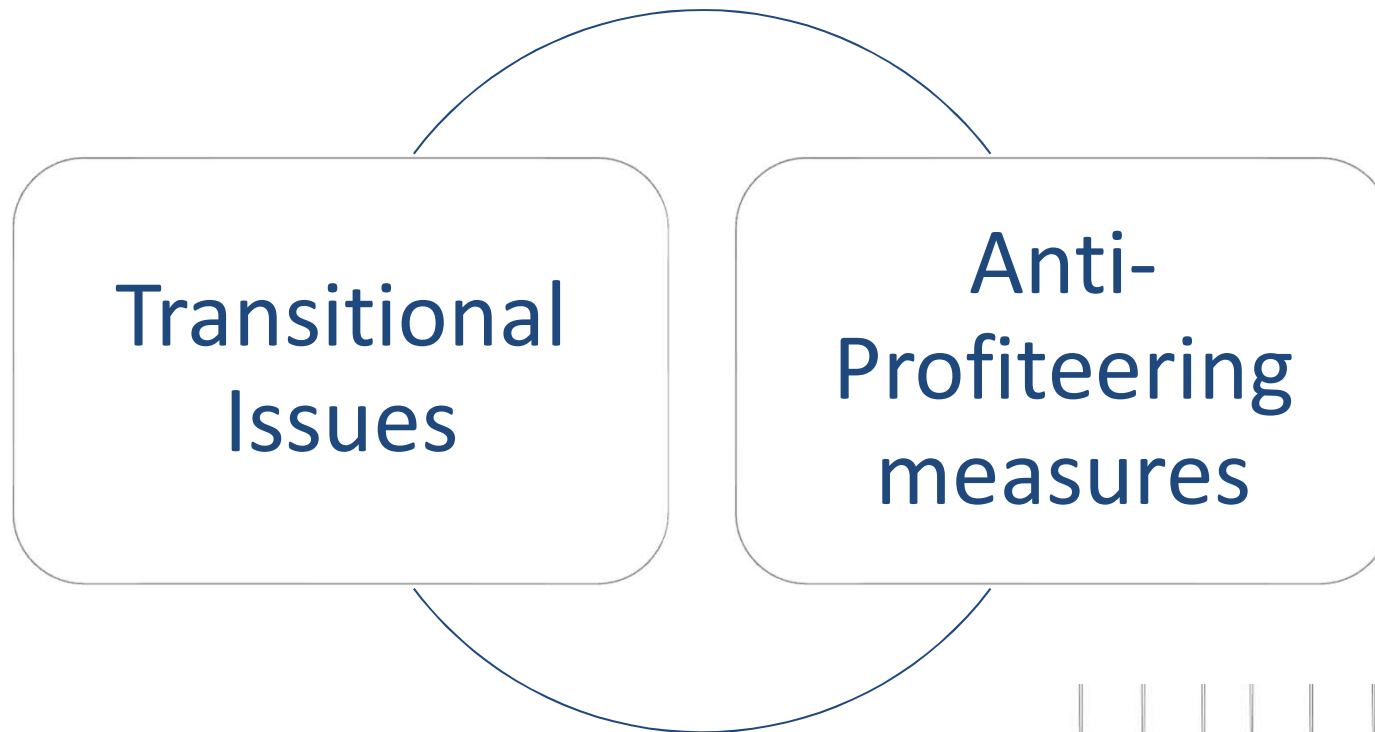


CURRENT DIFFICULTIES UNDER GST



Presented by:
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On: 06th April, 2018



TRANSITION CREDIT FOR CESSSES PAID EARLIER

🕒 Section 140 (1) :

“a person shall be entitled to take, in his electronics credit ledger, the amount of CENVAT Credit carried forward in the last return filed under pre-GST regime subject to certain conditions.”

Explanation.—For the purposes of this Chapter, the expressions “capital goods”, “Central Value Added Tax (CENVAT) credit”, “first stage dealer”, “second stage dealer”, or “manufacture” shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 or the rules made thereunder

🕒 Rule 3(1a) of CENVAT Rules:

“a provider of output service shall be allowed to take CENVAT credit of the Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016”



- ⌚ (5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law....
- ⌚ Eligible duties



Date for filing
TRAN-1?

