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TAX CONNECT

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EDITORIAL

Friends,

Union Finance Minister Arun Jaitley has said that the implementation of Goods and Services Tax (GST), along with a digitised economy ushered in by demonetisation, will make India's economy look much **cleaner, better and bigger.** He expects Indian industry, assesses, and states, to cooperate for the success of these two major moves by Indian Government in 2016.

In the current indirect taxation regime, the country is assessed by different authorities, central government is taxing manufacturing and services while states levy tax on sale of commodities. However, GST will make India one big entity with a single tax which will **lead to a seamless transfer of global services across the country.**

The Government is also expecting that **GST rollout will boost the Indian economy and make the non tax-compliant society more compliant**. Alongwith steps like demonetization, law for Benami Property, the government has also renegotiated tax treaties with Mauritius, Cyprus and Singapore to end tax evasion and round tripping of funds.

Now coming to the present taxes,

In Service Tax, it has been held that the administrative charges (to cover expenses in connection with registration etc.) and restoration charges (in the form of penalty for default in payment by the allottees) collected by the developers of immovable property shall not be held liable to service tax.

In Income Tax, procedure for Registration for Statement of Financial Transactions (SFFT) per Section 285BA and procedure for Registration and Submission of Form V for reporting under Pradhan Mantri Garib Kalyan Deposit Scheme (PMGK), 2016 has been provided.

Further, **Income Tax (1st Amendment) Rules, 2017** has been notified which provides that persons with bank accounts who have not submitted PAN or Form No 60 are advised to submit the same to the bank on or before the 28th February, 2017.

In Customs, exchange rate of foreign currencies into Rupee & vice versa has been provided for.

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): IGST LAW - 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.

- **To prevent double taxation or non-taxation:** No such provision was there in the old GST Law.

  The new law (Sec 10) Central Government shall have the power to notify any description of service or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

- **Special provision for payment of tax by a supplier of online information and database access or retrieval services located outside India to specified person in the taxable territory:-** No such provision was there in the old GST Law.

  As per the new law (Sec 10): Supplier of such service located in non-taxable territory shall be liable to pay tax on services received by non-taxable online recipient. If an intermediary is involved, such intermediary shall be liable to pay the tax if he satisfies all the following conditions, namely :-

  (a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

  (b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge i.e. intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-assessee online recipient and the supplier of such services;

  (c) the intermediary involved in the supply does not authorise delivery;

  (d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the service provider..

- **Simplified Registration Scheme for supplier of online information and database access or retrieval services located outside India to specified person in the taxable territory:** No such provision was there in the old GST Law.

  As per the new law Sec 12: Single registration can be obtained for payment of IGST.

- **Wrong payment of tax:** This is the most beneficial change that the industry was expecting.

  Everyone was worried that if payment of wrong tax is made, one will have to pay the interest on correct tax due to delay in payment. Further when one claims refund under normal refund provisions, limitation of two years would have applied. In New IGST Law, it is provided that no interest shall be payable on payment of correct tax subsequently. Also refund mechanism shall be separately provided in such cases to reclaim the tax wrongly paid.

  As per the new law Sec 19: if a taxable person who has paid IGST on a supply considered by him to be an inter-state supply, but which is subsequently found to be an intra-State supply, refund shall be granted in a manner prescribed. Moreover it also provides that a taxable person who has paid CGST / SGST on a transaction considered by him to be an intra- State supply, but which is subsequently found to be an inter-State supply, shall not be required to pay any interest on the amount of IGST payable.

- **Refund of IGST to outbound tourists:** No such provision was there in the old GST Law.

  As per the new law Sec 20: The IGST paid on any supply of goods to outbound tourist shall be refunded in the manner prescribed.

