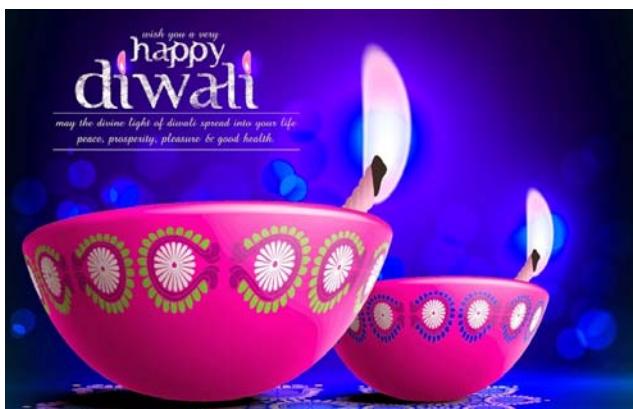


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May the festival of lights be the harbinger of joy and prosperity.

As the holy occasion of Diwali is here and the atmosphere is filled with the spirit of mirth and love, here's hoping this festival of beauty brings your way, bright sparkles of contentment, that stay with you through the days ahead.

Happy Diwali! And Season's Greetings!!

Changes in the Composition scheme – Government leaving no stone unturned to make the scheme successful

Deemed exports notified under GST, are we going in the reverse gear-shift again in GST?

Making a second hand sale of goods, are you liable to GST?

Reversal of input tax credit on capital goods, a burdensome task

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Changes in the Composition scheme – Government leaving no stone unturned to make the scheme successful

GST offers a simplified scheme for tax payers popularly called as “Composition scheme”. Under the scheme small traders, manufacturers and restaurants can opt to pay GST at a reduced rate of cumulative Central and State tax of 1%, 2% and 5% respectively.

Based on the figures, only 15.50 Lakh tax payers have opted for the composition scheme. In the last GST council, the Government has taken some measures to make this scheme more lucrative and accordingly notifications have been issued on October 13, 2017. These measures are –

- a. Threshold for composition tax payers has been increased from Rupees Seventy five lakh to Rupees One crore rupees and in states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Himachal Pradesh (9 states) it has been increased from Rupees Fifty-lakh to Rupees Seventy-five lakh.
- b. Removal of difficulty order has been passed such that the scheme can extend to person engaged in supply of exempted services including services by way of extending loans or advances in so far as consideration is represented by way of interest or discount.

In addition to the above, a group of ministers have been constituted, a five member GoM under chairmanship of

Assam Finance Minister Himanta Biswa Sarma have already conducted the first meeting in New Delhi on October 15, 2017. The GoM would look into aspects such as whether turnover of exempted goods can be excluded for computing the threshold limits, can composition scheme also extend to tax payers engaged in inter-state outward supplies of goods, tax structure for different types of restaurants and possibility of rationalisation of tax rates.

Deemed exports notified under GST, are we going in the reverse gear-shift again in GST?

Government on October 18, 2017 has notified supplies of goods as deemed exports.

Following categories of supplies shall be treated as deemed exports under GST:

- a. Supply of goods by a registered person against Advance Authorisation
- b. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
- c. Supply of goods by a registered person to Export Oriented Unit (EOU includes STP, EHTP or BTP units)
- d. Supply of gold by bank or PSU against advance authorisation

Further, in terms of the amended CGST Rules, in respect of supplies regarded as deemed exports, the application may be filed by

- a. the recipient of deemed export supplies or;

- b. the supplier of deemed export supplies in case where the recipient does not avail input tax credit on such supplies and furnishes undertaking to the effect that the supplier may claim the refund.

Yet again this leaves some open issues which management has to work on -fresh changes in the IT systems, negotiations between supplier and recipients as to who file the refund claim of taxes and this will depend entirely on which party has more negotiation power and also revisiting the contracts would be good idea as it is prudent to include in terms of contract an eventuality where the refund claim is denied.

Making a second hand sale of goods, are you liable to GST?

India is a huge market for buying and selling of second hand goods, it can include anything from motor vehicles, electronics, mobiles, laptops, gaming consoles, wrist-watches to utensils, used clothes etc.

Second hand goods market can be divided into two categories:

- One by persons who are in the business of buying and selling such second hand goods as such;
- Two, of persons who typically are not engaged in buying and selling of second hand goods but occasionally may sell / dispose such second hand goods being used in their business/homes

Continuing our discussion on applicability of GST to the said categories, we will first discuss the implications of GST on business which are engaged in buying and selling of such second hand goods as such.

