB's if the aggregate value of the above said limits exceeded 20Crores.

Finance Act 2017:

- Existing provisions of S. 92BA, inter alia, provide that expenditure in respect of which payment has been made to specified persons mentioned under s. 40A(2)(b) would be a 'specified domestic transaction' (SDT) covered by s. 92BA
- This led to significant compliance burden on taxpayers with respect to obtaining CA certificate in Form 3CEB, mentioning the details of the transactions, method adopted for determining arm's length price, positions taken with regard to certain transactions not considered as SDT, etc.
- To reduce such compliance burden of taxpayers, FB 2017 proposes to exclude the said transaction ofexpenditure in respect of which payment has been made/ to be made to specified persons from the scope of s. 92BA.
- Domestic TP shall continue to apply to other transactions specified u/s. 92BA relating to profit linked tax holiday units and subject to aggregate value threshold of Rs. 20 cr.

- Proposed amendment provides relief from TP compliance in respect of expenditure incurred in favour of resident related parties like:
  - Directors' remuneration;
  - Purchase of goods/ services
  - Interest on loan/ deposits
- Such transactions shall continue to be reported in Tax Audit Report in Form 3CD
- Deductibility of such payments would be tested under general principles of s. 40A(2)(a), viz.,
  - FMV of goods, services or facilities;
  - Legitimate needs of business/ profession
  - Benefits derived/ accrued therefrom

This amendment is effective from 1 April 2016 and will apply in relation to AY 2017-18 and subsequent years.

Concluding remarks and things to look out for:

- Any excessive payment made by an entity to other entity may not be completely taxed at corporate tax rates as the other entity (selling) would also claim its administrative or business expenditures out of the receipts. Hence there is still scope for tax avoidance and government may still revisit the subject at any point of time in the future.
- The tax authorities always had and will have power to question on the fair market value of the payments irrespective of the fact whether sec 40A(2)(b) is linked to sec 92BA or not. Form 3CD would cover this aspect as usual.
- The assessment approach from the tax office standpoint still does not seem to change for FY 13-14 and FY 14-15 cases as still references are being made to the TPO in relation to the said SDT payment cases.

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COMPANIES ACT, 2013

MEETINGS THROUGH VIDEO CONFERENCE

Contributed by CS D V K Phanindra

CONDUCTING BOARD MEETINGS THROUGH VIDEO CONFERENCE – PROCEDURE-PROCESS

Section 173of the Companies Act, 2013, provides for the participation of directors in a Board meeting, either in person or through video conferencing or other audio visual means, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

As per the rules framed under the Act, the following are the compliances for holding/attending meetings through Video Conference.

"Video Conferencing Or Other Audio Visual Means" *means "audio-visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting".*

From the above definition, it is clearly evident that holding of a Board meeting through Video Conferencing or through Audio Video means, is not simply conducting a meeting through **skype or a third party video conferencing facility/means.**

For the time being, the Companies Act, 2013, restricts for the following matters/decisions of the Board to be dealt by a meeting held through video conferencing or other audio visual means:

(I) Approval of the annual financial statements;
(ii) Approval of the Board's report;
(iii) Approval of the prospectus;
(iv) Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act; and
(v) Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

NOTE: *The Companies Amendment Bill, 2016 (Bill No.73 of 2016), proposes to amend Section 173, by inserting a second proviso to sub-section (2) of Section 173, that, where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter, including the restricted matters.*

Process/Procedure for conducting of Meeting through Video Conference and Compliance is as below:

1. Notice of Board Meeting:

A meeting of the Board shall be called by giving not less than 7 days in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

The Notice of the Meeting, wherein the facility of participation through video conferencing mode or other audio visual means, shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting and it shall be the place where all the recordings of the proceedings at the Meeting would be made.

Requirements to participate/attend a meeting through Video Conference:

A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the Company Secretary of the company, if any.

If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.

The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.

