SLUMP SALE

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ADVANCED DIPLOMA IN CORPORATE TAXATION

NALSAR UNIVERSITY OF LAW

AGENDA FOR THE SESSION

1. Comparison of various forms of M&A
2. Slum Sale: GST Perspective
3. Slump Sale: Corporate Law Perspective
4. Slump Sale: Income Tax Perspective

METHODS FOR TRANSFERRING BUSINESS

- Various types of M&A Structures:
- For transfer of business, in general, these ways are opted:

Parameters/ Method	Asset Sale	Slump Sale	Share Sale	Amalgamation	Demerger
Motive	Transfer of assets	Transfer of undertaking	Transfer of ownership	Transfer of entire entity	Transfer of undertaking in an entity
Mode	Asset Sale Agreement	Business Transfer Agreement/ Or Arrangement requiring NCLT approval	Shareholders Agreement/ Share Sale Agreement	NCLT Approval	NCLT Approval

SLUMP SALE

COMPANY LAW PERSPECTIVE

Corporate Law perspective:

- It is important to note that the MOA and AOA of company should authorize amalgamation, merger, demerger, slump sale. If not authorised can the transaction be transacted? Whether section 6 is helpful?
- Sec 179 of the Companies Act 2013 deals with power of board of director. Section 179(3) requires the following powers to be exercised by board by means of passing of board resolution in the meetings of the board –

  - To approve amalgamation, merger or reconstruction

  - To take over a company or acquire a controlling or substantial stake in another company.

COMPANY LAW PERSPECTIVE

- Sec 180 of the Companies Act 2013 deals with the restriction on the power of board of director. For specific powers, the section requires that the board should obtain /exercise the power only with the consent of the company by way of a special resolution.
- One of the powers mentioned u/s 180 is to sell or dispose of the whole undertaking or substantially whole of the undertaking. Refer Provision
- Undertaking has been explained to mean where the investment of the company exceeds 20% of its net worth or where 20% of the total revenue is generated.
- Substantially whole of the undertaking means 20% of the value of the undertaking.

COMPANY LAW PERSPECTIVE

- Note: observation in United Spirits Ltd. In re - 61 taxmann.com 169 (Karn HC) that Slump Sale is not covered by provisions of sec 180. This decision is to be read in its context and not as a case from where a principle is being established.
- Relevant procedures : Board Meeting, Audit Committee Meeting, Shareholder Meetings, Disclosure to Stock Exchanges, Relevant Forms and resolutions to be filed.
- Rights of third party acquirer are protected – 180(3).
- It is to be noted that the powers under this section should not be exercised by the board in the hope that the shareholders will ratify their actions – Duomatic Ltd., Re, (1969) 2 Ch 365: (1969) 1 All ER 161: (1969) 2 Comp LJ 81 (Ch.D)

COMPANY LAW PERSPECTIVE

- An entity may have several undertakings.
- Hypothecation or mortgage of properties to a bank as a security for obtaining loan is not disposing off the property- Yallamma Cotton, Wollen & Silk Mills Co. Ltd., In re (1970) 40 Comp Cas 466 (Mys): AIR 1969 Mys 280.
- The true test to examine whether the transfer of assets amounts to disposal of the undertaking or not is to see whether the business of the company would be carried on effectively even after the disposal of assets in question or whether a mere husk of the undertaking would remain after the disposal of the assets.

COMPANY LAW PERSPECTIVE

- Sec 230-240 deal with Compromise , Arrangements and Amalgamations.
- It is not mandatory for a slump sale transaction to get routed through NCLT. However, if desired the same can be considered as an arrangement and the provisions would become applicable.

GST PERSPECTIVE

- GST is levied on supply of Goods or services or both.
- Sec 7 of CGST Act deals with scope of Supply.
- The terms Goods and Services are defined under section 2(52) and 2(102) respectively.
- The concept of Slump Sale is not defined under GST.
- Permanent transfer/disposal of business assets (even without consideration) will be subject to GST where input tax credit (ITC) has been availed on such assets - clause 1 of Schedule I to CGST Act.
- As per clause 4(a) of Schedule II of CGST Act, where goods forming part of assets of a business are transferred or disposed of, such transfer will be supply of goods.
- Clause 4(c) of Schedule II, which states that transfer of business as going concern is not a 'supply' of goods
- Further, services by way of transfer of a going concern, as a whole or an independent part thereof is exempt from GST - Notification Nos. 12/2017-CT (Rate) and 9/2017-IT (Rate) both dated 28-6-2017, effective from 1-7-2017.

