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GLOBAL INDIRECT TAX SERVICES

India

Country Fact File (VAT)

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TAX

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Contents

Updated 31 March 2010

Scope and Rates

What supplies are liable to VAT?

India has a federal structure with both federal and state specific indirect tax levies on sale of goods. India introduced (in the period 2003–2006) VAT to replace the erstwhile sales tax regime on sale transactions within the state. The last state to switch over to the VAT regime with effect from 1 January 2008 is Uttar Pradesh. In tandem with the above state VAT regime exists another regime namely central sales tax (CST), which is levied on sale of goods occasioning movement across states. Sale by one taxable person to another taxable person across states is charged to CST at the rate of 2 percent, subject to the purchasing taxable person issuing statutory declarations and other specified conditions. (Prior to 1 June 2008, CST was applicable at the rate of 3 percent.) Alternatively, CST is charged at the VAT rate applicable in the originating state. The current tax regime does not envisage recovery of CST incurred on procurement of goods and hence results in a cost.

VAT is levied on the sale of goods made by a taxable person in the course of a business carried on by the said person. Sale has been defined as transfer of property in goods for valuable consideration. Mere supply of goods may not be charged to VAT. Import of goods into India is not subject to VAT. Rendition of services is also not subject to VAT, as services in India at a federal level are governed by independent legislation that is, service tax.

Sale includes transfer of property in goods involved in execution of a works contract, transfer of the right to use goods, and delivery of goods on hire purchase. A works contract generally means a contract which involves use of labor and transfer of material in the course of execution of the contract.

A taxable person is liable for VAT after turnover of his/her business reaches the threshold prescribed by the relevant state VAT legislation.

What is the standard rate of VAT?

VAT is generally charged at standard rates, namely 4 percent or 12.5 percent, depending upon the nature of goods. The categories of goods eligible for exemption and subject to VAT at 4 percent, 12.5 percent, or higher rates vary across states. The said VAT rate of 4 percent and 12.5 percent has been altered by a few Indian states:

- Five percent and 15 percent, respectively, with effect from 1 April 2008 in Gujarat.
- Additional tax of 0.5 percent and 1 percent, respectively, in Uttar Pradesh with effect from 1 June 2009 thereby, increasing the effective VAT rate to 4.5 percent and 13.5 percent, respectively.

Till March 2010, around 17 states have increased the basic slab rates of 4 percent (up to 5 percent) and 12.5 percent (up to 15 percent).

The definitions and scope of such categories of goods also vary across states.

Certain categories of goods that are by and large common across states are illustrated herein under.

VAT is charged at 4 percent on several categories of goods, including:

- Agricultural implements not operated manually or driven by animals
- Communication equipment like PBX or EPABX, etc.
- Intangible goods like patent, copyright, etc.
- Capital goods
- Chemical fertilizers
- Cotton
- Drugs and medicines

- Iron and Steel
- IT products (including hardware, software, telecommunication equipment, etc.)
- Industrial inputs (mainly certain basic chemicals and minerals)
- Processed meat, fish, vegetables, and fruits
- Sports goods
- Tractors
- Transformers and transmission towers.

Most other categories of taxable goods are subject to VAT at 12.5 percent.

Are there any reduced rates, zero rates, or exemptions?

Yes. There is a reduced rate of 1 percent for certain categories of goods, including:

- Gold
- Silver
- Precious stones such as diamonds, etc.
- Articles or ornaments made of the above.

The export of goods is zero rated.

There is an extensive list of exempt categories of goods, including:

- Agricultural implements operated manually or driven by animals
- Aids and implements used by handicapped persons
- Books, periodicals, and journals
- Electric energy
- Fresh milk, pasteurized milk, butter milk, and curd
- Fresh plants, samplings, and fresh flowers
- Fresh vegetables and fruits
- Meat, fish, prawn, and other aquatic products when not cured, or frozen, eggs, and livestock
- Paddy, rice, wheat, pulses, salt, and flour
- Sugar
- Textile.

Note: It is not possible to recover VAT incurred on inputs used for manufacture of exempted goods.

