

# Handbook

## on

# Composition Scheme under GST

## (February, 2026)



**The Institute of Chartered Accountants of India**  
(*Set up by an Act of Parliament*)  
**New Delhi**

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# Foreword

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Small taxpayers form the backbone of the Indian economy, and a simple, predictable and transparent tax framework is essential to support their growth and voluntary compliance. The Goods and Services Tax (GST) stands as one of the most significant tax reforms in India, aimed at creating a unified, transparent and efficient indirect tax system. Within this framework, the Composition Scheme plays an important role in facilitating ease of compliance for small taxpayers by offering a simplified tax structure, reduced procedural requirements and greater certainty in tax liability. It reflects the policy intent of balancing revenue considerations with the need to support small businesses and encourage voluntary compliance.

Over the years, the legal provisions, procedural requirements and compliance mechanisms relating to the Composition Scheme have undergone several changes. These developments underscore the need for stakeholders to have access to updated, reliable and practical guidance. In this context, the GST & Indirect Taxes Committee of ICAI has undertaken the task of revising the 'Handbook on Composition Scheme under GST' to align it with the latest amendments, notifications, circulars and judicial pronouncements.

I place on record my appreciation for the dedicated efforts of CA. Rajendra Kumar P, Chairman, CA. Umesh Sharma, Vice-Chairman and members of the Committee, along with all the members of the committee in bringing out this revised edition. The Handbook presents the subject in a lucid and well-structured manner, combining statutory provisions with practical insights, procedural guidance and interpretational clarity. I am confident that this publication will serve as a valuable reference for members of the profession and other stakeholders alike.

I trust that this updated Handbook will further strengthen the knowledge base of professionals and assist in ensuring better compliance and effective implementation of GST provisions relating to the Composition Scheme.

**CA. Charanjot Singh Nanda**  
President, ICAI

Date: 04.02.2026

Place: New Delhi



# Preface

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The Goods and Services Tax regime in India continues to evolve, with constant refinements aimed at enhancing ease of doing business while strengthening compliance. In this dynamic landscape, the Composition Scheme holds special significance for small taxpayers by offering a simplified compliance framework, reduced tax burden and procedural ease. At the same time, its eligibility conditions, restrictions and compliance requirements require clear understanding and careful application.

The GST & Indirect Taxes Committee of the Institute of Chartered Accountants of India (ICAI) has been consistently working towards equipping members and stakeholders with updated knowledge and practical guidance on various aspects of GST law. In this direction, we are pleased to present the revised edition of the "Handbook on Composition Scheme under GST". This publication has been comprehensively updated to incorporate the latest amendments up to 31<sup>st</sup> January, 2026.

The Handbook endeavours to provide a holistic and practical understanding of the scheme, covering eligibility criteria, procedural aspects, compliance requirements, restrictions and key interpretational matters. The inclusion of illustrations, practical insights and analysis of relevant provisions makes this publication a useful ready reference for practitioners as also the other stakeholders.

We are thankful to CA. Charanjot Singh Nanda, President, ICAI and CA. Prasanna Kumar D, Vice-President, ICAI for their continuous encouragement for all our endeavours. We place on record our appreciation for the dedicated efforts of CA. Jayesh Shah for revising the Handbook and CA. Chhavi Jain for finalising it. We are grateful to the other members of the Committee as well who are always eager to invest their time and expertise in all the initiatives of the Committee. We also appreciate the efforts of CA. Tanya Pandey from the Secretariat of the Committee for providing all the administrative support in releasing the revised Handbook.

While every effort has been made to ensure accuracy, differing interpretations of the law may exist. Readers are welcome to share suggestions or point out any inadvertent errors at [gst@icai.in](mailto:gst@icai.in). We trust that the members and readers will find this publication informative and useful in their professional endeavours.

**CA. Rajendra Kumar P**  
Chairman  
GST & Indirect Taxes Committee

Date: 04.02.2026  
Place: New Delhi

**CA. Umesh Sharma**  
Vice-Chairman  
GST & Indirect Taxes Committee



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## Introduction to Composition Scheme

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### 1. BRIEF OVERVIEW AND HISTORICAL BACKGROUND

Implementation of the Goods and Service Tax (GST) was a game changer in the field of indirect taxation in India. It's a destination based multipoint tax system covering in its ambit, both goods and services. All stages of production and distribution are held as mere pass through wherein tax paid is given as a credit to be adjusted against the liability to be paid at the next stage and tax finally "sticks" or gets added to the cost at the final consumption stage in the taxing jurisdiction. It has been further described as a destination-based Goods and Services Tax. Therefore, levy of GST ensures that tax on tax is not levied by way of availability of input tax credit of tax paid at the earlier stage. This is one of the biggest benefits of GST and one which has been the biggest contributor in the implementation of GST across the World.

Dealer base of GST is very wide and all activities of supplier, whether as a trader, wholesaler, manufacturer, service provider or works contractor, are covered under the ambit of GST. It is a taxation system which covers within its ambit almost all facets of activities of the business involving supply of goods or services or both except for certain exceptions. It involves, therefore, maintenance of records for outward supplies and input tax credits, filing of regular monthly returns and assessment of tax.

In the cases of small dealers, sometimes it becomes cumbersome for them to maintain such records in such detail. They suffer both on account of lack of infrastructure, manpower and financial resources. Therefore, it was deemed fit by the lawmakers to bring in a scheme for small dealers under the GST Regime wherein they would not be required to maintain detailed records but would have to calculate and pay tax through a simplified mechanism and file a simple return for declaration of outward supplies and tax paid thereon. The scheme is called "composition scheme".

In the initial phase when GST was implemented, the composition scheme was primarily for supplier of goods and for persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II. Then, as the time moved on and representations were submitted, it was modified to allow partial supply of services and finally a composition scheme specially for small service providers was introduced in GST. Therefore, the composition scheme would have to be understood from the perspective of small supplier who may be engaged in the supply of goods or services.

#### 1.1 WHAT IS A COMPOSITION SCHEME?

The word "composition" has been defined under the Oxford Dictionary to mean "a legal agreement to pay a sum in *lieu* of a larger debt or other obligation." Composition scheme

couldn't have been explained better in the shortest possible manner. However, under the GST Legislation, for persons opting for composition scheme, the benefit does not end here. In fact, under GST, certain relaxations are given in respect of compliances under the law as well.

Suppose if the goods are taxable @18%, a registered person by virtue of the provisions of Section 9(1) of CGST Act, 2017 is required to charge tax @18% on the supply of goods and after availing input tax credit against the output tax liability is required to deposit the balance tax payable. The provisions of CGST Act, 2017 provide that a small dealer with a turnover of not more than Rs. 5 crore has the option of Quarterly Returns with Monthly Payment (QRMP) Scheme. Under this scheme, a normal taxpayer whose annual aggregate turnover in preceding FY upto Rs.5 crore would have the option to file their Form GSTR-1 and Form GSTR-3B returns on quarterly basis. They would also pay their tax dues on monthly basis through a challan (PMT 06). This works out to be 8 returns and these return forms require multiple information to be submitted by the registered person. Further, section 35 read with rule 56, prescribes detailed maintenance of accounts and records by a normal dealer. These are broad compliances which are required to be performed by a normal registered person.

However, with a view to benefit small dealers having turnover upto a particular threshold, Government brought in the composition scheme whereby they -

- (a) Allowed those users to pay a fix % amount (say @1%) on gross turnover without availing benefit of input tax credit,
- (b) Gave relaxation in the matter of maintenance of accounts and records,
- (c) Provided a return Form with simple information to be filled,
- (d) Provided one single return with payment of tax on quarterly basis as against 24 or 8 (QRMP) returns to be filled in a year.

Therefore, the composition scheme allows registered persons up to a particular threshold limit to pay a small percentage of fixed amount on the turnover and at the same time, provide relaxation in compliances.

## **1.2 ARE THERE DIFFERENT COMPOSITION SCHEMES FOR SUPPLIER OF GOODS AND SERVICES**

We cannot say that there are two different schemes for goods and services; however, in common parlance, it is said that there is a composition scheme for supplier of goods and a composition scheme for supplier of services or mixed suppliers. This nomenclature became common in public parlance since the composition scheme initially was meant primarily for supplier of goods including persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II and other suppliers of services were not allowed to opt for the scheme. However, with the passage of time, it was slowly accepted that supplier of goods might be engaged in supply of service and the same might not be avoidable by the supplier and accordingly some relaxations were given from the provisions relating to composition

scheme for supply of service. Later, a separate composition scheme was specifically introduced keeping in mind the small service providers or mixed suppliers. The details of the two schemes have been given in Chapter 2 and Chapter 3.

For ease of understanding and referring to the two composition schemes, reference has been made in this Handbook towards the earlier composition scheme which has been in place from 1<sup>st</sup> July 2017 as “Composition scheme for Supplier of Goods” and composition scheme brought into effect from 1<sup>st</sup> April 2019 vide *Notification No. 02/2019-Central Tax (Rate) dated 7<sup>th</sup> March 2019* and insertion of Section 10(2A) to CGST Act, 2017 has been referred as “Composition Scheme for Supplier of Services or Mixed Suppliers”.

### **1.3 SNAPSHOT OF THE APPLICABLE RULES, FORMS, NOTIFICATIONS AND CIRCULARS**

Following Table gives a brief snapshot of the applicable Rules, forms, notifications and circulars relating to Section 10 of CGST Act, 2017.

#### **1.3.1 Relevant Rules**

<b>Rule</b>	<b>Particulars</b>
Rule 3	Intimation for composition levy
Rule 4	Effective date for composition levy
Rule 5	Conditions and restrictions for composition levy
Rule 6	Validity of composition levy
Rule 7	Rate of tax of the composition levy
Rule 11	Separate registration for multiple places of business within a State or a Union territory.
Rule 40	Manner of claiming credit in special circumstances
Rule 44	Manner of reversal of credit under special circumstances
Rule 62	Form and manner of submission of statement and return
Rule 80	Annual return

#### **1.3.2 Relevant Forms**

<b>Rule</b>	<b>Form</b>	<b>Name of the Form</b>
3(1)	CMP-01	Intimation to pay tax under section 10 (composition levy)- (Only for persons registered under the existing law migrating on the appointed day)
3(3) & 3(3A)	CMP-02	Intimation to pay tax under section 10 (composition levy)- (For persons registered under the Act)

3(4)	CMP-03	Intimation of details of stock on the date of opting for composition levy (Only for persons registered under the existing law migrating on the appointed day)
6(2)	CMP-04	Intimation/Application for withdrawal from composition levy
6(4)	CMP-05	Notice for denial of option to pay tax under section 10
6(5)	CMP-06	Reply to the notice to show cause
6(5)	CMP-07	Order for acceptance / rejection of reply to show cause notice
40	ITC-01	Declaration for claim of input tax credit under sub-section (1) of section 18
44	ITC-03	Declaration for intimation of ITC reversal/payment of tax on inputs held in stock, inputs contained in semi-finished and finished goods held in stock and capital goods under sub-section (4) of section 18
62	CMP-08	Statement for payment of self-assessed tax
62	GSTR-4	Return for composition taxpayer
80	GSTR-9A	Annual return (for composition taxpayer)

### 1.3.3 Relevant Notifications

	<b>Notification No.</b>	<b>Particulars</b>
1	Notification No. 8/2017-Central Tax, dated 27 <sup>th</sup> June 2017 amended vide Notification No. 46/2017-Central Tax, dated 13 <sup>th</sup> October 2017 and Notification No. 1/2018-Central Tax, dated 1 <sup>st</sup> January 2018 and Notification No. 05/2019 - Central Tax, dated 29 <sup>th</sup> January 2019 superseded vide Notification No. 14/2019 - Central Tax, dated 7 <sup>th</sup> March 2019,	Seeks to notify the turnover limit for composition levy for CGST
2	Notification No. 14/2019-Central Tax dated 7 <sup>th</sup> March 2019, as amended vide Notification No. 43-Central Tax, dated 30 <sup>th</sup> September 2019 and Notification No. 4/2022-Central Tax, Dated 31-3-2022, Notification No. 16/2022-Central Tax, Dated 13-7-2022	Seeks to supersede notification No. 08/2017 - Central Tax dated 27.06.2017 in order to extend the limit of threshold of aggregate turnover for availing Composition Scheme u/s 10 of the CGST Act, 2017 to Rs. 1.5 crores.
3	Notification No. 2/2019-Central Tax (Rate), dated 7 <sup>th</sup> March 2019, as amended vide, Notification No. 9/2019-Central Tax (Rate), dated 29 <sup>th</sup> March 2019	To give composition scheme for supplier of services with a tax rate of 6% having annual

	and Notification No. 18/2019-Central Tax (Rate), dated 30-9-2019	turnover in preceding year upto Rs 50 lakhs.
4	Notification No. 21/2019 - Central Tax, dated 23 <sup>rd</sup> April 2019 as amended vide Notification No. 34/2019 - Central Tax, dated 18 <sup>th</sup> July 2019, Notification No. 35/2019 - Central Tax, dated 29 <sup>th</sup> July 2019, Notification No. 50/2019 - Central Tax, dated 24 <sup>th</sup> October 2019, Notification No. 12/2020 - Central Tax, dated 21 <sup>st</sup> March 2020, Notification No. 34/2020 - Central Tax, dated 3-4-2020, Notification No. 59/2020 - Central Tax, dated 13th July 2020, Notification No. 64/2020 - Central Tax, dated 31st August 2020 and Notification No. 10/2021 - Central Tax dated 1-5-2021, Notification No. 25/2021-Central Tax, dated 1-6-2021	Seeks to notify procedure for quarterly tax payment and annual filing of return for taxpayers availing the benefit of Notification No. 02/2019-Central Tax (Rate), dated the 7 <sup>th</sup> March, 2019

#### **1.3.4 Relevant Circular**

Denial of composition option by tax authorities and effective date thereof [Circular No. 77/51/2018-GST - Central Tax, dated 31<sup>st</sup> December 2018]

#### **1.3.5 Removal of Difficulty Order**

	<b>Order No.</b>	<b>Particulars</b>
1	Order No. 1/2017 - Central Tax, dated 13 <sup>th</sup> October 2017 superseded by order No. 01/2019 - Central Tax, dated 1 <sup>st</sup> February 2019	Seeks to supersede Removal of Difficulties Order No. 1/2017 - Central Tax dated 13.10.2017 in view of the amendment to Section 10 of the CGST Act, 2017 (allowing registered persons opting for Composition Scheme to supply services up to a limit) coming into force w.e.f. 01.02.2019

# **Composition Scheme for Supplier of Goods and for Persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II**

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## **2. OVERRIDING IMPACT OF PROVISIONS OF SECTION 10**

Section 10 of CGST Act, 2017 starts with a non-obstante clause providing: "Notwithstanding anything to the contrary contained in this Act". Therefore, the provisions of section 10 of CGST Act, 2017 overrides anything contained in CGST Act which runs contrary to the provisions of Section 10 of CGST Act.

### **2.1 PROVISIONS OF SECTION 10 ARE SUBJECT TO PROVISIONS OF SECTION 9(3) AND 9(4)**

Provisions of Section 10 of CGST Act, 2017 are subject to the provisions of Section 9(3) and 9(4) of CGST Act, 2017. Section 9(3) and 9(4) of CGST Act, 2017 provides for liability of recipient to pay tax under reverse charge mechanism. By virtue of provisions of Section 10 being made subject to Section 9(3) and 9(4), even though a person might have opted for Composition Scheme and even though he may not be entitled for input tax credit of the tax paid under reverse charge mechanism but still he is required to pay tax under reverse charge mechanism.

**Question:** Ajay opted for composition scheme for the year 2024-25. He availed service of goods transport agency. He wants to know whether he is required to pay tax under reverse charge under Section 9(3) of CGST Act, 2017 since he would not be getting any input tax credit of the taxes paid.

**Answer:** Yes, even if Ajay had opted for composition scheme for 2024-25 and he might not get credit of tax paid under reverse charge, he would still be required to pay tax under reverse charge for the year 2024-25.

### **2.2 COMPOSITION TAX BEING AN AMOUNT IN LIEU OF TAX PAYABLE BY REGISTERED PERSON UNDER SECTION 9(1) OF CGST ACT, 2017**

The Calcutta High Court in the case of *Gopi Nath Sen and Ors. v. Bahadurmul Dulichand And Ors.* AIR 1979 Cal 203 observed that the words "damages in lieu of specific performance"

means and signifies that the compensation is granted instead of specific performance, ensuring that adequate relief might be awarded to the plaintiff who was otherwise entitled to such specific performance.

The Rajasthan High Court in the case of *ACTO WCLT Ajmer v. M/S Mukesh Goyal & Ors* on 13 September, 2013 while analysing the provisions of exemption fees which was payable in lieu of sales tax observed that exemption fees paid by the respondent-assessee to obtain certificate seeking exemption from payment of tax on the works contract, was the fees levied by the State Government in *lieu* of tax. Once such exemption fees is paid and exemption certificate is issued by the competent authority, there remains no question of payment of any tax by the assessee during the period which is covered by the exemption certificate.

Concise Law Dictionary by P. Ramanatha Aiyar has defined the words "in lieu of" in respect of Section 87 of The Code of Criminal Procedure, 1973 but it is equally applicable in respect of GST as well to mean "in place of"; instead of".

In the context of GST, when the CGST Act provides that a registered person may opt to pay a specified percentage "in lieu of" tax payable under section 9(1), it means that the composition tax replaces the tax amount under section 9(1) subject to such conditions and restrictions as may be prescribed by the Legislature.

Vide CGST Amendment Act, 2018, section 10(1) was amended to provide that composition tax is an amount in lieu of tax payable by registered person under sub-section (1) of section 9 of CGST Act. 2017. Prior to CGST Amendment Act, 2018, section 10(1) provided that composition tax was in lieu of tax payable by him. The Agenda to 28<sup>th</sup> GST Council Meeting held in the month of July 2018 provided that the amendment to Section 10(1) seeks to remove any interpretational ambiguity to state that composition taxpayers shall, in lieu of tax payable on invoice value of transactions under section 9(1) (applicable to regular taxpayers), pay tax as a percentage of their turnover. Thus, the amendment was more clarificatory in nature since previously it could have been argued that composition tax being paid by an individual is in lieu of any of the taxes being levied under the Act whereas the proposed amendment made it clear that the composition tax being paid by the registered person was only in lieu of tax payable by him under provisions of section 9(1) of CGST Act, 2017.

**Question:** Mr. Rajesh is selling goods which are taxable @18%. He has opted for composition levy for the year 2024-25. He wants to know whether he would be required to pay tax @18% even though he has paid composition tax.

**Answer:** Composition tax is an amount in lieu of tax payable under Section 9(1) of CGST Act, 2017. Therefore, if Mr. Rajesh has paid composition tax then in such case, he would not be required to pay tax @18% again.

## 2.3 CONDITIONS FOR OPTING FOR COMPOSITION SCHEME

### 2.3.1 Whether a registered person who is also engaged in supply of service can opt for composition scheme?

Clause (a) of sub-section (2) of section 10 of CGST Act, 2017 provides that save as provided in sub-section (1) of section 10; registered person shall not be engaged in the supply of services. Supply of service by person opting for composition scheme is allowed under section 10(1) in following manner:

- (a) Persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II.
- (b) Person engaged in supply of services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.
- (c) Services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

This position is prevalent from 1<sup>st</sup> February 2019. However, for better understanding, answer to the question can be divided into four parts for different time periods which are as follows:

- (a) *1<sup>st</sup> July 2017 to 12<sup>th</sup> October 2017- Person engaged in supply of service not allowed to opt for composition scheme except for supply of services covered in clause (b) of paragraph 6 of Schedule II* The above clause provides for supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration. Clause (b) of paragraph 6 of Schedule II primarily covers persons engaged in supply of food by way of or as part of service i.e., restaurant, caterers etc.
- (b) *13<sup>th</sup> October 2017 to 31<sup>st</sup> January 2019-Persons engaged in supply of exempt service allowed to opt for composition scheme:* Vide Removal of Difficulty order no. 01/2017-Central Tax dated 13<sup>th</sup> October 2017, it was clarified that a person would be eligible to opt for composition scheme if he is engaged in supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.
- (c) *1<sup>st</sup> February 2019 to 31<sup>st</sup> December 2019-Persons engaged in Supply of Services (whether taxable or exempt) allowed to opt for Composition Scheme upto a specified limit of turnover of Services-* Removal of Difficulty Order No. 01/2019 dated 1<sup>st</sup> February 2019 was issued in supersession of the Removal of Difficulty order No. 01/2017 dated 13<sup>th</sup> October 2017 and provisions of CGST Amendment Act, 2018 were brought in place.

Therefore, on a combined effect of amendment made by the CGST (Amendment) Act, 2018 and *Removal of Difficulty Order 01/2019 dated 1<sup>st</sup> February 2019* provided that:

- A person opting for composition scheme may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.
- The value of supply of exempt services by way of extending deposits, loans or advances in so far as consideration is represented by way of interest or discount shall not be taken into account for determining the eligibility for composition scheme under second proviso to sub-section (1) of section 10.

