

Madhya Pradesh Vritti Kar Adhiniyam, 1995

CONTENTS

1. Short Title, Extent And Commencement
2. Definitions
3. Levy And Collection Of Tax
- 4 . Employers Liability To Deduct And Pay Tax On Behalf Of Employees
5. Computation Of Income
6. Power To Exempt
7. Taxing Authority
8. Registration
9. Returns To Be Furnished By Employers
10. Returns To Be Furnished By Other Registered Persons
11. Assessment Of Tax
12. Payment Of Tax
13. Penalty For Non Payment Of Tax
14. Notice Of Demand
15. Recovery As Arrears Of Land Revenue
- 1 6 . Assessment Or Re-Assessment Of Tax On Employers And Persons Escaping Assessment
17. Appeal
18. Revision
19. Accounts
20. Production And Inspection Of Accounts And Documents And Search Of Premises
21. Refunds
22. Power Under Code Of Civil Procedure
23. Offences
24. Offences By Companies
25. Power To Compound Offences
26. Bar Of Prosecution Where Penalty Imposed
27. Protection Against Suits Or Other Proceedings
28. Power To Make Rules

SCHEDULE 1 :- SCHEDULE I

Madhya Pradesh Vritti Kar Adhiniyam, 1995

An act to provide for the levy of a tax on professions, trades, callings and employments in Madhya Pradesh. BE it enacted by the Madhya Pradesh Legislature in the Forty-Sixth year of the Republic of India as follows:-

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Madhya Pradesh Vritti Kar Adhiniyam, 1995.
- (2) It extends to the whole of Madhya Pradesh.
- (3) It shall be deemed to have come into force on the 1st day of April, 1995.

2. Definitions :-

In this Act unless the context otherwise requires:

- (a) Profession Tax Appellate Authority means an officer of the rank of an Appellate Deputy Commissioner or Additional Appellate Deputy Commissioner of Commercial Tax appointed under Section 3 of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (No. 5 of 1995) as may, by notification, be authorised by the State Government to perform such functions of the Profession Tax Appellate Authority under this Act as may be specified in the said notification;
- (b) [1] Profession Tax Assessing Authority means such officer not below the rank of an Assistant Commercial Tax Officer appointed under Section 3 of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (No. 5 of 1995), as may, by Notification, be authorised by the State Government to perform such functions of the Profession Tax Assessing Authority under this Act as may be specified in the said notification.
- (c) Employee means a person employed on [2] salary or wage and includes -
 - (i) A Government servant receiving pay from the revenues of the Central Government or any State Government or the Railway Fund;
 - (ii) A person in the service of a body whether incorporated or not, which is owned or controlled by the Central Government or any State Government where the body operates in any part of the State, even through its headquarters may be outside the State;
 - (iii) A person engaged in any employment of an employer not covered by items (i) and (ii) above;
- (d) Employer in relation to an employee earning any salary or wage on regular basis under him means the person or the officer who is responsible for disbursement of such salary or wage and includes the head of the office or an establishment as well as the manager or agent of the employer;
- (e) Income means:

- (i) Profits and gains;
- (ii) dividends and interests;
- (iii) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or a person who has a substantial interest in the company, and any sum paid by any such company in respect of any obligations, which, but for such payment would have been payable by the director or other person aforesaid, accruing or arising to a person within the State from any profession, trade or calling other than agriculture.
- (f) Person means any person who is engaged in any profession, trade, calling or employment in the State of Madhya Pradesh and includes a Hindu undivided family, firm, company, corporation or other corporate body, any society, club or association so engaged but does not include any person who earns salary or wage on casual basis;
- (g) Previous year means twelve months expiring on 31st March immediately preceding the year in respect of which assessment is to be made;
- [3] (h) Salary or Wages includes pay, dearness allowance and all other remunerations including allowances received by any person on a regular basis whether payable in cash or kind and also includes perquisites and profits in lieu of salary as defined in Section 17 of the Income Tax Act, 1961 (No. 43 of 1961) but does not include bonus in any form and on any account, gratuity and pension
- (i) Schedule means the Schedule appended to this Act;
- (j) Tax means tax payable under this Act;
- (k) Year means the financial year.

