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TAX CONNECT

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INCOME TAX

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CENTRAL EXCISE

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EDITORIAL

Friends,

Goods and Services Tax (GST) Council had its sixth session on 11 December, 2016, however, it was cut short for want of consensus on the sharing of administrative powers between the Centre and States. The meeting has now been convened on December 22-23.

In a video conferencing with the Asian business leaders, our Prime Minister **Narendra Modi** has invited foreign investments by referring GST implementation in 2017 as the opportune time.

He also mentioned that with the demonetization of high value currency on November 8, 2016, India is moving towards a cashless and digital economy. So, this is the right time for integration in to one of the most open and integrated economies of the world.

We are organizing a full day GST workshop on 20th January, 2017 in Kolkata. In the workshop we will mainly do a complete study of the Revised Model GST Law (November 2016) section wise and discuss the changes from the draft law in June 2016.

Now coming to the present taxes,

In Service Tax, exemption has been provided to services for settlement of amount upto Rs 2,000 in a single transaction through credit card, debit card, charge card or other payment card service.

Further, it has been clarified that in indirect taxes, past assessments will not be reopened just for the reason of increased turnover due to shift to digital mode of transactions.

In Customs, exchange rate of foreign currencies into Rupee & vice versa has been revised w.e.f 16.12.2016.

In Income Tax, Petroleum And Natural Gas Regulatory Board has been notified U/S 10(46) for specified income.

Also, procedure has been specified for the purposes of furnishing and verification of Form 27BA for removing of default of short collection and/or non collection of tax at source

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

Truly Yours

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SYNOPSIS

GOODS & SERVICE TAX (GST)

REVISED DRAFT MODEL GST LAW (NOVEMBER 2016): SOME NEW CONCEPTS & DEFINITIONS

The revised GST Model Law in November has brought in many changes in the existing law and has also introduced some new concepts. We hereby continue to discuss some of the key changes in this issue.

- **Limit for GST registration:** The limit for registration under the New GST law has been increased from Rs 9 lakhs to Rs 20 lakhs.

  As per the new law: Every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds twenty lakh rupees,

- **Limit for GST registration of Special Category States:-** The limit for the north-eastern states was Rs 4 lakhs which has now been increased to Rs 10 lakhs. The provision now also contains a mention about Jammu & Kashmir, Uttarakhand and Himachal Pradesh for whom the limit is Rs 10 lakhs.

  As per the new law: Where a person makes taxable supplies of goods and/or services from any of the States specified in sub-clause (g) of clause (4) of Article 279A of the Constitution (i.e Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand) he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.(Other than Special Category States)

  Special Category States:-
  Every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds ten lakh rupees

- **Taxable Persons:** Branch/Depots of the same assessee in different states are to be considered as different persons.
  As per the new law (Sec 10):

  (1) Taxable Person means a person who is registered or liable to be registered under Schedule V of this Act.

  (2) A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

  (3) An establishment of a person who has obtained or is required to obtain registration in a State, and any of his other establishments in another State shall be treated as establishments of distinct persons for the purposes of this Act.

- **Aggregate turnover:** Non-taxable supplies have been excluded from the aggregate turnover, while inter-state supplies have been added.

  As per the new law Sec 2(6): “Aggregate turnover” means the aggregate value of all taxable supplies, exempt supplies, exports of goods and/or services and inter-State supplies of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act, as the case may be;

  Explanation.- Aggregate turnover does not include the value of inward supplies on which tax is payable by a person on reverse charge basis under sub-section (3) of Section 8 and the value of inward supplies. [section 2(6)]

  The aggregate turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. [Explantion-1 Schedule V].

- **Capital assets:** In the new law no definition has been provided for Capital assets.

- **Capital Goods:** The definition has been broadened. Earlier definition was lined with Central Excise Tariff Heading and/or Tariff description which is more prone to litigation. The revised definition should help in reducing the litigation on the interpretation of “What capital goods are”.

GOODS & SERVICE TAX (GST) contd..