- (d) *1<sup>st</sup> January 2020 to till date:* Certain provisions of Finance (No. 2) Act, 2019 became effective from 1<sup>st</sup> January 2020. Subsequent to the amendment, explanation to section 10(1) was inserted. By the explanation, it was sought to be clarified that for the purposes of Second Proviso, the value of 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 shall not be taken into account for determining the value of turnover in a State or Union territory.

The below Table summarises the position:

Particulars	Period-1 <sup>st</sup> July 2017 to 12 <sup>th</sup> October 2017	Period- 13 <sup>th</sup> October 2017 to 31 <sup>st</sup> January 2019 Removal of Difficulty Order No. 01/2017- Central Tax Dated 13th October 2017	Period- 1 <sup>st</sup> February 2019 to 31 <sup>st</sup> December 2019 Removal of Difficulty Order No. 01/2019 Dated 1st February 2019 issued in supersession of the Removal of Difficulty order No. 01/2017 dated 13 <sup>th</sup> October 2017	Period- 1 <sup>st</sup> January 2020 to till date Finance (No. 2) Act, (2019) read with Removal of Difficulty Order No. 01/2019 Dated 1 <sup>st</sup> February 2019
Eligibility Criteria for the purpose of allowing a person paying tax	NA	If a person supplies any exempt services including services by way of	Value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of	Value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of

<p>under section 10 to supply services (other than services referred to in clause (b) of paragraph 6 of Schedule II)</p>	<p>extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme under section 10 subject to the fulfilment of all other conditions specified therein.</p>	<p>interest or discount, shall not be taken into account for determining eligibility for composition scheme under second proviso to sub-section (1) of section 10;</p> <p><b>Second Proviso to Section 10(1) of CGST Act-(Effective from 1st February 2019)</b></p> <p>Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.</p>	<p>interest or discount, shall not be taken into account for determining eligibility for composition scheme under second proviso to sub-section (1) of section 10 (Removal of Difficulty Order No. 01/2019 Dated 1<sup>st</sup> February 2019)</p> <p>For the purposes of second proviso, the value of 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 shall not be taken into account for determining the value of turnover in a State or Union territory (Explanation to Section 10(1) of CGST Act , 2017)</p> <p><b>Second Proviso to Section 10(1) of CGST Act-(Effective from 1st February 2019)</b></p> <p>Provided further that a person who opts to pay tax under clause (a) or</p>
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				clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.
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### 2.3.2 What is the Threshold Limit for opting for Composition Scheme and how it has to be calculated?

Provisions of section 10(1) provide that a person whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees may opt to pay under composition scheme an amount in *lieu* of the tax payable by him under section 9(1) of CGST Act, 2017. However, the First Proviso to section 10(1) empowers the Government to increase the said limit of fifty lakh rupees to such higher amount not exceeding one crore and fifty lakh rupees on the recommendation of the council. The power of Central Government to enhance the limit of fifty lakh to one crore was provided originally under the CGST Act, 2017. However, this power to enhance the limit to one crore was further enhanced to one core and fifty Lakh vide CGST Amendment Act 2018 with effect from 1<sup>st</sup> February 2019.

- (a) **Definition of Aggregate Turnover:** Section 2(6) of CGST Act, 2017 defines 'aggregate turnover' to mean aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same permanent account number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess. By the term aggregate turnover, aggregate supplies on a permanent account number have to be checked.
- (b) **Aggregate Turnover in case of Multiple Entities in different States under same PAN:** If an entity has its offices in multiple States; aggregate turnover of entities in all States would be taken for the purpose of checking the eligibility to opt for composition scheme. The turnover of entity in a State would be irrelevant and the aggregate turnover on the permanent account number would have to be considered.
- (c) **Notification No. 8/2017-Central Tax dated 27<sup>th</sup> June 2017- Prescribing Threshold limit of annual aggregate turnover of previous year for opting composition**

**scheme:** Notification No. 8/2017-Central Tax dated 27<sup>th</sup> June 2017 was issued prescribing threshold limit of annual aggregate turnover of preceding financial year for opting of composition scheme. However, vide Notification No. 46/2017-Central Tax dated 13<sup>th</sup> October 2017 threshold limit of annual aggregate turnover eligible to opt for composition scheme were enhanced as under:

<b>Notification No.</b>	<b>Limit prescribed for States other than those specifically mentioned in Notification No. 8/2017-Central Tax, dated 27<sup>th</sup> June 2017</b>	<b>Limit prescribed for States specifically mentioned in Notification No. 8/2017-Central Tax, dated 27<sup>th</sup> June 2017 (List of States provided below the Table)</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
<i>Notification No. 8/2017-Central Tax, dated 27<sup>th</sup> June 2017</i>	75 Lakh	50 Lakh
<i>Notification No. 46/2017-Central Tax, dated 13<sup>th</sup> October 2017</i>	100 Lakh	75 Lakh

List of specific States wherein threshold limit of aggregate annual turnover of previous financial year as provided in Column (3) of above table would be applicable:

- (i) Arunachal Pradesh,
- (ii) Assam,
- (iii) Manipur,
- (iv) Meghalaya,
- (v) Mizoram,
- (vi) Nagaland,
- (vii) Sikkim,
- (viii) Tripura,
- (ix) Himachal Pradesh

The rationale to increase the limit was provided in the press release to the GST Council Meeting dated 6<sup>th</sup> October 2017 as follows:

*"The composition scheme shall be made available to taxpayers having annual aggregate turnover of up to Rs. 1 crore as compared to the current turnover threshold of Rs. 75 lacs. This threshold of turnover for special category States, except Jammu &*

*Kashmir and Uttarakhand, shall be increased to Rs. 75 lacs from Rs. 50 lacs. The turnover threshold for Jammu & Kashmir and Uttarakhand shall be Rs. 1 crore. The increase in the turnover threshold will make it possible for greater number of taxpayers to avail the benefit of easier compliance under the composition scheme and is expected to greatly benefit the MSME sector.”*

- (d) **Notification No. 14/2019-Central Tax dated 7<sup>th</sup> March 2019 issued in supersession of Notification No. 8/2017-Central Tax dated 27<sup>th</sup> June 2017** Notification No. 8/2017-Central Tax dated 27<sup>th</sup> June 2017 was later on superseded by Notification No. 14/2019 - Central Tax, dated 7<sup>th</sup> March 2019. The threshold limit of annual aggregate turnover of preceding financial year for opting composition scheme was enhanced and revised limits are as follows:

<b>Notification No.</b>	<b>Limit prescribed for States other than those specifically mentioned in the Notification No. 14/2019-Central Tax, dated 7<sup>th</sup> March 2019</b>	<b>Limit prescribed by Notification for States specifically mentioned in the Notification No. 14/2019-Central Tax, dated 7<sup>th</sup> March 2019</b>
(1)	(2)	(3)
Notification No. 14/2019 - Central Tax, dated 7 <sup>th</sup> March 2019	150 Lakh	75 Lakh

These limits are applicable with effect from 1<sup>st</sup> April 2019.

List of specific States wherein threshold limit of aggregate annual turnover of previous financial year as provided in Column (3) of above table would be applicable

- (i) Arunachal Pradesh,
- (ii) Manipur,
- (iii) Meghalaya,
- (iv) Mizoram,
- (v) Nagaland,
- (vi) Sikkim,
- (vii) Tripura,
- (viii) Uttarakhand

It would be worthwhile to note that following changes took place in the list of specified States vide Notification No. 14/2019-Central Tax dated 7<sup>th</sup> March 2019 vis-a-vis Notification No. 8/2017-Central Tax dated 27<sup>th</sup> June 2017:

States Remained Unchanged	States deleted from List and thus opted for Higher Threshold Limit	States added to the List and thus opted for Lower Threshold Limit
(i) Arunachal Pradesh, (ii) Manipur, (iii) Meghalaya, (iv) Mizoram, (v) Nagaland, (vi) Sikkim, (vii) Tripura	(i) Assam (ii) Himachal Pradesh	(i) Uttarakhand

(e) **What is to be included or excluded from aggregate turnover as defined under section on 2(6) of CGST Act, 2017 to arrive at the aggregate annual turnover for calculating the threshold limit as provided under section 10 of CGST Act, 2017:** The answer to this question can again be divided into four parts. It has to be kept in mind that this para discusses only about the method for arriving at the aggregate annual turnover for calculating the threshold limit as provided under section 10 of CGST Act, 2017. This does not imply that the composition tax has to be paid on the same amount as arrived herein below. For that we would be discussing in the next para.

- *1<sup>st</sup> July 2017 to 12<sup>th</sup> October 2017:* No deduction was allowed from the aggregate turnover as defined under section 2(6) of CGST Act, 2017 for arriving at the aggregate annual turnover for calculating the threshold limit as provided under section 10 of CGST Act, 2017. The aggregate turnover as arrived by virtue of definition provided under Section 2(6) was matched with the threshold limit provided under Section 10 to check the eligibility to opt for composition scheme.
- *13<sup>th</sup> October 2017 to 31<sup>st</sup> January 2019- Value of Supply of exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount not to be included while computing his annual aggregate turnover in order to determine his eligibility for composition scheme:-* Removal of Difficulty Order No. 1/2017-Central Tax dated 13<sup>th</sup> October 2017 provided that value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount will not be included while computing his aggregate turnover in order to determine his eligibility for composition scheme.
- *1<sup>st</sup> February 2019 to 31<sup>st</sup> December 2019-Value of services by way of extending deposits, loans or advances in so far as the consideration is*

*represented by way of interest or discount not to be included while computing his annual aggregate turnover in order to determine his eligibility for composition scheme :Removal of Difficulty Order No. 01/2019 dated 1<sup>st</sup> February 2019 was issued in supersession of the Removal of Difficulty order No. 01/2017 dated 13<sup>th</sup> October 2017 and provisions of CGST Amendment Act, 2018 were brought in place. Therefore, on a combined effect of amendment made by way of CGST (Amendment) Act, 2018 and Removal of Difficulty Order 01/2019 dated 1<sup>st</sup> February 2019 provided that value of exempt services shall be included in the calculation of aggregate turnover to determine eligibility for the composition scheme. However, above aggregate turnover calculation still not include supply by way of interest on extending deposits, loans and advances.*

- *1<sup>st</sup> January 2020 to till date:* Certain provisions of Finance (No. 2) Act, 2019 became effective from 1<sup>st</sup> January 2020. Subsequent to amendment, Explanation-1 to Section 10 was inserted. However, impact of insertion of Explanation was similar to the impact as discussed in the above Paragraph relating to Removal of Difficulty Order No. 1/2019-Central Tax dated 1<sup>st</sup> February 2019 to the extent wherein it provided that value of supply of 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 included while computing his aggregate turnover in order to determine his eligibility for composition scheme.

However, newly inserted Explanation-1 to Section 10 also provided that for the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall include the value of supplies made by such person from the 1<sup>st</sup> day of April of a financial year upto the date when he becomes liable for registration under this Act.

The following Table summarises the whole position.

Particulars	Period-1 <sup>st</sup> July 2017 to 12 <sup>th</sup> October 2017	Period-13 <sup>th</sup> October 2017 to 31 <sup>st</sup> January 2019	Period-1 <sup>st</sup> February 19 to 31 <sup>st</sup> December 2019	Period-1 <sup>st</sup> January 2020 to till date
		Removal of Difficulty Order No. 01/2017- Central Tax dated 13th October 2017	Removal of Difficulty Order No. 01/2019 dated 1 <sup>st</sup> February 2019 issued in supersession of the Removal of Difficulty order No. 01/2017 dated 13 <sup>th</sup> October 2017	Finance (No. 2) Act, (2019) read with Removal of Difficulty Order No. 01/2019 dated 1 <sup>st</sup> February 2019
Supplies not to be included while computing aggregate turnover in order to determine eligibility for composition scheme	NA	In computing aggregate turnover in order to determine eligibility for composition scheme, value of supply of any exempt services including 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.	Value of supply of 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 in computing aggregate turnover in order to determine eligibility for composition scheme.	For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall not include the value of 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.

**(f) Case Studies on Threshold limit of annual aggregate turnover for opting composition scheme**

**Question-1:** Mr. Akash having place of business in Rajasthan wanted to opt for composition scheme for the year 2024-25. His turnover during the previous financial year 2023-24 was Rs 165 Lakh. He wants to know whether he can opt for Composition Scheme. What would have been the reply, had the turnover been Rs 125 Lakh?

**Answer:** Mr. Akash cannot opt for composition levy for the year 2024-25 since his turnover in previous year 2023-24 was Rs 165 Lakh which is more than the threshold limit of aggregate annual turnover of Rs 150 Lakh. However, if his aggregate annual turnover was Rs 125 Lakh in the previous year 2023-24, then he would have been eligible to opt for Composition Scheme.

**Question-2:** A person has two establishments i.e., in Uttarakhand and Rajasthan. The turnover in Rajasthan is Rs 60 Lakh and turnover in Uttarakhand is Rs 30 Lakh. He wants to opt for Composition Scheme in Rajasthan. Whether he can do so?

**Answer:** As per the provisions of section 10 of CGST Act, 2017, if a person opts for composition scheme in one State, he has to opt for composition scheme on all the registrations he has obtained across all States on the same permanent account number. Therefore, as a corollary, if he is not able to opt for composition scheme in even one of the States, he would not be eligible to opt for composition scheme in any of the States.

In the given example, the person is eligible to opt for composition scheme for Rajasthan on a stand-alone basis since his annual aggregate turnover of previous financial year is less than Rs 150 Lakh. However, he has an establishment in Uttarakhand as well wherein threshold limit of annual aggregate turnover of previous financial year for opting composition scheme is Rs 75 Lakh. Since his aggregate turnover for previous year on his permanent account number was more than 75 Lakh therefore, he cannot opt for composition scheme for the State of Uttarakhand. Since he would not be able to opt for composition scheme in Uttarakhand, therefore he would also not be able to opt for composition scheme in Rajasthan.

**Question 3:** In the table below, we have tried to analyse the applicable scenarios for a given turnover for the period 1<sup>st</sup> July 2017 till date for a supplier who is making taxable supply from Maharashtra:

Particulars	Manufacturer	Persons engaged in supplies referred to in clause (b) of paragraph 6 of Schedule II	Any other Supplier
Example	Previous Year Turnover -60 Lakh (Goods)	Previous Year Turnover -60 Lakh (Services)	Previous Year Turnover -60 Lakh (Goods)

1 <sup>st</sup> July 2017 to 12 <sup>th</sup> October 2017	Eligible	Eligible	Eligible
13 <sup>th</sup> October 2017 to 31 <sup>st</sup> March 2019	Eligible	Eligible	Eligible
1 <sup>st</sup> April 2019 to till date	Eligible	Eligible	Eligible

**Question-4:** In the table below, we have tried to analyse applicable scenarios for a given turnover for the period 1<sup>st</sup> July 2017 to till date for a supplier who is making taxable supply from Maharashtra:

Particulars	Manufacturer	Persons engaged in supplies referred to in clause (b) of paragraph 6 of Schedule II	Any Other Supplier
Example	Previous Year Turnover -90 Lakh (Goods)	Previous Year Turnover -90 Lakh (Services)	Previous Year Turnover -90 Lakh (Goods)
1 <sup>st</sup> July 2017 to 12 <sup>th</sup> October 2017	Ineligible	Ineligible	Ineligible
13 <sup>th</sup> October 2017 to 31 <sup>st</sup> March 2019	Eligible	Eligible	Eligible
1 <sup>st</sup> April 2019 to till date	Eligible	Eligible	Eligible

**Question-5:** In the table below, we have tried to analyse the applicable scenarios for a given turnover for the period 1<sup>st</sup> July 2017 till date for a supplier who is making taxable supply from Maharashtra:

Particulars	Manufacturer	Persons engaged in supplies referred to in clause (b) of paragraph 6 of Schedule II	Any Other Supplier
Example	Previous Year Turnover -125 Lakh (Goods)	Previous Year Turnover -125 Lakh (Services)	Previous Year Turnover -125 Lakh (Goods)

**Composition Scheme for Supplier of Goods and for Persons engaged in making ...**

1 <sup>st</sup> July 2017 to 12 <sup>th</sup> October 2017	Ineligible	Ineligible	Ineligible
13 <sup>th</sup> October 2017 to 31 <sup>st</sup> March 2019	Ineligible	Ineligible	Ineligible
1 <sup>st</sup> April 2019 to till date	Eligible	Eligible	Eligible

**Question-6:** In the table below, we have tried to analyse the applicable scenarios for calculation of eligibility of a Registered Person located in State of Madhya Pradesh to opt for Composition Scheme (Supplier of Exempted Services):

Particulars	Manufacturer	Persons engaged in supplies referred to in clause (b) of paragraph 6 of Schedule II	Any Other Supplier
Example	Previous Year Aggregate Turnover-55 Lakh Taxable Turnover (Goods)- 60 Lakh Exempt Turnover (Services)-8 Lakh Interest Income-2 Lakh	Previous Year Aggregate Turnover-55 Lakh Taxable Turnover-60 Lakh Exempt Turnover (Other Services)-8 Lakh Interest Income-2 Lakh	Previous Year Aggregate Turnover-55 Lakh Taxable Turnover (Goods)-60 Lakh Exempt Turnover (Services)-8 Lakh Interest Income-2 Lakh
1 <sup>st</sup> July 2017 to 12 <sup>th</sup> October 2017	Ineligible	Ineligible	Ineligible
13 <sup>th</sup> October 2017 to 31 <sup>st</sup> January 2019	Eligible	Eligible	Eligible
1 <sup>st</sup> February 2019 to till date	Ineligible	Ineligible	Ineligible

**Question-7:** In the table below, we have tried to analyse the applicable scenarios for calculation of eligibility of a registered person located in the State of Madhya Pradesh to opt for composition scheme (supplier of taxable services)

Particulars	Manufacturer	Persons engaged in supplies referred to in clause (b) of paragraph 6 of Schedule II	Any Other Supplier
<i>Example</i>	Previous Year Aggregate Turnover-55 Lakh Taxable Turnover (Goods)- 60 Lakh Taxable Turnover (Services)-3 Lakh Interest Income-2 Lakh	Previous Year Aggregate Turnover-55 Lakh Taxable Turnover-60 Lakh Taxable Turnover (Other Services)-3 Lakh Interest Income-2 Lakh	Previous Year Aggregate Turnover-55 Lakh Taxable Turnover (Goods)-60 Lakh Taxable Turnover (Services)-3 Lakh Interest Income-2 Lakh
1 <sup>st</sup> July 2017 to 12 <sup>th</sup> October 2017	Ineligible	Ineligible	Ineligible
13 <sup>th</sup> October 2017 to 31 <sup>st</sup> January 2019	Ineligible	Ineligible	Ineligible
1 <sup>st</sup> February 2019 to till date	Eligible	Eligible	Eligible

**Question-8:** Supplies are made by a registered person whose aggregate turnover in the preceding financial year was INR 75 Lakh/ 150 lakhs or below.

The person might have started a new business in the current year and thus would not have any turnover in previous year. Such a person would be eligible to opt for the scheme as his turnover was less than 150 Lakhs in the previous year.

The person could have been exclusively dealing in exempted goods or services in the previous year and thus was not required to be registered. Such a person would be eligible if his turnover of exempted goods or services or both was less than INR 150 Lakhs but if his turnover of exempted goods or services or both was more than INR 150 Lakhs (although not required to be registered under GST as dealing exclusively in exempted goods), then he would not be eligible to opt for the scheme.

**2.3.3 Other Conditions for opting for Composition Scheme:** Section 10 of CGST Act, 2017 provides that a registered person may opt for Composition Scheme subject to such conditions and restrictions as may be prescribed. The conditions and restrictions as a whole can be considered with a combined reading of Section 10 of CGST Act, Rule 5 of CGST

Rules, 2017 and Notifications issued in this matter till date. This would give us an overview of the persons who are eligible to opt for Composition Scheme.

*Condition-1: Person making any supply of goods or services who are not leviable to tax under this Act.*

Persons who are making supply of goods who are not leviable to tax under this Act would not be eligible to opt for Composition Scheme. The list of goods which are not leviable to tax under this Act are as follows:

- Petroleum crude
- High Speed Diesel
- Motor Spirit
- Natural Gas
- Aviation Turbine Fuel
- Alcohol for Human Consumption

Therefore, persons who are having retail outlets of petrol are not allowed to opt for Composition Scheme.

The scope of the clause has been widened by Finance Act, 2020 by adding 'services' not leviable to tax. This provision has been made effective from 1<sup>st</sup> January 2021.

*Condition-2: Person making any inter-State outward supplies of goods or services*

Persons who are making inter-State supply of goods or services are not eligible to opt for composition scheme. The condition might seem to be a simple one and an obvious one but needs to be checked very carefully. The condition casts restriction on making any inter-State outward supply of goods or services which covers both taxable and exempt supply.

The scope of the clause has been widened by Finance Act, 2020 by providing that person making inter-state supply of services would also not be eligible to opt for composition scheme.

