



Intricate issues in Composition scheme and RCM under GST

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Composition Scheme under GST



Overview of the Composition scheme

- The Composition levy is an alternate method of levy of tax designed for small tax payers whose turnover is upto a prescribed limit.
- The objective of the scheme is to bring simplicity and to reduce the compliance cost for the small tax payers.
- Primarily the Composition scheme is available to the suppliers of goods and restaurant service, but composition suppliers are permitted to supply services upto a marginal value in the year of opting for composition scheme.
- Subsequently the Composition scheme has also been extended to include service providers other than restaurant services vide Notification No.02/2019-CT(R)

Advantages of Composition Scheme

Lesser compliance

- A composition dealer is not required to file multiple GST returns vizz. GSTR-1, GSTR-3B etc.
- Not required to maintain details of Stock and tax payable.
- Not required to issue Tax invoices instead issue bill of supply.

Flexibility

- The dealer is allowed to switch between the Composition Scheme and the normal scheme on the basis of turnover of the preceding year. However once opted for the scheme the dealer can opt out or vice versa only in the next financial year.

Limited tax liability

- Pay taxes @ 1%, 5% or 6% instead of 5%, 12%, 18% or even 28%.
- Better liquidity as taxes are at a lower rate

Disadvantages of Composition Scheme

- There is limited territory of business as the dealer is restricted from carrying out inter-state transactions.
- No Input Tax Credit available to composition dealers.
- The Tax payer would not be able to supply goods through E-Commerce portal which is the future of retail business.
- A person supplying goods not leviable to tax under the GST Act i.e Motor spirits and alcoholic liquor for human consumption is not eligible to opt for composition scheme.
- Composition dealer cannot collect tax from the customer and has to pay tax from his own pocket.

Who can opt for Composition Scheme ?

– Sec 10(1)

- Small taxpayers with an aggregate turnover in preceding financial year up to Rs. 1.5 crores shall be eligible for composition scheme.
- In case of North-Eastern states and Uttarakhand, the limit is Rs 75 lakh.
- As per the CGST (Amendment) Act, 2018, a composition dealer can also supply services to an extent of ten percent of turnover, or Rs.5 lakhs, whichever is higher w.e.f. 1st Feb 2019.
- Turnover of all businesses registered with the same PAN should be taken into consideration to calculate turnover

Turnover limits for Composition Scheme under Sec 10(1)

Period	Turnover of Preceding Financial Year
01 st July 2017 to 12 th Oct 2017 (Notification No. 8/2017-CT)	Rs. 75 Lakhs (Rs. 50 Lakhs for specified states)
13 th Oct 2017 to 31 st March 2019 (Notification No. 46/2017-CT)	Rs. 1 Crore (Rs. 75 Lakhs for specified states)
1 st April 2019 – Till date (Notification No. 14/2019-CT)	Rs. 1.5 Crores (Rs. 75 Lakhs for specified states)

What are the GST rates for a composition dealer ? – Rule 7 & Notifn.8/2017-CT

Type of Business	1 st July 17 to 31 st Dec 17	1 st Jan 2018 – till date	Total
Manufacturer other than manufacturer of notified goods	1% + 1%	0.5% + 0.5%	1% of the turnover of in State/UT
Restaurants not serving alcohol	2.5% + 2.5%	2.5% + 2.5%	5% of the turnover of in State/UT
Any other supplier eligible for composition levy under Section 10 and corresponding rules.	0.5% + 0.5%	0.5% + 0.5%	1% of the turnover of taxable supplies of goods and services-(Services added w.e.f. 01.02.2019) in the State or UT i.e no tax payable on exempt supplies – w.e.f from 01.01.2018 vide Notf no. 03/2018- CT dt. 23.01.2018

Explanation 2. to Section 10 (inserted by Finance (No.2) Act 2019) — For the purposes of determining the tax payable by a person under this section, the expression "turnover in State or turnover in Union territory" shall not include the value of following supplies, namely:—

(i) supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and (ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.]

Under the earlier provisions the above points are clarified vide Order No. 01/2019 CT Dt. 01.02.2019 and Notification No. 2/2019-CT(R)

Composition Scheme – Service Providers Notifn. 2/2019 – CT(R) Dt. 07/03/2019

- As per 32nd GST Council Meeting held on 10th Jan 2019 and consequential issue of Notification No. 2/2019–CT(R), Service Providers can opt into the Composition Tax Scheme, and the Government has set the threshold turnover for service providers at **Rs. 50 lakhs** to be eligible for this scheme.
- Where more than one registered persons are having the same Permanent Account Number, issued under the Income Tax Act, 1961, central tax on supplies by all such registered persons shall be paid at the rate specified as per the notification
- Description of supply to which the above notification is applicable
First supplies of goods or services or both upto an aggregate turnover of fifty lakh rupees made on or after the 1st day of April in any financial year, by a registered person.
The Rate of tax shall be 3% CGST + 3% SGST.

“first supplies of goods or services or both” shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act

Inclusions and Exclusion from Aggregate turnover for determining eligibility under Composition scheme

Includes

Value of all Taxable Supplies including exports

Value of all exempt supplies

Value of Inter-state supplies of persons having the same PAN be computed on all India basis

Excludes

CGST/SGST/IGST/UTGST

Value of Inward supplies on which tax is payable under RCM.

Value of supply of any exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

the expression "aggregate turnover" shall include the value of supplies made by such person from the 1st day of April of a FY up to the date when he becomes liable for registration

Who cannot opt for Composition Scheme ?

