

No. C3/35960/12/CT

Office of the Commissioner,
Commercial Taxes, Kerala,
9th Floor, Tax Towers,
Killipalam, Karamana P.O,
Thiruvananthapuram.
PIN – 695 002.
Dated: 11/11/2015.

CIRCULAR No. 26/2015

Sub: KVAT Act, 2003 – Multi-level Marketing Entities – Registration, payment of tax at Compounded rates - Operational guidelines issued.

Read : 1. Circular No. 5/2011 dated 31/3/2011.
2. Kerala Finance Act – 2015.
3. Circular No. 1871/C2/2014/TD dated 14/9/2015 issued by the Principal Secretary, Taxes (C) Department, Government of Kerala.

In order to streamline the functioning of the Multi-level Marketing sector in the State of Kerala and also to ensure that the revenue due to the State ex-chequer is duly received, it was announced in the Kerala Budget – 2015 that all multi-level marketing companies, their distributors and agents would be made liable to take out registration under the Kerala Value Added Tax Act, 2003. As per Para 322 of the Budget Speech – 2015, it was announced that:

322. All Multilevel Marketing Companies, their distributors and agents would be made liable to take registration and pay tax under the Kerala Value Added Tax irrespective of their turnover.

Accordingly certain amendments were made in the relevant Sections of the Kerala Value Added Tax Act, 2003 by the Kerala Finance Act - 2015, which, as relevant to the context, is extracted hereunder:

(a) In Section 2, the following clauses were inserted:

“(xxviiA) “multi-level marketing” means marketing and sale of goods of a multi-level marketing entity through direct sellers or through direct sellers and distributors, otherwise than through shops, to the customers or consumers, generally in their houses or at their workplace or through demonstration of such goods at a particular place or by mail order sale;

(xxviiB) “multi-level marketing entity” means a company registered under the Companies Act, 2013 (Central Act 18 of 2013) or any partnership firm registered under the Partnership Act, 1932 (Central Act IX of 1932) or under the Limited Liability Partnership Act, 2008 (Central Act 6 of 2009) engaged in multi-level marketing;”

(b) In sub-section (1) of Section 6, the following words were inserted:

“or any multi-level marketing entity, their distributor and/or agent engaged in multi-level marketing”

(c) In Section 8, the following clause was inserted:

“(i) Any dealer who is a multi-level marketing entity may, at his option, pay, in such manner and subject to such conditions and restrictions as may be prescribed, in lieu of the tax payable by him on such goods under sub-section (1) of section 6, tax at the schedule rate applicable to goods, of the maximum retail price of such goods.

Provided that the provision of this clause shall not apply to such goods sold by multi-level marketing entities otherwise than by way of multi-level marketing:

Provided further that notwithstanding anything contained in section 6 and section 15, if multi-level marketing entities pay tax on maximum retail price under this provision, subsequent dealers in the chain shall not be liable to take out registration and shall be exempted from payment of tax on such goods.”

(d) In sub-section (2) of Section 15, the following clause was inserted:

“(xii) any multi-level marketing entity, their distributor and/or agent engaged in multi-level marketing;”

Now the trade has brought to the notice of the Department certain practical difficulties being faced by them on account of the above said amendments with particular reference to their online Registration and payment of tax under Compounding Scheme.

At present, the KVATIS does not have any specific provision for the Registration of Multi-level Marketing entities and for opting payment of tax under Compounding scheme for such entities.

As such, the following amendments are hereby made in the Forms concerned namely:

1. in Form No. 1 - Application Form for On-line Registration:

in Serial No. '11. Nature of Business' after sub-item 'k. Others (specify)', the sub-item 'l. Multi-level Marketing Entity / Distributor / Agent' shall be inserted;

2. in Form No. 1B – On-line Application for Salesman Permit / Exhibition or Exchange Mela / Compounding / Liability Certificate / Registration Renewal:

(i) in the item 'Category of Dealer' under the heading '**Compounding under Section 8**' after the word and symbol 'Medicine /', the words 'Multi-level Marketing Entity' shall be inserted;