*Condition-3: Person making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52.*

Persons who are making the supply of goods through an electronic commerce operator who is required to collect tax at source under Section 52 are not eligible to opt for the Composition Scheme till 30<sup>th</sup> September 2023. However, with effect from 1<sup>st</sup> October 2023, via Section 137 of the Finance Act 2023, the Government has omitted the word "goods" from Section 10(2) & (2A). The revised provision states, "The registered person shall be eligible to opt under sub-section (1), if he is not engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under Section 52." Previously, this included goods or services.

After the above amendment, the Government issued *Notification No. 36/2023 – CT* dated 04.08.2023 for electronic commerce operators, detailing the Special Procedures to be followed by electronic commerce operators required to collect tax at source under Section 52 with respect to goods supplied through their platform by Composition dealers. The special procedures include:

- (i) the electronic commerce operator shall not allow any inter-State supply of goods through it by the said person
- (ii) the electronic commerce operator shall collect tax at source under sub-section (1) of section 52 of the said Act in respect of supply of goods made through it by the said person and pay to the Government as per provisions of sub-section (3) of section 52 of the said Act.
- (iii) the electronic commerce operator shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

Person who is himself an electronic commerce operator and is not required to collect tax under section 52, is not barred from opting for the scheme. However, E-commerce operators who are required to collect tax at source under section 52 obtain registration through REG-07 where there is no option of applying for Composition Scheme.

As per the Finance Act, 2023, persons supplying 'services' through an electronic commerce operator who is required to collect tax at source under section 52 are not eligible to opt for composition scheme. This provision has been made effective from 1<sup>st</sup> October 2023.

The following Table summarises the whole position with example:

Time Period	Scenario	Provision
Till 30th September 2023	Mr. Kumar sells his crafts both through his own physical store and via an online marketplace, which is an electronic commerce operator required to collect tax at source (TCS) under Section 52 of the GST Act.	Eligibility: Mr. Kumar is not eligible to opt for the Composition Scheme because he is engaged in making a supply of goods through an electronic commerce operator  Reason: Section 10(2) of the GST Act states that a registered person shall be eligible to opt under sub-section (1) if he is not engaged in making any supply of goods or services through an electronic commerce operator required to collect TCS under Section 52.
From 1st October	Ms. Sharma offers her services directly to clients and	Eligibility: From 1st October 2023, the Finance Act 2023 via Section 137 has

2023	<p>also through an online platform, which is an electronic commerce operator required to collect tax at source (TCS) under Section 52 of the GST Act.</p>	<p>amended Section 10(2) &amp; (2A) by omitting the word "goods." Now, it only states that a registered person shall be eligible to opt under sub-section (1) if he is not engaged in making any supply of services through an electronic commerce operator required to collect TCS under Section 52.</p> <p><b>Restriction on Services:</b> Ms. Sharma remains ineligible to opt for the Composition Scheme because she supplies services through TutorHub, which is required to collect TCS under Section 52.</p> <p><b>Impact on Goods:</b> From 1st October 2023, Mr. Kumar, who sells goods, is now eligible to opt for the Composition Scheme after fulfilling other conditions as mentioned under Section 10 and the rules made thereunder, as the restriction only applies to services.</p>
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*Condition-4: Person who is a manufacturer of such goods as may be notified by Government on recommendation of the Council are not eligible to opt for Composition Scheme.*

The Government has notified vide *Notification no. 14/2019-Central Tax dated 7<sup>th</sup> March 2019*, as amended by *Notification No. 43/2019-Central Tax, dated 30<sup>th</sup> September 2019* and *Notification No. 4/2022-Central Tax, dated 31<sup>st</sup> March 2022* that manufacturers of following goods shall not be entitled to opt for composition scheme.

- Ice cream and other edible ice, whether or not containing cocoa (were notified vide *Notification No. 8/2017-Central Tax dated 27<sup>th</sup> June 2017*)
- Pan masala (were notified vide *Notification No. 8/2017-Central Tax dated 27<sup>th</sup> June 2017*)
- All goods i.e., tobacco and manufactured tobacco substitutes (were also notified vide *Notification No. 8/2017-Central Tax dated 27<sup>th</sup> June 2017*)
- Aerated water (*Notification No. 43/2019-Central Tax, dated 30<sup>th</sup> September 2019*)

**Following items have been added to the list vide *Notification No. 4/2022-Central Tax, dated 31<sup>st</sup> March 2022*:**

- Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks. However, the condition of 90 percent has been done away with vide *Notification No. 16/2022-Central Tax, dated 13.07.2022*.

- Bricks of fossil meals or similar siliceous earths
- Building bricks
- Earthen or roofing tiles

*Condition-5: Person should neither be a casual taxable person nor a non-resident taxable person.*

*Condition-6: Goods held in stock by him on 1<sup>st</sup> July 2017 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, where the option is exercised with effect from 1<sup>st</sup> July 2017 [Clause (b) to sub-rule (1) of rule 5 of CGST Rules, 2017]*

*Condition-7: 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 [Clause (c) to sub-rule (1) of rule 5 of CGST Rules, 2017].*

This provision was relevant for the period 1<sup>st</sup> July 2017 to 12<sup>th</sup> October 2017. Thereafter, from 13<sup>th</sup> October 2017 to 31<sup>st</sup> January 2019, implementation of reverse charge was suspended, this provision was not relevant for that period. Further, pursuant to the amendment of Section 9(4) of CGST Act, 2017 vide CGST (Amendment) Act, 2018, till now no goods have been notified under the newly amended section 9(4) for registered persons opting for composition scheme, therefore this provision is not relevant as of now for people opting for composition scheme.

*Condition-8: He shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both [Clause (d) to Sub-Rule (1) of Rule 5 of CGST Rules, 2017]*

For the purpose of section 9(4) of the CGST Act, 2017, this provision was relevant for the period 1<sup>st</sup> July 2017 to 12<sup>th</sup> October 2017. Thereafter, from 13<sup>th</sup> October 2017 to 31<sup>st</sup> January 2019, implementation of reverse charge was suspended, this provision was not relevant for that period. Further pursuant to the amendment of Section 9(4) of CGST Act, 2017 vide CGST (Amendment) Act, 2018, till now no goods have been notified under the newly amended section 9(4) for the registered persons opting for composition scheme. Therefore, this provision is not relevant as of now for people opting for composition scheme.

The Government has notified certain goods and services under section 9(3) of CGST Act, 2017. A person opting for composition scheme would be liable to pay tax under reverse charge although he would not be entitled for the Input Tax Credit of such tax paid.

## **2.4 RATES OF COMPOSITION TAX**

As per the provisions of section 10(1), taxes under composition levy would be payable at such rates as may be prescribed. However, prescribed rate would not exceed the rates as follows:

- (a) one per cent of the turnover in State or turnover in Union territory in case of a manufacturer,
- (b) two and a half per cent of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II
- (c) Half per cent of the turnover in State or turnover in Union territory in case of other suppliers.

**2.4.1 Legislative history for the Rate of Composition tax Payable:** Till 31<sup>st</sup> January 2019, both Rules and relevant Notification as applicable at that time contained rate chart for composition tax payable by a registered person. However, vide Notification No. 5/2019-Central Tax dated 29<sup>th</sup> January 2019 with effect from 1<sup>st</sup> February 2019, the rate chart was omitted from the notification and the words substituted in the notification were “an amount of tax calculated at the rate specified in rule 7 of the Central Goods and Services Tax Rules, 2017”. Therefore, a reference only to Rule 7 of the Central Goods and Service Tax Rules, 2017 was inserted for the rate chart rather than the rate chart itself.

The question that arises is, what was the need to have such amendment in the notification. The answer to the above question lies in the fact that Section 10(1) provides that composition tax levy shall be an amount calculated at such rate as may be prescribed. The words “prescribed” might have forced the Government to incorporate the rate chart in the CGST Rules, 2017. The words “prescribed” has been defined under the provisions of CGST Act, 2017 to mean “prescribed by rules made under this Act on the recommendations of the Council”. Therefore, when the Act provides that rate chart has to be provided in Rules and then it is outside the scope of the notification to provide the rate chart, to remove the ambiguity, the rate chart was removed from notification vide Notification No. 5/2019-Central Tax dated 29<sup>th</sup> January 2019 with effect from 1<sup>st</sup> February 2019 and now provided in the rules itself.

**2.4.2 Notification No. 8/2017-Central Tax dated 27<sup>th</sup> June 2017:** This notification provided that the composition tax would be payable at such rate as is provided, namely -

- (i) One per cent. of the turnover in the State in case of a manufacturer,
- (ii) Two and a half per cent. of the turnover in the State in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II of the said Act,
- (iii) Half per cent. of the turnover in the State in case of other suppliers.

Since, it is a CGST Notification an equivalent percentage of composition tax for SGST component has to be added for determining the total composition tax payable.

**2.4.3 Notification No. 1/2018-Central Tax dated 1<sup>st</sup> January 2018-Change in Rate Structure**

Vide Notification No. 8/2017-Central Tax dated 27<sup>th</sup> June 2017 was amended by notification

No. 1/2018-Central Tax dated 1<sup>st</sup> January 2018 composition tax would be calculated as under:

- (i) Half per cent of turnover in the State in case of a manufacturer,
- (ii) Two and a half per cent of turnover in the State in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II of the said Act,
- (iii) Half per cent of turnover of taxable supplies of goods in the State in case of other suppliers.

Since, it is a CGST notification an equivalent percentage of composition tax for SGST Component has to be added for reaching to the total composition tax payable.

**2.4.4 Substitution of rate table:** However, vide Central Goods and Services Tax (Seventh Amendment) Rules, 2020, w.e.f. 1<sup>st</sup> April 2020, the above table was substituted in Rule 7 to provide as follows:

Sl. No.	Section under which composition levy is opted	Category of registered persons	Rate of tax
(1)	(1A)	(2)	(3)
1	Sub-sections (1) and (2) of section 10	Manufacturers, other than manufacturers of such goods as may be notified by the Government	Half per cent. of the turnover in the State or Union territory
2	Sub-sections (1) and (2) of section 10	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	Two and a half per cent. of the turnover in the State or Union territory
3	Sub-sections (1) and (2) of section 10	Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10	Half per cent. of the turnover of taxable supplies of goods and services in the State or Union territory
4	Sub-section (2A) of section 10	Registered persons not eligible under the composition levy under sub-sections (1) and (2), but eligible to opt to pay tax under sub-section (2A), of section 10	Three per cent. of the turnover of supplies of goods and services in the State or Union territory.

Since, it is a rate chart provided in CGST Rules, an equivalent percentage of composition tax for SGST component has to be added for determining the total composition tax payable.

Presently the composition scheme has been provided under Section 10(1) read with Section 10(2) of CGST Act, 2017 and Section 10(2A) of CGST Act, 2017. If a person is not eligible to

opt for composition scheme under section 10(1) and 10(2) of CGST Act, 2017, then only he can opt for composition scheme under Section 10(2A). Therefore, the above rate chart clarifies that in case a person has opted for composition scheme under section 10(1) and 10(2) of CGST Act, 2017, then rate structure would be the one given in Row 1, 2 and 3. However, if the composition scheme has been opted under section 10(2A), then the applicable rate structure would be the one provided under Row 4 of the above Table.

**2.4.5 Composition Tax Payable on the turnover in State or turnover in Union territory :** The term "turnover in State" or "turnover in Union territory" has been defined under Section 2(112) of CGST Act, 2017 to mean the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excluding central tax, State tax, Union territory tax, integrated tax and cess.

The definition is on similar lines as that of "aggregate turnover" in Section 2(6) of CGST Act, 2017 the difference being that Section 2(6) provides for the turnover on the permanent account number in the entire country but the term "turnover in a State" or "turnover in a Union Territory" only provides for the turnover in a particular State or Union Territory.

**2.4.6 "Aggregate Turnover" on the Permanent Account Number of the Registered Person to be checked for eligibility and Tax to be paid on the "turnover in the State" or "Turnover in the Union Territory":** The Registered person would have to check whether annual aggregate turnover on his permanent account number in the entire country does not exceed the threshold limit even though he is opting for composition scheme in a State. Further, if he has opted for composition scheme in a State then he would have to opt for composition scheme for the entire country. After opting for composition scheme, the composition tax is to be paid on the turnover in a State or turnover in the Union Territory.

#### **2.4.7 Turnover in the State vs Turnover of Taxable supplies**

As discussed above, turnover in State encompasses all kinds of supplies be it in the nature of taxable, exempt, exports or inter-State. On the other hand, turnover of taxable supplies seeks to exclude all other supplies apart from taxable supplies. It may be noteworthy that for the manufacturer and service providers mentioned above, the composition levy would be calculated on the total turnover. On the other hand, for the traders, the base value on which the composition levy would be calculated would be taxable supplies only.

#### **2.4.8 Impact of Amendment to Section 10 of CGST Act, 2019 vide Finance (No. 2) Act, 2019**

Explanation 2 was inserted in Section 10 of CGST Act, 2017 vide Finance (No.2) Act, 2019 which provides that for determining tax payable by a registered person under Section 10 of CGST Act, 2017, expression "turnover in State or turnover in Union territory" shall not include value of following supplies: -

- (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*

Insertion of this clause seeks to clarify that if a person has become liable for registration and has obtained registration under composition scheme, then such person shall not be liable to pay tax on value of supplies made by such person from the 1<sup>st</sup> day of April of a financial year upto the date when he becomes liable for registration under this Act.

- (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*

There are two impacts of the above provision being inserted with effect from 1<sup>st</sup> January 2020. Let's try to understand it with the help of a table to know whether registered persons opting for composition scheme are required to pay 'composition levy on 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.

Particulars	Manufacturers, other than manufacturers of such goods as may be notified by the Government	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10
1 <sup>st</sup> July 2017 to 12 <sup>th</sup> October 2017	Ineligible	Ineligible	Ineligible
13 <sup>th</sup> October 2017 to 31 <sup>st</sup> December 2017	Yes	Yes	Yes
1 <sup>st</sup> January 2018 to 31 <sup>st</sup> December 2019	Yes	Yes	No
1 <sup>st</sup> January 2020 to till Date	No	No	No

With Explanation-2 inserted with effect from 1<sup>st</sup> January 2020, suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II and manufacturers, other than manufacturers of such goods as may be notified by the Government, would not now be required to pay tax on 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.

**2.4.9 Calculation of Composition Levy:** In the table below, we have tried to analyse the applicable scenarios for eligibility and tax liability of a registered persons located in the State of Madhya Pradesh opting for Composition Scheme (**supplier of exempted services**):

**Composition Scheme for Supplier of Goods and for Persons engaged in making ...**

<b>Particulars of Composition tax and Amount</b>	<b>Manufacturer</b>	<b>Persons engaged in supplies referred to in clause (b) of paragraph 6 of Schedule II</b>	<b>Any Other Supplier</b>
<i>Example</i>	<i>Previous Year Turnover-55 Lakh</i> <i>Taxable Turnover (Goods)-60 Lakh</i> <i>Exempt Turnover (Services)-8 Lakh</i> <i>Interest Income-2 Lakh</i>	<i>Previous Year Turnover-55 Lakh</i> <i>Taxable Turnover-60 Lakh</i> <i>Exempt Turnover (Other Services)-8 Lakh</i> <i>Interest Income-2 Lakh</i>	<i>Previous Year Turnover-55 Lakh</i> <i>Taxable Turnover (Goods)-60 Lakh</i> <i>Exempt Turnover (Services)-8 Lakh</i> <i>Interest Income-2 Lakh</i>
1 <sup>st</sup> July 2017 to 12 <sup>th</sup> October 2017	2% of Turnover in State	5% of Turnover in State	1% of Turnover in State
Amount	Ineligible	Ineligible	Ineligible
13 <sup>th</sup> October 2017 to 31 <sup>st</sup> December 2017	2% of Turnover in State	5% of Turnover in State	1% of Turnover in State
Amount	1.40 Lakh	3.50 Lakh	0.70 Lakh
1 <sup>st</sup> January 2018 to 31 <sup>st</sup> January 2019	1% of Turnover in State	5% of Turnover in State	1% of Turnover of taxable supplies in State
Amount	.70 Lakh	3.50 Lakh	0.60 Lakh
1 <sup>st</sup> February 2019 to 31 <sup>st</sup> December 2019	1% of Turnover in State	5% of Turnover in State	1% of Turnover of taxable supplies in State
Amount	Ineligible	Ineligible	Ineligible
1 <sup>st</sup> January 2020 till date	1% of Turnover in State	5% of Turnover in State	1% of Turnover of taxable supplies in State
Amount	Ineligible	Ineligible	Ineligible

**2.4.10 Calculation of Composition Levy:** In the table below, we have tried to analyse the applicable scenarios for calculation of eligibility and tax liability of a registered person located in State of Madhya Pradesh opting for composition scheme (**supplier of taxable services**):

Particulars	Manufacturer	Persons engaged in supplies referred to in clause (b) of paragraph 6 of Schedule II	Any Other Supplier
<i>Example</i>	<p>Previous Year Turnover-55 Lakh</p> <p>Taxable Turnover (Goods)-60 Lakh</p> <p>Taxable Turnover (Services)-3 Lakh</p> <p>Interest Income-2 Lakh</p>	<p>Previous Year Turnover-55 Lakh</p> <p>Taxable Turnover - 60 Lakh</p> <p>Taxable Turnover (other Services)-3 Lakh</p> <p>Interest Income-2 Lakh</p>	<p>Previous Year Turnover-55 Lakh</p> <p>Taxable Turnover (Goods)-60 Lakh</p> <p>Taxable Turnover (Services)-3 Lakh</p> <p>Interest Income-2 Lakh</p>
Composition tax-1 <sup>st</sup> July 2017 to 12 <sup>th</sup> October 2017	2% of Turnover in State	5% of Turnover in State	1% of Turnover in State
Amount	Ineligible	Ineligible	Ineligible
Composition tax-13 <sup>th</sup> October 2017 to 31 <sup>st</sup> December 2017	2% of Turnover in State	5% of Turnover in State	1% of Turnover in State
Amount	Ineligible	Ineligible	Ineligible
1 <sup>st</sup> January 2018 to 31 <sup>st</sup> January 2019	1% of Turnover in State	5% of Turnover in State	1% of Turnover of taxable supplies in State
Amount	Ineligible	Ineligible	Ineligible
1 <sup>st</sup> February 2019 to 31 <sup>st</sup> December 2019	1% of Turnover in State	5% of Turnover in State	1% of Turnover of taxable supplies in State
Amount	0.65 Lakh	3.25 Lakh	0.63 Lakh
1 <sup>st</sup> January 2020 to till date	1% of Turnover in State	5% of Turnover in State	1% of Turnover of taxable supplies in State
Amount	0.63 Lakh	3.15 Lakh	0.63 Lakh

## 2.5 RESTRICTION ON COLLECTION OF TAX AND INPUT TAX CREDIT

A 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.

- (a) ***Supplier cannot collect any tax from recipient:*** Section 10(4) casts a restriction on the supplier to collect tax from the recipient. Therefore, the amount to be paid as tax under Section 10 of CGST Act, 2017 would have to be paid by the supplier himself without being collected from the recipient.
- (b) ***Supplier not eligible to any credit of input tax:*** Section 10(4) casts a restriction on the entitlement of input tax credit of supplier. Supplier would not be eligible to claim any input tax credit against the tax payable on the supplies made by him.

## 2.6 DISCLOSURE BY COMPOSITION TAXABLE PERSON

The composition taxable person 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. He shall also 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.

## 2.7 WHY REMOVAL OF DIFFICULTY ORDER NO. 1/2017

We have discussed in detail *Removal of Difficulty Order No. 1/2017-Central Tax dated 13<sup>th</sup> October 2017*. The reason behind issuance of the Removal of Difficulty Order can be ascertained from the 22<sup>nd</sup> GST Council Meeting Minutes which stated thus:

*“He stated that even interest on deposits made in banks is considered as service (though exempted) and therefore a person receiving interest would be ineligible for composition scheme. He stated that it was proposed to issue an Order under Section 172 of the CGST/SGST Act (providing for removal of difficulty) to exclude such services from Section 10 as per the following: (i) Section 10(2)(a) of the CGST/SGST Acts to be read so as to exclude the services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount; (ii) Section 10(1) of CGST/SGST Acts to be read so as to exclude the interest earned from deposits, loans or advances from the aggregate turnover. He added that in the absence of such an exemption, Composition Scheme would be completely unavailable to manufacturers and dealers who were earning interest from deposits, etc. It was suggested that such dispensation could be provided for all exempt services and need not be restricted to interest or discount only. The Council agreed to the proposal. [Emphasis added]*

Therefore, it can be seen that the Removal of Difficulty Order was issued to make the scheme workable and iron out the issues faced by the common taxpayers. The issue as narrated

above are not taxpayer specific but issues which were faced by almost all the taxpayers opting for composition scheme. It would be apt to refer the judgement of the Apex Court in the case of *Allied Motors (P.) Ltd. v. CIT* [1997] 224 ITR 677 which held that when a Proviso is inserted to remedy unintended consequences and to make the section workable, a Proviso which supplies an obvious omission in the section and which Proviso is required to be read into the section to give the section a reasonable interpretation, it could be read retrospective in operation, particularly to give effect to the section as a whole.

