



UNIT-10

STATUTORY REQUIREMENT

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UNIT

10

Contents

Chapter I

- The Occupational Safety, Health and Working Conditions Code, 2020
- The Industrial Relations Code, 2020

The “aim of this chapter is to:

- Introduce you to labour related regulations of business

Objectives

On completion of this chapter, you will be able to”:

- Understand basic terminology connected with factories / industries.
- Statutory regulations related to contract labour and Inter-State migrants
- How to settle industrial disputes
- Agencies to contact in case of disputes
- Prepare a plan to meet Statutory Regulations

You are strongly advised to be on right side of the law to have a successful enterprise.



Entrepreneurs are passionate about new ideas and its implementation. By now you have a fairly good idea about ‘Entrepreneurship’. It is assumed that you would be setting your own enterprise and we wish you good luck. To be a successful entrepreneur you have to focus of your idea, market and demand & supply. The ideas will differ for different business to business, but what is common to all business is Statutory Regulations. What do you mean by statutory regulations and why are they required?

In simple language they are rules for conducting business in India and they are required to ensure that level playing field is made available to all entrepreneurs and safety of all persons involved in business is ensured. They are in form of Codes, Acts or applicable rules and regulations. They can be framed by Central Government, State Government and any /or other law enforcing agency. So while you are preparing to be entrepreneur, it is essential to have a basic understanding of business laws for smooth conduct of business and to avoid any legal action / penalties from authorities. Some entrepreneurs may have all the luck and they escape from law, however, for smooth management of your business, you are advised to be well versed with statutory regulations and follow them rather than relying on your luck. This Unit briefly covers the statutory requirements related to business.

In this chapter we will introduce you to two very important codes introduced by the Government namely:

“The Occupational Safety, Health and Working Conditions Code, 2020”

“The Industrial Relations Code, 2020”



THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

This is a code to consolidate and amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment. The Legislative department for the act is 'Ministry of Law and Justice' and the act "received the assent of the President on the 28th September 2020." The code has XIV chapters and three schedules. This code repeals following thirteen acts:

The Factories Act, 1948;

The Plantation Act, 1951;

The Mines Act, 1952;

The Working Journalist and other newspaper employees (conditions of service) and miscellaneous provisions Act, 1958:

The Working Journalist (fixation of rates of wages) Act, 1958;

The Motor Transport Workers Act, 1961;

The Beedi and Cigar Workers (conditions of employment) Act, 1966;

The Contract Labour (Regulations and abolition) Act, 1970;

The Sales promotion Employees (Conditions of Service) Act, 1976;

The Inter-State Migration Workmen (Regulation of Employment and Conditions of Service) Act, 1979;

The Cine – Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1996;

The Dock Workers (Safety, Health and Welfare) Act, 1986 and;

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996



Few important terms which you should know are broadly explained below:-

- (a) “Employee: Any individual (other than an apprentice engaged under the Apprentice Act, 1961) employed on wages by an establishment to do any skilled, semi-skilled, manual operational, supervisory, managerial, administrative, technical, clerical or any other work.
- (b) Employer: A person who employs, whether directly or through any person, or on his behalf or on behalf of any person, one or more employees in his establishment.
- (c) Factory: Any premises: -
 - (i) whereon twenty or more workers are working, or were working on any day of preceding twelve months, and in any part of which manufacturing process is being carried on with the aid of power, or is ordinarily so carried on: or
 - (ii) whereon forty or more workers are working, or were working on any day of preceding twelve months, and in any part of which manufacturing process is being carried on without the aid of power, or is ordinarily so carried on:
- (d) Machinery: Any article or combination of articles assembled, arranged or connected and which is used for converting any form of energy to perform work.
- (e) Wages: All remuneration whether by the ways of salaries, allowances or otherwise, expressed in terms of money or capable of being expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and it includes: -
 - (i) Basic Pay
 - (ii) Dearness Allowance
 - (iii) Retaining allowance, if any”

However, wages doesn't include bonus, value of house accommodation, contribution of employers towards provident / pension fund, conveyance “allowance, house rent allowance, overtime allowance, commission, gratuity etc.”



(f)“Week: It is a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector-cum-Facilitator.”

Registration of the Establishment

Employer of any establishment has to submit an application electronically to the registering officer appointed by the appropriate Government for the registration within sixty days of existence of establishment. The application form has information relating to ‘Inter-state migrant workers and is submitted along with prescribed fees by the appropriate Government.

Any change in ownership has to be intimated within thirty days of such change.

If the establishment is closed, the employer is required to inform the registering officer within thirty days of closure and certify that payments of all dues to the workers have been done. Employer has to send notice of commencement of operations and employer is required to intimate on cessation of operations also.

Duties & Responsibilities of Employer and Employees

Employer of every establishment shall “ensure that workplace is free from hazards which cause or are likely to cause injury or occupational disease to the employees. The” employer is required to inform the authorities if:-

- (a) Certain accidents take place
- (b) Certain dangerous occurrences happens in establishment

It may be noted that Safety and Security is responsibility not only of the employer but also of the employee. “Every employee at the workplace shall:-

- (a) Take responsible care for health and safety of him / her and of other persons who may be affected by his / her acts or omissions at the workplace.
- (b) Comply with safety and health requirements specified in the standards
- (c) Co-operate with the employer in meeting the statutory obligations of the employer.”

“Health, safety and working conditions

Provisions for the following have to be made”:-



- (a) Clean, hygienic & ventilated environment with temperature/ humidity control
- (b) Availability of Potable drinking waters
- (c) Adequate lighting
- (d) Sufficient arrangements for latrines and urinals for male, female and transgender employees separately
- (e) “Effective arrangements for treatments of wastes & effluents.”

Welfare facilities

Following welfare activities have to be catered for:-

- (a) Washing space for men & women
- (b) Separate bathing space for male, females, transgender employees,
- (c) Storage space for clothes not in use
- (d) Canteen, first aid boxes etc.
- (e) The Central Government may also make rules to provide for facility of creche.

Hours of work

“No worker shall be required to work for more than eight hours in a day

No worker shall be allowed to work for more than six days in a week.

Worker shall be paid twice the rate of wages in respect of overtime work”

Annual leave with wages

Every worker “shall be entitled for leave in calendar years with wages subject to following”:-

- (a) “He has worked one hundred and eighty days or more in such calendar year.”
- (b) “One day leave for every twenty days of work”

List of registers, records and returns which have to be maintained by “an employer.

Employers of an establishment shall maintain register in prescribed form, electronically or otherwise, containing such particulars of workers as may be prescribed by appropriate Government including”:-



- (i) “Work performed by them
- (ii) Number of hours of work constituting normal working hours in a day
- (iii) Day of rest allowed in every period of seven days
- (iv) Wage paid and receipt given therefor
- (v) Leave, leave wages, overtime work, attendance and dangerous occurrence and
- (vi) Employment of adolescent.”

Employer is required to “issue wage slips to the workers, in electronic forms or otherwise, and File such return electronically or otherwise to the Inspector-cum- Facilitator.”

All important notices have to be displayed at the workplace of the workers in such manner and form as may be prescribed by the appropriate Government

Employment of women.

It states that “women shall be entitled to be employed in all establishment for all types of work and they may also be employed with their consent before 6 a.m. and beyond 7 p.m. subject to such conditions related to safety, holidays and working hours or any other condition to be observed by the employer as may be prescribed by the appropriate Government.”

Special provisions for

Contract labour

This chapter has two parts.

Part I of chapter XI applies to:-

- (i) “Every establishment in which fifty or more contract labours are employed or were employed on any day of the preceding twelve months through contract.
- (ii) Every manpower supply contractor who has employed, on any day of the preceding twelve months, fifty or more contract labour.”

“This part shall not apply to the establishment in which work only of an intermittent or causal nature is performed.”



Inter- State migrant labour

The employer of “establishment in which ten or more inter-state migrant workers are employed or were employed on any day of the preceding twelve months shall”:-

- (i) Ensure suitable conditions of work
- (ii) “In case of fatal accident or serious bodily injuries to report to” “authorities of both states and next of kin of the worker
- (iii) To extend all benefits to such worker which are available to worker of that establishment”
- (iv) Provide a lump sum journey allowance once a year to his native place.

Offences and penalties.

Following offences are punishable:-

- (a) Causing obstruction to authorities
- (b) “Non-maintenance of registers records and non-filling of returns etc.
- (c) Falsification of records, wrongly disclosing results of analysis, contravention of provision of duties relating to hazardous processes/ accidents, and offences by the employees.

However, in certain cases exemption can be granted to occupier of factory from liability in certain cases, while for others penalties may be payable after due assessment by designated authorities.”

Establishment of social security fund

This is an initiative by the Government for welfare of the unorganized workers. The fund would credited with penalties received against proven offences and/or by other sources prescribed by the Government.

The code also covers three Schedules which are given below.

The first schedule

The first schedule of code lists the industries involving hazardous processes Few such industries are listed below:-.



- (a) Ferrous Metallurgy Industries
- (b) Foundries
- (c) Coal industries
- (d) Fertilizer Industries
- (e) Chemical Industries

The second schedule

The second schedule of the code includes matters pertaining to safe operations of machinery. Few of them are:-

- (a) “Fencing of machinery, work on near machinery in motion.
- (b) Protection of eyes, precautions against dangerous fumes, gases etc.”
- (c) “Notice in respect of accidents
- (d) Court of inquiry in case of accidents.”

The third schedule

The third schedule of the code gives the list of notifiable diseases. Few of them are:-

- (a) Poisoning
- (b) Anthrax.
- (c) Silicosis
- (d) Asbestosis

It is advised that Code be read in detail and The Factories Act, 1948 may be used as reference material.



THE INDUSTRIAL RELATIONS CODE, 2020

This is “an act to consolidate and amend laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement disputes and for matters connected therewith or incidental thereto.” The act “received the assent of the President on the 28th September 2020”. The act has XIV chapters and it replaces 3 acts:

- ‘ the Trade Unions Act, 1926’
- ‘ the Industrial Employment (Standing Orders) Act, 1946, and
- ‘ the Industrial Disputes Act, 1947

Few important terms which you should know are broadly explained below:-

- (a) “Average Pay: It means average of the wages payable to a worker:-“
 - (i) For “monthly paid worker, three complete calendar months”
 - (ii) For weekly worker, four complete weeks
 - (iii) For daily worker, twelve full working days
- (b) Closure: Permanent closing down of a place of employment or part thereof.
- (c) “Fixed Term Employment: Engagement of a worker on the basis of a written contract of employment for a fixed period *{please see the” terms of employment in Section 2(o)}*.
- (d) “Industry: Means any systematic activity carried by co-operation between an employer and worker (whether such worker is employed by such employer directly or by through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (NOT spiritual or” religious in nature). *The definition of ‘Industry’ “does NOT include ‘Institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service.”*
- (e) “Industrial Dispute : It means any dispute or difference between:-
 - (i) employers and employers
 - (ii) employers and workers



- (iii) workers and workers”
- (f) Industrial Establishment: “An establishment or undertaking in which any industry is carried on.”
- (g) “Lay-Off: Failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or accumulations of stocks or the breakdown of machinery or natural calamity or for any other connected reason, to give employment to a worker “who has not been retrenched.”
- (h) Lock-out: Temporary closing of a place of employment, or the suspension of work, or refusal by the employer to continue to employ any number of persons employed by him.
- (i) Retrenchment : Termination by the employer of the service a worker for any reason whatsoever, otherwise than as punishment inflicted by way of a disciplinary action. But it does NOT include:-
- (i) Voluntary retirement,”
 - (ii) Superannuation
 - (iii) Non-renewal of contract
 - (iv) “Termination of a Fixed Term Employment
 - (v) Termination on the ground of continued ill-health
- (j) Standing Order: “Orders relating to matters set out in the First Schedule of this code.
- (k) Strike: Cessation of work by a body of persons employed in any industry acting in” “combination, or a concerted refusal, or a refusal, under a common understanding, or any number of persons who are or have been so employed to continue to work or to accept employment and includes the ‘*concerted casual leave on a given day by fifty percent or more workers employed in an industry*’.
- (l) Trade Union Any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between
- (i) workers and employers



- (ii) “workers and workers
 - (iii) employers and employers
 - (iv) imposing restrictive conditions on the conduct of any trade or business”
- (m) Worker : “Any person (other than an apprentice engaged under the Apprentice Act , 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it includes working journalist and Sales promotion employees. Further, persons employed in supervisory capacity drawing wages of less than Rupees Eighteen Thousand per month” have also been included in the definition of the worker. *It may be noted that any person who has been employed mainly in a managerial or administrative capacity is NOT be considered as worker.*

Now we are aware of basic terminology let us proceed further to understand relevant features of this code.

