TAX CONNECT
96th Issue: 27 Nov 2016 - 03 Dec 2016

TAX CONNECT

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The Bengal Chamber of Commerce & Industry

INCOME TAX

CUSTOMS

CENTRAL EXCISE

SERVICE TAX

STATE TAXES

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EDITORIAL

Friends,

The Revised Draft Model GST Law is out Today. There have been substantial changes. Just to take you though few changes therein.

Issues	June Draft Model GST Law	November Draft Model GST Law
Sections	It consists of Section 1-162E	It consists of Section 1-197
Aggregate Tunover	Aggregate Tunover includes "Non-Taxable" supplies	Aggregate Tunover does not include "Non-Taxable" supplies
Capital Goods	Definition borrowed from Central Excise	Defintion completely changed and liberalized
Capital Assets	Definition was there	Removed
Composite Supply	Simple defintion	Definition substantially changed
Consideration	Subsidy received from Govt. not excluded	Subsidy received from Govt. excluded
Goods	"SECURITIES" included	"SECURITIES" excluded
Inputs	Inputs should be used **"for making outward supply"**	**restriction removed**
Input Services	Input sservice should be used **"for making outward supply"**	**restriction removed**
Mixed Supply	No concept was there	New Concept
Supply	1. Sch I for **"supply without consideration"** elaborate 2. Tax on **"composite supply"** was not determinable separately	1. Sch I for **"supply without consideration"** trimmed 2. Tax on "composite supply" determinable separately
Levy	1. CGST/ SGST not capped 2. Levy for e commerce not separately specified	1. CGST/ SGST capped at **14%** 2. Levy for e commerce separately specified
Value of Supply	Discounts not elaborately dealt with	**Discounts** elaborately dealt with
ITC	ITC provisions have been overhauled completely	
Cr/Dr Notes	Provisions changed substantially	

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

Truly Yours

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FORMAT OF PROVISIONAL IDS TO BE ALLOCATED TO EXISTING TAXPAYERS

The provisional ID for migrating to GST will consist of 15 Alpha-Numeric digits with each one representing the following:

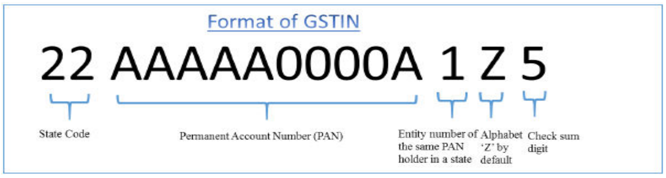
1st two digits – State code

Next ten digits – PAN of Taxpayer

Next one digit – Entity Number of taxpayer in a state

Next single alphabet Z – By default

Final Single digit – Check Sum Digit



INFORMATION & DOCUMENTARY REQUIREMENTS FOR GST ENROLMENT

INFORMATIONS

1) Provisional ID & password received from state/ Central Authorities

2) Valid Email Address & Mobile Number

3) Bank Account Number & IFSC code

DETAILS OF DOCUMENTS

1. Proof of Constitution of Business

   - Partnership Deed (for Partnership firms)

   - Registration certificate (for other entities)

   [PDF, JPEG format, size upto 1MB]

