

**Hotels and Restaurants Association (Western India)**

&

**PUNE HOTELS ASSOCIATION**

***Seminar on Indirect Taxes***

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**VAT and Luxury Tax in the State of Maharashtra**

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**Issues for Consideration:**

**Liability to pay Tax**

Taxable Person?

Tax Event?

Tax Rate?

Taxable Value?

**Hospitality:** Whether Sales or Service?

**Overlapping of Taxes**

**Type of organization** and services offered: -

Star Hotels

Club Houses

Discotheques

Small Hotels – Guest Houses

Restaurants, Refreshment Rooms, Canteens, Eating Houses

Sweets & Farsan shops

Catering

Bakery

**Taxability of: [?]**

Room Rent

Food & Drinks

Liquor

Hiring of Tourist Vehicles

Banquet Services

Other related services

Hotels enjoying Tax Exemption

Supplies to Airlines, Railways

Outside Catering

## **Basic Provisions in Brief:**

### **VAT in Maharashtra**

1. The system of Value Added Tax (VAT) has been implemented in the State of Maharashtra, w.e.f. **01.04.2005**.
2. **The following Acts were repealed on introduction of VAT; -**
  - (i) The Bombay Sales Tax Act, 1959, (**BST**)
  - (ii) The Maharashtra Sales Tax on the Transfer of Property in goods involved in the execution of Works Contract (Re-enacted) Act, 1989.
  - (iii) The Maharashtra Sales Tax on the Transfer of the Right to use any goods for any Purpose Act, (**Lease Tax**) and
  - (iv) The Bombay Sales of Motor Spirit Taxation Act, 1958.

Thus all transactions of purchase and sales of goods, within the State of Maharashtra, which used to be covered under the above Acts, till 31<sup>st</sup> March 2005, are now governed by the Maharashtra Value Added Tax Act 2002, as amended by Maharashtra Value Added Tax Amendment Bill 2005, now called 'Maharashtra Value Added Tax (Levy and Amendment) Act, 2005'. (MVAT Act). The Government has also notified Maharashtra Value Added Tax Rules 2005.

#### **3. There is only one tax i.e. VAT**

No separate Purchase Tax, Turnover Tax, Resale Tax, Surcharge, Works Contract Tax, and Lease Tax etc.

4. **No concessional forms** such as Form 14, 14A, 14B, 13A, BC Form etc.
5. **No Resales:** All transactions of sales of goods, as well as deemed sale of goods such as Works Contracts, Leases etc., by a dealer, within the State of Maharashtra, are liable to tax under MVAT Act.
6. Immediate **Input Tax Credit**, in the month/quarter in which the eligible goods purchased.
7. **Composition Schemes** for Retailers, Hoteliers, Caterers, Bakers, Contractors etc.
8. **CST continues for the time being.**
9. Certain Employers liable to deduct **TDS on Works Contracts**.
10. **Tax Payable by a dealer: -**

$$\text{VAT} = \text{Output Tax} - \text{Input Tax Credit} - \text{Credit b/f}$$

#### **Output Tax**

The amount of tax collected/payable by a dealer on sales of goods effected during the period. (Month/Quarter/Year)

#### **Input Tax**

The eligible amount of setoff of tax paid on purchases of goods, within the State, during the same period.

### **Credit C/f and Credit b/f**

If the eligible credit for input tax is more than the output tax during a given period, the same shall be carried forward to the next period (Month/Quarter/Year), subject to certain restrictions.

### **Incidence and Levy of Tax**

**Liability of Dealers:** Only a dealer is liable to pay tax (The term 'dealer' is defined)

**Registration of Dealers:** Compulsory Registration, Voluntary Registration, Eventual Registration.

#### **Turnover limit for compulsory registration:**

<i>Category of dealer</i>	<i>Total turnover</i>	<i>Turnover of taxable goods purchased or sold</i>
Importer	Rs. 1,00,000	Rs. 10,000
Others	Rs. 5,00,000 (Rs. 10,00,000 w.e.f. 26.06.2014)	Rs. 10,000

**Levy of Tax:** Tax on sale of Goods within the State (and also on purchase of certain notified goods). Sale includes deemed sale.

#### **Tax Exempt Goods**

No Tax payable on sales/purchase of specified commodities.

#### **Taxable Goods**

Value Added Tax (sales tax) shall be levied on the turnover of sales of goods (and on purchase of certain notified goods) at such rate as specified in respective schedules.

#### **Rate of Tax (As per Schedules)**

Schedule 'A' – Essential Commodities (Tax free)	Nil
Schedule 'B' – Gold, Silver, Precious Stones, Pearls etc.	1%
Schedule 'C' – Declared Goods, Industrial Inputs, and Such other specified goods	5%
Schedule 'D' – Foreign Liquor, Country Liquor, Motor Spirits, etc.	at specified rates
Schedule 'E' – All other Goods (not covered by A to D)	12.5%

#### **VAT not applicable**

(1) The transactions covered by the CST Act are outside the scope of levy of local sales tax or state level VAT. Therefore, The provisions of State Value Added Tax

Act, Rules and/or Notifications, in respect of levy or imposition of tax, are not applicable in respect to any sale or purchase of goods, where such sale or purchase takes place: -

- (a) (i) outside the State ; or
  - (ii) in the course of the import of the goods into the territory of India, or the export of the goods out of such territory ; or
  - (b) in the course of inter-State trade or commerce.
- (2) The State Government is empowered to exempt from payment of tax certain class or classes of sales of goods made by certain class or classes of dealers.

### **Input Tax Credit (Set Off): -- [Sec 48, Rules 51 to 56]**

**Eligibility:** – All registered dealers, whether manufacturer or traders, are eligible to take full set off of the taxes paid on inputs; i.e., Value Added Tax paid, within the State of Maharashtra, on purchases of Raw Material, Finished Goods and Packing Material.

