

"5.	What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?	<ol style="list-style-type: none"> 1. Section 15(2) of CGST Act specifies that the value of supply shall include "any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier." 2. It is clarified that as per the above provisions, taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS."
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77

Denial of composition option by tax authorities and effective date thereof.

Circular No. 77/51/2018-GST

31st December, 2018

Rule 6 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") deals with the validity of the composition levy. As per the said rule, the option exercised by a registered person to pay tax under the composition scheme shall remain valid so long as he satisfies the conditions mentioned in section 10 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") and the CGST Rules. The rule lays down the procedure for withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme and also the procedure for denial of option to the taxpayer to pay tax under the said scheme where he has contravened the provisions of the CGST Act or the CGST Rules.

2. In this connection, doubts have been raised as to the date from which withdrawal from the composition scheme shall take effect in a case where the composition taxpayer has exercised such option to withdraw. Doubts have also been raised regarding the effective date of denial of the option to pay tax under the composition scheme where action has been initiated by the tax authorities to deny such option to the composition taxpayer. Further, clarification has been sought regarding the follow up action to be taken by the tax authorities when the composition option is denied to the taxpayer retrospectively. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues raised as below.
3. Sub-rule (2) of rule 6 of the CGST Rules provides that the composition taxpayer shall pay tax under sub-section (1) of section 9 of the CGST Act as a normal taxpayer from the day he ceases to satisfy any of the conditions of the composition scheme and shall issue tax invoice for every taxable supply made thereafter. Sub-rule (3) of rule 6 of the CGST Rules provides that the registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in **FORM GST CMP-04** on the common portal. He shall file intimation for withdrawal from the scheme in **FORM GST CMP-04** within seven days of the occurrence of such event.

4. As per sub-rule (4) of rule 6 of the CGST Rules, where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 of the CGST Act or has contravened the provisions of the CGST Act or the CGST Rules, he may issue a notice to such person in **FORM GST CMP-05** to show cause as to why the option to pay tax under section 10 of the CGST Act shall not be denied. Upon receipt of the reply to the show cause notice from the registered person in **FORM GST CMP-06**, the proper officer shall, in accordance with the provisions of sub-rule (5) of rule 6 of the CGST Rules, 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 of the CGST Act from the date of the option or from the date of the event concerning such contravention, as the case may be.
5. It is **clarified** that 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.

78

Clarification on export of services under GST.

Circular No. 78/52/2018-GST

31st December, 2018

Representations have been received seeking clarification on certain issues relating to export of services under the GST laws. The same have been examined and the clarifications on the same are as below:

Sl. No.	Issue	Clarification
1.	In case an exporter of services outsources a portion of the services contract to another person located out-side India, what would	1. Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place:-