

FAQ related to reverse charge on renting of residential dwelling

Presented by GST Query resolution experts for Edukating GST Members



Edukating

**GST QUERY
RESOLUTION EXPERTS**



SRINIVAS RAO SIDDAMSETTY
ADVOCATE
HYDERABAD



RAJESH KUMAR SHARMA
ADVOCATE
UTTAR PRADESH



KRISHNA KUMAR PANYAM
CHENNAI



NITIN SHARMA
ADVOCATE
FARIDABAD



ASHISH MIGLANI
SAHARANPUR, UP



ARUN CHHAJER
CA
DELHI

Contact us- 8178908220 | contact@edukating.com | www.edukating.com



(1)	(2)	(3)	(4)
“5AA	Service by way of renting of residential dwelling to a registered person.	Any person	Any registered person.”;


If all the below conditions are satisfied then recipient will pay the tax under reverse charge as per new entry 5AA of Notification No 13/2017 Central Tax Rate (inserted vide NN 05/2022-CT dated 13.07.22 (Effective from 18.07.2022)

1. Property is **residential dwelling**
2. Use is not relevant (**Commercial purpose or residential purpose**)
3. Property has been taken on rent in relation to business (**whether for official or for employee**) and not for **personal**
4. Supplier (Landlord) can be any person (registered or not) and
5. Recipient (Tenant) is registered under GST

To have the clarity we are taking certain queries of Edukating Members -


Visit Website – www.edukating.com; Contact us 8178908220; Email – contact@edukating.com;

Queries	Property is residential dwelling	Use is not relevant (Commercial use or residential use)	Property has been taken on rent in relation to business (whether for official or for employee does not matter but not for personal)	Supplier (Landlord) is Any person (registered or not)	Recipient (Tenant) is Registered	Final Answer RCM Applicable or Not
Q1 - Landlord is not a registered person due to threshold limit and my client has taken the Commercial Property for commercial purposes and paying rent of Rs. 10,000/- pm. Whether my client needs to pay RCM since he is a registered person?	No	Not required to check	Yes 	Yes	Yes	No RCM as the Property is commercial. This transaction would always fall under Forward Charge. Further there is No GST Liability on this supply as the supplier is not registered
Q2 – Mr A is proprietorship registered in the GST. He is residing with family in rented residential property. As Mr A is registered so do he need to pay GST under RCM on personal residential dwelling taken on rent?	Yes	Not required to check	No (As the recipient has taken the property for own personal purpose and not for business purpose)	Yes	Yes	No RCM as it is not the supply at all. Ensure that this is not debited as expenses in P&L Account by the proprietor.
Q3 - My client (Mr Rakesh) is an unregistered proprietorship firm in GST and renting residential flats to unregistered persons. His aggregate turnover is more than 20 lakhs per annum. This supply is an Exempt supply as per NN 12/2017 CT Rate dated 28 th June 2017 (Sr. No 12). However he is also renting to a registered person (PQ Ltd). Whether my client (Mr Rakesh) needs to go for a compulsory registration w. e. f 18.7.22. Please advise	Yes	Not required to check	Yes 	Yes	Yes	Recipient PQ Ltd will pay tax under RCM. No requirement to take registration by Mr Rakesh irrespective of the turnover, as its outward supply is exempt or covered in the RCM. (Refer Sec 23 & NN 5/2017 CT dated 19th June 2017)

Queries	Property is residential dwelling	Use is not relevant (Commercial use or residential use)	Property has been taken on rent in relation to business (whether for official or for employee does not matter but not for personal)	Supplier (Landlord) is Any person (registered or not)	Recipient (Tenant) is Registered	Final Answer RCM Applicable or Not
Q4 What is the status of an unregistered firm renting out residential dwelling unit to a registered person. Who is liable to pay Tax? Whether registered person has to pay under RCM. If so what percentage	Yes	Not required to check	Yes	Yes	Yes	Recipient will pay tax under RCM as all the condition has been satisfied. Rate will be 18% (Refer NN 11/2017 CT Rate)
Q5 - One of my clients is a partnership firm. They are renting their residential dwelling unit to individuals for business purpose. One among the tenant is a registered person. My client is not registered in the GST till date. They are having only rental income from these residential dwelling and the amount is more than twenty lakhs per annum. Please advice on the requirement to take GST registration by the firm?	Yes	Not required to check	Yes	Yes	Yes	Recipient will pay tax under RCM. No requirement to take registration as its outward supply is exempt or covered in the RCM. (Refer Sec 23 read with NN 5/2017 CT dated 19th June 2017)
Q6 - One professional (registered in GST) has taken a house on rent for his office. The owner is not a registered in GST and is not charging any GST on the rent. Whether the professional has to pay GST @18% under RCM with effect from 18.07.22.	Yes	Not required to check	Yes 	Yes	Yes	RCM Applicable as all the condition has been satisfied.