In the absence of any intimation from the Director, it shall be assumed that the director shall attend the meeting in person.

2. Arrangements and requirements for/at the Meeting:

The Company shall make necessary arrangements to avoid failure of video or audio visual connection.

The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care:

(a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;

(b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;

(c) to record proceedings and prepare the minutes of the meeting;

(d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.

(e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and

(f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting; Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

3. Roll Call at the Commencement of the Meeting, Invitees and Quorum:

At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-

(a) name;
(b) the location from where he is participating;
(c) that he has received the agenda and all the relevant material for the meeting; and
(d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b);

Information as to any Invitees for the Board meeting:

After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson.

From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company Secretary, if any, and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.

Quorum:

The quorum for a meeting of the Board of Directors of a company shall be1/3rd of its total strength or 2 directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum. The Articles of Association of the Company to be verified for any requirement, for having a higher quorum

Participation through video Conferencing shall be counted for the purpose of Quorum is the quorum unless he is to be excluded for any items of business under the provisions of the Act, as detailed above i.e., matters not to be dealt through Video Conference.

The Chairperson shall ensure that the required quorum is present throughout the meeting.

4. Venue of the Meeting and placing of the Statutory Registers:

In respect of every meeting conducted through video conferencing or other audio visual means, the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.

5. Proceedings at the meetings, manner of transacting an item at the meeting, Recording of Minutes:

Director to Identify himself:

Every Director shall identify himself for the record before speaking on any item of business on the agenda.

If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.

Voting:

If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

Summarisation of decisions taken:

At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.

Recording of Minutes:

The minutes shall disclose the particulars of the directors who attended the meeting physically and through video conferencing or other audio visual means.

The draft minutes of the meeting shall be circulated among all the directors within 15 days of the meeting either in writing or in electronic mode as may be decided by the Board.

Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

The minutes shall be entered in the minute Book and signed by the Chairperson.

The recordings of the proceedings of the meeting along with date and time, shall be kept in the safe custody of the Chairperson or any Director of the Company.

From the above, it can be clearly seen that the facility of conducting Board Meetings through Video conference enable ease of operations and enhances the ability of the Board of Directors to take decisions in the interest of the Organisation.

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GST

SEAMLESS CREDIT UNDER GST— STILL SEEMS TO BE OUT OF REACH

Contributed by CA Sri Harsha & CA Manindar

INTRODUCTION:

GST is globally enshrined as a successful tax reform that will reduce the cascading effect of taxes, ensuring no tax burden on business houses and shifts the complete tax burden on to the end customer or consumer. Seamless Input Tax Credit (ITC) is often lauded as major benefit of GST by tax and economic experts. This is the driving force behind our country in embracing GST. Recently the CGST, IGST, UTSGST, GST Compensation bills are tabled in Parliament. The provisions of CGST bill relating to ITC will act as a litmus test for Government's commitment towards the objective of conferring seamless credit to business houses. This article aims at bringing some aspects of the provisions relating to ITC which do not go in hand with seamless credit.

ITC AVAILABLE ON ANY SUPPLY USED OR INTENDED TO BE USED IN BUSINESS:

Sub-section (1) of Section 16 of CGST bill provides for entitlement to ITC which is reproduced as under—

"(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be ***entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business*** *and the said amount shall be credited to the electronic credit ledger of such person"*

In terms of this section, a registered taxable person can claim ITC on procurement of all goods or services or both when they are used or intended to be used in the course or furtherance of his business. The expression 'used or intended to be used in the course or furtherance of businesses' is of wide connotation and this would simply imply that any expenditure which is incurred for the purpose of providing taxable supply of goods or services or both would be eligible for ITC. This is a welcoming move. Unlike the case of CENVAT Credit Rules, 2004 (CCR,2004), there are no definitions given for 'input', 'input service' and 'capital goods' which prescribe various conditions for eligibility viz. usage within the factory of production, direct nexus with provision of output service etc. That is to say even these terms appear in GST law, the same are without any conditions or restrictions as were there in earlier law. Thus, under GST regime every expenditure incurred for business would be entitled to ITC.