Certain categories of goods are charged to higher rates of 20 percent or above, including:

- Petroleum products such as diesel, petrol, lubricants, aviation turbine fuel, etc.
- Natural and other gasses used as fuel
- Liquor and beer.

Note: Except for resale, it is generally not possible to recover VAT paid on procurement of such goods.

Registration

Who is required to register for Indian VAT?

If a taxable person effects taxable sales within India in excess of the prescribed VAT registration threshold, the said person will be required to register and account for VAT in the state from where such sales are made. The registration threshold varies across states and range between approximately USD 25 to USD 25,000. However, in most states, if a person brings goods from outside the state for sale in the state, the threshold limit in such cases is zero. Certain states provide for a voluntary registration even if a taxable person is below the registration threshold.

However, no registration threshold has been prescribed for a taxable person effecting inter state sales. Accordingly, a taxable person is liable to register and account for VAT/CST after effecting first interstate sale transaction.

Are there penalties for not registering or late registration?

Yes. There are penalties for failing to register for VAT promptly which vary across states. The penalties are calculated based on the net tax due for the period commencing when the business should have applied for registration and ending on the date of application. The penalties can be reduced/waived on establishing a reasonable cause for late registration.

Are there any simplifications that could avoid the need for an overseas company to register for VAT?

No. An overseas company effecting sale of taxable goods within India in excess of the relevant VAT registration threshold will be required to register and account for VAT. An overseas company will need a place of business in the relevant state to register for VAT. However, depending upon the state specific provisions/practice, the company may authorize someone in India/engage an agent to register and discharge the tax liability on its behalf.

VAT Grouping

Is VAT grouping possible?

No. There is no provision for VAT grouping. In fact, a taxable person is liable to register and account for VAT separately in each state from wherever he/she makes taxable sales in excess of VAT registration threshold. However, a taxable person is entitled to apply for single registration and file consolidated return for various branches within a particular state of operation.

Can an overseas company be included in an Indian VAT group?

No.

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Returns

How frequently are VAT returns submitted?

A registered taxable person is liable to file VAT returns in the respective states. The frequency of VAT returns filing varies across states. Further, depending on the category of the taxable person/turnover or tax liability incurred during the preceding year or expected during the current year, the VAT return filing could be monthly, quarterly, or half-yearly.

Failure to furnish timely VAT returns and settle outstanding VAT payments may result in penalty and interest. The provisions for the imposition of penalties and interest vary across states and depend upon the duration of delay and the amount of net tax involved. The amount of penalty can be waived/reduced on demonstration of reasonable cause for delay. However, charging of interest in case of delay in deposit of VAT due is mandatory.

Are there any other returns that need to be submitted?

Yes, VAT legislations of most of the states require filing of an annual return within six to nine months from the completion of the relevant financial year.

VAT Recovery

Can I recover Indian VAT if I am not registered for VAT in India?

No. Only registered taxable persons can recover VAT on goods procured from within the state where he/she is registered.

Does your country apply reciprocity rules for reclaims submitted by non-established businesses?

No. Refunds are available only to registered taxable persons within the state.

Are there any items that you cannot recover VAT on?

Yes. Generally, VAT can be recovered on goods procured from within the state for resale, or use in manufacture or processing or packing of goods for sale. In addition, VAT can also be recovered on capital goods such as plant and machinery used in manufacture of goods.

Exempt supplies: The VAT paid on supplies which relate to exempt sales is not recoverable. Where VAT relates to both taxable and exempt sales, the taxpayer can recover proportionate VAT subject to appropriate apportionment.

Negative list: Various state VAT legislations provide for a negative list of items on which VAT cannot be recovered (except on resale). The lists of such negative items vary across states and include:

- Motor vehicles
- Petroleum products or natural gas used as fuel
- Air conditioners installed in office
- Office equipment and consumables.

International Supplies of Goods and Services

How are exports of goods and services from India treated?

Export of goods out of India is zero rated. A taxable person can claim refund of VAT paid on inputs used in export of goods, subject to the prescribed requirements. Alternatively, subject to conditions, a taxable person can also purchase goods for export without payment of VAT.