**Entry Tax:** – The amount of entry tax, paid by a registered dealer on the goods the sale of which is liable for VAT under MVAT, will be eligible for full set off.

**ITC on Capital Goods:** – Tax paid on certain items of capital goods (defined) such as machinery, components, parts and spares etc. are also eligible for full set off. (On certain other items of capital assets such as furniture and fixtures, office equipments, etc. setoff is admissible, subject to retention at prescribed rate, w.e.f. 08/09/2006.)

**ITC on Miscellaneous Goods:** – The amount of VAT paid on purchase of miscellaneous goods, debited to Profit & Loss A/c (such as printing and stationery, repairs, sales promotion etc.) also eligible for full set off.

**ITC on Fuel:** – Tax paid on purchase of goods, which is used as fuel, shall be eligible for set off, in excess of 4%. [@ 3% w.e.f. 01.04.2007]

**Reduction in set off:** (provisions as on this day): The amount of set off, available to a registered dealer, shall be reduced to the extent as provided, under the following circumstances: -

- (i) 3% of the purchase price of respective goods, if taxable goods used as fuel.
- (ii) 2% of the purchase price of respective goods, if taxable goods used in manufacture of tax-free goods.  
(No such reduction, if tax free goods so manufactured are exported out of India).
- (iii) 2% of the purchase price of respective packing material used in the packing of tax-free goods. (No such reduction, if such packing material is used in packing of tax free goods exported out of India).
- (iv) 4% of the purchase price of respective goods, if taxable goods sent to any other State in India as Branch Transfer or on Consignment.  
(No such reduction if such branch transferred goods is received back in the State within a period of 6 months whether after processing or otherwise).

- (v) Specified percentage of set off, if taxable goods used in Works Contract for which the dealer has chosen to pay tax under the Composition Scheme.  
(Reduction @ 4% of purchase price in respect of goods used in notified construction contracts. And in case of other contracts: @ 36% of eligible amount of setoff).
- (vi) In case of dealers, whose total receipts on account of sale are less than 50% of total gross receipts of business then set off is restricted to corresponding purchases, which are sold (or consigned outside the State by way of stock transfer) within 6 months from the date of purchase. And also on the purchases of packing material used for packing of such goods sold, resold or consigned.

For Dealers, who are manufacturer of goods (w.e.f. 08.09.2006)

The dealers, covered by this rule, who are manufacturer of goods (other than those who are principally engaged in doing job work) shall be entitled to claim setoff on purchases of plant & machinery which are treated as capital assets, and on purchases of parts, components and accessories of the said capital assets, and on purchases of consumables, stores and packing material in respect of a period of three years starting from the end of the year commencing the date of effect of certificate of registration. *[Inserted vide notification dated 23.10.2008]*

**For Hotel or Club (w.e.f. 08.09.2006): -**

In case of Hotels and clubs covered by this Rule, who have not opted for composition, shall be entitled to claim setoff only;

- (a) on the purchases corresponding to the food and drinks (whether alcoholic or not) which are served, supplied or, as the case may be, resold or sold, and
  - (b) on the purchases of capital assets and consumables pertaining to the kitchen and sale, service or supply of the said food or drinks.
- (vii) In case of closure of business, the set off on goods held in stock (other than capital assets), on the date of closure, to be disallowed and accordingly be reduced fully.
  - (viii) 3% of the purchase price of office equipment, furniture & fixture treated by the claimant dealer as capital assets.
  - (ix) 2% of purchase price of goods which are used in the distribution or transmission of electricity (including the goods treated as capital assets), if the claimant dealer is holding a licence for transmission or distribution of electricity under the Electricity Act, 2003.
  - (x) Setoff to Textile processors: .... ( *Inserted vide notification dated 23.10.2008*)

Wherever such reduction in set off is required to be done, it shall be done in the tax period in which such contingency arises.

If, for the purpose of reduction of set off, wherever required, it is not possible to identify the corresponding purchases then proportionate reduction on FIFO basis.

### **Condition for grant of set off**

- (1) Set off to be allowed only to a registered dealer.
- (2) A valid Tax Invoice is must to claim set off.
- (3) Proper maintenance of account of all the purchases in a chronological order stating therein the date on which the goods so purchased, the name and registration number of the selling dealer, tax invoice number & date, the amount of purchase price paid and the amount of tax paid separately.
- (4) The set off on eligible goods, purchased on or after 1st April 2005, has to be claimed in the tax period in which the goods has been purchased (entered in the books of account).
- (5) The set off on opening stock (closing stock as on 31-3-2005) has to be claimed in the first return to be filed for the tax period commencing 1st April 2005.
- (6) The set off on eligible assets, held in stock as on 31st March 2005, and sold on or before 31st December 2005, to be claimed in the tax period in which such assets have been resold.
- (7) In case of newly registered dealers, setoff can be claimed on the goods (including capital assets) purchased before the date of registration, within the same financial year, provided that the goods so purchased is not sold or disposed off before the date of registration. (Effective from 08.09.2006)

**No set off:** - No set off, under any Rule shall be admissible in respect of;

- (a) Purchase of passenger motor vehicles and parts components, accessories thereof.
- (b) Purchase of motor spirit by any dealer other than a dealer in motor spirit.
- (c) Purchase of Crude Oil, used by an oil refinery for refining.
- (d) Any purchase of consumables or capital assets by a job worker (pure labour job), whose only sales are waste or scrap of goods obtained from such labour job.
- (e) Any purchase made by a dealer holding Entitlement Certificate under a Package Scheme of Incentives (except the Entitlement Certificate under the New Package Scheme of Incentive for Tourism Projectsâ1999). As such units are entitled for refund of tax paid on purchases).
- (f) Any purchase of goods of incorporeal or intangible nature other than:
  - (i) Import Licences, Export Permits/licenses or Quota, DEPB and SIM Cards.
  - (ii) Soft wares in the hands of a trader in Soft wares.
  - (iii) Copyrights, if resold within 12 months from the date of purchase.
  - (iv) Duty Free Replenishment Certificate (DFRC), w.e.f. 01.04.2007.

