

Compliance Report on Business Reform Action Plan 2016: Bihar

**Recommendation No.-209-Introduce a system for advance tax ruling for State level taxes on the lines of Income Tax Act**

(Ref: [www.biharcommercialtax.gov.in](http://www.biharcommercialtax.gov.in))



# Commercial Taxes Department

GOVERNMENT OF BIHAR



Shri Bijendra Prasad  
Yadav  
Hon'ble Minister



Shri Nitish Kumar  
Hon'ble Chief Minister

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- Central Sales Tax
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# Chapter-I Preliminary

**MINISTRY OF LAW AND JUSTICE**  
(Legislative Department)  
New Delhi, the 23rd June, 2005/Asadha 2, 1927 (Saka)

The following Act of Parliament received the assent of the President on the 23rd June, 2005, and is hereby published for general information:

## **THE BIHAR VALUE ADDED TAX ACT, 2005**

No. 27 of 2005

[23rd June, 2005]

An Act to consolidate and amend the law relating to levy of tax on sales or purchases of goods in the State of Bihar and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:

### **1. Short Title, Extent and Commencement**

- (1) This Act may be called the Bihar Value Added Tax Act, 2005.
- (2) It shall extend to the whole of the State of Bihar.
- (3) It shall be deemed to have come into force on the 1st day of April, 2005.

### **2. Definitions**

In this Act, unless the context otherwise requires -

- (a) **Assessing Authority** means any of the authorities referred to in section 10 who is directed under sub-section (2) of that section to exercise or perform all or any of the powers and functions conferred on an Assessing Authority under this Act.
- (b) **Assistant Commercial Taxes Officer** means an Assistant Commercial Taxes Officer appointed under sub-section (1) of section 10.
- (c) **Assistant Commissioner of Commercial Taxes** means an Assistant Commissioner of Commercial Taxes and Additional Assistant Commissioner of Commercial Taxes appointed under sub-section (1) of section 10.
- (d) **Business** includes -
  - (i) any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce, manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern.
  - (ii) any transaction of sale or purchase in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern; and
  - (iii) any transaction in connection with, or incidental or ancillary to the commencement or closure of such business.
- (e) **Capital Goods** means plant, machinery and equipment used in trade or manufacturing of goods.

## Chapter-II Incidence of Tax

### 3. Charge of Tax

- (1) Every dealer who is registered under the Bihar Finance Act, 1981, as it stood before its repeal by section 94, shall be liable, on or after the commencement of this Act, to pay tax under this Act on sale or purchase, made by him.
- (2) Every dealer to whom the provisions of sub-section (1) do not apply and whose gross turnover of sales calculated from the commencement of the year ending on the day immediately before the commencement of the Act, exceeds the specified quantum, as applicable to him under the Bihar Finance Act, 1981, as it stood before its repeal by section 94, on the last day of such year shall, in addition to the tax, if any, payable by him under any other provision of this Act, be liable to pay tax under this Act on all his sales.
- (3) Every dealer to whom the provisions of sub-section (1) or sub-section (2) do not apply, shall be liable to pay tax under this Act -
  - (a) on all his sales of goods which have been imported by him from any place outside Bihar, with effect from the day on which he effects first sale of such goods; or
  - (b) in any other case, from the date on which his gross turnover, during a period not exceeding twelve months, first exceeded such taxable quantum as may be prescribed:

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Provided that the taxable quantum as may be prescribed under this sub-section shall not exceed five lakh rupees.

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Provided further that different taxable quantum may be prescribed for different classes of dealers.

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- (4) Every dealer who has become liable to pay tax under sub-sections (1), (2) and (3) shall, subject to the provisions of sub-section (5), cease to be so liable after the expiry of twelve consecutive months from the date he either closes or discontinues his business or entirely transfers his business to another person.
- (5) A registered dealer shall, within a period of twelve consecutive months, pay tax on the stock of goods remaining with him on the date with effect from which he closes or discontinues his business:

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Provided that the Commissioner may after recording the reasons, extend the period of twelve consecutive months if the goods are held in stock beyond the said period of twelve months because of reasons beyond the control of the dealer.

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- (6) Notwithstanding anything contained in sub-sections (1), sub-section (2) or sub-section (3), where any person who is or was, less than six months earlier, a member of the partnership firm, concern or undivided Hindu family which is or was, less than six months earlier, liable to pay tax, starts a new business, either singly or jointly with other persons, or joins other business, partnership firm or concern, tax as aforesaid, shall likewise be payable on sales and purchases made from such business, partnership firm or concern, on and from the date the person starts or joins it unless the liability in respect of such business, partnership firm or concern has arisen from an earlier date under the said sub-sections.
- (7) The tax for each year or any part thereof, may, with the previous approval of the Commissioner, be estimated and collected in advance, in the manner prescribed, during a year, in such installments as may be fixed by the prescribed authority.
- (8) For the purposes of sub-section (7), the prescribed authority may require the dealer to furnish an advance estimate of his taxable turnover for that year or any part thereof and

the manner prescribed.