FOOTNOTES:

1. Now in view of the Noti. No. 58, dt. 2.6.99 the Professional Tax assessment of a dealer shall be made by the assessing authority making his assessment under MPCT Act.
2. In the Act, the word salary wherever occurred has been substituted by the words salary or wage by the Professional Tax (Amendment) Act, 1999 with effect from. 1.5.99.
3. Clause (h) substituted by Professional Tax (Amendment) Act, 1999 with effect from. 1.5.99. During 16.4.96 to 30.4.99 clause (h) read as under:
(h) "Salary" shall have the same meaning as assigned to it under Section 17 of the Income Tax Act, 1961 (No. 43 of 1961) after deductions as permissible under Section 16 of that Act except tax payable under this Act;

Prior to 16.4.96 the provisions of clause (h) were similar to the present provisions.

3. Levy And Collection Of Tax :-

(1) Subject to the provisions of Article 276 of the Constitution of India, and of this Act there shall be levied and collected tax on professions, trades, callings and employments.

(2) Every person who carries on a trade either himself or by an agent or representative or who follows a profession or calling other than agriculture or who is in employment either wholly or in part in Madhya Pradesh and who falls under one or the other classes specified in column (2) of the Schedule shall, on the basis specified in the Schedule in respect thereto be liable to pay tax at the rate mentioned against the class of such persons in column (3) of the said Schedule:

Provided that notwithstanding anything contained in the Schedule, where a person is covered by more than one entry of the Schedule, tax under this Act shall be payable by such person at the highest rate of tax specified in respect of such entries.

(3) Notwithstanding anything contained in sub-section (2), any person falling in any of the classes specified in column (2) against serial number 2 of the Schedule shall have the right to opt, in the prescribed manner, to pay tax on the annual income as specified in column (2) against serial No.1 in lieu of the tax payable by him, and on exercising the option such person shall be liable to pay tax at the rate specified in column (3) against the category specified in column (2) against serial number 1 applicable to him, and for that purpose reference to salary or wage in serial No. 1 shall be construed as a reference to the income of such person.

(4) Every person who opts under sub-section (3) for payment of tax under entry at serial No. 1 of the Schedule shall, subject to the provisions of this Act, pay for each financial year a tax at the rate specified in Serial No.1 of the Schedule if his income during the previous year exceeds forty thousand rupees.

(5) Any person who is in employment in Madhya Pradesh shall be deemed to be in employment even though he may be absent therefrom on leave or otherwise.

4. Employers Liability To Deduct And Pay Tax On Behalf Of Employees :-

(1) The tax payable under this Act by any person earning a salary

or wage shall be deducted monthly in the prescribed manner by his employer from the salary or wage payable to such person before such salary or wage is paid to him and such employer shall, irrespective of whether such deduction has been made or not, when the salary or wage is paid to such person, be liable to pay tax on behalf of all such persons:

Provided that if the employer is an officer of the Central Government or a State Government, such employer shall discharge the said liability in such manner, as may be prescribed.

(2) When any person earning a salary or wage-

(a) is also covered by one or more entries other than entry 1 of the Schedule and the rate of tax in any such other entry is more than the rate of tax under entry 1 of the said Schedule,

(b) is simultaneously in employment of more than one employer, and such person furnishes to his employer a certificate in the prescribed Form declaring that he has been registered under sub-section (2) of Section 8 and shall pay the tax himself, then the employer or employers of such person shall not deduct the tax from the salary or wage payable to such person and such employer or employers, as the case may be, shall not be liable to pay tax on behalf of such person:

Provided that such person may opt to have the amount of tax deducted by the employer or employers from his salary or wage and thereupon the amount so deducted shall stand adjusted towards the tax payable by such person for the year.

