



# Levy of Krishi Kalyan Cess

Tax Alert  
June 01, 2016

## INTRODUCTION

The Central Government has imposed Krishi Kalyan Cess ("KKC"), *vide* Section 161 of the Finance Act, 2016 with effect from June 01, 2016.

In the Budget Speech, the Finance Minister stated that the proceeds of the KKC will be credited to the Consolidated Fund of India, and the Central Government may, after due appropriation made by Parliament, utilize such sums of money *exclusively* for financing and promoting initiatives to improve agriculture or for any other purpose relating thereto.

## THE LEVY

The Central Government has notified KKC on all taxable services at the rate of 0.5% of value of taxable service *vide* sub section (2) of Section 161 of Finance Act, 2016. KKC is not a cess on Service tax, but is to be levied @ 0.5% on the value of taxable services. Effectively, the rate of Service tax (including cess) would be 15%. KKC shall not be leviable on services which are fully exempt from Service tax by way of notification issued under sub-section (1) or (2) of Section 93 of the Finance Act, 1994 ("Act") or services covered under the negative list as prescribed under section 66B of the Act.

## POINT OF TAXATION

### SERVICE PROVIDER

An explanation has been inserted to Rule 5 of Point of Taxation Rules, 2011 ("POT Rules"), *vide* Notification No. 10/2016 Service tax dated March 01, 2016, which clarifies that this Rule shall also apply in case of new levies. In terms of the said amendment, point of taxation may be as under:

Scenario	Date of Invoice	Date of Receipt of Payment	Applicability of KKC	Service Tax Rate	ELP Comments
I.	May 28, 2016	May 28, 2016	No	14.5%	Date of payment is prior to levy of KKC.
II.	June 11, 2016	May 28, 2016	No	14.5%	Date of payment is prior to the levy of KKC however the invoice is raised within 14 days from the date of such levy.
III.	June 18, 2016	May 28, 2016	Yes	15%	Payment is received prior to the levy of KKC however; invoice is raised after 14 days. Therefore, KKC would be applicable.
IV.	June 02, 2016	June 02, 2016	Yes	15%	Date of payment is after the levy of KKC. Therefore, KKC would be applicable
V.	May 28, 2016	June 15, 2016	Yes	15%	Date of payment is after the levy of KKC. Therefore, KKC would be applicable.

With respect to scenario V above, a position may be taken that the rate of Service tax which was prevalent at the time of providing the said service shall apply<sup>1</sup>. Accordingly, where a service has been provided prior to the introduction of KKC, such services shall not be liable for KKC and applicable rate of Service tax may be 14.5%. However, this position is required to be independently examined.

<sup>1</sup> Association of leasing & Financial Services Companies Vs. Union of India [2010 (20) STR 417 (SC)]

## SERVICE RECIPIENT

KKC is applicable on Service tax payment under reverse charge mechanism as per the Notification No. 30/2012 Service tax dated June 20, 2012. – [Notification No.27/2016 Service tax dated May 26, 2016]. KKC liability would be determined in accordance with Rule 7 of POT Rules, wherein the point of taxation is the date on which consideration is paid to the service provider. However, specific proviso has been inserted **vide** Notification No. 21/2016 dated March 30, 2016 which provides that where there is any change in Service tax liability of a service recipient, where service has been provided and invoice is issued before the date of such change and payment is received after such change, the point of taxation shall be the date of issuance of invoice and not the date of payment. Accordingly, we have tabulated below point of taxation with respect to KKC in case of payment under reverse charge mechanism:

Provision of Service	Issuance of Invoice	Date of Payment	Point of Taxation	Service Tax Rate
On or before May 31, 2016 [i.e. before the applicability of KKC]	On or after June 01, 2016	On or after June 01, 2016	Proviso inserted in Rule 7 would not be applicable as the invoice is issued after the date of new levy. Therefore, point of taxation would be the date of payment.	15%
	On or before May 31, 2016	On or after June 01, 2016	In terms of proviso to Rule 7 inserted by way of Notification No. 21/2016 – S.T. dated March 30, 2016, point of taxation would be the date of issuance of invoice.	14.5%
	On or after June 01, 2016	On or before May 31, 2016	Proviso inserted in Rule 7 would not be applicable as the payment has been received prior to the date of new levy. Therefore, point of taxation would be the date of payment.	14.5%
On or after June 01, 2016 [i.e. after the applicability of KKC]	On or before May 31, 2016	On or after June 01, 2016	Proviso inserted in Rule 7 would not be applicable as the service has been provided after the date of new levy. Therefore, point of taxation would be the date of payment.	15%
	On or before May 31, 2016	On or before May 31, 2016		14.5%
	On or after June 01, 2016	On or before May 31, 2016		14.5%