For Composition Scheme under Sec 10(1) – Section 10(2)	For Composition Scheme as per Notification no. 02/2019-CT(R) – Section 10(2A)
Supplier engaged in the supply of services Except Restaurant Services.	Eligible to pay tax under sub section(1) of section 10 of the said Act.
Manufacturer of ice cream (21050000), pan masala (21069020), or tobacco (24) and Aerated Water - w.e.f 01.10.2019 (22021010)	Engaged in making supplies of ice cream (21050000), pan masala (21069020), or tobacco (24).
Supplier engaged in making any supply of goods or services which are not leviable to tax under this Act.	
Supplier engaged in making any inter-State outward supplies of goods or services.	
Supplier engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52	

Note :- A person who has opted for composition scheme can procure goods from an inter-state supplier without any restrictions. Restriction is on outward supply.

What are the conditions for availing Composition Scheme?

For Composition Scheme under Sec 10(1) – Rule 5	For Composition Scheme as per Notification no. 02/2019-CT(R)
The goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under sub-section (4) of section 9	Aggregate turnover in the preceding financial year was fifty lakh rupees or below
The goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State.	Not eligible to pay tax under sub-section (1) of section 10 of the said Act; Persons not eligible for composition scheme but eligible for above notification are registered persons exclusively engaged in the business of supplying services other than restaurant services.
The supplier shall mention the words "composition taxable person, not eligible to collect tax on supplies" at the top of the bill of supply issued by him.	The registered person shall mention at the top of the bill of supply 'taxable person paying tax in terms of notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies'.
The supplier mention the words "composition taxable person" on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business	The registered person opting to pay tax under this notification shall be liable to pay central tax at the rate of three percent on all outward supplies notwithstanding any other notification issued under Section 9(1) or section 11 of said Act.

Common Conditions/Restrictions in order to opt for Composition Scheme

- Sec 10(1) and Notification No.02/2019-CT(R)
- The option availed of by a registered person shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified.
- The registered person shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
- The registered person shall issue, instead of tax invoice, a bill of supply as referred to in clause (c) of sub-section (3) of section 31 of the said Act with particulars as prescribed in rule 49 of Central Goods and Services Tax Rules.
- The registered person shall be liable to pay central tax on inward supplies on which he is liable to pay tax under sub-section (3) or, as the case may be, under sub-section (4) of section 9 of said Act at the applicable rates i.e RCM liability payable.

How to opt for Composition Scheme ?

- Any person who applies for **fresh registration** under Rule 8(1) may give an option to pay tax under section 10 in Part B of FORM GST REG-01, which shall be considered as an intimation to pay tax under the said section.
- Any registered person who **opts to pay tax under section 10** shall electronically file an intimation in FORM GST CMP-02, duly signed or verified through electronic verification code, on the common portal prior to the commencement of the fin. year for which the option to pay tax under composition scheme is exercised. For FY 2020-21 date extended till 30-06-20.
- Furnish the statement in FORM GST ITC-03 for **reversal of ITC** as per Sec 18(4) on inputs/semi-finished goods and finished goods in stock in accordance with the provisions of sub-rule (4) of rule 44 within a period of sixty days from the commencement of the relevant financial year. For FY 20-21 date extended till 31st July 2020.

Compliances to be done by a Composition dealer

- From 1st April 2019 onwards, a composition dealer is required to file a quarterly statement containing the details of payment of self-assessed tax in form GST CMP-08 by 18th of the month after the end of the quarter and Furnish return GSTR-4 for every financial year till the thirtieth day of April following the end of such financial year electronically through common portal.
- For Quarter Ending March 2020
Due Date for GST CMP-08 – 7th July 2020
Due Date for GSTR-4 – 15th July 2020
- Apart from the above returns a composition dealer is also required to file an Annual Return in Form GSTR-9A by 31st Dec of the succeeding financial year. Form GSTR 9A can be used to reflect any additional tax liability which is not disclosed in Form GSTR 4.
- Until 31st March 2019 a composition dealer was required to pay tax and file Return in form GSTR-4 on a quarterly basis on or before the 18th day of the month after the end of the relevant quarter and file GSTR-9A by 31st Dec of the succeeding financial year.
- The dealer is required to maintain all the documents and records as per Sec 35 and Rule 56 except as per rule 56(2) – Stock of goods and 56(4) – Details of tax payable.

Opting out of Composition Scheme

Suo Moto

File an application in **FORM GST CMP-04** before the date of withdrawal.

Submit statement in **FORM GST ITC-01** containing details of the stock of inputs, semi-finished or finished goods held in stock by him on the date on which the option is withdrawn, within a period of **thirty days** from the date from which option is withdrawn, for availing ITC as per Sec 18(1)(c) read with rule 40

Any application for withdrawal or denial of the scheme in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

At the Instance of Officer

Where the proper officer has reasons to believe that the registered person was not eligible or has contravened the provisions of the Act, he may issue a notice to such person in **FORM GST CMP-05** to show cause within **15 days** of the receipt as to why the option shall not be denied.

Reply to show cause notice in **FORM GST CMP – 06** and the proper officer shall issue an order in **FORM GST CMP-07** within a period of thirty days of the receipt of such reply

Submit , a statement in **FORM GST ITC-01** containing details of the stock of inputs, semi-finished goods or finished goods held in stock by him on the date on which the option is denied, within a period of **thirty days from the date of the order** passed, for availing ITC as per Sec 18(1)(c) read with rule 40

Case 1

ABC is engaged in supply of goods . His aggregate turnover in preceding FY 19-20 is Rs. 70 lakhs. Since his aggregate turnover in the preceding FY does not exceed Rs. 1.5 Cr, he is eligible to opt for composition scheme in Current FY 20-21 by filing form GST CMP-02 on the GST portal before the start of the financial year i.e before 31st March 2020 (Now extended till 30th June 2020). Further, in FY 20-21, he can supply services (other than restaurant services) upto a value not exceeding :-

a) 10% of 70 Lakhs i.e Rs. 7 lakhs

or

b) Rs. 5 Lakhs, whichever is higher

Thus the entity can supply services upto a value of Rs. 5 Lakhs.

