

# INDIRECT TAXES UPDATE – 161

## SERVICE TAX

### Service Tax on Senior Advocates under reverse charge

Effective date : June 6, 2016

Union Budget 2016-17, provided for service tax to be paid by Senior Advocates (as defined under Advocates Act) under forward charge w.e.f. 1<sup>st</sup> April 2016.

Now, Central Government vide *Notification No. 32/2016 – ST dated June 6, 2016* has amended Mega Exemption Notification No. 25/2012 -ST to exempt services provided by a Senior Advocate by way of legal services to any person other than a business entity; or a business entity with a turnover up to Rs. 10 lacs in the preceding financial year.

Also, *Notification No. 33/2016 – ST dated June 6, 2016* has amended Service Tax Rules, 1994 to provide that services provided by senior advocates would be covered under reverse charge mechanism. Also, if the senior advocate is engaged by another lawyer, the Service Tax is to be paid by the litigant under reverse charge.

Further, *Notification No. 34/2016 – ST dated June 6, 2016* has amended Reverse Charge Notification No. 30/2012 – ST to provide 100% payment of tax by the recipient of the service provided by senior advocates.

In the nutshell, it has now been provided that services provided by senior advocate to a business entity with a turnover of more than Rs. 10 lacs are taxable under reverse charge mechanism i.e. Whole of the tax is to be paid by the client of senior advocate.

[Notification Nos. 32/2016 – ST, 33/2016 – ST, 34/2016 – ST all dated June 6, 2016]

*Comments: These amendments seek to alter the basis on which stay was granted in Delhi High Court Bar Association & Anr. v. UoI & Ors. WP(C) 2891/2016 with CM-APPL12126 & 12127/2016 (Del.) and also in Percy Cawas Kavina v. UoI & Ors. Spl. CA 4926/2016 (Guj.) holding the differentiation attempted in this year's Union Budget between advocate and senior advocate to be improper. However, it is still not free from doubt whether the Central Government would have successfully put this issue to rest.*

Applicability: Business entity with a turnover of more than Rs. 10 lacs

## VALUE ADDED TAX

### RAJASTHAN

Only Form EL-1 to be filed within 15 days from the end of the relevant month

Effective Date: 31<sup>st</sup> May, 2016

The Rajasthan Government has specified that the following persons effecting transactions within the State of Rajasthan through electronic media, shall furnish the information for every month or part thereof in Form EL-1 (earlier it was Form EL-1, EL-2 and EL-3) to the Assistant Commissioner/ CTO, within 15 days from the end of the relevant month to which it relates through the website portal [rajtax.gov.in](http://rajtax.gov.in):

- (i) effecting sale or purchase; or
- (ii) transports, receives for transportation or delivers goods; or
- (iii) receives any amount for the goods sold or purchased.

[Notification No. F. 16(708)/Tax/CCT/2015/122 dated 31<sup>st</sup> May, 2016]

Comments: In order to keep track of the goods being transacted through electronic media the Government has mandated furnishing of Form EL-1 by notified persons.

Applicability: Persons effecting transactions through electronic media

### HARYANA

Amendments in Rule 11, 13 & 14 of Haryana Value Added Tax 2003

Effective Date: 25<sup>th</sup> May, 2016

Following amendments have been made *vide* Notification No. 15/ST-1/H.A. 6/2003/S.60/2016 dated 25<sup>th</sup> May, 2016 in Haryana Value Added Tax Rules, 2003:

#### **Rule 11 (Procedure for Registration)**

- A proof of deposit of Rs. 500 to the appropriate Government treasury on account of registration fee shall be submitted along with Form VAT-A1 (application for registration). Hitherto, treasury receipt showing deposit of Rs. 100 was to be duly affixed on the application of registration.
- A notice will be issued to applicant *within 5 days* from the receipt of registration application if any deficiency is noticed by the assessing authority. In case the applicant fails to rectify the deficiency, then the application may be rejected. Earlier, if the application was not correct and complete or the applicant was not a bonafide dealer or has not complied with any direction given, then the assessing authority may reject the

application after giving the dealer an opportunity of being heard.

- If the assessing authority is satisfied that the applicant is a bonafide dealer and has deposited the registration fee in full, and has furnished the security (if demanded) and the application is in order then registration certificate in Form VAT-G1 shall be issued within 15 days from the date of receipt of application. Hitherto, the time limit of 15 days was not provided.

