



# ENNUM EZHUTHUM

## 46<sup>th</sup> Regional Conference of SIRC of ICAI

Friday & Saturday, 12<sup>th</sup> & 13<sup>th</sup> December 2014, Madurai  
Hosted by: Madurai Branch of SIRC of ICAI  
Madura College Grounds, Madurai



### Day - 1: December 12, 2014 (Friday)

08.00 am Registration

10.00 am Inaugural Session to be graced by

Smt. Nirmala Sitharaman  
Hon'ble Union Minister of State for  
Finance & Minister for Corporate Affairs  
Shri Pon Radhakrishnan  
Hon'ble Union Minister of State for Heavy  
Industry and Public Sector Enterprises  
CA. Piyush Goyal (\*Confirmation Awaited)  
Hon'ble Union Minister of State for  
Power, Coal, New and Renewable Energy  
**Presidential Address**  
CA. K. Raghu  
President, ICAI  
**Special Address**  
CA. Manoj Fadnis  
Vice-President, ICAI

11.30 am Technical Session - 1

Issues in Assessment Procedure  
Shri. Firoze B Andhyarujina, Mumbai

01.00 pm Lunch

02.30 pm Technical Session - 2

Recent Amendments in Companies Act  
CA. Ashish Makhija, New Delhi

03.30 pm Technical Session - 3

International Taxation with Special  
reference to NRI Taxation  
CA. Rashmin Sanghvi, Mumbai

04.30 pm Technical Session - 4

Taxation of Charitable Trusts / Nonprofit  
Organization  
CA. Dr. Manoj Fogla, Cuttack

06.00 pm Fire Works Display

07.00 pm Entertainment

08.30 pm Dinner

### Day - 2: December 13, 2014 (Saturday)

06.00 am Walkathon around Meenakshi Temple

08.00 am Breakfast

09.00 am Spiritual Session

10.00 am Technical Session - 5

Recent Changes in Service Tax  
CA. Ashok Batra, New Delhi

11.30 am Panel Discussion:

Challenges and Opportunities for Members  
**Panelists:**

CA. R. Balakrishnan, Past President, ICAI  
CA. B. P. Rao, Past President, ICAI  
CA. G. Sitharaman, Past President, ICAI

**Moderator:**

CA. G. Ramaswamy, Past President, ICAI

01.00 pm Lunch

02.00 pm Technical Session - 6

Rotation of Auditors under  
Companies Act, 2013  
Padma Shri Awardee  
CA. T.N. Manoharan, Past President, ICAI

03.00 pm Technical Session - 7

Taxation of Real Estate Transactions  
CA. R. Bupathy, Past President, ICAI &  
CA. Dr. Girish Ahuja, New Delhi

04.30 pm Thanks giving session

#### DELEGATE FEE:

Members: ₹ 3500

Non Members: ₹ 5250

Delegate fee by way of Cash or by Cheque / DD drawn  
in favour of '46<sup>th</sup> Regional Conference of SIRC of ICAI'  
payable at Madurai or Chennai can be submitted at  
SIRC Office or any Branch/CPE Study Circle/CPE  
Chapter/CPE Study Group of SIRC of ICAI

#### Payment by NEFT:

Axis Bank, Tallakulam, Madurai

Name: 46<sup>th</sup> Regional Conference of SIRC of ICAI

A/c No.: 914010040327254

IFSC: UTIB0000876

## FROM THE EDITOR'S DESK

### ON TDS

1. In this article I wish to highlight some of the recent issues which has cropped up in the matter of Tax Deduction at Source.

2. The introduction of the TDS provision in the Act, years back, by the legislature was with the intention for ensuring that payments which are taxable in nature do not go untaxed. It was a simple procedure those days available to the assessee and there was no difficulty for the payee to get credit for the tax deducted by the payer by attaching the relevant certificate. As years went by, this has become complicated and difficult to be complied with, TDS actually deducted and paid are not given credit in the payees' return by holding that there is mismatch, TAN number shown is not correct and so on. Of course, rectification methods are provided which also is a long driven process. It is high time that the makers of law look into this matter and make this simple for an ordinary person to understand and comply.

