

GST IMPLICATIONS ON RENTING OF IMMOVABLE PROPERTY

1. Levy of GST on Renting of Immovable Property

Section 9(1) of the CGST Act, 2017 provides that GST shall be levied on all intra-state supplies of goods or services, except on the supply of alcoholic liquor for human consumption. Renting of immovable property is treated as a supply of service under Schedule II of the CGST Act and is therefore liable to GST, unless specifically exempted.

Section 9(3) of the CGST Act empowers the Government, on the recommendations of the GST Council, to notify specified categories of supplies on which tax shall be paid by the recipient under the Reverse Charge Mechanism (RCM).

2. Position from 01.07.2017 – Renting of Immovable Property under Forward Charge Mechanism (FCM)

From the inception of GST, the renting of immovable property was taxable under the Forward Charge Mechanism (FCM) – section 9(1) of the CGST Act, 2017, wherein the supplier (landlord) was liable to charge and pay GST on the rental income, subject to registration requirements and exemptions available under GST law.

Renting of residential dwelling was absolutely exempted under GST Law till 17.07.2022.

Commercial renting services were taxable under FCM and GST was required to be discharged by the supplier of service. Residential dwelling used as residence was exempt vide Entry No. 12 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

3. Renting by Government to Registered Persons - RCM

Vide Notification No. 03/2018-Central Tax (Rate) dated 25.01.2018, the Government amended Notification No. 13/2017-Central Tax (Rate) and brought services supplied by the Central Government, State Government, Union Territory or Local Authority by way of renting of immovable property to a registered person under RCM.

Accordingly, where immovable property was rented by Government authorities to a registered person, the recipient became liable to discharge GST under RCM instead of the Government authority charging GST.

4. Major Amendment - Residential Dwelling Brought under RCM

Pursuant to the recommendations of the 47th GST Council Meeting, Notification No. 05/2022-Central Tax (Rate) dated 13.07.2022 inserted Entry No. 5AA in Notification No. 13/2017-Central Tax (Rate).

The amendment provided that:

"Service by way of renting of residential dwelling to a registered person" shall be liable to GST under Reverse Charge Mechanism with effect from **18.07.2022**.

Effect of the Amendment

- Prior to 18.07.2022, renting of residential dwelling for use as residence was exempt from GST.
- From 18.07.2022, where the recipient is a registered person, GST becomes payable under RCM.
- The liability to pay GST shifts from the landlord to the registered tenant.
- GST is payable by the recipient at the applicable rate (generally 18%) and eligible Input Tax Credit (ITC) may be availed subject to the provisions of the Act.

5. Further Amendment in 2024

Vide Notification No. 09/2024-Central Tax (Rate) dated 08.10.2024, a new Entry No. 5AB was inserted in Notification No. 13/2017-Central Tax (Rate), bringing under RCM the service of renting of immovable property (other than residential dwelling) when supplied by an unregistered person to a registered person. The amendment became effective from 10.10.2024.

6. Summary

1. Section 9(1) of the CGST Act levies GST on renting of immovable property as a taxable supply of service.
2. Section 9(3) empowers the Government to notify services liable under RCM.
3. From 01.07.2017, renting of immovable property was generally covered under Forward Charge Mechanism (FCM), with the supplier liable to pay GST.
4. Notification No. 03/2018-CT(R) shifted liability to the recipient in cases where immovable property was rented by Government authorities to registered persons.

5. Notification No. 05/2022-CT(R), effective from 18.07.2022, brought renting of residential dwelling to registered persons under RCM by inserting Entry No. 5AA in Notification No. 13/2017-CT(R).
6. Notification No. 09/2024-CT(R), effective from 10.10.2024, further extended RCM to renting of non-residential immovable property by unregistered suppliers to registered recipients.
7. Presently, depending on the nature of property and status of supplier/recipient, transactions may fall under either FCM or RCM. The following table shows the summary of GST applicability on renting of immovable property.

Applicability of GST on Renting of Immovable Property

Sl. No.	Supplier	Recipient	Property Type	FCM/RCM	Effective Date
1	Registered Person	Any Person	Commercial / non-residential	FCM	01.07.2017
2	Unregistered Person	Registered Person	Commercial / non-residential	RCM	10.10.2024
3	Government / Local Authority	Registered Person	Immovable Property	RCM	25.01.2018
4	Any Person	Registered Person	Residential Dwelling	RCM	18.07.2022
5	Any Person	Unregistered Person	Residential Dwelling used as Residence	Exempt	01.07.2017
6	Registered Person	Registered Person	Commercial / non-residential	FCM	01.07.2017
7	Registered Person	Unregistered Person	Commercial / non-residential	FCM	01.07.2017

References

1. Section 9(1) of the CGST Act, 2017 – Levy of GST under Forward Charge Mechanism.

2. Section 9(3) of the CGST Act, 2017 – Government empowered to notify supplies under Reverse Charge Mechanism.
3. Notification No. 12/2017-CT(Rate)- List of Exempted supply of services under the CGST Act.
4. Notification No. 13/2017(Rate)- Categories of services on which tax will be payable under reverse charge mechanism (RCM) under CGST Act.
5. Notification No. 03/2018-CT(Rate) dated 25.01.2018 – Renting of immovable property by Government/Local Authority to registered persons under RCM.
6. Notification No. 05/2022-CT(Rate) dated 13.07.2022 – Renting of residential dwelling to registered persons under RCM (Entry No. 5AA).
7. Notification No. 09/2024-CT(Rate) dated 08.10.2024 – Renting of commercial/non-residential immovable property by an unregistered supplier to a registered recipient under RCM (Entry No. 5AB).

For any clarifications feel free to reach out at:

mehsana@hnaindia.co.in and

arjun@hnaindia.com