

INDIRECT TAXES UPDATE – 160

SERVICE TAX

Exclusion of some services provided by Government to business entity from Mega Exemption Notification No. 25/ 2012

The Central Government vide *Notification No. 07/2016-Service Tax, Dated: February 18, 2016* amended the Mega Exemption Notification to provide exemption to Services provided by Government or a local authority to a business entity with a turnover up to Rs. 10 lacs in the preceding financial year.

Now, the Central Government vide *Notification No. 26/2016-Service Tax, Dated: May 20, 2016* has provided that following services provided by Government or a local authority to a business entity with a turnover up to Rs. 10 lacs in the preceding financial year would be liable to service tax:

- a) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
- b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- c) services of transport of goods or passengers
- d) Services by way of renting of immovable property.

[Notification No. 26/2016-Service Tax, Dated: May 20, 2016]

Comments: Considering the service tax on services provided by Government or local authority is liable to payment of tax on reverse charge basis, this amendment will greatly undermine the administrative benefit that was intended by the amendment in 07/2016. Further, in respect of these services (excluded from the exemption) if industry can comply with payment of tax (on reverse charge basis), the incremental effort is only very marginal to comply with all services from Government or local authority.

Krishi Kalyan Cess

In order to support financing initiatives relating to improvement of agriculture and welfare of farmers, Central Government has imposed Krishi Kalyan Cess (KKC) @ 0.5% on all taxable services with effect from 1st June 2016.

Now, the Central Government vide *Circular No. 194/04/2016-ST, Dated: May 26, 2016* has provided the following accounting codes for KKC:

KKC (Minor Head)	Tax Collection	Other Receipts (Interest)	Deduct Refunds	Penalties
0044-00-507	00441509	00441510	00441511	00441512

Further, the following have also been provided for w.e.f 1st June 2016:

- a) For tax payable on services covered under reverse charge or partial reverse charge, KKC would also be required to be paid along with Service Tax. Provisions of the Reverse Charge Notification will be applicable *mutatis mutandis* for the purposes of KKC also.
- b) KKC will not be leviable on services which are exempt from Service tax. Therefore, KKC @ 0.5% will be levied on value of all taxable services except the following:
 - i. Activity excluded from the definition of Service under Section 65B(44) of the Finance Act;
 - ii. Negative List of Services under Section 66D of the Finance Act;
 - iii. Services exempted by a notification issued under Section 93(1) of the Finance Act i.e.
 - Services exempted under Mega Exemption Notification vide Notification No. 25/2012-ST dated June 20, 2012.
 - Services exempted, as specified to specified percentage under the Abatement Notification No. 26/2012-ST dated June 20, 2012 i.e. KKC would be computed on abated value of taxable services.
 - iv. Services exempted by Special Order issued under Section 93(2) of the Finance Act.
- c) Value of taxable services for the purposes of the Krishi Kalyan Cess will be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006. Thus, KKC would be levied in the following manner:

In terms of Service Tax Valuation Rules, Service tax along with SB Cess and KKC needs to be applied on taxable value. Accordingly, effective rate of Service tax in following illustrative cases would be:

Particulars	Effective Service Tax Rate including SBC & KKC
Works Contract: Original works	6% (15% x 40%)
Works Contract: Other than Original Work	10.50% (15% x 70%)
Restaurant and Outdoor catering: AC Restaurant services	6% (15% x 40%)
Restaurant and Outdoor catering: Outdoor catering services	9% (15% x 60%)

- d) A Service provider is eligible to claim rebate of KKC paid on all the input services used in providing services exported in terms of Rule 6A of the Service Tax Rules, 1994, as KKC is included in definition of "service tax & cess" in the amended *Notification No. 39/2012-ST dated June 20, 2012 (Rebate of the duty paid on excisable inputs or Service tax and cess paid on all input services used in providing service exported)*

e) The SEZ Unit or the Developer of SEZ unit are eligible for refund of:

- KKC paid on the specified services on which *ab-initio* exemption is admissible but not claimed.
- That portion of KKC paid on the specified services which pertains to the authorised operation in a SEZ. When the services provided are common to the authorised operation in a SEZ and the operation in domestic tariff area, the same would be bifurcated in the manner as prescribed in rule 7 of the Cenvat Credit Rules. The same would be calculated as under:

total service tax pertaining to authorised operation in a SEZ * 0.5 (KKC)

14 (being the rate of service tax)

f) For services relating to air travel agents, insurance premium, purchase & sale of foreign currency and lottery distributor where the service tax is paid at an alternative rate in terms of sub-rules 7,7A,7B and 7C to Rule 6 of the Service Tax Rules, 1994, KKC would also be computed in proportion to such alternative rate i.e.

