

Provisions relating to Direct Tax and Indirect Tax

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Constitutional Entries

	Income Tax	GST
The authority to legislate	The authority to legislate is conferred under Article 246 of the Constitution. Legislative powers include power to tax by Parliament of India and the State Legislature.	<p>Article 246A confers powers to impose Goods and Service Tax (GST).</p> <p>Article 246A(1) provides power to the State Legislature to make laws with respect to GST.</p> <p>Article 246A(2) provides Parliament an exclusive power to make laws with respect to GST where the supply takes place in the course of inter-State trade or commerce.</p>
Legislative entries in the Constitution	Entry 82 of the List I, which reads as “Taxes on income other than agricultural income”.	-

Charging provision

Particulars	Income Tax	GST
Charge or levy	<p>The charge is on the total income earned by a person in the previous year.</p> <p>The purpose of direct tax is a charge on individual income or income earning capacity of a person</p>	<p>The charge or levy is on the activity of 'supply of goods or services'.</p> <p>GST is a transaction-based tax.</p> <p>Girdhari Lal Nannelal vs STC (1996) 3 SCC 701 and Haleema Zubair vs State of Kerala 2009 (13) STR 113 (SC)</p>
Year of chargeability	<p>The income earned in the 'previous year' is chargeable to tax in the assessment or current year. However, there are certain exceptions.</p> <p>The tax is on actual income of the previous year and it is immaterial whether the source of income is extant or defunct in the assessment or current year.</p>	<p>The levy or charge is on the supplies made during the financial year.</p> <p>Supplies made during the year is subject to tax i.e. the transaction should have taken place in the current year.</p>

Charging provision

Particulars	Income Tax	GST
Applicable law	Even though income is earned in previous year but the law that is to be applied is the law that is in force in assessment year.	The law that is to applied is always in the year in which the supplies takes place.
Rate of tax	Rate of tax is fixed by the Annual Finance Act.	The maximum or upper limit of rate is prescribed in the CGAT Act.,2017. However, the rate of tax applicable for each activity is notified by the Government on the recommendation of the GST Council, set up under Article 279A of the Constitution.

Collection of tax

Particulars	Income Tax	GST
Nature of tax	Direct Tax – Both the charge and incidence of tax is on same person.	Indirect Tax – Charge and incidence is on different person.
Power to collect tax	Parliament has exclusive power to collect tax.	In general both Centre and State legislatures has power to collect tax. However, Parliament has exclusive power to levy and collect IGST in respect of those supplies which takes places in the course of inter-State trade or commerce.
Payment of tax	Collection of tax is in the assessment year. However, in certain cases tax is collected in the financial year by way of advance tax and Tax Deduction at Source (TDS).	Tax is collected in the year in which supplies are made. Question of postponement of tax payment does not arise. [CST v. Sri Jagatbandhu Mohanty [1961] 12 STC 706]
Concept of reverse charge	No such provision	In respect of notified goods or services or both, the tax on which shall be payable on a reverse charge basis by the recipient of such goods or services or both.

Collection of tax

In the case of CST v. Sri Jagatbandhu Mohanty, [1961] 12 STC 706, the Orissa High Court said that there are two important points of difference between the Bihar Sales Tax Act and the Indian Income-tax Act, 1922. (1) Whereas income-tax for the assessment year is assessed on the income of the previous year, sales tax becomes liable to be paid immediately after each sale is effected though, for facility of computation and payment of tax, provision has been made for the filing of returns at the expiry of each quarter. (2) Whereas rates of income-tax vary in accordance with the amount of income and therefore no one can be certain of what income-tax he has to pay at least until the accounting year expires, the rate of sales tax does not vary on the amount of taxable turnover and a dealer, therefore, can always be certain of what sales tax he has to pay as soon as he effects a sale. In other words, sales tax becomes payable immediately after a sale is transacted. It said further that the words 'due' and 'payable' are separate. Eventually, High Court came to the conclusion that it is, therefore, clear that to the extent of liability admitted in a return the amount of tax is payable before the dealer submits that return. Thus, there is no doubt that the tax is payable since the sale is transacted and it is incumbent upon the registered dealer to state that amount in the return when submitted.

Definition of business

Particulars	Income Tax	GST
Definition	<p>"business" includes any <u>trade, commerce or manufacture or any adventure or concern</u> in the nature of trade, commerce or manufacture; - Section 2(13) .</p>	<p>Section 2(17) - "business" includes—</p> <ul style="list-style-type: none">(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, <u>whether or not it is for a pecuniary benefit</u>;(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;(f) admission, for a consideration, of persons to any premises;(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;(h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

Definition of business

Particulars	Income Tax	GST
Business – Meaning of	<p>The definition of business are wide.</p> <p>An activity carried on continuously in an organised manner with a set purpose and with a view to earn profits is “business”[Karnani Properties Ltd. v. CIT, [1971] 82 ITR 547]</p>	<p>However, an activity carried out with or without pecuniary benefit constitutes ‘business’.</p> <p>Further, it is clear in clause (c) that whether or nor there is a volume, frequency, continuity or regularity of the transaction.</p>
Profession	<p>2(36) 'Profession' includes vocation.“</p> <p>All professions are businesses, but all businesses are not professions. Thus ‘business’ is a word of wider import than ‘profession’ and ‘vocation’[Christopher Barker & Sons vs. Inland Revenue Commissioners (1919) 2 KB 222.]</p>	<p>The term originally contemplated only theology, law and medicine, but as applications of science and learning are extended to other departments of affairs, other vocations also receive the name, which implies professed attainments in special knowledge as distinguished from mere skill.[CIT vs Lallubhai Nagardas & sons (1993) 204 ITR 93 Bom.</p>

Definition of business

Particulars	Income Tax	GST
Vocation	<p>Preaching of sermons in church by representative or employee of church is an integral part of church. Activities of church amount to a vocation. [All Saints Church vs. CIT (Kar HC) [1984] 145 ITR 786.</p> <p>The teaching of Vedanta had been held by the Supreme Court to be a vocation. [P. Krishna Menon vs CIT (1959) 35 ITR 48.]</p>	
Adventure – Meaning of	<p>Sometimes it is said that a single plunge in the waters of trade may partake of the character of an adventure in the nature of trade. This statement may be true; but in its application due regard must be shown to the requirement that the single plunge must be in the waters of trade. On the other hand, it is sometimes said that the appearance of one swallow does not make a summer. This may be true if, in the metaphor, summer represents trade; but it may not be true if summer represents an adventure in the nature of trade because, when the section refers to an adventure in the nature of trade, it is obviously referring to transactions which individually cannot themselves be described as trade or business but are essentially of such a similar character that they are treated as in the nature of trade. [G. Venkataswami Naidu & Co. vs. CIT (1959) 35 ITR 594 (SC)]</p>	

Definition of business

Particulars	Income Tax	GST
Volume, frequency, continuity or regularity of the transaction	<p>Mere execution of development agreement of land, soon after purchase of land, would not, by itself mean that the owner of the land intends to carry on business; for the owner may well have decided to part with the said land for other reasons also [Devineni Avinash v. PCIT (2019) 412 ITR 28 (T&AP.),]</p> <p>An agricultural land was sold within 15 to 16 months with an intention to earn huge profits by the assessee, such intention alone nor the quantum of profit, could be the determinative factor to treat a receipt as business income and the transaction carried out by the assessee could not be treated as an adventure in the nature of trade. [PCIT v. Hennaben Bhadresh Mehta (2018) 409 ITR 196 (Guj.)]</p>	Any activity or transaction trade, commerce, manufacture etc whether or not there is volume, frequency, continuity or regularity of such transaction constitutes business.

Income tainted with illegality

	Income Tax	GST
1.	<p>The taint of illegality or wrong-doing associated with income, profits or gains is immaterial for the purpose of taxation. Income-tax Acts are not necessarily restricted in their application to lawful business only. The revenue merely looks at an accomplished fact; by bringing the profits to tax, it does not condone or take part in the illegal enterprise. The assessee may be prosecuted for the offence and at the same time taxed upon the profits arising out of its business. [Minister of Finance v. Smith [1927] AC 193, 198 (PC)]</p>	<p>The tax liability does not get absolved on illegal purchases or sales.</p>
2.	<p>The loss which is incurred during the course of business even if the same is illegal is required to be compensated. Dr. T.A. Quereshi v. CIT [2016] 287 ITR 547. See explanation I to Section 37 which now talks of non deductibility.</p>	<p>No liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling registered dealer in the treasury unless it is fraudulent, or collusion or connivance with the registered selling dealer or its predecessors with the purchasing registered dealer is established.[M/s Gheru Lal Bal Chand vs State of Haryana and Another 2011 SCC OnLine P&H 13205]</p>

Income tainted with illegality

	Income Tax	GST
3.	<p>The taint of illegality of the business cannot detract from the losses being taken into account for computation of the amount which can be subjected to tax as 'profits' under section 10(1) of the Income Tax Act,1922. The losses and the legitimate expenses of the business are to deducted while taxing the profits of the legal business. [Badri Das Daga v. CIT [1958] 34 ITR 10]</p>	<p>Input Tax Credit availed is provisional. It, however, does not empower the authority to revoke the input tax credit availed on a plea that the selling dealer has not paid the tax. [Sri Vinayaga Agencies v. The Assistant Commissioner (CT) 2013 (60) VST 283 (Mad)]</p>

Provisions relating to TDS

Particulars	Income Tax	GST
Deductor	Every person who is making the specified payments mentioned under the Income Tax. However, individual or HUF whose books are not required to be audited is exempted from deducting TDS.	The deductor specified in the GST Act are -: i) Central Government or State Government (ii) Local authority (iii) Governmental agencies (iv) Other Notified persons. Sec.51
Deductee	The receiver of the payment for the transaction.	The supplier of taxable goods or services or both shall deduct the TDS.
Taxability arises on	If the amount of payment exceeds the threshold amount specified under particular sections of the Income Tax Act, 1961 then only taxability shall arise.	If the total value of supply under a contract of taxable goods or services or both, exceeds Rs. 2,50,000/- then TDS is required to be deducted.
Registration	As and when the liability to deduct TDS arises then it is necessary to take the registration.	Provision of Compulsory registration is there for all the deductors of TDS. Further, if they are already registered under GST then also separate registration is required as a TDS deductor.

