



# UNIT

## 10

### Contents

#### Chapter I

- The Factories Act, 1948
- The Industrial Disputes Act, 1947

**The aim of this chapter is to:**

- Introduce you to labour related regulations of business

#### Objectives

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

- Outline the legal and statutory obligations affecting labour related regulations
- Assess whether they are relevant to your particular business
- Know how to satisfy these regulations and which agencies to contact
- Identify the official forms and leaflets or publications you need to obtain
- Set out an action plan for satisfying the statutory obligations applicable to your project



We presume you are going to set up a small scale industry of your own. In the previous units we have talked about various aspects involving the setting up and managing an industry, In this unit we are going to discuss about various Acts, Rule and Regulations applicable to you as a small scale entrepreneur; and which you have to comply with. The are called statutory requirements.

As a potential entrepreneur, you may like to known how to comply with the regulatory frame work of the State and Central Governments as regards to set up as well as carry out the operations of your enterprise. Knowledge of this frame work helps in smooth management of your business. This and the subsequent chapters of this unit introduce you to the statutory requirements.

In this chapter we attempt to make you aware the labour related enactment governing the small scale sector.

The labour law can be grouped into four main categories:

1. Factory Administration
2. Social Legislation
3. Wage Legislation

## **THE FACTORIES ACT, 1948**

### **Applicability**

This act is applicable to enterprises where the number of employees is :

- Ten or more where power is used; or
- Twenty or more where power is not used.

### **Registration Procedures**

\* Submit

- Application in Form No. 1 along with civil drawings to Chief Inspector of Factories for construction/extension of building.
- Application in triplicate in Form No. 2 for registration.
- Application in Form No. 3 for grant of licence alongwith the required fee.



\* If there is any addition to the existing load/structure, the same should be informed to the Chief Inspector of Factories.

\* In case of death of the licence, the licence can be transferred to other person.

\* The occupier (atleast 15 days before the occupation or use of any premise as a factory) must send to the Chief Inspector a written notice containing:

- The name and situation of the factory;
- Name and address of the occupier;
- Nature of manufacturing process;
- Total rated horse-power installed or to be installed in the factory;
- Number of workers likely to be employed;
- Appointment of the manager in Form no. 3A. If the manager is not appointed yet, the occupier is to be treated as the manager.

The forms are available with the Officer of the Chief Inspector of Factories.

## **Major Areas of Entrepreneurial Responsibility**

You have to hold the responsibility of the following:

### **Health**

- Arrangements for waste and effluent treatment.
- Adequate ventilation for circulation of fresh air.
- Adequate safety measures to be adopted for inhalation of dust and fumes.
- Adequate space for worker (500 cub. mts. per person).
- Drinking water-place to be mentioned in the local language. A minimum distance of 6 mtrs. should be kept from any contaminating body/activity.
- Sufficient latrine and urinal facility. Separate enclosures for men and women should be provided.

### **\* Cleaning:**

- Daily sweeping of the premises;
- Repainting of revarnishing of ceilings, wall, sides, tops of passages and staircases at least once in 5 years; or



- Weekly washing/cleaning of work rooms'
- If it is white washed, then at least once every 14 months.

Keep a record of the above in the prescribed register.

### **Safety**

- Dangerous parts of all kinds of machines should be securely fenced.
- Examination of parts of machinery, which are in moving condition must be done by a skilled male worker and his name must be put in the prescribed register keep for it.
- Suitable striking gear or other efficient mechanical appliances should be provided.
- Now women/children should be employed in any part of cotton pressing.
- Every hoist/lift must be in good condition and examined by a competent person at least once in every 6 months and a relevant register should be kept (Form No. 9) for records.
- Lifting machines, chains, ropes and lifting tackler should be examined at least once in 12 months (Form No. 10).
- A report of examination should be maintained (Form No. 11).
- Provision should be made for protect eyes in processes which involves a risk of injury to the eyes.
- Protection from dangerous fumes, gases, etc. A certificate from a competent authority must be taken as proof of the emptiness of gas from the area or tank. (Notice of poisonous gas must be made in Form No. 22)

### **Precautionary Measures for Fire**

- Adequate means of escape of workers should be provided
- Exit doors must always be kept unlocked or unfastened.
- The exit doors should be indicated in block letters in red in a language which the majority of the workers understand.



- Provision should be made for clear warning.
- Passage must be kept free for giving unhindered access to means of escape.

### **Welfare**

- Washing facility - separate for men and women.
- Facility for storing and drying cloths.
- Sitting arrangement for workers who work in standing position.
- Provision of first-aid facility.

### **Working Hours**

- Not more than 48 hours per week for adults.
- List of holidays or change of working days should be approved by the Factory Inspector, and displayed prominently in the factory.
- Consecutive working of more than 10 days should not be allowed.
- Overtime should be give (@2 time the normal wage) if an employee works more than 9 hours a day and 48 hours in a week.
- Period of work should be displayed in Form No. 14 and a register be maintained in Form No. 19.
- Women should not be allowed to work between 10.00 p.m. to 5.00 a.m. (Normally 7.00 p.m. to 6.00 a.m.).
- Timings for working hours should be displayed near the office.

### **Notice of Accident**

- Any occurrence of accident should be informed within 48 hours to the Chief Inspector of Factors (Form No. 21) and Employees State Insurance Corporation. It is fatal, notice should also be given to the District Magistrate or Officer-in-Charge of the nearest Police Station immediately.

### **Annual Leave**

- For an adult who has worked for a period of 240 days, one day for every 20 days.



- For a child one day for every 15 days.
- Leave record should be maintained (Form No. 18).
- Leave book to be given to every worker (Form No. 19).

### **Records to be Kept**

- Muster roll
- Adult workers' register
- Register of child workers and adolescents
- Overtime register
- Advance register
- Register for fine
- Register of deductions
- Register of wages
- Register accidents and dangerous occurrences
- Bound inspection book
- Register of cleaning and whitewashing
- Record of examination of parts of machinery

### **Intention of Returns**

- Half yearly returns should be submitted in July and January (Form No. 25).
- Annual returns should be submitted in Form No. 24 in January.

The Factories (Amendment) Act, 1986 had brought about some groundbreaking changes in the Act giving it an entirely different perspective. The Amending Act provides stricter punishment for breach of safety provisions. The present edition contains all the changes brought about by the Amending Act in the text and the commentaries. A new case-law and statute law supplement has been added to the book bringing it up to date till 2003.



## SAQ 1.1

List the Forms required under the Factories Act.

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2	
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## The Industrial Disputes Act, 1947

### Applicability

This Act applies to all factories and establishments regardless of the number of employees on its roll. The act applies to every business, trade, undertaking, services, avocation, etc., which is also considered as in industry under this Act.

### What is an Industrial Dispute

It means any dispute or differences that may arise between

- \* Employers or
- \* Employers and Employees or
- \* Employees



which is connected with

- \* employment or non-employment; or
- \* terms of employment; or
- \* the conditions of labour of any person.

However, where an employer terminates the services of a workman, any dispute arising out of such termination shall be deemed an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute.

### **Authorities under the Act**

The Act provides for reference of industrial disputes to authorities viz.

- a) Works Committee
- b) Conciliation Officer
- c) Board of Conciliation
- d) Courts of Inquiry
- e) Labour Court
- f) Industrial Tribunals and
- g) National Tribunal.

### **The Award and Its Scope**

Normally an award bestowed by any of the authorities becomes enforceable on the expiry of 30 days from the date of its publication unless the Central and State Governments, as the case may be, instruct otherwise on the grounds of expediency. An award becomes operative either from a date specified by the award itself or on the expiry of 30 days from the date of its publication of made by the Central or State Governments. The date of enforceability and operation may coincide only if no date is specified in the award.

### **Full Wages Payable During Pendency in Higher Courts**

Where a Labour Court, Tribunal or National Tribunal directs by its award, reinstatement of any worker and the employer prefers an appeal against it in a High Court or Supreme Court, the employer shall be liable to pay such a workman during the pendency of appeal full wages last drawn by him, inclusive of maintenance allowance payable under any rule, unless the





workman had been employed in any other establishment gainfully. The onus is on the employer to prove the latter.

### **Strike and Lock-outs**

No workman employed in any industrial establishment shall go on strike and no employer shall declare lock-out;

- During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings.
- During the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings.
- During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings where a notification has been issued.
- During any period of which a settlement or award is in operation in respect of any matters covered by the settlement or award.

If a strike or lock-out commences in contravention to the above - mentioned statutes, the same be treated as illegal strike or lock-out.

A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed illegal.

### **Penalty for Illegal Strike and Lock-outs**

Any workman who commences a strike which is illegal shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to fifty rupees or both.

Any employer who declares lock-out which is illegal shall be punishable with imprisonment for a term which may extend to one month, or with a fine which may extend to one thousand rupees or both.

Any person who instigates or incites others to take part in a strike or lock-out which is illegal will be punished with imprisonment for a term which may extend upto six months or with a fine which may extend to one thousand rupees or both.



