



C.V.O. CA'S

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NEWS & VIEWS

From President's Desk...

Dear Professional Colleagues and Readers,

Four Japanese techniques which will help us to be a better version of oneself are as follows:-

1. Ikigai- Discover the purpose of the life that fuels You and makes you to wake up each day, aligning with your talents, passions, profession and contribution to this world.
2. Kaizen- Focus on small improvements each day instead of trying to do everything at once.
3. Pomodoro Technique- Work for 25 minutes without distractions. Take a break for 5 minutes and repeat. It is a great way to get more done in less time.
4. Wabi-sabi- Embrace Imperfection. Instead of stressing over every little detail, focus on what is important and find beauty in simplicity. Taking action is better than waiting for perfection.

September is the month to get ready and gear up for the next big deadline of tax audits along with the festivals of 2nd Payushan Parva and Ganpati festival.

A historic achievement is etched in the month of August due to ISRO's successful soft landing of Chandrayaan-3 on the moon's South Pole marks a monumental milestone. Let us wish that this be the first of many unconquered frontiers.

India is one of the fastest growing economies and soon will be one of the top three economies of the world. Our honorable Prime Minister on the eve of 77th Independence Day while addressing the nation in his 10th consecutive cheering and inspiring speech highlighted to Reform, Perform and Transform as India has a demography, democracy, diversity to realize all dreams. He also emphasized on Sarva Jan heetay, Sarva jan Sukhaya and One Earth- One Family- One Future. He also stated that Jandhan Accounts are touching to 50 crore mark which is a significant milestone and more than 50% of accounts belong to women.

Many of our members participated in Indirect Refresher Course held at Keshav Shruti, Bhayendar on August 5 & 6 organized by Dadar East CPE Study Circle jointly with WIRC. We are also motivating our members to participate in Residential Refresher Course organized by Vapi Branch of ICAI and hosted by Dadar East CPE Study Circle at Avadh Utopia, Vapi on February 8, 9, 10, 2024.

Capital Market Committee had organized the session on August 11 on Fundamentals and Value Investing on Manufacturing Sector which was taken by Senior Equity Research Analyst Mr. Kashyap Zaveri. Around 90 members participated in this.

Young and Industry Members Empowerment Committee organized a trek to Tandulwadi, Palghar on August 12, Saturday in which around 50 members with family participated.

Publication and Training Committee had conducted an Online TDS/ TCS Course for Accountants & Article Assistants in which faculties will be our young members having 5+ years of experience.

Membership and Recreation Committee jointly with KVO Wives Forum has planned Industry Visit to Green Lab Diamonds, Surat on September 9, Saturday.

I thank all members for participating in all activities with full energy, great enthusiasm and giving overwhelming response. We looking forward for same zeal and enthusiasm for our forthcoming events.

We wish you happy learning, happy upskilling and happy networking!!!!

Thank you all..... Always in Gratitude

September 1, 2023

Jeenal
CA Jeenal Savla

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TAPESTRY OF INDIA'S DIVERSE CULTURE



CA Ameet Chheda

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FROM THE DESK OF CHAIRMAN

We recently celebrated our 77th Independence Day on 15th August. We celebrate 77 years of freedom to practice our religion, to practice our traditions, and freedom of voice.

India referred to as the subcontinent of diversity, is a land where myriad cultures, languages, traditions, and practices coexist harmoniously. India's cultural landscape is a tapestry woven with threads of complexity, beauty, and enchantment.

If we drive from south-to-north or north-to-south we will see striking differences in culture and traditions.

Landscape: Northern part of India is vastly covered with snow and mountain peaks whereas the southern part is more covered with forest, eastern India is blessed with many rivers and western India has layers of desert.

Language: In North India, we will see Hindi is widely spoken and is often referred to as the heartland of Hindi-speaking states whereas South and eastern India is characterized by its linguistic diversity, with states like Tamil Nadu, Manipur, Mizoram Karnataka, Andhra Pradesh, and Kerala having distinct languages. Especially in north-east India, language changes in very small areas.

Cuisine: North cuisine features rich and hearty dishes like Chole Bhature, samosas, and tandoori preparations. Roti is a staple food, whereas the South enjoys staple food prepared from rice, coconut and spices. We can enjoy sweets (like Rasgulla) in eastern India and fish-based dishes due to the region's proximity to water bodies.

Architecture: The North boasts iconic Mughal architecture, seen in the grandeur of the Taj Mahal in Agra and the Red Fort in Delhi. These structures reflect a blend of Persian, Islamic, and Indian architectural styles. Whereas southern India has many Temples with intricately carved sculptures and towering gopurams (entrance towers) are prevalent in South India. The Brihadeeswarar Temple in Thanjavur and Meenakshi Temple in Madurai are striking examples.

These examples are just a glimpse of the immense diversity that characterizes India's regions. Each region contributes unique cultural elements, traditions, and practices that collectively shape the vibrant mosaic of Indian identity.

Unity in Cultural Diversity: India's cultural diversity is a true testament to the concept of "unity in diversity." With 28 states and 8 union territories, each region boasts its distinct culture, language, cuisine, and art forms. Cultural diversity isn't a source of division but rather a source of unity, as Indians take pride in celebrating their differences and coexisting as one nation.

One can experience a sticking difference in Festivals and Traditions, food and Cuisine, Arts, Spirituality, Music and Dance.

In conclusion, India's diverse culture is a symphony of colors, sounds, flavours, and traditions that have been evolving for centuries. It's a living, breathing testament to the power of coexistence, tolerance, and acceptance. As the world continues to globalize, India's cultural heritage stands as a reminder of the beauty and significance of preserving and celebrating one's roots while embracing the world with open arms.

Several factors contribute to India's ability to maintain its diverse culture while remaining a unified country, despite its numerous languages, religions, and regional variations.

1. **Historical Continuity:** India has a rich history that dates back thousands of years. This historical continuity helps in fostering a sense of unity among diverse communities.
2. **Shared Values and Philosophy:** Many Indian philosophies and values are deeply ingrained across different communities. Concepts such as non-violence (ahimsa), tolerance, respect for diversity, and the pursuit of knowledge are found in various religious and cultural teachings. These shared values contribute to a sense of national cohesion.
3. **Struggle for Independence:** The struggle for India's independence from British colonial rule played a pivotal role in uniting people across regions and religions.
4. **Constitution and Democracy:** India's Constitution, adopted in 1950, provides a framework for a federal democratic system that respects the rights and aspirations of different communities. The principles of equality, secularism, and freedom of religion are enshrined in the Constitution, ensuring that cultural diversity is acknowledged and protected.
5. **Cultural Celebrations:** National festivals like Independence Day and Republic Day are celebrated across India, instilling a sense of unity and patriotism. Additionally, many regional festivals are observed at a national level, allowing people from different backgrounds to participate in each other's cultural celebrations.
6. **Interconnected Economy:** India's economy is interconnected and interdependent across regions. Economic ties and shared economic goals contribute to a sense of national unity. The exchange of goods, services, and ideas helps integrate diverse communities.

There are many such reasons with bind all Indians irrespective of their religion, location, cast and creed.

In conclusion, India's ability to maintain its diverse culture while remaining united is a result of a complex interplay of historical, cultural, social, and political factors. The country's unique journey toward unity in diversity serves as a remarkable example for the world, highlighting the potential for different cultures to coexist harmoniously within a single nation.

After the struggle of our national heroes to get independence for every one of us, now it's time we fight to maintain our unity in diversity

Thank you all..... Always in Gratitude

CA Ameet Chheda



RELATED PARTY TRANSACTIONS FROM AUDITOR'S LENS



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Virtually every business has transactions with related parties. They are a business necessity. Businesses have related entities and they transact in a regular and routine manner. These could be genuine transactions executed in the same manner as any other transaction with a non-related party. However, of late Related Party Transactions (RPTs) has taken negative connotation. The transactions among related parties have assumed greater importance in all the fields of businesses viz., fiscal, accounting and also as a matter of corporate governance. Perhaps, corporate governance significance is more in forte considering the fairness, transparency and accountability while conducting business.

In India, RPTs assume more significance due to the nature of Indian business houses, which are primarily promoter-led and consist of family business structures. It is perceived by the investor community that higher related party transactions means lack of governance and it may not be in the best interest of the organization.

Current debacles in the corporate governance relating to RPTs of many listed and reputed companies are raising questions and clicking alarm for the regulators to relook at the duties and responsibilities of all those charged with governance. Failure of conflict of interest in most of these cases generally takes the minority shareholders for a ride, but these issues need more deliberations and are not specifically covered in this article. Regulatory aspects of RPTs with respect to Companies Act, SEBI (LODR), Income Tax Act, GST Act, Transfer Pricing are dealt with by other articles in this special series on 'Related Party Transactions'. This article attempts to analyse related party transactions from auditor's point of view.

Definition of a Related Party and Related Party Transactions under GAAPs:

Definition of related party as per both GAAP's are as follows:

	AS-18	Ind AS-24
Relative	in relation to an individual, means the spouse, son, daughter, brother, sister, father and mother who may be expected to influence, or be influenced by, that individual in his/her dealings with the reporting enterprise.	A person or a close member of that person's family are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity including: <ul style="list-style-type: none"> i. that person's children, spouse or domestic partner, brother, sister, father and mother; ii. children of that person's spouse or domestic partner; and iii. dependents of that person or that person's spouse or domestic partner.
Related Party	parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions	An entity is related to a reporting entity if any of the following conditions applies: <ul style="list-style-type: none"> i. The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others). ii. One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member). iii. Both entities are joint ventures of the same third party. iv. One entity is a joint venture of a third entity and the other entity is an associate of the third entity. v. The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity. vi. The entity is controlled or jointly controlled by a person. vii. A person identified has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity). viii. The entity, or any member of a group of which it is a part, provides key management personnel services to the reporting entity or to the parent of the reporting entity.
Related Party Transactions	a transfer of resources or obligations between related parties, regardless of whether or not a price is charged.	a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged.

As can be seen from the above definitions, definition as per Ind AS 24 is much wider than AS 18 for relative and related party. Also, definitions of Control, Significant Influence and Joint Control are much wider in respective Ind AS as compared to AS 18. Ind AS 24 also covers certain relationships not covered under AS 18 such as joint ventures of the same venturer, joint venture and associate of the same party, certain post-employment benefit plans, parties providing KMP services, etc.

One thing to note is that accounting standard framework defines related party relationships and prescribes disclosures to be made in the financial statements for such transactions with certain exemptions. Accounting standards framework does not establish any recognition or measurement requirements for related party transactions. Such transactions are recognized and measured based on the requirements of the respective accounting standards. For eg: if the parent company gives collateral security for borrowings taken in subsidiary for acquisition of asset, then such transactions have to be recognised as per accounting standard on borrowing costs.

Identification of related parties under the Companies Act is not based on the principle of reciprocity. That means, it is possible that one company identifies other company as its related party. However, it does not necessarily mean that the second company will also identify the first one as its related party. Sec 188 of the Act specifies various contracts or arrangements with a related party which constitute a related party transaction. Hence, there is no express definition of the term RPT but only a list of contracts or arrangements which constitute one. It may be noted that the scope of RPTs under section 188 is restricted only to the types of contracts or arrangements specified under the section. Further, Rule 15 of the Companies (Meeting of Board and its Powers) Rules treat certain RPTs as prescribed RPTs where the transaction value is above respective threshold limit, for which a special resolution of the shareholders is required.