Provisions relating to TCS

Particulars	Income Tax		GST
Collector	Seller collects TCS on sale of specified goods.		Every e-commerce operator not being an agent, shall collect tax on the taxable supplies made through it by other suppliers.
Payee	The buyer of the goods shall pay at the time of sale.		The supplier of taxable supplies shall pay at the time of supply of goods or services.
Rate of tax	Rate of TCS is different for each category of goods specified under section 206(C) and 206(1C) of the IT Act, 1961.		1% of net value of taxable supplies made.
Nature of goods on which TCS is collected	Alcoholic Liquor for human consumption	1%	Any supplies made through the e-commerce operator (includes Goods and Services)
	Tendu leaves	5%	
	Timber obtained under a forest lease	2.5%	
	Timber obtained by any mode other than under a forest lease	2.5%	
	Scrap	1%	
	Minerals, being coal or lignite or iron ore	1%	
	Parking lot	2%	
	Toll plaza	2%	
	Sale of motor vehicle of value exceeding 10Lakhs	1%	

Provisions relating to TCS

Particulars	Income Tax	GST
Registration	As and when the liability to deduct TDS arises then it is necessary to take the registration.	Provision of Compulsory registration is there for all the e-commerce supplies. Further, if they are already registered under GST then also separate registration is required as a TCS deductor
Credit of tax paid	The credit of tax paid shall be given to person from whom the tax has been collected i.e. buyer of goods.	The credit of TCS shall be given to the supplier who has supplied goods through the e-commerce operator.
Consequence of failure to collect and pay TCS	The person who fails to deposit the tax collected at source shall be deemed to be assessee –in-default and he shall be liable to pay simple interest of 1% on the amount of tax not paid.	The tax collected should be deposited within 10 th of next month .

Taxation of different sectors under Income Tax and GST

Exemption to Charitable Institutions

Particulars	Income Tax	GST
What is exempted	Section 11 deals with taxation of institutions which are constituted for charitable or religious purposes. The <u>income derived from the property held under the trust</u> is not included in the total income to the extent such income is applied for such purposes in India.	Section 11 read with Notification No. 12/2017 of the CGST Act, 2017, provides exemption in respect of <u>services provided by an entity registered under Section 12AA of the Income Tax Act, 1961</u> by way of <u>charitable activities</u> .
Meaning of charitable activity	Section 2(15) defines “charitable purpose” to include: (a) relief of the poor, (b) education, (c) medical relief, (d) preservation of environment (including water sheds, forests and wild life) (e) preservation of monuments or places or objects of artistic or historic interest and (f) <u>any other object of public utility</u>	Clause 2 of Notification No.12/2017, defines “charitable activities” to mean: (i) public health by way of : (A) care or counseling of (I) terminally ill persons or persons with severe physical or mental disability; (II) persons afflicted with HIV or AIDS (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or (B) public awareness of preventive health, family planning or prevention of HIV infection (ii) advancement of religion , spirituality or yoga; (iii) advancement of educational programmes or skill development. (iv) preservation of environment including watershed, forests, and wildlife.

Exemption to Charitable Institutions

	Income Tax	GST
Exemption of voluntary contributions received	<p>As per section 12, if any voluntary contributions received, other than those made with specific direction, be considered as income from property held under trust. Such contribution to be applied to the extent of 85% of such income for its objects in India to claim exemption from tax.</p>	<p>The definition of “consideration” states that any payment received should be in “response to” or “In respect of” or “for inducement” or “without any response” for goods or services.</p> <p>Voluntary donations without any specific direction may not be consideration in response to or in respect of any goods or services.</p> <p>Further, vide para 2.2.2 of Service Tax Education Guide, it has been clarified that ‘Activity carried out without any consideration like donations, gifts or free charities are outside the ambit of service’.</p>
Sale of goods which are incidental or ancillary to charitable activities	<p>Assessee can claim exemption, if the business should be incidental to the attainment of objectives of charitable institution and separate books of accounts are maintained in respect of such business.</p>	<p>The definition of “charitable activity” does not provide for the sale of goods and the exempted.</p> <p>However, the activity of sale of goods which is incidental or ancillary to the charitable activity does not constitute “business” and accordingly, no tax is required to be paid. [Refer CST vs Sai Publication Fund [2002] 122 Taxman 437 (SC)].</p>

Exemption to Educational Institution

Particulars	Income Tax	GST
Exemption to educational institution	<p>As per section 10(23C)(iiiab), income received by any university or educational institution existing solely for educational purposes and which is wholly or substantially financed by the Government is fully exempt from tax.</p> <p>Further, section 10(23C)(iiiad) provides that the income earned by any university or educational institution <u>existing solely for educational purposes and not for the purposes of profit</u> shall be exempt from tax, if the aggregate annual receipts of such university or educational institution do not exceed Rs. 1 crores.</p>	<p>As per section 11 read with Notification No.12/2017, the following services by an educational institution are exempted:</p> <ul style="list-style-type: none"> (i) Services to its students, faculty and staff. (ii) Services by way of conduct of entrance examination . <p>The following services provided to educational institution are exempted:</p> <ul style="list-style-type: none"> (i) transportation of students, faculty and staff (ii) catering, including any mid-day meals scheme sponsored by the CG, SG or UT (iii) security or cleaning or house-keeping services performed in such educational institution (iv) services relating to admission to, or conduct of examination by, such institution. (v) supply of online educational journals or periodicals:
Conditions for claiming exemption	<p>The educational institution should apply (its income <u>wholly and exclusively to the objects for which it is established</u>). Further, the institution shall apply at least 85% of the income every year.</p>	<p>No such conditions prescribed.</p>

Exemption to Educational Institution

Particulars	Income Tax	GST
Definition of educational institution	<p>Educational institution is not defined.</p> <p>However, before granting exemption the Chief Commissioner or Director General may call for such documents or information, in order to satisfy itself about the genuineness of the activities.</p>	<p>Clause 2(y) of the Notification No.12/2017, defines “educational institution” to mean:</p> <ul style="list-style-type: none">(i) Pre-school education and education up to higher secondary school or equivalent;(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force and(iii) education as a part of an approved vocational education course.
Incidental or ancillary services.	<p>Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food.</p> <p>If the income of the educational institution is applied wholly and exclusively to the objects for which it is established, then exemption from tax is available.</p>	<p>The services of providing boarding and food facility would be treated as composite or bundled services under section 8 of the CGST Act, 2017.</p> <p>The predominant element being the service of education, the service of providing residential dwelling and food facility would be incidental or ancillary service. The entire service would be exempt from GST.</p>

Exemption to Health Care Services

Particulars	Income Tax	GST
<p>Exemption to health care facilities</p>	<p>Section 10(23C) of the Income Tax Act, 1961 provides exemption to any hospital or institution in respect of income from treatment of illness/mental effectiveness/medical attention/rehabilitation centers existing solely for philanthropic purposes and not for profit, which is wholly or substantially financed by Government.</p> <p>Further, section 10(23C)(iii ae), provides that the income earned by any hospital or other institution <u>existing solely for philanthropic purposes and not for the purposes of profit</u> shall be exempt from tax, if the aggregate annual receipts of such hospital or institution do not exceed Rs. 1 crores.</p> <p>Any institutions approved by the prescribed authority also eligible to avail exemption.</p> <p>Further, section 35AD provides for investment based deductions. The said section allows for 150% deduction on the amount of fixed assets invested by the hospitals.</p>	<p>As per Notification No.12/2017, the following health care services are exempted:</p> <ul style="list-style-type: none"> (i). Health care services by a clinical establishment, an authorised medical practitioner or para-medics; (ii). Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above. <p>“Health care services” means any service:</p> <ul style="list-style-type: none"> - by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and - includes services by way of transportation of the patient to and from a clinical establishment, - but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, trauma.

Exemption to Health Care Services

Particulars	Income Tax	GST
Charitable institution providing health care services	<p>The exemption under section 10(23C)(iii)e) is available, if the hospitals are providing the services solely for philanthropic purposes.</p> <p>If the trust or charitable institution carries out any activities for charitable purpose, then exemption under section 11 is allowable.</p>	<p>In order to claim exemption, the activities provided or performed by health care services are to be covered under the definition of “charitable activity”. The following are covered :</p> <p>(i) public health by way of :</p> <p>(A) care or counseling OR</p> <p>(B) public awareness of preventive health, family planning or prevention of HIV infection.</p> <p>The hospital or institution registered under section 12AA, providing any services that are covered under the definition of charitable activity is exempted from GST.</p>
Incidental or ancillary services.	<p>Supply of medicines, food etc to the patients and the attendants.</p> <p>All the income incidental to health care services are exempted.</p>	<p>The services of supplying medicines, food etc. would be treated as composite or bundled services under section 8 of the CGST Act, 2017.</p> <p>The predominant element being the service of health care facility, the service of supplying medicines and food would be incidental or ancillary service. The entire service would be exempt from GST.</p>

Sale of shares or securities

Particulars	Income Tax	GST
Taxability of income from sale of shares	The income from sale of shares or securities are taxable either as business income or income from capital gains depending on the facts and circumstances.	'Securities' have been explicitly excluded from the purview of GST, by virtue of its exclusion from the definition of 'goods' and 'services', as contained in Section 2(52) and Section 2(102) of the CGST Act respectively.
	<p>The CBDT vide circular no 6/2016 dated 29th February 2016 has clarified that:</p> <ul style="list-style-type: none">-If the taxpayer himself opts to treat his listed shares as stock-in-trade, the income shall be treated as business income.-If the taxpayer opts to treat the income as capital gains, the AO shall not put it to dispute. This is applicable for listed shares held for a period of more than 12 months.	An explanation has been inserted in the definition of service under section 2(102), to include activities of facilitating or arranging transactions in securities within the definition of services.