In most parts of the world where GST exists including in India, second hand sale of goods by a dealer in such business is liable to GST under a popular scheme called as 'margin scheme'. In a margin scheme, person dealing in such goods may be allowed to pay tax on the margin i.e. the difference between the value at which the goods are supplied and the price at which the goods are purchased. If there is no margin, no GST is charged for such supply. The purpose of the scheme is to avoid double taxation as the goods, having once borne the incidence of tax, re-enter the supply and the economic supply chain.

As per sub rule (5) of 32 of CGST rules 2017

"Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e. used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on purchase of such goods the value of supply shall be the difference between the selling price and purchase price and where the value of such supply is negative it shall be ignored"

Further, Notification No.10/2017-Central Tax (Rate) provides that if any person engaged in buying and selling of second hand goods who having paid the central tax on the value of outward supply of such second hand goods under the margin scheme receives such goods from an unregistered supplier, then GST on such inward purchase of goods is exempted from tax under reverse charge mechanism.

(This exemption was available where the purchases from unregistered suppliers was liable to tax under reverse charge mechanism, however, now the GST on reverse charge for procurements from unregistered suppliers has been suspended until March 31, 2018).

Now, this leaves a question, whether supplies from individuals who may not be engaged in selling of used goods on

regular basis but undertake such sale occasionally are liable to GST? Whether such transaction is considered as supply? If yes, is such transaction covered by said exemption when sale is made to a dealer engaged in buying and selling of goods?

Having discussed implications of GST on dealer of buying and selling of second hand goods, picking up from where we left in last paragraph, persons who typically are not engaged in buying and selling of second hand goods but occasionally may sell / dispose such second hand goods being used in their business/homes, are they liable to GST?

In a similar question put forth before the Government for sale of used gold ornaments by individuals to jewellers, the Government in the press release clarified that even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does not qualify to be a supply per se. Accordingly the sale of old jewellery by an individual to a jeweller will not attract the provisions of section 9(4) and jeweller will not be liable to pay tax under reverse charge mechanism on such purchases.

However, it is noteworthy that the press release nowhere discussed as to how it has arrived at conclusion that the said is not business of the individual. It is important to note that the word "business" has been defined in GST, and the definition is quite different from the regular meaning of the word business.

"business" includes--

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is

volume, frequency, continuity or regularity of such transaction;

- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

If one were to read finely between the lines, it is pertinent that the meaning of the term business is at variant from its natural meaning in two sense – it can be carried out with or without a pecuniary benefit and business need not necessarily have a frequency, continuity or regularity.

GST is applicable on supplies. "Supply" includes

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business"
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration

Now, we proceed to examine and understand the following concepts :

- a. Meaning of term 'goods' – does it exclude second hand sale of goods
- b. Whether the sale of second hand goods amounts to being a sale "in the course or furtherance of business" or not
- c. Disposal

Goods:

As per clause (52) of section 2 of CGST Act, 2017 "goods means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply".

Therefore, as it can be seen from the above that the law does not distinguish between new or second hand goods.

in the course or furtherance of business or not:

As discussed "business' includes--

- (a) *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
- (b) *any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- (c) *any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;"*

Therefore, sale of second hand goods by the dealers engaged in business of buying and selling of second hand goods as well as others who may not be engaged but carry out one-off such transaction may be considered to be in business and carry out transaction in course or furtherance of the same.

Can sale of second hand goods be considered as supply?

Supply amongst many other things also includes disposal of goods by a person. Disposal means the action or process of getting rid of something. Therefore, sale of used car, sale of used utensils etc. can all be considered as supply for purpose of GST.

So, is GST same as usual?

Reversal of input tax credit on capital goods, a burdensome task

Provisions of input tax credit reversal have undergone a substantial change under GST. In the hitherto regime, provisions for reversal of Cenvat credit did not apply to capital goods which means that the business could take full Cenvat credit on capital goods.

In GST, the reversal of input tax credit is applicable for inputs, input services and capital goods. There are separate provisions which deals with reversal for input and/or input services and for reversal for capital goods.

Capital goods means '*goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business*'.

Input tax credit of capital goods can be divided into three types i.e.:

1. Capital goods used exclusively for effecting exempted supplies or non-taxable supplies;
2. Capital goods used exclusively for effecting taxable supplies or zero-rated supplies; and
3. Capital goods used for partially effecting taxable supplies and exempted supplies;

Taxable supplies means '*Supply of goods or services or both which is leviable to tax under this act'*.