### **Rule 13 (Procedure for amendment in Registration Certificate)**

A proviso has been inserted stating that the assessing authority may dispose of the application for amendment in registration certificate within 15 days from the date of receipt of the application along with the supporting documents.

The aforesaid proviso has also been inserted under **Rule 14(1)** for cancellation of Registration Certificate.

[\[Notification No. 15/ST-1/H.A. 6/2003/S.60/2016 dated 25th May, 2016\]](#)

*Comments: To facilitate easy grant and amendments to the registration certificate, the above rules have been amended. Further, the amended rules provide for a 15 day time limit.*

*Applicability: All dealers*

### [Procedure for Haryana Amnesty Scheme, 2016](#)

[Effective Date: 27<sup>th</sup> May, 2016](#)

The Haryana Amnesty Scheme, 2016 is an arrangement for dealers affected during the reservation agitation in the month of February, 2016 to provide relief in respect of tax, interest, penalty or other dues payable for the period from the 01.01.2016 to 31.03.2016. Following are some conditions & restrictions provided for this scheme:

**Submission of application:** The affected dealer shall apply for the scheme within 60 days from the date of the notification of the scheme in the Official Gazette or from the date of being considered entitled to compensation by the designated authority or committee, whichever is later.

**Constitution of committee:** A committee consisting of two senior most Excise and Taxation Officers and the concerned Assessing Authority shall examine each application and make a report within 30 days to the concerned Deputy Excise and Taxation Commissioner (ST). If he finds that the information provided in the application is incomplete or incorrect then he may serve a notice directing the applicant to show cause as to why his application should not be rejected. Thereafter, within 15 days from the date of notice, the Deputy Excise and Taxation

Commissioner (ST) may pass an appropriate order on the application.

**Objects of Scheme:**

- The tax payable by an affected dealer on the turnover of goods sold by him during February, 2016 shall stand waived off. However, the relief of tax waiver allowed shall not exceed the average monthly tax payable under the Haryana VAT Act and CST Act during the period 01.04.2015 to 31.12.2015.
- The affected dealer shall be exempted from payment of interest, for non-payment of tax on the turnover of goods sold during the months of January, 2016 and March, 2016 provided such tax is paid by the 31.07.2016.
- An affected dealer who has failed to use the goods purchased for specified purpose against declaration in Form D-1 or Form C due to damage, destruction or loss of such goods during the reservation agitation shall get immunity from penalty.
- The dealer who has lodged claim may submit the returns for the period 01.01.2016 to 31.03.2016 upto 31.07.2016.
- An affected dealer shall be entitled to claim ITC even in respect of the goods damaged, destroyed or lost during the reservation agitation.
- The amount received as compensation or insurance claim received shall not be considered as valuable consideration towards the goods damaged, destroyed or lost during the reservation agitation.

[\[Notification No.16 /ST-1/H.A.6/2003/S.59A/2016 dated 27th May, 2016\]](#)

Comments: To mitigate the hardship faced by dealers during the reservation agitation, an amnesty scheme has been provided to waive off the tax, interest & penalty to some extent.

Applicability: Dealers affected due to reservation agitation

**GUJARAT**

**Provisional Refund upto Rs 1 lakh within 30 days**

**Effective Date: 25<sup>th</sup> May, 2016**

Sub-rule (5A) has been inserted under Rule 37 (Provisional Refund) empowering the Commissioner to grant provisional refund upto Rs. 1 lakh for a full amount within 30 days from the date of submission of all documents & after fulfilling the following conditions:

- The refund paid in the previous year should not have exceeded Rs. 1 lakh.
- The dealer should be holding a registration certificate for more than 2 years.

[\[Notification No. \(GHN-34\) VAR-2016\(38\)TH dated 25<sup>th</sup> May, 2016\]](#)

Comments: To hasten the process of granting refunds and to cut down on bureaucracies involved in

getting a refund, the Commissioner has been empowered to grant provisional refunds.

