

KERALA

The State of Kerala was formed on reorganisation of States in 1956. In the Malabar Region, which was previously a part of the erstwhile Madras State, sales tax was being administered since 1939. In the remaining part, viz., Travancore-Cochin, sales tax had been in existence since 1949. After the formation of the new State of Kerala, a new legislation, namely, Kerala General Sales Tax Act, 1963, was enacted, in which a number of commodities were brought under single-point taxation and other items were subjected to multi-point tax.

The following enactments are in force in the State for the levy of sales tax:

- A.Kerala General Sales Tax Act, 1963,
- B.Kerala Surcharge on Taxes Act, 1957,
- C.Kerala Additional Sales Tax Act, 1978,
- D.Central Sales Tax Act, 1956.

In addition to the above, the Department administers (a) the Kerala Agricultural Income Tax Act 1950 (b) Luxury Tax Act and (c) Kerala Money Lending Act 1988.

A. KERALA GENERAL SALES TAX ACT, 1963

1. Structure

Every dealer whose turnover is Rs 1 lakh or more becomes liable to pay tax. In respect of goods coming under the Schedules I,II,IV and V, this limit is Rs.50,000. Casual traders and dealers who are agents of non-residents become liable to pay tax, irrespective of the turnover limit.

Point of Levy: Kerala is predominantly an agricultural State producing mainly commercial crops - rubber, spices, cashewnuts, etc. which are exported out of the State. For its own needs, Kerala imports goods from other States. Such imported goods attract single-point tax on first sale within the State, while indigenous goods are taxed at the point of last purchase in the State. Non-specified goods not mentioned in any of the schedules are subjected to multi-point taxation at the general rate.

Rate Structure: The Kerala General Sales Tax Act has five schedules which specify commodities and tax rates. The first schedule lists goods under single-point taxation and prescribes the minimum rate of 2 per cent for bullion and specie and fertilisers, the maximum rate of 75 per cent for foreign liquor, and other intermediate rates of 4, 5, 6, 8, 10, 12, 15, 20, 45, and 55 per cent. Schedule II deals with declared goods in respect of which a single-point tax, not exceeding the rate of 4 per cent is leviable. Schedule III lists tax-exempted goods. Schedule IV deals with transfer of goods involved in the execution of works contract and Schedule V deals with goods subject to dual-point tax.

Goods which are not covered by any of the above schedules are taxable at multi-point at the rate of 5 per cent.

Turnover Tax: Turnover tax is levied on turnover other than the turnover involved in inter-State sale, export outside India and turnover of exempted goods. The rate of tax is 0.5 per cent. But turnover tax on tea, pepper, ginger, rubber and arecanut is limited to only one point. Turnover tax is levied on the turnover of oil companies at 3 per cent. Petrol, diesel, kerosene sold by dealers other than oil companies, fertiliser, chillies, coriander seed and peas dhal are exempt.

Every dealer other than an oil company, whose total turnover in a year exceeds Rs.50 lakh has to pay turnover tax at the rate of 0.5 per cent and the oil companies whose turnover in a year is Rs.50 lakh and above are required to pay turnover tax at the rate of 3 per cent.

Turnover tax on the turnover on which tax is leviable under Section 5A of the Act is exempted. (Section 5A of the Kerala GST Act - in the circumstances of sale or purchase of goods on which no tax is payable, under Section 5, sales tax is to be paid on the taxable turnover relating to purchase of such goods if the same are consumed in the manufacture of other goods for sale or otherwise disposed of or used in any manner other than by way of sale or despatched outside the State except as a result of sale).

Purchase Tax: Goods like rubber and other cash crops produced within the State are taxed at the point of last purchase in the State. Besides this purchase tax under section 5A is payable by every dealer who purchases from a registered dealer or from any other person any taxable goods for which no tax is payable and either consumes such goods in the manufacture of other goods for sale or disposes of them in any manner other than by way of sale in the State or despatches them to any place outside the State (except in the course of inter-State trade or commerce) is liable to pay purchase tax.

Works Contract: Works contract has been defined to mean - transfer or any agreement for carrying out for cash or for deferred payment or for other valuable consideration, the construction, fitting out, improvement or repair of any building, road, bridge or other immoveable property or the fitting out improvement or repair of any moveable property.

The threshold of turnover is fixed at Rs.75,000 and the labour charges are deductible from the total turnover of the works contract subject to tax. There are 20 types works contract liable to tax and the rate of tax applicable is 5 per cent. Recently compounding system of payment of taxes for works contract relating to construction of buildings, bridges, roads and dams is introduced.

