50 Practical FAQ's - GST on Renting of residential dwellings

[Everything you must know – A 360-degree analysis]

[CA Ashish Chaudhary]
Partner
Hiregange & Associates LLP

[CA Ravi Kumar Somani]
Partner
Hiregange & Associates LLP

[CA Pratik Kankariya]
Sr. Manager
Hiregange & Associates LLP

Introduction:

The accommodation & real-estate renting sector makes a significant contribution to the Indian economy. Apart from infrastructure development, it generates numerous business & employment opportunities. However, the onset of pandemic left the sector grappling with people leaving to their hometowns and properties left vacant. The sector was now on the verge of recovery with many co-livings, property owners offering competitive pricing to bring back the tenants. However, uncertainty in the tax structure and continuous tweaking is another big concern and a talking point of dispute between the landowners and tenants with both parties looking to safeguard its position.

Taxation on the accommodation sector has seen multiple changes in GST regime with tweaking to the tax rate slabs, change in valuation mechanism from Declared Tariff to transaction value, etc. All that the sector wanted from the government was clarity and certainty in the tax structure, however what they get in return is more confusion and complexity. The 47th GST Council meeting brought significant changes to the tax structure that goes on to change the entire dynamics of the transaction.

We shall now look at all the changes recommended and analyse them to understand it implication on the tax structure and overall impact on the business.

A) Removal of exemption on value of accommodation of Rs.1,000 per day or equivalent:

Notification	Entry up to 17-07-2022	Tax Rate	Entry from 18-07-2022
Exemption for Hotels, Inns, Guest House etc.	**Sl. No. 14 of NN 12/2017:** Services by a hotel, inn, guest house, club or campsite, "value of supply" of a unit of accommodation less than or	NIL	Omitted i.e., the exemption for a unit of accommodation up to Rs. 1,000/- is removed and the units even below the

	equal to Rs.1,000/- per day or equivalent.		value of Rs. 1,000/- are taxable as per the below entry.
Rate of Tax for Hotels, Inns, Guest House etc.	**Sl. No 7 of NN 11/2017:** Supply of 'hotel accommodation' having value of supply of a unit of accommodation **more than Rs. 1000/-** and less than or equal to Rs.7,500/- per unit per day or equivalent.	12%	**Sl. No 7 of NN 11/2017:** Supply of 'hotel accommodation' having value of supply of a unit of accommodation less than or equal to Rs.7,500/- per unit per day or equivalent.

Further, the term **'Hotel Accommodation**' is defined in Notification No. 11/2017-Central Tax (Rate) as *'Hotel accommodation' means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation.*

B) Taxability on Renting of residential dwellings:

Notification	Before 18-07-2022	From 18-07-2022
Exemption for Renting of Residential Dwellings	Services by way of renting of residential dwelling for use as a residence	Services by way of renting of residential dwelling for use as a residence **except where the residential dwelling is rented to a registered person.**

Further, below entry was inserted in the N. No 13/2017 – CT(R) i.e., the applicability of taxes would be under Reverse charge mechanism i.e., the tax needs to be paid by the registered person being a recipient of service.

Serial No.	Category of Supply of Services	Supplier of Service	Recipient of Service
5AA	Service by way of renting of residential dwelling to a registered person	Any person	Any registered person

In order to comprehend and understand the impact of above changes, the same is explained in the form of FAQ's. The article covers impact of these changes on the following sectors:

- Hotels, Inns, Guest Houses etc,
- Renting of residential dwellings / commercial premises,
- Employee Quarters, Accommodation,

- Student Hostels,
- Co-living, Service apartments,
- Dharamshala's.

Hotel Accommodations (i.e., Lodges, Inns, Guest House etc.):

Q1. What is the change in GST rate for Hotel Accommodation Services?

Ans: The 47th GST Council has removed the exemption on accommodation services having value of supply lesser than Rs. 1,000 per unit/per day or equivalent. The change & its related impact on eligibility of ITC is explained below:

Value of a unit of accommodation per day	Up to 18-07-2022	From 18-07-2022
Less than Rs. 1,000	Exempted. Further, ITC is restricted on goods, services used exclusively for exempt supplies. Further, ITC on common goods, services used also needs to be reversed as per Rule 42 & 43 of CGST rules	Taxable @ 12%. Further, ITC is fully eligible.
Between Rs. 1,000 to Rs. 7,500	12%	
Above Rs. 7,500	Taxable @ 18%. Further, ITC is fully eligible.	

Q2. What nature of services are covered under Hotel Accommodation services?

Ans: Since the tax rate for Hotel Accommodations of value below Rs. 1,000/- is changed and the same is now liable to tax @ 12%, hence it is important to understand the meaning of the term 'Hotel Accommodation'. As per Notification No. 11/2017-Central Tax (Rate) as amended, the term 'Hotel accommodation' is defined as under:

"Hotel Accommodation means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites, or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation."

Further, Education Guide issued under the service tax by CBEC states that hotel, motel, inn, guest house, campsite, lodge, houseboat, or like places are generally meant for **temporary stay**.

Q3. Whether Hotel tariffs below Rs. 1,000/- would become costlier by 12%?

