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Are Tax Holidays Beneficial In The Newest Tax Regime ?

Tax Holiday is an initiative by the government that gives away a tax reduction or even exemption in certain cases. In India like developing countries it is used to attract foreign investment. When the government wishes to boost certain production of goods or a sector of industries it grants a scheme of tax holidays. However, the intention behind these tax holidays is always for a temporary period and not permanent.

An example of tax holiday is sales tax holiday wherein consumers do not pay any tax on a the listed product for a specific period of time, to relieve taxpayers and thereby simultaneously boosting that sector.

Therefore benefits of tax holidays are

- 1) Increases Foreign Investment
- 2) Promotes Economic Activities
- 3) Inc Long Term Tax Revenue (Dec. Short Term).

Some examples of Tax Holiday under section 80IA comprise of following undertakings:

1. Provision of infrastructure facility :

Conditions:

- i) Should provide infrastructure facility i.e.

(road, highway project, water supply project, port, airport, navigational channel)

- ii) It should be owned by an Indian Company
- iii) There should be an agreement with the Central Government.

Commencement should be between 01 April 1995 to 01 April, 2017. 100% of profits as deduction for 10 consecutive assessment years.

2. Telecom Services :

Conditions :

- i) It should be a new undertaking (Cellular, Radio, Domestic Satellite Service, Broad-band Service and Internet service)
- ii) It should not be formed by transfer of old plant and machinery
- iii) The activity should commence between 31 March 1995 and before March 31, 2005. They are entitled to 100% profit deduction for first five years and 30% for the next five years.

3. Industrial Parks or SEZs

Conditions :

- i) It is develops/ed or maintains an industrial park of SEZ as per scheme framed and notified

by Central Government.

- ii) The Park must start operating from April 1, 2006 and March 31, 2011 under the Industrial Park Scheme, 2008, and SEZ must start operation during April 1, 1997 and March 31, 2005. 100% profit deduction for consecutive 10 AY

4. Power Generation/distribution :

Conditions :

- i) New Undertaking
- ii) It is setup in any part of India for generation or generation and distribution of power
- iii) Should not be formed by transfer of old plant and machinery (20% old machinery is permissible)
- iv) Commencement B/w 01 April 1993 to 31 March, 2017, transmission between 01 April, 1999 to 31 March, 2017. 100% profit deduction for 10 Consecutive AY

5. Reconstruction of a power unit :

Conditions :

- i) It should be owned by an Indian company and set up for reconstruction or revival of power generating plant
- ii) Formed b/w Nov 30, 2005 with majority equity by public sector companies for the purpose of enforcing the security interest of the lender to the company owning power generating plant and such Indian company is notified before Dec 31, 2005 by govt.
- iii) Such undertaking should generate and distribute power before March 31, 2011. 100% profit deduction for 10 consecutive AY

6. Laying and Operating Cross-Country Natural Gas Distribution Network :

Conditions :

- i) The undertaking is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a

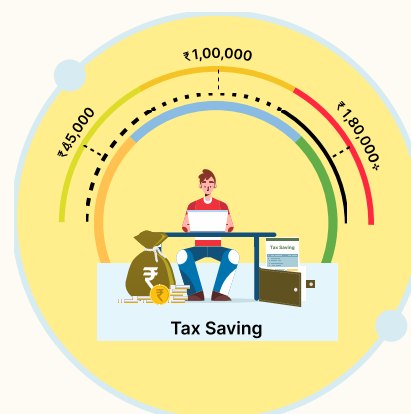
corporation established or constituted under central or state Act.

- ii) The undertaking has been approved by the petroleum and natural gas regulatory board and notified by the central government.
- iii) One-third of its total pipeline capacity is available for use on common carrier basis by any person other than assessee.
- iv) Functions start on or after April 1, 2007.
- v) Should not be formed by reconstruction of old plant and machinery. 100% profit deduction for 10 consecutive A.Y.

Now as effective corporate tax has been slashed to 25.17% for domestic companies, and new provisions under income tax act allows any domestic company to pay income tax at the rate of 22% subject to the condition that they will not avail any deduction (For example: Tax Holidays).

Moreover, companies incorporated after October 1, pay income tax at 15% subject to no incentives. Now for a company using tax holidays can opt in the newer and lower tax regime by giving up foregoing and future tax holidays deduction or keep using their deductions and pay the higher corporate tax (old tax regime).

Hence it is beneficial now to opt out of these deductions, as it'll be beneficial for the company as it pays lower tax and has greater savings, moreover tax holidays create a disparity for industries working in the same sector and not able to fulfill its conditions, hence removing tax holidays will be beneficial for competitiveness of the market and economy as a whole.



TREATMENT OF REIMBURSEMENT OF EXPENSE UNDER GST



Relevant provision of the GST Act & Rules

1. Section 7(1) of CGST Act: Reimbursement is supply or not.
2. Section-15- Value of supply
3. Rule-33 of CGST Rule : Value of supply of services in case of pure agent.
4. How to show in GSTR-1
5. Sec 2(47) of CGST Exempted supply
6. Sec 2(78) of Non-taxable supply

Now we will elaborate the provisions of GST Law.
Section 7(1) of CGST Supply: the expression **“supply”** includes–

1. all forms of supply of **goods or services** or both
2. made or **agreed to be made**
3. for a **consideration** (Sec,2(31) of CGST Act)
4. **by a person** (Section 2(84) of CGST Act)
5. in the course or furtherance of **business**; (Sec.2(17) of CGST Act)

Analysis:

So if we look into the reimbursement of expense incurred on behalf of the service recipient and claim of those expense, will be considered as consideration received in the course or

furtherance of business and this satisfied the five essential condition of supply.

Now we will move into the next step what would be **“value of supply”**.