TAX CALENDAR

Due date	Compliances from 15th Jan, 2017 to 21st Jan, 2017	State/Region
15th Jan, 2017	Deposit of VAT of previous month (VAT Act)	Bihar, Jharkhand, Sikkim, Kerala Haryana (if Tax> Rs. 1 lac), Karnataka (Quarterly, if total turnover of previous year is less than Rs. 25 lacs)
	Filing of monthly/quarterly VAT return (VAT Act)	Kerala (Monthly, Annual tax if> 10 lacs) Karnataka (Quarterly, if total turnover of previous year is less than Rs. 25 lacs)
	Deposit of WCT of previous month (VAT Act)	Bihar, Chandigarh, Delhi, Haryana Jharkhand, Punjab, Rajasthan Himachal Pradesh
	Filing of monthly/quarterly WCT return (VAT Act)	Punjab, Kerala
	Issuance of monthly/quarterly WCT certificate (VAT Act)	Punjab, Chandigarh, Goa, Haryana, Jharkhand, Himachal Pradesh
	PF deposit of previous month (EPF Act)	All India
	Deposit of Ptax of previous month (Commercial Tax Act)	Sikkim, Gujarat, Jharkhand
	Deposit of Entry tax of previous month (Entry Tax Act)	Bihar, Jharkhand
20th Jan, 2017	Deposit of VAT of previous month (VAT Act)	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)	Karnataka, Tamil Nadu, Uttar Pradesh Uttarakhand ,Punjab (if payment by 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, Uttarakhand
	Issuance of WCT certificate (VAT Act)	Uttar Pradesh , Manipur
21st Jan, 2017	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
	Issuance of WCT certificate (VAT Act)	Maharashtra
	Deposit of Ptax of previous month (Commercial Tax Act)	Odisha
	ESI deposit of previous month (ESI Act)	All India

SERVICE TAX

COURT DECISIONS

M/S JAIPURIA INFRASTRUCTURE DEVELOPERS PVT. LTD., M/S ANSAL HOUSING & CONSTRUCTION LTD. VERSUS CST, NEW DELHI [CESTAT NEW DELHI]

BRIEF: The administrative charges (to cover expenses in connection with registration etc.) and restoration charges (in the form of penalty for default in payment by the allottees) collected by the developers of immovable property shall not be held liable to service tax.

OUR COMMENTS: In the above case, the assesses are engaged in the development of immovable property.

- **The administration charge** has been recovered by the assessees from all original allottees of flats to cover expenses in connection with registration etc.

  Revenue has taken the view that these charges have been recovered in connection with the sale of real estate and hence, are liable to service tax under the category of Real Estate Agent Services defined under Section 65 (88).

  The assessees' contention is that they are acting on their own behalf and not as agent of anybody else. Accordingly, the service tax demand on such charges, are not sustainable under the category of Real Estate Agents.

- **The restoration charge** have been recovered when an allottee defaults in his payment schedule and for that reason allotment is cancelled. Such charges are in the nature of a penalty imposed on the allottee to cover damages caused by his default in payment

  Revenue has taken the same view again and considered it liable to service tax under the category of Real Estate Agent Services defined under Section 65 (88)

  The assessees' contention is that the appellants have recovered 'restoration charges' as a penalty for damages caused by default in payment by the allottees. Therefore, this cannot be considered as service for the levied by a Real Estate Agent.

The Hon'ble CESTAT has noted the following:

The Real Estate Agent Service has been defined under Section 65 (88) as follows :-

"Real estate agent means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting of any real estate and includes a real estate consultant.

Therefore, the real estate agent must satisfy the following conditions :

(i) Real Estate agent should be a person. The term 'person' has been defined in clause (42) of Section 3 of General Clauses Act, 1987, as 'person shall include any company or association or body of individual, whether incorporated or not'.

(ii) Real estate agent should be engaged in rendering services in relation to sale, purchase, leasing or renting of real estate. The term 'sale' refers to transfer or agreement to transfer for a price. The word 'purchase' refers to acquire or buy for price, which gives the absolute rights in the property.

Further, Section 65(105(V) defines the taxable service provided by a real estate agent, as any service provided or to be provided, 'to a client, by a real estate agent in relation to real estate'.