(ii) after the item '9. Medicine Dealers' and the sub-items under it, a new item namely:

' 10. Multi-level Marketing Entity

a. I opt for compounding for the financial year :

i. Whether compounding on MRP opted for the preceding year : Yes/No' shall be inserted;

3. in Form No. 1E – Permission to pay tax under Compounding Scheme;

(i) in the item 'Category' after the word and symbol 'Medicine /', the word 'Multi-level Marketing Entity' shall be inserted;

(ii) after the item 'Medicine Dealers' and the sub-items under it, a new item namely;

' Multi-level Marketing Entity

Permitted to compound Turnover of goods sold at the schedule rate applicable to the goods, of the maximum retail price of such goods'

shall be inserted;

Guidelines for the functioning of Multi-level Marketing Entities.

The Government of Kerala vide Circular read as paper 3rd above has formulated certain guidelines for the functioning of Multi-level Marketing Entities/Direct Sellers. The gist of the Government Circular is as follows:

I. Conditions for Multi-level Marketing/ Permissible Direct Selling: For making the Multi-level Marketing/ Direct Selling activities permissible within the State of Kerala, the following conditions are to be satisfied:

- (i). Every Multi-level Marketing/ Direct Selling Entity operating within the State should:
 - a) take out Registration under the Kerala General Sales Tax Act, 1963 / Kerala Value Added Tax Act, 2003 and the Income Tax Act.
 - b) take out Licenses as may be required as per the Laws of the State/Centre.
 - c) clearly state the nature of their business in the Partnership Deed or Memorandum of Association, as the case may be.
- (ii). The Multi-level Marketing/Direct Selling Entity should pay sales incentive to Direct Sellers at the agreed rate within the agreed period.
- (iii). The Multi-level Marketing/Direct Selling Entity should have an Official Website wherein the relevant details viz. Names and Identification numbers of their authorized Direct Sellers and provisions for registering complaints by the consumers shall clearly be stated.
- (iv). The Multi-level Marketing/Direct Selling Entity should have a Consumer Grievance Cell that should ensure redressal of consumer grievances within seven days from the date of making such complaints.

II. Appointment/Authorisation of Direct Sellers: While appointing or authorising the Direct Sellers, the Multi-level Marketing/ Direct Selling Entity should conform to the following procedure:

- i). Appointment/authorisation of Direct Seller should be upon receipt of application form in prescribed format. The application form should contain the details of the person applying to become a Direct Seller and an undertaking to the effect that he has understood the nature of business and the terms and conditions of the direct selling. Only after satisfying the correctness and genuineness of the details given in the application form with supporting evidences, he/ she should be appointed as a Direct Seller.
- ii). No application should be considered unless such applicant is eligible to enter into a contract under the Indian Contract Act, 1872.
- iii). An agreement recording terms of the appointment as Direct Seller should be executed between the Multi-level Marketing/Direct Selling Entity and the Direct Seller.
- iv). Each Direct Seller should be allotted a Unique Identification Number before granting license/permission to start Direct Selling and be given with an Identity Card.
- v). No incentive should be paid to any person either for canvassing any person for becoming a Direct Seller or for joining as a Direct Seller.
- vi). The Multi-level Marketing/Direct sellers should undergo training on the do's and don'ts of direct marketing in an approved institution by the Government such as Gulati Institute of Finance and Taxation (GIFT), Sreekaryam, Thiruvananthapuram.
- vii). Each Direct seller should take out registration under the Kerala Value Added Tax Act, 2003, if the Multi-level Marketing Entity is not opting for payment of tax under compounded system envisaged in the Act. If the Multi-level Marketing Entity has opted for paying the tax at the first point of sale on Maximum Retail Price, the subsequent dealers including direct sellers need not take out registration nor pay any Value Added Tax.

III. Activities Prohibited:

- i). No Multi-level Marketing/Direct Selling Entity or Direct Seller should indulge in any Money Circulation Scheme or do any activity barred by the Prize Chits and Money Circulation

Schemes (Banning) Act, 1978 (Money Circulation means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions).