Ans: Although the rate of tax has increased, however the impact need not lead to increase in price by 12% as the Hotels would now be eligible to claim Input

tax credit on various goods/ services procured by them. Earlier, this was leading to cost as the budget hotels were either unregistered or they were proportionately reversing the input tax credits to the extent of turnover comprising of room below Rs 1,000/-. Further, the impact of price rise would be only on unregistered persons who cannot claim the ITC.

Also, Hotels need to be vary of the Anti-Profiteering provisions that restricts one to profiteer from the pricing on account of taxes so that there are no consumer complaints or grievances. Even a compliant from a single consumer towards anti-profiteering can open a big pandora box of dispute. Hence, it is advised that the increase in prices is properly aligned basis the provisions of anti-profiteering laid out in section 171 of the CGST act.

Further, Generally the pricing in this industry is largely governed by the market forces and the customer pay capacity and therefore a proper analysis of the market conditions must be done to arrive at the right pricing that does not impact the sales negatively.

Q4. What shall be the treatment for inputs lying in the stock as on 17th July 2022 on which ITC is not claimed pursuant to the earlier provisions?

Ans: Sec 18(1)(d) of CGST Act provides that in the event of exempt supply becoming a taxable supply, a registered person can avail ITC in respect of inputs lying in stock that would be used for making taxable outward supplies.

Therefore, in case of hotels, input tax credit can be availed on various equipment's, consumables and other goods that are procured prior to the rate change but are in stock as on 17.07.2022, the input tax credit needs to be computed and availed.

Q5. What shall be the treatment for Capital Goods viz., Furniture, fixtures, Electrical equipment's etc. procured in the last 5 years on which ITC is not claimed pursuant to the earlier provisions?

Ans: Sec 18(1)(d) of CGST Act provides that in the event of exempt supply becoming a taxable supply, a registered person can avail ITC in respect of capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable. Therefore, in case of hotels, input tax credit can be availed on various capex items viz., furniture, fixtures, electrical equipment's cleaning machines, DG Sets etc.

However, one must take note that the credit in respect of capital goods needs to be properly computed as the same can be only proportionately availed as per the formula provided in rule 40 of the CGST rules.

Q6. Sai Hotels Ltd. had purchased 4 cots worth Rs. 50,000/- couple of years ago and ITC on the same was not availed as they were specifically used for making an exempt supply. Can they now avail the said ITC? If yes, how the eligible ITC to be computed?

Ans: Sec 18(1)(d) of CGST Act states that in the event of exempt supply becoming a taxable supply, registered person can avail proportionate ITC i.e., (5% reduction per quarter from the invoice date) of the capital goods used for making the exempt supply.

Therefore, in above case, Sai Hotels can claim proportionate ITC for those 4 cots. The amount of eligible ITC on account of removal of the said exemption can be computed as follows:

- ITC Amount = Rs. 9000 per cot
- Period used = 2 years i.e., 8 quarters
- % Reduction of ITC = 8*5% = 40%

Therefore, eligible ITC for 1 cot = 9000*60% = Rs. 5,400/-. Total eligible ITC for Sai Hotels Ltd = 5400*4 = Rs. 21,600/-.

Q7. Whether the small lodges, Inns, hostels etc. need to take registration under GST if their aggregate turnover exceeds Rs. 20 lakhs?

Ans: Many small lodges, inns, hostels etc. having room accommodations below Rs. 1,000/- were claiming the benefit of this exemption and were not registered under GST. Most of them would now come under the tax net. Therefore, if the aggregate turnover in a financial year exceeds Rs. 20 lakhs, then they need to obtain registration under GST.

Q8. Whether the small lodges, Inns, hostels etc. can opt for composition scheme?

Ans: In case lodges, inns, hostels etc. having room accommodations below Rs. 1,000/- have their aggregate turnover below Rs. 50 lakhs in the preceding financial year, then they can opt for composition scheme whereby GST @ 6% needs to be discharged. It is pertinent to note that in case of persons opting for composition scheme, the GST cannot be separately collected from the customers and the same needs to be built in the tariff price.

Further, the assesses under composition scheme would also not be eligible for input tax credit. Also, section 10 of the CGST act provides various conditions, procedures and restrictions for persons who are eligible to pay tax under the composition scheme

Hence, one must properly take note of the above while assessing the option of paying taxes under the composition scheme.

Q9. Customer has booked an accommodation prior to 18.07.2022 but the payment for accommodation service and the actual accommodation stay is after 18.07.2022. What shall be the taxability?

Ans: The change in the rate of tax has been made effective from 18th of July 2022 and suppliers of the said service shall comply with the provisions of Sec 14 of CGST Act i.e., "***Change in rate of tax in respect of supply of goods or***

services" to analyse "Time of supply" as that will eventually define the GST rate. Determination of time of supply under Section 14 has been provided as under:

Supply	Invoice	Payment	Time of Supply
Before rate change	Before rate change	Before rate change	Sec 14 not applicable
Before rate change	Before rate change	After rate change	Date of issue of Invoice
Before rate change	After rate change	Before rate change	Date of receipt of payment
After rate change	After rate change	After rate change	Sec 14 not applicable
After rate change	After rate change	Before rate change	Date of issue of Invoice
After rate change	Before rate change	After rate change	Date of receipt of payment
After rate change	Before rate change	Before rate change	Date of issue of invoice or date of payment whichever is earlier

Hence, in the given case, customer has only booked the accommodation prior to the change in the rate of tax and all the activity of payment, accommodation service, and issuance of Invoice takes place after the change in the rate of tax hence the time of supply will be the date of payment for the accommodation service or date of the invoice whichever is earlier as per Section 13(2)(a) of the CGST Act considering the Invoice has been issued within the time limit. Therefore, there will be no change in GST rate.

