

# Suresh Surana & Associates



## Value Added Tax (VAT) Regulations - Significant aspects (As applicable in the State of Gujarat) (With effect from 1 April 2006)

---

<b><u>Mumbai (Churchgate)</u></b> 5th Floor, Khetan Bhavan, 198, J.T. Road, Churchgate, Mumbai - 400 020.	<b><u>Mumbai (Andheri)</u></b> 310, Ahura Centre, 82, Mahakali Caves Road, Andheri (E), Mumbai - 400 093.
<b><u>Ahmedabad Office</u></b> 504, Narnarayan Complex, Navrangpura, Ahmedabad - 380 009.	<b><u>Surat Office</u></b> 604-605, Tirupati Plaza, Athwa Gate, Nanpura, Surat - 395 001.
<b><u>New Delhi Office</u></b> F-116 Himalaya house, 23, K.G. Marg, Connaught Place, New Delhi – 110001	<b><u>Gandhidham</u></b> Plot No. 115 / 116, Flat No. 5, Sector VIIA, Gurukul Road, Gandhidham – 370 201.
<b><u>Bangalore Office</u></b> 358, 1 <sup>st</sup> 'A' Main Road, 7 <sup>th</sup> Block, Koramangala, Bangalore – 560 095.	
Tel : (91-22) 2287 5770 / 56975289 * Fax : (91-22) 2287 5771 / 28205685 Email : <a href="mailto:emails@ss-associates.com">emails@ss-associates.com</a> * Website : <a href="http://www.ss-associates.com">www.ss-associates.com</a>	

**Value Added Tax (VAT) Regulations -  
Significant aspects  
(As applicable in the State of Gujarat)  
(With effect from 1 April 2006)**

**TABLE OF CONTENTS**

SR. NO.	DETAILS	PAGE NO.
1	Preface	1
2	Comparison between State sales tax and state Value Added Tax	1
3	Concept of VAT	2-3
4	Certain terms used under VAT– Section 2	3-5
5	Registration and liability to pay VAT	5-6
6	Charging under VAT	6
7	Set off / input tax credit – Section 11	7-9
8	Credit for tax paid on Opening stock as on 1 April 2006	9-10
9	Lump sum tax scheme – Section 14 and Rule 28	11-12
10	Composition of tax on works contract – Section 14A	12
11	Rates under VAT	12
12	Registration under VAT	13-14
13	Monthly & quarterly returns	15
14	Annual returns	15
15	Other provisions relating to the returns	15-16
16	Time limit and mode of payment of tax – Section 30 (Rule 26)	16-17
17	Tax invoice & Retail invoice – Section 60	17
18	Vat applicability to units in SEZ and 100% EOU	17-18
19	Credit note & Debit note – Section 61	18
20	Maintenance of accounts	18-19
21	Audit of accounts	20
22	Provisional assessment u/s 32 & Self-assessment u/s 33	20
23	Audit assessment under Section 34	20-21
24	Re-assessment or turnover escaping assessment under Section 35	21
25	Deduction of tax at source– Section 59A, 59B, rule 65	21-22
26	Provisions relating to jurisdiction & appellate matters	22
27	Penalty provisions	23-24
28	Miscellaneous provisions	24-25
29	Central sales tax (CST)	25
30	Limitation clause	25

# VALUE ADDED TAX

## 1.0 PREFACE

Valued Added Tax (VAT) is a modern and progressive tax system now used in over 130 countries around the World. Dr. Raja Chelliah Committee on tax reform had advocated introduction of VAT in India. This was initially tried out on Central Excise and after its success, extended to Service tax levy. Since at both the levels VAT has been successfully integrated in the tax system, the same has now been extended to state sales tax levies.

VAT was introduced in 22 states in India with effect from 1 April 2005. Considering the fact that VAT has been successful in most of the states taken for implementation in the first round, the States of Gujarat, Chhattisgarh, Jharkhand, Madhya Pradesh and Rajasthan with a view to integrate with the rest of the country have notified their decision to implement VAT regulations in their respective states with effect from 1 April 2006. With this the only two states, which have not yet implemented VAT, are Tamil Nadu and Uttar Pradesh.

The Government of Gujarat has passed the “**Gujarat Value Added Tax Act, 2003**” (Act) in the year 2003 and specified that the date of implementation (appointed date) of the same would be notified later. **Accordingly, the Government of Gujarat has vide notification no. GHN – 14/VAT-2006/S.1.(3)(1)-TH dated 29 March 2006 notified that the appointed date for implementation of VAT regulations in the State of Gujarat shall be with effect from 1 April 2006.** The said regulation will become effective if the Government of Gujarat notifies the same in its official gazette. Changes incorporated under the Act have been effected through the GVAT (Amendment Bill), 2006.

However “The Central Sales Tax Act, 1956” (Central Act) which levies sales tax on inter state sales is still effective and all inter state sale and purchase transactions effected after 1 April 2006 in the State of Gujarat shall continue to be subject to levy of central sales tax as was applicable earlier.

Each state, which has joined the VAT regime, has enacted specific VAT legislation to suit their requirements. Although many of the provisions are similar, freedom has been given to individual states to structure certain aspects of the legislation to suit their specific requirements. In this note we have attempted to compile and analyse the provisions and features of “**Gujarat Value Added Tax Act, 2003** (Act) with the changes made as per information available to us.

## 2.0 COMPARISON BETWEEN STATE SALES TAX AND STATE VALUE ADDED TAX

The basic difference between the earlier State Sales Tax and the VAT is, unlike Sales Tax, the basic framework of the VAT system would be identical in all the States (implementing such system) and thus bring about uniformity and “India - a common market” concept. The other major difference is the uniformity in the rates of tax charged on commodities apart from discretionary rates for certain essential commodities based on the state level importance. Some of the significant differences seen are enumerated in the table below:

<b>Earlier State Sales Tax</b>	<b>Present State Value Added Tax</b>
Re sales – Single point taxation system of sales tax	No-re sales. Multipoint taxation system with set off available on corresponding purchases.
Various concessional forms for purchases particularly for incentive units	Concessional purchases under declarations done away. No more forms to be collected or given.
Multiple taxes – State tax, Turnover Tax, Surcharge, Resale Tax, Lease tax, Works Contract Tax etc.	Only single tax levy
Exemption & Deferral Scheme	No new incentive schemes. However existing units availing incentive schemes to continue to benefit.
No Composition Scheme	Optional Composition Scheme for Retailers, Work Contractors and Hoteliers
Separate Acts for Works Contracts & Lease (Right to use Goods)	Works contract and Lease Transactions are covered under the State VAT Act
Declarations and Forms for various tax benefits and concessions	"Tax Invoice" mandatory for tax set off
Part input tax set off for traders, manufacturers (Burden 3% & 5%) or concessional form for input purchases	Full tax setoff for traders, manufacturers, exporters with certain retentions
Mandatory every year assessments	Self Assessments, Audit by Department, CA /ICWA/STP/LP Audit
Mild penalty, waiver for interest and delays	Stiff penal provisions as the scheme is based on Trust.

### **3.0 CONCEPT OF VAT**

#### **3.1 What is VAT?**

VAT is a modern and progressive mechanism of sales tax levy, collection and administration. It is charged and collected by dealers on the sales price paid by the customer. VAT paid by dealers on their purchases is usually available for set-off against the VAT collected on their sales.

