

# Synergies between GST and Income Tax

[29<sup>th</sup> March 2020]

CA Pritam Mahure and Associates

# Constitution of India

# Constitution of India

**Article 265 - Taxes not to be imposed save by authority of law**

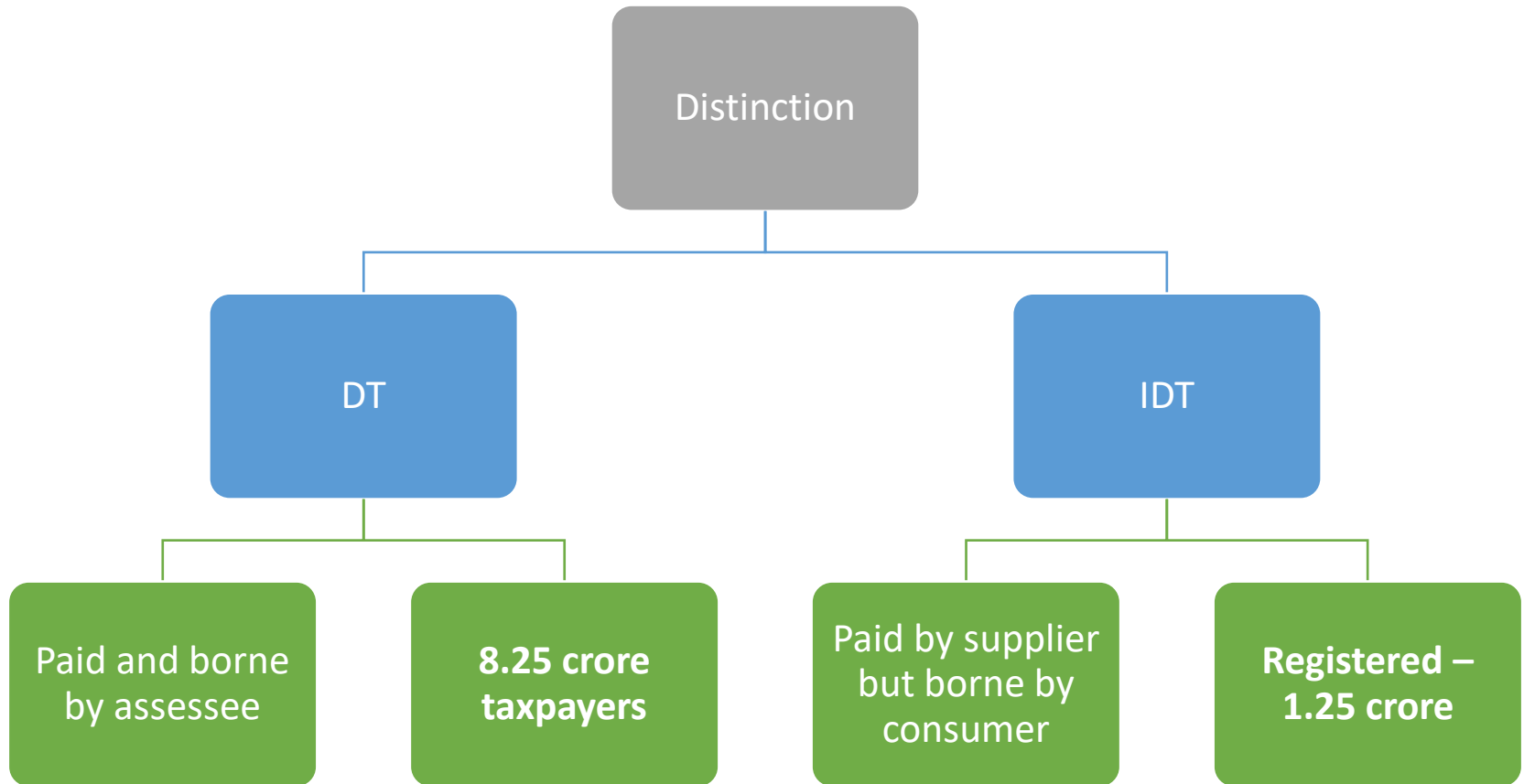
**246. Subject-matter of laws made by Parliament and by the Legislatures of States**

- Schedule VII - Entry 82 - Taxes on income other than agricultural income

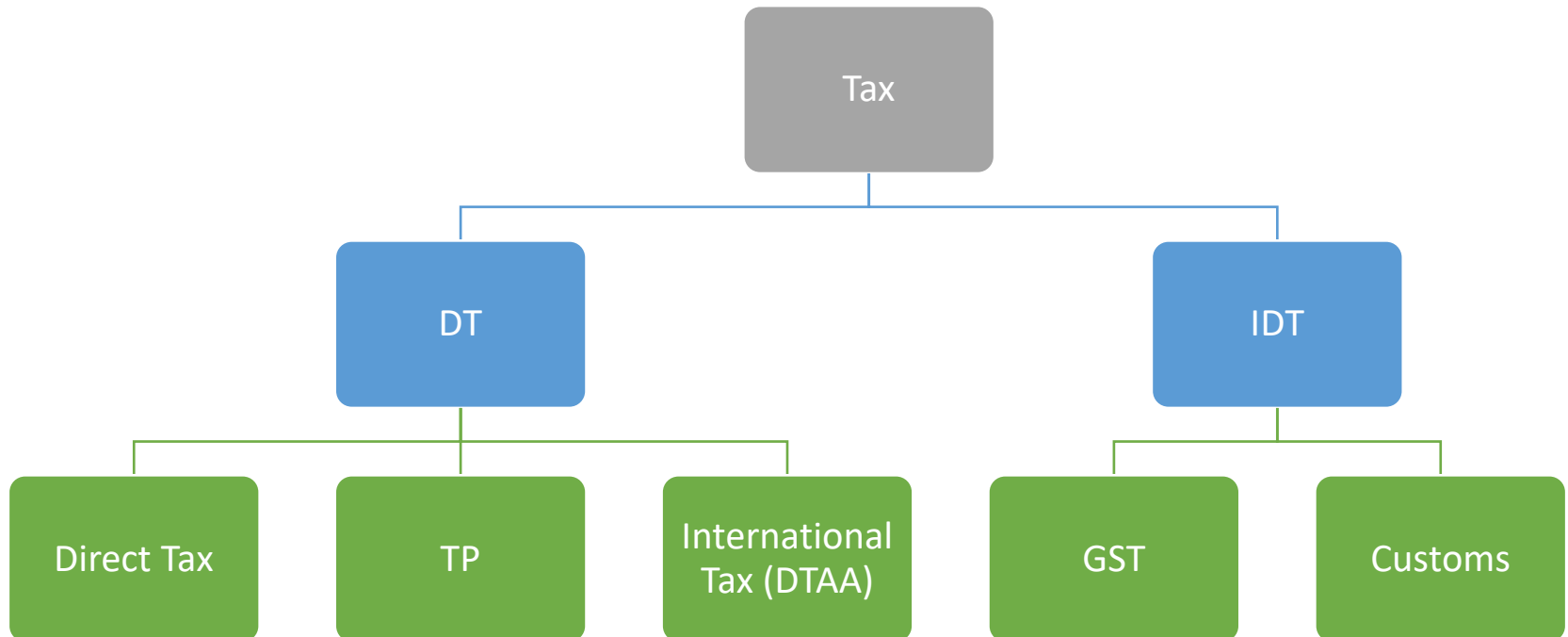
**246A. Special provision with respect to goods and services tax**

