GST- COMPOSITION SCHEME - BOON FOR SMALL TAXABLE PERSONS

BY:

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INTRODUCTION:

1: The new composition scheme provides for a simple and easy method of charge and payment of tax liability. In order to relieve small, medium small traders and businessmen of the need to keep the detailed records, the law makes provision for simpler, easy and convenient method of accounting, calculation and payment of tax to the Government.

2: In a bid to reduce the cost of administering small traders in the proposed Goods and Services Tax (GST) regime, the finance ministry plans to collect taxes from businesses below a turnover of Rs 1 crore at a defined floor rate, which will be much lower than the GST rate.This composition, which provides a simpler method of calculating tax liability, will be optional for dealers.

For instance, a dealer whose turnover is between Rs 10 lakh and Rs 1 crore can opt for a compounded levy of one per cent on his taxable turnover, instead of paying GST at 16 per cent.

1.2: The Composition Scheme is the scheme to facilitate small dealers (whose annual turnover does not exceed Rs. 50 lakhs) to pay GST at a flat rate of 2.5% without claiming Input Tax Credit. The objective of all such composition schemes is not to burden small dealers by the

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provisions of record keeping. Therefore, such schemes will generally contain the following features:

(i) small amount of tax shall be payable;

(ii) there shall be no requirement to calculate taxable turnover;

(iii) a simple return form to cover longer return period shall be sufficient.

"The scheme will be administered by the states for collecting Central GST (CGST) as well as State GST (SGST). Dealers involved in inter-state purchases will not be eligible for it."

The task force of the 13th Finance Commission on GST suggested that small dealers with a turnover of Rs 10 lakh to Rs 40 lakh be allowed to opt for a compounded levy of one per cent, each towards CGST and SGST.

2: Statutory Provision

2.1: Section 8 of the Central/ State Goods and Service Tax Act, 2016 covers the broad spectrum of composition levy. The text of the Section is reproduced hereunder for the ready reference:

> "(1) Notwithstanding anything to the contrary contained in the Act but subject to subsection (3) of section 7, on the recommendation of the Council, the proper officer of the Central or a State Government may, subject to such conditions and restrictions as may be prescribed, permit a registered **taxable person**, whose **aggregate turnover** in the preceding financial year did not exceed fifty lakh rupees, to pay, in lieu, of tax payable by him, an amount calculated at such rate as may be prescribed, but not less than two and a half per cent in case of manufacturer and one per cent in any other case, of the turnover in a State during the year:
>
> PROVIDED that no such permission shall be granted to a taxable person-
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> (a) who is engaged in the supply of services; or

(b) who makes any supply of goods which are not leviable to tax under this Act; or

(c) who makes any inter-State outward supplies of goods; or

(d) who makes any supply of goods through an electronic commerce operator who is required to collect tax at source under section 56; or

(e) who is a manufacturer of such goods as may be notified on the recommendation of the Council:

PROVIDED FURTHER that no such permission shall be granted to a taxable person unless all the registered taxable persons, having the same PAN as held by the said taxable person, also opt to pay tax under the provisions of this sub-section.

(2) The permission granted to a registered taxable person under sub-section (1) shall stand withdrawn from the day on which his aggregate turnover during a financial year exceeds fifty lakh rupees.

(3) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

(4) If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty and the provisions of section 66 or 67, as the case may be, shall apply mutatis mutandis for determination of tax and penalty.

COMPREHENSIVE ANALYSIS OF THE SECTION

The above provision deals with the composition scheme for the payment of tax by eligible taxable persons, subject to certain conditions. The detailed procedures and documentations would be contained in the Rules, to be prescribed.

3: Taxable person and its Relevance under GST:

3.1: Taxable person is defined under Section 9 of the CGST/ SGST Act but before understanding who is a taxable person, let us discuss the relevance of taxable person. The most important section of any statute is the charging section. In the Model GST Laws, Section 7 is the charging section under CGST and SGST Act and Section 4 is the charging section under IGST Act.