Applicability: All dealers

**Amendment in Rule 5 of Gujarat Value Added Tax Rules, 2006**

**Effective Date: 31<sup>st</sup> May, 2016**

Following sub-rules of Rule 5 have been amended vide *Notification No. (GHN-36) VAR-2016(39) / TH dated 31<sup>st</sup> May, 2016*:

**Sub-rule (1):** The dealer making an application shall upload on the website the scanned copies of Form 101 along with the Forms appended to Form 101 duly signed and scanned copies of the required documents. Hitherto, the application was to be made to the registering authority along with the attested copies of the requisite documents.

**Sub-rule (1)(c)(iii):** Along with attested copy of agreement or lease deed, a copy of property card or property tax bill of last year or copy of latest index-2 issued by the Sub-Registrar of Stamp Duties received by the owner of the rented premises is also be attached.

A sub-clause (11) has been inserted under **sub-rule (1)(d)** stating that copy of DIN obtained from the registrar of companies shall be submitted with the registration application.

Copies of challan for the payment towards security amount are not required to be submitted alongwith registration application. [**Sub-rule (1)(e)**]

**Sub-rule (11):** The security amount of Rs. 10,000 has to be deposited by way of e-payment in the Government treasury for each registration.

**Sub-rule (13):** A provisional registration number shall be given within 24 hours from uploading the application along with required documents. Hitherto, it was allotted within 3 working days from the date of receipt of application.

**Sub-rule (14):** For the procedure of post verification, hard copies of the documents duly signed by the applicant shall be obtained and shall be attested by the officer carrying out post verification. Further, a registration certificate converting the provisional into permanent registration shall be issued within 48 working hours after the completion of post verification. Hitherto, it was issued within 30 days from the date of receipt of application.

**Sub-rule (15):** During post verification, if the registering authority is not satisfied with any detail furnished by the dealer then within 3 working days from the date of uploading the application he shall give an opportunity to the dealer for the compliance of the query raised within 7 days. If the registering authority is satisfied with the compliance by the dealer then

permanent registration shall be issued within 1 day from the date of such compliance. However, if he is not satisfied with the compliance then he shall intimate the dealer about refusal within 7 days.

**Sub-rule (16):** The provisional registration number shall be deemed to have been converted into permanent registration if the post verification is not carried out within 11 days from the date of uploading of application. (earlier it was within 30 days from the date of receipt of application)

[Notification No. (GHN-36) VAR-2016(39) / TH dated 31<sup>st</sup> May, 2016]

Comments: To provide for a quick registration process of new dealers, the above rules have been amended.

Applicability: All dealers

## TELANGANA

### Tax payer friendly procedure for e-registration

Effective Date: 23<sup>rd</sup> May, 2016

The Telangana Government has provided the following registration procedure to ensure a tax payer friendly regime and thereby ensuring ease of doing business:

**Registration Application:** The dealer shall apply via e-Registration from 01.06.2016 onwards through the CTD portal to the concerned Circle Office for Registration. A GIS based jurisdictional mapping system will assist the dealers to locate their correct Jurisdiction. Alternately, the dealer can file VAT/CST/TOT registration application through TS I Pass portal. All supporting Documents shall be scanned and uploaded by the dealer.

#### **Processing of Registration Application:**

- On receipt of the application, the Registering authority shall scrutinize the application along with the supporting documents and cross check the validity of Aadhar number and PAN of the dealer.
- If the application is found to be in order, then it shall be approved within 1 working day of its receipt.
- If any discrepancy is found in application or the uploaded documents then the Registering authority may raise a query with valid reasons and the dealer has to reply within 7 days, else his online application is deemed to be cancelled.
- In case of rejection of a registration application, the Registering Authority should issue a rejection order by recording the reasons in writing in Form VAT 103 /TOT 017.

### **Issue of Registration Certificate:**

- If the Registration application is accepted, TIN is generated and intimated to the dealer by e-mail.
- Once the TIN is generated, the Registration Certificate is to be signed by the Registering Authority, scanned and uploaded to dealer's login.
- Once Digital Signatures are in place; the RC is to be issued with the Digital Signature of the Registering Authority.
- It is also informed that the authenticity of the TIN and the dealer registration details can be verified using the "Verify TIN" Facility on the CTD portal.