Issues and clarifications in Related Party Transactions:

Since the transactions with related parties are molded sometimes in different forms and structures, it is imperative for the regulator to include all such related parties and RPTs under the purview of these provisions. There are still some issues and clarifications relating to related party and RPTs, which are as follows:

- **Accustomed to act:** Whenever any director, of the company, on whose directions or instructions the BoD, managing director or manager of the body corporate is accustomed to act is called a “Deemed Director”. The influence of such deemed director must be real but need not extend over the whole of the company's activities. In case of sec 188, the Act expressly provides that it does not include a person who gives advice to the board in a professional capacity. Same exception is provided in the definition of officer u/s 2(59) and promoter u/s 2(69). Thus, it can be inferred that except where the Act provides this exception (for eg. Sec 185 Loans to Directors) even the directions or instructions of a person, including in the professional capacity, will be deemed as related party.
- The phrase “ordinary course of business” is not specifically defined under the Act. The Allahabad High Court has observed that for a transaction to be construed to have occurred in the regular course/ usual course of business, there must be “an element of continuity and habit for it to constitute the exercise of a profession and business.” The frequency of transactions over a period of time should not be the only criterion and it cannot be restricted to the core business activities of a company alone. Support services that do not form part of the main core activity of a business, but are nevertheless necessary and ancillary for running the core business, can also be considered as transactions that happen during the ordinary course of business

- **Key Managerial Personnel:** Ind AS 24 defines KMP as persons having authority and responsibility for planning directing and controlling the activities of the entity. With this definition, executive directors of the company will usually be covered since they carry such authority and responsibility. The definition also includes any director, whether executive or otherwise. Therefore, even non-executive directors who have such authority and responsibility are KMPs of the company. KMPs are not restricted to directors. Other senior management members may also be KMPs for eg: CFO, Chief Legal Officer, Chief Marketing Officer, Chief Executive Officer, etc. The company needs to evaluate their roles and determine whether they have the above mentioned authority and responsibility or not. It is not the designation but the role that the individual plays that determines whether he/she is a KMP or not. Therefore, all directors may not be KMPs and KMPs need not only be directors.
- **Body Corporate:** Definition of related party used the word 'company' under clause (viii) of section 2(76). There was an anomaly with regard to foreign companies because a foreign company is not a company as per the Act, it is a body corporate. Thus, the consequence of this would interpret those companies/ entities incorporated outside India, such as foreign holding/subsidiary/associate/ fellow subsidiary of an Indian company are excluded from related party requirements. To address this issue, Companies Amendment Act 2017 has substituted the word 'company' with the word 'body corporate'.
- **Relationship period:** Another interesting issue is what is the scope of requirement if the relationship ceases or new relationship gets established during the reporting period. Whether related parties should be considered as at the year end? Though accounting standards do not explicitly cover this matter, relationships should be covered during the period, and not only at the year end. Transactions taking place after cessation of relationships are not considered as related party transactions.

Auditor's approach for the audit of Related Party Transactions: and issues faced during audit of RPT:

Audit of a related party transactions is always a challenge for the auditor. Skepticism for such transactions is set at higher limits for the auditor. Objective of Standards on Auditing (SA) 550 – Related Parties are to obtain an understanding of related party relationships and transactions sufficient to be able to recognise fraud risk factors arising from related party relationships and transactions that are relevant to the identification and assessment of the risks of material misstatement due to fraud and whether related party relationships and transactions have been appropriately identified, accounted for and disclosed in the financial statements in accordance with the framework

1. Identification of Related Party and RPT is the primary step:

The source point of this would be the entity's mechanism of identifying the related parties. The way an organization deals with its related parties speaks volumes about the culture and integrity of the decision makers, i.e., the management. Have the directors given their self-declarations? Has the entity filed declarations with MCA or with tax authorities or custom authorities for cross border transactions? Has the entity given any declaration to its bankers or lenders with respect to related parties?

A major risk of audit is not identifying all the related parties and, on the basis of the above information, the auditor needs to determine whether reliance can be placed upon the information furnished. In case the auditor determines that complete reliance is not possible, he will need to scrutinize further. Some of the general scrutiny processes are entities with similar sounding names or pattern of names, entities structured as trusts, entities where one of the director is director/ shareholder and so on.

2. Rationale of RPT is the next step:

The auditor needs to understand business rationale for such transactions. When such rationale is lacking, it may not meet the small test and would require additional audit procedures to be carried out to fulfill auditor's responsibility and understand impact of such transactions on the financial statements. There is also a possibility of non-genuine transactions being recorded when the counterparty is a related party.

3. Analysing pricing of RPT is the last step:

As part of the audit process, apart from the business rationale as mentioned above, the auditor should also evaluate the consideration received or paid for such transactions to assess whether those transactions were carried out at arm's length or not. Pricing is the culmination of a business process that involves recommendation and approval by the persons who have the authority to do so. If the transactions are not at arm's length, then the reasons for determining such pricing, its impact on accounting of such transactions, etc. are additional factors that the auditor should consider. As an auditor the focus will be on the mechanism of the company to ensure that the transaction is priced appropriately. Information and inquiry will help the audit process:

Does the entity have a pricing policy for RPT's?

Is it clear and unambiguous?

Is it applied uniformly and consistently?

Does the policy permit deviations? If so, how are the deviations authorized?

4. Approval of RPT by the authority is the next step:

Approval process of RPT has become little complex and should be examined whether transactions are approved as per the regulatory provisions. Depending upon whether the RPT is in the ordinary course of business and on an arm's length pricing, the compliances required by a private/ public company under the Act are as follows:

Compliances	If RPT in Ordinary Course of business and on ALP basis	If RPT not in Ordinary course of business or not on ALP basis
Whether Audit Committee's approval required for all RPTs, whether prescribed or not?	Yes as per sec.177	Yes as per sec.177
Whether consent of the Board of Directors required for all non-prescribed RPTs?	No	Yes
Whether ordinary resolution by members required for all non-prescribed RPTs?	No	No
Whether consent of Board of Directors and ordinary resolution by members required for prescribed RPTs	Not required. May be placed to Board for information only.	Yes
Whether RPT to be referred in Directors' Report along with justification for the same?	No	Yes

From the above table, it is clear that transactions in ordinary course of business and on arm's length basis would not require approval of the shareholders. Also, transactions between holding company and wholly owned subsidiary (WOS) company whose accounts are consolidated and laid before shareholders at AGM would not require approval of the shareholders. The Audit Committee is also empowered to give an 'omnibus' approval for transactions up to Rs.1 crore i.e. a pre-approval for all RPTs proposed to be entered into by the company during a financial year subject to certain criteria to be defined by the Audit Committee. It should be noted that the Act does not clarify whether related party transactions must be first approved by the Board or the Audit Committee. If the Board approves a transaction, but the Audit Committee withholds consent it would pose challenges to the company.

1. Communicating to Those Charged with Governance is the last step:

Communicating significant matters arising during the audit in connection with the entity's related party's transaction helps the auditor to establish a common understanding with those charged with governance of the nature and resolution of these matters. Generally, Audit Committee must create opportunities for direct, periodic interactions between the auditors and the Audit Committee members in the normal course of business. It sometimes enables auditors to escalate the issues directly relating to governance matters. Reporting on issues related to RP and RPT is sensitive and requires tactful communication.

Conclusion:

In the past, large frauds have been detected in which Related Parties were involved. In many instances, special purpose entities were formed without substantial ownership in its equity to circumvent the law. Generally, in private or closely held public companies, domination of management by single or small group of persons may increase the risk of fraud. People at large outside any business group, view RPTs with an inherent negative sense of conjecture and assumption. On the other hand employees of many business organizations consider all regulatory provisions and mandates from internal governance framework as hurdles. Thus, there has been a constant yo-yo between promoters and minority share holders with each crying foul and each claiming victory.

Companies often seek business deals with entities to which they are familiar with or have been connected with their directors or KMPs. RPTs must have to be there as they form the very rational and basis of many Mergers & Acquisitions deals. While these types of transactions are legal, the special relationship inherent between the involved parties creates potential conflicts of interest.

In the present environment where laws are evolving to insert greater transparency in the dealings of business, RPT will only be further scrutinized. Therefore, greater responsibility on directors and liability on auditors have always been on regulator's mind.



CONCEPT OF RELATED PARTY TRANSACTIONS UNDER COMPANIES ACT INCLUDING SEBI REGULATIONS



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This article primarily intended to highlight the Compliance requirements of Related Party Transactions covered under the Companies Act, 2013 (the Act) and SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 [SEBI (LODR), 2015].

1. Definition of Related Party :-

The term related party as per Companies Act, 2013 /SEBI (LODR) Regulation, 2015

Sr. No.	Companies Act	SEBI (LODR) Regulation, 2015
1	<p>Section 2(76)</p> <p><i>“related party”, with reference to a company, means –</i></p> <p>(i) a director or his relative;</p> <p>(ii) a key managerial personnel or his relative;</p> <p>(iii) a firm, in which a director, manager or his relative is a partner;</p> <p>(iv) a private company in which a director or manager or his relative is a member or director;</p> <p>(v) a public company in which a director or manager and holds along with his relatives, more than 2% of its paid-up share capital;</p> <p>(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;</p> <p>(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:</p> <p>Provided that nothing in sub-clauses (vi) and</p>	<p>Regulation 2(zb)</p> <p><i>“related party” means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards:</i></p> <p>Provided that:</p> <p>(a) any person or entity forming a part of the promoter or promoter group of the listed entity; or</p> <p>(b) any person or any entity, holding equity shares:</p> <p>(i) of 20% or more; or</p> <p>(ii) of 10% or more, in the listed entity either directly or <i>on a beneficial interest basis as provided under section 89</i> of the Companies Act, 2013, at any time, during the immediate preceding financial year; shall be deemed to be a related party:</p> <p><i>Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);</i></p>

Sr. No.	Companies Act	SEBI (LODR) Regulation, 2015
	<p>(vii) shall apply to the advice, directions or instructions given in a professional capacity;</p> <p>(viii) any company which is –</p> <p>(A) a holding, subsidiary or an associate company of such company; or</p> <p>(B) a subsidiary of a holding company to which it is also a subsidiary;</p> <p>(C) an investing company or the venturer of the company;"</p> <p>“the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.</p> <p>(ix) such other person as may be prescribed</p> <p><i>(a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party)</i></p> <p>The term Relative means</p> <p>2 (77) “relative”, with reference to any person, means anyone who is related to another, if –</p> <p>(i) they are members of a Hindu Undivided Family;</p> <p>(ii) they are husband and wife; or</p> <p>(iii) one person is related to the other in such manner as may be prescribed.</p> <p>2 (55) “member”, in relation to a company, means –</p> <p>(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;</p> <p>(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;</p>	

Sr. No.	Companies Act	SEBI (LODR) Regulation, 2015
	(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository; “Person” shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:- (1) Father includes “Step-Father” (2) Mother includes the “Step-Mother” (3) Son includes the “Step-Son” (4) Son's wife (5) Daughter (6) Daughter's Husband (7) Brother includes the “Step-Brother” (8) Sister includes the “Step-Sister”	

2. Concept of Related Party Transactions:-

No Company shall enter into any related party transaction unless the approval of Board / Audit Committee / Shareholder, as the case may be, is obtained before entering into related party transactions as per the provisions of Section 188 of Companies Act, 2013 and SEBI (LODR), 2015.

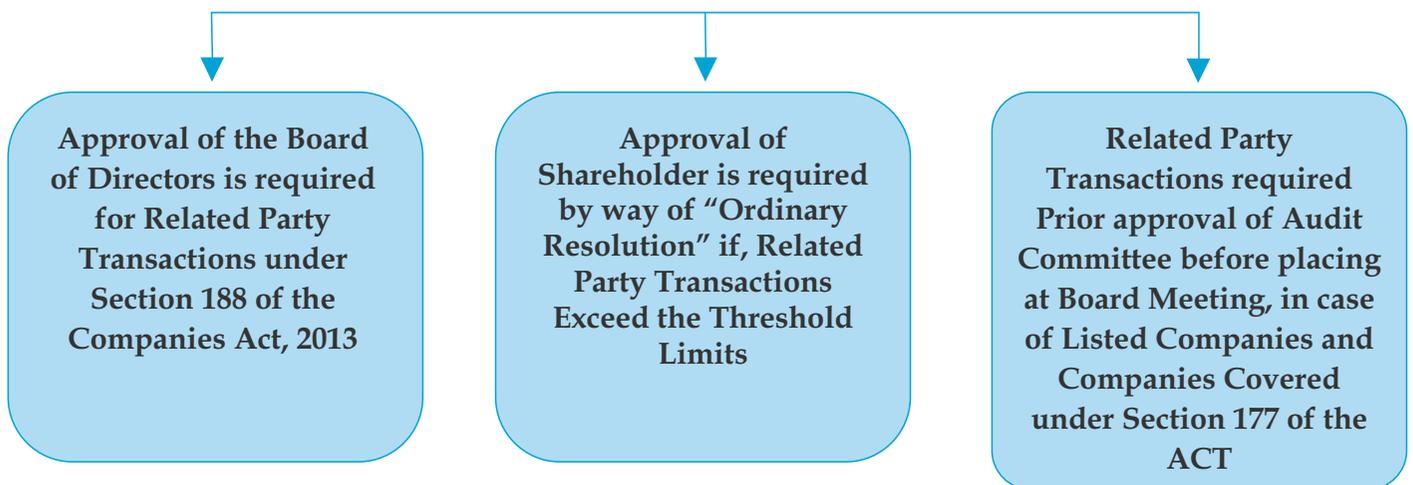
Related Party Transactions As per Section 188 of Companies Act, 2013	Threshold Limits As per Section 188 of Companies Act, 2013	Related Party Transactions As per SEBI (LODR), 2015
(a) sale, purchase or supply of any goods or materials;	Amounting to 10% or more of the Turnover of the Company	2 (zc) “related party transaction” ^s means a transaction involving a transfer of resources, services or obligations between: (i) a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or (ii) a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, regardless of whether a price is charged and a “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract:
(b) selling or otherwise disposing of, or buying, property of any kind;	Amounting to 10% more of Net Worth of the Company	
(c) leasing of property of any kind;	Amounting to 10% or more of the Turnover of the Company	
(d) availing or rendering of any services;	Amounting to 10% or more of the Turnover of the Company	
(e) appointment of any agent for purchase or sale of goods, materials, services or property;		