Q10. Customer has booked accommodation prior to 18.07.2022 and also made an online advance payment at the time of booking, however the actual accommodation stay is after 18.07.2022. What shall be the taxability?

Ans: Section 14 of the CGST Act 2017, provides for the determination of time of supply where there is a change in the rate of tax in respect of goods or services or both. In this case, payment for accommodation has been made prior to the change in the rate of tax and actual accommodation has taken place after the change in the rate of tax. Assuming Invoice will be issued after the completion of service i.e., at the time of checkout. Hence the time of supply will be the date of issue of Invoice (after 18th July 2022) as per Section 14(b)(iii) of the CGST Act as the services have been supplied and invoices have been issued after the change in the rate of tax. Therefore, new rates will be applicable.

Q11. Customer had an actual accommodation stay prior to 18.07.2022 but the payment for the service is made after 18.07.2022. What shall be the taxability?

Ans: Section 14 of the CGST Act 2017, provides for the determination of time of supply where there is a change in the rate of tax in respect of goods or services or both. In this case, payment for accommodation has been made after the change in the rate of tax and actual accommodation takes place before the change in the rate of tax. Assuming Invoice will be issued after the completion of service i.e., at the time of checkout. Hence the time of supply will be the date of issue of Invoice (before 18th July 2022) as per Section 14(a)(ii) of the CGST Act as the services have been supplied and invoices have been issued before the change in the rate of tax. Therefore, there will be no change in GST rate.

Q12. What shall be the impact of this change on the customers availing the accommodation service?

Ans: End consumers who are not registered under GST would need to absorb the burden of price increase. However, if the customers using the hotel accommodation, inn, guest house etc. are registered under GST, then they can avail the input tax credit if such expenditure are in the course or furtherance of their business and utilise the same against the output tax liability.

However, if a person does not have a GST registration in the state in which such Hotel, inn, guest house etc. is situated, then such person would not be able to avail and utilise the input tax credit and to that extent the GST element would become cost.

Although, in view of authors, legally the CGST portion of this tax paid should be eligible as input tax credit even if the recipient is not registered in such state, however presently the GSTN structure restricts ITC and the matter is under dispute.

Q13. In case where a small lodge provide food along with the accommodation, what shall be the impact of change in the rate of tax?

Ans: In case where a hotel, lodge provide food in complimentary to the accommodation, then the food element also would be liable to the tax rate @ 12%. However, if the food portion is unbundled, then the tax rate for the same would be governed by the rate of tax as applicable for such service i.e., 5% without ITC.

Further, it is pertinent to note that the concessional tax rate of 5% (without ITC) is prescribed for the restaurant services which interalia means that the Hotels need to identify the common goods/ services that are used for both hotel accommodation service and the food portion and ITC needs to proportionately be reversed on the same.

Q14. Overall, what shall be the compliance burden on Hotels, inns etc. due to change in rate of tax?

Ans: As discussed above, many small-scale service providers would now come under the ambit of GST and this would obviously result in increased compliances

as they would now have to obtain registration and ensure compliances to various provisions of the GST law viz, filing periodic returns, payment of taxes, maintaining proper records etc.

However, in respect of persons who were already registered under the GST, this change would actually reduce the complexities involved i.e., Persons engaged in both taxable & exempt supply were hitherto required to reverse the proportionate ITC by keeping complex calculations etc.

The said reversal calculations were very complex in nature and led to the burden of stringent compliances which were also open for multiple interpretations and disputes. The change would lead to full availment of ITC without restriction which would reduce the compliance burden to that extent.

Q15. Hotel incurs various expenditure for construction of new rooms or maintenance of existing property. Whether ITC of the same would be available to the hotels?

Ans: Any capital expenditure which results in immovable property (other than plant and machinery) and capitalised to the said immovable property in the books, then ITC on the same would not be eligible. However, if the said expenses are undertaken towards renovation or modernisation etc. and the cost is charged off to profit and loss account, the ITC of the same could be availed.

It is pertinent to note that very legality of blocking the input tax credit for hotels, inns, resorts etc. was held to be unconstitutional by the Hon'ble Orissa High Court in the case of ***Safari Retreats Pvt. Ltd. 2019-TIOL-1088-HC-Orissa-GST.*** Presently, the matter is pending before the Hon'ble Supreme Court.

Renting of Residential Dwellings:

Q16. What was the taxability of renting of residential dwellings prior to the amendment?

Ans: Prior to this amendment, renting of residential dwelling for use as a residence was exempt and when used for commercial purposes, the same was taxable. The tax structure is tabulated below for easy understanding.

Nature of property	Type of Use	GST levy	Forward/Reverse charge
Residential Dwelling	Residence	Exempt	NA
	Commercial	Taxable	Forward charge

Q17. What is the taxability of renting of residential dwellings after the amendment?

