

Reverse Charge under GST

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Reverse Charge under GST

The reverse charge has been defined in Section [2\(98\)](#) of the CGST Act.

It is **opposite to the Forward charge**.

Under the Forward charge the tax is collected and paid by the supplier of the goods or services or both whereas in the reverse charge the tax is paid by the receiver of goods or services or both.

The section 2(98) of the CGST Act defines the reverse charge.

Reverse charge means "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".

Reverse Charge

Under section 9(3) of the CGST Act

The section is reproduced as below –

"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".

From above, it can be said that under this section the reverse charges are applicable only on those transaction which the government has after the recommendation of council has notified.

So, this section operates only when the government notifies certain services to be covered under RCM and it operate independent of section 9(4).

Reverse charges on supply of Goods

The central government has issued the notification no. 4/2017 on which they have specified the description of the goods on which the reverse charge is applicable.

The operative part of the notification is reproduced here under -

Sr. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
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

Sr. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
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
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 2 provisions of sub section 1 of section 11 of the Lotteries (Regulations) Act, 1998 (17 of 1998).

Reverse charge on Services

The Government has notified various services through notification no 13/2017 dated 28/06/2017 and the list of those services are hereunder –

Sr. No.	Category of Supply of Services	Supplier of service	Recipient of Service
1.	Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road to- (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 law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (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 (e) anybody corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person.	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 law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (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 (e) anybody corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person; located in the taxable territory.

Sr. No.	Category of Supply of Services	Supplier of service	Recipient of Service
2.	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.	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory.
3.	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.
4.	Services provided by way of sponsorship to anybody corporate or partnership firm	Any person	Anybody corporate or partnership firm located in the taxable territory.

Sr. No.	Category of Supply of Services	Supplier of service	Recipient of Service
5.	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.
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.
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.

Sr. No.	Category of Supply of Services	Supplier of service	Recipient of Service
8.	Services supplied by a recovery agent to a banking company or a financial institution or a nonbanking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory
9.	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 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.	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory.

List in IGST notification has two additional items

Sr. No.	<i>Category of Supply of Services</i>	<i>Recipient of Service</i>
1.	Any service supplied by any person who is located in a non-taxable territory to any person (other than non-taxable online recipient) (This is Import of service)	Any person located in the taxable territory (other than non-taxable online recipient).
2.	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.	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962, located in the taxable territory.

Notification No -05/2017 dated 19/06/2017

In exercise of the powers conferred by sub-section (2) of section 23 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby specifies 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 sub-section (3) of section 9 of the said Act as the category of persons exempted from obtaining registration under the aforesaid Act.

Thus, a person who is supplying only those goods or services or both, on which the recipient is liable to pay the tax under RCM as per the provision of section 9(3), then that supplier of the good or services has been exempted from the registration.

Reverse charge under Section 9(4) of the CGST Act .

The Section 9(4) of the CGST Act is reproduce as below:

"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".

The registered person has been defined as under section 2(94) as

"Registered person" means a person who is registered under section 25 of the CGST Act but does not include a person having a Unique Identity Number".

Section - 25, Central Goods And Services Tax Act, 2017

25. (1) 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

In terms of portion highlighted above, it can be inferred that person registered in one State may not be registered in another State. For that reason, **registration status will have to be checked State-wise.**

An unregistered dealer cannot make interstate supplies.
This means that Reverse Charge in this case will apply only in case of intra-state supply by an unregistered dealer.

Tweet FAQ

Q. How to comply with 9(4) of CGST Act if POS is in another State of the unregistered supplier ?

Ans: Any person making inter-state supply has to compulsorily obtain registration and therefore in such cases, section 9(4) will not come into play.

Sec 24(i) of CGST Act v/s Section 5(4) of IGST Act

Section 24(i) of CGST Act, 2017 mandates a person making inter-state taxable supplies to take registration irrespective of turnover.

Section 5(4) of IGST Act, 2017 covers a situation wherein IGST is to be paid by the recipient on transaction, when supplier is not registered under GST.

This would typically cover cases of import of goods or services, where supplier may not be registered under GST.

Further, considering the intention of the law under Section 5(4) of the IGST Act and since Section 24(i) of the CGST Act has a specific provision (generally specific provisions prevail of generic provisions), the provisions would have to interpreted harmoniously. Accordingly, the supplier would be required to be obtain registration in case he undertakes inter-state supplies and would be required to charge tax accordingly.

