

# TAX INFO

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Latest update on GST Law: **All about Renting of Residential Dwelling- Applicability w.e.f. 18<sup>th</sup> July, 2022.**

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Recently, CBIC vide Notification No. 05/2022-Integrated Tax (Rate) dated 13<sup>th</sup> July 2022, withdrew exemption on renting of residential dwellings to a person registered under GST, which became effective from 18<sup>th</sup> July 2022. GST implications prior to 18<sup>th</sup> July 2022 by virtue of Notification No. 09/2017-Integrated Tax (Rate) dated 28<sup>th</sup> June 2017 exempted payment of GST against service of renting a residential dwelling used for the purpose of residence irrespective of the registration status of the supplier or the recipient of services as the case may be. However, the same exemption was not there in case where the renting of residential dwelling is for a purpose of business.

Accordingly, **usage of residential dwelling is not the deciding factor for taxability rather the status of the recipient** would play vital role in determining the taxability under GST laws. Further, by virtue of the Notification No. 05/2022-Integrated Tax (Rate) dated 13<sup>th</sup> July 2022, the onus of payment of GST on services by way of renting of residential dwelling to a registered person lies upon the registered recipient of service, irrespective of the registration status of service provider. Thus, GST should be discharged by the recipient of service of renting of residential dwelling under Reverse Charge Mechanism (RCM).

W.e.f. 18<sup>th</sup> July 2022, every landlord must acquire the GST registration status of his tenant. The SAC for renting of residential dwelling would be 997211 i.e., "Rental or leasing services involving own or leased residential property" and the applicable rate of tax would be 18%, either for payment of tax under forward charge or reverse charge.

- When any registered person under GST, provides his residential property on rent for residential or commercial purposes to another registered person under GST, then as the service recipient is registered under GST, he would be required to discharge GST under RCM and registered service provider would not be required to pay taxes on this transaction. Further, purposes for which such property is being used by the recipient shall not be relevant here. The registered service provider would be required to raise normal tax invoice mentioning all required particulars as enumerated under Rule 46 of the CGST Rules. However, service provider should mention the word "yes" after the phrase "whether the tax is payable on reverse charge basis" on the face of the invoice. Further, the registered recipient would be required to raise self-invoice and payment voucher for receipt of renting services. However, when the use of the residential property is **for commercial purposes**, the said transaction would not fall under the umbrella of blocked credits and the registered service recipient would be eligible to avail ITC but when used for residential purpose for own self, then ITC shall be blocked.
- When a registered person under GST, provides his residential property on rent for residence purpose to an un-registered person under GST, then as the service recipient is un-registered and property so rented out is being used for residential purposes, the said transaction would still be covered under the umbrella of exempt supply by virtue of Notification No. 09/2017-Integrated Tax (Rate) dated 28<sup>th</sup> June 2017. Therefore, the said transaction would be considered as exempt supply. The registered service provider would be required to issue Bill-of-supply in this case.

- When a registered person under GST, provides his residential property on rent for commercial purpose to an un-registered person under GST, then as the property so rented out is used for the commercial purposes and supplier being registered under GST, the said transaction would not be covered under the ambit of exempt supply by virtue of Notification No. 09/2017-Integrated Tax (Rate) dated 28th June 2017. Therefore, the said transaction would be eligible to GST in the hands of service provider under forward charge mechanism.
- When an individual not registered under GST, provides his residential property on rent for residence purpose to an unregistered person under GST, then as recipient is not registered under GST and the rented property is used for residence, No GST would be leviable on this transaction.
- When an individual not registered under GST, provides his residential property on rent for commercial purposes to an unregistered person under GST, then as recipient is not registered under GST, No GST would be leviable on this transaction. It has been assumed that supplier is not liable to obtain the registration under GST laws. Otherwise, the same would have been taxable in the hands of service provider under forward charge mechanism.
- When a registered person under composition scheme of GST, procures residential dwelling from an un-registered person, then such a person registered under composition scheme would be required to adhere the provision of RCM u/s Section 9(3) of the CGST Act. Therefore, the registered composition dealer would require to pay tax under RCM for use of such residential property. Even if such composition dealer procures residential dwelling from any normally registered person, still he would be required to adhere the provision of RCM u/s Section 9(3) of the CGST Act. Therefore, the registered composition dealer would require to pay tax under RCM for use of such residential property.

Since, the applicability of RCM became effective from 18<sup>th</sup> July 2022, so if any invoice is issued and payment has been made before the applicability of RCM provision, the same shall be governed by the law prior to 18<sup>th</sup> July 2022, i.e., registered recipient would not be required to pay tax under RCM.

If any payment of rent is made after 18<sup>th</sup> July 2022 against an invoice issued prior to the change of taxability, the same shall be governed by the law prior to 18<sup>th</sup> July 2022, i.e., registered recipient would not be required to pay tax under RCM.

If any invoice is received after 18<sup>th</sup> July 2022 but the payment was made prior to the change of taxability, the same shall be governed by the law prior to 18<sup>th</sup> July 2022, i.e., registered recipient would not be required to pay tax under RCM.

However, if any invoice is received after 18<sup>th</sup> July 2022 and payment is also made after 18<sup>th</sup> July, then since, the invoice is received and payment is made post change in taxability, RCM provision would trigger and registered recipient would be liable for payment of taxes under RCM.

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