# Overview

# Overview



# Overview



# Overview

## GST

Consumption based

To evade – Lowering sale,  
increasing in credit, shifting  
turnover

Legality is questioned (?)

## Income Tax

Source or residence based

To evade – Lowering sale,  
increasing in expenses, shifting  
turnover, changing residence

Legality is questioned (?)

# GST Act and IT Act



# GST Act and IT Act

## Act

- CGST Act, 2017
  - 174 sections and 3 Schedules
- IT Act, 1961
  - 298 sections and 14 Schedules

## Rules

- CGST Rules
  - 162
- IT Rules
  - 129

## Others

- Notifications
- Circulars
- Case laws

# Overview of Acts

# Income Tax Legislation

## Key sections

- Section 4 - Charge
- Section 10 - Exemptions

## Heads of Income (sec. 14)

- Salary
- HP
- PGBP
- CG
- IoS

## Rates

- Specified in FA
- Tax rates varies based on income
- Deductions

## Other

- TDS
- Business connection
- POEM, SEP
- Presumptive taxation
- 147

# GST Legislation

## Key sections

- Section 9 - Charge
- Section 7 – Supply
- Section 9 (3) and (4) - RCM

## Other provisions

- PoS
- Value
- ITC
- Time of supply

## Rates

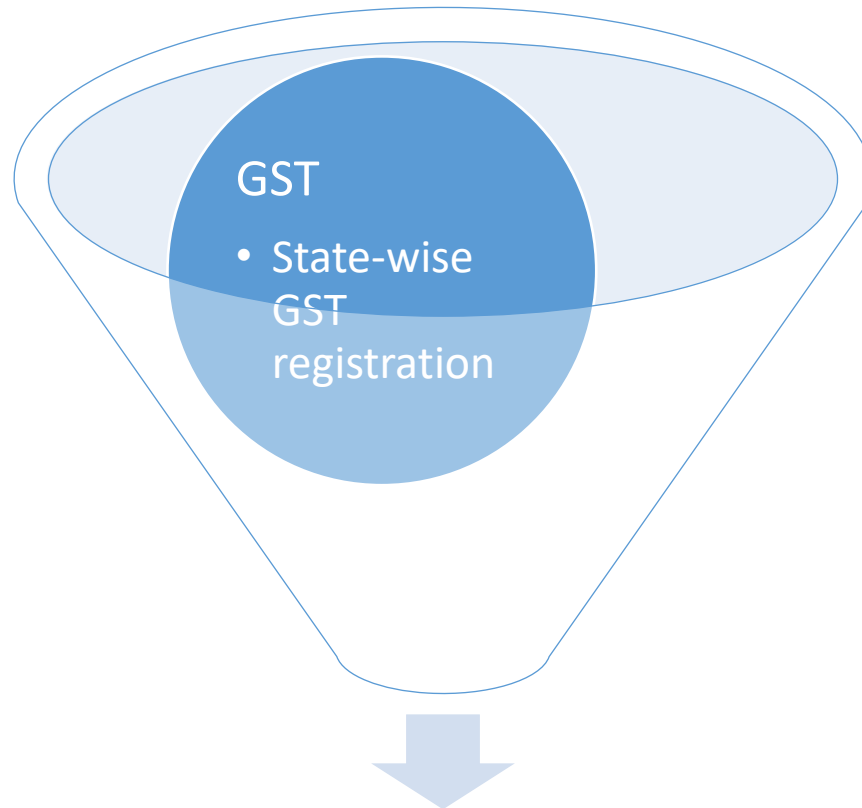
- Specified in Notifications
- Tax rates varies based on goods/ services

## Other provisions

- Composition scheme
- Best judgment assessment

Registration

# Registration



**IT**

- One taxpayer, one PAN

Compliances

# Returns

## GST

- Monthly GSTR 1 and 3B
- TDS, TCS
- GST Audit
- ITC – 04
- Annual Return
- E-way bills

## IT

- Annual IT Return (I, II, III, IV etc)
- TDS, TCS return
- Tax Audit
- Certifications and forms (CA certificate for 115JB, 50B etc)



# Payment

## GST

- Monthly payment

## IT

- Quarterly payment (Advance Tax)