As per the new law Sec 2(19): "capital goods" means goods, the value of which is capitalised in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business.

- **Consideration:** The definition has been modified to exclude subsidy given by the Central Government or State Government in the consideration.

As per the new law Sec 2(28): "consideration" in relation to the supply of goods or services includes

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

PROVIDED that a deposit, whether refundable or not, given in respect of the supply of goods or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply.

- **Goods:** Definition of goods has been modified to include "Actionable Claim", but exclude money and securities.

As per the new law Sec 2(49): "goods'' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

- **Intangible property:** In the new law no definition has been provided for Intangible property.

- **Money:** Any instrument recognized by RBI is given an extra mention in the new GST law..

As per the new law Sec 2(65): "money" means Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognized by the Reserve Bank of India when used as consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value.

- **Services:** Earlier explanation includes intangible properties and actionable claims in the purview of services. Now, as per the explanation, service includes transactions in money but does not include money and securities. Thereby, intangible properties are to be considered as goods. Only service transactions in money and securities are liable for tax, as per Explanation 2.

As per the new law Sec 2(92): "services'' means anything other than goods;

Explanation 1.- Services include transactions in money but does not include money and securities;

Explanation 2.- Services does not include transaction in money other than an activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

TAX CALENDAR

Due date	COMPLIANCES FROM 18th Dec, 2016 to 24th Dec, 2016	State/Region
20th Dec, 2016	Deposit of VAT of previous month (VAT Act)	Andhra Pradesh, Karnataka, Tamil Nadu, Chandigarh Punjab (if payment by cheque), Uttar Pradesh, Uttarakhand, Manipur, Goa (if Tax> or = Rs. 1 lac)
	Filing of monthly/quarterly VAT return (VAT Act)	Andhra Pradesh, Karnataka, Tamil Nadu, Uttar Pradesh, Uttarakhand, Punjab (if payment is through cheque) Manipur (if PY turnover is >Rs. 40 lacs)
	Deposit of P Tax of previous month (Commercial Tax Act)	Karnataka, West Bengal
	Deposit of Entry tax of previous month (Entry Tax Act)	Andhra Pradesh, Karnataka Uttar Pradesh, Uttarakhand
	Deposit of WCT of previous month (VAT Act)	Andhra Pradesh, Karnataka, Tamil Nadu, Uttar Pradesh Uttarakhand, Goa (Tax >/= Rs. 1 lac)
	Filing of monthly/quarterly WCT return (VAT Act)	Karnataka
	Issuance of WCT certificate (VAT Act)	Uttar Pradesh, Manipur
21st Dec, 2016	Deposit of VAT of previous month (VAT Act)	Delhi, Maharashtra, Odisha, West Bengal, Assam, Nagaland, Meghalaya
	Filing of monthly/quarterly VAT return (VAT Act)	Assam, Maharashtra, Odisha, Meghalaya
	Deposit of WCT of previous month (VAT Act)	Maharashtra
	Deposit of Entry tax of previous month (Entry Tax Act)	Odisha, West Bengal
	Deposit of Ptax of previous month (Commercial Tax Act)	Odisha
	ESI deposit of previous month (ESI Act)	All India
22nd Dec, 2016	Deposit of VAT of previous month (VAT Act)	Gujarat
	Deposit of WCT of previous month (VAT Act)	Gujarat
	Issuance of WCT certificate (VAT Act)	Delhi
	Deposit of Entry tax of previous month (Entry Tax Act)	Gujarat

SERVICE TAX

NOTIFICATIONS/CIRCULARS

EXEMPTION TO SERVICES FOR SETTLEMENT OF AN AMOUNT UPTO RS 2,000 IN A SINGLE TRANSACTION THROUGH CREDIT CARD, DEBIT CARD, CHARGE CARD OR OTHER PAYMENT CARD SERVICE

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 52/2016-Service Tax dated 08.12.2016 has amended Notification No.25/2012-Service Tax, dated the 20th June, 2012** and exempted services by an acquiring bank, to any person in relation to settlement of an amount upto Rs 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Here "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card."

