79TH ISSUE

31 JUL 2016 - 06 AUG 2016

TAX CONNECT

GST

SERVICE TAX | CENTRAL EXCISE

CUSTOMS | INCOME TAX

STATE TAXES

JAV & ASSOCIATES

Chartered Accountants

Kolkata:
1, Old Court House Corner
"Tobacco House" 1st Floor
Room No.-13 (North)
Kolkata-70001
West Bengal

Vadodara:
Quarter no. 3/174
Gujarat Refinery Township
Jawaharnagar
Vadodara-391320
Gujarat

Contact:
+919331042424; +91931594980;
+918697575185; +913322625203
Email:
tb.chatterjee@dic.co.in;
tb.chatterjee@yahoo.co.in;
cavivekjalan@gmail.com;
vivek.jalan@icai.org

WORKSHOP ON GST

EDITORIAL

Friends

The Constitutional Amendment Bill for GST, Commonly known as GST Bill, finally seems set to be passed in The Parliament on 2nd August and GST seems set to be rolled out on 1st April 2017!!

However the GST Model Law 2016 which has been released by The Government leaves a lot to be desired and should be analysed with a tooth comb. We will try to analyse some parts of the Law in our Workshop on Friday, 5th August 2016. We have also arranged a dedicated session on **"IT aspects of GST and interface with GSTN".** We feel a robust IT infrastructure would be a pre-condition for successful implementation of GST. It may well be the differentiator!!

In Central Excise, the Department has issued **various notifications for articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 of the Central Excise Tariff Act.** The Central Excise Rules, 2002 and CENVAT Credit Rules, 2004 have been amended accordingly. These notifications have been covered comprehensively further in the issue.

In Service Tax, the Government has reiterated Rule 3 of the Rules of 2008 (read with paragraph 2 (iii) of the Circular dated 1st July, 2008) and directed that **it is mandatory for the authority to issue a 15 days notice before attaching a property.** The non-compliance may lead to legal proceedings against the officers.

In Customs, in light of the Hon'ble Supreme Court's judgment in Mangalore Refinery and Petrochemicals Limited vs. Commissioner of Customs, Mangalore dated 02.09.2015, the Department has clarified that in case of all bulk liquid cargo, the shore tank receipt quantity should be basis for levy of Customs Duty irrespective of leviability at a specific rate or ad-valorem.

In Income Tax, The CBDT, Department of Revenue, Ministry of Finance, Government of India **vide Circular No. 28/2016 dated 27.07.2016** has clarified that **any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.**

Thus, in case of Senior/Very Senior Citizens whose date of birth falls on 1st April shall attain prescribed Age of 60 years/ 80 years on 31st March itself.

In West Bengal VAT, furnishing of return (Form 1in 4/14D/15/15R) using DIGITAL SIGNATURE has been made mandatory from quarter ending 30th June, 2016 for all registered dealers with turnover exceeding Rs 50 lacs in 2015-16 or having registration under the Companies Act. These dealers need not submit signed hard copy of the return.

Just to reiterate that we remain available over a telecom or e-mail.

