

## GST on Renting of Residential Dwelling

### **Background**

Prior to 18.07.2022, services by way of renting of residential dwelling for use as residence was exempt from GST vide [Notification No. 12/2017 CT \(Rate\) dated 28.6.2017](#). Now, vide [Notification No.4/2022- Central Tax \(Rate\) dated.13.07.2022](#) after the words "as residence", the words "except where the residential dwelling is rented to a registered person" is being inserted in Notification No. 12/2017 CT (Rate) dated 28.6.2017 with effect from 18.07.2022.

Thus, with effect from 18.7.2022, services by way of renting of residential dwelling to a registered person is made taxable to GST under Reverse Charge Basis (RCM) vide [Notification No. 05/2022 – Central Tax \(Rate\) dated 13.07.2022](#). Entry no. 5AA is being inserted in the [Notification No. 13/2017- Central Tax \(Rate\) dated 28.6.2017](#) to that effect.

### **Interpretation**

- As per the above-mentioned notifications renting of residential property for residence purpose to registered person will attract GST.
- Rate of tax applicable is 18% which is payable under RCM.
- Thus, the scope of exemption available to residential property given for residence has been curtailed. Henceforth, renting of any residential property to a registered person would not enjoy exemption.
- The following situations can be envisaged

Sr. No.	GST status of person giving residential property on rent (Supplier of Service)	GST status of person taking residential property on rent (Recipient of Service)	Taxability under GST up to 17.07.2022	Taxability under GST with effect from 18.07.2022
1	Registered	Registered	Exempted	Taxable under RCM
2	Unregistered	Registered	Exempted	Taxable under RCM
3	Unregistered	Unregistered	Not taxable	Not taxable
4	Registered	Unregistered	Not taxable	Not taxable

- However, it is to be noted that Input Tax Credit (ITC) will be allowed only when conditions as mentioned under section 16 and section 17 are fulfilled .
- Thus, when registered person has taken the residential property on rent for furtherance of business he is entitled to ITC.

- To give an example where the registered person is a company/firm/LLP/AOP/BOI, etc. who has taken residential property on rent for residential use of its employees/directors etc. then it has to pay GST under RCM and it can claim ITC of the GST paid under reverse charge as it will be considered as business expenditure. However, it is to be noted that GST department may disallow ITC claim by saying it is blocked credit as per section 17(5) (g). Then it will become pure cost to company. Thus, litigation may arise. Now, when an individual who is registered under GST as a proprietorship concern takes a residential dwelling for the purpose of residence on rent for himself/herself/family then it will be considered as personal expenditure and not the business expenditure of a proprietorship concern. GST will be paid under RCM, but the ITC of the GST paid under reverse charge cannot be claimed as it is blocked as per section 17(5) (g).
- Rental income of immovable property given for commercial purpose will continue to be taxable under forward charge with ITC.
- Where a person has taken GST registration under composition scheme takes a residential dwelling for the purpose of residence on rent then it will be considered as an item of business expenditure. He has to pay GST under RCM, but he cannot claim ITC as per section 10(4) applicable for a composition dealer.

### **CNK Comments**

- In the ruling given by Authority of Advance Ruling (AAR) of West Bengal in the case of [Borbheta Estate Pvt Ltd dated 27.06.2019](#), which involved renting of residential unit to M/s Larsen & Toubro Ltd., where the revenue had taken a stand that exemption provided under serial number 12 of the exemption [Notification No. 12/2017 CT \(Rate\) dated 28.6.2017](#) apply to renting of residential dwelling units for residential purpose it should not be available when the dwelling unit is rented to a commercial entity. But AAR ruled that applicability of exemption notification depends upon whether the dwelling unit is used as residence irrespective of whether they are let out to individuals or a commercial entity. Thus, it seems that in order to overcome the hindrance of earlier provision this new amendment has been made.
- The 47th GST council meeting had recommended to withdraw the exemption in respect of renting of residential dwelling to business entities (registered person). Thus the intention appeared to be levying GST only to registered business entities.
- However, the final print which has come out by way of notification has removed the exemption to all GST registered persons. Even individual registered persons who have taken residential property for personal purpose will end up paying GST under RCM. However, they will not be entitled for ITC credit of the same since it is for their personal purpose. This would entail the additional cost to individual registered person.

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