# Levy of taxes

# Levy of Taxes

Section 9 of CGST Act	Section 4 of IT Act
<p><b>Levy and collection.</b></p> <p>9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax <b>on all intra-State supplies of goods or services or both</b>, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., ...</p> <p>.....</p>	<p><b>Charge of income-tax.</b></p> <p>4. (1) Where any Central Act enacts that income-tax shall be <b>charged for any assessment year</b> at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act <b>in respect of the total income of the previous year of every person</b></p> <p>:</p> <p>.....</p>

# Levy of Taxes

Section 7 of CGST Act	Section 5 IT Act
<p><b>Supply includes-</b></p> <ul style="list-style-type: none"><li>• <i>all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;</i></li><li>• <i>import of services for a consideration whether or not in the course or furtherance of business 1[and];</i></li><li>• <i>the activities specified in Schedule I, made or agreed to be made without a consideration;</i></li></ul>	<p><i>(1) Subject to the provisions of this Act, the total income of any previous year of a person <b>who is a resident</b> includes all income from whatever source derived which—</i></p> <p><i>(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or</i></p> <p><i>(b) accrues or arises or is deemed to accrue or arise to him in India during such year ; or</i></p> <p><i>(c) accrues or arises to him outside India during such year</i></p>

# Classification

# Classification of income

## GST

Goods

Services

Both

- Composite Supply
- Mixed Supply

## Income Tax

Salary

HP

CG

PGBP

IoS

# Determining nature

GST	Income Tax
<p>Section 8 of CGST Act:</p> <p>(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such <b>principal</b> supply; and</p> <p>(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the <b>highest</b> rate of tax.</p>	<ul style="list-style-type: none"><li>• Income would fall in <b>any one</b> of the 5 heads as per Section 14 of IT Act namely Salaries, Income from house property, Profits and gains of business or profession, Capital gains, Income from other sources</li><li>• Tax rates – Multiple - Capital gains could attract 20%</li><li>• Specific deductions / computation such as 30% deduction for HP</li></ul>

# Definitions



# Definitions - Section 2

**CGST Act**

- 121

**IT Act**

- 48

# Definitions - Section 2

Agricultural  
income [2  
(1A)]

Business [2  
(13)]

Capital Asset  
[2 (14)]

Charitable  
purpose [2  
(15)]

Firm [2 (23)]

Income [2  
(24)]

India [2 (25A)]

Interest [2  
(28A)]

Person [2  
(31)]

Profession [2  
(36)]

Transfer [2  
(47)]

# Agriculture

Not. No. 11/2017	Section 2
<p>(vii) “agricultural produce” means <b>any produce out of cultivation</b> of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.”</p>	<p>(1A) "agricultural income" means—</p> <ul style="list-style-type: none"><li>(a) any <b>rent or revenue</b> derived from land which is situated in India and is used for agricultural purposes;</li><li>(b) any income derived from such land by—<ul style="list-style-type: none"><li>(i) agriculture; or</li><li>(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or...</li></ul></li></ul>

