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**Dear Professional Colleague,**

## **Krishi Kalyan Cess – FAQs**

Pursuing with an objective to finance and promote initiatives to improve agriculture and farmer welfare, the Government announced a new cess namely 'Krishi Kalyan Cess' ("KKC"), to be levied at 0.5% on the value of all taxable services w.e.f June 1, 2016. In this regard, a new Chapter VI is inserted in the Finance Bill, 2016, containing relevant provisions, which are applicable with enactment of the Finance Act, 2016.

Proceeds of KKC first be credited to Consolidated Fund of India and the CG may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of KKC for specified purposes

Hence, after levy of KKC, Service tax rate will increase from 14.5% to 15%, effective from June 1, 2016. In this regard, there are many queries, which require clarification. We have summarized these queries through Frequently Asked Questions (FAQs) enumerated below.

**In this context, the relevant Chapter of the Finance Act, 2016 is reproduced below:-**

### **"CHAPTER VI**

#### **'Krishi Kalyan Cess'**

*"161 (1) This Chapter shall come into force on the 1st day of June, 2016.*

*(2) There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Krishi Kalyan Cess, as service tax on all or any of the taxable services at the rate of 0.5 per cent. on the value of such services for the purposes of financing and promoting initiatives to improve agriculture or for any other purpose relating thereto.*

*(3) The Krishi Kalyan Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.*

*(4) The proceeds of the Krishi Kalyan Cess levied under sub-section (2) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of*

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*money of the Krishi Kalyan Cess for such purposes specified in sub-section (2), as it may consider necessary.*

*(5)The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Krishi Kalyan Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under the said Chapter or the rules made thereunder, as the case may be.”*

**On this issue, the Hon'ble FM in his speech for Budget 2016-17 has stated as under:**

*“I propose to impose a Cess, called the Krishi Kalyan Cess, @ 0.5% on all taxable services, proceeds of which would be exclusively used for financing initiatives relating to improvement of agriculture and welfare of farmers. The Cess will come into force with effect from 1st June 2016. Input Tax credit of this cess will be available for payment of this cess.”*

## **FAQs on Krishi Kalyan Cess for easy digest:**

### **Q1: What is KKC?**

**Answer:** It is a Cess called as Krishi Kalyan Cess, which shall be levied and collected in accordance with the provisions of Chapter VI of the Finance Act, 2016, as Service tax on all the taxable services at the rate of 0.5% on the value of such taxable services.

### **Q2: For what purpose(s) KKC is proposed to be levied?**

**Answer:** KKC is proposed to be levied for the purposes of financing and promoting initiatives to improve agriculture and farmers welfare or for any other purpose relating thereto.

### **Q3: What is the date of applicability of KKC?**

**Answer:** KKC would be levied at the rate of 0.5% on the value of all taxable services with effect from June 1, 2016 vide Section 161 of the Finance Act, 2016.

### **Q4: Whether KKC would be leviable on all taxable services?**

**Answer:** Yes, KKC would be levied on all taxable services. In this regard, the Central Government vide Notification No. 28/2016-ST dated May 26, 2016 has provided that KKC shall not be leviable on services which are exempt from Service tax by a Notification issued

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under Section 93(1) or Special Order issued under Section 93(2) of the Finance Act, 1994 (“the Finance Act”) or otherwise not leviable to Service tax under Section 66B thereof.

**Q5: Whether KKC would be leviable on an activity which is excluded from the definition of ‘Service’?**

**Answer:** No, such activity would not be leviable to KKC. Following activities are excluded from the definition of ‘Service’ under Section 65B(44) of the Finance Act:

- (a) An activity which constitutes merely,--
  - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
  - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or
  - (iii) a transaction in money or actionable claim;
- (b) A provision of service by an employee to the employer in the course of or in relation to his employment;
- (c) Fees taken in any Court or tribunal established under any law for the time being in force.

**Q6: Whether KKC would be leviable on services contained in the Negative List of services?**

**Answer:** No, KKC would not be leviable on services contained in the Negative List of services under Section 66D of the Finance Act.