5. Computation Of Income :-

For the purpose of computing the income of a person liable to pay tax in accordance with provisions of sub-section (3) and (4) of Section 3 the following deductions shall be made from the gross income namely:

- (i) Salary or wage of other persons engaged by him in the profession or calling;
- (ii) Rent in respect of the building to house the business as well as rent on account of machinery, furniture and other similar goods taken on lease or hire;
- (iii) all kinds of taxes;
- (iv) repairs and renewals of immovable property let out on rent subject to a maximum of 6.25 per cent of the annual rental value;
- (v) interest on borrowed capital;
- (vi) repairs of the building and rents of the premises where the

business is carried on;

(vii) electric charges in respect of business premises where the business is carried on;

(viii) such other deductions as may be prescribed.

6. Power To Exempt :-

Where the State Government is of the opinion that it is necessary or expedient so to do, either in the public interest or having regard to the peculiar circumstances of any case, it may by notification and subject to such conditions, if any, as it may specify in the notification, exempt any class of persons or any employer or class of employers from the operation of all or any of the provisions of this Act for such period as may be specified in the notification.

7. Taxing Authority :-

(1) The administration of the Act shall vest in the Commissioner of Commercial Tax appointed under Section 3 of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (No. 5 of 1995) who shall for the purpose of this Act be designated as Commissioner Profession Tax.

(2) The Commissioner Profession Tax shall exercise the powers of general superintendence and control over the authorities appointed under this Act.

(3) The Profession Tax Assessing Authority and the Profession Tax Appellate Authority shall exercise such powers and perform such duties as may be conferred or imposed upon them by or under this Act.

8. Registration :-

(1) Every employer, other than any officer of the Central Government, Railways or the State Government, liable to pay tax under Section 4 shall obtain a certificate of registration from the Profession Tax Assessing Authority in such manner and form as may be prescribed.

(2) Every person liable to pay tax under this Act, other than a person earning salary or wage in respect of whom the tax is payable by the employer but including a person who in addition to earning a salary or wage is also carrying on a trade, profession or calling other than agriculture or who is simultaneously in employment of more than one employer, shall obtain a certificate of registration from the Profession Tax Assessing Authority in such

manner and form as may be prescribed.

(3) Every employer or person required to obtain a certificate of registration under sub-section (1) or sub-section (2), shall within thirty days of his becoming liable to pay tax under this Act apply for the certificate of registration to the Profession Tax Assessing Authority in the prescribed form and that authority shall, after such enquiry as it considers necessary, within sixty days of the receipt of the application, if the application is in order, grant the certificate of registration.

(4) Where an employer or person liable to registration has wilfully failed to apply for such certificate within the time specified in sub-section (3), the Profession Tax Assessing Authority may, after giving him a reasonable opportunity of being heard, impose penalty not exceeding rupees twenty for each day of delay subject to a maximum of rupees two thousand five hundred.

(5) Where an employer or a person liable to registration has given false information in any application submitted under this Section, the Profession Tax Assessing Authority may after giving him a reasonable opportunity of being heard impose a penalty not exceeding rupees five hundred.

9. Returns To Be Furnished By Employers :-

(1) Every employer registered under this Act shall furnish returns to the Profession Tax Assessing Authority in such Form, for such period and by such date as may be prescribed, showing therein the salary or wage paid by him and the amount of tax deducted by him in respect thereof.

(2) Every such return shall be accompanied by a treasury challan in proof of payment of full amount of tax due according to the return and a return without such proof of payment shall not be deemed to have been duly filed.

(3) Where an employer has without reasonable cause failed to file such return within the prescribed time, the Profession Tax Assessing Authority may, after giving him a reasonable opportunity of being heard, impose upon him a penalty not exceeding rupees twenty for each day of delay.

