

**Handbook
on
Composition Scheme under GST**



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

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Foreword

The introduction of Goods & Services Tax (GST) in India is one of the most significant indirect tax reforms since Independence. The reform that took more than a decade of mutual co-operation, continuous discussion and intense debate between Central and State Governments about implementation methodology, was finally implemented with effect from 1st July 2017, subsuming almost all indirect taxes at the Central and State levels. As the journey of GST implementation progressed in India, the authorities have been quick to address the various challenges faced by the Industry and public concerns by issuing a series of notifications, clarifications, press releases and FAQs, to resolve a wide range of concerns.

The GST along with its challenges have brought in various benefits also like creation of National market by bringing down fiscal barriers amongst the States and has mitigated the cascading effect of taxes by allowing seamless credit of input tax across goods and services. The Institute of Chartered Accountants of India (ICAI) through its GST & Indirect Taxes Committee has been playing a vital role in the implementation of GST in India by providing suggestions to the Government at each stage of development of GST. Further, the Institute has been playing a proactive role and is a catalyst in dissemination of knowledge and awareness through technical publications, newsletters, e-learning and organizing various programmes, Certificate courses, webcasts etc. for all stakeholders.

I am happy to note that the GST & Indirect Taxes Committee of ICAI has now taken an initiative to issue a series of Handbooks covering various procedural aspects of GST and in that series is bringing out this **Handbook on Composition Scheme under GST** with an objective to provide a basic understanding of the topic. The Handbook explains the concepts / procedures relating to Composition Scheme in an easy to understand language and is aimed at updating the knowledge base of members in a simple and concise manner.

I congratulate CA. Rajendra Kumar P, Chairman, CA. Sushil Kumar Goyal, Vice-Chairman and other members of GST & Indirect Taxes Committee for coming out with this Handbook and for taking active steps in providing regular guidance to the members and other stakeholders at large.

I am sure that the Members will find this publication very useful in discharging the statutory functions and responsibilities in an efficient and effective manner.

Date: 12th August, 2020

Place: New Delhi

CA. Atul Kumar Gupta

President, ICAI

Preface

The Goods and Services Tax (GST) was introduced in India from 1st July, 2017. It is one of the major tax reforms since independence in the area of indirect taxation. It was introduced with the objective to mitigate the cascading effect of taxes by allowing seamless credit across goods and services, facilitate free flow of goods and services across India and boosting tax revenue from better compliance and widening the tax base. A remarkable feature of GST implementation is that all the States in India came together with the Centre to form a unique federal body called GST Council, which is entrusted with the objective of recommending policies and procedural matters in the formation and implementation of GST legislation. The spirit of co-operative federalism took deep roots thereby ensuring that large federal countries like India implement the GST Law.

In order to facilitate an understanding of the various compliances under GST, the GST & Indirect Taxes Committee of ICAI has taken an initiative to prepare a handbook on procedural aspects like registration, refund, return, Invoice etc. One of the results of such initiative is this **Handbook on Composition Scheme under GST**. An attempt has been here made to cover all aspects related to Composition Scheme at one place and is intended to give general guidance to all stakeholders and also help them in resolving issues that they may face during the course of the compliances under GST laws. This Handbook on Composition Scheme under GST is a comprehensive one containing analysis of the entire provisions under the law including notifications, circulars and orders upto 31st July, 2020 issued by the Government from time to time along with a set of FAQ's, MCQ's, as also Flowcharts, Diagrams and Illustrations etc. to make the reading and understanding easier.

We stand by the Government in our role as "Partners in GST Knowledge Dissemination" and have always been supporting Government with our intellectual resources, expertise and efforts to make GST error-free.

We sincerely thank CA. Atul Kumar Gupta, President and CA. Nihar Niranjan Jambusaria, Vice-President, ICAI for their encouragement to the initiatives of the GST & Indirect Taxes Committee. We express our gratitude for the untiring effort of CA. Arpit Haldia who has shared his intellectual expertise and CA. Shubham Khaitan for reviewing this publication. We place on record the services and unstinted support provided by the Secretariat of the Committee.

We trust this Handbook will be of practical use to all the members of the Institute and other stakeholders. We also welcome suggestions at gst@icai.in and request you to visit our website <https://idtc.icai.org> and provide valuable inputs in our journey to make GST truly a good and simple tax.