Taxation of supply of goods or services on e-commerce platform

Particulars	Income Tax	GST
Nature of services covered	<p>The service of online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement is subject to income tax. – This was introduced through Finance Act, 2016</p> <p>The scope of the equalisation levy has been widened vide Finance Act, 2020:</p> <ul style="list-style-type: none"> (a) Online sale of goods owned by the e-commerce operator; or (b) Online provision of services provided by the e-commerce; or (c) Online sale of goods or provision of services or both, facilitated by the e-commerce operator; or (d) Any combination of the above-mentioned activities. 	<p>The digital services are covered within the meaning of OIDAR services.</p> <p>As per section 2(17) of the IGST Act, 2017, OIDAR services include: Services ‘whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology’.</p> <p>The definition further provides to include:</p> <p>advertising on the internet; providing cloud services; provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet; providing data or information, retrievable or otherwise, to any person in electronic form through a computer network; online supplies of digital content, digital data storage; and online gaming.</p>

Taxation of supply of goods or services on e-commerce platform

Particulars	Income Tax	GST
Rate of tax	<p>6% on the online advertisements (FA, 2016)</p> <p>2% on the sale of goods and services to be paid by the non-resident e-commerce operator. (FA 2020)</p>	<p>The rate schedule for services does not make a distinction between services based on mode of supply i.e. online or offline.</p> <p>Therefore, 18% of IGST is the applicable rate.</p>
Person liable to discharge the tax	<p>The resident in India has to deduct 6% of tax on online advertisement services from the payment made to non-resident and deposit such tax with the Government.</p> <p>However, the non-resident e-commerce operator is liable to pay 2% of tax on the supply of goods or services made through e-commerce portal.</p>	<p>The person located in India has to pay the tax on reverse charge basis.</p>
Business/Personal transactions	<p>Equalization levy does not apply to personal transactions</p>	<p>OIDAR services cover personal transactions as well. Section mandates the non-resident providing OIDAR services to register under IGST and pay tax on forward charge. In the case of persons engaged in business, the IGST has to be paid by the recipient in India as a reverse charge.</p>

Taxation of supply of goods or services on e-commerce platform

Particulars	Income Tax	GST
Threshold limit	Equalization levy has a threshold limit of Rs. 1 lakh. Such threshold limit is applicable even for persons engaged in business or profession.	There is no threshold limit for applying GST on OIDAR services under IGST.
Location of supplier or recipient of service is in India	If the services of OIDAR is covered by equalization levy, the person in India must deduct tax at 6%.	Where the supplier of OIDAR service is within India and the recipient of service is also within India, it is liable for tax under IGST and it is liable to tax under Income-tax law as per regular provisions.
Where location of supplier or recipient of service is outside India	<p>Where the recipient of service is not registered under GST then the OIDAR service supplier has to get registered in India to discharge his IGST liability. The income-tax liability if imposed on the recipient who is not engaged in business or profession (and who is not registered under GST) then the compliance could become a burden on personal users.</p> <p>Where the supplier of OIDAR service is in India and the recipient of service is outside India, the liability to income-tax on the income earned will apply in the usual manner.</p>	<p>Where the supplier of OIDAR service is not in India and the recipient of service is in India, the recipient is engaged in business/profession and registered under GST, he has to pay GST under reverse charge</p> <p>Where the supplier of OIDAR service is in India and the recipient of service is outside India, it is not liable for GST as it is an export of service.</p>

Taxation of supply of goods or services on e-commerce platform

Particulars	Income Tax	GST
<p>Validity of imposition of equalisation levy</p>	<p>Whether the levy could be justified under Entry 92C or Entry 97 of the List I of the Seventh Schedule of the Constitution of India.</p>	<p>The services provided by the non-residents were taxable under the erstwhile service tax law under Finance Act, 1994 and presently under the GST laws.</p> <p>Whether the same set of services and same set of consideration can be taxed under two different statutes using same constitutional entries ?</p>
<p>Whether the levy is in the nature of colourable legislation</p>	<p>The non-resident would be liable to pay tax twice, one in 'source country' and another in 'resident country', thereby the levy bypasses the tax treaties (DTAA's) and benefits arising out of such international treaties.</p>	<p>The transaction of import of goods or services by the person in India is already subject to tax under GST by virtue of Article 246A of the Constitution.</p>
<p>Whether the equalisation levy fulfils the territorial nexus theory.</p>	<p>The activity of the non-resident should have nexus with Indian territory.</p>	<p>Under OIDAR services, either the provider or recipient of supply should be in India.</p>

Similarity between the provisions of Direct Tax and Indirect Tax

Concept of Mutuality

Particulars	Income Tax	GST
Concept and Meaning	<p>“No man, in my opinion, can trade with himself; he cannot, in my opinion, make, in what is its true sense or meaning, taxable profit by dealing with himself”. [Dublin Corporation vs. M'Adam (Surveyor of Taxes), (1887) 2 Tax Cas. 387 (D)]</p>	<p>The essence in applying the doctrine of mutuality is that there can be no sale transaction between two persons, as one person cannot sell goods to itself. [State of WB vs Calcutta Club 2019-TIOL-449-SC-ST-LB]</p>
Relevant section	<p>Section 28 (iii) of the Income Tax Act, 1961 income derived by a <u>trade, professional or similar association</u> from <u>specific services performed for its members</u> are deemed to be ‘profits and gains from business or profession’.</p>	<p>As per schedule II read with section 7 of the CGST Act, 2017, supply of goods by any <u>unincorporated association</u> or body of persons <u>to a member</u> thereof for cash, deferred payment or other valuable consideration is deemed to be supply of goods.</p>
Nature of	<p>This is an exception clause to principle of mutuality. Trade, professional or similar association (even though of mutual character) performing specific services for its members is deemed to carry on business in respect of those specific services and income arising therefrom is liable to tax. [Calcutta Stock exchange vs CIT (1956) 29 ITR 687]. Eg- Only fee collected for specific service is taxable and general entrance fee or periodic subscriptions are not taxable under this section.</p>	<p>The clause 7 of the schedule II presumes or deems the activity of supply of goods by unincorporated association is a ‘supply of goods’. In other words, the deeming fiction of goods or services cannot by itself create a charge or levy on the activity supply of goods by unincorporated association to its members.</p>

Concept of Mutuality

Particulars	Income Tax	GST
		<p>In terms of section 7 of the CGST Act, 2017, for the transaction to constitute a supply, there should be sale, barter etc. for a consideration, which requires <u>two persons</u>.</p> <p>In case of clubs, as there no two persons, there cannot be 'supply' of goods or services by the club to its members.</p>
Effect of incorporation	<p>As a general rule, the fact that a mutual association is incorporated as a company would not affect its mutual character or the non-liability of the surplus to tax, for incorporation does not destroy the identity between the contributors and the participatory. [CIT vs Bankipur Club 226 ITR 97 (SC)]</p>	<p>The doctrine of mutuality continues to be applicable to incorporated and unincorporated members clubs after the 46th Amendment adding Article 366(29A) to the Constitution of India. No sale is involved as element of transfer of property is absent. [State of WB vs Calcutta Club 2019-TIOL-449-SC-ST-LB].</p>
Mutual and Non-Mutual Activities	<p>The application of the principle of mutuality is not destroyed by the presence of transactions which are non-mutual in character. The principle of mutuality can, in such cases, be confined to transactions with members. The two activities can, in appropriate cases, be separated and the profits derived from non-members can be brought to tax.[CIT v. Madras Race Club [1976] 105 ITR 433 (Mad)].</p>	<p>The transactions with members cannot be subjected to tax even if it is business under Section 2(17).</p>

Section 10 vs Schedule III

Relevant section	Section 10 of the Income Tax Act, 1961 lays down certain categories of income, which will not be included in the computation of total income of a person.	Section 7 read with Schedule III list out certain activities which are neither treated as supply of goods nor a supply of service.
Nature of section 10	Section 10 is not a charging section. It merely specifically excludes certain types of income from the ambit of "total income".	Section 9 of the CGST Act, 2017 (charging section) does not apply to supply of those activities listed in the Schedule III.
Purpose of section 10	All the clauses mentioned in section 10 are types of income in general, but the said income are specifically exempted or excluded while computing total income.	An activity may not be 'supply' at all within the proper connotation of that term and yet may come within the purview of schedule III read with section 7. It may be to make the fact of non-taxability clear beyond possibility of doubt.
Expenses relating to income under section 10	While granting exemption under section 10 of the Income Tax Act, 1961, the expenditure relating to earning such income is disallowed under section 14A of the Income Tax Act, 1961.	Activities incidental to the transactions covered under schedule III would they be covered under schedule III of the CGST Act, 2017?