*[Circular-CCT's Ref No. CS(1)/18/2015, dated 23rd May, 2016]*

*Comments: To ensure a speedy grant of registration, the Government has introduced e-registration wherein if all the procedures are followed, registration may be granted within 1 day itself.*

*Applicability: All dealers*

**Prescribed discount rate of 8% for calculating & paying net present value of deferred taxes by an industrial unit**

**Effective Date: 01<sup>st</sup> June, 2016**

The Telangana Government has prescribed a discounting rate of 8% for calculating and paying the net present value of the deferred taxes by an industrial unit if the current year instalment is paid at least 10 months in advance. This discounting rate shall be in force from 01.06.2016 and valid upto 31.03.2017. Accordingly, the discount rate of 7% has been rescinded w.e.f. 01.06.2016.

*[Notification No. G.O. Ms. No. 115 dated 1<sup>st</sup> June, 2016]*

*Applicability: Dealers whose payment of taxes is deferred under an industrial policy.*

### **JAMMU & KASHMIR**

**Exemption period extended for hotels, lodges & guest houses upto 31.03.2017**

**Effective Date: 01<sup>st</sup> July, 2016**

The Jammu & Kashmir Government has extended the exemption from payment of tax by hotels, lodges and guest houses providing lodging facilities from 30.06.2016 to 31.03.2017.

*[Notification No. SRO 164. dated 30<sup>th</sup> May, 2016]*

*Comments: No tax was imposed on hotel industry till date and benefit of the same has been extended to*



revive the tourism sector.

Applicability: Dealers being hotels, lodges and guest houses providing lodging facilities.

### **MADHYA PRADESH**

**Two classes of registered dealers are notified for the assessments cases for FY 2014-15**

**Effective Date: 30<sup>th</sup> May, 2016**

The Madhya Pradesh Government has notified the following two classes (A) and (B) of registered dealers whose assessments cases are pending for the year 2014-15 and directed that their assessments shall be deemed to have been made as per the following scheme:

<b>Particulars</b>	<b>Class (A)</b>	<b>Class (B)</b>
<b>Registered dealers included</b>	Having annual turnover up to Rs. 50 crore during the year 2014-15	Having annual turnover above Rs. 50 crore during the year 2014-15
<b>Does not include</b>	-	<ul style="list-style-type: none"><li>Dealers in whose assessment orders of last three continuous years, additional demand of tax has been created.</li></ul>
	<ul style="list-style-type: none"><li>Industrial unit eligible to avail the exemption/ deferment of tax payment/ Investment Promotion Assistance under any notification issued.</li><li>Dealers whose tax evasion case has been detected for FY 2014-2015.</li><li>Dealers in whose cases notice have been issued for additional tax amount or where notice have been issued after Tax Audit and this requirement has not been complied with before submission of application.</li><li>In case refund of any kind is due to him.</li></ul>	
<b>Acts &amp; the assessment year</b>	Pending assessment cases under the MP VAT Act, 2002, CST Act, 1956 and the MP Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, 1976 for the year 2014-15.	
<b>Application</b>	Form A, B or C	Form D, E or F
<b>Time limit</b>	To be submitted within 60 days from the publication of scheme to the assessing officer before whom the assessment case for the year 2014-15 is pending.	



<b>Documents to be enclosed</b>	<ul style="list-style-type: none"> <li>• A court fee stamp of Rs. 5 shall be affixed on every application.</li> <li>• A copy of challan as a proof of payment of tax and interest if any.</li> <li>• A list of sales and purchases for the assessment period. If already submitted then it will not be needed again.</li> <li>• Every dealer whose turnover exceeds Rs. 1 crore during FY 2014-15 shall submit an audit report prepared by the Chartered Accountant. However in case turnover exceeds Rs. 10 crore then audit report in form 41-A has to be submitted.</li> <li>• The declaration prescribed for exemption and concessional rate of tax also shall be enclosed.</li> </ul>
<b>Dealers not submitted application</b>	If no information is available relating to purchases or sales made in the departmental record or where a satisfactory field report has been filed by any departmental officer to this effect then assessment shall be deemed to have been made for such dealer.
<b>Procedure</b>	<ul style="list-style-type: none"> <li>• An opportunity of being heard shall be given to the applicant if the application is incomplete or any mistake of calculation is detected.</li> <li>• If any aforesaid defect is found, a show cause notice shall be issued and the hearing date shall be fixed and communicated to the applicant.</li> <li>• The applicant shall rectify the defect and file the documents. Afterwards the competent officer shall accept the application and assessment shall be deemed to have been made.</li> <li>• If the dealer remains absent on the hearing date or the defect is not removed, the application shall be rejected.</li> <li>• The intimation for acceptance of the application shall be sent within 30 days from the date of application.</li> </ul>