CA. Rajendra Kumar P
Chairman
GST & Indirect Taxes Committee

CA. Sushil Kumar Goyal
Vice- Chairman
GST & Indirect Taxes Committee

Date: 12th August, 2020

Place: New Delhi

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Introduction to Composition Scheme

1.1. 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 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 law makers 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 of services.

1.2. 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 normal dealer would be required to file monthly GSTR-3B and Quarterly GSTR-1 (Less than Rs. 1.5 cr). This works out to be 16 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 16 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.

1.3. 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 on, 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 1st July 2017 as “Composition scheme for Supplier of Goods” and composition scheme brought into effect from 1st April 2019 vide Notification No. 02/2019-Central Tax (Rate) dated 7th 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”.

1.4. 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.

1.4.1. Relevant Rules

<i>Rule</i>	<i>Particulars</i>
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

1.4.2. Relevant Forms

<i>Rule</i>	<i>Form</i>	<i>Name of the Form</i>
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)

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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)

1.4.3. Relevant Notifications

	<i>Notification No.</i>	<i>Particulars</i>
1	Notification No. 8/2017-Central Tax, dated 27 th June 2017 amended vide Notification No. 46/2017-Central Tax, dated 13 th October 2017 and Notification No. 1/2018-Central Tax, dated 1 st January 2018 and Notification No. 05/2019 - Central Tax, dated 29 th January 2019 superseded vide Notification No. 14/2019 - Central Tax, dated 7 th March 2019	Seeks to notify the turnover limit for composition levy for CGST
2	Notification No. 14/2019-Central Tax dated 7 th March 2019, as amended vide Notification No. 43-Central Tax, dated 30 th September 2019	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 th March 2019, as amended vide, Notification No. 9/2019-Central Tax (Rate), dated 29 th March 2019 and Notification No. 18/2019-Central Tax (Rate), dated 30-9-2019	To give composition scheme for supplier of services with a tax rate of 6% having annual turnover in preceding year upto Rs 50 lakhs.

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4	Notification No. 21/2019 - Central Tax, dated 23 rd April 2019 as amended vide Notification No. 34/2019 - Central Tax, dated 18 th July 2019, Notification No. 35/2019 - Central Tax, dated 29 th July 2019, Notification No. 50/2019 - Central Tax, dated 24 th October 2019, Notification No. 12/2020 - Central Tax, dated 21 st March 2020, Notification No. 34/2020 - Central Tax, dated 3-4-2020	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 7th March, 2019
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1.4.4. Relevant Circular

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

1.4.5. Removal of Difficulty Order

	<i>Order No.</i>	<i>Particulars</i>
1	Order No. 1/2017 - Central Tax, dated 13 th October 2017 superseded by order No. 01/2019 - Central Tax, dated 1 st 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

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2.1. OVERRIDING IMPACT OF PROVISIONS OF SECTION 10

Section 10 of CGST Act, 2017 starts with a non-obstinate 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.

2.2. 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 2019-20. 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 2019-20 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 2019-20.

2.3. 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 relief by way of damages is granted in place of specific performance or in substitution thereof so that adequate relief might be awarded to the plaintiff who was otherwise entitled to such specific performance.

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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”.

Therefore, in GST perspective when the CGST Act provides that a registered person may opt to pay an amount equal to specified percentage “in lieu of” tax payable under section 9(1) of CGST Act, 2017 it would mean that whatever tax is payable as per the provisions of Section 9(1), Government has accepted that the person opting for composition scheme would be paying composition levy in place of tax amount provided under Section 9(1) of CGST Act, 2017. On the part of taxpayer, one who opts for composition scheme would not be required to pay tax under section 9(1) and would be required to pay composition tax in lieu of those taxes 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 28th 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 tax payers 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 2019-20. 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.