## **Lay-off**

Lay-off means the inability, failure, refusal of an employer to give employment to any of his employees owing to:

- shortage of coal, power or raw materials;
- accumulation of stocks; or
- breakdown of machinery; or
- natural calamity or any other related reason.

Whenever a workman, who has completed not less than one year of continuous service under the employer is laid off, he shall be paid by the employer fifty per cent of the total of basic wages and dearness allowance for all day during which he is laid off, except for weekly holidays that may intervene. If however, during any period of twelve months, a workman is laid off for more than 45 days, no such compensation is payable for a period beyond 45 days, if there exists an agreement to that effect. An employer may retrench such a worker at any time after the expiry of the first forty-five days of lay-offs, and when he does so any lay - off compensation paid to the worker during the preceding twelve months may be set off against the compensation payable for retrenchment. The employer shall declare lay-off on the notice board in the premises.

## **Retrenchment**

Retrenchment means termination of services of a workman by the employer of any reason whatsoever, or else as a punishment by way of disciplinary action.

## **Conditions for Retrenchment**

No workman who has been in continuous service of a minimum one year may be retrenched unless:

- The workman has been given one month's notice, or in lieu of which he has been paid wages for the notice period.
- The workman has been paid compensation equal to 15 day average pay for every completed year of continuous service or any part thereof if in excess of six months; and



- Notice is served on the appropriate government in the prescribed form.

The employer shall normally retrench the workman last employed first and in that order, whenever he decides to retrench workmen belonging to a category.

## **Closure**

An entrepreneur who intends to close down his undertaking should serve a notice at least 60 days before the date of intended closure to the Government stating the reasons for it. Such notice is not obligatory for an undertaking in which less than 50 workmen are employed.

## **Compensation in Case of Closure**

Every workman who has been in continuous service of one year is entitled to receive one month's notice or wages in lieu of such notice. He shall also be paid compensation equivalent to 15 days average pay for every completed year of continuous service. However, if the undertaking is closed down owing to circumstances beyond the control of the employer, the compensation payable to the workman by him shall not exceed his average pay for three months.

## **`Badli' Workman (Temporary workman)**

A 'badli' workman is a workman employed in place of another workman, whose name must be in the muster roll. If he is employed continuously for one year, a 'badli' workman will become a regular workman. He is then entitled to claim compensation.

## **Change in Service Conditions**

Any change related to the working condition from employer's side/employees' side shall be notified in the prescribed form.

## **Forms**

- E : Notice of change of service condition proposed
- 01 : Notice of lay off
- 02 : Termination of lay off
- 03 : Application for permission of lay off
- P : Notice of retrenchment to be given by an employer
- PA : Notice of permission for retrenchment



Q : Notice of closure

QA : Permission of closure

### SAQ 1.2

Write in one or two lines on the functioning of each of this following forms:

Form 03: \_\_\_\_\_

Form PA: \_\_\_\_\_

Form QA: \_\_\_\_\_



# UNIT

## 10

### Contents

#### Chapter II

- Wage Legislation

**The aim of this chapter is to:**

- Introduce you to labour related regulations of business

#### Objectives

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

- understand major areas of entrepreneurial responsibility
- maintenance of various registers and records
- payment of gratuity Act
- payment of bonus Act
- workmen's compensation Act
- contract labour



## **Wage Legislation**

There are few legislations governing the wages to your employees which you must be aware of.

### **Payment of Wages Act, 1936**

#### **Applicability**

This Act is applicable to factories and establishments, where:

- Ten or more workers are/were employed on any day of the preceding 12 months and the manufacturing process is being carried out with the aid of power.
- Twenty or more workers are/were employed on any day of the preceding 12 months and the manufacturing process is being carried on without the aid of power.

The Act is restricted in its application to the class of workers whose wages range upto RS. 1,600/- per month.

Wages mean basic pay, dearness allowance, city compensatory allowance, overtime wages and production incentives. Every employer will be responsible for the payment to the person employed by him (all wages required to be paid).

The objective of this Act is not adequacy of wages payable but is only concern is with the method of payment.

#### **Major Areas of Entrepreneurial Responsibility**

\* The act fixes the responsibility for payment of wages on -

- The employer
- In factories, the person named as manager; and
- In industrial establishment, the person, if any, responsible to the employer for the supervision and control of the industrial establishment.

The Primary liability for wage payment always rests with the employer.

In case of Private Limited Companies, the Director are held liable as employers.



\* The wages must be paid before the expiry of the seventh day of the month if the total employee strength is below 1000 in number.

\* On termination of employment, the wages must be paid before the expiry of the second working day from the date of termination of service.

The employer can make authorised deductions from the wages. The authorised deductions may include fines, deduction for absence of duty, deduction for damage or loss, deduction for recovery of advances, deduction for house accommodation supplied, deduction for amenities and services supplied, deduction for income-tax payable by the person, etc.

The total amount of deduction in a wage period should not exceed fifty per cent of wages actually earned by the worker.

### **Authority of Claim**

Claims may arise from deduction of wages or delay in payment of wages. The authority empowered to hear and decide for any specified area, may be a Presiding Officer of a Labour Court. The claim, however must be made by a employee within 12 months.

The authority will not make an order against the employer if it is convinced that the deduction or delay is owing to :

- A bonafide error or dispute regarding the amount payable; or
- Factors which render the employer unable to make payment despite reasonable diligency; or
- Employee's failure to apply for and accept the payment.

### **Appeals**

An employer may appeal if the total sum directed to be paid as wages and compensation exceeds Rs. 3000/- or the impugned direction involves imposition of financial liability exceeding Rs. 1,000/-.

An employee, on the other hand may appeal if the total amount of wages claimed exceed Rs. 20/-.

The employer must file, along with the memorandum of appeal, the Authority's certificate, testifying that the employer has deposited with him the amount payable under his direction. This is to prevent frivolous appeals of the employer.



## **Display of the Act**

An abstract of the Act may be displayed in English and in the language understood by the majority of the persons employed, in Form V.

## **Maintenance of Registers and Records**

The employer has to maintain registers and records giving particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars in the prescribed form.

The Inspector of Factories shall be the Inspector of this Act.

## **Forms**

- II : Register of Fine
- III : Register of Deductions
- IV : Muster Roll
- V : Register of Wages
- VI : Muster Roll-cum-Register of Wages
- VII I: Annual Return
- IX : Register of advances made
- X : Register of loans granted to employees for building a house or other approved purposes
- XI : Abstract of Payment of Wages Act

## **Payment of Gratuity Act, 1972**

### **Applicability**

Gratuity Act is applicable in all establishments in which 10 or more persons are/were employed.

A shop or establishment, where this Act has become applicable once shall continue to be governed by this notwithstanding that the number of persons employed therein at any time after it has become applicable, falls below ten.

### **Who are Entitled to Receive Gratuity**





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

### **When Payable**

Gratuity becomes due for payment on:

- Resignation
- Superannuation
- Retirement
- Death; or
- Disablement

### **Computation of Gratuity**

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

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

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

The computation of gratuity is as under :

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

### **Forfeiture of Gratuity**

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



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

### **Nomination Procedure**

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

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

### **Opening of Gratuity Fund**

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

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

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

### **Disbursement of Gratuity**

\* Within 30 days from the receipt of application from the employees (Form I or J), the employer should notify the amount payable to the applicant as well as to the Controlling Authority and should arrange to pay the claim either in cash or by cheque. If the amount of gratuity is not paid within the specified period, the employer shall pay simple interest notified by the Central Government, from the date on which the gratuity becomes payable to the date on which it is paid.



\* Issue Forms L and M - which are the forms prescribed for giving notice to the claimant indicating the amount payable or not payable.

\* In case there is a dispute about the amount of gratuity or its admissibility, the controlling authority will settle it. For such intervention by the Controlling Authority, an application should be made within 90 days from the occurrence of the dispute. Pending decision, however, the employer shall deposit with the Controlling Authority the amount which he admits is payable.

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

### **Claim to be Made by the Employee**

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

### **Employers' Other Responsibilities**

\*Keep in safe custody all nomination forms made by the employee.

\* Display an Abstract of the Act and Rules in Form U prominently and in a language used by the majority of the employees in the premises of the establishment.

### **Form and Returns**

A: Notice of Opening

B: Notice of any change in Form A

C: Notice of close down of the Establishment

F: Nomination

G: Fresh nomination (those who have nominated a person other than family members)

H: Modification and fresh nomination in the event of pre-deceased nominee

I: Claim form within 30 days after the gratuity become payable

J: Claim form before 30 days of the date of termination

L: Giving notice to the claimant indicating the amount payable

M: Giving notice to the claimant indicating the amount not payable

U: Display the abstract of Act and Rules



## **PAYMENT OF GRATUITY (AMENDMENT) BILL, 2007**

Teachers could soon be entitled for gratuity benefits under the Payment of Gratuity Act, which is a central statute. A Bill to extend the benefits of gratuity to teachers, under the Central Gratuity Law, was introduced in the Lok Sabha here on Monday. The Bill — Payment of Gratuity (Amendment) Bill 2007, introduced by Mr Oscar Fernandes, Labour Minister, sought to amend the definition of “employee” under the existing Payment of Gratuity Act so as to bring ‘teachers’ under the coverage of that definition. The Supreme Court had in its judgment dated January 13, 2004, in Ahmedabad Private Primary Teachers Association vs Administrative Officer held that teachers are not entitled to gratuity under the Payment of Gratuity Act, contending that teachers do not answer the description of “employee” who are “skilled”, “semi-skilled” or “un-skilled”.

