

G N LAW ASSOCIATES



NEWS UPDATE

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Renting of immovable property exemptions and RCM

Taxability of Renting of Residential Dwelling.

As per S.No., 12 of Notification 12/2017 Central Tax (Rate) Dt. 28.06.2017, the following service is exempted from payment of GST.

Services by way of renting of residential dwelling for use as residence.

As per the above, irrespective of the status of the supplier or recipient (whether registered under GST or not), supply of services by way of renting of residential dwelling for use as residence is exempted. To elaborate further, even if a company registered under GST, obtains a house on rent for providing accommodation to its senior executives, there would be no GST liability.

The above entry was amended vide Notification 4/2022 Central Tax (Rate) Dt. 13.07.2022, with effect from 18.07.2022, and the amended entry reads as below.

Services by way of renting of residential dwelling for use as residence, except where the residential dwelling is rented to a registered person.

Simultaneously, Notification 13/2017 Central Tax (Rate) Dt. 28.06.2017 prescribing reverse charge mechanism for various supply of services was also amended and S.No. 5AA was introduced vide Notification 5/2022 Central Tax (Rate) Dt. 13.07.2022, with effect from 18.07.2022. As per this amendment, if a residential dwelling is given on rent to a registered person (irrespective of whether the supplier is registered or not), RCM shall apply and the recipient of supply shall pay the tax.

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This amendment has created certain confusions. For example, a Chartered Accountant, who is registered under GST, may obtain a house on rent for using it as his residence. As per the above amendment, the Chartered Accountant would be liable to pay GST under RCM for the house rented by him for being used as his residence, which negates the purpose of granting exemption to residential dwelling used for residential purposes.

Hence, the following Explanation has been inserted under S.No. 12 of Notification 12/2017 Central Tax (Rate) Dt. 28.06.2017, vide Notification 15/2022 Central Tax (Rate) Dt. 30.12.2022, with effect from 01.01.2023.

Explanation – For the purpose of this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where –

- (i) The registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and*
- (ii) Such renting is on his own account and not that of the proprietorship concern.*

Being an Explanation, in the nature of clarifying the doubts, it shall have retrospective effect from 18.07.2022. Hence, it is clear that from 18.07.2022, renting of residential dwelling to a registered person would be liable to GST under RCM, except where the registered person is a proprietorship concern and the residential dwelling is used purely for residential purposes of the proprietor. In other words, if a partnership firm or a company, registered under GST, rents out a residential dwelling for being used as residence by its partners, directors, executives, etc. no exemption would be available and the recipient of service is liable to pay GST under RCM.



Taxability of Renting of immovable property other than residential dwelling (commercial buildings).

Supply of services by way of renting of any other immovable property is prima facie leviable to GST and such GST was payable by the supplier under forward charge mechanism,

For the first time, RCM was introduced in this regard, by inserting S.No. 5 A to Notification 13/2017 Central Tax (Rate) Dt. 28.06.2017, vide Notification 3/2018 Central Tax (Rate) dt. 25.01.2018, whereby the following service is notified for RCM.

S.No.	Category of supply of service	Supplier of Service	Recipient of Service
5A	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017.

Hence, from 25.01.2018, RCM is applicable if any immovable property (other than residential dwelling) is obtained on rent from government.

The above entry was further amended vide Notification 14/2023 Central Tax (Rate) Dt. 19.10.2023, with effect from 20.10.2023 and RCM was withdrawn if the supplier of such service (renting of immovable property) is Ministry of Railways (Indian Railways) and from this date, forward charge will be applicable, if the renting of immovable property service was supplied by Ministry of Railways (Indian Railways).

Now, vide Notification 9/2024 Central Tax (Rate) Dt. 08.10.2024, with effect from 10.10.2024, the following service is notified for RCM.



S.No.	Category of supply of service	Supplier of Service	Recipient of Service
5AB	Services by way of renting of any property other than residential dwelling	Any unregistered person.	Any registered person.

Hence, from 10.10.2024, if any commercial building is rented out by an unregistered person to a registered person, RCM shall apply. But, if the supplier is a registered person, forward charge shall apply. It may be noted that upto 09.10.2024, supply of services by way of renting of such commercial buildings by an unregistered person was not leviable to tax, whereas from 10.10.2024, RCM shall apply for the same.