2.4. CONDITIONS FOR OPTING OF COMPOSITION SCHEME

2.4.1. 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 1st 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) *1st July 2017 to 12th 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: Provisions prevalent at that time provided that a person would not be eligible to opt for composition scheme if he is also engaged in supply of services except for the supplies covered in clause (b) of paragraph 6 of Schedule II. The 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 as part of service i.e. restaurant, caterers etc.*
- (b) *13th October 2017 to 31st January 2019-Pesons engaged in supply of exempt service allowed to opt for composition scheme: Vide Removal of Difficulty order no. 01/2017-Central Tax dated 13th 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) *1st February 2019 to 31st 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 1st*

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February 2019 was issued in supersession of the Removal of Difficulty order No. 01/2017 dated 13th 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 1st 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) *1st January 2020 to till date:* Certain provisions of Finance (No. 2) Act, 2019 became effective from 1st 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 following Table summarises the position

Particulars	Period-1 st July 2017 to 12 th October 2017	Period- 13 th October 2017 to 31 st January 2019	Period- 1 st February 2019 to 31 st December 2019	Period- 1 st 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 1st February 2019 issued in supersession of the Removal of Difficulty order No. 01/2017 dated 13 th October 2017	Finance (No. 2) Act, (2019) read with Removal of Difficulty Order No. 01/2019 Dated 1 st February 2019
Eligibility Criteria for	NA	If a person supplies any	Value of supply of exempt services by	Value of supply of exempt services by

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<p>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)</p>		<p><i>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, the said person shall not be ineligible for the composition scheme under section 10 subject to the fulfilment of all other conditions specified therein.</i></p>	<p><i>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;</i></p> <p>Second Proviso to Section 10(1) of CGST Act-(Effective from 1st February 2019)</p> <p><i>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.</i></p>	<p><i>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)</i></p> <p><i>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)</i></p> <p>Second Proviso to Section 10(1) of</p>
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				<p>CGST Act-(Effective from 1st 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 Union territory in the preceding financial year or five lakh rupees, whichever is higher.</p>
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2.4.2. 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 1st 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 has 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 27th June 2017- Prescribing Threshold limit of annual aggregate turnover of previous year for opting composition scheme:* Notification No. 8/2017-Central Tax dated 27th 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 13th October 2017 threshold limit of annual aggregate turnover eligible to opt for composition scheme were enhanced as under:

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

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- (viii) Tripura,
- (ix) Himachal Pradesh

The rationale to increase the limit was provided in the press release to the GST Council Meeting dated 6th 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 7th March 2019 issued in supersession of Notification No. 8/2017-Central Tax dated 27th June 2017** Notification No. 8/2017-Central Tax dated 27th June 2017 was later on superseded by Notification No. 14/2019 - Central Tax, dated 7th 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:

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

These limits were applicable with effect from 1st 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 7th March 2019 vis-a-vis Notification No. 8/2017-Central Tax dated 27th 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 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.

- *1st July 2017 to 12th 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 as provided under Section 2(6) was matched with the threshold limit as provided under Section 10 to check the eligibility to opt for composition scheme.
- *13th October 2017 to 31st 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 13th 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.

- *1st February 2019 to 31st December 2019-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 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 1st February 2019 was issued in supersession of the Removal of Difficulty order No. 01/2017 dated 13th 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 1st February 2019 provided that value of supply by way of interest on extending deposits, loans and advances shall not be included while computing his aggregate turnover in order to determine his eligibility for composition scheme.
- *1st January 2020 to till date:* Certain provisions of Finance (No. 2) Act, 2019 became effective from 1st 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 1st 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 1st day of April of a financial year upto the date when he becomes liable for registration under this Act.

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The following Table summarises the whole position.

Particulars	Period-1 st July 2017 to 12 th October 2017	Period-13 th October 2017 to 31 st January 2019 Removal of Difficulty Order No. 01/2017- Central Tax dated 13 th October 2017	Period-1 st February 19 to 31 st December 2019 Removal of Difficulty Order No. 01/2019 dated 1 st February 2019 issued in supersession of the Removal of Difficulty order No. 01/2017 dated 13 th October 2017	Period-1 st January 2020 to till date Finance (No. 2) Act, (2019) read with Removal of Difficulty Order No. 01/2019 dated 1 st 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 2020-21. His turnover during the previous financial year 2019-20 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 2020-21 since his turnover in previous year 2019-20 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 2019-20, 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 1st 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
<i>Example</i>	<i>Previous Year Turnover -60 Lakh (Goods)</i>	<i>Previous Year Turnover -60 Lakh (Services)</i>	<i>Previous Year Turnover -60 Lakh (Goods)</i>