## **Payment of Bonus Act, 1965**

### **Applicability**

The Act applies to establishments employing ten or more persons irrespective of the constitution. Establishments newly set up are exempted for the first five years. However, during these five years, bonus will have to be paid for the year during which the company has made profit.

The payment of Bonus Act makes the employer liable to pay bonus to employees as an annual statutory has made profits.

The act includes all employees (Workers, clerical staff, executives) drawing wage or salary upto Rs. 3,500/- per month. To become eligible for bonus, every employee must have worked in the establishment for not less than 30 working days in the relevant account year.

### **How Much Bonus Payable and When**

A minimum of 8.33% of wages actually earned during the financial year, subject to a minimum of Rs. 100/- is payable to each eligible employee irrespective of profit or loss. The maximum limit is 20% of the wages earned.

The bonus is payable within a period of 8 months from the close of the accounting year, i.e. upto November.



Where there is a dispute regarding rate of Bonus for more than 8.33%, it becomes payable within a month from the date that the bonus becomes enforceable or settlement comes into operation.

### **Deductions from Bonus**

Where in any accounting year, an employer has paid any customary bonus, such as Pooja bonus or an advance bonus, the employer may deduct that amount from the final amount of bonus payable by him. Where in any accounting year an employee is found guilty of misconduct or causing financial loss to the employer, the employer may lawfully deduct such amounts from the bonus payable in respect of that accounting year.

### **Contracting Out - Extraneous Agreements**

The employees and Employers may enter into an agreement for payment of bonus under different formulate provided if:

- It has the prior approval of the appropriate government (Labour Commissioner).
- The minimum bonus rate as stated in the Act is preserved.
- Such employees are not entitled to be paid bonus in excess of the minimum if the employer has no surplus to allocate in an account year; or
- Such employees shall not receive bonus in excess of 20% of the salary or wage earned by them during the accounting year.

### **Registers and Returns**

Every employer shall maintain three registers such as:

Register A : Record of available surplus

Register B : Record of to be allotted surplus

Register C : Amount disbursed

Form D : Annual Return to be sent to the Controlling Authority within 30 days from the date of disbursal of bonus

The Payment of Bonus (Amendment) Ordinance, 2007 has,—

(i) substituted for the words "three thousand and five hundred rupees" the



words "ten thousand ruppess" in clause [13 of section 2 of the Payment of Bonus Act, 1965 (the Act)];

(ii) substituted for the words "two thousand and five hundred rupees" the words "three thousand and five hundred rupees" in both the places where they occur in section 12 of the Act;

(iii) omitted clause (vi) of section 32.

### **Minimum Wages Act, 1948**

1] The Central Government has introduced this Act to provide minimum rates of wages in certain employments.

The employer has to pay minimum wages to the employees in certain scheduled industries. At present, the Minimum Wages Act is applicable in 44 scheduled industries.

2] Minimum Wages consist of Basic and Special allowances. Basic wages are fixed for different industries and Special Allowances are announced by the Labour Commissioner every six months payable for six months from April to September and October to March.

3] Minimum wages payable under this Act should be paid in cash.

4] The employer has to publish a notice containing the minimum rate of wages together with an abstract from the Act in Form No. III A.

5] The Wages of one month should be paid before the expiry of the seventh day, after the last day of the wages period i.e. one month.

6] When the employment of a person is terminated, the wages shall be paid to him before the expiry of the second working day, after the day on which the employment has been terminated.

7] Overtime shall be paid at a rate double that of the ordinary wages rate.

### **Forms**

Over-time Register in Form No. IV

Wages Register in Form No. IV A

A Wages slip in Form No. IV B



A Muster Roll in Form No. V

Maintenance of Inspection Book

Employment card in Form No. V D (After one month this card should be returned to employer by the employee) - Fine register in Form No. I

Annual return in Form No. II (This return is to be submitted to the Labour Commissioner on or before January 31st following the end of the year to which it relates).

## SAQ 2.1

List the major legislations governing the wages. Write the objective of each of these legislations :


### **The Minimum Wages Act, 1948**

An Act to provide for fixing minimum rates of wages in certain employments. WHEREAS it is expedient to provide for fixing minimum rates of wages in certain employments; It is hereby enacted as follows:-- 1. Short title and extent. 1. Short title and extent.-(1) This Act may be called the Minimum Wages Act, 1948. (2) It extends to the whole of India 2\*\*\*. 2. Interpretation. 2. Interpretation.- In this Act, unless there is anything repugnant in the subject context,-- 3\*[(a) "adolescent" means a person who has completed his fourteenth year of age but has not completed his eighteenth year; (aa) "adult" means a person who has completed his eighteenth year of age;] (b) "appropriate Government" means,-- (i) in relation to any scheduled employment carried on by or under the authority of the 4\*[Central Government or a railway administration], or in relation to a mine, oilfield or major port, or any corporation established by 5\*[a Central Act], the Central Government, and (ii) in relation to any other scheduled employment, the State Government; 6\*[(bb) "child" means a person who has not completed



his fourteenth year of age;] (c) "competent authority" means the authority appointed by the appropriate Government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification;

## **THE WORKMEN'S COMPENSATION ACT, 1923.**

(As amended by the Workmen's Compensation (Amendment) Act 2000)

This is an Act to provide for the payment by certain classes of employees to their workmen of compensation for injury by accident. It extends, to the whole of India.

Employer's liability for compensation: If operational injury is caused to a workman by accident arising out of and in the cause of his employment, his employer shall be liable to pay compensation in accordance with the provisions of the Act:

Provided that the employer shall not be so liable –

- a. in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days.
- b. In respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to –
  - i. the workman having been at the time thereof under the influence of drink or drugs, or
  - ii. the willful disobedience of the workman to an order expressly given or to a rule expressly framed for the purpose of securing the safety of workmen, or
  - iii. the willful removal or disregard by the workman of any safety guard, or other device which he knew to have been provided for the purpose of securing the safety of workman.

### **Requirements**

Section 8 of the Act requires the employer to make payment of the compensation for the death or injury of his workman by deposit of the amount thereof with the commission appointed for





the purpose. No claim for compensation shall be entertained by a commission unless notice of the accident has been given.

### **Returns as to compensation**

The State Government, may, direct that every person employing workmen, shall send in a particular form to such authority as may be specified in the notification. If any question arises as to the liability of any person to pay compensation or as the amount, the question shall be settled by a commissioner.

### **Power of the State Government to make rules:**

The State Government may make rules to carry out the purposes of this Act. These rules may be called the workmen's compensation Rules, 1924.

### **The Contract Labour**

#### (Regulation and Abolition)

#### Act, 1970, with Rules 1971.

The system of employment of contract labour ends itself to various abuses. In the second five year plan, the Planning Commission made certain recommendations like undertaking of studies to ascertain the extent of the problem of contracted labour, progressive abolition of the system and improvement of service conditions of contract labour, where abolition was not possible.

This Act came into force in 1970 and extends to the whole of India. It applies to every establishment in which twenty or more workmen are employed and to every contractor who employs twenty or more workmen. It, however, does not apply to establishments in which the work only of intermittent or casual nature is performed.

### **Object of the Act**

The Act is a social welfare measure to further the general interest of the community of workmen as opposed to the particular interest of the individual entrepreneur. The Act prevails over the Industrial Disputes Act.

Registration of Establishments employing contract labour.



The appropriate Government, by an order in the official Gazette appoint gazetted officers of the government as registering officers for the purpose.

Every employer must make an application to registering officer for registration of the establishment.

### **Effect of non-registration**

No employer of an establishment, which needs to be so registered, but which has not been registered shall employ contract labour.

### **Contract of Agency**

Due to the complexity of modern business style, it is not possible for every individual to perform the contracts, which gives rise to legal relation. He / she has to depend upon some assistance and service of the other person.

The other person is called an 'Agent'.

### **Definition**

An agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom the act is done or who is so represented, is called the 'Principal'.

### **Rules of Agency**

1. Whatever a person can do, he can do through an agent.
2. He who does an act through another does it by himself.

An agent enjoys the rights to deal on behalf of his principal and an act done by an agent is presumed to be done by the principal.

Exception:- Performance in personal capacity

Any person who is of the age of majority may employ an agent.

A person who is incompetent to contract is not liable to his principal, if an agent is incompetent; the principal may be liable to a third person.

### **Creation of Agency**



When a principal employ an agent by word or by an agreement in writing, the arrangement is said as Agency by express agreement.

