

# Handbook on Reverse Charge under GST



**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)  
**New Delhi**

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# Foreword

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The Goods and Services Tax (GST) system in India is distinguished by its forward-looking and flexible characteristics, marked by continuous refinements and improvements. The Government has been proactive in addressing concerns raised by the business sector, with a focus on simplifying the compliance process. The GST Council meets regularly to deliberate on adjustments to tax rates, exemptions, and various aspects of the GST framework. The increasing GST revenue and the expanding base of taxpayers serve as clear indicators of the effectiveness of this innovative indirect tax system.

The Institute of Chartered Accountants of India (ICAI) has been pro-actively supporting the Government by providing its suggestions at each stage of development of GST, be it pre-implementation or post implementation, be it on policy issues or procedural aspects. Further, the ICAI through its GST & Indirect taxes Committee plays an active role in offering essential assistance to members as also the other stakeholders through its technical publications, GST Newsletter, webinars, certificate courses, conferences and programmes.

I am delighted to acknowledge the efforts taken by the GST & Indirect Taxes Committee in revising the publication, 'Handbook on Reverse Charge under GST'. The concepts / procedures relating to reverse charge mechanism in GST are presented in an easy-to-understand lucid language. The Handbook offers comprehensive insights and guidance to the registered persons who are liable to make payment of tax under reverse charge. This publication is updated up to 1<sup>st</sup> February, 2025.

I would like to appreciate the efforts of CA. Sushil Kumar Goyal, Chairman and CA. Rajendra Kumar P, Vice- Chairman and the experts who have contributed in developing this useful publication for the benefit of the members and other stakeholders.

I am confident that the readers would find this publication very useful in their professional assignments by discharging the statutory functions and responsibilities in an efficient and effective manner.

**CA. Ranjeet Kumar Agarwal**  
President, ICAI

Date: 06.02.2025  
Place: New Delhi





# Preface

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The GST & Indirect Taxes Committee spares no effort in developing various knowledge resources on GST like technical publications, newsletter, updates etc. from time to time to make the members as well as other stakeholders more able and proficient in GST.

Continuing on this path, the Committee has revised the publication '**Handbook on Reverse Charge under GST**'. This Handbook is designed to provide a comprehensive and user-friendly resource for registered persons dealing with goods or services subject to tax under reverse charge. It seeks to present all relevant provisions in a simplified manner, consolidating information in one accessible location. The Handbook also delves into pertinent notifications, circulars, case laws, etc., for a comprehensive understanding. The publication is up to date with amendments made up to February 1, 2025.

We sincerely thank CA. Ranjeet Kumar Agarwal, President, ICAI and CA. Charanjot Singh Nanda, Vice-President, ICAI for the encouragement and support extended by them to the various initiatives of the GST & Indirect Taxes Committee. We express our profound gratitude for CA. Arun Chajjer, CA. Anup Luharuka and CA. Abhishek Tibrewal in diligently revising and reviewing the publication. We also commend the efforts made by CA. Madhav Kumar Jha, CA. Sarthak Palta and Ms. Impreet Kaur from the Secretariat of the Committee for providing the requisite technical and administrative assistance in successfully releasing this publication.

Though every effort has been made to ensure the accuracy and legitimacy of the information presented in this publication, it is important to acknowledge that differing perspectives or opinions may exist on the subjects covered herein. We urge our readers to kindly inform us of any unintentional errors or oversights that they may come across in this publication.

We will be glad to receive your valuable feedback at [gst@icai.in](mailto:gst@icai.in). We also request you to visit our website <https://idtc.icai.org> and share your suggestions and inputs, if any, on indirect taxes.

**CA. Rajendra Kumar P**  
Vice-Chairman  
GST & Indirect Taxes Committee  
Date: 06.02.2025  
Place: New Delhi

**CA. Sushil Kumar Goyal**  
Chairman  
GST & Indirect Taxes Committee



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Readers may make note of the following while reading the publication:

- For the sake of brevity, the terms “Central Board of Indirect Taxes and Customs”, “Central Goods and Services Act, 2017”, “Central Goods and Services Tax”, “Central Goods and Services Tax Rules, 2017”, “Goods and Services Tax”, “Income Tax Act, 1961”, “Input Tax Credit”, “Integrated Goods and Services Act, 2017”, “Integrated Goods and Services Tax”, “State Goods and Services Tax”, “Union Territory Goods and Services Tax” and “Reverse Charge Mechanism” have been referred to as “CBIC”, “CGST Act”, “CGST”, “CGST Rules”, “GST”, “IT Act”, “ITC”, “IGST Act”, “IGST”, “SGST”, “UTGST” and “RCM” respectively in this publication.
- Unless otherwise specified, the section numbers and rules referred to in this publication pertain to CGST Act, 2017 and CGST Rules, 2017 respectively.



# Chapter 1

## Legal Provisions and Procedural Aspects

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### LEGAL PROVISIONS

Normally, the supplier of goods or services or both charges and collects the tax from the recipient and deposits the tax with the exchequer. However, under the Reverse Charge Mechanism (“**RCM**”), the liability to deposit tax shifts from the supplier to the recipient. The chargeability gets reversed and all the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “**the Act**” or “**the CGST Act**”) apply to such a recipient as if he is the person responsible for paying the tax in relation to the supply of such goods or services or both.

#### 1.1 Meaning of Reverse Charge

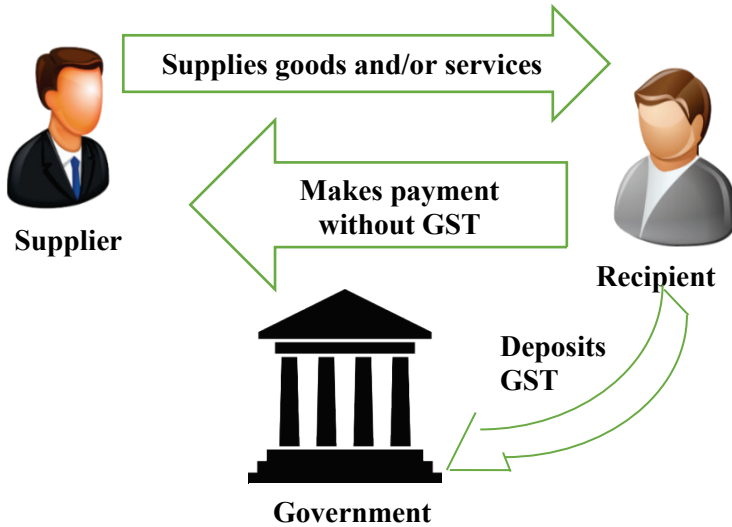
The term reverse charge has been defined by section 2(98) of the CGST Act as under:

##### Statutory Provision

##### **Section 2(98) - Definition of Reverse Charge**

*“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 under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act.*





The provisions of reverse charge mechanism are classified under following two categories:

- Specified categories of goods and / or services [9(3) of CGST / 5(3) of IGST]
- Specified categories of taxable goods and / or services procured by registered person from unregistered person [9(4) of CGST / 5(4) of IGST]



**1.1.1 Specified categories of goods and / or services [9(3) of CGST / 5(3) of IGST]**

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. In this context, the Government has specified the types of goods and services subject to Reverse Charge Mechanism (RCM) through the following notifications:

Reverse Charge on Certain Specified Supplies of Goods	<p>Notification No. 4/2017-Central Tax (Rate) dated 28-6-2017. As Amended By:</p> <ul style="list-style-type: none"><li>• Notification No. 36/2017-Central Tax (Rate), Dated 13-10-2017</li><li>• Notification No. 43/2017-Central Tax (Rate), Dated 14-11-2017</li><li>• Notification No. 11/2018-Central Tax (Rate), Dated 28-5-2018</li><li>• Notification No. 10/2021-Central Tax (Rate), Dated 30-9-2021</li><li>• Notification No. 14/2022-Central Tax (Rate), Dated 30-12-2022</li><li>• Notification No. 19/2023-Central Tax (Rate), Dated 19-10-2023</li><li>• Notification No. 6/2024-Central Tax (Rate), Dated 8-10-2024</li></ul>
Reverse Charge on Certain Specified Supplies of Services	<p>Notification No. 13/2017-Central Tax (Rate), Dated 28-6-2017, As Amended By:</p> <ul style="list-style-type: none"><li>• Notification No. 22/2017-Central Tax (Rate), Dated 22-8-2017, Corrigendum GSR 1199(E), Dated 25-9-2017</li><li>• Notification No. 33/2017-Central Tax (Rate), Dated 13-10-2017</li></ul>

	<ul style="list-style-type: none"><li>• Notification No. 3/2018-Central Tax (Rate), Dated 25-1-2018</li><li>• Notification No. 15/2018-Central Tax (Rate), Dated 26-7-2018</li><li>• Notification No. 29/2018-Central Tax (Rate), Dated 31-12-2018</li><li>• Notification No. 5/2019-Central Tax (Rate), Dated 29-3-2019</li><li>• Notification No. 22/2019-Central Tax (Rate), Dated 30-9-2019</li><li>• Notification No. 29/2019-Central Tax (Rate), Dated 31-12-2019</li><li>• Notification No. 5/2022-Central Tax (Rate), Dated 13-7-2022</li><li>• Notification No. 2/2023-Central Tax (Rate), Dated 28-2-2023</li><li>• Notification No. 8/2023-Central Tax (Rate), Dated 26-7-2023</li><li>• Notification No. 14/2023-Central Tax (Rate), Dated 19-10-2023</li><li>• Notification No. 9/2024-Central Tax (Rate), Dated 8-10-2024, Corrigendum Gsr 623(E), Dated 22-10-2024</li><li>• Corrigendum, dated 22-10-2024</li><li>• Notification No. 7/2025-Central Tax (Rate), dated 16-1-2025</li></ul>
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It is pertinent to mention here that similar entries also exist in SGST and UTGST in respect of goods or services.

### 1.1.2 Specified Categories of taxable goods or services procured by registered person from unregistered person [9(4) of CGST / 5(4) of IGST]

#### Statutory Provision

##### Section 9 - Levy and Collection

(4) <sup>1</sup>[The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, 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.]

## 1.2 Meaning of Recipient

At this juncture, it is relevant to understand the term 'recipient' under GST:

#### Statutory Provision

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

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<sup>1</sup> Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) with effect from 01.02.2019. Earlier, it read as "The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient 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."

*as such on behalf of the recipient in relation to the goods or services or both supplied.*

Under reverse charge mechanism, recipient is liable to make payment of tax. Now, to understand who the recipient in case of RCM will be, the definition specified the following:

- Where consideration is payable:  
The payment of consideration for a supply remains unaffected by the location of the recipient or the place of supply. In spite of where the supply is made, the individual responsible for paying the consideration is considered as recipient. This rule applies even in case where goods are delivered to one person based on the instructions of another. The individual providing the instructions and thus assuming liability for payment is regarded as the recipient, regardless of who physically receives the goods.
- Where no consideration is payable:
  - Goods: The actual receiver of the goods would be the recipient. Say, for instance, a supplier keeps a counter in the premises of another company for issuing free samples to the employees of the company. The recipients would be the employees, and not the company permitting the use of its premises.
  - Services: The actual receiver of the services would be the recipient.

### 1.3 Meaning of Consideration

Consideration has been defined by clause (31) of section 2 of the CGST Act as under:

**Section 2(31)** - "consideration" in relation to the supply of goods or services or both includes-

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but

shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services, or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

- The definition of 'consideration' clearly provides that the consideration can be payable by the recipient or by any other person. However, the law provides that the person who is liable to pay that consideration, shall be treated as the 'recipient'.
- Under RCM, consideration paid to supplier will exclude GST and GST will be paid to Government by recipient. While in forward charge consideration is inclusive of GST as supplier pays the tax to the Government.
- It is important to note that tax leviable under section 9(1) is only collected from recipient under section 9(3) or 9(4). If the ingredients attracting the levy are missing, then there cannot be any liability to discharge on RCM. As such, if output tax is exempt under section 9(1), then there cannot be a liability to discharge the same under RCM. Question then arises, whether threshold limit under section 22 can be considered as an exemption from tax for the supply or for the supplier. Exemption entries such as entry 45<sup>2</sup> bring this distinction into sharp focus, whether output tax not payable under 9(1) by the supplier due to threshold limit, can still be recovered from Recipient under RCM. Language of section 9(3) is not identical with that of 9(4) and for this reason, the question whether RCM can undo threshold limit is applicable only in cases covered by 9(3) and must be answered from the language of the RCM notification itself.

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<sup>2</sup> Notification 12/2017-Central Tax (Rate) dated 28.06.2017.

## PROCEDURAL ASPECTS

### 1.4 Registration

#### 1.4.1 Recipient of RCM Supply

As per section 24(iii) of the CGST Act, persons who are required to pay tax under reverse charge are compulsorily required to be registered under GST. There is no threshold limit applicable for registration for a recipient of RCM supplies.

As per section 25(1) of the CGST Act, every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed.

#### 1.4.2 Supplier in case of RCM Supply

By virtue of section 23(2) read with *Notification No. 5/2017-Central Tax dated 19-06-2017*, the persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under section 9(3) of the CGST Act are the category of persons exempted from obtaining registration under the aforesaid Act.

In other words, a person who is engaged in making only supplies of taxable goods and/or services on which reverse charge applies is exempted from obtaining registration under GST.

### 1.5 Time of Supply

#### 1.5.1 In case of Goods

As per section 12(3) of the CGST Act, 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: —

- (a) the date of the receipt of goods; or
- (b) 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

- (c) 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.

### 1.5.2 In case of Services

As per section 13(3) of the CGST Act, 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: –

- (a) 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
- (b) 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, <sup>3</sup>[in cases where invoice is required to be issued by the supplier]; or
- (c) <sup>4</sup>[the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient]

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), <sup>5</sup>[or clause (c)] 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

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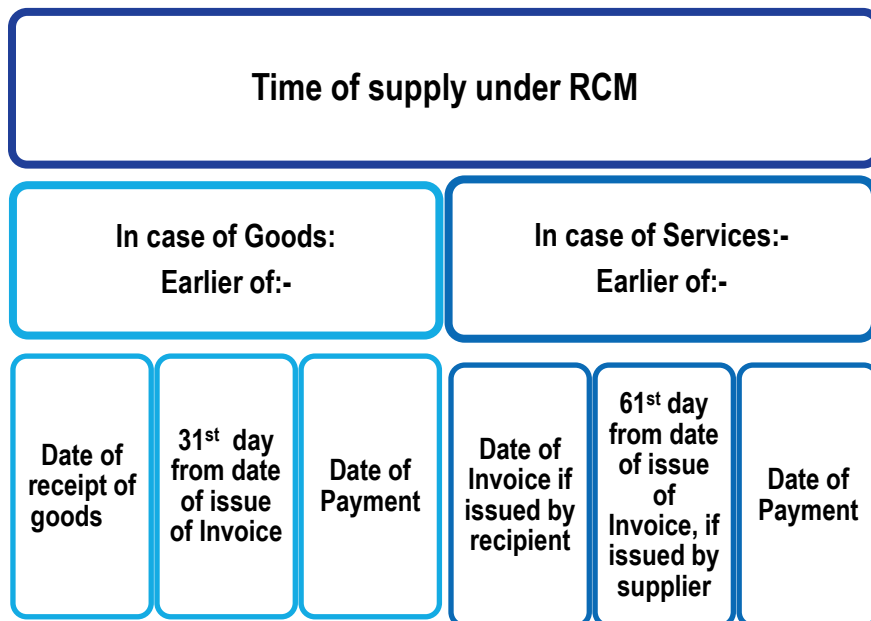
<sup>3</sup>Substituted vide section 117 of The Finance Act (No. 2) Act, 2024 No. 15 of 2024 dated 16.08.2024. Notified through Notification No. 17/2024 - CT dated 27.09.2024. Applicable w.e.f. 01.11.2024.

<sup>4</sup>Inserted by section 117 of The Finance Act (No. 2) Act, 2024 No. 15 of 2024 dated 16.08.2024. Notified through Notification No. 17/2024 - CT dated 27.09.2024. Applicable w.e.f.01.11.2024.

<sup>5</sup>Inserted by section 117 of The Finance Act (No. 2) Act, 2024 No. 15 of 2024 dated 16.08.2024. Notified through Notification No. 17/2024 - CT dated 27.09.2024. Applicable w.e.f. 01.11.2024.



date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.



## 1.6 Invoicing

CGST Rules pertaining to content of tax invoice are:

Rule No.	Rule
46	Tax invoice
54	Tax invoice in special cases

Exports, SEZ supply, ISD invoice, Banks, GTA, passenger transport services and services by way of admission to exhibition of cinematograph films to multiplex or other screen are some of the specific transactions requiring mention in the tax invoice.

### 1.6.1 Rule 46 – Tax Invoice

Rule 46 *inter-alia* provides the content of invoice as:

- Name, address and GSTIN of the supplier

## Legal Provisions and Procedural Aspects

- Invoice Number - Consecutively numbered not exceeding sixteen characters in one or multiple series - Alphabets / Numbers / special characters allowed
- Date of issue of Invoice
- Name, address and GSTIN, if registered, of the receiver
- Name & address of the recipient and the address of delivery, along with the name of the State & its code, if such recipient is unregistered & where the value of taxable supply is:
  - Rs. 50,000 or more.
  - Less than Rs. 50,000 & the recipient requests that such details be recorded in the tax invoice. However, in cases involving supply of online money gaming or in cases where any taxable service is supplied by or through an e-commerce operator or by a supplier of OIDAR services to an unregistered recipient, irrespective of the value of such supply, a tax invoice shall contain the name of the State of the recipient and the same shall be deemed to be the address on record of the recipient.

Note: In case of the export of goods or services, in lieu of such details, name and address of the recipient; address of delivery; and name of the country of destination be mentioned apart from an endorsement "SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS ON PAYMENT OF INTEGRATED TAX" or "SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX", as the case may be.

- Harmonised System of Nomenclature (HSN) code for goods or services. As per *NN 12/2017-CT dated 28.06.2017* as amended by *NN 78/2020-CT dated 15.10.2020*, registered person shall mention the HSN code in the tax invoice as issued by him:

S. No.	Annual Turnover in the Preceding Financial Year	No. of digits of HSN Code
1	Upto Rs. 5 Cr	4 digits
2	More than Rs. 5 Cr	6 digits

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- Description of goods or services
- Quantity in case of goods and unit or Unique Quantity Code thereof
- Total value of supply of goods or services or both
- Taxable value of supply of goods or services or both, taking into account discount or abatement, if any
- Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess)
- Amount of tax charged in respect of taxable goods or services
- Place of supply along with the name of the State, in case of inter-State transaction
- Address of delivery where the same is different from the place of supply
- Whether the tax is payable on reverse charge basis
- Signature or digital signature of the supplier or his authorised representative. However, such signature or digital signature shall not be required in the case of issuance of an electronic invoice as per the Information Technology Act, 2000.
- **Quick Reference (QR) code**, having embedded Invoice Reference Number (IRN) in it, in case invoice has been issued in the manner prescribed under rule 48(4).

As per *NN 14/2020 dated 21-03-2020* (as amended), an invoice issued by a registered person, whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs.500 crore rupees, other than those referred to in sub-rule (2), (3), (4) and (4A) of rule 54, and registered person referred to in section 14 of the IGST Act, to an unregistered person (B2C invoice), shall have Dynamic Quick Response (QR) code. This is applicable w.e.f. 01-12-2020. However, where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.

### 1.6.2 Rule 48 – Manner of issuing invoice

- Where an invoice is issued, other than in the manner specified under rule 48(4), following declaration that invoice is not required to be issued in the manner specified under rule 48(4), is to be filed by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover as notified under rule 48(4):

*"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule."*

- Rule 48(1) further provides the manner of issuance of invoice. In case of supply of goods, invoice shall be prepared in triplicate, in the following manner:
  - (a) the original copy being marked as ORIGINAL FOR RECIPIENT.
  - (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER, and
  - (c) the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.
- While in case of supply of services, the invoice shall be prepared in duplicate in the following manner [rule 48(2)]: —
  - (a) the original copy being marked as ORIGINAL FOR RECIPIENT and
  - (b) the duplicate copy being marked as DUPLICATE FOR SUPPLIER.
- The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in Table 13 of Form GSTR -1.
- In terms of rule 48(4), notified classes of persons while preparing an invoice shall include such particulars as contained in **Form GST INV – 01** after obtaining an Invoice Reference Number (IRN) from the common portal specified for this purpose. In case invoice is prepared

without including such prescribed particulars then such invoice shall not be treated as an invoice.