3. In the union budget announced, a welcome relief was given by the Finance Minister in that the disallowance u/s 40 (a) ia has been reduced from 100% to 30%. Still I feel the fixation of 30% is also on the higher side. No person will purposefully fail to deduct tax nor fail to pay the tax which is already deducted. Such issues occur because of the cumbersome procedures in the TDS provisions. Added to this different officers make different interpretation on the applicability of TDS provisions. To Quote an example is the applicability of TDS on freight charges. Basically there is no contract between the assessee receiving the services from the freight operator. The assessee places order with their suppliers who would dispatch the goods according to their choice of operators. To say that there is a contract between the assessee and the operator is nothing but abuse of the TDS provisions. Similar would be the case with ocean freight. Huge additions have been made in the past in an unscrupulous manner.

4. As regards to the provisions of section 40(a) ia, a welcome relief would be the recent decision of the Supreme

Court in the case of Vector Shipping Services Ltd. dated 2.7.2014 wherein their lordships have held that at the expenditure has been incurred and paid before the close of the previous year, the provisions of section 40(a) ia would not be applicable. Of course, the apex court having given this verdict tantamount to be the law of the land. It is hoped that as assured by the Finance Minister during his post budget speech, retrospective amendments will not be made to over come this decision.

5. To add fire to fury, the consequential provisions of section 201, 201(1A) and 271C are also initiated by many officers. This would result in payment of tax in toto to the extent of more than the income. In this era of simplification and rationalization, I do not think that this should be intention of the legislature to get some thing out of the assessee which they have not earned.

6. Various representations having made to the Finance Minister by the professional bodies and it is hoped that separate code be made for the TDS provisions to make it simple so that the assessee's at large can comply with the same without any difficulty. After all none of the assessee bear the TDS burden on their back. A portion is deducted out of the payment due to a 3rd party and they are only acting as Trustee for the government which is like collecting Sales Tax. So in this background, the department would appreciate that none of the assessee shall have a pinch in payment of TDS as long as it is not out of their pocket.



CA.R. SREENIVASAN

CA.R.SRINIVASAN  
EDITOR



# Works Contract tax Recent developments

## Introduction: Evolution of works Contract tax

### Important ingredients of Sale

- Two Parties, II) Goods, iii) Transfer of ownership
- Consideration, v) Delivery

Besides above ingredients all other ingredients such as offer, acceptance etc which are required to form a valid contract should be present

Gannon Dunkerley & Co (9 STC 353)

In this case Supreme Court held that "sale" should have the same meaning as it has under the Sale of Goods Act, 1930. i.e. If any transaction is to be treated as sale all the above mentioned ingredients should be present.

Because of the judgment state governments could not levy sales taxes on the following

- Works contract
- Supply of foods in hotel
- Lease contract etc

Article 265 of Constitution of India reads that "No tax shall be levied or collected except by authority of Law"

46th Amendment of constitution of India

In order to enable states to levy tax on the above types of transactions the concept of Deemed sale introduced

**The explanation in the section 2 (23) enumerates deemed sale. They are**

- Compulsory acquisition of goods, ii) Hire Purchase, iii) Lease Contract
- Supply of goods by an association to its members,
- Supply of food, drinks etc in restaurant
- Works Contract

### Definitions in Kerala value added tax Act, 2003

Works contract S.2(iv)

Any agreement for carrying out for cash or for deferred payment or other valuable consideration

- The construction,
- fitting out,
- improvement,
- repair
- manufacture,
- processing,
- fabrication,
- erection,
- installation,
- modification or

- commissioning of any movable or immovable property;

### Contractor S.2 (xiv)

"Contractor" means any person who undertakes any works contract for execution and includes a sub-contractor.