Agency can be by an implied agreement. When an agency arises from the conduct, situation, or relationship of parties, there is an implied agreement.

### **Clarification of Agent**

1. Special Agent – When a person is appointed to act as an agent for a specific assignment, he is a special agent.
2. General Agent – A person who has authority to do all acts connected with a particular trade, business or employment.
3. Universal Agent – A person whose authority to act as an agent for his principal is unlimited.

### **Notice of dishonour**

Dishonour by non-acceptance - A bill of exchange is said to be dishonoured by non-acceptance when the drawee or several drawees makes default in acceptance upon being required to accept the bill, or where presentment is excused and the bill is not accepted.

Dishonour by non-payment – A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee or the cheque makes default in payment upon being duly required to pay the same.

### **Notice of dishonour**

When a negotiable instrument is dishonoured by non-acceptance or non-payment, the holder must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make liable thereon and to someone of several parties whom he wants to make jointly liable.

There are instances where no notice of dishonour is necessary. E.g. when it is dispensed with by the entitled party, or when the drawer has countermanded payment etc. --- ---. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque is determined by certain rules.



## **Crossed cheques**

Where a cheque has across its face, an addition of the words ‘..and company’ between two parallel lines, either with or without the words ‘not negotiable’, that addition shall be considered a crossing and the cheque considered crossed generally.

## **Cheque crossed specially**

Where a cheque bears across its face, an addition the name of the banker, either with or without the words ‘not negotiable’, that addition shall be considered a crossing, and the cheque shall be considered crossed specially and to be crossed to that banker.

When a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise to the banker to whom it is crossed, for collection.



# UNIT

## 10

### Contents

#### Chapter III

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

#### The aim of this chapter is to:

introduce you to certain commercial laws governing your business

#### Objectives:

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

- understand about the Indian Contract Act
- the Indian Sale of Goods Act
- the Indian Negotiable Instruments Act
- the Indian Partnership Act



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

They are:

1. The Indian Contract Act
2. The Negotiable Instrument Act
3. The Indian Sale of Goods Act
4. The Indian Partnership Act

## **The Indian Contract Act**

The Indian Contract Act was formulated in 1877 and is being modified from time to time.

You should first know the making of 'Contract':

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

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

### **Classification of Contracts**

Contracts may be classified in following different ways:

#### **1) Simple contracts:**

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

#### **2) unilateral and bilateral contracts:**

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

#### **3) Express, implied and quasi contracts:**



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

### **Essential Requirement of a Valid Contract**

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

### **Competant to Contract**

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

Following agreements are declared void by law;

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

### **Performance of Contracts**

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

There can also be joint promises and joint liabilities.



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

## **The Indian Negotiable Instruments Act**

This was enacted in 1881. The act defines and provides for law relating to negotiable instruments, viz. Promissory Notes, Bills of Exchange and Cheques payable either to order to bearer.

A negotiable instrument may be transferred from one person to another by negotiation and by assignment of instrument under the Transfer of Property Act.

It means that when it is transferred to any person, that person becomes its holder.

### **Characteristic of a negotiable instrument**

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

### **Parties to a Negotiable Instrument**

The parties to a negotiable instrument are:

Drawer - is a person who draws the bill of exchange and maker of promissory note. And he must sign the bill.

Drawee - is the person on whom the bill, note or cheque is drawn. But when on the bill or in any endorsement, the name of any person is given in addition to the drawee, in case of need, such a person is called a 'drawee in case of need'.

There is another term "Holder in Due Course". It means any person who for consideration becomes the possessor of a negotiable instrument if payable to order, before the amount mentioned in it becomes payable.

In the law of negotiable instruments, the holder in due course enjoys an important position because of certain exclusive privileges. He holds the bills free from any defect of title of previous parties. He can file a suit in his own name against the parties liable to pay, gets a





good title to the instrument, he can recover the amount from any prior party/parties even if the instrument was made without consideration. Besides, validity of the instrument cannot be denied by the drawer or by acceptor of the bill.

An Act further to amend the Negotiable Instruments Act, 1881, the Bankers' Books Evidence Act, 1891 and the Information Technology Act, BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:-

CHAP PRELIMINARY CHAPTER I  
PRELIMINARY

### **Promissory Note**

Promissory note is an instrument in writing (not being a currency note) containing an unconditional undertaking signed by the maker to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the note.

### **Bill of Exchange**

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

Three parties are necessary to a bill of exchange.

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

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

### **Acceptance of the Bill of Exchange**

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

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

- There are two parties in a promissory note, while there are three in the bill.
- Nature of payment.



- Acceptance.
- Liability - in a promissory note the liability of the maker is absolute; in a bill the liability of the drawer is necessary and conditional, when the drawee refuses to honour the bill.
- In a bill the drawer stands in immediate relation with the acceptor and not the payee.

## **Cheque**

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

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

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

### **A cheque:**

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

A Cheques may be of two kinds

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

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

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

A cheque is crossed generally as follows:



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

### **Special Crossing:**

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

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

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

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

For your immediate purpose, this information, we hope, would be adequate.

### **Innovative ways of Banking :**

**Internet banking:** Internet banking allows customers to conduct financial transactions on a secure website operated by their retail or virtual bank, credit union or building society. Electricity, Telephone, Mobile bills could be paid easily and a lot more from the convenience of home could be done through Internet Banking. This service could be Availed without registering.

**Mobile banking:** Mobile banking is a term used for performing balance checks, account transactions, payments etc. via a mobile device such as a mobile phone.

**Telephone banking:** Telephone banking is a service provided by a financial institution which allows its customers to perform transactions over the telephone.



**ATM (automated teller machine):** Using an ATM, customers can access their bank accounts in order to make cash withdrawals (or credit card cash advances) and check their account balances as well as purchasing mobile cell phone prepaid credit. It is also used for paying routine bills, fees, and taxes (utilities, phone bills, social security, legal fees, taxes, etc.)

**Cheque drop box facility:** Most of the new generation private sector banks and foreign banks have introduced the drop box facility for depositing cheques. For banks, the facility has reduced the cost of servicing customers.

**MICR Cheque:** MICR stands for Magnetic Ink Character Reader. It is electronic clearing system compared to manual clearing system and is beneficial to all. The retail payments system in India comprising of paper based and electronic systems, handle large volume of transactions. These relate to various customer segments spread across the country. The cheque clearing is the dominant retail payment system in India.

## **The Indian Sale of Goods Act**

The law relating to sale of goods is laid down in this Act which was enacted in 1930. To you, as an entrepreneur, the importance of this Act cannot be underestimated.

First, let us discuss what is a sale. Contract for sale of goods means, it is a contract whereby the seller transfers goods to the buyer for a price. The sale is a bilateral act which involves two parties. There are, however, certain essential elements required to constitute a sale:

1. Seller and buyer must be different persons.
2. Both must be competent to contract.
3. There has to be a transfer or agreement to transfer.
4. A price in money is paid or promised

The formalities of a contract of sale may be, in writing, by word of mouth or partly by writing and partly by word of mouth or may be implied from the conduct of the parties.



## Conditions and Warranties

In a contract of sale all terms laid down may not be equally important. Those terms which are of fundamental importance are known as ‘conditions’ and the remaining ones are known as ‘warranties.’ Ordinarily, the rule is that the conditions and warranties are not implied; the buyer must make his stipulations. However, the act provides for some important exceptions, conditions which are implied by law are:

1. as to title to the goods
2. sale by description
3. sale of sample
4. sale by sample and description
5. time of delivery

Similarly a warranty may also be expressed or implied.

## Delivery of Goods

What is meant by Delivery? What are its various kinds?

‘Delivery’ means voluntary transfer of possession from one person to another.

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

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

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

Unpaid Seller’s Rights:



A seller will be considered 'unpaid seller' when a bill of exchange or negotiable instrument has been received is conditional payment and the condition has not been fulfilled due to dishonour of such instrument.

When the goods have passed to the buyers, the unpaid seller has the right to lien on the goods, a right of stoppage in transit (to prevent delivery to the buyer) and a right of resale.

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

## **The Indian Partnership Act, 1932**

The Indian Partnership Act which was amended in 1932 provides for rules relating to formulation of legal partnership. It states the rights and duties of the partners amongst themselves and outside and lays down rules regarding dissolution of partnership.

We have already, given you some idea about partnership and its special features earlier. This chapter will give you some more details.

### **What is the Partnership?**

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

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

### **Principal Elements of Partnership**

Principal elements of partnership are:

- i) Existence of more than one person.
- ii) Existence of a business.
- iii) Existence of the idea of making profit.
- iv) Existence of an agreement between all partners with the object of sharing profits.
- v) Business being carried out by all or by any of them acting for all.
- vi) Number of partners less than or equal to 20.



## **Partnership at Will**

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

## **Illegal Partnership**

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

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

## **Relations Between Partners**

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

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

## **Mutual Rights and Liabilities of Partners**

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

- i. A partner is not entitled to receive remuneration for taking part in the conduct of the business.