If the value of services supplied exceeds Rs. 5 Lakhs he becomes ineligible for the composition scheme and has to opt out of the composition scheme and follow regular scheme.

Further M/s ABC would be required to furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub rule (4) of rule 44 within a period of sixty days from the commencement of FY 20-21 i.e on or before 31st May 2020. (Now extended till 31st July 2020) to reverse the ITC by debiting electronic credit/cash ledger.

Case 1 - Continued

ITC Reversal shall be done as follows :-

1.Amount to be reversed is equivalent to ITC on :-

- inputs held in stock, contained in semi-finished goods or finished goods held in stocks
- Capital goods

on the day immediately preceding the date of switch over i.e 31st March of the preceding FY.

2. Manner of Reversal of ITC

- Inputs** – Proportionate reversal based on corresponding invoices. If such invoices not available, prevailing market price on the effective date of switch over should be used with due certification by a practicing CA/Cost Accountant.
 - Capital Goods** – Reversal on pro rate basis pertaining to remaining useful life (in months), taking useful life as 5 years.
3. Reversal amount will be calculated separately for ITC of CGST,SGST/UTGST and IGST.

4. Reversal amount will be added to the output tax liability of M/s ABC.

5. Electronic Credit/Cash ledger will be debited with such amount and balance ITC, if any, will lapse.

Case 2

Mr. B a registered taxable person was paying tax under the composition scheme. On 31st July 2019 his aggregate turnover crosses Rs.1.5 Crores.

Hence on 31st July the option availed to pay tax under Sec 10(1) or as per Notification 02/2019 –CT(R) shall lapse and Mr. B shall become liable to pay tax as per Sec 9(1).

Mr. B will be eligible to claim ITC on inputs held in stock, contained in semi-finished goods or finished goods held in stocks and on capital goods as on 30th July. 2019 by filing GST ITC-01 within 30 days i.e on or before 30th August 2019.

ITC on Capital goods will be reduced by 5% per quarter from the date of the invoice as per Sec 18(1) read with rule 40.

For the period 1st April to 30th July Mr.B shall be required to file GST CMP-08 on the 18th day of the month after the end of the quarter i.e on 18th July 2019 for quarter ending June'19 and on 18th October 2019 for the period 1st July 2019 to 30th July 2019. Return in Form GSTR-4 will be required to be filed by 30th April 2020 (Now extended till 15th July 2020)

From 31st July 2019 onwards Mr. B shall be required to file GSTR-3B and GSTR-1 as per the provisions of Sec 37 and Sec 39 on respective due dates as applicable.

Case 3 - Empathic Trading Centre (GST AAR Karnataka)

Facts of the case and contention of the applicant

1. The applicant is a proprietary concern engaged in the business of supplying goods under the trade name “Empathic Trading Centre” and is also a supplier of service of renting of immovable property. There is no connection whatsoever between the two lines of business and they are two separate and distinct business activities.
2. He is currently under composition scheme, having migrated to the composition scheme with effect from 01.04.2019 by virtue of Notification No.2/2019- Central Tax (Rate) dated 07.03.2019 as his aggregate turnover is much less than Rs.50,00,000-00 per annum.
3. He states that he is eligible for composition scheme as his aggregate annual turnover is much less than Rs.50 Lakhs as the scheme is applicable to both sale of goods and renting of immovable property service provision and The applicant contends that the supply of goods (sales) and the supply of service (rent) are unrelated and totally unconnected and hence he is liable to pay 1% as composition tax on supply of goods and 6% on the supply of service (rent), and the two amounts totaled and paid.

Case 3 - Continued

Discussion

1. The applicant admittedly is supplying services and hence the eligibility for composition scheme is dependent on the satisfaction of the condition stipulated in the second proviso to sub-section (1) of section 10. If the turnover of services of the applicant exceeds ten per cent of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher, then he shall not be eligible to composition scheme. Even if the applicant obtains separate registration, one for the goods and other for the services, he would not be eligible for composition for both the lines of business. Hence the applicant is not eligible for composition under section 10 of the CGST Act if the turnover of services of the applicant exceeds Rs.5 Lakhs or ten percent of turnover in the state, whichever is higher.
2. On perusal of the conditions as per Notification no. 02/2019-CT(R), an applicant shall be eligible to pay tax under the said notification, only if the applicant is not eligible to pay tax under section 10(1) of the CGST Act and the applicant does not satisfy the above condition as he is registered under Section 10 of CGST Act, 2017.
3. If the applicant opts out of the Composition levy and he obtains separate registrations for the two lines of business, as per second condition, he shall be liable to pay tax at 3% CGST and 3% SGST on the each of the turnovers of the registrations. He cannot apply different schemes for different types of transactions.

Case 3 - Continued

Ruling

1. The applicant is eligible to be in the composition scheme under section 10 of the CGST Act, 2017 if the turnover of services of the applicant does not exceed ten per cent of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.
2. The applicant is not eligible to opt to pay tax under the Notification No.2/2019- Central Tax (Rate) dated 07.03.2019 and under the Notification (02/2019) No. FD 48 CSL 2017 dated 07.03.2019 of the Government of Karnataka as the applicant is registered as a Composition Taxpayer.
3. The rate of tax applicable on the entire value is 3% CGST and 3% KGST and he cannot pay tax at 1% on supply of goods and 6% tax on the supply of services.