Except above, all other intangible goods are debarred from setoff.

- (g) Tax paid by way of works contracts in the erection of immovable property (other than plant & machinery).
- (h) Purchases of building material used in the erection of immovable property (other than plant & machinery). However, a contractor, who undertakes construction of immovable property by way of works contracts, is eligible to claim setoff on purchase of such goods.
- (i) Purchase of liquor (covered under entries 1, 2 and 3) or, as the case may be, Wine (as covered under entry 3A) of Schedule "D" appended to the Act except when the said goods are -

- (i) sold in the course of inter-State trade or commerce or in the course of export out of the territory of India or are sent, not by reason of sale, outside the State to any place within India by the claimant dealer to his own place of business, or the place of business of an agent or where the claimant dealer is a commission agent, to the place of business of his principal; and
  - (ii) sold from customs bond to foreign going ships and aircrafts.]
- (j) Purchases of mandap, tarpaulin, pandal, shamiana, etc. where the dealer has opted for composition u/s 42(4).
- (k) Purchases made on or after 1<sup>st</sup> April 2005 by a hotelier, which are treated by him as capital assets and which do not pertain to supply by way of or as part of service or in any other manner whatsoever of goods being food or other articles for human consumption or any drink (whether or not intoxicating) where such supply or service is made or given for cash, deferred payment or other valuable consideration.

**It may further be noted that**

- (a) Small dealers/retailers, hoteliers, caterers, bakers, mandap decorators etc., opting for Composition Scheme, u/ss. 42(1), 42(2) and 42(4) of MVAT Act, are not entitled for any set off.
- (b) There is no set off of CST paid on inter state purchases.
- (c) There is no set off for any other taxes paid such as excise duty, import duty, service tax, octroi, LBT or such other levy or levies.

**Credit C/f and Credit B/f:** – If during a tax period (month/quarter/six months) the tax on total turnover of sales is less than the amount of input tax credit, then such excess amount of credit may either be adjusted by the dealer against his tax liability under the CST Act for the same period or may be c/f to the next period. The unadjusted credit c/f of one period shall become the credit b/f for the next period. The excess credit may be carried forward in this manner till the end of the accounting year. The balance, if any, thereafter shall be claimed as a refund from the department. However, w.e.f. financial year 2012-13, excess credit in the last return of a financial year can be carried forward to next financial year, if such excess credit does not exceed Rs. 500000/-.

**Tax Invoice, Bill or Cash Memorandum**

Section 86 of MVAT Act requires that a registered dealer, shall in respect of every sale made by him issue either a tax invoice or bill or cash memorandum as provided hereunder: -

**Tax Invoice**

**Essential ingredients of a Tax Invoice:** – Under the scheme of VAT, the most important document is “tax invoice”. A registered dealer is entitled to claim set off only on the basis of a valid tax invoice. Set off is not available on purchases affected through a bill or cash memorandum. A ‘Tax Invoice’ is must to claim input tax credit (set off). To be a valid tax invoice, section 86(2) provides that it shall contain the following particulars: –

- (i) The word **Tax Invoice** in bold letter at the top or at a prominent place.
- (ii) Name, Address and Registration Number (TIN) of Selling Dealer.

- (iii) Name and Address and registration number (TIN) of the Purchasing Dealer.
- (iv) Serial Number and Date.
- (v) Description, Quantity and Price of the Goods sold.
- (vi) The amount of tax charged, to be shown separately.
- (vii) Signed by the selling dealer or a person authorized by him.
- (viii) A declaration u/r 77(1).

### **Bill or Cash Memorandum**

Section 86(6) requires every registered dealer to issue, at his option, either a Tax Invoice or Bill/Cash Memorandum, for every sale made by him.

(Issue of bill/ cash memorandum or Tax Invoice, as the case may be, is mandatory for each transaction of sale exceeding Rs. 50/-).

The dealer, choosing to issue Tax Invoice must comply with the requirements prescribed in sec. 86(2), enumerated above.

The dealers, who have opted for Composition Scheme u/ss. 42(1), 42(2) or 42(4), are not entitled to issue a Tax Invoice. Such dealers shall issue a Bill or Cash Memorandum.

A bill or cash memorandum should be serially numbered, dated and signed by the dealer or his servant or manager. Such bill or cash memorandum shall contain such particulars as may be required/as may be prescribed. It shall also contain a declaration as provided u/r 77(3).

A duplicate copy of all such bills/cash memorandum or Tax Invoice is required to be preserved for a period of eight years from the end of the year in which sale took place.

### **Composition Schemes**

Section 42 provides for Composition Schemes for various classes of dealers, as may be notified by the State Government from time to time. The dealers opting for such composition schemes shall pay tax at such rates, with such conditions, as may be prescribed in the scheme. Accordingly the Government of Maharashtra has notified different types of composition schemes for following classes of dealers: –

- (1) Restaurants, Clubs, Hotels and Caterers (2) Bakers (3) Retailers and (4) Dealers in 2nd Hand Motor Vehicles and (5) Dealers, who are in the business of giving on hire (leasing) of mandap, shamiana, tarpaulins, etc.

### **Deemed Sales Transactions:**

#### **Tax on Right to Use Goods (Leasing and Hire Charges)**

Earlier the tax on leasing and/or hire charges was payable under the provisions of Maharashtra Tax on Transfer of Right to Use Goods Act. But now, as there is no separate Act, all such transactions of deemed sale shall be liable to tax under MVAT Act at the same rate of tax as prescribed in the aforesaid schedules. The taxable turnover for such transactions shall be the amount of lease rental received or receivable for the Tax Period.

