



BHILAI BRANCH OF CIRC OF ICAI

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has uploaded webcasts held on 31st January 2019 in its portal where in member can understand the process of UDIN.

CA Final Examination results of November 2018 attempt has been declared. The result has been encouraging and I congratulate all the newly qualified Chartered Accountants. Consequent to this result 14969 students have been qualified as Chartered Accountants.

Dear Members,

I would like to thank all the members of the branch for electing me as a chairman for the year 2019. I would like to start my write up for this month by informing all the members that UDIN (Unique Document Identification Number) is now mandatory for all Chartered Accountants having full time Certificate of Practice.

The Member has to Register the Certificate attested / certified buy logging in the portal www.udin.icai.org. It has been noticed that financial documents /certificates attested by third person misrepresenting themselves as Chartered Accountant Member are misleading the Authorities/ Stakeholders. To curb such malpractice PDC of ICAI has come out with UDIN. This process will secure the certificate and the regulators can check the authenticity of documents. PDC

I thank various committees of ICAI for extending their support in organising the Seminars in our branch.

I thank all the resource persons for addressing our members on various topics of professional interest. I thank all the Past Chairmen of our branch for their support and guidance in times of need.

Dear members, your words of appreciation and encouragement from time to time has been source of inspiration and driving force for me in running the branch, keeping up with the pace set by my predecessors.

With Best wishes and warm regards,

CA. NITIN RUNGTA

Chairman

Bhilai Branch of CIRC of ICAI

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REVERSE CHARGE MECHANISM UNDER GST

About Reverse charge

Reverse Charge is one of the talked about provisions under GST. This Article attempts to compile the various provisions relevant to Reverse Charge Mechanism along with the extract from the relevant notifications.

Analysis of the levy provisions of the CGST Act

Subsection 1 :talks about levy on all intra state supplies except alcoholic liquor for human consumption.

Subsection 2: talks about levy on petroleum crude, high speed diesel, motor spirit , natural gas and aviation turbine fuel in future.

Subsection 3: talks about supply of certain notified goods & services in case of which tax is to be paid by the recipient.

Subsection 4: talks about supply by an unregistered person to a registered person, in which case along with the liability to pay tax, all the other applicable provisions are also required to be complied by such registered recipient in respect of such supplies.

Subsection 5: talks about certain notified services which are supplied through e commerce operator, in which case the e commerce operator himself is treated as if he is the supplier & hence the corresponding provisions of the law to apply accordingly.

Thus Sub Section 1 & 2 are Forward Charge provisions which uses the term levy, Sub section 3 & 4 are Reverse Charge provisions which determines who must pay tax. Now, Can we say Sub Section 5 is a reverse charge ? In fact there is a deeming fiction which is created therein treating the ecommerce operator himself as the supplier & hence it cannot be construed as a reverse charge. This is further substantiated by the definition of reverse charge under Section 2(98) of The CGST Act which gives reference to only 9(3) & 9(4) and also 5(3) & 5(4) of IGST Act but not 9(5)/5(5).

In a forward charge, the liability to pay tax to the Government is vested with the Supplier (Registered). However the Supplier does not pay it from his pockets, he collects from the recipient & pays. He, in a sense acts as an agent between the government and the recipient. Thus if we examine in a true sense it is the recipient who actually pays the tax to the government although through the supplier. Contrarily in reverse charge, the recipient of supply himself directly pays it to the government.



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Reverse Charge & Registration:

Section 24 of the CGST Act mandates registration under subsection (iii) to persons who are required to pay tax under reverse charge. This is an overriding section to Section 22(1) as it starts with a Non Obstante Clause. Thus owing to this provision if one falls within the ambit of Section 9(3), then he needs to register even though he is otherwise not required. Thus the turnover criterion does not apply at all in this scenario. Lets try to exemplify this. A partnership firm having an aggregate turnover of Rs.5 lakhs avails services from Goods Transport Agency (GTA) & pays Rs.1600/- as Freight Charges to GTA. Now owing to Section 9(3) read with Notification No. 13/2017 Central Tax (Rate) dated 28th June 2017 - Sl.No.1 Column 2(f) & 4(f) , & Notification No 12/2017 Central Tax (Rate) dated 28th June 2017 - Sl.No.21 Column 3 (b)/(c), such partnership firm is mandatorily required to register & once registered all the relevant provisions of the Act would apply accordingly. However it may be noted that if the specified recipient is "Registered Person" then the above provisions of Registration do not apply.