However, ITC has been barred on various items by way of exclusions under sub-sections (5) of Section 17 of the CGST bill. These items are similar to the exclusions given under the definitions of 'inputs', 'input services' of present CCR, 2004. Upon closer scrutiny of these exclusion clauses, they are even more detrimental compared to those under CCR, 2004. The comparative analyses of these exclusions are tabulated as under;

S No	Under CCR,2004	Under GST Regime
1	Services provided by way of renting of motor vehicles except when motor vehicle is not a capital goods i.e. credit is available only for those engaged in transportation of goods, passengers, imparting driving skills, renting of such vehicles	ITC is available when rent-a-cab service is used to provide similar category of service viz. Rent-a-cab. If a vehicle is hired by a person for imparting driving skills, ITC on such vehicle may not be available
2	Outdoor catering, beauty, health care, cosmetic surgery, membership of a club, health and fitness services, travel benefits etc are barred from availment of credit only when such services are intended for personal use of employees	ITC is barred on all these services irrespective of the fact whether they are incurred for use by employees or not. The only exception is travel benefits for which ITC is barred only incase where the expenditure is incurred for use by employees.

ITC ON WORKS CONTRACTS ALLOWED IN CASE OF PLANT & MACHINERY:

Under the present CCR, 2004, credit of service tax/excise duty paid with respect to works contracts for construction of buildings, civil structures or for laying of foundation or making of structures for support of capital goods is not allowed. Credit is allowed only to a works contractor who is in turn providing similar works contract services. However service tax paid on works contract services used for construction of capital goods (other than foundation or support structures) is allowed as credit.

Under the GST regime, the said restriction on availment of ITC on works contract services is retained and ITC is allowed only to the said works contract service that is used for further supply of works contract service. The only exception for this restriction is works contract services relating plant and machinery, where all the receivers of the said supply are entitled to take ITC. For this purpose, the expression 'Plant and Machinery' is defined which is reproduced as under—

"plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;
(ii) telecommunication towers; and
(iii) pipelines laid outside the factory premises

In view of this definition, ITC is not available on all types of works contracts relating to capital goods but only those that fit into the definition of plant and machinery. Further, ITC is restricted on works contracts relating to land, buildings, telecommunication towers and pipelines. However on a positive note, works contract services relating to foundation and structural supports for plant and machinery are eligible for ITC which are currently barred from CENVAT credit under CCR, 2004

NO ITC ON INPUTS & CAPITAL GOODS USED IN MANUFACTURE OF ELECTRICITY FOR USE IN PRODUCTION:

Electricity is not excisable goods but yet CENVAT Credit is allowed under the present CENVAT Credit Rules, 2004 on inputs used in manufacture of electricity that is captively consumed in factory for production of dutiable goods. Electricity is going to be outside the GST tax net as they continue to be subjected to tax by electricity duty by States. There is no corresponding provision under the model GST law to prescribe for availing ITC on inputs and capital goods used in manufacture of electricity for captive consumption to manufacture goods that are subject to GST. In such absence, manufacturers cannot avail ITC of such inputs and capital goods which they are allowed to do so under the current regime. This will certainly shoots up the cost of the goods and thereby contributes to the cascading effect which is against the objective of GST.

ITC ON PRE-REGISTRATION EXPENSES— ELIGIBLE ONLY UPON TIMELY REGISTRATION:

Unlike the present Central Excise and Service Tax laws, ITC under GST regime is allowed only if the assesse is registered under GST at the time of procuring goods or services. In case of any procurement prior to registration, ITC can be claimed only in accordance with the manner provided under Section 18(1) of the CGST bill which is reproduced as under—*"A person who has applied for registration under the Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act."*

In view of the above provisions, ITC relating to procurements prior to GST registration will be allowed only if GST registration is sought within the stipulated time period of 30 days from the date on which the assesse is liable for registration and the registration has been granted. In case of delay in applying the registration beyond the stipulated period, it seems that this provision is barring the assesse to claim ITC on expenditure incurred prior to registration.