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1 st July 2017 to 12 th October 2017	Eligible	Eligible	Eligible
13 th October 2017 to 31 st March 2019	Eligible	Eligible	Eligible
1 st 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 1st 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 Supplier	Other
<i>Example</i>	<i>Previous Year Turnover -90 Lakh (Goods)</i>	<i>Previous Year Turnover -90 Lakh (Services)</i>	<i>Previous Year Turnover -90 Lakh (Goods)</i>	
1 st July 2017 to 12 th October 2017	Ineligible	Ineligible	Ineligible	
13 th October 2017 to 31 st March 2019	Eligible	Eligible	Eligible	
1 st 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 1st 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 Supplier	Other
<i>Example</i>	<i>Previous Year Turnover -125 Lakh (Goods)</i>	<i>Previous Year Turnover -125 Lakh (Services)</i>	<i>Previous Year Turnover -125 Lakh (Goods)</i>	

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1 st July 2017 to 12 th October 2017	Ineligible	Ineligible	Ineligible
13 th October 2017 to 31 st March 2019	Ineligible	Ineligible	Ineligible
1 st 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
<i>Example</i>	<i>Previous Year Aggregate Turnover-55 Lakh Taxable Turnover (Goods)- 60 Lakh Exempt Turnover (Services)-8 Lakh Interest Income-2 Lakh</i>	<i>Previous Year Aggregate Turnover-55 Lakh Taxable Turnover-60 Lakh Exempt Turnover (Other Services)-8 Lakh Interest Income-2 Lakh</i>	<i>Previous Year Aggregate Turnover-55 Lakh Taxable Turnover (Goods)-60 Lakh Exempt Turnover (Services)-8 Lakh Interest Income-2 Lakh</i>
1 st July 2017 to 12 th October 2017	Ineligible	Ineligible	Ineligible
13 th October 2017 to 31 st January 2019	Eligible	Eligible	Eligible
1 st 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)

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

2.4.3. 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

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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 which are not leviable to tax under this Act.

Persons who are making supply of goods 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

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 service not leviable to tax. However, this provision is to be made effective from a date yet to be notified. However, until it is notified persons engaged only in supply of goods which are not leviable to tax are not eligible to opt for Composition Scheme. *The words "or services" in the clause have been inserted by Finance Act, 2020 but are yet to be made effective.*

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

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

The scope of the clause has been widened by Finance Act, 2020 by providing that persons making inter-state supply of services would also not be eligible to opt for composition scheme. However, this provision is yet to be made effective from a date to be notified. Until it is notified, only persons engaged in the supply of inter-State supply of goods are not eligible to opt for composition scheme. *The words "or services" in the clause have been inserted by Finance Act, 2020 but yet to be made effective.*

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 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 composition scheme. It would be pertinent to highlight that although a registered person engaged in

making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52 is barred from opting for the scheme, person who is himself an electronic commerce operator, is not barred from opting for the scheme.

The scope of the clause has been widened by Finance Act, 2020 by adding that persons supplying services through an electronic commerce operator who is required to collect tax at source under section 52 are also not be eligible to opt for composition scheme. However, this provision is yet to be made effective from a date to be notified. *The words "or services" in the clause have been inserted by Finance Act, 2020 but yet to be made effective.*

Condition-4: Person who is a manufacturer of such goods as may be notified by Government on recommendation of the council

The Government has notified vide Notification no. 14/2019-Central Tax dated 7th March 2019, as amended by Notification No. 43/2019-Central Tax, dated 30th September 2019 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 also notified vide Notification No. 8/2017-Central Tax dated 27th June 2017)
- Pan masala (were also notified vide Notification No. 8/2017-Central Tax dated 27th June 2017)
- All goods i.e. tobacco and manufactured tobacco substitutes (were also notified vide Notification No. 8/2017-Central Tax dated 27th June 2017)
- Aerated water (Notification No. 43/2019-Central Tax, dated 30th September 2019)

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 1st 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 1st 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 1st July 2017 to 12th October 2017. Thereafter, since from 13th October 2017 to 31st 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.

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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 CGST Act, 2017, this provision was relevant for the period 1st July 2017 to 12th October 2017. Thereafter, since from 13th October 2017 to 31st 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 the Tax Paid.

2.5. 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.

2.5.1. Legislative history for the Rate of Composition tax Payable: Till 31st 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 29th January 2019 with effect from 1st 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 rate 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 provided in the rules itself.

2.5.2. Notification No. 8/2017-Central Tax dated 27th 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 Rate Notification an equivalent percentage of composition tax for SGST component has to be added for determining the total composition tax payable.