Reverse Charge & Time of Supply The time of Supply provisions are envisaged in Section 12(3) for goods – (Date of Receipt of goods, Date of Payment as per bank account, Date of entry in the books or 31st day from the date of invoice whichever is earlier) The time of Supply provisions are envisaged in Section 13(3) for services – (Date of Payment as per bank account, Date of entry in the books or 61st day from the date of invoice whichever is earlier) **Responsibilities under Reverse Charge** In case of a 9(3) transaction if the supplier is a registered person, then responsibility of recipient is limited to the extent of payment of tax to the government & issue of GST payment voucher as provided in Section 31(3) (g) read with Rule 52 along with the corresponding reporting in the returns. On the other hand in case the supplier is an unregistered person & the recipient is a registered person, whether it is 9(3) or 9(4) the following additional responsibilities vest on the recipient along with the payment of tax,

- Classification of the supply & corresponding determination of HSN (if applicable)
- Application of time of supply provisions - Determination of the rate of tax,
- Issue of an Invoice (Section 31(3) (f)) read with Rule 46
- A Self Tax Invoice - Issue of payment voucher (Section 31(3)(g) read with Rule 52
- A GST Payment Voucher - Reporting the details under the relevant heads in the returns.

If any errors or mistakes occur in discharge of the above responsibilities the penal consequences (if any) would be applicable to the registered recipient & that is the biggest risk & burden of compliance under reverse charge.



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Reverse Charge & Tax payment:

The reverse charge liability must always be discharged in Cash & cannot be discharged through balances lying in the electronic credit ledger. Rule 85(4) as envisaged in Notification 10/2017(Central Tax - dated 28-06- 2017) clearly provides for the same. It is reproduced here below Rule 85(4) The amount deducted under section 51, or the amount collected under section 52, or the amount payable on reverse charge basis, or the amount payable under section 10, any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid by debiting the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.

Reverse Charge & Reporting in Returns:

A Registered Person (Supplier) supplying Outward Supplies subject to Reverse Charge is required to raise a Reverse Charge Tax Invoice & file in GSTR 1 under Table 4B. Presently there is no provision to report such transactions in GSTR 3B. However the same is required to be reported in GSTR 9 – Table 5C and also it has a place in the proposed returns formats. A Registered person (Recipient) procuring the goods/services subject to RCM is required to report the Self Tax Invoices & GST Payment Vouchers in GSTR 1 – Table 13. Such liability to be reported in 3.1(d) of GSTR 3B and based on eligibility credit could be claimed in 4(A)(3). Further it requires reporting in Table 4H of GSTR 9.

Reverse Charge & Compliance Time Line :

Based on the analysis of the various provisions & Notifications with respect to Reverse Charge Mechanism under GST we may create a time line for compliance as under - 01-07-2017 to 12-10-2017 - The reverse charge provisions under both Section 9(3) & 9(4)/5(3) & 5(4) would be applicable. (Subject to time of Supply provisions) 13-10-2017 till now - The reverse charge provisions under only Section 9(3) /5(3) would be applicable. Owing to Notification 38/2017(Central Tax - Rate) dated 13-10-2017 and Notification 32/2017 (Integrated Tax - Rate) dated 13-10-2017, exemption from the applicability of provisions of Section 9(4) & 5(4) respectively has been made applicable to all registered persons. This has been further extended to 30-09-2019 vide Notification 22/2018 (Central Tax - Rate) dated 06-08-2018 and Notification 23/2018 (Integrated Tax - Rate) dated 06-08-2018, This indeed is a welcome move to ease the burden of compliance by the registered persons. For Ease of Reference the following list is compiled for Notified Goods/Services for RCM. Notified Goods under 9(3) RCM (Notification Reference - Central Tax Rate - 4/2017, 36/2017, 43/2017, 11/2018)



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CGST Amendment Act - RCM under 9(4) 9(4) – Then

“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.”.