Effect of Notification no. 08/2017- Central Tax (Rate):

The Government has issued the notification no 08/2017 and it is reproduced as under.

"In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby **exempts intra-State supplies of goods or services or both** received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017): Provided that the said exemption shall not be applicable **where the aggregate value of such supplies 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 in a day**".

Computation of limit of Rs. 5,000/- for purchases made from Unregistered Persons

Limit of Rs. 5,000/- is GSTIN-wise, not person-wise.

ABC Pvt. Ltd. is having its offices in ten (10) States and is, therefore, registered in ten (10) States.

Now, limit of Rs. 5,000/- shall be applicable GSTIN-wise, meaning thereby that ABC Pvt Ltd can make purchases from unregistered person upto Rs. 5,000/- in a day from every GSTIN which in aggregate rose upto Rs. 50,000/- in a day. But the limit of Rs. 5,000/- remains unutilized to some extent for one GSTIN (i.e., ABC Pvt. Ltd.- Delhi) cannot be utilized by another GSTIN (i.e., ABC Pvt. Ltd.- Haryana) to complete the limit of Rs. 50,000/- per day of a person as a whole.

Inclusions in limit of Rs. 5,000/-

Is Purchase proceed of goods which are taxable but exempted from tax is also to be included in the limit of Rs. 5,000/- ???

Exemption has been issued on supplies received in course of intra-State supplies.

As per section 8 of Integrated goods and services tax, intra-State supply means supply of goods.....(unquote). It just refers to a supply, not excluding exempt supplies. Further, sub-section (4) of section 9 covers within its ambit taxable supplies. Therefore, only such exempt supplies would be included in Rs. 5,000/- which are taxable but have been wholly exempted by way of issuing notification under section [11](#) of the CGST Act or under section [6](#) of the IGST Act ???

It's Dual Exemption Case !!!

Exclusions from limit of Rs. 5,000/-

- Petrol, diesel expenses are not to be included.
- Activities mentioned in Schedule III are not to be included.
- Activities notified neither as 'supply of goods' nor as 'supply of services' are not to be included.
- Non-GST supplies shall not be included.

No exemption on inter-State supplies from unregistered persons.

Exemption not available on supplies notified under section 9(3) of the CGST Act, 2017

GST on Reverse Charge basis is not applicable on all transaction between Registered and Unregistered person

1. There must be some **supply** of goods or services
2. Supply must be of **taxable goods or services**
3. The **supplier** of goods or services is an **unregistered person**
4. The **recipient** of goods or services must be a **registered person**
5. Supply **must be an intra-state supply** as compulsory registration is required for inter-state sales

Thus, **to trigger the liability of recipient of goods or service to pay tax on reverse charge basis, all the five conditions specified above must be satisfied cumulatively.**

Condition 1: There must be 'supply' of goods or service

Scope of 'Supply' under the Act is provided under section [7](#) which, *inter alia*, provides that the expression "supply" includes :-

*"all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person **in the course or furtherance of business**;"*

Thus, to fall within the scope of supply provided under section 7 of the Act, fulfilment of following conditions shall be essential:-

a) **Supplier should be engaged in a 'business'**

Existence of 'business' is *sine qua non* to constitute to constitute a valid 'supply'. It is essential that the supplies should be made by a supplier who is engaged in a 'business'. ('Business' as defined in section [2\(17\)](#) of the Act)

b) Supply should be 'in course or furtherance of business'

This implies to constitute a valid 'supply' of goods or services, it must be 'in the course or furtherance of his business'. Thus supplies which are not 'in course or furtherance of business' would not qualify as 'supply' for levy of tax.

Example: When Ms. X, a salaried individual not registered under GST, sells her jewellery to a Jeweller registered under GST, the jeweller will not be under obligation to pay tax on Reverse Charge Basis on the jewellery purchased from Ms. X. This is because the transaction of sale of jewellery by Ms. X has not been made in the course or furtherance of business.

Under such cases, it will be important for the Registered Person to maintain appropriate documentation including declaration from supplier of goods or services to substantiate his claim that there was no obligation to pay tax on reverse charge basis on ground that the supplier was not acting in the course or furtherance of business.

Condition 2 : Supply must be of 'taxable' goods or services

Supply must be of some **taxable goods or services** to trigger the obligation to pay tax on reverse charge basis under section 9(4) of the Act. Thus, when a good or service on which tax is not levied or is levied at NIL rate, the provisions contained in section 9(4) of the Act shall remain dormant.