Bi-Partite forums

(a) Works Committee: “Any industrial establishment in which one hundred or more workers are employed or have been employed on any day during preceding twelve months requires the employer to constitute a Works committee”

(b) “Grievance Redressal Committee. Every industrial establishment employing twenty or more workers shall have one or more than one Grievance Redressal Committee for resolution of disputes arising out of individual grievances.”

Trade Unions

“A Trade Union is recognized only if it registered with ‘Registrar’ of Trade Unions appointed by the State Government. Any seven or more members of a Trade Union can apply for registration of Trade Union. However, no Trade Union will be registered unless at least ten percent / one hundred workers are the members of the Trade Union.” “There shall be a negotiating union or council” in “an industrial establishment having a registered Trade Union for negotiating with the employer of the industrial establishment.



Standing Orders

The Central Government shall make model standing orders pertaining to service conditions and other matters.” The employer has to make draft standing orders within six months based on the standing order made by the Central Government. However, the concept of ‘Standing Orders’ is applicable to industrial establishments with three hundred or more than three hundred workers. For the contents of Standing Orders, the *‘First Schedule’* to this code may be referred.

Notification of changes in conditions of service

The *‘Third Schedule’* to this code specifies certain service conditions of workers. Employer cannot change these conditions:-

- (a) Without giving a notice to the workers
- (b) “Within twenty-one days of giving such notice”

All budding entrepreneurs are advised to go through the ‘Third Schedule’

Mechanism for resolution of industrial disputes

It may be noted that conciliation officers, “Industrial Tribunal and National Industrial Tribunal have been constituted to resolve industrial disputes. In addition, employers and workers may also decide to settle the dispute through arbitration also.” However, *it is advised that micro / small / medium enterprises should resolve all difference by mutual understanding rather than approaching formal methodology to the extent possible.*

“Payment of full Wages to worker pending proceedings in higher courts”

If a tribunal directs that worker has to be re-instated and employer prefers to take the matter to higher courts, the “employer shall be liable to pay such workers full wages during the pendency of proceedings in higher courts.”

Strikes and Lock-outs

‘No worker “can go on strike without giving notice to the employer within a period of:

- (a) Sixty days before striking
- (b) Fourteen days of giving notice



- (c) Expiry of the date specified in notice
- (d) Pendency of reconciliation proceedings
- (e) Seven days after conclusion of arbitration proceedings
- (f) Period during which settlement or award is in operation”

‘No employer shall lock-out workers:

- (a) Without giving them notice.
- (b) Within fourteen days of giving notice
- (c) Within expiry of the date specified in notice
- (d) Pendency of reconciliation proceedings
- (e) Seven days after conclusion of arbitration proceedings
- (f) Period during which settlement or award is in operation

Any strike / lock-out shall be illegal if above terms are not met or it is under arbitration. It may be noted that “*No person shall knowingly spend or apply any money in direct furtherance or support any illegal strike/ lock-out*’.

Lay-off, retrenchment and closure”

The difference between Lay-off, retrenchment and closure has been discussed initially in this chapter. Further, the rules of lay-off, retrenchment and closure are linked with strength of workers in industrial establishment and if work the work is performed seasonally/ intermittently.

“Continuous Service

Continuous service in relation to a worker means the uninterrupted service including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which was not illegal or a lock-out or a cessation of work which is not due to fault on the part of the worker.”

‘**Badli Worker**’ He is “a worker who is employed in an industrial establishment in the place of another worker,” but he ceases to be Badli worker if completes one year of continuous service with establishment.



Compensation

Any worker with more than one year of continuous service is entitled for compensation if he is laid off. The compensation shall be equal to fifty percent of the total of the basic wages and dearness allowance which would have been payable to him had he not been laid off. However, no compensation shall be paid to” “a worker who has been laid-off :

- (a) If he refuses to accept any alternative employment in same establishment.
- (b) If he” does not report for work at the appointed time during working hours
- (c) If laying off was due to strike or slowing down of production on part of workers.

Worker re-skilling fund’

This is a new initiative by the Government primarily for reskilling of retrenched worker. The “fund shall consist of:-

- (a) Contribution from the employer (fifteen days of worker before retrenchment)”
- (b) Any other source “prescribed by the appropriate Government.

Offences and penalties.

No employer/worker/trade union shall” commit “unfair labour practices which are listed in the second schedule” of the code. The appropriate Government can appoint any offer (not below undersecretary) for holding enquiry if violation of any section of the act takes place. The penalties for laying off / retrenchment / closing down the industrial establishment without following the procedure can be punished with a fine which shall not be less than one lakh rupees, but extendable up to ten lakh rupees. Other penalties pertain to offences relate to:

- (a) Unfair labour practice
- (b) False entry
- (c) Non-submission of standing order
- (d) Furtherance of strike/ lock-out etc.

It may be noted that, if company commits the offence, every person who, at the time of the offence was committed was in charge of/ responsible for conduct of business shall be deemed guilty and shall be liable for proceedings/ punishments.



The code also covers three Schedules which are given below.

The first schedule

The first schedule of code lists the matters to be provided in standing orders. Few of these are:-

- (a) Classification of workers
- (b) Shift working
- (c) Attendance and late coming.
- (d) Means for redress for workers against unfair treatment.

The Second schedule

The second schedule of code lists the unfair labour practices Few of these are:-

I “On the part of Employers and Trade Unions of the employers

- (a) To dominate , interfere with or without contribute support to any Trade Union
- (b) To establish employer sponsored Trade Union”
- (c) To encourage/ discourage membership in any Trade Union
- (d) Unfairly discharging/ dismissing any worker

II “On the part of Workers and Trade Union of workers

- (a) To advise or actively or instigate support illegal strike
- (b) To” refuse to bargain collectively in good faith

The Third schedule

The third schedule lists change in “conditions of service for which notice is to be given.” Few of these are:-

- (a) “Wages, including the period and mode of payment.
- (b) Compensatory and other allowances
- (c) Hours of work and rest intervals
- (d) Leave with wages and holidays”



It is advised that Code be read in detail and The Industrial Dispute Act, 1947 may be used as reference material.

Chapter I Summary Points

1. “The Occupational safety, health and working conditions Code, 2020 and ‘The Industrial Relations Code, 2020’” have been assented by the President on 28th September 2020 and they would repeal a total of sixteen Acts including:-
 - (a) “The Factories Act, 1948
 - (b) The Industrial Dispute Act, 1947”
2. The Employee and Employer both are responsible for safety and security.
3. Wages of employee include Basic Pay, Dearness Allowances and Retaining Allowance.
4. Special provision exist for employment of women and Inter-state migrant
5. Fixed Term Employee is engaged on the basis of a written contract for a fixed period
6. Lock out/ strike are not illegal but a notice is a must for strike/ lock-out
7. Conciliation officers, “Industrial Tribunal and National Industrial Tribunal have been constituted to resolve industrial disputes”
8. “Spending money in direct furtherance or support any illegal strike/ lock-out is offence”

SAQ

1. Which Ministry is the Legislative Department for these two Codes?
2. What is difference between employee and a worker?
3. What registers, records and returns have to be maintained by an employer?
4. What constitutes an Industrial Dispute?
5. What is difference between Strike and Lock-out?
6. Who is a Badli Worker
7. What is covered in the Third Schedule of ‘The Industrial Relations Code, 2020’?



UNIT

10

Contents

Chapter II

- “The Code on Wages, 2019”
- The Occupational Safety, Health and Working Conditions Code, 2020

The aim of this chapter is to:”

- “Introduce you to laws related” to wages and social security of the employees. Towards this following codes have to be understood:-
 1. The Code on Wages, 2019
 2. The Code on Social Security, 2020 along with its three schedules

“Objectives

On completion of this chapter, you will be able to:

- Understand” basic terms related to wages
- Laws concerning minimum wages
- Laws related to payment of bonus
- Laws concerning Provident Fund
- Laws related to payment of gratuity
- Laws related to maternity benefits
- Social security for unorganized workers
- List of records to be maintained



THE CODE ON WAGES, 2019

This is an act to amend and consolidate the laws relating to wages and bonus and matters connected therewith.

The Legislative department for the act is 'Ministry of Law and Justice' and the act "received the assent of the President on the 28th September 2020." The code has IX and it repeals following four acts:

' the Payment of Wages Act, 1936'

' the Minimum Wages Act , 1948'

' the Payment of Bouns Act, 1965' and

' the Equal Remuneration Act, 1976'

Chapter I deal with preliminary definitions. Few important terms are broadly explained below:-

- “(a) Accounting Year: Means the year commencing on the 1st day of April.
- (b)” “Company: Means a company defined in the clause (20) of section 2 of the Companies Act, 2013.
- (c) Contractor: In relation to an establishment, means a person, who-
- (i) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishments, through contract labour:
or
 - (ii) supplies contract labour for any work of the establishment as mere human resource and includes a sub-contractor.
- (d) Contract Labour: Means a worker who shall be deemed to be employed in or in connection with the work of an establishment by” or through a contractor and it includes inter-State migrant worker.



- (e) “Co-operative Society: A society registered or deemed to be registered under Co-operative Societies Act, 1912 or any other law prescribed by any State”
- (f) “Corporation: Any corporate body established by or under Central Act, or State Act but does not include a company or a co-operative society.”

“Prohibition of discrimination on ground of gender

On the basis of gender, there shall be no discrimination among employees in matters relating to wages for similar work.”

Minimum Wages

- (a) No employer shall pay to any employee wages less than the minimum wages as prescribed by the appropriate Government.
- (b) The minimum rate of wages can be fixed based on:-
 - (i) for time of work (hour, day or month)
 - (ii) for piece of work
- (c) The components of minimum wages may consist:-
 - (i) “basic rate of wages and an allowance at a rate to be adjusted” periodically.
 - (ii) “basic rate of wages with or without the cost of living and the cash value of concessions provided
 - (iii) an all-inclusive rate allowing for basic rate, cost of living allowance and the cash value of the concessions provided.
- (d) The minimum wages are finalized by the Government based on the recommendations of appropriate committees.”
- (e) The “appropriate Government would review or revise minimum rate of wages ordinarily at an interval not exceeding five years.
- (f) The Central Government shall fix floor wage”
- (g) “Wages for overtime work shall not be less than twice the normal rate of wages



Payment of wages.

Payment” should be made in current currency/ coins/ cheque/ Bank transfer/ electronic mode. The fixation of wage period can be daily, weekly etc. but not more than a month.

The employer shall pay “wages to the employees engaged on:-

- (a) Daily basis at the end of the shift
- (b) Weekly basis, on the last working day of the week.”
- (c) “Monthly basis, before the expiry of seventh day of succeeding month”

The wages have to be paid within two working days “where an employee has been:-

- (a) Removed or dismissed from service; or
- (b) Retrenched or has resigned or became unemployed due to closure

Payment of bonus.

The” eligibility for earning bonus is determined based on the wages drawn by employee and is notified by the appropriate Government.

“It is paid to by the employer to the employee” “who has put in at least thirty days work in accounting year. Annual minimum bonus is calculated @ of eight and one third per cent of the wages” or rupees “one hundred whichever is higher whether or not the employer has any allocable surplus during previous accounting year.”

“If the surplus amount exceeds the minimum bonus payable to the employees the employer is bound to pay bonus in proportion to the wages earned by the employee, subject to a maximum of twenty per cent of such wages.

In the first five years accounting years bonus shall be paid only in respect of the accounting year in which employer derives profit.”