### **36. Tax Payable by a Dealer**

The tax payable by a dealer shall be calculated according to the following formula, namely:

$$T = A - B$$

Where **T** means the tax payable by the dealer, **A** means the output tax under this Act, and **B** means the total amount of input tax credit allowable to the dealer under section 16 or section 17.

### **37. Time Limit for Completion of Proceeding of Assessment Tax**

Except for a proceeding under sub-section (2) of section 26, section 28, sub-section (1) of section 31 and section 33, no proceeding for assessment of tax payable by a dealer under this Act in respect of any period shall be initiated and completed except before the expiry of two years from the expiry of such period:

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Provided that a proceeding for re-assessment in pursuance of or as a result of an order on appeal, revision or review shall be initiated and completed before the expiry of one year from the expiry of the year during which such order was communicated to the assessing authority:

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Provided that the Commissioner may, on being satisfied that it is necessary so to do and for reasons to be recorded in writing, extend in a case or class of cases, the said period of two years to such further period not exceeding two years.

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### **38. Exclusion of Time in Assessment Tax Proceedings**

In computing the period of limitation prescribed for assessment or re-assessment as the case may, under sections 27, 28, 29, 30, 31, 32 or section 33, the time during which any assessment or re-assessment proceedings remained stayed under the order of any competent court shall be excluded.

### **39. Payment and Recovery of Tax**

- (1) The tax payable under this Act shall be paid in the manner hereinafter provided.
- (2) The amount of —
  - (i) tax estimated in advance under sub-section (7) of section 3, or
  - (ii) tax due according to the returns filed by the dealer where full payment of such amount has not been made, or
  - (iii) tax assessed or re-assessed under section 26, section 27, section 28, section 29, section 30, section 31, section 32 or section 33 or in pursuance of or as a result of an order on appeal, revision or review, less the sum, if any, already paid by the dealer, or



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section 72, the appellate authority may, subject to such rules as may be made by the State Government under this Act, stay recovery of such amount or portion thereof for so long as the appeal remains pending or for such shorter period as the said authority may consider to be adequate.

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#### **40. Advance Recovery of Tax on Sales and Supplies to govt. and other persons**

- (1) Subject to the provisions of section 6, any person responsible for paying sale price or any amount purporting to be the full or part payment of sale price in respect of sales or supplies of taxable goods during a year made to the State Government; or Central Government; or a Company, Corporation, Board, authority, undertaking or any other body owned, financed or controlled either wholly or partly by the State Government or the Central Government, shall, at the time of payment, subject to such conditions and restrictions as may be prescribed, deduct an amount at the rate as may be specified by the State Government by a notification on account of tax on the amount of such payment:

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Provided that the rate or rates to be specified by the State Government shall not be more than the rate of tax applicable to the goods sold or supplied.

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- (2) Notwithstanding any law or contract to the contrary, the person making such deduction shall be lawfully competent to make such deduction.
- (3) The payment of the amount deducted under sub-section (1) into the Government Treasury in the prescribed manner, shall be the liability of the person making such deduction.
- (4) The payment of the amount deducted under sub-section (1) into the Government Treasury by the person making the deduction shall be deemed to be a payment by or on behalf of the seller or supplier concerned.
- (5) If any person contravenes any or all of the provisions of sub-section (1), (3) and (4), he shall be liable to pay, by way of penalty, a sum not exceeding twice the amount of tax deductible under sub-section (1):

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Provided that such penalty shall not be imposed unless the person contravening the provisions is given an opportunity of being heard by the prescribed authority.

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- (6) The provisions of section 39 and 47 for recovery of any amount of tax due from a dealer shall, *mutatis mutandis*, apply for recovery of any amount of tax deducted and or any penalty imposed but not deposited under this section.

##### **Explanation:**

For the purpose of this section, a **person** in this section shall include all officers or authorities who are competent or authorized to make payment of the sale-price in respect of sales to State Government or Central Government or to Company, Corporation, Board, authority, undertaking or any other body owned, financed or controlled wholly or partly by the State Government or the Central Government.

- (7) The provisions of sub-section (5) of section 41 shall, *mutatis mutandis*, apply, so far as it relates, to issuance of certificate to person from whose bills deduction has been made and for filing of quarterly statements by the person making the deductions.