Further, the section allows the assesse to claim ITC only to the extent relating to inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable for registration. This implies that there is no enabling provision to avail ITC relating to input services (otherwise related to stock) and capital goods that are procured prior to registration even though registration is obtained within the stipulated time period.

The condition of mandatory registration at the time of procurement is quite understandable as credit availment under GST regime is under a controlled electronic environment as supplier has to accept the corresponding liability and pay the tax by disclosing the said supply in his monthly GST returns.However this should not by any means operate as hindrance to deny credit to an assesse who failed to obtain registration within the stipulated time period.

It is advisable to prescribe a suitable mechanism to bring the procurements prior to GST registration under the said controlled electronic environment and allow assesseto avail the ITC. May be the fresh registrant is permitted to file a return immediately after registration with information relating to his procurements and ITC shall be allowed only when such information is matched with that the corresponding supplier.

ITC AVAILMENT ON GOODS NOT IN ALIGNMENT WITH TIME OF SUPPLY:

There is no concept of time of supply for goods either under VAT or Excise laws under the existing regime. The concept of point of taxation (akin to time of supply) is prevalent under Finance Act, 1994. The CCR, 2004 provides for availment of CENVAT Credit by receiver of services in case where he has paid advances towards taxable services and service tax is charged on such advances by the provider of services.

In terms of section 12 and section 13 of the CGST Bill, the liability to pay GST arises at the time of supply of goods or services which in general is the earlier of the date of issue of invoice (the prescribed last date for such issuance in the event invoice not issued) or the date on which supplier receives the payment with respect to the supply.

Subsection (2) of Section 16 of the CGST Bill provides for the conditions to be satisfied by registered taxable person in order to be entitled to ITC in respect of supply of goods or services. The relevant part of the section is reproduced as under;

"Notwithstanding anything contained in this section, but subject to the provisions of section 36, no registered taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other taxpaying document(s) as may be prescribed;

(b) ***he has received the goods and/or services;***

(c) the tax charged in respect of such supply has been actually paid to the account of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 34:

PROVIDED ***that where the goods against an invoice are received in lots or instalments, the registered taxable person shall be entitled to take credit upon receipt of the last lot or installment:***

PROVIDED FURTHER ***that where a recipient fails to pay to the supplier of services, the amount towards the value of supply of services along with tax payable thereon within a period of three months from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in the manner as may be prescribed.***

Explanation.—For the purpose of clause (b), it shall be deemed that the taxable person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such taxable person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise"

In terms of the above reproduced section, a registered taxable person is allowed to take ITC only upon receipt of goods or services apart from holding invoice, filing the return, tax charged has been paid by supplier etc. In cases where advances are given towards the taxable supply of goods or services, though the tax has been paid upon such advances by virtue of the provisions of time of supply, the receiver cannot avail ITC immediately and can only avail ITC after the receipt of goods or services.
This intention is further clearly evident from the first proviso of said section 16(2), which provides that in case where goods are received in lots or installments, ITC can be availed only upon the receipt of last lot or installment. Thus under GST regime, ITC cannot be availed immediately upon payment of tax towards advances paid towards supply of taxable goods or services. The recipient of supply has to wait till receipt of goods or services to avail ITC. This may cause undue hardship and may have a bearing on working capital of business houses.

REVERSE CHARGE IS AN EXEMPTED SUPPLY:

Sub-section (2) of section 17 of the Revised Model GST law provides for reversal of proportionate ITC in case where the registered taxable person is engaged in providing both taxable and exempted supply. The said provision is reproduced as under;

"Where the goods and / or services are used by the registered taxable person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act, 2016 and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building

Under the present Service Tax laws, a service for which reverse charge is applicable cannot be treated as an exempt service and there is no requirement to reverse the common CENVAT Credit on proportionate basis. However under GST regime, in terms of the above reproduced sub-section (3), exempt supplies include those supplies provided by a registered taxable person for which GST is required to be paid by recipient of supply under reverse charge mechanism.

