TAX CONNECT
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TAX CONNECT

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TAX CONNECT ACADEMY
Kolkata: 1, Old Court House Corner, "Tobacco House" 1st Floor, R.No.-13 (North), Kolkata-700001
Gujarat: Quarter no. 3/174, Gujarat Refinery Township, Jawaharnagar, Vadodara-391320

Contact: +919331042424; +919831594980; +913322625203
Email: tb.chatterjee@yahoo.co.in; cavivekjalan@gmail.com

EDITORIAL

Friends,

As the government is moving is getting closer towards meeting the July 1 deadline for rollout of GST in the country, **Prime Minister Narendra Modi called this historic step as "New Year, New Law, New Bharat".**

After 12 meetings to ensure the process of drafting the bill and rolling out GST, now the GST Council is considering placing services under two tax slabs under **GST: 12% and 18%. This two-tiered service tax** structure will be taken up by the Council in their next meeting on May 18.

At present, the consumers are paying 15% tax on all services except for the ones listed as exempted in the negative list.

Further, **Najib Shah, former Chairman of Central Board of Excise and Customs (CBEC)** has said that road tax paid by automobile owners will not be subsumed under the GST.

On the other hand GST Suvidha providers are getting ready to provide services to potential clients to help them in the process of transition to the new tax regime.

Now coming to the present taxes,

In Service Tax, it has been clarified that the conditions for exemption on 70% of value of services of transportation of goods under notification No. 26/2012-ST dated 20.06.2012 is not fulfilled by the foreign shipping lines, hence the benefit of conditional exemption will not be available to them and service tax will be paid on full value of services.

In Customs, exchange rate of foreign currencies into Rupee & vice versa have been revised w.e.f. 21.04.2017.

In Income Tax, it has been notified that the effective date of opening of the Bonds Ledger Account shall be the date of receipt of deposits by the Reserve Bank of India from the authorized banks where the due tax, surcharge and penalty has been received till 31st March, 2017 provided that the date of deposit shall in no case be extended beyond 30th April, 2017.

The above notifications/circulars have been discussed in detail further in the bulletin.

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, LL.B, B. Com (Hons.)

SYNOPSIS

CGST BILL INTRODUCED IN LOK SABHA: TIME OF SUPPLY, SPECIFIED ACTIVITIES TO BE TREATED AS SUPPLY/NOT TO BE TREATED AS SUPPLY

- **TIME OF SUPPLY OF GOODS**

A new clause 6 has been inserted in Section 12 which says that if there is an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration, the time of supply shall be the date on which the supplier receives such addition in value.

- **TIME OF SUPPLY OF SERVICES**

As per the Revised Model GST Law:

The time of supply of services shall be the earlier of the following dates, namely: -

(a) the invoice date or the last date on which the supplier is required, under section 28, to issue the invoice, or

(b) the date on which the supplier receives the payment with respect to the supply.

As per the CGST Bill introduced in Lok Sabha

The time of supply of services shall be the earliest of the following dates:

(a) Invoice date, if the invoice is issued within the period prescribed u/s 31(2) or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed u/s 31(2) or the date of receipt of payment, whichever is earlier; or

(c) in a case where the provisions of clause (a) or clause (b) do not apply, the date on which the recipient shows the receipt of services in his books of account.

If there is an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration, the time of supply shall be the date on which the supplier receives such addition in value.

- **ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION**

As per the CGST Bill introduced in Lok Sabha

Supply of goods/services between related persons or distinct persons **as specified in section 25**, when made in the course or furtherance of business.

However, gifts not exceeding Rs 50 thousand in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

- **ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES**

Additions as per the CGST Bill introduced in Lok Sabha

- **GST can't be levied on sale of land and, sale of building** (except the sale of under construction building) as these will neither be treated as a supply of goods nor a supply of services.

- **GST will not be charged on Actionable Claims** as it is provided in the Schedule III of newly introduced bill, that Actionable Claim, other than lottery, betting and gambling will neither be treated as a supply of goods nor a supply of services.