PAN based registration

- I. As per section 25(6) of the CGST Act, 2017, every person shall have a Permanent Account Number issued under the Income tax Act, 1961, in order to be eligible for grant of registration.
- II. Now by having such PAN based registration, the value of total turnover reported in all returns under GST, whether it is CGST or SGST, will be reported to the Income Tax Department by GSTN. Taxpayers would be required to reconcile the amount of total turnover from all returns under GST, to the amount as mentioned in the annual financials. Such reconciliation could also be asked by Income Tax Authorities during scrutiny or any other proceedings.
- III. Further, as per section 71 of the CGST Act, 2017, the authorised officer shall have access to any business premises of the registered person to inspect books of account, documents etc. Such inspection of documents inter-alia includes the income-tax audit report filed under section 44AB of the Income-tax Act, 1961.
- IV. From the above, it could be seen that the tax authorities under the GST law are vested with wide-ranging powers.

Presumptive Income vs Composition Scheme

Governing Provisions	Section 44AD, 44ADA and 44AE	Section 10 of the CGST Act, 2017
Applicability	The presumptive taxation scheme are designed to give relief to small taxpayers engaged in any business, profession and for the persons engaged in the business of plying, hiring or leasing of goods carriage. However, certain businesses are not covered under the scheme.	The composition scheme of levy is an alternative method of levy of tax designed for small taxpayers whose turnover is less than Rs.150 Lakhs. However, certain persons are not eligible to opt for the scheme.
Scheme is optional	Scheme is optional and is in lieu of regular tax mechanism	Scheme is optional and is in lieu of regular tax mechanism.
Benefits or advantages of opting the scheme	A fixed rate of income could be declared. However, certain expenses are not allowed to be claimed as deductions.	A fixed rate of tax is payable. However, input tax credit cannot be claimed.
Reduced compliance burden	There is no requirement to maintain books of account. Not required to get the books audited.	Required to maintain details of all stock, purchase and sale, etc for 72 months from the due date of annual return. Not required to get the books audited.

Deemed Income vs Schedule II

Particulars	Income Tax law	GST
Relevant section	Section 2(24) of the Income Tax Act, 1961 defines income. The income is artificially defined to include various items and the definition is inclusive in nature. In other words, unless a particular category of income is included in section 2(24), the inclusive definition will include only 'real income'	Schedule II read with section 7(1)(d) of the CGST Act, 2017, list out the activities that are to be treated as supply of goods or supply of services.
Nature of section or Schedule	Anything which can be properly described as income is taxable under the Act unless exempt under one or the other provisions of the Act. [Vodafone India Services Pvt Ltd vs UOI (2014) 368 ITR 1 30].	As per section 7(1A) of the CGST Act, 2017, unless a transaction or activity qualifies as 'supply' within the meaning of section 7(1), the said transaction is not chargeable to tax.

Claiming deduction of business expenditure vs Availing ITC on business expenditure.

Particulars	Income Tax	GST
Relevant provision	The provisions under Section 30 to 36 of the Income Tax Act, 1961 deal with deductions of <u>business expenditure</u> for computing profits and gains of business or profession and prescribe certain conditions to avail such deductions.	Section 16 of the CGST Act allows a registered person to avail Input Tax Credit (ITC) on the tax paid on the inward supply of goods and/or services, which is used by the person <u>in course and furtherance of its business</u> .
Fundamental principle for claim of deduction/ITC	The underlying principle for claim of deduction is that the expenditure incurred should be for carrying on the business of assessee. The use of expression “for the purpose of business”, in section 30 to 36 and 37, includes expenditure voluntarily incurred for commercial expediency.[SA Builders vs CIT [2007] 288 ITR 1 (SC)].	The input tax credit is allowable only on those supplies which are used in the course or furtherance of business.
Restriction on claim of deductions/ITC Rent free accommodation	In terms of the provisions of Income Tax Act, 1961, the expenditure incurred for rent-free accommodation would be considered as business expenditure and full deduction will be allowed.	If the rent-free-accommodation is part of the salary and such a benefit is given to all the employees of the company, then ITC on the said expenses would be allowable.

Claiming deduction of business expenditure vs Availing ITC on business expenditure.

Particulars	Income Tax	GST
Rent-a-cab services	The facility of rent-a-cab services would be treated as perquisite and allowable as business expenditure.	Credit on the inward supply of rent-a-cab services is not available, unless the same is mandated by the Government under any law or the assessee receiving such a service is also engaged in provision of the same outward supply of rent-a-cab services.
Staff welfare expenses – Say canteen facility	The expenses towards staff welfare activities are fully allowed as business expenditure.	As per section 17(5)(b) of the CGST Act, 2017, credit on food and beverages, outdoor catering is inadmissible.
Travel benefits to employees	The travel benefits provided to employees are allowed as deduction.	Credit on travel benefits provided to employees of the company is a blocked credit under section 17(5)(b) of the CGST Act, 2017.

Treatment of certain expenditures incurred in the business of the assessee

Nature of expense	Income Tax	GST
<p>Depreciation on assets vis-à-vis cenvat or input tax credit on assets</p>	<p>As per explanation 9 to section 43 of the Income Tax Act, 1961, the actual cost of asset shall be reduced by the amount of excise duty which has been claimed as CENVAT. If the assessee has claimed any CENVAT credit under Central Excise Rules for tax component than depreciation under income tax is not allowable for the same.</p>	<p>As per section 16(3) of the CGST Act, 2017, if the registered person has claimed the depreciation on the tax component of the capital goods under the provisions of income tax, then the input tax credit shall not be allowed on the said tax component.</p>
<p>Taxes paid under any other laws</p>	<p>It is settled law that the sales tax and other duties are part of the consideration for the dealers trading or business receipts. [See: Jonnalla vs CIT 200 ITR 588 (SC)]. Apert from the above, section 43B, provides deduction in respect of any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force.</p>	<p>The value of supply under section 15 of the CGST Act, 2017 shall be the transaction value. The value of supply shall include all taxes, duties, cesses, fee etc paid under other laws but not the GST laws for the time being in force.</p>

Computation of Total Income vs Valuation of Supply

Particulars	Income Tax	GST
Treatment of subsidy or incentives received	As per section 2(24)(XVIII) of the Income Tax Act, 1961, any assistance received in the form of subsidy or grant or cash incentive or duty draw back or waiver or concession or reimbursement by the CG or SG or any other authority or body or agency in cash or kind to the assessee shall be deemed to be income of assessee.	As per section 15(e) of the CGST Act, 2017, all the subsidies directly linked to the price shall be included in the value of supply of the supplier. However, subsidy by CG and SG shall be excluded.
Perquisites	<p>The term 'perquisite' has been defined in the section 17(2) of the Income tax Act,1961.</p> <p>Valuation of perquisites: As a general rule, the taxable value of perquisites in the hands of the employees is its cost to the employer. However, specific rules for valuation of certain perquisites have been laid down in Rule 3 of the IT Rules,1962</p>	<p>As per the press release issued on taxation of perquisites, it is clarified that the supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.</p> <p>Further, it is clarified that if services by the employer to the employee are provided free of charge to all the employees then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer.</p>

Computation of Total Income vs Valuation of Supply

Related transactions	party	<p>In terms of Section 92 of the Income Tax Act, any international transaction or specified domestic transaction between associated enterprises, shall be based on an arm's length price.</p> <p>The provisions relating to transfer pricing prescribes various methods of valuation in respect of related party transactions.</p>	<p>Under the GST Regime, as per schedule I of the CGST Act, 2017, the transaction between related persons is deemed to be a supply, even when they are without consideration.</p> <p>The valuation of such supplies ought to be determined as per Rule 28 of the Central Goods and Services Tax Rules, 2017 (CGST Rules).</p>

Annual Information Return

Particulars	Income Tax	GST
To be furnished by whom ?	Section 285BA of Income Tax Act, notifies certain persons for filing of annual information return (AIR) in respect of specified transactions within the specified time in form 61A and form 61B of the Income Tax Rules, 1962.	Similarly, section 150 of the CGST Act, 2017 prescribes certain persons or authorities, who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property, under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form (including electronic form) and manner, to such authority or agency as may be prescribed to furnish 'information return'.
Authorities who has to furnish AIR	No such provision	Section 150(1)(d) includes, an income tax authority appointed under the provisions of the Income-tax Act, 1961.

Law relating to Assessment/Adjudication

Particulars	Income Tax	GST
Self assessment	As per section 140A of the Income Tax Act, 1961, assessee is bound to calculate the tax by himself after taking TDS and deducting advance tax paid.	As per section 59 of the CGST Act, 2017, every registered taxable person shall himself assess the taxes payable and furnish a return for each tax period.
Summary assessment	<p>Section 143(1) of the Income Tax Act, 1961 lay down certain procedure for processing of return furnished by assessee.</p> <p>The total income shall be computed after making certain adjustments (say arithmetical accuracy check, disallowance of loss or expenditure which are disallowed in audit report etc).</p> <p>The tax, interest etc payable on the total adjusted income shall be computed.</p> <p>An intimation shall be sent to the assessee intimating the details of tax payable if any.</p>	<p>As per section 64 of the CGST Act, 2017, if the proper officer is in :</p> <ul style="list-style-type: none"> - <u>possession of any evidence</u> that any person is liable to pay any tax under the provisions of this Act and - <u>has sufficient reason to believe</u> that any delay in assessment will adversely affect the interest of revenue <p>-then the proper officer may proceed to determine the tax liability of such a person.</p> <p>This is actually a protective assessment provision.</p> <p>While a protective assessment is permissible, a protective recovery is not allowed - CIT v. Cochin Co. (P.) Ltd. [1976] 104 ITR 655 (Ker.)</p>

Law relating to Assessment/Adjudication

Particulars	Income Tax	GST
Regular Assessment	The provisions of scrutiny or regular assessment are laid down in section 143(2) read with 143(3) of the Income Tax Act, 1961.	As per section 61 of the CGST Act, 2017, a proper officer may scrutinize the GST returns and related particulars furnished therein.
Objective	<p>Is to confirm that the taxpayer has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner.</p> <p>When a regular proceedings having been commenced under section 143(2), a summary proceedings under section 143(1)(a) cannot be made [CIT vs Gujarath Electricity Board 260 ITR 84 (SC)].</p>	<p>The objective is to ensure the verification of correctness of return furnished by assessee.</p> <p>In case of any discrepancies and in the absence of satisfactory explanation offered, the proper officer may initiate audit, special audit, inspection, search and seizure or proceed to determine tax and other dues under section 73 or section 74.</p>
Time limit for completion of assessment	Within 12 months from the end of the assessment year in which income was first assessed.	After intimating the discrepancies, a notice may be issued asking explanation for the discrepancies. If no explanation is offered within 30 days then the assessing officer may initiates other proceedings.

