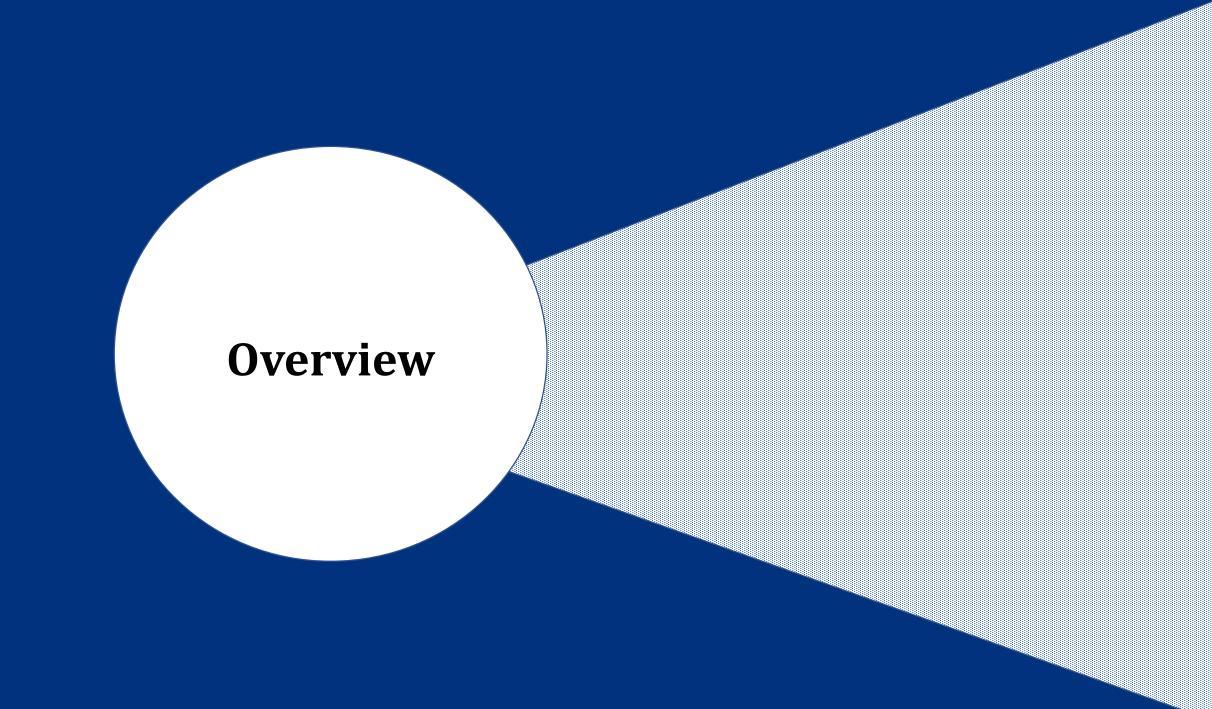
# Reverse Charge Mechanism under GST

CA Ashish Chaudhary
Partner, Hiregange & Associates

#### Coverage

- Overview
- Section 9(3) & 9(4) of CGST Act
- Services liable under 9(3) and issues therein
- Goods liable under 9 (3)
- Services & goods liable under 9(4)/5(4)
- Liability u/s 9 (5) ecommerce operator



#### Reverse Charge Mechanism - Overview

#### What is Reverse charge mechanism?

- As per Section 2(98), "**reverse charge**" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both.
- In other words, in the specified cases, the obligation to pay the GST would be on the recipient of goods and/or services rather than the supplier.

#### Who is supplier of service?

• As per section 2(105), "**supplier**" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

#### Who is recipient of service

As per section 2(93), "recipient" of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

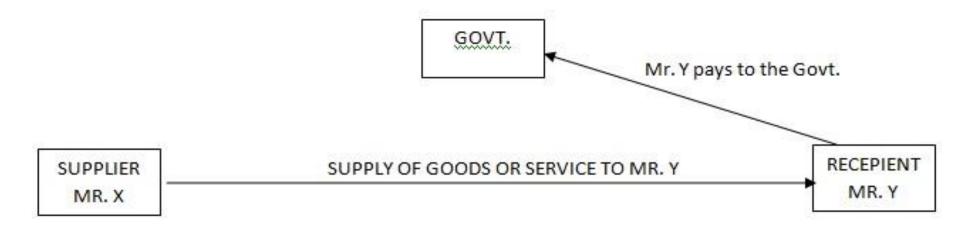
and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied,