Ans: After the amendment, the taxability of renting of residential dwellings have undergone a sea change wherein if the residential dwellings are used for residential purpose, then the exemption is removed and the same is liable to tax

under the reverse charge mechanism if the customer is registered under GST. Further, if the customer is not registered under GST, then the exemption continues as it is.

Further, the taxability under reverse charge mechanism is kept irrespective of the usage of the property i.e., the liability to pay tax is shifted on the customer being a registered person even if the residential dwelling is used for commercial purpose.

The summary of this amendment is explained in the tabulated form below for easy understanding:

Taxability of Residential Dwelling in various scenarios

Type of Use	Customer	GST levy	Forward/Reverse charge
Residence	Registered	Taxable	Reverse Charge
Residence	Unregistered	Exempt	NA
Commercial	Registered	Taxable	Reverse Charge
Commercial	Unregistered	Taxable	Forward Charge

Q18. What is the meaning of the term "Residential dwelling"?

Ans: The term "Residential dwelling" is not defined under the GST law or the erstwhile Service tax law. However, Education Guide issued by CBEC under the erstwhile service tax regime states that in the absence of definition in the law the same needs to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, campsite, lodge, houseboat, or like places meant for **temporary stay**.

The general dictionary meaning of the term **'Residential dwelling'** means *"Living in a certain place permanently or for a considerable length of time".*

From the above, one can gauge that the structure of dwelling (i.e., the way it is designed – the layout of the dwelling) and the intent of its use are of paramount importance to determine whether or not the premises is a residential dwelling.

Q19. What all factors one must consider in determining a property as a residential dwelling?

Ans: As discussed above, the GST law is silent about what should be the criteria to qualify the property as a "Residential dwelling". However, based on the meaning of the term 'residential dwelling' in general parlance, various factors that one needs to consider for determining if a particular dwelling is a residential dwelling or a commercial premises are as under:

a) Layout of the property, its structure, whether it is designed for usage as a residential unit or a commercial unit.
b) How is the plan of the property sanctioned by the local authorities.
c) The intention of the developer / owner of the property.
d) The purpose for which the dwelling is put to use.

e) The length of stay intended by the users.

The above list is not exhaustive, and one needs to determine the status of the premises based on various combination or more of the above factors depending upon the facts of each case. This is important because the taxability of would depend upon whether property is residential dwelling or otherwise especially the changes in the taxability of both the entries i.e., residential dwelling and accommodation services.

In other words, if one concludes the property to be a residential dwelling, then there is no taxability in the hands of the lessor as the taxability is either exempt or the liability is shifted on the recipient of service. However, if one concludes the property to be a commercial premises, then the taxability is under forward charge in the hands of the lessor.

Q20. How to determine whether the particular premises is used as a 'residence' or as an accommodation service?

Ans: In order to understand whether the premises is used as a 'residence' or as an 'accommodation service', one needs to understand the meaning of the term 'residence'.

The term 'Residence' is not defined under the GST law. Going by the general parlance, 'Residence' is a place in which a person lives or resides. In other words, if a person resides at a particular place as a place of his abode, then it would amount to his or her residence. This interalia means that a place for temporary stay cannot be said to be used as a residence, it can at the most be an accommodation or lodging for some period of time but cannot be said to be ones residence.

Cue in this regard can be taken from the erstwhile service tax law wherein, section 65(105) of the Finance Act, 1994 (prior to 2012), provides the definition of taxable service for services provided by hotels, inns, etc, which generally involves stay for shorter period as compared to permanent or considerable time of stay, provides that the said service is providing accommodation for a continuous period of less than **3 months**. A guidance or benchmarking of 3 months can be taken from the above.

Taking cue from above, it can be stated that the intention of the law is to provide exemption in cases where the main intention of taking the premises on lease or rent is for a **long-term stay.** The same view is also in line with the view taken by Karnataka High Court in the case of ***Taghar Vasudev Ambrish*** 2022-TIOL-242-HC-KAR-GST.

However, the 3 months criteria cannot be a touchstone criterion for all the situations under GST as there is no such specific mention of 3 months criteria under GST law as against the express provisions under the Service tax laws.

Therefore, one needs to factor out various business dynamics, the way contracts are structured, the privity of contract etc. to determine whether the premises is used as a residence or is merely an accommodation service.

In view of authors, this is very important aspect as based on this determination, the rate of tax could vary from 0% or 12% or 18%.

Q21. What is the GST impact in the hands of landlords residential dwelling given for use as residence?

Ans: The changes brought in the 47th GST Council will have no impact in the hands of landlords. In other words, earlier this transaction was fully exempted from the tax net and post amendment, the liability is shifted in the hands of tenants if the said tenant is registered under GST. For unregistered tenants, the exemption continues as it is. Hence, there is no requirement for the landlords to take registration under GST.

Q22. What is the impact in the hands of tenants, where residential dwelling is given for residential use?

Ans: In case of renting of a residential dwelling, if the tenant is a registered customer, GST needs to be paid under RCM and if it is an unregistered customer, the same is exempt under GST. The liability to pay tax arises in the hands of tenant even if the usage of the property is for the residential purpose.

There could be cases where an individual is registered under GST but the residential property is taken on lease where such lease is not in the course of his business but for his personal stay. In view of the author, there is no GST liability under RCM in such cases as the services received are not in the course of business and thus fails the test of supply and levy under GST.