GST PERSPECTIVE

- Transfer of business as going concern as a whole or of one of the units is not subject to GST - Rajashri Foods (P.) Ltd. In re [2018] 93 taxmann.com 417 (AAR-Kar.).
- Transfer of business as a going concern with assets and liabilities as slump sale is exempt from GST - Innovative Textiles Ltd. In re (2019) 73 GST 714 = 104 taxmann.com 436 (AAR-Uttarakhand). *Rajeev Bansal and Sudershan Mittal In re (2020) 81 GST 329 = 116 taxmann.com 158 (AAR-Uttarakhand).
- Transfer of business as a going concern between distinct persons does not attract provisions of para 4(c) of Schedule II of CGST Act, 2017 as distinct persons do not qualify to be another person; Transfer is in nature of supply of goods – Shilpa Medicare Ltd, in re (2022) 136 taxmann.com 221 (AAR – Andhra Pradesh)
- In Merck Life Science Pvt. Ltd. In re [2019] 72 GST 1 = 100 taxmann.com 321 (AAR-Maharashtra), transfer of business as slump sale on going concern basis was held as supply of service covered in para 5(e) of Schedule II. It was held that even if there is no consideration, since parties are related, GST is payable on notional consideration.

GST PERSPECTIVE

- Where under 'Purchase agreement', an operating outlet is sold to purchaser along with all of its assets which are necessary for continuing outlet's operations with regularity and permanency, Since only one outlet of business chain is being transferred/sold to recipient, it is not a case of transfer of an ongoing concern as a whole and transfer of business assets is covered under category of 'supply of goods' and transaction becomes a taxable event in terms of provisions of section 7 – Tea Post (P.) ltd, In re (2021) 123 taxmann.com 281 (AAR Gujarat) – difference between transfer of business asset and business as a whole.

GST PERSPECTIVE

- Relevant observations from Innovative Textiles Ltd., In re (2019) 104 taxmann.com 436 (AAR-Uttarakhand): *"From the above definition of the 'business' we find that the acquisition of goods/services for commencement of business is covered under the said definition. We observe that a transfer of a business as a going concern is the sale of a business including assets. In terms of financial transaction 'going concern' has the meaning that at the point in time to which the description applies, the business is live or operating and has all parts and features necessary to keep it in operation. We further find that internationally accepted guidelines (applicable to the case in hand) issued by His Majesty's Revenue & Customs (HRMC) to treat transfer of business as a going concern are as under:*

  a. The assets must be sold as part of a 'business' as a 'going concern'

  b. The purchaser intends to use the assets to carry on the same kind of business as the seller

  c. Where only part of a business is sold it must be capable of separate operation

  d. There must not be a series of immediately consecutive transfers"

GST PERSPECTIVE

- In SCV Sky Vision, In re (2021) 133 taxmann.com 400 (AAR- Andhra Pradesh) it was held that exemption to services by way of transfer of going concern is not applicable when liabilities are not transferred by transferor to transferee.
- It is important to note that the notification uses the phrase: "*as a whole or an <u>independent part thereof</u>*"
- Whether mandatory that all business assets and liabilities are to be transferred:

"Further, we are of the opinion that it is not essential to transfer all assets and liabilities for a transaction to qualify for a transfer of business. That is to say, that even if some assets are retained by the AAI, and the SPV after such transfer carries out subject business activities without any obstruction, it shall still qualify to be a transfer of a business. We find our view in compliance with judicial discipline as laid down by the H'ble Bombay High Court in the case of CST vs Sunderdas Harjiwan [1987] 65 STC 450" – Airport Authority of India, In re (2021) 131 taxmann.com 249 (AAR-Gujarat)

GST PERSPECTIVE

Rates:

- After the bifurcation between Goods and services, it is important to note that there is no clarity as to what rate is to be applied, in case the supply is considered as taxable. Whether the concept of mixed supply is to be applied or whether the concept of composite supply is to be applied is not yet tested.

ITC:

- Section 18(3) of the Act read with Rule 41 of the rules prescribes that registered person is allowed to transfer the ITC which remains unutilized in electronic credit ledger to such transferred business. Form ITC-02 needs to be filed.
- Since there is an exempt supply, there will be reversal of ITC. Exact mechanism for the same in the context of Slump sale is still uncertain.
- GST credit can be transferred in case of slump sale as well – Circular No 133/03/2020 – dated 23.03.2020.