DIGITAL MODE OF PAYMENT WHILE MAKING FINANCIAL TRANSACD TIONS-PAST ASSESSMENTS

OUR COMMENTS: Because of the recent initiatives of the government to curb black economy in the country people are encouraged to shift towards digital mode of payment, by which, no financial transaction would remain undisclosed and an enhanced turnover might get reflected in the books of accounts. An apprehension has been raised that increased turnover may lead to demands for the earlier period.

Therefore, the Dept. of Revenue, Ministry of Finance, Government of India vide **F. No. 137/ 155 /2012-Service Tax(Part-I) dated 09.12.2016 has** clarified that in indirect taxes, past assessments will not be reopened for this reason alone.

COMMISSIONER OF CENTRAL EXCISE, AGPUR VERSUS M/S SUNIL I-TECH ENGINEERS LTD. [CESTAT MUMBAI]

BRIEF:Air travel agent services are input services when travel is for the purpose of business. The cenvat credit is allowed on it even though the air tickets are in the name of the personnel of the assessee provided the bills are raised in the name of the assessee.

OUR COMMENTS: In the above case, the main business of the assessee is works contract. The works contract are situated at different places. Therefore, the personnel of the assessee are required to travel for business purposes at various sites. These travels are booked through air travel agency and the assessee avails cenvat credit on the service tax paid to the air travel agent.

The Revenue contended that invoice raised by the service provider pertain to tickets issued in the name of personnel of the assessee and not assessee itself and issued a show cause notice on the assessee to show why cenvat credit be allowed on these services and why not interest and penalty be imposed in this case.

The Hon'ble CESTAT held that the company is an artificial judicial person. It cannot travel itself as it exists only on paper in the eyes of law. It is only the personnel of the company, who travel for the business of the company and the CENVAT Credit in respect of Air Travel Agent service is rightly availed by the assessee.

[Decided in favour of assessee]

CENTRAL EXCISE

COURT DECISIONS

M/S HINDUSTAN UNILEVER LIMITED VERSUS CCE &ST, BHOPAL [CESTAT NEW DELHI]

BRIEF: The transport of material directly to the job worker's premises to avoid payment of extra period and same time, cannot lead to denial of credit.

OUR COMMENTS: In the above case, the assessee is engaged in the manufacture of detergent bars, cakes and powder. He was availing cenvat credit on the input, input service and capital goods.

The assessee use to procure inputs from the market and send the same directly to the job worker from supplier s place and then avail cenvat credit. The invoices also show that the goods were consigned to the job worker s premises on account of assessee. For the imported goods, although the goods were received by the job worker on account of the appellant.

The job worked goods sent to the assessee were used by the assessee for manufacture of final products cleared on payment of duty.

The Revenue denied cenvat credit on the goods on the grounds that assessee never received the goods in the factory and issued show cause notice.

The Hon'ble CESTAT noted that the assessee has followed the procedure laid-down under Rule 4(5)(a) of the CCR, 2004, therefore, he is entitled to avail cenvat credit.

Ref: Bharat Heavy Electricals Limited vs. CCE, Bhopal 2011 (274) ELT 359 (Tri. Del.)

CCE, Bhopal vs. Procter & Gamble 2010 (258) ELT 268 (Tri. Del.).

[Decided in favour of the assessee]

TECHNOLOGIES PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE [CESTAT MUMBAI]

BRIEF: Charges towards training provided to the customer's staff is not includable in the assessable value.

OUR COMMENTS: The assessee is an SSI unit engaged in the manufacture and sale of machines, mechanical appliances and parts thereof. The customer of the assessee is at liberty to get their staff trained from the assessee or not. Thus, these charges are not recovered from every customer. The charges on account of training are separately shown in the invoices wherever charged and recovered.

The Department's contention is that these training charges should be included in the assessable value for the purpose of imposition of excise duty.