- ii. The partners are entitled to equal shares in the profits and shall contributed equally to the losses sustained by the firm.
- iii. When a partner are entitled to interest on the capital sustained by him, such interest shall be payable only out of profits.
- iv. A partner making, for the purposes of the business any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest on it @ 6%.
- v. The firm shall indemnify a partner in respect of payments made and liabilities incurred by him in the ordinary and proper conduct of the business.
- vi. A partner shall indemnify the firm for any loss caused to it by his willful neglect in the conduct of the business of the firm.

### **Implied Authority of a Partner**

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

### **Liability of Partners and Firm**

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

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





## **Position of Minor in the Partnership Firm**

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

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

## **Partners and Registration of Firms**

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

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

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

## **How a Firm can be Registered?**

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



For Registration a statement with the following details and signatures of all partners is necessary to send to the Registrar.

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

### **When can a Partnership Firm be Dissolved?**

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

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

The court may order dissolution of a firm when:

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



### Q 3.1

Write in two sentences on each of the following Acts:

1. The Indian Contract Act

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2. The Negotiable Instruments Act

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3. The Indian Sale of Goods Act

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4. The Indian Partnership Act

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# UNIT

## 10

### Contents

#### Chapter IV

- Social Legislation
- Trade & merchandise marks Act

**The aim of this chapter is to:**

introduce you to tax related regulations

#### **Objectives:**

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

- understand employees Provident Fund and Miscellaneous Provisions Act
- what is a trade mark
- patent act



## **Social Legislation**

You must be aware that even to drive your two wheeler or car, you are required to take a third insurance. This is because any legislation given utmost importance to social security. Similarly, we have provision for social security in the industrial sector too. These are as follow :

### **Employees Provident Fund and Miscellaneous Provisions Act, 1952**

#### **Applicability**

The Act applies to every factory or establishment employing 20 or more employees

The Act however exempts a factory or establishment for a initial period of three years from commencement of business if the number of employees of more than 50 and for an initial period of five year if the number of employees is less than 50.

#### **Contribution**

The minimum contribution payable by the employer is 8.33% of the salary. The employees also should make an equal contribution. The Act does not specify a maximum. If any contribution involves a fraction of a rupee, it is ignored upto 49 paise and rounded off to the next rupee if it is 50 paise and more.

The contribution shall be 10% in respect of establishments which the Central Government may specify in the official gazette from time to time.

#### **Latest Rate towards EPF**

All employees subject to Salary Ceiling of Rs 6500/-per month as stated above would

contribute at the rate of 12% towards EPF with matching contribution from the employer. . No employee in Army schools whose salary is more than Rs 6500/- pm(Basic+DA) at the time of appointment will be made member of the EPF. Employees who are already members of EPF and drawing salary more than Rs 6500/-pm(Basic+DA), their EPF contribution will be restricted to Rs 780/- per month with matching contribution from the employer.

Other related schemes under this Act:

- i) Employee Family Pension Fund (FPF)



An amount not exceeding 1.16% of wages should be paid out of the Provident Fund to the Employee Family Pension Scheme, both by the employer and the employee.

#### ii) Deposit Linked Insurance Scheme (DLI)

This scheme provides life insurance facility to employees during the course of their service. An insurance fund may be created by the employer in which a deposit at the rate of 0.5% of the salary of each employee will be made by the employer. The employee does not have to make any contribution into this fund.

### **Major areas of Entrepreneurial Responsibility**

- Before the commencement of services of any person, the employer should ask him to state in writing whether he is a member of Provident Fund or not (Form 11).
- Thereafter, the employer should deduct P.F./F.P.F. from the wages of employees along with his equal contribution and administration charges, D.L.L., etc., and deposit the same in the State Bank of India with 15 days of the close of the month through challan.
- The employer prepares a contribution card in Form 3 or 3A for every employee. The amount recovered every month from the wages of an employee as well as the contribution card opened in the name of each member. The contribution card has a one year cycle. The renewal of the contribution card may be made in Form 3 or 3A, within one month of the expiry of the contribution card or the same may be submitted to the PF Commissioner alongwith a statement in Form 6 with one month after the close of year.

If a member leaves the establishment the contribution card should be sent within 25 days of the following month.

The employer keeps the contribution card in his custody. However, the employee has the right to inspect the contribution card once in two months.

- The employer needs to send to the Commissioner within 15 days of each month a return of employees qualifying to become members of the Fund for the first time with declaration in Form No. 2 furnished by such qualifying employees as well as details of those who left during the month (Form 10).



- Every employer shall maintain an inspection book in such a form as the Commissioner may specify. This may be inspected by an Inspector for recording his observation.
- The employer shall forward to the Commissioner within 25 days of the close of the month, a monthly consolidated statement in the prescribed form showing the recoveries made from the wages of each employees (Form 12A) along with a copy of the challans.

### **How to get PF Code Number from Regional PF Commissioner**

- Every employer shall furnish the detail of the establishment in Form 5A to the Commissioner. If there is any change in the control of establishment, the same may be furnished within 15 days.
- The employer shall send to the Commissioner within 15 days of the commencement of the scheme a consolidated return of the employees requirement to become members of the Fund, showing their wages. Even if there is no employee, the employer shall have to send a 'Nil' return.
- On receipt of the information from the employer, the Commissioner may allot a code number to the employer.
- Thereafter a sub account number is to be given to each employer.

### **Registers to Maintain**

- Member Register
- Non-member Register
- Declaration by each person taking up employment (Form 11)  
Register in Form No. 9)
- Copies of remittance challans for:  
Account I : Challans for PF  
Account II : Challan for PF Administration charges  
Account X : Challan for Family Pension



Account XXI : Challan for Deposit Linked Insurance

Account XXII : Challan for Insurance Admn. Charges

- Contribution cards

### Rate of Contribution

PF and FPF	10% and/or 8.33% of salary both by employer and employee (out of which 1.16% will go to FPF)
PF Admn. Fund Deposit Linked	0.65 by employer only
Insurance	0.5% by employer only
Insurance Admn	0.1% by employer only

### Forms

- 1 : Forms of family Pension Fund
- 2 : Declaration form to be set along with Form 1 of PF
- 3 : Consolidated return of employees
- 6 : Statement of contribution of return
- 7 : Contribution card of the members
- 8 : Annual statement
- 9 : Declaration of a person taking up employment in which the FPF scheme is in force.

THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS  
(AMENDMENT) ACT, 1996

ACT NO. 25 OF 1996

In the long title to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the principal Act), for the words "family pension fund", the words "pension fund" shall be substituted.





Amendment of section 2. 3. Amendment of section 2. In section 2 of the principal Act,- (a) clauses (gg) and (ggg) shall be omitted; 2 (b) after clause (k), the following clauses shall be inserted, namely:- (kA) "Pension Fund" means the Employees' Pension Fund

### Forms

1	PF Declaration form to be sent in duplicate.
2	Family Pension Fund declaration form to be set along with Form 1.
3A	Contribution card to be sent along with Annual Return.
5	Names of persons who have joined the establishment but become members of the Fund as the waiting period of 60 days is yet to expire; and the names of persons who have joined the establishment and become members of the Fund.
6	Return of contribution cards.
6A	Consolidated annual contribution statement
10	Names of employees leaving the service.
12A	Statement of Contribution for the month. This may be sent to the PF Commissioner before the 25th of every month along with copies of forms 5/10 and triplicate copies of all 5 challans.
10B & 19	Statement forms for PF and FPF, respectively.
11	Declaration of person taking up employment in which PF scheme is in force.

2	Declaration form to be sent along with Form 1 of PF
3	Consolidated return of employees
6	Statement of contribution
7	Contribution card of the members
8	Annual statement
9	Declaration of a person taking up employment in which the FPF scheme is in force



### SAQ 4.1

List in brief your responsibilities as an entrepreneur as regards the Employee's provident Fund provision.

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### THE TRADE AND MERCHANDISE MARKS ACT 1958

The laws of trade marks came into existence to prevent a traders from taking away another traders business trade and to prevent the dacoit of the public by the sale of spurious goods. The Indian Trade Marks Act was passed in 1940. To remove the defects and ambiguities, the Trade and Merchandise Marks Act of 1958 was enacted.

### What is a Trade Mark ?

A trade mark is a word, name, device, label, brand or other distinctive mark used by a manufacturer or trader to identify his goods from those of other manufacturers or traders. The trade mark must be distinctive so that the public is not confused or deceived.

Brand is a trade marked branded on metal goods etc. or stamped on the goods.

1. Manufacturers or quality of goods
2. Trade source of goods
3. Trade bands through which they pass on the way to the market

The owner of a trade mark may be a manufacturer, importer or just a retailer or a salesman.

The Indian Standards Institution under certification Marks Act (XXXVI) of 1952, provides for standardization and marking of goods.

There are four kinds of Trade Marks:

- Distinctive ordinary words
- Non-distinctive words
- Invented words



- Non-descriptive picture marks.

Before adopting a trade mark advice should be obtained from the Registrar of Trade Marks.

