UNIT 3
Direct & Indirect Taxes, Competition Act 2002

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What is tax ?

Tax is a mandatory fee imposed upon individuals or corporations by the Central and the State Government to help build the economy of a country by meeting various public expenses. Taxes are broadly divided into two categories- Direct and Indirect taxes.

What is Direct tax ?

It is a tax levied directly on a taxpayer who pays it to the Government and cannot pass it on to someone else.

What are the direct taxes imposed in India?

- **Income Tax- It is imposed on an individual who falls under the different tax brackets based on their earning or revenue and they have to file an income tax return every year after which they will either need to pay the tax or be eligible for a tax refund.**

- **Securities Transaction Tax -** If you are involved in stock trading, each of your trade also has a small constituent known as the securities transaction tax. Irrespective of whether you made money on the trade or not, you will have to pay this tax. The broker collects this tax from you and passes on to the securities exchange, which then pays it to the government.

- **Capital Gains Tax -** Every time you make capital gains, you will be required to pay capital gains tax. This capital gain could come from the sale of a property or from investments. Based on the capital gains and the duration for which you held the investment, you will be required to pay either LTCG (Long-Term Capital Gains) tax or STCG (Short-Term Capital Gains) tax.

What are the advantages of direct taxes?

Direct taxes do have a certain advantage for a country's social and economic growth. To name a few,

- **It curbs inflation: The Government often increases the tax rate when there is a monetary inflation which in turn reduces the demand for goods and services and as a result of descending demand, the inflation is bound to condense.**

- **Social and economic balance**: Based on every individual's earnings and overall economic situation, the Government has well-defined tax slabs and exemptions in place so that the income inequalities can be balanced out.

What is Indirect Tax?

It is a tax levied by the Government on goods and services and not on the income, profit or revenue of an individual and it can be shifted from one taxpayer to another.

Earlier, an indirect tax meant paying more than the actual price of a product bought or a service acquired. And there was a myriad of indirect taxes imposed on taxpayers. A few indirect taxes that were earlier imposed in India were :

- **Customs Duty- It is an Import duty levied on goods coming from outside the country, ultimately paid for by consumers and retailers in India.**
- **Central Excise Duty**– This tax was payable by the manufacturers who would then shift the tax burden to retailers and wholesalers.
- **Service Tax**– It was imposed on the gross or aggregate amount charged by the service provider on the recipient.
- **Sales Tax**– This tax was paid by the retailer, who would then shifts the tax burden to customers by charging sales tax on goods and service.
- **Value Added Tax (VAT)**– It was collected on the value of goods or services that were added at each stage of their manufacture or distribution and then finally passed on to the customer.

GST as Indirect Tax

- With the implementation of GST, we have already witnessed a number of positive changes in the fiscal domain of India. The various taxes that were mandatory earlier are now obsolete, thanks to this new reformed indirect tax. Not just that, GST is making sure the slogan "One Nation, One Tax, One Market" becomes the reality of our country and not just a dream.
- That said, with the dawning of the 'Goods & Services Tax (GST), the biggest relief so far is clearly the elimination of the 'cascading effect of tax' or the 'tax on tax' quandary.
- Cascading effect of tax is a situation wherein the end-consumer of any goods or service has to bear the burden of the tax to be paid on the previously calculated tax and as a result would suffer an increased or inflated price.
- Under the GST regime, however, the customer is exempted from the tax they would otherwise pay as a result of the cascading effect.

There are several other benefits of GST. Let’s list a few:

- **Input Tax Credit**: At the time of paying tax on the final product, one can reduce the tax they have already paid on their purchases and pay just the balance amount. This is called Input Tax Credit which again reduces the burden of a hefty tax.

- **Composition Scheme under GST**: The government has done a commendable job by introducing Composition Scheme for small businesses with a turnover below Rs.1 crore. As per the scheme, they don’t have to go through the time-consuming formalities of GST but only pay the tax at a fixed rate based on their business turnover. Isn’t that a relief for small taxpayers? It sure is!

