

KRISHI KALYAN CESS

FREQUENTLY ASKED QUESTIONS



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Q1) What is Krishi Kalyan Cess (KKC)?

A1) In order to finance and promote the welfare of farmers and development of agriculture, the Central Government has levied Krishi Kalyan Cess (KKC) at the rate of 0.5% on the value of taxable service.

Q2) What is the date of implementation of KKC?

A2) The Central Government has kept the date of applicability of KKC as 1st June, 2016 under Chapter VI as per Section 161 of the Finance Act, 2016.

Q3) What would be the effective rate of KKC and service tax post KKC?

A3) KKC would be applicable at the rate of 0.5% and the effective rate of service tax post KKC would be 15% (14% Service Tax + 0.5% Swachh Bharat Cess + 0.5% Krishi Kalyan Cess).

Q4) How will the KKC be calculated?

A4) KKC will be calculated in the same way as the Service Tax and Swachh Bharat Cess is calculated. This means that the taxable value to be taken for KKC would be the same as that for Service Tax and Swachh Bharat Cess. So, KKC would be 0.5% of the value of taxable service.

For example,

Q5) Whether KKC would be required to be mentioned separately in invoice?

A5) Yes, KKC would be required to be shown as a separate line item in the invoice after Service Tax and Swachh Bharat Cess.

Particulars	Calculation	Amount
Value of Taxable Service		10,000
Service Tax	(10,000*14%)	1400
Swachh Bharat Cess	(10,000*0.5%)	50
Krishi Kalyan Cess	(10,000*0.5%)	50
Total Value including taxes		11,500

Q6) Is there a separate accounting code for payment of KKC?

A6) Yes, Circular No. 194/04/2016-ST dated 26th May, 2016 has prescribed the minor head of KKC as "507-Krishi Kalyan Cess". Please find the new sub-heads below:

Sl No	Krishi Kalyan Cess (Minor Head)	Tax Collection	Other Receipts (Interest)	Deduct Refunds	Penalties
1	0044-00-507	0441509	00441510	00441511	00441512

Q7) Whether KKC would be leviable on all or selected services?

A7) It has been clarified by Notification no. 28/2016-ST dated 26th May, 2016 that Krishi Kalyan Cess will not be levied on the following:

- i) Services which are exempt from the whole of service tax by a notification viz. Notification No. 25/2012-ST dated 20th June, 2012 and other notifications issued to modify this Mega Exemption Notification
- ii) Services which are exempt under Section 93(1) and 93(2) of the Finance Act, 1994
- iii) Services which are specified in the Negative list u/s 66D of the Finance Act, 1994.
- iv) Activities which do not fall within the definition of service u/s 65B(44) of the Finance Act, 1994.

So, effectively Krishi Kalyan Cess is applicable on all services apart from the three exceptions given above.

Q8) What will be the KKC where abatement of service tax is applicable?

A8) It has been provided in the Notification no. 28/2016-ST dated 26th May, 2016 that Krishi Kalyan would be leviable only on that percentage of taxable value which is specified in the Notification no. 26/2012-ST dated 20th June, 2012. This means that the KKC would be charged on the percentage of taxable value after abatement.

For example, in case of renting of motorcab, the service tax is to be paid on 40% of the value of taxable service after taking abatement as per Notification No. 26/2012-ST dated 20th June, 2012. The rate of KKC in this case will be 0.5% of 40% = 0.2%.

Q9) What will be the KKC in case of works contract and restaurant and outdoor catering services?

A9) As per Notification No. 28/2016-ST dated 26th May, 2016, the value of taxable services for the purposes of the Krishi Kalyan Cess shall be the same as the value taken for determining service tax under the Service Tax Valuation Rules.

So as per Rule 2A of the Service Tax Valuation Rules for works contract, the effective rate of KKC will be 40% of 0.5% = 0.2% in case of original works and 70% of 0.5% = 0.35% in case of other than original works.

As per Rule 2C of the Service Tax Valuation Rules for restaurant and outdoor catering services, the effective rate of KKC will be 40% of 0.5% = 0.2% in case of AC Restaurant services and 60% of 0.5% = 0.3% in case of outdoor catering services.