This is a logical condition as tax on reverse charge is to be paid at rates applicable on the goods or service being supplied by the unregistered person to the registered person. And when the good or service being supplied is not taxable, there would be no obligation to pay any tax thereon.

Condition 3 and 4 : Supply of goods or services by an unregistered person to a registered person

'Registered person' as defined in section [2\(94\)](#) of the Act means a person who is registered under section [25](#).

Section 25 of the Act deals with the procedure for registration and *inter alia*, provides that every person liable to registration under section [22](#) or [24](#) must apply for registration within specified time and in prescribed manner.

Section 22 of the Act deals with person liable for registration and section 24 deals with the cases where registration shall be compulsorily required.

Condition 5 : Supply must be an intra-state supply

An unregistered dealer cannot make interstate supplies. This means that Reverse Charge u/s 9(4) will apply only in case of intra-state supply by an unregistered dealer.

Time of supply of goods under Reverse Charge - Sec 12(3)

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

- 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**.

Time of supply of services under Reverse Charge - Sec 13(3)

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

- 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:

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

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

Procedure for reverse charge

The person liable to pay tax under GST under reverse charge is required to issue invoice in name of self. Rs 5,000 per day exemption is available in respect of supplies from unregistered person. For supplies above this amount, a monthly consolidated invoice can be raised - S Nos. 50, 54 and 59 of Tweet FAQ released by CBE&C on 26-6-2017.

Thus, once consolidated invoice per month is sufficient. This is required to be uploaded in GSTR 2. Tax is to be paid in electronic cash ledger. Input Tax Credit can be availed. It seems once return is filed, Input Tax Credit can be taken. There is no specific provision that ITC can be taken only after payment in Electronic Cash Ledger [we have to see what GSTN system allows].

Transportation of goods - by road

Services by way of transportation of goods- by road except the services of—

- (i) a goods transportation agency;
- (ii) a courier agency;

are Exempt under GST.

Impact of GST on 'Goods Transport Agency (GTA)' Service

What is 'Goods Transport Agency'?

As per definition 2(ze) of the Notification, 'goods transport agency' means any person who **provides service in relation to transportation of goods by road and issues consignment note**, by whatever name called.

What is 'Consignment Note'?

It will be interesting to note the meaning of consignment note and the persons who need to issue a consignment note. In Service Tax Rules, 1994, Explanation to Rule 4B defines 'consignment note' to mean *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 names of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.*

There are plethora of case laws where the courts, various CESTAT held that **"Only persons issuing consignment notes are covered within 'goods transport agency'; therefore, individual truck owners who do not book cargo and issue consignment note in normal course of business are, prima facie, not goods transport agency and, accordingly, services provided by them are not liable to service tax"**

It was observed by CESTAT New Delhi in case of *Birla Ready Mix v. Commissioner of Central Excise*, [\[2013\] 39 STT 257/\[2012\] 28 taxmann.com 201](#) that "**The mere fact that the operator is doing activity of transportation cannot make the operator a "Goods Transport Agency."** The fact that part of the hire charges for the vehicles is being paid on the basis of number of kilometers run cannot alter the nature of the responsibility of the operators because such payment is consistent with a scheme of hiring the vehicle though it may be consistent with a contract for transportation of goods also. On the other hand a fixed charge per month for the vehicle is more consistent with a scheme of hiring the vehicle rather than a contract for transporting the goods.....**the operator was responsible only for the vehicle and there is no custodial rights or responsibilities in matter of goods carried.** This obviates the need to issue consignment notes which normally is a document of title for the goods when it is in the custody of the transporter. Since the appellants are responsible for the goods transported, consignment note, which is a document of title to the goods, is not issued."

CESTAT, New Delhi in case of *Nandganj Sihori Sugar Co. v. Commissioner of Central Excise*, [\[2014\] 46 GST 570/47 taxmann.com 92](#) observed that "a consignment note issued by Goods Transport Agency represent its liability to transport the consignment handed over to it to the destination and deliver the same to the consignee and **merely a bill issued for transportation of goods cannot be treated as Consignment Note.**"

Other Exemptions

Entry 21 of Notification no. 12/2017 - Central Tax (Rate) dated 28.06.2017 - Services provided by GTA, by way of transport in a goods carriage of

- a) Agricultural produce
- b) Goods, where consideration charged for transportation of goods on a consignment transported on a single carriage does not exceed Rs. 1,500
- c) Goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750
- d) Milk, Salt and Food Grain including Flour, pulses and rice
- e) Organic Manure
- f) Newspaper or magazines registered with Registrar of Newspapers
- g) Relief materials for victims of natural or man-made disasters, calamities, accidents or mishap
- h) Defense or Military equipments

Notification No. 20/2017-Central Tax (Rate) New Delhi, the 22nd August, 2017

Goods Transport Agency Service (GTA)

Allowed option of 12% GST with full ITC under forward charge.