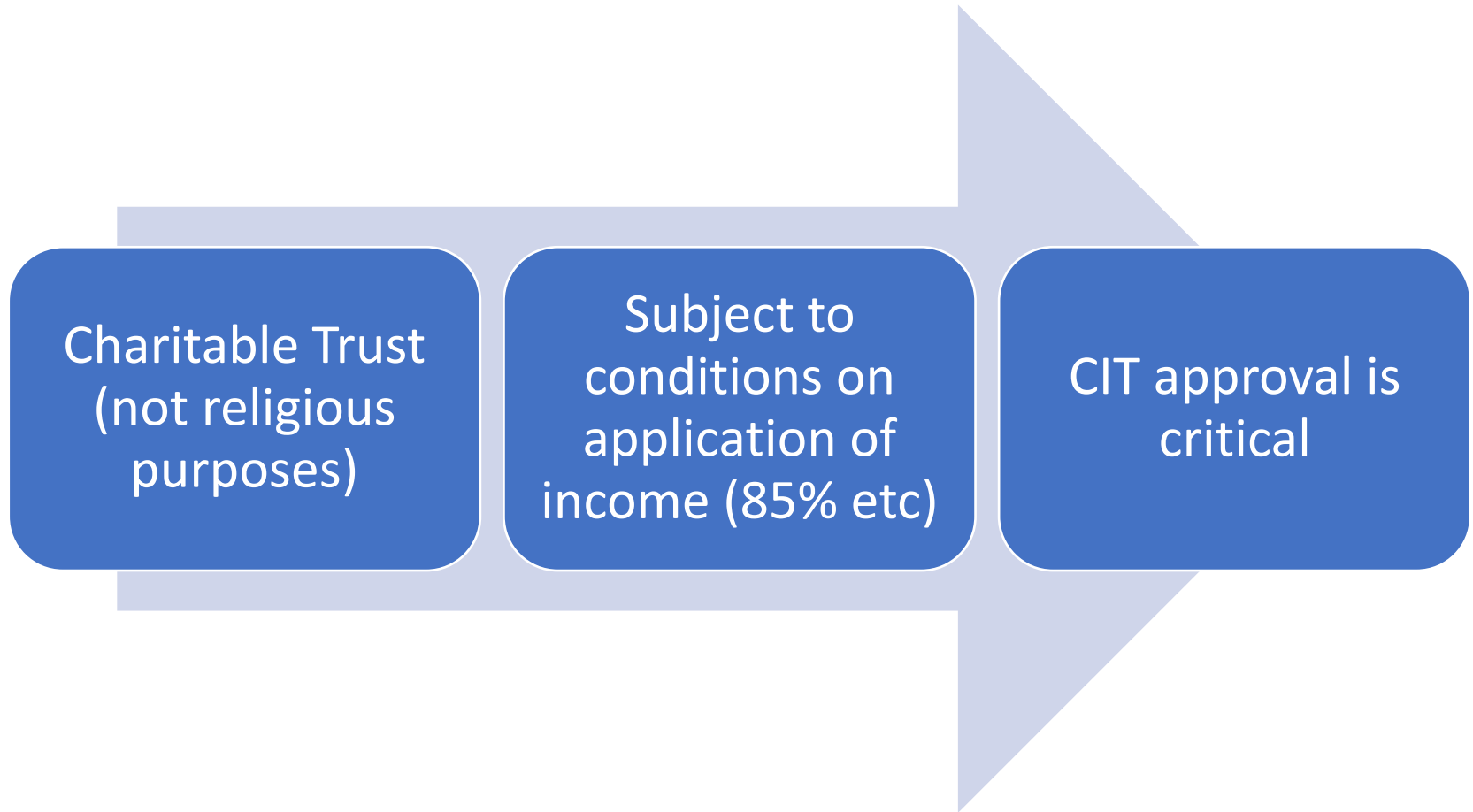
# Business/ Profession

Section 2	Section 2
<p>(17) "business" includes —</p> <p>(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;</p> <p>(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);</p> <p>(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction; ...</p>	<p>(13) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;</p> <p>(36) "profession" includes vocation ;</p>

# Charitable activities/ purpose

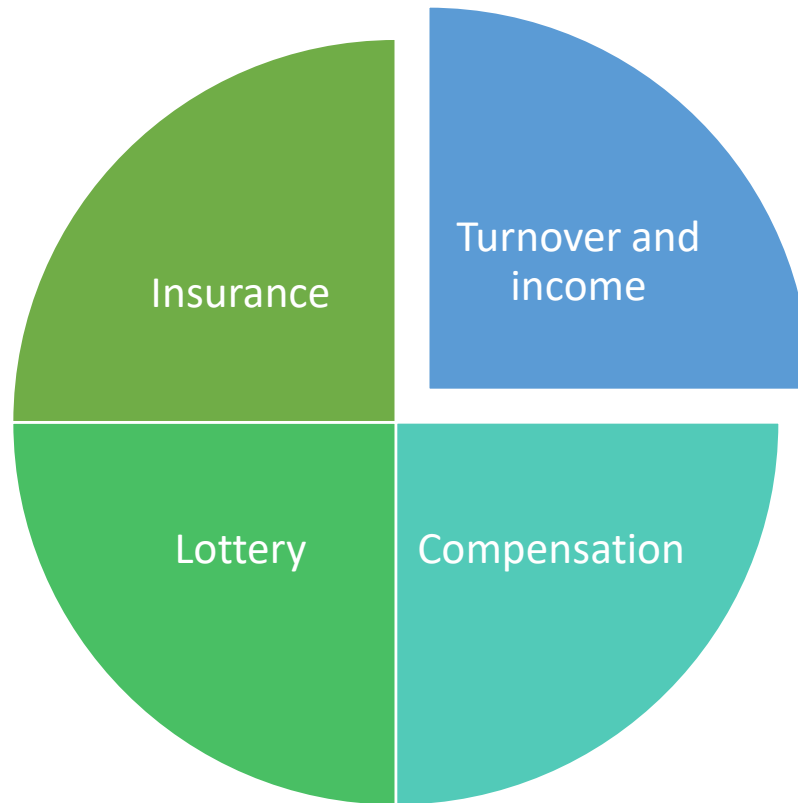
Not. No. 12/2017	Section 2
<p>(a) Entities must be registered under Section 12AA of the Income tax Act, and</p> <p>(b) Such services or activities by the entity are by way of charitable activities</p> <p>[(i) public health by way of: (A) care or counseling of (I) terminally ill persons or persons with severe physical or mental disability; (II) persons afflicted with HIV or AIDS; (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or...]</p>	<p>(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:</p> <p><b>Provided</b> that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, ...</p>