Q10) How will KKC be calculated on services covered by Rule 6 of 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)

A10) For KKC, Rule 6(7E) of the Service Rules, 1994 has been inserted as per Notification No. 31/2016-ST dated 26th May, 2016 just like Rule 6(7D) was inserted for SBC. As per this new rule, in case of services specified in Rule 6 of the Service Tax Rules (air travel agent, life insurance premium, purchase and sale of foreign currency and services by lottery distributors/selling agents), the Krishi Kalyan Cess will be:

$$\frac{\text{Total Service tax liability under Rule 6}}{14} * 0.5$$

14

For example, in case of domestic bookings of an air travel agent, the effective rate of KKC would be calculated as under:

$$\frac{0.7}{14} * 0.5\% = 0.025\%$$

14

Q11) Whether Cenvat Credit will be available for KKC?

A11) To clarify the position on Cenvat Credit in case of KKC, Notification no. 28/2016-CE(NT) dated 26th May, 2016 has been brought out by the Central Government which has made the requisite modifications in Rule 3 of the Cenvat Credit Rules, 2004 which is summarized as below:

- 1) An output service provider is entitled to take Cenvat Credit on input services in respect of KKC.
- 2) Cenvat Credit of any other duty, tax or cess will not be utilized for payment of output KKC
- 3) Cenvat Credit in respect of KKC on input services will be utilized only towards payment of KKC on output services.

Please note that the Cenvat Credit treatment of KKC is different from that of SBC wherein Cenvat Credit is still not available.

It is also worthwhile to observe here that Cenvat Credit on input services is only available to an output service provider. So to manufacturers, the KKC on input services will be a part of the cost thereby increasing the cost of production for them.

Q12) Will KKC be applicable to services under reverse charge mechanism?

A12) Notification no. 30/2012-ST dated 20th June, 2012 contains the list of services wherein service tax is required to be paid under reverse charge mechanism.

It has been stated by the Central Government through Notification no. 27/2016-ST dated 26th May, 2016 that all the provisions for service tax under Notification no. 30/2012 dated 20th June, 2012 will apply to KKC mutatis mutandis.

So, just like service tax, KKC will be paid under reverse charge mechanism as well for services specified under Notification No. 30/2012 dated 20th June, 2012.

Q13) Will the rebate of KKC on input services be available when such services have been used for providing output services which have been exported under Rule 6A of the Service Tax Rules, 1994?

A13) Notification No. 39/2012-ST dated 20th June, 2012 contains the conditions, limitations and procedure of rebate on inputs and input services where these are utilized towards output services which have been exported under Rule 6A of the Service Tax Rules, 1994.

As per the above notification, rebate on Service tax, Education cess, Higher Education cess and Swachh Bharat Cess were allowed. Notification no. 29/2016-ST dated 26th May, 2016 has been brought out by the Government to insert Krishi Kalyan Cess as well in the list of service tax and cess.

In effect, rebate on Krishi Kalyan Cess will also be allowed.

Q14) Will the refund of KKC paid be allowed for specified services received by units located in SEZ on which ab-initio exemption was available but not claimed?

A14) Notification No. 12/2013-ST dated July 1, 2013 provides for exemption on services received by units located in a SEZ or Developer of SEZ and used for their authorized operations.

Notification No. 30/2016-ST dated 26th May, 2016 has been notified by the Central Government which allows the SEZ unit or Developer of SEZ to opt for refund of KKC paid on specified services on which ab-initio exemption was admissible but was not claimed.

Q15) What will be the point of taxation for Krishi Kalyan Cess when the service provider is liable to pay service tax under forward charge during the transition phase?

A15) As per Explanation 1 to the Rule 5 of the Point of Taxation Rules, this rule is to be followed with regard to the point of taxation for new levy. This rule is to be applied for KKC as well when it becomes applicable from 01/06/2016.

As per Rule 5 of the Point of Taxation Rules, KKC will not be levied when:

- a) Both the date of invoice and the date of payment is before 01/06/2016
- b) The date of payment is before 01/06/2016 and the invoice date is before 15/06/2016

So, in the following two cases, KKC will be levied as per Rule 5 of the Point of Taxation Rules:

- a) The date of payment is on or after 01/06/2016 irrespective of the date of invoice
- b) The date of invoice is after 15/06/2016 irrespective of the date of payment

For example,

Date of Payment	Date of Invoice	Point of taxation	KKC Applicable
28/05/2016	27/05/2016	27/05/2016	No
28/05/2016	15/06/2016	28/05/2016	No
28/05/2016	18/06/2016	18/06/2016	Yes
05/06/2016	28/05/2016	05/06/2016	Yes
05/06/2016	18/06/2016	05/06/2016	Yes

Q16) Will Krishi Kalyan Cess be leviable on the invoices raised on or before 31/05/2016 which remained unpaid on 31/05/2016?