Reverse Charge Mechanism under GST

Background

- In **Forward Charge**, the supplier has to collect the tax from recipient and remit the tax periodically to the Government. However under **Reverse Charge Mechanism**, recipient has to remit the tax to the government directly.
- The taxability under Reverse Charge Mechanism (RCM) was first introduced during the Service tax regime.
- The GST law has carried forward the legacy with a similar concept under Sections 9(3) and 9(4) of the CGST Act and Sections 5(3) and 5(4) of the IGST Act.
- Section 2(98) of the CGST Act :

Reverse charge means "liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9 of Central Goods and Service Tax Act, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act".

Background

Forward Charge



Reverse Charge



Levy and Collection

- Extract of Section 9(3) of CGST Act / Section 5(3) of IGST Act ,
 - *The Government may, on the recommendations of the Council, by notification,*
 - *specify categories of supply of goods or services or both,*
 - *the tax on which shall be paid on reverse charge basis*
 - *by the recipient of such goods or services or both*
 - *and all the provisions of this Act shall apply to such recipient*
 - *as if he is the person liable for paying the tax in relation to the supply of such goods or services or both*

Levy and Collection

- Section 9(4) of CGST Act was substituted by the Central Goods and Services Tax (Amendment) Act, 2018, w.e.f. 1-2-2019.
- Prior to its substitution, sub-section (4) read as under :
 - *The central tax in respect of the supply of taxable goods or services or both*
 - *by a supplier,*
 - *who is not registered,*
 - *to a registered person*
 - *shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

Challenges faced by Recipients on supplies received from Unregistered Persons

- Whether the supply is intra-State or inter-State by identifying the location of the **unregistered supplier** and place of supply of the specific transaction.
- Whether the supply is mixed supply or composite supply
- Identification of Rate of Tax/HSN/SAC Code
- Ascertain the time of supply
- Limit of Rs. 5000/- per day (Notifn. 8/2017-CTR)
- Applicability of the earlier sub section 4 of Section 9 – suspended vide Notifn. No.38/2017-CT-R Dtd. 13-10-17 by omitting the proviso in Notifn. 8/2017-CT-R.

Levy and Collection

- Extract of Section 9(4) of CGST Act / Section 5(4) of IGST Act w.e.f. 01-02-19.
 - *The Government may, on the recommendations of the Council, by notification,*
 - *specify a class of registered persons who shall,*
 - *in respect of supply of specified categories of goods or services or both*
 - *received from an unregistered supplier,*
 - *pay the tax on reverse charge basis*
 - *as the recipient of such supply of goods or services or both,*
 - *and all the provisions of this Act shall apply to such recipient*
 - *as if he is the person liable for paying the tax in relation to such supply of goods or services or both.*



IGST on Import of Goods

- Proviso to Sec.5(1) of IGST Act
 - Integrated tax on goods imported into India
 - shall be levied and collected
 - in accordance with the provisions of section 3 of the Customs Tariff Act, 1975
 - on the value as determined under the said Act
 - at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

Exemption to certain supplies from RCM

- Notifn. 9/2017-CTR – Exempts the supplies of goods or services or both received by a (TDS) deductor u/s 51 of the CGST Act,
 - from any supplier, who is not registered,
 - from the whole of the central tax leviable thereon u/s 9(4),
 - subject to the condition that the deductor is not liable to be registered otherwise than u/s 24(vi).
- Notifn. 10/2017-CTR – Exempts the supplies of second hand goods purchased from unregistered suppliers by the dealers operating under Margin Scheme

Time of Supply (Section 12(3) of CGST Act)

Goods:

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply **shall be the earliest of the following dates**, namely:

- a) the date of the receipt of goods; or
- b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- c) the date immediately following **thirty days** from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

Time of Supply (Section 13(3) of CGST Act)

Service:

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply **shall be the earliest of the following dates**, namely:

- a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- b) the date immediately following **sixty days** from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supplier:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

What is the time limit to raise RCM self invoice?

- As per Section 31(3)(f) of CGST Act, a Registered Person(RP) who is liable to pay tax u/s 9(3) or 9(4) of the CGST Act shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the **date of receipt of goods or services or both.**
- RP may issue a consolidated invoice at the end of a month for supplies covered u/s 9(4) (Rule 46- 2nd proviso)
- As per Section 31(3)(g), a RP who is liable to pay tax u/s 9(3) or 9(4) shall issue a payment voucher at the time of making payment to the supplier.
- In case of Registered Taxable Person receiving supply of notified goods or services or receipt of supplies from unregistered supplier where tax has to be paid on reverse charge basis, the self- invoice series should be reflected in Document details in GSTR-1 – table 13.2

RCM- Payment and Reporting

- Tax under reverse charge basis shall be paid through Electronic Cash Ledger only. (Section 49(4) r.w. Rule 85(4))
- *Rule 56(1)-every registered person shall keep and maintain, in addition to the particulars mentioned in sec.35(1), a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with the relevant documents*
- Invoice level information in respect of all outward supplies attracting reverse charge, rate wise, to be furnished separately in **GSTR1-Table 4B**
- Tax payable on reverse charge basis should be reflected in **GSTR-3B-Table 3.1 (d)**
- ITC of tax paid on RCM (other than import of goods/services) should be reflected in **GSTR-3B-Table 4(A)(3)**.