Queries	Property is residential dwelling	Use is not relevant (Commercial use or residential use)	Property has been taken on rent in relation to business (whether for official or for employee does not matter but not for personal)	Supplier (Landlord) is Any person (registered or not)	Recipient (Tenant) is Registered	Final Answer RCM Applicable or Not
The office is in a residential colony and is the upstairs of a residential building. Please clarify.						
Q7 Company (Registered in GST) paying rent to residential property used for commercial purpose. Whether RCM is applicable? Commercial purpose is not used in the notification so kindly clarify.	Yes	Not required to check	Yes	Yes	Yes	RCM Applicable as all the condition has been satisfied.
Q8 – Mr X a registered person in GST has taken 2 properties on rent from un registered supplier. One is used for commercial use and another is used for residential of the employee. Assume that the properties are residential dwelling? Please advice on RCM applicability.	Yes	Not required to check	Yes	Yes	Yes	RCM Applicable on both properties, as all the condition has been satisfied.
Q9 – One Partnership Firm (Registered in GST) taken the residential Property on rent from a registered landlord and giving the same to one partner of the firm for his residence. This expense is debited in the Firm P&L Account ?	Yes	Not required to check	Yes	Yes	Yes	RCM Applicable as all the condition has been satisfied.

Current Offerings -GST Membership Plans					
Sl. No.	Features	Corporate	Platinum	Gold	Silver
01	Monthly GST Newsletter (in PDF)	✓	✓	✓	✓
02	Daily one practical problem with solution (in PDF)	✓	✓	✓	✓
03	Daily alert on any updates (in PDF)	✓	✓	✓	✓
04	GST Compliance Calendar (in PDF)	✓	✓	✓	✓
05	Reply to GST Notices (Members to share drafted notices & Edukating will guide them in drafting a reply)	10 Notices Per Annum	5 Notices Per Annum	5 Notices Per Annum	✗
06	Monthly Judgements Newsletter - 5 Judgments Analysis (in PDF)	✓	✓	✓	✗
07	Two Webinars in a month				
	• One Webinar on GST Judgements	✓	✓	✓	✗
	• One Webinar on GST Amendments	✓	✓	✓	✗
08	WhatsApp group for GST Queries and having reply from Edukating Admin	✓	✓	✓	✗
09	Advance Course on GST with Case Study Analysis (Recorded)	20 Hours	20 Hours	20 Hours	✗
10	Unlimited Access to recording GST Course from Basic to Advance	40 Hours	40 Hours	✗	✗
11	Attend 1 live batch of 65 Hours from Basic to advance Course	✓	✓	✗	✗
12	Monthly Series on one Topic like Export, Refund, E-Way Bill, New Return System	✓	✓	✗	✗

Q10 –We have taken commercial vacant plot on rent. We are running car servicing. We are registered under GST. MY Question is Landlord not registered under GST. Do I need pay RCM on rent?	No	Not required to check	Yes  Edukating®	Yes	Yes	Not Applicable as it is not residential dwelling hence no RCM
--	----	-----------------------	---	-----	-----	---

<p>Q11 – Arvind is an employee XYZ Ltd and has taken one residential dwelling on rent. Rent is directly paid by the employee to the landlord and employee taken the reimbursement from the company subsequently as a part of employment contract? Please advise whether RCM is applicable</p>	<p>Yes</p>	<p>Not required to check</p>	<p>Yes</p>	<p>Yes.</p>	<p>Yes</p>	<p>Actually there are 2 transactions one is between landlord and employee and second is between employee and company.</p> <p>First transaction between the landlord and employee. It is exempted from GST as per the Sr. No 12 of exemption notification 12/2017 CT Rate.</p> <p>Second transaction is part of the employment contract, which is neither supply of goods nor supply of service as per Schedule III of CGST Act. Therefore there is no RCM.</p>
<p>Q12 XY and Associate is a registered partnership firm. Mr. X is a Partner of this firm and taking the residential property on rent for which he is making the payment to the landlord directly. Agreement is also in the name of Partner.</p>	<p>Yes</p>	<p>Not required to check</p>	<p>No as it is for the personal purpose</p>	<p>Yes</p>	<p>No</p>	<p>As all the condition not satisfied so no RCM.</p>

LIVE
Certification Course



Business Corporate Accountant Course



Register now- 8178908220 | www.edukating.com



SCHOLARSHIP EXAM
For Business Corporate Accountant Course

SUNDAY, 28TH AUGUST 2022
4-5 PM

- Total Question- 50
- Question Type- MCQ
- No Negative Marking
- Result will be considered on the basis of Merit

Batch Start Date :- 1st September 2022

REGISTER NOW

Contact us- 8178908220
www.edukating.com



Some Important Question

Advance payment made before 18.7.2022 – will need to pay RCM?

Q 13 - We have paid advanced rent on residential dwelling for the year 2022-23 in April 22. Can we have to pay RCM On this w e.f 18/07/22?

Answer - In my view the time of supply of service is determined in accordance with Sec 13 of CGST Act. In this case as you have already paid the rent in April 2022 therefore the time of supply would also be in April 2022 and at that time this transaction was not under Reverse Charge. Hence it would not be cover under RCM now

Q 14 – Mr. A (GST Registered Person) has paid advanced rent on residential dwelling for one month (from 1st Aug to 31st Aug'22). Rent is paid on 15th July 22. The property has been taken for the purpose of office of Mr A.