Related Party Transactions As per Section 188 of Companies Act,2013	Threshold Limits As per Section 188 of Companies Act,2013	Related Party Transactions As per SEBI (LODR),2015
(a) sale, purchase or supply of any goods or materials;	Amounting to 10% or more of the Turnover of the Company	Provided that the following shall not be a related party transaction:
(b) selling or otherwise disposing of, or buying, property of any kind;	Amounting to 10% more of Net Worth of the Company	(a) the issue of specified securities on a preferential basis, subject to compliance of the requirements under the SEBI (ICDR) Regulations,2018;
(c) leasing of property of any kind;	Amounting to 10% or more of the Turnover of the Company	(b) <u>the following corporate actions by the listed entity which are uniformly applicable/offered to all shareholders in proportion to their shareholding:</u>
(d) availing or rendering of any services;	Amounting to 10% or more of the Turnover of the Company	i. payment of dividend; ii. subdivision or consolidation of securities; iii. issuance of securities by way of a rights issue or a bonus issue; and iv. buy-back of securities.
(e) appointment of any agent for purchase or sale of goods, materials, services or property;		© acceptance of fixed deposits by banks / Non-Banking Finance Companies at the terms uniformly applicable/offered to all share - holders/public, subject to disclosure of the same along with the disclosure of related party transactions every six months to the stock exchange(s), in the format as specified by the Board:
(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and	Monthly Remuneration exceeding Rs.2,50,000/-	Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s);
(g) underwriting the subscription of any securities or derivatives thereof, of the company:	Exceeding 1% of the Net Worth	
<p>Explanation.-</p> <ol style="list-style-type: none"> 1. It is hereby clarified that the limits specified in sub-clause (a) to (e) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year. 2. The turnover or net worth referred in the above sub-rules shall be computed on the basis of the audited financial statement of the preceding financial year. 3. In case of wholly owned subsidiary, the resolution is passed by the holding company shall be sufficient for the purpose of entering into the transaction between the wholly owned subsidiary and the holding company. 		

3. Responsibility of Board of Directors and Audit Committee

- Timely Identifying Related Party, Nature of Related Party Transactions, Volume, Duration along with justification, etc.
- Preparation of Policy for the Related Party Transactions.
- To check that No related party transaction shall be entered by the company without prior approval of the Board of Directors/ Audit Committee as the case may be.
- Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting it should be ratified by the Board or by the shareholders as the case may be.
- Board / Audit Committee should check that Interested Director should not participate and vote during Agenda of Related Party Transaction.
- To disclose all Related Party Transaction in the Financial Statement of the Company.
- To Identify material Transactions along with ongoing current transactions and take approval of Shareholders.
- To Keep Record all the Related party transactions including “Arm Length Transactions” and to do timely disclosures.

4. COMPLIANCE TO BE CARRIED OUT BY COMPANY FOR RPT



Restrictions / Exceptions /Exemptions /Related Party Transactions in ordinary course of business on an arm's length basis

<u>Related Party Transactions with Restrictions / Exceptions /Exemptions</u>	<u>Restrictions / Exceptions /Exemptions of Related Party Transactions</u>
No member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party	Provided also that nothing contained in the second proviso shall apply to a company in which 90% or more members, in number, are relatives of promoters or are related parties

<u>Related Party Transactions with Restrictions / Exceptions / Exemptions</u>	<u>Restrictions / Exceptions / Exemptions of Related Party Transactions</u>
<p>Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis</p>	<p>Transactions entered into by the Companies in Ordinary Course of Business and on an arm's length basis will not required to take approval.</p> <p>“Arm's Length Transaction” means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest</p>
<p>Provided that no contract or arrangement, in the case of a <u>company having a paid-up share capital of not less than such amount, or transactions exceeding such sums[^], as may be prescribed, shall be entered into except with the prior approval of the company by a resolution</u></p> <p>^ As per the Threshold hold limits</p>	<p>Requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a <u>holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.</u></p>
<p>Audit Committee may make omnibus approval for <u>related party transactions proposed to be entered into by the company subject to such conditions</u></p> <p><u>Omnibus approvals shall be valid for a period not exceeding 1 year and shall require fresh approvals after the expiry of one year:</u></p> <p><u>Applicability to Constitute Audit Committee:-</u></p> <ol style="list-style-type: none"> Every Listed Public Company The Public Companies having paid up share capital of Rs. 10 crore or more; or The Public Companies having turnover of Rs. 100 crore or more; or The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 crore 	<p>All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely</p> <ol style="list-style-type: none"> The Audit Committee shall, after obtaining approval of the Board of Directors, specify the criteria for making the omnibus approval which shall include the following, namely:- <ol style="list-style-type: none"> maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year; the maximum value per transaction which can be allowed; extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval; review, at such intervals as the Audit Committee may deem fit, related party transaction entered into by the company pursuant to each of the omnibus approval made; transactions which cannot be subject to the omnibus approval by the Audit Committee. <p><i>Omnibus approval shall be valid for a period not exceeding 1 Financial Year and shall require fresh approval after the expiry of such financial year.</i></p> <p><i>Omnibus approval shall not be made for transactions in respect of selling or disposing of the undertaking of the company.</i></p>

Preparation/Intimation/Approval/Filing of Related Party Transaction with ROC, Stock Exchange, etc.

- Every contract or arrangement entered shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement in Form AOC-2. **(Annexure 1)**
- Listed entity shall make such disclosures every 6 months within 15 days from the date of publication of its standalone and consolidated financial results Disclosure Of Related Party Transactions as per Regulation 23(9) SEBI (LODR) Regulations, 2015, **(Annexure 2)**
- Preparation Register in Form MBP-4 [Register of contracts with related party and contracts and Bodies etc. in which directors are interested] **(Annexure 3)**

5. Applicability of Section 185 & 186 Companies Act, 2013 with respect to Related Party Transactions.

Section 185 of Companies Act, 2013, provide reference with respect to Loan to Directors, /Guarantee/Security.

- **Restrictions on giving Loan/Guarantee/Security by Company to following persons:-**
 1. Any Director of Company ; or
 2. Any Director of Company which is its Holding Company; or
 3. Any Partner of Directors of Lending Company; or
 4. Any relative of Directors of Lending Company or
 5. Any Firm in which any of Directors of Lending Company is Director; or
 6. Any Firm in which any Relative of Director of Lending Company is Director
- **Giving Loan/Guarantee/Security by Company to following Persons Allowed/Not Allowed based on Passing of Special Resolution*:-**

Not Allowed, if fails to pass Special Resolution:-	<u>Allowed, if pass Special Resolution:-</u>
Any Private Company of Which any such Director is a Director or Member;	Any Private Company of Which any such Director is a Director or Member;
Body Corporate in which 25% or more voting power rest with one or more directors	Body Corporate in which 25% or more voting power rest with one or more directors
Body Corporate whose Board accustomed to act on directions of Board of Directors of Lending Company	Body Corporate whose Board accustomed to act on directions of Board of Directors of Lending Company

➤ **Exemption/Exceptions/Conditions by which Company can give Loan/Guarantee/Security**

<u>Conditions</u>	<u>Exemption/Exceptions</u>
The giving of any loan to a managing or whole-time director	<ul style="list-style-type: none"> ü A Company Can give loan to MD / Whole Time Directors as a part of the conditions of service extended by the company to all its employees; or ü pursuant to any scheme approved by the members by a special resolution
A Company can give Loan/Guarantee/Security in ordinary Course of Business	<p>In the ordinary course of its business to provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of 1 year, 3 years, 5 years or 10 years Government security closest to the tenor of the loan</p> <p>For Eg:- The main business of Banks/NBFC are to give loans to the Companies against security/Guarantee of company by charging Interest on Loan, such activities are considered as in ordinary course</p>
<ul style="list-style-type: none"> ➤ A Special resolution is passed by the Company in General Meeting ➤ The loans are utilised by the borrowing company for its “Principal Business Activities” 	<ul style="list-style-type: none"> ➤ A Company Can give Loan/Guarantee/Security by Special Resolutions and conditions mentioned in above* ➤ The Word “Principal Business Activities” generally means funds utilized in main business but as per RBI, principal business Activities means when a company's financial assets constitute more than 50 per cent of the total assets and income from financial assets constitute more than 50 per cent of the gross income.
Any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or	A Holding Company can give <u>Loan/Guarantee/Security to its Wholly Owned Subsidiaries</u>
Any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:	A Holding Company can <u>only give Guarantee or Security to its Subsidiaries companies, but cannot give Loans</u>

Section 186 of Companies Act, 2013, provide reference with respect to Loan and Investments by Companies.

A Company Loan/Guarantee/Security/investments to Company, Any person, Body Corporate or make any investments subject to Conditions

If Loan/Guarantee/Security/investments is made by company not exceeding , 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account	Only by way of Passing Board Resolutions
If Loan/Guarantee/Security/investments is made by company exceeding , 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.	Only by way of Passing Special Resolution in General Meeting

Section 186(Except Section 186(1) shall not apply to

a. Loan/Guarantee/Security/investments made by

- ✓ banking Company, or
- ✓ an Insurance Company, or
- ✓ housing Finance Company in ordinary course of its business, or
- ✓ industrial or Infrastructural Finance Company

b. To any investment

- ✓ made by an Investment Company#;
- ✓ made in shares allotted pursuant sections 62(1)(a) i.e. Right Issues of shares;
- ✓ made, in respect of Investment or lending activities by NBFC and whose principal business is the acquisition of securities

The expression “**Investment Company**” means a [company](#) whose principal business is the acquisition of shares, [debentures](#) or other [securities](#); and a [company](#) will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than 50% of its total assets, or if its income derived from investment business constitutes not less than 50% as a proportion of its gross income.

6. Practical Difficulties while complying the regulatory requirements

- Related party transactions can present a conflict of interest and may not be consistent with the best interests of the company and its shareholders.
- In Small Companies due to lack of knowledge /understanding of Board /Audit Committee of Company they may find difficult to identify related party relationships and transactions.
- The Relate Party Transactions are Complex in nature and therefor there may be difference of opinion between Board of Directors / Audit Committee while identifying the Related Party Transactions and Nature.
- During course of Audit, it may not be particularly feasible for auditor to identify related-party transactions.

7. Consequences on the failure to comply with Related Party Transactions /Disclosures As per Section 188 (3)

Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within 3 months from the date on which such contract or arrangement was entered into, such contract or arrangement **shall be voidable at the option of the Board or, as the case may be, of the shareholders and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the Directors concerned shall indemnify the company against any loss incurred by it.**

As per Section 188 (4)

Without prejudice to anything contained in sub-section (3), it shall be open to the company to **proceed against a director or any other employee** who had entered into such contract or arrangement in contravention of the provisions of this section **for recovery of any loss sustained by it as a result of such contract or arrangement.**

As per Section 188 (5)

If, Any **director** or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall be liable,

- (i) in case of **listed company** a penalty of Rs.25,00,000/-

And

- (ii) in case of any other company penalty of Rs.5,00,000/-

8. Regulatory requirements relating to RPT with respect to SEBI (LODR) 2015, RBI (NBFC & Bank), IRDAI, etc.

The SEBI has issued Listing Obligations and Disclosure Requirements (LODR) for the companies listed on a recognised Stock Exchange In India. Regulation 23 specifically deals with the compliance and disclosure requirements in relation to the Related Part Transactions. The Meaning, definition and Related Party Transactions^s as per SEBI LODR are already discussed above.

The listed entity shall formulate a policy on **“Materiality of Related Party Transactions”** and on dealing with related party transactions including clear threshold limits duly approved by the Board of Directors and such policy shall be reviewed by the board of directors at least once every 3 years and updated accordingly.