## **Register of Trade Marks**

It is divided into two parts:

Part 'A' & part 'B'. All marks registered under 1940 Act are in part 'A' of the register. They cannot be challenged after being in the register for seven years except under exceptional grounds.

If a mark is distinctive it may be registered in Part 'A'. A mark which is not distinctive but capable of distinguishing may be registered in part 'B' of the register.

A Registrar's clarification of goods shall be final.

For more details, you may refer to the Act.

**ISI Mark:** Indian Standards Institute. It is now named as Bureau of Indian Standards. ISI mark is given by BIS. this is a third party guarantee of quality. BIS does certain checks on the product and provides the ISI mark. BIS also provides other quality check certificates also, like AGMARK, Hallmark etc. this depends on product category.

**AGMARK:** Agmark is an acronym for agricultural marketing....this organisation certifies food products for their quality.

**Objectives-**Promotion of Grading and Standardisation of agricultural and allied commodities under Agricultural Produce (Grading & Marking) Act, 1937.

**HALLMARK:** Hallmark has been acting as a safeguard to purchasers of gold and gold articles for centuries in various countries. In simple terms, Hallmark is a purity certification of gold articles in accordance with Indian Standard specifications. The Bureau of Indian Standards (BIS), the country's apex standards body, is involved in the development of technical standards (popularly known as Indian Standards), product quality and management system certifications and consumer affairs in all matters concerning Standardization, Certification and Quality.

Gold articles are evaluated and tested at an official Assaying and Hallmarking Centre and then certified that the metal used conforms to the national and international standard of fineness



and purity. Hallmarking is the accurate determination and official recording of the proportionate content of precious metal in gold. Hallmarks are thus official marks used in many countries as a guarantee of purity or fineness of gold jewellery.

**Organic trademark:** A trademark - "India Organic" will be granted on the basis of compliance with the National Standards for Organic Production (NSOP). Communicating the genuineness as well as the origin of the product, this trademark will be owned by the Government of India. Only such exporters, manufacturers and processors whose products are duly certified by the accredited inspection and certification agencies, will be granted the licence to use of the logo which would be governed by a set of regulations.

For further details visit <http://ipindia.nic.in/>

## THE PATENT ACT, 1970

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

The Act of 1970 recognised the importance of development of exploitation of new inventions of the industrial progress. It also sought to protect the patent rights and was brought into force in 1972.

The definition of 'Invention' means any new and useful:-

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

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

Application for patents can be made by the following persons:

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



## **Form of Application**

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

## **Power of Controller to refuse or require amended application**

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

## **Potential infringement**

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

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

## **Grant and Sealing of Patent.**

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

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



# UNIT

## 10

### Contents

#### Chapter V

- Central-Excise
- Sales Tax
- The Income Tax Act

#### The aim of this chapter is to:

introduce you to (Revenue Legislation) tax related regulations

#### Objectives:

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

- Understand about Excise Duty
- MODVAT Scheme
- sales tax
- income tax to your business
- tax related regulations could be broadly classified under above heads



# Central Excise

(Some Guidelines)

## Meaning of Excise

Excise is to tax on articles produced or manufactured in the country and intended for domestic consumption. It is an indirect tax levied by the Government. It is paid by the manufacturer who passes it on to the consumers. In general, excise is a central tax and therefore the Government is responsible for its levy and collection. Central Excise is a Central tax. It is mentioned as 'duty' and not as 'tax'.

## Applicable Laws for Central Excise

The following important laws in India deal with Central Excise and related matters.

1. Central Excise and Salt Act
2. Central Excise Tariff Act
3. Central Excise Rules
4. Additional Duty of Excise Act
5. Central Excise (Valuation) Rules

There are one or two more Rules as well as Custom and Excise Revenue Appellate Tribunal Act, 1986.

The Central Government is empowered to levy excise on all articles manufactured in Indian excluding alcohol, alcoholic preparations and narcotics. The liability to duty starts the moment a new commodity is manufactured.

## Basis of Excise Duty

Different bases are used for the levy of excise, but there are four broad forms;

- a) A specific duty i.e. a rate fixed per unit or humble, weight volume or area.
- b) A duty as a percentage of value.
- c) A rate of duty which varies with the total volume or volume in period, and
- d) A duty which is levied on productive capacity irrespective of actual production.



## Exemption from Duty

The Central Government has the power to grant exemption, full or partial, from payment of duty generally by issue of a notification or in a specific case by means of a special order. Exemptions are granted to achieve varied socio-economic objectives, such as encouragement to small scale industry, (not mentioned here) have been granted exemptions, so far.

Throughout the Central Excise tariff, duty exemptions are provided for manufacturing activities carried on a small or tiny scale. Some of the criteria for grant of duty concessions are:

- i) Number of workers employed
- ii) Nature of process involved (e.g., manual)
- iii) Number of machines employed
- iv) End-use of the product
- v) Per unit value of the good manufactured.

A number of product relaxations have been announced by the government for the benefits of MSME. units.

### I. In case the MSME Unit is not availing MODVAT

(Please see Unit 2) for MODVAT)

Sales Turnover Limit	Rate of Duty	Remarks
0.30 Lacs ( <b>3 crores</b> )	NIL	Irrespective of the goods manufactured
30.50 Lacs	Normal duty less 10%	Subject to a minimum of 5%
50.75 Lacs	Normal duty less 5%	Subject to a minimum of 5%
75.30 Lacs	Normal duty	

### II. In case the MSME Unit is availing MODVAT

Sales Turnover Limit	Rate of Duty	Remarks
0.50 Lacs	Normal duty less 10%	Subject to a minimum of 5%
50.75 Lacs	Normal duty less 5%	Subject to a minimum of 5%
75.30 Lacs	Normal duty	





### III. When sales turnover exceeds Rs. 300 Lacs during a financial year:

- i. Eligibility for the next financial year is not available.
- ii. If however, in the next financial year, the sale turnover is less than Rs. 300 lacs, eligibility is restored in the subsequent financial year.
- iii. Where the clearance exceed Rs. 300 lacs, the SSI unit will have to pay full duty from first clearance in the succeeding financial year.

**VAT:** Value Added Tax (VAT) is a modern and progressive form of sales tax. It is charged and collected by dealers on the price paid by the customer. VAT paid by dealers on their purchases is usually available for set-off against the VAT collected on sales.

**How VAT is charged:** Dealers who are required to be registered for VAT must (1)Charge and collect VAT on their sales of taxable goods (2)Issue proper tax invoices (3)Keep proper records and books of account (4)Calculate the VAT due to Government based on VAT charged on sales LESS any VAT available as a set-off on business purchases (5)File VAT returns on a regular basis declaring their VAT liability (6)Pay any amount of VAT due to the Government with the VAT return

**Rate of VAT:** Under the VAT, the tax rates have been simplified. There are only two main rates of VAT: (1)4% for items consisting mainly of raw materials used in the manufacturing process, IT products and some goods of common consumption (2)12.5% for all goods unless they are listed under the other rates Foodgrains including pulses, milk, vegetables and books are not subject to VAT. In addition, there are two other rates for specific items: (1)1% for gold, silver, other precious metals, precious and semi precious stones and their jewellery (2)20% for liquor The only exception to these rates is for the sale of motor spirits, which have special tax rates based on the existing Bombay Sales of Motor Spirit Taxation Act, 1958, subject to a floor rate of 20%.

### **Distinction between Excise duty and Sales Tax**

We would like you to know about some difference between Excise Duty and Sales Tax, which are as follow:

1. Sales tax is levied and collected by State Governments while excise duties are levied by the Central Government.



2. The incidence of excise arises on manufacture of goods, while that the sales tax arises on sale of goods.
3. Excise is generally charged on the assessable value of the goods while sales tax is based on the selling price of the product.
4. In most of the cases excise requires prior approval of assessable value of the product, not so for sales tax.
5. Excise is required to be deposited before the removal of goods while sales tax is deposited after sales.
6. Excise is uniformly levied all over Indian while sales tax differs in different states.
7. Excise law requires specific records to be maintained regarding manufacture, stock and removal of goods depending upon the type of product. Sales tax does not generally stipulate any special format.

## **Levy of Central Excise**

Central excise duties are levied and collected by the Central Excise Department.

## **Registration of Units**

Every manufacturer of excisable goods is required to get himself registered before commencing the production. And every importer or dealer desiring to issue MODVAT in service should also get himself registered.

It is also very necessary for an assessee to understand the basic principles of valuation before the amount of duty leviable thereon is determined and paid.

Rules for registration are given in Notification No. 11/92-Ce (NT) vide Central Excise Amendment Rules 1992.

## **Procedures**

Till recently there were different rules in the Central Excise for providing rebate of duties paid in relation to indigenously manufactured goods on export. Similarly different rules provided for exporting goods following prescribed formalities in relation to manufacture and export without incurring excise duty or without paying duties on certain categories of inputs used in their manufacture, and the benefits were not available to all industries.



(For tax of new rules, please refer The Central Excise (11th Amendment Rules, 1994).

