



NITYA
tax associates



Residential Dwelling – Taxability under GST

“A house is a home when it shelters the body and comforts the soul” – By Phillip Moffitt

Introduction

The 47th Council meeting will be remembered for carving out an exception to a long-time exemption for “Services by way of renting of residential dwelling for use as residence”. The Council made some bold moves in widening the tax base impacting one and all. Such a recommendation inter alia proposed to amend the said entry so as to exclude a registered person from the scope of exemption. Earlier, irrespective of the status of a recipient, the renting of a residential dwelling remained exempt.

To implement the GST Council’s recommendation, the Government vide **Notification No. 4/2022-Central Tax (Rate)** dated **July 13, 2022** has levied tax on renting of residential dwelling to a registered person. Through this Article, the Authors have attempted to delve into the repercussions of this amendment.

Residential Dwelling - Meaning

At the outset, it is noteworthy to mention that the term residential dwelling is not defined under GST law. Under **‘Taxation of Services’ – Education Guide** dated **June 20, 2012** (**‘Education Guide’**) issued by CBEC (now CBIC), the term ‘residential dwelling’ was explained as any residential accommodation other than hotel, motel, inn guest house, campsite, lodge, houseboat, or like places meant for temporary stay. In general parlance, ‘residential dwelling’ is understood as a place designed for people to live in.

Basis meaning assigned in Education Guide and dictionary meaning, an inference can be drawn that a property will qualify as ‘residential dwelling’ basis structural design of such property for people to live in at the time of renting.

GST under RCM

The Government, in line with recommendation of GST Council has amended **Notification No. 13/2017-Central Tax (Rate)** dated **June 28, 2017** (‘RCM Notification’) to include ‘Services by way of renting of a residential dwelling to a registered person’ under RCM

Registration Requirement and Place of Supply

Section 22(1) of the CGST Act provides that every supplier is liable to obtain registration in the State from where it makes taxable supply of services. Further, Section 24 starts with a non-obstante clause and sub-clause (iii) to the said Section thereof provides for compulsory registration of persons required to pay tax under RCM.

Section 12(2)(a) of the IGST Act stipulates that where any services are provided directly in relation to an immovable property then place of supply will be the location of such immovable property. Accordingly, in case of renting of residential dwelling, place of supply will be the State where such property is located.

Further, in terms of Section 7 and 8 of the IGST Act, where location of a supplier and place of supply are in same State, such supply will qualify as an intra-state supply. However, if location of a supplier and place of supply are in different states, such supply will qualify as an inter-state supply.

For ease of understanding, different scenarios have been tabulated below:

Scenario	Location of supplier	Location of residential property	Location of recipient	Place of Supply	Nature of tax
1	Delhi	Delhi	Delhi	Delhi	CGST & SGST
2	Delhi	Delhi	Haryana	Delhi	CGST & SGST
3	Punjab	Delhi	Haryana	Delhi	IGST

In Scenario 2, there is an ambiguity for payment of CGST and SGST by recipient under RCM located in a State other than State where immovable property is located. Legally, recipient is liable to pay CGST and SGST in Delhi under RCM. Hence, recipient will have no option but to obtain registration in same State where property is located to discharge RCM.

Further, in Scenario 2, if recipient intends to claim ITC, it can distribute such ITC to its Haryana location through ISD mechanism. For distribution of such ITC, a recipient needs to obtain separate ISD registration in the State where property is located.

Time of Supply

Post July 18, 2022, rate of tax on renting of residential dwelling has been changed from Nil to 18 percent.

Section 14 of the CGST Act deals with time of supply on account of change in rate of tax. Notably, for applying Section 14, it is pertinent to determine the date on which services are provided to recipient. However, for continuous supply of services (such as renting services), there is no provision to determine date on which such services are provided.

Section 31(5) of the CGST Act stipulates that in case of continuous supply of services, where due date of payment is ascertainable from a contract, invoice needs to be issued on or before due date of payment. Hence, in absence of any specific mechanism under Section 14 to determine when services are provided, inference can be drawn from Section 31(5).

For ease of understanding, different scenarios have been tabulated below:

Rent payment date	Date of provision of service	Time of supply	GST liability
July 1, 2022	July 1, 2022	July 1, 2022	Exempt
August 1, 2022	August 1, 2022	August 1, 2022	Taxable under RCM

Section 14 also refers to invoice date for determination of time of supply. However, where supply was exempt and becomes taxable subsequently, the supplier would have either issued a bill of supply or an invoice without GST before the rate change.

Under Section 2(66) read with Section 31 of the CGST Act, the term 'invoice' does not include 'bill of supply'. Hence, a taxpayer may not be able to determine time of supply under Section 14 in scenario where exempt supply subsequently becomes taxable. Due to this lacuna in law, taxpayers need to determine time of supply of services basis date of provision of service and date of payment.

Input Tax Credit

Section 16(1) of the CGST Act states that a registered person is entitled to avail ITC of GST paid on goods and services, used or intended to be used in course or furtherance of its business.

Where employer has rented residential dwelling for stay of its employees, such service will be considered to be received by employer in the course or furtherance of its business. Hence, a recipient can claim ITC on such service.

Further, Section 17(5) starts with a non-obstante clause and restricts ITC where goods or services are used for personal consumption. Here, personal consumption is referred in context of a taxpayer and not employees. Hence, services received by an employer/Company can by no stretch of imagination be said to be used for personal consumption. This view is duly supported by past jurisprudences under Direct Tax¹ laws. Basis this, services received by way of renting of residential dwelling, an employer/Company will be eligible for ITC as the same will always be deemed to be used for furtherance of its business.

Conclusion

The registered persons availing residential dwelling on rent need to be mindful of the above legal positions and appropriately discharge their tax liability, obtain registration, avail ITC and undertake other compliances. It will be interesting to see whether CBIC will come up with any clarification on the existing ambiguities with respect to tax payable under RCM, ITC availment, etc. or not to avoid future litigations.



Dharnendra Kumar Rana
Partner
(Author)
NITYA Tax Associates



Akanksha Gupta
Managing Associate
(Co-Author)
NITYA Tax Associates



Devansh Singhal
Executive
(Co-Author)
NITYA Tax Associates

¹Sayaji Iron and Engg. Co. v. CIT, [2002] 253 ITR 749 (Gujarat HC)