In such event, the registered taxable person is required to reverse a portion of ITC though he is engaged in providing those supplies which are subject to GST payable either by him or by the recipient of supply. This will also mean that with respect to supplies that are going to be notified under GST for reverse charge, Government on one hand is going to get the revenue in full on such supplies and on the other hand it will deny the ITC by requiring the corresponding supplier to restrict ITC. This requirement of reversal of ITC by supplier to extent of his supplies covered under reverse charge would break the ITC chain and contribute to the cascading effect. This provision requires reconsideration in light of the spirit behind GST (seamless credit).

CONCLUSION:

In view of the above discussion, it is amply clear that the provisions of ITC under the CGST Bills incorporated enough hurdles to restrict the free flow of credit and some of the provisions are even more detrimental in denying ITC as compared to the current CCR, 2004.Thus seamless credit, the much hyped benefit of GST is seemingly still out of reach for business houses. Industry, trade and professional bodies have to make suitable representations in this regard and GST Council, Centre and State Governments have to re-consider these in fair manner after all the reason for introduction of GST is to overcome the trade barriers and reduce the cascading effectthereby encouraging the industry for voluntary and prompt tax compliance.

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AUDIT

SIGNIFICANCE OF SUPPLY CHAIN MANAGEMENT IN HOSPITALITY INDUSTRY

Contribauted by CA Sandeep Das

What is SUPPLY CHAIN Management..?

All activities associated with the flow and transformation of goods from the raw materials stage, through to end users, as well as the associated information inflows. This includes material and information flows both up and down supply chain. Therefore supply chain includes a whole horde of systems such as systems management, operations and assembly, purchasing, production schedule, order processing, inventory management, transportation, warehousing, and customer service.

In today's changing business environment, there is an increased focus on delivering value to the customer at the cheapest possible costs. Hence there has been increased interest in logistics and supply chain management practices since performance is not only determined by actions and decision, but also the improvements on return on investment and greater profitability.

Hotel companies, both big and small, must focus on how to offer products and services while keeping costs low. In an industry which is labor intensive many hotels are forced to make bolder and more visible moves in costs reduction to their operations. It comes as no surprise that much of these costs cutting efforts have been focused on payroll and other employee associated costs, like hiring freezes, cuts in employee perks, reduction of bonuses, and reductions in salaries.

One area of the hotel industry that is usually left out in cost cutting efforts is its logistics and supply chain operations. Even though logistics and supply chain is considered an operations management strategy in the hotel and other service industries, they can use these strategies to help add value to their properties. The supply chain is an important element within the hotel and catering industry.

A well-established logistics and supply chain management system can help the hotel industry give individual hotel companies a sustainable competitive advantage. The use of the right logistics and supply chain strategies helps not to only improve the quality and service of the hotel company, but drive down costs. For staff in this industry, it is crucial to build steady relationships with suppliers and work with a good ordering system in order to improve the service level towards customers.

The hotel industry can benefit from the comprehensive and integrated practices of logistics and supply chain management, by delivering a consistently reliable and high quality service at the best costs.

Challenges in the Supply Chain in the hotel industry

The purchase manager is always under constant pressure to meet the user departments' un- planned needs. As a result the purchase manager always tries to have huge buffer stocks, lest he should fall short of satisfying the hotel operating/user departments. But this does not mean that quality management processes should be totally ignored.

Material Cost: A hotel store deals with huge quantities of the items with very less price. Bulk of the direct material cost is invested in such items. Majority of the consumables of the hotel are of perishable nature due to which one cannot make use of the economies of bulk purchase. This increases the Number of transactions and thereby the transaction costs. This results in increased transaction costs.