Truly Yours

Timir Baran Chatterjee

M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan

FCA, CIDT (ICAI), B. Com

INDEX

COMPLIANCE CALENDAR

Due date	COMPLIANCES FROM 31st July, 2016 to 6th August, 2016	STATUTE
31st July, 2016	Deposit of VAT of previous month	Mizoram VAT Act Jammu & Kashmir VAT Act
	Filing of monthly/quarterly/annual VAT return	Bihar VAT Act (Quarterly) Haryana VAT Act (Quarterly) Jammu & Kashmir VAT Act (Quarterly) Jammu & Kashmir VAT Act (Annual, for turnover of below Rs 60 lacs) Mizoram VAT Act (Quarterly) Nagaland VAT Act (Quarterly) Sikkim VAT Act (Quarterly) Sikkim VAT Act (Annual, for assesses other than companies) Meghalaya VAT Act (Annual, for non audit cases) Tripura Vat Act (Monthly/Quarterly) West Bengal VAT Act (Quarterly)
	VAT Audit	Bihar VAT Act (for assessees other than companies and not requiring audit)
	Deposit of WCT	Jammu & Kashmir VAT Act (Quarterly)
	Filing of monthly/quarterly WCT return	Bihar VAT Act (Monthly) Chandigarh VAT Act (Monthly) Haryana VAT Act (Quarterly) Jammu & Kashmir VAT Act (Quarterly) Tamil Nadu VAT Act (Monthly)
	Issuance of WCT certificate	Assam VAT Act (Monthly) Gujarat VAT Act (Quarterly) Kerala Vat Act (Quarterly) Jammu & Kashmir VAT Act (Quarterly)
	Deposit of P tax of previous month	Maharashtra VAT Act
	Deposit of Entry tax of previous month	Assam VAT Act
	Filing of TDS/TCS return for 1st quarter	Income Tax Act
	Filing of income-tax return for non-audit cases	Income Tax Act
5th August, 2016	Deposit of WCT of previous month	Kerala VAT Act
	Service Tax deposit of previous month (Company/ Society)	Finance Act

MODEL GST LAW 2016: TRANSITIONAL PROVISIONS contd..

Treatment of long term construction / works contracts

The goods/services supplied on or after the appointed day for a contract entered prior to the appointed day shall be liable to tax under the provisions of this Act.

Progressive or periodic supply of goods or services

No tax shall be paid on the supply of goods/services made on or after the appointed day if the consideration for the said supply has been received in advance prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law.

Treatment of retention payments

No tax shall be payable on the supply of goods and/or services made before the appointed day where a part consideration for the said supply is received on or after the appointed day but the full duty or tax payable on such supply has already been paid under the earlier law.
i.e. no tax shall be payable on retention payment subsequent to appointed day since supplies are made prior to appointed day.

Deduction of tax source

In case of sale of goods for which invoice has been issued before the appointed day and for which tax was required to be deducted at source under the earlier law, no TDS shall be deducted even if payment is made on or after the appointed day.

Credit distribution of service tax by ISD

The input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services is received on or after the appointed day.

Proceedings relating to output duty/tax liability

- Every proceeding of appeal, revision, review or reference relating to any output duty/tax liability initiated before the appointed day, shall be disposed as per earlier law. The same shall be recovered as an arrear of tax under this Act shall not be admissible as input tax credit.
- If any amount is to be refunded to the claimant, the same shall be refunded as per earlier law and shall not be admissible as input tax credit under this Act.

Amount recovered or refunded in assessment or adjudication proceedings

- In assessment or adjudication proceedings instituted before or after the appointed day, under the earlier law, if any amount of tax, interest, fine or penalty becomes recoverable from the taxable person, the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit

- If any amount becomes refundable to the taxable person, the same shall be refunded in accordance with the provisions of earlier law.

Amount recovered or refunded due to revision of returns

If any return, furnished under the earlier law, is revised and any amount is found to be recoverable from the taxable person, the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

If any amount becomes refundable to the taxable person, the same shall be refunded in accordance with the provisions of earlier law.

SERVICE TAX

NOTIFICATIONS/CIRCULARS

INSTRUCTIONS REGARDING PROVISIONAL ATTACHMENT OF PROPERTY UNDER SECTION 73C

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **CIRCULAR No. 196/06/2016-ST dated 27.07.2016** has directed that it is mandatory for the authority to issue a 15 days notice to reply before attaching a property.

As observed by Hon'ble High Court of Allahabad in the case of Kunj Power Project Pvt. Ltd. v UoI [2016 (41) S.T.R 3 (All)], the order directing attachment of the property without waiting for a reply to the show cause notice, and without giving any opportunity and without giving any notice, is in gross violation of Rule 3 of the Rules of 2008 read with paragraph 2 (iii) of the Circular dated 1 st July, 2008.