Q23. In the above case, what if the tenant is registered as a composition dealer, then whether the tax liability under reverse charge arises in the hands of tenant?

Ans: As explained above, the liability to pay tax is carved out in the hands of the recipient of service who is a registered person. It is pertinent to note that a person who is registered as a composition dealer is also a registered person as per section 2(94) read with section 25 of the CGST Act, 2017.

Therefore, all the provisions of the GST law in relation to RCM will be applicable to Composition dealer in the same way as a regular dealer. Therefore, in the given case, the tenant being a registered person would be liable to pay GST under RCM.

Q24. Company ABC (regd under GST in Maharashtra) have taken premises on rent from landlord for usage by its employees in Maharashtra, what is the GST implication?

Ans: The service recipient is a registered person under GST in the state of Maharashtra and therefore the exemption is not applicable. M/s ABC Ltd. must discharge the GST liability on the said service under reverse charge mechanism.

Q25. Company A (regd under GST in Maharashtra) have taken premises on rent from landlord for its employees in Delhi, what is the GST implication?

Ans: The liability to pay tax arises only if the customer is a registered person. In the given case, although Company A is registered under GST but the said company is not a registered person in Delhi.

It is pertinent to note that as per sec 25 of the CGST act, each registered person is a separate distinct person for the purpose of GST laws. Therefore, in the given case since Company A is not registered in the state in the state of Delhi, hence the question of tax liability under reverse charge does not arise and the transaction would be exempt from the tax net.

On the contrary, it is pertinent to note that department may take a contrary view that the recipient of service in this case is Maharashtra state of Company A and it needs to pay IGST under RCM. However, it is to be noted that presently there is no mechanism provided in the GST structure i.e., either in the GST returns etc. to pay IGST under RCM with place of supply as a different state.

Further, this interpretation is also not in line with the objects, purpose and also the legal provisions of the IGST Act.

Q26. Employee of Company A have entered into a rental agreement with the landlord, the said rent is reimbursed by the company A. What is the GST implication on the employee & the company A?

Ans: In respect of the first transaction between employee and the landlord, assuming that the employee is an unregistered person under GST, the transaction with the landlord for renting of residential dwelling would be exempted from the tax net.

Coming to the second transaction which is between company and the employee, it is necessary to understand that the same is in the nature of perquisite provided by the company to its employees for the discharge of his duties for the company and therefore it cannot be called as a transaction of a renting per se.

It is more of a facility, benefit or a perk that the company has granted to the employees in lieu of or as a consideration for his employment service.

This has also been clarified by CBIC vide its Circular No. 172/04/2022-GST, wherein it is stated that "Perquisites provided by employer to employees as per the contractual agreement" would be covered under Entry 1 of Schedule III i.e., "services by employee to the employer in the course of or in relation to his employment" thus there would not be any levy of GST on the same.

Q27. Director of the Company A has entered into a rental agreement with the Company A for the premises used for self-use. What is the GST implication on the director & the company A?

Ans: In order to determine implication of GST, we will have to first analyse if this transaction amounts to 'Supply' in the first place. It is pertinent to note that an

economic activity in the form of 'business' is important criterion to be satisfied for a transaction to be called as a 'supply'.

In the similar context, a Press release dated 13th July 2017 was issued stating that "Even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course of furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does not qualify to be a supply per se,"

Further, PIB Fact Check tweeted from its official handle stating that "Renting of residential units taxable only when it is rented to a business entity. No GST when it is rented to a private person for personal use. No GST even if the proprietor or partner of a firm rent's residence for personal use,"

Based on the above, it can be understood that the aspect of 'business' needs to be always looked at as the levy of tax is on the supplier. In the given case, the director cannot be said to be in the business of renting the properties to the company and the important criterion of 'business' in the scope of supply fails, thereby the transaction cannot be said to be a supply in the first place and therefore the liability to pay tax under reverse charge in the hands of company does not arise.

Q28. In the above case, what if the Director receives the rentals paid by him as a compensation for employment by way of reimbursements from the company instead of a separate rental deed?

Ans: In case the director does not provides the property to company on the lease basis but instead simply obtain the lease payments as a reimbursement towards the compensation for the employment services, then the transaction would not be liable for GST basis the discussion in FAQ No. 26 above.

Q29. Director of Company A have entered into a rental agreement with the Company A for the premises to be used as a guest house/ employee quarter by the company A. What is the GST implication on the director & the company A?

Ans: In this case, the director is not using the premises for his own or self use and instead the premises is given on rent to the company for use as a guest house/ employee quarter etc. Further, if company A is registered under GST, then the transaction between the director and the company would be liable to tax under reverse charge in the hands of the company.

Q30. If company pays GST under RCM on residential dwelling used by its employees/ directors, then whether ITC on the same would be eligible?

Ans: It is to be noted that as per section 16 of the CGST act, input tax credit is eligible on all goods/ services that are used in the course or furtherance of business.

Now, section 17(5)(g) states that input tax credit is blocked in cases where the goods/ services are used for personal consumption. In the given case, the service cannot be said to be used for the personal consumption because it is used by the company in the course of its business. In fact, the tax liability itself is paid under RCM only because the property was used in the course of business.