Transitional Issues

- ⌚ For CENVAT Credits which were reversed due to non-payment within 3 months in Service tax era. How to claim CENVAT Credit of the same?
- ⌚ Section 140 (9):
 - Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, **such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day**
- ⌚ What if the amount is not paid within 3 months from 1st July, 2017?

- ⌚ Section 174. **Repeal and saving.** —
- ⌚ (2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994) (hereafter referred to as “such amendment” or “amended Act”, as the case may be) to the extent mentioned in the sub-section (1) or section 173 **shall not** —
- ...
- ⌚ (b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or
- ⌚ **(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts :**
- ⌚ Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day;

2nd Proviso to Rule 4 (7) of CENVAT Credit Rules, 2004



- ⌚ **Provided** further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9 is **not made within three months of the date of the invoice**, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service, except an amount equal to the CENVAT credit of the tax that is paid by the manufacturer or the service provider as recipient of service, **and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules**

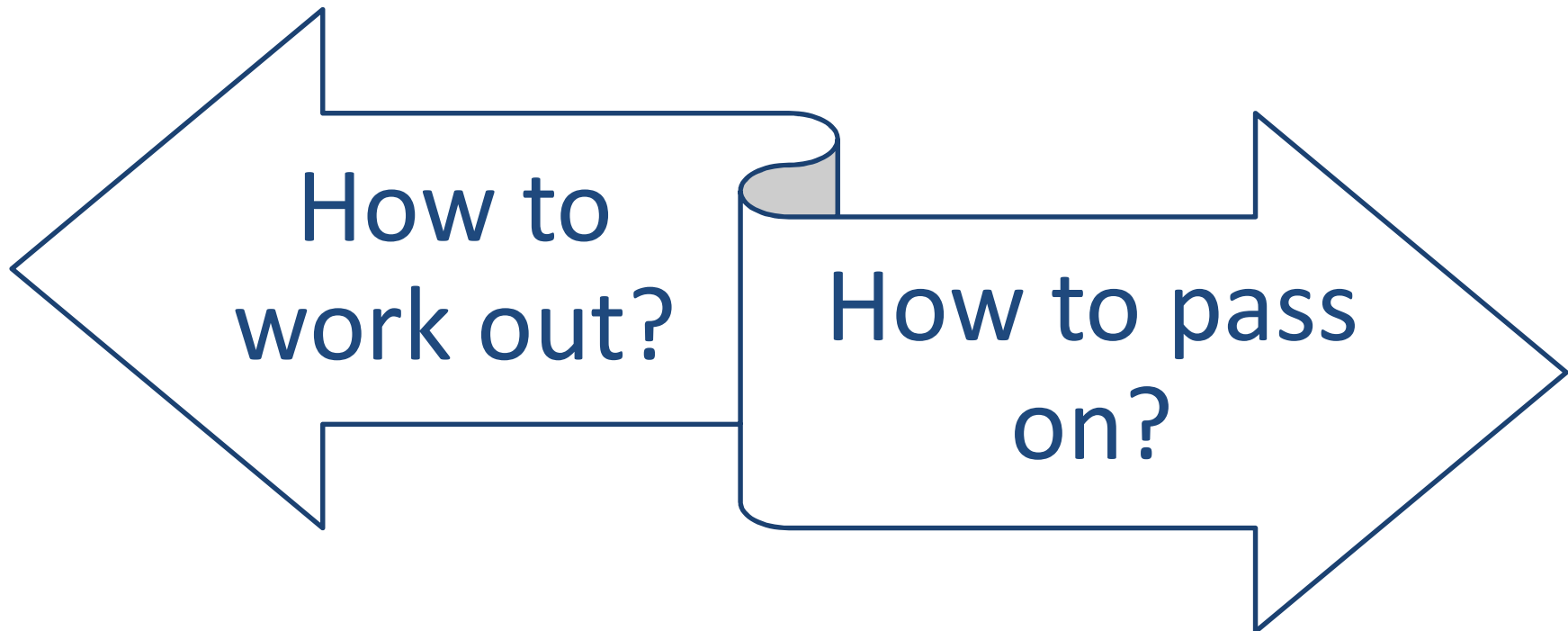
Anti-Profiteering Measures (Sec. 171)



Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices



Examination by Government whether ITC availed or reduction in tax rate actually reduced prices or not