It is also emphasized that non-compliance with the above rule will leave officers with no defence in legal proceedings.

PERMISSION TO PAY SERVICE TAX THROUGH NON ELECTRONIC MODES

OUR COMMENTS: As per Rule 6(2) of the Service Tax Rules, 1994, although every assessee shall pay service tax electronically through internet banking, the jurisdictional Deputy/Assistant Commissioner, may, for reasons allow the assessee to deposit service tax by any other mode.

The Department of Posts have informed that in certain jurisdictions, officers are not allowing them permission to pay by cheque even in deserving cases. The purpose of giving discretion in the law is getting defeated.

Hence, The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide F.No 137/08/2013-Service Tax dated 22.07.2016 has reiterated Rule 6(2) and directed that the discretion vested in the jurisdictional Deputy/Assistant Commissioner under rule 6(2) of the Service Tax Rules, 1994, should be exercised judiciously and rationally so that there are no unwarranted refusals.

COURT DECISIONS

BHARATH AUTO CARS PVT LTD VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX MANGALORE [CESTAT BANGALORE]

BRIEF: An assessee is not required to submit written protest for refund against each payment of service tax for the subject services not liable for payment of service tax.

OUR COMMENTS: In the above case, the assessee is providing subject services namely free services for the automobiles sold under warranty. The warranty charges are taken from the customers at the time of sale/purchase of the vehicles and the amount of sales tax/VAT is paid under written protest for refund. Later, the refund is sanctioned by the Department.

However, refund was not sanctioned by the Department for a particular period on the ground that that assessee did not make payment of service tax for the said period under protest. Accordingly, the refund claim filed after the expiry of one year from the relevant date is time barred under provisions of Section 11 B of the Central Excise Act 1944.

The Hon'ble CESTAT held that here was a continuing deemed protest by the assessee for the service tax paid for the subject services.

The Department has already paid the refund amount for the same services for the earlier periods as the service tax was not chargeable. It is not understood that why the Department is insisting on separate written protest for each payment against the said services which were not liable for payment of service tax.

Hence, the assessee is entitled to this refund of this amount of service tax.

[Decided in favor of assessee]

CENTRAL EXCISE

NOTIFICATIONS/CIRCULARS

NOTIFICATIONS IN RESPECT TO ARTICLES OF JEWELLERY OR PARTS OF ARTICLES OF JEWELLERY OR BOTH, FALLING UNDER HEADING 7113 OF THE CENTRAL EXCISE TARIFF ACT

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India has issued various notifications for articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 of the Central Excise Tariff Act

Notification No. 26/2016 [CE] dated 26-7-2016 to prescribe 1% excise duty (without input and capital goods credit) on parts of articles of jewellery falling under heading 7113 and criteria for classification as a precious metal

Notification No. 27/2016 [CE] dated 26-7-2016 to provide partial exemption on the above articles if manufactured by: (a) re-conversion of jewellery given by the retail customer, or (b) mounting of precious stone given by the retail customer.

Notification No. 28/2016 [CE] dated 26-7-2016 to increase the SSI Exemption limit and the SSI Eligibility limit for the above articles.

Notification No. 29/2016 [CE] dated 26-7-2016 to exclude handicrafts under heading 7113 from the purview of excise duty exemption for "handicrafts".

Notification No. 33/2016 [CE (NT)] dated 22-7-2016 to notify the tariff values for the above articles

Notification No. 34/2016 [CE (NT)] dated 26-7-2016 to notify the Articles of Jewellery (Collection of Duty) Rules, 2016, applicable to the above articles

Notification No. 35/2016 [CE (NT)] dated 26-7-2016 to amend the Central Excise Rules, 2002 for the above articles.

Notification No. 36/2016 [CE (NT)] dated 26-7-2016 to amend the CENVAT Credit Rules, 2004 for the above articles.