- In this regard, *Notification No. 13/2020-CT dated 21-3-2020 [NN 13/2020]* (as amended) was issued which provides that the registered person, other than a Government department, a local authority, a SEZ unit and those referred to in sub-rule (2), (3), (4) and (4A) of rule 54, whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 5 crores (with effect from 01-08-2023) as a class of registered persons who shall prepare invoice and other prescribed documents, in terms of rule 48(4) in respect of supply of goods or services or both to a registered person or for Exports. E-invoicing first became applicable with effect from 01.10.2020.

### **Exemptions to registered persons from issuing E-invoice and Dynamic QR Code**

- Following registered persons are exempt from issuing e-invoice and Dynamic QR Code [*NN 13/2020 and NN 14/2020*] –
  - an insurance company or a banking company or a financial institution, including a non-banking financial company; [refer Rule 54(2)]
  - goods transport agency supplying services in relation to transportation of goods by road in a goods carriage; [refer Rule 54(3)]
  - passenger transportation service; [refer Rule 54(4)]
  - services by way of admission to exhibition of cinematograph films in multiplex screens by issuing electronic ticket. [refer Rule 54(4A)]
- Registered person who has obtained registration under section 14 of the IGST Act 2017, supplying OIDAR service to unregistered person is also exempt from mentioning Dynamic QR Code on invoice. It is also clarified vide *Circular No. 146/02/2021-GST dated 23-02-2021*, in case supplies made for export, dynamic QR code is not required.
- E-invoicing is not required when supplies are made by Government department, a local authority and a SEZ unit.

Every invoice issued by a person to whom rule 48(4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice [Rule 48(5)]. Thus, scenario where e-invoice concept is applicable, valid tax invoice means e-invoice only. Normal invoice prepared in three/two copies, will not be considered as compliance of law.

The provisions of rules 48(1) and (2) shall not apply to an invoice prepared in the manner specified in rule 48(4) [Rule 48(6)]. Accordingly, in case of e-invoice there is no requirement to issue multiple copies of invoices as invoice is being issued digitally.

Where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots, then-

- the supplier shall issue the complete invoice before dispatch of the first consignment.
- the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference to the invoice.
- each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
- the original copy of the invoice shall be sent along with the last consignment.

Further, the person-in charge of the conveyance transporting the goods shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 where such person is not required to carry an e-way bill.

Besides above, it is relevant to highlight that according to section 54(3), where the supplier of taxable service is a GTA supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing following information other than as mentioned under rule 46.

- the gross weight of the consignment,
- name of the consigner and the consignee,

- registration number of goods carriage in which the goods are transported,
- details of goods transported,
- details of place of origin and destination,
- GSTIN of the person liable for paying tax whether as consigner, consignee or GTA

GTA is exempt from issuing an e-invoice and dynamic quick response (QR) code as discussed *supra*.

### 1.6.3 Invoicing for Supplier in case of Reverse Charge

As per section 31 read with rule 46(p), a registered person making supply of goods or services notified under section 9(3) shall issue tax invoice containing the specified particulars including the words '*the tax is payable on reverse charge basis*' by the recipient.

Since an unregistered person does not come within the ambit of GST Law, he is not required to issue any document in respect of supply of goods or services notified under section 9(3) or 9(4) of the CGST Act/ section 5(3) or 5(4) of the IGST Act.

It is important to note that e-invoicing provisions shall be applicable on tax invoices, debit notes, credit notes involving RCM for payment of tax, except of course, proforma invoices.

Following types of suppliers are entitled to issue a consolidated tax invoice for the supply of services made during a month at the end of the month, with or without a serial number and with or without address of the recipient of taxable service. The option is given to these suppliers to exclude serial number and address of the recipient only and other fields as required in Rule 46 are mandatory.

- Insurance company
- Banking company
- Financial institution including a non-banking financial company

### 1.6.4 Invoicing for Recipient in case of Reverse Charge

As per section 31(3)(f) of the CGST Act, a registered person who is liable to pay tax under section 9(3) or section 9(4) shall, <sup>6</sup>[within the period as may be

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<sup>6</sup> Inserted by section 122 of The Finance Act (No. 2) Act, 2024 dated 16.08.2024. Notified through Notification No. 17/2024-CT dated 27.09.2024. Applicable w.e.f. 01.11.2024.

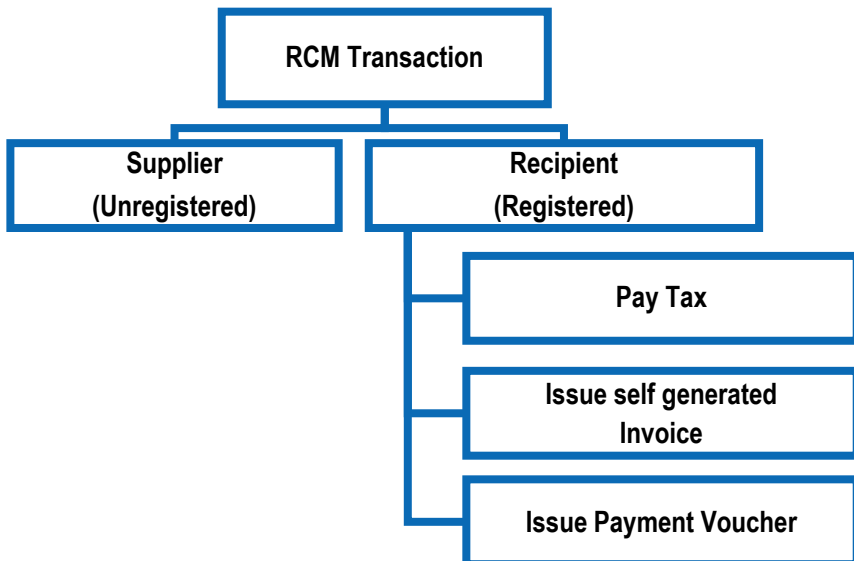
prescribed] issue an invoice in respect of goods or services or both received by him from the supplier who is *not registered* on the date of receipt of goods or services or both. Such tax invoices raised by the recipient are popularly called as “Self-generated Tax Invoice”.

<sup>3</sup>[**Explanation.**—For the purposes of clause (f), the expression “supplier who is not registered” shall include the supplier who is registered solely for the purpose of deduction of tax under section 51].

As per second proviso to rule 46, where an invoice is required to be issued under section 31(3)(f), a registered person may issue a consolidated invoice at the end of a month for supplies covered under section 9(4), the aggregate value of such supplies exceeds Rs. 5,000 in a day from any or all the suppliers:

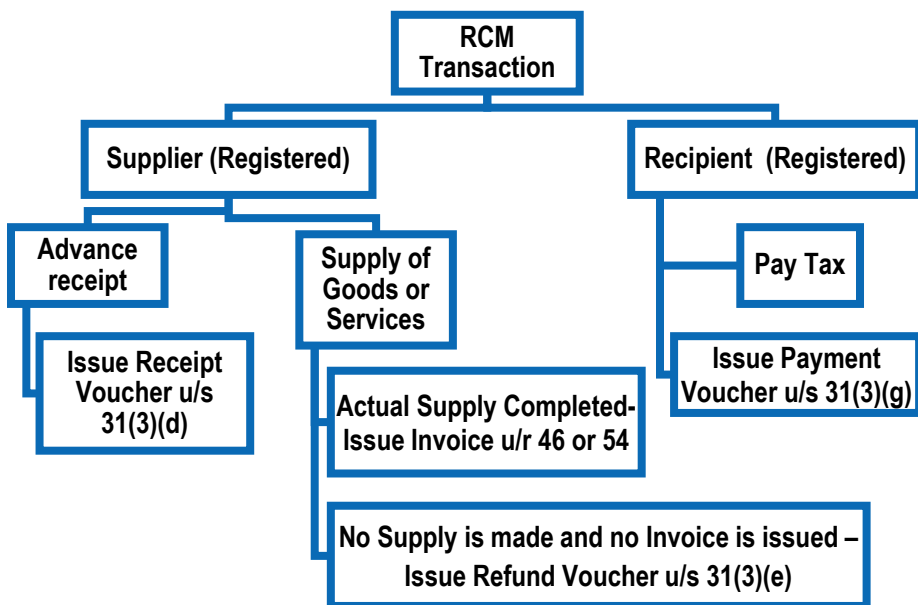
As per section 31(3)(g), a registered person who is liable to pay tax under section 9(3) or section 9(4) shall issue a payment voucher at the time of making payment to the supplier containing the particulars stipulated in rule 52. Payment Voucher is a proof of transaction between unregistered supplier and registered recipient.

### RCM Transaction when Supplier is Unregistered





### RCM Transaction when Supplier is Registered



## 1.7 Accounts and Records

Rule 56(1) states that every registered person shall keep and maintain, in addition to the particulars mentioned in section 35(1), a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.

In terms of rule 56(4), every registered person, other than a person paying tax under section 10, shall keep and maintain an account, containing the details of tax payable (including tax payable in accordance with the provisions of section 9(3) and section 9(4), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

### 1.7.1 Recording RCM in Books of Accounts

- ❖ Separate ledgers for RCM liability are required to be maintained in the books of accounts to distinguish them from normal ledgers: -

- Output IGST-RCM
  - Output CGST-RCM
  - Output SGST-RCM
  - Input IGST-RCM
  - Input CGST-RCM
  - Input SGST-RCM
- ❖ The following entries shall be passed for recording the expenses under RCM: -

1. *For recording the expense under RCM*

Expense A/c	Dr	100	
	To Creditor		100

2. *For recording GST on the RCM Expense incurred (in case RCM supply is creditable)*

Input CGST-RCM	Dr	9	
Input SGST-RCM	Dr	9	
	To Output CGST-RCM		9
	To Output SGST-RCM		9

3. *When payment of RCM GST liability is made*

Output CGST-RCM	Dr	9	
Output SGST-RCM	Dr	9	
	To Bank		18

## **1.8 Payment of Tax under RCM**

As per section 49(4) of the CGST Act, the amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and restrictions and within such time as may be prescribed.

In terms of **rule 85(4)**, any liability of tax payable under reverse charge shall be discharged by debiting the electronic cash ledger. In other words, reverse charge liability cannot be discharged by using ITC reflecting in electronic credit ledger. The payment of tax on reverse charge is to be paid on or before 20<sup>th</sup> (for monthly taxpayers) or 25<sup>th</sup> (for quarterly taxpayers) of the succeeding month. However, after discharging reverse charge liability, the credit of the same can be claimed by the recipient in the same month itself, if he is otherwise eligible.

### 1.9 Input Tax Credit under RCM

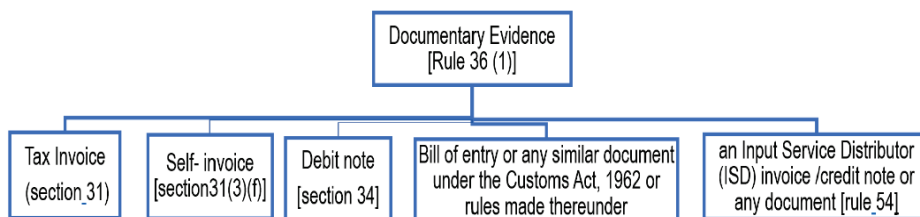
Sections 16 to 21 of the CGST Act read with Rules 36 to 45 of the CGST Rules deal with ITC provisions under GST.

#### Conditions and eligibility for availing ITC

1. Section 16(1) provides that every registered person subject to section 49 (payment of tax), shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. Such amount of ITC shall be credited to the electronic credit ledger.
2. Registered person shall be entitled to avail ITC on inward supply of goods or services or both subject to fulfilment of all the conditions stipulated below:

##### (a) Tax Invoice or Debit Note

Recipient is in possession of a tax invoice or debit note issued by a supplier, or such other tax paying documents as may be prescribed. Rule 36 of the CGST Rules provides the documentary requirements and conditions for claiming ITC.



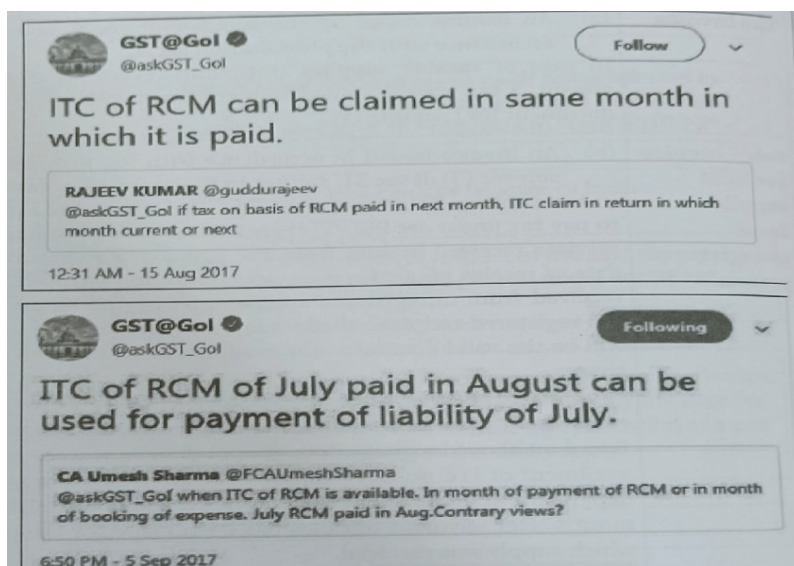
Rule 36(1)(b) provides that ITC shall be availed by a registered person, based on an invoice issued in accordance with the

provisions of section 31(3)(f), subject to the payment of tax. In other words, ITC would be available to the recipient on the basis of Tax Invoice issued by recipient along with proof of payment of tax.

The phrase **“subject to the payment of tax”**, led to the ambiguity that whether availment of ITC on RCM supplies received from unregistered suppliers is dependent upon payment of taxes i.e., it shall be available as credit in next month after payment of taxes have been made for the particular month in which supply was received. In other words, whether in case of RCM, provisional credit is available in the same month subject to payment of taxes by due date of relevant months.

In this regard, it was time and again mentioned in various tweets on the GST twitter handle that credit in case of reverse charge supplies can also be availed in the same month as that of supply on provisional basis.

Relevant screenshots are given as under:



### (b) Details uploaded by Supplier in Form GSTR-1

ITC in respect of any inward supply of goods or services or both can be taken by the registered person only if details of invoice or debit note have been uploaded by the supplier in his

statement of outward supply (GSTR-1 /IFF) and such details have been communicated to the recipient of such invoice or debit note in Form GSTR-2B. This requirement came w.e.f. 01-01-2022 inserted by the Finance Act, 2021 [Section 16 (aa) read with Rule 36(4) - w.e.f. 01-01-2022]. This would be applicable only on forward charge and not on ITC availed under reverse charge, import of goods, import of services, ISD credits etc.

**(c) Receipt of goods or services or both**

One of the conditions for taking Input Tax Credit (ITC) on inward supplies of goods or services or both is that registered person must have received the goods or services or both.

**(d) Unrestricted ITC**

Details of input tax credit in respect of the inward supply of goods or services or both communicated to such registered person (recipient) under section 38 has not been restricted. As per section 38, an auto-generated (proposed to be removed vide the Finance Bill, 2025) statement (Form GSTR-2B) containing the details of ITC shall be made available electronically to the recipients. This statement shall contain the details of inward supplies as follows:

- ❖ Credit of input tax may be available to the recipient
- ❖ Credit cannot be availed, whether wholly or partly. The section 38(2)(b) lists some 6 cases where credit cannot be availed.

**(e) Tax paid to Government**

The supplier should have actually paid the tax charged on the goods and/or services, for which ITC is being taken, either in cash or by utilizing ITC, subject to the provisions of section 41.

**(f) Filling of return**

Recipient of inward supply has furnished the return in Form GSTR-3B to avail ITC on eligible inward supplies.

- 3. Goods received in lots** - Where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment.

4. **Payment for the invoice to be made in 180 days-** Recipient must pay to the supplier the value of the goods or services along with the tax within 180 days from the date of issue of invoice, failing which the amount of credit availed by the recipient shall be paid by him along with interest under section 50. However, once the amount is paid, the recipient shall be entitled to re-avail the input tax credit. In case part payment has been made, proportionate credit would be allowed. This provision is not applicable in the following cases:
- (i) Supplies on which tax is payable under reverse charge [Rule 37(1)]
  - (ii) Deemed supplies without consideration - Schedule I [First Proviso to Rule 37]
  - (iii) Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both as per section 15(2)(b) [Second Proviso to Rule 37]
  - (iv) Value representing discount for which financial credit notes have been issued by the supplier.

**Note:**

- Value of supply is deemed to have been paid in above situations (ii) and (iii).
  - Credit available must be availed within the time limit in section 16(4) and any delay beyond this time limit will result in available credit being forfeited permanently.
  - Credit once availed [within the time limit in section 16(4)] but reversed under rule 37(1) may be reclaimed under rule 37(4) and time limit u/s 16(4) is not applicable in such case.
5. **If depreciation claimed on tax component, ITC not allowed** - ITC will not be allowed on the tax component of the cost of capital goods and plant and machinery, if depreciation on such tax component has been claimed under the provisions of the Income Tax Act.

6. **Time limit for availing ITC** - A registered person is not entitled to avail ITC on tax invoice/ debit notes after the 30<sup>th</sup> November of the subsequent financial year w.e.f. 1-10-2022 [earlier it was, due date of furnishing of the return under section 39 for the month of September of the subsequent financial year] or furnishing of the relevant annual return, whichever is earlier.
7. **Section 17 - Apportionment of credit and blocked credit** - After fulfilling all the conditions stipulated in section 16, the registered person needs to fulfil the requirements specified in section 17. ITC shall be restricted to so much of input tax as is attributable to the business and for purpose of effecting taxable supplies including zero-rated supplies. However, if inward supply of goods or services or both used by the registered person partly for making taxable supplies including zero-rated supplies or partly for making exempt supplies then proportionate ITC needs to be reversed.

Where the goods or services or both are used by the registered person partly for	the purpose of any business & partly for other purposes	the amount of credit shall be restricted to so much of the input tax as is attributable to.	the purposes of his business
	effecting taxable supplies including zero-rated supplies & partly for effecting exempt supplies		the said taxable supplies including zero-rated supplies
For section 17(2), exempt supplies shall			
INCLUDE		EXCLUDE	
Supplies on which the recipient is liable to pay tax on reverse charge basis Transactions in securities Sale of land and, subject to para (5)(b) Schedule II, sale of building.		Value of activities or transactions specified in Schedule III, except, - (i) the value of activities or transactions specified in para 5 of the Schedule III; & (ii) the value of such activities or transactions as may be prescribed in respect of para 8(a) of the Schedule III.	

## **8. Special option for Banks or Financial Institutions including NBFCs**

As per section 17(4) read with rule 38, an option is made available to a Banking company or financial institution including NBFC engaged in accepting deposits, extending loans or advances that chooses not to comply with the provisions of section 17(2). As per this option, the ITC availment would be limited to 50% of the eligible ITC on inputs, capital goods and input services each month and lapse the remaining ITC.

## **9. Blocked Credit**

Input Tax Credit shall not be available to the registered person in respect of list of goods or services or both specified u/s 17(5) even if he satisfies all the conditions specified u/s 16 & 17 read with CGST Rules. In other words, ITC is blocked in such cases.

Conditions for availing ITC can be summarised as pre and post conditions where:

<b>Pre-conditions</b>		<b>Post-conditions</b>	
Registration	16(1)	Payment to supplier within 180 days	Rule 37
Possession of valid tax invoice	16(2)(a)	Actual end-use in making taxable outward supplies which are not (i) exempt under <i>NN 12/2017</i> or (ii) treated to be exempt by conditions in tariff notifications [see expln. 4(iv) to <i>Notification No. 11/2017-CT (R)</i> , dt. 28.06.2017]	17(1), 17(2), 17(5)(h) and 18(4)
Filing of Form GSTR - 1 by Supplier (to enable it to appear in Form GSTR -2A/ 2B to Recipient)	16(2)(aa)*		
Delivery of goods or services (complete and effective)	16(2)(b)	Not blocked (default)	17(5)
Credit matching via GSTR-2B	16(2)(ba)	Steps to 'claim-reverse-restore' credit belatedly matched	Rule 37A



Payment of tax by supplier	16(2)(c)	Not ineligible (special category)	Tariff conditions (Rate Notf.)
Credit show in return filed	16(2)(d)	Time limit to claim credit	16(4)

### **1.10 Distribution of RCM credit by Input Service Distributor (ISD)**

ISD provisions are dealt in section 20 of the CGST Act. The Finance Act, 2024 has substituted section 20 which has been notified vide *Notification No. 16/2024-CT dated 06.08.2024* and made applicable with effect from 01.04.2025.

#### **Statutory Provision**

##### **Section 20 - Manner of distribution of credit by Input Service Distributor**

- (1) *Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.*
- (2) *The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.*
- (3) *The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit, in such manner as may be prescribed.*

Before analysing the above provision there are some key words which required to be understood.