A16) It has been clarified by the Central Government through Notification no. 35/2016-ST dated 23rd June, 2016 that if:

- a) the provision of service has been completed on or before 31st May, 2016 and
- b) the invoice has also been raised on or before 31st May, 2016

then, the Krishi Kalyan Cess be exempted.

However, it is a bit surprising that the Government has not amended Rule 5 of the Point of Taxation Rules which is applicable in the given case and instead has brought this exemption through a notification without any amendment in law. One can clearly argue here that this Notification is beyond the scope of Rule 5 of the Point of Taxation Rules.

Q17) Which date will be the date of payment as per Point of Taxation Rules, 2011?

A17) For determining the date of payment, Rule 2A of the Point of Taxation Rules needs to be looked at. It states that the date of payment will be the earlier of

- a) the date of entry of payment in the books of accounts
- b) the date of credit in the bank account

However, the date of payment will be considered to be the date of credit in the bank account and not the date of entry of payment in the books in the following situations:

- (i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account; and
- (ii) the credit in the bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and
- (iii) the payment is made by way of an instrument which is credited to a bank account

To ensure non-leviability of KKC under Rule 5, the payment should be credited in the bank by 31st May, 2016 as per Rule 2A of the Point of Taxation Rules. If the payment is received on or after 1st June, 2016, KKC will be leviable and the exact date of payment will be determined as per Rule 2A of the Point of Taxation Rules stated in the above paragraph.

Q18) What will be the point of taxation for Krishi Kalyan Cess under reverse charge in the transition phase?

A18) For payment under reverse charge, Rule 7 of the Point of Taxation Rules, 2011 needs to be referred. As per this Rule, the point of taxation should be:

- i) if the date of payment is within 3 months of the date of invoice – date of payment
- ii) if the date of payment is after 3 months of the date of invoice – the date immediately after the said period of 3 months

However, a new proviso has been inserted in Rule 7 vide Notification no. 21/2016-ST dated 30th March, 2016. As per this proviso, when there is a change in the extent of liability under reverse charge mechanism and the following conditions are satisfied, the point of taxation will be the date of invoice:

- a) The service has been provided before the date of change
- b) The invoice has been issued before the date of change
- c) The payment has not been made till the date of change

For example,

Date of Invoice	Date of Payment	Point of Taxation	KKC Applicable
23/05/2016	28/05/2016	28/05/2016	No
24/01/2016	28/05/2016	24/04/2016	No
28/05/2016	05/06/2016	28/05/2016	No
03/03/2016	10/07/2016	03/03/2016	No
03/06/2016	08/06/2016	08/06/2016	Yes
03/06/2016	05/10/2016	03/09/2016	Yes

Q19) Is there an unfair disparity between the applicability of KKC on forward charge and reverse charge during the transition phase?

A19) Yes, when the services have been rendered and the invoices have been raised before 01/06/2016 but the payment is still to be received on that date, then the treatment under both reverse charge and forward charge is different.

Under reverse charge, the point of taxation will be the date of invoice and under forward charge, it will be the date of payment. So, KKC will be applicable on forward charge but not on reverse charge.

So, it can be said that this disparity unfairly discriminates the service providers who are liable to pay service tax on forward charge basis as against the service receivers who are liable on reverse charge basis.

For example,

Date of Payment – 05/06/2016

Date of Invoice – 28/05/2016

POT under reverse charge – 28/05/2016 (KKC not applicable)

POT under forward charge – 05/06/2016 (KKC applicable)

Q20) What is the scope of tax planning during the transition phase of introduction of Krishi Kalyan Cess?

A20) Please find below some of the tools of tax planning that can be used to cushion the impact of Krishi Kalyan Cess:

- i) Under forward charge, if the service provider has already raised his invoice, he should promptly ask the service receivers for payment on or before 31st May, 2016 to avoid the impact of KKC
- ii) Under forward charge, if the service provider receives advance payment on or before 31st May, 2016, then the service provider should raise an invoice by 15th June, 2016 to avoid the impact of KKC
- iii) Under reverse charge, if the services have been rendered and the payment is expected on or after 1st June, 2016, then the invoice should be raised on or before 31st May, 2016 to avoid the impact of KKC

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