# Demystifying Section 9(4) – RCM on purchase of goods and services on purchase made from unregistered persons

### Introduction

Goods and Service Tax was rolled out on 1<sup>st</sup> July,2017 and since its introduction there has been lot of hue and cry over it in the industry. The impact of GST has been both positive and negative .Lot of traders especially the small businessman are not happy with it. Heavy compliance requirements, burdensome procedure, blockage of working capital are some of the reasons that has caused dissatisfaction among people. One provision Section 9(4) hit the small businesses really bad.

#### **Analysis**

Due to section 9(4) the small or petty contractors who were not liable for registration because their turnover was less than 20 lakhs may lose business or will be forced to take registration. The big businesses stopped taking goods from unregistered persons as they had to comply with Reverse charge provisions and has to do everything from issuing self-invoice to filing return on behalf of unregistered persons. Concession of Rs. 5,000 every day made no real difference. As there was lot of dissatisfaction among the small traders ,government deferred this section again and again.

Many people are still confused about applicability of Section 9(4) as this section was deferred again and again by the government. There is widespread confusion and lot of ambiguity in their mind regarding its section.

**Notification No. 8/2017-Central Tax (Rate)** which provided exemption from reverse charge upto Rs.5000 per day has been rescinded and this exemption is no more required in view of changes made by CGST Amendment act,2018. Now govt need to specify class of registered persons or specified categories of goods or services on which recipient needs to pay rcm ,in case it purchase from unregistered person. As of now only 3 services are covered under till date and all three are in context of real estate. The detailed analysis of the supplies on which section 9(4) is applicable is as follows:

# SUPPLIES ON WHICH SECTION 9(4) IS APPLICABLE

Notification no.	Category of Supply of goods or services	Recipient of goods and services	Analysis
Notification No. 07/2019- Central Tax (Rate) Effective from 01.04.2019	1)Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate) dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.		As of now three supplies are notified and all are in <b>context</b> <b>of real estate</b> 1) Input goods and services , if purchases from unregistered person exceeds 20% of total purchase .From 01.04.2019 promoter has to buy inputs and input services used in the construction of said project at least 80% from registered suppliers only. If there is any short fall below 80%, then the promoter needs to pay tax under RCM on the said shortfall @ 18% even though the rates on the respective goods is below 18%. (Read Notification no. 03/2019- Central Tax (Rate)
	2) Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial Promoter. number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, amended.	Promoter	2) Any value of cement purchased from an unregistered person by a promoter would be liable in his hands under RCM irrespective of the threshold limit. Promoter shall pay tax under RCM at 28% (Clarification issued in Notification no. 24/2019-Central Tax (Rate)

3) Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter	<ol> <li>Promoter is liable to pay GST under reverse charge on Capital goods supplied to promoter by unregistered person for construction of a project</li> </ol>
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## C<u>onclusion</u>

In the current scenario the reverse charge u/s 9(4) is only applicable to specified category of goods and services. By changing the provision of section 9(4), government has provided some relief to small traders but even now there are lot of technical glitches and problem faced by the traders which needs to be addressed by the government. As the GST is about to turn three on 1<sup>st</sup> July, 2020 the government should bring some reforms to remove these roadblocks in the path of smooth compliance of GST.

## **Conclusion**

The Delhi High Court read down para 4 of the impugned Circular No. 26/26/2017-GST dated 29.12.2017 to the extent that it restricts the rectification of Form GSTR-3B in respect of the period in which the error has occurred and Bharti was allowed to rectify Form GSTR-3B for the period to which the error relates, i.e. the relevant period from July, 2017 to September, 2017 within a period of two weeks.