In Gujarat, "The Gujarat Value Added Tax Act, 2003" (Act) will merge following three existing State level taxes:

- The Gujarat Sales Tax Act, 1969
- The Gujarat Purchase Tax on Sugarcane Act, 1989
- The Bombay Sales of Motor Spirit Taxation Act, 1958

#### **3.2 Merits of VAT**

- (i) It is simple, transparent and progressive
- (ii) Simplification in tax system as collect tax and pay to Government
- (iii) Uniformity in tax rates for all the States resulting in "India a Common Market"
- (iv) Elimination of "Tax on Tax" resulting in reduction in the effective tax rate for goods.
- (v) Full set-off available for VAT paid on most business purchases
- (vi) Simplification of tax forms and procedures
- (vii) Recognition to Dealers as Tax agents of the Government
- (viii) Self policing and transparent system, No incentive for tax evasion
- (ix) Greater reliance on self assessment and voluntary compliance by dealers

### 3.3 Demerits of VAT

- (i) Every eligible dealer becomes a tax payer
- (ii) In some of the cases, VAT may result in price hike
- (iii) Central Sales Tax is impediment as no set off of the same is available under VAT.
- (iv) In absence of declarations, many cases may result in refund, which, as experienced are not easily received.
- (v) Other taxes like Octroi, Excise Duty, Cess, Luxury tax, Entry tax will remain.
- (vi) In some cases, the penal provisions may be harsh.

### 3.4 Applicability

VAT applies to all types of business segments including -

- (i) Importers and Exporters
- (ii) Manufacturers
- (iii) Distributors
- (iv) Wholesalers
- (v) Retailers
- (vi) Works Contractors
- (vii) Lessors

## 4.0 CERTAIN TERMS USED UNDER VAT – SECTION 2

- 4.1 The term '**business**' includes any trade, commerce or manufacture whether or not carried on with a motive of profit and whether or not done regularly.
- 4.2 **Place of business** includes a warehouse, godowns, a place of manufacture, place where books of accounts are kept, place of business of the agent and also includes any vehicle, vessel or any other carrier wherein the goods are stored or used for transporting the goods.
- 4.3 **Capital Goods** means plant and machinery, **excluding second hand plant and machinery**, meant for use in manufacture of taxable goods and accounted as capital assets in the books of accounts.
- 4.4 A **dealer** is a person who, in course of his business buys, sells, manufactures, makes supplies, distributes goods, directly or indirectly, whether for consideration or not.

It includes Central and State Government, Local authority, a casual dealer, auctioneer, broker, factor, commission or any other agent including del-credere agent, work contractor, hire purchase and installment system, transfer of right to use, and transfer of goods otherwise than by contract.

It excludes –

- an agriculturist or a person, who sells exclusively agricultural produce or fish / sea food cultivated or as the case may be caught by him personally or by his family member on his behalf.
- a charitable, religious or educational institution dealing with goods in performance of its functions which are not in the nature of business and for achieving its objectives.

- 4.5 **Goods** mean all kinds of movable property (other than newspapers, actionable claims, electricity, stock, shares, and securities) and includes livestock, all materials, articles and commodities and every kind of property (whether as goods or in some other form) involved in the execution of works contract, all intangible commodities and growing crops, grass, standing timber or things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.
- 4.6 **Person** includes an individual, a joint family, Hindu Undivided Family, a Company, a Firm, an Association of Person or Body of Individuals, whether incorporated or not, a Society, Club or other institution, a local authority, a Central Government or a state government and every artificial juridical person not falling within any of the preceding descriptions.
- 4.7 **Purchase Price and Sale Price** means & includes
- Central Excise duty and Customs duty
  - any sum charged for anything done by seller but does not include
    - any such sum charged after delivery
    - insurance for transit or on installation if separately charged by seller.
  - In case of goods transferred in works contract, sum after deducting labour charges.
  - In case of hire purchase or installment system, sum payable for delivery only.
  - In the following cases, sum or consideration payable thereon -
    - where property in goods is transferred otherwise than under a contract
    - transfer of right to use any goods
    - supply of goods by unincorporated Association of Persons or Body of Individuals to its members
    - supply by way of service or whatsoever, of goods being food or any article for human consumption or any drink.

**Note :** Sales includes barter sales.

- 4.8 **Value of goods** means invoice value and includes excise, customs, sales tax, Vat and also includes transportation, freight, insurance, all charges incidental to the transaction of goods.

In case invoices are not available or in case of transactions other than purchases, aforesaid value of like goods.

- 4.9 **Raw Materials** includes processing materials, consumable stores, packing materials, but does not include fuels for the purpose of generation of electricity.
- 4.10 **Earlier Law** means any of the following laws –
- Bombay Sales of Motor Spirit Taxation Act, 1958
  - Gujarat Sales Tax Act, 1969
  - Gujarat Purchase Tax on Sugarcane Act, 1989
- 4.11 **Taxable Turnover** means turnover of sales or purchase after deducting
- turnover not subject to tax
  - turnover of goods exempt by notification u/s 5 (1) & 5(2).
  - labour, service and like charges in case of Works Contract.

- 4.12 Total turnover** means aggregate of
- turnover of sales or purchase within State, whether exempt or not
  - turnover of sales in the course of inter-state trade or commerce
  - export sales
  - turnover on behalf of principal.
- 4.13 **Turnover of sales or purchases** means total purchase turnover or total sales turnover after deducting goods returned within prescribed time (presently six months).
- 4.14 **Year** means a financial year.
- 5.0 REGISTRATION AND LIABILITY TO PAY VAT**
- 5.1 **Threshold** Limit of turnover is “**Total Turnover of Rs. 5 Lakh and Taxable Turnover of Rs.10,000**” in a year.
- 5.2 **A dealer is liable to pay tax if thresholds exceed in a previous year or if threshold exceeds in a current year. He is also liable if he was already registered under earlier law (Central or State).**
- 5.3 It is provided that any registration certificate issued under the said Act and in force immediately before the appointed day shall be deemed to be the registration certificate issued under this Act, and accordingly such registration certificate shall be valid and effectual as a registration certificate under the Act until such certificate is issued, substituted, suspended or cancelled under the provisions of the Act.
- 5.4 A dealer who is registered or liable to be registered as a dealer under the VAT act or under the Central Act at any time after the appointed day.
- 5.5 **A dealer shall not be liable to pay tax on thresholds turnover before his registration.**
- 5.6 However after crossing the threshold limit, if his turnover for the subsequent year goes below thresholds, he can apply for cancellation of the registration but shall be liable to pay VAT till the date of cancellation of his certificate.
- 5.7 A person **wrongly registered** shall also be liable to pay tax during the period of his registration.
- 5.8 VAT shall not be imposed on (shall **not apply** to)
- inter state sales or purchases
  - sale or purchases outside the State.
  - imports or exports.
  - goods specified in Schedule I, subject to specified conditions therein.
  - Exempt any class of sales or purchases from payment of the whole of tax payable under the provisions of this Act by notification in the Official Gazette.
  - Exempt from payment of the whole of tax in respect of any class of sales or purchases for the purpose of promoting the scheme of Special Economic Zones (SEZ) or promoting exports by notification in the Official Gazette.

- 5.9 **Sales Tax** shall be paid on the sales of goods at the rates specified in **Schedule II or III. Adjustment in Tax** due to change in invoice value of sales on discounts, etc. or due to cancellation of sales or sales return u/s 8 is possible if-
- rectified invoice or corrected invoice is issued
  - furnished a copy of return for the period for which rectification is sought.
  - seller has borne the rectified / corrected tax
  - **if the event of rectification occurs within six months of sale.**
- 5.10 **Purchase Tax** to be paid on –
- dealer liable to pay tax under this Act purchases taxable goods from an unregistered dealer (rate of tax shall be as specified in **Schedule II or III**)
  - registered dealer purchases sugarcane from unregistered dealer for manufacture of sugar or khandsari (rate of tax shall be as specified in Schedule II or III)
  - taxable goods purchased by a dealer under certificate or declaration, the conditions of which are not complied with (rate of tax shall be earlier rate under earlier law or rate in Schedule II or III, whichever higher)
- 5.11 **Packing materials** supplied with goods = **sale of goods**. – Sec.10. i.e to say, packing materials shall be treated at par with sale of goods with respect to VAT duty.
- 5.12 The net amount of tax payable after utilizing tax credit shall be determined in Form 201. This shall not apply to a dealer registered under lump sum scheme.

