Note on Tax Planning under Indirect Taxation

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This note is the view of the paper writer on tax planning.

- Professionals in practice / employment to be a profit center and not cost center
- Historic Value addition not enough may have to look to customers and suppliers for value.
- Since not much explored, untapped opportunity available in Indirect taxes.
- This would need updated Knowledge of law and current trends
- In the case of IRC V Duke of Westminister 1936 AC 1 where Lord Tomkin observed that every man is entitiled if he can to order his affairs, so that tax attaching under appropriate Acts, is less than it otherwise would be. If he succeeds in ordering them so as secure the result, then however unappreciative the Commissioners of Revenue/ tax gatherers maybe of his ingenuity, he cannot be compelled to pay increased taxes.
- There have been some Judges like Justice Reddy who have defined it as the art of dodging tax without breaking the law.

The main objectives of tax planning under Central Excise are enumerated below:-

A. Conservation of resources of the organisation.
B. Adhering to the law of the land and avoid litigation to extent possible.
C. Availing full advantage of the law even if it means litigation.
D. In India the possibility of retrospective amendments also should be considered as the risk is real.

- Honestly with a tinge of moderation. It should have legal support (judicial precedent) or based on clear logic and once decided gone through fearlessly with adequate disclosure to the department.

A few illustrations of Tax planning possible under Central Excise, Customs, Service Tax and K-VAT are set out hereinafter. The points have been provided in no particular order/ sequence.

1. Strategically before setting up the business look at what are the customers needs, which product segment are you meeting, can the buyer avail the set offs or not.
2. The cross sectional credit between service tax and central excise would provide some possible value adds.

3. GST is on the horizon (maybe in 2012 or so) Be ready for the same by locating as required by business needs rather than tax breaks based decision.
4. In case of final products or sale to dealers/ traders. The decision to set up the unit at a particular location where excise Reliefs exist – The North East (32 & 33/99 , Kutch, Chatitisgarh, Uttaranchal, Himachal Pradesh has some exemptions as on date. A large number of the larger FMCG companies have already opened shop there.: Scheme Started in 1997. For new industrial undertaking and those how have done substantial expansion in installed capacity increase of 25%., J&K employment also criterion, 10 years from date of commercial production, double the investment, specified areas some products and all areas some products.

5. The decision to set up the unit outside the country due to factors like customs rate- The rate of basic custom duty may be so low that the imports maybe cheaper. China, Taiwan, Bangladesh, Sri Lanka maybe considered for local as well as outstation.

6. Centralised working for growing businesses can be a blessing as the costs keep multiplying. The concessional rate have now been removed.
   The factors of labour can be considered as a deterrent. Auto ancillary groups

7. The excess capacity available in the country where work on principal to principal job work basis could be undertaken- Route preferred by MNC for consumer goods or low tech products. However for high tech product / non standardized product this may not be useful. Velvet shampoo, domestic cooking appliances,

8. The decision to take up the entire process in house- The cascading effect of multi point levy of sales tax may prompt this. Now with VAT this is not an issue for long.
   - Imported/ CST purchases dominant

9. Maximisation of the cenvat credit by looking at alternative procurement possibilities. Where small suppliers then the decision to change the vendors from being suppliers to job workers- This can happen when the process cost is minimal and material cost substantial. Paper industry.

- Reporting methods
- Alternate suppliers who pass on credit
- SSI supplier to be job workers

Cost saving of between 7-12.5% on total purchases not under Central Excise.

10. Independent unit for new collaborations, tie ups , new products to take advantage of exemptions- The benefits of SSI exemption per year for final consumer products works out to about Rs. 5-12 lakhs per annum. Other than this it gives a little breathing time for compliance. However capital goods credit should not be missed out due to this.
    - Register and claim the benefits.

11. The requirement of having trading, servicing and manufacturing together. This would depend on the product, and the customer. A broad view of the supplier, client and his customer needs to be taken.
    - customer under Central Excise,- excise dealer, taxable service provider and importantly manufacturer under Central Excise – Manufacturer under Central Excise better off
    - customer a trader who does not pass on credit, exempted manufacturer, non taxable service provider - Status of trader/ manufacturer under exemption being better off

12. Sales channels: Through distributors/ depots/ associated companies/ marketing companies.
    - not used much by the unorganized sector

13. Complying with the frequent changes in the law to avoid demands (penalties, interest) and losses due to customer not agreeing in future to re-reimburse additional amounts.

14. Utilising the exemption available- Electronic and medical industry in past few years, rural exemption.

15. Method of set up and method of export is export oriented- Advance Licence, FTZ, Advance Intermediate License, manufacture in bond, duty drawback, DEPB etc.

16. Method of import when exports exist- Advance licence, rebate on exports, rebate on inputs used in exports, high sea sales, warehousing procedures, drawback , EPCG etc.

17. VAT may become all pervasive compliance mode preferable- Long term planning of policy for the company. The supply chain may have to be relooked.

18. The SSI exemption option- Avoiding splitting unless legally clear. Rural area option to be examined.

19. Opting for branded products where credit not utilisable.

20. Considering the excise implications at time of merger. – Litigated demands may devolve on the unsuspecting buyer, duty credit available can be transferred.

21. Opting for import at concessional rate of duty. End use may be restricted.

22. Use of warehousing provisions.

23. Classification for vaguely defined products/ services with disclosure especially if alternatives are at higher rate.

24. Structuring the transaction considering the Valuation options under VAT, Service tax, Central Excise and Customs laws.

25. Under VAT the proper calculation of rebates/ special rebates are to be done to avoid demands with interest and penalties.

26. Depending on the type of product and buyer decide the mode of delivery and sale which is optimal. Similarly plan for the purchases.

27. In every transaction look at the claiming of credit/ set off and to the maximum extent possible do not break the credit chain.

28. Be ready for the audits by statutory authorities and not get coerced into reversal/ payments not required by law.

29. In all the suggestions given above, the current position of the law as well as judicial trends are important.
    - Reference to case laws will indicate tax planning already in vogue.
    - Ensure if doubt then proceed after intimation to department.

The choice of option would also depend on the customer profile, environment in which the manufacturer exists and his accounting and organizational capabilities. The tax planning above is not to be applied blindly and only indicative at best.