# Charitable purpose



Income

# Income





# Income 2 (24)

*(24) "income" includes—*

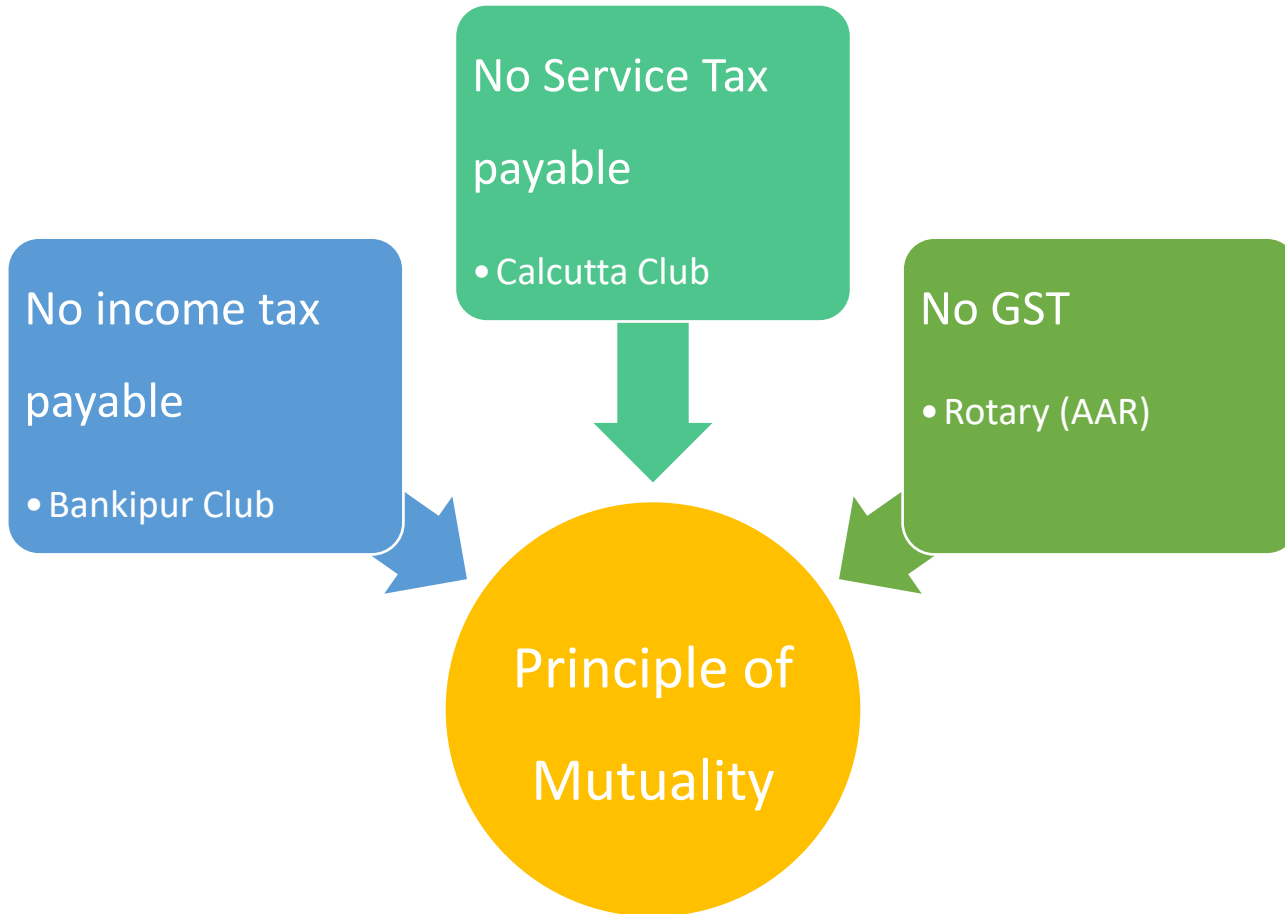
*(i) profits and gains ;*

*(ii) Dividend*

*...*

*(ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.*

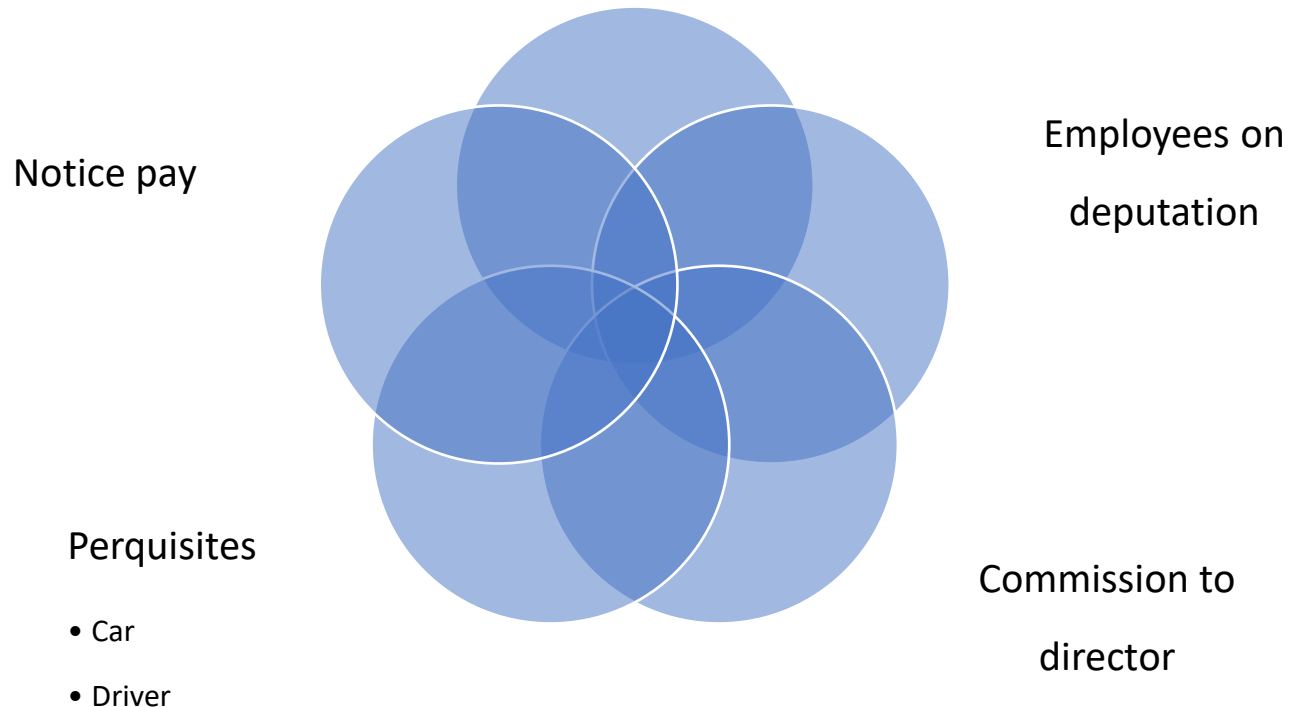
# Principle of Mutuality



Salary

# Salary – GST vs IT

How to determine  
whether a person is an  
employee?



HP

HP

# Commercial rent

- Furniture rent

PGBP

# ITC V/s Deduction

GST	Income Tax
<p><b>Section 16-20 of CGST Act</b></p> <ul style="list-style-type: none"><li>• Credit is available if such input is used for the business and tax invoice as well as such goods/ services are received by the business</li><li>• Certain other conditions to avail ITC like payment in 180 days, filing return, etc.</li><li>• Section 17(5) specifically disallow ITC on certain procurements such as motor vehicle, food and beverages, works contract on immovable property, etc.</li><li>• No credit if depreciation claimed</li></ul>	<p><b>Section 30-37 of Income Tax</b></p> <ul style="list-style-type: none"><li>• Deductions like depreciation, scientific research, other business related expenses</li><li>• Weighted deduction like 150% in certain cases of Scientific research</li><li>• Expenses of personal nature, <b>CSR, TDS provisions defaulted, payment in cash</b></li></ul>



# PGBP

Specific  
allowed  
expenses

Health  
insurance of  
employees

Bad debts

Specific  
dis-  
allowed  
expenses

TDS not  
deducted

# Clubbing of income

# Clubbing of income

What if income of husband and wife is clubbed?