## 6.0 CHARGING UNDER VAT

Under VAT, Tax is levied at each point of sale. Tax paid on purchase point will be allowed to be set off, also referred to as input credit under VAT.

### Significant procedural steps to be followed:

- Registered dealers must issue a serial numbered “**Tax invoice**” to other dealers separately showing the VAT amount being charged.
- Registered dealers can claim set off of VAT paid on their purchases only if they have the “**Tax Invoice**” for all such purchases. As a result, VAT is not a cost to the dealers.
- Certain dealers who sell mainly to consumers at retail level can opt for a simplified system of VAT calculation and payment. Such dealers will not issue a tax invoice. However they will be required to issue a retail invoice.
- The VAT invoice should have details relating to name and address of the selling and purchasing dealer, TIN / CST registration number etc.

The VAT sales procedure is explained by way of a table below

Dealer	Purchase price	Value Addition	Sales Price	Tax @ Rate 4 %	Setoff	Net Tax payable
Raw materials supplier	0	100	100	4	Nil	4
Manufacturer – 1	100	50	150	6	4	2
Manufacturer – 2	150	100	250	10	6	4
Distributor	250	200	450	18	10	8
Wholesaler	450	100	550	22	18	4
Retailer	550	150	700	28	22	6
Consumer #	700	Nil	Nil	28	Nil	28

# As the consumer is finally consuming the product and complete the sales chain, he will not be entitled for the set off.

## 7.0 SET OFF / INPUT TAX CREDIT – SECTION 11

### 7.1 What is set-off?

Set-off is the amount of tax credit which can be claimed in the VAT return. It is the tax, which is paid while purchasing the goods. This credit can be adjusted against the VAT payable on the sales affected, and the balance of VAT has to be paid to the Government. The set off will be available at the point of its purchase and irrespective of its subsequent point of sale or use.

### 7.2 Eligibility for set off

7.2.1 **Credit for tax can be claimed (during the tax period in which the Tax invoice is recorded)** by registered dealer on sales tax, purchase tax, or entry tax paid by him on the purchase of taxable goods, which are **intended** for

- sale or resale in State
- inter-state sale
- branch transfer/ consignment to other states
- exports or sales to 100 % Export Oriented Units (EOU) and / or Units in Special Economic Zones (SEZ).
- use as raw material in manufacture or in packing of goods so manufactured.
- capital goods used in manufacture of taxable goods, purchased after the appointed date to be notified.

7.2.2 However if such purchases are **partially utilized** for the above-intended purposes, **full credit shall not be permissible and credit should be calculated proportionately**. Furthermore, if such purchases are **not used** for intended purposes subsequent to the availment of credit, then such credit will have to be reduced accordingly.

7.2.3 On the issue of **debit note or credit note**, the credit will have to be adjusted accordingly in the period in which such credit or debit note is issued and recorded in the books of account.

7.2.4 **Credit shall be reduced by 4% on the turnover of purchases of–**

- taxable goods sent for branch transfer or agent consignment outside the state
- raw materials for use in manufacturing or packing of above goods.
- fuels used for manufacture of goods.

7.2.5 **Tax credit shall not be allowed for purchases –**

- **from unregistered dealer**
- from a dealer not liable to pay VAT
- **from a dealer opting to pay lump sum tax scheme.**
- made prior to the date of liability to pay VAT
- made prior to the date of registration
- **made in the course of inter state trade or commerce.**
- **of the goods which are disposed of otherwise than in sale, resale or manufacture.** *(except goods dispatched outside state in course of branch transfer / consignment)*
- of Schedule I goods or exempted goods by notification u/s 5(2).

- **of capital goods used in manufacture or packing of Sch. I or Notification 5(2) exempted goods**
- **of capital goods used in manufacturing of Schedule I items or Notification 5(2) or in generation of electric energy including captive power.**
- **of property or goods not connected with the business of the dealer.**
- of vehicles and its equipments, accessories, spare-parts except if doing it as a business.
- **of the goods used as fuel in electricity generation.**
- **of petrol, high speed diesel, crude oil and lignite, unless intended for resale.**
- of the goods which are used in motor vehicles.
- **of the capital goods involved in execution of works contract**
- **of the goods which remain as unsold stock on the closure of business.**
- **where invoice does not show tax separately.**
- **where original invoice or authenticated duplicate invoice is not available**
- there is evidence that Tax invoice has not been issued
- **of the goods for which right to use is transferred for any purpose.**
- **from a dealer after his name is published u/s 27(11) or u/s 97.**
- during the period when permission for lump sum scheme has remained valid.

**7.2.6 Exception to above is credit on purchase tax paid by a registered dealer for purchase from unregistered dealer or purchase from dealer who is not liable to pay tax under this Act** subject to conditions as may be prescribed.

**7.2.7 Where capital goods as above are not used continuously for a period of 5 years, credit shall be proportionately reduced** having regard to the period falling short of 5 years.

**7.2.8 Tax credit other than on capital goods, remaining unadjusted during the tax period shall be refundable within two years.** – Rule 15(6). **In case of exports, credit shall be refundable within 3 months from the month of purchase.** Refund shall be admissible subject to furnishing of tax invoice and satisfaction of Commercial Tax Officer to the fact that transactions are duly recorded in books.

### **7.3 General conditions for Set off**

- The set off shall not exceed the amount of tax actually paid on purchases
- **Excess credit as determined in Form 201 shall be adjusted against liability under the Central Sales Tax (if any).** If excess credit still exists even after adjustment of CST liability, such unadjusted credit, shall be carried forward to next tax period. – Rule 18(2)
- The dealer is allowed to use FIFO method for VAT regulations for claiming setoff.
- Those manufacturers who partially sell their finished goods from the state of Gujarat and also transfer their finished goods to depots / branches outside the state of Gujarat. E.g. If non-permissible sales (ie. Stock transfers outside Gujarat) is 50 %, then burden to be borne would be 2 % (i.e. 4 % of 50 %). Thus if tax paid on inputs is 12.5 % then setoff would be 12.5 % less 2 % = 10.5 % only.

#### 7.4 Setoff applicability to various categories of dealers

To summarize, the Set off applicability to the various categories of dealers is tabulated below

Sr. no.	Category of sales turnover	Set off eligible
1	Local sales	Full
2	Interstate Sales	Full
3	Exporters	Full
4	Stock transfers	Reduced set off
5	Lumpsum scheme	No
6	Works Contracts	Partial
7	Lease transactions	Partial
8	Package Scheme Incentives (PSI) units	No mention in the Act / Notifications issued #

#### Package scheme Incentives (PSI) Units

The Act does not mention any new incentive schemes or changes in the notifications issued under the earlier law in respect of Package Scheme Incentives issued to units. Based on our interaction with the authorities, we understand that although no mention is made of the Package Scheme in the Act, the intention of the authorities is to continue the said benefits to such units for the committed period. Necessary guidelines / notifications in respect of the same are to be issued in due course.

#### 8.0 CREDIT FOR TAX PAID ON OPENING STOCK AS ON 1 APRIL 2006

##### 8.1 Outstanding Credit brought forward may be taken on the taxable goods held as opening stock (including stock in process for manufacture) declared in the statement of taxable goods in Form 108, as on 31 March 2006, if

- such goods have been purchased during the financial year 2005-2006
- purchase or sales tax thereon has been paid by purchasing dealer under any earlier law
- are intended to be used for the manufacture or use in or trading of taxable goods.