Materiality of Related Party Transactions require prior approval of Audit Committee and shareholders:-

For All RPT considered material	If, individually or taken together with previous transactions during a financial year, exceeds Rs. 1,000/-crore OR
Brand Usage or Royalty shall be considered material	If, the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed 5 % percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity



DECRYPTING THE NUANCES OF RELATED PARTY TRANSACTIONS UNDER THE GST LAW



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You don't pay taxes – they take taxes – By Chris Rock

Till now, the transaction with related persons has been a special area of consideration for Government and Tax Authorities on the assumption that the transaction may be motivated by the relationship between the transacting parties to mould the transaction in their favour. To avoid the tax evasion in such transaction, various safeguards are adopted in tax laws, such as transfer pricing provision, Section 40(A)(2), etc. introduced in Income Tax Act. Similar provisions for related party transactions are adopted under various indirect tax laws viz., the Customs Act 1962, the Central Excise Act 1944, the Service Tax laws – Chapter V of the Finance Act 1994), select State VAT Laws, etc.

Under GST regime, supply of goods and/or services between distinct person, as described in Section 25(4) and 25(5) of the CGST Act, 2017 ('the Act'), and related person, as defined in an explanation (a) attached with Section 15 of the Act, would be subject to levy of GST with specific provisions governing taxability and valuation. Therefore, it is important to determine the correct value of supply of goods and services to distinct persons or related persons to avoid litigation.

This article seeks to analyse the concept of related party transactions, expectations of the taxpayers for transactions between the distinct persons and related parties locally as well as for the cross-border flow of services between them i.e., related party transactions, introduced in GST framework.

Why understanding the distinct persons and related person is important?

Clause 2 of Schedule I of the Act, provides that:

*“Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business **SHALL BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION**”*

Section 15 of the Act provides that the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply.

That means, for supply of goods or services or both between related persons or between distinct persons, the transaction value has to be ignored and valuation as per Rule 28 of GST Rules, 2017 ('the Rules') has to be considered. Also, by virtue of Schedule I, the GST law has created a deeming fiction to tax supplies between distinct / related person even if made without consideration.

Related Party (Explanation (a) to Section 15 of the Act)

Under GST, persons shall be deemed to be “related persons” if –

- (i) such persons are **officers or directors** of one another's businesses;
- (ii) such persons are **legally recognised partners** in business;
- (iii) such persons are **employer and employee**;
- (iv) any person directly or indirectly owns, controls or holds **twenty-five per cent. or more of the outstanding voting** stock or shares of both of them;
- (v) one of them **directly or indirectly controls** the other;
- (vi) both of them are **directly or indirectly controlled by a third person**;
- (vii) together **they directly or indirectly control a third person**; or
- (viii) they are **members of the same family**.

While the related party definition is quite self-explanatory, there are some aspects of the related party definition that warrants attention. First of all, the GST law has brought employer and employee under the roof of related party thereby making it critical for business to evaluate all employer-employee transactions from a GST standpoint as well. Varied nuances of employer-employee transaction are discussed in the ensuing paras of this article. Another aspect of the related party definition is the term 'direct and indirect control'. The term control is neither defined under the GST law nor any guidelines are prescribed in this regard thereby leaving it open to interpretation.

Let us now understand the concept of '**distinct person**' under the GST law:

“As per Section 25(4) of the Act, a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of GST Act.

As per Section 25(5) of the Act, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of GST Act.”

In a nutshell, two different branches in different states / UT having the same PAN shall be considered as 'distinct person' under the GST law. An 'distinct person' is treated at par with 'related person' under the GST law.

Let's peep into some nuances on related party / distinct person transactions:

Transaction between Employer and Employee

An employer and employee are considered as related party for the purpose of GST law thereby creating a deeming fiction to tax such transaction (*by virtue of Schedule I to the Act*). However, not all transactions between employer and employee shall be taxable to GST. The following transactions are outside the purview of GST:

- Gifts not exceeding INR 50,000 in value in a financial year by an employer to employee (*first proviso to Clause 2 of Schedule I*);
- Services by an employee to the employer in the course of or in relation to his employment (*Clause 1 of Schedule III*);

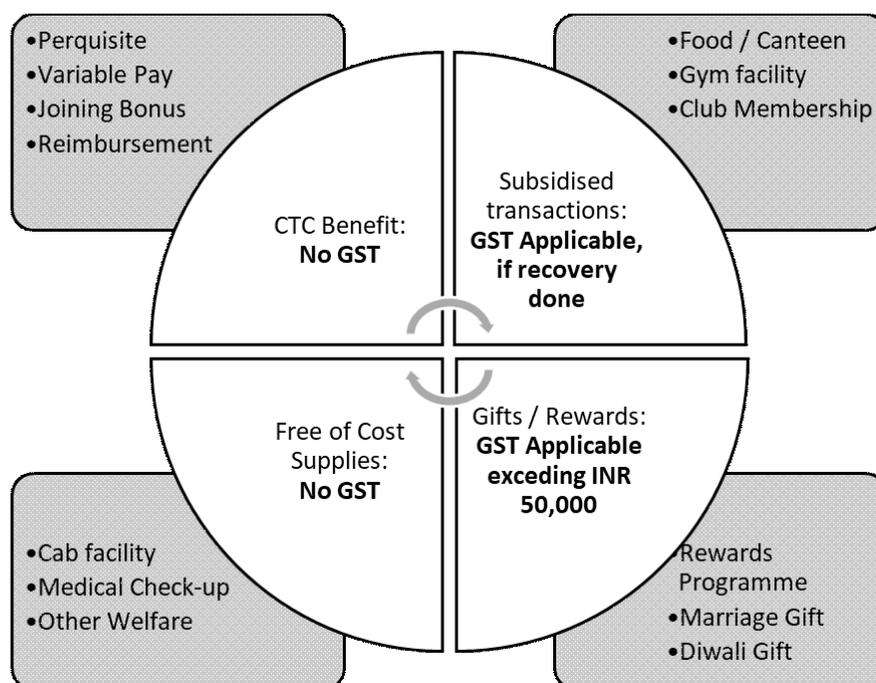
The term 'gift' is not defined under the GST law. However, as per a Press Release by CBIC which states, in common parlance, a gift is made without consideration, is voluntary in nature, and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift. The GST law has also put a limit on the monetary value of gifts given to employees to INR 50,000 in a financial year. Thus, if the value of gifts given to employees in a financial year exceeds the limit of INR 50,000, the same shall be taxable in the hands of the employer.

In addition to gifts, services by employee to employer in the course of or in relation to his employment has been kept outside the purview of the GST law. The CBIC has also *vide* press release dated 10 July 2017, provided clarifications on the said matter. The broad principles enumerating out of the clarifications given by the CBIC are as follows:

- Any supply by the employer to the employee in terms of contractual agreement between the employer and the employee will not be subject to GST;
- Any services provided free of cost to all employees will not be subject to GST provided appropriate GST was paid when procured by employer;
- Free housing (or any similar facility / perquisite) provided in terms of the contractual agreement between the employer and employee - is part and parcel of the cost to company and should also not attract GST.

It is to be noted that in case any recovery / discounted recovery is made by the employer from employee for any services / facility provided, the same shall be subject to GST as the said scenario is not covered in the press release. There are many advance rulings on various employer-employee transactions issued till date with both positive and negative views and thus, business have to ensure that all employer-employee transactions are dealt with in lines with the provisions of the GST law.

Listed below are certain employer-employee transactions along with possible GST implications on the same:



Further, determination of credit eligibility to the employer under each scenario also requires a deep analysis in light of the specific restrictions envisaged under Section 17(5) of the Act.

Transaction between 'related person' (other than employer-employee)

These transactions typically include transaction within the group companies, companies involved in joint venture or between holding company and subsidiaries, etc. While exchange of monetary consideration is present in majority of the transactions, there are few transactions, which by its very nature do not involve any monetary consideration. However, due to the deeming fiction of the GST law are brought under the ambit of taxability. Example of such transactions would include, Corporate Guarantees & Pledging of Shares, Issuance of Letter of Credit, Brand Usage etc. Thus, it becomes imperative for business to identify transactions wherein no consideration is involved, evaluate the GST implications considering the deeming fiction and determine tax liability if any.

Having said that, for transactions where consideration is involved, the same will be subject to the valuation provisions which are discussed in the ensuing paragraphs.

Transaction between 'distinct person'

As stated above, unlike the erstwhile regime, branches / GSTIN's in different states are considered to be distinct person for the purpose of GST law and thus, any transaction between branches would be considered as a supply. Accordingly, all provisions as applicable for supply to a normal customer would also apply for transactions between branches.

For example, under the erstwhile VAT regime, transfer of raw materials / finished goods from branch in Maharashtra to a branch in Gujarat did not suffer tax and transfers were made under declaration for 'branch transfer'. However, under the GST law, the same would be a taxable supply in the hands of Maharashtra branch. A tax invoice for supply of goods will be raised by Maharashtra branch and Gujarat branch shall avail ITC basis such tax invoice while filing its GST returns.

Further, as pointed out in the foregoing para's, the GST law has also created a deeming fiction for transactions between distinct persons even if made without consideration. A question would arise to understand what type transactions would get covered under the said deeming fiction.

Let's take an example of a company having presence in multiple States / Union Territories in the country and has a Head Office ('HO') in the state of Maharashtra. The HO would, in ordinary course of business, handle various activities on PAN India basis *viz.*, Taxation, Finance, Human Resources, Supply Chain etc. For the above mentioned activities various third party services *viz.*, Statutory audit, Tax return filings, Legal services, Banking and finance services etc., would also be procured by HO. Invoices for such services are usually received by HO and accordingly ITC of GST paid is also availed by HO.

While the GST law provides for an option to transfer ITC pertaining to the third party invoices mentioned above through the ISD mechanism, by virtue of the deeming fiction, the activities undertaken by HO for PAN India operations or such internally generated services would be considered as taxable supply (*ordinarily known as 'cross charge'*). The taxable value for the purpose of such supply would have to be determined basis Rule 28 of the Rules (*discussed in the ensuing paragraphs*). As a result, even in absence of any actual service and consideration being exchanged, businesses are required to undertake cross charge activity which includes determining common HO functions, allocation of costs, ensuring compliance with valuation rules etc., on regular basis and discharging GST.

Valuation Rules under the GST law

Let us now look at the Valuation Rules i.e., Rule 28 of the Rules in relation to related / distinct person. The Rule provides 4 methods to determine the value of supply, which are discussed below:

Sr. No.	Particulars	Remarks
1	Open Market Value (' O M V ') (Explanation (a) to Rule 35 of the Rules)	<p>It means the price at which the supplies of goods or services are made when the supplier and recipient are not related and the price is the sole consideration for supply. Determination of OMV in case of goods should ordinarily be an easy task. However, in case of services, determining OMV could be a challenging task because of its subjective nature.</p> <p>The jurisprudence and research material to determine OMV for services is not available in the public domain, which is as established under the transfer pricing laws. Hence, for GST purpose, one may rely on the transfer pricing laws and judicial precedence available on several transfer pricing issues in other taxation laws in India as well as taxation laws of other countries where similar provisions are applicable to ascertain OMV in case of services.</p>
2	Like kind and Quality Method (Explanation (b) to Rule 35 of the Rules)	<p>The value of the supply, where the open market value is not available, value of supply of goods or services of like kind and quality would be considered as the assessable value. The essential characters of the definition are as follows:</p> <p>(a) Supply shall be made under similar circumstances.</p> <p>(b) Comparable should be selected on the basis of similar to the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles.</p> <p>Under GST, selection of comparables will be a tedious task for the taxpayers and any wrong determination of value of supply will invite the litigation in near future. There is a lot of subjectivity in this matter, leading to numerous litigations. In case of services, the application of this Rule will be very difficult task because quality of services or services for the satisfaction can't be measured.</p>
3	Cost Plus Method (Rule 30 of the Rules)	<p>If the value is not determinable under earlier valuation methods, value of supply shall be the value as determined by the application of Rule 30 or Rule 31, in that order. Accordingly, in this method, value of supply of goods and services shall be 110% of the cost of production or cost of manufacturing of the product or cost of provision of services. As such law does not specify the clear guidelines or procedure or standards to determine the cost of the goods or provision of services. Under the erstwhile Excise tax regime, Cost Accounting Standard-4 (CAS-4) was permitted to be referred for determining cost of production for goods. Thus, the CAS-4 or any similar provisions can be relied in this regard. It is important to note that in the case of supply of services, the supplier may opt for Rule 31, ignoring Rule 30.</p>

Sr. No.	Particulars	Remarks
4	Residual Method (Rule 31 of the Rules)	This rule provides that where the value of supply of goods or services or both cannot be determined under any of the foregoing Rules, the same shall be determined using reasonable means consistent with the principles and the general provisions of Section 15 of the Act and the Valuation Rules.