Similarly, in *Commissioner of Income v. Alom Extrusions Limited* [319 ITR 306 (SC)] following the decision laid down by the Apex Court in the case of *Allied Motors*, it was held that the amendment made to Section 43B of the Income Tax Act, 1961 vide Finance Act, 2003, will operate retrospectively with effect from 1<sup>st</sup> April, 1988 [when the First Proviso stood inserted]. Further the Madras High Court in the case of *Refex Industries Ltd. v. Assistant Commissioner of CGST & Central Excise* [2020] (Madras) while deciding about the amendment to section 50 of CGST Act (prior to GST Council Meeting held on 14<sup>th</sup> March 2020 wherein it was decided that amendment would be made retrospective), held that the Proviso, as per which interest shall be levied only on that part of the tax which is paid in cash, has been inserted with effect from 01.08.2019, but clearly seeks to correct an anomaly in the provision as it existed prior to such insertion. It should thus, be read as clarificatory and operative retrospectively.

Therefore, there is a need for clarification in this regard and the Removal of Difficulty Order No. 1/2017 inserted to correct an anomaly should operate retrospectively and not prospectively.

## **2.8 CAN REGISTERED PERSONS OPTING FOR COMPOSITION SCHEME SUPPLY SERVICES?**

Registered persons opting for composition scheme are allowed to supply services of value not exceeding ten per cent of turnover in the preceding financial year in a State or Union territory or five lakh rupees, whichever is higher.

Agenda for the 28<sup>th</sup> GST Council Meeting highlighted the fact as to why registered persons opting for composition scheme need to be allowed to supply certain percentage of total turnover as services. The relevant extract of the agenda is as follows:

*"At present, registered persons engaged in the supply of services (other than restaurant services) are not eligible for composition scheme. As a result, manufacturers and traders supplying services are unable to opt for the scheme even if its percentage is very small as compared to the supplies of goods. With a view to enable these taxpayers to avail of the benefit of composition scheme, a new proviso is being added in order to allow them to be eligible for the scheme even if they supply services of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or Rs. 5 lakhs, whichever is higher. This is a taxpayer-friendly measure and it is believed that small taxpayers would immensely benefit from this amendment."*

The move has helped people to avail the benefit of composition scheme and at the same time supply services which cannot be avoided and are part and parcel of their business activity even though they intend principally to be a supplier of goods.

## 2.9 SOME COMMON QUESTIONS ON COMPOSITION SCHEME

- (a) **Can a composition dealer supply goods to any registered person who has also opted for composition Scheme?**

There is no restriction in the law for supply of goods by one registered person under composition scheme to another registered person under composition scheme.

- (b) **Can a person opting for composition scheme purchase goods from outside the State?**

Section 10 of CGST Act, 2017 places restriction on inter-State supply of goods by a person who has opted to pay under composition scheme. However, it has not placed a restriction on such a person to import goods from outside the State. Therefore, there is no restriction on goods being imported from outside the State by a person who has opted for payment under composition scheme.

- (c) **Can a person who is supplying goods permitted to make inter-State supply?**

A person who has opted to pay tax under section 10 of CGST Act, 2017 cannot make an inter-State supply of goods. If he does so, he would not be eligible to remain under the composition scheme and would have to withdraw from the composition scheme.

- (d) **Can person opting under the composition scheme have multiple registrations in other States as well?**

A person who has opted for composition scheme can have registration in multiple States. However, if he has opted for composition scheme for one registration, then he would have to opt for composition scheme for all other registrations. Further pursuant to opting for composition scheme, if he has to withdraw from composition scheme for some reason, he will have to withdraw from composition scheme from all the States.

- (e) **Can a person opt for composition scheme in one State and regular scheme in other States?**

No, if a person has to opt for composition scheme under section 10, he will have to opt for composition for all the States. He cannot have the option to choose composition scheme in one registration and remain under normal scheme for other registrations.

- (f) **Can a person who is supplying alcoholic liquor for human consumption or petrol opts for composition scheme?**

No, a person supplying alcoholic liquor for human consumption or petrol is not eligible to opt for Composition Scheme as provisions of Section 10 debar a person to opt for composition scheme if he is engaged in supplying goods which are not liable to tax. As

per the provisions of Section 9 of CGST Act, 2017, both petrol and liquor for human consumption are supplies not liable to GST.

**(g) Can a composition dealer supply through e-commerce operator?**

A person who has opted for the composition scheme can only supply goods through an e-commerce operator. However, a composite dealer can supply both goods or services through an e-commerce operator who is not liable to collect tax under Section 52 of the CGST Act, 2017. If a person who has opted to pay tax under the composition scheme supplies services through an e-commerce operator who is liable to collect tax under Section 52, they would have to withdraw from the composition scheme. Therefore, if a Kirana store dealer has opted for the composition scheme under the GST regime and also supplies services through ABC Limited, where ABC Limited collects TCS on the supply of services made through him, then the Kirana dealer would have to withdraw from the composition scheme.

**(h) Can a casual taxable person opt for Composition Scheme?**

A person came to the State of Rajasthan to attend an exhibition from the State of Maharashtra. He booked a stall in the exhibition and intends to get himself registered as a casual taxable person. Can he opt for composition scheme?

No, as per the provisions of section 10 of CGST Act, 2017, casual taxable person cannot opt for composition scheme.

An overview of the Provisions on Composition Scheme from 1 <sup>st</sup> July 2017 to till date [Section 10(1) and (2) of CGST Act]						
Particulars	1 <sup>st</sup> July to 12 <sup>th</sup> October 2017	13 <sup>th</sup> October 2017 to 31 <sup>st</sup> December 2017	1 <sup>st</sup> January 2018 to 31 <sup>st</sup> January 2019	1 <sup>st</sup> February 2019 to 31 <sup>st</sup> March 2019	1 <sup>st</sup> April 2019 to 31 <sup>st</sup> December 2019	1 <sup>st</sup> January 2020 to 31 <sup>st</sup> March 2020
Threshold Limit	50 Lakh/75 Lakh	75 Lakh/100 Lakh	75 Lakh/100 Lakh	75 Lakh/150 Lakh	75 Lakh/150 Lakh	75 Lakh/150 Lakh
Supplier of Service allowed to opt for Composition Scheme (Other than services referred to in clause (b) of paragraph 6 of Schedule II)	No	Yes (with restrictions)				

Eligibility criteria for the purpose of allowing a person paying tax under section 10 to supply services (other than services referred to in clause (b) of paragraph 6 of Schedule II)	NA	<p>If a person supplies goods and/or services referred to in clause (b) of paragraph 6 of Schedule II of the said Act and also supplies any exempt services including 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 for determining eligibility for composition scheme under second proviso to sub-section (1) of section 10 (Removal of Difficulty Order No. 01/2019 dated 1st February 2019)</p>	<p>Value of supply of 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 for determining eligibility for Composition Scheme under second Proviso to sub-section (1) of section 10 (Removal of Difficulty Order No. 01/2019 dated 1st February 2019)</p>	<p>Value of supply of 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 for determining eligibility for composition scheme under second proviso to sub-section (1) of section 10; Second Proviso to Section 10(1) of CGST Act-(Effective from 1<sup>st</sup> February 2019)</p> <p>Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II, of value not exceeding ten per cent of turnover in a State or or Union territory in the preceding financial year or paragraph 6 of Schedule</p>
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<p>Services Not to be included while computing aggregate turnover in order to determine eligibility for composition scheme</p>	<p>NA</p>	<p>In aggregate computing turnover in order to determine eligibility for composition scheme, value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount</p>	<p>II, of value not exceeding ten per cent of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.</p> <p>Value of supply of 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 in computing aggregate turnover in order to determine eligibility for composition scheme</p> <p>For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall not include the value of 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.</p>
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<p>Supplies provided by way of extending deposits, loans and advances in so far as the consideration is represented by way of interest or discount- Determination of Tax Payable</p>	<p>For the purposes of determining the tax payable by a person under Section 10, the expression "turnover in State or turnover in Union territory" shall not include value of 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.</p>
<p>Tax Rate for Composition Scheme</p>	<p>(i) one per cent. of the turnover in State in case of a manufacturer,</p> <p>(ii) two and a half per cent. of the turnover in State in case of persons engaged in making supplies referred to in clause (b) of</p> <p>a) Manufacturers, other than manufacturers of such goods as may be notified by the Government- half per cent of the turnover in the State or Union territory</p> <p>b) Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II- two and a half per cent of the turnover in the State or Union territory</p> <p>c) Any other supplier eligible for composition levy under section 10 and the provisions Chapter II of CGST Rules, 2017- half per cent of the turnover of taxable supplies of goods and services in the State or Union territory"</p> <p>a) Manufacturers, other than manufacturers of such goods as may be notified by the Government- half per cent of the turnover in the State or Union territory</p> <p>b) Suppliers making supplies referred to in clause (b) of paragraph</p>

	<p>paragraph 6 of Schedule II of the said Act, and</p> <p>(iii) half per cent. of the turnover in State in case of other suppliers:</p>	<p>6 of Schedule II- two and a half per cent. of the turnover in the State or Union territory</p> <p>c) Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10-half per cent. of the turnover of taxable supplies of goods and services in the State or Union territory</p>
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# Composition Scheme for Supplier of Services or Mixed Suppliers

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### 3. LEGISLATIVE HISTORY

The Central Government had issued *Notification No. 02/2019- Central Tax (Rate)* dated 7<sup>th</sup> March 2019 under sections 9(1), 11(1) and 16(1) of CGST Act, 2017 to bring Composition Scheme for service providers or mixed suppliers. Thereafter, provisions of Section 10(2A) were inserted in CGST Act, 2017 w.e.f. 1<sup>st</sup> January 2020 vide Finance (No. 2), Act, 2019. The enabling rule for providing rate for calculating amount payable as composition tax i.e. (amount in lieu of the tax payable under section 9(1) was inserted vide Central Goods and Services Tax (Seventh Amendment) Rules, 2020, w.r.e.f. 1-4-2020.

However, *Notification No. 2/2019-Central Tax (Rate)* dated 7<sup>th</sup> March 2019 has not been withdrawn even after insertion of Section 10(2A) in the CGST Act, 2017 read with Rule 7 of CGST Rule, 2017. As per Agenda to 35<sup>th</sup> GST Council Meeting, it was provided that *Notification No. 2/2019- Central Tax (Rate)* dated 7<sup>th</sup> March 2019 would be rescinded from the date on which the amended provisions of section 10 of the CGST Act are brought into force. It would be pertinent to highlight that the provisions of Section 10(2A) and *Notification No. 2/2019-Central Tax (Rate)* dated 7<sup>th</sup> March 2019 differ in some respects.

Now, the question remains as to what is the present situation regarding the composition scheme for service providers or mixed suppliers; whether provisions of Section 10(2A) are in force and if yes what happens to *Notification No. 2/2019-Central Tax (Rate)* dated 7<sup>th</sup> March 2019. Although, it would be desirable that Government withdraws *Notification No. 2/2019-Central Tax (Rate)* dated 7<sup>th</sup> March 2019 subsequent to insertion of Section 10(2A) but even though the same is not withdrawn, still provisions of Section 10(2A) would prevail over the Notification.

The discussion in this Chapter has been made keeping in focus the provisions of Section 10(2A) of CGST Act, 2017 based upon the above principle. However, areas where *Notification No. 2/2019-Central Tax (Rate)* dated 7<sup>th</sup> March 2019 differs from provisions of Section 10(2A) have been duly highlighted.

- a) Overriding impact of the provisions of Section 10-Refer Para 2.1 of Chapter 2.
- b) Provisions of Section 10 are subject to the provisions of Sections 9(3) and 9(4) - Refer Para 2.2 of Chapter 2.
- c) Composition tax is in lieu of the tax payable by the registered person under sub-section (1) of section 9 of CGST Act, 2017-Para 2.3. of Chapter 2.

### 3.1 WHEN CAN A REGISTERED PERSON OPT FOR COMPOSITION SCHEME?

A registered person can opt for composition scheme under section 10(2A) only if he is not eligible to opt to pay tax under sub-section (1) and sub-section (2) of Section 10.

The condition stipulates that a registered person shall not be eligible to pay tax under sections 10(1) and 10(2) of CGST Act. Section 10(1) and (2) of CGST Act, 2017 deal with conditions to be satisfied by a person to be eligible to opt for normal composition scheme or in common parlance composition scheme for supplier of goods. Therefore, it is possible that a person might satisfy all conditions as set out in sections 10(1) and 10(2) but still may not want to opt for composition scheme under those sections but want to opt for composition scheme under section 10(2A) i.e., composition scheme for supplier of services or mixed suppliers.

'Eligibility' and 'Opting' are two different aspects and cannot be considered to be synonym to each other. Therefore, when the provision lays down the condition that registered person should not be eligible to opt for composition scheme under section 10(1) and 10(2) of CGST Act, 2017, it would mean that registered person does not satisfy the condition as provided therein. Now let's consider the scenarios listed below:

- **Situation-1:** Eligible to pay tax under section 10(1) and 10(2) of CGST Act, 2017 but *not opted to pay tax therein* (as discussed earlier)-
- **Situation-2:** Not eligible to pay tax under section 10(1) of CGST Act, 2017 and therefore did not opt to pay tax therein

Since the condition stipulated in the provision is that the registered person should not be eligible to pay tax under section 10(1) and 10(2) of CGST Act, 2017, a person who is eligible under section 10(1) and 10(2) of CGST Act, 2017 but has not opted (*Situation-1* as narrated above) would not be able to opt for the scheme as set out in Section 10(2A) as well. Only the persons who are falling in *Situation-2* as narrated above would be able to opt for the scheme. In a nutshell, if a person wants to opt for composition scheme as provided under Section 10(2A) of CGST ACT, 2017 then following would be the process:

- Want to opt for composition scheme for supplier of services or mixed suppliers under Section 10(2A) – Yes
- Whether 'Eligible to pay tax under section 10(1) and 10(2) of CGST Act, 2017'- If yes then either opt for composition scheme under section 10(1) and 10(2) of CGST Act, 2017 or wait till the person becomes ineligible to opt to pay tax under composition scheme under section 10(1) and 10(2) of CGST Act.
- Whether 'Ineligible to pay tax under section 10(1) and 10(2) of CGST Act, 2017'- If yes, then opt for the composition scheme as provided under section 10(2A) of CGST Act, 2017.

Therefore, a scenario has sought to be created wherein every person opting to pay tax under composition scheme as provided under Section 10(2A) of CGST Act, 2017 should either be ineligible to pay tax under section 10(1) and 10(2) of CGST Act, 2017 at that time or if he is not ineligible therein, then he would have to first opt to pay tax under composition scheme under section 10(1) and 10(2) of CGST Act or would have to wait till he becomes ineligible to opt to pay tax under composition scheme under section 10(1) and 10(2) of CGST Act, and then once he becomes ineligible to pay tax therein then only he can opt to pay tax under composition scheme as provided under Section 10(2A) of CGST Act, 2017.

The Authority for Advance Ruling (AAR) in the case of *Empathic Trading Center* [2020] 116 taxmann.com 868 (AAR – KAR.) decided about eligibility to opt for Composition Scheme under *Notification No. 2/ 2019 – Central Tax (Rate)* dated 07.03.2019. It was held that on perusal of *Notification No. 2/ 2019 – Central Tax (Rate)* dated 7<sup>th</sup> March 2019, it is evident from the conditions as provided under the notification for optional Composition Scheme for service providers, that an applicant shall be eligible to pay tax under the said notification, only if he/it 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/it is registered under Section 10 of CGST Act, 2017. Since, the applicant is eligible to pay tax under section 10 of CGST Act, 2017, he/it would not be eligible to opt for composition scheme under *Notification No. 2/ 2019 –Central Tax (Rate)* dated 7<sup>th</sup> March 2019.

Although the decision is in respect of *Notification No. 02/2019-Central Tax (Rate)* dated 7<sup>th</sup> March 2019 it is equally applicable for Section 10(2A) as well since the condition for being eligible to opt for composition scheme under Section 10(2A) is subject to the applicant being ineligible to opt under Section 10(1) and 10(2).

### **3.1.1 What would be the circumstances wherein a person would straight away want to opt for composition scheme under Section 10(2A) rather than composition scheme under Section 10(1) and 10(2)?**

As composition tax rate under Section 10(2A) is higher than the composition tax rate provided in Section 10(1) and 10(2), one would be tempted to think why at all a person would straight away want to opt for composition scheme under Section 10(2A) rather than composition scheme under Section 10(1) and 10(2). Further, one would seemingly want to conclude that since Composition Scheme under section 10(2A) would never be beneficial than that provided in section 10(1) and 10(2) and therefore a person should first opt for composition scheme under Section 10(1) and 10(2).

However, there is a story on other side as well. A person might want to opt for composition levy in terms of section 10(2A) without opting for composition levy under Section 10(1) and 10(2), if he is aware of the fact that soon after opting for composition scheme under Section 10(1) and 10(2), he would become ineligible under that scheme and thereafter since the time limit for opting for composition scheme under section 10(2A) would have expired, he would not be able to opt for composition scheme under section 10(2A) as well.

Assume that a person has applied for new registration. Although he wanted to opt for Composition Scheme under section 10(2A) of CGST Act, 2017, he could not do so as he was not ineligible under section 10(1) at that time. Therefore, he opted for composition scheme under section 10(1). Within a month of the new registration, he was ineligible for composition scheme under section 10(1) as his turnover of supply of services exceeded Rs 5 Lakh. He cannot now opt for the scheme under section 10(2A).

In the alternative, if he would not have opted for composition under section 10(1) of CGST Act, 2017 at the time of application of registration and had waited for becoming ineligible under section 10(1), then also he could not have opted for composition scheme under section 10(2A) as his time limit to opt for composition scheme in case of new registration as provided under rule 3 of CGST Rules, 2017 would have expired.

Thus, effectively the provisions of section 10(2A) require amendment for being available to the intended registered person or a clarification may be issued that since composition scheme under Section 10(2A) and as both section 10(1) & 10(2) fall under section 10 of CGST Act, 2017, if a person has opted for Composition Scheme under section 10(1) and 10(2) and subsequently he becomes ineligible to pay tax under section 10(1) and 10(2), he would not be required to apply a fresh option under section 10(2A). He may continue with composition scheme under section 10 but would now be paying composition tax under section 10(2A) subject to fulfillment of other conditions rather than under sections 10(1) and 10(2).

## 3.2 CONDITIONS FOR OPTING FOR COMPOSITION LEVY

### 3.2.1 Registered person whose aggregate turnover in the preceding financial year was INR 50 lakhs or below is eligible to opt for composition scheme

The term 'aggregate turnover' has been defined by section 2(6) of CGST Act, 2017 to include all taxable and exempt supplies by a person having the same permanent account number, to be computed on an all-India basis. Therefore, turnover of the person having the same PAN on all India basis has to be INR 50 lakhs or below in the previous year. Hence, if a person has multiple branches in different States, then the turnover of all his branches should be rupees fifty lakh or below in the previous year on an aggregate basis.

The next question is what happens if a person was not registered in the previous year. There might be two situations in such case-

- *Person might have started a new business in the current year and thus would not have any turnover in the previous year- Such person would be eligible to opt for the scheme as his turnover was less than Rs. 50 Lakh in the previous year.*
- *Person could have been exclusively dealing with exempted goods or services in the previous year and thus was not required to be registered- Such person would be eligible if his turnover of exempt goods or services or both was less than INR 50 Lakh but if his turnover of exempt goods or services or both was more than INR 50 Lakh (although not*

required to be registered under GST as dealing exclusively in exempted goods), then he would not be eligible to opt for the scheme.

### **3.2.2 Other Conditions for persons eligible to opt for composition scheme for supplier of services or mixed suppliers**

*Condition 1: Registered person should not be engaged in making supply of goods or services which are not leviable to tax under the CGST Act.*

Persons who are making supply of goods or services which are not leviable to tax would not be eligible to opt for composition scheme. The list of goods which are not leviable to tax are as follows:

- Petroleum crude
- High Speed Diesel
- Motor Spirit
- Natural Gas
- Aviation Turbine Fuel
- Alcohol for Human Consumption

*Condition 2: The registered person should not be engaged in making inter-State supply of goods or services*

The registered person should not be engaged in making any inter-State outward supply of goods or services. The condition might seem to be a simple one and an obvious one but needs to be checked very carefully. The condition places restriction on making any inter-State outward supply of goods or services or both which covers both taxable and exempt supply and supply of goods or services or both.

*Condition 3: The registered person should neither be a casual taxable person nor a non-resident taxable person*

The registered person should neither be a casual taxable person nor a non-resident taxable person. The terms 'casual taxable person' and 'non-resident taxable person' have been defined by section 2(20) and 2(77) of CGST Act, 2017 respectively.