INCOME TAX PERSPECTIVE

Income tax:

- Slump Sale is dealt with section 2(42C) read with section 50B.
- Section 2(42C) defines Slump Sale.
- Section 50B provides the computational mechanism.
- Prior to introduction of section 50B, slump sale was not considered as taxable under the capital gains provision, as it was not possible to compute cost of acquisition. In the absence of cost of acquisition, there was a failure in the computational mechanism thereby leading to non applicability of the charging section itself [Refer PNB Finance Ltd vs CIT (2008) 307 ITR 75 (SC)].

INCOME TAX PERSPECTIVE

- Section 50B was introduced in the statute by Finance Act, 1999 w.e.f. 01/04/2000. It provided that the networth of the undertaking was to be considered as the cost of acquisition for the purpose of section 48.
- Prior to the amendments made vide Finance Act, 2021, there was a controversy with respect to taxability in cases wherein the consideration was discharged through modes other than cash, such as in exchange of shares. It was argued that such transactions constitute Slump Exchange as against Slump Sale and thus are not eligible to tax.
- The Finance Act, 2021, made an amendment to clarify that even a Slump Exchange transaction falls within the ambit of Slump Sale and therefore is taxable as Capital Gains. This clarification was given effect retrospectively from FY 2020-21 [Explained later].

INCOME TAX PERSPECTIVE

- Finance Act, 2021 also amended section 50B(2) to further provide that the full value of consideration for transfer of such capital asset viz. the undertaking itself, shall be the fair market value, which shall be determined as per rules.
- Interestingly, the manner in which the amendment to section 50B(2) has been worded, it does not adopt the generally followed approach of considering the higher of actual value or prescribed value, as the sale value [For e.g.. Section 50C]. It provides that the fair market value, as prescribed shall be the full value of consideration for computing capital gains. Thus, subject to what is prescribed under the rules, the actual consideration is of no relevance while computing capital gains for the undertaking. Thus, the rules in this regard, had been awaited with great anticipation.

INCOME TAX PERSPECTIVE

- The CBDT, vide Notification No 68/2021/F.No 370142/16/2021-TPL; dated 24th May 2021, have notified a new rule - viz. Rule 11UAE - under the Income tax Rules 1962 for the purpose of determining FMV on a Slump Sale.
- Rule 11UAE lays down two computational formulas wherein – one computes the fair market value of the undertaking and the other computes the fair market value of the consideration received or accrued on account of transfer of the undertaking.
- It is expressly stated that the fair market value of the undertaking shall be the one which is higher amongst the two values derived by the two given formulas.
- The essence of a slump sale was existence of a lump sum price for the entire undertaking. Rule 11UAE, literally takes away this essence.

INCOME TAX PERSPECTIVE

- In a 'Lock, stock and barrel' transaction, which is transfer as a going concern, price is not attributed to individual items. If individual price is attributed, then it would be considered as an itemised sale.
- In the case of Vatsala Shenoy v. JCIT, (2016) 389 ITR 519 (SC) [Again affirmed in the review petition in Vatsala Shenoy v. JCIT, (2017) 391 ITR 363 (SC)], the Supreme Court held that in a transaction if specific and separate valuation for individual assets and liabilities is done, the transaction would not be treated as a Slump Sale.
- Rule 11UAE goes on a trajectory wherein values are being assigned to specific assets, and liabilities thereby losing the prerequisite of a Slump Sale transaction itself.

INCOME TAX PERSPECTIVE

Issues under 11UAE:

- Whether relying on the case of C.B.Gautam v. UOI, (1993) 199 ITR 530 (SC) can a 15% variation be accepted?
- Cross holding? Impact of it – how to compute - Assuming 11UA and 11UAE both are applicable – Whether horse before the cart?
- No threshold for variation provided
- Conflict with section 50CA – in case of transfer of shares?

INCOME TAX PERSPECTIVE

- Sec 56(2)(x) refers to immovable property being land and building as against 11UAE dealing with immovable property – So rights in immovable property shall also be considered for valuation purpose under Rule 11UAE.
- Contingent liabilities – although an important consideration in reality while doing valuation – is excluded from the scope of 11UAE
- Would it require drawing of new financials as on the date of transfer?
- Whether applicable retrospectively?
- Earlier there was a controversy as to whether sec 50C would apply to sec 50B. The Special Bench decision of ITAT in DCIT v. Summit Securities Ltd, (2012) 135 ITD 99 (Mum)(SB) expressed that section 50B would override section 50C. Now, due to the advent of Rule 11UAE – this has become academic.

INCOME TAX PERSPECTIVE

- No indexation benefit available in case of Slump Sale.
- Cost of transfer can still be deducted while computing Capital Gains under section 48.
- The concept of negative networth as affirmed in DCIT v. Summit Securities Ltd, (2012) 135 ITD 99 (Mum)(SB) would still continue to apply.
- Other than provisions of section 195, no tax is required to be deducted at source on account of transfer arising through a Slump sale transaction.