### Dealer S.2(XV)

In the definition of dealer "any person executing works contract" is included

### Goods S.2(xx)

Means all kinds of movable property (other than newspapers, actionable claims, electricity, stocks and shares and securities) and includes live stock, all materials, commodities and articles and every kind of property (whether as goods or in some other form) involved in the execution of a works contract, and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale;

### Awarder S.2(vii)

Means any person who awards any works contract to a "contractor for execution"

### Person S.2(xxxiii)

(xxxiii) "Person" includes: -

- an individual
- a joint family
- a company
- a firm
- an association of persons or a body of individuals; whether incorporated or not
- the Central Government or the Government of Kerala or the Government of any other State or any department thereof or a Union Territory in India
- a local authority
- every artificial juridical person not falling under any of the preceding sub-clauses

Incidence and Levy of Works contract tax

**Section 6.** (1) Every dealer whose total turnover for a year is not less than ten lakh rupees and every importer or casual trader or agent of a non-resident dealer, or



CA.UDAYAVARMA.R

## Basic Condition in Partial RCM

Service Receiver

Business entity registered as body corporate

He should be located in taxable territory

Service Provider

Individual

HUF

Partnership Firm

AOP

Rent a Cab Services

- Renting of Motor Vehicle
- If abatement Of 60% claimed
- If abatement is not claimed
- S.R. is Liable to pay @ 4.944%
- S.P. is not Liable
- Pay any tax
- S.R. is Liable to pay @ 6.18%
- S.P. is Liable to pay @ 6.18% (wef 1.10.2014)

## Details in Invoice under RCM

Governing Rule: Rule 4A of the Service Tax Rules 1994.

Invoice shall indicate the name, address and the registration number of the service provider and person receiving taxable service; the description and value of taxable service provided or agreed to be provided; and the service tax payable thereon.

As per clause (iv) of sub-rule (1) of the said rule 4A "the service tax payable" thereon has to be indicated. The service tax payable would include service tax payable by the service provider.

## Important Points relating to RCM

Cenvat can not be availed for discharging the ST Liabilities on RCM

ST Paid under RCM can be utilized towards the discharge of ST on output services

Threshold exemption of upto Rs.10 Lac is not applicable to Service Recipient here in RCM except Legal services

## Important Points relating to RCM

Point of Taxation Rules: [Notification No.13/2014-ST]

The first Proviso to rule 7 of the Point of Taxation Rules (POTR) is being amended to provide that point of taxation in respect of reverse charge will be the payment date or

the first day that occurs immediately after a period of three months from the date of invoice, whichever is earlier. This amendment will apply only to invoices issued after 1st October, 2014. A transition rule is being prescribed (new rule 10 of POTR).

Thank You

## Highlights of New Proposed Goods & Service Tax (GST):

1. The basic principal governing behind GST is to have single Taxation System for Goods and Services across the country.

Currently Indian economy has various taxes on Goods and services such as VAT, Service Tax, Excise, Entertainment Tax, Luxury Tax Etc.

Now in the new Proposal of GST;

We will be having only two taxes on all goods and Services as follows:

- State Level GST (SGST)
- Central Level GST (CGST)

2. In case of Central GST, following Taxes will be subsumed with CGST which are at presently levied separately on goods and services by Central government:

- Central Excise Duty
- Additional Excise Duty
- The Excise Duty levied under Medicinal and toiletries preparation Act
- Service Tax
- Additional Custom Duty (CVD)
- Special Additional Duty
- Surcharge
- Education Cess and Secondary and Higher Secondary education Cess

3. In case of State GST, following taxes will be subsumed with SGST; which are presently levied on goods and services by State Governments:

- VAT/Sales Tax
- Entertainment Tax (unless it is levied by local bodies)
- Luxury Tax
- Tax on lottery
- State Cess and Surcharge to the extent related to supply of goods and services.

4. The basic principal for subsuming of taxes in GST is provided as follows:

- Those taxes which commences with import / manufacture / production of goods or provision of services at one end and the consumption of goods and services on other end.
- The taxes, levies and fees which are not related to supply of goods & services should not be subsumed under GST.

5. Taxes on items containing alcohol and petroleum product are kept out of GST.

They will continue to be taxed as per existing practices.

6. Tax on Tobacco products will be subject to GST.

But government can levy the extra Excise duty over and above GST.

7. The Small Taxpayer:

The small taxpayers whose gross annual turnover is less than 1.5 Crore are exempted from CGST and SGST.