## **Job Work**

Job work means processing or working with raw materials or semi-finished goods supplied to the job worker, so as to complete part of whole of that process, resulting in the manufacture of an article. The job worker contributes mainly his labour and skill. A job worker is not required to obtain central excise registration for this purpose. His goods are exempt also from excise duty.

## **MODVAT Scheme and MSME Units**

1. As the excise duty is now leviable practically on all goods, whether raw materials, intermediates, components, sub-assemblies, capital goods and final effect of multi-point levies resulting in high prices for finished products.
2. Notwithstanding the exemption, a manufacture can exercise an option for not availing the benefits of the exemption and to pay excise duty at the rate applicable to the specified goods. Partnership firms, companies, etc. shall be treated as different manufacture for exemption limit.

Pending introduction of a more comprehensive 'Value Added Tax' (VAT), there are certain schemes at present in operation to provide for input duty relief:

- i) MODVAT Credit Scheme for inputs
- ii) MODVAT Credit Scheme for capital goods
- iii) Exemption for capital use
- iv) Remission of duty for special industrial purposes
- v) Money Credit Scheme.

These are all covered by various Rules and Notifications.

## **Change in Excise Duty Rate**

1. Excise duty rate on items currently attracting 4% to be raised to 8% with following major exceptions:
  - Specified food items including biscuits, sharbats, cakes and pastries
  - Drugs and pharmaceutical products falling under Chapter 30



- Medical equipment
  - Certain varieties of paper, paperboard and articles thereof
  - Paraxylene
  - Power driven pumps for handling water
  - Footwear of RSP exceeding Rs.250 but not exceeding Rs.750 per pair
  - Pressure cookers
  - Vacuum and gas filled bulbs of RSP not exceeding Rs.20 per bulb
  - Compact Fluorescent Lamps
  - Cars for physically handicapped
2. Specific component of excise duty applicable to large cars/utility vehicles of engine capacity 2000 cc and above to be reduced from Rs. 20,000/- per vehicle to Rs.15,000 per vehicle.
  3. Excise duty on manmade fibre and yarn to be increased from 4% to 8%.
  4. The scheme of optional excise duty of 4% for pure cotton to be restored.
  5. Excise duty for man-made and natural fibres other than pure cotton, beyond the fibre and yarn stage, to be increased from 4% to 8% under the existing optional scheme.
  6. An optional excise duty exemption to be provided to tops of manmade fibre manufactured from duty paid tow at par with tops manufactured from duty paid staple fibre.
  7. Suitable adjustments to be made in the rates of duty applicable to DTA clearances of textile goods made by Export Oriented Units using indigenous raw materials/ inputs for manufacture of such goods.
  8. Full exemption from excise duty to be provided on goods of Chapter 68 of Central Excise Tariff manufactured at the site of construction for use in construction work at such site.



9. Benefit of SSI exemption scheme to be extended to printed laminated rolls bearing the brand name of others by excluding this item from the purview of the brand name restriction.

10. On packaged or canned software, excise duty exemption to be provided on the portion of the value which represents the consideration for transfer of the right to use such software, subject to specified conditions.

11. Excise duty on branded articles of jewellery to be reduced from 2% to Nil.

**Excise duty rate:** - There is no change in the mean Cenvat rate of 8% *ad valorem*. However, the concessional excise duty rate of 4% has been increased to 8%, with certain exceptions like food products, pharmaceuticals products including drugs, papers, medical equipments and specified textiles machinery etc. Chapter-wise details are given below.

### SAQ 5.1

List three major differences between excise and sales tax.

1. _____
2. _____
3. _____

## Sales Tax

### What is Sales Tax

Sales tax is a tax levied by state. It is levied whenever goods are purchased from within the state. When Goods are purchased/procured from outside the state, Central Sales Tax which is popularly know as CST, is levied. Since it is a duty of the seller to charge sales tax from the buyers on behalf of the State Government and hand over the same to the Government, you as a businessman are supposed to acquaint yourself with the broad outlines of sales tax.



The basic values of the Sales Tax Law are as under:

1. A business/enterprise having a turnover exceeding specified limits (which may differ from one state to another) has to get itself registered with Sales Tax Authority.
2. It is optional for the enterprise to acquire registration for Central Sales Tax (CST). in the course of inter-state trade, CST registration becomes essential as rates of CST are comparatively lower than the rates of the state sales tax. This results in favourable economic advantage for Registered Dealers.
3. Business having registration are known as Registered Dealers (RD)
4. Businesses which are not registered with Sales tax Authority are known as Un-Registered Dealers (URD).
5. When goods bought from URD, tax is to be paid by the buyer.

You should, acquire information on the following:

1. Am i obliged to get registration or not?
2. Is my commodity/service subject to sales tax and if so, at what rate?
3. Is there any surcharge on the sales tax?
4. Am I obliged to sell or purchase goods against particular form against which reduced/special rates of sales tax are applicable for a specified class of buyers, sellers or goods?
5. Under what conditions can I get goods from outside the state on payment of CST? In case of such purchases what formalities are to be observed? (Usually, "C" form is issued).
6. To whom can I sell outside the state on CST? What is the procedure for getting appropriate form i.e., "C" form.
7. Is the tax rate on commodity the same for resale, lower or nil? (For traders)
8. Is there any rebate available for tax paid inputs? If yes, at what rate? How the rebate is to be claimed?



Generally, the policy of first point/first imposition of the tax prevails in almost all states of our country though the rates differ from state to state. That is why the liability to pay tax starts from transaction of sale. You, as an entrepreneur, should know the limit of your total turnover and the point at which the liability to pay tax starts. You also should know the limit of taxable turnover and the limit of the turnover fixed for importing or exporting goods from one state to another for the starting point of the liability of paying CST.

### **What Procedure You may follow?**

Now the question may arise as to what procedure you should follow. For this, the correct way is to contact the legal branch, administrative branch or the public relations officer or the Sales Tax Department or a practicing consultant. Some primary information is also provided by guidance bureau and single-point assistance agencies of the government, Chambers of Commerce and Industry or concerned industrial or trade associations. The Industries Department also provides information regarding various incentives or benefits being extended by the Sales Tax Authorities.

We highlight below some general procedures to be followed by any new entrepreneur irrespective of the state in which you are doing business.

### **Regulation of Business**

The regulating authority is Sales Tax Department in the state. Here, registration means registration of a business under the Sales Tax Law. one should first known under whose jurisdiction his business is situated. After confirming the jurisdiction, you should try to contact the concerned authority. If you want to start a manufacturing activity, you may not wait till your production starts. You can get registered as a dealer. Make sure you know what type of prescribed forms are required to be filled in. Other information about other documents to be furnished along with the registration form, such as copies of partnership deed or Memorandum and Articles of Association, proof of permanent place of business, registration under Shop and Establishment Act, rent receipt, municipal tax bill or light bill may come useful. normally no fees are required to be paid for registration which is given by the department within a stipulated time.



## **Periodic Returns**

After having got yourself registered as a dealer, the second step is to maintain the books of accounts and file 'returns'. A return is a statement of figures showing all sales, purchases, alongwith all claims such as tax free goods sold against certain forms required under the Act, taxable balance and amount of tax payable. The tax payable must be deposited form known as Challan. Return and challan should be submitted together within the prescribed time limit. There are penalties for failure and late filing of the returns.

Record keeping is very crucial. At the time of assessment, you are to provide various supporting documents, proofs and reconcile your books with the returns submitted to the authorities.

Assessment of Returns Assessment (final amount of a tax payable for the year) on the basis of returns filled with the authorities is an important procedure. The sales tax authority calls the assessee to inspect various records kept by the assessee and to verify the correctness of returns filed by him during the year. In this process the concerned officer checks the correctness of the various claims and deductions shown by the assessee.

Generally, the final assessment takes place two to three years after completion of the financial year.

As an assessee, you should be careful in claiming your deductions and claims. You should keep yourself ready with the books of accounts duly closed and with supporting evidence like 'C' forms, goods return memos, transport receipts etc. to prove your claims for refund, if any.

You should also be aware about your rights to appeal against Assessment Order which is not in your favour. If you are aggrieved by any order passed by the Sales Tax Authority then you may prefer and appeal with higher authority within the stipulated item provided in the law.

## **Other Formalities**

There are other formalities like information about the change in name and style of the business, change in the constitution of the enterprise, change in the accounting year, change in place of business etc. to be complied with. Though these things prima-facie do not seem to be of any importance, sometimes they may create a major problem.





You also have to be careful in preparing the invoice, which will show the date, sales tax registration number, name and address of the purchaser, description of the goods sold amount of consideration, rate of tax charge, amount of tax, etc.

Even at the time of winding up your business (may it not happen), the Registered Dealer is required to inform the authority about the closure of the business and observe certain formalities.

It will be perceived that a knowledge of these factors requires good acquaintance with the existing tax laws and hence you will be well advised to consult a practitioner in the field so as to meet with the various requirements of the Act.