5% GST with no ITC will also continue.

(However, the GTA has to give an option at the beginning of financial year)

Notification No. 22/2017- Central Tax (Rate) , 22nd August, 2017

In the notification no 13/2017 dated 28/06/2017,-

(i) in the Table, against serial number 1, in column (2), after the words and brackets “goods transport agency (GTA)” the words and figure “, **who has not paid central tax at the rate of 6%,” shall be inserted;**

(ii) in the Explanation, after clause (d), the following clause shall be inserted, namely:- “(e) 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.”.

Who needs to pay tax?

Nature of Service - Transport of Goods by Road

Service Provider - Goods Transport Agency

Service Recipient - Any of the following:-

- (a) Any Factory registered under Factories Act, 1948
- (b) Any Society registered under Societies Registration Act, 1860 or any other law for time being in force in India
- (c) Any Co-operative Society established by or under any law
- (d) Any person registered under CGST/SGST/IGST/UTGST
- (e) Any body corporate established by or under any law
- (f) Any partnership firm whether registered or not including AOP (Association of Persons)
- (g) Any Casual Taxable person

Who needs to pay tax? - Recipient who is liable to pay freight is liable to pay tax under Reverse Charge.

Service Provider	Consignor	Consignee	Person liable to pay Freight	Person liable to pay GST
GTA	A Ltd (Whether or not registered under GST)	B & Co (Whether or not registered under GST)	A Ltd	A Ltd
GTA	A & Co (Whether or not registered under GST)	X (GSTIN: 37ABCDE1234F1ZQ)	X	X
GTA	A Co-Op Society Ltd (Whether or not registered under GST)	(GSTIN: 37ABCDE1234F1ZQ)	A Co-Op Society Ltd	A Co-Op Society Ltd
GTA	A Ltd (Whether or not registered under GST)	B Ltd (Whether or not registered under GST)	B Ltd	B Ltd
GTA	A (GSTIN: NA)	V (GSTIN: 36PQRST0987UZ1W)	A	GTA
GTA	A (GSTIN: NA)	R (GSTIN: 25ASDFG7654H1ZE)	R	R
GTA	A (GSTIN: NA)	S (GSTIN: NA)	S	GTA

Registration of GTA

Every supplier shall be liable to be registered in the State from where he makes a taxable supply, if his aggregate turnover in a financial year exceeds Rs. 20 Lakhs.

Section [2\(6\)](#) of CGST Act, 2017 defines Aggregate Turnover to mean Taxable Supplies, Exempt Supplies (Not liable to tax + Nil rated + Exempt from Tax)

Hence, if a GTA is providing services of transportation of goods by road and having aggregate turnover of more than Rs. 20 Lakhs, they need to get registered under GST.

It is important to refer to [Notification No. 5/2017 - Central Tax dated 19.06.2017](#) wherein the person whose supplies are all taxed under reverse charge as per section 9(3) of CGST Act, 2017 need not register under GST Act considering the provisions of Section [23\(2\)](#) of CGST Act, 2017.

Therefore, if a GTA is providing services of transportation of Goods to persons listed in the Entry 1 of [Notification No. 12/2017 - Central Tax \(Rate\) dated 28.06.2017](#), then GTA need not register taking shelter of [Notification No. 5/2017 - Central Tax dated 19.06.2017](#).

Input Tax Credit for GTA

Coming to Input tax credit, which is the most important advantage of GST; Notification No. 11/2017 - Central Tax (Rate) which notified rate on services; Entry 9 (iii) prescribes rate of 2.5% CGST on GTA Services with a condition that Credit of input tax on goods or services used in supplying the service has not been taken.

This restriction implies that input on goods or services used exclusively for providing GTA services cannot be taken and reversal to extent of GTA turnover when goods/services are used for provision of both taxable and GTA services as per provisions of Section 17 (2) of CGST Act, 2017.