2.5.3. Notification No. 1/2018-Central Tax dated 1st January 2018-Change in Rate Structure

Vide Notification No. 8/2017-Central Tax dated 27th June 2017 was amended by notification No. 1/2018-Central Tax dated 1st 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 rate notification an equivalent percentage of composition tax for SGST Component has to be added for reaching to the total composition tax payable.

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

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Sl. No.	Section under which composition levy is opted	Category of registered persons	Rate of tax
<i>(1)</i>	<i>(1A)</i>	<i>(2)</i>	<i>(3)</i>
1	<i>Sub-sections (1) and (2) of section 10</i>	<i>Manufacturers, other than manufacturers of such goods as may be notified by the Government</i>	<i>Half per cent. of the turnover in the State or Union territory</i>
2	<i>Sub-sections (1) and (2) of section 10</i>	<i>Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II</i>	<i>Two and a half per cent. of the turnover in the State or Union territory</i>
3	<i>Sub-sections (1) and (2) of section 10</i>	<i>Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10</i>	<i>Half per cent. of the turnover of taxable supplies of goods and services in the State or Union territory</i>
4	<i>Sub-section (2A) of section 10</i>	<i>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</i>	<i>Three per cent. of the turnover of supplies of goods and services in the State or Union territory.</i>

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.

2.5.5. 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.

2.5.6. "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.

2.5.7. 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 the taxable supplies only.

2.5.8. 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 1st day of April of a financial year upto the date when he becomes liable for registration under this Act.

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(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 1st 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 st July 2017 to 12 th October 2017	Ineligible	Ineligible	Ineligible
13 th October 2017 to 31 st December 2017	Yes	Yes	Yes
1 st January 2018 to 31 st December 2019	Yes	Yes	No
1 st January 2020 to till Date	No	No	No

With Explanation-2 inserted with effect from 1st 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.

2.5.9. 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)

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

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

2.5.10. 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>	<i>Previous Year Turnover-55 Lakh Taxable Turnover (Goods)-60 Lakh Taxable Turnover (Services)-3 Lakh Interest Income-2 Lakh</i>	<i>Previous Year Turnover-55 Lakh Taxable Turnover - 60 Lakh Taxable Turnover (other Services)-3 Lakh Interest Income-2 Lakh</i>	<i>Previous Year Turnover-55 Lakh Taxable Turnover (Goods)-60 Lakh Taxable Turnover (Services)-3 Lakh Interest Income-2 Lakh</i>
Composition tax-1 st July 2017 to 12 th October 2017	2% of Turnover in State	5% of Turnover in State	1% of Turnover in State
Amount	Ineligible	Ineligible	Ineligible
Composition tax-13 th October 2017 to 31 st December 2017	2% of Turnover in State	5% of Turnover in State	1% of Turnover in State
Amount	Ineligible	Ineligible	Ineligible
1 st January 2018 to 31 st 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 st February 2019 to 31 st December 2019	1% of Turnover in State	5% of Turnover in State	1% of Turnover of taxable supplies in State
Amount	0.65	3.25	0.63
1 st 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	3.15	0.63

2.6. 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.

2.7. 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.

2.8. WHY REMOVAL OF DIFFICULTY ORDER NO. 1/2017

We have discussed in detail about Removal of Difficulty Order No. 1/2017-Central Tax dated 13th October 2017. The reason behind issuance of the Removal of Difficulty Order can be ascertained from the 22nd 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 1st 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] 114 taxmann.com 447 (Madras) while deciding about the amendment to section 50 of CGST Act (prior to GST Council Meeting held on 14th 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.

2.9. 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 to 28th 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.

2.10. 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 would 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?

Yes, a person who has opted for composition scheme can supply through the e-commerce operator who is not liable to collect tax under section 52 of CGST Act, 2017. If a person who has opted to pay tax under composition scheme supplies through an e-commerce operator who is liable to collect tax under section 52, he would have to withdraw from the composition scheme. Therefore, if a kirana store dealer has opted for composition scheme under GST regime and he also supplies through ABC Limited and ABC Limited collects TCS on supplies made through him, then in such case 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 st July 2017 to till date [Section 10(1) and (2) of CGST Act]							
Particulars	1 st July 2017 to 12 th October 2017	13 th October 2017 to 31 st December 2017	1 st January 2018 to 31 st January 2019	1 st February 2019 to 31 st March 2019	1 st April 2019 to 31 st December 2019	1 st January 2020 to 31 st March 2020	1 st April 2020 to till date
Threshold Limit	50 Lakh/75 Lakh	75 Lakh/100 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	NA	If a person supplies goods and/or services referred to in clause	Value of <i>supply of exempt services by way of extending deposits, loans</i>	Value of <i>supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest</i>			