Section-15. (1) The value of a supply of goods or services or both shall be

- the transaction value,
- which is the price actually paid or payable
- for the said supply of goods or services or both
- where the supplier and the recipient of the supply are not related and
- the price is the sole consideration for the supply.

Further Section 15 (2) says that the above value of supply shall include

1. any taxes, duties, cesses, fees and charges levied under any law other than GST Act
2. any amount that the supplier is liable to pay but incurred by recipient and not included while deciding sole consideration of supply.
3. Any incidental expenses charged by supplier at the time of, or before delivery of goods or supply of services.

4. interest or late fee or penalty for delayed payment of consideration.

5. subsidies directly linked to the price

- excluding subsidies provided by the CG and SG.

Further Again Section 15 (4) CGST Act says that-

– where the value of the supply of goods or services or both cannot be determined under sub-section (1),

– the same shall be determined in such manner as may be prescribed. (It means if the value of supply is not sole consideration then refer CGST rules)

Analysis of section 15(1):

The transaction value of supply must be decided” on the below factor :

- Transaction must fall under the definition of supply
- Price is actually paid or payable
- Supplier and recipient are not related party and
- The price is sole consideration for such supply

If the above conditions are not satisfied, then we will refer to the valuation rules under CGST rules which are as under:

Rule 33 of CGST Rule: Value of supply of services in case of pure agent.-

- Notwithstanding anything contained in the provisions of this Chapter, –
- the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be

• excluded from the value of supply, if all the following conditions are satisfied, namely,

(i) the supplier acts as a pure agent of the recipient of the supply,

- when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply

- has been separately indicated in the invoice
- issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent

- from the third party as a pure agent of the recipient of supply
- are in addition to the services he supplies on his own account.

Explanation.-

For the purposes of this rule, the expression pure agent means a person who

- enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- does not use for his own interest such goods or services so procured; and receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.





Analysis of Reverse Charge Mechanism Under **GST**

Introduction

Section 9(3) specifies the Government on the recommendation of the council specifies the category of goods and services or both on which tax shall be paid on Reverse Charge basis.

Similarly, section 9(4) specifies that the Government on the recommendation of the council specify the class of the registered person who shall in respect of supply of specified categories of goods or services or both from unregistered supplier shall pay tax on the reverse charge basis as the recipient of the supply.

Time of Supply in case of Reverse Charge Mechanism under GST

In case of **supply of goods**, time of supply is earliest of the following: –

- Date of receipt of goods
- Date of payment as per books of accounts or the date of debit in its bank account, whichever is earlier.
- The date immediately following thirty days from the date of issue of invoice or similar other document.

In case of **supply of service**, time of supply shall be earliest of the following: –

- Date of payment as per books of account or date of debit in bank account, whichever is earlier
- The date immediately following the sixty days from the date of issue of invoice or the similar other document.

Payment of Tax and Input Tax Credit in case of Reverse Charge Mechanism under GST

- The recipient of specified goods or services or both shall be responsible to pay tax under reverse charge. The recipient cannot use ITC to pay output GST on goods or services under reverse charge and shall be paid in cash only.
- The recipient of goods or the services can avail ITC on the amount paid under reverse charge only if such goods or the services or both are used for business or furtherance of business.
- A composition dealer should pay tax at the normal rates while discharging tax liability under reverse charge. The composition dealer shall be ineligible to claim input tax credit in respect of tax paid.

Compliance in respect of supplies under reverse charge Mechanism under GST

- Every tax invoice as per section 31 has to mention whether the tax in respect of supply in the invoice is payable under reverse charge.
- Any amount payable under reverse charge shall be paid by debiting the electronic cash ledger i.e. the reverse charge tax liability shall be discharged by cash only and after discharging the tax liability, credit of the same can be taken by the recipient, if otherwise eligible.
- Invoice level information in respect of all supplies attracting reverse charge, rate wise, are

Supplies of goods under reverse charge Mechanism under GST

S No.	Description of supply of goods	Supplier of goods	Recipient of supply
1	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3	Tobacco leaves	Agriculturist	Any registered person
4	Silk Yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
4A	Raw Cotton	Agriculturist	Any registered person
5	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or agent.
6	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union territory or a local authority	Any registered person
7	Priority Sector Lending Certificate	Any registered person	Any registered person

Supply of Services under Reverse Charge Mechanism under GST

S no.	Category of supply of services	Supplier of service	Recipient of service
1	Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road	Goods Transport Agency (GTA) except those who are paying tax under forward charge i.e. 12% (CGST 6% and SGST 6%)	(a) Any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or

			<p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the CGST/ IGST/ SGST/ UTGST Act; or</p> <p>(e) any body-corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person; located in the taxable territory.</p>
2	Services supplied by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity.”	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory.
3	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.
4	Services provided by way of sponsorship to anybody corporate or partnership firm.	Any Person	Anybody corporate or Partnership firm located in the taxable territory.
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, -(1) renting of immovable property, and(2) services as specified below-(I) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;(II) services	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

	in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (III) transport of goods or passengers.		
5A	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a registered person.	Central Government, State Government, Union territory or local authority	Any person registered under the CGST Act, 2017.
5B	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter	Any person	Promoter
5C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter	Any person	Promoter
6	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.
7	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.
9	Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.

10	Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India.
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IGST needs to paid as Reverse Charge on the following services: –

S no.	Category of Supply of Services	Supplier of service	Recipient of Service
1	Any service supplied by any person who is located in a non-taxable territory to any person other than nontaxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than nontaxable online recipient.
2	Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	A person located in a non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962, located in the taxable territory.





**Mr. Ajay Kumar Yadav, Inspector General, BSF, Indore
Addressing on Republic Day at Indore Branch.**



CA. Kirti Joshi, Regional Council Member addressing in Financial Literacy program

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