#### Reverse Charge Mechanism

#### NORMALCHARGE



#### REVERSE CHARGE



#### Levy of GST under RCM

Sec 9 (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Sec 9 (4) The Government may, on the recommendations of the Council, by notification, specify a <u>class</u> of registered persons who shall, in respect of <u>supply</u> of <u>specified</u> categories of goods or services or both received from an unregistered <u>supplier</u>, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both

## Time of supply for goods - section 12(3)

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—

- ☐ the date of the **receipt of goods**; or
- □ the **date of payment** as entered in the books of account of the recipient or the **date on which the**payment is **debited** in his bank account, whichever is earlier; or
- □ the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply

## Time of supply for Services - section 13(3)

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely: –

- the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier

#### Invoicing

•In terms of section 31(3)(f) (self-invoice): A registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the <u>supplier who is not registered</u> on the date of receipt of goods or services or both.

•In terms of section 31(3)(g) (payment voucher): A registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier

#### Input Tax Credit - RCM

Tax paid under RCM eligible as ITC subject to other conditions

Document and time for taking credit: same month subject to payment of tax

GST	Central excise/Service Tax
Sec 16 (2) (a) he is in possession of a <b>tax invoice</b> or debit note issued by a supplier registered under this Act, or such other tax paying documents <b>as may be prescribed</b>	Rule 9: a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax
Rule 36 (b): an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;	<b>Provided</b> that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid

#### Input Tax Credit time limit

- ■A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September **following the end of financial year to which such invoice or debit note pertains** or furnishing of the relevant annual return, whichever is earlier:
- □ [**Provided** that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of **any invoice** or invoice relating to such debit note **for supply of goods or services or both made during the financial year 2017-18**, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

#### Other aspects in RCM

**Registration:** All persons procuring goods or services notified under Section 9(3) or Section 9(4) are mandatorily required to obtain GST Registration.

**Payment of Tax:** GST levied under the Reverse Charge mechanism should be deposited with the Govt by the 20th of the next month

Liability to be paid in cash

Person under composition scheme – liable to pay under RCM

Double taxation – supplier treated as providing exempted services with no ITC

Classification and exemption

List of services on which GST is to be paid under RCM as per notification No.10/2017-Integrated Tax (Rate) dated 28.06.2017 and amended from time to time

S No	Description of Service	To be paid by - Recipient being
	Any service supplied by any person in non-taxable territory, to any person other than a non-taxable online recipient,	Any person located in the taxable territory
	Goods Transport Agency (who has not paid IGST at 12% inserted vide notification No.22/2017 Integrated Tax (Rate) dated 22.08.2017) provided to persons specified in Note 1 (i)	Note1(i) below but excludes
3	,	Recipient if business entity located in taxable territory
4	Services supplied by an arbitral Tribunal to business entity.	Recipient if business entity

List of services on which GST is to be paid under RCM as per notification No.10/2017-Integrated Tax (Rate) dated 28.06.2017 and amended from time to time

S No	Description of Service	To be paid by - Recipient being
5	Sponsorship	Any body corporate or partnership firm
6	Services provided or agreed to be provided by CG/SG/UT or local authority excluding specified services	
6A	Services supplied by Central Government, State Government, Union Territory, or Local Territory by way of renting Immovable property to a person registered under the CGST Act, 2017.	

6B	Services supplied by any person by way of transfer of Promoter development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	
6C	Long term lease of land (30 years or more) by any personagainst consideration in the form of upfront amou (called as premium, salami, cost, price, developme charges or by any other name) and/or periodic rent formstruction of a project by a promoter.	nt nt
7	Services by Director to a Company	Recipient if company or body corporate
8	Service by insurance agent	Recipient is a person carrying on insurance business
9	Service of a recovery agent	Recipient if banking co. or a financial institution or a NBFC

10	Transportation of goods by a vessel from outside India up to customs station of clearance in India, supplied by a persor located in non-taxable territory.	,
11	Transfer or permitting the use or enjoyment of a copyrigh covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic musical or artistic works, by an author, music composer photographer, artist or the like	producer or like located in taxable territory
12	Supply of services by the members of Overseeing Committee to Reserve Bank of India	eRecipient if Reserve Bank of India.
13	Services supplied by individual Direct Selling Agents (DSA's other than body corporate, partnership or LLP.	A banking company or a NBFC, located in the taxable territory.
14	Services provided by business facilitator(BF)	A banking company , located in the taxable territory
15	Services provided by an agent of business correspondent (BC)	A business correspondent, located in the taxable territory.