## **41. Advance Recovery of Tax from Works Contractor**

- (1) Subject to the provisions of section 6, every person, responsible for making any payment in discharge of any liability on account of valuable consideration payable in respect of transfer of property in goods (whether as goods or in some other form) vested in the execution of a works contract shall be lawfully competent to deduct an amount at the rate or rates, not exceeding four per cent, to be specified by the State Government, in a notification published in the Official Gazette, purporting to be a part or full amount of tax payable on the sale of such goods from every bill or invoice raised by the works contractor as payable by the person and no such payment or discharge of any such bill or invoice raised by a works contractor shall be made without deduction as aforesaid.

### **Explanation:**

For the purpose of this section, the **person** in this section shall include all officers and authorities of the Central or State Government or of a company, corporation, board, authority, co-operative societies, undertaking or any other body constituted or formed under any Act and of any firm or association of persons and organisation.

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Provided that, the State Government may prescribe the conditions subject to which no such deductions shall be made.

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- (2) No such payment or discharge of any bill or invoice raised in respect of transfer of property in goods (whether as goods or in some other form) by a works contractor shall be made without the deduction referred to in sub-section (1):

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Provided that no deduction under sub-section (1) shall be made where the payment is made as advance prior to the commencement of the execution of such works contract until it forms part of the sale price payable for transfer of property in goods (whether as goods or in some other form):

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Provided further that no deduction under sub-section (1) shall be made from the payment or any part thereof where:

- a. the payment or any part thereof does not relate to any transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract;
  - b. the dealer produces a certificate issued by the Deputy Commissioner, Commercial Taxes or the Assistant Commissioner, Commercial Taxes or the Commercial Taxes Officer, in-charge of the concerned Circle to the effect that the payment or any part thereof relates to such transfer of property in goods (whether as goods or in some other form) on which he has no further liability to pay tax in terms of the provisions of section 15 of the Central Sales Tax Act, 1956;
  - c. the dealer produces a certificate issued by the Deputy Commissioner, Commercial Taxes or the Assistant Commissioner, Commercial Taxes or the Commercial Taxes Officer, in-charge of the concerned Circle to the effect that the payment or any part thereof relates to such transfer of property in goods (whether as goods or in some other form) on which he has no liability to pay tax in terms of the provisions of section 6.
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- (3) The amount deducted under sub-section (1) shall be adjusted against the amount of tax finally assessed or determined as being payable by the concerned works contractor and any amount deducted in excess of the tax so assessed or determined shall be refunded in accordance with the provisions of this Act.
- (4) The deduction referred to in sub-section (1) shall be made in the manner prescribed.
- (5) The person making the deduction shall issue a certificate in the form and manner prescribed, containing such particulars as may be required to be mentioned therein. to

## Chapter-XVI Repeal and Savings, Rule Making Powers, etc.

### 93. Power to make Rules

- (1) The State Government may, by notification, make rules to carry out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
  - (a) the manner in which the advance tax may be collected under sub-section (7) of section 3;
  - (b) constitution of the Tribunal under sub-section (1) of section 9;
  - (c) the terms and conditions of service of the Chairperson or any other Government servant appointed as a member of the Tribunal under sub-section (7) of section 9;
  - (d) the areas and functions of inspectors under sub-section (3) of section 10;
  - (e) the form and manner in which the true and complete declaration referred to in clause (a) of sub-section (2) of section 13 shall be filed;
  - (f) the conditions and restrictions subject to which the registered dealers may be permitted to pay an amount under sub-section (1) of section 15;
  - (g) the conditions and restrictions subject to which an input tax credit shall be claimed under sub-section (1) section 16;
  - (h) the manner and the period within which the input tax credit in respect of capital goods shall be allowed under clauses (a), (b), (c), (d) and (e) of sub-section (1) of section 16;
  - (i) the manner in which the input tax credit on the sale or supply of goods shall be claimed by the registered dealer selling the goods or using them in the execution of sub-contract under sub-section (2) of section 16;
  - (j) the other goods on which input tax credit shall not be claimed or allowed under clause (a) of sub-section (3) of section 16;
  - (k) the particulars of sale in the original copy of the tax invoice and the form and manner of the duplicate copy of the original tax invoice under sub-section (5) of section 16;
  - (l) the manner in which input tax credit on goods and the manner and extent in which the input tax on account of capital assets shall be allowed under sub-section (1) of section 17;
  - (m) the restrictions and conditions subject to which and the time and manner in which the organizations specified in the Schedule-V to this Act may apply for refund of tax paid on goods purchased under sub-section (2) of section 17;
  - (n) the manner of application for and the grant of certificate of registration under sub-section (2) of section 19;
  - (o) the manner in which the certificate of registration shall be surrendered and the manner in which the certificate of registration shall be cancelled under sub-section (2) of section 20;
  - (p) the security and the manner in which such security shall be furnished under section 21;
  - (q) the manner in which the declaration shall be furnished and the particulars of the



## **Bihar Value Added Tax Rules, 2005**

[24th March, 2005]

**S.O.26 dated 24th March, 2005** – In exercise of the powers conferred by section 93 of the Bihar Value Added Tax Act, 2005, the Governor of Bihar hereby makes the following rule:

### **1. Short title and commencement:**

- (1) These rules may be called Bihar Value Added Tax Rules, 2005.
- (2) These rules shall come into force from the date of their issue.