(4) The State Government may, subject to such conditions as may be specified exempt any employer or class of employers from furnishing returns.

10. Returns To Be Furnished By Other Registered Persons :-

(1) Every person referred to in sub-section (2) of Section 8 shall, by the 30th June in each financial year file before the Profession Tax Assessing Authority a correct and complete return in such Form and containing such particulars as may be prescribed setting forth his income in the previous year:

Provided that the Profession Tax Assessing Authority may, for sufficient cause to be recorded in writing, extend the date for filing the return:

Provided further that where such person derives income from any profession, trade or calling other than agriculture at places located within the territorial jurisdiction of more than one Profession Tax Assessing Authority, he shall file the return before such Profession Tax Assessing Authority having jurisdiction over the place where he normally resides.

(2) The State Government may subject to such conditions as may be specified, exempt any class of persons from filing a return.

(3) Every such return shall be accompanied by a treasury challan in proof of payment of full amount of tax due according to the return and a return without such proof of payment shall not be deemed to have been duly filed.

(4) Where a person specified in sub-section (1) has without reasonable cause failed to file such return within the time specified in sub-section (1) the Profession Tax Assessing Authority may, after giving him a reasonable opportunity of being heard, impose upon him a penalty not exceeding rupees five for each day of delay subject to a maximum of rupees five hundred.

11. Assessment Of Tax :-

(1) The amount of tax due from an employer or person under this Act shall be assessed separately for each year:

Provided that where such employer or person fails to furnish return by the prescribed date or knowingly furnishes incomplete or incorrect return for any period of any year, he may be assessed to tax for such period.

(2) If the Profession Tax Assessing Authority is satisfied that the return filed by an employer or person is correct and complete, it shall by order in writing assess the employer or person and determine the tax payable by him on the basis of such return.

(3) (a) If the Profession Tax Assessing Authority is not satisfied that the return filed by an employer or person is correct and complete, it shall serve upon the employer or person a notice in the

prescribed Form requiring him on a date specified in the notice to attend in person or through an authorised representative and to produce accounts and papers in support of the return.

(b) The Profession Tax Assessing Authority shall, on the date specified in the notice or as soon as may be afterwards, on examination of accounts and papers, assess the amount of tax payable by the employer or person.

(c) If the employer or person fails to comply with the terms of the notice or if in the opinion of the Profession Tax Assessing Authority the accounts and papers are incorrect or incomplete or unreliable, the said authority shall, after such enquiry as it deems fit, or otherwise assess the tax due to the best of its judgement.

(4) If an employer or person has failed to get himself registered or being registered has failed to file return, the Profession Tax Assessing Authority shall, after giving the employer or person a reasonable opportunity of being heard and after holding such enquiry as it deems fit or otherwise, pass an order assessing the amount of tax to the best of its judgement.

12. Payment Of Tax :-

(1) The tax or penalty or any other amount payable under this Act shall be paid in the prescribed manner.

(2) The amount of tax deducted by an employer from the salary or wage of his employees shall be paid by treasury challan within ten days of the end of the month for which the deduction has been made.

(3) The amount of tax due from persons other than employers shall be paid for every year:

(a) in respect of a person registered before the commencement of a year or registered on or before 31st August of a year.: Before 30th September of the year.

(b) in respect of a person who is registered after 31st August of a year.: Within thirty days of the date of registration.

13. Penalty For Non Payment Of Tax :-

If a employer or person fails without reasonable cause, to make payment of any amount of tax within the specified time or the date as specified in the notice of demand, the Profession Tax Assessing Authority may, after giving him a reasonable opportunity of being heard, impose upon him a penalty equal to two per cent per month of the amount of tax due subject to a maximum of two-third of the

amount of tax due.

14. Notice Of Demand :-

(1) Where any tax or penalty is payable in consequence of any order passed under or in pursuance of the provisions of this Act the Profession Tax Assessing Authority shall serve on the person concerned a notice of demand in the prescribed Form specifying the amount so payable.