Exempted supplies means '*Supply of any good or service or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply*'. Exempt supply shall for input reversal purpose also include supplies on which the recipient is

liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Non-taxable supplies means '*Supply of goods or services or both which is not leviable to tax under this act*'

While the fact that taxable supplies has been defined to include supply of goods or services which is *leviable* to tax under this act, literal interpretation of the word *leviable* would mean that taxable supplies includes exempt supplies.

Be that as it may, this article would deliberate on the finer aspects for reversal of credit on capital goods.

In the first case (capital goods used exclusively for exempted supplies), the credit of the same is completely disallowed. In the second case (capital goods used for taxable supplies) the entire tax amount shall be credited to the electronic credit ledger of the recipient. In the third case (where the goods are used partly for taxable and partly for exempt supplies) the recipient is required to reverse the credit proportionally.

Procedure for reversal of ITC on capital goods

- First, the total common credit related to the capital goods will be credited to the electronic credit ledger of the recipient taking the useful life of the asset as 5 years from the date of invoice/purchase denoted as 'Tc';
- Now the amount of input tax credit attributable to a tax period on common capital goods shall be calculated as - $Tm = Tc/60$ and the same shall be calculated for every tax period ;
- Total amount of input tax credit on all common capital goods whose useful

life remains during the tax period shall be as follows:

$$Tr = \sum Tm \text{ for all common capital goods whose useful life remains during the tax period}$$

- The amount of credit to be added to output tax liability attributable to exempt supplies out of input tax for common use of capital good shall be:

$$Te = Tr * \frac{\text{Aggregate value of exempt supplies, made, during the tax period}}{\text{Total turnover of the registered person during the tax period}}$$

- Remaining amount after deducting credit attributable towards exempt supplies will be allowed as ITC i.e. $Tr - Te$;
- As the complete credit on the capital goods has been credited to the electronic credit ledger at the beginning itself, monthly input tax credit attributable to the exempted supplies as calculated will have to be reversed along with the interest applicable thereon;
- All the above calculations must be separately done for CGST, SGST, UTGST and IGST;
- ITC on the capital goods which were earlier used exclusively for exempted supplies but now used for both exempted and taxable supplies shall be calculated by deducting ITC @ 5% of every quarter or part thereof used.

Some parting thoughts, why should the taxpayer pay the interest when taking back the credit each month, especially when taking full credit has been forced on him? Businesses have to now keep a track of capital goods addition,

capital goods removal month on month basis and make detailed workings each month.

Highlights of important changes based on last GST Council meeting and what to expect from the next one

Exemption from obtaining registration under GST for making inter-state supplies of taxable services

Government has vide Notification 10/2017 - Integrated Tax dated October 13, 2017 exempt inter-state supplies of taxable services where the person has aggregated turnover computed on all India basis of an amount not exceeding twenty lakh rupees in a financial year. However, for special category states, such amount shall not exceed an amount of ten lakh rupees in a financial year (excluding Jammu & Kashmir, for which the normal limit of twenty lakh rupees) will be applicable.

Suspending reverse charge provision under GST till March 31, 2018

Government exempts the inter-State supply and intra-state supply of goods or services or both received by a registered person from any supplier, who is not registered from payment of goods and services tax under Section 5(4) or Section 9(4) of the IGST & CGST Act until March 31, 2018.

No liability of GST on receipt of advances

In case of advance received from customer, a registered person requires to pay tax even before supply of goods or services to comply with the provisions of time of supply. This becomes burdensome for small taxpayers. To minimize such inconvenience, taxpayers having annual turnover below INR 1.5 crores shall not be required to pay GST at the time of receipt of advances on account of supply of goods. The GST on such supplies shall be payable only when the supply of goods is made. It is pertinent to note that the relaxation is applicable in respect of goods and not for services.

Exemption for Goods transportation agency services

Where business entity is unregistered, GTA's are not willing to transport the goods for unregistered person. This creates big problem for unregistered business entities. In order to mitigate such difficulty an exemption is given in which the services provided by a GTA to an unregistered person shall be exempted from GST. However, this exemption is not applicable in case of factory, society, Co-operative society, body corporate, partnership firm and registered casual taxable person.

Therefore, mostly, this exemption is applicable in case of individuals and proprietorships.