9(4) – W.e.f. 01st February 2019 In section 9 of the principal Act, for subsection (4), the following sub-section shall be substituted, namely:— “The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of 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 such supply of goods or services or both.”. However it may be pertinent to note that there are twin conditions which needs to be fulfilled

- Specified Class of Registered persons
- Specified Categories of Goods or Services

- Both to be specified via a Notification Further as of now such notification has not been issued yet. Hence there is no requirement to discharge RCM u/s 9(4) for anybody. Further the Notification 8/2017 Central Tax Rate dated 28-06-2017 which provided for exemption of Rs.5,000/- per day for RCM under 9(4) has been rescinded vide Notification 01/2019 – Central Tax Rate dated 29-01-2019. The reason being, owing to the above amendment in the CGST Act, it became Superfluous. One may need to wait in anticipation to know the class of persons and the category of goods or services or both, as may be notified and prepare for the compliances...

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KEY AUDIT MATTERS (KAMS) - A DISCUSSION

Introduction

Members would be aware that Standard on Auditing 701 (SA 701)- Communicating Key Audit Matters in the Independent Auditors' Report is applicable for audits of financial statements for periods beginning on or after April 1 2018 (in effect for the financial year ending 31st March 2019).

Applicability

Paragraph 5 of SA 701 states that the SA applies to audits of complete sets of general purpose financial statements of listed entities and circumstances when the auditor otherwise decides to communicate key audit matters in the auditor's report. This SA also applies when the auditor is required by law or regulation to communicate key audit matters in the auditor's report. However, SA 705 (Revised) prohibits the auditor from communicating key audit matters when the auditor disclaims an opinion on the financial statements, unless such reporting is required by law or regulation.

KAMs- Definition

Paragraph 8 of SA 701 determines KAM to be those matters that, in the auditor's professional judgment, were of most significance in the audit of the financial statements of the current period. Key audit matters are selected from matters communicated with those charged with governance.

Determining KAMs

Paragraph 9 of SA 701 lays down some principles for the auditor to determine Key Audit Matters in the audit reports. These principles are:

1. Areas of higher assessed risk of material misstatement, or significant risks identified in accordance with SA 315- Identifying and Assessing the Risk of Material Misstatement.
 2. Significant auditor judgments relating to areas in the financial statements that involved significant management judgment, including accounting estimates that have been identified as having high estimation uncertainty.
 3. The effect on the audit of significant events or transactions that occurred during the period.
- International Experience ISA 701- Communicating Key Audit Matters in the Independent Auditors' Report issued by the International Accounting and Audit Standards Board (IAASB) has been applicable for a couple of years now for international companies. Since SA 701 is based on ISA 701, learnings from audit reports issued after ISA 701 has been introduced could give us an idea of the impact of KAMs on financial reporting.



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ACCA Survey

The Association of Chartered Certified Accountants (ACCA) analysed the impact of ISA 701 on financial reporting.

How many KAMs to finalise in an Audit Report?

An immediate question that crops up is how many KAMs should an auditor determine and report? Though this would vary from company to company, it appears that there should not be too many KAMs as not all matters are significant in an entity can pose a threat if material misstatement. The ACCA analysis showed that there were 1,321 KAMs reported across 560 audit report (an average of 2.35). Since SA 701 is new to India and all listed entities are reporting under Ind AS (with concepts such as Fair Valuation and financial instruments), one can expect there to be an average of 3 or 4 KAM's in audit reports in India.