Material Ordering Costs: The individual departments normally use manual indents and purchase requisitions independently. In many properties the hotels do not have computerized indenting and purchase requisitions. The consolidation of such indents and requisitions become quite time consuming. The purchase Department is found to place individual orders for same products, due to difficulty in consolidation Even for chain properties where different units are located in the same city, the hotels do not take advantage of bulk purchasing due to the above reasons.

Inventory Holding Costs: The purchase department, in the fear of not being able to give the right items to the user departments on time, stock large quantities of materials. This occupies a large space and there by leads to increase in costs.

Emergency purchase: The purchases are made on the request to the user departments on the spur of the moment, and are regularized later by making the required paper work. Due to lack of planning, emergency purchases are a matter of routine and not due to exception.

Factors affecting supply chain management in Hotel Industry

It is essential to understand that the premise under which the hospitality industry operates is much different from other industries. The industries capital costs are high, operating costs being comparatively lower. The hotel industry has its unique characteristics, like customer centricity, different types of management etc.

(I) Guest or Customers are the utmost important for the hotel industry; customer satisfaction is of paramount importance to the hotel industry. In the hospitality industry the customer related activities such as food and beverage production and service, housekeeping, Front office management are given utmost importance. The back office operations such as the accounts, purchases, supplies chain management, revenue recording etc. take a back seat.

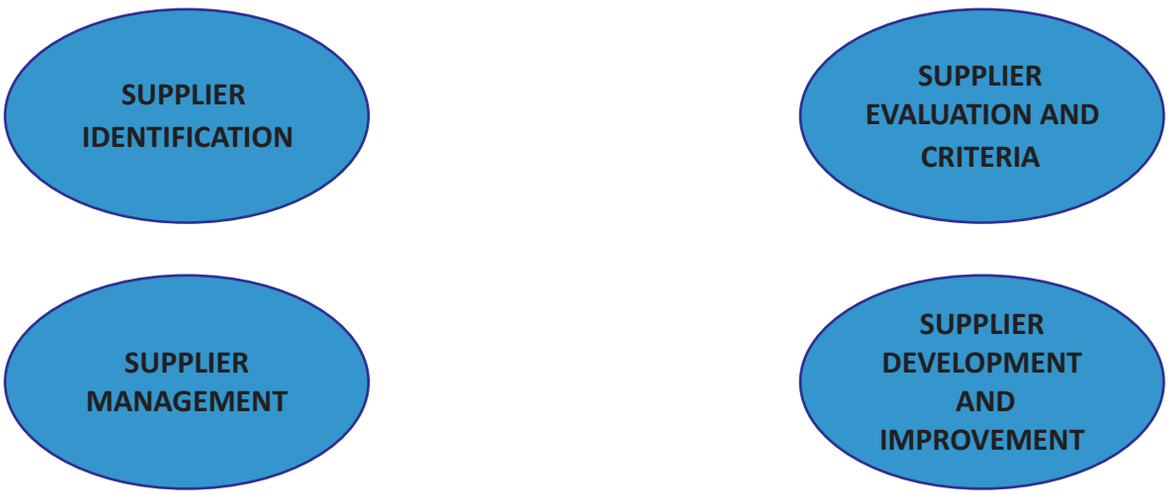
(II) Different types of management systems, such as the ownership hotels, franchisees, hotels which are run on operating contracts by chains etc. The different managements systems have different implications on the supply chain management.

(III) In the hotel industry all the efforts are customer oriented as a result lot of cost reduction which can be attained through improved upstream functions of supply chain management is lost. Current trends in the industry show that computerized property management systems are used but mainly for front office management and reservation systems.

Benefits of Supply Chain Management

- The supplier and the hotel benefit from a well-established system of supply chain management. The relationship between the supplier and hotel becomes stronger because of professional management in the form of development of proper purchasing policies. This could also lead to concentrating on a few trusted suppliers, rather than have a large and inefficient supplier base. Newer and more efficient suppliers could be identified, leading to increased efficiency.