**Q7: Whether KKC would be leviable on exempted services?**

**Answer:** KKC shall not be leviable on services which are exempt from Service tax by a Notification issued under Section 93(1) or Special Order issued under Section 93(2) of the Finance Act. The services exempted by a Notification issued under Section 93(1) of the Finance Act are as under:

- (a) Services exempted under the Mega Exemption Notification vide Notification No. 25/2012-ST dated June 20, 2012;
- (b) Services exempted, to specified percentage under the Abatement Notification No. 26/2012-ST dated June 20, 2012;

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**Q8: What will be the effective rate of Service tax w.e.f June 1, 2016 after applicability of KKC?**

**Answer:** The effective rate of Service tax shall be 15% with effect from June 1, 2016 i.e. Service tax @ 14%, Swachh Bharat Cess (“SBC”) @ 0.5% and KKC @ 0.5% on value of taxable services.

**Q9: How KKC will be calculated?**

**Answer:** KKC would be calculated in the same way as Service tax is calculated and would be levied on the gross value of taxable services and will be computed in accordance with Section 67 of the Finance Act and the Rules made there under.

**Q10: Whether KKC is a ‘Cess on tax’ and we need to calculate KKC @ 0.5% on the amount of Service tax like we were earlier doing for calculating Education Cess and SHE Cess?**

**Answer:** No, KKC is not a Cess on Service tax. KKC shall be levied @ 0.5% on the value of taxable services.

**Q11: Whether KKC would be required to be mentioned separately while raising the invoice?**

**Answer:** KKC would be levied, charged, collected and paid to the Central Government under separate accounting head/ code. It is required to charge KKC separately on the invoice as well as account for the same separately in the books of account and paid separately under separate accounting code which is notified by the Government vide Circular No. 194/4/2016-ST dated May 26, 2016. An illustration showing levy of Service tax and SBC & KKC is given below, assuming Rs. 5,000/- as value of a taxable service:

Particulars	Tax/ Cess (Rs.)
Value of taxable service: (a)	5,000/-
Add: Service tax @ 14% on (a)	700/-
Add: SB Cess @ 0.5% on (a)	25/-
Add: KKC @ 0.5% on (a)	25/-
<b>Total:</b>	<b>5,750/-</b>

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## Q12: What is the accounting code for KKC?

**Answer:** The Central Government vide Circular No. 194/4/2016-ST dated May 26, 2016 has notified separate accounting codes for payment of KKC in the following manner:

KKC (Minor Head)	Tax Collection	Other Receipts (Interest)	Deduct Refunds	Penalties
0044-00-507	00441509	00441510	00441511	00441512

## Q13: How KKC will be calculated for services where abatement is allowed?

**Answer:** The Central Government vide Notification No. 28/2016-ST dated May 26, 2016 has clarified that KKC will be levied on value of taxable services after availing the benefit of abatements by way of an exemption provided vide Abatement Notification No. 26/2012-ST dated June 20, 2012 i.e. KKC would be computed on abated value of taxable services.

## Q14: What will be the effective rate of Service tax in case of specified services under the Abatement Notification like GTA services (other than used household goods) after levy of KKC?

**Answer:** Service tax is required to be paid on 30% of value of taxable service, after abatement of 70% as provided under the said Abatement Notification. The effective rate of Service tax including SBC and KKC would be 4.50% (i.e. 30% of 15%).

## Q15: How KKC would be calculated on specified services covered under Service Tax (Determination of Value) Rules, 2006 [“the Service Tax Valuation Rules”]?

**Answer:** The Central Government vide Notification No. 28/2016-ST dated May 26, 2016 has clarified that the value of taxable services for the purpose of KKC shall be the value as determined in accordance with the Service Tax Valuation Rules.

## Q16: What will be the effective rate of Service tax in case of Works Contract service after levy of KKC?

**Answer:** As per Rule 2A of the Service Tax Valuation Rules, KKC needs to be applied along with Service tax and SBC on specified portion and the effective rate of Service tax in case of Works contract Service would be as under:

- In case of original works: 6% (15%\*40%); and
- Other than original works: 10.50% (15%\*70%)

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## Q17: What will be the effective rate of Service tax in case of AC Restaurant services and Outdoor catering services?