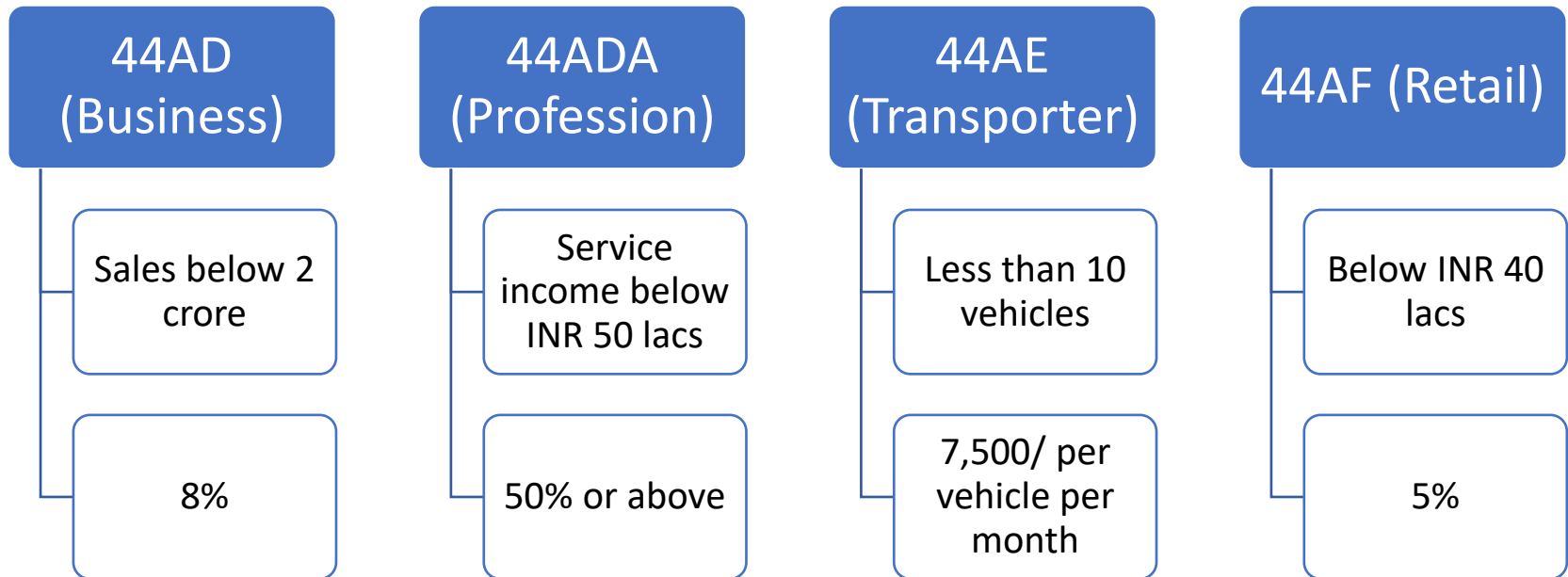
- Whether for GST threshold it is relevant?

# Presumptive taxation

# Composition V/s Presumptive

GST	Income Tax
<p><b>Section 10 of CGST Act</b></p> <ul style="list-style-type: none"><li>• Separate schemes for goods as well as service providers</li><li>• Not available to certain category of Suppliers</li><li>• Different threshold for goods (1.5 Cr) and services (0.5 Cr)</li><li>• Certain Other Conditions to avail such scheme</li><li>• Advantages like lesser compliance and limited tax liability</li><li>• Limitations such as cannot make inter-state supply, no ITC and cannot supply through e-commerce</li></ul>	<p><b>Section 44AD (Business) and Section 44ADA (Profession) of Income Tax</b></p> <ul style="list-style-type: none"><li>• Separate schemes for Business as well as professionals</li><li>• Only individuals, HUF, or partnership firms can avail such scheme</li><li>• Different Turnover/ Gross Receipts threshold of for Business (2 Cr) and services (0.5 Cr)</li><li>• Certain Other Conditions to avail such scheme</li><li>• Similar advantages like lesser compliance and limited tax liability</li><li>• Limitations such as cannot claim deductions and benefits available to other taxpayers</li></ul>

# Presumptive Taxation



Accounting

# Accounting

GST	IT
Goods – Accrual	145 – Cash or Mercantile
Services – Earlier of accrual or cash	145B – ICDS – Revenue Recognition (except Individual or HUF everyone need to go for Mercantile)



Carry forward

# Carry forward

GST	IT
ITC - No prescribed time limit	Loss – Section 72A - 8 years

Undisclosed income

# Undisclosed income/ investments

GST	IT
GST Implications on income disclosed in raid?	<a href="#"><u>Income Tax raids unearth ₹77 crore from financier of Vijay-starrer 'Bigil'</u></a>  Un-explained investments?

# Rule of Apportionment

# Rule of Apportionment

GST	IT
Section 17 Rule 42/43	Section 14A Rule 8D

Cash expenses

# Cash expenses

GST	IT
URD RCM - Earlier 5,000 – From 13.10.2017 not applicable	269SS – 10,000/- For loan and advances  40A (3) – 10,000/- any expenditure in cash



# Valuation

# Transactions with related person

GST	Income Tax
Relevant section – Explanation to Section 15 of CGST Act	Section 2(41) and 40A of Income Tax Act
<ul style="list-style-type: none"><li>• Supply made by one related party to another party is taxable under GST</li><li>• Even if supply made without consideration, it is taxable as per Schedule I</li></ul>	<ul style="list-style-type: none"><li>• Arm's length price is relevant in case of international transactions under Section 92 of Income Tax Act</li><li>• Domestic Transfer pricing (above 20 crore)</li></ul>

# Valuation

Rules	IT Rules
Rule 27 to 31	<p><b>Rule 11UA</b> – Valuation of shares (Merchant Banker valuation for shares) or Jewelry – Value as per Registered Valuer</p> <p>Land/Building (Section 50C) – Value as per Stamp Duty</p>

# TDS

GST	Income Tax
<ul style="list-style-type: none"><li>• Sec 51 of CGST Act</li></ul>	<ul style="list-style-type: none"><li>• Various sections such 194, 194DA, 195</li></ul>
<ul style="list-style-type: none"><li>• It is on the basis of deductor i.e government needs to deduct TDS on payments made by it</li></ul>	<ul style="list-style-type: none"><li>• It is on the basis of nature off expenses like salary, professional services, works contract, etc.</li></ul>
<ul style="list-style-type: none"><li>• TDS deducted is credited in receiver's electronic cash ledger</li></ul>	<ul style="list-style-type: none"><li>• Tax deducted is reflected in Form 26AS</li></ul>

Is PE in DT equals PE in IDT?