Registration

- Section 24(iii)- a person paying tax under the reverse charge mechanism has to compulsorily get registered even if the turnover is below the threshold limit.
- Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the IGST Act is not liable for Registration u/s 23
- Persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both u/s 9(3) are notified u/s 23(2) as the category of persons exempted from obtaining registration under the aforesaid Act. (Notifn. 5/2017-CT)

Issues

- Are Charitable Organisations who are providing exempt services liable for Registration if they receive services liable for RCM ?
- Whether an unregistered Proprietary firm having an aggregate turnover of Rs. 15 lacs is liable for Registration if it receive services liable for RCM ?

Applicability of RCM on supply of goods

- The Central Government vide notification no 4/2017-CT-R dated 28.06.2017 specified the supply of goods i.r.o which tax is to be paid under reverse charge mechanism by the recipient of supply of such goods.

SI No	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
1.	0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	1404 90 10	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	2401	Tobacco leaves	Agriculturist	Any registered person
4.	5004 to 5006	Silk yarn	Any person who manufactures silk yam from raw silk or silk worm cocoons for supply of silk yarn	Any registered person

Applicability of RCM on Supply of Goods

SI No	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
4A.	5201	Raw cotton Inserted by Notifin No. 43/2017-CT-R w.e.f. 15-11-2017.	Agriculturist	Any registered person
5.	-	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent.

- Explanation.—For the purposes of SI no 5, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of sub-section (1) of section 11 of the Lotteries (Regulation) Act, 1998 (17 of 1998).

Applicability of RCM on Supply of Goods

SI No	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
6.	Any Chapter	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union territory or a local authority	Any registered person
7.	Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person

- Serial No.7 and entries relating thereto, inserted by Notification No.11/2018-Central Tax (Rate), Dated **28-5-2018**.
- Serial No 6 was Inserted by Notification No. 36/2017-Central Tax (Rate), dated 13-10-2017, w.e.f. **13-10-2017**.

Categories of Services notified u/s 9(3) on which RCM is applicable -Notifn No. 13/2017-CT-R

- Various categories of services have been notified u/s 9(3) till date.

Category of Supply of Services	Supplier of service	Recipient of Service
1. Supply of Services by a goods transport agency (GTA) (who has not paid Central Tax @ 6% in respect of transportation of goods by road)	Goods Transport Agency (GTA)	Any registered person under GST, factory, society, body corporate, partnership firm, AOP, casual taxable person

- Exclusions from RCM - GTA services provided to Dept. or establishment of CG/SG/UT or local Authority or Governmental agencies which have taken registration under GST Act only for the purpose of deducting tax (TDS) u/s 51 and not for making a taxable supply of goods or services.
- The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification

Whether payment made for tempo charges for which no consignment note is issued will be covered under RCM?

- As per clause (ze) of Notifin no.12/2017-CT-R- GTA means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.
- Thus, it can be seen that issuance of a consignment note is must for a supplier of service to be considered as a Goods Transport Agency.
- It is only the services of such GTA, who assumes agency functions, that is being brought into the GST net. Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA.
- Consignment note is a document issued by a goods transportation agency against the receipt of goods for the purpose of transporting the goods by road in a goods carriage
- If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of goods transport agency.

.....Whether payment made for tempo charges for which no consignment note is issued will be covered under RCM?

- If a consignment note is issued, it means that the lien on the goods has been transferred to the transporter. Now the transporter is responsible for the goods till its safe delivery to the consignee.
- Will the tempo Hire Charges be covered under renting of motor vehicles category under RCM ?
- Services by way of giving on hire—to a goods transport agency, a means of transportation of goods is exempt – Entry 22-Notifn.12/2017-CT-R

List of service on which RCM is applicable

Category of Supply of Services	Supplier of service	Recipient of Service
2. Legal Services	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory.

- Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.
- “Legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.”.
- The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.

Issues - RCM on legal services

- If the legal service are received in Individual capacity whether RCM applicable ?
- Import of Services by a firm of Advocates
 - - Services of an Advocate from UK availed by firm of Advocates in India - whether liable for RCM ?
 - - Services of an Architect from UK availed by firm of Advocates in India - whether liable for RCM ?
- (Notifn. 10/2017-IT-R entry 1)
- Export of services by a firm of Advocates – whether covered by Entry 2 of Notifn. 13/2017 ?
- What is taxability on reimbursement of expenses other than legal fees charged by Advocates?

List of service on which RCM is applicable

Category of Supply of Services	Supplier of service	Recipient of Service
3. Arbitral Tribunal Services	An Arbitral Tribunal.	Any business entity located in the taxable territory.
4. Sponsorship Services	Any person	Any body corporate or partnership firm located in the taxable territory
5. Services supplied by Central/State Governement/UT/local authority*	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

*Excluding : Renting of immovable property, Services by the Dept. of Posts by way of Speed post services, express parcel post, life insurance, and agency services, services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport, transport of goods or passengers

Sponsorship service vs Advertisement services

- It is very important to differentiate between Sponsorship service and advertisement.
- Sponsorship services are covered under reverse charge whereas advertising services are covered under forward charge.
- As per Section 65 (99)(a) of Finance Act, 1994, “**Sponsorship**” includes naming an event after the sponsor, displaying the sponsor’s company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors.
- As per Section 65(2) of Finance Act, 1994, "advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas.

Sponsorship service vs Advertisement services

- Advertising means when one is incurring any expenditure on its own behalf for promoting its product's sale. for instance like putting banners on roads, showing advertising on TV/Radio etc.
- Sponsorship is also a type of advertisement, but the company incurs the expenditure on behalf of others.
- Eg. In Vivo IPL, vivo incurred/sponsored some part of expenditure for organizing matches. In this way it also tries to show in front of the public the name, its initiatives taken, so that people come to know about it.
- Differentiation is required to be done on case to case to basis as there is very thin line of difference in both.