Difference between Direct and Indirect Tax

Direct Taxes	Indirect Taxes
It is levied on income and activities conducted.	It is levied on product or services.
The burden of tax cannot be shifted in case of direct tax.	The burden of tax shifted for indirect taxes.
It is paid directly by person concerned.	It is paid by one person but he recovers the same from another person i.e. person who actually bear the tax ultimate consumer.
It is paid after the income reaches in the hands of the taxpayer	It is paid before goods/service reaches the taxpayer.
Tax collection is difficult.	Tax collection is relatively easier.
Example Income tax, wealth tax etc.	Example GST, excise duty custom duty sale tax service tax

IMPORTANT DATES & INFORMATION

- MRTP Act – 1969 (Sachar Committee)
- Competition Act – 2002 (Raghavan Committee)
- Amendment to Competition Act – 2007
- Notification on "Combination"- 2009

DEFINITIONS

Acquisition Sec 2 (a)

Acquisition means , directly or indirectly, acquiring or agreeing to acquire

- Shares of any enterprise
- Voting rights of any enterprise
- Assetsof any enterprise
- Control over management of any enterprise
- Control over assets of any enterprise

DEFINITIONS

Agreement Sec 2 (b)

Agreement includes any arrangement or understanding or action in concert:

- Whether or not, Such arrangement, understanding or action is formal or inwriting or,
- Whether or not such arrangement, understanding or action is intended to been forceable by legal proceedings.

Cartel Sec 2 (c)

Cartel includes an association of:

- Producers,
- Sellers,
- Distributors,
- Traders or,
- Service providers,

Who by agreement amongst themselves, limit, control or attempt to control the:

I. Production , distribution ,sale or,

II. Price of or trade in goods or provision of services

DEFINITIONS

Goods Sec 2 (i)

Goods means good as defined in the Sale of Goods Act 1930 and includes:

- Products manufactured, processed or mined.
- Debentures, stock and shares after allotment.
- In relation to goods supplied, distributed or controlled in India , goods imported into India

Consumer Sec 2 (f)

Consumers means any person who:

- Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use
- Hires or avails of any services for a consideration which has been paid or promised or party paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than then person who hires or avails of the services for consideration paid or promised, or partly paid or partly promised or under any system of deferred payment, when such services are availed of with the approval of the first –mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use

DEFINITIONS

Enterprise Sec 2 (h)

Enterprise means a person or a department of the Government, who or which is, or has been, engaged in any activity,

- Relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places

But does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defense and space

Person , it includes :

- An individual, HUF, company body corporate, firm.
- AOP whether incorporated or not ,in india or outside india
- Any co operative society
- A local authority
- Every Artificial juristic person

DEFINITIONS

Group

Group means, Two or more enterprise which directly or indirectly

I. Have 26% or more Voting Right in the other Enterprise

II. Ability to appoint more than half of the members of Board of Directors

III. Ability to control the management or affairs of the other enterprise

Control includes

- Controlling the affairs or management by
- One or more Enterprise Jointly or singularly over another Enterprise
- One or more Group Jointly or singularly over another group or enterprise

Predatory Pricing - It means the sale of goods or provision of services, at a price below cost of production to reduce competition or eliminate the competitors. The main objective of such price is to reduce competition or to eliminate the competitors

Anti Trust law -The antitrust laws apply to virtually all industries and to every level of business, including manufacturing, transportation, distribution, and marketing. They prohibit a variety of practices that restrain trade [Examples are illegal practices of price-fixing, corporate mergers likely to reduce the competitive vigour of particular markets, and predatory acts designed to achieve or maintain monopoly power]

DEFINITIONS

- Monopoly - A market structure characterized by a single seller, selling a unique product in the market. In a monopoly market, the seller faces no competition, as he is the sole seller of goods with no close substitute
- Perfect Competition - Perfect competition is a market system characterized by many different buyers and sellers. In the classic theoretical definition of perfect competition, there are an infinite number of buyers and sellers. With so many market players, it is impossible for any one participant to alter the prevailing price in the market. If they attempt to do so, buyers and sellers have infinite alternatives to pursue.
- Oligopoly - An oligopoly is similar in many ways to a monopoly. The primary difference is that rather than having only one producer of a good or service, there are a handful of producers, or at least a handful of producers that make up a dominant majority of the production in the market system. While oligopolists do not have the same pricing power as monopolists, it is possible, without diligent government regulation, that oligopolists will collude with one another to set prices in the same way a monopolist would.