Answer – Here the time of supply will be determined according to Section 14 of CGST Act as there is change in rate of taxes. Assuming the Invoice has been issued on 15th July 22 then time of Supply will be the date of Invoice or date of payment which ever is earlier 15th July 2022. Hence the RCM will not be applicable.

Assuming the Invoice has been issued on 1st August 22 then time of Supply will be the date of Invoice i.e. 1st August 2022. Hence the RCM will be applicable.

Related Party Transaction and Valuation Rule

Q 15 – One partnership firm registered in the GST at the residential address of the partner. Partner has given his residential property to firm without charging any rent. So please explain the applicability of RCM in the hand of partnership firm

Answer – As per section 7 of the CGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely-

(i) It should be for a **consideration** by a person; and (ii) It should be in the course or furtherance of **business**.

The exceptions to the above are the activities enumerated in Schedule I of the CGST Act which are treated as supply even if made without consideration. Since the partner is related person as per explanation (a) to Section 15 of CGST Act hence the transaction between partner and partnership firm will be a supply even without consideration as per para 2 of Schedule I. The valuation will be as per the **valuation rule 27** of CGST Rules 2017. Therefore it is covered in RCM and Partnership firm need to pay the tax as all the conditions are satisfied.

Note –Similar view would be there for all the related party transaction. List of related persons are given in the explanation (a) to Section 15 of CGST Act.

Place of Supply for RCM Transaction?

Q16 Tenant (XYZ Ltd) is registered in the GST at Haryana State but taken residential property for the employee's residence at Delhi. Landlord is also at Delhi. Then the company (XYZ Ltd) will pay the tax under RCM whether as CGST + SGST or IGST?

Answer - Normally RCM is only shifting the responsibility to pay the tax on the recipient instead of supplier. But which tax will be paid is decided based on the location of supplier and place of supplier.

As the location of supplier is Delhi and Place of Supply (According to Section 12(3) of IGST Act) is also Delhi therefore the supply become **Intra State Supply according to Section 8 of IGST Act**. So the recipient will pay the tax under RCM as CGST and SGST.

However the recipient is not located in Delhi and therefore if pay CGST and SGST then that SGST would of Haryana. However it should be of Delhi so there may be three possibilities –

- 1) As the recipient is not registered in Delhi so for Delhi the recipient is unregistered so not liable to pay tax under RCM. **or**
- 2) Recipient take mandatory registration Delhi by virtue of Sec 24(iii) and pay the CGST and SGST under RCM **or**
- 3) Recipient will pay IGST

Q17- What is residential dwelling?

'Residential Dwelling' is not defined in the Act and in exemption notification as well. It is well settled rule of Statutory Interpretation of fiscal statutes that the words used therein if not defined in the statute have to be interpreted in their popular sense.

Therefore, the meaning of expression 'residential dwelling' has to be understood in terms of the normal trade parlance. It is pertinent to note that under the erstwhile service tax law, the expression 'residential dwelling' was defined in paragraph 4.13.1 of Taxation of Services: An Education Guide dated 20.06.2012 which was issued by Central Board of Indirect taxes and Customs which is reproduced below for the facility of reference:

4.13.1 What is a 'residential dwelling'?

The phrase 'residential dwelling' has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp - site, lodge, house boat, or like places meant for temporary stay.

In a Foreign Judgment, namely, in Collins (AP) V. Uratemp Ventures Limited [2012] 24 taxmann.com 134 (ECJ). it was held that – 'Dwelling' means a place where one lives, regarding and treating it as home. It is the place where he lives and to which he returns for sleep and which forms the Centre of his existence. Dwelling may be a house or part of a house and even a single room as a part of a house, may be a dwelling. However, the use a person makes of it when living there depends on his mode of life. Such a place does not cease to be a 'dwelling' merely because one takes all or some of one's meals out; or brings take-away food in to the exclusion of home cooking; or at times prepares some food for consumption on heating devices. (Ghodawat Eduserve LLP (GST AAR Maharashtra)

Renting for residential purpose which is indicated by the express clarification issued by CBEC in Education Guide on Service Tax dated 20/06/2012 at para 4.13.3. v which is reproduced below:

Q. Furnished flats given on rent for such renting as residential dwelling for the temporary stay (a few days)

Clarification: such renting as residential dwelling for the temporary stay (a few days) bonafide use of a person or his family for a reasonable period shall be residential use; but if the same is given for a short stay for different persons over a period of time the same would be liable to tax (emphasis supplied)

Blacks Law Dictionary:

Residence- Place where one actually lives or has his home; a person's dwelling place or place of habitation; an abode; house where one' home is; a dwelling house.

Dwelling- The house or other structure in which a person or persons live; a residence; abode; habitation; the apartment or building, or a group of buildings, occupied by a family as a place of residence. Structure used a place of habitation.

Thanking You
Team Edukating

Disclaimer – Please note that view explained are solely based on our interpretation to the Act/Rules etc. Please do not treat as any opinion/ decision in respect to any act/rules. The same are only for educational purpose.