2. Photograph of Promoters / Partners /Karta of HUF [JPEG format, Size upto 100KB]

3. Proof of Appointment of Authorized Signatory [PDF, JPEG format, size upto 1MB]

4. Photograph of Authorized Signatory [JPEG format, Size upto 100KB]

5. Opening page of Bank Passbook/Statement (containing Account Number, Address of Branch & Account

TAX CALENDAR

Due date	COMPLIANCES FROM 27th Nov, 2016 to 3rd Dec, 2016	State/Region
28th Nov, 2016	Deposit of VAT of previous month (VAT Act)	Arunachal Pradesh
	Filing of monthly/quarterly VAT return (VAT Act)	Arunachal Pradesh (if turnover>Rs. 1 crore)
	Deposit of VAT of previous month (VAT Act)	Tripura, Jammu & Kashmir, Himachal Pradesh, Punjab (if payment otherwise than by cheque), Goa (if Tax < Rs. 1 lac), Mizoram
	Filing of monthly/quarterly/annual VAT return (VAT Act)	Himachal Pradesh (if PY turnover is>5 cr), Tripura, Bihar, Punjab (if payment otherwise than by cheque)
	Deposit of WCT of previous month (VAT Act)	Goa (if Tax< Rs. 1 lac)
30th Nov, 2016	Filing of monthly/quarterly WCT return(VAT Act)	Rajasthan, Bihar Chandigarh, Tamil Nadu
	Deposit of Entry tax of previous month (Entry Tax Act)	Maharashtra (For unregistered dealers) Goa, Assam
	Issuance of WCT certificate (VAT Act)	Assam
	Deposit of P tax of previous month (Commercial Tax Act)	Maharashtra, Assam, Mizoram, Manipur, Meghalaya, Nagaland, Tripura
	Filing of income-tax return by any person required to furnish Form No. 3CEB under section 92E (Income Tax Act)	All India

NOTIFICATIONS/CIRCULARS

EXCLUSIVE JURISDICTION TO LTU-BANGALORE WITH RESPECT TO OIDAR SERVICES

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India has issued **Notification No. 50/2016- Service Tax dated 22.11.2016 and has** amended notification No. 20/2014-ST dated 16th September, 2014 to provide exclusive jurisdiction to LTU-Bangalore for OIDAR provided or agreed to be provided by a person located in non-taxable territory and received by a non-assessee online recipient.

M/S TANYA AUTOMOBILES PVT LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, MEERUTI [CESTAT ALLAHABAD]

BRIEF: If there is documentary proof specifically indicating the value of the goods supplied/sold during repairs, the demand of Service Tax for the cost of the goods supplied is not sustainable.

OUR COMMENTS: The assessee is an authorized service station of motor vehicles.

The department issued a show cause notice against the assessee alleging that he was paying Service Tax on the labour charges only and not on value of spare parts and lubricants used in the course of servicing of the motor vehicles.

The Hon'ble CESTAT observed that where the party is liable to pay Service Tax on the entire invoices/bills, then by virtue of Notification No. 12/03, service tax exemption is available to the extent of value of the goods and materials sold by the service provider to the service recipient provided a documentary proof of such sale exists and no credit of Central Excise duty paid on consumables and spares has been taken.

In the above case, though no separate invoice was issued for the sale of spares and consumables, the assessee is showing their value separately in the invoice and also paying VAT/Sales Tax on the same i.e. there is a documentary proof specifically indicating value of the goods.

Hence, no service tax liability arises on the value of the spare parts and lubricants used in the course of servicing.

Accordingly, the impugned order was set aside.

[Decided in favor of assessee]

CENTRAL EXCISE

COURT DECISIONS

COMMISSIONER OF CENTRAL EXCISE, NASHIK VERSUS MAHINDRA & MAHINDRA LTD. [CESTAT MUMBAI]

BRIEF: Cost of advertising, marking, publicity incurred by the dealer from their margin cannot be included in the assessable value of the vehicle.

OUR COMMENTS: In the above case, the issue is regarding the inclusion of dealers margin in the assessable value.

As per the dealers agreement, dealer is supposed to incur expenses towards advertising, publicity, marketing, after sale services etc. which are required to be done by the assessee and the dealer is compensated for such expenses which is difference in margin and not dealer price.

The Revenue took view that the assessable value gets depressed and Central Excise duty is short paid and issued a show cause notice.

The Hon'ble CESTAT noted that:

- As per the dealers agreement, the dealer is bound in terms of contract to undertake advertisements, sales promotion, marketing and aftersale services of the goods.
- In the case of **CCE v. TVS Motors Co. - 2016 (331) ELT 3 (SC)** has held that aftersale services cost is not liable to be included in the assessable value for discharge of duty.
- The demand is in respect of the dealers margin covering the cost of aftersale services, free delivery inspection charges and advertising costs partly incurred by the dealer.
- The Apex Court in the case of TVS Motors Co. (supra) has clearly held that cost of pre-delivery inspection charges and free aftersale charges incurred by the dealer are not includable in the assessable value of the vehicle sold by the assessee.

Accordingly, it was held that the issue of cost of advertising, marking, publicity incurred by the dealer from their margin cannot be included in the assessable value of the vehicle.

The appeals filed by the Revenue where rejected.