Going by the above definitions, It was held that **administrative charges are not covered within the definition of Real Estate Agent**, in as much as it has been collected by the appellant directly from the allottes. In such a transaction there are only two parties - the buyer and seller (appellant) of the flat. Since no service has been rendered, the demand for service tax is not sustainable.

Further, **restoration charges** are in the nature of a penalty imposed on the allottee to cover damages caused by his default in payment. Such charges cannot be considered as a service charge liable for levy of service tax.

Accordingly, the demand was set aside.

[Decided in favour of assessee]

NOTIFICATIONS/CIRCULARS

AMENDMENT NOTIFICATION NO. 2/2011-CENTRAL EXCISE, DATED THE 1ST MARCH, 2011

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 01/2017-Central Excise dated 05.01.2017** has omitted the following entry from the list of goods on which option to pay duty at 6% with cenvat credit wad allowed vide Notification No. 02/2011 - dated 1-3-2011

"Articles of goldsmiths' or silversmiths' wares of precious metal or of metal clad with precious metal, bearing a brand name, except gold coins of purity 99.5% and above and silver coins of purity 99.9% and above."

12.5% EXCISE DUTY ON MOTOR VEHICLES FALLING UNDER SPECIFIED HEADINGSOF THE FIRST SCHEDULE OF THE CENTRAL EXCISE TARIFF ACT

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 02/2017-Central Excise dated 11.01.2017** has amended **Notification No. 12/2012-Central Excise dated 17.03.2012** and has prescribed an effective rate of excise duty of 12.5% on Motor Vehicles falling under heading 8702 90 21, 8702 90 22, 8702 90 28 and 8702 90 29 of the First Schedule of the Central Excise Tariff Act.

DUTY ON TAMARIND KERNEL POWDER FALLING UNDER HEADING 1302 NOT REQUIRED TO BE PAID FOR A SPECIFIED PERIOD

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 01/2017-Central Excise (N.T.) dated 11.01.2017** has provided that:

According to a practice that was generally prevalent regarding levy of duty of excise (including non-levy thereof) u/s 3 of the Central Excise Act, 1944, on Plain (Un-modified) Tamarind Kernel Powder falling under heading 1302 of the First Schedule to the Central Excise Tariff Act, 1985, was not being levied according to the said practice, during the period 19.07.2011 to 18.07.2016.

Now, therefore, it has been directed that the whole of the duty of excise payable under section 3 of the said Act on the said goods, shall not be required to be paid for the said period in accordance with the said practice.

INSTRUCTIONS ISSUED TO PROCEED WITH THE ADJUDICATION OF SHOW CAUSE NOTICES ISSUED U/S28(11)

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **F.No.276/104/2016-CX.8A (Pt.) dated 03.01.2017** it has been instructed that Show Cause Notice issued u/s 28(11) of the Customs Act, 1962 on the competency of officers of DGDRI, DGCEI and Customs (Prev.) needs to be taken out of the Call Book immediately and the adjudication of such Notices are to be proceeded with in accordance with law.

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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. 01/2017-Customs (N.T.) dated 05.01.2017 & in supersession of Notification No. 147/2016-Customs (N.T.) dated 15.12.2016** 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. **06.01.2017** 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	50.40	48.65
2.	Bahrain Dinar	186.65	174.20
3.	Canadian Dollar	51.95	50.40
4.	Danish Kroner	9.80	9.45
5.	EURO	72.80	70.30
6.	Hong Kong Dollar	8.90	8.65
7.	Kuwait Dinar	229.75	215.10
8.	New Zealand Dollar	48.35	46.65
9.	Norwegian Kroner	8.05	7.80
10.	Pound Sterling	85.15	82.40
11.	Singapore Dollar	48.05	46.55
12.	South African Rand	5.15	4.85
13.	Saudi Arabian Riyal	18.70	17.55
14.	Swedish Kroner	7.60	7.35
15.	Swiss Franc	67.80	65.65
16.	UAE Dirham	19.10	17.90
17.	US Dollar	68.80	67.15
18.	Chinese Yuan	9.95	9.65
19.	Qatari Riyal	19.30	18.25

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	59.35	57.45
2.	Kenya Shilling	67.90	63.50

AMENDMENTS IN NOTIFICATION 63/94 DATED 21ST NOVEMBER 1994

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 02/2017-Customs (N.T.) dated 06.01.2017** has amended **Notification No. 63/94 dated 21.11.1994.**

The readers may refer the notification for details.