*Condition 4: The registered person should not be engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52.*

The registered person should not be engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52. It would be pertinent to highlight that although registered person engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52 is barred from opting the scheme, the person who is himself an electronic

commerce operator is not barred from opting for the scheme. The above restriction on supplies made through an electronic commerce operator who is required to collect tax at source under section 52 applies only to the supply of services and not on goods. This means that a composite dealer can supply goods through an e-commerce operator; however, there is a restriction imposed on e-commerce operators by *Notification No. 36/2023-CT dated 04/08/2023*, stating that if a composite dealer supplies goods through an e-commerce operator, such supplies cannot be inter-State.

*Condition 5: The registered person should not be engaged in manufacturing of such goods or supply of such services as may be notified by the Government on the recommendation of the Council*

This condition prescribes that the registered person should not be engaged in the manufacture of such goods or supply of such services which are notified by Government on recommendation of GST Council.

However, the condition as provided in *Notification No. 2/2019-Central Tax (Rate) dated 7<sup>th</sup> March 2019* was a bit different and provided that the supplier opting for composition scheme under this notification should not be engaged in making supplies of goods specified below falling under Tariff Item, sub-heading, heading or Chapter as detailed hereunder:

<b>Tariff item, sub-heading, heading or Chapter</b>	<b>Description</b>
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
22021010	Aerated water (Inserted vide <i>Notification No. 18/2019-Central Tax (Rate) w.e.f. 1<sup>st</sup> October 2019</i> )
24	All goods, i.e., Tobacco and manufactured tobacco substitutes

Section 10(2A) has been brought more or less in line with the provisions of section 10(1) and 10(2) by restricting the manufacturers of such goods as may be notified by the Government on the recommendation of the Council with the additional power of restricting the supplier of such services as may be notified by the Government on the recommendation of the Council.

The council is yet to notify any such activity relating to manufacturing of goods or supply of services and therefore, this condition is not effective anymore as *Notification No. 2/2019-CT(R)* is no more operational. This might lead to a view that w.e.f. 1<sup>st</sup> April 2020, persons restricted by *Notification No. 2/2019-CT(R)* can still opt for compositions scheme under section 10(2A).

*Condition-6: He shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both- [Clause (d) to Sub-Rule (1) of Rule 5 of CGST Rules, 2017.]*

Pursuant to the amendment of section 9(4) of CGST Act, 2017 vide CGST Amendment Act, 2018, till now no goods have been notified under the newly amended section 9(4) for the registered persons opting for composition scheme. Therefore, this provision is not relevant as of now for people opting for composition scheme. The Government has notified certain goods and services under section 9(3) of CGST Act, 2017. A person opting for composition scheme would be liable to pay tax under reverse charge although he would not be entitled for the input tax credit of the tax paid.

### **3.2.3 Inclusions and Exclusions for the purpose of determination of threshold limit and tax payable**

#### ***3.2.3.1 Calculation of Threshold limit for the purposes of determining eligibility of a person to opt for composition scheme in Section 10(2A)***

Explanation-1 to section 10 provides that for the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall include the value of supplies made by such person from the 1<sup>st</sup> day of April of a financial year upto the date when he becomes liable for registration under this Act.

Further, in computing the aggregate turnover in order to determine eligibility of a registered person to pay tax under section 10(2A), the value of supply of 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.

#### ***3.2.3.2 Calculation for the purpose of determination of tax payable***

Explanation 2 to Section 10 provides that for the purpose of determination of tax payable, “Turnover in State or Turnover in Union Territory” shall not include supplies from first day of April of a financial year to the date from which he becomes liable for registration under the Act and value of supply of 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.

However, in contrast to the above, *Notification No. 2/2019-Central Tax dated 7<sup>th</sup> March 2019* did not exclude the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount for the calculation of tax payable. Therefore, although for the purpose of computing aggregate turnover in order to determine eligibility of a registered person to pay tax under the notification, value of supply represented by way of interest or discount were excluded; however, for the purpose of payment of tax, notification was silent and therefore tax was leviable on the value of supply represented by way of interest or discount.

Therefore, there is a difference between provisions of section 10(2A) and *Notification No. 2/2019-Central Tax (Rate) dated 7<sup>th</sup> March 2019* in this respect and with effect from 1<sup>st</sup> April 2020, provisions of section 10(2A) would prevail over the notification and computing tax payable as well, value of supply of 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.

**Question:** How would threshold limit for eligibility to opt for composition scheme under section 10(2A) be worked out and how composition tax would be worked out?

**Answer:** Subject to other conditions being satisfied, a person who has obtained a new registration can opt for payment of tax under section 10(2A) of CGST Act, 2017. The question that arises is: Assume that a person has applied for registration when his turnover was Rs 19 Lakh. In such case, how would the limit of aggregate turnover of INR 50 lakh be worked out? Whether he would get an additional turnover of Rs Fifty lakh for the purpose of determining eligibility or he would only get additional turnover of Rs 31 lakh and after that he would have to opt out of the scheme.

For the purpose of determining his eligibility to opt to pay tax under section 10(2A), his turnover would include supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act. Therefore, his turnover of Rs 19 Lakh would be includable for determining eligibility upto a limit of INR 50 lakh and he would only get additional turnover of INR 31 Lakh to be under the scheme and after that he would have to opt out of the scheme.

The next issue that arises is whether he would be required to pay tax on the turnover of INR 19 lakh or he would only be liable to pay tax on the remaining turnover upto the limit of INR 50 lakh i.e., Rs 31 Lakh. For the purpose of determination of tax payable under Section 10(2A), first supplies of goods or services or both shall not include supplies from first day of April of a financial year to the date from which he becomes liable for registration under the Act. Therefore, such person would only be liable to pay tax on the remaining turnover of Rs 31 Lakh and would not be required to pay tax on the initial Rs 19 Lakh.

Therefore, “Aggregate turnover” on the permanent account number of the registered person to be checked for eligibility and tax is to be paid on the “Turnover in the State” or “Turnover in the Union Territory”.

### 3.3 COMPOSITION TAX PAYABLE AT THE RATE OF 6 PERCENT (3% CGST+3% SGST)

The registered person opting for composition scheme under section 10(2A) of CGST Act, 2017 would be liable to pay an amount of tax calculated at such rate as may be prescribed but not exceeding three per cent of the turnover in the State or turnover in Union territory. It would be pertinent to highlight that *Notification No. 2/2019-Central Tax (Rate)* also provided the same rate of 6% i.e., (3% CGST+3% SGST). The rate chart as provided under Rule 7 of CGST Rules, 2017 from 1<sup>st</sup> April 2020 is as follows:

<b>Sl. No.</b>	<b>Section under which composition levy is opted</b>	<b>Category of registered persons</b>	<b>Rate of tax</b>
<b>(1)</b>	<b>(1A)</b>	<b>(2)</b>	<b>(3)</b>
4	Sub-section (2A) of section 10	Registered persons not eligible under the composition levy under sub-sections (1) and (2), but eligible to opt to pay tax under sub-section (2A), of section 10	Three per cent. of the turnover of supplies of goods and services in the State or Union territory.

The condition to pay tax @ 6% of the turnover in the State or turnover in the Union territory is an onerous condition. This requires the registered person to pay tax at the rate of 6% on all outward supplies whether they are taxable or exempt from the levy of tax except for value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. For e.g., let us take the following scenarios for better understanding:

<b>Scenario</b>	<b>Particulars</b>	<b>Tax Liability</b>
Scenario-1:	Taxable Supplies of Goods: INR 15 Lakh Exempt Supplies of Services: INR 10 Lakh	INR 1.5 Lakh
Scenario-2:	Taxable Supplies of Goods: INR 25 Lakh	INR 1.5 Lakh
Scenario-3:	Exempt Supplies of Services: INR 25 Lakh Interest Income: INR 2 Lakh	INR 1.5 Lakh

Thus, it is immaterial whether supplier is supplying exempt or taxable goods or services or both; once opted for payment of tax under section 10(2A), he would be liable to pay tax at the rate of 6% on all supplies irrespective of their nature i.e., taxable or exempt, except for value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

This brings us to another question i.e., whether such tax at the rate of 6% is payable on 'Non-GST Supplies' also. In such a case, it would be apt to highlight that person engaged in making any supply of goods or services which are not liable to tax are not eligible to opt to pay tax under section 10(2A) of CGST Act, 2017. Therefore, such situation would never arise wherein a person is engaged in making supplies not leviable to tax under the Act and who has opted to pay tax under Section 10(2A).

### **3.4 PERSONS HAVING MULTIPLE REGISTRATIONS ON SINGLE PAN**

Where more than one registered person has the same permanent account number, issued under the Income Tax Act, 1961(43 of 1961), the registered person would not be able to opt to

pay amount in lieu of tax under this sub-section unless all registered persons opt to pay tax under this sub-section. Registered persons having same permanent account number can be in the same State or in different States. Hence, if a person is registered in Gujarat as well as Rajasthan, then both registrations would have to pay tax under section 10(2A) of CGST Act, 2017. There can't be a situation wherein one registrant is paying tax under section 10(2A) and the other one is paying tax under the regular scheme. This condition exists on similar lines to the one prescribed under section 10(2) of the CGST Act, 2017.

### **3.5 RESTRICTION ON COLLECTION OF TAX AND INPUT TAX CREDIT**

A registered person shall not collect any tax from recipient on supplies made by him nor shall he be entitled to any credit of input tax.

**(a) Supplier cannot collect any tax from recipient:** Section 10(4) casts restriction on supplier to collect tax from the recipient. Therefore, the amount to be paid as tax under Section 10 of CGST Act, 2017 would have to be paid by the supplier himself without being collected from the recipient.

The next question is on what amount such tax would be collected and whether the amount collected from the recipient would be deemed as inclusive of taxes or otherwise. Supposing, a person has a receipt of INR 20 lakh and GST has to be paid @ 6% whether such person can pay GST @ 6% treating amount collected as inclusive of such amount i.e., INR 20 Lakh/1.06\*.06 or 6% has to be paid on Rs 20 Lakh. Since, the notification places restriction on any amount being collected from the recipient, tax at the rate of 6% will have to be paid on 20 Lakh and it cannot be deemed that Rs 20 Lakh is inclusive of the tax to be paid.

Further, it would be apt here to highlight that in case of restaurants or passenger transportation services; tax rate under section 9(1) of CGST Act, 2017 has been prescribed at 5% but there is no restriction on the amount being collected from the recipient. However, for Composition Scheme issued under section 10(1) and 10(2) or Section 10(2A), restriction has been placed on the supplier from collection of tax from the recipient, which is not so in the case of similar tax rate being prescribed under section 9(1) of CGST Act, 2017 without entitlement of input tax credit.

**(b) Supplier not eligible to any credit of input tax:** Section 10(4) casts a restriction on entitlement of input tax credit of supplier. The supplier would not be eligible to claim any input tax credit against the tax payable on the supplies made by him.

### **3.6 WHETHER SUPPLIER WOULD BE LIABLE TO PAY TAX ON OUTWARD SUPPLIES MADE BY HIM WHICH ARE LIABLE TO REVERSE CHARGE AND TAX IS PAYABLE BY THE RECIPIENT?**

A registered person opting to pay tax at the rate of 6% under section 10(2A) of CGST Act, 2017 shall not be liable to pay tax on the outward supplies made by him which are subject to

RCM u/s 9(3) or 9(4) of CGST Act, 2017. This is because the tax paid under section 10(2A) is in lieu of the tax payable under section 9(1) and not in lieu of the tax payable under sections 9(3) or 9(4) of the CGST Act, 2017. The tax would be paid by the recipient as per sections 9(3) or 9(4) of the CGST Act, 2017 on outward supplies made by the composite dealer that are subject to RCM.

### **3.7 DISCLOSURE BY COMPOSITION TAXABLE PERSON**

Persons covered by composition tax 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. He shall also 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.

# Persons Liable for Registration in GST

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Section 22 of CGST Act, 2017 deals with the person liable for registration for GST. As a general rule, liability to obtain registration for GST is based upon two key factors:-

- Aggregate turnover
- State or Union Territory from where taxable supply of goods or services or both is made.

In accordance with the provisions of Section 22 of the Act, every supplier shall be liable to obtain registration in the State or Union Territory from where he makes a taxable supply of goods or services or both if his aggregate turnover in a financial year exceeds the prescribed limit.

The requirement for obtaining registration from every State or Union territory from where supplier makes a taxable supply clearly depicts that in general there would be no concept of centralised registration in GST.

### **4.1. DEFINITION OF ‘AGGREGATE TURNOVER’**

First, it is important to understand here as to what “aggregate turnover” means. As per sub-section (6) to Section 2 of the CGST Act, 2017, “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same permanent account number, to be computed on all India basis but excludes Central tax, State tax, Union territory tax, integrated tax and cess.

Further, as per sub-section (47) to Section 2 of the CGST Act, 2017, “exempt supply” includes non-taxable supply.

Therefore, in simpler terms, “aggregate turnover” means the sum total of all supplies made by a person – whether taxable, non-taxable, and exempt or exports, to be computed in totality, taking into account all supplies of a person under the same permanent account number.

### **4.2. APPLICABLE THRESHOLD FOR STATE/UNION TERRITORY**

Moreover, the prescribed threshold limit of aggregate turnover, for obtaining registration in a State/Union Territory, can be understood from the following Table: –

State	Threshold limit of Aggregate Turnover for obtaining registration, where supplier is engaged exclusively in the Supply of Goods	Threshold limit of Aggregate Turnover for obtaining registration, where supplier is engaged in the supply of Goods and Services	Threshold limit of Aggregate Turnover for obtaining registration, where supplier is engaged in the supply of Services
All States other than “Special Category States”	40 Lakhs **	20 Lakhs	20 Lakhs
States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.	20 Lakhs *	20 Lakhs	20 Lakhs
Manipur, Mizoram, Nagaland and Tripura, also known as “Special Category States”	10 Lakhs	10 Lakhs	10 Lakhs

\*\* Increased from 20 lakhs to 40 lakhs INR by *Notification No. 10/2019 dated 7<sup>th</sup> March 2019* w.e.f. 1<sup>st</sup> April 2019. However, following categories of persons are excluded from such exemption –

- (a) Persons required to take compulsory registration under Section 24 of the CGST Act, 2017.
- (b) persons engaged in making supplies of the following goods –
  - Ice cream and other edible ice, whether or not containing cocoa.
  - Pan masala
  - All goods, i.e., Tobacco and manufactured tobacco substitutes.
  - Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks (vide *Notification No. 3/2022-Central Tax dated 31-3-2022*). However, the condition of 90 percent has been omitted vide *Notification No. 15/2022-Central Tax dated 13-7-2022*

- Bricks of fossil meals or similar siliceous earths (vide *Notification No. 3/2022-Central Tax dated 31-3-2022*)
  - Building bricks (vide *Notification No. 3/2022-Central Tax dated 31-3-2022*)
  - Earthen or roofing tiles (vide *Notification No. 3/2022-Central Tax dated 31-3-2022*)
- (c) Persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand. (Out of these, special category states are only four - Manipur, Mizoram, Nagaland and Tripura.)

\*These States were excluded from Special Category States for the purpose of Section 22 of CGST Act, 2017 w.e.f. 1<sup>st</sup> February 2019 by CGST (Amendment) Act, 2018. Due to such exclusion, the threshold limit in these States changed from INR 10 lakhs to 20 Lakhs. However, as these States are specifically excluded from the purview of *Notification No 10/2019 dated 7<sup>th</sup> March 2019*, the benefit of enhanced threshold limit of 40 lakh INR is not available to them.

### **4.3. PERSON ENGAGED IN SUPPLY OF EXTENDING DEPOSITS, LOANS OR ADVANCES**

The explanation to sub-section (1) of section 22 clarifies that a person shall be considered to be engaged exclusively in the supply of goods, even if he is engaged in the exempt supply of extending deposits, loans or advances, in so far as the consideration is represented by way of interest or discount.

In other words, if a registered person deals exclusively in the supply of goods, other than those goods mentioned in the exclusions and receives interest on loans or deposits, then merely due to the provision of such service of extending loans or deposits, he shall not be disentitled from availing the benefit of enhanced exemption limit of forty lakh rupees. However, for determining the threshold limit of ₹40 lakh, the interest income from extending deposits, loans or advances still needs to be included in the aggregate turnover when calculating the threshold limit for registration under GST.

### **4.4. OTHER SCENARIOS WHEN A PERSON IS REQUIRED TO BE REGISTERED UNDER SECTION 22**

Apart from the general provision of registration discussed above, section 22 further provides that the following persons are also liable to obtain registration for GST –

- (a) Every person registered in any of the previous tax regimes, is liable to obtain registration with effect from the appointed day.
- (b) Where a business carried on by a taxable person is transferred to another person as a going concern, such transferee is liable to obtain registration with effect from the date of such transfer.

- (c) Where there is a transfer pursuant to sanction of a scheme or an arrangement for amalgamation, or demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

#### **4.5. MANDATORY REGISTRATION AS PER SECTION 24 OF CGST ACT, 2017**

Conversely, section 24 of the CGST Act, 2017 deals with the cases of compulsory registration. It is noteworthy here, that Section 24 overrides the general provision of registration, as provided by section 22 of the Act. That is to say, the benefit of threshold limit discussed above is not available to the persons falling under section 24 and they have to be compulsorily registered, irrespective of their turnover. Following is the exhaustive list of cases, where compulsory registration is required –

- (a) Persons making any inter-State taxable supply
- (b) Casual taxable persons making taxable supply
- (c) Persons required to pay tax under reverse charge
- (d) Persons required to pay tax under section 9(5), wherein a list of services have been specified by Notification No 17/2017 Central Tax (Rate) dated 28th June 2017 (as amended from time to time)
- (e) Non-resident taxable persons making taxable supply
- (f) Persons required to deduct tax (TDS) under section 51
- (g) Persons making taxable supply of goods or services or both, on behalf of other taxable persons, whether as an agent or otherwise.
- (h) Input service distributor, whether or not separately registered under this Act
- (i) Persons who supply goods or services or both, other than supplies specified under section 9(5), through such electronic commerce operator who is required to collect tax (TCS) under section 52
- (j) Every electronic commerce operator who is required to collect tax at source under section 52
- (k) Every person supplying Online Information and Database Access or Retrieval (OIDAR) services, from a place outside India to a person in India, other than a registered person
- (l) every person supplying online money gaming from a place outside India to a person in India; and
- (m) Such other class of persons as may be notified by the Government on the recommendations of the GST Council.

Where Composition Scheme is in question, it is worthwhile to highlight that registration under Section 24 has a very limited scope, because the Composition Scheme has its own conditions and restrictions, owing to which, not every kind of taxpayer can opt for it.

## **4.6. PERSONS NOT LIABLE FOR REGISTRATION-SECTION 23 OF CGST ACT, 2017**

Following persons are not required to be registered under GST as per statutory provisions and notifications issued under section 23 of CGST Act, 2017:

- (a) Any person engaged exclusively in the business of supplying goods or services or both which are wholly exempt or not liable to tax.
- (b) An agriculturist to the extent of supply of produce out of cultivation land.
- (c) Persons engaged in making taxable supplies, total tax on which is liable to be paid on reverse charge basis. [Notification No. 5/2017-Central Tax dated 19<sup>th</sup> June 2017]
- (d) Persons making inter-State taxable supplies of handicraft goods. Where the aggregate value of supplies on PAN-India basis does not exceed ` 20 Lakhs in a year (` 10 Lakhs for special category States- Manipur, Mizoram, Nagaland and Tripura) - (w.e.f. 22.10.2018) - Notification No. 3/2018-Integrated Tax dated 22.10.2018. This notification has superseded Notification No. 8/ 2017-Integrated Tax dated 14.09.2017. Such persons shall be required to obtain a Permanent Account Number and generate an e-way bill in accordance with the provisions of rule 138 of the CGST Rules, 2017
- (e) Job workers engaged in making inter-State supply of services to a registered person except those who are liable to be registered under section 22(1) of the CGST Act, 2017 or persons opting for voluntary registration, or persons engaged in making inter-State supplies of services in relation to jewellery, goldsmiths' and silversmiths' wares and other articles. [Notification No. 7/2017-Integrated Tax, dated 14<sup>th</sup> September 2017 as amended by Notification No. 2/2019 - Integrated Tax, dated 29<sup>th</sup> January 2019]
- (f) Casual taxable persons making taxable supplies of handicraft goods. Where the aggregate value of supplies on PAN-India basis does not exceed ` 20 Lakhs in a year (` 10 Lakhs for special category States-Manipur, Mizoram, Nagaland and Tripura) - (w.e.f. 23.10.2018) – Notification No. 56/2018-Central Tax dated 23.10.2018. This notification has superseded Notification No. 32/ 2017-Central Tax dated 15.09.2017.
- (g) Persons making inter-State supplies of taxable services. Where the aggregate value of supplies on PAN-India basis does not exceed ` 20Lakhs in a year (` 10 Lakhs for special category States- Manipur, Mizoram, Nagaland and Tripura) (w.e.f.13.10.2017) – Notification No. 10/2017-Integrated Tax dated 13.10.2017 as amended vide Notification No. 3/2019-Integrated Tax dated 29.01.2019, w.e.f. 01.02.2019. Notification No. 3/2019 grants exemption from registration to persons making inter-State supplies of taxable services to special category States.