The Hon'ble CESTAT held as per the **concept of transaction value, any charges in connection with the manufacture, marketing, selling of excisable goods shall form part of the assessable value.**

In this case, training provided to the customer's staff has no nexus with the activity of manufacturing, sale or marketing of the product and it does not enrich the value of their products.

Therefore, training charges are not includable in the assessable value.

[Decided in favour of the assessee]

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. 147/2016-Customs (N.T.) dated 15.12.2016 & in supersession of Notification No. 145/2016-Customs (N.T.) dated 01.12.2016** 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. **16.12.2016** 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	51.35	49.40
2.	Bahrain Dinar	186.25	173.85
3.	Canadian Dollar	51.85	50.25
4.	Danish Kroner	9.75	9.40
5.	EURO	72.45	70.00
6.	Hong Kong Dollar	8.85	8.60
7.	Kuwait Dinar	229.70	215.00
8.	New Zealand Dollar	49.10	47.20
9.	Norwegian Kroner	8.05	7.75
10.	Pound Sterling	86.50	83.75
11.	Singapore Dollar	47.95	46.45
12.	South African Rand	5.00	4.70
13.	Saudi Arabian Riyal	18.70	17.50
14.	Swedish Kroner	7.45	7.20
15.	Swiss Franc	67.50	65.20
16.	UAE Dirham	19.10	17.90
17.	US Dollar	68.65	67.00
18.	Chinese Yuan	9.95	9.60

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	58.75	56.85
2.	Kenya Shilling	68.70	64.25

FIXATION OF TV OF EDIBLE OIL, BRASS, POPPY SEED, ARECA NUT, GOLD AND SLIVER

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Notification No. 148/2016-Customs (N.T.) dated 15.12.2016** has amended **Notification No.36/2001-Customs, dated 03.08.2001** and fixed tariff value of edible oil, brass, poppy seed, areca nut, gold and silver by substituting tables, TABLE – 1, TABLE – 2 and TABLE – 3.

INCOME TAX

NOTIFICATIONS & CIRCULARS

PETROLEUM AND NATURAL GAS REGULATORY BOARD NOTIFIED U/S 10(46) FOR SPECIFIED I NCOME

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **NOTIFICATION No. 112/2016 dated 07.12.2016** has notified Petroleum and Natural Gas Regulatory Board, u/s 10(46) in respect of the specified income arising to that Board subject to the following conditions:

(a) They shall not engage in any commercial activity;
(b) Activities and the nature of the specified income remain unchanged throughout the financial years; and
(c) They shall file return as per Section 139(4C)(g) of the Income-tax Act, 1961.

PROCEDURE FOR THE PURPOSES OF FURNISHING AND VERIFICATION OF FORM 27BA FOR REMOVING OF DEFAULT OF SHORT COLLECTION AND/OR NON COLLECTION OF TAX AT SOURCE

OUR COMMENTS: The Directorate of Income-tax (Systems), CBDT, Ministry of Finance, Government of India vide **Notification No. 12/2016 dated 08.12.2016** has authorizes the persons mentioned at Col. No. 1 to receive Form 27BA to be filed in the mode specified at Col. No. 2 for the specified assessment years (in Col. No. 3) and pertinent to defaults mentioned at Col. No. 4:

A.O.	Mode	AY	Default u/s
Field Assessing Officer(TDS)	Paper	Up to & including 2016-17	206(6A)
CPC-TDS	Electronic (from 15.01.2017)	Up to & including 2016-17	206CB
CPC-TDS	Electronic (from 15.01.2017)	Including & from 2017-18	206CB & 206(6A)

The AO should ensure that interest on non-collection of the whole or any part of the tax or failure in payment after collection shall be paid before furnishing the statement.

For the procedure for electronic filing of Form 27BA, the readers may refer the notification.