INCOME TAX PERSPECTIVE

- A report in Form 3CEA from a Chartered Accountant indicating and certifying the net worth of division/undertaking has to be furnished before the specified date referred to in section 44AB [i.e. date one month prior to the due date for furnishing return of income under section 139(1)].
- Provisions of section 56(2)(x) not applicable to recipient as what is being received is not a property as referred in section 56(2)(x).
- No benefit of carrying forward of losses.
- MAT credit is also not eligible to be carried forward

INCOME TAX PERSPECTIVE

- Section 50 not applicable to Slump Sale transactions
- Allocation of value – Purchase Price Allocation ('PPA')- PPA is done after the transfer – So the requirement of lump sum price not violated – 11UAE itself requires breakup – CIT v. Spunpipe and Construction Co. Ltd. (1965) 55 ITR 68 (Guj) – Explanation only provides safeguard for determination of value for statutory purposes as against for PPA.
- Whether mandatory to transfer all assets and liabilities?
- In case of slump sale if certain defunct assets or properties are left out because they would cause inconvenience or lead to some kind of trouble for buyer, it is well within right of seller to exclude such asset from list and such sale would qualify for treatment under section 50B - Triune Projects (P.) Ltd. v. Dy. CIT [2017] 77 taxmann.com 40 (Delhi).

INCOME TAX PERSPECTIVE

- Some items like Motor Car and building retained by assessee does not impact in constituting slump sale. The assessee was in the field of intellectual property rights. Computers, furniture etc. linked to the business is sold. Items kept by assessee has nothing to be done with its business – Rohan Software (p) Ltd v. ITO, (2008) 115 ITD 302 (Mum).
- Undertaking as per section 2(42C)/2(19AA) itself states that undertaking includes any part of an undertaking.
- Since what were sold were assets, movable and immovable and not liabilities, it could not be treated as a case of slump sale - Kampli Co-operative Sugar Factory Ltd v. JCIT, (2002) 83 ITD 430 (bang)

THANK YOU

PLEASE FEEL FREE TO ASK QUESTIONS

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PROVISIONS

Income tax:

2(42C): “slump sale” means the transfer of one or more [undertaking, by any means] for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.
Explanation 1 - For the purposes of this clause, “undertaking” shall have the meaning assigned to it in Explanation 1 to clause (19AA).
Explanation 2 - For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.]
[Explanation 3 - For the purposes of this clause, "transfer" shall have the meaning assigned to it in clause (47)]

Section 2(19AA) defines demerger. Explanation 1 to section 2(19AA) explains undertaking as under:
Explanation 1 - For the purposes of this clause, "undertaking" shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

PROVISIONS

50B. (1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place :
Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.
[(2) In relation to capital assets being an undertaking or division transferred by way of such slump sale,–
(i) the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48;
(ii) fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.]

PROVISIONS

(3) Every assessee, in the case of slump sale, shall furnish in the prescribed form13 and14 [a report of an accountant as defined in the Explanation below sub-section (2) of section 288 before the specified date referred to in section 44AB] indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

[Explanation 1.–For the purposes of this section, “net worth” shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account :
Provided that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.
Explanation 2.–For computing the net worth, the aggregate value of total assets shall be,–
(a) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of sub-clause (c) of clause (6) of section 43;

PROVISIONS

[(aa)in the case of capital asset being goodwill of a business or profession, which has not been acquired by the assessee by purchase from a previous owner, nil;]
[(b)in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD, nil; and
(c)in the case of other assets, the book value of such assets.]]]

PROVISIONS

11UAE. (1) For the purpose of clause (ii) of sub-section (2) of section 50B, the fair market value of the capital assets shall be the FMV1 determined under sub-rule (2) or FMV2 determined under sub-rule (3), whichever is higher.
(2) The FMV1 shall be the fair market value of the capital assets transferred by way of slump sale determined in accordance with the formula -
A+B+C+D - L, where,
A = book value of all the assets (other than jewelry, artistic work, shares, securities and immovable property)as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale as reduced by the following amount which relate to such undertaking or the division, –
(i)any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and
(ii)any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;
B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer
C = fair market value of shares and securities as determined in the manner provided in sub-rule (1) of rule 11UA

PROVISIONS

D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property
L= book value of liabilities as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale, but not including the following amounts which relates to such undertaking or division, namely:–

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

PROVISIONS

(3) FMV2 shall be the fair market value of the consideration received or accruing as a result of transfer by way of slump sale determined in accordance with the formula
E+F+G+H, where,
E = value of the monetary consideration received or accruing as a result of the transfer;
F = fair market value of non-monetary consideration received or accruing as a result of the transfer represented by property referred to in sub-rule (1) of rule 11UA determined in the manner provided in sub-rule (1) of rule 11UA for the property covered in that sub-rule;
G = the price which the non-monetary consideration received or accruing as a result of the transfer represented by property, other than immovable property, which is not referred to in sub-rule (1) of rule 11UA would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer, in respect of property;
H = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property in case the non-monetary consideration received or accruing as a result of the transfer is represented by the immovable property.