(2) The amount of tax or penalty as specified in such notice shall be paid by such date as may be specified therein and where no date is specified, it shall be paid within thirty days from the service of the notice of demand.

15. Recovery As Arrears Of Land Revenue :-

Any tax or penalty or part thereof remaining unpaid after due date in accordance with the provisions of Section 14, shall be recoverable as an arrear of land revenue.

16. Assessment Or Re-Assessment Of Tax On Employers And Persons Escaping Assessment :-

(1) If for any reason, any employer or person liable to pay tax under the provisions of this Act has not been assessed to tax or has been under assessed to tax for any year, the Profession Tax Assessing Authority may, at any time within three years next following the year in respect of which such tax has not been assessed or has been under assessed proceed to assess or re-assess the tax payable by such employer or person in respect of that year.

(2) The assessment or re-assessment under sub-section (1) as the case may be, shall be completed within two years from the date of initiation of such proceedings.

17. Appeal :-

(1) Any person or employer aggrieved by any order made under Sections 8, 9, 10, 11, 13, and 16 may appeal against such order to the Profession Tax Appellate Authority.

(2) No appeal shall be entertained after the expiry of thirty days from the date of receipt of demand notice or receipt of the order.

(3) No appeal shall be entertained, unless the amount of tax or penalty in respect of which the appeal is being preferred has been paid in full.

(4) The Profession Tax Appellate Authority in disposing of an appeal may:

(i) confirm, annul, reduce, enhance or otherwise modify the assessment or penalty; or

(ii) set aside the assessment or penalty and direct the Profession Tax Assessing Authority which made the assessment or imposed the penalty, to pass a fresh order after further enquiry.

(5) No order under this Section shall be passed without giving the appellant or his representative a reasonable opportunity of being heard.

18. Revision :-

(1) The Commissioner Profession Tax may, on his own motion revise any order passed by any authority under this Act:

Provided that no order shall be revised by the Commissioner Profession Tax under this sub-section after the expiry of three years from the date of passing of the impugned order.

(2) No order under this Section shall be passed without giving the assessee a reasonable opportunity of being heard.

(3) The Commissioner Profession Tax may delegate his power under sub-section (1) to the Additional Commissioner, Commercial Tax appointed under Section 3 of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (No. 5 of 1995).

19. Accounts :-

(1) Every employer liable to pay tax under this Act shall maintain correct particulars of the employees employed under him and correct accounts in respect of salary or wage paid to such employees.

(2) The registers or documents and accounts relating to the particulars of employees and salary or wage disbursed to them maintained by the employer shall be open to inspection by the Commissioner Profession Tax.

20. Production And Inspection Of Accounts And Documents And Search Of Premises :-

(1) The Commissioner Profession Tax may inspect and search any premises, where any profession, trade, calling or employment liable to tax under this Act is carried on or is suspected to be carried on and may cause production and examination of books, registers,

accounts or documents relating thereto and may seize such books, registers, accounts or documents as may be necessary:

Provided that if the Commissioner Profession Tax removes from the said premises any books, registers, accounts or documents, he shall give to the person incharge of the place a receipt describing the books, registers, accounts or documents so removed by him and retain the same only for so long as may be necessary for the purposes of examination thereof or prosecution.

(2) The Commissioner Profession Tax may, subject to such restrictions and conditions as may be prescribed, delegate his powers under sub-section (1) to any officer of and above the rank of Commercial Tax Inspector appointed under Section 3 of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (No. 5 of 1995).

21. Refunds :-

(1) If the Profession Tax Assessing Authority, is satisfied that the amount of tax or penalty paid by an employer or person for any year exceeds the amount to which he has been assessed under this Act for that year, it shall cause a refund to be made in cash of such amount in the manner prescribed, found to have been paid in excess.

(2) Notwithstanding the provisions of sub-section (1) the amount of refund shall be adjusted in the prescribed manner against any arrears of tax, penalty or any other amount due under this Act.