It may be noted that all kinds of hiring services are not liable to tax under MVAT. It is only those transactions where there is 'Transfer of Right to Use Goods' and, therefore, falling under the category of deemed sale.

### **Works Contracts**

As there is no separate Act governing works contract transactions, all such transactions are now taxable as deemed sales under the MVAT Act. The rate of tax, on such deemed sales of goods, used in the execution of works contract, shall remain same as prescribed in the aforesaid schedules to the respective goods. However the sale price of such goods has to be determined in accordance with the provisions contained in Rule 58 of the Maharashtra Value Added Tax Rules, 2005.

### **Works Contract – Composition Schemes**

Section 42(3) provides for a Works Contract Composition Scheme, whereby a dealer, at his option, may choose to pay tax **@ 5% on Construction Contracts (as notified) or in case of other contracts @ 8% on the total contract value.** (After deducting there from the amount paid towards sub-contract, if any.)

### **Works Contract – TDS Provisions**

Section 31 provides that the Commissioner may, by notification, require any dealer or person or class of dealers or persons (hereafter referred as 'the employer') to deduct tax on such amount payable on the purchases effected by them, as may be notified.

All such employers shall have to: –

- (a) Deduct tax, at prescribed rate, from the amount paid or payable to a contractor during a given period.
- (b) Deposit the amount so deducted with the Govt. treasury within 21 days from the end of month in which such tax deducted or required to be deducted.
- (c) Issue a certificate of deduction of tax, immediately, in Form 402.
- (d) Maintain necessary records in prescribed format, Form 404.
- (e) Submit Annual Return within three months from the end of year to which such return relates i.e. by 30<sup>th</sup> June of next financial year. This return is now e-return (Form 424)

### **Notes:**

1. The TDS provisions are applicable only to specified employers.
2. A contractor, awarding sub-contracts, is not required to deduct TDS from such sub-contractor/s.
3. TDS provisions are not applicable in respect of works contract liable to tax under the CST Act.
4. TDS not required to be deducted where the amount or the aggregate of the amount payable to a dealer by such employer is less than rupees 5 lacs during the financial year.
5. TDS is required to be deducted on the amount paid/payable in respect of works contract. Thus TDS not to be deducted on taxes (whether VAT or service tax) charged separately by the contractor.
6. No TDS on advance payments, however TDS on such advances to be deducted at the time when such advance is adjusted towards the amount payable.
7. A contractor can apply in Form 410 for a certificate of no deduction of tax at source if the contract is not a works contract.

### **Rate of TDS**

TDS has to be deducted @ 2% if the contractor is a registered dealer under MVAT Act, otherwise @ 5%.

### **Determination of Sale Price in certain cases**

#### **Sale of Food by Residential Hotels**

Rule 59 provides for determination of taxable turnover of sales/service of food & drinks in case of residential hotels charging composite amount, for lodging and boarding, which is inclusive of breakfast, lunch, or dinner or any such combination. The turnover in such cases has to be determined by applying specified percentage on the amount of such composite charges.

#### **Reduction in Sale Price in certain cases**

If a dealer has chosen not to collect tax separately from its customers, the tax payable by him on the turnover of sales shall be calculated by reducing from the turnover of sales an amount arrived at through the following formula:– [R. 57 (1)]

$$\text{Sale Price} * \text{Rate of Tax}/100 + \text{Rate of Tax}$$

### **Filing of Returns and payment of Taxes**

Every registered dealer is required to file correct, complete and self-consistent return, in prescribed form, by the due date. (Different forms for different category of dealers - Forms 231 to 235)

#### **Periodicity and due date:**

A. Dealers to file half yearly returns: within 30 days from the end of six monthly period:

- (1) Retailers opted for composition Scheme
- (2) Tax liability, in the previous year, up to Rs. 1 lakh or Refund entitlement up to Rs. 10 lakhs.

B. Dealers to file Quarterly returns: within 21 days from the end of quarter

- (1) Tax liability, in the previous year, exceeds Rs. 1 lakh but up to Rs. 10 lakhs or refund entitlement exceeds Rs. 10 lakhs but up to Rs. 1 crore
- (2) Newly registered dealers (during the first year of registration)
- (3) Dealers under Package Scheme of Incentive

C. Dealers to file Monthly returns: within 21 days from the end of each month

All other dealers, whose tax liability in the previous year exceeds Rs. 10 lakhs or refund entitlement exceeding Rs. 1 crore.

Note: The returns, whether monthly, quarterly or six monthly have to be uploaded in electronic format only. A grace period of 10 days, from the end of due date, has been provided for uploading e-returns vide Trade Circular Nos. 16T of 2008, dated 23-4-2008 and 31T of 2008, dated 8-9-2008. It has further been clarified through Trade Circular 15T of 2009, dated 21/04/09 that even Nil payment returns and returns having refund claim or credit c/f can also be uploaded within this grace period of 10 days.

Tax Liability for the purpose means aggregate of taxes payable by a registered dealer, in respect of all places of business within the State of Maharashtra, under the Central Sales Tax Act and MVAT Act after adjustment of amount of set off claimed.

As per Rule 17 of MVAT Rules, the Commissioner of Sales Tax is empowered to determine periodicity for different classes of dealers. Accordingly, the sales tax department determines, from time to time, periodicity of returns of all dealers and the same is made available on its website (mahavat.gov.in). The dealers are required to file return as per the periodicity determined by the department.

Late Fees: Non-filing or late filing of returns attracts mandatory late fees of Rs. 5,000/- per return, w.e.f. 1<sup>st</sup> August 2012. The provision for Late Fees has been recently amended w.e.f. 1<sup>st</sup> July 2014. The amended provision now provides that if a dealer files return within 30 days from the due date of filing the return the late fee shall be Rs. 2000/- and in all other cases it shall be Rs. 5000/-.