In respect of unregistered dealer purchases (URD) made and stock outstanding as on 31 March 2006, the dealer can pay such purchase tax (URD tax) along with the Sales tax return for the month of March 2006 before the due date and claim such tax paid as credit for the goods lying in stock as on 31 March 2006.

The above statement duly confirmed by the registered dealer **should be submitted** to the Commercial Tax Officer **within such date as may be prescribed**.

##### 8.2 However **no tax credit can be claimed on those goods –**

- which are not taxable in this Act or earlier law.
- Central sales tax paid on purchases of goods.
- **which are not included in statement as above.**
- if there are no sales/purchase invoice for which credit has to be claimed.
- which are not recorded in the books of accounts.
- on which the dealer has not furnished the return under earlier law.

8.3 If tax is not separately shown on invoices, tax credit shall be worked out as per following formulae –

$$\text{Tax Credit} = (9/10 * \text{Price of Goods}) * (\text{Rate} / \text{Rate}+100)$$

8.4 If credit claimed is found in excess, dealer shall be informed of the same after verification. **Claiming the credit falsely and deliberately can attract penalty up to twice the amount of the credit so claimed.**

8.5 Details once furnished in the statement cannot be changed in case credit is found excess.

**8.6 Conditions for claiming set off (Opening stock)**

- The Dealer who is engaged in the trading business in respect of the stocks lying as on 1 April 2006 of trading goods purchased from suppliers of same State (Within Gujarat purchases).
- Manner of claiming of setoff shall be notified in due course.
- Manufacturers shall claim set off, in the month of Purchases as per GST rules only in respect of the closing stock as on 31 March 2006.

**Example for set off on opening stock (Tax rates are hypothetical)**

Sr. no.	Sources of Purchases	Total amount	Net	Sales tax	Purchase Tax
1	Tax paid separately (4%)	10,400	10,000	400	-
2	-- do --- (8%)	10,800	10,000	800	-
3	-- do --- (13%)	11,300	10,000	1,300	-
4	URD Purchases (13%)	5,650	5,000	-	650
5	Printed Materials (WCT 4%) (For Trading)	15,600	15,000	600	-
6	Furniture / Office Equipments (LST 4%) (For leasing)	20,800	20,000	800	-
	<b>Total amount</b>	<b>74,550</b>	<b>70,000</b>	<b>3900</b>	<b>650</b>

- The total set off available on opening stock would be Rs.4,550 (Rs.3900+Rs.650).
- This setoff can be claimed in such manner as may be notified by the authorities.

**8.7 The significant details to be submitted in respect of the opening stock as on 1 April 2006 for claim of set off with the Sales tax authority are as under:**

- Purchase invoice date and number
- Suppliers name and address
- Description of goods and Quantity
- Details of Forms issued, if any
- Total purchase amount
- Net purchase price
- Sales tax amount (ST)
- Purchase from unregistered dealer
- Purchase tax paid / payable

## 9.0 LUMPSUM TAX SCHEME – SECTION 14 AND RULE 28

9.1 Any dealer whose taxable turnover does not exceed Rs. 50 lakh in the preceding year can opt for payment of lump sum tax **However this Scheme shall not apply to a dealer who is –**

- engaged in activity of manufacture unless such activity is exempt by State Govt.
- makes inter-state sales and / or exports
- makes inter-state purchases and / or imports
- dispatches goods to his branch or consignment agent outside the State
- receives goods from branch or consignment agent outside the State
- effects the sales or purchase through the commission agent.
- involves in works contract or transfer of right to use any goods
- purchases goods from or sales goods to a dealer permitted to pay lumpsum tax.

9.2 However if a dealer so opts for the Lumpsum Scheme, he **cannot**

- (i) claim tax credit
- (ii) charge any tax on such sale in sales bill / invoice
- (iii) issue tax invoice to purchaser.

9.3 **We understand that the general rate of Lumpsum Tax has been fixed at 0.5 % of the invoice value.** However, in respect of certain dealers the rates of Lumpsum tax has been fixed as under –

- **Hotels & Restaurants – 4 %**
- **Bakery Industry – 2 %**
- **Brick Manufacturers– 2 %**

9.4 In addition to lump sum tax, he shall pay purchase tax u/s 9(1) & 9(3) as discussed in above.

9.5 Application for lump sum scheme for a particular year shall be made in **Form 210** to concerned CTO (Commercial Tax Officer) **within 30 days** of the date of registration in case of new registrations during the year. **For dealers already registered, application shall be made on or before 15 May 2006 for financial year 2006-07 and on or before 30 April for subsequent years.** Commissioner shall communicate his decision within **15 working days** from date of receipt of application and may grant permission in Form 211.

9.6 A dealer may change the option and come out of the lump sum scheme if he so desires, by intimating for non application of this scheme to the concerned CTO.

9.7 **However, re-application after cancellation is no-where provided in the law till date.** So once the cancellation is made, there is no provision for re-application for opting for lump sum scheme for the same year.

9.8 The rate of lump sum tax shall be prescribed by State Government by notification in Official Gazette.

9.9 It has been clarified that the dealer who has been permitted to opt for Lumpsum composition scheme under the provisions of the Act, shall be liable to pay Central Sales Tax as per the provisions of the Central Act in respect of sales made by him in the course of inter-state trade or commerce.

9.10 Burden of proof shall lie on the Dealer who claims that he is not liable to pay tax under this Act in respect of any sale effected by him or is eligible for a tax credit under Section 11 & 12.

#### 10.0 COMPOSITION OF TAX ON WORKS CONTRACT – SECTION 14A

10.1 The CTC (Commercial Tax Commissioner) may permit a work contractor to pay lump -sum tax by way of composition at such rate as may be fixed by the State Govt., in lieu of regular tax under the Act.

10.2 **We understand that the Tax rate for Works Contract under Section 14A of the Act has been fixed at 2 %.**

10.3 If a dealer so opts under this scheme, he shall not be entitled to claim tax credit, charge any tax on sale under this scheme, or issue tax invoice on such sale.

10.4 In addition to lump sum tax, he shall pay purchase tax u/s 9(1) & 9(3) as above.

10.5 **Where any dealer has opted for composition of tax under earlier law and commenced work prior to the appointed day (1 April 2006) and such work is not completed before such day, such dealer shall pay tax for remaining work in accordance with the provisions of this Act.**

#### 11.0 RATES UNDER VAT

Under VAT, the tax rates have been simplified. The details of the individual commodities and the rates to which they are subject to are given in Schedule I, II AND III of the VAT Act.

Category of items (Some important items)	Schedule	Rate of Tax
Agricultural implements, bangles made of glass or plastic, bidis, kumkum, books (other than commercial books), bread, cattle feed, cereals, pulses, electrical energy, fire wood and char coal, fresh flowers, fruits, vegetables, water and items of general importance and mass consumption by the poor.	I	0 %
Precious and semi-precious stones – Diamond Industry @	II	0 %
Gold, Silver and other precious metals and articles of jewellery made of gold or silver (studded or non -studded)	II	1 %
Raw materials, spares and consumables generally used in the manufacturing process, Iron and Steel, Pipes, IT products, communication equipments, cotton, crude oil, dyes, drilling rigs, imitation Jewellery and other items of common consumption, software, SIM cards etc	II	4 %
Foreign Liquor, Country Liquor etc	II	60 %
High Speed Diesel (24%), Aviation Fuel (30 % and above) and other types of motor spirit etc	III	24 % or above
All goods not covered in any of the other Schedules	II	12.5 %

**@ The Act provides for levy of VAT @ 1 %, however based on announcement made by the Hon. Finance Minister Shri Saurabh Patel on 29 March 2006, the Diamond industry (Hira Udyog) has been exempted and the levy of VAT @ 1 % set aside. Formal notification on the same is yet to be issued.**

Detailed Schedules as provided in the VAT Act, which may be referred to for more details.