16	Security services (services by way of supply of security personnel) provided by other than body corporate. (w.e.f. 01.01.2019)	Any registered person, located in the taxable territory.
17	Motor vehicle renting services Here the supplier should be a person other than a body corporate, paying integrated tax at the rate of 5% on renting of motor vehicles with input tax credit only of input service in the same line of business (w.e.f. 01.10.2019)	Any body corporate located in the taxable territory.
18	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended. Note 5	Borrower

Discussion on service specific issues

#### Definition of Supply – Import of Service

**Scope of supply.** — (1) For the purposes of this Act, the expression "supply" includes:

- (a) .....
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c).....

#### Schedule I

Import of services by a [person] from a related person or from any of his other establishments outside India, in the course or furtherance of business.

#### **Transaction in money**

Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.

- Liability under RCM when:
  - Supplier is located outside India
  - Place of supply is in India
  - Recipient of service is located in India
- Intermediary viz a viz market support services
- Import of goods on payment of rental charges Notification 85/2017-Customs

Payment of royalty and license fees – exemption from IGST to the extent included in the Customs valuation. Other services included in customs valuation to have IGST service liability?

Services imported by SEZ from outside India – Notification 18/2017

• Transactions with associated enterprises – entry in the books of account – *General Motors (I) Pvt Ltd* – expense provision liable to ST under RCM.

- Establishment in India and establishment outside India to be treated as distinct person taxability of head office and branch transactions where:
  - It is merely consolidation for the books of account It is merely consolidation as per accounting requirement. DSP Merrill Lynch Limited vs. CST, Mumbai
  - Expenditure incurred by branch office outside India and reimbursement claimed from Indian Head office
  - Remittance made by Indian HO to branch outside India for operational purpose *Service is taxable only when consumed in India, where services are consumed abroad, then tax is not leviable in India. Merely flow of funds for branch's survival reimbursement of costs of branch and ipso facto do not amount to rendition of service by branch.* Milind Kulkarni 2016

- Cost allocation by head office outside India to a project office in India: Underlying services (Vishay Components India Pvt) *viz a viz* merely MIS entry

- Deputation of employees by holding company from outside India to subsidiary company in India: Joint employment vs recovery as consideration (*Nissin Brake 2019-SC*)

- Taxability of Corporate Guarantee where supplier is located outside India.

#### GTA Coverage

Supply of Services by a goods transport agency (GTA) who has not paid integrated tax at the rate of 12%, in respect of transportation of goods by road to-

The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification

#### **GTA** Issues

- Difference between GTA and GTO what if consignment note not issued KISAN SAHKARI CHINI MILLS LTD. (All HC)
- Transaction between to GTA where vehicles are taken from other transporters
- Incidental services in addition to transportation circular no. 186/5/2015
- 5% taxable under RCM whether ITC is eligible?
- Transporter charged tax @ 5% under forward charge whether liability under reverse charge?
- Whether tax charged wrong under forward charge ITC is eligible?
- Nature of tax liability transporter outside State?

#### Services provided by Government

Services supplied by the **Central Government, State Government, Union territory**or local authority to a <u>business entity</u> excluding, -

• (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.

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

#### Services provided by Government

- Reverse charge liability on services from Government does not include government authority and governmental entity
- Many of the services provided by Government are exempted –
- MCA Payments, Registration Fee Payment, License Fees, renewal fees etc.
- Special focus on Government payment higher possibility of missing RCM liability

#### Services provided by Directors

Services supplied by a director of a company or a body corporate to the said company or the body corporate.

- Services provided by directors employee capacity *viz a viz* director Clay Crafts India Pvt Ltd (AAR) / Allied Blenders and Distlieries Pvt Ltd (Mum- CESTAT)
- Services provided in capacity other than employees
- Other services provided by directors technical consultancy, renting of immovable property services etc.

#### Sponsorship Services

• Difference between sponsorship services and advertisement services includes naming an event after the sponsor, displaying the sponsor's company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition (ST law)

Sponsorship services provided to partnership firm

Sponsorship in case of donation to charitable institution

# Renting of Motor Vehicle - Not 22/2019

S.	Category of Supply of Services	Supplier of	Recipient of
No.		Service	Service
15	Services provided by way of renting of a motor vehicle provided to a body corporate	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any body corporate located in the taxable territory.

# Renting of Motor Vehicle - Not 29/2019

S.	Category of Supply of Services	Supplier of	Recipient of
No.		Service	Service
15	Services provided by way of renting of any <i>motor vehicle designed to carry passengers</i> where the <i>cost of fuel is included</i> in the consideration charged from the service recipient provided to a body corporate	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent to the service recipient	Any Body Corporate located in the taxable territory

# Renting of Motor Vehicle – Analysis

Service Provider	Recipient	Liability
Individual, HUF, Firm	Company	Under RCM
	(body corporate- BC)	
Individual, HUF, Firm	Individual, HUF, Firm	Under FCM
Company	Any	Under FCM
Individual, HUF, Firm	Employee of BC (acting as agent of the BC)	Under RCM
Individual, HUF, Firm	Employee of BC (employee availing services on P2P)	Under FCM

#### Renting of motor vehicle – Circular No. 130/49/2019

It was clarified by the circular that:

- (i)where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and,
- (ii) where the supplier of the service doesn't charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.