It can be seen from above options provided to adopt the valuation that taxpayers will have to perform logical analysis and maintain robust documentation to prove that the related party transactions are not distorted.

In addition to the above mentioned Valuation provisions, Rule 28 also provides for the following relaxed / simplified method for valuation for specified cases:

First proviso to Rule 28 (Re-sale price method)

The essential characters of this provision are as follows:

There must be 'as such' supply (i.e., supply in the same form in which received). In other words, this method can be applied for trading industry only.

This method is available at the option of supplier only.

The value of supply shall be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.

Accordingly, taxpayers can pay GST on 90% of the market value in case of supply of goods to entities such as subsidiaries, branches and joint ventures. By opting to pay GST on 90% value of supply of goods instead of 100% value of supply of goods, a taxpayer can save working capital blockage of GST on 10% value of the supply of goods. This approach can be used for goods transfers between branches in different States / Union Territories.

Second proviso to Rule 28

As per Second proviso to Rule 28 of the CGST Rules, 2017, where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. GST being a creditable tax for most of the transactions, it would not pose any loss to the exchequer inspite of slanted valuation if full ITC is available to recipient related party. Thus, Second proviso to Rule 28 of the Rules accepts valuation adopted by the supplier where full ITC is available to the recipient related party.

However, adoption of any value under Rule 28 has not been free from dispute of tax authorities. An example of this is that while the GST law did not mandate cross charge of employee cost, despite that there have been contrary Advance rulings mandating inclusion of employee cost in value of cross charge. Having said that, the ambiguity around inclusion of employee cost in valuation has been put to rest basis the clarification issued by the CBIC *vide* circular bearing number 199/11/2023 dated 17 July 2023.

It is also apposite to note that, basis the principle enumerated under the Second proviso to Rule 28, the said Circular has also clarified the following in relation to internally generated services (*services by HO to BO*) in cases where full ITC is available to BO:

- In tax invoice for cross charge has been raised, any value declared in the invoice shall be deemed to be open market value; and
- Where no invoice has been issued for internally generated services, the value of services shall be deemed to be NIL and thus be considered as open market value.

Further, there seems to be a lack of clarity regarding ambit of Rule 28 as to whether the same warrants a wider interpretation or a transaction wise approach towards eligibility of ITC to the recipient related party. Thus, in a scenario where the recipient has exempt supplies and is not eligible for full credit, it poses a question on the supplier related party as to whether it can adopt any value or such supplies should be made at open market value.

To summarize, in respect of related / distinct person transactions, the GST Law prescribes certain methods which have to be sequentially applied to determine the value of such transaction. Non-compliance could lead to litigation and huge tax liabilities in the hands of service providers.

Related party under Customs Law - An overview

For the purpose of the Customs Law, the definition of related person is notified under the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (*'Customs Valuation Rules'*). The definition of related person under the Customs law is similar to that under the GST law.

The Customs Valuation Rules aims to bring the import price for related party imports at arm's length and ensure that importers do not undervalue the import price, directly or indirectly, to avoid customs duty. The Customs Valuation Rules provide for adjustments to be made to the import prices in case of related party imports and also provides for underlying principles basis which import prices can be equated with arm's length pricing.

Where the entities in question are found to be related, the Customs Authorities have the power under the law to refer the Valuation issue to the Special Valuation Branch (SVB) which would try to ascertain the veracity of the value declared. Detailed guidelines with respect to investigation of related party imports including SVB are mentioned in Circular 5/2016-Cus dated 9 February 2016.

Conclusion

To conclude, as the transaction between related person and distinct person, whether for supply of goods or services, attract greater scrutiny from the revenue authorities and may have serious consequences on the taxability of the transaction, it becomes imperative for the companies to ensure that reasonable care of the legislative provisions is taken while planning business operations.



UNDERSTANDING OF RELATIONSHIPS, TRANSACTIONS AND SECONDARY ADJUSTMENTS



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Introduction:

The way that a person behaves or feels about the other person is called as a relationship. It can be about a group of people or countries or companies or any other business units. This is the definition of relationship as per Google. However, like we all know that Google and tax laws do not get along. Thus, in this article, I would throw some light with respect to the definitions of related party and what would be termed as a related party transaction from a transfer pricing perspective.

Definition as per Section 2(41):

As per the Income-tax Act, 1961 ('the Act') the relative is defined under various sections. These definitions are applicable specifically to the provisions of the Chapters that they are provided upon with an exception to the definition in Section 2. Accordingly, each definition is unique and plays a critical role for the provision applicable to it. To start with, Section 2(41) of the Act provides a generic definition of the term relative which is applicable in all the cases wherein there is no specific definition given for related party. This definition covers "relative", in relation to an individual wherein the relative means spouse, siblings and any lineal ascendant or descendant of that individual.

Section 40A(2)(b):

Further, Section 40A(2)(b) provides a wider definition of the term relative wherein it states that a relative for an individual is any relative of the said individual. The term relative here means the same as defined under Section 2(41). However, if the assessee taxpayer is a company, firm, association of persons or Hindu Undivided Family ("HUF") then the relative would include any director of the company, partner of the firm, member of the association or a member of the HUF family, or any relative of such director, partner or member as the case may be. One prominent aspect of this Section is, one person should hold atleast 20% of voting rights in the other entity directly for that person to be called as a relative of that entity. This holds significance particularly in case of an incorporated company, a partnership firm (including limited liability partnership) and an association of persons. The definition under this Section 40A(2)(b) is applicable primarily for computing and reporting the extent of expenditure allowed with respect to related parties while determining the profits and gains from business or profession.

Considering the above definition, one may wonder that the domestic and international expenditure transactions with almost all of the individual's relatives and the related parties of other assesses like companies, association of people get covered within Section 40A(2)(b). Thus, one may wonder what would be the coverage of the Chapter X.

Section 92A - Determining related parties:

In this regard, the Chapter X of the Act provides for special treatment towards international related party transactions and certain specified domestic transactions. If we look back in history then Chapter X was introduced with a mindset to keep a check on the shifting of tax base from India to a related party in another jurisdiction. The said chapter provides definition of related parties covering not only direct relationship but also indirect relationships with a resident and a non-resident. Section 92A provides definitions about the nature of relationships that would tantamount to be international related parties and consequently the transactions with them to be international related party transactions.

Let us look into each of the clauses of Section 92A with examples to understand the nature of relationships that would be covered.

Sec No.	Clause as per Act	Instances
1(a)	Which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise	A Pvt Ltd participates in the management of A LLP which has a capital stake in A Inc. Accordingly, A Pvt Ltd, A LLP and A Inc. are related parties as per this clause.
1(b)	In respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise	Person A has management control in Company ABC Pvt Ltd and person A also has an equity capital control in PQR Inc. Accordingly, Company ABC Pvt Ltd and PQR Inc. are related party as per this clause.
2(a)	One enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise.	A Pvt Ltd holds more than 26% voting power in A Inc. Accordingly, A Pvt Ltd and A Inc. are related parties as per this clause.
2(b)	Any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises.	Person A has more than 26% voting power in Company ABC Pvt Ltd and Person A also has more than 26% voting power in PQR Inc. Accordingly, Company ABC Pvt Ltd and PQR Inc. are related party as per this clause.
2(c)	A loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise	A Pvt Ltd has advanced loan amounting to \$50 million to A Inc. The total assets owned by A Inc. is \$100 million. Accordingly, A Pvt Ltd has advanced loan more than 50% of A Inc.'s assets. Thus, A Pvt Ltd and A Inc. are related parties as per this clause.
2(d)	One enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise	A Inc. has provided corporate guarantee for \$10 million on behalf of A Pvt Ltd's total debts of \$50 million. Accordingly, A Pvt Ltd is a related party of A Inc. as per this clause.
2(e)	More than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise	A, B and C are the executive directors of ABC Inc. These directors also participate in the management of ABC Inc. Directors A and B are appointed by PQR Pvt Ltd. Thus, PQR Pvt Ltd and ABC Inc. are related parties of each other as per this clause.

Sec No.	Clause as per Act	Instances
2(f)	More than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons	ABC Pvt Ltd has appointed executive directors 3 out of 4 directors on the governing board of PQR Ltd. ABC Pvt Ltd has also appointed 2 executive directors out of 3 directors of MNO Ltd. Thus, ABC Pvt Ltd, PQR Ltd and MNO Ltd are related parties of each other as per this clause.
2(g)	The manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights.	A Inc. has appointed ABC Pvt Ltd as a contract manufacturer to produce the products of "A". A Inc. would share its know-how and technology exclusively to ABC Pvt Ltd for manufacturing the products of A. ABC Pvt Ltd is not allowed to engage with any other third party to produce products for that company. Thus, ABC Pvt Ltd and A Inc. are determined to be international related parties as per this clause.
2(h)	Ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise	ABC Pvt Ltd is engaged in manufacturing of plastic chairs. ABC Pvt Ltd procures the plastic granules being a critical raw material forming 95% of the materials used to manufacture plastic chairs from A Inc. Further, A Inc. also guides ABC Pvt Ltd on the pricing of the product and the markets to be targeted. Accordingly, A Inc. is an associated enterprise of ABC Pvt Ltd as per this clause.
2(i)	The goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise	A Inc. instructs ABC Pvt Ltd to manufacture plastic products and sell those plastic products to B Inc. at a rate of \$5 per plastic chair. A Inc. has also decided on the terms and conditions of this sale as per this clause.
2(j)	Where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual	Person M has control over the management of entity A Inc. and Person N (being father of M) has control over the management of entity ABC Pvt Ltd. Accordingly, entity A Inc. and ABC Pvt Ltd are associated enterprises of each other as per this clause.

Sec No.	Clause as per Act	Instances
2(k)	Where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative	Person M HUF has control over the management of entity A Inc. and Person N (being member of M HUF) has control over the management of entity ABC Pvt Ltd. Accordingly, entity A Inc. and ABC Pvt Ltd are associated enterprises of each other as per this clause.
2(l)	where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals	A is an AOP of various persons resident outside India, M/s B LLP holds 15% stake in the A - AOP. Thus, pursuant to this clause, A and M/s B LLP as per this clause.
2(m)	there exists between the two enterprises, any relationship of mutual interest, as may be prescribed	Currently, nothing is specified under this clause.

Apart from the above, the Permanent Establishments, Branch offices, Project offices of the foreign entities are separately defined as "Persons" as per Section 2 of the Act. Thus, the relationship between these entities with their Head-Offices or holding entities would also be recognised as a related party i.e. an associated enterprise.

It can be seen from the above clauses and their relative examples that Section 92A covers a wide range of entities to be determined as an associated enterprise or related entity of one-another. To understand this better, let us look at a typical case to see how the provisions of related party function as per the Act. For instance, A Inc. and Microsoft Inc. enter into a mutual agreement to provide Microsoft's Office 365 suite to all the computers or laptops of A Inc. along with any entity which is part of A Inc. at a discounted price which is not normally offered to any retail customer. A Pvt Ltd being part of the A Inc. Group engages in a transaction with Microsoft Inc. to procure Office 365 suite pursuant to the primary agreement or negotiations of A Inc. then the transaction between A Pvt Ltd and Microsoft Inc. would be deemed to be an international transaction as per the Act. In this case though the transaction was between A Pvt Ltd and Microsoft Inc. but the primary arrangement was between A Inc. and Microsoft Inc. which governed the transaction of A Pvt Ltd and Microsoft Inc. thus the provisions of related party triggered as per the Section 92A of the Act.

Section 92B - Determining the related party transactions:

Having looked at the nature of relationships and the determinants of associated enterprise, we shall now try to understand the nature of transactions that would be covered by the definition of international transactions. The international transaction has been defined in Section 92B of the Act.

Section 92B is an inclusive definition which provides to include transactions in the nature of purchase or sale of tangible goods or capital assets, purchase or sale of intangible goods or capital assets (*for instance tradename, right to use, licenses, commercial secret, marketing channel, distribution network, carbon credits, etc.*), rendering or availing of services, provision of corporate guarantee, providing or availing free of cost goods

or services, cost pooling arrangements, mutuality agreements or arrangements, or any other cost or expense incurred or to be incurred in connection with any benefit or service or facility provided or to be provided. Thus, all those transactions which have a bearing on the profits or losses or incomes or assets of the entity would be covered as an international transaction.

