# DVAT AMENDMENT ACT 2016

*(This booklet contain the detailed analysis on D VAT Amendment Act 2016)*

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VAT constitutes 65% of the total revenue from taxes to Delhi. Therefore, managing this tactfully becomes really important for the government. This is the first legislation to be notified as a law since, AAP government took charge in February, 2015. LG Shri Nazeeb Jung gave assent to the DVAT (Amendment) Act 2016 which has been notified by government vide Notification no. F.14/LA-2016/cons2law/77-86 dated of July 5, 2016. The effective date of implementation of this is July 26, 2016 vide notification no F.3(4)/Fin (Rev.-1)/2016-17/DSVI/238. The Act contains total eight amendments.

**Section: 3(11) Advance Tax on Importation of goods in to NCT of Delhi**

*Notwithstanding anything contained in this Act to the contrary, the Government may by notification specify the goods on which a person shall pay tax in advance at the rates notified by the Government but not exceeding the rates applicable on such goods under this Act, when he imports such goods into the National Capital Territory of Delhi from a place outside India, subject to such conditions as may be specified in the notification. The aforesaid payment of tax in advance shall be counted towards the final tax liability of the taxable person:*

*Provided that the Government may by notification exempt any person or class of persons from payment of tax in advance or reduce the rate of payment of tax in advance subject to such conditions as may be notified:*

*Provided further that if on an application made by a person the Commissioner or an officer authorized by him, after verifying all aspects of the case, arrives at a decision that such person should be exempted from payment of tax in advance or that the rate of payment of tax in advance should be reduce for such person, he may do so and impose such terms and conditions on such person as he may deem fit.*

*Explanation.- The person, who imports goods into the National Capital Territory of Delhi, shall pay tax in advance, on the presumption that such goods are meant for the purpose of sale or for use in manufacture or processing of goods meant for sale, unless, it is proved otherwise by such person. It is further presumed, unless it is proved otherwise by such person, that such goods or any product manufactured therefrom shall not be sold below the price at which such goods have been purchased and imported.*


Analysis:

**Q: What is the rate of Advance tax and on which goods it will apply?**

A: When an assessee imports goods in to the NCT of Delhi, then he is liable to pay advance tax. The Rate of advance tax yet to be notified and it will be applicable on those goods which shall be notify by the government.

Important Note: Rate will differ according to the goods.

**Q: What will be the Point of Taxation for advance tax?**

A: The date on which the goods imports in to NCT of Delhi. Therefore, it is important to read the term "import of goods in to Delhi". Section 2(p) of DVAT Act 2004, define this term as under:

*Means taking, receiving, bringing, carrying, transporting, or causing, to bring or receive goods into Delhi from any place **outside Delhi;***

***Explanation:*** *In the case of goods arriving in Delhi from a foreign country through customs, the "import of the goods in Delhi" occurs at the place where the goods are cleared by Customs for home consumption.*

*Therefore, by reading the above explanation it is very much clear that*

*"For the purpose of advance tax import from other state in to Delhi doesn't amount to import". Clearance of imported goods from outside country plays vital role to decide whether advance tax levied or not. Therefore, once goods imported from outside India and get cleared from another state and then bring to Delhi would not be liable for advance tax.*

***Q:* Whether it is applicable on all dealers?**
A: Yes, however the government may exempt some class of persons by way of notification.

**Q: What are the presumptions of Section 3(11)?**
A: There are two presumptions as laid down in explanation:

1. That such goods are meant for the purpose of sale or for use in manufacture or processing of goods meant for sale.
2. That such goods or any product manufactured there from shall not be sold below the price at which such goods have been purchased and imported.

**Comment:**
The VAT department will now prepare and notify the percentage at which the advance tax will be levied. Officials justify its introduction on the grounds that it would help keep track of imported goods coming into the city; and their movement and sale would be recorded with the VAT department as well.