Other references:

- Union of India v. Bombay Tyre International Ltd. - 1983 (14) ELT 1896 (S.C.) and
- Govt. of India v. Madras Rubber Factory - 1995 (77) ELT 433 (S.C.)
- CCE v. Surat Textile Mills Ltd. - 2004 (167) ELT 379 (S.C.),
- CCE v. Poona Bottling Co. Ltd. - 2005 (182) ELT 23 (S.C.)
- CCE v. Eicher Tractors Ltd. - 2004 (164) ELT 129 (S.C.)

[Decided against Revenue]

CUSTOMS

NOTIFICATIONS/CIRCULARS

REVISION OF EXCHANGE RATE OF FOREIGN CURRENCIES INTO RUPEE & VICE VERSA

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 138/2016-Customs (N.T.) dated 17.11.2016 & in supersession of Notification No. 136/2016-Customs (N.T.) dated 03.11.2016** has **revised the exchange rate of foreign currencies** specified in col.(2) of each of **Schedule I** and **Schedule II** annexed hereto, into Indian currency or vice versa, w.e.f. **18.11.2016** to be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

SCHEDULE-I

Sl. No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	51.75	49.80
2.	Bahrain Dinar	186.55	174.15
3.	Canadian Dollar	51.35	49.80
4.	Danish Kroner	9.95	9.60
5.	EURO	73.95	71.45
6.	Hong Kong Dollar	8.85	8.65
7.	Kuwait Dinar	231.00	216.20
8.	New Zealand Dollar	49.20	47.30
9.	Norwegian Kroner	8.15	7.90
10.	Pound Sterling	85.80	83.05
11.	Singapore Dollar	48.70	47.25
12.	South African Rand	4.90	4.60
13.	Saudi Arabian Riyal	18.70	17.55
14.	Swedish Kroner	7.55	7.25
15.	Swiss Franc	68.95	66.60
16.	UAE Dirham	19.10	17.90
17.	US Dollar	68.80	67.10
18.	Chinese Yuan	10.05	9.75

SCHEDULE-II

Sl. No	Foreign Currency	Rate of exchange of 100 units of foreign currency equv. to Indian rupees	
(1)	(2)	(3)	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	63.40	61.30
2.	Kenya Shilling	68.95	64.50

CLEARANCE OF IMPORTED METAL SCRAP

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Circular No. 53/2016-Customs dated 18.11.2016 has clarified** that the import of shredded metallic scrap shall continue to be cleared inter-alia upon furnishing of pre-shipment inspection certificate. Para 3(i) of the Circular No. 48/2016-Customs dated 26.10.2016 shall stand modified to that extent.

NOTIFICATIONS & CIRCULARS

INCOME-TAX (32ND AMENDMENT) RULES, 2016

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 106/2016 dated 21.11.2016** has amended Rule 10V (Guidelines for application of section 9A) of the Income-tax Rules, 1962. The new rules may be called the Income–tax (32nd Amendment) Rules, 2016.

The readers may refer the aforesaid notification for details.

ADMISSIBILITY OF EXPENDITURE INCURRED BY A FIRM ON KEYMAN INSURANCE POLICY IN THE CASE OF A PARTNER

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India, **CIRCULAR NO. 38/2016 dated 22.11.2016** has issued a clarification on the admissibility of expenditure incurred by a firm on Keyman Insurance Policy premium in the case of a partner.

As per **Circular no. 762/1998 dated 18.02.1998**, premium on the Keyman Insurance Policy is allowable as business expenditure, however, such expenditure incurred on a partner of a firm, use to be disallowed by the assessing officers as not incurred for the purpose of business.

High Courts have upheld the admissibility of the expenditure incurred by the firm in the case of the partners. As per Explanation to Clause (10D) of Section 10 of the Income-tax Act, 1961 and the CBDT Circular no. 762/1998 dated 18.02.1998, Courts have held that a **Keyman Insurance Policy is not confined to a policy taken for an employee but also extends to an insurance policy taken with respect to the life of another person who is connected in any manner whatsoever with the business of the subscriber (assessee).**

In the case of M/s Ramesh Steels, ITA No. 437 of 2015, vide judgement dated 2.2.2016 (NJRS citation 2016-LL-0505-68), the High Court of Punjab and Haryana have held that, "**the said policy when obtained to secure the life of a partner to safeguard the firm against a disruption of the business is equally for the benefit of the partnership business which may be effected as a result of premature death of a partner. Thus, the premium on the Keyman Insurance Policy of partner of the firm is wholly and exclusively for the purpose of business and is allowable as business expenditure".**

The above view has been accepted by CBDT **and it has been clarified that premium paid by the firm on the Keyman Insurance Policy of a partner, to safeguard the firm against a disruption of the business, is an admissible expenditure under section 37 of the Act.**

Henceforth, appeals may not be filed by the department on this settled issue and those already filed, may be withdrawn/not pressed upon.