- It leads to significant reduction in costs and also helps continuous evaluation and improvement in the buying process. It could increase the product range or perhaps reduce it too, because of intensive market research undertaken.
- Improved management information to future requirements



SCM – Strategic methods explained

Supplier Identification: Generally supplier base is huge in the hotel industry, this has its positives, conscious steps should be taken to identify committed suppliers who are willing to go by the objectives of the Organisation, and be involved and appreciate and support the changes of the organizational requirements.

Supplier evaluation and selection: Supplier evaluation is a critical process, suppliers ability to supply the right goods at the right time with correct specifications has to be reviewed. Contracts are awarded after careful negotiations with the supplier.

Supplier management : After the suppliers fulfills its obligation by delivering the required goods as per specifications it's the responsibility of the Purchase department to ensure suppliers bills are paid promptly , at times good suppliers are lost due to the payment delays. Therefore its very essential to maintain a strong relationship with the supplier hence supplier management has to be strengthened.

Supplier development and improvement: It's a very crucial step in the supplier chain management. A careful consideration of this process would contribute towards efficiency and cost saving.

Conclusion:

Professional supply chain management ensures every supplier is committed for top quality product and service standards. An efficient supply chain management helps in significant cost reduction by developing and implement contracts and agreements with suppliers of hospitality products and services, securing for the hotels competitive prices be if for food and beverage, rooms or property operations.

This article is contributed by CA Sandeep Das, Partner of SBS and Company LLP, Chartered Accountants. The author can be reached at sandeepd@sbsandco.com

LABOUR LAWS

CONDITIONS OF EMPLOYMENT – PROBATION

Contributed by S V Ramachadra Rao

In Industrial and Commercial Organisations, it is the normal practice that the new employees are taken on probation. The probationary period may range between six months to two years depending on the nature of the role and responsibilities. During the probationary period a new employee performance and behaviour is required to be monitored and provide close supervision and coaching, guidance and training, either to learn a new job or to turn around a performance problem. The period is also required to be utilised to make the new employee to understand and integrate with the culture of the organisation besides systems and processes of working. The intent and object of such probationary period is rarely utilised by the organisations.

The other purpose of probationary period is to suspend or modify the usual employment rules for an employee and to understand and assess his or her on the job competencies, potential, behaviour patterns and commitment to the organisation and its objectives.

The implied promise or threat of a probationary period is that the employee will have to utilise the opportunity and perform to best of his abilities and if the employee fails to do so, he may not be considered for permanent employment and lose his employment at the end of probation or during the period of the probation.

To achieve the real objectives of the probationary period organisations may practice the below mentioned policies.

- Notify the employee the probationary period, the intent and consequences.
- Conduct periodic reviews with the employee to provide feedback and counselling.
- If the employee is having performance issues, detailed guidance may be provided on how the employee can improve—and offer training, if necessary.
- Assign a knowledgeable and experienced mentor to advise the employee.
- Treat the employee fairly and consistently.
- If an employee can't do the job or improve performance, clearly document everything ie. employee's performance, your efforts to coach and manage, training provided and so on.

The model standing orders provided in the Industrial Employment Standing Order Act has defined probationer as a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months service therein. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period of three months, be reverted to his previous permanent post.

Model standing orders are the guiding principles to the employer for finalisation of its own standing orders and certification of the same. When once the company standing orders are certified, the probationary period mentioned therein will be applicable. The three months mentioned therein is only indicative and not necessary applicable to all organisations.

The employer normally incorporates the period of probation and terms of extension of the same in the appointment order. If there is any conflict between the certified standing orders and the appointment order, the provisions contained in the certified standing orders shall prevail.