DEFINITIONS

- Monopolistic competition is a type of market system combining elements of a monopoly and perfect competition. Like a perfectly competitive market system, there are numerous competitors in the market. The difference is that each competitor is sufficiently differentiated from the others that some can charge greater prices than a perfectly competitive firm. An example of monopolistic competition is the market for music. While there are many artists, each artist is different and is not perfectly substitutable with another artist.

Criteria	Perfect	Monopolistic	Oligopoly	Monopoly
No of Firms	Very large	Many	Few	one
Type of product	Standard	Differentiated	Std / Diff	unique
Control o Price	None	Slight	Considerable	Considerable, if not regulated
Entry / Exit	Free	Free	Barriers	Barriers
Example	Agri product like wheat, soybeans etc	Restaurants, Retail stores etc	Automobiles, airlines, Baby foods etc	Patented drugs, Electric goods etc

- Bid Rigging - Agreement between enterprise or person engaged in similar production or trading of goods or provisions of service which has effect of eliminating or reduce the competition for bid.

INTRODUCTION TO COMPETITION ACT, 2002

The Framework of Competition Act 2002 has essentially four compartments:

i. Anti- Competitive Agreements [Section 3]
ii. Abuse of Dominance [Section 4]
iii. Combination Regulation [Section 5 & 6]
iv. Competition Advocacy [Section 49]

Objective of the Act

i. Facilitate & Foster Competition
ii. Establish a Commission to prevent practices having adverse effect on competition
iii. Promote and sustain competition in markets
iv. Protect the interests of consumers
v. Ensure freedom of trade in the Indian markets

ANTI-COMPETITIVE AGREEMENTS

In simple words, Anti-Competitive agreements are agreements that are made by two or more companies competing in the same market to fix prices or reduce stocks etc, so as to manipulate the market favourably for them. This has the effect of the companies reducing the competition in the market which adversely affects the end consumer.

The Competition Act, 2002 defines anti-competitive agreements as such in **section 3** where it states, "*No enterprise or association of enterprises or individuals or association of individuals may enter into an agreement regarding production, supply, distribution, storage, acquisition or control of goods or provision of services which may adversely affect the competition in the Indian market*".

Such agreements are termed as AAEC agreement, which means the **appreciable adverse effect on competition** agreements**.** the Act expressly states that such an agreement shall be void.

An AAEC agreement is classified as any agreements that result in:-

- Directly affects purchase or sale prices
- Indirectly affects purchase or sale prices
- Limits production
- Limits supply
- Limits technical development
- Limits service provision in the market
- Leads to the rigging of bids
- Leads to collusive bidding

ABUSE OF DOMINANT POSITION

The abuse of dominant position is prohibited by **Section 4** of the Competition Act. Abuse of dominant position is defined under the second part of the same Section. According to the act dominant position means any enterprise that enjoys the position and power in the Indian market which enables it to:

- Operate independently of competitive forces in the relevant market
- Affect its competition, consumer or the relevant market in its favour.

For example, predatory pricing is a practice that is seen to be an abuse of dominant position. In simple words when a dominant enterprise engages in AAEC acts, it is considered an abuse of dominant position. The difference between the definition of anti-competitive agreements and abuse of dominant position is that in anti-competitive agreements there have to be two or more parties and it can be between any enterprise or firm and doesn't require there to be a dominant firm involved. In abuse of dominant position, it can be done by a single party but the party has to be in a dominant position in the relevant market.