Popular Areas of KAM

As per the ACCA analysis, the most common KAM was on asset impairment which was mentioned in over a quarter of all reports . Revenue recognition, excluding any reference to fraud, is the second most common KAM, followed by doubtful debt, goodwill impairment and considerations relating to tax, including the valuation of deferred tax assets. The high ranking of goodwill impairment and tax is in line with expectations and indicates that auditors challenge the valuation of key assets to ensure that they are not overvalued.

Source:

Key Audit matters - unlocking the secrets of the audit published by ACCA.

Benefits of KAMs Introduction of KAMs in Audit Reports would possibly provide the following benefits:

- KAMs encourage better conversations between the auditor and those charged with governance; this in turn contributes to better governance
- KAMs help the auditor to focus on the areas of the audit requiring the most careful judgement; this in turn contributes to higher audit quality
- KAMs give preparers incentives for revisiting financial reporting and disclosures in areas related to those KAMs. This in turn leads to better financial reporting. Together, these contribute to a much broader impact of KAMs on the financial reporting process beyond merely providing better information for investors. In the Indian context, one can expect a reduction in the number of Emphasis of Matters (EOM) in audit reports as they will certainly find a place in the KAM.



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CRUCIAL ASPECTS OF INPUT TAX CREDIT

1. The Challenges in the Erstwhile Indirect tax Structure were multiple levies and compliances at the State and Centre levels, overlapping of tax on various transactions, complex laws on movement of goods, cascading of taxes, Ineligibility of input tax credit and multiple litigations with reference to classification, valuation, eligibility of credit, etc. The GST law has changed the tax incidence, tax computation, tax structure, credit utilization, Input tax credit mechanism etc. which completely has transformed the erstwhile indirect taxation system.
2. The efficient indirect tax system will be a perfect mechanism when it allows the business entity to claim the input tax credit at the time of discharging the tax liabilities. If the Input tax credit is not allowed freely to the business entity, then always it remain the cost and result into tax inefficiencies.
3. In the GST regime, the Input tax paid on inputs/input services/capital goods are allowed if they are used or intended to be used in course of business. The wider meaning is given to terms 'inputs' or 'input services' or 'capital goods' by using the words 'in course or furtherance of business' which was not existing in earlier regime.
4. In the earlier tax regime, the Authorities have disallowed the input tax credit on the grounds like purchase from cancelled dealer, purchase from the sellers who has not deposited the tax, etc. wherein the claim of input tax credit to buyer is disallowed without appreciating the fact that the liability of the seller cannot be shifted to buyer. Every supplier who has collected the tax is under the obligation to deposit the same but in many instances the authorities are recovering the taxes from the recipient by disallowing their input tax credit. In the GST regime, one of the mandatory conditions to claim input tax credit is that supplier have paid the taxes to the government and if the taxes are not paid by supplier, the input tax credit is disallowed. Therefore, the liability of the supplier is shifted to the buyer by disallowing the input tax credit. There is no robust mechanism to verify the taxes paid by the supplier for the business entity who has claimed the input tax credit. In many scenarios it would be unreasonable / unrealistic to expect recipient to verify accounts of supplier to find out whether taxes have been paid or not. Therefore, there is always a risk factor in availment of input tax credit.
5. In case of works contracts and many other contracts, there is a trade practice of retaining 5 to 10% of the contract value, even on completion of the entire contract (commonly known as Retention Money). For example, X appoints Y Ltd. to construct office building for Rs. 10 crores. On completion of the service, X will make payment of Rs. 9 crores only and withheld Rs. 1 crore which will be paid to Y Ltd. only after one or two years, so as to safeguard itself from any deficiency in service of the contractor. However, if the payment to the vendor for the value of services along with GST is not made within 180 days from date of Invoice, then such Input tax credit is to be reversed. In the Erstwhile law, in the case of Hindustan Zinc Limited dated 30.10.2018 (Excise Appeal No. E/52554-52557/2018) wherein the CESTAT has held



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that when there is no dispute that service tax is paid by the provider on full invoice value even though he has not received full/part payment from the service recipient, the CENVAT Credit can be availed by the recipient of service. Therefore, under the service tax regime, the credit of service tax can be availed on such retention money even when only service tax is paid to the supplier of service. But under the GST regime there are various school of thoughts on this issue like 'fails to pay' will trigger when there is obligation to pay, or the retention amount can be considered as deposit or the principle held in service tax law can hold good under GST law, even though the drafting of the laws is different. So, there is no clarity on this issue and there is risk of reversal of Input tax credit.