It is pertinent to note here that these transactions whether incurred or to be incurred between two or more related parties where either or both of them are non-residents then too it would be covered within the definition of international transaction as per the Act.

Additionally, the Act also clarifies that the transaction pertaining to restructuring or reorganisation would be an international transaction as per the Act irrespective of the fact if it has a bearing on the profits or incomes or losses or assets of the entity.

Let's understand the concept of two non-resident related parties entering into a transaction wherein it has a bearing on the Indian entity by this example, say A Inc. has entered into an agreement with B Pty Ltd to sale one of its many business divisions. Pursuant to this agreement, the ownership of shares of A Pvt Ltd being Group's captive entity solely functioning in that business division get transferred from A Inc. to B Pty Ltd than the transaction is determined to be a related party transaction which has an indirect bearing on A Pvt Ltd. Thus, this transaction is an international transaction which needs to be reported by the Indian entity as per the Act though it has been entered into between two non-residents as these type of transactions between two non-residents are indirectly be said to affect an Indian entity.

Section 92BA – Specified domestic transactions:

It can be perceived from the above that the relationship as per Section 92A and the list of transactions as per Section 92B are pretty wide in their coverage to keep a check on the tax base from being eroded. Moreover, the transactions are not only covered from an international perspective but certain domestic transactions have been defined in Section 92BA which also need to be analysed from the provisions of Chapter X.

The specified domestic transactions as per Section 92BA include transactions with entities enjoying tax-holidays or preferential tax rate. These include entities or divisions enjoying benefits under Special Economic Zones (SEZ) as provided under Section 10A, Software Technology Parks as per Section 10AA, entities in certain under-developed areas or entities engaged in certain specified businesses as per Section 80IA, 80IB, etc. of Chapter VI of the Act.

The specified domestic transactions were introduced recently in this Chapter X with a purpose to check whether the domestic entities are not engaging in erosion of tax base from a high tax entity to a low or no tax entity.

The specified domestic transactions require a check not only between the related parties or associated enterprises, it requires a check on inter-departmental transactions of the same entity as well. For instance, A Pvt Ltd has its corporate office in Mumbai, sales office in Delhi, and branch office in Bengaluru, and manufacturing unit in a SEZ location. The corporate office and branch office looks into the day-to-day functioning of the manufacturing unit like payroll processing, support in statutory filings, etc. For rendering these support services to the manufacturing unit, the corporate office and branch office recovers a consideration from the manufacturing unit in SEZ. Further, the manufacturing unit in SEZ transfers its goods to sales office in Delhi for sale to third parties. According to the Section 92BA, these inter-departmental transactions between SEZ unit and other office locations i.e. Mumbai, Delhi and Bengaluru would be subjected to the provisions of Chapter X.

Section 92CE: Secondary adjustment a path breaking change:

The Organisation for Economic Cooperation and Development (OECD) and G20 nations have been discussing on the ways to prevent the erosion of the tax base. In this regard, a unique concept of secondary adjustment has been introduced. This section will discuss the concept of secondary adjustment in detail.

"Primary Adjustment" to a transfer price, means an increase in the total income or reduction in the loss while determining the transfer price in accordance with the arm's length principle. The various types of primary adjustment are classified as adjustments which are:

- a) Made suo-moto by the assessee in a return of income;
- b) Made by the assessing officer and the same has been accepted by the assessee;
- c) Is determined by an advance pricing agreement entered into by the assessee on or after 01 April 2017;
- d) Is made as per the Safe Harbour Rules as per Section 92CB; or
- e) Is arising out of the mutual agreement procedure of Section 90 or 90A.

Accordingly, if the assessee satisfies any of the above criteria then the statute requires the assessee to undertake a secondary adjustment. "Secondary Adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

However, the assessee is exempt from undertaking the secondary adjustment if the value of primary adjustment is less than INR 1 crore or the adjustment has been in respect of an assessment year commencing prior to 01 April 2016.

The statute also provides that the amount of secondary adjustment not only needs an adjustment in the books of account but also the said money needs to actually flow into the assessee vide an appropriate amount of foreign currency. In case the assessee fails to do so then the amount of secondary adjustment would be deemed to be a loan to the associated enterprise and the same would attract an interest chargeable to tax in the hands of the assessee.

The statute also provides a way out to those assesses who do not wish to repatriate foreign currency into the books of assessee. The way out calls for payment of an additional tax at the rate of 18% on the said amount of adjustment. Thus, if the assessee who do not wish to avail foreign currency into its books than an option to pay an additional tax and settle the dues with the Revenue. It is pertinent to note here that the tax-rate of 18% is equivalent to the erstwhile dividend distribution tax rate.

Let us understand the above by way of an example, A Inc. has undertaken a transaction pertaining to availing of software development services from A Pvt Ltd.

Sr. No.	Particulars	Amount (In INR)
A	Assessee's arm's length sale consideration (Cost Plus 8%)	25,00,00,000
B	Assessing Officer determined arm's length sale consideration (Cost Plus 15%)	26,62,03,704
C	Adjustment value determined during assessment proceedings (A - B)	1,62,03,704
D	Additional foreign currency to be paid by A Inc to A Pvt Ltd	1,62,03,704
E	In case option D is not availed, the assessee A Pvt Ltd has an option to pay an additional tax @ 18% of "D"	29,16,670
F	In case, the assessee does not opt for "D" or "E" than the amount of adjustment as per "C" would be deemed to be an inter-company loan whose interest ¹ would be chargeable to tax in India.	

It is pertinent to note here that the assessee (in this case A Pvt Ltd) would neither be allowed any deduction nor be allowed any set-off of refund or brought forward losses or existing taxes paid, if any while opting for option E in the above table.

If we look at the concept of secondary adjustment from a global perspective then there are few countries who have adopted an approach similar to that of India, while there are certain other economies who have adopted only single option of either repatriation i.e. option "D" above or additional tax payment i.e. option "E".

Problems faced in other laws:

As we note from above that the secondary adjustment concept asks the assessee to record the adjustment value in the books of account. It maybe thus pertinent to understand that in case the assessee accepts the primary adjustment during the course of assessment proceedings which usually occur post two financial years than in which financial year would the assessee undertake this adjustment. On reading of the general accounting principles, one may consider the adjustment in the previous financial year if the event of such acceptance of the assessing order occurs before the signing of the statutory financial statements or in the on-going financial year if the event occurs after the signing of the statutory financial statements. The value of the said adjustment can be considered to give same effect as that provided to a prior period income or expense.

One another aspect that needs to be looked upon is the indirect-taxes i.e. Goods and Service Tax (GST) which has to be charged in certain transactions with foreign enterprises. The assessee would have to disclose the adjustment amount in their GST returns while filing the same with the Revenue authorities. The assessee would also have to pay tax on the same with interest if the adjustment is recorded in the previous year's books of account.

¹Rule 10CB has prescribed an interest rate of SBI base rate + 325 bps if the original transaction is in Indian Rupees or an interest rate of 6 month LIBOR as on 30 September + 300 bps if the original transaction is in foreign currency.

If we look from Foreign Exchange Management Act or the Reserve Bank of India's foreign trade policies then the amount of foreign exchange has to be brought into India within 6 months from the end of the month in which the adjustment entry is recorded. Thus, if the assessee records the adjustment in the previous financial year's books of account than the assessee would be left with almost no time to repatriate the money back into India. However, the situation would be different if the assessee chooses to pay additional tax instead of seeking the remittance of foreign currency.

Apart from the above, since we are looking at the international transactions, one needs to also consider a wholistic approach i.e. from the Group perspective instead of keeping our focus only on India as there might be a situation that we miss out on the bigger piece as there are different rules globally. There might be a situation wherein the assessee may seek to raise the foreign currency but the same may not be allowed as a deduction in the other economy. Thus, one needs to consider all aspects before deciding on one of the options.

Conclusion:

Tax is one of the key sources of income for any economy. If the tax base of any economy is shifted then that country may be affected with a lower inflow of money resulting in lower economic development. On perusal of the above paragraphs, it can be construed that the Indian Revenue authorities are trying to keep a check on any transaction which may have an impact on the profits or losses or assets of the entity / unit of an entity if they have been entered into between the related parties or associated enterprises. The purpose to keep a check on such related party transactions is in accordance with the globally accepted principles of Base Erosion Profit Shifting (BEPS) as has been determined by a common meeting between the Organisation for Economic Cooperation and Development (OECD) and G20 nations.

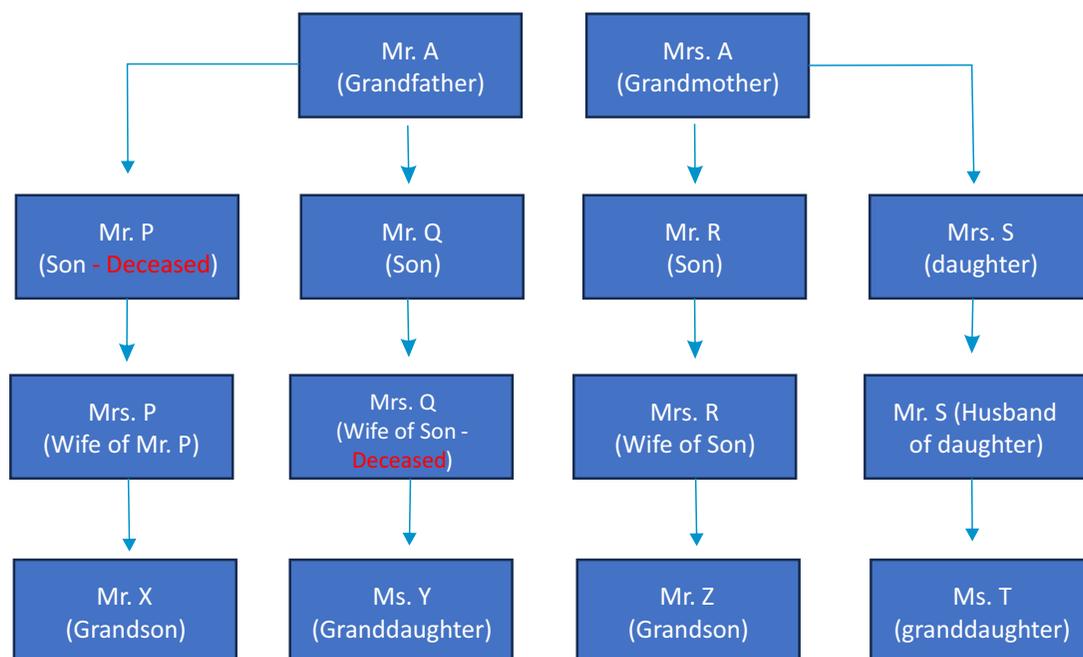


CASE STUDY ON RELATED PARTY TRANSACTION – INDIAN TAX AND REGULATORY IMPLICATIONS



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1. The scope of this article is to present a case study on related party transactions and analyse the implications from the perspective of various tax and regulatory framework. The article intends to bring out the common themes as well as divergence among these statutory codes.
2. **Let us consider the following case study:**
- 2.1 There is a prominent Chheda family in the CVO community which is engaged in multiple businesses, some of which are listed and some of which are private. The family members consist of the following individuals:



- 2.2 All the family members are Indian citizens. Further, they are Indian tax and fema residents, other than Mrs. S, Mr. S and Ms. T, who are settled in London for more than a decade.
- 2.3 The family runs the following businesses:
 - a) ABC Private Limited carries out wholesale trading of cloth and textile products and owns the trademark "ABC"
 - b) XYZ is a Limited Liability Partnership which is engaged in manufacturing of denim and linen products and owns the trademark "Chheda products".
 - c) PQR is a Public Listed Company which has established chain of branded stores across the countries which has shirting, suiting and "made to measure" services.

2.4 The details of partners and shareholders in the aforesaid companies / LLP are as under:

Sr. No.	Business entity	Shareholders / Partners / Directors
1.	ABC Pvt Ltd	Mr. A (55%), Mr. Q (20%), Mr. R (10%), Mrs. S (10%), Ms. Y (5%). All the shareholders are also directors in the company (other than Ms. Y).
2.	XYZ LLP	Chheda Family Trust holds 70% controlling and economic partnership rights and the balance is held by Mr. A
1.	PQR Ltd	The family members owns in aggregate around 72% stake in the listed company. Specifically, Mr. A has gifted his 30% stake to Ms. T couple of years back, who is now the largest shareholder and a declared promoter.

2.5 As the 3rd generation of the family have started getting involved into the various businesses, there is a growing philosophy within the family to give more operating authority to certain individuals and also come up with a sandbox model wherein some family members would be given the rights / ownership to certain brands and businesses and would be encouraged to operate it on their own.