REMEDIES

Remedies against AAEC agreements and abuse of dominant position are provided by the Competition Commission of India. Upon a review and enquiry into the alleged practices the Competition Commission may pass the following orders:

- Direct the discontinuance of such practices
- Impose a penalty that is less than 10% or the turnover of the preceding three financial years; in the case of a cartel the penalty shall be 10% or three times the turnover of every financial year and shall continue for the period of continuance of such practices
- Direct the modification of such an agreement or abuse so as to curtail its adverse effect upon the competition of the market
- Pass any order that it may so deem fit.

COMPETITION COMMISSION

- The Competition Commission of India is established under the Competition Act, 2002. It is a statutory body that has the power to govern and enforce the Competition Act including penalties. It was established when the need for a healthy competitive environment became necessary following liberalisation under the then Shri Atal Bihari Vajpayee government.

- The Commission is composed of a chairman and a minimum of 2 board members and a maximum of 6 board members. These members are required to have a minimum of 15 years of experience in their respective fields. Its objectives, duties and powers are enumerated in the Competition Act, 2002. Its main duty and object is to ensure that the Indian markets maintain a healthy and fair competitive environment and is granted power to ensure such an environment and penalise any acts adversely affecting its duties.

POWERS OF THE COMMISSION

The Commission has been vested with the powers of a civil Court while trying a suit in respect of following matters:

- summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of documents;
- receiving evidence on affidavits;
- issuing commissions for the examination of witnesses or documents;
- requisitioning any public record or document or copy of such record or document from any office;
- dismissing an application in default or deciding it ex parte; and
- any other matter which may be prescribed.

DUTIES OF THE COMMISSION

The Commission has been charged with the duty

- to eliminate practices having adverse effect on competition;
- to promote and sustain competition;
- to protect the interests of consumers; and
- to ensure freedom of trade carried out by other participants,

in the Indian markets.

THE COMPETITION APPELLATE TRIBUNAL

- The tribunal is established by the Central Government to hear, and dispose of appeals against orders and directions passed by the Competition Commission of India.
- The Competition Appellate Tribunal adjudicates on claims for compensation that may have arisen from the findings of the Competition Commission of India.

The Competition Appellate Tribunal is composed of a Chairperson and maximum 2 members. Their term of office is 5 years or till they attain the age of 65 years. The members of the tribunal are eligible for re-appointment.

The provisions of the Tribunal allow for a final appeal to the Supreme Court of India if the aggrieved parties are not satisfied with the adjudications of the tribunal.

REGULATION OF COMBINATION

The term combination has a broad definition under the ACT, it includes

- any acquisition of shares,
- voting rights,
- control of assets
- Party to merger or amalgamation of enterprises

Any person/enterprise shall not enter into a combination which is likely to have an adverse effect on the competition and such a combination will be void.

If any person/enterprise proposes to enter into a combination he shall intimate the Competition Commission of India within 30 days of:

- Approval of the proposal relating to mergers and amalgamation by the BOD of the enterprises involved in the process.
- Execution of any agreement pertaining to acquiring of control.

BUSINESS PERSPECTIVE

Business Operations in India necessitates the knowledge of the various laws and regulations and also the implementation of the same. Competition in the market is a huge challenge which needs to be dealt with carefully. It is essential for the businesses to realize that although competition brings prosperity, thriving and striving shall be a continuous process.

The various matters to be kept in mind by the business houses are:

i. The markets are susceptible to formation of cartels which pose a risk of formation of monopolies. The awareness of the fact that such associations are not permitted under the Competition Act 2002 is essential.

ii. When discussions are made with competitors documentation of the same should be done.

iii. Any meetings wherein any matter is being discussed, which shall raise issues under the competition law shall be avoided.

iv. It is advisable to avoid discussions pertaining to price and the actual cost to the company.

v. Appointment of an Ombudsman for advise on the Competition Law so as to prevent any legal issues may be done.

vi. Communication aspects although seem trivial may leave an impact when it comes to abuse of dominant position issues. Any statements made shall be weighed carefully.

The Competition Act 2002 is a comprehensive law and the intent of the legislation is

To promote fair competition, catch up with the global economy, safeguard the interest of the consumers and ensure a stable market for India.