RESCINDMENT OF NOTIFICATION NUMBER 86/2013 DATED 01/11/2013

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 114/2016 dated 14.12.2016** has rescinded notification No. 86/2013 dated 1st November 2013 (except as respects things done or omitted to be done before such rescission) vide which Cyprus was specified as 'notified jurisdictional area' for the purposes of international transaction.

STATE TAXES

DELHI

COMMUNICATION OF THE PROVISIONAL IDENTIFICATION NUMBER AND PASSWORD TO DEALERS FOR MIGRATION TO GST

OUR COMMENTS: The Department Of Trade And Taxes, Government Of National Capital Territory Of Delhi, **vide No.JCTT/Policy/2016/751-769 dated 14.12.2016** has communicated that Provisional ID and Password has been provided on dealer's login which shall be used to update the current information on the GST Portal at https://www.gst.gov.in from 16th December, 2016 to 31st December, 2016.

The following shall be completed for pre-registration:

Step 1: Enter the username and password provided
Step 2: Enter Mobile Number and Email ID of the Authorized Signatory where all future correspondence from the GST Portal shall be sent.
Step 3: Enter the OTP sent on Mobile and Email as provided.
Step 4: Enter information and upload scanned images as mentioned in pre-Registration Form.

User Guide and FAQ is also available at https://www.gst.gov.in/help/faq.
Also, a video tutorial has been uploaded at http://tutorial.gst.gov.in/video.

A welcome message will come to the registered Mobile Number and Email ID from the system after verification / validation of the information submitted.

In case of misleading/wrong/ incorrect information with / without evidence provisions of cancellation as per the Provisions of Proposed Goods and Services Tax Act, 2016 shall get attracted.

MADHYA PRADESH

REVISED RETURN FOR THE YEAR 2015-2016 CAN BE FURNISHED UP TO 31ST DECEMBER, 2016, BY A DEALER HAVING ANNUAL TURNOVER EXCEEDING RS 1 CR

OUR COMMENTS: The Commercial Taxes Department, Government of Madhya Pradesh vide **NOTIFICATION No. F-A-3-50-2016-1-Five-(47).- dated 13.12.016** has provided that the revised return for the year 2015-2016 can be furnished up to 31st December, 2016, by a dealer having annual turnover exceeding Rs 1 cr.

AUDIT REPORT PERTAINING TO THE YEAR 2015-2016 CAN BE FURNISHED UP TO 31ST DECEMBER, 2016 WITHOUT A LATE FEE

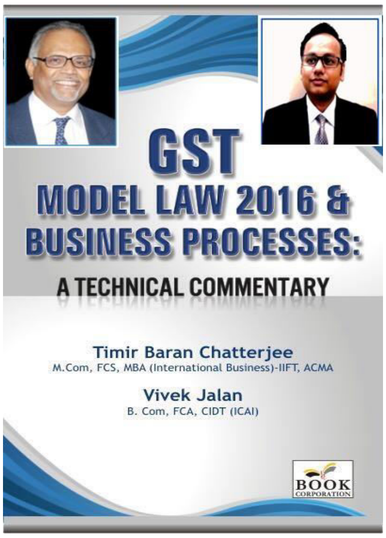
OUR COMMENTS: The Commercial Taxes Department, Government of Madhya Pradesh vide **NOTIFICATION No. No. F-A-3-50-2016-1-Five-(48)- dated 13.12.016** has provided that the audit report pertaining to the year 2015-2016 can be furnished up to 31st December, 2016 without a late fee.

TAMIL NADU

EXEMPTION ON THE SALE OF GOODS MADE TO CONSULATE OF RUSSIAN FEDERATION IN CHENNAI

OUR COMMENTS The Commercial Taxes & Registration (B2), Government of Tamil Nadu, vide **G.O. (Ms)No. 128 dated 07.12.2016 has exempted** the tax on the sale of goods made to the consulate of Russian Federation in Chennai and its officials in Tamil Nadu for official and personal use w.e.f 01.07.2014.

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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<u>BOOK EXCLUSIVELY ON WORKS CONTRACT (SERVICE TAX AND VAT)</u>

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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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