<p>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)</p>		<p>(b) of paragraph 6 of Schedule II of the said Act and <i>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</i>, the said person shall not be ineligible for the composition scheme under section 10.</p>	<p><i>or advances in so far as the consideration is represented by way of interest or discount</i>, shall not be taken into account for determining eligibility for composition scheme under second proviso to sub-section (1) of section 10;</p> <p><i>Second Proviso to Section 10(1) of CGST Act-(Effective from 1st February 2019)</i></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</p>	<p><i>or discount</i>, 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>For the purposes of second proviso, the <i>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</i> shall not be taken into account for determining the value of turnover in a State or Union territory (<i>Explanation to Section 10(1) of CGST Act, 2017</i>)</p> <p><i>Second Proviso to Section 10(1) of CGST Act-(Effective from 1st February 2019)</i></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 <i>value not exceeding ten per cent of turnover in a State or</i></p>
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			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.	<i>Union territory in the preceding financial year or five lakh rupees, whichever is higher.</i>
Services 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.	<i>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</i>	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.
Supplies provided by	NA			For the purposes of determining the tax payable by a person under Section 10, the expression

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			"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.
Tax Rate for Composition Scheme	(i) one per cent. of the turnover in State in case of a manufacturer, (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 paragraph 6 of	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 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 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	a) <i>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</i> b) <i>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</i>

	<p>Schedule II of the said Act, and (iii) half per cent. of the turnover in State in case of other suppliers:</p>	<p>goods and services in the State or Union territory"</p>	<p>c) <i>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</i></p>
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Composition Scheme for Supplier of Services or Mixed Suppliers

3.1. LEGISLATIVE HISTORY

The Central Government had issued Notification No. 02/2019- Central Tax (Rate) dated 7th 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. 1st 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 7th 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 35th GST Council Meeting, it was provided that Notification No. 2/2019- Central Tax (Rate) dated 7th 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 provisions of Section 10(2A) and Notification No. 2/2019-Central Tax (Rate) dated 7th 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 7th March 2019. Although, it would be desirable that Government withdraws Notification No. 2/2019-Central Tax (Rate) dated 7th 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 7th March 2019 differs from provisions of Section 10(2A) have been duly highlighted.

3.2. Overriding Impact of the Provisions of Section 10-Refer Para 2.1 of Chapter 2.

3.3. Provisions of Section 10 are subject to the provisions of Section 9(3) and 9(4) - Refer Para 2.2 of Chapter 2.

3.4. 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.

3.5. WHEN A REGISTERED PERSON CAN 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 section 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 Section 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 for Supplier of Services or Mixed Suppliers

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 7th 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 7th March 2019.

Although the decision is in respect of *Notification No. 02/2019-Central Tax (Rate) dated 7th 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).

3.5.1. 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 Section 10(1) and 10(2).

3.6. CONDITIONS FOR OPTING FOR COMPOSITION LEVY

3.6.1. 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 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. Therefore, 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

Composition Scheme for Supplier of Services or Mixed Suppliers

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

3.6.2. 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 goods or 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 goods or 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 goods or services through an electronic commerce operator who is

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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.

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 7th 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:

Tariff item, sub-heading, heading or Chapter	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
22021010	Aerated water (Inserted vide Notification No. 18/2019-Central Tax (Rate) w.e.f. 1 st October 2019)
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. However, 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 yet operational and since notification no. 2/2019-Central Tax (Rate) is no more operational, there might be a view that with effect from 1st April 2020, persons restricted by notification no. 2/2019-Central Tax (Rate) can also opt for the composition 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.

3.6.3. Inclusions and Exclusions for the purpose of determination of threshold limit and tax payable

3.6.3.1. 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 1st 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.

3.6.3.2. 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 7th 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 7th March 2019 in this respect and with effect from 1st 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 be 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 includible 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.

3.7. Composition tax payable on the turnover in a State or turnover in a Union Territory- Refer Para 2.5.5. of Chapter -2.