AMENDMENTS IN NOTIFICATION 69/2004 DATED 09.07.2004

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No. 68/2016-Customs dated 31.12.2016** has amended **Notification No. 69/2004 dated 09.07.2004.**

The readers may refer the notification for details.

INCOME TAXES

NOTIFICATIONS & CIRCULARS

PROCEDURE FOR REGISTRATION FOR STATEMENT OF FINANCIAL TRANSACTIONS (SFT) AS PER SECTION 285BA

OUR COMMENTS: The Directorate of Income Tax (System), CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 13 of 2016 dated 30.12.2016** has specified that the statement of financial transaction required to be furnished under sub-section (1) of section 285BA of the Act shall be furnished in Form No. 61A and has laid down the procedure of the same.

The readers may refer the notification for the detailed procedure.

PROCEDURE FOR REGISTRATION AND SUBMISSION OF FORM V FOR REPORTING UNDER PRADHAN MANTRI GARIB KALYAN DEPOSIT SCHEME (PMGK), 2016

OUR COMMENTS: As per para 7(2) of the PMGK deposit Scheme, 2016, the Authorised banks are required to furnish electronically the details of deposits made under PMGK in Form V not later than next working day to enable the Department to verify the information of the deposit before accepting the declaration.

The Directorate of Income Tax (System), CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 14 of 2016 dated 30.12.2016** has specified the procedure to be followed by the Authorised banks for furnishing the PMGK deposit details.

The readers may refer the notification for the detailed procedure.

TATA TRANSLATIONAL CANCER RESEARCH CENTRE APPROVED U/S 35(1) (II) OF IT ACT 1961

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 1/2017 dated 02.01.2017** has notified that the organization TATA Translational Cancer Research Centre ('TTCRC') under the aegis of TATA Medical Centre Trust (PAN:- AABTT2222Q) has been approved by the Central Government for section 35(1)(ii) of the Income-tax Act, 1961, read with Rules 5C and 5D of the Income-tax Rules, 1962, from Assessment year 2016-2017 onwards in the category of 'Scientific Research Association', subject to specified conditions.

INCOME TAX (1ST AMENDMENT) RULES, 2017

OUR COMMENTS: The CBDT, Department of Revenue, Ministry of Finance, Government of India vide **Notification No. 2/2017 dated 06.01.2017** has amended the Income-tax Rules, 1962. These rules may be called the Income Tax (1st Amendment) Rules, 2017.

As per the amended Rules persons who are having bank accounts but have not submitted PAN or Form No 60 are advised to submit the same to the bank on or before the 28th February, 2017.

The readers may refer the notification for the detailed amendments.

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STATE TAXES

MAHARASHTRA

EXTENSION IN DATE FOR FILING OF THE VAT AUDIT REPORT IN FORM 704 FOR YEAR 2015-16

OUR COMMENTS: The Office Of The Commissioner Of Sales Tax, Government of Maharashtra **vide Trade Circular No. 3T of 2017 dated 11.01.2017** has extended the date for filing of the VAT audit report in form 704 for year 2015-16.

The physical copy of the acknowledgment and the statement of submission of Audit Report shall be submitted upto 20th February 2017 to the concerned Nodal Officers viz. Dy. Commissioner of Sales Tax, Asst. Commissioner of Sales Tax or Sales Tax Officer. The list of the Nodal Officers is available on the website www.Mahavat.gov.in.

