

Bimal Jain

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Dear Professional Colleague,

No KKC if invoice is raised and services are rendered on or before May 31, 2016

Pursuing with an objective to finance and promote initiatives to improve agriculture and farmer welfare, the Government announced a new cess namely 'KrishiKalyan Cess' ("KKC"), to be levied at 0.5% on the value of all taxable services w.e.f June 1, 2016. Hence, after levy of KKC, Service tax rate has increased from 14.5% to 15%, effective from June 1, 2016.

Further, Explanation 1 & 2 to Rule 5 of Point of Taxation Rules, 2011 ("the POTR"), inserted w.e.f March 1, 2016, provides that point of taxation in case of new levy on services shall be governed by Rule 5 of the POTR and new levy or tax shall be payable on all cases other than the following two specific situations specified in Rule 5, where new levy shall **NOT** be payable:

1. Invoice issued and payment received against such invoice before such service becomes taxable;
2. Payment received before the service becomes taxable and invoice has been issued within 14 days of the date when the service is taxed for the first time

Thus, as per the Rule 5 read with explanations, only in two situations (mentioned above), the KKC shall not be payable and in all others, KKC is to be paid.

With the Service tax rate (including Swachh Bharat Cess and KKC) of 15% becoming effective from June 1, 2016, a turmoil was being faced by the service providers in respect of on-going transactions for which completion of services have taken place before June 1, 2016 with or without raising of corresponding invoices, but payment for the same is not received till June 1, 2016.

The explanations added to Rule 5 of the POTR raised a fundamental question as to whether a service which has already been provided prior to introduction of new levy could be taxed on receiving payment subsequently, when in terms of Section 66B of the Finance Act, 1994, the chargeable event being rendering of services will always be the prime factor for determining leviability of any tax or cesses.

Now, the Central Government vide ***Notification No. 35/2016-ST dated June 23, 2016***, has **exempted taxable services with respect to which the invoice for the service has been issued on or before May 31, 2016, from the whole of KKC leviable thereon, subject to condition that the provision of service has been completed on or before May 31, 2016.**

Thus, no KKC shall be payable in cases where invoice is raised and provision of service has been completed on or before May 31, 2016.

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Time of supply under GST:

The Central Government has finally brought clarification for levy of KKC when invoice is raised and provision of service has been completed on or before May 31, 2016. But under the Goods and Services Tax (“GST”), taxable event would be ‘supply’ of goods and/ or services as compared to the prevailing concepts of manufacturing of goods/ provision of services/ sale of goods.

As per the Draft Model GST Law, CGST/SGST and IGST on the services shall be payable in the hands of supplier, at the earliest of the following:

S. No.	Situation	Time of supply	
1.	Invoice issued within prescribed period	Date of issue of invoice or Date of Receipt of payment	Whichever is earlier
2.	Invoice not issued within prescribed period	Date of completion of the provision of service or Date of Receipt of payment	Whichever is earlier
3.	Not falling under (1) or (2) above	Date on which the recipient shows the receipt of services in his BOA	

Hence, it would be interesting to see as to how such scenarios of new levy would be dealt under the GST regime.

To view the complete Notification, please click on the link below:

<http://www.a2ztaxcorp.com/wp-content/uploads/2016/06/KKC-Notification-23062016.pdf>

To view our earlier article on KKC titled “Krishi Kalyan Cess – Applicability & Open Issues”, discussing applicability of KKC in detail with multiple practical example(s), please click on the link below:

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<http://www.a2ztaxcorp.com/krishi-kalyan-cess-applicability-open-issues/>

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

Thanks & Best Regards

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