8. Input Tax Credit (ITC):

Taxes Paid against CGST allowed as ITC against CGST. Taxes paid against SGST allowed as ITC against SGST.

9. Cross utilization of ITC between the Central GST and State GST would not be allowed.

Exception: Inter State Supply of goods and services.

10. PAN based identification number will be allowed to each taxpayer to have integration of GST with Direct Tax.

11. IGST Model and ITC:

- Center would levy IGST (CGST + SGST)
- The ITC will be allowed in this transaction will be SGST, IGST, CGST as applicable.
- Appropriate provision will be provided for consignment or Stock transfer.

12. GST Rate Structure:

- Two Rate Structure
- A lower rate for necessary items and goods of basic importance
- Standard rate for goods in General
- Special Rate

13. Exports are fully exempted with Zero rates.

Goods Transport Agency Services

Provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

Any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

Any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

Any co-operative society established by or under any law;

Any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944)

Any body corporate established, by or under any law; or

Any partnership firm whether registered or not under any law including association of persons;

Relevant aspects relating to the above are briefed here as below :

Transportation of fruits, vegetables, eggs or milk by road in a goods carriage is exempt from Service Tax. (Refer point no. 21 of notification no. 25/2012).

Transport of organic manure by vessel, rail or road (by GTA) is being exempted by amending entries at Sl.No. 20 and 21. Therefore, organic manure will be on par with fertilizer which is already exempted.

Services by way of loading, unloading, packing, storage or warehousing, transport by vessel, rail or road (GTA), of cotton, ginned or baled, is being exempted

[amendment of entry at Sl. No. 20 & 21 and 40]. Relevant aspects relating to the above are briefed here as below :

No Service Tax is to be paid when Gross Amount charged on all consignments transported in a goods carriage does not exceed Rs. 1500/-.

No Service Tax is to be paid when Gross Amount charged on individual consignment transported in a goods carriage does not exceed Rs. 750/-

Taxable value of Goods Transport Agency Service shall be exempt in excess of 25%. In other words, abatement of 75% is available.

Services tax paid on service provided for transport of goods from inland container depot to the port of export can be claimed as refund.

Goods Transport Agency

- Taxability -75% Abatement on the Service Amount say On Rs 100
  - Taxable Amount Rs.25
  - Liability -Recipient Liable to discharge ST
  - Any person who pays freight either himself/Agent
  - POP -POP of services of GTA shall be the Location of Person liable to pay tax.
  - Provided that when the person is located in NTT , the provider shall be liable to pay ST
- Legal Services

Legal services provided by advocates or partnership firms of advocates are exempt from service tax when

provided to the following:

An advocate or partnership firm of advocates providing legal services.

any person other than a business entity.

a business entity with a turnover up to rupees ten lakh in the preceding financial year.

However, in respect of services provided to business entities, with a turnover exceeding rupees ten lakh in the preceding financial year, tax is required to be paid on reverse charge by the business entities.

PROVISIONS WITH REGARD TO taxable service from NON TAXABLE TERRITORY

1) A company ABC provides a taxable service to a receiver PQR, both located in the taxable territory.

Who will be liable to pay service tax. ?

Ans.- Since the location of the receiver is in taxable territory, the service is taxable. Service tax liability will be discharged by ABC as service provider.

2) And if ABC would have been provided such service to a recipient DEF located in non taxable territory. Whether it is a taxable service ?

Ans. here Since the service recipient is located outside the taxable territory. the same would be exempt service.

3) If same service would have been provided to PQR (located in taxable territory) by an overseas provider XYZ (located in Non taxable territory) Whether this service is taxable? And if yes who will be liable for pay service tax ?

Ans. Since service recipient is located in the taxable territory, it is taxable service. However in this case since service provider is located in Non taxable territory, the tax liabilities would be discharged by the receiver, under the reverse charge principle.

