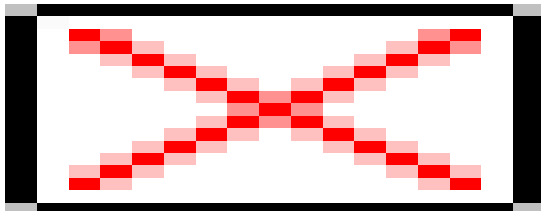


## An eye on taxation of CSR

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**ABRAHAM**

Maslow, a psychology professor known for his expertise on 'human behavior' proposed one of psychology's most popular theories in 1943, which quickly came to be known as '**Maslow's Hierarchy of Needs**' or '**Maslow's Pyramid**'.

The theory sums up the need of humans at different stages of life. It starts with basic 'physiological' needs such as Food and Clothing at the bottom of a pyramid and progresses through 'Safety', 'love and belonging', 'Self-esteem' to eventually reach 'Self-actualization' at its tip which comprises of '**the need to give back to society**'.

Self-actualization in particular is also seen as an indicator of individual's behavior as well as 'organizational behavior' to have realized its 'full potential' or 'all that it could be' and is the very genesis of 'Corporate Social Responsibility' a.k.a. CSR! It started as an attempt of an organization to strengthen and uplift her people to achieve its full potential and evolved to include care and concern for the Society at large. In its present avatar, CSR also aids Companies to build brand image.

This development led to codification of statutory framework around CSR, which began with the Companies Act, 2013 that made CSR expenditure a mandatory requirement. This statutory framework further evolved when the Ministry of Corporate Affairs notified the Companies (Corporate Social Responsibility) Amendment Rules, 2021 on January 22, 2021 to monitor CSR expenditure. The increasing scope of statutory framework is now also witnessing development of tax laws around CSR, which we attempt to deliberate in ensuing text.

### **INPUT TAX CREDIT AND CSR**

Goods and Services tax law sought to introduce fungibility of tax credits in a more comprehensive manner than its predecessors, and in that it allowed Input Tax Credit on a wide spectrum of input supply 'used in course or furtherance of business'. The exception of a select few input supplies that are barred from tax credit system were specified as negative list under Section 17(5) of the Central Goods and Services Tax Act, 2017.

With the growing intrinsic nexus of CSR with 'furtherance of business', be it by building brand image or complying with 'mandatory expenditure' as per Companies Act, credit of GST paid on CSR expenses seemed available by industry at large.

### **ADVANCE RULING AND AMBIGUITIES**

However, the aforesaid understanding was soon unsettled by varied, and often contradictory, rulings by Advance Ruling Authority. Notably, Kerala AAR in ***M/s. Polycab Wires Private Limited - 2019-TIOL-107-AAR-GST***

ruled that input tax credit will not be available with respect to supplies made free cost towards CSR. The ruling essentially equated CSR with a non-taxable supply to deny the credit. Soon after, Telangana AAR in ***M/s. Bambino Pasta Food Industries Private Limited - 2022-TIOL-126-AAR-GST***

ruled that expenses towards CSR being a mandatory responsibility, is an expenditure made in the furtherance of the business and thus credit be allowed. There exists a plethora of Rulings to contradictory ends. The entire issue also lacked clarity as to whether expenses made beyond expenses as stipulated under Companies Act would be treated as CSR expenses for the purpose of tax credit or not!

## **AMENDMENT OF SECTION 17(5) AND CHANGE IN POSITION OF LAW**

These ambiguities, moves and counter-moves across Advance Ruling Authorities continued until provisions of Section 17(5) itself were amended restricting the credit on CSR expenses to an utter surprise of taxpayers.

While the popular demand sought availability of credit on CSR expenses, which was also aligned with the very intent of reducing cascading effect by introduction of GST, the restrictive amendment appears to be an attempt to plug a rather peripheral issue of discouraging unwarranted or alien spendings under the guise of CSR. It wouldn't be any surprise if scores of petitions challenge the very constitutionality of such an amendment.

## **INCOME TAX ACT, 1961**

These restrictive provisions coupled with amendment to Section 17(5) of the Central Goods and Services Tax [Act, 2017](#) furthers the agony. For one, the provisions of Income Tax Act, 1961 disallows deduction of CSR expenses and increases the very fold of restrictions around CSR expenses. It also disallows GST paid on such CSR expenses causing a double whammy, as now, this GST is neither available as a deduction for Income Tax nor as credit under GST!

Ironically, these are the very statutes that restrict availment of credit of GST paid on capital goods, if these are claimed as deduction by way of depreciation and seeks to attain mutual exclusivity of 'benefit' under Income Tax and GST but fails to maintain similar mutual exclusivity of 'restriction' with respect to CSR expenditure. Such contradictory approach resulting in 'discriminatory treatment' is also a likely challenge to constitutionality of amendment to Section 17(5) under the aegis of Article 14 of the Constitution of India.

## **CONCLUSION**

On a brighter side, the amendment to Section 17(5) is prospective and by that it also endorsed availability of credit on CSR expenditure prior to such amendment! This has now opened door for many taxpayers who forgo the credit of CSR expenses prior to amendment to claim it now. The limitation to claim such credit however, again, can only be addressed by Writ jurisdiction of the courts.

Amidst the tightening grip of regulators to restrict tax credit benefits and deductions simultaneously with increased vigilance to monitor the CSR expenses, the issue of tax credit appears to have attained finality, to say the least, and even though it takes away the benefits for all the taxpayers, it also creates a level playing field across the industries and plugs the deviations created by various Advance Rulings.

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