3.8. "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"- Refer Para 2.5.6 of Chapter-2

3.9. 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 1st April 2020 is as follows:

Composition Scheme for Supplier of Services or Mixed Suppliers

<i>Sl. No.</i>	<i>Section under which composition levy is opted</i>	<i>Category of registered persons</i>	<i>Rate of tax</i>
<i>(1)</i>	<i>(1A)</i>	<i>(2)</i>	<i>(3)</i>
4	<i>Sub-section (2A) of section 10</i>	<i>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</i>	<i>Three per cent. of the turnover of supplies of goods and services in the State or Union territory.</i>

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:

<i>Scenario</i>	<i>Particulars</i>	<i>Tax Liability</i>
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	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.

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).

3.10. PERSONS HAVING MULTIPLE REGISTRATIONS ON SINGLE PAN

Where more than one registered person have 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.

3.11. 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.

3.12. 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 as the tax would be paid by the recipient as per section 9(3) or (4) of the CGST Act, 2017 as the case may be .

3.13. 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

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: -

Persons Liable for Registration in GST

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 7th March 2019 w.e.f. 1st 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.
- (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. 1st 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 Notification No 10/2019 dated 7th 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.

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 requiring 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
- (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) 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 19th June 2017]
- (d) Persons making inter-State taxable supplies of handicraft goods. [Notification No. 8/2017-Integrated Tax, dated 14th September 2017 as amended by Notification No. 9/2017-Integrated Tax, dated 13th October 2017 superseded by Notification No. 3/2018-Integrated Tax, dated 22nd October 2018]

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- (e) Job workers engaged in making inter-State supply of services to a registered person. [Notification No. 7/2017-Integrated Tax, dated 14th September 2017 as amended by Notification No. 2/2019 - Integrated Tax, dated 29th January 2019]
- (f) Casual taxable persons making taxable supplies of handicraft goods. [Notification No. 32/2017-Central Tax, dated 15th September 2017 as amended by Notification No. 38/2017-Central Tax, dated 13th October 2017 superseded by Notification No. 56/2018 - Central Tax, dated 23rd October 2018]
- (g) Persons making inter-State supplies of taxable services. [Notification No. 10/2017-Integrated Tax, dated 13th October 2017 as amended by Notification No. 3/2019 - Integrated Tax, dated 29th January 2019]
- (h) Suppliers of services through an e-commerce platform (other than the services specified in sub-section 5 of section 9) [Notification No.65/2017-Central Tax, dated 15th November 2017 as amended by Notification No. 6/2019 - Central Tax, dated 29th January 2019]

Intimation for exercise of option for Composition Levy

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 enrolment 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 31st July 2017 to 16th August 2017 vide Order No 01/2017-GST dated 21st 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 –

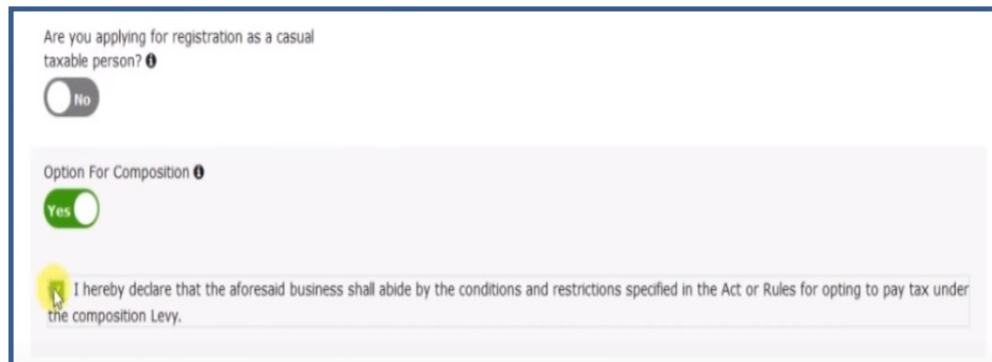
- (a) Non-collection of tax from the recipient, from *the appointed day itself*.
- (b) Issuance of bill of supply for all the supplies made.

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. 17th 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 31st January 2018, which was made effective vide Order No 11/2017 – GST dated 31st 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 snap shot of Part-B of Form GST REG-01 on the common portal, where a person can choose “Option for Composition”.