Reduction / Deduction in Bonus

“If an employee has not worked for all working days in an accounting year the bonus” may be reduced proportionally (subject to a minimum of “eight and one third per cent of the wages).”



“In an accounting year if an employee is found guilty of misconduct causing financial loss , the employer may deduct this amount from payable bonus for that accounting year only and balance amount has to be paid.”

“Time Limit for payment of bonus

Bonus amount has to be credited within eight months from the close of the accounting year.”

Records, returns and notices

Every employer “shall maintain a register containing details of:-

- (a) Persons employed
- (b) Muster Roll
- (c) Wages”

Every employer is required to display following information notices at prominent places:-

- (a) “Abstract of this Code
- (b) Category –wise wage rates of employees
- (c) Wage period
- (d) Day or date and time of payment of wages
- (e) Name and address of Inspector-Cum- Facilitator having jurisdiction” (Appropriate Government appoints Inspector- Cum – Facilitator)

Offences and Penalties

“An employer who-

- (a) Pays to any employee less than minimum” amount “shall be punishable with a fine which may extend to fifty thousand rupees.”
- (b) Contravenes any other provision of the code shall be punishable with a fine which may extend to twenty thousand rupees.

Burden of Proof

When a claim has been filed on account of nonpayment / less payment of remunerations or bonus “burden to prove that the said dues have been paid shall be on the employer”



THE “CODE ON SOCIAL SECURITY, 2020

This is an act to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organized or unorganised or any other sectors. The” Legislative department for the act is ‘Ministry of Law and Justice and the act “received the assent of the President on the 28th September 2020.” The act has XIV chapters and it will repeal following nine acts:

- ‘ the “Employee’s Compensation Act, 1923’
- ‘ the Employees’ State Insurance Act, 1948’
- ‘ the Employee’s Provident Funds and Miscellaneous Provisions Act, 1952’
- ‘ the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959’
- ‘ the Maternity Employee’s Compensation Act, 1961’
- ‘ the Payment of Gratuity Act, 1972’
- ‘ the Cine-Workers Welfare Fund Act, 1981’
- ‘ the Building and other Construction Workers’ Welfare Cess Act, 1996’ and
- ‘ the Unorganized Workers’ Social Security Act, 2008’”

Few important terms are broadly explained below:-

- (a) “Agent: when used in relation to an establishment, means every person, whether appointed or not, who acting or purporting to act on behalf of the owner, takes part in management, control, supervision or direction of such establishment.”
- (b) “Career Centre: Means any office (including employment exchange, place or portal) established and maintained in the manner prescribed by the Central Government for providing career services.”



- (c) “Completed year of service: Means continuous service for twelve months.”
- (d) “Contractor: In relation to an establishment a contractor is a person who:-
- undertakes to produce a given result for the establishment, other than mere supply of goods or articles through contract labour.
 - Supplies labour contract for any work of the establishment.”
- (e) Fixed Term Employment: Means the engagement of an employee on the basis of written contract of employment for a fixed period subject to certain conditions.
- (f) “Inter State Migrant: - A person who is employed in an establishment and who:-
- has been recruited directly” recruited/ indirectly recruited through contractor from other state.
 - “has come on his own from one state and obtained employment in an establishment situated in other state.”

Now that we are familiar with some important terms let us look at some welfare schemes:

Employees’ Provident Fund

Employees Provident Fund is applicable to establishments with more than twenty employees. Basically, this is a saving scheme managed by the Government with aim to create a retirement corpus for employees. The contribution and interest earned helps to reduce the Tax liability of the employee. In this fund the employer and employees contribute every month. These monthly savings gets accumulated and can be accessed as a lump sum amount at the time of retirement, end of employment or to meet certain financial requirements “(subject to certain conditions). *The scheme is operated on line and is applicable to every establishment in once it crosses threshold limit of twenty employees.*

Membership to the Fund

When an employee joins and his 'pay' is more than fifteen thousand rupees a month at the time of joining, he/she is called non-eligible employee and he/she is not made a member of the fund. However, employees drawing less than fifteen thousand rupees per month have to mandatorily become members of the EPF. Provision exists for an employee drawing 'pay' above prescribed limit to become a member. If the employee and employer both agree with the



permission of relevant authorities (Asst. PF Commissioner), the employee can be enrolled as a member.

Contribution by employer and employee

As per prevailing rules the contribution of the employer would be twelve per cent of pay obtained by adding the basic pay and dearness allowance. If any retaining allowance is paid that is also to be added. An equal contribution is paid by the employee also. However, in certain conditions notified by the EPFO, the contribution rate for both employee and the employer is limited to 10 percent.

Universal Account Number (UAN)

The term UAN has been introduced recently to assist the member of EPF. It is a one-time permanent number allotted by EPFO, which would change throughout one's career. If an employee is changing jobs and he has UAN, he has to inform new employer and he will not get a new UAN from new employer. UAN helps to keep a track all activities of EPF of an employee.

Other linked Schemes by Central Government

The Central Government also provides schemes under aegis of Provident Fund which are:-

- (a) Employees' Pension Scheme (EPS)
- (b) Deposit linked Insurance Scheme (EDLI)

Employer's Responsibilities

- Obtain PAN of establishment, register with EPFO by submitting relevant documents as per prevailing norms.
- Register new employees as per eligibility, upload KYC documents and generate UAN
- Make deductions as per the norms and deposit them timely (by 15th of the month).
- Maintain record of all deposits to EPFO.
- Maintain record of KYC documents (PAN, UAN, Aadhar, bank details).



Records to be maintained:

- Details of members (family particulars and nominations- Form 2)
- Details of non-eligible members
- Form 11 of all members
- Form 3A of all employees (Yearly record of contribution)
- Form 6A is the detailed Yearly record for all employees of establishment.
- Record of deposit under
 - Account I : Deposits made towards EPF
 - Account X : Deposits made towards Pension Fund (EPS)
 - Account XXI : Deposits made towards EDLI

Existing rate for deposit

EPF	10% or 12 % of salary both by employer and employee
EPS	8.33 % by employer only (part of EPF contribution of 12%)
EDLI	0.5% by employer only (part of EPF contribution of 12%)
Admin Charges	0.5% of total pay or five hundred rupees whichever is less by employer only

Important Forms

2	Declaration and nomination form for EPF & EPS
5	New employees registering for EPF and EPS
5(IF)	Claim as per the EDLI Scheme
10C	For claiming withdrawal benefits / scheme certificates of EPS
10D	For claiming monthly pension
11	Auto Transfer of EPF



13	EPF Account Transfer
14	Financing a LIC Policy from EPF
15G	To save TDS on the interest income on EPF
19	Final Employees' Provident Fund Settlement
20	EPF Final statement in case of death of the employee
31	For partial withdrawal of funds.

“Employees’ State Insurance Corporation

Employees' State Insurance (abbreviated as ESI) is a self-financing social security and health insurance scheme for Indian workers. The fund is managed by the Employees' State Insurance Corporation (ESIC). The “corporation can set up hospitals either independently or in collaboration with state government or other private entities, but most of the dispensaries and hospitals are run by concerned state governments. For all employees earning” wages of twenty one thousand rupees or less per month can be member of this scheme. The employer contributes 3.25% and the employee contributes 0.75%, total share 4%. ESI scheme is a type of social security scheme for employees in the organised sector.

Gratuity

“Gratuity is paid by an employer to his employee in monetary terms for services rendered by him during the period of employment. Usually an employee is eligible for gratuity only if he has completed five years of continuous service with an organization.” Gratuity is to be paid by every establishment in which ten or more employees are employed or were employed , on any day of preceding twelve months. Unlike the provident fund, the gratuity “amount is totally paid by the employer without any contribution from the employee.”

“Who are Entitled to Receive Gratuity

Gratuity shall be payable to an employee, who has put in continuous service for a period of not less than five years. In case of death or disablement the minimum continuous service is one year. The minimum qualifying period of 5 years continuous service shall be considered uninterrupted by absence owing to sickness, accident, leave, strike, lock-out, or a reason not due to any fault of the employee.

When Payable



Gratuity becomes due for payment on:

- Superannuation
- Retirement or resignation
- Death; or Disablement
- Termination of fixed term employment
- Any other condition as notified by the Central Government

Computation of Gratuity

For every completed year of service or part thereof in excess of six months, gratuity is payable at the rate of 15 days wages last drawn by the employee.

In the case of an employee employed in a seasonal establishment, the employer shall pay gratuity at the rate of seven days wages for each season.

In the case of a piece-rated employee, daily wages should be computed on the average of total wages that he/she received for a period of last three months of his/her termination.

The computation of gratuity is as under:

$$\text{Gratuity} = \frac{\text{Monthly Salary} \times 15 \times \text{Year of Service}}{26}$$

Forfeiture of Gratuity

Gratuity may be forfeited, partially or totally, where the termination of services of the employee is due to damages or loss caused by him, willfully or negligently to the extent of the damage or loss so caused.

If the service is terminated on grounds of riotous or disorderly conduct or any act of violence, the gratuity shall be wholly forfeited.

Nomination Procedure

Each employee, who has completed one year of service should make a nomination of Form F. Nominee must be a member of the family. An employee can nominate more than one person as nominees.



If an employees has no family, he can nominate any person or persons. But subsequently on acquiring a family such nomination automatically becomes void. The employees shall then make a fresh nomination. Such fresh nomination shall be in Form G. A nomination once made may be modified under a notice to the employer. In the event of nominee predeceasing the employee, the nomination is automatically revoked and fresh nomination may be made in Form H.

Opening of Gratuity Fund

The entrepreneur may submit the details in Form-A to the Controlling Authority as and when the Act has become applicable to his unit. If there is any change in Form-A, he may give a notice of change in Form B. In case of closure of the unit, he may have to submit the details in Form C.

Every employer, when once the Act becomes applicable to him should:

- Establish an approved Gratuity Fund in the prescribed manner; or
- Obtain an Insurance Number in the prescribed manner for his liability toward the payment of gratuity from the Life Insurance Corporation.

Disbursement of Gratuity

- * Within 30 days from the receipt of application from the employees (Form I or J), the employer should notify the amount payable to the applicant as well as to the Controlling Authority and should arrange to pay the claim either in cash or by cheque. If the amount of gratuity is not paid within the specified period, the employer shall pay simple interest notified by the Central Government, from the date on which the gratuity becomes payable to the date on which it is paid.
- * Issue Forms L and M - which are the forms prescribed for giving notice to the claimant indicating the amount payable or not payable.
- * In case there is a dispute about the amount of gratuity or its admissibility, the controlling authority will settle it. For such intervention by the Controlling Authority, an application should be made within 90 days from the occurrence of the dispute. Pending decision, however, the employer shall deposit with the Controlling Authority the amount which he admits is payable.



- * There is no time limit for payment of gratuity when there is no application.

Claim to be Made by the Employee

The eligible employee or his nominee shall put in a claim within 30 days after gratuity become payable or 30 days before the date of termination on either Form I of J as the case may be. Delayed application is not valid.

Employers' Other Responsibilities

- * Keep in safe custody all nomination forms made by the employee.
- * Display an Abstract of the Act and Rules in Form U prominently and in a language used by the majority of the employees in the premises of the establishment.

Maximum Gratuity Limit

The ceiling of Gratuity amount under the Payment of Gratuity Act, 1972 has been raised from time to time keeping in view over-all economic condition and employer's capacity to pay. The Gratuity Exemption limit is twenty lakh rupees as on date.

Form and Returns

- A: Notice of Opening
- B: Notice of any change in Form A
- C: Notice of close down of the Establishment
- F: Nomination
- G: Fresh nomination (those who have nominated a person other than family members)
- H: Modification and fresh nomination in the event of pre-deceased nominee
- I: Claim form within 30 days after the gratuity become payable
- J: Claim form before 30 days of the date of termination
- L: Giving notice to the claimant indicating the amount payable
- M: Giving notice to the claimant indicating the amount not payable
- U: Display the abstract of Act and Rules"

Maternity Benefits

Maternity benefits are to be paid by every "establishment in which ten or more employees are employed or were employed, on any day of preceding twelve months." Further,:-



(a) “No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

(b) No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.”

