

Amendments are proposed in Kerala Finance Bill 2014. Since the bill is not yet passed, those changes are not incorporated.

## \*THE KERALA BUILDING TAX ACT, 1975

(Act 7 of 1975)

Amended by Acts 6 of 1981, 1 of 1991, 3 of 1992, 13 of 1993,  
23 of 1996 and 23 of 1999

*An Act to provide for the levy of a tax on buildings*

**Preamble.**— WHEREAS it is expedient to provide for the levy of '[a tax on buildings and luxury tax on certain residential buildings];

BE it enacted in the Twenty-sixth year of the Republic of India as follows:—

**1. Short title, extent and commencement.**— (1) This Act may be called the Kerala Building Tax Act, 1975.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 1st day of April, 1973.

### Case Law

**Need for comprehensive amendment:** Need for comprehensive amendment mooted by Court in view of the new pattern of structures coming up in the State. *Pavan Kumar P. v. State of Kerala and Others* — 2012 (2) KHC 695 : 2012 (2) KLT 889 : ILR 2012 (3) Ker. 79 : 2012 (2) KLJ 796 (DB).

**Amendment of the Act mooted:** Need for comprehensive amendment mooted by Court in view of the new pattern of structures coming up in the State. *Pavan Kumar P. v. State of Kerala and Others* — 2012 (2) KHC 695 (DB).

\* Published in K.G. Ext. No. 171 dt. 02/04/1975 (w.e.f. 01/04/1973.)

1. Substituted by the Kerala Finance Act, 1999 (Act 23 of 1999), for the words "a tax on buildings" (w.e.f. 01/04/1999).

### **Statement of objects and reasons**

#### **Act 7 of 1975**

In his Budget Speech for 1970-71, the Minister for Finance had declared among other things, that a non-recurring tax on buildings constructed or in respect of which major repairs and improvements are undertaken on or after 1st April, 1970 would be introduced. Accordingly, the Kerala Building Tax Bill, 1973, providing for the levy of a non-recurring tax on buildings constructed, etc., on or after the 1st April, 1970, was prepared and published as L.A. Bill No. 146. The Bill was introduced in the Legislative Assembly on 5-7-1973 and referred to a Select Committee. The Select Committee submitted its report on 28/03/1974. However, the Bill as reported by the Select Committee could not be taken up during the last budget session.

2. After the budget session, it was considered that levy of building tax as proposed in the Bill as reported by the Select Committee should be given effect to immediately. Therefore, the Kerala Building Tax Ordinance, 1974 (10 of 1974), was promulgated by the Governor on the 27th July, 1974, to give effect to the provisions of the Bill as reported by the Select Committee. The Kerala Building Tax Bill, 1974, for replacing that Ordinance by an Act of the Legislature was published as L.A. Bill. No. 200 with the intention of getting it passed during the last session of the Legislative Assembly. But that Bill could not be introduced and passed during the last session of the Legislative Assembly, and consequently Ordinance No. 10 of 1974 could not be replaced by an Act of the Legislature. Under sub-clause (a) of clause (2) of Article 213 of the Constitution of India, the Ordinance would have ceased to operate on the 9th November, 1974. Therefore, in order to keep alive the provisions of ordinance No. 10 of 1974, the Governor on the 18th November, 1974, promulgated the Kerala Building Tax Ordinance, 1974 (16 of 1974), containing the same provisions as in Ordinance No. 10 of 1974.

3. The Bill seeks to replace Ordinance No. 16 of 1974 by an Act of the Legislature. (*Published in K.G. Ext. No. 70 dt. 13/02/1975*).

#### **Act 6 of 1981**

In the budget speech for the financial year 1980-81, the Minister of Finance announced that in the case of building tax the exemption limit would be raised from Rs.20,000 to Rs.50,000 and that the rates of building tax would be revised as indicated in the speech.

2. According to clause (f) of Section 2 of the Kerala Building Tax Act, 1975 capital value of a building means the value arrived at by multiplying the annual value of the building by sixteen. It is considered that the capital value arrived at by multiplying the annual value by sixteen would be very high. It is therefore proposed to provide that the capital value shall be ten times the annual value.

**Challenge against payment of Building Tax : High Court granting stay : Demand for interest:**

Whether tenable. When stay is granted, it means that the Court admitting the case finds a *prima facie* case in favour of the applicant. Demand for interest not justified as delay in payment cannot be attributed to the applicant. *K. P. Issac & Sons Pvt. Ltd. (M/s.) v. Tahsildar and Others* — 2010 (1) KHC 413 : 2010 (1) KLT 441 (DB).