WEST BENGAL

THE WEST BENGAL TAXATION LAWS (AMENDMENT) ACT, 2016

OUR COMMENTS The Legislative, Law Department, Government of West Bengal, vide Notification **No. 1135-F.T. dated 30.12.2016 has notified The West Bengal Taxation Laws (Amendment) Act, 2016 is** an Act to amend the West Bengal Sales Tax Act, 1994, the West Bengal Sales Tax (Settlement of Dispute) Act, 1999, and the West Bengal Value Added Tax Act, 2003 has been assented to by the Governor and

Vide Notification No. 1917 - FT 1st day of January, 2017 has been appointed as the date on which section 2, section 3 and section 4, of the said Act shall come into force**.**

SUMMARY OF PROCEDURE TO BE FOLLOWED FOR SETTLEMENT OF DISPUTE

OUR COMMENTS Amendments have been made in the West Bengal Sales Tax (Settlement of Dispute) Act, 1999, by the West Bengal Taxation Laws (Amendment) Act, 2016 (West Ben. Act XI of 2016, w.e.f. 1st January, 2017, in terms of Notification No. 1917-F.T. dated 30th December, 2016, and Notification No. 1918-F.T. dated 30th December, 2016, for settlement of dispute related to tax, penalty or interest arising out of an assessment under any of the following Acts:

1. The West Bengal Value Added Tax Act, 2003;
2. The West Bengal Sales Tax Act, 1994;
3. The Central Sales Tax Act, 1956;
4. The Bengal Finance (Sales Tax) Act, 1941;
5. The Bengal Raw Jute Taxation Act, 1941;
6. The West Bengal Sales Tax Act, 1954; and
7. The West Bengal Motor Spirit Sales Tax Act, 1974

The last date for filing application for settlement is the 31st January, 2017.

Further, TRADE CIRCULAR NO. 07/2016 dated 30.12.2016, procedure to be followed for settlement of dispute. Has been prescribed.

The readers may refer the circular for details.

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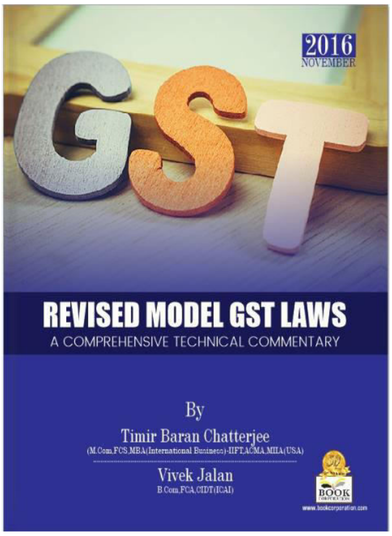
IN STANDS: REVISED MODEL GST LAWS : A COMPREHENSIVE TECHNICAL COMMENTARY



ABOUT THE BOOK: While the Government is moving at a rapid pace, yet it is still a question whether the Corporates are GST Ready or not. It is high time that the law needs to be analysed and implemented into every facet of the business including sales and marketing, Logistics, procurement, HR, IT and of course Finance and Taxation. The book contains an exhaustive coverage of the Revised Model GST in the form of a Section wise technical commentary. It provides an insight into the following:

1. Brief about the major changes between the Revised law and the earlier law.
2. Revised Model GST Law November 2016
3. Revised Model IGST Law November 2016
4. GST Compensation Law
5. GST Return Rules
6. GST RefundRules
7. GST Registration Rules
8. GST Payment Rules
9. GST Invoice Rules

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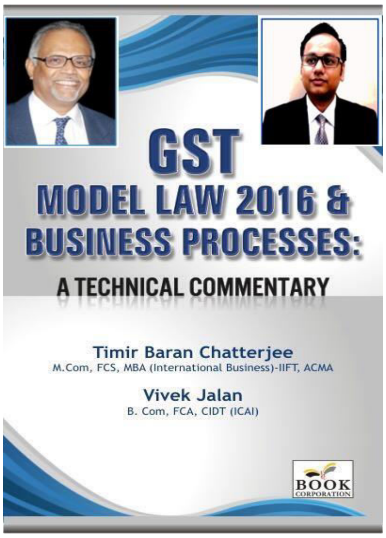
IN STANDS - GST: MODEL LAW 2016 & BUSINESS PROCESSES : A TECHNICAL COMMENTARY



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)

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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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