Issue

- ABC Pvt Ltd, has sponsored cricket event of PQR Trust. The Trust has raised invoice of Rs. 1.00,000 + GST on ABC Pvt. Ltd..
 - Whether ABC Pvt Ltd. would still be liable for paying tax under RCM ?
- Umasons Auto Compo Pvt Ltd vs Commissioner of Central Excise and Customs - The Appellant had paid the service tax to the provider of GTA service (GTA service was covered under reverse charge mechanism) and the service provider had paid tax to the Government. It was held that there is no dispute regarding payment of service tax by the provider of GTA service. Once the amount of service tax is accepted by the Government from the provider of GTA service, it cannot be again demanded from the recipient of the GTA service. The case was decided in favour of assessee. Similar stand was taken in Navyug Alloys Pvt. Ltd versus CCE & C, Vadodara -II

List of service on which RCM is applicable

Category of Supply of Services	Supplier of service	Recipient of Service
5. Services supplied by Central/State Government/UT/local authority*	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.
5A. Services supplied by the Central Government, State Government, Union territory or local authority by way of Renting of Immovable Property (w.e.f 25.01.2018)(NN.3/2018 CT-R)	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017

*Excluding : Renting of immovable property, Services by the Dept. of Posts by way of Speed post services, express parcel post, life insurance, and agency services, services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport, transport of goods or passengers

Govt. Services

- Sec. 7(2)(b) – Notif. 14/2017- CT-R -
- "Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution ¹*[or to a Municipality under article 243W of the Constitution]*."
- shall be treated neither as a supply of goods nor a supply of service.
- Various Services supplied by Central/State Government /UT / local authority – Exempt – Notifn.12/2017-CT-R – No RCM in such cases.

List of service on which RCM is applicable

Category of Supply of Services	Supplier of service	Recipient of Service
5B. Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter(w.e.f 01.04.2019) (NN.5/2019-CT-R)	Any person	Promoter.
5C. Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter(w.e.f 01.04.2019) (NN.5/2019-CT-R)	Any person	Promoter

List of service on which RCM is applicable

Category of Supply of Services	Supplier of service	Recipient of Service
6. Directors Service	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.

Issues in RCM on Directors remuneration paid by the company

- GST under Reverse Charge Mechanism shall **not** be applicable on Remuneration paid to **Executive Director** where there is contract of employment between the company and directors.
- Further if TDS is deducted by the company under section 192 and the director declares remuneration as “income from salary” in his/her income tax return and Form 16 is issued by the company to the directors.
- However, GST under RCM shall be applicable in case of sitting fees, commission and other services not under the employment contract paid to the directors (Non -Executive Directors / Independent Directors).
- It should be noted that if commission paid to director is under employment agreement, and if it is included in computing Salary for the purpose of TDS u/s 192 of the Income Tax Act, then such commission paid to director should not be considered as supply under GST and hence should not be liable to tax under Reverse Charge mechanism.

RCM on Directors remuneration paid by the company

- The view has been formed on the basis of recent judgment of Authority for Advance Ruling of Karnataka in the case of Anil Kumar Agarwal.
- However it should be noted that the contrary view was taken by the Authority for Advance Ruling of Rajasthan in case of M/s Clay Craft India Pvt Ltd.
- The correct interpretation of law should be clarified by the GST Council / Government in order to avoid litigation in future especially where the Authority for Advance Ruling of different states have made contradicting views.

List of service on which RCM is applicable

Category of Supply of Services	Supplier of service	Recipient of Service
7. Services supplied by Insurance agent	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
8. Services supplied by Recovery agent	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.

List of service on which RCM is applicable

Category of Supply of Services	Supplier of service	Recipient of Service
9. Supply of service by music composer, photographer, artist or the like	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory
9A. Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright (w.e.f 01-10-2019)	Author	# Publisher located in the taxable territory

Provided that nothing contained in this entry shall apply where,

(i) the author has taken registration, and filed a declaration, in the form at Annexure I, with the jurisdictional CGST or SGST Commissioner, that he exercises the option to pay GST on the service under forward charge and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;

(ii) the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST Inv-I to the publisher.

List of service on which RCM is applicable

Category of Supply of Services	Supplier of service	Recipient of Service
10. Supply of services by the members of Overseeing Committee to Reserve Bank of India (w.e.f 13.10.2017)	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India.
11. Services supplied by individual Direct Selling Agents (DSAs)(w.e.f 27.07.2018)	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.	A banking company or a non-banking financial company, located in the taxable territory.
12. Services provided by business facilitator (BF) (w.e.f. 01.01.2019)	Business facilitator (BF)	A banking company, located in the taxable territory
13. Services provided by an agent of business correspondent (BC)	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory

List of service on which RCM is applicable

Category of Supply of Services	Supplier of service	Recipient of Service
14. Security Service (w.e.f 01.01.2019)	Any person other than a body corporate	A registered person, located in the taxable territory
15. Services by way of renting of motor vehicle designed to carry passengers , where cost of fuel is included in the consideration charged. (w.e.f 01.10.2019)	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging tax at the rate of 12 % to the service recipient	Any body corporate located in the taxable territory.
16. Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of SEBI	Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI.

Renting of motor vehicle

- RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:
 - is other than a body-corporate;
 - does not issue an invoice charging GST @12% (6% CGST + 6% SGST) from the service recipient; and
 - supplies the service to a body corporate.