### Input Service Distributor (ISD)

**Section 2(61)** - ‘input service distributor’ means an “office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20”.

The above definition has been substituted vide The Finance Act, 2024 and notified vide *Notification No. 16/2024-CT dated 06.08.2024*. It has been made applicable with effect from 01.04.2025.

The above sections 20 and 2(61) are proposed to be further amended vide the Finance Bill, 2025 to explicitly provide for the distribution of Input Tax Credit (ITC) by the Input Service Distributor (ISD) in relation to inter-State supplies, on which the tax is liable to be paid under the reverse charge mechanism (RCM), by inserting reference to sub-section (3) and sub-section (4) of section 5 of the Integrated Goods and Services Tax Act.

### Distinct Persons

As per section 25(4), *a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.*

### Analysis

Any supplier with multiple registrations under the same PAN, as well as any office of a supplier of goods or services, must register separately as an Input Service Distributor if they receive services, including those services for which tax is paid under Reverse Charge Mechanism (RCM) for or on behalf of distinct persons.

The rationale behind this requirement is to ensure that credits pertaining to services utilized in different locations but managed through an ISD office are appropriately transferred to those respective locations.

## **Handbook on Reverse Charge under GST**

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It is important to note that an ISD cannot engage in direct supply activities but is limited to collecting invoices for services and issuing prescribed documents for credit distribution purposes.

Prior to the Finance Act, 2024, amendment, ISDs were not permitted to distribute input services credit that included services subject to RCM. Additionally, ISD cannot be used in a situation where there is a liability to pay GST, they could only receive and distribute credits in accordance with Rule 39.

However, post-amendment, ISD are now mandated to distribute credits from invoices received by him, including the credits related to services subject to RCM on which levy of tax paid by distinct persons registered in the same state as the ISD.

## Chapter 2

# Goods Notified under RCM

The goods notified under *Notification No. 04/2017-Central Tax (Rate) dated 28.06.2017 ["NN 4/2017"] (as amended)* are liable to tax under reverse charge under section 9(3) of the CGST Act and the notified goods are given as follows:

### 2.1 Supply of Cashew nuts, Bidi wrapper leaves, Tobacco leaves [Entry 1, 2 & 3]

#### ENTRY - 1, 2 and 3

S.No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
(1)	(2)	(3)	(4)	(5)
1.	0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	1404 90 10	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	2401	Tobacco leaves	Agriculturist	Any registered person

#### ANALYSIS

To better understand the entries above, it is crucial to know the definitions of 'agriculturist' and 'family' as provided in sections 2(7) and 2(49) respectively.

**2(7) "agriculturist"** means an individual or a Hindu Undivided Family who undertakes cultivation of land-

(a) by own labour, or

- (b) *by the labour of family, or*
- (c) *by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family;*

**2(49) "family" means,-**

- (i) *the spouse and children of the person, and*
- (ii) *the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;*

An individual or HUF undertaking cultivation of land, whether own or not, would be regarded as an agriculturist. The cultivation should be undertaken by own labour/ family labour/ servants on wages or hired labour.

It is important to note that if an agriculturist supplies specified goods as mentioned above to any registered person (recipient) then tax needs to be paid under reverse charge mechanism by the latter.

## 2.2 Supply of Essential Oils other than citrus fruits [Entry 3A]

### ENTRY – 3A

S. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
(1)	(2)	(3)	(4)	(5)
3A.	3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	<b>W.e.f. 01-01-2023</b> <i>Following essential oils other than those of citrus fruit namely: -</i> (a) <i>Of peppermint (Mentha piperita);</i> (b) <i>Of other mints : Spearmint oil (ex-mentha</i>	<i>Any unregistered person</i>	<i>Any registered person</i>

	<p>33012400, 33012510, 33012520, 33012530, 33012540</p>	<p><i>spicata</i>), <i>Water mint-oil</i> (<i>ex-mentha aquatic</i>), <i>Horsemint oil</i> (<i>ex-mentha sylvestries</i>), <i>Bergament oil</i> (<i>ex-mentha citrate</i>), <i>Mentha arvensis</i>.</p> <p><b>From 01-10-2021 to 31-12-2022</b></p> <p>Following essential oils other than those of citrus fruit namely: -</p> <p>(a) Of <i>peppermint</i> (<i>Menthapiperita</i>);</p> <p>(b) Of other mints: <i>Spearmint oil</i> (<i>exmenthaspicata</i>), <i>Water mint-oil</i> (<i>exmentha aquatic</i>), <i>Horsemint oil</i> (<i>exmenthasylvestries</i>), <i>Bergament oil</i> (<i>ex-mentha citrate</i>).</p>	Any unregistered person	Any registered person
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### ANAYISIS

This entry has been substituted vide *Notification No. 14/2022-Central Tax (Rate) dated 30-12-2022*, w.e.f. 01-01-2023. Prior to its substitution, Sl. No. 3A as inserted by *Notification No. 10/2021-Central Tax (Rate) dated 30-09-2021*, w.e.f. 01-10-2021.

As a measure to improve compliance and curb irregular refunds on exports, implementation of RCM on *Mentha* oil was recommended by the GST Council in its 45<sup>th</sup> GST Council Meeting held on 17.09.2021. Hence, the supply of *mentha* oil from unregistered person has been brought under reverse charge, vide *Notification No. 10/2021-CT (Rate) dated 30-9-2021*, w.e.f. 01.10.2021. Further, based on the recommendation of GST Council in its 48<sup>th</sup> Meeting held on 17.12.2022, CBIC vide *Notification No. 14/2022-C.T. (Rate), dated 30-12-2022*, w.e.f. 01-01-2023, included supply of *Mentha arvensis* under RCM as has been done for *Mentha* Oil.

## 2.3 Supply of Silk Yarn [Entry 4]

### ENTRY - 4

<b>S. No.</b>	<b>Tariff item, sub-heading, heading or Chapter</b>	<b>Description of supply of Goods</b>	<b>Supplier of goods</b>	<b>Recipient of supply</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
4	5004 to 5006	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person

Supply of silk yarn from any person who manufactures silk yarn from raw silk or silkworm cocoons to any registered person, falls under the ambit of RCM.

## 2.4 Supply of Raw Cotton [Entry 4A]

### ENTRY - 4A

<b>S. No.</b>	<b>Tariff item, sub-heading, heading or Chapter</b>	<b>Description of supply of Goods</b>	<b>Supplier of goods</b>	<b>Recipient of supply</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
4A.	5201	Raw cotton	Agriculturist	Any registered person

### ANALYSIS

This entry has been inserted vide *Notification No. 43/2017-Central Tax (Rate)*, dated 14-11-2017, w.e.f. 15-11-2017.

Based on the recommendation of GST Council, CBIC vide *Notification No. 43/2017-CT (R)*, dated 14-11-2017, raw cotton, supplied by an agriculturist to a registered person was brought under RCM. This supply of raw cotton by the farmers to buyers i.e., ginnors and traders, under RCM has led to

procurement of cotton expensive. The background of such entry was to reduce the differential tax burden between composite and standalone units which can be understood as:

- Under the GST regime the following items attract 5% GST: - i. raw cotton, ii. Cotton(rut), iii. Cotton yarn and iv. Cotton seeds.
- Cotton oil cake has been exempted from GST w.e.f. 22.9.2017. [Cotton seed oil cakes fall under HS Code 2306. Prior to 22-9-2017, Cotton seed oil cakes for use as aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed attract Nil GST; and Cotton seed oil cakes for other uses attract 5% GST.]
- Prior to 13.10.2017, a registered dealer purchasing raw cotton from an agriculturist has to pay tax under reverse charge as per the provisions of section 9(4). Since then, section 9(4) has been kept in abeyance till 31.03.2018. As a result, while composite units, procuring cotton from farmer do not suffer any tax, oil millers who purchase cotton seeds [for manufacturing cotton seed oil and cotton oil cake] suffer GST on cotton seeds. Oil content in cotton seeds being about 25%, standalone oil millers are required to reverse the ITC [corresponding to the value of cotton oil seed cake] resulting in increased cost of cotton seed oil cake [by about Rs. 82 per quintal] vis-à-vis composite mills.

It is also clarified through FAQ [F. No. 332/2/2017-TRU, dated December, 2017] which provides that:

<b>S. No.</b>	<b>Queries</b>	<b>Replies</b>
65.	<i>For cotton ginning business, will the 5% GST on raw cotton be paid directly by factories on reverse charge basis or it is paid to the agent and later claimed? (Agent being the mediator between unregistered farmer and the factories).</i>	<i>If the sale of raw cotton is supplied by an agriculturist to a registered person (say a manufacturer or dealer), then such registered person is liable to pay GST on reverse charge basis. In other cases, GST is to be paid by the supplier of raw cotton.</i>
66.	<i>Will 5% GST on raw cotton be paid directly by factories on reverse charge basis and who will pay it?</i>	<i>Where the supply of raw cotton is by an agriculturist [as defined under section 2(7) of the Central Goods and Services Tax Act, 2017] to a</i>



		<i>registered person, GST will have to be paid by such registered person on reverse charge basis.</i>
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Further, based on the recommendations of the GST Council in its 50<sup>th</sup> meeting held on 11-07-2023, CBIC vide *Circular No. 200/12/2023-GST dated 01-08-2023*, has clarified that supply of raw cotton, including kala cotton, from agriculturists to cooperatives is a taxable supply and such supply of raw cotton by agriculturist to the cooperatives (being a registered person) attracts 5% GST on reverse charge basis under *Notification No. 43/2017-Central Tax (Rate) dated 14-11-2017*. Further, in view of prevailing genuine doubts, the issue for the past periods prior to issue of this clarification has been regularized on “as is basis”.

Agricultural Produce Market Committee (APMC) Agents have been made liable to RCM in respect of raw cotton trades since they pay a deposit to growers before the actual onward sales. And the licenses granted to these Agents – kuchha (non-reselling agent) or pucca (reselling agent) – is lost sight of while raising demands. Unlike APMC where agents are issued specific types of licenses based on their experience and performance, other sectors where there is no such oversight body, RCM demands are more rigorous. APMC Agents are liable to GST (i) on commission at 18 per cent or (ii) on deemed supplies under paragraph 3, schedule I, although for income-tax purposes all agents report only commission as their gross revenue. These Agents are unaware of the two alternatives applicable, that is tied to the type of license they are issued.

## 2.5 Supply of Lottery [Entry 5]

### ENTRY - 5

<b>S. No.</b>	<b>Tariff item, sub-heading, heading or Chapter</b>	<b>Description of supply of Goods</b>	<b>Supplier of goods</b>	<b>Recipient of supply</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
5.		Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent.

*Explanation.* - For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of sub-section (1) of section 11 of the Lotteries (Regulation) Act, 1998 (17 of 1998).

### **ANALYSIS**

To understand the taxability of lottery ticket, it is important to understand whether it is goods or services. Clause (52) of section 2 of the CGST Act defines the term “goods” as under:

*“Goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;*

Lottery tickets is actionable claim and is classified as Goods.

Further, w.e.f. 1-10-2023 by virtue the *Central Goods and Services Tax (Amendment) Act, 2023* notified through *Notification No. 48/2023-Central Tax, 29-09-2023*, clause (102A) of section 2 of the CGST Act has been inserted and entry 6 of Schedule III has been amended as follows:

**2(102A) - “specified actionable claim”** means the actionable claim involved in or by way of—

- (i) betting;
- (ii) casinos;
- (iii) gambling;
- (iv) horse racing;
- (v) lottery; or
- (vi) online money gaming;

Entry 6 of Schedule III of the CGST Act:

*“Actionable claims, other than specified actionable claims”.*

*Prior to amendment, entry 6 was read as: “Actionable claims, other than lottery, betting and gambling”.*

Goods have their own HSN code but when “beneficial interest in movable property not in possession” involving such goods are involved, they become

‘actionable claim’ as per section 3 Transfer of Property Act. Transfer of such actionable claims is addressed in section 130 of Transfer of Property Act. For instances, debtors in books are transactions in money, but when such receivables are securitized and sold to ARCs, they become ‘actionable claim’. Consider the HSN code that is to be applicable in such cases. Similarly, right to participate in a draw along with a chance to claim prize (if successful in draw) is lottery. These rights made transferable in a ticket, coupon, e-coupon, etc. are ‘actionable claim’. Reference to ICAIs Background Material on GST with respect to actionable claims may be relevant.

It is important to note that ‘any chapter’ for RCM liability, can be very perplexing, especially, when e-invoice is applicable that cannot be issued without specific HSN code. Taxpayers are liable to fall back on HSN 4907-00-90 in case of all ‘documents of title’ that are actionable claims.

Further, there are two kinds of lotteries:

- **Lottery run by State Government** - When the Government supplies the lotteries to the lottery distributor or selling agent, the agent needs to make the GST payment of that supply to Government under RCM as provided in entry 5 of NN 4/2017.

Further, entry 149 of *Notification No. 2/2017-Central Tax (Rate)*, dated 28-06-2017 exempts “Supply of lottery by any person other than State Government, Union Territory or Local authority subject to the condition that the supply of such lottery has suffered appropriate central tax, State tax, Union territory tax or integrated tax, as the case may be, when supplied by State Government, Union Territory or local authority, as the case may be, to the lottery distributor or selling agent appointed by the State Government, Union Territory or local authority, as the case may be.”

Hence, when the selling agent or distributor supplies the tickets to the local agents, such supply shall be treated as exempt if the distributor has paid GST on the transaction when supplied by the Government.

- **Lottery authorized by State Government** - When the lottery tickets are distributed by lottery distributor to local agent, tax is to be paid under forward charge. Further, when the local agents distribute the tickets (make supply), GST needs to be paid by them under forward charge, no exemption is given in this case. In fact, tax by must be paid

by the distributors / local agents at each point of supply under normal charge.

## 2.6 Supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Central Government, State Government, Union territory or local authority [Entry 6]

### ENTRY - 6

S. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
(1)	(2)	(3)	(4)	(5)
6.	Any Chapter	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government [excluding Ministry of Railways (Indian Railways)], State Government, Union territory or a local authority	Any registered person

### ANALYSIS

With effect from 13-10-2017, supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Central Government, State Government, Union territory or a local authority to any registered person is taxable under GST on reverse charge basis by virtue of *Notification No. 36/2017-Central Tax (Rate)* and *Notification No. 37/2017-Integrated Tax (Rate)*, both dated 13-10-2017.

The words "Central Government, State Government, Union territory or a local authority" has been substituted with "Central Government [excluding Ministry of Railways (Indian Railways)], State Government, Union territory or a local authority" vide *Notification No. 19/2023-Central Tax (Rate)*, dated 19-10-2023, w.e.f. 20-10-2023.

## Handbook on Reverse Charge under GST

Further, Circular No. 76/50/2018-GST, dated 31-12-2018 has clarified the following:

<b>Issue</b>	<b>Clarification</b>
<i>Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?</i>	<ol style="list-style-type: none"><li>1. It may be noted that intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST.</li><li>2. Vide Notification No. 36/2017-Central Tax (Rate) and Notification No. 37/2017-Integrated Tax (Rate) both dated 13.10.2017, it has been notified that intra-State and inter-State supply respectively of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Central Government, State Government, Union territory or a local authority to any registered person, would be subject to GST on reverse charge basis as per which tax is payable by the recipient of such supplies.</li><li>3. A doubt has arisen about taxability of intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority to an unregistered person.</li><li>4. It was noted that such supply to an unregistered person is also a taxable supply under GST but is not covered under notification No. 36/2017-Central Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017.</li><li>5. In this regard, <b>it is clarified that the respective Government departments (i.e. Central Government, State Government, Union territory or a local authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an unregistered person subject to the provisions of sections 22 and 24 of the CGST Act.</b></li></ol>

Moreover, it is relevant to mention here that based on the recommendation of GST Council, supply of all goods and services by Ministry of Railway (Indian Railways) shall be taxed under forward charge mechanism to enable them to avail ITC, which would reduce the cost for Indian Railways. The CBIC *vide Notification No. 19/2023 Central Tax (Rate) dated 19-10-2023 amend entry 6 above*. Therefore, w.e.f. October 20, 2023, supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Ministry of Railways (Indian Railways) is not taxable on reverse charge basis.

Again, 'any chapter' in this case refers to 'appropriate chapter' applicable to such motor vehicles. While considering RCM liability, reference to corresponding Cess notification must be referred.

## 2.7 Supply of Priority Sector Lending Certificate [Entry 7]

### ENTRY -7

<b>S. No.</b>	<b>Tariff item, sub-heading, heading or Chapter</b>	<b>Description of supply of Goods</b>	<b>Supplier of goods</b>	<b>Recipient of supply</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
7.	Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person

This entry has been inserted vide *Notification No. 11/2018-Central Tax (Rate), dated 28-05-2018, w.e.f. 28-05-2018*.

### Analysis

#### Applicability of GST on Priority Sector Lending Certificate (PSLC)

*Circular No. 34/8/2018-GST, dated 01-03-2018* clarified the GST applicability on PSLC:

*Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?*

*In Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been*

## Handbook on Reverse Charge under GST

notified as a permissible activity under Section 6(1) of the Banking Regulation Act, 1949 vide Government of India notification dated 4<sup>th</sup> February, 2016. PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT.

In GST there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods at standard rate of 18% under the residuary S. No. 453 of Schedule III of notification No. 1/2017-Central Tax (Rate). GST payable on the certificates would be available as ITC to the bank buying the certificates.

Circular No. 46/20/2018-GST, dated 06-06-2018 clarified on GST Rate on PSLC:

Para 7 of said circular clarified that Priority Sector Lending Certificates (PSLCs) are classifiable under heading 4907 and attract 12% GST.

Circular No. 62/36/2018-GST dated 12-09-2018 clarified on Levy and Collection of Tax on PSLC:

**FCM/RCM on PSLC:** It has been clarified that GST on PSLCs for the period 01-07-2017 to 27-05-2018 will be paid by the **seller bank on forward charge basis** and GST rate of 12% will be applicable on the supply.

**Circular No. 93/12/2019-GST, dated 08-03-2019:**

It has been clarified that GST on PSLC trading shall attract Reverse Charge from 28-05-2018 onwards and has to be paid by the buyer bank vide Notification No. 11/2018-Central Tax (Rate), dated 28-05-2018.

## 2.8 Supply of Metal Scrap [Entry 8]

### ENTRY -8

S. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
(1)	(2)	(3)	(4)	(5)
8.	72, 73, 74, 75, 76, 77, 78, 79, 80, or 81	Metal Scrap	Any unregistered person	Any registered person

**Analysis**

This amendment was introduced through *Notification No. 06/2024-CT(R) dated 8/10/2024*, bringing significant impact on Metal Scrap Transactions. This change would shift the responsibility for paying GST from Unregistered Supplier to Registered Buyers effective from 10.10.2024. Also, this amendment is made to track down the untapped metal scrap transaction, which have a significant impact in financial statements.



## Chapter 3

# Services Notified under RCM

## Services Notified under CGST Act, 2017

Supply of Services notified for RCM under section 9(3) vide Notification No. 13/2017 Central Tax (Rate) dated 28-06-2017 ("Reverse Charge Notification" or "NN 13/2017") (as amended) is discussed one by one as under:

### 3.1 Supply of services by Goods Transport Agency [Entry 1]

#### ENTRY -1

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service*
(1)	(2)	(3)	(4)
1	Supply of Services by a goods transport agency (GTA), <sup>7</sup> [***] in respect of transportation of goods by road;  <sup>8</sup> [Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to,— a. a Department or	Goods Transport Agency (GTA)	a) Any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or  b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other

<sup>7</sup> Words "who has not paid central tax at the rate of 6%," omitted by Notification No. 5/2022-Central Tax (Rate), dated 13-07-2022, w.e.f. 18-07-2022. Prior to its omission "said words" as inserted by Notification No. 22/2017-Central Tax (Rate), dated 22-08-2017.

<sup>8</sup> Inserted vide Notification No. 29/2018-Central Tax (Rate) dated 31-12-2018, w.e.f. 01.01.2019.