Thus, If GTA is the person who is liable to pay tax, he cannot avail input tax credit on any goods or services used for providing GTA Services

However, if tax is paid on GTA under Reverse charge as per Section 9(3) of CGST Act, 2017; can the tax paid under reverse charge on GTA Services be taken as ITC? is a question to be discussed. On careful reading of condition in Notification No. 11/2017 - Central tax (Rate) dated 28.06.2017; one can infer that the restriction of ITC is only on goods or services used in supplying the GTA service i.e. in case of reverse charge, the person paying tax will not use any goods or service to supply GTA service since he is a recipient of that service and is made liable to pay tax under reverse charge only and hence **tax paid on GTA under reverse charge can be availed as ITC by the person paying the tax.**

Also to be kept in mind, the provisions of **section 9(4)** of CGST Act, 2017 wherein the registered person is liable to pay tax under reverse charge if he receives goods or services from an unregistered person.

If a GTA is obtaining services of unregistered accountant for his accounting works, GTA needs to pay tax under reverse charge on the accountant fees since the accountant is unregistered but cannot avail ITC because the ITC is restricted. Let us take a case where **GTA hires vehicles from other persons who own the goods carriage. In this case, since the activity of hiring goods carriage to GTA is exempt as per Notification no. 12/2017 - Central Tax (Rate) dated 28.06.2017, there will be no question of reverse charge** and hence no question of eligibility of ITC.

Reverse Charge for Advocates

12th July 2017

Delhi HC provides temporary relief to advocates for non-compliance with GST

HIGH COURT OF DELHI

There being no clarity on whether all legal services provided by legal practitioners and firms would be governed by reverse charge mechanism, no coercive action can be taken against lawyers and law firms for non-compliance with any legal requirement under the CGST Act, IGST Act or the DGST Act till further clarification is issued by the Centre and the State in this regard

15th July 2017

Lawyer Services Press Release - Ministry of Finance

“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.”

The words “by way of legal services” are preceded and succeeded by comma.

Therefore, the said words apply to an individual advocate including a senior advocate and a firm of advocates. Legal services provided by either of them are liable for payment of GST under reverse charge by the business entity. **The words “by way of representational services before any court, tribunal or authority....” appear in conjunction with senior advocate without a comma** and merely describe the nature and mode of representational services provided by a senior advocate to a business entity. It, therefore, follows that legal services, which includes representational services, provided by advocates are under reverse charge.

In this context, it is further clarified that legal service has been defined to mean 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.

HIGH COURT OF DELHI
18th July 2017

In view of the Press Release issued by the Ministry of Finance as shown to the Court today, and the instructions given to Mr. Narula to the effect that the legal position that existed under the Finance Act, 1994 as regard legal services being amenable to service tax under the reverse charge mechanism continuing even under the CGST, DGST or IGST Acts, till further orders, all legal services provided by advocates, law firms of advocates, or LLPs of advocates will be continued to be governed by the reverse charge mechanism unless of course any such legal service provider wants to take advantage of input tax credit and seeks to continue with the voluntary registration under Section 25 (3) of the CGST Act and the corresponding provisions of IGST or DGST Act.

Reverse Charge on Employee Reimbursements

Key scenarios

1. Reimbursement of expenses for supplies received by employees from registered dealers
2. Reimbursement of expenses for supplies received by employees from unregistered dealers
3. Expenses for which employer is not under any obligation to reimburse

1. Reimbursement of expenses for supplies received by employees from registered dealers

Expenses of personal nature

In the books of account the employer would account for these expenses as salaries or employment cost.

Expenses related to the business of employer

For accounting purposes, the employer shall record these expenses in the books of account.

2. Reimbursement of expenses for supplies received by employees from unregistered dealers

Applicability of Reverse Charge Mechanism

To determine the actual recipient of the supply, reference can be made to the definition of "recipient" as given under Section [2\(93\)](#) of the CGST Act, which is reproduced as below:

"(93) **"recipient"** of supply of goods or services or both, means—

(a) where a consideration is payable for the supply of goods or services or both, the **person who is liable to pay that consideration;**

(b) where no consideration is payable for the supply of goods, the person **to whom the goods are delivered** or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person **to whom the service is rendered,**

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

3. Expenses for which employer is not under any obligation to reimburse

In terms of Schedule II, read with Section 7 of the CGST Act, ***"gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both"***

Anything given voluntarily without any consideration (not on routine basis) can be considered as a gift. Therefore, reimbursement of personal expenses of employee made on special circumstances will be considered as gift which should not be subject to GST if value is less than fifty thousand rupees (per employee) in a financial year.

