

GST UPDATE No 241 ON PARTIAL WITHDRAWAL OF EXEMPTION ON RENTING OF RESIDENTIAL DWELLING

The 47th GST Council Meeting widened the scope of RCM transactions by introducing a new entry liable to tax under RCM. According to the notification no. 05/2022-Central Tax (Rate) dated 13.07.2022, a new entry no. 5AA has been introduced wherein the tax is payable by the registered recipient of service under RCM in case of services of renting of residential dwelling received by it from any person. Simultaneously, notification no. 04/2022-Central Tax (Rate) dated 13.07.2022 has made amendment in the exemption notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 wherein the exemption has been partially withdrawn if the service of renting of residential dwelling is being provided to registered person. The revised entry reads as services by way of renting of residential dwelling for use as residence, except where the residential dwelling is rented to a registered person. The analysis of the above amendments is the focus point of our present update.

It is pertinent to mention that the above entry is specific to renting of residential dwelling so the renting of commercial property is not covered under RCM. The following can be the possible permutations and combinations for better understanding of the provision:-

Service Provider	Service Receiver	Usage of property	Whether RCM applicable?	Remarks
Unregistered	Unregistered	Residential	No	No GST payable as exemption
Unregistered	Registered	Residential	Yes	RCM is applicable as service

				recipient is registered
Registered	Unregistered	Residential	No	No GST payable as exemption
Registered	Registered	Residential	Yes	RCM will be applicable irrespective of the fact whether the service provider is registered or not as far as service is being received by registered person.

Now, following points emerge from the amendment:-

1. **What will be implication if the usage of residential dwelling is commercial in nature?** It is pertinent to mention that the RCM notification merely states that services by way of renting of residential dwelling to a registered person is covered under RCM. However, the exemption notification states that ***services by way of renting of residential dwelling for use as residence, except where the residential dwelling is rented to a registered person.*** On analysis of the language, it is found that the exemption entry seeks to provide that renting of residential dwelling for use as residence is exempt except when rented to registered person. Now, the question arises is whether the intention is to

refer “use as residence” even when rented to registered person? For instance, it is often observed that residential property is being used as office by a person registered under GST. Whether RCM would be applicable in such cases or not is the point of dispute?

2. **What will be effect if premises is taken by registered person in the personal capacity?** It is possible that the proprietor of a firm registered under GST has taken residential dwelling for use as residence. In that case, the rent expenditure is of personal nature and is not being claimed as business expenditure in Income Tax Laws. In such a scenario, the rent paid is not in the course or furtherance of business. Hence, suitable clarification should be issued regarding payment of tax under RCM in such scenario by the registered person.
3. **Whether ITC admissible for the tax paid under RCM by the registered recipient?** Another question that arises is regarding the availability of input tax credit of the tax paid by the service recipient. For example- if a residential dwelling is being taken on rent by a company for use as residence by its employees, the company would be liable to pay GST under reverse charge mechanism. Now, the question arises is whether the input tax credit of the tax so paid would be available to the company or not. In this respect, reference is made to the provision contained in section 17(5)(g) which states that ITC would be restricted for goods or services or both used for personal consumption. However, in the present case, the services of renting have been availed by the company for providing residence to the employees which can be considered as in the course or furtherance of business, particularly when the factory is situated in remote location. Therefore, the credit would be available but would be definitely litigated by the department.
4. **What will be implications on leasing of/services provided by hotels, hostels, dharamshalas etc?** Yet one more issue is whether the above provision would be applicable in case of premises such as hotels, hostels etc. let out for residential purposes on short term basis. Moreover, there are also arrangements wherein residential property such as residence of erstwhile regime is being leased out to a company to be run as a hotel which is being used as short term accommodation. In this context, it is

worth mentioning that the GST Council has also withdrawn the exemption of declared tariff of room being less than Rs. 1000 per day per room. Consequently, the accommodation services provided by hostels was enjoying the benefit of exemption either under the erstwhile entry for renting of residential dwelling or under the entry of declared tariff of room being less than Rs. 1000 per day per room. In this context, reference may be made to the decision given in the case of advance ruling pronounced in the case of **M/S GHODAWATENDUSERVE LLP** wherein it was held that hostel is not a residential dwelling as it is meant for temporary stay during the time period of training. However, on the contrary, hon'ble Karnataka High Court in the case of **TAGHAR VASUDEVA AMBRISH** has concluded that activity of leasing out hostel to students and women is covered under 'residential dwelling' even if the lessee itself is not using the premises. Therefore, if the decision of the Karnataka High Court is applied, reverse charge mechanism may apply even in cases where the premises is being let out by lessor to lessee, who is a company registered under GST laws, to be run as a hostel.

The implications of the recently introduced amendment has far reaching consequences and it is hoped that the government issues a suitable clarification resolving all the probable ambiguities so that unwarranted litigation is avoided.