	<p><i>Establishment of the Central Government or State Government or Union territory; or</i></p> <p><i>b. local authority; or</i></p> <p><i>c. Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services:]</i></p> <p><i><sup>9</sup>[Provided further that nothing contained in this entry shall apply where, -</i></p> <p><i>(i) the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge; and</i></p> <p><i>(ii) the supplier has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has made a declaration as prescribed in Annexure III on such invoice issued by him.]</i></p>		<p><i>law for the time being in force in any part of India; or</i></p> <p><i>c) any co-operative society established by or under any law; or</i></p> <p><i>d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</i></p> <p><i>e) Any body corporate established, by or under any law; or</i></p> <p><i>f) any partnership firm whether registered or not under any law including association of persons; or</i></p> <p><i>g) any casual taxable person; located in the taxable territory.</i></p>
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<sup>9</sup> Inserted vide Notification No.: 5/2022-Central Tax (Rate) dated 13.07.2022, w.e.f. 18.07.2022

**\* For ease of reference, recipient of service in case of entry 1 above is referred as specified category recipients.**

### **Analysis**

#### **Meaning of Goods Transport Agency (GTA)**

Under GST Law, the definition of Goods Transport Agency (GTA) is specified in clause (ze) of Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017 as follows:

Goods Transport Agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

It can be seen from the definition as provided for GTA, that issuance of Consignment Note is crucially important for a Supplier of Services to qualify as GTA under GST. Therefore, Individual Truck/Tempo operators who do not issue any consignment note may not be covered within the term GTA.

#### **Meaning of Consignment Note**

Consignment Note is neither defined in the Act nor in the *Notification No. 12/2017-Central Tax (Rate)*. Therefore reference may be made to the explanation to rule 4B of the erstwhile Service Tax Rules, 1994, which stipulates that - *"consignment note" "means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of goods transported, details of the place of origin and destination, person liable for paying Service tax whether consignor, consignee or the goods transport agency."*

In view of the above definition, any document which contains the information mentioned hereinabove, would be regarded as consignment note and the issuer of such document would be termed as GTA. Under section 8 of "the Carriage by Road Act, 2007, movement of any consignment requires to be accompanied by a 'goods forwarding note'. With the fiction in paragraph 2, schedule I, being implemented with full force, omission to comply with RCM requirement can be perilous.

If a consignment note is issued, it indicates that the lien on the goods has been transferred (to the transporter) and the transporter becomes

responsible for the goods till its safe delivery to the consignee. Consignment note is the 'document of title' that is negotiable by endorsement to pass title to any transferee-endorsee.

It is pertinent to note the following points:

- GST on GTA cannot be avoided by non-issuance of Consignment Note and it is essential to understand that such Note's issuance or non-issuance would not change the nature of the activity, the requirement of issuing note cannot be seen in isolation and thereby, there shall be no exemption from tax in this transaction. (*AAAR Rajasthan - KM Trans Logistics Private Limited*)
- For the purpose of RCM Notification, the person who pays or is liable to pay freight for Transportation of Goods by road in goods carriage, located in taxable territory shall be treated as person who receives the service.
- There is no intention of the legislature not to tax the service providers who are not issuing consignment notes, as this would be unjust with those who are issuing notes and also, would consequent to evasion of taxes. (*AAR, Uttarakhand - Uttarakhand Forest Development Corporation*)

### **Taxability of intermediary and ancillary services**

Another important aspect in the definition of GTA which has extended its scope is the use of the phrase 'in relation to'. It includes not only the actual transportation of goods, but also various intermediary and ancillary services, such as, loading/unloading, packing/ unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road.

Such supply can better be understood in the light of *FAQ on Transport & Logistics issued by CBIC*:

Are intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, provided in relation to transportation of goods by road to be treated as part of the GTA service, being a composite supply, or these services are to be treated as separate supplies?

The GTA provides service to a person in relation to transportation of goods by road in a goods carriage, which is a composite service. The composite service may include various intermediary and ancillary services, such as, loading/unloading, packing/ unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.

In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service and would not be treated as a separate supply. In fact, any service provided along with the GTA service that is part of the composite service of GTA shall be taxed along with GTA service and not as separate supplies.

However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.”

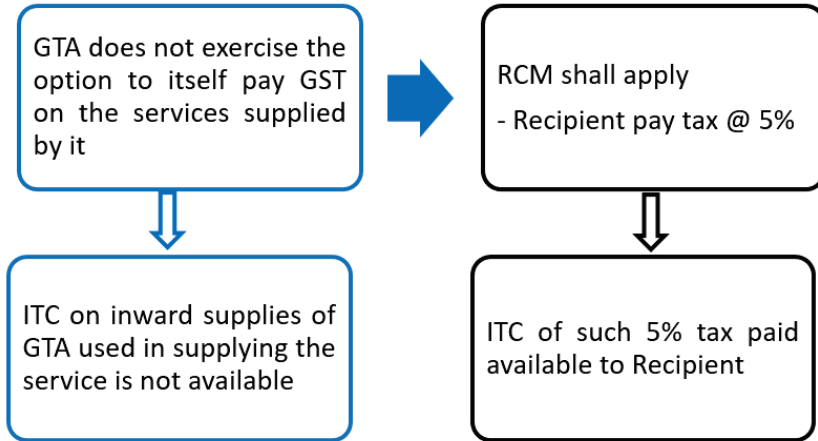
### **Options available to GTA**

It is apposite to highlight here that as per entry 9 of NN 11/2017 as amended vide Notification no. 03/2022- Central Tax (Rate) dated 13-07-2022, w.e.f. 18.07.2022, GTA may exercise the option to itself pay GST on the services supplied by it i.e., under forward charge (FCM) and if GTA doesn't exercise such option then reverse charge (RCM) will apply.

#### **Option 1 - Where GTA does not exercise the option to pay GST itself on the services supplied by it (Reverse Charge Mechanism):**

Tax at 5% will be applicable and paid by the recipient on reverse charge basis. Recipient can also avail credit of the same after making payment. It is also provided that the credit of input tax charged on goods and services used in supplying the service has not been taken by GTA.

It is important to note that recipient here means only those persons who are provided in Entry 1 of NN 13/2017.



**Option 2 - Where GTA opts to pay GST itself on the services supplied by it (Forward Charge Mechanism):**

When GTA opts to pay tax under forward charge, then it has two options:

- (i) Pay tax @ 5% (2.5% CGST+2.5% SGST/UTGST or 5% IGST). In this case, he can't take the ITC on goods or services used in supplying the said services by road; or
- (ii) Pay tax @ 12% (6% CGST+6% SGST/UTGST or 12% IGST). In this case, there is no restriction on availing the ITC on goods or services used in supplying the said service by GTA.

**Declaration on Invoice issued by GTA**

If GTA opts for forward charge, he has to make a **declaration** on invoice as per Annexure III of NN 13/2017. This provision is inserted vide Notification No. 5/2022-Central Tax (Rate), dated 13-7-2022, w.e.f. 18-07-2022.

**Declaration**

*I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us from the Financial Year \_\_\_\_ under forward charge and have not reverted to reverse charge mechanism.*

**How can GTA exercise option 2?**

As provided in NN 11/2017, GTA is required to file a declaration in form **Annexure V** to exercise the option of payment of GST under the forward

## Handbook on Reverse Charge under GST

charge [5% or 12%] on or after the 1<sup>st</sup> January of the preceding Financial Year but not later than 31<sup>st</sup> March of the preceding Financial Year. This is to be submitted before the jurisdictional GST Authority (online via common GST portal). The declarations cover following two points:

1. GST registration is either applied for or obtained by GTA and GST payment on such GTA service will be done under forward charge by provisions of section 9(1) of the CGST Act.
2. Option once exercised shall not be allowed to be changed within a period of one year from the date of exercising the option and will remain valid till the end of the financial year for which it is exercised.

Hence, option once exercised cannot be withdrawn during the financial year. If declaration in Annexure V is not furnished by GTA, it would be assumed that GTA has opted not to pay GST and accordingly, RCM provisions will apply.

### Time limit for filing Annexure V

After discussing who, what and why Annexure V (introduced from 18.07.2022) is to be filed, let us understand the time frame for filing the same as under:

FY 2022-2023	The option had to be exercised on or before the 16.08.2022. Note: Since Annexure V was introduced from 18.07.2022, invoice for supply of GTA service charging CGST and SGST/UTGST or IGST may be issued during the period from 18.07.2022 to 16.08.2022 before exercising the option by way of filing Annexure-V for the financial year 2022-2023. However, in such case, GTA has to mandatorily exercise option to pay GST (under forward charge mechanism) by way of filing Annexure V on or before 16.08.2022.
FY 2023-2024	On or before 31.05.2023
From FY 2024-25 onwards	On or after the 1 <sup>st</sup> January of the PFY but not later than 31 <sup>st</sup> March of the PFY [Note – Prior to 27.07.2023, it was on or before the 15 <sup>th</sup> March of the PFY]
Where GTA commences new	Option may be exercised before the expiry of:

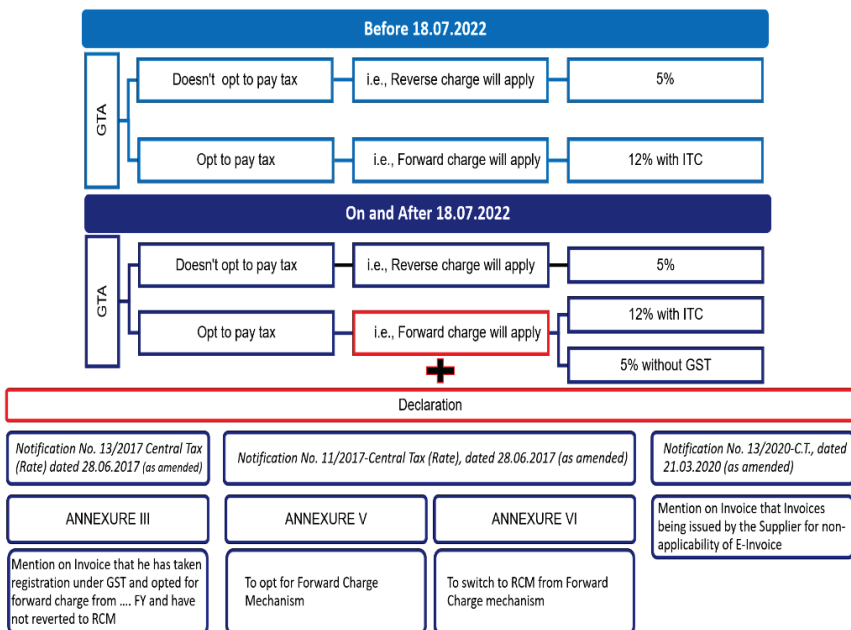
business crosses threshold for registration during any Financial Year	or	45 days from the date of applying for GST registration	or	1 month from the date of obtaining registration.	whichever is later
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### Options for Future Financial Years

The option exercised by GTA to itself pay GST under forward charge on the services supplied by it during a financial year shall be deemed to have been exercised for the next and future financial years unless the GTA files a declaration in **Annexure VI** to revert under reverse charge mechanism on or after the 1<sup>st</sup> January of the PFY but not later than 31<sup>st</sup> March of the PFY. This provision is applicable w.e.f. 27.07.2023 through *Notification No. 6/2023-Central Tax (Rate), dated 26-07-2023*.

Hence, Annexure V is only to be filed once and not for every year w.e.f. 27.07.2023. Annexure V is to be filed if GTA opts to pay tax under forward charge mechanism and Annexure VI is to be filed if GTA opts to exit from such option.

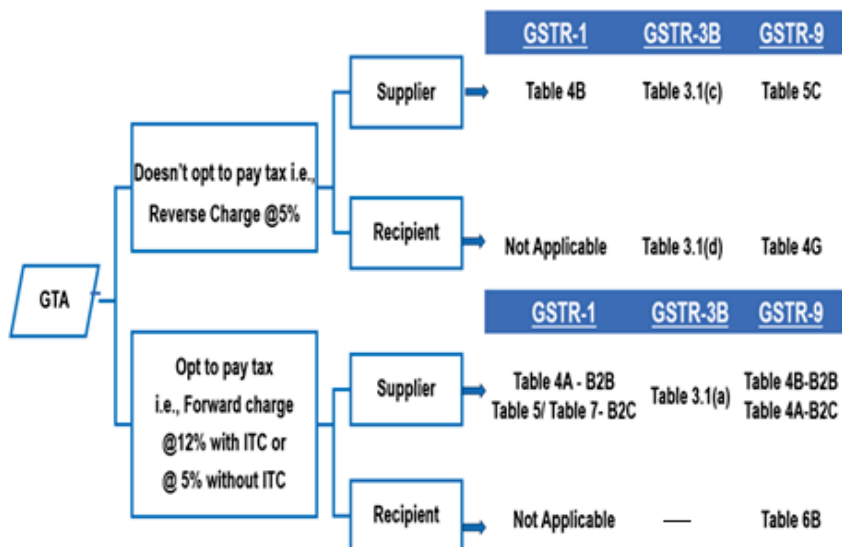
**Pre and Post 18.07.2022 position of GTA service is depicted as under:**





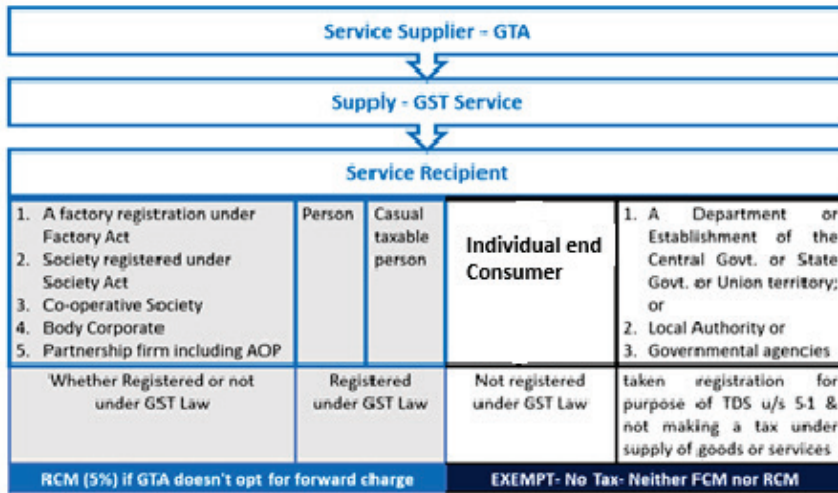
## Handbook on Reverse Charge under GST

Further, to bring more clarity as to where will the supplier and recipient show GTA related entries in various forms in current scenario i.e., on or after 18.07.2022, below chart may be referred:



GTA Services shall not be chargeable under reverse charge when:

- Supply of services to unregistered recipients (Exemption under S.No.21A of Notification 12/2017(Amended)-Central Tax (Rate))
- GTA opts to pay under forward charge
- Supply of services to persons other than persons specified
- Supply of services of GTA, by way of transport in a goods carriage of the items as covered under S.No. 21 of *Notification No. 12/2017-Central Tax (Rate)*--consequently, this would neither attract forward charge nor reverse charge.
- GTA services under RCM are treated as exempt supplies in the hands of GTA service provider for reversal of common credit, in line with section 17(3), the value of exempt supply shall include supplies on which the recipient is liable to pay tax.
- GTA services would include all ancillary and incidental activities provided with that of transportation of goods by road.



### Non-applicability of RCM Provisions

RCM provisions shall not apply to services provided by a GTA, by way of transport of goods in a goods carriage by road to-

- A Department / establishment of the Central Government / State Government/ Union territory; or
- local authority; or
- Governmental agencies,

which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

Note - It is important to note here that this service is exempted from GST vide entry 21B of NN 12/2017 (extract below). Hence, there will be no tax liability in this case.

### Exemptions available to GTA

The following services provided by a GTA have been exempted vide *Notification No. 12/2017-CT(R) dated 28.06.2017*:

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Exemption available to GTA with respect to GTA services is listed below under:



Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
21	Heading 9965 or Heading 9967	<p>Services provided by a goods transport agency, by way of transport in a goods carriage of-  agricultural produce  Omitted*  Omitted*  milk, salt and food grain including flour, pulses and rice;  organic manure;  newspaper or magazines registered with the Registrar of Newspapers;  relief materials meant for victims of natural or man-</p>	Nil	Nil

**Services Notified under RCM**

		<i>made disasters, calamities, accidents or mishap; or defence or military equipment's</i>		
21A	Heading 9965 or Heading 9967	<p>Services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the following recipients, namely:—</p> <p>(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or</p> <p>(b) any Society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or</p> <p>(c) any Co-operative Society established by or under any law for the time being in force; or</p> <p>(d) any body corporate established, by or under any law for the time being in force; or</p> <p>(e) any partnership firm whether registered or not under any law including association of persons;</p> <p>(f) any casual taxable person registered under the Central Goods and</p>	<i>Nil</i>	<i>Nil</i>

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		Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.								
21B	Heading 9965 or Heading 9967	<p>Services provided by a goods transport agency, by way of transport of goods in a goods carriage, to,—</p> <table border="1"><tr><td>(a)</td><td>a Department or Establishment of the Central Government or State Government or Union territory; or</td></tr><tr><td>(b)</td><td>local authority; or</td></tr><tr><td>(c)</td><td>Governmental agencies,</td></tr></table> <p>which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.</p>	(a)	a Department or Establishment of the Central Government or State Government or Union territory; or	(b)	local authority; or	(c)	Governmental agencies,	Nil	Nil
(a)	a Department or Establishment of the Central Government or State Government or Union territory; or									
(b)	local authority; or									
(c)	Governmental agencies,									

\* Clauses (b) and (c) are omitted vide Notification No. 4/2022 -Central Tax (Rate), dated 13-07-2022, w.e.f. 18-07-2022. Prior to their omission clauses (b) & (c) read as under:

- (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;

- (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty;"

**Annexures**

**ANNEXURE V**

**FORM**

*Form for exercising the option by a Goods Transport Agency (GTA) for payment of GST on the GTA services supplied by him under forward charge before the commencement of any financial year to be submitted before the jurisdictional GST Authority.*

*Reference No. -*

*Date: -*

- 1. I/We \_\_\_\_\_ (name of Person), authorised representative of M/s..... have taken registration/have applied for registration and do hereby undertake to pay GST on the GTA services in relation to transportation of goods supplied by us during the financial year.....under forward charge in accordance with section 9(1) of the CGST Act, 2017 and to comply with all the provisions of the CGST Act, 2017 as they apply to a person liable for paying the tax in relation to supply of any goods or services or both;*
- 2. I understand that this option once exercised shall not be allowed to be changed within a period of one year from the date of exercising the option and will remain valid till the start of the financial year for which I exercise option to revert under reverse charge mechanism by filing Annexure VI on or before the due date.*

*Legal Name: -*

*GSTIN: -*

*PAN No.*

*Signature of Authorised representative:*

*Name of Authorised Signatory:*

*Full Address of GTA:*

*(Dated acknowledgment of jurisdictional GST Authority)*

Note: The above option for any Financial Year shall be exercised on or after 1st January of the preceding Financial Year but not later than 31<sup>st</sup> March of the preceding Financial Year. The option for the financial year 2022-2023 can be exercised by 16-08-2022.

### **Annexure VI**

#### **FORM**

*Form for exercising option by a Goods Transport Agency intending to revert under reverse charge mechanism to be filed before the commencement of any financial year to be submitted before the jurisdictional GST Authority.*

*Reference No. -*

*Date: -*

1. *I/We\_\_\_\_\_ (name of Person), authorized representative of M/s..... had exercised option to pay GST on the services of GTA in relation to transportation of goods supplied by us during, the financial year.....under forward charge by filing Annexure V on .....;*
2. *I hereby declare that I want to revert to reverse charge mechanism for Financial Year.....;*
3. *I understand that this option once exercised shall not be allowed to be changed within a period of one year from the date of exercising the option and will remain valid till the end of the financial year for which it is exercised.*

*Legal Name: -*

*GSTIN: -*

*PAN No.*

*Signature of Authorized representative:*

*Name Authorized Signatory:*

*Full Address of GTA:*

*(Dated Acknowledgment of jurisdictional GST Authority)*

*Note: The above option for any Financial Year shall be exercised on or after 1<sup>st</sup> January of the preceding Financial Year but not later than 31<sup>st</sup> March of the preceding Financial Year.*

From above, it can be inferred that GST is not payable under RCM or Forward charge on services specified in entry 21 of NN 12/2017-CT(R) dated 28.06.2017. As transportation of aforesaid goods by GTA in goods carriage is exempt. Where 'goods carriage' means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

*Illustration:*

DEF Enterprises, a registered trading company, procures Goods Transport Agency (GTA) services from MNO Logistics in January 2024. MNO Logistics is a registered GTA provider that has opted to pay GST under the reverse charge mechanism (RCM). The service is used to transport finished goods to various retail outlets across the State.

*Analysis:*

Under the GST provisions, GTA services are taxable, but the tax liability shifts to the recipient (DEF Enterprises) under RCM.

Key GST Provisions for GTA Services:

- GST Rate:
- 5% GST under RCM by recipient (no ITC available to the GTA), or
- 12% GST under forward charge (with ITC to the GTA).
- The recipient of the service (DEF Enterprises) is liable to pay GST under RCM when the GTA has opted for the 5% rate.

Transaction Details:

- Service Cost: ₹2,00,000 (transportation charges).
- Applicable GST Rate: 5% under RCM.
- GST Amount: ₹10,000 (i.e., ₹2,00,000 x 5%) to be paid by DEF Enterprises.