**Answer:** The KKC would be calculated in similar manner on AC Restaurant Services and Outdoor catering services as calculated for Works Contract service . As per Rule 2C of the Service Tax Valuation Rules, KKC needs to be applied along with Service tax and SBC on specified portion. Therefore, the effective rate of Service tax after KKC would be as under:

- In case of AC Restaurant services: 6% (15%\*40%); and
- In case of Outdoor catering services: 9% (15%\*60%)

## Q18: How KKC will be calculated for services under Reverse Charge Mechanism?

**Answer:** The Central Government vide Notification No. 27/2016-ST dated May 26, 2016, has clarified that the KKC would be leviable on specified services under the Reverse Charge Notification No. 30/2012-ST dated June 20, 2012 and all provision for chargeability of Service tax shall be applicable mutatis mutandis for the purposes of KKC also. In other words, KKC along with Service tax shall be paid on taxable services specified under Reverse Charge and Partial Reverse Charge Mechanism as well for Service Receiver to pay the Service tax, SBC and KKC.

## Q19: Whether KKC would be applicable on specified services covered under Rule 6 of the Service Tax Rules, 1994 [“the Service Tax Rules”] (i.e. Air Travel agent, Life insurance premium, Purchase and sale of foreign currency and Services by lottery distributors/selling agents)?

**Answer:** Sub-rule (7E) has been inserted under Rule 6 of the Service Tax Rules vide Notification No. 31/2016-ST dated May 26, 2016, which prescribes that if Service tax is payable at an alternative rate, KKC would also be computed in proportion to such alternative rate, in similar manner as it was prescribed at the time of introduction of SBC:

i.e Service Tax liability [calculated as per sub-rule (7), (7A), (7B) or (7C)] X 0.5%/14%

The option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.

For example in case of air travel agent services, the KKC would be payable as per the following rates:

Domestic bookings	0.025% [(0.7%*0.5%)/14%]
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International bookings	0.05% [(1.4%*0.5%)/14%]
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**Q20: What will be the point of taxation (“POT”) for determination of KKC taxability for a service provider?**

**Answer:** POT in case of new levy on services shall be governed by Rule 5 of Point of Taxation Rules, 2011 (“the POTR”). As per Rule 5 read with explanations inserted vide Notification No. 10/2016-ST dated March 1, 2016, only in following two situations (given below), the KKC shall not be payable and in all other cases, KKC is to be paid:

- Invoice issued and payment received against such invoice before such service becomes taxable i.e prior to June 1, 2016
- Payment received before the service becomes taxable i.e prior to June 1, 2016 and invoice has been issued within 14 days of the date when the service is taxed for the first time

**Q21: Whether KKC would be leviable in following cases in terms of Rule 5 of the POTR?**

**Answer:**

S. No.	Date of applicability of KKC	Date of Invoice	Date of Payment Received	Applicability of KKC
1.	1 <sup>st</sup> June, 2016	14 <sup>th</sup> June, 2016	30 <sup>th</sup> May, 2016	No
2.	1 <sup>st</sup> June, 2016	18 <sup>th</sup> June, 2016	30 <sup>th</sup> May, 2016	Yes
3.	1 <sup>st</sup> June, 2016	30 <sup>th</sup> May, 2016	30 <sup>th</sup> May, 2016	No
4.	1 <sup>st</sup> June, 2016	3 <sup>rd</sup> June, 2016	3 <sup>rd</sup> June, 2016	Yes
5.	1 <sup>st</sup> June, 2016	30 <sup>th</sup> May, 2016	3 <sup>rd</sup> June, 2016	Yes

**Q22: Whether KKC is payable with respect to services provided before June 1, 2016?**

**Answer:** As per Rule 5 of the POTR, KKC is applicable with respect to all taxable services other than services for which the payment is received before June 1, 2016 and the invoice is issued before June 1, 2016 or within 14 days from June 1, 2016. There is debate that in all

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cases, other than the two cases specified in Rule 5, KKC will be applicable even if the service is provided before June 1, 2016.

But there is legal jurisprudence that if the levy was not applicable at the time of provision of the service, then merely because the payment is made/ received afterwards, the same cannot be made applicable. This view is duly supported by the Hon'ble Supreme Court in the case of ***All India Federation of Tax Practitioners Vs. Union of India [2007-TIOL-149-SC-ST]*** in which it was held that "a tax on a thing or goods can only be with reference to a taxable event" and the same contention was upheld again in the case of ***Association of Leasing & Financial Service Companies Vs. Union of India [2010 (20) STR 417 (SC)]***, where in the Hon'ble Supreme Court observed that the **taxable event under the Service tax law is the rendition of service.**

**Therefore, KKC should not be leviable on a service rendered prior to June 1, 2016 when KKC was not applicable at the time of its rendition, merely because its payment is received on or after the date of levy or the invoice is not issued within 14 days of the date of levy.**

Hence, a clarification is required from the Government before the stated issue open up unwanted litigation for no benefit to the Department and Trade both.

