

Procedural Provisions Under VAT

VAT is finally here to stay. Despite the release of White Paper on VAT a lot is yet to be done to make everyone aware of final details and procedural aspects of the new tax regime. This article, delves into certain provisions under the VAT Law in respect of registration of dealer, return, assessment, self assessment, Tax Invoice, Debit Note & Credit Note, check post etc. on the basis of the White Paper and makes specific reference to the VAT Laws in respect to certain deviations in various states in this regard.

Introduction of state level Valued Added Taxation (VAT) system is termed as the biggest post independent exercise to reform indirect taxes levied by various states of India.



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India, being federal state, an elaborate exercise was done by the Empowered Committee of state Finance Ministers constituted by the Ministry of Finance, Govt. of India with a objective to have a collective attempt of the states to strike a balance between the commonality of the VAT design and at the same time allow the states to have the desired flexibility in the VAT structure in view of the local needs.

With this objective, a 'white paper' was released by the Hon'ble Finance Minister, Govt. of India on 17.1.2005. This white paper is an expression of the genuine commitment of the states to the implementation of VAT from 1.4.2005. The states have agreed to have common frame work of the VAT Law, however, as stated earlier, have been

allowed freedom for incorporating variations consistent with the basic design as agreed upon at the Empowered Committee.

Registration

Under the VAT Laws, the threshold limit of turnover of sales to obtain registration is fixed at Rs.5 lakh. Therefore, dealers having turnover exceeding Rs.5 lakh will be compulsorily required to obtain registration under the VAT Law. Thus, small dealers having gross annual turnover not exceeding Rs.5 lakh will not be liable to pay VAT. However, states will have flexibility to fix threshold limit within Rs. 5 lakhs.

- (a) **Voluntary Registration:** For dealers, who have not crossed the prescribed limit of turnover but who wishes to be registered can apply under the Voluntary Registration Scheme & obtain the registration.
- (b) In spite of the commitment by the states to the basic design of the VAT, there appears to be wide variations amongst states



in respect of registration provisions e.g. Andhra Pradesh VAT Act (APVAT Act) provides that, every dealer who commences his business & whose estimated taxable turnover (TO) of 12 consecutive months exceeds Rs.40 lakhs shall be liable. Further, if in the preceding 3 months the TO has exceeded Rs.10 lakhs or in 12 preceeding months exceeded Rs.40 lakhs shall also be liable. Further such TO limit is not applicable to dealer who is either importer or liable under the Central Sales Tax Act (CST

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Act) or makes inter – state purchases / dispatches, or non-resident dealer, dealer in liquor & motor spirits like petrol, diesel etc., agent of non-resident principal and who undertakes works contract & whose sale exceeds Rs.5 lakh for Govt. or local authority (who has opted for composition).

Thus the above types of dealers, under the APVAT Law is required to obtain registration irrespective of the TO. As against this under the Delhi VAT Act, 2004 (Delhi VAT), the TO limit is fixed at Rs.10 lakhs. Under the Karnataka

VAT Act, 2003 (KVAT Act), the dealer who believes that his taxable TO is likely to exceed Rs.2 lakh during any period after 31.3.2005 (date to be notified) is liable for registration. At the same time every dealer whose taxable TO exceeds Rs.15000/- in one month after 1.4.2005 shall register forthwith.

Maharashtra VAT Act, 2002 (MVAT Act) provides for TO limit of Rs.5 lakh, however, in respect of an importer the TO limit is Rs.1 lakh.

(c) Registration – Transition: The

‘White Paper’ clearly states that all existing dealers who are registered under the then operative local sales tax acts will be automatically registered under the VAT Act. However, the states have under taken exercise to discourage small dealers to be continued under VAT Laws (may be they are not expected to contribute much to the state treasury) by automatically cancelling their registration certificate, unless they are re-registered under VAT Laws on exceeding the prescribed limits or under voluntary registration scheme. This has led to an unprecedented rush and chaos at the registration branches of the VAT department. The commissioner of sales tax, Maharashtra State has administratively decided to continue to allow dealers who wish to continue their registration.

(d) Tax payers identification number (TIN): To facilitate automated cross checking of transaction through the computerized data base / document based verification, TIN is being allotted to all the dealers. Some states have already completed this exercise where as some states like Maharashtra has yet to start it & is expected to intimate only after 6-8 months. TIN will consist of 11 digit numerals through out the country. First two characters will represent the state code. However, the set up of the next nine characters may be different in different states.

(e) Composition scheme: Small dealers with TO between Rs.5 lakhs and Rs.50 lakhs have



been provided with an option to pay tax (an amount lieu of tax) under a composition scheme where under a small percentage of gross TO is payable as tax. The percentage is likely to be around 0.5% to 1%. However, some States have issued notifications which provides for percentage of tax calculated on the difference of sales and purchases.

Returns

- ☞ Returns forms under the VAT Law are very simple to fill in. The return shall accompany payment challan. Maharashtra has continued with the system of having return cum challan system where combined form is submitted to bankers along with payments & thereafter the dealer is not required to file separate return with the VAT department.
- ☞ Return filed will be scrutinized by the returns branch and if there is any inconsistency or apparent error or mistake, a defect memo / notice would be issued to the dealer. Thereupon, the dealer has to make good deficit if any, in payment of tax.
- ☞ A novel feature of many state VAT Law is that if the return is not filed in the prescribed time, the officer, without giving any notice or hearing, would pass a best judgment Assessment Order. Such erring dealer, thereafter, has to file the return along with payment of taxes. On such filing of return, the best judgment order for the period under the return is / may be cancelled & the return thus filed would be considered for fresh assessment, if any.