Retrospective application?

#### Ocean Freight

Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India

High Court judgment in case of Mohit Minerals Pvt Ltd

Application of HC judgment in other States

## **Security Services**

# Security services (services provided by way of supply of security personnel) provided to a registered person:

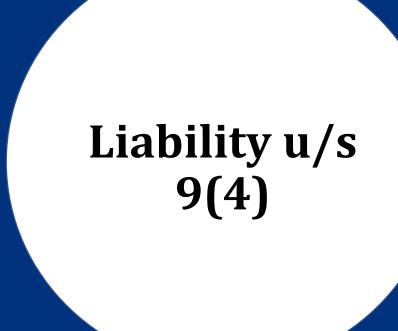
- Service provider is person other than body corporate
- Recipient is any registered person (whether body corporate or not)
- To be paid on the gross amount (incl salary+PF+ESIC+Margin of contractor etc)
- If other services provided by security agency no liability under RCM

## **Construction related services**

S. No	Description of Service	Liability of RCM
1	Services supplied by any person by way of transfer of development rights or FSI	By Promoter
2	Long term lease of land (30 years or more) by By Promoter any person against consideration in the form of up-front amount.	

#### Other issues in RCM

- Whether ITC can be taken in the same month or next month
- RCM implication in case of COVID period
- Purchase made from agriculturist
- RCM for rental services received from non-residents Individuals having properties located in India



## RCM on URD purchases

Earlier	Amended	Impact
All supplies received from URD liable to reverse charge.		had rescinded
Exemption provided for a limit of Rs. 5000 per RP per day	goods or services as are	

## Notification on RCM – 07/2019

Description	Liability of RCM
Supply of any goods and services (shortfall of 80%)	Recipient of goods
other than capital goods and cement	and services
Cement	Recipient of goods
	and services
Capital goods	Recipient of goods
	and services

#### Illustration 1

SI. No	Name of input goods and services	Percentage of input goods and services received during the financial year	Whether inputs received from registered supplier? (Y/ N)
1	Sand	10	Υ
2	Cement	15	N
3	Steel	20	Υ
4	Bricks	15	Υ
5	Flooring tiles	10	Υ
6	Paints	5	Υ
7	Architect/ designing/ CAD drawing etc.	10	Y
8	Aluminium windows, Ply, commercial wood	15	Y

Here the promoter has procured 80% of the inputs from a registered person but the cement procured by him was from unregistered person and hence he is required to pay GST on cement at the applicable rates on reverse charge basis.

#### Illustration 2

SI. No	Name of input goods and services	Percentage of input goods and services received during the financial year	Whether inputs received from registered supplier? (Y/ N)
1	Sand	10	Υ
2	Cement	15	Υ
3	Steel	20	Υ
4	Bricks	15	Υ
5	Flooring tiles	10	Υ
6	Paints	5	N
7	Architect/ designing/ CAD drawing etc.	10	Y
8	Aluminium windows, Ply, commercial wood	15	N

Here the promoter has procured 80% of the inputs from registered supplier and hence not required to pay GST under reverse charge basis.

Liability under RCM on goods

## Reverse Charge Mechanism 9(3)/5(3) - Goods

List of Goods on which GST is to be paid under RCM as per Notification No. 4/2017-Integrated Tax (Rate) as amended from time to time

S. No	Description of Goods	Supplier
1	Cashew nuts, not shelled or peeled	Agriculturist
2	Bidi wrapper leaves (tendu)	Agriculturist
3	Tobacco leaves	Agriculturist
		Any person who manufactures silk yarn from raw silk or
4	Silk yarn	silk-worm cocoons for supply of silk yarn
4A	Raw cotton	Agriculturist

## Reverse Charge Mechanism 9(3)/5(3) - Goods

List of Goods on which GST is to be paid under RCM as per Notification No. 4/2017-Integrated Tax (Rate) as amended from time to time

S. No	Description of Goods	Supplier
		State Government, Union Territory or any local
5	Supply of lottery	authority
	Used vehicles, seized and confiscated goods,	Central Government, State Government, Union
6	old and used goods, waste and scrap	territory or a local authority
7	Priority Sector Lending Certificates	Any registered person

Liability on E-Com
Operator

### E-commerce operator

☐ The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

## Thank You



ashish@hiregange.com

+91 8510950400