Exemptions: As already stated, Schedule III of the KGST Act enumerates commodities which are exempted from tax. These include salt, vegetables, fresh fruits, eggs and a few other items of mass consumption. The sale or purchase of goods by certain institutions or dealers has been exempted by issue of special notifications, subject to

the fulfilment of certain conditions. Sale of readymade khadi garments by dealers who exclusively deal in khadi comes under this category. Sale by cooperative societies and institutions recognised by Khadi and Village Industries Commission is also exempted from tax. Sale of foodgrains by the Food Corporation of India to the Government of India under the Food for Work Programme is also exempted from tax.

Taxation of Inputs: Under the KGST Act, tax is levied at 4 per cent on the sale of industrial raw material, component parts, containers or packing material to be used for the manufacture of other goods which are sold within the state or sold during the course of inter state trade or commerce. Concessional rate of 4 per cent sales tax on goods purchased for use in the manufacture of goods is made available to all the goods manufactured even if the goods manufactured are consigned and despatched to branches outside the state.

Incentive to Industries: The rate of sales tax on goods produced by large and medium scale industries in 'no industry' districts of Waynad and Idukki is reduced to 2 per cent.

2. Registration

Every dealer whose total turnover in any year is not less than Rs.1 lakh is under statutory obligation to get himself registered. Besides, every dealer carrying on business in all or any of the goods mentioned in the first, second, fourth and fifth schedules with the total turnover in respect of those goods not less than Rs.50,000 is also under legal obligation to register.

Other dealers may obtain voluntary registration even if their turnover is less than the statutory limit.

3. Assessment

Returns: Dealers who are liable to pay tax under the Act and any other dealer registered under this Act are bound to file returns relating to their turnover. The returns may be filed on monthly or quarterly basis. The last date for filing the return is 15th of the month following. Dealers liable to pay tax and having taxable turnover of less than Rs.10,000 have to file quarterly returns. Other dealers have to file monthly returns. The return has to be accompanied by proof of payment of tax. Besides, every dealer liable to pay tax under the Act, irrespective of the quantum of the total turnover, and other dealers whose total turnover for the year is not less than the minimum specified, have to file annual return before 1st May each year.

Mode of Assessment: If the assessing authority is satisfied that the return filed is complete and correct, he may complete the assessment on the basis of such return. Otherwise, he may direct the dealer to produce accounts and other evidences and if necessary, make assessment on the basis of best judgement. If it is found that the turnover has escaped assessment for any year, the assessing authority may complete the assessment/re-assessment within four years from the end of the relevant year on the basis of best judgement.

Returns of the dealers with the total turnover of Rs.5 lakh for the year are assessed on the basis of return by accepting the same for any two years out of three consecutive years, if such a dealers total turnover as assessed under the **KGST Act** according to the latest completed assessment is Rs.5 lakh.

There is a provision for protective assessment under the **KGST Act**. when the assessing authority has reason to believe that any person is or was carrying on business in the name of or in association with any other person, both would be jointly and severally responsible for payment of taxes, penalty or other amount due as if they are dealers, after hearing them.

4. Penalty and Prosecution

Penalty: Defaults under the Act attract penalty and fines are imposed if the dealer is convicted. The various defaults and the penalties leviable are as follows:

<i>Default</i>	<i>Penalty</i>
i. Failure of a dealer to get himself registered.	An amount not exceeding twice the amount of sales tax evaded or sought to be evaded; where it is not practicable to quantify the fine, an amount not exceeding Rs.5,000.
ii. Failure to keep true and complete accounts.	
iii. Failure to submit any return in accordance with rules.	
iv. Submitting untrue or incorrect returns.	
v. Failure to comply with any or all terms of any statutory notice, etc.	

Prosecution: The various offences under the Act and the amount of fine that can be imposed are given below:

i. Knowingly submitting an untrue return or failure to submit a return as per law.	Fine upto Rs.1,000.
ii. Failure to keep true and complete accounts.	
iii. Dishonestly objecting to or failure to comply with the terms of notice.	
iv. Failure of dealer to get himself registered.	

For offences such as obstruction to search or inspection by the sales tax authorities and a few others, simple imprisonment upto six months has been prescribed under the Act.

