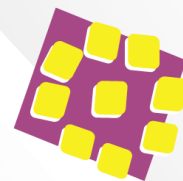


**GST on the Residential
Dwelling rented to Registered
Tax Person Under GST**

INDIRECT TAX

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GST on the Residential Dwelling rented to Registered Tax Person Under GST

In pursuance of the 47th GST Council meeting held on the 28th and 29th of June 2022, the Central Government has issued a series of Notifications and circulars to give the effect of its recommendation. On 13th July 2022, the Government issued rate Notifications, and it is effective from 18th July 2022.

Amongst the other changes, taxability on the residential dwelling is a major shift and has wide implications. To date, the service by way of renting residential dwellings for use as residence is exempt from GST. However, effective from 18th July 2022, the exemption is available only to the residential dwelling rented to GST unregistered persons. Thereby, levied the GST on residential dwellings given for residence purposes to GST Registered persons. Further, liability to discharge the tax is shifted to tenant under RCM and Building Owner is not liable to pay GST

We at Annveshan have made an attempt to extract the impact of the provision in a FAQ manner for our readers.

FREQUENTLY ASKED QUESTIONS

1. Under which Notification the changes are notified?

Ans: Notification 4/2022 – Central Tax (Rate) dated 13th July 2022 read with Principal Notification No 12/2017 – Central Tax (Rate) dated 28th June 2017 and 5/2022 – Central Tax (Rate) dated 13th July 2022 read with Notification No 13/2017 Central Tax (Rate) dated 28th June 2017

2. What type of residential dwelling is liable to tax under GST?

Ans: Renting of residential dwellings for use as a residence to Registered Person under GST is liable to GST.

3. What is the meaning of a Registered Person?

Ans: Registered person means the person registered under the GST Act. It includes – an individual, a HUF, a company, a firm, an LLP, a body corporate, a trust, and every other person who is registered under GST

4. What is the taxable event or what transaction tax is to be discharged?

Ans: Tax is on service by way of renting residential dwellings for use as a residence to a Registered Person. However, in our view, the same has to be read with Sections 9(3) and 7 of the CGST Act, 2017. In other words, the transaction should qualify as supply from the viewpoint of the tenant. The term supply, in short, means the supply of goods and services in the course of business or furtherance of business for consideration.

Accordingly, in our view, tax is on service by way of renting residential dwellings for use as a residence to a Registered Person in the course of business.

Instances

It can be noted that it is common in the business/industry to have residential dwellings for rent for the accommodation purposes of its employees/guests in the course of business. All these days these were exempt due to exemption granted for residential dwellings. Now, these transactions are taxable in the hands of such business/industry.

5. What is continued as exempted?

Ans: Renting of residential dwellings for use as a residence to Unregistered Person under GST is exempted.

6. What is the rate of tax and Who has to pay the GST?

Ans: The rate of tax is 18% and a tenant who is registered under GST has to pay GST under RCM.

7. From when this provision is applicable?

Ans: The provision is effective from 18th July 2022.

8. I am a GST registration holder and have given my dwelling as rent for residential purposes to an unregistered person. Am I liable to pay tax?

Ans: No. taxability crystallizes only when it is rented to GST Registered Person that to in the hands of a tenant who is registered under GST.

9. I am a GST registration holder and have given my dwelling as rent for residential purposes to a GST-registered person. Am I liable to pay tax?

Ans: Transaction attracts GST. The responsibility to discharge the tax is on the tenant under RCM and not on the owner of the dwelling irrespective of whether the building owner is registered under the GST or not.

10. I am a non-GST registration holder and have given my dwelling as rent for residential purposes to a registered person of GST. Do I have to take registration under GST?

Ans: No. Since liability is on the GST registered tenant, the owner of the building is not required to take any registration.

11. I am a tenant and GST registration holder. I am a proprietor and run my business from a different place of business. Still, do I need to pay GST under RCM for the occupation of a dwelling for residential purposes?

Ans: In the case of a proprietary concern, there is an ambiguity that exists. In our view, if the rent of residential expense is considered as a business expenditure, then, the GST is applicable on rent paid under RCM.