2.6 To achieve the above, the family has decided to carry out some kind of an internal restructuring to enable the aforesaid objectives for the ultimate benefit of the larger family. The family would continue to stay together and in most cases, continue to share the benefits of the old and new businesses in some agreed manner. Hence for the purposes of our case study, we are presuming that this is not a family separation or a family settlement.

2.7 The broad steps involved in the overall restructuring are as under:

- Ms. Y shall draw a handsome salary from ABC Pvt Ltd, while her contribution to the said company shall be negligible. The "ABC" brand owned by ABC Pvt Ltd shall be transferred to Ms. Y for a NIL consideration, who shall set up a new traditional wear business under her own company. Ms. Y shall give a limited right to ABC Pvt Ltd for a NIL consideration to enable the said company to use the "ABC" brand for the limited purposes of its wholesale trading business.
- The brand owned by XYZ LLP shall be transferred for NIL consideration to one of the partners, viz. Chheda family Trust (which has been settled by Mr. A for the benefit of the overall Chheda family). The said brand shall be licensed to the said LLP for a nominal annual consideration to run the denim manufacturing business.
- XYZ LLP owns certain treasury in the form of stock market investments. The said treasury shall be transferred to Mr. X who shall sell the same and shall use the proceeds to set up a new business in the field of kids fashion.
- The manufacturing unit of linen products shall be transferred by XYZ LLP to a new LLP owned by Mr. Z, who shall individually run the said division under a new brand and expand it in future.

5. The brand owned by the listed company, PQR Ltd shall be licensed to Ms. T for the European territory for an arms length licence fee. She would set up similar stores in Europe (initially starting with UK) in the field of shirting, suiting and “made to measure” services.
3. The tax and regulatory implications of the restructuring steps involving related party transactions have been analysed in detail as under:

3.1 Step 1.1: Ms. Y to receive salary from ABC Pvt Ltd without any significant contribution

3.1.1. As per Section 40A(2) of the Income-tax Act, 1961, under the following circumstances, an Assessing Officer can disallow the excessive or unreasonable expenditure made to a “specified person” having regard to any of the following factors:

- (a) Fair market value of services (arms length test)
- (b) Legitimate needs of the business (proprietary test)
- (c) Benefit derived by the business (benefit test)

3.1.2. The term “specified person” includes the following:

Category of Taxpayer	Specified person coverage (illustrative)
Company	Director Relative ¹ of Director Shareholder holding 20% voting rights Relative of the aforesaid Shareholder

3.1.3. In the instant case, the salary paid by ABC Pvt Ltd to Ms. Y [a specified person under Section 40A(2)] is likely to be regarded as excessive and unreasonable having regard to the tests laid down under the said Section and an appropriate portion of the salary regarded as excessive/unreasonable, could be subject to disallowance. However, irrespective of such disallowance, the said salary shall be taxable in the hands of Ms. Y.

3.1.4. From a GST law perspective, a salary transaction is not subject to any GST.

3.1.5. From the perspective of Companies Act, 2013, the following implications arises:

- Unlike the Income-tax Act, where the related party definition under Section 40A includes a person with substantial interest (viz. voting rights of 20% or above), the concept of related party under the Companies Act [viz. Section 2(76) and Section 188] is linked more to the ability to control (viz. Directors and Key Management Personnel) rather than a position of benefits (viz. shareholders)
- Under the Companies Act, a related party would include a Director and his relative.
- The term “relative” under the Companies Act Vs the Income-tax Act is wider in some sense (for instance, it would include a son-in-law and daughter-in-law, which is not covered under Section 2(41) / 40A of the Income-tax Act, though covered under Section 56 of the Income-tax Act) and narrower in some sense (a grandfather is not covered, unless the grandfather and grandson / granddaughter are members of a Hindu Undivided Family – whereas, under the Income-tax Act, the same shall be covered irrespective of the condition regarding these members being part of the same HUF).

¹As per Section 2(41) of the Income-tax Act, 1961, the term “relative” of an individual, means the husband, wife, brother, sister or any lineal ascendant or descendant of the said individual.

- Payment of salary by ABC Pvt Ltd to Ms. Y would be regarded as a related party transaction under the Companies Act.
- As per Section 188 of the Companies Act, a related party transaction needs to be approved by the board of directors.
- The related party transaction further needs to be approved the shareholders in a general meeting by passing an ordinary resolution, provided the transaction crosses a particular threshold (10% of the turnover, in case of services). In the present case, salary payment to Ms. Y is unlikely to cross the said threshold and hence a shareholders approval may not be required.

3.2 Step 1.2: Transfer of “ABC” brand by ABC Pvt Ltd to Ms. Y for NIL consideration

- 3.2.1 A transfer of brand by ABC Pvt Ltd to Ms. Y would not invoke the provisions of Section 40A(2), since no expenditure has been “incurred” by the said company.
- 3.2.2 The interesting issue which arises is whether such a distribution of valuable asset by ABC Pvt Ltd to Ms. Y (a shareholder holding 5% equity shares) can be regarded as a dividend under Section 2(22)(a) of the Income-tax Act, which states that dividend includes “*any distribution by a company of accumulated profits whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company*”.
- 3.2.3 Assuming that ABC Pvt Ltd has enough accumulated profits in its financial statements which corresponds to the market value of the brand distributed to Ms. Y, there is an exposure that the said distribution may be regarded as taxable dividend in the hands of the said shareholder.
- 3.2.4 As an alternate view, there is an argument that a distribution to a single shareholder should not tantamount to a dividend as envisaged under Section 2(22)(a) and such a distribution may be tested for taxation under other provisions of the Income tax Act (for instance, Section 56). The term “distribution 'distribution' and 'payment' have different meanings; distribution is all about division amongst several persons. It connotes an idea of apportionment among more than one person. In the case of 'distribution' the recipients would be more than one, while in the case of 'payment' the recipient may be a single person².
- 3.2.5 If one were to analyse whether the receipt of the brand would be regarded as a deemed taxable gift in the hands of Ms. Y, one may infer that Section 56 refers only to a limited set of assets received without adequate consideration and a receipt of an intangible asset is not covered under the said deeming fiction.
- 3.2.6 A wider debate exists under the recently made amendment under Section 28 r.w.s. 194R wherein value of any benefit or perquisite arising from business or profession is chargeable to income-tax under the head “Profits and Gains from Business or Profession”. In the current context, Ms. Y is not receiving the said intangible asset in lieu of any of her existing business or profession and hence these provisions should not be attracted.
- 3.2.7 Lastly, one may finally refer to Section 2(24)(iva), which defines “income” to include the value of any benefit obtained from a company by a director or an equity shareholder holding 20% voting rights. In the instant case, since Ms. Y falls under neither of the two categories, the said provision may not be applicable.
- 3.2.8 From a GST perspective, the transfer of brand to Ms. Y should be regarded as a supply of services. The issue is whether the said transaction is regarded as a transaction between related party and if yes, at what valuation should GST be applicable. The GST provisions in this context are summarised below:

CIT vs. P.V. John [1990] 52 Taxman 221 (Ker.)

- Generally, the value of services supplied is linked with the transaction value – essentially, the actual price paid or payable for the given supply (Section 15 of the Central Goods and Services Tax Act, 2017 read with the State Goods and Services Tax Act, 2017). However, distinct regulations come into effect when the transaction involves “related persons” or when the price is not the sole factor under consideration.
- In situations where the transaction involves “related persons”, the valuation is determined using the following principles (Rule 28 of the Central Goods and Services Tax Rules, 2017 read with the State Goods and Services Tax Rules, 2017):
 - (a) Open Market Value: Full value in money of the underlying goods or services in a scenario where the supplier and the recipient of the supply are not related, and the price is the sole consideration.
 - (b) Value of supply of goods or services of like kind and quality: If it is not feasible to determine the open market value, the value can be inferred from goods or services that closely resemble the characteristics, quality, quantity, functional aspects, materials, and reputation of the goods or services being supplied.
 - (c) Alternative approaches: If neither the open market value nor the value of comparable goods or services can be determined, there are alternatives:
 - 110% of Production or Acquisition Cost: The value can be set at 110% of the cost incurred in producing, manufacturing, or acquiring the goods, or in providing the service.
 - Reasonable Means: The value can be arrived at using sensible methods, although these methods are not explicitly defined.
- There are 2 exceptions to the above valuation methodology:
 - (1) Exception 1: When goods are intended for resale as-is by the recipient, the supplier has the choice to value them at 90% of the price charged for similar goods by the recipient to his unrelated customers.
 - (2) Exception 2: Where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

³Under GST Act, persons shall be deemed to be "related persons" if,-

- such persons are officers or directors of one another's businesses;
- such persons are legally recognised partners in business;
- such persons are employer and employee;
- any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person; or
- they are members of the same family;
- the term "person" also includes legal persons;
- persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

- In nutshell, the value of supplied goods or services usually relies on the transaction value. However, specific rules apply in cases involving related parties or when price is not the sole consideration. These rules encompass assessing open market value, drawing from similar goods or services, and using alternative methods when necessary. There are two exceptions to this valuation approach: one for goods intended for resale and another for recipients eligible for full input tax credit. Recently the CBIC has further clarified that in case where full credit is available any value on the invoice shall be deemed to be Open Market Value.
- 3.2.9 Interestingly, a transaction between a company and a minority shareholder is not covered under the related party definition as provided under the GST Act. To this extent, the coverage of related party within the GST law seems to be narrower as compared to other laws. However a transaction between a company and its director is covered within the related party definition, if there exists an employer-employee relationship.
- 3.2.10 Consequently, in the instant case, the transfer of brand at NIL consideration by ABC Pvt Ltd to Ms. Y (being a director/employee) for NIL consideration could attract GST and the said GST would have been leviable at the deemed market value of such a brand, since the recipient (viz. Ms. Y), in the absence of any business carried on in a proprietorship capacity where such a brand may have been used, may not have been eligible for full input tax credit. A possible way out to avoid any adverse GST implications is for Ms. Y to charge a nominal royalty in step 1.3 when its gives ABC Pvt Ltd a limited right to use the brand name. In such a case, a possible one to one nexus can be built for the transaction and it could be argued that recipient would be eligible for a full tax credit.
- 3.2.11 As regards the Companies Act, as explained in para 3.1.5, the transfer of brand to Ms. Y would require a prior board approval under Section 188 and if the value of the said brand exceeds 10% of the company's turnover, the same would also require an approval of the shareholders under a general meeting.
- 3.3 Step 1.3: Ms. Y shall give a limited right to ABC Pvt Ltd for a NIL consideration to enable the said company to use the "ABC" brand for the limited purposes of its wholesale trading business.**
- 3.3.1 There are no income-tax implications under provisions of Section 40A, 56, etc, nor any implications under Section 28(iv) r.w.s. 194R. The said provisions cover any benefit arising from business. The said receipt of licence for NIL consideration to use the brand should not be regarded as "arising" from ABC Pvt Ltd's business.
- 3.3.2 Further, one can argue that such a licence to use the brand for a limited purpose by Ms. Y to ABC Pvt Ltd is not in the course of her business and hence no further GST implications need to be considered, since the said transaction would not be covered under Section 7 of the Central Goods and Services Act, 2017 relating to "scope of supply". In any case, the recipient, viz. ABC Pvt Ltd would have received a full input tax credit and hence no market value could be imputed on such a supply of service by Ms. Y to ABC Pvt Ltd.
- 3.3.3 There are no implications under the Companies Act, 2013.
- 3.4 Step 2.1: The "Chheda products" brand owned by XYZ LLP shall be transferred for NIL consideration to the Chheda family Trust (which shall be settled by Mr. A for the benefit of the overall Chheda family).**

