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## Can Second Hand Goods Dealer Opt For Composition Scheme?

### Introduction:

Normally Value of supply of goods or services or both shall be **transaction value**; however, in respect of **second hand goods**, a person dealing in such goods may be **allowed** (option) 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.

### Legal Provisions:

#### Levy & Collection are discussed in Section 9 of CGST Act, 2017

**As per Section 9(1) of the CGST Act, 2017**, Subject to the provisions of sub-section (2), there shall be **levied a tax** called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, **on the value determined under section 15** and at such rates, not exceeding twenty percent, as may be notified by the Government on the recommendations of the Council and collected in **such manner as may be prescribed** and shall be paid by the taxable person.

**As Per Section 15(1) of the CGST Act, 2017**, Value of supply of goods or services or both shall be **transaction value**, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

**As Per Section 15(4) of the CGST Act, 2017**, where the value of the supply of goods or services or both cannot be determined under Section 15(1), the same shall be determined in such manner as may be prescribed. **Valuations rules are prescribed** under Chapter IV of the CGST Rules, 2017 from Rule 27 to Rule 35.

#### Valuation of Second Hand Goods:

**As per Rule 32(5) of the 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 the purchase of such goods, the **value of supply** shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.

### Interpretation to the Margin Scheme Valuation

**Rule 32(5)** flows from Section 15(4) which applies "**ONLY TO**" cases covered by Section 9 of the CGST Act, 2017.



## Can Second Hand Goods Dealer Opt For Composition Scheme?

### Composition Levy – Section 10

Section 10 of CGST Act, 2017 starts with a non-obstinate clause providing: **“Notwithstanding anything to the contrary contained in this Act** but subject to provision of sub sections (3) & (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh may opt to pay, **in lieu of the tax payable by him under section 9(1),\*\*** an amount calculated at such rate as may be prescribed, but not exceeding

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**\*\* Amended vide CGST Amendment Act, 2018**

**Prior to CGST Amendment Act, 2018**, section 10(1) provided that composition tax was in **“lieu of tax payable by him.”**

*Hence one can argue that, composition dealer can pay tax on the basis of Rule 32(5) by opting margin Scheme.*

Notification No. 8/2017- central tax dated 27.06.2017 was amended by notification No. 1/2018 – central tax dated 01.01.2018 composition tax would be calculated as under:

(iii) Half Percent of **turnover of taxable supplies** of goods in the stat in case of other suppliers

**For the Purpose of Section 10**, neither value of taxable supplies has been specified for the purpose of payment of tax. **For this one may have to refer again** section 15 for the value of taxable supply which in turn again contradicts the above provisions.

### Analysis:

- Person dealing in Second hand goods cannot opt the composition scheme and pay tax on the value prescribe under Rule 32(5). As **Rule 32(5)** flows from Section 15(4) which applies **“ONLY TO”** cases covered by Section 9 of the CGST Act, 2017 **NOT** by Section 10.
- Merely similarity of Non availment of Input Tax Credit under Rule 32(5) & Section 10 doesn't make Taxable Registered person dealing in second hand goods liable to opt composition scheme
- Government must notify separate valuation rules for the composition scheme dealers.

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Thank  
You!