Most of the employees and also some of the employers believe that if no action is taken at the end of the probationary period and the employee is continued in the employment, it is deemed confirmation. It is not true. It will become deemed confirmation only if the rules of the company or the appointment order or the standing orders specifically incorporates such provision. The Constitution Bench in the matter of Sukhbans Singh V. State of Punjab and also in the matter of G S Ramaswamy and Ors v. Inspector-General of Police, Mysore has opined that a probationer cannot, after the expiry of the probationary period, automatically acquire the status of a permanent member of the service, unless of course, the rules under which he is appointed expressly provide for such a result.

Therefore even though a probationer may have continued to act in the post to which he is on probation for more than the initial period of probation, he cannot become a permanent servant merely because of efflux of time, unless the Rules of service which govern him specifically lay down that the probationer will; be automatically confirmed after the initial period of probation is over.

If provided in the appointment order, the services of the probationer can be terminated at the end of the probationary period or during the course of the probationary period without conducting an enquiry in accordance with the terms of employment. The Honble Punjab & Haryana HC in the matter of Jitender Kumar VS. P O, Industrial Tribunal-cum-Labour Court, Gurgaon [2014 LLR 985] confirmed this view and the facts of the matter are as under:

The workman was appointed initially on 12.01.2001, on probation for a period of six months after two years of training. As per the appointment order the probationary period is liable to be extended at the sole discretion of the Management and workman is deemed to be on probation unless confirmed in writing. In accordance with the terms of appointment order the probationary period was extended for 3 months on 12.07.2001 till 11.10.2001, after advising him to be more careful in future by considering his appraisal report and asked him to improve his work and conduct. On 09.10.2001 that is just before completion of the extended probationary period the Management discharged the workman by holding that his work and conduct was not found upto the expectation of the Management. Compensation and notice pay, along with the letter of termination of service was also sent to him and the discharge was after the Management had reviewed the working of the probationers on 08.10.2001 wherein it was noticed that the probationer was remaining absent, adversely affecting the working of the Company, doing illegal activities at the gate of the Company and affecting the industrial peace of the Company.

The court held, the Management is within its right to discharge the workman from his services in view of his conduct during period of probation since the main object of appointment of a person on probation is to enable the employer to assess his suitability in the establishment during the probation period and afterwards. Hence, no regular enquiry is required in such matter since the termination is neither stigmatic nor against the conditions of employment.

In another matter [DM, Rajasthan State Road Transport Corporation Vs. Kamruddin 2009 LLR 945] Supreme Court opined that dismissal of a probationer, for unsatisfactory work, will not be interfered by the courts.

The HR function has to take up the responsibility of monitoring, guiding, counselling and assisting the probationers to cope up with the work requirements and also document the deficiencies, if any, found during the probationary period so as to enable the management to take an appropriate decision on the probationary workmen. If this is not done, the purpose for which the probationary period has been created will be defeated.

This article is contributed by S V Ramachadra Rao, an associate of SBS and Company LLP, Chartered Accountants. The author can be reached at svrr@resourceinputs.com

TECHNICAL SESSIONS:

S.No.	Event	Date	Speaker	Venue
1	Derivatives vis-a-vis FEMA Regulations	07/04/2017	CA Murali Krishna G	SBS - Hyd
2	Demonetisation vis-a-vis Auditor's Report	14/04/2017	CS Bhyrav MHS	SBS - Hyd
3	Companies Amendment Bill - Part 3	21/04/2017	CA Manindar K	SBS - Hyd
4	Insolvency and Bankruptcy Code - Perspectives from Companies Act & Bankers	28/04/2017	CS Phanindra DVK & CA Rajesh D	SBS - Hyd

Note:

The timings for the above events shall be from 16:30 hrs to 18:30 hrs. We request the recipients of "SBS Wiki" who are interested to attend the above events to send confirmation of your participation two days in advance to make appropriate arrangements. The relevant material will be hosted at slideshare shortly after the session. The link to download is *http://www.slideshare.net/Team-SBS*

Session on Companies Amendment Bill - Part 2 - CS Phanindar DVK

Session on Reward Schemes under FTP - CA Manindar

By

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