**Q23: What will be the POT for determination of KKC liability in case of service receiver under Reverse Charge Mechanism?**

**Answer:** POT in case of Reverse Charge is determined in accordance with Rule 7 of the POTR. In terms of Rule 7 of the POTR, point of taxation under reverse charge (except associated enterprises located outside India), shall be as under:

- Payment made within 3 months – Date of payment;
- Payment not made within 3 months - Date immediately following the end of 3 months

In case of associated enterprises, where the person providing the service is located outside India, POT shall be earlier of the following:

- Date of debit in the books of account of service receiver;
- Date of Payment

Recently a proviso has been inserted in the said rule vide Notification No. 21/2016-ST dated March 30, 2016, which provides that where there is change in the liability or extent of liability of Service tax to be paid under Reverse Charge, the POT will be determined as under:

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- Service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the POT shall be → the **date of issuance of invoice**.

**Q24: When there can be change in the liability or extent of liability of Service tax to be paid by service receiver under Reverse Charge?**

**Answer:** There can be change in the liability or extent of liability of Service tax to be paid by service receiver under Reverse Charge because of changes in abatement rate, composition rate, change in rate of Service tax, applicability of any new levy like KKC w.e.f June 1, 2016 etc.

**Q25: Whether KKC would be leviable when GTA service has been provided on May 20, 2016 and invoice issued on May 25, 2016 but the payment was made on June 4, 2016?**

**Answer:** In case of GTA services, the liability to pay Service tax is on the service recipient (Consignor/ Consignee liable to pay freight). Hence, POT would be governed by Rule 7 of the POTR (as amended) in the following manner:

Date of service	Date of invoice (DOI)	Date of payment (DOP)	Applicability of KKC
20.05.2016	<u>25.05.2016</u>	04.06.2016	POT shall be DOI as per amended Rule 7 of the POTR: KKC not applicable

**Q26: How the liability on service receiver in case of new levy has changed after insertion of proviso in Rule 7 of the POTR?**

**Answer:** In order to understand implication of proviso inserted in Rule 7 of the POTR, let us take the same example i.e. GTA service has been provided on May 20, 2016 and invoice issued on May 25, 2016 but the payment was made on June 4, 2016. Now, a comparative analysis of liability of pay KKC (w.e.f. June 1, 2016) under Erstwhile Rule 7 and amended Rule 7 is given as under:

### **Analyses of Erstwhile Rule 7 Vs. Amended Rule 7:**

	Date of service	Date of invoice (DOI)	Date of payment (DOP)	Applicability of KKC
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As erstwhile Rule 7	per 20.05.2016	25.05.2016	<u>04.06.2016</u>	POT would have been DOP: KKC applicable
As amended Rule 7	per 20.05.2016	<u>25.05.2016</u>	04.06.2016	POT shall be DOI: KKC not applicable

**Q27: Please explain how liability to pay KKC would be determined for both service provider (under Forward Charge) and service receiver (under Reverse Charge), when services have been provided on May 20, 2016 and invoice issued on May 25, 2016 but the payment was made on June 4, 2016?**

**Answer:** Whereas POT for new levy in case of service provider is governed by Rule 5 of the POTR, POT in case of service receiver liable to pay Service tax under Reverse Charge is governed by Rule 7 of the POTR. A comparative analysis of liability to pay KKC in the hands of service provider (under Forward Charge) and service receiver (under Reverse Charge) is given as under:

### Service Provider Vs. Service Receiver: Anomaly

	Date of service	Date of invoice (DOI)	Date of payment (DOP)	Applicable Rule	Applicability of KKC
Liability of SP under forward charge	20.05.2016	25.05.2016	<u>04.06.2016</u>	Rule 5(a) of the POTR	KKC applicable
Liability of SR under reverse charge	20.05.2016	<u>25.05.2016</u>	04.06.2016	Rule 7 of the POTR	POT shall be DOI: KKC not applicable

Thus, under similar situation, on one hand KKC would be payable in case liability to pay Service tax is on service provider but KKC would not be payable when liability to pay Service

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tax is on the service recipient under reverse charge. This is again creating anomaly and confusion among the Trade.