Total Service tax liability calculated under Rule 6(7)(7A), (7B) or (7C) * 0.5 (KKC)

14 (being the rate of service tax)

For example : for domestic bookings the rate of KKC would be: $0.7\% * 0.5\% / 14\% = 0.025\%$

[\[Circular No. 194/04/2016-ST, Dated: May 26, 2016 & Notification Nos. 27/2016-Service Tax, 28/2016-Service Tax, 29/2016-Service Tax, 30/2016-Service Tax & 31/2016-Service Tax, all Dated: May 26, 2016\]](#)

Comments: Point of Taxation of Levy of Krishi Kalyan Cess (KKC)

Explanation 1 and 2 inserted with effect from March 1, 2016 to Rule 5 of the Point of Taxation Rules, 2011 directs that KKC will be applicable in the following cases:

- *Service provided and invoice issued before June 1, 2016 if but payment received after this date*
- *Service provided before June 1, 2016 but invoice issued and payment received after this date*

The levy of tax cannot be postponed until the time when it is due for quantification of the tax. This has been established by Hon'ble Supreme Court has held in Vazir Sultan Tobacco v. UoI 83 ELT 3. As such, to impose KKC (levied under section 161 of Finance Act, 2016) which is a new levy when service has already been provided before June 1, 2016 merely by the wordings of the explanation in Rule 5. Rule 4A of the Service Tax Rules, 2004 determines completion of service to be the date of invoice. Accordingly, if completion of service can be evidenced to be prior to imposition of KKC, it is doubtful if the rule can eclipse the levy under section 66B of Finance Act, 1994.

CENVAT CREDIT RULES

Cenvat credit of Krishi Kalyan Cess (KKC) to service providers

Central Government vide *Notification No. 28/2016-Central Excise (N.T.), Dated: May 26, 2016* has amended CENVAT Credit Rules, 2004 to allow Cenvat credit of KKC to a service provider. Rule 3 of CENVAT Credit Rules, 2004 has been amended to provide the following:

- A provider of output service shall be allowed to take Cenvat credit of the KKC on taxable services
- CENVAT credit of any duty specified in Rule 3(1) of the Credit Rules shall not be utilised for payment of KKC;
- CENVAT credit in respect of KKC shall be utilised only towards payment of KKC.

Thus, unlike SBC, CENVAT credit of KKC paid on input services will be allowed to be used for payment of the KKC on taxable services provided by a service provider. Further, CENVAT credit of Service tax or Excise duty can neither be utilized for payment of KKC nor vice versa.

[Notification No. 28/2016-Central Excise (N.T.), Dated: May 26, 2016]

Comments: KKC would add to the cost for the manufacturers as they will not be able to avail the credit of KKC paid by them on input services utilised during manufacture. The prices will rise to that extent as cost would be recovered from ultimate consumers only.

VALUE ADDED TAX

DELHI

Grant of Registration through Mobile DVATMsewa Application

Effective date: 17th May 2016

The Department of Trade and Taxes has developed a mobile application DVATMsewa to provide registration service along with few other services. Further, the registration number/TIN will be issued within one working day. The following procedure is prescribed for instant registration without verification of business premises:-

- The dealer has to download the mobile application “DVATMsewa” and register by giving his basic information. Thereafter, business related information will have to be provided including uploading the image of business premise.
- On submission, the system of the Department will verify the Aadhar details and PAN details of the dealer. Thereafter, the details will be provided to VATO for checking the address & location of business premises. After verifying the same, reference ID and password will be sent through e-mail on the same day.
- Dealer will then file the registration application along with scanned documents and

deposit fee online. On approval of application by VATO, final TIN will be generated.

- Registration Certificate will be available for login on the same day. Signed copy of the RC would be dispatched by post till the online dispatch facility through digital signatures is extended.

[\[Circular No. 6 of 2016-17 F.3\(521\)/Policy/2015/221-26 dated 17th May, 2016\]](#)

Comments: A mobile application has been introduced to make the procedure of registration easier, convenient and accessible to every applicant who desires to obtain a TIN.

Applicability: All dealers

[Date extension for filing Form CR-II for all the quarters of FY 2015-16 upto 16.06.2016](#)

[Effective date: 19th May 2016](#)

The Delhi Government has extended the due date of filing Form CR-II for first three quarters of FY 2015-16 from 31.03.2016 to 16.06.2016. Further, the return date of the last quarter has been extended from 28.04.2016 to 16.06.2016.

Form CR-II is required to be filed by all firms/ companies engaged in the business of courier delivering goods having value in excess of Rs. 10,000/- and having their offices functioning within the National Capital Territory of Delhi.

[\[Notification No. F.3\(628\)/Policy/VAT/2016/238-50 dated 19th May, 2016\]](#)

Comments: To alleviate difficulties faced by dealers involved in the courier business, the Government of Delhi has extended the due date for filing Form CR-II

Applicability: Dealers being courier agencies delivering goods having value in excess of Rs. 10,000/-

ANDHRA PRADESH

[Instructions for goods vehicles movement within/ outside the State](#)

[Effective date: 17th May 2016](#)

The Deputy Commissioners are directed to ensure that the following instructions, which have been issued with an intention to arrest the tax evasion by preventing concealed movement of goods vehicles and misuse of waybills or rotating one waybill for multiple trips:

- No goods vehicle will be detained for long periods without issuance of detention notice. Further, the officers are required to be accessible to the dealers or the person in-charge of the goods vehicle till the issue is settled.
- Under VAT, it is compulsory to register only sensitive commodities. In case, the dealers

apply for online registration and it is pending with the department for more than 3 days then system allows for generation of way bill. Therefore, vehicles possessing these way bills shall not be detained. For manual way bills, report of pending application can be checked online in VATIS. Further, action can be taken if the details in the waybills do not match with the goods in the vehicle.