- (h) Persons making supply of goods through an electronic commerce operator (ECO), who is required to collect tax at source under section 52 of the Act and having an aggregate turnover in the preceding and current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State/Union territory, as the category of persons exempted from obtaining registration, subject to certain conditions (w.e.f. 01.10.2023). - *Notification No. 34/2023- Central Tax dated 31.07.2023* grants a waiver of mandatory for persons supplying goods through an ECO required to collect tax under section 52, subject to certain conditions.

Suppliers of services through an e-commerce platform (other than the services specified in sub-section 5 of section 9) who is required to collect tax at source, provided their aggregate turnover does not exceed` 20 lakh (` 10 lakh in special category States-Manipur, Mizoram, Nagaland and Tripura) (w.e.f. 15.11.2017). - *Notification No. 65/2017-Central Tax dated 15.11.2017* as amended vide *Notification No. 6/2019-Central Tax dated 29.01.2019*, w.e.f. 01.02.2019. *Notification No. 6/2019* grants exemption to suppliers of services through an e-commerce platform obtaining compulsory registration to special category States

# Intimation for exercise of option for Composition Levy

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Rule 3 of the CGST Rules, 2017 deals with intimation to be given for composition levy. Precisely, it lays down the procedures to be followed by an assessee, in order to exercise the option to pay tax as a composition dealer, under section 10 of the CGST Act, 2017. The contents of the above rule can be summarised into three broad cases: –

## 5.1. CASE 1 - WHERE A PERSON MIGRATED TO GST FROM ANY OF PREVIOUS TAX REGIMES -( RULE 3(1) OF CGST RULES, 2017)

For a person who had migrated to GST from any of the previous tax regimes, by enrolment on the common portal and had been granted provisional registration, composition scheme could be opted for by electronically filing intimation in Form GST CMP-01, duly signed or verified through electronic verification code (EVC), within the prescribed period.

Practically, when a person was granted provisional registration certificate in Form GST REG-25, on the basis of enrolment application filed, he had to submit another application electronically in Form GST REG-26, for final registration under GST. It is important to mention here, that neither the format of enrollment application, nor Form GST REG-26, provided any option to the assessee to opt for composition scheme. This is at variance with Form GST REG-01, which is filed by a person to obtain new registration, wherein the option to choose composition scheme is available in the registration application itself. It is because of this difference, that a separate intimation was required to be given and FORM GST CMP-01 came into picture as a *one-time measure for migration cases to opt for composition scheme*.

Although the prescribed period to file this form was either prior to the appointed day or within thirty days after the said date, an extension was granted from 31<sup>st</sup> July 2017 to 16<sup>th</sup> August 2017 vide Order No 01/2017-GST dated 21<sup>st</sup> July 2017.

Once a registered person filed an intimation in Form GST CMP-01 till the due date, he had to comply with the provisions of Section 10 including –

- (a) Non-collection of tax from the recipient, from *the appointed day itself*.
- (b) Issuance of bill of supply for all the supplies made.

Further, sub-rule (4) to the above rule states that *any person who files an intimation in Form GST CMP-01, shall furnish the details of stock held by him, including inward supply of goods received from unregistered persons, as on the day preceding the date from which he opts for composition scheme, in Form GST CMP-03, which shall be filed electronically on the common portal.*

Accordingly, such person also had to file Form GST CMP-03 on the common portal, which was only an *intimation* of the details of stock held by him while opting for composition scheme. The due date to file such form was originally sixty days from the date of exercise of option for composition levy, which was extended to ninety days by the Central Goods and Service Tax (Fifth Amendment) Rules, 2017 w.e.f. 17<sup>th</sup> August 2017. However, due to technical glitches on the common portal, multiple extensions were given to the due date to file this form and the final due date was 31<sup>st</sup> January 2018, which was made effective vide Order No 11/2017 – GST dated 31<sup>st</sup> December 2017.

## **5.2. CASE 2 - WHERE A PERSON APPLIES FOR REGISTRATION UNDER RULE 8(1) OF THE CGST RULES, 2017-( RULE 3(2) OF CGST RULES, 2017)**

Rule 8(1) provides details of information required to make an application for registration on the common portal. Out of the persons specified in the above sub-rule, any person seeking registration has the option to choose composition scheme in Part-B of the registration application in Form GST REG-01. It has been stated in the Rule that once this option is selected in the registration application, it shall be considered as intimation to pay tax under Section 10 of the CGST Act, 2017. Following is a snapshot of Part-B of Form GST REG-01 on the common portal, where a person can choose “Option for Composition”.

Are you applying for registration as a casual taxable person? Yes

Option For Composition Yes

 I hereby declare that the aforesaid business shall abide by the conditions and restrictions specified in the Act or Rules for opting to pay tax under the composition Levy.

## **5.3. CASE 3 – WHERE A PERSON ALREADY REGISTERED AS A NORMAL TAXPAYER, WANTS TO OPT IN TO THE COMPOSITION SCHEME (RULE 3(3) OF CGST RULES, 2017)**

Where a registered person opts to pay tax under Section 10 of the CGST Act, 2017, he is required to file intimation electronically in Form GST CMP-02 on the common portal, duly signed or verified through electronic verification code (EVC).

This intimation is required to be given by the registered person *prior to the commencement of the financial year*, for which option to pay tax under composition scheme is exercised. That is to say, the last date to file such form is 31<sup>st</sup> day of March of the previous financial year.

However, as a relief measure during COVID-19 situation, a proviso has been inserted in sub-rule (3) of the above rule to the effect that, for opting into the composition scheme for financial year 2020-21, intimation in Form GST CMP-02 can be filed upto 30<sup>th</sup> June 2020.

Sub-rule (3) to the above rule further provides that any person exercising this option shall also furnish a statement in Form GST ITC-03, within a period of sixty days from the commencement of the financial year for which composition scheme is opted. Form GST ITC-03 is an intimation for reversal of input tax credit/payment of tax on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods. Sub-section (4) to Section 18 read with sub-rule (4) of Rule 44 lays down in detail, the method of reversal of such input tax credit.

It is worthwhile to highlight here, that both Form GST CMP-03 and Form GST ITC-03 are drawn on similar lines, except that *Form GST ITC-03 is for the reversal of input tax credit*, as the same is availed by a registered person in the course of being a Normal Taxpayer and he is required to forego the same once he opts for composition scheme, whereas *Form GST CMP-03 is only an intimation of stock details*, not leading to any reversal of input tax credit, because the registered person opts for composition scheme since the inception itself and consequently, no input tax credit is availed by him.

Additionally, newly inserted proviso to sub-rule (3) has extended the due date of filing Form GST ITC-03, for registered persons opting to the composition scheme from financial year 2020-21, upto 31<sup>st</sup> July 2020, owing to COVID-19 pandemic.

#### **5.4. EXCEPTIONAL CASE – RULE 3(3A) OF CGST RULES, 2017**

During the financial year 2017-18, there were several issues on the common portal in relation to the forms that were to be filed for opting into the composition scheme. Due to difficulties faced by taxpayers and as a comforting measure, sub-rule (3A) was inserted in Rule 3 by CGST (Seventh Amendment) Rules, 2017 (and further amended by CGST (Ninth Amendment) Rules, 2017) allowed certain persons to opt for composition scheme with effect from the beginning of any month, starting from October 2017, by filing Form GST CMP-02. This option was made available to -

- (a) Persons migrating from previous tax regimes, who had obtained provisional registration by enrolling on the common portal,
- (b) Persons who had been granted registration as normal taxpayers.

Initially this option was introduced by inserting sub-rule (3A) to rule 3 w.e.f. 15<sup>th</sup> September 2017, wherein the Form had to be filed by 30<sup>th</sup> September 2017, in order to enter into the composition scheme from 1<sup>st</sup> October 2017. But this rule was further amended and substituted by the option to choose composition scheme *from the beginning of any succeeding month, for which Form GST CMP-02 could be filed on any day in the previous month*.

Moreover, for this exceptional case also, a registered taxpayer switching over from regular to composition scheme was required to file Form GST ITC-03, for reversal of Input Tax Credit, within a period of ninety days from the date on which such person commenced to pay tax under Section 10. This period of ninety days was further amended to one hundred and eighty days by *Notification No 3/2018 dated 23<sup>rd</sup> January 2018*. Further, a Proviso was also inserted to sub-rule 3A, in order to clarify that post filing of Form GST ITC-03; a registered person could not file Form GST TRAN-1, as input tax credit could not be availed after opting into the composition scheme.

Towards the conclusion, this rule lays down that, where a person has multiple places of business in various States/Union Territories on the same permanent account number, an intimation given in Form GST CMP-01 or Form GST CMP-02, in respect of any place of business shall be deemed to be an intimation with respect to *all places of business in all other States/Union Territories*. This is in compliance with Proviso to sub-section (2) of Section 10 of the CGST Act, 2017, which states that where there are more than one registrations on the same permanent account number, the registered person shall not be allowed to opt for the scheme unless all the registrations under that permanent account number opt to pay tax under this scheme.

## **5.5. EFFECTIVE DATE FOR COMPOSITION LEVY**

The option to pay tax under section 10 shall be effective from the beginning of the financial year, in which the intimation is filed under sub-rule (3) of rule 3 and the appointed day where the intimation is filed under sub-rule (1) of the said rule. The intimation under sub-rule (2) of rule 3, shall be considered only after the grant of registration to the applicant and his option to pay tax under section 10 shall be effective from the date fixed under sub-rule (2) or (3) of rule 10.

## **5.6. OPTION ONCE FILED NEED NOT BE FILED FOR EVERY YEAR**

The registered person paying tax under section 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the Act and these Rules.

## **5.7. TREATMENT OF BALANCE ITC IN CASE PERSON OPTS FOR COMPOSITION SCHEME FROM NORMAL SCHEME OR GOODS OR SERVICES OR BOTH BECOME EXEMPTED FROM TAX [SUB-SECTION (4) OF SECTION 18 OF CGST ACT, 2017]**

Section 18(4) of the CGST Act, 2017 provides that once a person opts for composition scheme from normal/ regular scheme or where the goods or services or both supplied by him become wholly exempt under the law, then the person would be required to pay, by debiting to electronic cash ledger or electronic credit ledger, an amount equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods

held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising such option or date of such exemption of goods or services or both.

The proviso to the section provides that after payment of amount by way of debit to the electronic cash ledger or credit ledger equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse. The provision is a similar provision to the one which was applicable under VAT and CENVAT Rules, 2004.

#### **5.7.1. Manner Of Calculation of Reversal of Input Tax Credit-Rule 44 of CGST Rules, 2017**

- a) Reversal for input Tax Credit on inputs held in stock and inputs contained in semi-finished and finished goods held in stock:** Input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs.(**clause (a) of sub-rule (1) of rule 44 of CGST Rules, 2017**)
- b) Capital Goods:** (**clause (b) of sub-rule (1) of rule 44 of CGST Rules, 2017**) :Input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.

##### **Illustration:**

Capital goods have been in use for 4 years, 6 month and 15 days.

The useful remaining life in months= 5 months ignoring a part of the month

Input tax credit taken on such capital goods= C

Input tax credit attributable to remaining useful life= C multiplied by 5/60

- c) The amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.** (**sub-rule (2) of rule 44 of CGST Rules, 2017**)
- d) In some of the cases, it might happen that tax invoices related to the inputs held in stock are not available, then in such case registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of the goods on the effective date of the occurrence of any of the events specified in sub-section (4) of section 18 or, as the case may be, sub-section (5) of section 29.** (**sub-Rule (3) of rule 44 of CGST Rules, 2017**)
- e) The amount as determined shall form part of the output tax liability of the registered person.**
- f) The registered person shall be required to submit the details of the amount as follows:** (**sub-rule (4) of rule 44 of CGST Rules, 2017**)

- **FORM GST ITC 03:-** Amount relates to any event specified in sub-section (4) of section 18 and
- **FORM GSTR-10:-** Amount relates to the cancellation of registration (Form GSTR – 10 is not applicable in case of Composition Scheme)

As per CGST Rules, 2017, the amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in FORM GST ITC-03, where such amount relates to any event specified in sub-section (4) of section 18 and in FORM GSTR-10, where such amount relates to the cancellation of registration.

**g) Amount to be certified by Chartered Accountant or Cost Accountant: (sub-rule (5) of rule 44 of CGST Rules, 2017)**

The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing chartered accountant or cost accountant i.e., in cases where tax invoices related to the inputs held in stock are not available and the registered person is required to estimate the amount under sub-rule (1) based on the prevailing market price of the goods on the effective date of the occurrence of any of the events specified in sub-section (4) of section 18 or, as the case may be, sub-section (5) of section 29.

# Chapter 6

## Time of Supply

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### 6.1. INTRODUCTION

Until 31<sup>st</sup> January 2019, the composition levy covered supply of goods along with the only service of being the service referred to in clause (b) of paragraph 6 of Schedule II. There was relaxation vide Removal of Difficulty Order No. 1/2017 dated 13<sup>th</sup> October 2017 for giving relief in terms of supply of exempt services. However, w.e.f. 1<sup>st</sup> February 2019, CGST (Amendment) Act, 2018 allowed composition taxpayers to supply services upto ten percent of turnover in the preceding financial year, or five lakh rupees, whichever is higher. Thereafter, *Notification No. 2/2019 – Central Tax (Rate)* dated 7<sup>th</sup> March 2019 widened its scope by bringing in another composition scheme for supplier of service or mixed supplier upto an aggregate turnover of fifty lakh rupees. Therefore, the time of supply of goods as well as of services, holds relevance for composition levy.

### 6.2. TIME OF SUPPLY OF GOODS AND SERVICES

The relevant Sections and Rules for time of supply are as follows:

- Sections 12 to 14 of CGST Act, 2017
- Section 31 of CGST Act, 2017
- Rule 49 of CGST Rules, 2017

In order to discharge tax liability in GST, it is important to know the date on which any charging event occurs, which gives rise to such tax liability. This point in time is known as *time of supply*.

### 6.3. SECTION 12-TIME OF SUPPLY OF GOODS

Section 12 of the CGST Act, 2017 deals with time of supply of goods. Sub-section (2) states the general rule of time of supply of goods, which is earlier of –

- a) date of issue of the invoice or the last date, mentioned under Section 31, on which he is required to issue invoice with respect to that supply
- b) date on which the supplier receives payment in respect of the supply made.

It is worthwhile to mention here, that *Notification No 66/2017-Central Tax dated 15<sup>th</sup> November 2017* provides relaxation from payment of tax on advances received in respect of supply of goods. However, the notification excludes registered persons paying tax under Section 10 of the Act. Accordingly, composition dealers are required to pay tax on advances received for supply of goods, as receipt of advance always triggers time of supply.

### **6.3.1. Time of supply of goods to be date of issue of invoice, where an advance upto Rupees One Thousand, in excess of the amount indicated in the invoice, is received**

For ease of compliance, CGST Act also carves out an exception to the above provision which allows time of supply of goods to be the date of issue of invoice, where an advance up to Rupees one thousand, in excess of the amount indicated in the invoice, is received by the supplier and such exception is only for the excess amount. Moreover, it is clarified by inserting Explanation to the above sub-rule, to the effect that “the date on which supplier receives the payment” shall be the date earlier of the two dates i.e., date on which payment is entered in his books of accounts or date on which payment is credited in the bank account.

## **6.4. SECTION 13 -TIME OF SUPPLY OF SERVICES**

Section 13 of the CGST Act, 2017 deals with time of supply of services. Sub-section (2) states the general rule of time of supply of services, which is categorised as follows –

### **6.4.1. Where invoice has been issued within the period prescribed under Section 31**

Time of supply shall be earlier of the following –

- (i) Date of issue of invoice, or
- (ii) Date on which the supplier receives payment in respect of the supply made.

### **6.4.2. Where invoice has not been issued within the period prescribed under Section 31**

Time of supply shall be earlier of the following –

- (i) Date of provision of service, or
- (ii) Date on which the supplier receives the payment in respect of the supply made.

### **6.4.3. Where the above provisions do not apply**

Time of supply of services shall be the date on which the recipient shows the receipt of services in his books of account.

### **6.4.4. Time of supply of services to be date of issue of invoice, where an advance upto Rupees One Thousand, in excess of the amount indicated in the invoice, is received**

For ease of compliance, an exception has been carved out which allows time of supply of services to be the date of issue of invoice, where an advance up to Rupees one thousand, in excess of the amount indicated in the invoice, is received by the supplier and such exception is only for the excess amount. Moreover, it is clarified by inserting explanation to the above sub-rules, that “the date on which supplier receives the payment” shall be the date earlier of the two dates i.e., date on which payment is entered in his books of accounts or date on which payment is credited in the bank account.

## **6.5. ISSUE OF INVOICE BY SUPPLIER OPTING FOR COMPOSITION SCHEME**

Sub-section (3) of Section 31 of CGST Act, 2017 provides that for registered persons opting to

pay tax under Section 10, instead of a tax invoice, a *bill of supply* shall be issued, containing particulars as specified in Rule 49 of CGST Rules, 2017.

#### **6.5.1. Time of Supply in case of Liability under Reverse Charge in case of Goods**

Section 10 of the CGST Act, 2017 is an overriding provision but it does not override sections 9(3) and 9(4) of the Act. That is to say, a composition taxable person is required to discharge liability on inward supplies liable to tax under reverse charge. In case of goods under reverse charge, the time of supply shall be earliest of –

- (a) date of receipt of goods, or
- (b) date on which payment is 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) date immediately following thirty days from the date of issue of invoice by the supplier.

If it is not possible to determine the time of supply through any of the methods above, then the date of entry in the books of account of the recipient of supply shall be the time of supply.

#### **6.5.2. Time of Supply in case of Liability under Reverse Charge in case of Services**

In case of services under reverse charge, the time of supply shall be earlier of –

- (a) date on which payment is entered in the books of accounts of the recipient or the date on which payment is debited in his bank account, whichever is earlier, or
- (b) date immediately following sixty days from the date of issue of invoice by the supplier.

However, if it is not possible to determine the time of supply through any of the methods above, then the date of entry in the books of account of the recipient of supply shall be the Time of Supply.

#### **6.5.3. Time of Supply in other cases**

Apart from the above provisions, there are some specific provisions for time of supply, which are common for both, supply of goods and supply of services. They are discussed as below –

- (a) Where it is not possible to determine time of supply of goods or services by any of the stated provisions, then the time of supply shall be considered as the date of filing of return, where a periodical return has to be filed, and in any other case, the date on which tax is paid.
- (b) The time of supply of goods or services, in cases where there is an addition in value by way of interest, late fees or penalty for delayed payment of any consideration, shall be the date on which the supplier receives such addition in value.

#### **6.5.4. Time of Supply in case of change in rate of Tax**

Section 14 of the CGST Act, 2017 deals with time of supply of goods and services, in cases where there is a change in rate of tax. Following table would help in understanding the matrix in case of change in rate of tax-

**6.5.4.1. In cases wherein goods or services have been supplied before change in rate of tax**

When Invoice for the supply has been raised by the supplier	When Payment has been received in respect of supply	Time of Supply
After change in rate of tax	After change in rate of tax	Date of receipt of payment or Date of Issue of Invoice whichever is earlier
Before change in rate of tax	After change in rate of tax	Date of issue of invoice
After change in rate of tax	Before change in rate of tax	Date of receipt of payment

**6.5.4.2. In cases wherein goods or services have been supplied after change in rate of tax**

When Invoice for supply has been raised by the supplier	When Payment has been received in respect supply	Time of Supply
Before change in rate of tax	After change in rate of tax	Date of receipt of payment
Before change in rate of tax	Before change in rate of tax	Date of receipt of payment or date of issue of invoice whichever is earlier
After change in rate of tax	Before change in rate of tax	Date of issue of invoice

For the purpose of Section 14, in a normal case, "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier. However, in an exceptional case, date of receipt of payment shall be the date of credit in bank account in case credit in the bank account is after four working days from the date of change in the rate of tax.

# Value of Supply of Goods and Services

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The Supreme Court in the case of *Govind Saran Ganga Saran v. Commissioner of Sales Tax and Ors* AIR 1985 SC 1041 held that the following are the characteristics of a levy of tax to be valid:

- (a) The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy.
- (b) The second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax.
- (c) The third is the rate at which the tax is imposed.
- (d) The fourth is the measure or value to which the rate will be applied for computing the tax liability.

If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.

It can be observed that the value of supply is one amongst the four characteristics for a levy to be valid. The relevant Sections and Rules under GST regime for valuation are Section 15 of CGST Act, 2017 read with Rules 27 to 35 of CGST Rules, 2017.

## 7.1. SUPPLIER AND RECIPIENT ARE NOT RELATED PERSONS AND PRICE IS THE SOLE CONSIDERATION

One of the important aspects of GST Law is determination of the value on which tax is sought to be computed and collected. Such determination is known as valuation.

Section 15 of CGST Act, 2017 states that the value of supply of goods or services is "Transaction Value", *which is the price actually paid or payable*. However, following are the two conditions attached to it –

- Supplier and recipient of supply should not be related
- Price should be the sole consideration

If any of the above two conditions are not satisfied, reference needs to be made to the rules for determination of valuation.