- 3.4.1 There are no income-tax implications on XYZ LLP as well as the Family Trust.
- 3.4.2 In this case, since the family trust controls the LLP, the said transaction shall be regarded as a supply of goods / services between related parties. In this case, there is a high exposure that the GST could be leviable at the deemed market value of such a brand. However, it can be argued that the recipient (viz. Chheda Family Trust) is able to get a full input tax credit of the GST against the liability of GST arising in step 2.2, viz. licensing the brand to XYZ LLP for a nominal consideration and hence, due to this one to one nexus between the transactions, there should not be any deemed imputation of market value for the purposes of GST levy.
- 3.5 Step 2: The brand shall be licensed to the XYZ LLP by the Family Trust for a nominal annual consideration to run the denim manufacturing business.**
- 3.5.1 There are no adverse implications under the Income-tax Act. The Family Trust shall discharge its tax liability on the nominal income earned every year from the licensing arrangement and the LLP shall claim an annual deduction of such an expenditure.
- 3.5.2 From a GST perspective, it would be regarded as a transaction between related parties. However, the market valuation should not be imputed in the instant case, if the recipient (viz. XYZ LLP) is eligible for full input tax credit. Hence, no adverse GST implications should arise.
- 3.6 Step 3: The treasury investments owned by XYZ LLP shall be transferred to Mr. X for NIL consideration.**
- 3.6.1 Receipt of the treasury investments shall be regarded as a taxable income in the hands of Mr. X under Section 56 of the Income-tax Act. There would be no adverse implications in the hands of XYZ LLP.
- 3.6.2 From a GST perspective, transfer of securities are not subject to any GST, since securities are excluded from the definition of the term "goods" and "services".
- 3.7 Step 4: The manufacturing unit of linen products shall be transferred by XYZ LLP to a new LLP owned by Mr. Z**
- 3.7.1 There are no adverse implications under the Income-tax Act. The provisions of section 56 should also not apply, since an "undertaking" is not covered within the specified list of assets, the receipt whereof could create a taxable event in the hands of the recipient in the absence of inadequate consideration.
- 3.7.2 From a GST perspective, while a transfer of an undertaking on a going concern basis is considered as a supply of services, the same is chargeable to tax at NIL rate as per entry no. 2 of the Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017.
- 3.8 Step 5: The brand owned by the listed company, PQR Ltd shall be licensed to Ms. T for the European territory for an arms length licence fee.**
- 3.8.1 No adverse implications from an Income-tax Act perspective. The listed company would be subject to tax on the annual licence fee. Since Ms. T (a non-resident) holds more than 26% of the voting power in the listed company, it would be regarded as an associated enterprise of the listed company and the said transaction would need to comply with the Transfer Pricing provisions with respect to arms length test, appropriate documentation and compliance under the Income-tax Act.

- 3.8.2 From a GST perspective, it would need to be ascertained whether Ms. T is directly or indirectly controlling the listed entity. In any case, since the transaction is at arms length, there are no adverse GST implications. In any case, the said transaction may be regarded as an “export of services” (provided payment is made in foreign currency and other procedural conditions relating to export of services are complied) on which no GST is payable.
- 3.8.3 As regards the Companies Act, as explained in para 3.1.5, the licensing of brand to Ms. T would require a prior board approval under Section 188 and if the value of the said brand exceeds 10% of the company's turnover, the same would also require an approval of the shareholders under a general meeting.
- 3.8.4 Since the company is a listed entity, it would also need to comply with the Regulation 23 of the SEBI (Listed Obligations and Disclosure Requirements) Regulations, 2015 as under:
- The licensing transaction would require a prior approval of the Audit Committee wherein only independent directors can vote.
 - If the transaction is regarded as material, it would also require a prior approval of the shareholders in a general meeting, wherein related parties / promoters would not be allowed to vote.
 - A brand licensing transaction to be entered into individually or taken together with previous transactions during a financial year would be regarded as material, if a transaction involving payments made to a related party with respect to brand usage or royalty, exceed 5% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

4. Concluding Remarks

- 4.1 The aforesaid fictional case study showcases the implications of a related party transaction under the Income-tax Act, GST Law, Companies Act and SEBI Regulations. As highlighted in few cases, frequently, the definition of related party is significantly different under these various statutes and adequate care needs to be taken while undertaking any related party transaction. The current case study also leaves enough scope and homework for the readers to structure the overall family arrangement in a far more refined manner as compared to what was originally planned by the illustrious Chheda family.



DREAMZZ UNLIMITED



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This is being written on invitation from the CVOCA Association. I would like to thank the Association for the opportunity to share my journey and learnings with all of you. It would be my privilege if it inspires/helps the younger professionals in their personal or career journey.

My native place is Baroi, Mundra. I was born in a middle-class family. My father Vasantbhai had his own business, and my mother Rekhaben was a LLB and took tuitions for school students. My maternal Grandfather, Jadavjee Mulji Shah (popularly known as J M Shah in the Kutchi Samaj) was one of the first Tax Consultants in the Kutchi community. He was well known in the Community for his tax expertise, principles, and ethics. Many of the Chartered Accountants used to consult him on tax matters. He was my biggest source of inspiration.

My Parents worked hard and at the same time, spent enough time on my education – Thanks to that I studied well. I scored 87% in my Grade 10 (in 1991), and many advised me to pursue Science. My Grandfather was my role model and I wanted to follow his footsteps and become a CA, so I pursued commerce. I cleared the Foundation, Inter CA and Final CA Group 2 exams in the first attempt. Group 1 Final CA took me a couple of attempts. Most of my Friends cleared in their first attempt and I was quite anxious to clear the exams then.

Learnings:

- There's no substitute for **hard work**.
- One needs to be patient. There's a **time for everything** and things happens at that time.
- Life has its **share of ups and downs**. What truly matters is how you get through those Ups and Downs. There's light at the end of the tunnel.
- **Family plays an important role in your success**. Always remember this and be alongside your family even after you grow and become successful in your career.

I did my articleship with a medium sized firm “*Rajesh R Shah & Co.*”. This gave me varied work exposure across areas like Accounting, Audits, Taxation, Advisory and across structures like Proprietorship, Partnership, Private and Public Limited companies & Banks. We were amongst the last few batches who wrote manual accounts and got exposure to accounting software as well. Manual accounts writing gave deep understanding of accounting and clarity of concepts which helped a long way in my corporate career.

Post my articleship, I joined KPMG, Muscat in the Tax Advisory division (providing Tax compliance, planning and business advisory services to domestic and international clients). I had no plans to go overseas but this opportunity came through a Friend who had joined there – **Life had different plans for me!** I had to take a decision within 3 days, and I opted for it; it was quite overwhelming.

It was a small practice of close to 100 people but from varied nationalities – India, Pakistan, SriLanka, Britain, Sudan, Egypt, and Oman. Working with folks from different countries was a great learning about their cultures, traditions, and sensitivities. On the work front, since it was a small practice, though being in Tax team, we handled audits for MNC clients and consulting them on the structuring and entry strategy for Oman operations. Its rare to get such an exposure across areas in a Big 4 firm and I was privileged to have this. My stint with KPMG was, in some sense, *a turning point in my career*.

Learnings:

- I would recommend CAs to work with a Big 4 atleast once in their career. The learnings that Big 4 firms provide is invaluable.
- **Think BIG** – How to grow business, add value to Clients and in turn grow the practice.
- **Networking** – Interactions with different departments (Audit, Tax, Consulting, Risk, etc.) provides varied learning and builds a Network for a lifetime.
- **Ability to charge** the Clients proportionate to the efforts and value added. Many practicing CAs, especially small and mid-sized ones, hesitate to charge the Clients for their efforts. Working with a Big 4 helped me break this shell.
- **Best practices and Processes go a long way** – One wonders why there's a lot of documentation working with a Big 4. Over a period, I realised that documentation and processes have their own advantages - helps one scale faster and provides, great customer experience and helps build a long-term brand.

After about a 4-year stint at KPMG, Muscat, I returned to India and joined UTV, one of the leading Media companies in India. I joined the Finance team and in a short span of time, I became the *CFO, leading Finance and Strategy* for the *Broadcasting business of UTV*, responsible for entire financial, accounting, commercial operations & Strategy. I was fortunate to see through the entire journey from *pre-IPO to listing on Indian and AIM stock exchanges to sale of the Company to the Walt Disney Company*. It was a high-growth company, and I got an opportunity to work on several M&As including the Walt Disney Company's acquisition of UTV and HungamaTV, UTV's acquisition of gaming companies overseas. I was also privileged to work closely with Ronnie Screwvala, a great business mind and a visionary leader. Everyday was a new learning working with him.

Post Disney's acquisition of UTV, I headed *Business Finance, FP&A and Sourcing* across the five business verticals of the combined entity i.e., Motion Pictures, Broadcasting, Digital, Content Production and Retail (Consumer Products). This role included partnering with Business verticals on strategy, financial planning & reporting and operational efficiencies.

Learnings:

- As a CFO, one should **understand the business in depth**. Once you understand the business, everything else follows – Accounting, Taxation, Cash management all becomes easier.
- Accounting, Accounting standards, practices and policies **must reflect the business transactions** and not the other way round. During those days, Media was a sunrise industry and not many (Auditors, Bankers) had a deep understanding of the same. We had to take the efforts to explain them about the same and build the policies accordingly.
- Always **challenge the status-quo**.
- **CFO must be a Strategic business partner** - always look to **ADD VALUE** than only being a Controller. The frontline teams deal with the external world, competition and the challenges it presents – see how you can partner with them to meet those challenges.
- Be solution oriented.
- **Decision-making** - As you progress in life, there will be instances where you will have to take decisions without all the information necessary at your command. Trusting your instincts and making decisions based on calculated risk-taking is a skill that will prove valuable at this time.
- **Mentors** – Its extremely important to have a Mentor(s) both in your personal and professional life. Mentors *can help support growth, help set goals, offer constructive feedback, serve as a source of knowledge and are willing to listen*. They can aid decision making at crucial junctures in your career and life.

- **Marketing** – CAs tend to underplay themselves and prefer to stay behind the scenes. It's important to communicate their value addition to the businesses. It's important to build your brand internally and externally as well.

After close to a decade journey with UTV, I joined Times Network in 2014 (the TV arm of the *Times of India Group*) to look after Corporate strategy and Business development. Currently, I look after 4 functions – *Corporate Strategy, Technology & Digital Transformation, Pricing & Revenue Strategy, and Channel operations*. I launched 8 TV channels and the digital platforms for the Network and saw the business grow 3X over the years.

Learnings:

- **Macro-view of the business** – This role gave me a macro-view of the business looking at Strategy and Business development. In the CFO/Finance roles, one gets into a lot of transactional and compliance activities which sometimes doesn't give an opportunity to look at the macro-view.
- **Digital Transformation** – Embrace technology. To stay competitive, businesses must embrace technology and integrate it into their operations. With tools like artificial intelligence, robotics, machine learning and NLP, every process/activity can be automated.
- **Technology is not always expensive** – One can find tools which are suitable and affordable to all business be it small, medium or large-scale businesses.
- **Systems and Processes** – Systems and processes help run your business more efficiently; achieve scale and growth. In fast-paced organisations, many try to by-pass processes on the excuse that they slowdown growth. The fact, however, is that well-designed processes help move fast with clarity and ownership.

When I launched the digital publishing business for Times Network, I ventured into the startup ecosystem (*as an Angel Investor*) to learn about the digital ecosystem. Over the past 7 years, I have invested in more than 75 startups and mentored many of these startups. This has helped me keep abreast of the changing technology and how technology is impacting business.

Learnings:

- **Entrepreneurs are multitaskers** – They juggle multiple roles and responsibilities. Apart from handling their share of the work, they chip in with other tasks and duties. Every decision ends up at their desk.
- **Trust your instincts** - Taking calculated risks is a skill every professional needs to learn. Consider what Mark Zuckerberg has to say: “In a world that's changing really quickly, the only strategy that is guaranteed to fail is not taking risks.” As you progress in life, there will be instances where you will have to take decisions without all the information necessary at your command. Trusting your instincts and making a decision based on calculated risk-taking is a skill that will prove valuable at this time.
- **Fail fast and learn fast** - Startups walk the **thin line between success and failure**. Failing fast requires a culture where the team has the freedom to fail but can learn something from each failure that helps the team succeed faster the next time. It teaches you to accept failure gracefully and emerge stronger, wiser and more resilient from every fall.
- **Entrepreneurs are great story tellers** – This helps them hire and lead teams, raise funds, and collaborate effectively.
- **Change is the only constant in life** – One's ability to adapt to those changes will determine your success in life.

My wife Preetal supported me and stood by me through all the career decisions. It was possible to steer through all the ups & downs, work pressure and stressful moments thanks to her understanding and sacrifices. I would like to take this opportunity to thank my wife Preetal, my daughter Mahi, my Parents, my Family and Friends for their continuing support, love, feedback and encouragement without whom this journey wouldn't have been so exciting.

EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Moderator / Speaker	Attendance / Views
Saturday, 12th August, 2023	YIME Committee	One Day Trekking	Not applicable	50+ participants
Thursday, 10th August, 2023	Capital Market Committee	“Fundamentals & Value Investing - Manufacturing Sector”	Mr. Kashyap Javeri, Fund Manager with Emkay Investment Managers Ltd (EIML)	85+ participants