- Abatement as prescribed under the Notification No. 26/2012 Service tax dated June 20, 2012 would apply for KKC also. For example, in the case of Goods Transport Agency service, [Service Tax + Swachh Bharat Cess ("SB Cess") + KKC] % would be  $(14\% \text{ Service Tax} + 0.5\% \text{ SB Cess} + 0.5\% \text{ KKC}) \times 30\% = 4.5\% (4.35\% + 0.15\%)$  – [Notification No.28/2016 Service tax dated May 26, 2016].
- Rebate of KKC paid on input services which are used for export of service to any country other than Nepal and Bhutan is eligible - [Notification No.29/2016 Service tax dated May 26, 2016].
- Special Economic Zone can claim the refund of KKC paid on input service where ab-initio exemption is admissible but not claimed [Notification No. 30/2016-S. T. dated May 26, 2016]
- Sub-rule (7D) to Rule 6 has been inserted so as to provide that the persons (i.e. air travel agent, life insurance premium, purchase and sale of foreign currency and services by lottery distributors/selling agents) liable for paying the Service tax under Rule 6 of the Service Tax Rules, shall have the option (not changeable during the year) to pay KKC on proportionate basis viz. Service tax liability [calculated as per sub-rule (7), (7A), (7B) or (7C)]  $\times 0.5\%/14\%$ . [Notification No. 31/2016-Service Tax dated May 26, 2016]
- With respect to Services covered under Rule 2A, 2B or 2C of Service Tax (Determination of Value) Rules, 2006, the effective rate of Service Tax plus SB Cess plus KKC in case of original works and other than original works under the works contract service would be  $6\% [(14\% + 0.5\% + 0.5\%) \times 40\%]$  and  $10.5\% [(14\% + 0.5\% + 0.5\%) \times 70\%]$  respectively. Similar, would be the tax treatment for restaurant and outdoor catering services.
- Service provider is eligible to avail CENVAT credit of KKC. KKC can be utilized towards payment of KKC leviable on taxable services. Further, KKC cannot be paid utilizing credit of any other duty or tax. – [Notification No.28/2016 C.E. (N.T.) dated May 26, 2016]

## EFFECTIVE RATE OF SERVICE TAX

Particulars	April 01, 2015 to May 31, 2015 (%)	June 01, 2015 to November 14, 2015 (%)	November 15, 2015 to March 31, 2016 (%)	April 1, 2016 to May 31, 2016 (%)	June 01, 2016 onwards (%)
General rate of Service tax	12.36	14	14.50	14.50	15
Financial leasing including hire purchase	1.24	1.4	1.45	1.45	1.5
Transport of goods in containers by rail by any person other than Indian railways	3.71	4.2	4.35	5.8*	6
Transport of goods by rail (other than above entry)	3.71	4.2	4.35	4.35	4.5
Transport of passengers by rail	3.71	4.2	4.35	4.35	4.5
Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	8.65	9.8	10.15	10.15	10.5
Transport of passengers by air with or without accompanied belongings in economy class	4.94	5.6	5.8	5.8	6
Transport of passengers by air with or without accompanied belongings in other than economy class	7.42	8.4	8.7	8.7	9
Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	7.42	8.4	8.7	8.7	9
Services of goods transport agency in relation to transportation of goods other than used household goods	3.71	4.2	4.35	4.35	4.5
Services of goods transport agency in relation to transportation of used household goods	3.71	4.2	4.35	5.8*	6
Services provided by a foreman of chit fund in relation to chit	-	-	-	10.15**	10.5
Renting of vehicle	4.94	5.6	5.8	5.8	6
Transport of passengers by (a) a contract carriage other than a motorcab (b) a radio taxi	4.94	5.6	5.8	5.8	6
Transport of passengers by stage carriages	-	-	-	-	6**
Transport of goods in a vessel	3.71	4.2	4.35	4.35	4.5
Services by tour operator					
♦ In relation to a package tour	3.09	3.5	3.63	4.35*	4.5
♦ Solely of arranging or booking accommodation in relation to the tour	1.24	1.4	1.45	1.45	1.5
♦ Any other services	4.94	5.6	5.8	4.35*	4.5
Construction of a complex or building for sale	3.09	3.5	3.63	4.35*	4.5

♦ Residential unit having carpet area of less than 2000 sq.ft and the amount charged in less than Rs. 1 Crore	3.71	4.2	4.35	4.35	4.5
♦ Other than above					
Works contract service for original works	4.94	5.6	5.8	5.8	6
Any other works contracts	8.65	9.8	10.15	10.15	10.5
Restaurants	4.94	5.6	5.8	5.8	6
Outdoor catering services	7.42	8.4	8.7	8.7	9

\* Change in abatement rate

\*\* New entry inserted in the Notification No. 26/ 2012 Service tax dated June 20, 2012

## ELP COMMENTS

Imposition of KKC has increased the cost of services for the manufacturers as CENVAT credit of KKC is not available. Service provider is eligible to avail CENVAT credit of KKC. The industry must take steps to secure that the KKC becomes CENVATABLE to the manufacturers and KKC can be utilized against Excise duty liability.

In addition to the above, the point of taxation has also raised the issue of retrospective taxation of new levy.

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