If the rent paid is considered personal expenses, then in our view, GST is not applicable since the same will not qualify as a supply of service as the same is not received for business purposes.

Therefore, while making the rental agreement one must be mindful of bringing actual facts therein.

12. I am a tenant and GST registration holder. I am a proprietor and run my business from my residence. Do I need to pay GST under RCM for the occupation of the dwelling for residential purposes?

Ans: In this scenario, there is every possibility to treat it as a residential dwelling used for the purpose of business or in the course of business, and therefore, in our view, may attract GST.

However, the moot question still prevails if the expenses are not considered as business expenses still GST would attract? *In our view, Registered persons have to make a detailed analysis before deciding on the taxability.*

13.I am a tenant and GST Unregistered person. Do I need to take GST registration to discharge the tax?

Ans: No, GST is applicable only to the tenant who is registered under GST for running of business or rendering of service.

14.I am GST Un-registered person who has given my dwelling for commercial purposes to GST registered person. What is the GST implication on the same?

Ans: The new amendment is only for “Residence” purposes. Therefore, with respect to the commercial purpose, the old provision would continue. Thereby, if your Gross Turnover exceeds 20 lakhs, the building owner who is given for commercial purposes has to take GST registration and discharge the GST liability.

15.I am a tenant registered under GST, has taken the dwelling for commercial purposes? Do I have to discharge the GST under RCM as per the New provision?

Ans: The new provision is applicable only in the case of residential purposes occupied by a registered person under GST. In the instant case, the building owner has to discharge the tax under forward charges subject to his Threshold limit.

16.I am a tenant registered under GST and have taken the dwelling for residential purposes from the unregistered building owner. On what value do I have to discharge GST?

Ans: The tenant has to pay the GST at 18% on the total value of the Rent. However, there is one more school of thought that the total value of rent should be considered as inclusive of GST, and accordingly, GST has to be calculated on the inclusive method.

17. I am a tenant registered under GST, and have taken the dwelling for residential purposes from the registered dwelling owner. On what value do I have to discharge GST?

Ans: Registered dwelling owner has to report the transaction in their GSTR 1 under Table 4B by selecting the option *supply attracts reverse charge* and it will automatically reflect in tenant GSTR 2B with tax amount. The tax amount reported therein should be discharged by the tenant. In other words, tenants should pay at 18% on the total value of rent.

18. Can the tenant take input tax credit paid under RCM in respect of occupation of residence?

Ans: Yes. The input tax credit is eligible subject to restrictions under Sections 16 and 17 of the CGST Act and Rules made thereunder.

Summary of the above for quick recap:

	Case 1	Case 2	Case 3	Case 4	Case 5	Case 6
Building owner	UN	R	UN	R	R	UN*
Tenant	UN	UN	R	R	UN	R
Purpose	Residential	Residential	Residential	Residential	Commercial	Commercial
GST payable						
-Reverse charge mechanism	NA	NA	YES	YES	NA	NA
-Forward charge	NA	NA	NA	NA	YES	NA
Rate	-	-	18%	18%	18%	-

NOTE-

R – Registered under GST

UN – Unregistered under GST

NA – Not Applicable

*** – Subject to threshold limit of 20lakhs**

DISCLAIMER:

The information included is a summary of recent circulars and is not intended to advice on any matter.

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LOCATIONS –

Bengaluru

Basavangudi
#43/61, surveyors street
Basavangudi,
Bengaluru – 560 004

Lalbagh
#6/B-1, MNKRaoRoad, off: GovindappaRoad,
Basavanagudi, Bangalore - 560 004
Ph: +91-80-2656 3388/2657 0874/2657 0875

Chennai

Flat no:1A, Divya Ramaneeyam Apartments
20/39, 4th Main Road, R.A. Puram
Chennai - 600 028
Ph: 9844024754

New Delhi

A-33 Ground Floor Saraswati Garden
New Delhi – 110 015

D S Vivek

MANAGING PARTNER

vivek@annveshan.com

+91 98453 78991

Udupi Vikram

PARTNER

vikram.u@annveshan.com

+91 97387 79117

Contributors: GST Team Annveshan

For further queries,
Contact

CA Rakesh Jain
Rakesh.b@annveshan.com
9535522295



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