Reverse charge compliance in GST

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Reverse charge mechanism is not a new concept for indirect tax assesses. Most Indian State VAT laws provides for levy of VAT on procurement of taxable goods from unregistered persons. Even in service tax, there are specified categories of services such as manpower supply services, rent-a-cab services, road transport service etc. which are liable for tax under reverse charge basis. Services from outside the Country are also liable on RCM. Under central excise law, where molasses are produced in a Khandsari sugar factory, the person who procures such molassesfor use in manufacture of any commodity should pay the excise duty.
In this article, we try to analyse the requirement, issues with respect to reverse charge compliance in new GST law.

Reverse charge mechanism (RCM) refers to payment of taxes by recipient of goods or services rather than supplier of goods or services. According to Section 9(4) of CGST Act 2017, GST in respect of taxable supplies by unregistered to a registered person should be paid by such registered recipient. Section 9(3) provides for GST levy under reverse charge on specified goods or services. Such specified services or goods could be even from registered persons. Electronic commerce operator would be made liable for GST under RCM on specified categories of services ***(not on goods)*** provided within the state. Such levy is applicable only when specified services are supplied through electronic commerce operator.

The list of goods or services which are always liable for GST under RCM are yet to be notified. Normally the areas where there is not much organised activity or where the suppliers would be uneducated and may not comply or will not comply are areas where RCM is imposed.It is also imposed on suppliers who cannot be reached like those who are located outside India on whom India would not have any jurisdiction. The services like goods transportation agency services could still continue to be under RCM.

The dangerous part of RCM is levy of GST on procurement of any taxable goods or services from unregistered persons. This could be unfair to the small suppliers and create lot of practical issues and few of them are discussed in subsequent paragraphs.

Levy due to registration

A person engaged in only export of goods or services would have obtained registration for limited purpose like claim of refund though there is no output GST payable by him.

However, such registered person would also be liable for compliance under RCM on procurement of goods or services from unregistered persons. A person who is required to pay tax under reverse charge mechanism has to take compulsory registration under GST law.

Identification of all supplies for payment of taxes

Big challenge for compliance could be identification of all taxable supplies from unregistered suppliers and applying the rate of taxes. There could be procurements such as biscuits, coffee or tea for employees, gift items, stationary items etc., all of which could be liable for GST. There could be miscellaneous services such as electrical maintenance, plumbing, carpentry etc. The assesse needs to identify all such procurements and ascertain rate of taxes for payment which could be a tedious exercise. There could be lot of expenses which are incurred by the employees travelling at other places. Even these expenses need to be screened every month to discharge liability under reverse charge.

Credit eligibility would be subject to conditions specified in Section 16 of CGST Act. Items like biscuits, coffee would not be eligible for credit as credit on such items are specifically restricted. This would add to the cost of procurements.

Documentation requirement

Registered person liable to pay GST under RCM should raise tax invoice (on self) according to Section 31(3)(f) of CGST Act on the date of receipt of goods or services. Tax invoice should contain various details like description of goods, HSN or SBC, rate of taxes etc. The invoices need to be generated for each of the procurement separately. In addition to invoice, he also needs to issue a payment voucher to the supplier at the time of making the payment. These details need to be disclosed in the GSTR return on monthly basis.

RCM affects small businesses

Due to increased compliance, the registered persons would start avoiding procurements from small time vendors. Though this could force registration of non-compliant vendors, the genuine small vendors would suffer. Registration, complying with complicated return filing requirements could force small vendors to opt out of business. This could create employment problem as well. The best way for government could have been to provide exemption on payment of tax under RCM to a certain limit for each vendor. However, presently it is not clear if government is even aware of the implication the RCM has on small vendors.

Conclusion: Procurement of goods or services from unregistered persons would increase the compliance cost in addition to extra manhours. One more disadvantage is non-eligibility of ITC to unregistered vendors which results in increasedprocurement cost. Before GST is implemented, there is a need to identify all unregistered vendors and they should be suggested to register, if beneficial and practical. Otherwise it is expected that businesses who are keen to safeguard their margins would avoid transactions with such unregistered suppliers. Professionals could keep an eye on such transactions during GST implementation support and suggest assesses to reduce or avoid it. However, this would affect the small businesses very badly unless government provides some relaxation by fixing threshold limit for RCM levy.

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