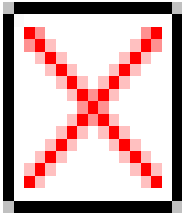


Renting of residential dwelling - withdrawal of exemption - a fiasco?

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IN the 47th GST Council meeting held on 29th June 2022, *inter alia* , the following recommendation was made -

C4. In case of Services, following exemptions are being rationalized:

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Sr. no.	Description
2.	Exemption on following services is being withdrawn. a. x xx b. x xx c. x xx d. x xx e. x xx f. Renting of residential dwelling to business entities (registered persons).

For effectuating the above proposal, amendments were made in notification 12/2017-CTR [granting exemption] and in notification 13/2017-CTR [reverse charge liability] by notifications 04/2022-CTR and 05/2022-CTR respectively. Both these notifications are dated 13th July 2022 and made effective from 18th July 2022.

The relevant entries of these respective notifications read -

12	Heading 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence [except where the residential dwelling is rented to a registered person].	Nil	Nil
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5AA	Service by way of renting of residential dwelling to a registered person.	Any person	Any registered person.
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Instead of entering into a complex word jargon, the sum and substance of these amendments is lucidly explained in the tabulation below -

SrNo	Residential dwelling or non-residential property	Registration status of owner	Registration status of tenant	GST Applicability and Person liable to pay GST
1	Residential usage	Not registered under GST	Not registered under GST	No GST payable - exempted as per notification 4/2022 CTR
2	Residential usage	Not registered under GST	Registered under GST	Taxable. Recipient to pay GST under reverse charge mechanism. Sr.5AA of 5/2022-CTR applies.
3	Residential usage	Registered under GST	Not Registered under GST	No GST payable - exempted as per notification 4/2022 CTR
4	Residential usage	Registered under GST	Registered under GST	Taxable. Recipient to pay GST under reverse charge mechanism. Sr.5AA of 5/2022-CTR applies.
5	For commercial usage	Registered under GST	Not registered under GST	Taxable. Property owner would be required to pay GST under forward charge mechanism.
6	For commercial usage	Registered under GST	Registered under GST	Taxable. Recipient to pay GST under reverse charge. Sr.5AA of 5/2022-CTR applies.

Some pertinent questions arise in the above context, which I have tried to answer below.

1. What about the Input tax credit, if tax is being paid under reverse charge mechanism?

If the renting is for residential dwelling, then the input tax credit would be blocked under provisions of section 17(5) of the CGST Act 2017. However, if the residential dwelling is taken on rent for commercial usage, then Input tax credit would be available as the residential dwelling would constitute a 'place of business'.

2. What should the taxpayer do in order to ensure compliance under the GST laws?

The recipient (registered person) needs to start paying GST under reverse charge mechanism. Since the notification is effective from 18/07/2022, GST would be due on rent accruing from such date.

One nagging question is - whether the 'registered person' should hold registration in the state/UT where such residential property is located?

As per Section 2(94) of the Act, 2017, 'registered person' means a person who is registered under section 25.

The notification(s) does not qualify the word "registered". Therefore, if any recipient holds a registration under GST Laws anywhere in India and has taken a 'residential dwelling' on rent, then the recipient would be required to pay GST under reverse charge basis, in that state where such 'residential dwelling' is located. For this purpose, a fresh registration in that State would be required. This is because as per provisions of section 12(3) of the IGST Act 2017, the 'Place of supply' in case of services in relation to immovable property will be the 'location of such immovable property'.

Let us also take a look at the following examples:

Illustration no. 1.

X Ltd holds a Maharashtra GST registration. It plans a new set up in the state of 'Goa' and for this purpose sends a team to do the ground work. X Ltd has taken two flats of the same owner [unregistered] on rent for use as residence by their team members. The total yearly rent for the flats is Rs 18 Lakhs. X Ltd is of the view that since it does not hold a registration in 'Goa' they shall be considered as 'not registered under GST' and consequently no tax is required to be paid under reverse charge mechanism. Is this claim correct?

Answer.

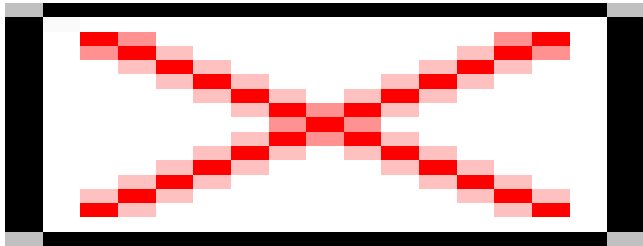
This claim of X Ltd. is incorrect. Entry 5AA refers to 'any registered person' as recipient. This qualification of being registered is not vis-à-vis registered in Goa but anywhere in India under the GST laws. Therefore, X Ltd. would be required to pay GST under reverse charge mechanism by seeking a fresh registration in Goa for purpose of discharging tax. This is apparently so because there is also no mechanism under the GST law or GSTN portal which enables a person registered in one state to deposit the tax of another state under reverse charge.

Illustration no. 2.

The recipient of 'renting of a residential dwelling for use as a residence' is a proprietor of a business and holds a GST registration based on his PAN. What is his tax liability?

Answer. The proprietor would be taking an unfortunate 'hit' of the tax liable to be paid under reverse charge mechanism. He would also not be entitled to claim the Input tax credit in view of the provisions of s.17(5) of the Act.

Stop Press: The PIB in a tweet release yesterday evening said this -



Conclusion: It would be prudent on the part of the CBIC to clarify on both these aspects before the issue snowballs into a major controversy.

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[The views expressed are strictly personal.]

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