B. KERALA SURCHARGE ON TAXES ACT, 1957

The levy of surcharge is governed by the Kerala Surcharge on Taxes Act, 1957. No surcharge is leviable if the turnover is upto Rs.1 lakh only. A total turnover range of Rs.1 lakh to Rs.10 lakh attracts surcharge at the rate of 5 per cent of sales tax, while a total turnover above Rs.10 lakh is subject to surcharge of 8 per cent.

C. KERALA ADDITIONAL SALES TAX ACT, 1978

Kerala Additional Sales Tax Act, 1978 was introduced with effect from 1.4.1978. Initially the rate was 10 per cent on the tax due. At present, additional sales tax is levied at the rate of 25 per cent on the tax due.

5. Administrative Organisation

The administration of the Sales Tax Department is vested with the Board of Revenue (Taxes). The Member, Board of Revenue is in charge of the agricultural income tax and sales tax departments and thus functions as the Commissioner of Sales Tax as well as Agricultural Income Tax. He is assisted in day-to-day administration by two Secretaries, one IAS Officer and another senior Deputy Commissioner and other supporting staff, three Assistant Secretaries and one Inspecting Assistant Commissioner (Audit).

To supervise the work of the field staff, there are 10 District Deputy Commissioners. Besides, there is a Deputy Commissioner (Intelligence) attached to the Board of Revenue (Taxes) with headquarters at Trivandrum controlling the Intelligence Wing. There are nine Inspecting Assistant Commissioners (Intelligence) to assist the

Deputy Commissioner (Intelligence). A Deputy Commissioner (Law) provides legal advice to the Department and liaisons with the Advocate General in the matters before the High Court. A Deputy Commissioner (Training) is in charge of the training institute. Law Officers, in the cadre of ACs are State representatives in the Tribunal.

There are 24 Inspecting Assistant Commissioners to supervise the work of the Sales Tax Officers. In the assessment wing, there are two categories of assessing officers dealing with assessment work - (i) Assistant Commissioners (Assessment) and (ii) Sales Tax Officers. Their work relates to administration of the Central Sales Tax Act and the Kerala General Sales Tax Act, and includes functions under the Additional Sales Tax Act and surcharge on Taxes Act.

Assessment work of the Special Circle of the Sales Tax Office is looked after by 26 Assistant Commissioners (Assessment). They deal with the cases in which annual taxable turnover involved exceeds Rs.15 lakh.

6. Appeals and Revisions

The first appeal lies to Appellate Assistant Commissioner and Deputy Commissioner (Appeals). The Deputy Commissioner of the district may suo moto or on application call for and examine any order passed by the officers other than the Appellate Assistant Commissioner.

Appeals to Tribunal lie against the orders of Appellate Assistant Commissioners and Deputy Commissioner (Appeals) suo moto revision orders of the Deputy Commissioners.

The Board of Revenue may either suo moto or on application call for and examine any order passed or proceeding recorded under the Act and revise any such order within four years from the date of such order. The Board of Revenue also entertains the applications against the revision orders passed by the Deputy Commissioner.

Any person aggrieved by the suo moto revision orders passed by the Board of Revenue may appeal to the High Court. The High Court may revise orders passed by Appellate Tribunal in Tax revision cases.

Rectification of Mistakes: An assessing authority, appellate or revising authority (including the Appellate Tribunal) on application or otherwise at any time within three years from the date of any order passed by it, rectify any error apparent from the records.

7. Checkposts

There are 50 sales tax checkposts functioning in the State for checking illicit transport of goods and to prevent evasion of tax. 41 checkposts are located on the borders of the State while the remaining 9 are internal. Every person who transports goods has to file a declaration at the checkpost in the prescribed form. The authorities at the checkposts are empowered to inspect the goods to verify whether the declaration is in order. The authorities have also the power to take necessary penal action if a false declaration, etc., is detected.

Where the person-in-charge of the vehicle carrying goods is found to be in collusion for carrying of such goods, the vehicle also would be detained unless the security as provided under Section 29A(2) is furnished and if the same has committed offence. Subsequently, the vehicle could be detained for a period not exceeding 30 days from the date of furnishing the security. Further where the goods transported are found

to have not suffered taxes on the dealer, or has at any time defaulted payment of any tax for any period, the transport of goods is allowed only after realising the tax and if the said tax is not paid, goods are detained and dealt with as provided under the Act.

When vehicles carrying goods from any place outside the State and bound for any place outside the State pass through the State, the person in-charge of the vehicle has to obtain transit pass for such goods from the checkpost officer of the first checkpost after his entry into the State and deliver it to the officer in-charge of the last checkpost before his exit from the State, as per Section 30B of the Kerala General Sales Tax Act.