# FE/ PE

GST	IT
<p>2 (50) “fixed establishment” means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs</p>	<p>PE is “a fixed place of business through which the business of an enterprise is wholly or partly carried on</p>

# Formula One World Championship vs CIT [24 April, 2017]

- *We are of the opinion that the test laid down by the Andhra Pradesh High Court in Visakhapatnam Port Trust case fully stands satisfied. Not only the Buddh International Circuit is a fixed place where the commercial/economic activity of conducting F-1 Championship was carried out, one could clearly discern that it was a virtual projection of the foreign enterprise, namely, Formula-1 (i.e. FOWC) on the soil of this country. It is already noted above that as per Philip Baker[27], a PE must have three characteristics: stability, productivity and dependence.*

# Formula One World Championship vs CIT [24 April, 2017]

- *All characteristics are present in this case. Fixed place of business in the form of physical location, i.e. Buddh International Circuit, was at the disposal of FOWC through which it conducted business. Aesthetics of law and taxation jurisprudence leave no doubt in our mind that taxable event has taken place in India and non-resident FOWC is liable to pay tax in India on the income it has earned on this soil.*
- *We are, however, inclined to accept the submission of Mr. Datar that only that portion of the income of FOWC, which is attributable to the said PE, would be treated as business income of FOWC and only that part of income deduction was required to be made under [Section 195](#) of the Act.*



# Linking between Acts and Case Laws

# Case Laws – GST and IT – Whether provisions can be borrowed?

**Moriroku UT India (P)  
Ltd (SC)**

*'Therefore, one cannot borrow and automatically apply the concept of amortised cost to Section 3 of the 1948 Act.'*

**Dai Ichi Karkaria  
Ltd. (SC)**

*'Judgments relating to Income Tax or other statutes have no relevance while considering a provision in an excise statute'*

# **Income Tax Act**

**When linking will be initiated?**

# IT Act – Linking initiated

## New provision

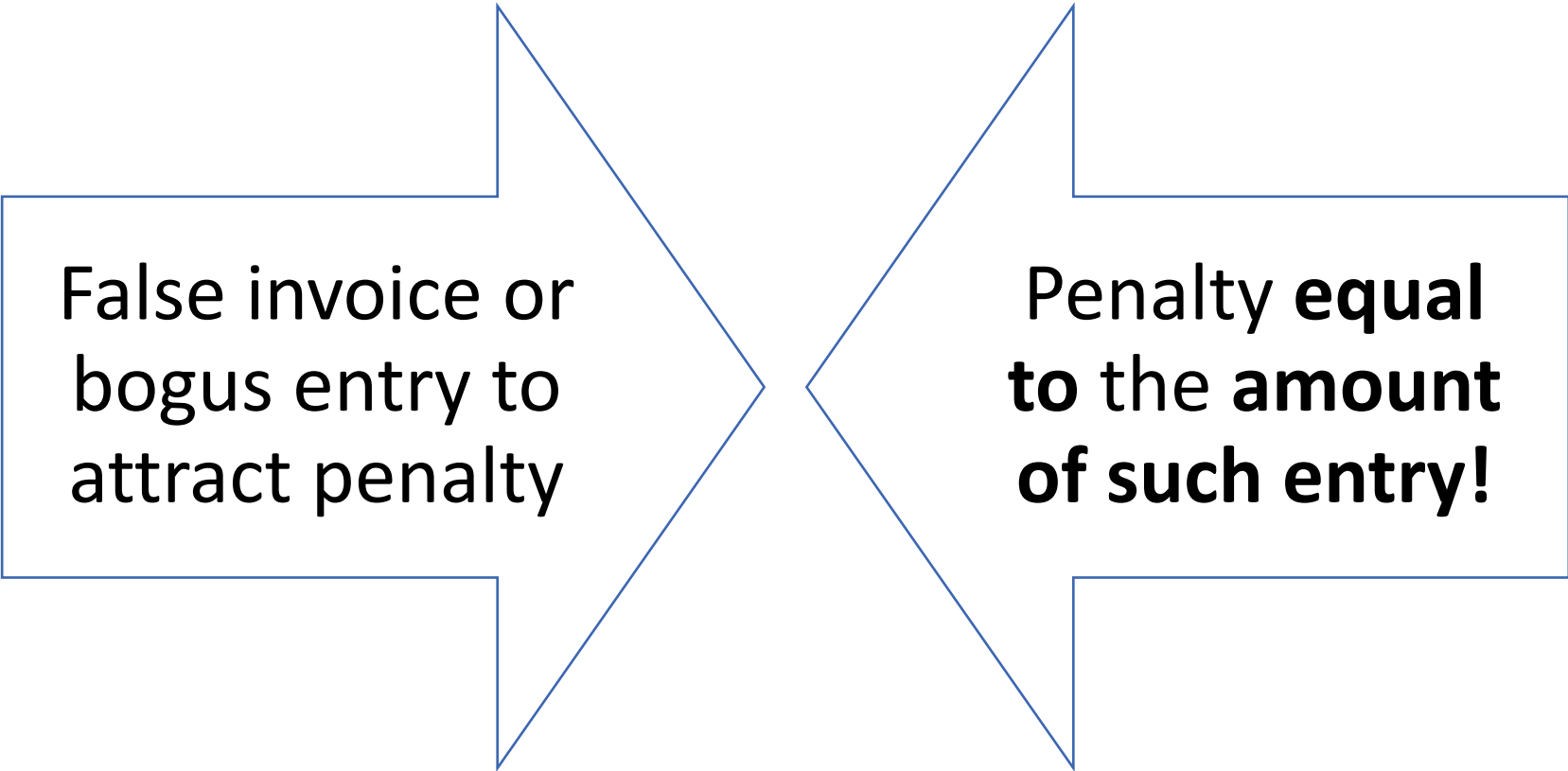
**Section 271AAD** is being inserted in Income Tax Act (**from 1<sup>st</sup> April 2020**)