TDS/TCS/E-way bills deferred

The provisions of TDS & TCS as stated under Section 51 & 52 of CGST/SGST

Act and provisions of E-way bill have been deferred till March 31, 2018

Changes in rate of tax for certain services

Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent of the value of the works

Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be

The rate of tax has been revised to 5% in total.

Transportation of passenger by way other than motor cab or renting of motor cab is subject to 18% rate of tax. It is now decided that facility of 5% without ITC and 12% with ITC shall be extended to any motor vehicle.

Introduction of Invoice-cum-bill of supply

Where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies

Next council meeting, what to expect

Twenty-third meeting of GST Council is scheduled to be convened on November 10, 2017 at Guwahati, Assam.

The issue of bringing real estate under the GST's ambit will be discussed in this meeting.

Rates for air-conditioned restaurants are likely to come down from 18 per cent to 12 per cent.

"The higher GST tax slab of 28 per cent is bound to be gradually reduced as the GST Council will evolve alternative mechanism and the next GST Council meeting will see results on this front also.

Laxminiwas & Co. (Hyderabad – India)

402, Moghul's Court,
Basheerbagh, Hyderabad 500 001, India
T: +91-40 -2324 0700
F: +91-40 -4010 0860
E: daya@Incofirm.com

Laxminiwas & Co. (Visakhapatnam – India)

11-9-28, Plot No.62
Daspalla Hills,
Andhra Pradesh – 530003.
E: vijay@Incofirm.com, daya@Incofirm.com

Laxminiwas & Co. (Bengaluru – India)

Mahavideh, Ground Floor No.3
Osborne Road, Next to Jain Temple
Bangaluru-42
E: shrenik@Incofirm.com ,daya@Incofirm.com

KNAV & Co. (Mumbai – India)

Indé Global Advisory Private Limited
Indé Global Consulting LLP
301/303, OIA House,
470 Cardinal Gracious Road,
Andheri East, Mumbai 400 099
Maharashtra, India
T: +91-22-6164 4800
E: khozema.anajwalla@knavcpa.com

P.P. Shah & Associates (Mumbai – India)

302, OIA House,
470 Cardinal Gracious Road,
Andheri East, Mumbai 400 099
Maharashtra, India
T: +91-22-6195 3000
F: +91-22-6195 3030
E: paresh.shah@knavcpa.com

MGC & KNAV Global Risk Advisory LLP (New Delhi – India)

220/221, Square One Building,
Saket District, New Delhi 110 017, India
T: +91-11-4106 9400
E: monish.chatrath@knavcpa.com

Soni Chatrath & Co. (New Delhi – India)

906, New Delhi House Building,
Barakhamba Road,
New Delhi – 110 001, India
T: +91-11-4150 4766
F: +91-11-4353 6459
E: bm.chatrath@sonichatrath.com

KNAV UK Ltd. (UK)

Kajaine House, 57-67 High Street,
Edgware, Middlesex, HA8 7DD
T: +44 20 3617 6200
F: +44 20 8732 4555
E: aman.singh@knavcpa.com

KNAV SNG (Singapore)

71 Ubi Crescent, Excalibur Center,
#08-01, Singapore 408 571
T: +65-6846 8376
F: +65-6725 8161
E: wayne.soo@knavcpa.com

KNAV P.A. (USA)

One Lakeside Commons, Suite 850,
990 Hammond Drive NE,
Atlanta, GA 30328
T: +1- 678-584 1200
F: +1- 770-676 6082
E: atul.deshmukh@knavcpa.com

KNAV – Cabinet Martine Chabert (France)

74 Rue Maurice Flandin 69003 Lyon, France
T: +334 781 82694
F: +334 721 35860
E: martine.chabert@knavcpa.com

KNAV NL B. V. (The Netherlands)

WTC Amsterdam, Strawinskyalaan 923,
1077XX Amsterdam, Netherlands
T: +312 066 44 054
F: +312 066 44 970
E: henk.burke@knavcpa.com

KNAV - ORFA (Switzerland)

Rue de la Gare 24, CH – 1860 AIGLE, Switzerland
114, Rue du Rhône, 1204 Genève, Switzerland
T: +412 44 66 77 27
F: +412 44 66 92 82
E: claude.rey@knavcpa.com

KNAV Professional Corporation (Canada)

55 York Street, Suite 401,
Toronto, Ontario, M5J 1R7, Canada
T: +1 416 229 1411
F: +1 416 229 1711
E: harshad.parekh@knavcpa.com