## 7.2. VALUE OF SUPPLY WHERE CONSIDERATION IS NOT WHOLLY IN MONEY

Rule 27 of the CGST Rules, 2017 states that if supply is for a consideration not wholly in money, then value of supply shall be

- (a) the open market value of such supply;
- (b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
- (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;
- (d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

### **7.3. VALUATION IN CASE OF DISTINCT PERSONS OR RELATED PERSONS OTHER THAN THROUGH AGENT**

Rule 28 of the CGST Rules, 2017 comes into the picture when the supplier and recipient are distinct persons as specified in sub-section (4) and (5) of Section 25 or related persons, and the supplies are affected other than through an agent. In such a case, the rule states that value of supply shall be the open market value of such supply. If the same is not available, it shall be the value of goods or services of like kind and quality. Further, if both of these cannot be determined, the value shall be taken as per Rule 30, or Rule 31, as explained above and in that order. However, there are two exceptions to the above provision –

- (a) If the goods are intended for further supply as such by the recipient, the supplier has the option to value the goods at ninety percent of the price charged by recipient from a customer who is not related for like kind and quality of goods.
- (b) If the recipient is eligible to avail full Input tax credit on the goods supplied, the value declared in the invoice shall be *deemed to be the open market value* of such supply.

### **7.4. VALUATION IN CASE OF PRINCIPAL AND AGENT**

Where the supplier and recipient are related as principal and agent, the value of supply is governed by Rule 29 of the CGST Rules, 2017, which states that the value shall be –

- (a) the open market value of the goods being supplied, or
- (b) at the option of the supplier, ninety per cent of the price for like kind and quality of goods charged by recipient from a customer who is not related if the goods are intended for further supply by recipient.

However, if the value cannot be determined as above, it shall be determined by the application of Rule 30 or Rule 31, as explained above and in that order.

## 7.5. VALUE OF SUPPLY OF GOODS OR SERVICES OR BOTH BASED ON COST

Rule 30 of CGST Rules, 2017 provide that where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be one hundred and ten per cent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

## 7.6. RESIDUAL METHOD FOR DETERMINATION OF VALUE OF SUPPLY OF GOODS OR SERVICES OR BOTH

Rule 31 of CGST Rules, 2017 provides that where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of Section 15 and the provisions of Chapter IV of CGST Rules, 2017. However, in case of supply of services, the supplier may opt for this rule, ignoring Rule 30.

## 7.7. DETERMINATION OF VALUE IN CERTAIN CASES

Other instances where rules of valuation bring clarity, include the following situations: –

- (a) Where a registered person deals in second hand goods, as such or with minor processing, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.
- (b) The expenditure incurred by a supplier as “pure agent” of the recipient of supply shall be excluded from the value of supply, provided he makes payment to the third party on authorisation by recipient, he separately indicates such payment in the *bill of supply* and the supplies procured by him from such third party on recipient’s behalf, are in addition to his own services.

## 7.8. WHAT IS TO BE INCLUDED IN VALUE OF SUPPLY

Section 15 of the Act further states, that the value of supply shall include the following: –

- (a) Any tax, duty, cess, fee or charge levied under any law for the time being in force, other than the taxes under GST Act charged separately by the supplier. However, in case of a composition dealer, no tax is chargeable in bill of supply issued by the supplier and hence, this inclusion holds relevance only to the extent of including taxes under other laws in valuation.
- (b) Any amount which is the liability of the supplier but paid by the recipient and not included in the price.
- (c) Incidental expenses connected with the supply, such as packing charges, or any amount charged by supplier for anything done in respect of supply of goods or services.
- (d) Interest or late fee or penalty for delayed payment of any consideration for any supply.

- (e) Subsidies directly linked to the price, includable in the value of supply of the supplier who receives such subsidy, but excluding subsidies provided by the Central and State Governments.

## **7.9. WHAT IS NOT TO BE ADDED TO VALUE OF SUPPLY**

The value of supply shall not include any discount which is given—

- (a) Before or at the time of supply, if such discount is duly recorded in the invoice issued in respect of such supply.
- (b) After the supply, if
- the discount is established in terms of an agreement entered into, at or before the time of such supply
  - the recipient of supply reverses his input tax credit, as attributable to the discount on the basis of document issued by the supplier.

# Place of Supply of Goods and Services

The relevant sections for place of supply are Sections 10 to 12 of IGST Act, 2017.

The basic principle of GST is that tax finally “sticks” or gets added to the cost at the final consumption stage in the taxing jurisdiction. Place of supply provisions determine the *place*, that is, the jurisdiction to which revenue should belong.

## 8.1. SECTION 10 OF IGST ACT, 2017

Section 10 deals with place of supply of goods other than supply of goods imported into/exported from India. It can be categorised as follows –

GENERAL PROVISIONS	
<i>Situation</i>	<i>Place of Supply (Linked to Place of Delivery)</i>
Supply involving movement of goods	Location of goods at the time at which movement of goods terminates for delivery to the recipient.
Supply not involving Movement of Goods	Location of goods at the time of delivery to the recipient.
SPECIFIC PROVISIONS	
<i>Situation</i>	<i>Place of Supply</i>
Delivery of goods by supplier to a recipient or any other person, <i>on the direction of a third person</i> , before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise. That is to say, goods purchased by the third person, but delivered to some other person or a “bill to-ship to” transaction.	Principal place of business of the third person.
Goods being assembled or installed at site.	Place of installation or assembly.
Supply of goods on board a conveyance including a vessel, an aircraft, a train or a motor vehicle.	Location at which such goods are taken on board.
RESIDUAL PROVISION	
<i>Situation</i>	<i>Place of Supply</i>
Where the place of supply cannot be determined by any of the methods.	Determined in the manner as may be prescribed.

## **8.2. SECTION 11 OF IGST ACT DEALS WITH PLACE OF SUPPLY OF GOODS IMPORTED INTO/EXPORTED FROM INDIA.**

Since a composition dealer cannot make inter-State supply of goods, place of supply of goods exported from India is not relevant in this context. But the law nowhere restricts a composition dealer to import goods from outside India.

As per the section, the place of supply of goods imported into India shall be the location of importer. However, it is important to note here, that if a composition dealer imports goods, he shall not be entitled to avail Input Tax Credit on such import, as per the provisions of Section 10 of the CGST Act, 2017.

## **8.3. PLACE OF SUPPLY IN CASE OF SERVICES WHEREIN BOTH SUPPLIER AND RECIPIENT OF SERVICES ARE IN INDIA**

For supply of services by a composition taxable person, place of supply shall be governed by Section 12 of the IGST Act, 2017.

### **8.3.1. General Rule for determining place of Supply**

The general rule of place of supply of services, as laid down by the above section is –

- (a) Where supply is made to a registered person the place of supply shall be the location of such person.
- (b) Where supply is made to a person other than a registered person the place of supply shall be –
  - (i) where address on record exists – the location of the recipient.
  - (ii) other cases, including where there is no address on record the location of the supplier.

### **8.3.2. Some Specific Rules for place of Supply relevant for Composition Taxable Person**

There are certain exceptions to the general rule of place of supply. In the context of a composition taxable person, some specific situation which might be directly relevant to the composition taxable person is as follows –

- (a) Where a registered person supplies services, which are in relation to immovable property, the place of supply shall be the location where immovable property is located. For example, in respect of the services provided by a person who has rented out his immovable property or by an interior decorator registered as a composition taxable person, who is engaged in making supplies of designer furnishing products and also provides interior designing consultancy, the place of supply of his service shall be governed by the above provision.
- (b) Where a registered person provides restaurant and catering services, personal grooming/beauty treatment services, health services, the place of supply shall be the location where the services are actually performed.

For example, in respect of a beautician registered as a composition taxable person or a person running a restaurant and supplying food to its customer or composition taxable person providing grooming services, the place of supply of her service shall be governed by the above provision.

- (c) The place of supply of services by way of transportation of goods to –
- (i) a registered person –the place of supply shall be location of such person.
  - (ii) a person other than registered person – the location at which such goods are handed over for their transportation.

Initially, the basic idea behind including services in the scope of composition levy was to cover only *incidental* services provided in the course of supplying goods. However, with the introduction of composition scheme for supplier of services or mixed suppliers up to an aggregate turnover of fifty lakh, the coverage got increased. Practically, the scope of services is very limited as the composition scheme is intended for small businesses and accordingly, it carries its own restrictions and limitations with it.

# Chapter 9

## Reverse Charge

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'Reverse charge' means fostering the liability to pay tax on the recipient of a supply, instead of the supplier, in respect of supplies notified in this regard.

### 9.1. BRIEF ABOUT REVERSE CHARGE

There are two separate provisions for reverse charge in GST i.e., one covered by provisions of sub-section (3) to Section 9 of CGST Act, 2017 and sub-section (3) to Section 5 of IGST Act, 2017, and the other one covered by sub-section (4) of Section 9 of CGST Act, 2017 and sub-section (4) to Section 5 of IGST Act, 2017.

### 9.2. MANDATORY REVERSE CHARGE

In accordance with sub-section (3) to Section 9 of the CGST Act, 2017 and sub-section (3) to Section 5 of the IGST Act, 2017, the Government has notified the list of goods and services on which, the recipient of supply shall be required to pay tax, as if he is the person liable to pay tax on the supply of such goods or services. This list may be referred from *Notification No 13/2017 – Central Tax (Rate) dated 28<sup>th</sup> June 2017* (as amended time to time) and *Notification No. 10/2017-Integrate Tax (Rate) dated 28<sup>th</sup> June 2017* (as amended from time to time).

### 9.3. REVERSE CHARGE ON INWARD SUPPLIES RECEIVED FROM UNREGISTERED PERSON

As per sub-section (4) to Section 9 of the CGST Act, 2017 and sub-section (4) to Section 5 of the IGST Act, 2017, the liability to pay tax in respect of taxable inward supplies received from unregistered persons shall be discharged by the registered recipient, as if he is the person liable to pay tax on such supply.

#### 9.3.1. Relief provided by *Notification No. 08/2017-Central Tax (Rate) dated 28<sup>th</sup> June 2017*

Wherever a registered person purchases goods or procures services from an unregistered person, he shall be liable to pay tax on such goods or services under reverse charge. However, on representations being made to Government of practical difficulty being faced by dealers, *Notification No 8/2017 – Central Tax (Rate) dated 28<sup>th</sup> June 2017* was issued to provide relaxation in this regard, by exempting inward supply of goods and services upto an aggregate value of five thousand rupees per day. That is to say, where a registered person purchases goods or procures services from an unregistered person upto five thousand rupees in a day, he shall be exempted from paying tax under reverse charge for that day. It is necessary to highlight here, that once the aggregate value of inward supplies crosses the threshold of five thousand rupees in a day, the exemption limit shall lapse for that day.

### **9.3.2. Reverse Charge Payable by recipient wherein specified goods or services are procured from a registered person.**

Since reverse charge under sub-section (4) to section 9 of the CGST Act, 2017 and sub-section (4) to Section 5 of the IGST Act, 2017 has been a difficult compliance for the taxpayer community at large, it was deferred after 12<sup>th</sup> October 2017, at various dates and the last notification in this regard was *Notification No. 01/2019-Central Tax (Rate)* dated 29<sup>th</sup> January 2019, which rescinded the original *Notification no. 8/2017-Central Tax (Rate)* dated 28<sup>th</sup> June 2017 enforcing applicability of reverse charge on inward supplies received from unregistered dealers, w.e.f. 1<sup>st</sup> February 2019.

The CGST (Amendment) Act, 2018 further amended sub-section (4) to section 9 of the Act, so as to keep this reverse charge reserved for only notified class of goods or services received from unregistered suppliers and for notified class of registered persons.

Moreover, as far as composition taxable persons are concerned, although their payment of tax on outward supplies is governed by the provisions of section 10 of the CGST Act, 2017, since Section 10 of the Act in itself is subject to the provisions of sub-section (3) and (4) of Section 9 of the Act, compliance with reverse charge provisions extends to such persons also. Since composition dealers are not eligible to claim any input tax credit, the credit of such reverse charge paid is not be available to them and hence, it forms part of compliance cost for the business. Under *Notification No. 13/2017-Central Tax (Rate)*, as amended, a person registered under the composition scheme is specifically excluded from paying GST under the Reverse Charge Mechanism (RCM) for receiving security services and for the renting of any commercial/immovable property (other than a residential dwelling) from an unregistered supplier.

# Returns for Person opting for Composition Scheme

## 10.1 REGULAR RETURN FOR COMPOSITION TAXPAYERS [RULE 62 OF CGST RULES 2017]

Every registered person paying tax under section 10 is required to file following return/statement as under:

Form	Particulars	Periodicity	Due Date
CMP-08	Statement containing the details of payment of self-assessed tax	Every Quarter or Part thereof	18 <sup>th</sup> of the month Succeeding the Quarter
GSTR-4	Return	Every Financial Year or part thereof	Upto FY 2023-24: 30 <sup>th</sup> day of April following the end of such financial year. FY 2024-25 onwards: 30 <sup>th</sup> day of June following the end of such financial year.

The reference to person “*paying tax by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7<sup>th</sup> March, 2019*” in addition to Section 10 was omitted by Notification No. 82 /2020 – Central Tax dated 10<sup>th</sup> November 2020 w.e.f. 01.01.2021.

Since the person opting for composition scheme is not eligible for availing input tax credit, he is required to discharge his liability towards tax or interest payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger.

It is important to note that any delay in filing CMP-08 will incur an interest liability of 18% per annum for the number of days delayed, as per section 50(1). This is particularly relevant because many composition taxable persons tend to file all their CMP-08 at the time of submitting their GSTR-4, rather than quarterly. Therefore, there is often a lack of awareness regarding the potential interest costs associated with late filings.

The return in Form GSTR-4 furnished by the said person shall include invoice-wise inter-State and intra-State inward supplies received from registered and unregistered persons and consolidated details of outward supplies made.

**PERSON OPTING FOR COMPOSITION REQUIRED TO FILE DETAILS OF OUTWARD AND INWARDS SUPPLIES AND RETURN UNDER RULES 59, 60 AND 61**

This condition is applicable for registered persons who have opted to pay tax under section 10 from the beginning of a financial year. Such persons shall furnish details of outward and inward supplies and return under rules 59 (GSTR-1), 60 (GSTR-2A) and 61(GSTR-3B) relating to the period during which the person was liable to furnish such details and returns till the 30<sup>th</sup> November of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier. Such person shall not be eligible to avail input tax credit on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme.

The reference to person “paying tax by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7<sup>th</sup> March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7<sup>th</sup> March, 2019” in addition to Section 10 was omitted by *Notification No. 82 /2020 – Central Tax dated 10<sup>th</sup> November 2020 w.e.f. 01.01.2021*.

**10.2. LIABILITY TO FILE RETURNS**

The liability to file returns wherein withdrawal is made from composition scheme -

<b>Form</b>	<b>Particulars</b>	<b>Periodicity</b>	<b>Due Date</b>
CMP-08	Statement containing the details of payment of self-assessed tax	Period for which he has paid tax under the composition scheme	18 <sup>th</sup> day of the month succeeding the quarter in which the date of withdrawal falls
GSTR-4	Return	Period for which he has paid tax under the composition scheme	30 <sup>th</sup> day of April following the end of the financial year during which such withdrawal falls

Rule 62(6) making reference to person “paying tax by availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7<sup>th</sup> March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dated the 7<sup>th</sup> March, 2019” was omitted by *Notification No. 82 /2020 – Central Tax dated 10<sup>th</sup> November 2020 w.e.f. 01.01.2022*.

### **10.3. LIABILITY TO FILE ANNUAL RETURN IN FORM GSTR-9A**

A registered person who has opted for composition levy is required to file annual return in GSTR-9A. However, for the years 2017-18, 2018-19 and 2019-20 vide *Notification No. 47/2019-Central Tax dated 9<sup>th</sup> October 2019* further amended by *Notification No. 77/2020-Central Tax, dated 15-10-2020*, filing of GSTR-9A was made optional for registered persons whose aggregate turnover in a financial year did not exceed two crore rupees. It was further provided that the said return shall be deemed to be furnished on the due date if it has not been furnished before the due date. From FY 2020-21 onwards till FY 2023-24 vide *Notification No. 31/2021, 10/2022, 32/2023 & 14/2024 Central Tax* respectively, filing of Annual return got exempted for registered person whose aggregate turnover in the respective financial year is upto 2 Cr. Further, vide *Notification No. 15/2025 CT dated 17.09.2025*, for the financial year 2024-25 onwards, the registered person whose aggregate turnover in any financial year is up to two crore rupees have been exempted from filing annual return that said financial year.

# Chapter 11

## Bill of Supply

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### **11.1. BILL OF SUPPLY**

Section 31 of CGST Act, 2017 read with Rule 49 of CGST Rules, 2017 deals with bill of supply.

Bill of supply is an invoice, which a composition taxable person has to issue. Clause (c) of sub-section (3) to section 31 of the CGST Act, 2017 states thus:

*“A registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed”*

Rule 49 of the CGST Rules, 2017 describes the details that a bill of supply should contain. Following are the particulars –

- (a) Name, address and goods and services tax identification number of the supplier.
- (b) Consecutive serial number, not exceeding sixteen characters, containing alphabets or numerals or special characters, unique for a financial year.
- (c) Date of its issue.
- (d) Name, address and goods and services tax identification number or unique identity number, if registered, of the recipient.
- (e) Harmonised system of nomenclature (HSN) Code for goods or services.
- (f) Description of goods or services or both.
- (g) Value of supply of goods or services or both taking into account discount or abatement, if any.
- (h) Signature or Digital Signature, of the supplier or his authorised representative.

The provisos to Rule 46 (Tax Invoice) shall, *mutatis mutandis*, apply to the bill of supply.

It has been provided under rule 49 vide *Notification No. 74/2018-CT dt. 31.12.2018* that the signature or digital signature of the supplier shall not be required in the case of issuance of an electronic bill of supply in accordance with the provisions of Information Technology Act, 2000.

The requirement to quote HSN Code has been prescribed by the Board as follows, in *Notification No 12/2017-Central Tax dated 28<sup>th</sup> June 2017 as amended by Notification No. 78/2020- Central Tax dated 15-10-2020, Notification No. 90/2020 - Central Tax dated 1-12-2020*:

Annual Turnover in the preceding Financial Year	Number of Digits of HSN Code
Upto rupees five crore	4
B2B	
B2C (Optional)	
More than rupees five crores	6

It has been further provided that a registered person having aggregate turnover up to five crores rupees in the previous financial year may not mention the number of digits of HSN Code, as specified in the corresponding entry in column (3) of the said Table in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons

Since the maximum limit of turnover to opt for composition scheme is Rs 1.5 Crores and most of the persons opting for composition scheme makes supplies to unregistered persons, therefore it can be concluded that in most of the cases a composition taxable person is not required to quote HSN Code in his invoice, i.e., bill of supply, and mentioning only the description of the product being sold shall suffice.

Further, there is a relaxation available for issuing bill of supply, where the registered person may issue a consolidated bill of supply, in case the following conditions are fulfilled –

- (a) The recipient is not a registered person.
- (b) The recipient does not require such invoice.
- (c) The value of goods or services or both supplied, is less than rupees two hundred.

In cases where all of the above conditions are met, consolidated bill of supply in respect of such supplies can be made by the taxable person, at the close of each day.

Also, where there is an issuance of an electronic bill of supply in accordance with the provisions of the Information Technology Act, 2000, the same shall not require signature or digital signature of the supplier or his authorised representative.

Moreover, sub-rule (1) to rule 5 of the CGST Rules, 2017 adds another requirement to the contents of bill of supply, stating that a composition taxable person 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.

It is noteworthy that GST Law has prescribed only the contents of a bill of supply and not provided any standard format for the same. Therefore, while issuing a bill of supply, there can be any format used by the supplier but the above contents have to be mandatorily provided in the Bill of Supply.

## Chapter 12

# Accounts and Records

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### 12.1. ACCOUNTS AND RECORDS TO BE MAINTAINED UNDER THE CGST ACT, 2017

Section 35 read with Rule 56 provides details about the records to be maintained by a registered person. Following are the records which are to be maintained by every person opting for composition scheme under section 10 of CGST Act, 2017:

- (a) A true and correct account of production or manufacture of goods; inward and outward supply of goods or services or both; stock of goods; output tax payable and paid.
- (b) A true and correct account of goods or services imported supplies attracting payment of tax on reverse charge along with relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers and e-way bills.
- (c) Every registered person shall keep and maintain a separate account of advances received, advances paid and adjustments made thereto.
- (d) Particulars of names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act; names and complete addresses of the persons to whom he has supplied goods or services, where required under these rules; the complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.

There are certain additional records which are required to be maintained under following situations provided they are applicable on the person who has opted for composition scheme:

- Additional records to be maintained by Agents as defined under clause (5) of section 2 of CGST Act, 2017
- Additional records required to be maintained by manufacturers
- Additional records required to be maintained by service providers
- Additional records required to be maintained by works contractors
- Maintenance of records by person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch

The provisions of section 35(1) read with rule 56 of the CGST Rules outline general requirements for accounts and records. However, rule 56(2) explicitly exempts composition taxpayers from maintaining detailed quantitative stock records.