Law relating to Assessment/Adjudication

Particulars	Income Tax	GST
Principle of Estoppel	<p>The Assessing Officer (AO) is not a Court, the doctrine of res judicata or estoppel by record does not apply to his decisions; a finding or decision of the income tax authorities in one year may be departed from in a subsequent year. [New Jehangir Vakil Mills vs CIT 49 ITR 137 (SC)]</p> <p>On contrary, it is held that AO is bound to by the rule of res judicata or estoppel by record, he could reopen a question previously decided only if fresh facts came to light, which on investigation would entitle the officer to come to conclusion different from the previously reached. [Burmah Shell vs Chand 61 ITR 493, 506].</p>	<p>When the principle laid down by Tribunal in one case is accepted by the department, then the department is not entitled to raise the same point in other cases. [See: Boving Fouress Ltd. Vs. CCE, 2006(202) ELT 389(S.C.); CCE Vs. Surcoat Paints (P) Ltd., 2008 (232) E.L.T. 4 (S.C.)]</p>

Law relating to Assessment/Adjudication

Particulars	Income Tax	GST
<p>Best Judgment Assessment or Assessment of non-filers of return</p>	<p>As per section 144 of the Income Tax Act, 1961, AO is empowered to make a best judgment assessment: -in case of <u>non-filing of return</u> either within due date or beyond due date. OR -If the assessee <u>fails to comply with the notice of enquiry</u> issued under section 142(1).</p>	<p>As per section 62 of the CGST Act, 2017, proper officer may proceed to assess the tax liability to the best of his judgment, if:</p> <ul style="list-style-type: none"> -Non-furnishing of monthly and final return , <u>even after the service of notice under section 46 of the CGST Act, 2017.</u> <p>As per section 63 of the CGST Act, 2017, where a taxable person even though liable to pay tax but fails to obtain the registration , the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment.</p> <p>However, there is no reference to section 73 or 74 for the purpose of issuing notice before the best judgement assessment. However, the fundamental principles of justice may require notice to be issued before a best judgement assessment is made [Koyammankutty vs ITO 58 ITR 871].</p>
<p>Provisional Assessment</p>	<p>The provisional assessment concept has been omitted by Taxation Laws (Amendment) Act, 1970 .</p>	<p>As per section 60 of the CGST Act, 2017, provisional assessment could be conducted when, taxpayer is unable to determine the</p> <ul style="list-style-type: none"> -<u>value of goods or service</u> or both or determine or -the <u>rate of tax</u> applicable thereto. <p>As per sub-section (2) the taxable person should execute a bond and with a</p>

Law relating to Assessment/Adjudication

Particulars	Income Tax	GST
Income escapement assessment	<p>Section 147 of the IT Act, 1961 lay down the procedure for income escarpment assessment.</p> <p>The objective of carrying out assessment under section 147 is to bring under the tax net any income which has escaped assessment in original assessment.</p> <p>Original assessment refers to scrutiny or regular assessment, best judgment assessment, income escapement assessment.</p> <p>Time limit for issuance of notice is 4 years from the end of the relevant assessment years.</p> <p>Time limit for completion of assessment is 12 months from the end of the financial year in which notice under section 148 is served.</p>	<p>GST law provides for adjudication under Section 74 in such cases.</p>

Law relating to Appeals

Particulars	Income Tax	GST
Who is the Appellate Authority	Appellate Authority u/s 246A (after 01.10.1998) is CIT(A).	Appellate authority Sec 107 r/w Rule 109A: i. Commissioner (A) if adjudicating authority is AC/JC ii. Additional Commissioner (A) is the adjudicating authority is DC/superintendent
What orders can be appealed against	All kinds of orders specified in Section 246A.	Any person aggrieved by any decision or order passed under CGST Act/SGST Act.
Limitation for Appeal	<p>Within 30 days from date of service of notice of demand relating to assessment or penalty (or, in other cases, from the date on which intimation of the order sought to be appealed against is served). [Sec 249(2)]</p> <p>Appeal may be admitted beyond the above date if there is sufficient cause.</p>	<p>Within three months from the date on which the decision or order is communicated.</p> <p>Extension of one month may be granted if sufficient cause is shown for failure to file within stipulated time. [Sec 107(4)]</p>

Law relating to Appeals

Particulars	Income Tax	GST
<p>Payments to be made before Appeal</p>	<p>Court fee (of not more than Rs. 250, based on total income of assessee to which appeal relates) + Tax due on the income returned + If returns are not filed, amount equal to amount of advance tax payable by him. [Section 249(1) and (3)]</p>	<p>In full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; + A sum equal to 10% of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed. [Section 107(6)]</p>
<p>Stay of recovery pending appeal</p>	<p>On application before PCIT, assessee may deposit 20% of demand based on office memorandum by CBDT vide F.No.404/72/93-ITCC dated 31-07-2017.</p>	<p>The recovery proceedings for the balance amount shall be deemed to be stayed upon the payment of the said amounts.</p>
<p>Powers of Appellate Authority to direct AO to do further enquiry</p>	<p>CIT (A) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the AO to make further inquiry and report the result of the same to the CIT (A) [S. 250(4)]</p>	<p>Appellate authority shall not refer the case back to the adjudicating authority that passed the said decision or order. [S. 107]</p>

Law relating to Appeals

Particulars	Income Tax	GST
Additional Grounds and Evidence	CIT (A) may allow appellant to include any ground not specified in grounds of appeal if he feels that its omission is not wilful or unreasonable. [Sec. 250(5)]	No additional evidence can be produced unless adjudicating authority has refused to admit it or if assessee was prevented by sufficient cause, etc.
Power of Appellate Authority	CIT (A) may confirm, reduce, enhance or annul the assessment. He may confirm or cancel order imposing penalty or vary it so as either to enhance or to reduce the penalty. He may also pass such order as he may think fit. [S. 251]	Appellate authority may confirm, modify or annul the impugned decision or order. He may enhance any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit. [S. 107]
Appeal to Appellate Tribunal	Only those orders appealable u/s 253(1) is maintainable before ITAT.	Any person aggrieved by an order passed against him by appellate authority or revisionary authority. [S. 112] It may or may not admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed 50,000/-

Law relating to Appeals

Particulars	Income Tax	GST
Limitation	Within sixty days of the date on which the order sought to be appealed against is communicated.	Within three months from the date on which the said decision or order is communicated to such person.
Time limit within which appeal must be decided	Where it is possible, within a period of one year from the end of the financial year in which such appeal is filed.	107(13) specifies where it is possible appeal should be decided within one year.

Revisionary Powers

Particulars	Income Tax	GST
When Revision is made	<p>If Principal Commissioner or Commissioner considers that any order of AO is erroneous in so far as it is prejudicial to the interests of the revenue, after hearing and enquiry, pass such order thereon as the circumstances of the case justify.</p> <p>It includes an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. [Sec. 263]</p>	<p>Same as section 263 of Income Tax Act, 1961.</p> <p>Instead of AO, it would be adjudicating authority.</p> <p>In addition to order being erroneous, it must also be illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not. [Sec. 108]</p>
Meaning of prejudicial	<p>Defined in Explanation 2 to Section 263(1).</p> <p>The power to exercise suo motu revision in terms of section 263(1) is in the nature of supervisory jurisdiction and same can be exercised only if the circumstances specified therein, viz., (1) the order is erroneous and (2) by virtue of the order being erroneous, prejudice has been caused to the interest of the revenue, exist. Where another view is possible, revision is not permissible – [CIT v. Greenworld Corporation [2009] 181 Taxman 111 (SC).]</p>	<p>Not defined.</p> <p>'prejudicial to the interests of the Revenue' does not necessarily mean loss of revenue. The interests of the Revenue are not to be equated to rupees and paise merely. There must be grievous error in the order passed by the ITO which might set a bad trend or pattern for similar assessments which, on a broad reckoning, the Commissioner might think to be prejudicial to the revenue administration. [Bismillah Trading Co. v. Intelligence Officer [2001] 248 ITR 292 (Ker.)]</p>

Revisionary Powers

Particulars	Income Tax	GST
Limitation to Pass Order	Two years from the end of the financial year in which the order sought to be revised was passed.	Revisional Authority may pass an order on any point which has not been raised and decided in an appeal before AA/Tribunal/HC/SC, before expiry of 1 year from the date of the order in such appeal or before the expiry of 3years from the date of initial order – Whichever is later.
No revision if	Similar in 263 Explanation (c)	<p>the order has been subject to an appeal under section 107 or section 112 (before appellate tribunal) or section 117 (HC) or section 118 (SC);</p> <p>the period of 6 months from date of communication of impugned order has not yet expired;</p> <p>more than three years have expired after the passing of the decision or order sought to be revised; or</p> <p>the order has already been taken for revision under this section at an earlier stage; or</p> <p>the order has already been passed in exercise of the powers under Section 108(1).</p>

Revisionary Powers

Particulars	Income Tax	GST
Revision in cases other than proceedings of AO	<p>Same as Sec. 263. But, the order of the authority subordinate to principal commissioner or commissioner need not be prejudicial to the interest of the revenue.</p> <p>Also, revision cannot be made prejudicial to the interest of the revenue.</p> <p>Cannot be made suo moto if the order has been made more than one year previously.</p>	No equivalent provision.
Order not levying penalty cannot be revised	<p>If the Commissioner finds, while examining the records of an assessment order under section 263, that the Assessing Officer has not initiated penalty proceedings, he cannot direct initiation of penalty proceedings because penalty proceedings are not a part of assessment proceedings. The Commissioner cannot pass an order under section 263 pertaining to penalty [CIT v. Nihal Chand Rekyan [2000] 242 ITR 45 (Delhi)]</p>	However, under the GST Act, the proceedings for tax liability and penalty are adjudicated as part of single assessment.