Section 7 of the CGST/ SGST and Section 4 of the IGST	
Normal Charge	**Reverse Charge**
1.Payable on all supplies of goods and/ or services (intrastate CGST+ SGST and interstate IGST)	1.Payable on all specified goods and/ or services (intrastate CGST+ SGST and interstate IGST)
2.Payable at a specified rate	2.Payable at a specified rate
3.Payable by taxable person	3.Payable by person receiving specified supplies

Normal Charge (Forward Charge) is the charge where the person supplying the goods and/ or services will collect the GST and pay to the Government.

Reverse Charge is the charge where the person receiving the supply of goods and/ or services will pay the GST to the credit of the Government.

After analyzing the chargeability section, it can be observed that in normal charge, the **GST is payable by the taxable person**. In other words, **in order to complete the levy under normal charge, the person must be a taxable person. If a person is not a taxable person, then he is not liable to pay GST.**

3.2: Section 9 of the CGST/ SGST Act provides for the meaning of the taxable person which states as follows:

> "A taxable person means a person who carries on any business at any place in India/ State of ________ and who is registered or required to be registered under Schedule III of this Act."

After reading the definition we can understand that a taxable person is-

A person (he must fall within the definition of person u/s 2(74) of the said Act) who carries on business (he must be carrying on business within the ambit of Section 2(17) at any place in India/ State (the person must be carrying on business in India) and who is registered (who has obtained registration u/s 19) or required to be registered under Schedule III of the Act.

In other words, we can conclude that to become a taxable person, the following conditions must be met simultaneously.

- the person must be covered under the definition of Section 2(74);
- the activity of business must be covered u/s 2(17);
- the business must be carried out in India;
- the person must be
    - registered or
    - required to be registered under Schedule III of the Act.

If any of the above condition is negative, then that person will not be a taxable person and hence, he is not liable to pay GST.

4: Composition Scheme is an option:

Tax payment under this scheme is an option **available to the registered taxable person**. This scheme would be applicable only to taxable person whose supplies are restricted to a particular state. In other words, a person opting effecting **Inter-State supplies cannot opt** for this scheme.

The taxable person should make an application exercising his option to pay tax under this scheme. Once an application is granted, the eligibility would be valid unless his permission is cancelled under law or he becomes ineligible.

5: Applicable to only goods and not services:

Composition scheme may be opted for by taxable persons, for supply of goods and not for services. It is important to note that for any tax payable under reverse charge mechanism, the option of payment under this scheme will not be available.

6: Eligibility to pay tax under Composition Scheme:

Only taxable persons whose 'aggregate turnover' does not exceed Rs.50 lakhs in a financial year will be eligible to opt for payment of tax under the composition scheme.

In terms of Section 2(6) of the CGST/ SGST Act, 2016 **"aggregate turnover"** means Value of all (taxable supplies + Exempt Supplies + Exports and Inter-state supplies) – Taxes + Value of Inward supplies + Value of supplies taxable under reverse charge) of a person having the same PAN. It is expected that this threshold of turnover would be for the relevant financial year.

The threshold of Rs. 50 lacs would be applicable to **a person having the same PAN**[2] and can be understood as follows:

- Taxable person covered by the same PAN shall be under composition across India;
- Value of supplies in all forms- goods
- Value of supplies of all business verticals.

7: CONDITIONS:

i. Restricted from effecting Inter-State supplies:

The taxable person should not effect any inter-State supplies of goods. A plain reading of the proviso to Section 9 would imply that the restriction on supplies would be applicable only to sales/ dispatches (outward supplies). Where a taxable person effects Inter-State barter transaction (supply) or Inter-State warranty contract (supply), he will not be eligible to opt for composition scheme.

ii. Composition Scheme would be applicable for all transactions under the same PAN.

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[2] Person having the same PAN means all the entities across India having the same PAN.

