

Dilemma about Due Dates for Compliances by Composition Taxable Persons [CMP-02, CMP-03, CMP-08, GSTR-4 and ITC-03]



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Notification 34/2020-CT dated 03-04-2019, extended the due date of quarterly payment of tax in case of composition taxable persons in Form CMP-08 for Quarter ending 31-03-2020 from 18-04-2020 to 7-07-2020.

Further date for annual return for composition taxable person in GSTR-4 was extended from 30-04-2020 to 15-07-2020 vide **NN 34/2020**.

Still Further, **notification 30/2020, dated 03-04-2020**, extended the date for opting for composition scheme for 2020-21 in form CMP-02 from 31st March 2020 to 30-06-2020 by inserting proviso to Rule 3(3). Further last date for reversal of ITC in case of opting in for composition tax scheme in ITC-03 was extended from 31-05-2020 to 30-06-2020.

There was no specific notification for CMP-03 i.e. furnishing of stock details on opting in for composition scheme. Since the time for filing CMP-03 is 90 days from the date on which option for composition scheme is exercised, there is consequential change in date.

While dates for waiver of late fee for GSTR-1 and GSTR 3B were extended through **Notification 52/2020 and 53/2020**, however no similar extensions were granted in case of composition taxable persons. Also there was no specific extension for opting in composition scheme

Hence one view is that there is no extension of dates in case of composition taxable persons.

However **notification 55/2020 read with notification 35/2020**, extends time limit for completion or compliance of **any action, by any authority or by any person**, has been **specified in, or prescribed or notified under the CGST Act to 31st August** However this extension notification is not applicable for compliances of section 39 and 10(3).

Hence we need to check whether the compliances for CMP-02, CMP-03, CMP-08, GSTR-4 and ITC-03 fall under compliance under section 39 and 10(3).

Section 39(2) which deals with return by composition taxable person was replaced vide **section 97 of Finance Act (No.2) Act 2019**. Quarterly filing of return by composition taxable person in GSTR-4 was replaced by annual filing of GSTR-4. However the new provisions of section 39(2) have not yet been put into force. Hence section 39(2) as on date is applicable in its older form requiring quarterly quarterly filing of return.

Notification 20/2019 however amended Rule 62 to provide for quarterly statement of tax in CMP-08 and annual filing of return in GSTR-04 in case of composition taxable person.

Further special procedure under section 148 was laid down vide **Notification 21/2019-Central Tax dated 23-04-2019** to provide for quarterly statement of tax in CMP-08 and annual filing of return in GSTR-04 in case of composition taxable person. Further it was mentioned in context of notification 2/2019 (i.e. Composition Scheme for service providers up to first 50 lacs) that if CMP-08 and GSTR-4 is filed, then section 39 shall be deemed to have been complied with for the purpose of such composition taxable person.

But notification 21/2019 was issued at a time when service providers were covered by notification 2/2019 and corresponding **section 10(2A)** was not in operation. However after section 10(2A) for service providers under composition scheme having come into force w.e.f. 01-01-2020, this part of notification dealing with deemed compliance of section 39 may no longer be applicable. Even if it is presumed to be still applicable one should not lose sight of principals propounded by supreme court. The Supreme Court in the case of **Apollo Tyres Ltd. v. CIT [2002] 122 Taxman 562** held that deeming provision should be applied for the purpose for which the said deeming provision is specifically enacted. The Supreme Court in the case of **CIT v. Mother India Refrigeration Industries (P.) Ltd. [1985] 23 Taxman 8** held that legal fiction cannot be extended beyond its legitimate field and will have to be confined to that purpose. Hence deeming fiction of filing of returns in notification 21/2019 as deemed compliance of section 39 can not be stretched to exclusion of compliances under section 39 under extension notification 35/2020 and 55/2020 under special circumstances.

Further since section 39(2) applicable as on date requiring quarterly filing of GSTR-4 is in complete contrast with special procedure being followed u/s 148 regarding CMP-08 and GSTR-4, Rule 62 and other notification like extension notification 35/2020 and 55/2020 in so far as it deals with returns filing and statement of taxes by composition taxable person can no longer be said to be referring to section 39 but rather referring to Section 148.

Hence exclusion of section 39 in extension of dates notification 35/2020 can not be said to be referring to returns and taxes of composition taxable person. Since these compliances at present are being governed by section 148 and there is no exclusion of the provisions of section 148, hence extension notification should apply to return filing and statement of taxes in GSTR-4 and CMP-08 with equal force.

Further the extension notification excludes the operation of section 10(3). Section 10(3) deals with lapse of option when turnover exceeds the limits under composition scheme. However opting in for composition scheme through CMP-02 is governed by section 10(1) and section 10(2A), the operation of which has not been excluded from extension notification 35/2020.

Reversal of ITC on opting in composition scheme is governed by section 18(4), again the exclusion where of is not contemplated in 35/2020.

CMP-03 for providing stock details is tagged with date of opting in composition scheme, hence no extension notification is required.

Hence it can be concluded from the above discussions that all dates for

- a) CMP-08, GSTR-04

- b) CMP-02, ITC-03

Stand extended to 31-08-2020 and CMP-03 shall be required to be filed with in 90 days from the date of opting in form CMP-02

The government, however, sooner than later is required to issue clarification.