## **12.2. REGULATORY PROVISIONS REGARDING MAINTENANCE OF BOOKS OF ACCOUNTS**

- (a) Each volume of books of account maintained manually by the registered person shall be serially numbered. Although records under provisions of "Chapter VII-Accounts and Records" under CGST Rules, 2017 may be maintained in electronic form also they should be authenticated by means of a digital signature.
- (b) If any taxable goods are found to be stored at any place other than those declared by the registered person, without the cover of any valid documents, it would be treated as if such goods have been supplied by the registered person.
- (c) Every registered person shall keep books of account at the principal place of business and books of account relating to additional place of business mentioned in his certificate of registration. The books of accounts being maintained for principal place of business and additional place of business shall include any electronic form of data stored on any electronic device.
- (d) The accounts and documents shall be kept at every related place of business mentioned in the certificate of registration, if they are maintained manually and shall be accessible at every related place of business where such accounts and documents are maintained digitally.
- (e) No entry made in register, accounts or records can be erased, effaced or overwritten. All incorrect entries, other than those of clerical nature, shall be scored out under attestation and thereafter correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.
- (f) If any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person. If the registered person wants to contradict such provision, he would have to prove it otherwise. The onus is upon the registered person to prove otherwise.

## **12.3. TIME PERIOD FOR RETENTION OF BOOKS OF ACCOUNTS**

Every registered person is required to keep and maintain books of account together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply or other records in accordance with provisions of sub-section (1) of section 35 of CGST Act, 2017. As per section 36 of the Act, the records shall be retained by them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

However, in cases wherein a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal

or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, he shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

#### **12.4. WHAT IF THE REGISTERED PERSON FAILS TO PROPERLY ACCOUNT FOR GOODS OR SERVICES OR BOTH?**

Subject to the provisions of section 17(5) of CGST Act, 2017 if the registered person fails to account for goods or services or both in accordance with the provisions of sub-section (1) of Section 35 of CGST Act, 2017, the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person. The provisions of section 73 or section 74 or 74A, as the case may be, shall, *mutatis mutandis*, apply for determination of such tax.

## Withdrawal from Composition Scheme

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### 13.1. CONSEQUENCE OF CROSSING THRESHOLD LIMIT OF AGGREGATE TURNOVER FOR ELIGIBILITY TO OPT FOR COMPOSITION LEVY

As per provisions of sub-section (3) of Section 10 of CGST Act, 2017 read with sub-rule (2) of Rule 6 of CGST Rules, 2017, permission granted for payment of composition levy in *lieu* of taxes shall lapse with effect from the day on which his annual aggregate turnover during a financial year exceeds the threshold limit as prescribed in section 10(1) or section 10(2A) as the case may be, for opting composition scheme.

### 13.2. COMPOSITION SCHEME TO BE WITHDRAWN ON ACCOUNT OF NON-FULFILLMENT OF CONDITIONS PROVIDED UNDER SECTION 10 OF CGST ACT

Sub-rule (2) of rule 6 states that a person shall be liable to pay tax under sub-section (1) of Section 9 from the day when he ceases to satisfy any of the prescribed conditions. He would have to file intimation for withdrawal from composition scheme in FORM GST CMP-04 within seven days of the occurrence of such event. He would also be liable to issue tax invoice for every taxable supply made thereafter.

### 13.3. OPTION TO WITHDRAW FROM COMPOSITION SCHEME

Sub-rule (3) of rule 6 of CGST Rules, 2017 states that a registered person intending to withdraw from composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04, duly signed or verified through electronic verification code, electronically on the common portal.

### 13.4. CONSEQUENCES WHERE AN INELIGIBLE PERSON OPTS FOR COMPOSITION LEVY

Section 10(5) of CGST Act, 2017 provides that in case where proper officer has reason to believe that registered person was not eligible to pay composition levy in *lieu* of the tax payable by him or he has contravened prescribed conditions, such person shall be liable to pay -

- (a) tax payable by him under other provisions of this Act and
- (b) in addition to any tax that may be payable by him under any other provisions of the Act, penalty as applicable under the provisions of the law.

Provisions of section 73 or 74 or 74A shall apply *mutatis mutandis* for determination of tax and penalty. Therefore, any recovery wherein proper officer has reason to believe that registered person was not eligible to pay composition levy in lieu of the tax payable by him or he has contravened prescribed conditions shall be initiated in section 10(5) read with the procedure laid down in section 73/74/74A.

*Circular No. 77/51/2018-GST - Central Tax, dated 31<sup>st</sup> December 2018* was issued by CBIC which clarifies denial of composition option by tax authorities and effective date thereof. The relevant extract of the circular is as follows:

*"In a case where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation/application filed in FORM GST CMP-04 but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed. If at any stage it is found that he has contravened any of the provisions of the CGST Act or the CGST Rules, action may be initiated for recovery of tax, interest and penalty. In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules. In such cases, as provided under sub-section (5) of section 10 of the CGST Act, the proceedings would have to be initiated under the provisions of section 73 or section 74 of the CGST Act for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in FORM GST CMP-07. It is also clarified that the registered person shall be liable to pay tax under section 9 of the CGST Act from the date of issue of the order in FORM GST CMP-07. Provisions of section 18(1)(c) of the CGST Act shall apply for claiming credit on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order."*

### **13.5. ISSUE OF NOTICE BY THE PROPER OFFICER**

Rule 6(4) of CGST Rules, 2017 provides that the proper officer may issue a notice to a registered person who was not eligible to pay composition levy in lieu of tax payable by him or who has contravened prescribed conditions in FORM GST CMP-05 to show cause within fifteen days of the receipt of such notice as to why the option to pay tax under section 10 shall not be denied. The rule only provides for the process of issue of show cause for withdrawal from the composition scheme.

### **13.6. REPLY TO SHOW CAUSE NOTICE BY REGISTERED PERSON AND ORDER BY THE PROPER OFFICER**

The registered person would be required to submit reply to the show cause notice issued by the proper officer in FORM GST CMP-06. Rule 5 of Rule 6 of CGST Rules, 2017 provides that the proper officer shall issue an order in FORM GST CMP-07 within a period of thirty days of

the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.

### **13.7. SUBMISSION OF DETAILS OF STOCK IN HAND ON WITHDRAWAL FROM OR DENIAL OF COMPOSITION SCHEME:**

Following persons would have to electronically furnish at the common portal the statement in Form GST ITC-01:

- (a) Persons who have filed intimation for withdrawal from composition scheme when they ceased to fulfill conditions as specified in section 10 or rules thereof, or
- (b) Persons who have voluntarily withdrawn from option to pay tax under section 10
- (c) Persons in respect of whom an order of withdrawal of option has been passed by the proper officer in Form GST CMP-07,

### **13.8. SUBMISSION OF INFORMATION RELATING TO STOCK AS ON THE DATE OF WITHDRAWAL OR DENIAL**

Form GST ITC-01 requires details of stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied. The details in Form GST ITC-01 have to be submitted within 30 days from the date on which the option is withdrawn or from the date of order passed in Form GST CMP-07, as the case may be.

### **13.9. IMPLICATION OF INTIMATION OF WITHDRAWAL OR DENIAL OF OPTION IN RESPECT OF A PLACE OF BUSINESS**

Any intimation for withdrawal or denial of the option in respect of any place of business in any State or Union territory shall be deemed to be intimation in respect of all other places of business registered on the same PAN.

### **13.10. PERSON OPTING OUT OF THE COMPOSITION SCHEME UNDER SECTION 10 [CLAUSE (C) OF SUB-SECTION (1) OF SECTION 18 OF CGST ACT, 2017]**

This provision is for the registered person who had earlier opted for composition levy under section 10 of CGST Act, 2017 but subsequently ceases to pay tax under section 10 and becomes liable to pay tax under section 9. For better understanding of the provision, it can be summarized as follows:

- (a) The person should have ceased to pay tax under section 10.
- (b) The person would be entitled to take credit of input tax in respect of:
  1. Inputs held in stock and

2. Inputs contained in semi-finished or finished goods held in stock, and
3. Capital goods

The person would be eligible for availing credit of the taxes paid with respect to the above inputs held in stock or contained in semi-finished or finished goods held in stock or capital goods on the day immediately preceding the date from which he becomes liable to pay the tax under section 9 of the CGST Act, 2017.

Credit of the tax paid on Capital Goods shall be reduced by such percentage points as may be prescribed in this behalf.

A similar mechanism was applicable earlier in Central Excise of proportionally reducing the input tax credit on the capital goods by percentage points for every month of capital goods held by the assessee.

The conditions provided in section 18(1)(c) are much broader than the conditions provided under sections 18(1)(a) and 18(1)(b). Section 18(1)(c) allows credit in respect of the tax paid on capital goods held as on the day immediately preceding the date from which he ceases to pay tax under composition scheme and becomes liable to pay tax under section 9 of the CGST Act, 2017. Section 18(1)(a) and 18(1)(b) however does not allow any such credit contained in capital goods.

#### **13.10.1. Capital Goods-Eligibility of Input Tax [Clause (a) of Sub-Rule (1) of Rule 40 of CGST Rules, 2017]**

The input tax credit on capital goods shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.

#### **13.10.2. Registered Person required to submit declaration in ITC-01 [Clause (b) and (c) of Sub-Rule (1) of Rule 40 of CGST Rules, 2017]**

The registered person would be required to submit a declaration within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18 on the common portal in FORM GST ITC-01 to the effect that he is eligible to avail the input tax credit. The commissioner has the power to extend such period to such further period as he may deem fit by a notification in this behalf.

The declaration shall clearly specify details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, and capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9.

**13.10.3. Details furnished in ITC-01 to be verified by a Chartered Accountant: Clause (d) of Sub-Rule (1) of Rule 40 of CGST Rules, 2017**

The details furnished in GST ITC-01 shall be duly certified by a practicing chartered accountant or a cost accountant if aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees.

**13.10.4. Details furnished in GST ITC-01 to be verified with details in GSTR-4: Clause (e) of Sub-Rule (1) of Rule 40 of CGST Rules, 2017**

The input tax credit claimed shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR- 4 on the common portal.

# Cancellation of Registration in GST

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Section 29 of the CGST Act, 2017 deals with cancellation of registration. In GST, registration can be cancelled in two circumstances:

- Upon application made by the registered person or by his legal heirs.
- By the proper officer, on his own motion.

## **14.1. CANCELLATION OF REGISTRATION ON AN APPLICATION MADE BY REGISTERED PERSON OR BY PROPER OFFICER ON HIS OWN MOTION**

In the following situations, the proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration –

- (a) The business has been discontinued or fully transferred for any reasons including death of the proprietor, amalgamated with another entity, demerged or disposed of.
- (b) There is any change in the constitution of the business.
- (c) [The taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24].

However, point (c) has been amended vide Finance Act, 2020 w.e.f. 01.01.2021. The amended provision allows the registered person to apply for cancellation if he is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25.

The impact of the amended provision is that the person who has taken the registration voluntarily is also allowed to apply for cancellation of registration. It would be worthwhile to highlight that amendment in the respective rule was made w.e.f. 23<sup>rd</sup> January 2018 subsequent to which the person who had taken the voluntary registration was also allowed to apply for cancellation of registration.

## **14.2. CANCELLATION OF REGISTRATION ON ITS OWN MOTION BY THE PROPER OFFICER**

Following are the situations where only the proper officer can initiate measures to cancel registration of a person, from such date as he may deem fit, including any retrospective date, *but after giving a reasonable opportunity of being heard to the taxpayer* –

- (a) Where a registered person has –
  - (i) Not conducted any business from the declared place of business
  - (ii) Issued invoice or bill without supply of goods or services.
  - (iii) Violated the provision of rule 10A, with respect to non-furnishing of bank account details in Registration Application within the prescribed period.
- (b) Where a composition taxpayer has not furnished returns for three consecutive tax periods.
- (c) Where any registered person, other than composition taxpayer, has not furnished returns for a continuous period of six months.
- (d) Where any person who has taken voluntary registration and has not commenced business within six months from the date of registration.
- (e) Where registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

#### **14.3. CANCELLATION OF REGISTRATION NOT TO AFFECT THE LIABILITY OF A PERSON TO PAY TAX OR OTHER PENDING DUES UNDER THE GST LAW**

It is noteworthy that cancellation of registration by any of the above means, shall not affect the liability of a person to pay tax or other pending dues under the GST Law. Also, the CGST (Amendment) Act, 2018 has clarified by adding a Proviso to sub-rule (1) and (2) of section 29 of the Act, that in any of the above cases, during the pendency of cancellation proceedings, the registration may be suspended, owing to which, as per rule 21A of the CGST Rules 2017, the registered person shall not be required to furnish any return.

#### **14.4. PROCEDURE FOR FILING APPLICATION FOR CANCELLATION OF REGISTRATION AND SUO-MOTO CANCELLATION BY THE PROPER OFFICER**

The procedure for cancellation of registration is different in both of the above cases. Where a registered person himself makes an application for cancellation of registration, the procedure is governed by Rule 20 of the CGST Rules, 2017. In such case, he is required to submit the details in Form GST REG-16, within a period of thirty days from the date of occurrence of the event warranting the cancellation. In this Form, he shall provide the requisite details and relevant documents, in support thereof.

On the other hand, where the proper officer has *reasons to believe* that the registration of a person is liable to be cancelled under section 29, he shall issue a show cause notice to such person in FORM GST REG-17, requiring the registered person to respond, within a period of seven working days from the date of the service of such notice, as to why his registration shall

not be cancelled. Thereafter, reply to the Show-Cause Notice is to be furnished by the registered person in Form GST REG-18 within a period of seven working days.

Once detailed information is submitted by the registered person (or by his legal heir, in case of his death) in Form GST REG-16, in a situation where registered person (or his legal heir) wants to apply for cancellation of registration or once reply to show cause notice is given, in a situation where proper officer himself proceeds to cancel the registration, and if the proper officer is satisfied that such person is no longer liable to be registered or his registration is liable to be cancelled, he shall issue an order in Form GST REG-19, within a period of thirty days from the date of application submitted, or from the date of reply to show cause notice. In such order, he shall direct the taxable person to pay the due tax, interest or penalty, as the case may be.

#### **14.5. DROPPING OF PROCEEDINGS FOR CANCELLATION OF REGISTRATION**

However, where the reply given by the registered person is found to be satisfactory by the proper officer and he is convinced that the registration is not liable to be cancelled, the proper officer shall drop the proceedings and pass an order in FORM GST REG –20.

Moreover, in relation to the above provision, the law provides an exception, that if the cancellation of registration of a person is on account of non-filing of returns as a regular taxpayer or as a composition tax payer, then furnishing all the pending returns and making full payment of all the taxes along with applicable interest and late fee shall suffice, and the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20.

#### **14.6. CONSEQUENCES OF CANCELLATION OF REGISTRATION**

Whether composition taxable person is required to pay amount under section 29(5) of CGST Act, 2017 at the time of cancellation of registration in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods held in stock. Section 29(5) of the CGST Act, 2017 provides that every registered person whose registration is cancelled shall pay an amount, which shall be higher of the two –

- (a) credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods held in stock, as on the day immediately preceding the date of such cancellation, or
- (b) output tax payable on such goods.

input tax credit of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods held in stock, for the purpose of (a) above, shall be calculated in accordance with Rule 44 of the CGST Rules, 2017. The final payable amount shall be paid either by way of utilisation of credit available in Electronic Credit Ledger or by making payment through Electronic Cash Ledger.

Section 29(5) read with rule 44 contains provision regarding reversal of input tax credit if any claimed in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation.

The provision does not make out a case where inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation, are treated as if they have been supplied as in the case section 35(6) wherein it has been provided that proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person. Section 29(5) of CGST Act, 2017 does not create a deeming provision in a similar way.

Further Para 4 of Schedule II of CGST Act, 2017 does provide that where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person. However, pursuant to amendment made to section 7 of CGST Act, 2017 vide CGST (Amendment) Act, 2018, Schedule II would only come into picture to determine whether the activity or transaction is a supply of goods or supply of services when such activity or transaction falls within the ambit of supply under the provisions of sections 7(1)(a), 7(1)(b) and 7(1)(c). Therefore, in the given case of a person covered under composition scheme opting for cancellation of GST Registration, merely in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation cannot be classified as supply under the provisions of Section 7 and once it is not classifiable as supply, provisions of schedule II would not come into picture.

The intention of the section is to reverse the input tax credit claimed in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation since post GST registration cancellation, these goods would be sold without charging GST. Since in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation, person under composition scheme would not have claimed any input tax credit or if claimed earlier as a regular taxpayer, would have reversed by Form GST ITC-03 while opting for composition scheme, therefore provisions of section 29(5) are not applicable upon him. Further, reference to output tax in Section 29(5) seems to be another way or benchmark to arrive at the amount under the provisions of section 29(5).

Another key indicator of legislative intent can be seen from Rule 44 which contains provisions regarding "Manner of Reversal of credit under special circumstances". Therefore, at the outset, it can be observed that provisions of Rule 44 are applicable only in cases wherein input tax credit has to be reversed. Secondly, provisions of Rule 44(4) provide that in case of

cancellation of registration, details of the amount determined under provisions of Rule 44(1) has to be furnished under GSTR-10. However, if we go through the provisions of Section 45 of CGST Act, 2017, it is observed that a registered person who is required to furnish a return under sub- section (1) of section 39 i.e., GSTR-3B is liable to file GSTR-10 within 90 days of cancellation of registration. Therefore, since the person covered under composition scheme is filing return under Section 39(2) of CGST Act, 2017, he is not liable to file GSTR-10. Applying the principle of purposive interpretation, had the intention of legislature been to impose liability under Section 29(5) on a composition taxable person opting for cancellation of registration, then in such case they would have required him to file GSTR-10 as in case of normal GST Dealers who claim Input Tax Credit on inward supply of goods or services or both. There cannot be a situation wherein a person is required to pay a liability but there is no method prescribed in the law to discharge it. The primary reason for not requiring composition taxable person to file GSTR-10 seems to be the fact since section 29(5) is only applicable in case of input tax credit claimed and since in case of composition taxable person there cannot be a scenario wherein, he would have claimed input tax credit, therefore he is not required to file GSTR-10.

Further, the Instructions in Form GSTR-10 itself provide:

- (a) This form is not required to be filed by taxpayers or persons who are registered persons paying tax under section 10;
- (b) Details of stock of inputs, inputs contained in semi-finished or finished goods and stock of capital goods/plant and machinery on which input tax credit has been availed.

The above set of instructions also make it clear that the FORM is not applicable to persons paying tax under section 10 and secondly details of only those stock of inputs, inputs contained in semi-finished or finished goods and stock of capital goods/plant and machinery is required to be given on which input tax credit has been availed. In the case of a person paying tax under section 10, since he has not availed any input tax credit, he is not required to file GSTR-10. The form which is relevant for Section 29(5) and its set of instructions do clarify the intent behind section 29(5) of CGST Act, 2017.

Therefore, taking into consideration the above factors, it can be interpreted that no liability accrues in case of composition taxable person in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation.

### **14.7. REVOCATION OF CANCELLATION OF REGISTRATION**

As can be seen from the cases discussed in Para 14.1. and 14.2. above that proper officer can cancel registration of a registered person on his own motion. In such cases, power has been entrusted with proper officer to revoke such cancellation of registration on an application being made by registered person. Revocation of cancellation of registration under respective SGST Act or UTGST Act shall be deemed to be revocation of cancellation of registration

under CGST Act, 2017. No application filed for revocation of cancelled registration shall be rejected without giving proper opportunity of being heard.

#### **14.7.1. Application for Revocation of Cancelled Registration**

A registered person whose registration has been cancelled by the proper officer on his own motion, can apply to such officer for revocation of cancellation of registration in FORM REG-21 within thirty days from date of service of cancellation order. However, in case registration has been cancelled for failure of registered person to furnish returns then no application for revocation of cancellation can be filed unless due returns have been furnished and any amount due as tax, in terms of such returns has been paid along with any amount payable towards interest, penalty and late fee payable in respect of the said returns.

#### **14.7.2. Process to dispose of application filed for revocation of Cancelled Registration**

The proper officer may issue a notice in FORM GST REG-23 requiring applicant to show cause as to why application submitted for revocation of cancellation of registration should not be rejected. The applicant shall furnish reply within seven working days from date of service of notice in FORM GST REG-24. Once the proper officer receives information or clarification in FORM GST REG-24, he shall proceed to dispose of application within thirty days from date of receipt of such information or clarification from applicant.

Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke cancellation of registration by an order in FORM GST REG-22 within thirty days from the date of receipt of the application and communicate the same to the applicant. The proper officer may reject the application for revocation of cancellation of registration and communicate the same to the applicant. The order for rejection of application for revocation of cancellation of registration should be in writing and should be a reasoned order. The order shall be passed in FORM GST REG-05.

## Notes

## Notes

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