If an argument is taken that the property is used for non-business and the personal purpose, then the very question of taxability does not arise. Hence, in this case the service would be said to be used in the course of business and the input tax credit on the same should be eligible.

Q31. What if partial amount is recovered from employees towards the rental cost borne by the company, what would be GST impact?

Ans: Supply of residential dwelling for residential use to employees being unregistered person is covered by the exemption and hence not liable to GST. However, proportionate ITC may need to be reversed if the cost of taxes is also being borne by the employees as upheld by the Hon'ble Bombay High Court in the case of ***Ultratech Cement Ltd. vs. Commissioner of c. Ex., Nagpur 2010 (260) E.L.T. 369 (Bom.)***. In view of authors, the applicability of this ratio needs to be tested in the context of GST, where the transactions between employer and employees are clarified to be in the nature of perquisites and are not liable to GST.

Q32. Landlord has given residential property on lease to ABC Ltd who has further subleased it PQR Ltd. What would be GST liability on all the parties presuming that both the tenants are registered under GST?

Ans: Taxability is discussed as below:

- Landlord: There is no GST liability in the hands of landlord.
- ABC Ltd: It is liable under RCM on the services availed from the landlord @ 18%. However, w.r.t. further services of renting provided to PQR ltd, the liability would be under RCM on PQR Ltd. Thus, the ABC Ltd may not be entitled to avail the ITC of the GST paid under RCM as it is used for making exempted outward supplies (under RCM).
- PQR Ltd: Liability under RCM and can avail ITC thereof.

Therefore, in case of sub-leasing contracts, the total tax incidence on the transaction goes on to 36% as there is a clear cascading of taxes with blockage of ITC at each of the levels of subletting.

Q33. Residential property is given on lease where the tenant uses it for mixed purpose i.e., both for commercial and also residential purpose. What would be GST implication?

Ans: In case the property is used by the tenant for both residential and also commercial purpose, then it would be imperative to understand the dominant intent and the preliminary usage. In other words, if pre-dominantly the property

is intended to be used as a residence with some ancillary commercial use, then the taxability must be determined as if the property is used as a residence. The reverse would also hold good.

However, if a separate price is fixed for the area to be used for commercial and residential purposes, then the tax needs to be discharged proportionately under reverse charge to the extent of usage for commercial purpose.

It is important that the terms of the agreement clearly spell out the intent and the break-up of costs to avoid any possible dispute with the tax authorities as to taxability.

Q34. In the above case, what shall be the implication on ITC?

Ans: RCM liability paid by tenant would be eligible as credit to the extent it is used in the course or furtherance of business. Rule 42 provides for disallowance of ITC @ 5% where inward supply is used partly for the purpose of business and partly otherwise.

Renting of Commercial Premises:

Q35. Landlord gives commercial premises for commercial use to a tenant, what is the GST impact in the hands of landlords?

Ans: In case of renting of commercial premises, there is no exemption under GST and irrespective of the tenant's status i.e., registered or unregistered, the said transaction is taxable in the hands of landlord under forward charge.

Q36. In the above case, what is the GST implication in the hands of tenant?

Ans: In case of commercial premises, the taxability is in the hands of landlord under forward charge. Hence, there is no liability in the hands of tenant. Further, landlord while discharging its tax obligations can collect the taxes from the tenant for which the tenant would be eligible for input tax credit subject to satisfaction of other conditions provided u/s 16 of the CGST act.

Q37. If the property having both commercial as well as residential units is given on a rent to a single tenant, what shall be the GST implication?

Ans: In case the property is given on rent includes both residential as well as commercial units, then it would be imperative to understand the dominant nature of the contract i.e., if the property is predominantly residential in nature with commercial units being ancillary then the property can be said to be a residential unit and the taxability would be determined as if it is a residential unit. The reverse would also hold good.

However, if separate agreements are entered for the commercial and the residential area, then the tax on the commercial area would be liable under

forward charge in the hands of the landlord and the tax on the residential portion needs to be paid by the landlord under reverse charge (if registered under GST).

In view of the authors, the above position should also hold good if there is a single rental agreement entered towards both residential and also commercial portion so long as the terms of agreement clearly spell out and delineate the area and break-up as to the rentals.

Student Hostels, PG's:

Q38. Whether Student Hostels/ Paying guest services provided to students qualifies as accommodation service or rental services?

Ans: Circular No. 32/06/2018-GST considers hostel services to be part of accommodation services i.e., at par with hotels, inn, motels, etc.

However, ***Karnataka High Court's judgement in the Taghar Vasudev Ambrish 2022-TIOL-242-HC-KAR-GST*** contradicts the said contention wherein it was held that hostels are used by students for the purpose of residence and also for a longer duration terming the stay in hostel as for residential purpose.

It is to be noted that there cannot be a one size fits formula and a standard benchmarking in these cases. For instance, there can be situations where the hostel stays are also accepted for shorter periods i.e., say for a fortnight or where the educational course being undertaken itself is a short term. Further, in a same hostel there can be students staying for long term and also short term.

Few important parameters to be considered in this regard are as under:

a) The privity of contract and the nature of arrangement between the service provider and the user of property.
b) Apart from the room/ bed charges, what are the other facilities & amenities being offered.
c) Period of stay, whether the same is meant for short/ temporary stay or long term.