Non Entitlement of Maternity Benefits

“No woman shall be entitled to maternity benefits unless she has actually worked in an establishment of the employer from whom she Calais benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

Maximum Period

The maximum period for which any woman shall be entitled to maternity benefits shall be twenty - six weeks of which not more than eight weeks shall precede the expected date of her delivery.”

“Forfeiture of maternity benefits

A woman who works for remuneration during the period she was permitted by an employer to absent herself for availing the maternity benefits shall not be entitled to receive maternity for such period.”

Duties “of employer

It is the duty of the” employer to display “abstract of the provisions of maternity benefits and rules relating thereto in the language or languages of the locality” at every part of establishment where woman are employed.

“Social Security for Unorganized workers, Gig workers and Platform workers”

Let us understand these terms first:-

Unorganized Workers: “They are home based workers, self-employed workers or a wage workers in the unorganized sector.”

“Gig Workers: A person who performs work or participates in work arrangement and earns from such activities outside traditional employee- employer relationship.



Platform Workers : Workers working outside traditional employee- employer relationship, primarily on online platform.”

The code states that the Central Government shall frame schemes for above persons regarding:-

- “Life and disability cover
- Health and maternity benefits
- Old age protection
- Education

The state Government shall frame schemes related” to:-

- Provident fund
- Housing
- Skill up gradation
- Funeral
- Old age homes

Maintenance of Records, Registers, Returns etc.

The employer shall maintain record of:-

- Muster roll with wages
- “Number of days/ hours of work performed b the employee
- Wages paid
- Leave” record etc.
- Employee identification number
- Deductions made and cess paid
- Total number of employees
- Number of dangerous occurrences
- Person recruited



- “Vacancies for which suitable candidates were not available”

The employer shall “issue wage slip to the employees in electronic form or otherwise”

The employer must display notices as prescribed by the appropriate Government

The employer shall file all mandatory returns

The code also covers three Schedules which are given below.

The first schedule

The first schedule of code deals with applicability of:-

- (a) Employees’ provident Fund
- (b) Employees’ State Insurance Corporation
- (c) Gratuity
- (d) Maternity Benefit
- (e) Employees’ Compensation
- (f) Social Security for Unorganised Workers’
- (g) Employment Information and Monitoring.

The Second schedule

The second schedule of code lists the category of employees

The Second schedule

The third schedule of code lists the occupational diseases

It is advised that Code be read in detail and the repealed acts be read as reference material

Chapter II Summary Points

1. “The Code on Wages, 2019 has been assented by the President on 8th August 2019 2020 and they would repeal a total of four Acts including:-“
 - (a) “The Minimum Wages Act, 1948
 - (b) The Payment of Bonus Act, 1965



2. The Code on Social Security, 2020 has been assented by the President on 28th September 2020 and they would repeal a total of nine Acts including:-
 - (a) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
 - (b) The Maternity Benefit Act, 1961
 - (c) The Payment of Gratuity Act, 1972
3. The employer is bound to pay minimum wages and bonus as per rules prescribed by appropriate Government.”
4. “In the first five years accounting years bonus shall be paid only in respect of the accounting year in which employer derives profit”
5. When “a claim has been filed on account of nonpayment / less payment of remunerations or bonus” the “burden to prove that the said dues have been paid shall be on the employer”
6. The Employees Provident Fund is applicable to every establishment with more than twenty employees’
7. Gratuity may be forfeited in certain circumstances
8. Maternity leave is right of every woman employee, provided she meets the eligibility
9. “Welfare schemes for unorganized workers are framed both by the Central and State Government.”

SAQ

1. What are the components to be considered while calculating minimum wages?
2. How is the amount to be paid as bonus calculated?
3. What is UAN?
4. How many years would be considered for gratuity payment to a person who has worked for six years two months?
5. What do you understand by term career centre?
6. Who is a Gig Worker?
7. List all the documents an employer is required to maintain?



UNIT

10

Contents

Chapter III

- “The “Indian Contract Act”
- The Indian Negotiable Instruments Act
- The Indian Sale of Goods Act
- The Indian Partnership Act

The aim of this chapter is to:

introduce you to certain commercial laws governing your business

Objectives:

On completion of this chapter, you will be able to :

- Understand” about the “Indian Contract Act
- the Indian Sale of Goods Act
- the Indian Negotiable Instruments Act
- the Indian Partnership Act



In this Chapter we are going to give some general information about certain laws and acts which have relevance for you as potential entrepreneurs:

They are:

1. The Indian Contract Act , 1872
2. The Negotiable Instrument Act,1881
3. The Indian Sale of Goods Act, 1930
4. The Indian Partnership Act

The Indian Contract Act. 1872

The Indian Contract Act was formulated in 1872 and is being modified from time to time” The act covers legal aspects of contracts. “It extends to the whole of India and it came into force on the first day of September 1872. “

“You should first know the making of `Contract':

An agreement enforceable by law is a valid contract. It is mainly two-sided affair, something being promised or done on one side in return for something being promised or done on the other side. A contract is supposed to fulfill all requirements of law is to make a contract valid.

As an entrepreneur you will have to enter into contract, for example, with your workers, suppliers and customers. So it is essential for you to have a general idea about `contracts'.

Classification of Contracts

Contracts may be classified in following different ways:

1) Simple contracts:

A contract under seal is a written promise or promises which derives its validity form the legally prescribed deed.

2) unilateral and bilateral contracts:

Here, a promise of one side is exchanged for an act on the other side. In bilateral contract a promise is exchanged for a promise or set of promises.

3) Express, implied and quasi contracts:



When intention of parties is expressed in clear words, it is an express contract. In implied contracts, the contract will be influenced from the conduct of the parties and circumstances of the case. In quasi contract a fiction of law is adopted to enforce legal duties by actions of contract where no contract exists - implied or expressed. Such obligations are imposed by law.

Essential Requirement of a Valid Contract

- 1) Offer and acceptance.
- 2) Free consent of the parties.
- 3) Competency of parties to enter into contract.
- 4) Lawful object and consideration for a valid contract. There should be lawful consideration and the object should not be fraudulent or immoral.
- 5) Not against public policy.

Competent to Contract

Only those people who are of age of majority, sound of mind, and not disqualified by law from entering into a contract, are competent to enter into contract.

Following agreements are declared void by law;

- 1) Agreement in respect of marriage
- 2) Agreement in restraint of trade
- 3) Agreement in restraint of legal proceedings
- 4) Agreements for uncertainties
- 5) Agreements by way of wages

Performance of Contracts

The main objective of a contract is obviously that it should be performed as per agreement. It is also necessary to keep in view the terms and conditions as laid down in the contract. For example, 'A' promises to deliver good to 'B' on a certain day on payment of Rs. 100/-. If 'A' dies before that day, his representative is bound to deliver the goods to 'B' is bound to pay Rs. 1,000/- to him.

There can also be joint promises and joint liabilities.



If there is a breach of contract there are rules regarding compensation for the breach. Section 73 of the Act deals with them.

The Indian Negotiable Instruments Act,” 1882”

It is not always possible for to carry cash for business, hence a need was felt to adopt some other method for making and receiving payments. Accordingly, the term ‘Negotiable Instruments’ was coined which is primarily a written document with a promise. These documents which are used as a substitution for money are known as negotiable instruments. They may change hands before being presented for payment. “The Law relating to negotiable instrument is contained in the Negotiable Instrument Act, 1881. This an Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

It extends to the whole of India and it came into force on the first day of March, 1882.”

Negotiable Instrument

A negotiable instrument is made by a person and is likely to be transferred from one person to another before being presented for payment. “It means that when it is transferred to any person, that person becomes its holder.

Characteristic of a negotiable instrument

- 1) It is transferable by endorsement and delivery.
- 2) It entitle the holder to property in the instrument for value.
- 3) it contains a promise to pay money and money only.
- 4) It is writing.
- 5) It is unconditional.”

Types of Negotiable Instruments

There are two types of negotiable instruments:

Negotiable Instruments recognized by status:

- (i) “Promissory notes
- (ii) Bills of exchange
- (iii) cheque “



Negotiable instruments recognized by usage or customs of trade:

- (i) Bank notes/ exchequer bills
- (ii) Hundis, Share certificate etc

We will restrict our discussion to Negotiable Instruments recognized by status.

“Promissory Note

Promissory note is an instrument in writing (not being a currency note) containing an unconditional undertaking signed by the maker to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the note. Please remember that In India a promissory note ‘ Payable to bearer’ cannot be issued by any person except”:-

- (a) Reserve Bank of India
- (b) The Central Government

“Bill of Exchange

A bill of exchange is an instrument, in writing, containing an unconditional offer signed by the maker directing a certain person(s) to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument. Its essentials are that it must be in writing, contain an unconditional order to pay and must be signed by the maker.

Three parties are necessary to a bill of exchange.

- 1) The drawer who makes the bill.
- 2) The drawee who is directed to pay the bill.
- 3) The payee to whom or to whose order the amount of the bill is payable.

A bill of exchange, may be inland or foreign. Inland bill is drawn in India an payable in India. All other bills are known as foreign bills. A bill may also be a bearer or an order bill.

Acceptance of the Bill of Exchange

‘Acceptor’ means the drawee of the bill, who has signed his assent upon the bill and has delivered the same to the holder or any person on his behalf.

The difference between a bill of exchange and a promissory note are:



- There are two parties in a promissory note, while there are three in the bill.
- Nature of payment.
- Acceptance.
- Liability - in a promissory note the liability of the maker is absolute; in a bill the liability of the drawer is necessary and conditional, when the drawee refuses to honour the bill.
- In a bill the drawer stands in immediate relation with the acceptor and not the payee.

Cheque

A cheque is defined as "a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand".

All of you must be familiar with cheques. But we will give you some information anyway.

A cheque has three parties, namely drawer, drawee and payee, and is an unconditional order to pay. the scope of a cheque is much wider than a bill of exchange. It is a sort of direction issued to the banker to pay a certain sum of money to a particular person, or to his order. The bank is, therefore, liable only to the drawer:

A cheque:

- must be dated
- amount must be written in words and figures
- must clearly bear the name of the payee
- should bear a matching signature of the drawer with his/her specimen signature

A Cheques may be of two kinds

- 1) crossed
- 2) uncrossed (bearer cheque)

Bearer cheques can be presented to the drawee banker for payment. Bank is not responsible if the cheque is presented by a wrong person or if it is lost or stolen.

Crossed Cheque : A cheque may be crossed in two ways: general crossing and special crossing.



A cheque is crossed generally as follows:

- 1) It has only transverse parallel lines marked across its face
- 2) It bears the words "& 'Co.'" between these lines
- 3) It bears the words 'not negotiable' between the two parallel lines.

Special Crossing:

A cheque is crossed specially when the name of a banker is added across the face of the cheque either with or without the words 'not negotiable'. The banker on whom the cheque is drawn shall only pay to the banker to whom it is crossed or his agent.

When the cheque is crossed generally it is the duty of the banker to whom it is drawn, not to pay it otherwise than to a bank. In the case of special cross, the banker shall not pay it otherwise than to the banker to whom it is crossed or his agent.

Law protects a collecting banker who pays a crossed cheque if he has acted in good faith without negligence, where he receives payment for a customer and only act as an agency for collection.

A banker may refuse to pay the amount of a cheque if there are not sufficient funds in the customer's account, or has a lien over the funds, or the customer has countermanded payment of the cheque. He can also refuse of the cheque is post-dated or if the customer dies or does not present the cheque within a reasonable time.”

Dishonour of Cheques

The negotiable act was amended in 1988. If a person issues a cheque for meeting a debt or liability and the cheque is dishonored, it can become an offence punishable under Section 138 and further amended in 2002. These provisions were considered too harsh and cases started piling up in court Hence, in June 2020, the Ministry of Finance has proposed decriminalizing minor offences which are minor in nature. These were required to improve business sentiment and unclogging court processes. The proposals include Section 138 of Negotiable Instruments Act, 1881 also.