## Handbook on Reverse Charge under GST

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### Steps Involved:

1. Consignment Note Issuance by the GTA:
  - MNO Logistics issues a note to DEF Enterprises for ₹2,00,000, excluding GST.
  - The note specifies that the recipient is liable to pay GST under RCM.
2. Tax Payment by Recipient (DEF Enterprises):
  - DEF Enterprises shall issue an invoice as per rule 47A.
  - DEF Enterprises pays the GST amount of ₹10,000 directly to the Government via its GST cash ledger.
  - The payment is recorded under RCM in its monthly GSTR-3B return.
3. Input Tax Credit (ITC):
  - DEF Enterprises can claim the ₹10,000 GST paid under RCM as ITC in the same return period as the transportation service is used for taxable supplies.
  - However, the GTA in this case shall not be allowed to avail ITC.
4. Return Filing:
  - MNO logistics, registered under GST, shall have to report the transaction in GSTR-1 under Table-4, with marking 'Supplies liable under Reverse Charge'.
  - DEF Enterprises reports the transaction in:
    - GSTR-3B: To declare tax paid under RCM and claim ITC.
    - GSTR-2A/GSTR-2B: The auto-populated return reflects the self-invoiced RCM transaction.
5. Accounting Aspect
  - Accounting Entries for DEF Enterprises:
    - Transportation Expense Account (Debit): ₹2,00,000.
    - GST Payable under RCM (Debit): ₹10,000.
    - Bank/Cash Account (Credit): ₹2,10,000 (total payment)

- Once ITC is claimed:
  - GST Input Credit Account (Debit): ₹10,000.
  - GST Payable Account (Credit): ₹10,000.

### 3.2 Supply of Advocate Services [Entry 2]

#### ENTRY - 2

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
2	<sup>10</sup> [Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.]  Explanation.—"Legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.]	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory.

#### Notes

- This entry was substituted vide Corrigendum GSR 1199(E), dated 25-09-2017. Prior to its substitution, it was read as: "Services supplied by an individual advocate including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity".

<sup>10</sup> As substituted vide Corrigendum GSR 1199(E), dated 25-09-2017

- **Legal service** means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.
- **Advocate** has the same meaning as assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961), that is “advocate means an advocate entered in any roll under the provisions of this Act”.
- **Senior advocate** has the same meaning as assigned to it in section 16 of the Advocates Act, 1961 (25 of 1961), that is, “an advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction”.
- **Business entity** means any person carrying out business.
- As per clause (c) of explanation to NN 13/2017, the business entity located in the taxable territory who is litigant, applicant, or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification. Therefore, it can be said that the legal services provided to a business entity with an aggregate turnover exceeding such amount in the preceding financial year as makes it liable for registration under the CGST Act. Further, tax is payable by the business entity on such services under reverse charge.

### Exemptions - Services provided by Advocates

Following services [heading 9982 or heading 9991] provided by specified categories of advocates are exempt from GST vide S. No. 45 of NN 12/2017-

In terms of S.No. 45 (b), services provided by a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to:

- (i) An advocate or partnership firm of advocates providing legal services;
- (ii) any person other than a business entity;
- (iii) \*[a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from

registration under the Central Goods and Services Tax Act, 2017 (12 of 2017)]; or

- (iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;

are exempt from GST

S. No. 45(c) specifies that legal services provided by a senior advocate to:

- (i) any person other than a business entity;
- (ii) \*[a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017)]; or
- (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.

are exempt from GST

\* Upto 30-09-2019, exemption was available to those business entities having an aggregate turnover up to "*twenty lakh rupees (ten lakh rupees in the case of special category States) in the preceding financial year*". This was substituted vide *Notification No. 21/2019-Central Tax (Rate), dated 30-9-2019*. This change ensures that whenever there is a change in the threshold limit for obtaining registration, corresponding change is not required to be made in the above entry.

Further, it is also clarified by CBIC through *Circular No. 27/01/2018-GST, dated 04-01-2018* that:

S. No.	Questions/Clarifications sought	Clarifications
1.	Whether legal services other than representational services provided by an individual advocate or a senior advocate to a business entity are liable for GST under reverse charge mechanism?	Yes. In case of legal services including representational services provided by an advocate including a senior advocate to a business entity, GST is required to be paid by the recipient of the service under reverse charge mechanism, i.e., the business entity.

### *Illustration:*

ABC Pvt. Ltd., a registered GST entity, hires legal consultancy services from an unregistered advocate. The advocate is not registered under GST due to the nature of the exemption provided for their turnover.

### **Analysis:**

Under the reverse charge mechanism (RCM), legal services provided by an advocate to a business entity are taxable. Since the advocate is unregistered, ABC Pvt. Ltd. must self-invoice for the transaction and pay GST under RCM.

### **Steps Involved:**

1. ABC Pvt. Ltd. generates a self-invoice for the service received.
2. GST is paid under RCM by ABC Pvt. Ltd. using the cash ledger.
3. ABC Pvt. Ltd. claims input tax credit (ITC) on the tax paid under RCM, as the legal services are used for business purposes.

### **Outcome:**

ABC Pvt. Ltd. complies with GST regulations and offsets the RCM tax paid against their GST liabilities.

## 3.3 Supply of Services of Arbitral Tribunal [Entry 3]

### ENTRY - 3

<b>Sl. No.</b>	<b>Category of Supply of Services</b>	<b>Supplier of service</b>	<b>Recipient of Service</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
3	Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal	Any business entity located in the taxable territory.

### **Analysis:**

- I. In terms of clause (i) of the definitions provided in NN 12/2017, arbitral tribunal has the same meaning as assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

Clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 states that arbitral tribunal means a sole arbitrator or a panel of arbitrators.

- II. Services by any Court or Tribunal established under any law for the time being in force is neither as a supply of goods nor a supply of services as per Schedule III of section 7 of the CGST Act. The word Tribunal does not cover the Arbitral Tribunal since the Arbitral Tribunal is the creature of an agreement and not established under any law.

Hence, services supplied by an arbitral tribunal to a business entity located in the taxable territory is covered under RCM.

### Exemptions - Services provided by Arbitral Tribunal

Services [heading 9982 or heading 9991] by an arbitral tribunal are exempt from GST through S.No. 45(a) of NN 12/2017, if provided to the following:

- (i) any person other than a business entity;
- (ii) \*[a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017] or
- (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity

\* Upto 30-09-2019, exemption was available to those business entities having an aggregate turnover up to *"twenty lakh rupees (ten lakh rupees in the case of special category States) in the preceding financial year"*. This was substituted vide Notification No. 21/2019-Central Tax (Rate), dated 30-9-2019. This change ensures that whenever there is a change in the threshold limit for obtaining registration, corresponding change is not required to be made in the above entry.

### 3.4 Supply of Sponsorship Services [Entry 4]

#### ENTRY - 4

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
4	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person <sup>11</sup> [other than a body corporate]	Any body corporate or partnership firm located in the taxable territory.

#### ANALYSIS

- (a) As per clause (b) under explanation to NN 13/2017, **“body corporate”** has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.

Section 2(11) of the Companies Act, 2013 provides that “body corporate” or “corporation” includes a company incorporated outside India, but does not include:

- (i) a co-operative society registered under any law relating to co-operative societies; and
  - (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.
- (b) As per explanation (e) to NN 13/2017 as inserted by Notification No. 22/2017-Central Tax (Rate), dated 22-08-2017, a Limited Liability Partnership formed and registered under the provisions of the Limited Liability Partnership Act, 2008 (6 of 2009) shall also be considered as a partnership firm or a firm.
- (c) Notification No. 07/2025-Central Tax (Rate), dated 16<sup>th</sup> January 2025, has amended the applicability of the RCM on sponsorship services.

<sup>11</sup> Inserted vide Notification No. 07/2025- Central Tax (Rate) dated 16-01-2025.

With effect from 16<sup>th</sup> January, 2025, RCM shall apply only in cases where sponsorship services are provided by any person other than a body corporate to a body corporate or a partnership firm located in the taxable territory.

Prior to this amendment, the RCM on sponsorship services was applicable in a broader context, wherein any person providing such services to a body corporate or a partnership firm located in the taxable territory was subject to RCM. Consequently, irrespective of whether the supplier was a corporate entity, an individual, or any other entity, the recipient was liable to discharge GST under RCM.

### Exemptions

Sponsorship services of sporting events organized by the following bodies are exempt under S.No. 53 of NN 12/2017.

- by a national sports federation, or its affiliated Federations, where the participating teams or individuals represent any district, State, zone or Country;
- by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- by the Central Civil Services Cultural and Sports Board;
- as part of national games, by the Indian Olympic Association; or
- under the *Panchayat Yuva Kreedha Aur Khel Abhiyaan* Scheme ("PYKKA").

Sines, the services as specified above are exempted, therefore, option of taxability under RCM does not arise.



### 3.5 Supply of Services by Central Government, State Government, Union territory or local authority to Business Entity [Entry 5]

#### ENTRY - 5

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
5	<p>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding,-</p> <p>(1) renting of immovable property, and</p> <p>(2) services specified below -</p> <p>(i) services by the Department of Posts <sup>12</sup>[and the Ministry of Railways (Indian Railways)] <sup>13</sup>[***];</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers.</p>	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

<sup>12</sup> Inserted by Notification No. 14/2023-Central Tax (Rate), dated 19-10-2023, w.e.f. 20-10-2023.

<sup>13</sup> Words "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" omitted by Notification No. 5/2022-Central Tax (Rate), dated 13-07-2022, w.e.f. 18-07-2022.

## Analysis

Before we go into the analysis of the above entries, it is relevant to highlight that the entry para (d) of explanation to *Notification No. 13/2017-Central Tax (Rate)*, dated 28-06-2017 which provides that the words and expressions used and not defined in this notification but defined in the CGST Act, the IGST Act, and the UTGST Act shall have the same meanings as assigned to them in those Acts. Hence, for definition of Government and local authority we may refer to CGST/ IGST Act.

Section 2(53) of the CGST Act/ 2(9) of the IGST Act defines "Government" to mean the Central Government and as per section 2 (6) of the UTGST Act "Government" means the Administrator or any authority or officer authorised to act as Administrator by the Central Government

Further, as per section 2(69) of the CGST Act, "local authority" means —

- (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
- (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371 <sup>14</sup>[and article 371J] of the Constitution; or
- (g) a Regional Council constituted under article 371A of the Constitution.

The Finance Bill, 2025 has proposed to amend the definition of "local authority" provided in section 2(69), by replacing the term "municipal or local

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<sup>14</sup> Inserted by section 2 of *The Central Goods and Services Tax (Amendment) Act, 2018* (No. 31 of 2018) – Notified through *Notification No. 2/2019-CT* dated 29.01.2019. Brought into force w.e.f. 01-02-2019.

fund" with "municipal fund or local fund". Additionally, an Explanation is proposed to be inserted after the sub- clause to define the terms "Local Fund" and "Municipal Fund," thereby clarifying the scope and application of these terms within the definition of "local authority."

Services of the Government covers a wide range of services that can be tested on the basis of 'payments made' by 'business entity' located in taxable territory. All payments to Government must be tested on the anvil of whether it is a (i) fee (ii) penalty or (iii) consideration. Fee is that which does not guarantee favourable consideration of application and is not imposed in any proportion to activities involved. Penalty is that which is linked to any infraction of law. All others would have to be admitted and in consideration, that is, *quid pro quo*. Consideration paid to Government is also subject to two exemptions in entry 47 and 62 of exemption notification<sup>15</sup>.

- Sovereign is permitted by article 298 to engage in 'trade or commerce' and natural resources of the State are its stock-in-trade. As such, any award of rights to exploit partake the character of consideration, whether spectrum allocation for mobile telephony or mineral exploitation rights, under a contract.
- Where the payment is due under a statute, there is a debate whether it is a tax or consideration. The Apex Court determined that royalties on mining leases are not taxes but rather contractual considerations under Mineral Lease. Additionally, the Mines and Minerals (Development and Regulation) Act, 1957 does not restrict the States' taxing power. Therefore, States can use the yield of mineral-bearing land as a measure to levy such taxes as held in *Mineral Area Development Authority v. Steel Authority of India Ltd.*
- Licensing Services from State Government or Local Authority for Metal Extraction shall be Taxable under Reverse Charge Mechanism. Any Royalty paid in respect of mining lease and contribution made under Statutory Compliance shall be classifiable under SAC 997337 "Licensing Services for the Right to use Minerals including its Exploration and Evaluation". Additionally, as *ruled by AAR Goa in Cosme Costa and Sons*, any statutory contribution made by the Lessee under statute is obligatory in nature.

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<sup>15</sup> Notification 12/2017-Central Tax (Rate) dated 28.06.2017

- License Fee and Spectrum usage charges paid in respect to Spectrum allotted by Central Government shall be taxable classified under SAC 997338 and payable as Reverse Charge - *Commissioner (Appeals) in Bharti Hexacom Limited*. However, there was a lot of confusion regarding the Time of Supply for payment of GST where payments to be made in instalments under Deferred Payment option in respect of Spectrum Allocation Services which has been clarified by CBIC vide *Circular No. 222/16/2024 dated 26.06.2024*, such arrangement is considered to be continuous supply of services as per section 2(33) of the CGST Act. Hence, the GST liability would arise as and when such instalments are due and paid.
- Some of the services of Department of Post are under forward charge (Speed Post, Express Post Parcel Life Insurance supplied to individuals or businesses) and the others under reverse charge ((Ordinary Post, Post Card, Inland Letters, Registered Post etc. supplied to business entities). This makes the tax structure on the services of Department of Post complicated.

### *Illustration:*

ABC Construction Ltd., a company registered under GST, obtains a license from the municipal corporation of a metropolitan city for constructing commercial buildings. The municipal corporation provides the license as a taxable service.

Since the municipal corporation is a Government entity and the services provided are taxable under GST, the Reverse Charge Mechanism (RCM) applies to the transaction. Therefore, the Municipal Corporation issues service invoice with mentioning that payment of tax on Reverse Charge Mechanism, consequently ABC Construction Ltd. shall be liable to pay tax under Reverse Charge.

### 3.6 Supply of Service of Renting of Immovable Property [Entry 5A, 5AA & 5AB]

#### ENTRY – 5A

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
5A	Services supplied by the Central Government <sup>16</sup> [excluding the Ministry of Railways (Indian Railways)], State Government, Union territory or local authority by way of renting of immovable property to a person registered under the CGST Act	Central Government, State Government, Union territory or local authority	Any person registered under the CGST Act.

#### ANALYSIS

- This entry was inserted vide Notification No. 3/2018-Central Tax (Rate), dated 25-01-2018, w.e.f. 25-01-2018.
- As per the Explanation of Notification No. 16/2018-Integrated Tax (Rate) it is stated that "**renting of immovable property**" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

<sup>16</sup> Inserted by Notification No. 14/2023-Central Tax (Rate), dated 19-10-2023, w.e.f. 20-10-2023.

ENTRY – 5AA

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
5AA	Service by way of renting of residential dwelling to a registered person.	Any person	Any registered person.

ANALYSIS

- This entry was inserted vide *Notification No. 5/2022-Central Tax (Rate), dated 13-07-2022 w.e.f. 18-07-2022.*
- At the outset, it is relevant to mention that the phrase 'residential dwelling' has not been defined in GST Law. However, in normal trade parlance it shall include all residential accommodation other than hotel, motel, inn, guest house, campsite, lodge, house boat or like places which are meant for temporary stay.
- Services by way of renting of residential dwelling for use as residence* was exempt by virtue of entry 12 of NN 12/2017. Thereafter, GST Council in its 47<sup>th</sup> meeting dated June 28 and 29, 2022 recommended withdrawal of exemption on renting of **residential dwelling for residential use when supplied to business**, as the objective to exempt residential dwelling was to exempt the rent paid by the individuals or non- commercial person as there should not be any tax burden on him. Hence, renting of residential dwelling to a business entity has been made taxable. Hence, with effect from 18-07-2022, such exception has been added vide *Notification No. 4/2022 -Central Tax (Rate), dated 13-07-2022* and entry 12 of exemption notification was amended to: "*Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person.*" Moreover, with effect from 18-07-2022, a new entry 5AA was inserted in reverse charge notification. Accordingly, supply of service by way of renting of residential dwelling by any person to a registered person is covered under RCM.

The amended entry no.12 led to an issue that whether GST would be payable on renting of a residential dwelling by the proprietor of a proprietorship firm in his personal capacity for use as his residence when the firm is a registered person. So, GST Council in its 48<sup>th</sup> Meeting dated 17-12-2022 recommended that where the residential dwelling is rented by a person who is the proprietor of a proprietorship firm who rents it in his personal capacity for use as his own residential dwelling, (and such renting is not on account of its business, i.e., not accounted for in the books of account of the firm but is on personal account) the exemption should be available to him. Accordingly, *w.e.f. 01-01-2023* an explanation has also been inserted *vide Notification No. 15/2022 -Central Tax (Rate) dated 30-12-2022*.

- d. All the following conditions must be present for the applicability of reverse charge in relation to renting of residential dwelling:
- i. Property is residential dwelling,
  - ii. Supplier (Landlord) can be any person (registered or not),
  - iii. Recipient (Tenant) must be a registered person, and
  - iv. For commercial purpose
- e. Opinions on PGs (Paying Guests) and serviced apartments are split due to legal developments and the stance of various authorities, which suggest that the phrase "per day or equivalent thereof" does not allow for a straightforward calculation of daily rates when the contract does not offer accommodation based on a per-day tariff.

### ENTRY – 5AB

<b>Sl. No.</b>	<b>Category of Supply of Services</b>	<b>Supplier of service</b>	<b>Recipient of Service</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
5AB	Service by way of renting of <sup>17</sup> [any Immovable property] other than	Any Unregistered	Any registered person <sup>18</sup> [other than a person who

<sup>17</sup> As corrected by Corrigendum, dated 22-10-2024. Earlier, it was read as "any property".

<sup>18</sup> Inserted vide Notification No. 07/2025- Central Tax (Rate) dated 16-01-2025

## Services Notified under RCM

	<i>residential dwelling.</i>	<i>person</i>	<i>has opted to pay tax under composition levy].</i>
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### ANALYSIS

- a) This entry was inserted vide *Notification No. 09/2024-Central Tax (Rate) dated 08-10-2024, w.e.f. 10-10-2024.*
- b) With this amendment, the onus of taxability under GST Act has been shifted from Unregistered Landlord to Registered Recipient under Reverse Charge Mechanism.
- c) Entry 5AA states liability under Reverse Charge on Residential Dwelling, where Entry 5AB states liability under Reverse Charge on other than Residential Dwelling
- d) *Notification No. 07/2025-Central Tax (Rate), dated 16<sup>th</sup> January 2025,* has amended the applicability of the RCM on the renting of immovable property other than a residential dwelling. With effect from 16<sup>th</sup> January 2025, a registered person who has opted for the composition scheme is no longer liable to discharge GST under RCM on the receipt of such services from an unregistered person.

### 3.7 Supply of Transfer of Development Rights/ Floor Space Index/ Long term Lease [Entry 5B & 5C]

#### ENTRY - 5B & 5C

<b>Sl. No.</b>	<b>Category of Supply of Services</b>	<b>Supplier of service</b>	<b>Recipient of Service</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
5B	<i>Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.</i>	<i>Any person</i>	<i>Promoter</i>
5C	<i>Long term lease of land (30 years or more) by any person against</i>	<i>Any person</i>	<i>Promoter</i>



## Handbook on Reverse Charge under GST

	<i>consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.</i>		
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### ANALYSIS

Entry 5B and 5C was inserted vide *Notification No. 5/2019-Central Tax (Rate)*, dated 29-03-2019 and applicable w.e.f. 01-04-2019.