TAX CALENDAR

Due date	COMPLIANCES FROM 23rd Apr , 2017 to 29th Apr, 2017	STATUTE
22nd Apr, 2017	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
25th Apr, 2017	Filing of monthly/quarterly VAT return (VAT Act)	Delhi (Quarterly, if filed online) Jharkhand (Monthly)
	Issuance of WCT certificate (VAT Act)	West Bengal (Monthly) Mizoram (Monthly)
	Filing of service tax second-half yearly return (Finance Act)	All India
28th Apr, 2017	Deposit of VAT of previous month	Arunachal Pradesh
	Filing of monthly/quarterly/annual VAT return (VAT Act)	Arunachal Pradesh (Monthly, if annual turnover>Rs. 1 crore), Arunachal Pradesh (Quarterly, if annual turnover<Rs. 1 crore) Delhi (Quarterly, if filed manually)
	Filing of monthly/quarterly WCT return (VAT Act)	Delhi (Quarterly)

SERVICE TAX

NOTIFICATIONS/CIRCULARS

ISSUES RELATED TO LEVY OF SERVICE TAX ON THE SERVICES PROVIDED BY A PERSON IN NON-TAXABLE TERRITORY TO A PERSON IN NON-TAXABLE TERRITORY BY TRANSPORTATION OF GOODS BY A VESSEL FROM A OUTSIDE INDIA TO THE CUSTOMS STATION IN INDIA

OUR COMMENTS: The Dept. of Revenue, Ministry of Finance, Government of India vide **Circular No. 206/4/2017-Service Tax dated 13.04.2017** has issued a clarification on levy of service tax on the services provided by a person in non-taxable territory to a person in non-taxable territory by transportation of goods by a vessel from outside India to the customs station in India:

Vide **Notification No. 1/2017-ST dated 12.01.2017,** service tax exemption was withdrawn for the aforesaid services.

Vide **Notification No. 2/2017 and 3/2017- ST both dated 12.01.2017**, the person in India who complies with sections 29, 30 or 38 of the Customs Act, 1962 was notified to be liable to pay service tax.

Vide notification Nos. 13/2017-ST and 15/2017-ST both dated 13.04.2017, the importer of goods as defined in the Customs Act, 1962 has been made liable for paying service tax for such services w.e.f. 23rd April, 2017.

Vide notification No. 13/2017-ST dated 13.04.2017, the person liable to pay service tax has been provided an alternate mechanism for calculating and paying service tax w.e.f. 22.01.2017. Swachh Bharat Cess and Krishi kalyan Cess will be paid accordingly.

Vide notification No. 14/2017-ST dated 13.04.2017, the point of taxation of such services has been specified as the date of bill of lading of goods in the vessel at the port of export w.e.f 22.01.2017. Thus, no service tax is leviable if the bill of lading is of date prior to 22.01.2017.

Vide notification No. 10/2017-C.E (N.T) dated 13.04.2017, the importer of the goods has been allowed to avail Cenvat credit on the basis of the challan of payment of service tax w.e.f 23.04.2017.

Further, with regard to calculation of service tax an option has been provided in the Service Tax Rules to pay service tax **@ 1.4% of value of imported goods** determined u/s 14 of the Customs Act, 1962 and the rules. In addition, **Swachh Bharat Cess and Krishi kalyan Cess will be paid each @ 0.05% of Customs value of goods** w.e.f. 22.01.2017.

Vide notification No. 26/2012-ST dated 20.06.2012, an exemption has been provided on 70% of value of services of transportation of goods in a vessel subject to specified. This conditional exemption is not available in case of foreign shipping lines, their services being exports from their home country, are zero-rated in their home country and thus have suffered no taxes. Further the foreign shipping lines do not get registered in India and do not follow the provisions of Cenvat Credit Rules.