E-return Annexure: It is now mandatory to upload e-return annexure before uploading periodic returns.

#### **Payment of Tax:**

A dealer shall first make payment of tax due in to the Government treasury (Form MTR-6 for e-payment), and thereafter upload the return in appropriate form as may be applicable. It may be noted the tax due, if any, has to be paid within the prescribed due date of 21/30 days as the case may be. (There is no grace period for payment of tax).

It may further be noted that it is now mandatory for all the dealers to make payment of taxes electronically (except in certain case of six monthly returns, where tax can be deposited with certain branches of State Bank of India).

In case of delayed payments, interest is payable @ 1.25% p.m. or part thereof. Such interest is mandatory and shall be paid before filing of return.

## **LUXURY TAX**

Luxury Tax, in Maharashtra, is levied under the provisions of “The Maharashtra Tax on Luxuries and Tax by Way of Cess on Other Facilities, Services, Enjoyments, Utilities, Consumption, etc. Act 1987”. Earlier the Luxury Tax was applicable on certain categories of goods also but now it is applicable to hotels only.

### **Basic Provisions in brief**

#### **Important Definitions: (Section 2)**

(b) "business" includes

- (i) the activity of providing residential accommodation and any other service in connection with or incidental or ancillary to such activity of providing residential accommodation, by a hotelier for monetary consideration;
- (ii) any supply in a club whether or not incorporated by way of or as part of any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is made or given for cash, deferred payment or other valuable consideration;

whether or not such activity, other services or supply is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such activity, other services or supply,

*(b-1A) "Certificate of Entitlement" means a Certificate issued by the Commissioner in respect of Luxury Tax Incentives by way of exemption from the tax liability under the Package Scheme of Incentives for Tourism, 1993 or the New Package Scheme of Incentives for Tourism Projects, 1999 or, the new package Scheme of Incentives for Tourism Projects, 2000 [or the Tourism Policy 2006];*

(b-1) "club" includes both an incorporated and unincorporated association of persons, by whatever name called;

(d-1) "Eligibility Certificate" means a certificate issued by the Maharashtra Tourism Development Corporation under the Package Scheme of Incentives for Tourism, 1993, or the New Package Scheme of Incentives for Tourism Projects, 1999 or, the New Package Scheme of Incentives for Tourism Projects, 2000, [or the Tourism Policy 2006];

(d-2) "Eligible Unit" means the unit in respect of which an Eligibility Certificate is issued;]

(e) "hotel" includes-

- (i) a residential accommodation, a club, a lodging house, an inn, a public house or a building or part of a building, where a residential accommodation is provided by way of business; and
- (ii) a club where supply is made or given of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) by way of or as part of any service or in any other manner whatsoever, for cash, deferred payment or other valuable consideration by way of business;
- (f) "hotelier" means the owner of the hotel and includes the person who for the time being is in charge of the management of the hotel ;
- (g) "Luxury provided in a hotel" means-
- (i) accommodation and other services provided in a hotel, the rate or charges for which including the charges for air-conditioning, telephone, television, radio, music, entertainment, extra beds and the like, exceeds rupees two hundred or more, per residential accommodation per day; and
- (ii) any supply in a club by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration;
- (h) "person" includes any company, club or association or body of individuals whether incorporated or not, and also a Hindu undivided family, a firm, a local authority, a State Government and the Central Government;
- (i) "place of business" includes an office, or any other place which is used by a person for the purpose of his business or where he keeps his books of accounts;
- (k) "receipt"
- in relation to a hotelier means the amount of valuable consideration received or receivable by a hotelier or by his agent for any luxury provided in a hotel; and .....

### **Incidence and Levy of tax: (Section 3)**

(1) Subject to the provisions of this Act and the rules made there under there shall be levied a tax on the turnover of receipt of a hotelier,

(2) There shall be levied a tax on the turnover of receipts in respect of luxuries covered by sub-clause (i) of clause (g) of section 2 at the following rates, namely,

(a) Where the charge for luxury provided in a hotel does not exceed two hundred rupees per day *per residential accommodation* - -Nil

(b)	Where the charge for luxury provided in a hotel exceeds two hundred rupees per residential accommodation, but does not exceed twelve hundred rupees per day <i>per residential accommodation</i>	4 per centum of such turnover of receipt
(c)	Where the charges for luxury provided in a hotel exceeds twelve hundred rupees per day <i>per residential accommodation</i>	10 per centum of such turnover of receipts

Provided that, where the charges are levied otherwise than on daily basis, then the charges for determining the tax liability under this section shall be computed proportionately for a day per residential accommodation, based on the total period of such accommodation for which the charges are made.

There shall be levied a tax at the rate of 12% on the turnover of receipts in respect of luxuries covered by sub-clause (ii) of clause (g) of section 2.

(3) Where, in addition to the charges for luxury provided in a hotel, service charges are levied and appropriated by the hotelier and not paid to the staff, then such charges shall be deemed to be part of the charges for luxury provided in the hotel.

(4) w.e.f. 1-9-1990.

(5) Where luxury provided in a hotel for a specified number of persons is shared by more than the number specified, then, unless the additional person is a child occupying the room along with his parent or guardian and no separate charge is recovered for the child, in addition to the tax levied for luxury provided to the specified number of person, there shall be levied and recovered separately the tax in respect of the charges made for the extra persons accommodated.

Explanation;- For the purpose of this sub-section. "child" means a person who has not completed twelve years of age.

(6) The tax shall not be levied and payable in respect of the turnover of receipts for supply of food and drinks, on the sale of which the hotelier has already paid the tax under the Bombay Sales Tax Act, 1959.