### **Taxability of Transferable Development Rights (TDR) or Floor Space Index (FSI) or Long-Term Lease**

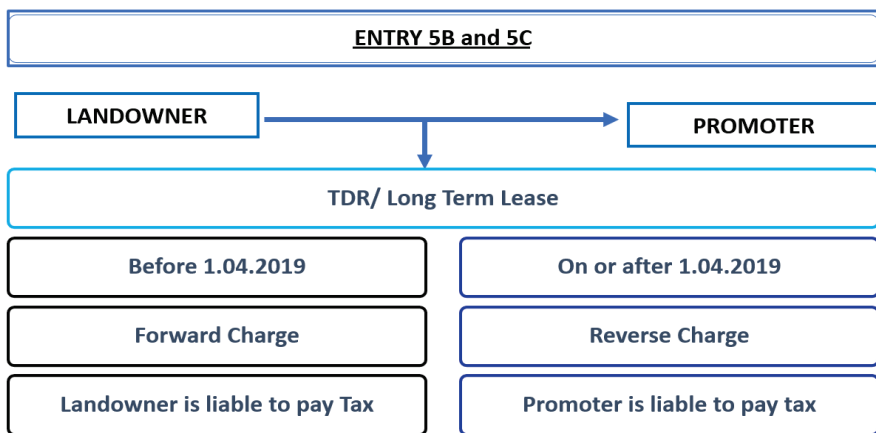
Based on the recommendations made by 33<sup>rd</sup> and 34<sup>th</sup> GST Council meeting to boost real estate sector, various notifications were issued which were effective from 1<sup>st</sup> April 2019. Following notifications were issued:

Notification No.	Particulars
03/2019 – CT (R)	Amended rates on various services related to Real Estate Sector and relevant conditions
04/2019 – CT (R)	Exemption on specified services – transfer of development rights, FSI and Long-term lease- related to Real Estate Sector
05/2019 – CT (R)	Reverse charge on specified services – transfer of development rights, FSI and Long-term lease- related to Real Estate Sector
06/2019 – CT (R)	Due date for payment of tax under RCM in respect of Development Rights and tax payable on landowner's area
07/2019 – CT (R)	Reverse charge in respect of shortfall of procurement from RD and cement and capital goods procured from URD
08/2019 – CT (R)	Tax rate on shortfall of goods procured from URD (Other than capital goods or cement)

One such notification is *Notification No. 5/2019-Central Tax (Rate)*, dated 29-03-2019 which pertains to RCM in respect of non-exempt development rights, FSI and Long-term lease.

### RCM – TDR/ FSI/ Long Term Lease (LTL)

In terms of entry 5B of NN 13/2017 read with entry 41A of NN 12/2017, the promoter is liable to pay GST on TDR or FSI supplied by any person (whether registered or not) on or after 01-04-2019 on reverse charge basis. Implying forward charge applicability on such services from 01-07-2017 to 31-03-2019.



In case of transfer of TDR/FSI, the promoter in capacity of lessee is liable w.e.f. 01-04-2019, to pay tax under RCM. However, Entry 41A in Exemption Notification provides that w.e.f. 01-04-2019, supply of TDR or FSI of land used for the construction of residential apartments in a project that are booked before issuance of completion certificate or first occupancy, whichever is earlier, is exempt.

Furthermore, in case of long-term lease (LTL) of land (30 years or more), promoter in capacity of lessee is liable to pay tax under RCM on consideration paid to the lessor in the form of upfront amount. This upfront amount is a lumpsum and may be called premium, salami, cost, price, development charges or by any other name. Also, w.e.f. 01-04-2019, vide entry 41B of Exemption Notification, upfront amount payable for LTL is exempt to the extent it is used for construction of residential apartments that are booked before issuance of completion certificate or first occupation. In

## Handbook on Reverse Charge under GST

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addition to the upfront amount, there may be periodic payment of license fee or annual/ monthly rent payable for LTL which is taxable under GST.

The promoter shall be liable to pay tax at the applicable rate (@18%), on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both or upfront amount paid for LTL, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner-

GST payable on TDR or FSI (including additional FSI) or both / upfront amount payable for LTL on land for construction of the residential apartments in the project but for the exemption contained herein	x	carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation
		<hr/>
		Total carpet area of the residential apartments in the project

However, such amount of tax shall be limited to

- a) 1% of the value in case of affordable residential apartments or
- b) 5% in case of residential apartments other than affordable residential apartments

remaining un-booked on the date of issuance of completion certificate or first occupation.

The liability to pay such tax shall arise on the date of completion or first occupation of the project, whichever is earlier.

To comprehend the aforesaid exemption better it is pertinent to be familiar with the following terminologies:

- 1. "Promoter" shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).
- 2. "Floor Space Index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

3. "Project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);
4. "Ongoing Project" shall mean a project which meets all the following conditions, namely,—
  - (a) commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31<sup>st</sup> March, 2019:—
    - (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
    - (ii) a chartered engineer registered with the Institution of Engineers (India); or
    - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
  - (b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub-clause (a) above that construction of the project has started on or before the 31<sup>st</sup> March, 2019;
  - (c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;
  - (d) apartments being constructed under the project have been, partly or wholly, booked on or before the 31<sup>st</sup> March, 2019.

Explanation. - For the purpose of sub-clauses (a) and (b) above, construction of a project shall be considered to have started on or before the 31<sup>st</sup> March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31<sup>st</sup> March, 2019.

5. "Project which commences on or after 1<sup>st</sup> April, 2019" shall mean a project other than an ongoing project;

6. "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).
7. "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent of the total carpet area of all the apartments in the REP
8. "Carpet Area" shall have the same meaning assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
9. "Apartment" shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
10. "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;
11. "Commercial apartment" shall mean an apartment other than a residential apartment;
12. "Real Estate Regulatory Authority" shall mean the Authority established under sub-section (1) of section 20 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) by the Central Government or State Government;
13. "Affordable Residential Apartment" shall mean,—
  - (a) a residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.

For the purpose of this clause,—

- (i) Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR)

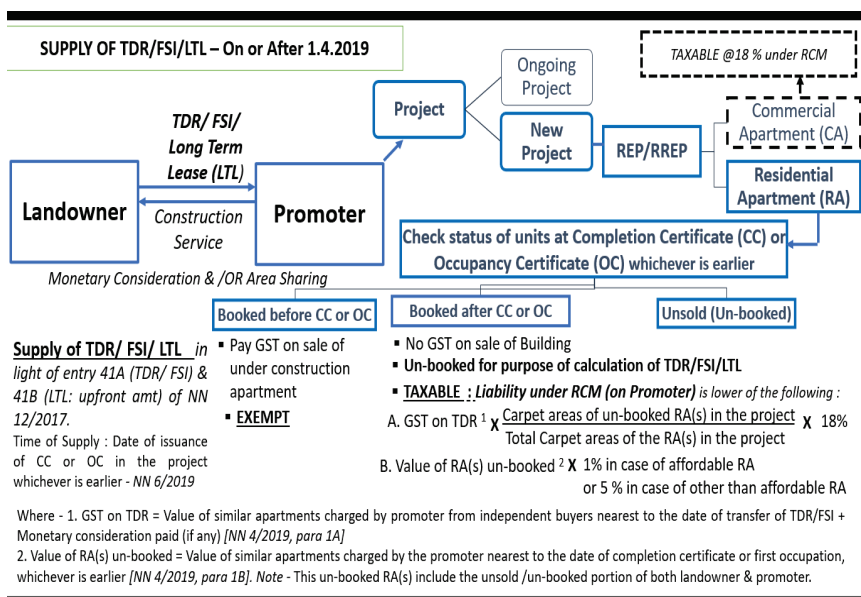
with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;

- (ii) Gross amount shall be the sum total of:—
  - A. Consideration charged for the services specified at items (i) and (ic) in column (3) against Sl. No. 3 in the Table;
  - B. Amount charged for the transfer of land or undivided share of land, as the case may be, including by way of lease or sub- lease; and
  - C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges, etc.
- (b) an apartment being constructed in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table above, in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be. *[Refer entry 3 of NN 11/2017]*
- 14. "Commencement Certificate" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan
- 15. "Development Works" means the external development works and internal development works on immovable property;
- 16. "External Development Works" includes roads and road systems landscaping, water supply, sewage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;

## Handbook on Reverse Charge under GST

17. "Internal Development Works" means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per sanctioned plans
18. The term "competent authority" as mentioned in definition of "commencement certificate" and "residential apartment", means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

**Taxability of Supply of TDR/FSI / LTL on or after 01-04-2019 is depicted below:**



CBIC has issued FAQ on Real Estate Sector vide Circular F. No. 354/32/2019-TRU, dated 07-05-2019 and Circular F. No. 354/32/2019-TRU, dated 14-05-2019. Relevant extract of the FAQs are as under:

<b>Question</b>	<b>Answer</b>
<i>What is the rate of GST applicable on transfer of development rights, FSI and long-term lease of land?</i>	<p><i>Supply of TDR or FSI or long-term lease of land used for the construction of residential apartments in a project that are booked before issue of completion certificate, or first occupation is exempt.</i></p> <p><i>Supply of TDR or FSI or long term lease of land, on such value which is proportionate to construction of residential apartments that remain un-booked on the date of issue of completion certificate or first occupation, would attract GST at the rate of 18%, but the amount of tax shall be limited to 1% or 5% of value of apartment depending upon whether the residential apartments for which such TDR or FSI is used, in the affordable residential apartment category or in other than affordable residential apartment.</i></p> <p><i>TDR or FSI or long-term lease of land used for construction of commercial apartments shall attract GST of 18%.</i></p> <p><i>The above shall be applicable to supply of TDR or FSI or long-term lease of land used in the new projects where new rate of 1% or 5% is applicable.</i></p>
<i>Who is liable to pay GST on TDR and floor space index?</i>	<i>The promoter is liable to pay GST on TDR or floor space index supplied on or after 01-04-2019 on reverse charge basis.</i>
<i>At what point of time, the promoter should discharge its tax liability on TDR.</i>	<i>The liability to pay GST on development rights shall arise on the date of completion or first occupation of the project, whichever is earlier. Therefore, promoter shall be liable to pay tax on reverse charge basis, on supply of TDR on or after 01-04-2019, which is attributable to the residential apartments that remain un-booked on the date of issuance of completion certificate, or first occupation of the project.</i>



<p>At what point of time, the promoter should discharge its tax liability on FSI (including additional FSI).</p>	<p>On FSI received on or after 01-04-2019, the promoter should discharge his tax liability on FSI as under:</p> <p>(i) In case of supply of FSI wherein consideration is in form of construction of commercial or residential apartments, liability to pay tax shall arise on date of issuance of Completion Certificate.</p> <p>(ii) In case of supply of FSI wherein monetary consideration is paid by promoter, liability to pay tax shall arise on date of issuance of Completion Certificate only if such FSI is relatable to construction of residential apartments. However, liability to pay tax shall arise immediately if such FSI is relatable to construction of commercial apartments.</p>
<p>At what point of time, the promoter should discharge its tax liability on supply of long-term lease.</p>	<p>On long term lease received on or after 01-04-2019, the promoter should discharge his tax liability on long term lease as under:</p> <p>In case of supply of long-term lease of land for construction of commercial apartments, tax shall be paid by the promoter immediately. However, for construction of residential apartment, liability to pay tax on the upfront amount payable for long term lease shall arise on the date of issuance of Completion Certificate.</p>
<p>Land development corporation of Orissa has provided land on long term lease for 99 years, for construction of a real estate project. As per the lease agreement, promoter has to pay an upfront amount of Rs. 10 Crore and annual /</p>	<p>The liability to pay tax on Long term lease of land (30 years or more) received against consideration in the form of upfront amount and periodic licence fee is on the promoter. The promoter has to discharge tax liability on the same RCM basis. However, the upfront amount payable for the long-term lease (known as premium, salami, cost, price, development charges etc.) is exempt to the extent it is used for construction of</p>

<i>monthly licence fee of five lakhs. Does the promoter have to pay GST on these amounts?</i>	<i>residential apartments that are booked before issuance of completion certificate or first occupation.  Annual/monthly rent or licence fee payable for long term lease is taxable under GST.</i>
<i>Whether the GST is leviable on the output supply of Transferrable Development rights by a developer (usually evidenced by TDR Certificate issued by the authorities). If yes, under which entry and at what rate?</i>	<i>Yes, GST is payable on transfer of development rights by a developer to another developer or promoter or to any other person under reverse charge mechanism @ 18% with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017 (heading 9972).</i>
<i>It may be clarified whether exemption granted on transfer of development right or FSI for residential construction and reverse charge mechanism prescribed for payment of tax on TDR, FSI or long-term lease (premium) in the new dispensation is applicable where development rights were transferred by way of an agreement executed prior to 01-04-2019, but consideration, whether in cash or other form, flowed to the land owner, in full or part, on or after 01-04-2019.</i>	<i>The new dispensation has been prescribed for real estate sector vide notifications issued on 29-03-2019. The same are effective prospectively from 01-04-2019. They shall apply only to development rights or FSI transferred on or after 01-04-2019. They shall not apply to development rights transferred by way of an agreement prior to 01-04-2019 even if the consideration for the same, in cash or kind, is paid in part or full on or after 01-04-2019.</i>

*Illustration:*

XYZ Developers, a real estate company, enters into an agreement with Mr. Verma, a landowner, to develop a residential apartment complex on his land

in exchange for Transfer of Development Rights (TDR). In consideration, XYZ Developers agree to construct and deliver 5 residential flats to Mr. Verma and pay GST on the TDR as per applicable laws.

### *Analysis:*

#### Taxability of TDR under GST:

- TDR is classified as a supply of service under GST.
- The person transferring the TDR (landowner) is the supplier, and the person receiving the TDR (developer) is the recipient and tax is applicable under reverse charge mechanism (RCM) when the developer receives TDR.

#### GST Exemption:

- If the TDR is used for constructing residential apartments that are sold before obtaining the Occupancy Certificate (OC) or first occupation, it is exempt to the extent of such supply.
- GST is applicable on the unsold flats proportionate to the TDR used after obtaining the OC.

#### Transaction Details

- Mr. Verma (landowner) transfers TDR to XYZ Developers.
- XYZ Developers agree to deliver 5 flats valued at ₹75,00,000 each to Mr. Verma.
- Transfer Value of TDR: ₹3,75,00,000 (equivalent to the value of the flats).
- GST Rate on TDR: 18%.
- GST Liability: ₹3,75,00,000 x 18% = ₹67,50,000.

### **Steps for Compliance**

#### 1. TDR Valuation and Invoicing:

XYZ Developers self-invoice for the TDR received under RCM based on the market value of ₹3,75,00,000 and XYZ Developers discharge the GST liability of ₹67,50,000 under RCM, consequently self-invoicing be done.

2. GST Exemption Applicability:

- Flats sold before OC: If all 5 flats provided to Mr. Verma are sold before obtaining the Occupancy Certificate, no GST applies on the TDR transaction.
- Flats sold after OC: For any unsold flats as of OC, XYZ Developers must proportionately pay GST.

### 3.8 Supply of Services by Director [Entry 6]

#### ENTRY - 6

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
6	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.

#### ANALYSIS

As per this entry, reverse charge is applicable on the services provided by the director of a company or body corporate to the said company or body corporate.

Entry 6 should be read with para 1 of schedule III to the CGST Act, which provides that “Services by an employee to the employer in the course of or in relation to his employment”, shall neither be treated as supply of goods nor supply of services. Therefore, it can be said that GST under reverse charge is not applicable where the amount is paid as salary to the director under employer – employee relationship and is subjected to TDS u/s 192 of the Income Tax Act, 1961. Except this, any amount paid, by whatever name called, shall be liable to GST under reverse charge.

### Clarification in respect of levy of GST on Director's Remuneration [Circular No. 140/10/2020-GST dated 10<sup>th</sup> June 2020]

#### Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

The primary issue to be decided is whether or not a Director is an employee of the company. In this regard, with the perusal of the relevant provisions of the Companies Act, 2013, it can be inferred that:

- a. the definition of a whole time-director under section 2(94) of the Companies Act, 2013 is an inclusive definition, and thus he may be a person who is not an employee of the company.
- b. the definition of “independent directors” under section 149(6) of the Companies Act, 2013, read with rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that such director should not have been an employee or proprietor or a partner of the said company, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.

Therefore, in respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore **taxable under reverse charge**. Accordingly, it is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in the hands of the company, on reverse charge basis.

#### Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company

Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of **employer-employee relation** (i.e. a “**contract of service**”) or is there any element of “**contract for service**”. The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in **dual capacities**, namely, one **as a director of the**

**company** and the other on the basis of the **contractual relationship of master and servant** with the company, i.e. under a contract of service (employment) entered into with the company. Accordingly, it is clarified that the part of Director's remuneration which are declared as Salaries in the books of a company and subjected to TDS under Section 192 of the IT Act, are **not** taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017 and the portion, which is declared **other than salaries** in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, **taxable under reverse charge**.

### **Taxability of Services supplied by a Director in Personal Capacity**

By virtue of entry 6, as discussed above, services supplied by a director of a company or a body corporate to the said company or the body corporate are subject to RCM. An issue was raised that whether services supplied by a director of a company in his personal capacity such as renting of immovable property to the company or the body corporate is taxable under RCM.

Based on the recommendations made in the 50<sup>th</sup> GST Council Meeting held on 11-07-2023, CBIC *vide Circular No. 201/13/2023-GST, dated 01-08-2023* has clarified that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM.

Only those services supplied by a director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under entry no 6 of *NN 13/2017*.

Inferred from above, if a residential property of director is given on rent to company registered under GST in personal capacity. Then, though this transaction does not fall under the ambit of entry 6 but will fall under entry 5AA provided as all the conditions stipulated therein are satisfied.

### Taxability of Personal Guarantee offered by Directors to the Bank

As per the *Circular No. 204/16/2023-GST dated October 27, 2023*, no GST is payable on the service of providing personal guarantee by Director. Further, as per the *Circular No. 218/12/2024-GST dated June 26, 2024*, GST is fully exempted for the services regarding the extension of loans in the case of related entities, in which the consideration is solely in the form of interest or discount.

### 3.9 Supply of Services for Insurance Business [Entry 7]

#### ENTRY - 7

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
7	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory.

#### ANALYSIS

Clause (f) under explanation to *NN 13/2017* provides that insurance agent shall have the same meaning as assigned to it in clause (10) of section 2 of the Insurance Act, 1938 (4 of 1938).

Further, clause (10) of section 2 of the Insurance Act, 1938 provides that “insurance agent” means an insurance agent who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal, or revival of policies of insurance.

From above, RCM will apply in case of services supplied by an insurance agent to any person carrying on insurance business in the taxable territory.

### 3.10 Supply of Services by Recovery Agent to Financial Institution [Entry 8]

#### ENTRY -8

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.

#### ANALYSIS

As per para 2(l) of the NN 12/2017, banking company has the same meaning as assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934). And as per clause (a) of section 45A of the Reserve Bank of India Act, 1934, "banking company means a banking company as defined in section 5 of the Banking Regulation Act, 1949 (10 of 1949) and includes the State Bank of India, any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), any corresponding new bank constituted by section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), and any other financial institution notified by the Central Government in this behalf.

Further, as per clause (d) to section 13(8) of the IGST Act, 'non-banking financial company' means, -

- (i) a financial institution which is a company;
- (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
- (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.



From above, RCM will apply in case of services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.

### 3.11 Supply of Services by Music Composer, Photographer, Artist & Author [Entry 9 & 9A]

#### ENTRY – 9 & 9A

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
9	<p><b>W.e.f. 01.10.2019</b></p> <p>Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.</p> <p><b>From 01.07.2019 to 30.09.2019</b></p> <p>Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under</p>	<p>Music composer, photographer, artist, or the like</p> <p>Author or music composer, photographer, artist, or the like</p>	<p>Music company, producer or the like, located in the taxable territory.</p> <p>Publisher, music company, producer or the like, located in the taxable territory.</p>

	<i>clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like.</i>		
9A	<b>W.e.f. 01.10.2019</b> <i>Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.</i>	<i>Author</i>	<i>Publisher located in the taxable territory, subject to certain conditions as explained below</i>

**Analysis:**

- For the period 1<sup>st</sup> July 2017 till 30<sup>th</sup> September 2019, the services provided by author by way of transfer or permitting the use or enjoyment of a copyright 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 to a publisher was included in entry 9 to NN 13/2017. However, w.e.f. 1<sup>st</sup> October 2019, the said service was separately covered by entry 9A.
- Permanent transfer of IPRs is not a service under paragraph 5(c), schedule I to the CGST Act.
- Entry 9A was inserted vide *Notification No. 22/2019-Central Tax (Rate), dated 30-09-2019* and applicable w.e.f. 01-10-2019.

As per entry 9A, reverse charge is applicable when services are provided by the author to the publisher. However, there is an exception to this rule.

## Handbook on Reverse Charge under GST

Author has an option to pay GST under forward charge basis on services mentioned in column (2) of entry 9A provided he satisfy following conditions:

- (i) the author has taken registration under CGST Act and filed a declaration, in the form at Annexure I (as mentioned below), within the time limit prescribed therein, with the jurisdictional Commissioner stating:
  - he exercises the option to pay GST on the service specified in column (2), under forward charge
  - he will comply with all the provisions of GST as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and
  - he shall not withdraw the said option within a period of 1 year from the date of exercising such option
- (ii) the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST INV-I to the publisher.

### **ANNEXURE I FORM**

*[9A of Table]*

*Declaration to be filed by an author for exercising the option to pay tax on the "supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher" under forward charge on or before 31-10-2019 for the option to be effective from 01-11-2019 or before the commencement of any Financial Year for the option to be effective from the commencement of that Financial Year.*

Reference No. ....