Notification No. 37/2016 [CE (NT)] dated 26-7-2016 to provide a modified format for quarterly return, ER-8, for return of excisable goods cleared at the Central Excise duty rate of 1% [including articles of jewellery or parts of articles of jewellery or both, falling under heading 7113] or 2%

Notification No. 38/2016 [CE (NT)] dated 26-7-2016 to amend notification No. 35/2001-Central Excise (N.T.) dated the 26th June, 2001 for the above.

Notification No. 39/2016 [CE (NT)] dated 26-7-2016 to exempt a manufacturer or principal manufacturer of the above articles from filing of annual return.

Notification No. 40/2016 [CE (NT)] dated 26-7-2016 to exempt a manufacturer or principal manufacturer of the above articles from taking central excise registration upto the full exemption limit.

The above notifications are self-explanatory. The readers may refer the same.

CUSTOMS

NOTIFICATIONS/CIRCULARS

SILVER BULLION AND CIGARETTES SPECIFIED FOR SECTION 123 - BURDEN OF PROOF IN CASES OF SEIZURES

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 103/2016- Customs (N.T.) dated 25.07.2016** has specified silver bullion and cigarettes for the purpose of Section 123 – Burden of proof in case of seizures.

ORGANIC SUGAR EXEMPTED FROM EXPORT DUTY

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 43/2016-Customs dated 26.07.2016** has provided exemption from export duty to Organic sugar up to 10,000 MT in a year beginning with October and ending with September subject to specified conditions.

However, the exemption for the period ending with 30th September, 2016 shall be restricted to 2500 MT.

ASSESSMENT OF BULK LIQUID CARGO

OUR COMMENTS: In light of the Hon'ble Supreme Court's judgement in Mangalore Refinery and Petrochemicals Limited vs. Commissioner of Customs, Mangalore dated 02.09.2015 , the Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No.34/2016-Customs dated 26.07.2016** has rescinded Circular No. 96/2002-Customs dated 27.12.2002 & Circular No. 06/2006 dated 12.01.2006 and directed assessment of bulk liquid cargo.

Now, in case of all bulk liquid cargo imports for home consumption or warehousing, the shore tank receipt quantity should be taken as the basis for levy of Customs Duty irrespective of whether Customs Duty is leviable at a specific rate or ad-valorem .

In cases where bulk liquid cargo is cleared directly on payment of duty without being pumped in a shore tank, assessment may continue to be done as per ship's ullage survey report at the port of discharge.

REVIEW OF ACCREDITED CLIENT PROGRAMME (ACP) AND AUTHORIZED ECONOMIC OPERATOR (AEO) PROGRAMME

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 33/2016-Customs dated 22.07.2016** has decided to merge the schemes ACP and AEO into a combined three-tier AEO programme and enhance their scope to provide further benefits to the entities who have demonstrated strong internal control system and willingness to comply with the CBEC laws.

Entities certified under old AEO Programme pursuant to Circular No 37/2011- Cus., dated 23.08.2011 and No. 28/2012-Customs dated 16.11.2012 shall be entitled to benefits as per this circular.

Entities with the ACP status as per Circular No. 42/2005 dated 24.11.2005 shall submit application within 90 days for transition to the AEO status.

The revised AEO Programme is appended to the Circular. The readers may refer the same.

INCOME TAX

NOTIFICATIONS & CIRCULARS

DRAFT RULES FOR DETERMINATION OF AMOUNT RECEIVED BY THE COMPANY IN RESPECT OF SHARE - SECTION 115QA

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **F No 370133/30/2016-TPL dated 25.07.2016** has clarified the definition of "distributed income" amended vide Finance Act , 2016 w.e.f. 01.06.2016.

Distributed income = Consideration paid on buy back of shares - Amount received by the company for issue of such shares.

Through the amendment, the methodology for determination of the amount received by the company under different circumstances in which the shares have been issued has been provided.