CBEC Press Release on 10th July 2017

It is being reported that gifts and perquisites supplied by companies to their employees will be taxed in GST. Gifts upto a value of Rs 50,000/- per year by an employer to his employee are outside the ambit of GST. However, gifts of value more than Rs 50,000/- made without consideration are subject to GST, when made in the course or furtherance of business. The question arises as to **what constitutes a gift**. Gift has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift. Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C).

Basic principle to be followed herein is that any payment in terms of contractual agreement entered into between the employer and employee will not fall under GST. Points to be considered are:—

There is a person who has employed someone for availing his services.

There is an agreement/contract between the two regarding nature of work, compensation for the same, etc.

Compensation for the same can be provided in any form, *i.e.*, **cash or in kind (perquisites) or both.**

Payments so made will be governed by the provisions of Income-tax Act meaning thereby that if the payment made is in the form of salary, the amount so paid should have been considered by the employer at the time of making deduction of tax at source under Income-tax Act.

In the same manner, if the perquisites provided by the employer are as per the terms of contract, its value should have been considered by the employer for computation of TDS under Income-tax Act.

It means that any amount paid to employees not considered for the purpose of TDS under Income-tax Act, will be considered as supply of service under GST and will become subject to tax.

In short, payment made to employee should be either taxable under Income-tax Act or under GST. ***It cannot be exempt from tax under both the Acts.***

Any attempt to treat any payment to the employee as not taxable under both Income-tax and GST can have serious consequences for both the employer and employees under both the Acts.

RCM Impact on NGO's under GST

Charitable Organisation is having one PAN and against the same PAN, the registration is taken with the GST Act, Will all the verticals fall with in the preview of GST Act?

It is fact that there is a Common PAN used for all the verticals. NGO can only have one PAN as per the provisions of the Income Tax Act. The intention of government was very clear when the specific exemption was given to the income-tax registered charitable institutions. Because of that provisions, charitable institutions need not register with the GST Department as their outward service (Grants/donations) are outside the preview of GST Act.

The confusion arises whether the charitable vertical of NGO will be considered as an unregistered entity or registered entity for the applicability of RCM under Section 9(3) and Section 9(4)? As far as the Sales of Product Vertical, they are taxable in the GST Act, So, NGO will be considered as a registered entity for this purpose and GST will be applicable on the sale of products as well as section 9(3) and Section 9(4) will be applicable and RCM needs to charged on the inward supplies from unregistered entities or from specified entities covered under RCM.

There is no clarification on the applicability of RCM on the charitable part of the NGO's.

So, many NGO's are involved in the sales of products. A clarification will be required in this aspect, otherwise either they have to charge RCM which will increase their administration cost or they have to discontinue their sales which will affect their cash inflows.

Sec 9(5) : Services supplied through E-Commerce Operator

The Government may specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it on reverse charge basis.

E-commerce Operator who pays tax on reverse charge basis all provisions of the Act shall apply to him as if the supplier liable for paying the tax in relation to the supply of such services. Because of this provision he can avail Input Tax Credit eligible as per the provision the Act.

Moreover the E-commerce Operator need collect any tax at source.

[Notification No.17/2017-Central Tax \(Rate\), dated 28th June, 2017](#) provides that in the case of following services provided by through the E-commerce Operator, tax has to be paid on reverse charge basis E-commerce Operator.

i.	services by way of transportation of passengers by a radio-taxi motorcar, maxi cab and motorcycle;
ii.	Services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes. However if the service provider is liable to get registered under Section 22(1), then tax not to be paid under reverse charge basis. Section 22(1) deals with registration of suppliers having turnover more than Rs.20 lakhs (in Northeastern States and other specified States the turnover limit Rs.10 lakhs).

By [Notification No. 23/2017-Central Tax \(Rate\) dated 22nd August, 2017](#), the following services also has been added:

Services by way of house-keeping, such as plumbing, carpentering etc., except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

Appropriate Notifications have been issued under Integrated Goods and Services Tax Act and State Goods and Services Tax Acts to make this provision applicable under these Acts also.

The recipient has to pay 100% of the tax on reverse charge basis.

Thank You !

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