# The Chamber of Tax Consultants

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# Tax Consolidation

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# Tax Consolidation - Concept

1. **Supreme Court in Govind Saran Ganga Saran v CST (1985) 155 ITR 144.**
2. **Components of Tax**:
   a) Character of levy
   **b)** **Person** on whom the levy should be imposed.
   **c)** **Value / Tax Base** on which the levy should be imposed.
   d) Rate at which the levy should be imposed.
3. **Tax Consolidation**:
   a) Based on principles of economic unity - a corporate group under "common control".
   b) Serves horizontal equity
   **c)** **"Person" / Taxable Unit**: The corporate group.
   d) Expands the "**tax base"**? **"Tax Base"**: Aggregate the results of all members of the group.

- # Tax Consolidation - Concept

5. **Ownership:**
   a) 100% - aligns with horizontal equity.
   b) 75% to 95% - commonly employed
   c) 50% - rare but still in vogue.
   **d) Aspect of Minority interest**
6. **Components of Ownership:** Value, Voting Power, Significant influence etc.
7. **Methods**:
   a) Pooling
   b) Absorption
   c) Attribution
   d) Contribution

# Tax Consolidation - Concept

1. **Group**: Geographical inclusion
    a) Country Group
        - PE of a non-resident subsidiary
        - Resident Subsidiary held by the PE
    b) Trade bloc Group
    c) Worldwide Group

- # Tax Consolidation - Concept

8. **Tax Consolidation – Elective / Mandatory**
9. **Consolidation Cycle**:
   a) Forming the Group – All eligible members / Selection?
   b) New Member Joining – Mandatory / Optional?
   c) Member Exiting – Voluntary / By law
   d) De-consolidation: Group Termination
10. **Consolidation Term:**
   a) Irrevocable
   b) Revocable after a specified term
   c) Revocable any time

- # Tax Consolidation - Concept

11. **Losses**
    a) Pre Consolidation losses – Cancel, Transfer, Quarantine
    b) Losses during Consolidation Term
    c) Group losses on De-consolidation – Retain / distribute?
12. **Intra-group asset transfer**:
    a) Gain / Loss is taxable
    b) Gain / Loss is deferred – recapture events?
13. **Intra-group share transfer:**
    a) Gain / Loss is taxable
    b) Gain / Loss is deferred – recapture events

# Tax Consolidation - Concept

14. **Computation mechanism:**
    a) Same tax period?
    b) Same accounting method?
    c) % taxable income of a member to be included?
    d) Separate returns by each member – aggregation by group-head?
    e) Only a combined return by group head?
15. **Tax liability:**
    a) Joint and Several
    b) Respective share of tax
    c) Penalties / Fines
    d) Tax neutral payments for tax value
16. **Succession of group – Acquisition / Merger etc.**

# Tax Consolidation – Benefits and Limitations

**Benefits:**

1. **Loss offset** against profits within the group.
2. Elimination of tax on **intra- group asset transfer**.
3. Better cash management as inter-company **dividends** between group members are eliminated from taxable income.
4. **Higher deductions** and credits subject to conditions of percentages/size etc.
5. Serves as an effective **<u>anti-abuse</u>** in the home country of Group head.
   a) Lesser number of SAAR
   b) Lower scope for GAAR – Tax consolidation is based on Substance over Form.
6. Enhances **global competitiveness** for corporate groups headquartered in a country.
7. **Ease of Doing Business:**
   a) Ease of tax administration, superior in an e-assessment, enhances collection ease and revenue predictability.
   b) Risk rating of the Corporate group.
   c) Ability to handle scale.
   d) Ease of compliance – single assessee, single appeal etc.
   e) Some disallowances would become redundant - Sec 14A, 40A(2)(b)

# Tax Consolidation – Benefits and Limitations

**Limitations:**

1. **Expertise**: Needs higher skill sets, specialisation – both for businesses and tax administration.
2. **Irrevocable Status**: A separate regime, will bind future years as Group. May not be able to roll back such decision in future.
3. **Forego fragmentation benefits**: Huge losses of group entities may curtail the deduction and credits.
4. **Alignment of tax period**: If joining is permitted during a tax year, it may curtail the tax period for the joining member. Limitations based on lapsing of tax-year may get adversely impacted - e.g. losses, tax credits etc.
5. **Alignment with tax treaty:**
   a) "Enterprise" used in treaty - separate company?
   b) Foreign tax credit provisions, how to look at doubly taxed income?

# Tax Consolidation - Concept

1. **Alignment of anti-avoidance provisions:**
   a) Transfer Pricing
   b) Controlled Foreign Corporation
   c) Place of Effective Management
   d) Interest deduction limitation
2. **Countries having tax consolidation regime:**
   –) USA – domestic pooling, absorption for foreign companies
   –) France, Spain, New Zealand, Japan, Russia – Pooling
   –) UK – Group Relief
   –) Germany – Loss contribution
   –) Australia - Absorption
   –) Netherlands – based on fiscal unity
   –) Denmark , Italy – Joint Taxation