## 12.0 REGISTRATION UNDER VAT

12.1 Following are the modes of registration–

- A dealer dealing exclusively in goods specified in Schedule I not liable to registration
- A dealer liable to pay tax under VAT to apply in Form 101 within 30 days of liability
- A dealer having fixed place of business may voluntarily apply for registration by making deposits of Rs.25,000, which can be adjusted against tax, interest or penalty.
- A dealer already registered under earlier law or Central Act shall be deemed to be a registered dealer.

12.2 Following additional points need to be considered with regard to the registration matters –

- If more than one place of business, apply where the main place of business situated.
- If a new partner is admitted, give two photographs and intimate the authorities within 30 days.
- Change in details about Manager, intimate within 30 days in Form 106.
- **If bank account is closed or any new account is opened, Form 107 to be submitted.**
- Get additional copies for each place of business in case of more than one place.
- RC (Registration Certificate) shall be personal to the dealer to whom it is granted and shall not be transferable.
- On the dissolution of the firm due to the death of the partner and a partner of the firm carries on such business, COR (Certification of Registration) shall continue to be valid for a period of six months unless an application made by the continuing partner for amendment in COR.

## 12.3 Amendments in Registration Certificate–

- In the following cases, no fresh registration to be obtained but only Registration Certificate shall be amended.
  - Change in name of business
  - Change in constitution of firm without dissolution thereof.
  - Change in trustees in case of a trust
  - Conversion of HUF into a partnership firm
  - Change in management including director or managing director in case of a firm, company, trust or any other set-up.
- Intimation of change shall have to be given where a Registered Dealer
  - transfers /discontinues his business or any place of business in full or in part
  - open a new place of business
  - temporarily closes business for more than 30 days,
  - there is change in name, style, constitution or nature of business.
  - effects any change in ownership of business.
- Any event requiring amendment in Certificate of Registration shall be intimated within 30 days.

- **Such change shall be effective from the date of the aforesaid event irrespective of the date of intimation. Failure to intimate as above attracts penalty @ Rs.100/- per day, up to maximum Rs.5,000.**

- 12.4 Application for cancellation of Registration Certificate to be made within 30 days of**
- business discontinuance, dissolution or company wound up
  - transfer of business to any other person, if transferee already holds RC.
  - death of owner leaving no successor to carry on the business.
  - dealer ceased to its liability to pay tax under this Act.
  - change in place of business, if jurisdiction there upon has been changed.
- 12.5 The Commercial Tax Officer may cancel the registration certificate after giving the registered dealer a reasonable opportunity of being heard if he
- **failed to file three consecutive returns under the Act**
  - knowingly furnishes incomplete or incorrect particulars in return to evade tax.
  - **failed to pay tax payable for three consecutive tax periods.**
  - failed to account in his books tax and retail invoices issued by him
  - deliberately accept or furnish or cause to be furnished a false declaration
  - has been convicted of an offence under this Act or earlier law.
  - fails to intimate the discontinuance of business
  - issues to another dealer, tax or retail invoice, bill or cash voucher without sale, so as to defraud Government Revenue.
  - **has been found evading tax on account of physical stock variation with books.**
- 12.6 Registration Certificate may be suspended and input tax credit shall be denied till date of regularization of following defaults, wherein a dealer
- Failed to inform changes as above.
  - Failed to furnish return or pay tax
  - Failed to file declaration or intimate changes regarding the details of managers and bank accounts as per Section 65 or section 66.
  - Failed to produce books of accounts u/s 67 when required by Commissioner.
- 12.7 If a business place is changed by a dealer, which falls under a separate jurisdiction, then instead of making application for transfer of case, a dealer shall apply for fresh registration.
- 12.8 On cancellation of registration certificate as above, tax shall be payable by the dealer on the taxable goods held as stock on the date of such cancellation. Tax payable shall be higher of tax rate on fair market value of such goods or credit already claimed thereon.
- 12.9 Where a dealer fails to get himself registered under the Act, he shall have to pay the tax as applicable on his turnover as per normal provisions of the Act. However he cannot claim the credit available to him under the Act in respect of the turnover related to the period of default.**

### **13.0 MONTHLY & QUARTERLY RETURNS**

**13.1 Dealer opting for lump sum scheme shall file quarterly return in Form 202 along with information in Form 202A within 22 days of the end of the relevant quarter.** However where the above scheme becomes inapplicable in any month, such dealer shall file monthly return from the next month onwards.

**13.2 Every other dealer shall furnish monthly return in Form 201 within 22 days from the relevant month** along with information with reference to tax invoice of sales in Form 201A, tax invoice of purchase in Form 201B and inventory of goods in Form 201C.

**If taxable turnover in previous or current year exceeds Rs.100 Lakh, all above forms except 201C shall also be submitted by way of soft copy.**

**13.3** Every registered dealer who holds a certificate of exemption or certificate of deferment of tax under any of the incentive schemes, shall furnish so long he avails such benefit,

- monthly return (in Form 201 by soft copy if applicable)
- monthly return of incentives of sales tax exemption availed in Form 203 and deferment availed in Form 204 within 22 days of the relevant month.
- If such exemption or deferment gets completed, he shall file regular monthly returns.

**13.4** In all the above cases, return shall be filed to Commercial Tax officer having jurisdiction of chief place of business. Further if the dealer has no fixed or regular place of business but is registered by CTO-Ahmedabad, such dealer shall furnish such return to CTO-Ahmedabad

**13.5** A registered dealer is permitted to file a "Revised Return" before the expiry of one months next following the last date prescribed for furnishing the original return.

### **14.0 ANNUAL RETURNS**

**14.1 Annual return shall be furnished** by way of self assessment to CTO having jurisdiction over chief place of business **within three months from end of the relevant year** by a

- Registered Dealer opting for lump sum scheme, in Form 202 along with Form 101E.
- Registered Dealer claiming exemption or deferment in Form 205 and Form 203 or Form 204, as may be and Form 101E.
- Every other Registered Dealer, in Form 205 along with Form 101E.

**14.2 If total turnover exceeds Rs.100 Lakh, annual return shall be furnished on website accompanied by Annual Accounts (Trading & P/L a/c and Balance Sheet).**

### **15.0 OTHER PROVISIONS RELATING TO THE RETURNS**

**15.1** Where a dealer turns liable to pay tax u/s 3 or u/s 57(5) and has not applied for registration within time as per Rule 5, then he shall furnish first return from the date of liability of tax to the date of registration. Thereafter from the date of registration, regular returns to be furnished.