**Section: 29(2) Filling of Return under Digital Signature (New Sub Section)**

*(2) The* ***Commissioner*** *may by notification in the official gazette, require any dealer or class of dealers to file the returns only through electronic mode appending digital signatures or any other electronic identification process and with effect from such date as may be specified therein.*

**Comment:**
The concept is already started for dealers having turnover more than 1 crore (CST+VAT) in PFY. This provision now vests the power to Commissioner only.

**Section: 50A Electric Communication of Sales Information**

*(1) The Government may by notification in the official gazette require any dealer or class of dealers to install such physical compliance devices or software, as may be considered necessary for instantaneous communication of the information of sale invoices to the Commissioner.*

*(2) The cost of equipment and installation of the device and software, as may be required under sub-section (1), shall be borne by the dealer.*

**Comment:**

With the view to get instant information of sales Invoices from dealers, now some class of dealers may need to install software in their device. But, anxious thing is "dealer will bear the cost of software".

**Section: 86(10) Minimum Penalty Reduction**

"for the words"ten thousand rupees", the words "one thousand rupees" shall be substituted".


**Comment:**
A loudable change!!

Section 86(10) prescribe the penalty in case any person who furnishes a false or misleading or deceptive return or failure to include any matter or thing without which the return is false, misleading or deceptive the penalty shall be TAX DEFICIENCY OR ~~10000~~ 1000, whichever is higher.

**Section: 91A Special Court and Public Prosecutor**

*(1) Notwithstanding anything contained in this Act to the contrary, the Government may, if considers expedient or necessary, constitute, by notification in the Official Gazette, a Special Court with the concurrence of the Chief Justice of the Delhi High Court for the purposes of the trial of offences under this Act.*

*(2) For the Special Court, the Government shall appoint a person to be the Public Prosecutor and*

*may appoint more than one person to be the Additional Public Prosecutors.*

**<u>Section: 92(3) Permission from Commissioner for Prosecution</u>**

(3) Every officer or person so authorized shall, upon investigation of the offence, submit a report to the Commissioner with the recommendations for sanctioning prosecution or otherwise and the Commissioner, shall, then take a decision as to whether prosecution is essentially required in the matter and if so, the authorized officer shall launch prosecution before the Metropolitan Magistrate having jurisdiction over the area or before a court specially designated by the government for the purpose.

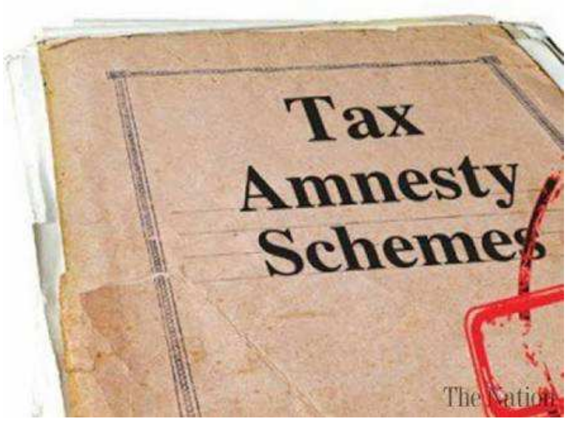
**<u>Section: 93 Composition of offence (Once only)</u>**

Provided that the composition of offence shall not apply in case of second and subsequent offence of the same nature.

**<u>Section 107: Amnesty Scheme</u>**

Notwithstanding anything to the contrary contained in the Act and Rules thereto, the government may by notification in the official gazette, notify the amnesty scheme(s) covering payment of tax, interest, penalty, or any other dues ~~under the 'Act' which relate to any period ending before 1st day of April 2013~~ ***already assessed under section 32 or section 33 of the Act, as the case may be, before a period of at least one year from introduction of such Amnesty Scheme***, and subject to such conditions and restrictions as may be specified therein, covering period of limitations, rates of tax, interest or penalty or any other dues payable by a class of dealer or classes of dealer or all dealers.

***(Bolded sentence Amendment)***




**<u>Comment:</u>**

Now this amendment opens the option of introducing an amnesty scheme in the future.