Hence, it is important that the facts and circumstances of each case are properly studied, the crux of the transaction is understood and most importantly the nature of arrangement between the parties i.e., privity of contract is clearly laid out and basis these factors, an appropriate decision must be taken as to whether the hostel is in the nature of the accommodation service or a rental arrangement.

This differentiation is important as the taxability, person who must pay tax and also the tax rate would change based on the above assertions.

Q39. Company A provides Hostel services to students, whether GST is applicable on the same?

Ans: As discussed above, if the hostel is meant for short-term stay with various facilities such as catering, Wi-Fi, laundry etc., then the service would be leviable to tax @ 12%. However, if the arrangement in the hostel service is more in the

nature of long term stay with privity of rental arrangement, then the said service would be exempt from tax (assuming students are not registered under GST).

Q40. Company A provides Hostel services to the university/ educational institution, whether GST is applicable on the same?

Ans: Generally, in the case of transaction with universities/ educational institutions, the arrangement would be in the nature of rental services wherein a leave and license or a lease deed is executed for a longer term which ranges from 3 years and above. Therefore, the arrangement in these cases would generally be in the nature of renting.

Further, the students staying in these hostels also reside in the hostels for a longer period of time till the completion of the course i.e., 1 year and up to 5 years.

Also, the charge in this case would not be per student based, instead a lumpsum monthly amount would be charged from the university.

Hence, as the premises is in the nature of a residential dwelling and it is also used for the residential purpose, therefore the transaction would be exempt from tax net.

However, if the said university/ educational institution is registered under GST, then the said university/ educational institution needs to be pay tax under reverse charge mechanism @ 18%.

Q41. University being an educational institution provides hostel services to its students, what is the GST implication on the same?

Ans: Services provided by university being an educational institution to its students are exempted from GST as they are imparted based on the curriculum and it leads to qualification in the form of a degree, diploma etc. Many educational institutions also provide the hostel facility to its students and a separate fee is charged for the said Hostel facilities provided.

It is pertinent to note that as per entry 66 of the Notification No. 12/2017-Central Tax (Rate) services provided by the educational institutions to its students are exempted from the tax net and hence even the hostel facility would be exempted.

More so, the facility is an element of a natural bundle to the educational service and hence once the principal supply is exempt, the ancillary items also must not be liable to tax.

Q42. M/s. ABC is a commercial coaching centre which provides the hostel facility to its students as a part of its coaching classes, what is the GST implication on the same?

Ans: Commercial training and coaching services provided by the commercial coaching centres are not covered under exemption from GST liability and

generally taxable @ 18%. The exemption discussed above would not be applicable to these commercial coaching centres.

Hence, if the hostel facility is bundled with the coaching service then the tax rate of 18% would be applicable even on the fees collected towards the hostel facility.

However, if the hostel facility is independently provided without bundling it with the main service (i.e., commercial coaching), then the said service would be liable to tax @ 12% as an accommodation service.

However, if the hostel facility is provided for a long term stay and the privity of contract is that of a renting of residential dwelling, then the same would be exempted from the tax net (assuming that the students are not registered under GST).

Q43. Mr. A (unregistered under GST) provide hostel services to the students by directly collecting the charges from the students. The premises is taken on rent from the landlords. What is the GST implication in the hands of landlord?

Ans: In the case of transaction between landlord and Mr A., the transaction is in the nature of renting of residential dwelling used for residence. Reliance in this regard can be placed on the decision in the case of ***Taghar Vasudeva Ambrish Vs Appellate Authority for Advance Ruling Karnataka 2022-TIOL-242-HC-KAR-GST*** wherein it is held that Hostels are primarily given on rent for residential use and is not at par with hotels.

Hon'ble High Court also concluded that the benefit of exemption notification cannot be denied to the petitioner on the ground that the lessee is not using the premises and that the premises is registered as a commercial unit under the shops and establishments act. Therefore, there will not be any GST implication in the hands of landlord.

Q44. In the above case, what is the GST implication in the hands of Mr. A?

Ans: As far as Mr. A is concerned, if he is registered under GST, then it shall be liable to tax under RCM on services availed from landlord and may not be entitled to take the ITC of the same if onward services to students are exempted being in the nature of renting services (assuming students are not registered under GST).

However, if the onward service to students is in the nature of accommodation service, then the same would be liable to GST @ 12% and the tax paid under RCM would be available as input tax credit.

Service Apartments, Co-living Centres:

Q45. Whether the Service Apartments, Co-living centres are in the nature of a renting service or whether they are an accommodation service?

Ans: Just like co-working where the workspace and the related facilities are shared among the businesses, similarly there is a trend of co-living, where individuals share the room along with various common facilities and live together. This has many benefits as it gives one a feeling of staying at a home with access to all the facilities/ amenities such as homely food, caretaker, gym etc.

Further, due to shared living the cost gets divided and the price point comes at a much cheaper rates as compared to hotels, inns etc.

This leads to many students, corporate employees prefer co-livings/ service apartments over hotels, inns etc. especially when the stay is meant for a bit longer term.

Now, the moot question that comes is for the purpose of taxability, whether co-livings can be said to be hotels, inns etc. or whether it is in the nature of a renting arrangement.