6. The concept of allowance of Input tax credit attributable to business vs non-business purpose has been emerged in the GST law. The GST law state that the 5% of common input tax credit should be reversed as attributable to non- business purpose if common input and input services are used partly for business and partly for non - business(personal) purpose. There will be independent assessment always to prove that input tax credit has been used only for business purpose as there are various scenarios where it is difficult to analyze to the extent used for business purpose or non-business purpose like input tax credit on mobile bills, Internet usage bills, travel bills, Restaurant bills ,etc. The registered person should not be denied the legitimate claim of input tax credit on superfluous grounds. Therefore, there is always a risk of disallowance of input tax credit for non-business purpose.
7. In the earlier taxation regime, the common input tax credit on capital goods was not required to be apportioned for exempt supply or non- business purpose whereas under the GST regime the input tax credit is required to be apportioned for each capital goods considering the life of capital goods as five years which is more cumbersome and challenging irrespective of the actual life of capital goods. The discretion of capitalizing the goods as capital goods is vested with the registered person and accordingly the specific provisions will be applicable to such classification. The capital goods would have been purchased at different point of time and being put to use at different point of time but the criteria is only capitalization of such goods. In certain instances even if any expenses incurred on immovable property like repair, renovation, alteration, etc and if such expenses are capitalized then input tax credit is blocked. With the risk of disallowance of input tax credit in many scenarios, the business entity have taken the option of availing depreciation on tax paid on capital goods rather than taking the option of availment of input tax credit on such capital goods.



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8. In the earlier taxation regime, the Input tax credit on pre- registration was allowed whereas in GST regime the pre-registration credits on inputs is not allowed if the person fails to take registration within thirty days.
9. In the earlier taxation regime, the refund of unutilized input tax credit was able to be claimed in case of exports whereas in case of GST regime, the refund of unutilized input tax credit can be claimed in case of exports and inverted duty structure.
10. In the earlier taxation regime, the eligibility of input tax credit was not linked with the obligation of the employer under any law for time being in force. In the GST regime, the input tax credit in respect of food and beverages, health services, renting or hiring of motor vehicles, vessels and aircraft, travel benefits to employees etc., can be availed where the provision of such goods or services is obligatory for an employer to provide to its employees under any law for time being in force.
11. Therefore, the criteria's, specification's, condition's, restriction's for enjoying input tax credit benefit has been transformed in the GST Regime. There are various scenarios as compared to the earlier tax regime wherein the decision of availment of credit has to be examined appropriately. Even the wrong availment of Input Tax Credit shall be treated as violation of the provisions of the law irrespective of whether it is utilized or not based on section 73 and section 74 of the GST Act. Even after more than a year of GST Implementation, there are lot of amendments in the provisions of Input tax credit with reference to its eligibility, availment and its utilizations. Therefore, the risk factors associated with the availment and utilization of input tax credit should be reviewed periodically for smooth compliance under the GST law.

UPCOMING EVENTS OF BHILAI BRANCH OF CIRC OF ICAI

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|------------|---|--|
| 02.03.2019 | : | MEET WITH HON'BLE COMMISSIONER OF INCOME TAX
RAIPUR |
| 12.03.2019 | : | INTERNATIONAL WOMENS DAY |
| 23.03.2019 | : | FULL DAY WORKSHOP ON GST & UDIN |
| 28.03.2019 | : | FULL DAY SEMINAR ON BANK AUDIT |