New Age Banking : The Government emphasis on Digitization of banking service. This makes the system more transparent and compliances are increased. This also helps in 24x7 banking and avoiding rush to banks. Few modes of New Age Banking are:-



Internet banking: One of the most popular new age banking tool is Internet banking. This allows any person to carry out financial transaction using Internet. A bank account holder has to register with his/her bank to allow him Internet Banking with specific permission to do financial transactions. This is a safe and convenient way to carry out financial transactions (like transfer of funds, bill payment etc.) as it is protected by an OTP (One time password). However, the user has to be cautious to avoid any loss due to phishing/ cyber fraud. NEFT and RTGS are very common mode for money transfer using Internet Banking. However, you should follow the guidelines issued by RBI/ your bank religiously.

Mobile banking: Mobile banking is a term used for performing all above activities using internet on his/her mobile device.

Telephone banking: Telephone banking is used if a person is not comfortable with above two modes. This gives very limited options and generally they are non-financial in nature.

ATM (automated teller machine): The account holder can use an ATM for withdrawal or depositing the cash. Usually a day limit is set to safeguard the losses if any unforeseen event happens. This facility may be used for limited transactions.

Cheque drop box facility: Most banks have a Cheque Drop facility at the ATM and in bank premises. This saves time for standing in a queue just to deposit a cheque.

Debit/ Credit Cards: In order to reduce physical transactions of cash the use of Debit/ Credit card is increasing. These are chip enables card which help you to make transactions smoothly without dealing in physical currency. In addition bank record is always available to reconcile the transactions at a later date. However, you should be very careful with your PIN (Personal Identification Number) to ensure that the card is not misused.

It is always advised to operate separate bank accounts for your personal/ family usage and for your business transactions, however, small the amount may be.

Caution: Be aware of cyber fraud while dealing with modern age banking

The Indian Sale of Goods Act, 1930

The law relating to sale of goods came into force from First July Nineteen Thirty. Though is this is an old act but it is an important act for entrepreneurs and should be understood well.

First, let us discuss what a sale is. Contract for sale would entail



- an offer sell at a price
- an offer to buy at price
- acceptance of this offer.

Price is consideration in the form of money.

It may be seen that this contract is a bilateral act involving two parties. There are, however, certain essential elements required to constitute a sale:

1. It has two different persons: a buyer and a seller.
2. Above two must be competent to contract.
3. An agreement to transfer should exist or actual transfer should take place.
4. A price in money is either promised or is paid.

The contract of sale need not be in writing. It can be verbal (i.e. by word of mouth) or a combination i.e. partly by writing and partly by word of mouth. A contract implied by the conduct of the parties would also be considered as contract of sale.

Conditions and Warranties

In a contract of sale there are two terms which are of importance:-

- 'conditions'
- 'warranties.'

The important term is conditions as it is fundamental in nature. Warranties are remaining ones. Remember that, conditions and warranties are not implied; the buyer must make his stipulations. Still, some exceptions have been incorporated in the act, which are implied by law. They are:

1. For title to the goods
2. Description of sale
3. Sale of sample
4. Sale by both of the above i.e. sample & description
5. Delivery time



Similarly a warranty can be expressed or implied.

Delivery of Goods

What is meant by Delivery? What are its various kinds? ‘Delivery’ means voluntary transfer of possession from one person to another.

It does not necessarily involve a physical delivery of the goods sold and passing them from the seller to the buyer. The delivery of the goods sold may be done in the following ways:

- i. by doing anything which the parties agree shall be treated as delivery; or
- ii. by doing anything which has the effect of putting in goods in the possession of the buyer or any person authorized to hold them on his behalf.

It is the duty of the buyer to take delivery of the goods within a reasonable time after being notified by the seller. If the seller fulfills his conditions of selling, the buyer becomes liable to the seller for any loss by his neglect/refusal to take delivery and for a reasonable charge for the care and custody of goods.

Unpaid Seller’s Rights:

It may so happen that seller has provided the goods but the price has not been paid or payment received is a conditional payment. In such cases the seller will be considered ‘unpaid seller’. However, if the goods have been already passed to the buyers by the unpaid seller, he has following rights: (a) to lien on the goods (b) right of stoppage in transit (so that delivery is not made to the buyer) and (c) right to resale.”

International Commercial Terms

The globe is shrinking commercially and you may deals with the clients from any part of the world. In such cases the good would be sent to any part of the world, hence few terms regarding shipping and delivery should be known to you.

Applicable to all modes of transport

“CIP: Carriage and Insurance Paid To

CPT: Carriage Paid To

DAP: Delivered at Place



DAT: Delivered at Terminal

DDP: Delivered Duty Paid

EXW: Ex Works

FCA: Free Carrier

Applicable to Sea and Inland Waterways

CFR: Cost & Freight

CIF: Cost, Insurance and Freight

FAS: Free Alongside Ship

FOB: Free On Board”

These are the “general concepts and rules you have to keep in mind in case of sale of goods, for more details the Act can be referred to.

The Indian Partnership Act, 1932”

“An Act was enacted in 1932 and it came into force on the 1st day of October 1932.” The present Act superseded the earlier law, which was contained in Chapter XI of the Indian Contract Act, 1872.” The act “provides for rules relating to formulation of legal partnership. It state the rights and duets of the partners amongst themselves and outside and lays down rules regarding dissolution of partnership.”

“What is the Partnership?

Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called `PARTNERS' and collectively `A FIRM'.

Principal Elements of Partnership

Principal elements of partnership are:

- i) Existence of more than one person.
- ii) Existence of a business.
- iii) Existence of the idea of making profit.



- iv) Existence of an agreement between all partners with the object of sharing profits.
- v) Business being carried out by all or by any of them acting for all.
- vi) Number of partners less than or equal to 20.

Partnership at Will

In the case of 'Partnership At Will' a partner can retire from the firm or dissolve it whenever he thinks proper by merely giving a notice in writing to the other partners of his intention. In this kind of partnership no fixed period has been agreed upon the duration of the partnership or no provision is made as to the determination of the partnership in any other way.

Illegal Partnership

The following partnership has been held to be illegal as being opposed to public policy:

- a. Partnership for creating monopolies
- b. Partnership formed for the purpose of trafficking in public offices
- c. Partnership to derive profit from the sales of religious offices
- d. Partnership for the purpose of deriving profits by entering into marriage breakage contracts
- e. Partnership for making profit by trading with the enemy
- f. Partnership formed for the purpose of deriving profits from a criminal office.

Relations between Partners

The Act provides for some general duties of partners of a firm. Without going into details of these duties, the fundamental principle is that the partners should work for the common advantage of the firm and must be faithful in rendering accounts and information to each other.

The mutual rights of the partners are determined by the partnership contract to which they have agreed. Such contract may be express or implied by a course of dealings.

Mutual Rights and Liabilities of Partners



If these are not regulated by the terms of express partnership agreement between the partners, the law provides as follows:

- (i) A partner is not entitled to receive remuneration for taking part in the conduct of the business.
- (ii) The partners are entitled to equal shares in the profits and shall contribute equally to the losses sustained by the firm.
- (iii) When a partner is entitled to interest on the capital sustained by him, such interest shall be payable only out of profits.
- (iv) A partner making, for the purposes of the business any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest on it @ 6%.
- (v) The firm shall indemnify a partner in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business.
- (vi) A partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

Implied Authority of a Partner

The firm is bound by the acts of a partner done in the ordinary way to carry on the business of the firm. This is also called implied authority of a partner to bind the firm. The implied authority of the partners may be extended or restricted by the contract between the partners of the firm. If any restriction is imposed on the power of a partner, the third party (concerned outside) must be informed beforehand about such restrictions. When a third party honestly deals with the partner of a firm in connection with the firm's business and the partner intentionally conceals the facts of restriction, the firm will be held liable for the acts of its partner.

Liability of Partners and Firm

Even partner is jointly and severally liable for all acts of the firm done while he is a partner. The general rule of partnership is that a firm is liable for any loss or inquiry caused to a partner if they were done by him while acting (i) in the ordinary course of the business of the firm, or (ii) with the authority of his partners. Where a firm in course of its business receives



money or property from a third party and a partner misapplies it is in the custody of the firm, the firm will be liable for such as loss.

When even after the death of a partner, the firm continues in the old name, it shall not make his legal representative or his estate liable for any act of the firm done after his death.

Position of Minor in the Partnership Firm

A person who is minor according to this law shall not be a partner of a firm, but with the consent of all the partners, a minor can be admitted to the benefits of partnership. In such a case, he is entitled to such share of the profits as well as the property as agreed to amongst the partners. However, such minor cannot be made personally liable for any act of the firm, but he has a limited liability which extends to his share in the firm. For example, a minor cannot be declared insolvent but his share in the firm is liable and vests in the official receiver.

A minor who has thus been admitted to the benefits of a partnership, may, at any time with in six months of his attaining majority or of his obtaining knowledge about the partnerships, whichever is later, issue public notice whether he elects to become or not a partner of the firm. If he declared not to become a partner of the firm and fails to give a notice, the presumption is that he has become a partner on the expiry of six months period.

Partners and Registration of Firms

Incoming Partner: In a partnership firm, a new partner will not be introduced unless all existing partners agree and the new partner will not be liable for any act of the firm done before he becomes a partner.

A retiring partner may be discharged from any liability to their party for acts of the firm done before his retirement by a agreement made by him with such a third party and the remaining partners of the firm. Such agreement may be implied by a course of dealings between any third party and the reconstituted firm.

But the retiring partner and the remaining partners continue to be liable as partners to third parties, unless a public notice of the retirement is given either by retired partner or any partner of the firm.

How a Firm can be registered?



In order to safeguard public interest and to regulate the partnership's framework, the Act introduces a system of registration of firms. In case of non-compliance of registration, the partnership agreement or transaction with third person do not become void. It only suspends the right to file suit if the firm is not registered. For Registration a statement with the following have to be sent with signatures of all partners

- The firm's name
- Place of principal place of business of the firm
- Any other places where the firm carries on business
- The date when each partner joined the firm
- The function of the firm.

When can a Partnership Firm be dissolved?

In the following cases a partnership firm can be dissolved without intervention of the court:

- 1) As a result of agreement between all parties.
- 2) When the business of the firm becomes unlawful.
- 3) Subject to agreement between the partners in certain contingencies like:
 - a) expiry of the term fixed
 - b) completion of undertaking
 - c) death of a partner
 - d) insolvency of a partner
 - e) in the case of a partnership at will, by a partner giving notice writing.

The court may order dissolution of a firm when:

- 1) A partner becomes of unsound mind.
- 2) A partner becomes permanently incapable.
- 3) A partner's misconduct is prejudicial to business.
- 4) A partner commits willful breach of agreement.
- 5) A partner sells/transfers his entire business.
- 6) The business cannot be carried on except at a loss, and
- 7) For any reason which the court considers just. Until public notice of the dissolution of the firm is given, the firm shall be bound by the transactions made with third parties.”



Chapter III Summary Points

1. An agreement should be enforceable by law to be considered as a valid contract.
2. The negotiable instrument can change hands, yet it would be valid.
3. New age banking requires lots of caution against cybercrimes.
4. As per sales of goods act, the buyer and seller have to be different person.
5. International delivery terms may include cost, insurance and freight.
6. Partnership is a relation between persons who agree on certain terms
7. In certain cases the partnership firm can be dissolved by the court.

SAQ

1. What is a contract?
2. What is a promissory note?
3. What is bill of exchange?
4. Who is an unpaid seller?
5. What is difference between term CIF and CFR?
6. What do you understand by partnership at will?
7. How can be a firm registered?



UNIT

10

Contents

Chapter IV

- Trade Mark Act, 1999

“The aim of this chapter is to:

Introduce you to trade and merchandise act

Objectives:

On completion of this chapter, you will be able to” :

- What is a trade mark
- Role of Bureau of Standards
- The patent act



“THE INDIAN TRADEMARK LAW”

The details on Trademark are covered under “Trade Marks Act of 1999” and this law is a statutory protection of Trademarks. The first attempt to safeguard propriety of a business person was made through “Indian Trade Marks Act of 1940”. In 1958, the Trade and Merchandise Marks Act of 1958 was enacted to improve it. Subsequently India joined World Trade Organization (WTO) in 1995 and became a party to “Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement”.