### **2. Definitions:**

- (1) In these rules, unless there is anything repugnant to the subject or context—
  - (a) *The Act* means Bihar Value Added Tax Act 2005;
  - (b) *Circle* means a unit of Commercial Taxes administration as specified in the Government notification issued in this behalf from time to time, within the local limits of which a dealer's place of business is situated;
  - (c) *Circle Incharge* means the Deputy Commissioner of Commercial Taxes or the Assistant Commissioner of Commercial Taxes or the Commercial Taxes Officer, Incharge of the Circle or the officer specially empowered by the Commissioner in this behalf;
  - (d) *Deputy Commissioner, Commercial Taxes* means a Deputy Commissioner of Commercial Taxes appointed under section 10 of the Act;
  - (e) *Tax Invoice* means the invoice issued by the registered selling dealer to the purchasing registered dealer in terms of section 53 of the Act.
  - (f) *Joint Commissioner, Commercial Taxes* means a Joint Commissioner of Commercial Taxes appointed under section 10 of the Act;
  - (g) *Ward* means an administrative unit as specified in the order issued by the Commissioner in this behalf from time to time within the area of a circle;
  - (h) *Forms* means a Form prescribed under these rules;
  - (i) *Quarter* means a quarter ending on the 30<sup>th</sup> June, 30<sup>th</sup> September, 31<sup>st</sup> December, 31<sup>st</sup> March of a year;
  - (j) *Government Treasury* means, in relation to a dealer the treasury or sub-treasury, as the case may be, of the district or subdivision in which his place of business is situated.
  - (k) *section* means a section of the Act;
  - (l) *sub-section* means any sub-section of a section of the Act.
- (2) all other words, terms or expressions not defined herein shall have the same meaning as is assigned to them in the Act.

### **3. Registration of dealer**

- (1) An application for registration under sub-section (2), sub-section (3) or sub-section (4) of section 19 shall be made in Form A-I.
-

## 7. Collection of Advance Tax

- (1) Subject to the prior sanction of the Joint Commissioner of Commercial Taxes (Administration) of the concerned division, the advance tax under sub section (7) of section 3 shall ordinarily be for a period not exceeding three months of any year.
- (2) Notwithstanding anything contained in sub rule (1), if the authority specified in Rule 62 is satisfied that, in the case of any goods or class or description of goods or in the case of any dealers or any class of dealers, it is necessary in the interest of revenue so to do, he may, with the prior sanction of the Commissioner, require any dealer to pay advance tax for a period not exceeding twelve months in such installments as may be deemed fit.

## 8. Tribunal

- (1) The Tribunal under section 9 shall consist of three or more members appointed by the State Government. One member shall be a Judicial Member and one other member shall be a departmental Member.
  - (2) The Judicial member shall be:
    - (a) a retired Judge of a High Court who, at the time of his appointment, shall not be more than 65 years of age, or
    - (b) an officer of Judicial Service not below the rank of a District Judge.
  - (3) The Departmental Member shall be a person who is or has been an officer not below the rank of Joint Commissioner of Commercial Taxes.
  - (4) The other member or members, as the case may be, shall be a person or persons:
    - (a) who has or have been for at least ten years in the practice as an Advocate in any High Court or the Supreme Court, or
    - (b) who has been or have been an Associate or a Fellow Member of the Institute of Chartered Accountants of India for a minimum period of 10 years, or
    - (c) who is or has been an officer of the Indian Audit and Accounts Service not below the rank of Deputy Accountant General.
  - (5) The judicial member shall be the Chairman of the Tribunal.
  - (6) No person who has attained the age of 62 years shall be appointed as a member other than the judicial member.
  - (7) No member of the Tribunal, other than the Judicial Member, shall continue as member after attaining the age of 65 years:
 

*Provided that the officer of the Judicial Service appointed as Judicial Member shall, subject to the provisions of sub-rule (9), be entitled to continue as member till the expiry of his term.*
  - (8) Subject to the provisions of sub-rule (7), the members of the Tribunal shall ordinarily be appointed for a period of three years which may be extended by a period not exceeding three years.
  - (9) The appointment of a member of the Tribunal may be terminated before the expiry of his tenure if the member –
    - (a) is adjudged as an insolvent, or
    - (b) is engaged, during his term of office, in any paid employment outside the duties of his office, or
-