Further, the conditions for exemption on 70% of value of services of transportation of goods under notification No. 26/2012-ST dated 20.06.2012 is not fulfilled by the foreign shipping lines, the benefit of conditional exemption will not be available to them and service tax will be paid on full value of services.

COURT DECISIONS

COMMISSIONER CENTRAL EXCISE, ROHTAK VERSUS SAINT GOBAIN GYPROC INDIA LTD [PUNJAB AND HARYANA HIGH COURT]

BRIEF: Determination of the value of excisable goods u/s 4 of the Central Excise Act, 1944 on account of monthly discounts/quarterly discounts and other concessions given to dealers/depots/customers at the factory gate in regard to the clearance of excisable goods on payment of duty to them.

OUR COMMENTS: In the above case the issue relates to the determination of the value of excisable goods namely Gypsum Board in terms of Section 4 of the Central Excise Act, 1944 on account of monthly discounts/quarterly discounts and other concessions given by the respondent to its dealers/depots/customers at the factory gate in regard to the clearance of excisable goods on payment of duty to them.

The assessee contended that the final prices after the incentives fluctuate on account of competition in the market. The provisional assessment was finalized concluding excess payment.

However, a question was raised if the assessee had passed the burden of central excise duty to the customers. The assessee here relied upon the credit notes issued by it to its customers in respect of the discounts as well as the certificate of an independent Chartered Accountant certifying that the incidence of duty had not been passed on to the customers.

The certificate states that the assessee had paid the excise duty on provisional basis on the assessable value of invoices raised from the factory and depots and had not passed on any amount of discounts/incentives to their buyers/dealers at the time of clearance of goods on invoices but had issued credit notes later to them for the same on the basis of schemes prevailing during the relevant period.

Further, the assessee has not recovered any amount from its buyers/dealers in respect of the discounts/incentives nor recovered any amount of duty on discounts/incentives.

The central excise bill payment is adjusted by way of issuance of credit note inclusive of central excise duty. Since credit note is not in a form of tax invoice, central excise duty elements cannot be depicted separately upon credit notes issued. The customers/dealers deducted the value of duty and duty elements as shown in the credit notes (shown merged both elements) from the bills and paid lower amount to the appellant, unjust enrichment does not apply as customers/dealers did not allow passing of burden by deducting from bills.

The Tribunal took into account the relevant factors such as the certificates issued by the independent Chartered Accountants and was satisfied itself that the Chartered Accountants had verified the books and on such verification certified that the refund claimed did not form part of the finished goods.

It was therefore concluded that the assessee has not passed on the duty incidence to the dealers/customers. In support of this contention, the fact that the dealers were not registered with the department and therefore, could not issue excisable invoices passing on the duty in turn to their customers was relied upon.

[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. 40/2017-Customs (N.T.) dated 20.04.2017 & in supersession of Notification No. 33/2017-Customs (N.T.) dated 06.04.2017** 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. **21.04.2017** 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	49.50	47.75
2.	Bahrain Dinar	1777.75	165.75
3.	Canadian Dollar	48.85	47.20
4.	Chinese Yuan	9.55	9.25
5.	Danish Kroner	9.50	9.15
6.	EURO	70.65	68.20
7.	Hong Kong Dollar	8.45	8.20
8.	Kuwait Dinar	219.65	205.35
9.	New Zealand Dollar	46.40	44.70
10.	Norwegian Kroner	7.70	7.40
11.	Pound Sterling	84.25	81.45
12.	Qatari Riyal	18.25	17.25
13.	South Arabian Riyal	17.85	16.70
14.	Singapore Dollar	47.05	45.55
15.	South African Rand	5.05	4.70
16.	Swedish Kroner	7.35	7.10
17.	Swiss Franc	66.05	63.70
18.	UAE Dirham	18.20	17.05
19.	US Dollar	65.55	63.85

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	60.45	58.40
2.	Kenya Shilling	64.75	60.50

CLARIFICATION FOR LEGISLATIVE CHANGES RELATING TO SECTION 46 & 47 UNDER CUSTOMS ACT, 1962 PROPOSED IN THE FINANCE BILL, 2017

OUR COMMENTS: The CBEC (Dept. of Revenue), Ministry of Finance, Government of India vide **Circular No. 12/2017- Customs dated 31.03.2017** has issued clarifications on proposals in the Finance Bill, 2017 relating to amendments in sections 46 and 47 of the Customs Act, 1962. The clarifications have been regarding applicability of the new provisions vis-a-vis arrival of goods and filing of bill of entry.