TRIPS: It is International legal agreement which lays down regulatory standards for the of different forms of intellectual property (IP) by Central Governments. It is applicable to all countries who are member of the World Trade Organization (WTO). The responsibility of administrating the agreement is with WTO.

Subsequently the Indian Trade Marks Act of 1999 was passed to meet the guideline of TRIPs.

What is a Trade Mark ?

A “trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of good, their packing and combination of colours”. *The trade mark is a type of Intellectual Property Right.* Examples of trademark are:-

Product: Pepsi

Colour: Coca-Cola Red

Word: Google

Registration of Trademark

Registration of a trade mark is essential to safe guard the IPR of you product. The trademark has to be registered with” Trademark Registry of India”. Starting March of 2017 the process of registration has been simplified. To ease and encourage the registration the Government has:-

- Reduced the number of forms from seventy four to eight
- E-filling and hearing through Video-conferencing is allowed
- Discount in fees is available to Startups/ Small enterprises-



Trade Mark Classes

As on date India allows trademark to be registered under forty-five classes. Few important services which are covered are:-

- Class 35. Advertisement
- Class 36 .Insurance.
- Class 38. Telecommunications.
- Class 39. Transport and travel arrangement.
- Class 41. Education/entertainment.
- Class 42. Development of computer hardware and software.
- Class 43. Services related to food and beverages
- Class 44. Medical services.

If any trademark is misused by another party following actions can be initiated:-

- Infringement: If violation is been done against a registered trademark
- Passing Off: If violation is done against unregistered trademark.

Renewal of registration

The trademark is registered for ten years, but it can be renewed within twelve months of expiry. Hence once a Trademark is registered it can be with you for life if regular renewal is done.

Certification Marks in India

Bureau of Indian Standards (BIS) was established through **Bureau of Indian standards (BIS) Act 2016**. Bureau of Indian Standards (BIS) sets the National Standards for India. Amongst other responsibilities of the bureau one important responsibility is issuance of **ISI Mark**. The ISI certification is applicable to industrial products like cement, valves, tyres etc. If a product bears the ISI mark it guarantees that the product meets the standards of Bureau of Indian Standards (BIS), the national standards body of India.

BIS also provides other quality check certificates also, like AGMARK, Hallmark etc. this defers on product category.

BIS HALLMARK: For entrepreneurs who want to try jewellery business they should know about Hallmarking. India is one of the biggest importers of gold and consumption of gold



jewelry. A need was felt to certify the purity of gold/ silver hence BIS hallmarking system for gold began in April 2000. The Hallmark certifies that gold / jewellery meets the standards laid by the Bureau of Indian Standards. The hallmarking for silver jewellery commenced in December 2005. It is expected that only Hallmark jewellery can be sold from January 2021.

Caution: beware of fake hallmarking of jewellery which is an offence

Those who want to venture in Agri related business for them following terms are important:-

AGMARK: **AGMARK** is known as a certification mark but it is actually an acronym for Agricultural Marketing. An AGMARK product meets the standards set by *Directorate of Marketing and Inspection* under Ministry of Agricultural & Farmers Welfare. The objectives of this certifications are Standardization and Grading and Standardization of agricultural commodities

“FPO” Mark: For fruit products like packed fruit beverages/jams/ syrups / extracts etc., the *FPO* mark is a certification mark mandatory. The certification is derived from Food Safety and Standards Act of 2006. The FPO mark ensures that food product is fit for human consumption as it was manufactured in a safe' environment.

It is necessary to have a FPO license to start a fruit processing industry in India.

India Organic: These days trend of organic food is increasing hence a need was felt to regulate this area. India Organic certification ensures that product conforms to the National Standards for Organic Products. It means these products were grown without the use of chemicals/induced hormones. Another step in this direction is introduction of Jaivik Bharat logo. This helps to identify authentic organic food.

“Food Safety and Standards Authority of India (FSSAI)” was set up by Ministry of Health & Family Welfare, Government of India as an autonomous body to enforce the Food Safety and Standards Act, 2006. FSSAI regulates and he regulation and supervises food safety to protect and safe guard public health. *FSSAI issues different types of license which is dependent upon:-*

- *Nature of food business*
- *Turnover*



“THE PATENT ACT, 1970”

The Patents Act was passed in 1970. Before this there was a bill introduced in the legislative council for protection of inventions in India, based on English Patent Law of 1852 and passed in 1859. The Pattern and Designs Protection Act was passed in 1872.

The Act of 1970 recognised the importance of development of exploitation of new inventions of the industrial progress. It also sought to protect the patent rights and was brought into force in 1972. Patents rule was brought in 2003 and *major amendments in the rules have been done in 2016, which gives many benefits to startups.*

The definition of ‘Invention’ means any new and useful:-

- a) process or method of manufacture;
- b) machine or apparatus;
- c) substance produced for manufacture and includes any new and useful improvement of the above.

Patentee - A person entered in the register of patents as the proprietor of the patent.

Application for patents can be made by the following persons:

1. True and first inventor
2. Assignee of the true and first inventor

Form of Application

“Every application for a patent shall be for one invention only and shall be filed in the patent office. Every application shall state that the applicant is in possession of the invention and shall name the true and first inventor and shall be accompanied by a complete specification.”

“Power of Controller to refuse or require amended application

If, the controller is satisfied that an application or specification does not comply with the act, he may refuse to proceed with the application or” require its amendment. He may also refuse the application if it appears to him that the invention claimed is not an invention or is not patentable under the Act.

Potential infringement



When it appears to controller that an invention cannot be performed without substantial risk of infringement of another patent, he may direct that a reference to the other patent to be inserted in complete specification of the applicant by notice to the public.

“The test is whether there are reasonable grounds for contesting the validity of the claim of the other patent.”

Grant and Sealing of Patent.

When an application for patent has not been opposed or opposed and decided in favour of the applicant or the application has not been refused, the patent shall be granted to the applicant. The controller shall seal it “with the seal of the patent office and enter it in the register on” that date.

For other details, if needed, the Act / rules can be referred to by you.

Chapter IV Summary Points

1. Trademark is a type of IPR.
2. The trademark can be registered.
3. If trademark is violated legal action can be initiated.
4. Separate application is required for each invention.
5. A person entered in the register of patents as the proprietor of the patent is called patentee.

SAQ

1. What is definition of a trademark?
2. How many classes are there in Indian Trademark Act?
3. For how many years the registration of trademark is applicable.
4. Who can file an application for a patent?
5. What do you understand by the term ‘Grant and Sealing’ of a patent.



UNIT

10

Contents

Chapter V

- Goods and Service Tax(GST)
- Composition Scheme
- The “Income Tax Act”

The aim of this chapter is to:

Introduce you to Goods and service tax and income tax regulations

Objectives:

On completion of this chapter, you will be able to” :

- Understand about GST
- Composite scheme
- income tax to your business
- tax related regulations could be broadly classified under above heads



The Goods and Service Tax

Introduction

The Goods and Services Tax Act was passed in the Parliament on March 29, 2017 and came into effect from midnight of 30th June and 1st July, 2017. This was biggest reform in the tax structure of India. This is an indirect tax for supply of goods and services. GST is a comprehensive and multi-stage tax levied on every value addition. It is called multi stages as GST is applied at every stage of production; however, this is refunded to them except to the final consumer. The GST holds a great significance as both the Central and State Government rely on the GST for their indirect tax revenue.

GST Slabs in India

Currently there are six slabs categorized based on goods and services:-

0% : Primarily for hulled cereal grains, sanitary napkins etc.

0.25 % Applicable for Cut and semi polished stones

5%: This slab has household items like sweets, sugar, spices, tea, coffee, coal, edible oil, etc.

12%: Under this slab are computers and processed foods are included like cheese, ghee etc.

18%: This slab has toothpaste, hair oil, etc. as well as capital goods and industrial intermediaries.

28%: This slab involves luxurious items like premium cars, AC, Refrigerators, etc.

The rates are reviewed and revised through regular GST council meetings. The GST council meeting is chaired by the Union Finance Minister.

Products not a part of GST

-Petroleum Products

-Alcohol for human consumption

-Customs Duty



Taxes Subsumed

Following taxes have been subsumed:

Central Levies

-“Excise Duty

-Service Tax

-Countervailing Duty(CVD)

-Special Additional Duty(SAD)

-Central Sales Tax

State Levies

-State Value Added Tax

-Entry/ Purchase Tax

-Octroi/ Local Body Tax(LBT)

-Luxury/ Entertainment Tax”

Taxes Not subsumed in GST

Property Tax and Stamp Duty

Professional Tax

Electricity Duty



Types of GST

There are four different types of GST as listed below:

1. The State Goods and Services Tax (SGST)

SGST is defined as one of the two taxes imposed on transactions of goods and services of every state. Levied by State Government of every state.

2. The Central Goods and Services Tax (CGST)

CGST is referred as the Central Tax levied on transactions of goods and services which take place within a state. Imposed by the Central Government, CGST ensures to replace all other Central taxes.

3. The Integrated Goods and Services Tax (IGST)

IGST is applied on the interstate transactions of goods and services. IGST is also applicable on the goods being that are imported to distribute among the respective states. The IGST is levied when the movement of products and services occur from one state to another.

4. The Union Territory Goods and Services Tax (UTGST)

Applicable on the Intra UT supply of goods and services, the aim to impose UTGST is to apply a collection of tax to provide benefits as same as SGST. The UTGST is applicable to five Union Territories namely Lakshadweep, Damn and Diu, Dadra and Nagar Haveli, Andaman and Nicobar Islands, and Chandigarh.

Harmonized System of Nomenclature code (HSN) Code

HSN was developed by The WCO (World Customs Organization) as a multipurpose international product nomenclature with the vision of facilitating the classification of goods all over the World in a systematic manner. India is member of WCO. It is an eight digit code which helps making GST more systematic and globally acceptable.



Registration / Exemption from GST

GST Act is applicable to whole of India, though terms may differ for some states. Notwithstanding that, every person involved in any business in any part of India is expected to register under GST Act if the turnover of business exceeds a threshold limit(this limits is revised based on prevailing economic conditions).

As on date GST registration is mandatory for ‘Any business involved in the supply of goods whose turnover in a financial year exceeds Rs 40 lakhs for Normal Category states (Rs 20 lakhs for Special Category states).

A person who engaged trade and commerce (or any other economic activity) in any form like Company, HUF/ LLP, Startup, NGO etc is treated as taxable person.

Benefits of GST

GST presents a transparent tax system imposed on the supply of goods and services. When an item is bought, a common individual sees only the state taxes applicable on the product label and not the various tax components embedded on the product.

The aim of imposing GST is to improve the ease of business operations by enhancing tax compliance, boosting revenue receipts of both central and state government and accelerating economy growth. Eradication of cascading of taxes result in lowered tax burden on many products. Following are the few benefits of GST mentioned below:

Eradicates the cascading tax effect

Allows higher threshold to businesses for registration

Composition scheme for small business operations

Easy and Convenient online processes

- Lesser Tax Compliance
- Enhanced Efficiency of logistics

GST Composition Scheme

Among the benefits listed above is GST Composition Scheme, which is a major benefit for small tax payers. It is a simple and easy scheme for small tax payers.



Eligibility: Taxpayers whose annual turnover is up to one hundred and fifty lakh rupees are eligible to opt for this scheme(one hundred lakh for J&K/ Uttarakhand, and seventy five lakh for other special states). Even if the 10% of annual turnover is provided as service still one can opt for the scheme. The trader should fill up GST CMP-01 form to accept the scheme. However, no Input Tax Credit (ITC) can be claim under this scheme.

Non Eligibility: The following category of businessmen will not be eligible:-

- (a) Manufacturers of ice-cream, pam masala or tobacco
- (b) Having inter-state supplies
- (c) Businesses operating through e-commerce

Tax Rate: The tax rate applicable are:-

- (a) Manufacturer 1%
- (b) Restaurant Services 5%

Returns to be filed

Individuals or registered tax payers are required to pay the taxes within eighteen days after the end of the relevant quarter on form GST CMP-08.