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**Imposition and measure of tax:** Challenge to. Legislature has power to fix rate of tax and scope of judicial review in such matters is very less. Interpretation of Statutes. *Simon T. A. and Others v. Tahsildar and Others* — 2008 (3) KHC 582 : 2008 (3) KLT 826 : ILR 2008 (3) Ker. 667 : 2008 (3) KLJ 209 : AIR 2008 Ker. 245 (DB).

**Proposal by Tahsildar to levy building tax:** Objections filed by the aggrieved. Orders passed without considering the objections cannot be sustained and is liable to be set aside. *M/s. Ansal Buildwell Limited v. The Tahsildar and Others* — 2007 (2) KHC 956 (DB).

**Assessment of building tax is a quasi judicial function:** Act conferring power to the Government to issue orders to remove difficulties. Such power cannot be used to issue directions to the authorities, exercising judicial/quasi judicial functions and dictating to them how to exercise those functions. *Bavasons Constructions Pvt. Ltd. v. State of Kerala* — 2007 (2) KHC 409 : 2007 (3) KLT 101.

**Building tax paid under the Building Tax Act:** Whether an allowable business expenditure. Held, it is not an allowable business expenditure either under S.30(b) or under S.37(1) of the Income Tax Act. *CIT v. Hotel Shah and Co.* — 2005 KHC 546 : 2005 (2) KLT 123 : 2005 (2) KLT 123 (DB).

**Taxing Statute how to be construed:** It may be stated at the outset that the provisions of a taxing statute have to be construed strictly. A person cannot be taxed unless the provision clearly provides for it. The words of the statute or the relevant entry have to be given their true and natural meaning. The Authority cannot add to the words. It cannot impose a levy by reading an implication into the plain words of the provision. There is no room for intendment. The words of the statute cannot be strained. Strict letter of law has to be seen. The present case has to be examined in the light of these broad parameters. *Kurian Abraham (P) Ltd. v. Asst. Commissioner (Assmt.) II* — 2004 KHC 110 : 2004 (1) KLT 498 : 2004 (1) KLJ 462 : ILR 2004 (2) Ker. 1 (FB).

**Taxing Statute to be strictly applied:** A taxing statute has to be strictly applied and that rule will lie not only

— Statement of Objects and Reasons (contd...) —

3. The Bill seeks to amend the Kerala Building Tax Act, 1975, to give effect to the above proposals with retrospective effect from the date of commencement of that Act. (**Published in K.G. Ext. No. 521 dt. 27/07/1980.**)

**Act 1 of 1991**

The Government have declared tourism as an industry with a view to develop tourism in the State and announced various concessions to tourism related activities as per G.O. (P) 224/86/GAD dated 11-7-1986. One of the concessions declared by Government was to exempt the Buildings constructed in relation to tourism from the provisions of the Kerala Building Tax Act, 1975.

For achieving the above said purpose the Kerala Building Tax Act, 1975 has to be amended suitably and the Government have decided to amend the Kerala Building Tax Act, 1975 for the purpose.

As the above proposal had to be given effect to immediately and as the Legislative assembly was not in session the Kerala Building Tax (Amendment) Ordinance, 1990 (Ordinance No. 8 of 1990) was promulgated by the Governor of Kerala on the 2nd day of November, 1990, and published in the Kerala Gazette Extraordinary dated the 6th day of November, 1990.

The Bill seeks to replace the said Ordinance by an Act of the Legislature. (**Published in K.G. Ext. No. 1159 dt. 07/12/1990.**)

**Act 3 of 1992**

Section 5 of the Kerala Building Tax Act, 1975 empowers the Government to charge building tax based on capital value of buildings. Government have decided to charge building tax based on plinth area of buildings instead of capital value. It was also decided to make a provision to collect building tax in cases where misuse of exemption by the assessee is found out later on. Government considered necessary that application for revision shall be made only after the building tax has been paid. Certain other consequential amendments were also considered necessary.

2. For achieving the above said purposes the Kerala Building Tax Act, 1975 has to be amended and the Government have decided to amend the Act suitably.

3. As the above proposals had to be given effect to immediately and as the Legislative assembly was not in session, the Kerala Building Tax (Amendment) Ordinance, 1992 (Ordinance No. 2 of 1992) was promulgated by the Governor of Kerala, on the 25th day of January, 1992 and published in the Kerala Gazette Extraordinary No. 87 dated the 25th day of January, 1992 and it was brought into force on the 10th day of February, 1992.