Law relating to recovery

Particulars	Income Tax	GST
When tax payable and when assessee deemed in default	<p>Within days of the service of the notice at the place and to the person mentioned in the notice.</p> <p>If AO has reason to believe that it will be detrimental to the to revenue if the full period of 30 days is allowed, he may, with permission of commissioner, direct that the sum in less than 30 days as may be specified by him. [S. 220(1)]</p>	<p>Within a period of three months from the date of service of such order.</p> <p>If the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him. [S. 78]</p>
Extension of time for payment	<p>On an application made by the assessee, AO may extend the time for payment or allow payment, subject to such conditions . [S. 220(3)]</p> <p>If not paid even after extension of time – treated as assessee in default. [S. 220(4)]</p>	<p>On an application filed by a taxable person, the Commissioner may extend the time for payment or allow payment of any amount due, other than the amount due as per the liability self-assessed in any return, in maximum of 24 monthly instalments, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:</p> <p>Where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery. [S. 80]</p>

Law relating to recovery

Particulars	Income Tax	GST
Discretion of AO to not treat the assessee as not being in default	<p>AO has discretion, if assessee has presented appeal – even though time for payment has expired – as long as appeal remains undisposed. [S. 220(6)].</p> <p>The recovery proceedings can be taken up only in cases where an assessee is in or deemed to be default.</p>	No equivalent provision as compulsory predeposit is envisaged.
Recovery can be made pursuant a notice	<p>Except in case where assessee makes his own estimate of advance tax, no assessee can be deemed to be in default unless a <u>notice of demand under section 156</u> is duly served on him and is not complied by him. [Sunil vs TRO 166 ITR 882].</p> <p>The law mandates issuance of separate notice before the initiation of recovery proceedings.</p>	<p>As per section 78 of the CGST Act, 2017, any amount payable by a taxable person in pursuant to an <u>order</u> passed under the Act and such amount is not paid within 3 months from the date of service of the order, then recovery proceedings may be initiated.</p> <p>There is no requirement to issue separate notice for recovery but the same should be read in to avoid being struck down.</p>

Law relating to recovery

Particulars	Income Tax	GST
What happens when assessee is in default – Recovery and modes thereof	Tax recovery officer may draw up statement in prescribed form specifying amount of arrears and proceed to recover in as per Rules in II Schedule by either attaching and selling movable or immovable property or by arresting assessee or by appointing a receiver to manage assessee's movable/immovable property. [S. 222]	Modes of recovery prescribed u/s 79 read with Rule 142-161: <ul style="list-style-type: none">(i). Deduction of any other amount payable from any money which may be under the control of the proper officer.(ii). Detaining and selling any goods belonging to such person which are under the control of the proper officer.(iii). Initiate garnishee proceedings.(iv). Distrain/seize any movable or immovable property belonging to or under the control of assessee and detain the same until the amount payable is paid.(v). District collector may recover as an arrear of land revenue.

Law relating to recovery

Particulars	Income Tax	GST
<p>What happens when assessee is in default – Recovery and modes thereof</p>	<p>Other modes of recovery u/s 226:</p> <p>(i). Notice in writing to any person from whom money is due to assessee or holds money for or on account of the assessee.</p> <p>(ii). By distraint and sale of his movable property in the manner laid down in Third Schedule.</p> <p>(iii).AO/TRO may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.</p> <p>Further modes:</p> <p>Recovery by state government as an addition to any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered. [S. 227]</p> <p>Recovery of tax in pursuance of agreement with foreign countries [S. 228A]</p>	<p>Modes of recovery prescribed u/s 79 read with Rule 142-161:</p> <p>(vi). If any amount is payable to defaulter in the execution of decree of a civil court for payment of money or enforcement of mortgage, request should be issued to Court and Court shall execute the decree.</p> <p>(vi). Sale of movable and immovable property of defaulter.</p> <p>(vii). A debt not secured by a negotiable instrument, a share or movable property not in possession of defaulter can be attached by issuing order to debtors, the company or the person in possession of movable property.</p> <p>(viii). Attachment of interest in partnership or property in custody of courts or public officer.</p> <p>(ix). Recovery can be made from “distinct persons”,</p> <p>(x). State officer can recover CGST as arrears of SGST.</p>

Law relating to recovery

Particulars	Income Tax	GST
Payment of tax on instalment	Section 220(3) provides for extension of time grant of installments for payment of tax on an application to the Assessing Officer (AO).	As per section 80 of the CGST Act, 2017, on an application by the taxable person, the Commissioner may, extend the time for payment or may allow payment of any amount due under the Act in monthly instalments. The maximum permissible instalments is 24 months. However, this benefit is subject to payment of interest under section 50 of the Act.
Transfer of property to be void in certain cases	<p>As per section 281, during the pendency of any proceedings or after the completion thereof, but before the service of notice, the defaulter shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him <u>except with the permission of the Tax Recovery Officer.</u></p> <p>An application for permission sought under section 281 cannot be summarily rejected merely because a proceeding under the Act is pending against the applicant or any tax liability is due from the applicant - Atria Power Corpn. Ltd. v. Asstt. CIT [1999] 102 Taxman 513 (Kar.).</p>	<p>As per section 81 of the CGST Act, 2017, when a person after an amount has become due from him, if he creates charge or parts with the property by way of sale, mortgage, exchange or any other mode of transfer in favour of any other person, <u>with the intention to defraud the Government revenue</u>, such charge or transfer shall be void as against any claim in respect of any tax. The same will however be valid as regards as innocent purchaser.</p> <p>The transfer of property is to be void only when the proper officer can prove that there is an intention to defraud the Govt.</p> <p>[Does it mean it is open to proper officer to decide whether the transfer is void or he should approach the civil court to</p>

Law relating to recovery

Particulars	Income Tax	GST
Tax to be first charge on property.	<p>No such express provision.</p> <p>However, as per section 222(1) read with Rule 16(1) of second schedule, after issuance of notice by TRO, the defaulter or his representative shall not be competent to mortgage, charge, or otherwise deal with any property belonging to him except with the <u>permission of the Tax Recovery Officer</u>, nor <u>shall any civil court issue any process against such property in execution of a decree for the payment of money.</u></p> <p>Income-tax department cannot claim any priority in payment from liquidation estate merely because it had issued attachment order much prior to initiation of liquidation proceedings under Insolvency and Bankruptcy Code - <i>Leo Edibles & Fats Ltd. v. Tax Recovery officer</i> [2018] 99 taxmann.com 226/259 Taxman 387 (AP & Telangana).</p>	<p>As per section 82 of the CGST Act, 2017, notwithstanding in any other provisions under law except IBC, 2016, any amount payable on account of <u>tax, interest or penalty shall be a first charge</u> on the property of such taxable person.</p>

Liability in some specified cases

Particulars	Income Tax	GST
<p>Liability in case of transfer of business</p>	<p>Section 170 of the Act, specifies that the successor to any business shall be assessed in respect of the income of the previous year in which the succession took place, from the date of succession. The liability imposed on the successor under this section also extends to assessment of income <u>prior to the date of succession, in case the predecessor cannot be found by the tax authorities.</u></p> <p>Where the business of a firm is taken over by one of its partners, it is a case of succession - S.M.S. Karuppiah Pillai v. CIT [1941] 9 ITR 1 (Mad.)</p> <p>Taking over a part of the business will not amount to 'Succession'. [Premji Khimraj Shah v. ITO [1979] 118 ITR 216 (Guj.).]</p>	<p>As per section 85 of the CGST Act, 2017, where a taxable person, liable to pay tax, transfers his business in <u>whole or in part</u>, by sale, gift, lease etc. or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall <u>jointly and severally</u> be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person <u>up to the time of such transfer.</u></p>

Liability in some specified cases

Particulars	Income Tax	GST
Liability of agent and principal	<p>Section 163 says that an agent in relation to a non resident includes inter alia any person in India from or through whom a non-resident does any business or is in receipt of any income, directly or indirectly. Section 160 declares such an agent as representative assessee.</p> <p>Under Section 161 representative assessee is treated as the person who is receiving the income or in whose favour the income has accrued beneficially. Tax shall be levied and recovered in his own name but in a representative capacity.</p>	<p>As per section 86, where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall be jointly and severally liable to pay the tax payable on such goods under the CGST Act.</p>