- (ii). No Multi-level Marketing/Direct Selling Entity should pay any incentive, by whatever name called, to any person or Direct Seller except the incentive related to the volume of sales of goods or services effected by them.
- (iii). Neither the Multi-level Marketing/Direct Selling Entity nor the Direct Sellers should supply or sell goods which are of inferior quality or have exceeded its validity/usage period.
- (iv). No Multi-level Marketing/Direct Selling Entity or Direct Seller should carry out any money circulation business or Pyramid Scheme for making fast money.
- (v). No Multi-level Marketing/Direct Selling Entity should create chain of customers as the long and unbroken chain would amount to Pyramid Scheme and should be construed to be attempting for making quick or easy money.
- (vi). No Multi-level Marketing/Direct Selling Entity or Direct Seller should be selling goods that does not give value for the money the buyer pays.
- (vii). No Multi-level Marketing/Direct Selling Entity or Direct Seller should collect any Service Charge, while selling goods.
- (viii). Should not commit any act or acts that are punishable under Indian Penal Code.
- (ix). Should not commit any act or acts in violation of the provisions of Indian Contract Act, 1872.
- (x). Should not do any act or acts in violation of the provisions of the Consumer Protection Act, 1986.

IV. General Conditions:

- (i). The Maximum Retail Price of all goods sold by the Multi-level Marketing/Direct Selling Entity or Direct Seller should be visibly displayed on the package/carton/cover of the goods.
- (ii). Goods sold by the Multi-level Marketing/Direct Selling Entity or Direct Seller should carry Guarantee/Warranty of the manufacturer.
- (iii). Multi-level Marketing/Direct Selling Entity should give the consumer the opportunity to exchange/return the goods sold to him if he finds any manufacturing defect or the product purchased is not useful for the purpose it was meant, within thirty days from the date of purchase, provided any seal/protection on the product is kept unbroken.
- (iv). Accounts of individual Direct Sellers shall be maintained properly and should be made available through Web.

V. Maintenance of Records:

Direct Selling Entity/ Company should maintain the following records:

- I. Memorandum of Association, Articles of Association and Certificate of Registration issued by the Registrar of Companies.
- II. Copies of TIN, DIN of Directors, TAN and PAN; In the case of a Partnership - Partnership Deed duly registered.

- III. Registration Certificates taken out under the Kerala General Sales Tax Act, 1963/ Kerala Value Added Tax Act, 2003, Chapter V of the Finance Act - 1994, and Central Sales Tax Act, 1956.
- IV. Copies of Sales Tax / Value Added Tax Returns, Service Tax Returns, Income Tax Returns filed before the authorities concerned during the previous three financial years.
- V. Copies of the Statements of Income Tax Deducted at Source.
- VI. Register containing the details of all Direct Sellers within the State.
- VII. KYC/KBDS (Know Your Customer/Know Your Direct Sellers) as a mandatory process.

VI. Grievance Redressal Mechanism: Every Multi-level Marketing/Direct Selling Entity must have a Complaint Redressal Forum to address the problems of their customers/Direct Sellers effectively. Details of such Forum should be made readily available on the website of the Multi-level Marketing/Direct Selling Entity.

VII. Breach of Guidelines: The Multi-level Marketing/Direct Selling Entities and the Direct Sellers have to follow the above guidelines meticulously. Multi-level Marketing/Direct Selling activity in violation of the guidelines shall be dealt appropriately by the Law Enforcement agencies under the provisions of the appropriate Act such as Prize Chits and Money Circulation Schemes (Banning) Act, 1978, Indian Penal Code, Consumer Protection Act etc.

All assessing authorities are hereby directed to verify and satisfy themselves that the Multi-level Marketing / Direct Selling entity has complied with the above said Guidelines before granting Registration to such entities. Also an affidavit has to be obtained stating that they are complying with the guidelines.

The Circular No. 5/2011 read as 1st paper above stands modified to the above extent.

COMMISSIONER

To,

All concerned
AC ITMC – for information and further necessary action.