- (1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is—
- (i) a false entry; or
  - (ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability,

the Assessing Officer may direct that such person shall pay by way of **penalty** a sum **equal** to the aggregate **amount** of such false or omitted entry.

- (2) Without prejudice to the provisions of sub-section (1), the Assessing Officer may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

# IT Act – Linking initiated



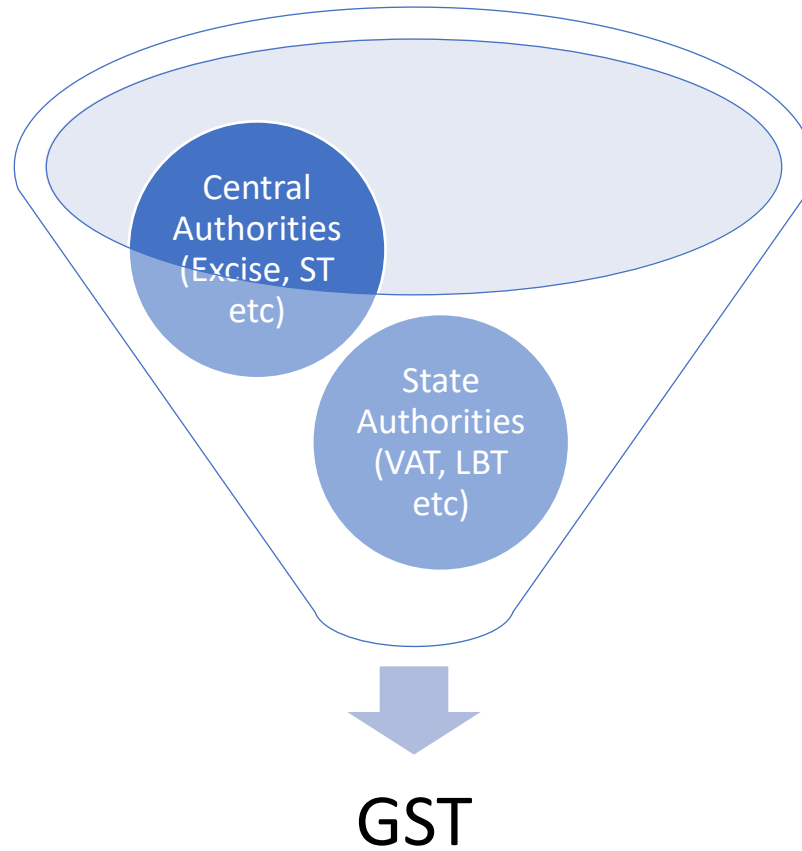
False invoice or  
bogus entry to  
attract penalty

The diagram consists of two large, blue-outlined arrows pointing towards each other. The left arrow points right and contains the text 'False invoice or bogus entry to attract penalty'. The right arrow points left and contains the text 'Penalty equal to the amount of such entry!'. The two arrows meet at a central point, forming a four-pointed star shape.

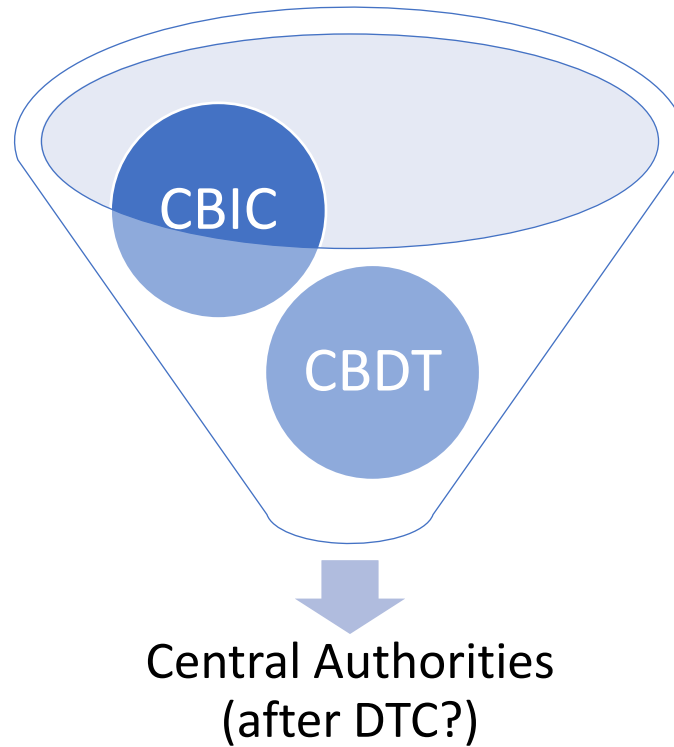
**Penalty equal  
to the amount  
of such entry!**

**What future holds?**

# Present



# Future?



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\* Many countries have amalgamated Direct and Indirect Tax departments - [OECD](#)

\*Amalgamation was recommended - [TARC](#)



Thank you!

**CA Pritam Mahure and Associates**

**Happy to Discuss**

For feedback / suggestions: [info@lawgical.in](mailto:info@lawgical.in) / 020-27293425

[E-books on GST](#)

[E-books on How to be Future Proof](#)

Smile please 😊