(7) For the purpose of this Act, Tax collected separately by the hotelier shall not be considered to be part of the receipt or the turnover of receipts of the hotelier.

### **Registration: (Section 8)**

(1) No hotelier ~~or tobaccoist~~ liable to pay tax under this Act shall conduct or cause to be conducted business unless he possesses a valid certificate of registration as provided by this Act:

Provided that, it shall be lawful for the hotelier ~~or, as the case may be, tobacconist~~ to conduct or cause to conduct business if the hotelier ~~or the tobacconist~~ has applied for registration as provided by this act.

(2) Every hotelier ~~and every tobacconist~~ required to possess a certificate of registration shall apply to the Commissioner within thirty days from the date on which the hotelier or, as the case may be, tobacconist first becomes liable to pay tax.

**The applicable rates of tax, with effect from 1-7-2014, are as under:**

**Charges for luxury provided in a hotel per residential accommodation per day**

Up to Rs. 1,000/-	Nil
From Rs. 1,001/- to Rs. 1,500/-	4%
Exceeding Rs. 1500/-	10%

**It may be noted that:**

Earlier the rates of tax from 29<sup>th</sup> April 2010 till 30<sup>th</sup> June 2014 were as follows:-

Up to Rs. 750/-	Nil
From Rs. 751/- to Rs. 1,200/-	4%
Exceeding Rs. 1200/-	10%

Where the charges are levied otherwise than on daily basis then for computation of tax charges shall be computed proportionately for a day per residential accommodation, based on total charges for that period.

Tax under this Act shall not be levied on the turnover of receipts for supply of food and drinks, on which hotelier has to pay sales tax under MVAT Act, 2002.

Tax collected separately by the hotelier under this Act shall not be considered to be part of the turnover of receipts by the hotelier.

A hotelier having even one room with charges more than Rs. 1,000/- per day per accommodation would be liable to pay tax, hence liable for registration.

**Maintenance of Accounts:** Every hotelier shall maintain:

1. Information of residential accommodation and tariff thereof in Form 1.
2. Daily accounts of occupation of residential accommodation in the hotel and collection of tax thereof in Form 2 and
3. Monthly abstract of collection and remittance of tax in Form 3. The register in Forms 1, 2 and 3 shall be certified by an officer duly authorised by the Commissioner.

However, the Commissioner of Luxury Tax, vide Circular No. 4/1988 dated 24-2-1988, has clarified that hotelier may maintain one register only (instead of three separate registers). At the time of Registration, the register/s shall be signed and sealed by registering authorities. Thereafter new register shall be signed and sealed by assessing authorities.

**Exemptions from Luxury Tax:** Various Notifications have been issued, from time to time (u/s. 22) for granting exemptions to certain specified persons or class of persons from Luxury Tax in hotels.

### **Filing of Returns and Payment of Tax**

#### **Due Dates:**

- A. Annual Return: 30<sup>th</sup> April of succeeding year
- B. Quarterly Returns: April-June: 31<sup>st</sup> July  
Jul-Sep: 31<sup>st</sup> Oct  
Oct-Dec: 31<sup>st</sup> Jan  
Jan-Mar: 30<sup>th</sup> Apr
- C. Monthly Returns: By the last date of next month

#### **Periodicity:**

1. Tax liability more than Rs. 20000/- in the previous year: Monthly
2. Tax liability in previous year between Rs 5001/-and Rs 20000/-: Quarterly  
(and also monthly returns for the months of January and February)
3. Tax liability in previous year up to Rs 5000/-: Annual
4. If annual tax liability in previous year was less than Rs. 5000/- but exceeds in current year: first return from 1st April to end of quarter in which it so exceeds, thereafter quarterly.
5. If tax liability in current year exceeds Rs. 20,000/- then quarterly returns till the end of quarter in which such liability exceeds, thereafter monthly.
6. Special provision for filing the returns for the first year from obtaining registration certificate (Rule 17):

Notwithstanding anything contained in rule 12 or 13, every registered hotelier to whom registration certificate is granted for the first time under the Act, shall, until the expiry of a period of twelve months from the date of the grant thereof, furnish monthly returns, and each such return shall be furnished on or before the last day of the month immediately succeeding.

**Reduction of receipt for levy of tax- (Rule 18)** A registered hotelier may, in respect of any receipt on which luxury tax is payable by him, either,

- (i) exclude the amount, if any, collected by him separately by way of tax from the receipt on which tax is leviable; or
- (ii) where the tax is not separately collected, deduct from the receipt as per tariff charged, a sum calculated in accordance with the formula given in the Table hereunder:-

[TABLE

The formula shall be as follows:-

Receipt multiplied by	$\frac{R}{100+R}$	where 'R' means the rate of tax.]
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**Preservation of books of accounts, registers, etc (Rule 37):**

Every registered hotelier and every hotelier on whom a notice has been served under sub-section (1) of section 29, shall preserve all books of accounts, registers and other documents including bills, cash memoranda, invoices, vouchers and other documents relating to the receipts, for a period of not less than five years from the expiry of the year to which they relate.

**E-payment facility: Refer** Circular No. 16T of 2014 dated 17/09/2014 on the subject “Providing e-payment facility for Profession Tax, Luxury Tax and Sugarcane Purchase Tax through GRAS.

**Incentives under Tourism Policy 2006:-** Refer various Notifications and also recent Trade Circular No. 15T of 2014 dated 06/08/2014. (New section 22B inserted on 26<sup>th</sup> June 2014, vide Maharashtra Act No XXVII of 2014).