Date

.....

To

.....

.....

.....

(To be addressed to the jurisdictional Commissioner)

1. Name of the author:

2. Address of the author:

3. GSTIN of the author:

**Declaration**

1. I have taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017), and I hereby exercise the option to pay central tax on the service specified against serial No. 9A in column (2) of the Table in the notification No. 13/2017 -Central Tax (Rate), dated the 28-06-2017, supplied by me, under forward charge in accordance with section 9(1) of CGST Act, and to comply with all the provisions of CGST Act, 2017 (12 of 2017) as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both.
2. I understand that this option, once exercised, shall not be allowed to be changed within a period of 1 year from the date of exercising the option and shall be valid, at least, till the end of Financial Year following the year in which it is made.

Signature .....

Place .....

Name .....

Date .....

GSTIN .....

**ANNEXURE II**

Declaration to be made in the invoice by the author exercising the option to pay tax on the "supply of service by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher" under forward charge.

***Declaration***

[9A of Table]

I have exercised the option to pay central tax on the service specified against serial No. 9A in column (2) of the Table in the notification No. 13/2017-Central Tax (Rate), dated 28th June, 2017 under forward charge.

**3.12 Supply of services by the members of Overseeing Committee to Reserve Bank of India [Entry 10]****ENTRY -10**

<b>Sl. No.</b>	<b>Category of Supply of Services</b>	<b>Supplier of service</b>	<b>Recipient of Service</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
10.	Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Over-seeing Committee constituted by the Reserve Bank of India	Reserve Bank of India.

**ANALYSIS**

- The Exemptions- as per S.No.26 of *Notification No. 12/2017-Central Tax (Rate)* (Exemption Notification) , services by Reserve Bank shall be exempted, and also as per S.No.42 of *Notification No.09/2017-Integrated Tax (Rate)* (Exemption Notification), the services received by Reserve Bank in relation to management of Foreign Exchange Reserves are exempt from GST have been withdrawn.
- The taxability has been made to node the broken chain of availing ITC on such services.

### 3.13 Services supplied by Individual Direct Selling Agents (DSAs) [Entry 11]

#### ENTRY -11

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
11.	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs).	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.	A banking company or a non-banking financial company, located in the taxable territory.

#### ANALYSIS

DSAs are not defined under CGST Act, however in general parlance, DSAs help the organisations that bring direct business. Specifically, they identify potential customers for the bank or NBFC they represent. These experts guide borrowers through the loan application process and ensure that all necessary documentation is available and accurate.

This would imply that where-

- Supplier is a Body Corporate, Partnership or Limited Liability Partnership, then such supplier is liable under Forward Charge Mechanism;
- Supplier is other than above, then the recipient of the transaction shall be liable under Reverse Charge Mechanism.

### 3.14 Supply of Services by Business Facilitator (BF) & Business Correspondent (BC) [Entry 12 & 13]

#### ENTRY -12 & 13

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
12.	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory.
13	Services provided by an agent of business correspondent (BC) to business correspondent (BC)	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.

#### ANALYSIS

**This entry was inserted vide Notification No. 29/2018-Central Tax (Rate), dated 31-12-2018 and applicable w.e.f.01-01-2019.**

A clarification has been issued by the CBIC vide Circular No. 86/05/2019-GST, dated 01-01-2019 on supply of services by BF/BC to a banking company, which is in line with RBI's Circular No. DBOD. No. BL.BC. 58/22.01.001/2005-2006, dated 25-1-2006 which is as follows:-

- Banks may pay reasonable commission/fee to the BC, the rate and quantum of which may be reviewed periodically. The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner.
- Hence, banking company is the service provider in the business facilitator model or the business correspondent model operated by a banking company as per RBI guidelines. The banking company is liable to pay GST on the entire value of service charge or fee charged

to customers whether or not received *via* business facilitator or the business correspondent, under Reverse Charge Mechanism.

- Additionally, as per S.No.39, the exemption has been given on the transaction where the supplier is a Business Facilitator/Business Correspondent to Banking or Insurance Company, of the supply of its services with respect to accounts in rural area branch, or any intermediary services ancillary with such supply of services.
- Therefore, it becomes crucially important to analyse each case, that in order to avail the above exemption, the conditions mentioned therein must be satisfied. Elsewise, the liability shall arise under Reverse Charge Mechanism under the Entry 12.

### *Illustration:*

ABC Bank, a registered financial institution under GST, appoints Mr. Raj, a Business Correspondent (BC), to provide banking services such as account opening, cash deposits, withdrawals, and other financial transactions in rural areas. Mr. Raj operates under a service agreement and earns a commission of ₹50,000 per month.

### *Analysis:*

GST Framework for BCs:

1. Taxable Supply: Services provided by BCs are considered taxable.
2. Exemption for Rural Areas:
  - Services provided by a BC to a banking company in a rural area are exempt from GST under Notification No. 12/2017-Central Tax (Rate).
  - Rural areas are defined under RBI guidelines.
3. Reverse Charge Mechanism (RCM): When a BC provides taxable services to a banking company, GST is payable under RCM by the banking company (recipient).
4. If Mr. Raj provides services in rural area, No GST is charged and thereby, no GST Registration required and no RCM Liability.
5. On the other hand, in case of urban area, charge this transaction under Reverse Charge, and Banking Company to issue self-invoice, with



payment of tax under reverse charge and thereby to claim Input Credit for the same.

### 3.15 Supply of Security Services [Entry 14]

#### ENTRY -14

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
14.	Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to,— (i) (a) Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act.	Any person other than a body corporate	A registered person, located in the taxable territory.

#### ANALYSIS

This entry was inserted vide *Notification No. 29/2018-Central Tax (Rate)*, dated 31-12-2018 and applicable w.e.f. 1-1-2019.

It provides that any registered person located in taxable territory receiving security services (services provided by way of supply of security personnel)

from any person other than a body corporate, is liable to pay GST on reverse charge basis.

Further, when such security services are supplied to Government Department / Establishment of the Central Government / State Government / Union Territory, who have taken registration under GST only for the purpose of deducting TDS or when provided to the Composition dealer, they are not required to pay GST under reverse charge.

Moreover, GST shall be payable under Forward charge mechanism on security services in case such services are supplied by body corporate or supplied to the unregistered persons.

Security services contracts are (i) contracts for services with list of guards to be deployed or (ii) contract of services with list of guards to be deployed specified to measure consideration payable. RCM is applicable only when the contract is for 'contract for services'.

Services provided to an educational institution by way of security services performed in such educational institution, is exempt by virtue of entry 66 (b) (iii) of the NN 12/2017.

Note: Supply of manpower is different from supply of security service.

### **3.16 Supply of Renting of Passenger Motor Vehicle [Entry 15]**

#### **ENTRY -15**

<b>Sl. No.</b>	<b>Category of Supply of Services</b>	<b>Supplier of service</b>	<b>Recipient of Service</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
15.	<b><i>W.e.f. 01.01.2020:</i></b> Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the	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	Any body corporate located in the taxable territory.

## Handbook on Reverse Charge under GST

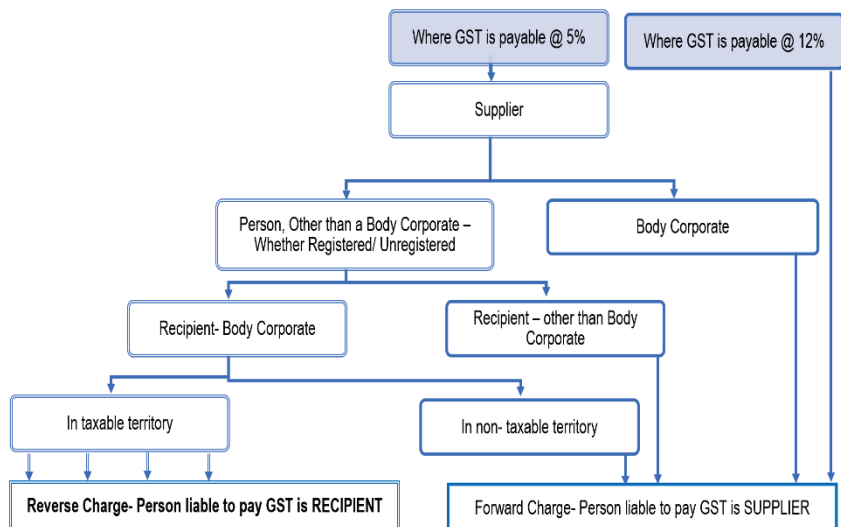
	consideration charged from the service recipient, provided to a body corporate.	of 6 per cent to the service recipient	
	<b>From 01.10.2019 to 31.12.2019</b> Services provided by way of renting of a motor vehicle provided to a body corporate.	Any person other than a body corporate, paying central tax 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.

- RCM under entry 15 will be applicable where service is provided to a body corporate located in the taxable territory, by any person, other than a body corporate.
- The entry also stipulates that supplier does not issue an invoice charging GST @ 12% (6% CGST + 6% SGST) from the service recipient. This is clarified *vide Circular No. 130/49/2019-GST, dated 31-12-2019* as:
  - 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,
  - 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.
- Further, pursuant to entry 10(i) of NN 11/2017 under Heading 9966 (*Rental services of transport vehicles with operators*), the supplier of such service [renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient] has two options:  
 Option 1: Charge @ 5% (2.5% CGST+2.5% SGST/UTGST or 5% IGST) and taken only the limited ITC of input services in the same line of business, if any

Option 2: Charge @ 12% (6% CGST+6% SGST/UTGST or 12% IGST) without any restriction of ITC on goods or services used in supplying renting of motor vehicles service by the supplier of service. i.e., with full ITC.

- *Circular No. 177/09/2022-TRU, dated 03-08-2022* has clarified situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers as there was ambiguity as to whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966). Accordingly, as recommended by the GST Council, it is clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966., and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent. However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

### Person Liable To Pay Tax Under Renting Of Motor Vehicle Service



#### Illustration:

XYZ Pvt. Ltd., a registered IT services company, hires a fleet of passenger vehicles from ABC Travels, an unregistered transport service provider, for employee transportation between office and residence. As per Entry 15 of Notification No. 13/2017-Central Tax (Rate), services by way of renting a motor vehicle to a registered person are subject to GST under the Reverse Charge Mechanism (RCM) if certain conditions are met.

#### Analysis:

##### GST Rate:

- 5% GST under RCM by recipient (no ITC available to the GTA), or
- 12% GST under forward charge (with ITC to the GTA).

It is pertinent to note that the recipient in either of the above scenarios, shall not be allowed to claim ITC, as renting passenger vehicles is not eligible for ITC if used for employee transportation, as per section 17(5) (Blocked Credit).

### 3.17 Supply of Lending of Securities [Entry 16]

#### ENTRY -16

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
16.	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended.	Lender i.e., a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI.

This entry was inserted vide Notification No. 22/2019-Central Tax (Rate), dated 30-09-2019.

CBIC vide Circular No. 119/38/2019-GST, dated 11-10-2019, has clarified taxability of supply of securities under Securities Lending Scheme, 1997 (SLS 1997), which provides as:-

- Lender is a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme. Borrower is a person who borrows the securities under the scheme through an approved intermediary. Approved intermediary is a person duly registered by the SEBI under the guidelines/scheme through whom the lender will deposit the securities for lending and the borrower will borrow the securities
- Securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 are not covered in the definition of goods under section 2(52) and services under section 2(102) of the

## Handbook on Reverse Charge under GST

CGST Act. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

- The supply of lending of securities under the scheme is classifiable under heading 997119 and is leviable to GST@18% under Sl. No. 15(vii) of *Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017* as amended from time to time.
- With effect from 1<sup>st</sup> October, 2019, the borrower of securities shall be liable to discharge GST as per Sl. No 16 of *Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019* under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM.

Hence, the taxability of supply of lending of securities service can be summarised as under:

Period	Charge	Nature of Tax	Rate
01-07-2017 to 30-09-2019	Forward charge	IGST If the service provider has already paid CGST/SGST/ UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.	18% [ <i>vide</i> Sl. No. 15(vii) of <i>NN</i> 11/2017] [classifiable under heading 9971 19]
From 1-10-2019	RCM	IGST	

## Services Notified under IGST Act, 2017

Supply of services notified for RCM under section 5(3) of the IGST Act *vide* *Notification No. 10/2017 Integrated Tax (Rate) dated 28-06-2017* ("Reverse Charge Notification" or "NN 10/2017") (as amended) is discussed one by one as under:

### 3.18 Import of Services by Person located in a Non-Taxable Territory to a Person located in a Taxable Territory [Entry 1-IGST]

#### ENTRY -1 --- IGST

S. No.	Description of Services	Supplier of Services	Recipient of Services
1.	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.

#### ANALYSIS

- RCM is applicable in case of supply of any service, by any person who is located in a non-taxable territory to any person located in the taxable territory other than non-taxable online recipient.
- Supply of services imported into India shall be treated as supply of services in the course of inter-State trade or commerce, hence IGST shall be applicable
- Based on the recommendations of the 50<sup>th</sup> GST Council Meeting, CBIC vide Notification No. 38/2023-CT dated 04-08-2023 has made amendment in rule 64 of the CGST Rules and in Form GSTR-5A which is as under:

**Rule 64: Form and manner of submission of return by persons providing online information and data base access or retrieval services and by persons supplying online money gaming from a place outside India to a person in India:**

Every registered person either providing online money gaming from a place outside India to a person in India, or providing online information and data base access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or to a



registered person other than a non-taxable online recipient, shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.

- The term “non-taxable online recipient” has been defined under section 2(16) of the IGST Act. It has been substituted vide section 160 (a) of the Finance Act, 2023 read with *Notification No. 28/2023-CT, dated 31-07-2023* and applicable with effect from 01-10-2023.

**Section 2(16) of IGST Act - Definition of ‘Non-Taxable Online Recipient’**

*“non-taxable online recipient” means any unregistered person receiving online information and database access or retrieval services located in taxable territory.*

*Explanation. — For the purposes of this clause, the expression “unregistered person” includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017 (12 of 2017).*

Till 30-09-2023, the term “non-taxable online recipient” was read as follows:

*“Non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.”*

**Explanation.-** *For the purposes of this clause, the expression “governmental authority” means an authority or a board or any other body, -*

- set up by an Act of Parliament or a State Legislature; or*
- established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted [to a Panchayat under article 243G or] to a municipality under article 243W of the Constitution.*

The amended provision removes the condition of receipt of online information and database access or retrieval services (OIDAR) for any

purpose other than commerce, industry or any other business or profession. This adjustment aims to facilitate the taxation of OIDAR service provided by any person located in non-taxable territory to an unregistered person receiving the said services and located in the taxable territory.

Further, it also seeks to clarify that the persons registered solely in terms of clause (vi) of section 24 of CGST Act [i.e., persons who are required to deduct tax under section 51, whether or not separately registered under this Act] shall be treated as unregistered person for the purpose of the said clause.

Section 2(17) of IGST Act defines the term “online information and database access or retrieval services”. It is also amended vide Section 160(b) of the Finance Act 2023 read with *Notification No. 28/2023-CT, dated 31-07-2023* and applicable with effect from 01-10-2023.

**Section 2 (17) of IGST Act, 2017 – Definition of “online information and database access or retrieval services”**

*“online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply <sup>19</sup> [\*\*\*] impossible to ensure in the absence of information technology and includes electronic services such as, -*

- (i) advertising on the internet;*
- (ii) providing cloud services;*
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;*
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;*
- (v) online supplies of digital content (movies, television shows, music and the like);*

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<sup>19</sup> Omitted by the Finance Act 2023 read with Notification No. 28/2023-C.T., dated 31-07-2023 w.e.f. 01-10-2023. Prior it was read as “essentially automated and involving minimal human intervention and”

- (vi) *digital data storage; and*
- (vii) <sup>20</sup>*[online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017)]*

*Illustration:*

XYZ Textiles imports textile machinery from a supplier in Germany. The supplier is located outside India and does not have a GST registration.

*Analysis:*

Under the GST law, import of goods attracts Integrated GST (IGST) under RCM. The importer is required to pay IGST on the value of the imported goods, including the cost of insurance and freight (CIF).

Steps Involved:

1. XYZ Textiles files a Bill of Entry declaring the CIF value of the goods.
2. IGST is calculated on the CIF value and paid at the customs port under RCM.
3. XYZ Textiles claims ITC for the IGST paid at the time of import, provided the machinery is used for taxable supplies.

Outcome:

The company ensures compliance with GST and customs regulations while claiming ITC to reduce its overall tax liability.

### **3.19 Ocean Freight in case of Import of Goods on CIF Basis- Omitted w.e.f. 01.10.2023 [Entry 10-IGST]**

**ENTRY -10 – Omitted w.e.f. 01-10-2023 - No IGST on ocean freight in case of import of goods on CIF basis**

Discussion on Entry 10 of *Notification No. 10/2017- Integrated Tax (Rate) dated 28-06-2017* before omission w.e.f. 01-10-2023.

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<sup>20</sup> *Substituted by the Integrated Goods and Services Tax (Amendment) Act, 2023, w.e.f. 1-10-2023. Prior to its substitution, sub-clause (vii) read as under: "(vii) online gaming;"*

Entry 10 was originally read as:

<b>S. No.</b>	<b>Description of Services</b>	<b>Supplier of Services</b>	<b>Recipient of Services</b>
10.	<i>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.</i>	<i>A person located in non-taxable territory</i>	<i>Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962), located in the taxable territory.</i>

Where the location of supplier or the location of recipient is outside India, the place of supply of shall be determined as per Section 13 of the IGST Act. Further, section 13(9) provided that *the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.* Therefore, in case of imports, the place of supply of services of transportation of goods shall be in India and the same shall be liable to GST under reverse charge.

Further, entry no. 9(ii) of *Notification No. 8/2017-Integrated Tax (Rate)*, dated 28-06-2017, subject to certain conditions prescribes rate of 5% for transport of goods by vessel including services '*by a person located in non-taxable territory to a person located in non-taxable territory*' by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India. It is apposite to mention here that entry no.9(ii) of *Notification No. 11/2017-Central Tax (Rate)*, dated 28-06-2017 however does not have the 'inclusive clause'.

<b>Sl. No.</b>	<b>Chapter, Section or Heading</b>	<b>Description of Service</b>	<b>Rate (per cent)</b>	<b>Condition</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>
9	<b>Heading 9965</b> (Goods	(ii) <i>Transport of goods in a vessel including services provided or agreed to be</i>	5	<b>Provided</b> that credit of input tax charged on goods

## Handbook on Reverse Charge under GST

	transport services)	provided by a person located in non-taxable territory to 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	(other than on ships, vessels including bulk carriers and tankers) used in supplying the service has not been taken  Explanation: This condition will not apply where the supplier of service is located in non-taxable territory. [Please refer to Explanation No. (iv)]
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Furthermore, the explanation to *Notification No. 8/2017-Integrated Tax (Rate)*, dated 28-06-2017 vide M.F. (D.R.) Corrigendum F. No. 334/1/2017-TRU, dated 30-06-2017 provided that where the value of taxable service provided by a person located in non-taxable territory to 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 is not available with the person liable for paying integrated tax, the same shall be deemed to be 10% of the CIF value (sum of cost, insurance and freight) of imported goods.

Inferred from above, the importers are liable to pay IGST @ 5% on 10% of the CIF value of goods being imported, in respect of the transportation of goods by vessel services.

It is pertinent to mention that in a cost, insurance and freight (CIF) contract, a freight invoice is issued by a foreign shipping line to a foreign exporter, with no involvement of Indian importer. In terms of *NN 8/2017 Integrated Tax (Rate)*, dated 28-06-2017 and *NN 10/2017-Integrated Tax (Rate)*, dated 28-06-2017, the Indian importer was required to discharge IGST on the aforesaid freight services under RCM.

In this regard, writ petition was filed before the Hon'ble Gujarat High Court in case *Mohit Minerals (P) Ltd. v. UOI 2020-VIL-36-GUJ*, dated 23-01-2020, challenging the aforesaid notifications as ultra vires the GST Laws. The High Court struck down the same, against which the Union of India filed a petition before the Hon'ble Supreme Court in case of *Union of India & Anr. vs. Mohit Minerals Pvt. Ltd. Civil Appeal No. 1390 of 2022 dated 19-05-2022 [2022 (61) G.S.T.L. 257 (S.C.)]*, wherein the Supreme Court of India observed the following:

- In case of CIF contract of imports, the importer cannot be subjected to RCM, once the ocean freight is paid by the foreign seller to the foreign shipping line.
- On a conjoint reading of sections 2(11) and 13(9) of the IGST Act read with section 2(93) of the CGST Act, the import of goods by a CIF contract constitutes an "inter-state" supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service.
- The IGST Act and the CGST Act define reverse charge and prescribe the entity that is to be taxed for these purposes. The specification of the recipient (in this case the importer) by *Notification No. 10/2017-Integrated Tax (Rate)*, dated 28-06-2017 is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed in section 5(3) of the IGST Act for the purposes of reverse charge. In the given case, the person liable to make payment of the consideration would be the foreign supplier. The Indian importer cannot be considered as the recipient of the services.