Anti Profiteering Rules, 2017

Duty of Authority

- Whether any reduction in rate of tax on any supply of goods or services or the benefit of the input tax credit has been **passed on** to the recipient by way of commensurate reduction in prices
- **To identify** the registered person who has **not passed** on the benefit of reduction in rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices

Anti Profiteering Rules, 2017

Duty of Authority

– To order,

- Reduction in prices
- Return to the recipient, an amount equivalent to the amount **not passed on** by way of commensurate reduction in prices along **with interest at the rate of eighteen percent from the date of collection of higher amount till the date of return** of such amount **or recovery** of the amount not returned in **case the eligible person does not claim return of the amount or is not identifiable**, and depositing the same in the Fund referred to in section 57
- Imposition of penalty as prescribed under the Act; and
- Cancellation of registration under the Act

SUPPLY

Composite Supply v/s Independent Supply...

Composite Supply

- 2 or more supplies naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply



Sec. 8

- Tax Liability on composite supply shall be treated as supply of principal supply

Sec. 2 (90) Principal Supply

- Supply which constitutes pre-dominant element of a composite supply

...Composite Supply v/s Independent Supply...

Restaurant providing Hall on rent along with food

- Is it composite supply?
- Which is Principal supply?
 - Renting of Hall or
 - Supply of food?
 - Rate of tax?
 - » 5%
 - » 18%



- Or
- Both are separate independent services and tax is leviable on both the supplies independently

...Composite Supply v/s Independent Supply



15. Value of Taxable Supply

(2) The value of supply shall include——

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

Supply in only if in course of Business...

🕒 Section 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;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

🕒 Sec 2(17) Business

- Trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit
- Activity in connection/accidental/incidental/ancillary to above
- Whether or not there is volume or frequency
-

...Supply in only if in course of Business

If every activity is business

- Whether or not for pecuniary benefit
- in connection/accidental/incidental/ancillary
- Disposing of assets, etc..

What's Your
Business?



Sec. 7 Supply

- All forms of supply – sale, transfer, barter, exchange..... for consideration, in the course of business
- Supply 'taxable' only if 'in the course of business'

Was there any need to mention 'in the course of business' in Section 7?

- It could be everything is supply
 - Since every activity is Business

Scope of supply for international transactions

- 🕒 **Sec. 5 of IGST**
 - Tax payable on all inter-state supplies

- 🕒 **7(5) Supply of goods or services or both,**
 -(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

2(22) “taxable territory” means the territory to which the provisions of this Act apply

1(2) It shall extend to the whole of India



Time of supply and accounting standards

Revenue Recognition AS 9

– Sale of Goods

- Revenue from sales should be recognized when :
 - All significant risks and rewards of ownership have been transferred to the buyer from the seller.
 - Ultimate realisability *of receipt* is reasonably certain.

– Rendering of Services

- Revenue from service transactions is usually recognized as the service is performed, either by proportionate completion method or by the completed service contract method.



Supply Even if made without consideration

Cases	Revenue recognition as per AS 9	Supply as per GST
Branch Transfer	No	Yes
Supply by principal to agent, agent undertakes to supply on behalf of principal	No	Yes
Supply by agent to principal , agent undertakes to receive on behalf of principal	No	Yes
Permanent transfer of business asset without consideration, gift to an employee > Rs. 50,000/-	No	Yes

REGISTRATION

4/6/2018

Whether an unregistered person hiring a lawyer needs to take registration?



🕒 **Section 22. Persons liable for registration.**

(1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees...

🕒 **Section 24. Compulsory registration in certain cases.**

Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—

...

- ⊗ **(iii) persons who are required to pay tax under reverse charge;**
- ⊗ **Section 9 (3)** The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis **by the recipient** of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both
- ⊗ **Section 9 (4)** The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, **to a registered person** shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both
- ⊗ Side effect of registration – RCM on URD purchases

Registration

I am a Chartered Accountant and supply services to clients situated in 4 States. Should one registration at Mumbai be sufficient?



Mandatory Registration (Section 25)

Every person
who is liable to
be registered
under Section 22
or 24

shall apply for
registration in
every State/UT
in which he is so
liable

within 30 days
from the date on
which he
becomes liable
to registration

in such manner
and subject to
such conditions,
as may be
prescribed

Challenge v opportunity