Annexure-I

**Some Important Definitions under MVAT Act**

**DEALER**

According to section 2(8) of MVAT Act “dealer” means any person who for the purposes of or Consequential to his engagement in or, in connection with or incidental to or in the course of his business buys or sells goods in the State whether for commission, remuneration or otherwise and includes;

- (a) a factor, broker, commission agent,
- (b) an auctioneer
- (c) a non resident dealer or as the case may be an agent, residing in the State, of a non-resident dealer,
- (d) any society, club or other association of persons

*Explanation-* For the purposes of this clause, each of the following persons, bodies and entities who sell any goods whether by auction or otherwise, directly or through an agent for cash, or for deferred payment, or for any other valuable consideration, shall, notwithstanding anything contained in any other provision of this Act, be deemed to be a dealer, namely: -

- (i) Customs Department of the Government of India administering the Customs Act, 1962;
- (ii) Departments of Union Government and any Department of any State Government;
- (iii) Local authorities;
- (iv) Port Trusts;
- (iv-a) Public Charitable Trust
- (v) Railway Administration as defined under the Indian Railways Act, 1989 and Konkan Railway Corporation Limited;
- (vi) Incorporated or unincorporated societies, clubs or other associations of persons;
- (vii) Insurance and Financial Corporations, institutions or companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934;
- (viii) Maharashtra State Road Transport Corporation constituted under the Road Transport Corporation Act, 1950;
- (ix) Shipping and construction companies, air transport companies, airlines and advertising agencies;
- (x) Any other corporation, company, body or authority owned or constituted by, or subject to administrative control, of the Central Government, any State Government or any local authority:

*Exception I.* — An agriculturist, who sells exclusively agricultural produce grown on land cultivated by him personally, shall not be deemed to be a dealer within the meaning of this clause.

*Exception II.* —An educational institution carrying on the activity of manufacturing, buying or selling goods, in the performance of its functions for achieving its objects, shall not be deemed to be a dealer within the meaning of this clause.

*Exception III.* —A transporter holding permit for transport vehicles (including cranes) granted under the Motor Vehicles Act, 1988, which are used or adopted to be used for hire or reward shall not be deemed to be a dealer within the meaning of this clause in respect of sale or purchase of such transport vehicles or parts, components or accessories thereof.

## **PERSON**

According to section 2(17) of MVAT Act, “person” includes an individual, any State Government, the Central Government, any company or society or club or association or body of individuals whether incorporated or not, and also a Hindu Undivided Family, a firm and a local authority and every artificial juridical person not falling within any of the preceding descriptions;

## **BUSINESS**

Section 2(4) defines “business” to include;

(a) any service;

(b) any trade, commerce or manufacture;

(c) any adventure or concern in the nature of service, trade, commerce or manufacture; whether or not the engagement in such service, trade, commerce, manufacture, adventure or concern is with a motive to make gain or profit and whether or not any gain or profit accrues from such service, trade, commerce, manufacture, adventure or concern.

*Explanation.* For the purpose of this clause;

(i) the activity of raising of man-made forest or rearing of seedlings or plants shall be deemed to be business;

(ii) any transaction of sale or purchase of capital assets pertaining to such service, trade, commerce, manufacture, adventure or concern shall be deemed to be a transaction comprised in business;

(iii) sale or purchase of any goods, the price of which would be credited or, as the case may be, debited to the profit and loss account of the business under the double entry system of accounting shall be deemed to be transactions comprised in business;

(iv) any transaction in connection with the commencement or closure of business shall be deemed to be a transaction comprised in business;

## **GOODS**

Section 2(12) defines “goods” means every kind of moveable property not being newspapers, actionable claims, money, stocks, shares, securities or lottery tickets and includes live stocks, growing crop, grass and trees and plants including the produce thereof including property in such goods attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

## **SALE**

According to section 2 (24), “sale” means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge; and the words “sell”, “buy” and “purchase”, with all their grammatical variations and cognate expressions, shall be construed accordingly;

*Explanation,—For the purposes of this clause,—*

(a) a sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in section 4 of the Central Sales Tax Act, 1956;

(b) (i) the transfer of property in any goods, otherwise than in pursuance of a contract, for cash, deferred payment or other valuable consideration;

(ii) the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

**(In the above clause (b) (ii) for the words ‘works contract’ the following words are inserted by Maharashtra Act No. XXXII of 2006 Dt.05.08.2006)**

(ii) the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract including, an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

**(In the above clause (b) (ii) for the words ‘works contract namely’ the words ‘works contract including’ are inserted by Maharashtra Act No. XXV of 2007 Dt.06.08.2007)**

- (iii) a delivery of goods on hire-purchase or any system of payment by installments;
- (iv) the transfer of the right to use any goods or any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (v) the supply of goods by any association or body of persons incorporated or not, to a member thereof or other valuable consideration;
- (vi) the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is made or given for cash, deferred payment or other valuable consideration:

*shall be deemed to be a sale’.*

## **SALE PRICE**

According to section 2(25) “sale price” means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged.

*Explanation I.* The amount of duties levied or leviable on goods under the Central Excise Act, 1944 or the Customs Act, 1962 or the Bombay Prohibition Act, 1949, shall be deemed to be part of the sale price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.

*Explanation II.* Sale price shall not include tax paid or payable to a seller in respect of such sale.

*Explanation III.* Sale price shall include the amount received by the seller by way of deposit, whether refundable or not, which has been received whether by way of a separate agreement or not, in connection with or incidental or ancillary to, the said sale of goods;

## **PURCHASE PRICE**

Section 2(20) defines “purchase price” means the amount of valuable consideration paid or payable by a person for any purchase made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged;

*Explanation I.* —The amount of duties levied or leviable on the goods under the Central Excise Act, 1944, or the Customs Act, 1962 or the Bombay Prohibition Act, 1949 shall be deemed to be part of the purchase price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.

*Explanation II.* —Purchase price shall not include tax paid or payable by a person in respect of such purchase.