[\[Notification No. F-A-3-20-2013-1-V-\(32\). dated 30<sup>th</sup> May, 2016\]](#)

*Comments: To ensure timely completion of assessments, the Government has come out with the above scheme wherein the risk of loss of revenue is less.*

*Applicability: i.) Dealers whose annual turnover is less than Rs. 50 crores  
ii.) Dealers whose annual turnover is more than Rs. 50 crores subject to certain exclusions*

### **KERALA**

[\*\*Date extension for filing Annual return for FY 2015-16 upto 31.07.2016\*\*](#)

Kerala Government vide Circular No. 06/ 2016 No.C1-17064/16/CT dated 01<sup>st</sup> June, 2016 has extended the due date for filing Annual Return & enclosures for the financial year 2015-16

from 30.04.2016 to 31.07.2016.

[[Circular No. 06/ 2016 No.C1-17064/16/CT dated 01<sup>st</sup> June, 2016](#)]

Applicability: All dealers.

## **HIMACHAL PRADESH**

### **Amendments made to the Himachal Pradesh Value Added Tax Act, 2005**

**Effective Date: 26<sup>th</sup> May, 2016**

The Himachal Pradesh Bill No. 7 of 2016 have received the assent of the Governor on 26<sup>th</sup> May 2016 and therefore, the following amendment will take effect accordingly:

#### **Section 11 (Input Tax Credit)**

<b>Situation where dealer-</b>	<b>Earlier Penalty</b>	<b>New Proposed</b>
Falsely claims ITC in his returns	Twice of such claim or credit	Amount equal to such claim or credit
Claims incorrect ITC in the return	50% of such claim or credit	25% of such claim or credit

**Section 14A (Application for grant of Provisional Registration Certificate)** has been inserted which provides that:

- Any person can apply for registration by online application along with scanned copies of the prescribed documents.
- The Provisional Registration Certificate (RC) shall be granted within 3 working days of receipt of application.
- Afterwards, the applicant may be directed to produce evidence and documents and also the accounts relating to the business for verification. On being satisfied, the prescribed authority shall issue a Permanent RC within 30 days from the date of receipt of application.
- However, prescribed authority may reject the application & cancel the Provisional RC within 30 days of receipt of application if it is satisfied that the particulars given are incorrect or that the applicant has misrepresented certain facts only after giving an opportunity of being heard to the applicant.

#### **Section 16 (Payment of tax and returns)**

<b>Particulars</b>	<b>Earlier penalty when annual tax liability is more than Rs. 20 lakhs</b>	<b>New Penalty</b>
Failure / delay to file	Rs. 1,000 per day	Rs. 1,000 per day subject to

monthly returns	maximum of Rs. 50,000
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Further, where a dealer has closed down his business or has left the business without getting his RC cancelled then the Assessing Authority shall suspend the RC immediately and thereafter no further incremental penalty shall be imposed.

**Section 27A (Special provision for settlement of pendency and arrears)** has been inserted, which provides a Settlement Scheme for cases of a particular period where the dealer could not submit the statutory forms required for assessment. The Scheme will allow for waiver of the tax amount, interest and penalty.

**Section 49A (Advance Ruling)** has been inserted, which provides that:

- An 'Advance Ruling Authority (ARA)' is constituted to clarify the rate of tax or the eligibility to tax of any transaction or eligibility of deduction of input tax or liability of deduction of tax at source.
- Any registered dealer can make an application accompanied by proof of fee payment.
- The Authority after examining may either admit or reject the application. Further, the application shall not be accepted where the question raised:
  - is already pending or
  - relates to a transaction which is designed apparently for the avoidance of tax.Moreover, no application shall be rejected unless an opportunity of being heard is given and reasons for such rejection shall be recorded in the order.
- The order shall be passed within 90 days of the receipt of application. A copy of every order shall be sent to the applicant and the officer concerned.

[\[Act No. 10 of 2016\]](#)

Applicability: All dealers.

*Source: Respective State Commercial Taxes Website*

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