West Bengal VAT Act, 2003,

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provides that if the dealer is not in a position to pay taxes as per return, he should file return & file a letter explaining the financial difficulties faced by him & may obtain installments from the appropriate authorities to pay taxes.

- ☞ **Revised return:** If the dealer discovers any omission or incorrect statement made in the return, the dealer can file a revised return before the prescribed time. The Karnataka VAT law provides that such revised return can be filed within 6 months from the end of the tax period except when it is on account of issuance of debit note under section 30 of Karnataka VAT Act.
- ☞ **Payment of Taxes:** Periodicity of filing of return & payment of taxes is normally different for different categories of dealers. Further, there is no commonality in this respect under various state VAT enactments.

Assessment

- ☞ Unlike assessment taken up at the end of the year, the concept of assessment under the VAT Law is assessment of the return filed under the VAT Law. Thus, technically, a dealer liable to file monthly return is liable for 12 such assessments in a year, while a dealer who is liable to file quarterly return may be called for 4 assessments in a given year. However, under the VAT regime, the trust is on the self-assessment & only in very selective cases the dealer would be called upon for scrutiny assessment. Thus, a dealer may be called upon for assessment for just one or two returns.

In view of the basic change in the system of assessment & reliance on self-assessment', the correctness & completeness of information filled in the return is very important.

- ☞ All the states do provide for scrutiny assessments, best judgment assessment, assessments of transactions unearthed during search & survey, willful evasion made by the dealer etc. The limitation period varies from 3 years to 4 years in case of returns filed in time and in case of tax evasion cases from 6 to 8 years under various state VAT enactments.
- ☞ In majority of the cases, if the notice is not issued for calling for assessment, the return filed is deemed to be assessed. In view of this, the re-assessment powers have been provided in VAT enactments of AP, Karnataka, Delhi etc. Maharashtra has also provided for review of the order by the higher authority. The power of 'Review' is combination of 'Revision & reassess-

ment' of an order.

☛ **Audit:** VAT department may issue notice for the departmental auditing of the books of accounts of the dealer within the time limit specified in the Act. If such notice is not issued, the dealer will be deemed to have been self-assessed on the basis of returns submitted by him. Besides this, some states have also provided for audit of accounts and submission of report by any 'Accountant', in certain categories of dealer. The audit is similar to the one which is done u/s 44AB of the Income Tax Act, 1961.

Tax Invoice

☛ The basic design of VAT is to charge tax on the sales (i.e. output) & claim credit taxes paid on the purchases (input tax). Thus, the document which enables a dealer to claim such input tax credit (ITC) is very important one. The mechanism of ITC is crucially based on documentation of tax invoice, cash memo or bill.

The dealer who claims ITC must have 'tax invoice' wherein the amount of 'tax' collected by the 'vendor' from the purchases (claimant dealer) is clearly shown separately. A dealer who has opted for composition of taxes or as unregistered dealer who is not allowed to collect taxes separately, such dealers would issue cash memo or bill. Similarly, goods sold at the retail counters to individuals etc. (and not to dealer) are not likely to claim ITC & therefore, would issue cash memo or bill.

☛ Particulars, mention of registration number, other discipline

for maintenance of information is similar to one all earlier laws had.

☛ **Debit note & Credit note (D/N & C/N):** As the return is treated as base for assessment & in majority of the cases, the return filed are treated as self-assessed, any amendment to liability to pay taxes on a transaction of sales because of issuance of debit note and/or credit note would actually require one to file revised return and/or amend the position of assessment of that return.

To do away with this practical difficulty, most of the state provide that the tax effect on account of D/N & C/N is to be adjusted in the return for the month / period in which the accounting entries for the same is made in the books of accounts.

Checkpoint and transit pass

■ Many state sales tax enactments have provided for setting up of check post & issuance & submission of transit pass. This mechanism is to check evasion of tax by unscrupulous elements. Under the VAT regime, to counter balance the reliance on self assessment and also to check evasion of tax a well networked computerisation up to the levels of assessing officer & also at the check post is under taken. This process is extremely important for document based verification and integration with taxation information exchange system as well as with

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information of the Central excise and Income Tax Systems.

■ In due course of time, check posts would be instituted in states where check posts were traditionally not set up. The driver of the goods vehicle is to carry 2 copies of the 'Tax Invoice' & tender one copy of the same at the check post & obtain acknowledgement on the other. In case, the goods are to pass through a state than the driver of the vehicle will obtain transit pass at the entry point & submit it to the exit point when he moves out of the state. If the transit pass is not submitted in the time / days mentioned or reasonable time, it would be presumed that the goods are sold / disposed off in the state & appropriate tax would be assessed.

Conclusion

In this article, certain salient features of Vat legislation have been touched upon on the basis of white paper & VAT Laws of some states. However, reader is requested to go through the provisions of the respective state law before taking any position under the law. The article, in a way covers only very general aspects of VAT Law. ■