Renting of motor vehicle

- The Government has issued Circular No. 130/49/2019-GST 31.12.219 to clarify the issues regarding renting of motor vehicle under RCM.
- When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM.
- There are only two rates applicable on the service of renting of vehicles, 5% with limited ITC and 12% with full ITC.
- The only interpretation of the notification entry in question which is not absurd would be that:
 - where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and
 - where the supplier of the service doesn't charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.
- The services supplied to non body corporate at 5% will not have any GST implication

List of service on which RCM is applicable

- The Central Government vide notification no 10/2017 Integrated Tax (Rate) dated 28.06.2017 has notified following list of services on which tax shall be paid on reverse charge basis by the recipient of the such services.

Category of Supply of Services	Supplier of service	Recipient of Service
Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.
Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962), located in the taxable territory.

Online Information Database Access and Retrieval services(OIDAR)

As per Section 2(17) of IGST Act, “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,—

- advertising on the internet;
- providing cloud services;
- provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- online supplies of digital content (movies, television shows, music and the like);
- digital data storage; and
- online gaming

Online Information Database Access and Retrieval services(OIDAR)

- OIDAR is a category of services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services. E.g. downloading of an e-book online for a payment would amount to receipt of OIDAR services by the consumer downloading the e-book and making payment.
- In cases where the supplier of such service is located outside India and the recipient is a business entity (registered person) located in India, the reverse charge mechanism would get triggered and the recipient in India who is a **registered entity under GST** will be liable to pay GST under **reverse charge**.
- If the supplier is located outside India and the recipient in India is a non taxable online consumer (let say individual consumer). In such cases, the place of supply would be India and the transaction will have GST implication, but the problem would be, how such tax would be collected. It would be impractical to ask the individual in India to register and undertake the necessary compliances under GST for a one transaction.

Online Information Database Access and Retrieval services(OIDAR)

- For such cases, Section 14 of IGST provides special provision for payment of tax by a supplier of online information and database access or retrieval service.
- **Non-taxable online recipient** means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.[S. 2(16) of IGST Act]

Services Received from provider of services located in non-taxable territory, for charitable purposes

- As per the entry no. 10 of Notification no.9/2017-Integrated Tax (Rate) dated 28.06.2017, if charitable trusts registered under Section 12AA of Income-tax Act receives any services from provider of services located in non-taxable territory, for charitable purposes, such services received are not chargeable to GST under the reverse charge mechanism.

RCM on ocean freight

- Notification No 10/2017 of IGST(Rate) Dt 28.06.2017 notifies the list of services on which the RCM would be applicable. Entry No 10 is relevant in the for examining the applicability of GST on ocean freight.

Category of supply of service	Supplier of Service	Recipient of Service
Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory

RCM on ocean freight

- In case of FOB contract, the importer hires the vessel for the transportation goods and pays the transportation charges.
- The term importer as per section 2(26) of Customs Act, 1962 (hereinafter referred to as the 'Customs Act') in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner , beneficial owner or any person holding himself out to be the importer.
- RCM is applicable only if :
 - Such transportation of goods is from **a place outside up to customs station of clearance in India.**
 - Supplier of services is the person located in non-taxable territory.
 - **'Recipient'** is the importer.

RCM on ocean freight

- As per Section 2(93) of CGST Act, the term **recipient** means
 - In case consideration is payable for the supply, the person who pays the consideration;
 - In case if no consideration is payable, the person to whom the goods delivered or made available, or to whom possession or use of the goods is given or made available;
 - Where no consideration is payable for the supply of service, the person to whom the service is rendered.
- In case of FOB contract, the importer pays the consideration to vessel owner(person located in non-taxable territory) for transportation service and all conditions for liability under RCM will be satisfied.
- However, in case of CIF(Cost, Insurance and Freight), the contract will be between the vessel owner and the foreign supplier wherein the scope of transportation is upto customs station in India but the foreign supplier pays the consideration thereby making him **the recipient of service**.

RCM on ocean freight

- In case of import of goods, tax by way of IGST is already paid along with Customs duty on the CIF value of imports which already includes the freight amount. A second levy of tax on RCM basis on the freight amount leads to double taxation.
- It is important to read explanation 4 of 8/2017 Integrated Tax (Rate) Dt 28.06.2017 which states that,

*Where the value of taxable service provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India is not available with the person liable for paying integrated tax, the same shall be deemed to be **10% of the CIF value** (sum of cost, insurance and freight) of imported goods.*
- The above explanation states the mechanism for valuation of transportation service provided by vessel owner to the foreign vendor which is outside the purview of GST.
- Importer has neither availed the ocean freight service nor he is liable to pay the consideration, hence he is not the recipient.

RCM on ocean freight

- The charging section provides for payment of GST by person who is making supplies and in certain notified cases, payment of GST by the recipient of supply. Thus, GST is not payable by a person who is neither a supplier nor a recipient.
- Section 5(3) of IGST Act authorizes the Government to specify the categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of supply.
- The Government cannot specify the person liable to pay tax as other than the recipient of the supply.
- Therefore, the Hon'ble High Court of Gujrat in the case of Mohit Minerals (P) Ltd held that the Notifications levying tax on supply of ocean freight service and making the importer of goods as the person liable for paying the tax are unconstitutional as there is no statutory sanction for levy and collection of such tax.
- Further it is to be noted that Input tax credit can be availed only by the recipient of supply. Since the importer is not the recipient of ocean freight service, he is not eligible for taking ITC.

Will belated issue of RCM self-invoice impact the ITC eligibility?

- Suppose reverse charge liability arose (for goods or services received) during 2018-19, can the RCM self-invoice be issued in October 2019 and ITC be claimed thereafter?
- Section 16(4) of CGST Act states that a RP shall not be entitled to take ITC in respect of any **invoice** or debit note for supply of goods or service or both after the due date of furnishing of the return under section 39 for the month of **September** following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the **relevant annual return**, whichever is **earlier**.
- As per Section 2(66) of CGST Act, *Invoice or tax invoice means the tax invoice referred to in section 31.*
- Rule 36 mandates availability of **invoice** issued by supplier under section 31 of the CGST Act or RCM self-invoice issued under section 31(3)(f) (subject to payment of tax) for availing ITC.