Similarly, export of services from India is exempt from service tax, (a separate federal levy on provision of notified services), subject to conditions.

How are goods dealt with on importation?

No VAT is payable on importation of goods into India. However, customs duty may be payable on such imports.

How are services which are brought into India from abroad treated for VAT purposes?

No VAT is payable on importation of services into India. However, service tax may apply under the reverse charge mechanism.

Invoices

What do I have to show on a tax invoice?

A tax invoice is issued when sales are made to another registered taxable person. While the precise format/ content requirements differ across states, in this regard a tax invoice should broadly contain the following information/details:

- Name, address, and registration number (VAT number) of the seller
- The word TAX INVOICE mentioned at a prominent place
- Name, address, and VAT number of the buyer
- Date of the invoice
- A pre-printed serialized number
- The description, quantity, volume, unit price, and VAT rate of each item
- Total gross amount payable, excluding VAT
- Amount and nature of any discount offered
- The total amount of VAT payable
- Signature of the selling dealer or his/her authorized representative
- Where exempt or zero-rated supplies are included in the invoice, each such item should be distinguished separately.

Apart from the above, certain states have prescribed certain specific requirements such as name of the printer, time of sale, statutory declaration regarding nature of the transaction/seller, etc.

In case taxable sales are made to a non-registered person or taxable person outside the state, generally a retail invoice is issued. The retail invoice should also contain the above information/details except that the words retail invoice should be indicated prominently instead of tax invoice.

Can I issue invoices electronically?

The invoices can be generated electronically. However, duly signed original invoice in paper form has to be issued by the taxable person to enable the purchasing taxable person to avail input VAT.

Is it possible to operate self-billing?

No.

Record Keeping Requirements

How long the records and invoices must be retained in India?

The requirement of record keeping varies across states and ranges between five to seven years from the completion of the relevant financial year.

Can the invoices be stored abroad?

The seller copy of the invoices has to be stored at the principal place of business in the relevant state of operation, in order to provide an access to state VAT authorities at all times during usual business hours. Hence, the invoices cannot be stored abroad.

Transfer of Business

Is there a relief from VAT for the sale of a business as a going concern?

Yes, if a business is sold as a going concern, VAT may not apply, subject to certain conditions. For example, the business should be transferred as a whole and the purchaser should be able to carry on the business by stepping into the shoes of the seller. Where part of a business is transferred, then that part of the business should have independent and separate operations.

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Options to Tax

Are there any options to tax transactions?

The VAT legislation in India does not provide for an option to tax transactions.

Head Office and Branch Transactions

How are transactions between head office and branch treated?

The transactions involving supply of goods between head office and a branch or vice versa are not subject to VAT, subject to conditions and furnishing of prescribed statutory declarations.

Bad Debt

Am I able to claim relief for bad debts?

No. The VAT legislations generally in India do not provide for a relief for bad debts.

Anti-Avoidance

Is there a general anti-avoidance provision under Indian VAT law?

Most VAT legislation in India do not specifically provide for a general anti-avoidance provision. However the VAT authorities in India may challenge the genuineness of the transactions in order to ensure transactions are not undervalued or underreported in order to evade payment of VAT.

Various courts in India have examined this issue on several occasions. In view of the recent jurisprudence, the VAT authorities are required to restrict themselves to the relevant agreements/documentation only and produce legal evidence, in order to allege the transaction as an artificial device aimed at avoiding tax. The VAT authorities would not be permitted to allege the transaction as sham or a device intended to avoid tax solely on the basis of suspicion or hypothetical assessment of the underlying motive of the parties. Thus, the application of anti-avoidance principles has to be examined on the basis of specific facts of each case.

Penalty Regime

What is the Indian penalty and interest regime like?

VAT legislations in India provide for penalties for non-compliance.

The penalties are generally computed on the basis of nature and duration of non-compliance and amount of tax involved. However, voluntary disclosure of non-compliance generally mitigates the penalty.

The delay in deposit of VAT attracts mandatory interest which varies across states and ranges from 15 percent to 24 percent per year.

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