- 15.2 Where a business is discontinued or transferred or registration certificate cancelled in Sec. 27(5), then last return up to such date shall be furnished within 22 days from such date of discontinuance or transfer or cancellation, as the case may be.
- 15.3 Application for filing separate returns for different places of business can be made in Form 206 to Commissioner. However besides separate returns, a consolidated return for all places shall be filed to CTO having jurisdiction over chief place of business.
- 15.4 A return shall accompany a receipted challan in Form 207.
- 15.5 Commissioner will serve notice u/s 29(3) in Form 208 where total turnover of a dealer is likely to exceed the threshold limit. A return thereupon will have to be furnished but tax need not be paid till actual liability.
- 15.6 **A dealer can revise a return within one month from the last date of original return if he discovers any mistake, error, omission or incorrect statement therein.**
- 15.7 An application for yearly exemption from furnishing returns can be made to Commissioner in Form 209, who in turn shall grant exemption if he is satisfied that dealer is not likely to make any taxable sale or purchase during the year. Such exemption will be on a yearly basis and will have to be renewed every year. However where taxable sale or purchase is made in exemption period as aforesaid, information thereof within 30 days of such sale or purchase shall be given to relevant CTO & regular returns therefrom shall be furnished as per normal provisions.
- 16.0 TIME LIMIT AND MODE OF PAYMENT OF TAX – SECTION 30 – RULE 26**
- 16.1 A dealer who is required to furnish monthly return shall pay monthly tax within 22 days from the end of the relevant month vide Challan in Form No.207 and one copy thereof is to be submitted along with the monthly return.
- 16.2 A dealer who is required to furnish quarterly return shall pay quarterly tax within 22 days from the end of the relevant quarter vide Challan in Form No.207 and one copy thereof is to be submitted along with the quarterly return.
- 16.3 Where due to furnishing of revised return, tax is found to be payable, then such tax should be paid before the due date of furnishing the revised return and one copy of Challan in Form No. 207 should be submitted to the concerned CTO within three days of such payment.
- 16.4 In case of Government Department or office, tax shall be paid by the authorized person as soon as may be convenient and copy of challan shall be paid to concerned CTO within the due date for furnishing the return.
- 16.5 Any sum payable due to offence shall be payable within the time prescribed in the order determining such sum payable and a copy of challan to be furnished within 3 days of payment.
- 16.6 Any amount determined to be payable by Tribunal shall be paid vide Challan in Form No. 207 obtained from a Govt. Treasury or office of CTO.

16.7 **Effective date of payment of tax shall be the date of realization into the Government Treasury.**

16.8 Failure to pay tax within due date attracts simple interest @ 18% per annum for a period and on the amount of tax under default. Short payment if any shall first be adjusted towards interest portion.

#### **17.0 TAX INVOICE & RETAIL INVOICE – SECTION 60**

A Tax Invoice is the document a dealer must obtain when he purchases goods for business and on which he has paid tax. There is no prescribed format for tax invoice. A Tax invoice can be in any form to suit the business.

17.1 A registered dealer selling goods to another registered dealer shall issue “**Tax invoice**” in triplicate, except in case of –

- a sale of Schedule I goods or goods exempted u/s 5(2)
- a sale to a lump sum scheme dealer
- interstate sales or exports
- sales to a non registered dealer.

17.2 Where tax invoice is not to be issued, a retail invoice in duplicate shall be issued consequent to sale of any goods exceeding Rs.100 in any one transaction.

17.3 If invoices as aforesaid are not issued, a penalty up to 10% of amount of transaction/turnover may be levied by Commissioner.

17.4 Invoices shall bear the consecutive serial number, mention of whether they are original, duplicate or triplicate, sale date, name -address-TIN/CST of buyer and seller (only seller in case of retail invoice), HSN number, description of goods, their quantity, sale price, tax rate, tax amount and gross value. Invoices shall bear the signature of an authorized person.

17.5 The term “**Tax Invoice**” should be prominently mentioned in bold letters either at the top or at a prominent place on the invoice.

17.6 A duplicate tax invoice can be obtained if original is misplaced. However the indemnity bond and duplicate invoice shall bear the words –

“Copy in lieu of Lost Invoice” on its letter head and bearing the declaration – “I hereby declare that this is the duplicate of the Tax invoice bearing No.\_\_\_\_, dated\_\_\_\_, issued to M/s \_\_\_\_\_, bearing TIN No. \_\_\_\_\_.”

#### **18.0 VAT APPLICABILITY TO UNITS IN SEZ AND 100% EOU**

The units in SEZ and 100% EOUs shall continue to be exempted from the levy of VAT on exports effected in the state of Gujarat. The units are required to purchase goods by paying tax to their supplier and shall be eligible for full set off. The units will be required to submit the return and the refund shall be granted within three months of the date of filing of the return and production of the purchase details and tax invoices and tax payments for the same. The units would continued to be exempted from the levy of Central Sales Tax on its purchases from inter state supplier.

All the units in SEZ and 100% EOUs need to be certified by the Commissioner of Sales Tax for the purpose of exemption on their sales effected locally. For this purpose, the government is empowered to issue notification or special order granting exemption from payments of tax on sale of goods by such units.

## **19.0 CREDIT NOTE & DEBIT NOTE – SECTION 61**

- 19.1 Where a tax invoice has been provided and thereafter goods are returned or sale is cancelled or value of sale is altered whatsoever, seller shall provide a purchaser
- a Credit note if actual tax is less than invoiced tax.
  - a Debit note if actual tax exceeds invoiced tax.
- 19.2 Credit Note / debit note shall be issued only once in respect of the same transaction
- 19.3 **Time limit for issue of Credit note on sales transactions –**
- For sales return, time limit is six months.
  - Credit note to be issued, where consideration is previously agreed is one year.
  - Credit note for annual discount to be issued within three months from the end of the year.
- 19.4 Credit / debit note shall be printed, consecutively numbered, bear date of issue, name-address-TIN of buyer and seller, serial no. & date of relevant tax invoice, value of goods and amount of tax credit/debit to the purchaser, reason for issue of credit or debit note and signature of the authorized person.
- 19.5 Credit note / Debit note shall be issued in triplicate. Original to be delivered to purchaser, duplicate to be enclosed with return & triplicate to be retained by registered dealer /seller.

## **20.0 MAINTENANCE OF ACCOUNTS**

- 20.1 Every registered dealer shall keep and maintain true and fair accounts as below.
- Complete details of purchase, sale or disposal of each commodity, whether taxable or not
  - Details of goods produced, manufactured, bought, transferred, supplied or sold by him
  - Records of collection and payment of tax and tax credit claimed
  - Register of delivery challan, tax invoice, debit note, credit note
  - Monthly production register showing quantities of raw materials consumed and finished goods so produced.
  - Master record of name and address of buyers and sellers
  - Complete address of the premises wherein goods are kept/stored.
  - Records and particulars of goods, which are disposed of without any consideration.
- 20.2 Every commission agent or broker shall maintain –
- Particulars of authorization given by each principal
  - Particulars of goods purchased or goods received for sale from each principal separately.
  - Particulars of purchases or sales effected on behalf of each principal.
  - Details of accounts furnished to each principal.

- Monthly statement showing value of goods and tax transferred to him by principal for sale, sale price and tax on goods sold by him and amount of commission charged.
  - Tax paid by him on purchases/sales effected on behalf of each principal, challan no and date of remittance of tax.
- 20.3 Every dealer executing a Works Contract shall keep separate account showing–
- Name and address of persons for whom and on whose behalf he executes works contract.
  - Particulars of goods procured (purchase or otherwise) for execution of works contract.
  - Particulars of goods to be utilized in execution of each works contract
  - Details of payment received in respect of each works contract.
  - Details of labour, service and like charges that are deductible in calculating tax (however such amount shall be reasonable with regard to the nature of respective works contract)
- 20.4 All such books, registers and records shall be kept at the place/s mentioned in registration certificate. All the registers, accounts and documents shall be sequentially numbered. In case records are maintained in computer, hard copies shall be taken out on a monthly basis and maintained.
- 20.5 Any entry shall not be erased or overwritten. All incorrect entries shall be scored out under attestation by the authorised person and the correct entry be recorded. In case of computers, hard copies of correction or change of entry need to be maintained.
- 20.6 All such accounts, documents and registers shall be maintained for a period of 8 years from the end of the year to which they relate, and should be kept at place/s mentioned in the registration certificate.
- 20.7 Any other person being a carrier or clearing and forwarding agent having custody for delivery / dispatch of any goods on behalf of any dealer shall maintain true, complete and correct records in respect thereof and produce/caused to be produced details in relation thereto when required by Commercial Tax Officer.
- 20.8 Every dealer except under lump sum scheme shall maintain monthly stock Inventory for each commodity.
- 20.9 Every dealer shall maintain subsidiary accounts for each place of his business, godowns, warehouse, etc.
- 20.10 Every dealer dealing in Motor Spirit and HSD to maintain daily stock in Form 213
- 20.11 Dealer not engaged in manufacturing are exempted from monthly stock inventory of items – Drugs & medicines, hardware, Kirana, Cosmetics, Stationery, Foods grains such as cereal and pulses, utensils and ready made garments.