Composition scheme would become applicable for all business verticals/ registrations which are separately held by the person with the same PAN. To clarify further, if a taxable person has multiple business verticals, and if he has opted for separate registrations for each such vertical, composition scheme would become applicable for all the business verticals and it cannot be applied for select verticals only.

iii. **Shall not collect tax:**
Taxable person opting to pay tax under the composition scheme is prohibited from collecting tax.

iv. **Not entitled to input tax credit:**
Taxable person opting to pay tax under the composition scheme will not be eligible for any input tax credit.
However, if the taxable person becomes ineligible to remain under the composition scheme, the taxable person will become entitled to take input tax in respect of inputs held in stock (as inputs contained in semi-finished or finished goods) held on the day immediately preceding the date from which he becomes liable to pay tax under Section 7. The same words has been explained in Section 16(3), i.e. manner of taking input tax credit: The same has been laid down for ready reference:

> "16(3) Where any registered taxable person ceases to pay tax under section 8, he shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under section 7."

v. **Additional conditions:**
There may be other conditions or restrictions which may be prescribed under the Rules. Fulfilling those conditions, if any, would also be necessary to opt for payment of taxes under the Composition scheme.

8: Rate of Tax

The rate of tax would be ass notified by the Government after recommendation of the GST Council. However, the law provides that such rate cannot be less than **2.5% of the turnover** in case of a manufacturer and **1%** in any other case in the State during the year. The word "turnover" to be read as defined in Section 2(107) of the Act.

"Turnover in a State" means the aggregate value of all taxable supplies, exempt supplies, export of goods and / or services made within a State by a taxable person and inter-state supplies of goods and/ or services made from the State by the said taxable person excluding taxes, if any charged under the CGST Act, SGST Act and the IGST Act, as the case may be.

9: Cancellation of permission

Where the proper officer has the reason to believe that the taxable person was not eligible to the composition scheme or if the permission granted earlier was incorrectly granted, the proper officer may cancel the permission and demand the following:

- Differential tax- viz., tax payable under the other provisions of the Act
- Penalty equivalent to the tax.

10: Comparative Review:

Under the current tax laws, the scheme of composition is provided for in most State level VAT laws. The conditions prescribed under the GST law for composition scheme is comparable to the restrictions/ conditions under the State level VAT laws.

In the current value-added tax (VAT) regime also, there is a compounding scheme for businesses below a turnover of Rs 50 lakh in many states. It has not been availed by many traders because the difference between the VAT rate (4 per cent) and the floor rate (about 1 per cent) is not huge. Moreover, traders who join the scheme cannot issue tax invoices to customers or claim set-off on VAT paid on purchases. In the GST scheme, too, the input tax credit will not be allowed against the purchases made from exempt dealers.

Under VAT, traders dealing in sugarcane, pan masala, narcotics and rectified spirit are not eligible for the compounding scheme. The Finance Commission task force suggested that dealers of high value goods like gold, silver and platinum ornaments, precious stones and bullions, subject to the threshold exemption but without the ceiling of Rs 40 lakh, be allowed to opt for the scheme in GST. It reasoned such items are prone to smuggling due to high tax incidence resulting in social and economic disorder.

11: Conclusionary Points:

- A composition scheme would become applicable for all business verticals/ registrations which are separately held by the person with the same PAN.

- A composition scheme is applicable subject to the condition that the taxable person does not effect inter-state supplies or engaged in the provision of service.

- A taxable person under the composition scheme is not eligible to claim input tax credit.

- A customer who buys goods from taxable person who is under composition scheme is not eligible to claim composition tax as input tax credit.

- A taxable person under the shelter of composition scheme is restricted from collecting tax.

- The threshold for composition scheme is Rs. 50 lacs of aggregate turnover in a financial year.

- The minimum composition tax rate prescribed under the Act is 1% of the turnover in the State.

The finance ministry has suggested simplified procedures for dealers under the compounding scheme, such as registration by single agency for both SGST and CGST without manual interface, no physical verification of premises and no pre-deposit of security, simplified return format, longer frequency for return filing, electronic return filing through certified service centres or chartered accountants, audit in 1-2 per cent cases based on risk parameters, and lenient penal provisions.