*Explanation III.* —Purchase price shall include the amount paid by the purchaser by way of deposit whether refundable or not which has been paid whether by way of a separate agreement or not, in connection with or incidental or ancillary to, the said purchase of goods;

## **YEAR**

Section 2(35): “year” means the financial year.

## **Annexure-II**

### **Determination of Sale Price (Taxable Turnover) in case of Residential Hotels:**

Rule 59, of MVAT Rules 2005, provides that in assessing the turnover of sales of goods, specified in paragraph (vi) of sub-clause (b) of the *Explanation* to clause (24) of section 2, of the residential hotels, providing lodging and boarding and charging a composite sum, which is inclusive of breakfast or lunch or dinner or, as the case may be, a combination of all or any of the above, the Commissioner shall determine the taxable turnover of sales, in respect of any period in the following manner, namely, (a specified percentage of composite charges): -

- (a) Where the composite charges include the charges for breakfast, 5%.
- (b) Where the composite charges include the charges for lunch, 10%.
- (c) Where the composite charges include the charges for dinner, 15%.
- (d) Where the composite charges include the charges for breakfast and lunch, 15%.
- (e) Where the composite charges include the charges for breakfast and dinner, 20%.
- (f) Where the composite charges include the charges for lunch and dinner, 25%.
- (g) Where the composite charges include the charges for breakfast, lunch and dinner, 30%.

Provided that, if the claimant dealer produces evidence to the satisfaction of the Commissioner that the component of the taxable turnover of sales in the composite sum is less than the percentage given above, the Commissioner shall reduce the above percentage to the extent of actual sum of turnover of sales, so proved.

Annexure-III

**Composition Scheme for Hotels (Restaurants), Clubs and Caterers**

Eligibility: (a) Hotels, Restaurants, Eating House, Refreshment Room, Club or Boarding Establishment. (Having gradation of less than Four Stars)

(b) Factory Canteens

(c) Caterers

Applicability: In respect of aggregate sales of Food and non-alcoholic drinks.

a) Whether Served for consumption at or immediate vicinity or supplied by way of counter sale by such hotel, restaurant, eating house, refreshment room, club or boarding establishment.

(b) Served for consumption at such factory canteen.

(c) Served for consumption at any place other than a hotel, restaurant, eating house, refreshment room, boarding establishment, factory canteen, or any club by a caterer.

Composition Amount: **5%** of Turnover of Sales

Conditions: (1) Application in Form No. 1 (Form 2 for Caterers), on or before 30<sup>th</sup> September 2005. (New dealers: at the time of registration).

(2) Option cannot be changed during the same financial year.

(3) Not entitled to claim any setoff or refund.

(4) Not entitled to issue Tax Invoice. Cannot collect tax separately in his bill/cash memo.

Notes:

- *There is no turnover limit.*
- *It covers aggregate of all sales whether tax free or taxable.*
- *There is no prohibition that permit rooms cannot opt for this scheme. However they shall pay tax at prescribed rate on sale of liquor.*

*Annexure IV*

**Clarification on certain aspects in respect of levy of Luxury Tax.**

(Extracts from the Circular No. 20T of 2005 dated 23/09/2005, issued by the Commissioner of Sales Tax, Maharashtra)

The Maharashtra Tax on Luxuries and Tax by way of Cess on other Facilities, Services, Enjoyments, Utilities, Consumption, etc. Act, 1987, provides levy of tax in respect of luxury provided in a hotel. Certain queries are received by the Government, from hoteliers, in respect of levy of luxury tax under the Act. Since the queries are of common nature, these are clarified as under: -

**1) Printed tariff and levy of luxury tax:**

It has been the practice of the trade that the actual receipts from luxuries provided in hotel vary from the printed tariff. This is due to various factors, such as the competitions among the trade, season etc. It is reported that some of the officers assess the luxury tax on basis of printed tariff instead of on the actual tariff charged to customers for the luxury provided in a hotel and queries as to the correct legal position have been received. It is hereby clarified that the luxury tax is leviable on the actual turnover of receipts in respect of luxuries provided in a hotel and not on the basis of printed tariff.

**2) Levy of luxury tax on other services:**

Department has clarified this issue in Circular No. 18 of 1988, dt. 20.05.1988. The list of services which do not form part of the luxury provided in a hotel, as enlisted in the said circular, is reproduced below: -

Sr. No.	Services rendered
1	Telephone calls and trunk calls. (These charges are based on the actual calls made).
2	Laundry services (i.e., washing clothes).
3	Valet services (i.e., dry cleaning and pressing clothes).
4	Limousine services (i.e. use of a limousine- charges are dependent on the duration of use).

- 5 Air mail services- charges, therefore, are for postal expenses incurred for the customers.
- 6 Health club services- the charges are on the basis of the standard rates of the club prevailing at the time of use.
- 7 Secretarial services (i.e., use of conference rooms).
- 8 Photocopy/ Xerox machine services- charges for these services depend on the actual number of copies made for the customer.
- 9 Tele-fax Services ( pertain to the reproduction of documents in any part of the world as desired by the customer).
- 10 Courier service- for delivering letters, parcels, packets to the location specified by the customer.
- 11 Telex services- the charges are based on actual utilization of telex machine.

It is further clarified that, if the charges for above listed services are optional, over and above the tariff, on the basis of actual services availed of and shown separately in the bill, then the luxury tax is not payable on receipts from these services; but if any of these services are included in the tariff without option to the customer or if the bill is inclusive of the above listed services, then the luxury tax is payable on such composite receipts shown in the bill.

**3) Dormitory:**

In the dormitory the person is charged only for one bed. If the charge for one bed is Rs. 200/- or below, then luxury tax is not payable and if the charge for one bed is above Rs. 200/-, then luxury tax is payable on the receipts there from by the hotelier.

\* \* \* \* \*