Partial Reverse Charge Mechanism

List of services under partial reverse charge mechanism

Sr.No	Nature of services	Description of services	% of Ser tax payable by S.P.	% of Ser Tax payable by S.R.
1)	Manpower Supply Service	Supply of manpower for any purpose including security services provided to company	25%	75%
2)	Rent a cab services	Renting of Passenger vehicles <ul style="list-style-type: none"><li>➤ With abatement</li><li>➤ Without abatement</li></ul>	Nil 50% (wef 1.10.2014)	100% 50% (wef 1.10.14)
3)	Works Contract Service	Works Contract service provided to company	50%	50%

dealer in jewellery of gold, silver and platinum group metals or silver articles or contractor or any State Government, Central Government or Government of any Union Territory or any department thereof or any local authority or any autonomous body whatever be his total turnover for the year, shall be liable to pay tax on his sales or purchases of goods as provided in this Act.

The liability to pay tax shall be on the taxable turnover, -

(a) in the case of goods specified in the Second and Third Schedules at the rates specified there in and at all points of sale of such goods within the State.

(b) Omitted.

(c) in the case of transfer of the right to use any goods for any purpose whether or not for a specified period, at the rate of 5% at all points of such transfer;

(d) in the case of goods not falling under clauses (a) or (c) at the rate of 14.5% at all points of sale of such goods within the State. Government may notify a list of goods taxable at the rate of 14.5%;

(e) in the case of transfer of goods involved in the execution of works contract where transfer is in the form of goods, at the rates specified for such goods in clauses (a) or (d) above, as the case may be;

(f) In the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods, but in some other form, at the rate of 14.5 per cent and when the transfer is in the form of goods at the rates prescribed under the respective Schedules.

Method of Payments of sales tax on works contract

- Compounding Method
- Regular VAT method

Compounding under section 8(a) (i)

- Any works contractor registered under CST Act he has to pay
  - 7%of the whole contract amount along with tax u/s.6(2)
  - 5% of the whole contract amount along with tax u/s.6(2)in case the awarder is GOK, Water authority or local Authorities

Compounding under section 8(a) (ii)

- Any works contractor NOT registered under CST Act he has to pay
  - 4%of the whole contract amount along with tax u/s.6(2)provisions of this clause shall not apply to any works contract in which the transfer of material is in the form of goods.

Compounding under section 8(a) (ii)

In the case of any work compounded under this clause, and which remains unexecuted fully or partly as on 31st March, 2014, the contractor may continue to pay tax in respect of such works in accordance with the provisions of this clause as existed when he had opted for compounding upto 31st March, 2015.

Compounding under section 8(a) (ii)

- Works contract awarded by GoK, Kerala Water Authority or local authorities, the contractor shall not be laible to pay tax u/s. 6 (2) in respect of the purchase of soil, sand or rocks.
- Tax cannot be collected from the Awarder

Compounding under section 8(a) (ii)

In case of works given to sub contractor , amount paid to sub contractor can be excluded if Form 20 H is collected and only on balance contract amount 4% has to be paid

Procedure for compounding ( Rule 11

- Application in Form No. 1B and shall be filed before the assessing authority on or before the 30th day of April every year
- If the Assessing authority is satisfied that the application filed is in order, it shall grant permission in Form No. 1E

v General points

- In case of works contract, invoice has to be given in Form No:8C
- For purchases from unregistered dealers invoice has to be in form No: 8E
- Dealer opts for compounding , quarterly return has to be filed in the form No: 10 B on or before 25th of next month for quarter ending 30th June, 30th September, 31swt December, 31st March
- Deduction is available in respect of the amount paid to sub contractors provided the dealer claiming deduction shall produce proof that sub contractor is registered dealer and the turnover on relation to the amount is included in the return filed by such sub contractor and tax thereon has been paid

Regular VAT method

Features of regular Method

- Tax computed on taxable turnover(Output tax)
- Tax can be collected
- Input tax credit can be availed on tax paid on purchases made locally
- Purchase tax has to be paid on purchases from unregistered dealers
- As per section 6 of KVAT Act rate on taxable turnover of goods used in works contract is
  - If the goods are ascertainable-rate of tax-at



appropriate rate in the schedule

In case of goods are transferred not in the same form / not ascertainable—Rate of tax-14.5%

#### Methods for computation of taxable turnover

- Material cost method
- Deduction method
- Material cost Method
- Under Material cost method

Turnover will be= cost of goods + Related overhead charges + Profit

On this tax as per schedule is to be applied

Section 6(f) in case of transfer of goods involved in execution of works contract, where the transfer is not in form of goods, but in some other form, at the rate of 14.5% and when transfer is in the form of goods at the rates prescribed under respective schedules.