S. No.	Case	Amount received by the company shall be:
1	Share issued on subscription	Paid up amount + Premium received (if, any)
2	Amount returned prior to buy-back	Amount received at the time of issue – Amount returned
3	In case of amalgamation	Amount received by the amalgamated company for the shares issued by it
4	In case of demerger	(i) Resulting company: Amount which bears to the amount received by the demerged company for original shares the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger. (ii)Demerged company: Amount received in respect of the original shares - Amount arrived in (i) above.
5	Share issued or allotted, without any consideration	Nil
6	Share issued on conversion of bond or debenture, debenture-stock or deposit certificate	Amount received in respect of the instrument converted
7	Any other case	Face value of the share

ANY SPECIFIED AGE IN LAW IS TO BE COMPUTED AS HAVING BEEN ATTAINED ON THE DAY PRECEDING THE ANNIVERSARY OF THE BIRTHDAY

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Circular 28/2016 dated 27.07.2016** has issued a clarification regarding attaining prescribed Age of 60 years/ 80 years on 31st March itself, in case of Senior/ Very Senior Citizens whose date of birth falls on 1st April.

In the light of the Hon'ble Supreme Court's judgement in the case of Prabhu Dayal Sesma vs. State of Rajasthan & another 1986, AIR, 1948 , it has been clarified that that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday.

Thus, any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.

MAHARASHTRA

NEW FAQ'S ON SETTLEMENT OF ARREARS IN DISPUTES ACT, 2016

OUR COMMENTS: In response to the further queries received from the Trade and Associations about various provisions of the Settlement Act, the Commissioner of Sales Tax, Government of Maharashtra vide **Trade Cir. No. 20T of 2016 dated 19.07.2016** has added a third set of FAQs to the existing FAQ's issued vide **Trade Circular No. 19T of 2016 dated 30th June 2016 and revised on July 7th 2016.**

The circular is self-explanatory. The readers may refer the same.

ORISSA

AMENDMENT IN RULE 65, FORM VAT-307 & FORM VAT-312

OUR COMMENTS: The Finance Department, Government of Odisha vide **Notification dated 23.07.2016** has issued Odisha Value Added Tax (3rd Amendment) Rules, 2016 and amended Rule 65, Form VAT -307 and 312 w.e.f. 01.10.2015.

The notification is self-explanatory. The readers may refer the same.

UTTARAKHAND

TAX RATE ON RESIN CHANGED TO 2%

OUR COMMENTS: The Finance Section - 8, Government of Uttarakhand vide **Notification No.470/2016/90(120)/XXVII(8)/2006 dated 25.07.2016** has changed the tax rate on Resin to 2%.

1% TAX RATE ON INFORMATION TECHNOLOGY GOODS IN COURSE OF INTER-STATE TRADE OR COMMERCE

OUR COMMENTS: The Vitta Anubhag - 8, Government of Uttarakhand vide **Notification No. 628/2016/74(120)/XXVII(8)/2005dated 25.07.2016** has directed to charge 1% tax on Information Technology goods in course of inter-state trade or commerce on furnishing the declaration in Form "C", for a period upto 31-03-2017 or the date of implementation of GST, whichever is earlier.

WEST BENGAL

MANDATORY SUBMISSION OF RETURN USING DIGITAL SIGNATURE

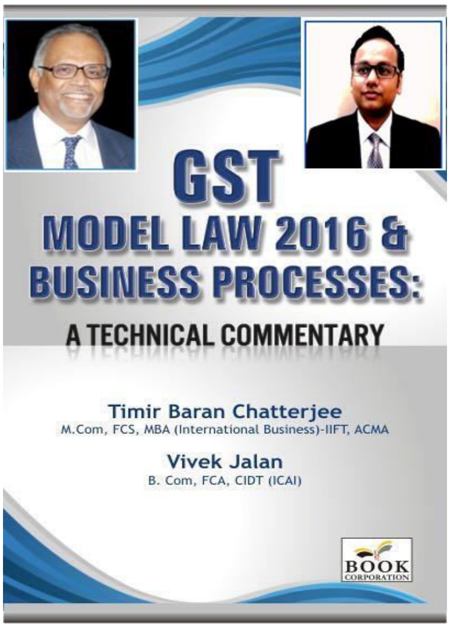
OUR COMMENTS: The Directorate of Commercial Taxes, Government of West Bengal vide **Trade Circular No. 05/2016 dated 25.07.2016** has extended the facility of submission of return using digital signature to larger number of registered dealers w.e.f. quarter ending 30th June, 2016 and has amended rule 34A(3) of WBVAT Rules, 2005 through Notification No. 1024-F.T. dated 21.07.2016.