STATE TAXES

DELHI

DUE DATE FOR FORM DVAT-16, 17 & 48 FOR Q2 2016-17 EXTENDED TO 28.11.2016

<u>OUR COMMENTS</u> The Department of Trade and Taxes, Government of National Capital Territory Of Delhi, **vide Circular No. 19/2016 dated 21.11.2016** has extended the last date of filing of online/hard copy of second quarter return for the year 2016-17, in Form DVAT-16, DVAT-17 and DVAT-48 along with required annexure/enclosures to 28/11/2016.

KARNATAKA

EXTENSION OF THE LAST DATE OF PAYMENT OF TAXES TO 24.11.2016

<u>OUR COMMENTS:</u> The Government of Karnataka vide **NOTIFICATION [No. FD 104 CSL 2016] dated 19.11.016** has extended the time till 24th of November 2016, for payment of taxes along with the return for the dealers whose liability does not exceed Fifty Thousand Rupees as per the return relating to the tax period of October 2016.

PUNJAB

LAST DATE OF E-FILING OF ANNUAL STATEMENT IN FORM VAT-20 FOR 2015-16 HAS EXTENDED TILL 10TH DECEMBER, 2016

<u>OUR COMMENTS:</u> The Department of Excise & Taxation, Government of Punjab vide **Public Notice 17.11.016** has extended last date of e-filing of annual statement in Form VAT-20 for the year 2015-16 till 10th December, 2016

MAHARASHTRA

EXEMPTION OF LATE FEE FOR MONTHLY RETURNS FOR THE PERIOD FROM APRIL 2016 TO OCTOBER 2016

<u>OUR COMMENTS</u> The Office of the Commissioner of Sales Tax, Government of Maharashtra, vide **Trade Cir. No. 36T of 2016 dated 21.11.2016** has decided that the because of the technical difficulties due to which some of the dealers could not file returns for the periods April 2016 to October 2016 by the due dates as specified in the Trade Circular No 34 T of 2016 Dt. 02.11.2016, the late fee payable by such dealer shall be exempted if such return is filed on or before the 30th November 2016.

The late fee for Q1 & Q2 returns shall also be exempted if such quarterly returns are filed before 10.12.2016 and 21.01.2017 respectively.

MAHARASHTRA SETTLEMENT OF ARREARS IN DISPUTES RULES, 2016

<u>OUR COMMENTS</u> The Finance Department, Government of Maharashtra, vide **Notification No. SAD 1516/CR 155/Taxation-1 dated 19.11.2016** has made Maharashtra Settlement of Arrears in Disputes Rules, 2016.

As per the Rules, 50%. of the requisite amount shall be paid on or before the 30th November 2016 and remaining 50%. shall be paid on or before the 31st December 2016.

The benefits under this rule shall not be available, if applicant has not submitted application in Form-1 and has withdrawn the appeal before the 30th November 2016.

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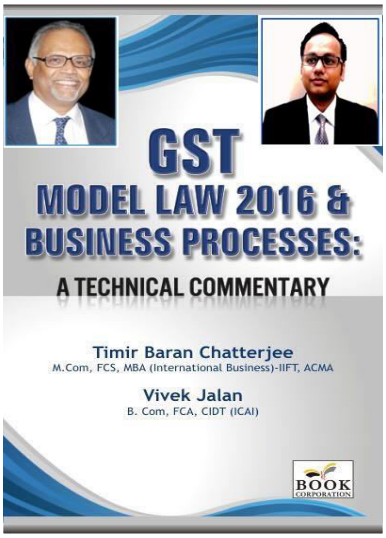
IN STANDS - GST: MODEL LAW 2016 & BUSINESS PROCESSES : A TECHNICAL COMMENTARY



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

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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.

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