Will belated issue of RCM self-invoice impact the ITC eligibility?

- GSTR-1 captures the details of invoices issued for inward supply in Table 13(Documents Issued).
- As per Section 37(3) of CGST Act, provides that rectification or any omission in GST Return can be made before the due date of return u/s 39 for the month of September of succeeding FY and before furnishing the annual return.
- The view can be taken that the details of outward supplies are communicated to recipient through GSTR2A but no such communication is made for RCM-Self Invoices.
- However, it is well known that even details related to B2C and export invoices furnished in GSTR-1 (which are not communicated to recipients) cannot be edited beyond the said time limit.

Will belated issue of RCM self-invoice impact the ITC eligibility?

- Hence, it appears that the proviso to Section 37(3) applies to all details furnished in GSTR-1, whether communicated to the recipient or not.
- Also, under the self-assessment regime, it is not feasible to expect that error or omission in GSTR-1 be rectified irrespective of time limit.
- In view of the foregoing, any omission to include the serial numbers of RCM self-invoices (for goods / services received in 2018-19) cannot be rectified beyond the date of filing returns for the month of September 2019, since GSTR-9 for 2018-19 could not have been filed before such date.
- In fact, non-reporting of serial numbers of RCM self-invoices in GSTR-1 could be viewed as non-compliance with Rule 36(1), prompting disallowance of ITC arising from such unreported RCM self-invoices. Hence, belated issue of RCM self-invoice (beyond the period stipulated under law as aforesaid) may impact ITC eligibility.

ITC – other issues

- *The condition of payment of value of service within 180 days of the date of supplier invoice is not applicable on supplies liable to tax under RCM. (2nd proviso to Section 16(2))*
- *A supplier shall not be eligible to claim input tax credit of GST paid on goods or services used to make supplies on which recipient is liable to pay tax. (Section 17(3))*

Applicability of RCM in Real Estate Sector

- The Central Government vide Notification No. 5/2019-Central Tax (Rate), dated 29-3-2019, w.e.f. 1-4-2019 inserted the following entry:

Category of Service	Supplier of service	Recipient of Service
Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter	Any person	Promoter.
Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.	Any person	Promoter.

Applicability of RCM in Real Estate Sector

- In cases where the value of input and input services falls short of the threshold of 80%, then the tax shall be paid by the promoter under reverse charge mechanism @ 18% on the value of inputs and input services comprising such shortfall.
- It may be noted that the inputs and input services procured by the promoter consists of various types of goods and services which would be liable for different rates of taxes.

For eg the rate of tax of some commodities may be either 5%/12%/18%/28% (other than cement), but if such commodities are purchased from unregistered persons and are covered by the shortfall to the threshold of 80%, then the tax on such commodities would be payable @ 18% to the extent of shortfall irrespective of the rate of tax applicable to that commodity.

Applicability of RCM in Real Estate Sector

- There are special conditions for applicability of reverse charge in cases where cement is purchased from unregistered persons.
- It should be noted that the rate of tax applicable to cement is 28% and it comprises as a major input in the construction of the project.
- In cases where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement under reverse charge mechanism at the applicable rate i.e. @ 28%.
- It should be noted that whenever any cement is received from an unregistered person, the tax liability under reverse charge mechanism gets triggered.
- Even if the promoter has procured other inputs and input services from registered persons of value amounting to 85%, but has purchased balance 15% cement from unregistered person, even then tax will be payable on such 15% cement purchased from unregistered person although the threshold limit of 80% has been achieved.

Applicability of RCM in Real Estate Sector

- As per Explanation 2 in the above referred conditions, tax on cement received from an unregistered person shall be paid in the **month** in which cement is received.
- The inputs and input services on which the promoter has paid tax under reverse charge mechanism shall be deemed to have been purchased from registered person.
- Thus once tax is paid on reverse charge basis, whether u/s 9(3) or 9(4) of the CGST Act , the corresponding value of inputs and input services will be eligible to qualify for the prescribed threshold value of 80%.

Illustration:

SI No	Name of input Goods and services	% of input goods and services received during the financial year	Whether inputs received from registered supplier? (Y/N)
1	Sand	10	N
2	Cement	15	N
3	Steel	15	Y
4	Bricks	10	Y
5	Flooring tiles	10	Y
6	Paints	15	Y
7	Architect/designing/CAD drawing etc.	25	N

Illustration:

- In this example, the promoter has procured only 50 % of goods and services from a GST registered person.
- Thus, value of goods and services procured from registered suppliers during a financial year falls short of threshold limit of 80 per cent.
- To fulfill his tax liability on the shortfall of 30 per cent. from mandatory purchase, the promoter has to pay GST on cement at the applicable rate on reverse charge basis.
- After payment of GST on cement @ 28%, on the remaining shortfall of 15%., the promoter shall pay tax @ 18% under RCM.

Applicability of RCM in Real Estate Sector

- As explained hereinabove, for calculating the threshold limit of 80% , the value of **inputs and input services** are only required to be considered.
- The value of **capital goods** is not required to be considered while calculating the threshold limit of 80%.
- However, irrespective of whether the value of inputs and inputs services fall short of the 80% threshold, if any capital goods are purchased from an unregistered person, then tax is payable by the promoter on such purchases of capital goods under reverse charge basis at the rates applicable to the respective capital goods purchased.

Questions ???



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THANK YOU !!