- Deduction method

As per this method, from the gross bill amount following deduction can be made to arrive taxable turnover

Labour charges

Charges for planning, and designing and architect fees

Machinery hire charges, interest on machinery loan, depreciation on machinery Consumables

Establishments and overhead charges relatable labour and service

Profit relatable to labour and services

On balance amount tax has to be paid 14.5%

Lump sum deduction method - Incase of labour cannot be ascertained from the books of accounts lump sum deduction can be made for labour and services as pertable given in KVAT

Ø From the gross amount and in the case of general construction contract 25% can be deducted to arrive taxable turnover and in case of structural contract 30 % can be deducted to arrive taxable turnover

#### Tax deducted at source

Section 10 . Deduction of tax at source –

(1) Every awarder shall deduct from every payment, including advance payment, made by him to any works contractor liable to pay tax under section 6, in relation to any works contract awarded, the tax payable by the contractor in respect of such contract under that section, whether the transfer of goods involved in the execution of works contract is in the form of goods or not, and remit it to Government, in the prescribed manner, on or before the twentieth day of the month succeeding the month in which such deduction is made.

Every such awarder shall also file such return as may be prescribed.

( 2 ) For the purpose of sub - section (1), the contractor may produce a liability certificate in relation to such works contracts from the assessing authority showing the tax liability or tax remittance, as the case may be, of the contractor in relation to the work.

#### Rates of TDS

(2A) In cases where a liability certificate has been produced as per subsection (2), payment shall be effected to a works contractor, on the basis of the said certificate; and,—

(i) in case of work awarded by GoK,KWA or LA after deducting 4% of the amount paid as per the WC

(ii) in other cases—

(a) after deducting 8% of the amount paid as per the WC in the case of Registered contractors

(b) after deducting 10% of the amount paid as per the WC in the case of other contractors:

- The awarder shall not insist any tax liability certificate if contractor is opted for compounding
- If the awarder is fails to deduct tax, remit TDS within the stipulated time, the awarder and any person or persons responsible for such deduction on behalf of the awarder liable for payment of such amounts to the Government forth with as if it were a tax due from him. S.10(3)

#### Filing Of Returns

• Dealer opts for compounding , quarterly return has to be filed in the form No: 10 B on or before 25th of next month for quarter ending 30th June, 30th September, 31st December, 31st March

• Dealer opts not compounding regular VAT returns to be submitted

Thank You

## Reverse Charge Mechanism



CA.INDHU S N

### INTRODUCTION OF REVERSE CHARGE MECHANISM (RCM)

What do you mean by RCM ?

Applicability

Notification No. 30/2012- ST dated 20/06/2012

Categories covered

Services under full reverse charge mechanism (RCM)

Services under partial reverse charge mechanism (RCM)

List of services under full Reverse Charge Mechanism

1)	Insurance Agents services	Services provided or agreed to be provided by an insurance agent to any person carrying on insurance business
2)	Goods Transport agency services (GTA)	Services provided by GTA in relation to transportation of goods by road
3)	Sponsorship Services	Sponsorship services to any Body Corporate or Partnership firm located in taxable territory
Sr No.	Nature of services	Description of services
4)	Legal Services	Legal services by Individual advocate or a firm of advocates including arbitral services to business entity with turnover exceeding Rs.10 lakhs in the preceding year
5)	Government services	Support services by Government or local authority to any business entity.
6)	Director Services	Services provided or agreed to be provided by a Director of a company to a said company
7)	Provision of Taxable service from non-taxable territory	Any taxable service where the Service provider is located in a non taxable territory and service recipient located in a taxable territory
8)	Provision of Taxable service by Recovery Agents	Services provided by Recovery Agents to Banks, Financial Institutions and NBFC is being brought under the reverse charge mechanism; service receiver will be the person liable to pay service tax. [Notification 9/2014 -ST and 10/2014-ST]