In view of the above, the Hon'ble Supreme Court held that:

Levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under section 2(30) read with section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of section 8 of the CGST Act.

In line with the said judgment, following amendments have been made in the IGST notifications to provide that IGST will not be leviable on ocean freight

under reverse charge on CIF contracts of import of goods by the Indian importers, w.e.f. 01-10-2023:

- Entry No. 10 of IGST reverse charge notification [*Notification No. 10/2017-IT (R) dt. 28-06-2017*] has been omitted vide *Notification No. 13/2023- IT(R) dated 26-09-2023*.
- In IGST rate notification [*Notification No. 08/2017-IT (R) dated 28-06-2017*], against entry 9 prescribing rate of 5%, in column (3), in item (ii), the words "including services provided or agreed to be provided by a person located in non-taxable territory to 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", have been omitted vide *Notification No. 11/2023- IT(R) dated 26-09-2023*.
- In IGST exemption notification [*Notification No. 09/2017-IT(R) dated 28-06-2017*] against entry no.10, in column (3), the proviso has been substituted. Clause (ii) of the proviso which pertained to services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry has been removed in the substituted proviso vide *Notification No. 12/2023- IT (R) dt. 26-09-2023*.
- Section 13(9) of the IGST Act has been omitted by virtue of *section 162 the Finance Act, 2023* read with *Notification No. 28/2023-CT, dated 31-07-2023*.

## Chapter 4

# Goods and / or Services Notified u/s 9(4)

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### 4.1 Specified category of goods or services received by specific class of registered person from unregistered suppliers [Section 9(4) of the CGST Act / 5(4) of the IGST Act]

Section 9(4) of the CGST Act has been substituted *vide Notification No. 02/2019-Central Tax dated 29-01-2019* and applicable w.e.f. 01-02-2019. Substituted sub-section has been reproduced as under:

**9(4)** *The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, 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.*

Prior to substitution, section 9(4) read as under:

**9(4)** *The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient 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.*

### Analysis

#### Prior to Substitution

Tax in respect of supply of taxable goods or services or both by unregistered supplier to registered person, shall be paid by such registered person on reverse charge basis as the recipient 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.



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However, in order to avoid practical difficulty as being faced by the trade in application of section 9(4), relaxation was provided on small expenses through *Notification No. 8/2017-CT(R) dated 28-06-2017 w.e.f. 13-10-2017* (as amended). It provided that tax is required to be paid under reverse charge only on aggregate value of supply of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds five thousand rupees (5,000) in a day.

Thereafter, the Government had exempted the applicability of reverse charge on supplies received from unregistered suppliers through *Notification No. 38/2017-CT(R) dated 13.10.2017*, which was further extended till 30-09-2019.

The above exemption was rescinded, when the provision of section 9(4) was substituted through *Notification No. 2/2019-CT dated 29-1-2019, w.e.f. 01-02-2019*.

### Post Substitution

***Notification No. 7/2019 -Central Tax (Rate) dated 29-03-2019 (as amended) w.e.f. 01.04.2019 for Promoters***

Pursuant to section 9(4), the Government *vide Notification No- 07/2019-Central Tax (Rate) dated 29-03-2019* (as amended), specified categories of goods and/or services, received by specific class of registered persons from unregistered supplier, the tax on which shall be paid by the recipient of such goods or services or both. Similar notification in IGST *Notification No. 7/2019-I.T. (Rate), dated 29-3-2019. This notification is applicable w.e.f. 01.04.2019.*

<b>Sl. No.</b>	<b>Category of supply of goods and services</b>	<b>Recipient of goods and services</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1	Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges, etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased	Promoter

	by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in Notification No. 11/ 2017-Central Tax (Rate), dated 28 <sup>th</sup> June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28 <sup>th</sup> June, 2017, as amended.	
2	<p><b>From 01-04-2019 to 01-10-2019</b></p> <p><i>Cement falling in Chapter Heading 2523 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in Notification No. 11/2017-Central Tax (Rate), dated 28-06-2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28-06-2017.</i></p> <p><b><sup>21</sup>[W.e.f. 01-10-2019</b></p> <p><i>Cement falling in Chapter Heading 2523 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).]</i></p>	Promoter
3	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/2017 - Central Tax (Rate), dated 28-06-2017, published in Gazette of India vide G.S.R. No. 690, dated 28-06-2017, as amended.	Promoter

<sup>21</sup> Substituted vide Notification No. 24/2019-CT (R) dated 30-09-2019.

### Points to be noted:

- Concessional rates on the construction of residential apartments as provided in *Notification No. 11/2017- CT(R) dated 28-06-2017* (as amended) are only applicable subject to fulfilment of conditions as specified therein. One of the condition is that eighty percent (80%) of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges, etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only. In case, it falls short of 80 per cent during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier), promotor is liable to pay tax on reverse charge basis on such shortfall amount @ 18% (9% - CGST and 9%-SGST).
- Further, tax on cement purchased from unregistered person shall be paid @ 28% in the month in which cement is received.
- Tax on capital goods under RCM at applicable rates in terms of entry 3 of *07/2019- Central Tax (Rate) dated 29-03-2019* [refer entry 3 above]. However, to apply these concessional rates of GST on construction of residential apartments, each and every purchase of capital goods should be from registered dealers only. In case of purchase of capital goods from unregistered dealer, the entire liability to pay tax would be on the promoter under RCM.

The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.

## 4.2 Clarifications on Real Estate by CBIC

FAQs on real estate was also issued by the Central Board of Indirect Taxes and Customs ("CBIC"). [F. No. 354/32/2019-TRU, dated 07-05-2019]. The relevant extract is as under:

S. No.	Question	Answer
8.	<i>Does a promoter/builder have to purchase all goods and services from registered suppliers only?</i>	<i>A promoter shall purchase at least <b>eighty percent</b> of the value of input and input services, from registered suppliers. For calculating this threshold, the value of services by way of grant of development rights, long term lease of land, floor space index, or the value of electricity, high speed diesel, motor spirit and natural gas used in construction of residential apartments in a project shall be excluded.</i>
9.	<i>If value of purchases as prescribed above from registered supplier is less than 80%, what would be the applicable GST rate on such purchases?</i>	<i>Promoter has to pay GST @ 18% on reverse charge basis on all such inward supplies (to the extent short of 80% of inward supplies from registered supplier) except cement on which tax has to be paid (by the promoter on reverse charge basis) at the applicable rate, which at present is 28% (CGST 14% + SGST 14%)</i>
10.	<i>In case of new rate of 5%/1%, whether the conditions of payment of tax through Cash Ledger, payment of tax under RCM subject to 80% limit, non-</i>	<i>Yes. All the specified conditions against clause (i) to (id) of Sl. No. 3 of Notification No. 11/2017-CTR are mandatory.</i>

	<i>availing of Input Tax Credit, reversal of credit, maintenance of project wise account, reporting of ITC not availed in corresponding GSTR-3B etc. are required to be complied mandatorily by the Developer?</i>	
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### **4.3 Illustrations**

Illustrations as provided in Annexure III of *Notification No. 3/2019-CT(R) dated 29-3-2019* (as amended) which relate to section 9(4) have been reproduced below for ease of understanding:

#### **Illustration 1:**

A promoter has procured following goods and services [other than capital goods and services by way of grant of development rights, long term lease of land or FSI] for construction of a residential real estate project during a financial year.

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

In this example, the promoter has procured 80 per cent of goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], from a GST registered person. However, he has procured cement from an unregistered supplier. Hence, at the end of financial year, the promoter has to pay GST on cement at the applicable rates on reverse charge basis.

**Illustration 2:**

A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

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

In this example, the promoter has procured 80 per cent of goods and services including cement from a GST registered person. However, he has procured paints, aluminium windows, ply and commercial wood, etc., from an

unregistered supplier. Hence at the end of financial year, the promoter is not required to pay GST on inputs on reverse charge basis.

**Illustration 3:**

A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges, etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

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

In this example, the promoter has procured 50 per cent of goods and services from a GST registered person. However, he has procured sand, cement and aluminium windows, ply and commercial wood, etc., from an unregistered supplier. Thus, value of goods and services procured from registered suppliers during a financial year falls short of threshold limit of 80 per cent. To fulfil his tax liability on the shortfall of 30 per cent from mandatory purchase, the promoter has to pay GST on cement at the applicable rate on reverse charge basis. After payment of GST on cement, on the remaining shortfall of 15 per cent, the promoter shall pay tax @ <sup>8</sup>[18 (9 + 9)] per cent under RCM.

## Chapter 5

# Forms

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It is crucial to understand where the reverse charge details related to outward and inward supplies need to be reported in FORM GSTR-1, GSTR-3B, GSTR-9, and GSTR-9C. We will discuss this in detail as follows:

### 5.1 Reporting for Supplier under RCM

#### Form GSTR-1

In case registered person supplying specific goods and/or services to registered recipient, where tax has to be paid on reverse charge basis, the details (invoice wise, rate wise) of such supplies shall be reflected in **Table 4B of Form GSTR-1**.

**Table 4. Taxable outward supplies made to registered persons (including UIN-holders) other than supplies covered by Table 6**

Description	No of Records	Document Type	Value	Integrated Tax	Central Tax	State/UT tax	Cess
<b>4A - Taxable outward supplies made to registered persons (other than reverse charge supplies) including supplies made through e-commerce operator attracting TCS - B2B Regular</b>							
<b>4B - Taxable outward supplies made to registered persons attracting tax on reverse charge - B2B Reverse charge</b>							

#### Form GSTR-3B

In case of registered person supplying specific goods and/or services to registered recipient, where tax has to be paid on reverse charge basis, the taxable value of such supplies shall be reflected in Table 3.1 (c) of Form GSTR-3B.



**3.1 Details of Outward Supplies and inward supplies liable to reverse charge [(other than those covered by 3.1.1)]**

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(a) Outward taxable supplies (other than zero rated, nil rated and exempted)					
(b) Outward taxable supplies (zero rated )					
(c) Other outward supplies (Nil rated, exempted)					
(d) Inward supplies (liable to reverse charge)					
(e) Non-GST outward supplies					

**Form GSTR-9**

Aggregate value of supplies made to registered persons on which tax is payable by the recipient on reverse charge basis shall be reflected in **Table 5C**. Details of debit and credit notes are to be mentioned separately. Table 4B of **FORM GSTR-1** may be used for filling up these details.

Pt. II	Details of Outward and inward supplies made during the financial year					
			(Amount in ₹ in all tables)			
	Nature of Supplies	Taxable Value	Central Tax	State Tax/ UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
<b>5</b>	<b>Details of Outward supplies made during the financial year on which tax is not payable</b>					
A	Zero rated supply (Export) without payment of tax					
B	Supply to SEZs without payment of tax					
C	Supplies on which tax is to be paid by the recipient on reverse charge basis					
C1	Supplies on which tax is to be paid by e-commerce operators as per section 9(5) [Supplier to report]					
D	Exempted					
E	Nil Rated					
F	Non-GST supply (includes 'no supply')					
G	Sub-total (A to F above)					

### Form GSTR-9C

Aggregate value of supplies made by a registered person on which tax is to be paid by the recipient shall be declared in **Table 7D**. This shall be reported net of credit notes, debit notes and amendments if any.

7	Reconciliation of Taxable Turnover	
A	Annual turnover after adjustments (from 5P above)	<Auto>
B	Value of Exempted, Nil Rated, Non-GST supplies, No-Supply turnover	
C	Zero rated supplies without payment of tax	
D	Supplies on which tax is to be paid by the recipient on reverse charge basis	
E	Taxable turnover as per adjustments above (A-B-C-D)	<Auto>
F	Taxable turnover as per liability declared in Annual Return (GSTR9)	
G	Unreconciled taxable turnover (F-E)	AT 2

## 5.2 Reporting for Recipients under RCM

### Form GSTR-1

If a registered person receives supplies of goods and / or services notified u/s 9(3) / 9(4) of the CGST Act, from unregistered person, he is required to prepare self-invoice and payment voucher. Such document details shall be reflected in **Table 13 of Form GSTR-1**.

**Table 13. Documents issued during the tax period**

Sr. No.	Nature of document	Sr. No.		Total number	Cancelled	Net issued
		From	To			
1	2	3	4	5	6	7
1.	Invoices for outward supply					
2.	Invoices for inward supply from unregistered person					
3.	Revised Invoice					

4.	Debit Note					
5.	Credit Note					
6.	Receipt voucher					
7.	Payment Voucher					
8.	Refund voucher					
9.	Delivery Challan for job work					
10.	Delivery Challan for supply on approval					
11.	Delivery Challan in case of liquid gas					
12.	Delivery Challan in cases other than by way of supply (excluding at S. no. 9 to 11)					

### Form GSTR-3B

In case registered person receives supply of notified goods and / or services where tax is to be paid on reverse charge basis, it should be reflected in **Table 3.1 (d) of Form GSTR-3B.**

#### 3.1 Details of Outward Supplies and inward supplies liable to reverse charge [(other than those covered by 3.1.1)]

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(f) Outward taxable supplies (other than zero rated, nil rated and exempted)					
(g) Outward taxable supplies (zero rated )					
(h) Other outward					

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supplies (Nil rated, exempted)					
(i) Inward supplies (liable to reverse charge)					
(j) Non-GST outward supplies					

Further, for availment of eligible ITC on import of services on which RCM is applicable, shall be reflected in **Table 4(A)(2)** and eligible ITC on inward supplies liable to reverse charge other than import of goods and import of services shall be reflected in Table 4(A)(3) of **Form GSTR-3B**.

### Reporting of ITC availed in respect of RCM in Table 4

**Table 4. Eligible ITC**

Details	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5
<b>(A) ITC Available (whether in full or part)</b>				
(1) Import of goods				
(2) Import of services				
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)				
(4) Inward supplies from ISD				
(5) All other ITC				
<b>(B) ITC Reversed</b>				
(1) [As per rules 38, 42 and 43 of CGST Rules and sub-section (5) of section 17]				
(2) Others				

<b>(C) Net ITC Available (A) – (B)</b>				
<b>(D) [Other Details]</b>				
(1) [ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period]				
(2) [Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions]				

It is important to note that where RCM is paid via Form DRC-03, then without admitting liability in Table 3.1(d), credit of such RCM may be entered in Table 4(A)(5) so that credit flows into Electronic Credit Ledger. Unless RCM is not discharged pursuant to demand under section 74, credit is not blocked under section 17(5)(i). As such, RCM discharged pursuant to demand under section 73 (or under section 74 with relief under section 75(2)), may be discharged via Form GSTR-3B or Form DRC-03 and yet credit claimed.

### Form GSTR-9

The aggregate value of all inward supplies (including advances and net of credit and debit notes) on which tax is to be paid by the recipient (i.e. by the person filing the annual return) on reverse charge basis shall be **reflected in Table 4G**. This shall include supplies received from registered persons and unregistered persons on which tax is levied on reverse charge basis. This shall also include aggregate value of all import of services.

The aggregate value of ITC availed on all inward supplies received from **unregistered persons (other than import of services)** on which tax is payable on reverse charge basis shall be declared in **Table 6C**. It may be noted that the total ITC availed is to be classified as ITC on inputs, capital goods and input services.

The aggregate value of ITC availed on all inward supplies received from **registered persons** on which tax is payable on reverse charge basis shall be declared in **Table 6D**. It may be noted that the total ITC availed is to be classified as ITC on inputs, capital goods and input services.

Details of input tax credit availed on import of services (excluding inward supplies from SEZs) shall be declared in **Table 6F**.

### Option for both Table 6C and 6D

For FYs 2017-18 and 2018-19, the registered person shall have an option, to either report the breakup of ITC as inputs, capital goods and input services or report the entire ITC under the “inputs” row only. And for FYs 2019-20, 2020-21, 2021-22 and 2022-23, the registered person shall report the breakup of input tax credit as capital goods and have an option to either report the breakup of remaining amount as inputs and input services or report the entire remaining amount under the “inputs” row only.

For FY 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall have an option to either report Table 6C and Table 6D separately or report the consolidated details of Table 6C and 6D in Table 6D only.

Pt. II	Details of Outward and inward supplies made during the financial year					
			(Amount in ₹ in all tables)			
	Nature of Supplies	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
<b>4</b>	<b>Details of advances, inward and outward supplies made during the financial year on which tax is payable</b>					
A	Supplies made to un-registered persons (B2C)					
B	Supplies made to registered persons (B2B)					
C	Zero rated supply (Export) on payment of tax (except supplies to SEZs)					
D	Supply to SEZs on payment of tax					
E	Deemed Exports					
F	Advances on which tax has been paid but invoice has					

	not been issued (not covered under (A) to (E) above)					
G	Inward supplies on which tax is to be paid on reverse charge basis					
G1	Supplies on which e-commerce operator is required to pay tax as per section 9(5) (including amendments, if any) [E-commerce operator to report]					
H	Sub-total (A to G1 above)					
I	Credit Notes issued in respect of transactions specified in (B) to (E) above (-)					
J	Debit Notes issued in respect of transactions specified in (B) to (E) above (+)					
K	Supplies/tax declared through Amendments (+)					
L	Supplies/tax reduced through Amendments (-)					
M	Sub-total (I to L above)					
N	Supplies and advances on which tax is to be paid (H + M) above					



Reporting of ITC availed in respect of RCM in Table 6

Pt. III	Details of ITC for the financial year					
	Description	Type	Central Tax	State Tax/ UT Tax	Integra- ted Tax	Cess
	1	2	3	4	5	6
<b>6</b>	<b>Details of ITC availed during the financial year</b>					
A	Total amount of input tax credit availed through FORM GSTR-3B (sum total of Table 4A of FORM GSTR-3B)		<Auto>	<Auto>	<Auto>	<Auto>
B	Inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs)	Inputs				
		Capital Goods				
		Input Services				
C	Inward supplies received from unregistered persons liable to reverse charge (other than B above) on which tax is paid & ITC availed	Inputs				
		Capital Goods				
		Input Services				
D	Inward supplies received from registered persons liable to reverse charge (other than B above) on which tax is paid and ITC availed	Inputs				
		Capital Goods				
		Input Services				
E	Import of goods (including supplies	Inputs				
		Capital				

	from SEZs)	Goods				
F	Import of services (excluding inward supplies from SEZs)					
G	Input Tax credit received from ISD					
H	Amount of ITC reclaimed (other than B above) under the provisions of the Act					
I	Sub-total (B to H above)					
J	Difference (I - A above)					
K	Transition Credit through TRAN-I (including revisions if any)					
L	Transition Credit through TRAN-II					
M	Any other ITC availed but not specified above					
N	Sub-total (K to M above)					
O	Total ITC availed (I + N above)					

**Form GSTR-9C**

Supplies where tax was paid on reverse charge basis by the recipient shall be declared under the head **“RC”** in Table 9.

Pt. III	Reconciliation of tax paid					
9	<b>Reconciliation of rate wise liability and amount payable thereon</b>					
				Tax payable		
	Description	Taxable Value	Central tax	State tax/ UT tax	Integrated Tax	Cess, if applicable
	1	2	3	4	5	6
	A 5%					
	B 5% (RC)					
	C 12%					
D	12% (RC)					

## Handbook on Reverse Charge under GST

E	18%					
F	18% (RC)					
G	28%					
H	28% (RC)					
I	3%					
J	0.25%					
K	0.10%					
[K-1	Others					-]
L	Interest					
M	Late Fee					
N	Penalty					
O	Others					
P	Total amount to be paid as per tables above		<Auto>	<Auto>	<Auto>	<Auto>
Q	Total amount paid as declared in Annual Return (GSTR 9)					
R	Un-reconciled payment of amount (PT1)					

Any ITC availed in respect of RCM shall be declared in **Table 12**.

Pt. IV	Reconciliation of Input Tax Credit (ITC)				
12	Reconciliation of Net Input Tax Credit (ITC)				
A	ITC availed as per audited Annual Financial Statement for the State/UT (For multi-GSTIN units under same PAN this should be derived from books of accounts)				

B	ITC booked in earlier Financial Years claimed in current Financial Year	(+)	
C	ITC booked in current Financial Year to be claimed in subsequent Financial Years	(-)	
D	ITC availed as per audited financial statements or books of account		<Auto>
E	ITC claimed in Annual Return (GSTR9)		
F	Un-reconciled ITC		<b>ITC 1</b>

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