## 21.0 AUDIT OF ACCOUNTS

- 21.1 If total turnover of a dealer exceeds **Rs. 100 Lakh**, he shall get his accounts audited by a practicing Chartered Accountant or Cost Accountant or enrolled LP/STP and obtain audit report within **six months** from the end of that year. A true copy thereof shall be furnished to Commercial Tax Officer within thirty days of receipt of report.
- 21.2 The Certificate to be submitted to the Commercial Tax Officer, shall contain report as to –
- Correctness of tax credits claimed
  - Adoption of fair and reasonable method with respect to credit u/s 11(11) of the Act.
  - True and proper calculation and payment of tax
- 21.3 Penalty for failure of above compliance would attract penalty up to Rs.10,000 as may be determined by the Commercial Tax Officer.

## 22.0 PROVISIONAL ASSESSMENT U/S 32 & SELF-ASSESSMENT U/S 33.

- 22.1 A return or a revised return shall be provisionally assessed by Commissioner if,
- Tax payable after adjusting credit is nil,
  - The amount of tax credit is carried forward for subsequent return
  - The amount of refund is claimed therein
  - The dealer has claimed higher amount of tax credit than admissible.
- 22.2 Notice for Provisional Assessment for above shall be in Form 301. The time period to comply this notice shall be minimum 15 days from the date of service thereof unless dealer or his agent agrees otherwise in writing. The order for provisional assessment shall be in Form 304.
- 22.3 **If a return is not filed within the time limit, or where aforesaid notice is not complied with, Commissioner may proceed to provisionally assess the dealer on the basis of past returns or past records or on the basis of available information.**
- 22.4 Where Commissioner has reason to believe that tax has been evaded or excess tax credit has been claimed against admissible, then he may provisionally assess to the best of his judgment, the amount of tax payable by the dealer.
- 22.5 The audit assessment cannot be denied just because the provisional assessment has been done.
- 22.6 A registered dealer shall furnish **annual return** by way of self assessment and an intimation in the prescribed form shall be send by the Commissioner to such dealer.

## 23.0 AUDIT ASSESSMENT UNDER SECTION 34

- 23.1 Notice for **audit assessment** u/s 34(2) shall be in Form 302 and time period of response thereof shall be minimum 15 days from the date of service of notice, unless dealer or his agent agrees otherwise in writing.
- 23.2 **Following cases shall compulsorily be selected for audit assessment under Rule 31(3).**
- Annual Turnover exceeds Rs.10 Crores.
  - Annual Tax Payable exceeds Rs.5 Lakh.

- Total Turnover or Taxable Turnover or Tax Payable as compared to previous year falls to the extent of 10% or more.
- In case of seizure of books of accounts or other documents or inventory u/s 67(3)(c)(iii).
- Input tax credit as compared to previous year exceeds 10% or more.
- Input tax credit carried forward exceeds 20% or more of output tax payable in that year.
- SEZ unit, 100% EOU Unit, and a dealer granted certificate of exemption under sales tax
- Incentive scheme declared by Government from time to time.
- Cases selected randomly by the Commissioner as he may deem fit.

23.3 **No order under audit assessment shall be made after the expiry of four years after the end of the year in which tax is assessable.**

23.4 If Commissioner, on the basis of available information, is satisfied that a dealer required to pay tax has not got registered under the Act, he can make a best assessment judgment the tax payable by way of audit assessment and time limit for passing order shall be **eight years** after the end of the year in which the tax is assessable.

23.5 If Commissioner is of the opinion that transactions are accounted in a manner to pay less tax, then he shall calculate the tax liability with reference to fair market price of such or like goods.

#### **24.0 RE-ASSESSMENT OR TURNOVER ESCAPING ASSESSMENT UNDER SECTION 35**

24.1 Where a dealer has been assessed by way of self / provisional / audit assessment, and Commissioner has reason to believe that whole or any part of taxable turnover has escaped assessment or under assessed or assessed at lower rate, a notice in Form 303 may be issued for compliance not in any case before 15 days of the service of notice, except with the consent of the dealer in writing. Order thereof shall be in Form 304.

24.2 Time limit for passing of order of re-assessment is five years from the end of the year under subject, in respect of which assessment is to be made.

24.3 If Commissioner is of the opinion that transactions are accounted in a manner to pay less tax, then he shall calculate the tax liability with reference to fair market price of such or like goods.

#### **25.0 DEDUCTION OF TAX AT SOURCE – SECTION 59A, 59B, RULE 65**

25.1 If specified sale price in a Works Contract exceeds Rs. 100 Lakh, the payer shall deduct tax at source @ 2 % on the payments made and deposit the same with the Tax authorities.

25.2 A contractor, if he pays any amount to a sub contractor shall deduct tax @ 2 % on the payments made by him to a sub contractor.

25.3 Contractor / subcontractor shall furnish statement in Form 702 to the person paying the consideration to them and such person thereupon shall deduct and pay tax accordingly.

- 25.4 Any Dealer deducting the Tax shall at the time of payment of whole or any part of specific sale price, furnish to contractor / subcontractor, certificate in Form 703 specifying the amount so deducted and other particulars.
- 25.5 As per Section 59B(5), if a contractor or a sub contractor is not liable to pay tax under this Act, he may apply to Commercial Tax Officer for issuing a NIL deduction certificate. However no provision for lower deduction. A certificate for nil deduction shall be in Form 701.
- 25.6 **Payment of TDS shall be made to the Tax authorities within 22 days of deduction.** An amount of TDS shall form part of the specified sale price received by the contractor or a subcontractor.
- 25.7 Failure to deduct TDS will attract a penalty up to 25% of the subject amount. Failure to pay the same within time attracts simple interest @ 18% p.a. of the amount under default.
- 25.8 Any person deducting tax shall pay the same to Government and obtain treasury receipt thereof and furnish the copy of such receipt to contractor / sub-contractor within thirty days of receipt of the same.
- 25.9 A Deductor shall furnish to the Commercial Tax Officer a yearly declaration in Form 704, on or before 30 June of the close of relevant year, duly accompanied by a challan in Form 207 as a proof of payment of TDS.
- 25.10 The provisions of Rule 19 and 26 relating to payment of tax and furnishing of returns shall apply mutatis mutandis to this Rule.

