

Note on Implementation of Section 269SU & Challenges thereof

Finance (No.2) Act, 2019 with effective from 01st November 2019 has introduced Section 269SU in the Income Tax Act, 1961 (Act) which deals with acceptance of payment through prescribed electronic modes. Vide said section, every person, carrying on business, shall provide facility for accepting payment through prescribed electronic modes, in addition to the facility for other electronic modes, of payment, if any, being provided by such person, if his total sales, turnover or gross receipts, as the case may be, in business exceeds Rs 50 Crores during the immediately preceding previous year.

Even though the said section has been introduced with effective from 01st November 2019, it remained dormant since the corresponding rules dealing with electronic modes was inserted with effective from 01st January 2020 qua Rule 119AA of Income Tax Rules 1962, prescribing modes (for brevity 'specified modes') as under:

- Debit Card powered by RuPay
- UPI (BHIM-UPI) - Unified Payments Interface and
- UPI QR Code (BHIM-UPI QR Code) Unified Payments Interface Quick Response Code

Accordingly, even if the taxpayer is currently accepting payments only through banking channel or other electronic modes, , Section 269SU read with Rule 119AA obliges taxpayer to accept payments through specified modes, This is for the reason that the language of Section 269SU indicates that the above specified modes should be in addition to the existing facilities. Non-compliance of Section 269SU results in penalty under Section 271DB of Rs 5,000/- per day of default with effect from 1st February 2020.

Hence, from the above, it is evident that notwithstanding to the existing modes, the taxpayer shall be equipped with the setup of above electronic modes for receipt and non-compliance of the same would lead to penalty.

The taxpayer should follow the below steps to communicate to the income tax authorities that the specified modes are equipped: applicable, we suggest you comply the same in the income tax portal. Step are as below;

- i) Logon to <https://www.incometaxindiaefiling.gov.in/home>
- ii) Go to Compliance - "Prescribed Payment Modes"
- iii) Choose Option 'Yes' and tick for each mode for which setup is made
- iv) Click on 'Submit'

However, the larger question that remains unanswered as on date is, whether the provisions of Section 269SU are applicable to all taxpayers whose total sales, turnover or gross receipts exceeds Rs 50 Crores or only to such taxpayers who are dealing with end customers in the supply chain?

The said aspect is not clear, since neither the section nor rules carves out any exception for taxpayers who are engaged in only B2B supplies and does not transact with end customers. The specified modes above suggest that the said modes are generally used between customers and from their suppliers (generally retailers) and not for transactions between B2B. This is also for the reason that the specified modes generally have daily usage limits, which would not be any help for B2B transactions.

At this juncture, it is imperative to understand the legislative intention behind insertion of Section 269SU, which is evident from the memorandum to Finance Bill:

Mandating acceptance of payments through prescribed electronic modes

In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money and to promote digital economy, it is proposed to insert a new section 269SU in the Act so as to provide that every person, carrying on business, shall, provide facility for accepting payment through the prescribed electronic modes, in addition to the facility for other electronic modes of payment, if any, being provided by such person, if his total sales, turnover or gross receipts in business exceeds fifty crore rupees during the immediately preceding previous year.

In order to ensure compliance of the aforesaid provisions, it is further proposed to insert a new section 271DB to provide that the failure to provide facility for electronic modes of payment prescribed under section 269SU shall attract penalty of a sum of five thousand rupees, for every day during which such failure continues. However, the penalty shall not be imposed if the person proves that there were good and sufficient reasons for such failure. Any such penalty shall be imposed by the Joint Commissioner.

This amendment will take effect from 1st November 2019

From the above, it is evident that the intention to insert Section 269SU is to oblige taxpayer to setup electronic modes so as to discourage the acceptance of cash for payments made to him so as to reduce the generation of cash and leading to less cash economy. By juxtaposing the intention with the current issue, it becomes clear that the said provision is applicable only for taxpayers who are engaged in receipt of cash for supply of goods/services and dealing with customers and not for regular B2B transactions, for which payment is already settled through banking channels using.

For example, a cement manufacturing company sells only to its distributors and does not engage in supplies to end customers. In such a situation, the distributors are already obliged to make payment through normal banking channels and payments to manufacturer in cash are not allowed by other provisions of the Act. Hence, there is no rationale for the manufacture to setup the electronic modes specified above, since none of the distributors would use them for making their payments. However, if the distributor's turnover exceeds Rs 50 Crores in the preceding financial year, he is obliged under Section 269SU to setup the modes since he would be selling cement bags to end customers and not only to other businesses.

Hence, in our opinion, the said provisions of Section 269SU call for compliance only for such businesses where taxpayer is dealing with end customers. In absence of any clarity and high penalty, it is advisable for businesses who are exclusively engaged in B2B supplies to setup the above modes for receipt of payment, if the setup cost is not huge. Alternatively, they can wait till a clarification is received in this connection and during the interim period, the penalty can be requested to be waived in terms of proviso to Section 271DB which provides for waiver of penalty if good and sufficient reasons for non-compliance with Section 269SU are shown. In our opinion, the ambiguity discussed supra would be a good and sufficient reasons.

The said aspect requires clarified immediately and various trade associations and professional associations have already made representations to Central Board of Direct Taxes in this connection.