PROVISIONS

(4) The fair market value of the capital assets under sub-rule (2) and sub-rule (3) shall be determined on the date of slump sale and for this purpose valuation date referred to in rule 11UA shall also mean the date of slump sale.
Explanation -For the purposes of this rule, the expression "registered valuer" and "securities" shall have the same meanings as respectively assigned to them in rule 11U.

Inserted w.e.f. - 24.5.21

PROVISIONS

(47) ["transfer", in relation to a capital asset, includes,–
(i)the sale, exchange or relinquishment of the asset ; or
(ii)the extinguishment of any rights therein; or
(iii)the compulsory acquisition thereof under any law ; or
(iv)in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment ;] [or]
[(iva)the maturity or redemption of a zero coupon bond; or]
[(v)any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or
(vi)any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.
[Explanation 1].–For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.]

PROVISIONS

[Explanation 2.–For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India]

PROVISIONS

45. [(1)] Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections [***] [54, 54B, [***] [[54D, [54E, [54EA, 54EB] 54F[54G and 54H]]]]], be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

PROVISIONS

Transactions not regarded as transfer.
47. Nothing contained in section 45 shall apply to the following transfers :–
(i) any distribution of capital assets81 on the total or partial partition of a Hindu undivided family;
(iii) any transfer of a capital asset under a gift83 or will or an irrevocable trust :
[Provided that this clause shall not apply to transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly or indirectly to its employees under 85 [any Employees' Stock Option Plan or Scheme of the company offered to such employees in accordance with the guidelines issued by the Central Government in this behalf];]
(iv) any transfer of a capital asset by a company to its subsidiary company, if–
(a) the parent company or its nominees hold the whole of the share capital of the subsidiary company, and.
(b) the subsidiary company is an Indian company;
[(v) any transfer of a capital asset by a subsidiary company to the holding company, if–
(a) the whole of the share capital of the subsidiary company is held by the holding company, and
(b) the holding company is an Indian company :]
[Provided that nothing contained in clause (iv) or clause (v) shall apply to the transfer of a capital asset made after the 29th day of February, 1988, as stock-in-trade;]

PROVISIONS

GST

9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the 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 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

PROVISIONS

GST

Scope of supply

7. (1) For the purposes of this Act, the expression "supply" includes–

(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;

[(aa)the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.

Explanation.–For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b)import of services for a consideration whether or not in the course or furtherance of business; [and]

(c)the activities specified in Schedule I, made or agreed to be made without a consideration [***]

PROVISIONS

GST
Scope of supply

[(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(2) Notwithstanding anything contained in sub-section (1),–

(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,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of [sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as–

(a)a supply of goods and not as a supply of services; or

(b)a supply of services and not as a supply of goods.

PROVISIONS

GST
SCHEDULE I
ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:
Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods–
(a)by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
(b)by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a [person] from a related person or from any of his other establishments outside India, in the course or furtherance of business.

PROVISIONS

GST
SCHEDULE II
ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. Transfer
(a)any transfer of the title in goods is a supply of goods;
(b)any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
(c)any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building
(a)any lease, tenancy, easement, licence to occupy land is a supply of services;
(b)any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process
Any treatment or process which is applied to another person's goods is a supply of services.

PROVISIONS

GST
SCHEDULE II
ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

4. Transfer of business assets

(a)where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;

(b)where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless–

(i)the business is transferred as a going concern to another person; or

(ii)the business is carried on by a personal representative who is deemed to be a taxable person.

PROVISIONS

GST

NOTIFICATION NO. 12/2017-CENTRAL TAX (RATE), DATED 28-6-2017,

In exercise of the powers conferred by 1[sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and section 148] of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:–

PROVISIONS

Companies Act 2013
Sec 180. (1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:–
(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.
Explanation.–For the purposes of this clause,–
(i) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent of the total income of the company during the previous financial year;
(ii) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;
…

PROVISIONS

Companies Act 2013

(3) Nothing contained in clause (a) of sub-section (1) shall affect–

(a)the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or

(b)the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.