Liability in some specified cases

Particulars	Income Tax	GST
Liability in case of amalgamation and merger	In terms of Section 170(2) of the Act, once the amalgamation is effective, assessment in respect of the income of the amalgamating company upto the appointed date has to be in the name of the amalgamated company as successor in interest of the amalgamating company.	<p>When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.</p> <p>The amalgamating entity ceases to exist upon the approved scheme of amalgamation. The amalgamating company cannot thereafter be regarded as a “person” in terms of Section 2(31) of the Act 1961 against whom assessment proceedings can be initiated and an assessment order passed. Spice Entertainment Ltd. v Commissioner of Service Tax 2012 (280) ELT 43 (2012)</p>

Liability in some specified cases

Particulars	Income Tax	GST
Liability in case of liquidation of company	<p>Section 178 of the Act, deals with liquidation in company. The provisions are same as that of the GST law.</p> <p>The tax payment referred to in section 178 is in respect of the income of a company accrued before its winding-up. It has no application to the income accruing to the company after the order for its winding-up. ITO v. Official Liquidator [1978] 111 ITR 77 (Ker.).</p>	<p>When any company is being wound up, every person appointed as receiver of any assets of a company (referred to as the liquidator), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.</p> <p>The commissioner after making enquiry, notify the liquidator, the amount that would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.</p>
Liability of directors in case of company in liquidation	<p>Section 179 provides that where any tax dues from private limited company in respect of any income of any previous year <u>cannot be recovered</u> then every person, who was director of Private Limited Company at any time during the relevance previous year shall be <u>jointly and severally liable</u> for the payment of such tax unless he proves that the non-recovery <u>cannot be attributed to any gross neglect misfeasance or breach of duty on his part in relation to the affairs of the company.</u></p>	<p>When any company is wound up and any tax, interest or penalty determined under this Act on the company, <u>whether before or in the course of or after its liquidation, cannot be recovered</u>, then every person who was a director of such company at any time during the period for which the tax was due, shall <u>jointly and severally</u> be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery is <u>not attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.</u></p>

Liability in some specified cases

Particulars	Income Tax	GST
	<p>The phrase 'cannot be recovered' requires that the revenue must establish that recovery cannot be made against the company, and then alone, it would be permissible for the revenue to initiate action against the director or directors responsible for conducting the affairs of the company [Indubhai T. Vasa v. ITO <u>[2005] 146 Taxman 163 (Guj.)</u>/Bhagwandas J. Patel v. Dy. CIT <u>[1999] 154 CTR (Guj.) 497.</u>]</p>	
<p>Liability in case of partition of HUF or AOP</p>	<p>As per section 171(6), every member of the HUF before partition shall be jointly and severally liable for the tax on the income assessed of the HUF. The same section empowers the assessing officer to recover the tax due on completion of the assessment on the disrupted HUF from every person who was member of the HUF before partition.</p> <p>Joint liability of the member is personal and distinct from the personal and several liability as found by the Supreme Court in the case of Govindas vs. ITO AIR 1977 SC 552.</p>	<p>Where the taxable person being the HUF or AOP is liable to tax under the Act and the property of such HUF or AOP is partitioned amongst the various members or groups of members then each member or group of members shall jointly and severally be liable to pay the tax, interest or penalty due from the HUF or AOP. [Section 93(2)].</p>

Liability in some specified cases

Particulars	Income Tax	GST
Liability of partners and LLP of firm to pay tax	Every person who was the partner or his legal representative, shall be jointly and severally liable along with the firm for the amount of tax, penalty or other sum payable by the firm for the assessment year to which such previous year is relevant. [Section 188A/167C].	Where a taxable person, liable to pay tax, interest or penalty is a firm, and the firm is dissolved, then, every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution. [section 93]
Liability if a person dies	<p>Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased. [Section 159(1)]</p> <p>Legal representative of deceased assessee would be deemed to be an assessee [section 159(3)].</p> <p>Legal representative' includes its plural form - Under section 13(2) of the General Clauses Act, words used in singular will include their plural also. Therefore, the expression 'legal representative' in section 159 takes in plurality of legal representatives - First Addl. ITO v. Mrs. Suseela Sadanandan [1965] 57 ITR 168 (SC).</p>	<p>where a person, liable to pay tax under this Act, dies, then:</p> <ul style="list-style-type: none"> - If the business is carried on by the legal representative or other person, then such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act. - if the business carried on by the person is discontinued, then the legal representative of the deceased, shall be liable to pay out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, penalty or interest due from such person under this Act.[Section 93(1)]

Prosecution

Particulars	Income Tax	GST
Presumption as to culpable mental state ITA: S. 278E; GST: S. 135		<ul style="list-style-type: none">• In any prosecution for any offence which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state.• The presumption is rebuttable.• "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.• For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.• An act of voluntary disclosure brought out by a person rules out the possibility of fraud [RJ Nair Vs State of Maharashtra 1991 (52) ELT 524 (Bom)]• Mere carelessness on the part of the accused or suspected knowledge on the part of the accused that he is committing an offence under the GST law is not sufficient. [1984 (18) ELT 278 (Ori)].• If, from the statement of the accused and the and the complaint, it is clear that the accused did not possess any knowledge of commission of any offence, the accused would be entitled to acquittal.• Culpable mental state can be inferred even from an attempt to commit crime, i.e, if an act is deliberately done and manifests a clear intention to commit offence aimed, being reasonably proximate to consummation of the offence. [State of Maharashtra Vs Mohd Yakub (1980) 3 SCC 57]

prosecution

Particulars	Income Tax	GST
What offences can be prosecuted	<p data-bbox="333 248 512 287">S. 279(1):</p> <ul data-bbox="333 301 1589 1365" style="list-style-type: none"><li data-bbox="333 301 1589 396">• Contravention of order made u/s 132(3), i.e, not to remove when impracticable to seize<li data-bbox="333 411 1589 506">• Contravention of 132(1)(iib), i.e, failure to afford opportunity for authorized officer to inspect books of accounts.<li data-bbox="333 521 1589 559">• Dealing with property to thwart tax recovery.<li data-bbox="333 574 1589 669">• Failure to comply with provisions of section 178(1) and (3) (i.e, company in liquidation)<li data-bbox="333 684 1589 829">• Failure to remit TDS or to remit tax on distributed profits on domestic companies OR Central Government OR to remit TDS on winnings on lottery in kind to the Government.<li data-bbox="333 843 1589 882">• Failure to pay TCS<li data-bbox="333 896 1589 935">• Willful attempt to evade tax, penalty or interest<li data-bbox="333 949 1589 988">• Willful failure to furnish return<li data-bbox="333 1002 1589 1098">• Willful failure to produce accounts and documents under section 142(1) or to comply with a notice under section 142(2A)<li data-bbox="333 1112 1589 1150">• False statement in verification or delivery of false account, etc.<li data-bbox="333 1165 1589 1260">• Falsification of books of account or document, etc., to enable any other person to evade any tax<li data-bbox="333 1275 1589 1365">• Abetment of false return, account, statement or declaration relating to any income or fringe benefits chargeable to tax	<p data-bbox="1625 248 1803 287">S. 132(1):</p> <ul data-bbox="1625 301 2474 1308" style="list-style-type: none"><li data-bbox="1625 301 2474 339">• Supply of goods without invoice<li data-bbox="1625 354 2474 392">• Issue of invoice without supply of goods<li data-bbox="1625 406 2474 502">• Avails ITC based on invoices where goods are not supplied<li data-bbox="1625 516 2474 612">• Fraudulently avails ITC without issue of any invoice<li data-bbox="1625 626 2474 722">• Collects tax but fails to remit tax beyond 3 months<li data-bbox="1625 736 2474 775">• Evades tax or fraudulently obtains refund<li data-bbox="1625 789 2474 885">• Dealing in goods which he knows or has reason to believe is liable for confiscation<li data-bbox="1625 899 2474 1045">• Concerned with supply which he knows or has reason to believe are in contravention with the provisions of the GST Act.<li data-bbox="1625 1059 2474 1205">• Fails to supply information which is required to supply or supplies false information<li data-bbox="1625 1219 2474 1308">• Attempts or abates commission of above offences

prosecution

Particulars	Income Tax	GST
Previous sanction for prosecution	Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority must sanction [S. 279(1)]	Commissioner must sanction [S. 132(5)]
Compounding	Any Offence under the Act either before or after the institution of proceeding can be compounded by PCCIT or CCIT or DG. [S. 279(2)]	Any Offence under the Act either before or after the institution of prosecution can be compounded by Commissioner on payment by person accused of the offence a compounding amount. [S. 138]
Second and Subsequent Offences	Punishable by 6 months to 7 years of imprisonment [S. 278A]	Imprisonment for a term which may extend to five years and with fine [S. 132(2)]
Minimum term and maximum term of imprisonment	Range from 3 months upto 7 years. No upper limit of fine is prescribed.	Range from 6 months to 5 years. No upper limit of fine is prescribed.
Offences by Companies	Every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Offence committed is attributable to neglect of any director, manager etc, such person is deemed to be guilty of such offence. [S. 278B ITA and S. 137 GST]	

Prosecution

Particulars	Income Tax	GST
Which offences are cognizable and which offences are non-cognizable	<p>List of non-cognizable offences u/s 279A:</p> <ul style="list-style-type: none"> • Failure to remit TDS under Chapter XVII-B. • Willful attempt to evade tax, penalty or interest • Wilful attempt to evade payment of any tax, penalty or interest • Willful failure to furnish return of income or in response to notice under section 142(1)(i) or section 148 or section 153A • False statement in verification or delivery of false account, etc. • Abetment of false return, account, statement or declaration relating to any income or fringe benefits chargeable to tax 	<p>List of cognizable offences u/s 132(1): The following offences if the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds Rs. 5 crore:</p> <ul style="list-style-type: none"> • Invoice not issued with intention to evade • Invoice issued of higher amount to get excessive ITC • Availed excessive ITC by issuing fake invoices • Tax collected but not paid within 3 months
Proper court to try offences	Special courts (of the level of Magistrate of 1 st Class) constituted by central government in consultation of CJ of HC to try offences. CrPC to apply. [S. 280A-280D]	No court inferior to that of a Magistrate of the First Class, shall try any such offence. [S. 134]