INCOME TAXES

NOTIFICATIONS/CIRCULARS

INSPECTOR GENERAL OF POLICE, ECONOMIC OFFENCES WING, CSO, KERALA & SPECIAL COMMISSIONER OF POLICE, CRIME, DELHI (OFFICE OF CRIME BRANCH & ECONOMIC OFFENCES WING, DELHI POLICE) NOTIFIED U/S 138(1)

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No 30 & 31/2017 dated 19.04.2017 has** specified Inspector General of Police, Economic Offences Wing, CSO, Kerala & Special Commissioner of Police, Crime, Delhi (Office of Crime Branch & Economic Offences Wing, Delhi Police) for the purposes of **section 138(1) : Disclosure of information respecting assessees**

Further, income-tax authority, **as specified in Notification No. SO No 731 (E) dated 28.07.2000, shall-**

(i) furnish only relevant and precise information after forming an opinion that furnishing of such information is necessary so as to enable the above notified authority to perform its functions

(ii) convey to the authority being specified vide this notification to maintain absolute confidentiality in respect of the information being furnished.

AMENDMENT TO PRADHAN MANTRI GARIB KALYAN DEPOSIT SCHEME

OUR COMMENTS: The CBDT, Dept. of Revenue, Ministry of Finance, Government of India vide **Notification No [F. No. 3(1)-W&M/2016] dated 19.04.2017 has** amended the clause 5 of the Pradhan Mantri Garib Kalyan Deposit Scheme

Ref: **Notification No.S.O.4061 (E) dated 16.12.2016, Notification No. S.O. 204(E) dated 19.01.2017 and Notification No. S .O. 365 (E) dated 07.02.2017.**

As per the amended, the effective date of opening of the Bonds Ledger Account shall be the date of receipt of deposits by the Reserve Bank of India from the authorized banks; wherein the due tax, surcharge and penalty has been received till 31st March, 2017 provided that the date of deposit shall in no case be extended beyond 30th April, 2017.

COURT DECISIONS

THE PRINCIPAL COMMISSIONER OF INCOME TAX-6 VERSUS M. TECH INDIA P. LTD. [DELHI HIGH COURT]

BRIEF: If software is acquired with the right to use it, the payment made for the same would amount to royalty, however, if the software is acquired as a product for reselling, the consideration paid cannot be considered as royalty and disallowed under Section 40(a) of the Act for non-deduction of TDS.

OUR COMMENTS: In the above case, the assessee is a Value Added Reseller (VAR) of the software. He purchased certain software from Australia and Malaysia under VAR agreement. Similar purchases made earlier have been allowed as expenditure for the computation of taxable income.

However, in AY 2008-09, the Revenue treated these expenditures as royalty payments and disallowed the same under section 40(a) in the computation of taxable income for non-deduction of TDS.

The Hon'ble High Court held that in the cases where an assessee acquires the right to use a software, the payment so made would amount to royalty. However in cases where the payments are made for purchase of software as a product, the consideration paid cannot be considered to be for use or the right to use the software. Where software is sold as a product it would amount to sale of goods.

It is necessary to make a **distinction between the cases** where consideration is paid to **acquire the right to use a patent or a copyright** and **cases where payment is made to acquire patented or a copyrighted product/material.**

Accordingly, the payments made for acquisition of software for reselling shall be allowed as deduction.