Advantages of Composition Scheme

- Less compliance (returns, books of record, issuance of invoices)
- Limited tax liability
- More liquidity

Disadvantages of Composition Scheme

- Limited territory of business (barred from carrying out inter-state business)
- Input Credit Tax (ITC) is not available
- Cannot use e - commerce portal

You are advised to study the scheme thoroughly before taking a decision to opt or not to opt for the scheme depending on your business model



“The Income Tax Act, 1961

The Income-tax Act, 1961 is act which provides guidelines for collection and settlement of Income Tax. Let us first understand what Income. Income may be defined as monetary gains through following:

1. Profit
2. Capital Gain
3. Grants by a trust
4. Perquisites / benefit in lieu of money
5. Dividend
6. Earnings from Games/ completion etc.

Remember, you have to pay taxes on the products / services sold by you. It does not matter the sale was done in profit or on loss. However, you are liable to pay income tax only if your net earnings are above a threshold limit prescribed by the Government.

So you should file your GST returns as per the law even if you are not liable to pay Income Tax. It is an offence not to file GST returns.

The Indian Financial System follows the concept of Financial Year which commences on 01st April of calendar years and concludes on 31st March of next calendar year. The rates/ slabs of income tax are announced during the annual budget presented by the central Government and they generally are not changed during the financial year. You are expected to compute your income correctly, pay the taxes honestly, keep a record of income and file returns as per the law. Noncompliance is viewed seriously and it is not advisable to make any lapses on this.

Assesse

An income tax assessee is a person who is liable to pay income tax under this Act.



Here the term person includes the following;

1. an individual – any human being
2. a Hindu Undivided Family – A family of two or more members
3. a company example ‘State Bank of India’
4. a firm – Any partnership firm
5. an association of persons example Markfed
6. a local authority example Panchayat, and
7. every artificial judicial person example Delhi University.

Financial Year vs Assessment Year

As explained earlier, the term Financial Year generally written as FY commences on 01st April and all income accrued till 31st March of next year is computed for purpose of Income Tax. This is the income for the financial year. For example the financial year 2018-19 (FY 2018-19) would commence on 01 April 2018 and end on 31st March 2019. The returns for this financial year are submitted by date prescribed by the Government (generally 31st July 2019). The assessment by the authorities would commence after that hence the next year/ following year and this is called assessment year. It may be seen that both are a period of twelve months but dates of these twelve months differ. As an illustration

Period of Income	Financial Year	Assessment Year
01 April 2018 to 31 March 2019	2018-19	2019-20
01 May 2017 to 31 March 2018	2017-18	2018-19

Authorities under IT Act

“There are eight income tax authorities:

1. The Central Board of Direct Taxes
2. Directors-General of Income tax or Chief Commissioner of Income-tax
3. Directors of Income Tax or Commissioners of Income-tax, Commissioners of Income-tax (Appeals)



3.1 Additional Directors of Income-tax or Additional Commissioners of Income- tax
Additional Commissioners of Income-tax (Appeals)

4. Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy
Commissioners of Income-tax (appeals)

5. Assistant Directors of Income-tax or Assistant Commissioners of Income-tax

6. Income Tax Officers

7. Tax Recovery Officers

8. Inspectors of Income Tax.”

“ We shall not go into details about the functions of each authority, except the income tax officer. He is the most important official in the administrative hierarchy of the Income Tax Department. There are two types of Income Tax (IT) Officers, Class I and Class II. The IT officer is the authority who initiates the assessment, calls for returns from assessee within his jurisdiction, makes the assessment, collects revenue and the refunds. Wide discretionary power & vast powers of search and seizure of documents, books of accounts, have been conferred upon him by the Act. Heads of Income and Computation for the purpose of charging of income tax and computation of total income, classification of the income is made under the following heads:”

- 1) “Salaries
- 2) Interest on securities
- 3) Income from house property
- 4) Profits from business/profession
- 5) Capital gains
- 6) Income from sources”

“There are specific modes of computation on income under each particular head which must be strictly followed. We shall no go into that right now. It may however be mentioned that you as, assessee have to pay tax on "total income".”

“Income Tax Returns

Section 140A of the Income Act, 1961 requires every assessee to compute the tax payable on the basis of the return required to be submitted by him be it under any section.



The requirements are that -

- 1) the tax has to be paid whatever the amount may be,
- 2) it must be paid before the return is submitted and
- 3) the proof of payment of the tax must accompany the return.

You may use Section 147 to 153 which allows reopening of past assessments or to the initiation of proceedings for the assessment of the income of past years. If assessment has been completed but certain incomes of the relevant year were not included in the assessment as result they were not assessed) these section provide a remedy..

There are two broad classes, where the assessment may be reopened or newly initiated:

1. where the IT officer has a reason to believe that the assessee had omitted or failed to make a return or to discharge fully and truly all facts necessary for his assessment for the year in question, which has resulted in income chargeable to tax for that year escaping assessment, and
2. when the IT officer in consequence in information in his possession, has a reason to believe that income chargeable to tax has escaped assessment for any year although there has been no default on the part of the assessee.

There is a system of allocating a permanent account number to every” assessee. “The idea is identification of the person concerned. If a person, having a taxable income in respect of any accounting year, has not been allotted such a number, he has to make an application to the IT officer.

In addition to above you should be aware of following terms:

“Tax Deducted at Source (TDS)”: In order to have a steady revenue collection and to avoid tax evasion the Government deducts the Income tax at the source of income itself. The income tax so deducted is known as TDS. TDS is applicable on select incomes like:-

- Salary
- Payment of professional fees
- Rent for plant and machinery/ immovable property
- Cash withdrawal beyond certain prescribed limit



Remember TDS is not applicable to all persons and it is not applicable to all types of income. Further, different TDS rates are applicable on different types of income. Generally a threshold limit is set for TDS, which means TDS would be deducted if the income exceeds that limit.

Form 15 G/15H: It may so happen your income in the financial year is not likely to exceed the threshold limit. In that case you can submit form 15 G/ 15H along with PAN number and request the payer not to deduct TDS. (Form 15G for individual below sixty years of age and form 15H for individual above the age of sixty years)

Form 26 AS: This is akin to passbook of tax paid/ deducted during any financial year. It is maintained by IT department and can be downloaded by providing PAN. This contains all details related to TDS, Taxes paid as self-assessment and advance tax etc. *You should check your form 26 AS regularly.*

Capital Gains Tax

Any business is likely to have assets like immovable property(building) movable property , (vehicles) and /or plant & machinery. These are grouped under capital assets. If any profit is gained by sale of a capital asset is known as Capital Gain and it is taxed as Capital Gain Tax in the financial year in which transaction took place. is a capital gain.

Set Off and Carry Forward Losses

We are confident that your business would generate profit but the possibility of losses cannot be ruled particularly in initial years. The Government has provision for adjusting these losses through:

Set off of losses: Here losses are adjusted against the profit or income in that particular financial year only. These losses can be set off within the same head as ‘ Intra-head set-off’ or in other head through ‘ Inter-head set-off’.

Carry forward of losses: It is likely that even after adjusting the losses against income some losses are still not accounted for. These unaccounted losses can be carried forward to next financial years for adjustment against income in those years. However, rules for carrying forward losses are different for heads of income.



Chapter V Summary Points

1. GST is considered biggest tax reform in India.
2. The tax under GST is classified under slabs decided by the GST council.
3. Alcohol for human consumption and petroleum products are not a part of GST
4. An assessee is an individual who is liable to pay income tax
5. Winnings from lottery / contests is also considered as income.

SAQ

1. What are advantages of GST?
2. Explain Composite scheme for GST
3. Who chairs the GST council meeting?
4. What all monetary gains are considered as income?
5. What do you understand by term assessment year?
6. Explain the term TDS.
7. Explain set off and carry forward losses?

UNIT

10

Contents

Chapter VI

- CPCB
- Pollution related Acts
- Boiler Act
- Explosive License Act
- Drugs and Cosmetics
Manufacturing License

The aim of this chapter is to:

- Introduce you to certain industry specific requirements.

Objective:

On completion of this chapter you will be able to:

- Identify whether your business calls for any special requirements by the government such as :
 - Indian Boiler Act
 - Explosive license Act
 - Drugs and cosmetic manufacturing license



As an entrepreneur you have to be well versed with commercial laws, however, it is our sacred duty to protect the environment in which we live and work. Over the years the environmental conditions are degrading hence need of protecting and conserving our environment was felt by the Government. Accordingly, “The Ministry of Environment, Forest and Climate Change (MoEFCC)” has been created for prevention and control of pollution and other related issues of environment. The ministry operates through The **Central Pollution Control Board (CPCB)** of India. The board functions at national level as well as at State levels/ Union Territories through State Pollution Control Boards. The primary function of the board includes control of :-

- Air quality
- Water quality/ pollution
- Environment Protection
- Waste Management
- Wild-life/ & Forest environment

As an entrepreneur and a responsible citizen you should be aware of measures adopted by the Government for our environment. Towards this you should know:-

National Green Tribunal Act, 2010 is an Act for speedy resolution of the cases pertaining to environmental issues. The NGT is guided by principles of natural justice and not by the Code of Civil Procedure, 1908.

The **Air (Prevention and Control of Pollution) Act, 1981** is an Act to not only prevent & control air pollution in India but also for its abatement. This act gives powers to the authorities to restrict the use of certain fuel, equipment and to install pollution control equipment. Regular inspection is undertaken by the authorities to enforce these measures.

The Water (Prevention and Control of Pollution Act, 1974), is an act to preserve the water resources in the country. Fresh water resources are essential for domestic use, use in agriculture, industry and for wildlife & fisheries and they are available in limited quantity. There is need to restrict the uses and conserve the resources. Accordingly restrictions have been placed on industry to draw the quantity of underground water and discharge polluted water.



Environment Protection Act, 1986 is an Act for the protection and improvement of environment and related matters. This act was initiated after Bhopal gas Tragedy (Union Carbide India Limited in 1984). The act works for improving and protecting the environment not only for humans but also for other living beings like animals and plants.

The small scale entrepreneur is initially expected to operate from one State only. The environmental laws are enforced very strictly and noncompliance is viewed seriously by authorities. Hence, you are advised to comply with the rules and avoid violations as it can lead to litigations and cancellation of licenses. Remember, violation of air / water pollution rules is considered as a criminal offence.

In addition to above you should also know:

I) The Indian Boiler Act, 1923

II) The explosive License (for manufacturing, storage and transportation of explosives including calcium carbide) Act.

III) Drugs and Cosmetics Manufacturing License.

“Indian Boiler Act 1923

Industries using steam boilers are required to take permission under the act from the State Chief Inspectorate of Factories. As per the present position any boiler containing water storage capacity of more than 22.5 litres is covered under the Act. Those boilers having water storage capacity of less than 22.5 litres are called 'Baby Boilers' and are exempted under the Act. As per the Act, periodic inspection of the boiler is required by boiler Inspector and certificate to be obtained for safety. *However, most of the State Governments are moving towards self-certification.*

Explosive License Act

Under the Explosive Licence Act, of storage, transportation and processing petroleum products and explosive material require explosive licence from Chief Controller (Explosives), Nagpur. There are also regional offices which implement the provisions of the Act. This Act is applicable to industries where petroleum products like aromatics, aliphatic, kerosene, diesel, petrol, natural gas and industrial gas under high pressure are stored or transported. The Act classifies various products in classes like 'A', 'B', 'C', 'D', etc., depending on the flammability



and explosiveness of the products. Strong facilities and infrastructure are required to be created at site according to the class of the product. For example, for storage of petroleum products, above ground, it is necessary that no construction or building is allowed in the periphery of 30 feet from the storage place. Moreover certain firefighting equipment has to be kept on the premises.”

Explosives are classified using the United Nations’ system for the transport of dangerous goods. In this system:

- Most explosives are classified as dangerous goods of Class 1.
- Class 1 is subdivided into six Divisions which are 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6.
- Each division is also assigned any of thirteen Compatibility Group letters which are A, B, C, D, E, F, G, H, J, K, L, N and S.