## **Q28: Whether Cenvat credit of the KKC is available?**

**Answer:** The Central Government vide Notification No. 28/2016-CE (N.T.) dated May 26, 2016, has amended Rule 3 of the Credit Rules to provide that:

- A provider of output service shall be allowed to take Cenvat credit of the KKC on taxable services leviable under Section 161 of the Act;
- Cenvat credit of any duty specified in Rule 3(1) of the Cenvat Credit Rules, 2004 (“**the Credit Rules**”) shall not be utilised for payment of KKC;
- Cenvat credit in respect of KKC shall be utilised only towards payment of KKC.

## **Q29: Can the Cenvat credit of Service tax be used for payment of KKC?**

**Answer:** No, Cenvat credit of Service tax cannot be used for payment of KKC. Only Cenvat credit of KKC paid on input services shall be allowed to be used for payment of the KKC on taxable services provided by a service provider.

## **Q30: Whether the Cenvat credit of KKC is available to a Manufacturer?**

**Answer:** No, the Cenvat credit of KKC is not available to manufacturer. In terms of amended Rule 3 of the Credit Rules, Cenvat credit of KKC paid on input services shall be allowed to be used for payment of the KKC on taxable services provided by a service provider.

## **Q31: How KKC will impact “Make in India” and “Start up India” campaign of the Government?**

**Answer:** The KKC will have adverse impact on the “Make in India” and “Start up India” campaign of the Government as the manufacturers paying KKC on procurement of their input services would not be in a position to avail Cenvat credit of the same and thus would form part of their cost, leading to increase in prices to that extent. Further, there would be separate accounts, codes, records & computation, followed by corresponding peculiar Cenvat provisions, required to be maintained for KKC, going against the ease of doing business. Thus, imposition of KKC is likely to hamper “Make in India” and “Start-up India” campaign of the Modi Government.

## **Q32: Does a person providing both exempted & taxable services and reversing Cenvat credit @ 7% of value of exempted service under Rule 6 of the Credit Rules, needs to reverse the KKC also?**

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**Answer:** Yes, since the KKC is included in the Cenvat credit chain unlike SBC, therefore, Cenvat credit have to be reversed in the similar manner as was earlier reversed in case of Education Cess and Secondary Higher Education Cess.

**Q33: Can Input Service Distributor (“ISD”) distribute the Cenvat credit of KKC as per Rule 7 of the Credit Rules?**

**Answer:** Yes, Cenvat credit of KKC may also allowed to be distributed to Units providing taxable output services as per Rule 7 of the Credit Rules, but an appropriate amendment is required in this regard in Rule 7 of the Credit Rules.

**Q34: In which column, KKC and the Cenvat credit details of KKC to be shown in the Service Tax return?**

**Answer:** Although the Government has prescribed the separate accounting code for KKC, but Service Tax return i.e. Form ST-3 is not amended as yet, it will be clarified to show availment and utilization of KKC separately in ST-3 in future.

**Q35: Would rebate be available of KKC paid on input services used for provision of export of services?**

**Answer:** The Central Government vide Notification No. 29/2016-ST dated May 26, 2016, has amended Notification No. 39/2012-ST dated June 20, 2012 (Rebate of the duty paid on excisable inputs or Service tax and cess paid on all input services used in providing service exported) to insert KKC under the definition of “service tax and cess”, to enable the provider of services to claim rebate of KKC paid on all the input services used in providing services exported in terms of Rule 6A of the Service Tax Rules.

**Q36: Would refund be available of KKC paid on specified services used in Special Economic Zone (“SEZ”)?**

**Answer:** Yes, the Notification No. 30/2016-ST dated May 26, 2016 has amended the Notification No. 12/2013-ST dated July 1, 2013 (Exemption on services received by units located in a SEZ or Developer of SEZ and used for their authorised operation), which allows refund of the KKC paid on the specified services to SEZ Unit or developer, on which ab-initio exemption is admissible but not claimed and the refund amount would be calculated as under:

Service tax distributed to SEZ Unit/ Developer as per Rule 7 of the Credit Rules\*(0.5+0.5)

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*Hope the information will assist you in your Professional endeavors. In case of any query/ information, please do not hesitate to write back to us.*

Thanks & Best Regards

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