You should bear in mind that the above discussion is meant for creating an awareness and providing general guidance to your. The position of various requirements may differ from state to state. It is advisable to spare time and get more information locally. In taxation matters, general knowledge can help you, but without technical details one may run the risk of violation of laws. Do take help of some knowledgeable person engaged in the field.

## **Turnover Tax**

In addition to sales tax, these days the states are generally levying 'Turnover Tax' on Registered Dealers.

This tax is being levied on Dealers only. Prescribed rates are in the form of step-up rate table. It is not passed on to the buyers.

The Sales Tax Department monitors the administration of turnover tax.

## **Implication of Sales Tax on Prices**

It is clear that you as an entrepreneur are required to pay the share in the form of sales tax at the specific rate to the exchequer whether you earn profit or not on given transaction. Goods manufactured by you perhaps may not attract Central Excise Duty but in most of the cases, sales tax is leviable which introduces a cost-push i.e., it increases the cost.

Rates of sales tax differ from state to state. Various states are offering special Schemes to attract entrepreneurs to their state by providing certain concessions. This kind of situation often introduces fierce competition. Because of this sometimes goods manufactures within the



state become costly as compared to the goods imported from outside the state on account of higher rates of tax within the state.

Thus, in the competitive environment, you as an entrepreneur must bear in mind the following points:

- a. Exact rate of tax on raw material and finished goods.
- b. Benefits or incentives declared by the state.
- c. Similar details of other state in which your competitors are situated.
- d. Rate of turnover tax which is nothing but a reduction of profit margin of the seller in a gradually increasing proportion. The rate of turnover tax increases with increase in turnover with the specified range.

### **SAQ 5.2**

Explain the procedure involved in sales tax transactions.



## **The Income Tax Act, 1961**

You become liable to collect and pay sales tax on the goods that you sell, irrespective of the fact that whether you make profit or loss from such sales. While you pay income tax only when you earn an income above certain exempted limits.

Anyway, you should always be cared to file the mandatory sales tax & income tax returns regularly. Non-payment or non-filing becomes an offense.

The Act governs the levy of income tax in India. it defines various terms of expressions and state the liability of person to pay income tax. It provides for various income tax authorities and state the nature of total income and the taxable income. It is important to keep in view that the rates of income tax are subject to amendment every year by the provisions of the finance Act passed by the Parliament.

### **What is income?**

Income includes:

1. profit & gains
2. dividends
3. voluntary contributions received by a trust
4. the value of perquisite or profit in lieu of salary taxable
5. the value of any benefit or perquisite whether collection able in money or not obtained from a company
6. any sum chargeable to income tax
7. any capital gains
8. any winnings from lotteries, races etc.

### **Assessee**

Assessee means a person by whom tax or any other sum of money is payable under the income tax act.

Here the term "person" includes the following;



1. an individual
2. a Hindu Undivided Family
3. a company
4. a firm
5. an association of persons
6. a local authority, and
7. every artificial judicial person.

### **Assessment Year**

The expression "assessment year" means the period of twelve months commencing on the 1st day of April every year. Tax is levied for each financial year commencing from that day and ending on 31st day of march immediately following, at the rate or rates prescribed in Finance Act for the year. The tax charge is on the 'total income of the previous year'

The year for which the tax is paid is called the "assessment year" or "Income tax year", while the year in respect of the income of which the tax is levied is called the 'previous year' or 'accounting year'. There are four exceptions to the general rule that the income of the previous year alone can be assessed in the assessment year. They are

- i) shipping business of non-residents,
- ii) persons leaving India,
- iii) person trying to alienate their assets with a view to avoiding tax, and
- iv) discontinued business or profession.

### **Income Tax Authorities**

There are eight income tax authorities:

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



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

4. Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (appeals)
5. Assistant Directors of Income-tax or Assistant Commissioners of Income-tax
6. Income Tax Officers
7. Tax Recovery Officers
8. Inspectors of Income Tax.

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

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

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

### **Income Tax Returns**

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



The requirements are that -

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

Now, suppose that an assessment has been completed but certain incomes of the relevant year were not included in the assessment, what happens?

Section 147 to 153 relate to the reopening of past assessments or to the initiation of proceedings for the assessment of the income of past years which has escaped assessment.

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

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

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

## **Deductions of Income Tax at Source**

The provisions are that income tax can be deducted at source in the following cases:

1. if it is chargeable as 'salary'
2. if it is chargeable as 'interest on securities'
3. dividends paid by an Indian company
4. any person other than an individual or a Hindu Undivided Family crediting or paying any interest other than interest on securities to a resident person
5. winning of lotteries, races, etc.



6. if any insurance commission is paid to a resident Indian.

### **Capital Gains when liable to tax**

Any profit or gains from the transfer of a capital asset made in a previous years will be chargeable to income tax. The expression 'capital asset' means property of any kind held by the assessee. It includes all kinds of property, movable or immovable, tangible or intangible, fixed or circulating. The goodwill of a business, a partner's share in a firm, patents, trademarks and actionable claims are illustrations of capital assets.

### **Set Off and Carry Forward Losses**

Income tax is only one Act and the heads of income are more - So, it is essential that a loss sustained in any year under one head in the same year, should be set off against the income under any other heads in the same years. Thus an assessee can set off his business losses against income from any other source or sources.

Besides this, the assessee has a right to carry forward the loss in case where it cannot be set-off due to absence or inadequacy of income under any other head in that year. The loss so carried forward can be set-off against the profits of subsequent assessment year.

We have here given you a broad outline of the Income Tax Act. For detailed information, we advise you not only to refer to the Act, but to consult an income tax expert or consultant when the need arises.

### **SAQ 5.3**

Write down two properties of how you will use the knowledge on Income Tax Act.

1. _____
2. _____
_____



# UNIT

## 10

### Contents

#### Chapter VI

- Pollution Control Act
- Indian Boiler Act
- Explosive License Act
- Drugs and Cosmetics

Manufacturing License

**The aim of this chapter is to:**

- introduce you to certain industry specific requirements.

**Objective:**

On completion of this chapter you will be able to:

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





Apart from commercial laws there are a few industrial laws governing manufacturing activities.

They are such as;

I) Pollution Control Acts

- a) General (Pollution Prevention and Control) Act, 1974
- b) Water (Pollution Prevention and Control) Act, 1977
- c) Air (Pollution Prevention and Control) Act, 1981
- d) Environment (Protection) Act, 1986

II) The Indian Boiler Act, 1923

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

IV) Drugs and Cosmetics Manufacturing Licence.

## **Pollution Control Act**

The State Air and Water Pollution Control Board is the body responsible for implementing this act. The act, in general, is applicable to all types of industrial and service units. However, chemical and allied industries are required to take more actions under this act, as most of them create air, water pollution during the manufacturing process. When such an industry approaches the board to set up a unit, the permission is given by the State Pollution Control Board for its establishment provided certain norms like effluent treatment plants and other facilities for effluent disposal are complied with. Sometimes permission is given to set up the industry in a specific location set apart for the purpose.

There is also a Central Pollution Control Board in New Delhi which takes care of larger interests of air, water pollution control. Central Authority makes the rules and regulations and prescribes the specifications for the disposal of various types of effluents. The small scale entrepreneur is required to carry out the formalities within the state only. The provisions under this act are very strict and therefore you are advised to comply with the rules and so to avoid complications and criminal litigations later on. As per the latest amendments in the Act air, water pollution is considered as a criminal offence.



a. **THE WATER (PREVENTION AND CONTROL OF POLLUTION) CESS (AMENDMENT) ACT, 2003**

ACT NO. 19 OF 2003- An Act further to amend the Water (Prevention and Control of Pollution) Cess Act, 1977. BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:-

(1) This Act may be called the Water (Prevention and Control of Pollution) Cess (Amendment) Act, 2003. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 2. 2. Amendment of section 2.-In the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977) (hereinafter referred to as the principal Act), in section 2, for clause (c), the following clause shall be substituted, namely:- '(c) "industry" includes any operation or process, or treatment and disposal system, which consumes water or gives rise to sewage effluent or trade effluent, but does not include any hydel power unit;'.

## **Indian Boiler Act 1923**

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

## **Explosive License Act**

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



products, above ground, it is necessary that no construction or building is allowed in the periphery of 30 feet from the storage place. Moreover certain fire fighting equipment has to be kept on the premises.

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

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

## Drugs And Cosmetics Manufacturing License

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

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

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

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



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

### **The natural holistic approach of treatment**

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

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



## SAQ 6.1

Identify whether the product you choose for your business is governed by special legislation. If yes, collect these details and present below in brief.

### IMPORTANT NOTES

### ASSIGNMENT X

Enrollment No. \_\_\_\_\_

### ASSIGNMENT

Enrollment No. \_\_\_\_\_



## ASSIGNMENT X

In this unit we made an attempt to impart knowledge on statutory requirements which should be broadly classified into labour related, commercial laws, Tax Related and industry Specific. Write in not more than one page on each of these four categories explaining how these knowledge is useful for your business.

Enrollment No. \_\_\_\_\_