All registered dealers with turnover exceeding Rs 50 lacs in 2015-16 or having registration under the Companies Act and filing return in Form 14/14D/15/15R shall furnish return using DIGITAL SIGNATURE mandatorily from quarter ending 30th June, 2016. These dealers need not submit signed hard copy of the return.

Other dealers may also submit return electronically using DSC, or alternatively send the single page signed acknowledgement in Form 14e/15e/15Re within 15 days from the expiry of the due date of furnishing the return electronically.

Thus, filing of hard copy of the entire return is not required anymore.

IN STANDS - GST: MODEL LAW 2016 & BUSINESS PROCESSES : A TECHNICAL COMMENTARY



ABOUT THE BOOK: GST Bill is going to be passed in July 2016 and GST is expected to go live from 1st April 2017! In this backdrop, as our initiative to get GST READY, we have launched this publication. This books provides an insight into the following –

1. Procedural provisions under The Model GST Law 2016
2. Glimpse of the Model GST Law 2016
3. Model GST Law 2016
4. GST Valuation (Determination of The Value of Supply of Goods and Services) Rules, 2016
5. The Integrated Goods and Services Tax Act, 2016
6. GST Registration Process
7. GST Return Process
8. GST Payment Process
9. GST Refund Process
10. Eco system for GST and GST Suvidha Provider

FOR ONSITE DELIVERY CONTACT TAX CONNECT AT :

+91 33 2262 5203 ; +91 80173 87083; p3.javaa@gmail.com

Authors:

Timir Baran Chatterjee
M.Com, FCS, MBA (International Business)-IIFT, ACMA

Knowledge Partner:
Bengal Chamber of Commerce and Industry (the first chamber of the Country)

Published *by:*

BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999, 22306669, 22205367
Cell : 9830010297, 9331018333
Order by email: bookcorporation@gmail.com

BOOK EXCLUSIVELY ON WORKS CONTRACT (SERVICE TAX AND VAT)

AVAILABLE IN ALL LEADING LEGAL BOOK SHOPS INCLUDING BOOK CORPORATION

Works Contract has been one of the most complex and litigation prone areas in Indirect Taxes. However with good understanding of all the provisions under Service Tax & VAT which hit Works Contracts & proper planning, Trade & Industry can not only avoid litigation but can also save around 5% - 10% on indirect taxes which by no means is an ordinary saving in the competitive market. For Trade & Industry, the problems on the subject have been many. Over the last few years we have received queries and replied to the issues at various forums.

Vide this publication, we have made an attempt to cover in detail all issues related to **Service Tax:** Valuation, Point of Taxation, Place of Taxation, Abatement, Reverse Charge, Input Tax Credit Mechanism & **VAT**: Contractual Transfer Price, Modes of Valuation, WIP, STDS as well as **GST** . We have also focused on the issues faced by various sectors on account of Works Contract.

This book is divided into Seven Parts covering several broad areas. Each area has the provisions directly from the Statue in the beginning and detailed discussions on the provisions in the form of questions and answers thereafter. Since litigations on the subject have been manifold, we have also covered judicial pronouncements extensively.

Authors:

Timir Baran Chatterjee
M.Com, FCS, MBA (International Business)-IIFT, ACMA

Vivek Jalan
B. Com, FCA, CIDT (ICAI)

Published *by:*

BOOK CORPORATION

4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999, 22306669, 22205367
Cell : 9830010297, 9331018333
Order by email: bookcorporation@gmail.com
Website : www.bookcorporation.com