## **26.0 PROVISIONS RELATING TO JURISDICTION & APPELLATE MATTERS**

- 26.1 A person has a right to question the jurisdiction on transfer of case within thirty days, where upon the opportunity shall be provided to the affected person. However the decision shall be final.
- 26.2 Power to transfer the case lies with the Commissioner.
- 26.3 The Tribunal will have power to award cost, which shall be recoverable as arrears in land revenue.
- 26.4 The Commissioner and Tribunal shall have all the powers of a Civil Court for the purpose of receiving the proof of facts on affidavit. They can also appoint any Officer to administer the oath to the dependent in relation to the affidavits made.
- 26.5 An appeal can be filed in Form 501 **within 60 days** from the date of communication of order appealed against. First appeal shall lie to Deputy Commissioner if order is made by Assistant Commissioner or Commercial Tax Officer or any Subordinate Officer. If order is made by Deputy Commissioner, appeal shall lie to Joint Commissioner and if order is made by the Joint Commissioner or Additional Commissioner or Commissioner, appeal shall lie to the Tribunal. A Second appeal shall also lie to Tribunal.
- 26.6 Commissioner can exercise revisional powers suo moto within 3 years or on application in Form 502 within 1 year from the date of any order passed by subordinate officers and shall pass his order within 5 years from the date of the order passed by subordinate officer.

## 27.0 PENALTY PROVISIONS

- 27.1 Fine up to Rs.20,000 subject to minimum Rs.10,000 and / or Imprisonment up to 6 months, subject to minimum of 1 month in the following cases –
- falsely representing himself as a registered dealer for any sale or purchase, if he is not so.
  - knowingly furnishes a false return wherein tax evaded in more than Rs.1,000.
  - **knowingly produces before Commercial Tax Officer a false tax invoice, bill, voucher, declaration, certificate, etc. so as to claim deduction or tax credit exceeding Rs.1,000.**
  - fails to pay tax due on the returns filed by him
  - knowingly keeps or produces false accounts
  - knowingly issues false certificate, invoice, declaration, voucher, any other document
  - willfully attempts to evade tax anyhow.
  - carries on a business as a dealer without being registered
  - fails without any sufficient cause to furnish any information u/s 26.
  - fails to surrender his registration certificate as provided in Section 27(9)
  - fails to furnish any returns without sufficient cause as provided in Sec.29
  - collects tax in contravention of Sec.31
  - contravenes the provisions of Sec.60 ( issue of tax and retail invoices)
  - fails to keep or maintain accounts and records u/s 62
  - fails to produce records during search or obstructs inspection thereon.
  - obstructs or prevents any officer performing his duty or function
  - being an owner of vehicle, prohibits its inspection during search or in transit.
  - issues to registered dealer a tax or retail invoice, bill or cash memo, so as to defraud Govt. revenue.
- 27.2 Besides aforesaid penalty, in case of continuing offence, a penalty of Rs.100 per day may be levied.
- 27.3 Besides the committer of offence as aforesaid, any person who aids or abets in aforesaid defaults shall also be punishable with punishment of imprisonment up to six months and / or fine above Rs. 20,000/- or with both.
- 27.4 Manager shall also be responsible for defaults mentioned above, unless he proves that default was without his knowledge or he exercised due diligence to avoid the same.
- 27.5 Penalty for breach of rules prescribed shall be fine which may extend up to Rs.1,000 and when the offence is a continuing one, with a fine up to Rs.50 per day of default.
- 27.6 Other significant penalties prescribed under the Act –

Particulars	Penalty
Tax credit claimed in excess or wrongly	Twice the credit such claimed
Not providing bank account information	Rs.10,000.
Not providing Specimen Signature	Amount taxable as per invoice
Collection of tax in contravention of Act	Tax so collected
Default of provisions of tax and retail invoice	10% of such turnover involved
Default in payment of tax	Rs.100 per day of default

Particulars	Penalty
Failure to file return	Rs.100 p.m. or part thereof – S.29(5)
Failure to furnish audit report	Maximum of Rs.10,000.
Failure to get registered	Higher of Tax assessed or Rs.5,000.
Re/Assessed tax exceeds returned tax by 25%	150% of the difference.
Failure to permit inspection or provide information by a custodian of goods	150% of duty evasion
Failure to produce books by a possessor thereof	150% of duty evasion

## 28.0 MISCELLANEOUS PROVISIONS

- 28.1 Fees shall be paid in Court Fees Stamps on every application as per section 96 as under –
- for a certified or duplicate copy of registration certificate.
  - for a certified copy of order of assessment or any other order passed
  - any document produced or filed in any proceeding under this Act
  - for a copy of order or document under this Act
  - for determination of disputed questions under section 80.

- 28.2 Power to challenge any notice or order or communication

Service of any notice or order or communication shall not be called into question if the same has already been acted upon – Section 93(2).

- 28.3 Provisions with regard to Refunds are as follows -

- Refund as per return to be adjusted against tax payable in subsequent tax period
- Provisional refund wherever applicable shall be claimed in Form 306.
- Provisional refund receivable after furnishing bank guarantee or security.
- If excess claim for refund found, interest to be charged @ 18% p.a.
- Interest @ 6% p.a. receivable on refund resulting from audit assessment /Court order

- 28.4 In case of a firm, the firm and each and every Partner thereof shall be jointly and severally liable to pay tax, interest or penalty under the Act, even if there is any contract to the contrary. **If a Partner retires from a firm, he shall intimate the Commercial Tax Officer within one month, otherwise he shall remain liable as aforesaid even after his retirement till the date of intimation. – Section 54.**

- 28.5 If there is a change in constitution of a firm or AOP, all Partners / Members before such change including the Partners / Members after such change, shall jointly and severally be liable to pay any tax, interest or penalty under the Act for the period before its reconstitution. – Section 58(2).

- 28.6 **Movement of goods within and outside the State–**

**Every movement of goods within the State or going outside the State shall be accompanied by Form 402 in triplicate.** In case of specified goods, such form can be obtained in book, which shall be issued by registering authority on a payment of Rs.25 in court fee stamps. **In case of other goods, the downloaded or pre-printed forms can be used. Triplicate shall be kept with consignor, original & duplicate to be given to transporter, who in turn shall furnish original at the Check Post to Check Post Officer and the duplicate given to the Consignee.**

## 28.7 Movement of goods entering into the State -

**Carrier of goods entering the State shall carry Form 403 in triplicate.** In case of goods specified by CTC by a public circular, Form 403 shall be duly authenticated from registering authority of the consignor. **In case of other than specified goods, the form shall be simply in triplicate. Original shall be deposited at the Check Post with the Check Post Officer and receipt thereto shall be obtained on duplicate and triplicate. During the movement during mid states, duplicate and triplicate shall be endorsed by each check post by the authorised officer.** Duplicate shall be forwarded to consignee and triplicate shall be retained by the carrier.

## 29.0 CENTRAL SALES TAX (CST)

The Government has indicated that it proposes to bring down the current rate of central sales tax @ 4 % down in a phased manner, although no time frame has been defined for the same. Subsequent to the phasing out of the CST, the government plans to introduce integrated Goods and Services Act.

## 30.0 LIMITATION CLAUSE

This note is not meant for circulation and is general in nature. In this note, we have attempted to summarise some of the significant aspects to be kept in mind by Clients to ensure compliance of VAT regulations as are proposed to be applicable in the State of Gujarat. Each State has its own VAT legislation and although many of the provisions would be similar, Clients should ensure to verify specific provisions as applicable to each State before taking any business decisions. Further, the VAT rules as considered are yet to be formally announced and made operative and all our views are based on the draft rules circulated. It would be pertinent to note that VAT is an evolving legislation and hence may undergo changes on a continuous basis by way of notifications, clarifications etc issued by the Department based on their practical experience in implementing the legislation.

It may be noted that nothing contained in this note should be regarded as our opinion and professional advice should be sought for applicability of legal provisions based on specific facts. **This note has been done based on the announcements / changes made or suggested till 29 March 2006.** Though reasonable efforts have been taken to avoid errors or omissions in this note we are not responsible for any liability arising to Clients directly or indirectly due to any statements or error contained in this Circular. It must be noted that the views expressed in the Circular are based on our understanding of the regulations as published the Government authorities may or may not agree or subscribe to such views.