[Decided against revenue]

STATE TAXES

MAHARASHTRA

CIRCULAR REGARDING AMENDMENTS TO THE MAHARASHTRA VALUE ADDED TAX ACT, SUGARCANE PURCHASE TAX ACT, PROFESSION TAX ACT AND ENTRY TAX RULES

OUR COMMENTS: The Commissioner Of Sales Tax, Government of Maharashtra vide **Trade Cir. 11T of 2017 dated 20.04.2017** has given effect to the Budget proposals for the year 2017-18 and accordingly, a Bill to amend the following Acts/Rules, has been passed by the Legislature and has received assent of the Governor on 15th April 2017.

The Acts and Rules, which are amended, are as follows:

1. The Maharashtra Purchase Tax on Sugarcane Act, 1962(SCPT Act);

2. The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (PT Act);

3. The Maharashtra Value Added Tax Act, 2002 (MVAT Act);

4. Maharashtra Tax on the Entry of Goods into Local Area Rules, 2002 (ET Act/Rules).

For salient features of the amendments the readers may refer the aforesaid circular.

ODISHA

COLLECTION OF TAX ON ACTUAL SALE VALUE INSTEAD OF ON MRP

OUR COMMENTS: The Office of the Commissioner Of Commercial Taxes, Government of Odisha vide **Cir. No.V-32011/6/2015/5595/CT dated 12.04.2017** has requested to follow the advisory issued vide this office letter No.5091/CT., dated 31.03.2017 addressed to the President, Utkal Chemist and Druggist Association to advise its members to collect tax on actual sale value instead of on MRP in the entire chain of transactions and to claim credit of input tax paid in due manner.

The dealers will be in a position to liquidate the stock on which VAT was paid on MRP before introduction of GST. For the remaining stock, the dealers will have input tax credit.

UTTARAKHAND

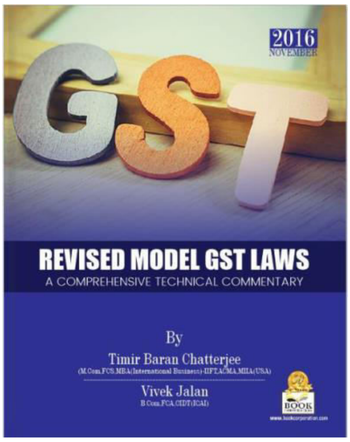
REVISION IN TAX RATE ON AVIATION TURBINE FUEL (ATF)

OUR COMMENTS The Finance section - 8, Government of Uttarakhand vide **No.155/2017/146(120)/XXVII(8)/ 2008 dated 12.04.2017** has amended in Schedule III of the Uttarakhand Value Added Tax Act, 2005 in supersession of the **Notification no. 62/2017/146(120)/XXVII(8)2008, Dated 25 January, 2017** and revised the rate of tax on ATF as follows:

Aviation Turbine Fuel: 20%

Aviation Turbine Fuel: 1% for a period of 10 years from the date of the notification of the Regional Connectivity Scheme, under the specified conditions.

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

Authors:

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

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

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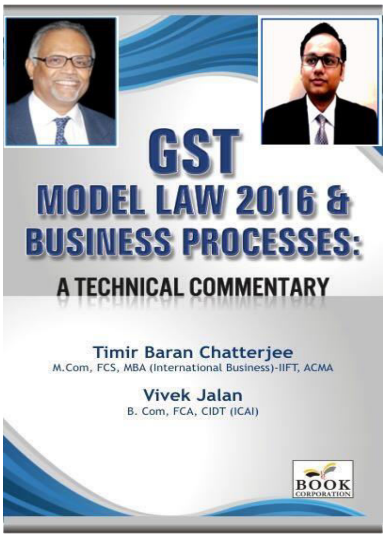
IN STANDS - GST: MODEL LAW 2016 & BUSINESS PROCESSES : A TECHNICAL COMMENTARY



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

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)

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BOOK CORPORATION
4, R. N. Mukherjee Road
Kolkata 700001
Phones: (033) 64547999, 22306669, 22205367
Cell : 9830010297, 9331018333
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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.

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