The screenshot displays a web form with the following elements:

- A question: "Are you applying for registration as a casual taxable person?" with a "No" radio button selected.
- A section titled "Option For Composition" with a "Yes" radio button selected.
- A declaration statement: "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." with a cursor pointing to the text.

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 31st 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 30th June 2020.

Intimation for exercise of option for Composition Levy

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 31st 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. 15th September 2017, wherein the Form had to be filed by 30th September 2017, in order to enter into the composition scheme from 1st 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 23rd 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.

Chapter-6

Time of Supply

6.1. INTRODUCTION

Until 31st 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 13th October 2017 for giving relief in terms of supply of exempt services. However, w.e.f. 1st 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 7th 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 15th 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 Section 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 there is a supply of vouchers by a supplier, the time of supply of goods or services shall be based on whether supply is identifiable at the time of issue of such voucher. If the same is identifiable, the time of supply shall be date of issue of voucher, and in any other case, the time of supply shall be date of redemption of voucher.
- (b) 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.

- (c) 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

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 SHOULD BE 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 WHEREIN 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, includible 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 Section 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

'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 28th June 2017 (as amended time to time) and Notification No. 10/2017-Integrate Tax (Rate) dated 28th 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 28th 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 28th 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 12th October 2017, at various dates and the last notification in this regard was No. 01/2019-Central Tax (Rate) dated 29th January 2019, which rescinded the original notification no. 8/2017-Central Tax (Rate) dated 28th June 2017 enforcing applicability of reverse charge on inward supplies received from unregistered dealers, w.e.f. 1st 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.

Returns for Person opting for Composition Scheme

10.1 REGULAR RETURN FOR COMPOSITION TAX PAYERS [RULE 62 OF CGST RULES 2017]

Every registered person paying tax under section 10 or paying tax by availing benefit of Notification No. 02/2019-Central Tax (Rate), dated 7th March, 2019 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 th of the month Succeeding the Quarter
GSTR-4	Return	Every Financial Year or part thereof	30 th day of April following the end of such financial year

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.

The return in 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 or by availing the benefit of Notification No. 2/2019 - Central Tax (Rate), dated the 7th March, 2019 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-2 not made operational till date) and 61(GSTR-3B) relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September 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 or opting for paying tax by availing the benefit of Notification of No. 2/2019- Central Tax (Rate), dated 7th March, 2019.

10.2. LIABILITY TO FILE RETURNS

The liability to file returns wherein withdrawal is made from composition scheme or the person ceases to avail the benefit of Notification No. 02/2019- central tax (rate), dated 7th march, 2019-

Form	Particulars	Periodicity	Due Date
CMP-08	Statement containing the details of payment of self-assessed tax	Period for which he has paid tax under the composition scheme	18th 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	30th day of April following the end of the financial year during which such withdrawal falls

10.3. LIABILITY TO FILE ANNUAL RETURN IN 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 and 2018-19 vide Notification No. 47/2019-Central Tax dated 9th October 2019, 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.

Chapter-11

Bill of Supply

11.1. BILL OF SUPPLY

Section 31 of CGST Act, 2017 read with Rule 49 of CGST Rules, 2017 deal 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 requirement to quote HSN Code has been prescribed by the Board as follows, in Notification No 12/2017-Central Tax dated 28th June 2017:

Annual Turnover in the preceding Financial Year	Number of Digits of HSN Code
Upto rupees one crore fifty lakhs	Nil
More than rupees one crore fifty lakhs and upto rupees five crores	2
More than rupees five crores	4

Since the maximum limit of turnover to opt for composition scheme is Rs 1.5 Crores, it can be

concluded that 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

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

Section 35 read with Rule 56 provide 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 situation 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

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, otherwise 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. 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 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, as the case may be, shall, *mutatis mutandis*, apply for determination of such tax.

Withdrawal from Composition Scheme

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 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 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.

Circular No. 77/51/2018-GST - Central Tax, dated 31st 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 from 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.

Cancellation of Registration in GST

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, this provision has been amended vide Finance Act, 2020 but the effective date is yet to be notified. 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. 23rd January 2018 subsequent to which the person who had taken the voluntary registration was also allowed to apply for cancellation of registration. The amendment in the CGST Act, 2017 is sought to be made vide Finance Act, 2020.

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 ACT

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 Act. 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 makes 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 Section 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.