In view of the authors, the taxability in case of service apartment case cannot be decided merely based on their status of being a service apartment or a co-living centre, instead one needs to first understand the purpose/ usage of the co-living centre and basis that the nature of transaction must be derived.

For example, there can be a co-living centre, which is purely meant for student's on a long term basis, in which case the service is in the nature of Hostel facility and the taxability would be based on the principles as discussed above for hostel services.

On the other hand, there would be service apartments that are meant for short stay i.e., a week or a month etc. in which case the nature of service is more akin to a hotel, inn, guest house etc. and the taxability would be based on the principles as discussed above for the hotel accommodation services.

Hence, in view of the authors, there cannot be a cast in stone principles of taxability for service apartments/ co-living centres. One needs to assess the taxability based on the facts and circumstances of each case.

As an illustration, following can be the broad differentiating factors between a 'Hotel Accommodation' and a typical 'renting arrangement':

a) In case of rental arrangements, there would be a rental or lease agreements executed for staying in above referred places.
b) They are generally meant for long term stay (say for more than 11 months) and construe a place of abode or a residence for the person using the facility.
c) Generally, prices are not defined on per day/per room basis and are fixed on a monthly basis with yearly renewal/ increments.
d) Landlords does not undertake the facilities like Wi-Fi, food, laundry etc.
e) The premises would be residential in nature viz., residential sanction would be granted from the authorities.

It is to be noted that the above list is only illustrative in nature, and one must consider various above factors jointly and severally to arrive at the correct

taxability. There can be situations where a mix of both the scenarios are being offered in a co-living centre.

In view of the authors, the pre-dominant intention plays a vital role in deriving whether the co-living centre/ service apartment is in the nature of a hotel accommodation or a renting service.

Q46. ABC Ltd. (registered under GST) is into the business of providing service apartments for use by taking the premises (residential dwelling) on rent from landlords. What will be GST implication of the same on landlord?

Ans: In case of service apartments, as the premises would be in the nature of a residential dwelling, therefore irrespective of its use i.e., residential, or commercial, it would be liable for GST under RCM in the hands of ABC ltd. There would not be any GST incidence in the hands of the landlords.

Further, landlords who were collecting and paying GST till now can stop charging GST on the invoices. Also, there is no other taxable income, then the landlords can also consider deregistering under GST.

However, if the premises is commercial in nature, then the liability to pay tax would be under forward charge in the hands of the landlord.

Q47. In the above scenarios, what shall be the tax implication if ABC Ltd. is not registered under GST?

Ans: Renting of residential dwelling for use as a residence to an unregistered person is exempt from tax net. Hence, if ABC ltd. is not registered under GST, then the transaction would not be liable to tax in the hands of ABC ltd.

In view of the authors, in case of end use-based exemptions, the ultimate end usage must be seen and not the intermediate use. In the present case, the end use of the service apartments is that of the residential purpose only and the transaction would be exempt from the tax net if the recipient is unregistered under GST.

This view is also affirmed by the Karnataka High court in the case of ***Taghar Vasudev Ambrish*** 2022-TIOL-242-HC-KAR-GST.

Q48. What if the arrangement between a co-living service provider and the landlord is in the nature of an operations and management arrangement with landlord directly providing the service to the occupants. What shall be the GST implication in the hands of the landlord?

Ans: In the case of operators & management arrangement, there would not be any leave and license or rental arrangement between the landowner and a co-living service provider. Instead, the transaction would be more in the nature of a joint venture with landowner directly billing the occupants for the rental services and co-living provider directly billing to the occupants towards the facility management services.

The landlord would be exempt from the tax net if the occupants are not registered under GST. Further, if the occupants are registered under GST, then such occupants need to directly pay GST by themselves under RCM.

Q49. In the above case, what shall be the tax implication in the hands of co-living service provider?

Ans: In the above arrangement, the co-living service provider directly bills the occupants towards the facilities in which case the transaction falls in the category of a facilities management services and are liable to tax @ 18% under forward charge in the hands of a landowner.

Dharamshala's/ Religious precincts:

Q50. Is there any GST impact on the renting or rooms in the religious precincts by dharmshala's?

Ans: In case where the precincts in the religious place meant for general public is given on rent by an entity registered as a charitable or religious trust under section 12AA or 12AB or a trust or an institution registered under section 10(23C)(v) or a body or an authority covered under clause section 10 (23BBA) of the Income-tax Act, 1961 then the same would not be liable to tax net subject to monetary limit as provided below:

Type of Property	Rental Amount	GST levy
Renting of rooms	Less than Rs. 1,000/- per room/ per day	Exempt*
	More than Rs. 1,000/- per room/ per day	Taxable
Renting of premises, community halls, Kalyan mandapam or open area	Less than Rs. 10,000/- per day	Exempt*
	More than Rs. 10,000/- per day	Taxable
Renting of shops or other spaces for business or commerce	Less than Rs. 10,000/- per month	Exempt*
	More than Rs. 10,000/- per month	Taxable

* The exemption entry is covered under s. no. 13 wherein no amendment has been carried out and hence the exemption continues to be available.

*[The views expressed are strictly personal. For feedback or queries, please write to the authors at **ashish@hiregange.com** **or** **ravikumar@hiregange.com** **or** **pratik@hiregange.com**]*