4. Government have since decided to enable them to grant exemption from building tax in respect of buildings financed by Central or State Government Grants. Suitable provision for the purpose has been incorporated in the Bill.

5. The Bill with the above modification seeks to replace Ordinance No. 2 of 1992 by an Act of the Legislature. (**Published in K.G. Ext. No. 303 dt. 11/03/1992.**)



against the assessee but also against the Revenue especially when the question of time bar is being considered. *Shajahan v. Tahsildar*— 2000 KHC 610 : 2000 (3) KLT 143 : 2000 (2) KLJ 438.

**Proceedings of the assessing authority under the Building Tax Act is a judicial proceeding:**

Officer exercising the powers under the Act are entitled to the benefit of the Act. Suit for damages is not maintainable in respect of acts done in performance of the duties under the Act. *Sankara Pillai v. Chandran*— 1991 KHC 159 : 1991 (1) KLT 586 : 1991 (1) KLJ 418 : ILR 1991 (2) Ker. 707.

**Whether the Act is violative of Art. 14, 19 and 301 of the Constitution:** The underlying basis of tax under the Act is on sound and well accepted principle or taxation. Retrospectivity of operation is no ground for invalidation. There is a legislative history for choosing the date of commencement. When the Act was in the Bill stage as Bill 146/73, the date of commencement was 01/04/1970. The Select Committee modified it to 01/04/1973. It is not for us to cavil at this legislative wisdom or policy. A conspectus of the provisions of the Act does not justify our holding that it places unreasonable restrictions on the right to acquire, hold and dispose of property under Art. 19. The attack based on Art 301 does not at all appeal to us. It is well recognised that the freedom of trade and commerce guaranteed by this Article can be invaded only if the legislation complained of directly and immediately affects the movement part of the trade. We see nothing in the provisions of the impugned Act which violate the provisions of Art. 301 of the Constitution. *Sundari Bai Alias Radha Bai v. State of Kerala*— 1978 KHC 225 : 1978 KLT 931 : AIR 1979 Ker. 68 : 1978 KLT SN 86 (FB).

**2. Definitions.**— In this Act, unless the context otherwise requires,—

- (a) “[‘Appointed day’ means such date as the Government may for the purpose of this Act, specify by notification in the Gazette\*:]

**Case Law**

**Factors to be taken into account:** It is the state of affairs as at the time of completion of the construction that has to be taken into account. Generator if installed subsequently, has to be eschewed from consideration. *Amritha Theatre v. Tahsildar*— 1994 KHC 306 : 1994 (2) KLT 102.

- (b) “appellate authority” means an appellate authority appointed under Section 4;
- (c) “assessee” means a person by whom building tax or any other sum of money is payable under this Act and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of the building tax payable by him;
- (d) “assessing authority” means an assessing authority appointed under Section 4;
- (e) “building” means a house, out-house, garage, or any other structure, or part thereof, whether of masonry, bricks, wood, metal or other material, but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure.

**Explanation 1.**— In the case of buildings constructed for providing housing accommodation for workers and their families residing in plantations, in pursuance of Section 15 of the Plantations Labour Act, 1951 (Central Act 69 of 1951) or buildings constructed under the Government of India Subsidised Housing Scheme for industrial workers, each part of a building providing or intended to provide accommodation for a worker or a worker and his family shall be deemed to be a separate building.

**Explanation 2.**— Where a building consists of different apartments or flats owned by different persons and the cost of construction of the building was met by all such persons jointly, each such apartment or flat shall be deemed to be a separate building.

**Case Law**

**Land owner entering into joint venture agreement with builder: Given multiple apartments as consideration for land: Whether such apartments can be assessed as a single unit:** Several flats assigned to a single person in an apartment building also constitute a ‘building’. When Explanation 2 is applied to an apartment building, there is no scope for assessment of part of such building other than as a separate apartment. Irrespective of the number of owners owning the apartment building, each flat is to be assessed as a separate building. *Pavan Kumar P. v. State of Kerala and Others*— 2012 (2) KHC 695 : 2012 (2) KLT 889 : ILR 2012 (3) Ker. 79 : 2012 (2) KLJ 796 (DB).

2. Substituted by Act 3 of 1992, published in K.G.Ext. No. 415 dt. 01/04/1992 (w.e.f. 10/02/1992). Prior to the Substitution it read as:

“(a) “annual value” of a building means the gross annual rent at which the building may at the time of completion be expected to let from month to month or from year to year;”.

\* Government has notified 10th day of February, 1992 as the appointed day.