“Drugs And Cosmetics Manufacturing License

All marketable products of pharmaceutical industry and cosmetics industry have to acquire licence/registration from the Drug and Cosmetics Controller of the State Government. The provisions of the act specify the contents to be used in various products, and creation of testing facilities by the entrepreneur. A list of banned ingredients in the formulation as well as specific packaging norms for the products are to be obtained from the Controller and should be strictly observed to.

Apart from the above acts, there are specific industries which are covered by various regulations specified by the State or Central Government.

The following table lists these and the concerned authorities to be contacted.

Sr. No.	Statutory License/ Clearance	Concerned Authority
1.	Boiler license under Indian Boilers Act	Inspector of Factories and Boilers
2.	Permission for disposal of effluents/pollution control regulations	State Pollution Control Boards
3.	License for possession and use of rectified spirit and denatured spirit	Excise Superintendent/Dy. Superintendent of the local area



4.	Explosive license (for manufacture and storage and transport of explosives including calcium carbide)	Department of Explosives
5.	Drugs and Cosmetics manufacturing license	State Drugs Controller
6.	Food grains milling storage and transport license	State Directorate of Food and Civil Supplies
7.	Permission/license to process fruit products under FPO rules	Deputy Director, Food and Vegetable Products
8.	Khandsari sugar factories	State Director of Sugar Dy. Commissioner of the respective district
9.	Tourism industry/hotel project	State Tourism Development Corporation
10.	Indian System of Medicines (Ayurvedic, Unani, Sidha)	State Directorate of Indian System of Medicine
11.	Agricultural Chemicals, Pesticides and Insecticides	Directorate of Plant Protection, Quarantine and Storage Central Control and Insecticide Cell NA 4, FARIDABAD”

The natural holistic approach of treatment

“The Department of **Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (AYUSH)** was established as Department of Indian Systems of Medicines and Homoeopathy (ISM & H) in Ministry of Health & Family Welfare in March, 1995.”

“The National Health Policy of 1983 and also the National Policy on ISM&H -2002 envisaged integration of AYUSH with the modern system of medicine. Mainstreaming of AYUSH is also one of the strategies envisaged under National Rural Health Mission with an objective to improve outreach and quality of health delivery in rural areas. The objective of integration of AYUSH in the health care infrastructure is to bring about an architectural correction and re-inforce the existing public health care delivery system, to facilitate the use of natural, safe and friendly remedies, which are time tested, accessible and affordable.”



Chapter VI Summary Points

1. The CPCB works for pollution control in India.
2. There are Acts which govern usage and discharge of ground water.
3. Boilers have to be inspected regularly or self-certification certificate has to be submitted.
4. It is mandatory to obtain manufacturing license/registration from the Drug and Cosmetics Controller of the State Government for all pharmaceutical / cosmetics industry products.

SAQ

1. What is full form of SPCB?
2. Which accident forced the Government to enact Environment Protection Act, 1986.?
3. What is a Baby Boiler?
4. Write a short note on AYUSH.



UNIT

10

Contents

Chapter VII

- Registration of a Startup
- Fund Raising by a Startup

Startup- Registrations & Fund Raising

The Government of India has been promoting innovation and entrepreneurship in India and accordingly significant steps have been taken in the direction to promote the culture Entrepreneurship. The Government launched Startup India Initiative on 16th January 2016 and several programmes / schemes have been launched since then. These are managed by The Department for Promotion of Industry and Internal Trade (DPIIT), through dedicated teams. These teams are supporting Startup through:-

- Providing easier compliances and hand holding. They also support easier exit process if startup fails.
- Supporting Funding and providing tax incentives
- Arranging Incubators and partnership with Academia and Industry

“What is a Startup

The Startup is generally a newly established business” with some innovative methods. The “keyword is innovation. The business either develops a new product/ service or redevelops a current product/service into something better.” In order to be recognized as a startup the new entity would be considered as Startup for ten years if



- it incorporated “as a Private Limited Company
- Registered as a partnership firm
- Registered as Limited liability partnership.”

Further the turnover should be less than one hundred crore rupees for any of previous financial years. In addition the entity should be supporting innovative methods

Remember a Startup cannot be carved out of existing business.

For more details please refer to General Statutory Rule 127(E) issued by Ministry of Commerce and Industry on 19th February 2019.

Recognition of Startup

The entity has to apply online to DPITT with a copy of registration and a write-up about your business. The DPIIT would assess the application and recognize the entity as startup or reject. If the application is rejected reasons are given.

Tax Advantages of Registration as Startup

- Tax Exemption under Section 80 IAC for three years during first ten years of incorporation.
- Tax Exemption under Angel Tax (Section 56). To be applied on form 2 of appendix -1 of GSR 157(E) .

Intellectual Property rights

The Startups would certainly involve innovation hence all entrepreneurs working as Startup should get well versed with IPR rules. Intellectual Properties. This could be anything – a thought, an idea, an item, images, process, logos, and so forth that represents a brand.

Advantages of IPR:

- Can sell or license for creating an additional revenue stream.
- Offering distinctive products/services to your customers.
- It can become an essential part of your marketing or branding (Exclusivity).
- Intellectual properties are assets that you can use as security against loans.



Consider exploiting your IP to the fullest as it makes more sense to secure your business in the best possible manner. The details on IPR were covered in chapter IV, however, the basic concept is given below.

1. Trademarks

The trademarks in India are statutorily protected by the Indian Trademark Act, 1999 “ A Trade mark is a distinct mark which graphically distinguishes between products. The trade mark is represented by symbol TM, which allows limited protection. However if the trademark is registered ® with Trade Mark Registry of India National Authority only owner can use this trademark. *It is advised to register your trade mark to derive maximum benefits.*

2. Patents

Patents come to play when you are looking to protect a new invention that is original and can be used to simplify the lives of people.

Condition: Patent requires an idea to be novel and unique. The industrial procedures can be patented especially if a non-obvious step is introduced in it.

IPR is extremely critical for any startup, protection of the same helps them to safeguard their innovative creations and the government aids in funding to get such protection. The government has launched various schemes for Startups by funding as well as awards to boost innovation in the country.

Popular Schemes to reimburse the money spent on patents/ support Innovation

Two schemes to reimburse the money spent on the filing of a patent, support innovation etc are as below:

- (1) **“Scheme for facilitating Startups Intellectual Property Protection (SIPP)”**: SIPP is a scheme was launched in 2016 for IPR protection by Startups and the same has been extended up to March 2023. The Scheme is implemented by the “office of Controller General of Patents, Designs and Trademarks (CGPDTM) and provides facilitators to start ups for filing and processing of their applications for patents, designs and trademarks. Professional charges of the facilitators are reimbursed by the office of CGPDTM as per provisions under SIPP scheme.



(2) “Promoting Innovations in Individual Startups and MSMEs (PRISM)”

PRISM “scheme aims at to support individual innovators which will enable to achieve the agenda of inclusive development - one of the thrust areas of XIIth five year plan (2012-2017). It would also provide support to institutions or organizations set up as Autonomous Organization under a specific statute or as a society registered under the Societies Registration Act, 1860 or Indian Trusts Act, 1882 leading to development of state-of-art new technology solutions aimed at helping MSME clusters.”

Raising funds for your startup –Facilitation by various departments of Government

In any business the significance of ‘Funding’ cannot be ignored. Every entity would require funding support for development of idea and the idea into a commercially viable theme. Funds are also required to expand the business also. The type of funding could be:-

- Equity
- Debt
- Grants

Source of Funding: In the initial stages funding could be arranged through:-

- Incubators: They offer funds and value added services like apace & utilities
- Government Loan Schemes (CGTMSE, MUDRA and Stand-up India
- Angel Investors: Indian Angel Network
- Crowd funding: Small amounts from a large number of people, generally online

Few schemes from Government of India to promote businesses in India mainly focus on providing the much needed capital for investment are:-

PM Employment Generation Programme and Other Credit Support Schemes

- “Prime Minister Employment Generation Programme (PMEGP)”
- “Credit Guarantee Trust Fund for Micro and Small Enterprises (CGTMSE)”
- “Interest Subsidy Eligibility Certificate (ISEC)”

Development of Khadi, Village and Coir Industries

- “Coir Vikas Yojna (CVY)”



- “Export Market Promotion (EMP)”
- “Domestic Market Promotion Scheme(DMP)”

Technology Up gradation and Quality Certification

- “A Scheme for Promoting Innovation, Rural Industry & Entrepreneurship (ASPIRE)”

Marketing Promotion Scheme

- “Procurement and Marketing Support Scheme(P&MS)”

You may go through the website of MSME to know more about relevant schemes

You may opt for any funding mechanism, but you need to be correct from all statutory angles before anybody invests in your startup. So you must ensure all legal aspects are covered adequately before you seek funding

Chapter VII Summary Points

1. Startup cannot be carved out existing business.
2. There are tax exemptions under Section 80IAC and 56 of IT Act for startups.
3. Government provide financial support for filling patents
4. The funding can be raised through equity, debt and grants.
5. Incubators offer financial support and other value added services
6. The Ministry of Micro, small and medium enterprises has several schemes which can be useful of you.

SAQ

1. When was Startup India launched?
2. What is the role of DPIIT?
3. What is section 56 of IT Act 1961?
4. What is difference between Trademark and Registered Trademark?
5. What is crowd funding?
6. Explain any two government schemes for MSME.

Old Legislations vis - a - vis New Codes

Sr No	Name/s of Old Laws	Applicable Codes as per recent reforms	Agency/ Authority implementing and monitoring the codes
1	The Factories Act, 1948	The Occupational Safety, Health and Working conditions Code, 2000	Ministry of Law and Justice
2	The Planation Labour Act, 1951	"	"
3	The Mines Act, 1952	"	"
4	The Working Journalists and other Newspaper Employees and Miscellaneous Provisions Act, 1955	"	"
5	The Working Journalists Act, 1958	"	"
6	The Motor Transport Workers Act, 1961	"	"
7	The Beedi and Cigar Workers Act, 1966	"	"
8	The Contract Labour Act, 1970	"	"
9	The Sales Promotion Employees Act, 1976	"	"
10	The Inter-State Migrant Workmen Act, 1979	"	"
11	The Cine-Workers and Cinema Theatre Workers Act, 1981	"	"
12	The Dock Workers Act, 1986	"	"
13	The Building and Other Construction Workers Act, 1996	"	"
1	The Trade Unions Act, 1926	The Industrial Relations Code, 2000	Ministry of Law and Justice
2	The Industrial Employment Act, 1946	"	"
3	The Industrial Dispute Act, 1946	"	"
1	The Payment of Wages Act, 1936	The Code on Wages, 2019	Ministry of Law and Justice
2	The Minimum Wages Act, 1948	"	"
3	The Payment of Bonus Act, 1965	"	"
4	The Equal Remuneration Act, 1976	"	"



1	The Employee's Compensation Act, 1923	The Code on Social Security, 2020	Ministry of Law and Justice
2	The Employees' State Insurance Act, 1923	"	"
3	The Employees' Provident Funds and Miscellaneous Provisions Act, 1952	"	"
4	The Employment Exchanges Act, 1959	"	"
5	The Maternity Benefit Act, 1961	"	"
6	The Payment of Gratuity Act, 1972	"	"
7	The Cine- Workers Welfare Fund Act, 1981	"	"
8	The Building and Other Constructions Workers' Welfare Cess Act, 1996	"	"
9	The Unorganised Workers' Social Security Act, 2008	"	"

Authorities	
dealing with Laws /Codes	
Name of Legislation/ Code	Local Administrating Agency
Labour Issues	Labour Commissioner/ Director of Labour
PF Related Issues	RPFO / PF Commissioner
ESI Related Issues	ESIC Office
Women Related Issues	State Women Commission
Estate / Building/Statutory compliances	Municipal Commissioner / DM
IT Related Issues	IT Commissioners
GST/ Taxes Related Issues	GST Commissionerate
Pollution Related Issues	State Pollution Control Board