- In cases of trans-shipment, goods vehicles should not be detained if these are covered by all other documents. However, proper enquiry may be conducted in case of suspicion.
- Certain mistakes may be inadvertently committed by the dealers which can be treated as technical offences and action may be taken accordingly.
- During interstate movement, if any parcel lorry is not covered by Transporter declaration then action may be taken against the transporter and penalty may also be levied. Further, the check post staff will mandatorily conduct thorough physical verification & afterwards generate a document similar to Transporter declaration with vehicle number on all the e-waybills and issue it to the transporter. However, necessary action can be taken if any other irregularities are noticed.

[Circular No. CCT's Ref. No.Enft/E3/329/2015 dated 17th May 2016]

Comments: To ensure and arrest the tax evasion by preventing clandestine movement of goods vehicles and misuse of waybills or recycling one waybill for multiple trips the Government of Andhra Pradesh has issued instructions to Deputy Commissioners on the manner in which goods vehicles ought to be inspected.

Applicability: All dealers

RAJASTHAN

Insertion of Rule 16A & Rule 28 under Rajasthan Value Added Tax Rules, 2006

Effective date: 23rd May 2016

Following rules have been inserted under Rajasthan Value Added Tax Rules, 2006 which shall come into force from 23.05.2016:

Rule 16A (Application for seeking permission for change of Assessing Authority and amendment in registration certificate)

- An application for change in principal place of business outside the territorial jurisdiction of the present assessing authority shall be filed in e-Form VAT-05 within 30 days from the date of occurrence of such event to the officer authorized by the Commissioner.
- An enquiry shall be conducted by the authorized officer within 30 days of receipt of application and thereafter if he grants the permission then the competent authority may amend the registration certificate in Form VAT-03 within 2 working days. The present assessing authority shall be informed regarding the same.

Rule 28 (Refund in case of wrong deposition or excess deposition of any amount)

- An application for refund of any amount which has been deposited wrongly or in excess shall be submitted by a dealer in e-Form VAT-20AA, after submission of return in Form VAT-10, and along with Form VAT-26 (certificate by CA) duly digitally signed by the Chartered Accountant to the officer authorized by the Commissioner.
- The authorized officer shall conduct an enquiry to verify the refund amount mentioned in the application. If any amount is found refundable, then the application will be forwarded to the assessing authority to grant refund. If the authorized officer is of the opinion that amount is not refundable then he shall pass an order after providing an opportunity of being heard to the dealer.
- The assessing authority shall pass an order for refund in e-Form VAT-23 within 30 days and shall submit the same on www.rajtax.gov.in to the Central Refund Officer within 2 working days of passing of such order.

[Notification No. F. 12(79) /FD/Tax/2014-15 dated 23rd May, 2016]

Comments: To ease the process of changing the principal place of business and to ensure refund of taxes wrongly paid the above rules have been amended.

Applicability: All dealers

MAHARASHTRA

Go Live of SAP based new registration functionality

Effective date: 25th May 2016

The Maharashtra Government has provided a new SAP based system. Accordingly, the Billing Software was made available from 14.05.2016 for helping the small dealers to prepare annexures of sales and purchases. Now the new functionality of Registration based on SAP has been provided from 25.05.2016. Further, actual dates for implementation of other functionalities (i.e. other than registration) will be notified as and when these become ready for deployment.

Moreover, the circular also provides following Annexures in a detailed manner regarding the procedure to download the Billing Software, information as to how to use the Billing Software, the changed procedure because of new SAP based registration:

Annexure A: The changes in the processes of Registration

Annexure B: The free Billing Software

Annexure C: The Transition Issues relating to registration

Annexure D: About the Help from offices

[Trade Circular No. 18T of 2016 dated 24th May, 2016]

Comments: To computerize the entire the VAT system, the Maharashtra Government has extended the functionality by adding registration based on SAP

Applicability: All dealers

Source: www.cbec.gov.in & Respective State Commercial Taxes Website

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UPCOMING EVENTS OF INDRECT TAXES COMMITTEE

S No	Name of Course	Starting from	Venue	Contact Person
1.	Workshop on Service Tax	4th June 2016	Allahabad	Mr. Ajeet Sharma, 993561926, allahabad@icai.org
2.	National Conference on Indirect Taxes	10th & 11th June, 2016	Ernakulam	CA. T N Suresh 9447000804 ernakulam@icai.org
3.	Certificate Course Service tax	11 th June 2016	Bangalore	www.idtc.icai.org
4.	Certificate Course Service	25 th June 2016	Mumbai	www.idtc.icai.org

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