22. Power Under Code Of Civil Procedure :-

The Profession Tax Assessing Authority, the Profession Tax Appellate Authority and the authority exercising powers under Section 18 shall for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (V of 1908) while trying a suit, in respect of following matters, namely:

(a) enforcing the attendance of and examining any person on oath or affirmation;

(b) compelling the production of any document; and

(c) passing such interim orders as may be necessary in the ends of justice;

and any proceeding before such authority under this Act, shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code, 1860 (XLV of 1860) and also for the purpose of Section 196 of the said Code.

23. Offences :-

(1) Any employer or person who, without sufficient cause, fails to comply with any of the provisions of this Act or the rules framed thereunder shall, on conviction be punished with fine not exceeding two thousand five hundred rupees and when the offence is a continuing one, with fine not exceeding twenty five rupees per day during the period of continuance of the offence.

(2) No court shall take cognizance of any offence punishable under this Act except with the previous sanction of such authority as may be prescribed and no Court inferior to that of a Magistrate of the first class shall try any such offence.

24. Offences By Companies :-

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation- For the purpose of this Section-

(a) Company means any body corporate and includes a firm or other association of individuals; and

(b) Director in relation to a firm, means a partner of the firm.

25. Power To Compound Offences :-

(1) Subject to such conditions as may be prescribed, the Profession Tax Assessing Authority, may either before or after the institution of proceedings under this Act permit any employer or person

charged with an offence under this Act to compound the offence on payment of such sum not exceeding two thousand five hundred rupees, as the assessing authority may determine.

(2) On payment of such sum as may be determined by the Profession Tax Assessing Authority, under sub-section (1), the accused employer or person shall be discharged and no further proceeding shall be taken against him in respect of the said offence.

26. Bar Of Prosecution Where Penalty Imposed :-

No prosecution for contravention of any provisions of this Act shall be instituted in respect of the same facts in respect of which a penalty has been imposed under this Act or the rules framed thereunder.

27. Protection Against Suits Or Other Proceedings :-

(1) No suit shall lie in any Civil Court to set aside or modify and assessment made or order passed under the provisions of this Act.

(2) No prosecution, suit or other proceedings shall lie against any officer or authority or any employer for anything done or intended to be done in good faith under this Act or the rules made thereunder.

28. Power To Make Rules :-

(1) The State Government may make rules for carrying 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:

(a) (i) the manner in which tax shall be deducted by an employer under Section 4 from the salary or wage of his employees;

(ii) the manner in which liability to deduct tax on behalf of employees shall be discharged, where the employer is an officer of the Central Government or a State Government, under Section 4;

(b) the manner and Form in which certificate of registration shall be obtained under sub-section (1) and (2) of Section 8;

(c) the Form in which, the period for which and the date by which returns shall be furnished by employers under Section 9;

(d) the Form in which return shall be furnished under sub-section (1) of Section 10;

- (e) the Form in which notice shall be served on an employer and person under Section 11;
 - (f) the manner in which tax, penalty or any other amount payable under the Act shall be paid;
 - (g) the Form of notice to be served or issued under Section 14 or Section 16, respectively;
 - (h) the manner in which an appeal shall be preferred under sub-section (1) of Section 17;
 - (i) restrictions and conditions subject to which the Commissioner Profession Tax may delegate his powers under sub-section (2) of Section 20;
 - (j) the manner in which refund shall be made or adjusted under Section 21;
 - (k) the authority for sanctioning prosecution under Section 23;
 - (l) the conditions subject to which offences may be compounded under Section 25;
 - (m) all matters which are expressly required to be prescribed under this Act.
- (3) All rules made under this Act shall be laid on the table of the legislative assembly.

SCHEDULE 1

SCHEDULE I

(See Section 3)

Schedule of Rates of Tax on Professions, Trades, Callings and Employments