Provisions relating to Search

Particulars	Income Tax	GST
When	<p>Sec 132 In consequence of 'information in his position', the authorised officer has 'reason to believe' that:</p> <ol style="list-style-type: none"> I. Any person to whom summons is issued or might be issued would not produce the requisite information OR II. Any person is in possession of any money bullion, jewellery or other valuable things. 	<ol style="list-style-type: none"> I. Pursuant to an 'inspection' or II. Proper officer has 'reason to believe' that any goods liable to confiscation or books or things are secreted in any place. (Sec.67)
Powers of the proper/ authorised officer	<ol style="list-style-type: none"> I. Enter and search any building, vessel etc. where he has reason to believe that money, jewellery, documents are kept. II. Break open the lock of door, box etc. III. Search any person who has got out of or is about to, if the authorised officer has reason to believe that such person/s has secreted the books, registers etc. of any other person. 	<ol style="list-style-type: none"> I. The proper officer may authorise any officer to search and seize or he may himself search and seize goods, documents or books or things. <p>The other powers include:</p> <ol style="list-style-type: none"> I. Power to seal or break open the door or electronic devices etc. in which any goods, accounts, registers are suspected to be concealed.

Provisions relating to Search

Particulars	Income Tax	GST
Powers of the proper/ authorized officer	<ol style="list-style-type: none"> I. Seize any such books, money, bullion, jewellery etc. as a result of search. II. Place marks of identification on the books or documents III. Make a note or an inventory of money, jewellery or other valuable things. 	Same powers
Seizure of stock-in-trade of business	There is no power to seize the stock-in-trade, but the officer is empowered to make a note or inventory of such stock-in-trade	Seizure and confiscation of goods is possible.
What if goods/valuable article or thing is not possible to seize	<p>Where it is not possible to seize any valuable article or thing, due to its volume, weight etc.. The proper office may serve notice on the owner that he shall not remove, part with, or deal with the goods except with the permission. Such action is deemed to be seizure.</p>	<ol style="list-style-type: none"> I. Where it is not practicable to seize any goods, the proper office may serve notice on the owner that he shall not remove, part with, or deal with the goods except with the permission. II. The Government having regard to the perishability or hazardous nature of goods, may specify the class of goods which shall be disposed off, immediately after the seizure of goods.

Provisions relating to Search

Particulars	Income Tax	GST
Retention of books and other valuable articles seized	The books or other documents, shall not be retained for more than 30 days from the date of order of assessment, unless an approval has been obtained in writing.	<ol style="list-style-type: none"> I. The documents or books seized could be retained until such time, it is necessary for inquiry or proceedings. II. However, the books or other documents, which have not been relied upon for the issuance of notice, shall be returned within 30 days from the date of issuance of notice.
Release of goods on provisional basis	No such provisions	The goods seized shall be released on a provisional basis, upon execution of bond and furnishing of guarantee or on payment of tax, interest and penalty.
Extension of jurisdictional area	<ol style="list-style-type: none"> I. Where any building, vessel etc. is within the area of jurisdiction of the authorised officer, but such authority has no jurisdiction over the person whose documents, things etc. are to seized and II. Delay in getting authorization would cause prejudice the interest of the revenue. <p>Then the authorised officer in whose jurisdiction the building or vessel is located may himself exercise the power to search</p>	There is no specific provision as such.

Provisions relating to Search

Particulars	Income Tax	GST
Extension of authorisation	<p>I. Where a search of any documents, valuable articles etc. is authorised and</p> <p>I. any other officer other than the officer who is authorised, has reason to suspect that such document or asset is kept in any other building, place etc. not mentioned in the authorization, then he may authorise such place or building.</p>	<p>I. No such provisions</p>
Provisional attachment of property	<p>I. During the course of search or seizure or within 60 days from the date of authorisation and</p> <p>II. for the purpose of protecting interest of the revenue, the proper office may provisionally attach any property belonging to the assessee.</p> <p>The provisional attachment so made, shall be valid only for six months.</p>	<p>No such provisions during search or seizure but Section 83 allows provisional attachment when assessment proceedings are pending to protect interest of revenue. Maximum period is one year from date of order of provisional attachment.</p>

Accounts and Records

Particulars	Income Tax	GST
Relevant section	Section 44AA of the Income Tax Act, 1961 prescribes that if the sale/gross receipts from the business or profession is more than Rs. 25 Lakhs or the income from business or profession is more than Rs. 2.5Lakh in any of the 3 preceding years, then books of accounts will be compulsorily maintained. Books of accounts has to be kept at the principal place of business.	As per section 35 of the CGST Act, 2017, every registered person shall maintain GST records at the principal place of business.
Professionals defined	Legal, Medical, Engineering, Architectural Accountancy, Technical consultancy, Interior decoration, Authorised Representative (one who charges fees for representing someone before tribunal or any authority), film artist, company secretary	The following persons are responsible to maintain specified records: (a) The owner i.e. Manufactures, (b). Service Supplier and Trader. (c).Operator of Warehouse or Godown or any other place used for storage of goods. (d).Every Transporter
Books of accounts as per Rule 6F	Cash books, journals, ledgers, copies of bills or receipts., details of stock, daily cash register.	Production or manufacture of goods, inward and outward supply of goods or services or both, stock of goods, Input tax credit availed, output tax payable and paid and other particulars as may be prescribed.

Accounts and Records

Particulars	Income Tax	GST
Period of retention	Books should be maintained for a period of 6 years from the end of the relevant assessment year.	Books and records should be maintained for 6 years from the last date of filing of the annual return (31st December) for that year.
Records of tax paid or payable	-	Every registered person shall keep and maintain an account, containing the details of tax payable including tax payable under reverse charge, tax collected and paid, input tax, input tax credit claimed, together with a register of Tax Invoice, Credit Notes, Debit Notes, Delivery Challan issued or received during any tax period.
Consequence of not maintaining proper records	Failure to maintain books of accounts and other documents or to retain them as required u/s 44AA attracts penalty of Rs. 25000 u/s 271A. After levying penalty for non maintenance of books of accounts, no penalty can be levied for not getting the books of accounts audited.[CIT vs S.K. Gupta and Co. [2010] 322 ITR 86 (Allahabad)]	The proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of Section 73 or Section 74, shall apply for determination of tax liability.

Provisions relating to Audit

Particulars	Income Tax	GST
General Audit or Audit by assessee	<p>Section 44AB of the Income-tax Act, 1961 contains the provisions for the tax audit of an entity.</p> <p>The persons whose incomes exceeds the prescribed threshold limit should get their accounts audited.</p>	<p>In terms of section 65(1) of the CGST Act, 2017, the Commissioner or any other officer authorised, may undertake audit of any registered person for such period, at such frequency as prescribed in Rule 101 of the CGST Rules, 2017.</p>
Time limit to complete the audit	<p>Before the date of filing of return of income of the assessee.</p>	<p>The audit of the assessee to be completed within a period of three months and on conclusion of the audit, the authorized officer shall, within thirty days, inform the assessee of the findings, his rights and obligations and the reasons for such findings.</p>
Audit by assessee	<p>The General audit as contemplated under section 44AB is an obligation of the assessee [Pani Devi v. UOI [2000] 245 ITR 798]</p>	<p>As per section 35 of the CGST Act, 2017, every registered person whose turnover during a financial year exceeds two crores, he shall get his accounts audited by a chartered accountant or a cost accountant and shall submit his report In the prescribed manner.</p>

Provisions relating to Audit

Particulars	Income Tax	GST
Special Audit or Audit by departmental authorities	As per section 142(2A) of the Income Tax Act, 1961, if at any stage of proceedings, AO having regard to the <u>nature and complexity of the accounts of the assessee and the interests of the revenue</u> , he may direct the assessee to get the accounts audited by an accountant and to furnish a report to such audit and subject to certain other conditions.	As per section 66 of the CGST Act, 2017, if at any stage of <u>scrutiny, investigation or any other proceedings</u> , any officer not below the rank of AC, having regard to the <u>nature and complexity of the case and the interest of revenue</u> , is of the opinion that the <u>taxable value has not been correctly declared or the input tax credit availed is not within the normal limits</u> , he may, direct such registered person to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.
General and Special Audit are mutually exclusive .	Assessing Officer can pass an order to have a special audit under section 142(2A), even though the accounts of the petitioner have already been audited under section 44AB i.e. general audit.[Jagatjit Sugar Mills Co. Ltd. v. CIT [1994] 210 ITR 468 (P&H)]	The provisions of section 66(3) of the CGST Act, 2017, makes it clear that the order for conducting special audit could be made even if, the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.

Provisions relating to Audit

Particulars	Income Tax	GST
Show cause notice or reassessment notice based on the audit party's report	The true evaluation of the law in its bearing on, the assessment must be made directly and solely by the ITO. The interpretation or observation made by the audit party cannot be a basis for assessment or re-assessment. [Eastern Newspaper Society vs CIT 2002-TIOL-870-SC-IT-LB]	As per section 66(6) of the CGST Act, 2017, if the special audit results in detection of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized then the regular assessment proceedings under section 73 or section 74 of the CGST Act,2017 could be initiated. The opinion of the audit party cannot constitute information and cannot be a basis for reopening assessment [Haryana Co-operative Sugar Mills Ltd. v. State of Haryana (1996) 107 STC 103,

Thank You

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