

## **TOPIC ASSIGNED**

- **RCM ON RENT AND ITS TAXABILITY**
- **DISCOUNTS AND TAXABILITY**
- **PAYEMENTS TO DIRECTORS AND TAXABILIYT**
- **REMIMBURSEMENT OF EXEPENSES AND ITS TAXABILITY**
- **TAXES ON ADVANCES AND MOBILISATION ADVANCE**
- **CROSS CHARGE AND ISD**
- **IMA CASE**

# FCM & RCM\_ RENT

<b>12</b>	<b>14a [ *** ]</b> Heading 9972	Services by way of renting of residential dwelling for use as residence <b>12a</b> <i>[except where the residential dwelling is rented to a registered person].</i> <b>12aa [ 12b [Explanation 1] - For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, -     (i) <i>the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and</i>     (ii) <i>such renting is on his own account and not that of the proprietorship concern. ]</i> <b>10b</b> <i>[Explanation 2.- Nothing contained in this entry shall apply to-</i>     (a) <i>accommodation services for students in student residences;</i>     (b) <i>accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.]</i></b>	Nil	Nil
<b>10b [ 12A</b>	Heading 9963	Supply of accommodation services having value of supply less than or equal to twenty thousand rupees per person per month provided that the accommodation service is supplied for a minimum continuous period of ninety days.	Nil	Nil ]

## REFERENCE[12a]



12a. Inserted by [Notification No. 4/2022 -Central Tax \(Rate\)](#), dated [13-7-2022](#), w.e.f. **18-7-2022**.



## REFERENCE[12b]



12b. Explanation renumbered as Explanation 1 by [Notification No. 4/2024-Central Tax \(Rate\)](#), dated [12-7-2024](#), w.e.f. **15-7-2024**.



# RCM\_ RENT

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
<a href="#">4a</a> [5AA]	Service by way of renting of residential dwelling to a registered person.	Any person	Any registered person.]



REFERENCE[4a]  

4a. Inserted by [Notification No. 5/2022-Central Tax \(Rate\)](#), dated 13-7-2022, w.e.f. **18-7-2022**.

<a href="#">4b</a> [5AB]	Service by way of renting of [any immovable property] other than residential dwelling.	Any unregistered person	Any registered person <a href="#">3a</a> [other than a person who has opted to pay tax under composition levy.]]
--------------------------	--	-------------------------	--

REFERENCE[4b]  

4b. Inserted by [Notification No. 9/2024-Central Tax \(Rate\)](#), dated 8-10-2024, w.e.f. **10-10-2024**.

REFERENCE[3a]  

3a. Inserted by [Notification No. 7/2025-Central Tax \(Rate\)](#), dated 16-1-2025, w.e.f. **16-1-2025**.

# RCM\_RENT\_RESIDENTIAL

SCENARIO	USE OF PROPERTY	LANDLORD SUPPLIER (AP)	TENANT RECEPNT (RP)	RCM APPLICABILITY	TYPE OF TAX	INPUT
REGISTRATION (R)	RESIDENTIAL	REG	REG	YES	RCM	YES
REGISTRATION (R)	RESIDENTIAL	REG	NOT_REG			
REGISTRATION (R)	RESIDENTIAL	NOT_REG	REG	YES	RCM	YES
REGISTRATION (R)	RESIDENTIAL	NOT_REG	NOT_REG	NO	NO	NO
REGISTRATION (R)	COMMERCIAL	REG	REG	YES	RCM	YES
REGISTRATION (R)	COMMERCIAL	REG	NOT_REG	NO	FCM	NO
REGISTRATION (R)	COMMERCIAL	NOT REG	REG	YES	RCM	NO
REGISTRATION (R)	COMMERCIAL	NOT_REG	NOT_REG	NO	NO	NO

# RCM\_RENT\_OTHER THAN RESIDENTIAL

SCENARIO	LANDLORD SUPPLIER (URP)	TENANT RECEPIENT(RP)	RCM APPLICABILITY	WHO PAYS	INPUT
REGISTRATION (R)	REG	REG	NO	FCM	RECIPIENT
REGSITRATION (R)	REG	NOT_REG	NO	FCM	NO
REGISTRATION (R)	NOT_REG	REG	YES	RCM	YES
REGISTRATION (R)	NOT_REG	NOT_REG	NO	NO	NO
REGISTRATION (C)	REG	REG	NO	FCM	NO
REGISTRATION (C)	REG	NOT_REG	NO	FCM	NO
REGISTRATION (C)	NOT_REG	REG	YES	RCM	NO
<b>REGISTRATION (C)</b>	<b>NOT_REG</b>	<b>REG</b>	<b>NO</b>	<b>NO</b>	<b>NO</b>

# DISCOUNT AND TAXABILITY

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

## Relevant Circulars

**Circular No.-212/6/2024-GST dated 26th June, 2024**

### Para 2.4

In view of the above, till the time a functionality/ facility is made available on the common portal to enable the suppliers as well as the tax officers to verify whether the input tax credit attributable to such discounts offered through tax credit notes has been reversed by the recipient or not, the supplier may procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate

### Part 2.7

In cases, where the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a Financial Year is not exceeding Rs 5,00,000 (rupees five lakhs only), then instead of CA/CMA certificate, the said supplier may procure an undertaking/ certificate from the said recipient that the said input tax credit attributable to such discount has been reversed by him, along with the details mentioned in Para 2.5 above.

## Relevant Circulars

**Circular No. 92/11/2019-GST dated 7th March, 2019**

### **Part 2.A- Free samples and gifts:**

- Not taxable supply
- Essential requirement of consideration not met.
- Unless it falls under Schedule-1
- Section 17(5)(h)
- Inputs not available and proportionate reversal

### **Para 2.4.B-Buy one get one free offer**

- It is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply.
- It can at best be treated as supplying two goods for the price of one.
- Mixed supply or composite supply and section 8
- No need of proportionate reversal of ITC



## Relevant Circulars

**Circular No. 92/11/2019-GST dated 7th March, 2019**

### **Part 2.C- Discounts including 'Buy more, save more' offers:-Staggered Volume discounts**

For example-

Get 10 % discount for purchases above Rs. 5000/-,  
20% discount for purchases above Rs. 10,000/- and  
30% discount for purchases above Rs. 20,000/-.

Such discounts are shown on the invoice itself.

### **Para 2.4.C-Volume discounts**

- Not known beforehand
- Not shown in Invoice
- Based on agreement.
- **Full inputs available /no need of proportionate reversal of Inputs**
- Not included in the value as per 15(3) conditions MET with input reversal by the recipient

## Relevant Circulars

**Circular No. 92/11/2019-GST dated 7th March, 2019**

### **Part 2.D- Secondary Discounts**

These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet.

### **Section 34\_ Credit notes**

**OR**

- **Financial Credit notes in Breach of 15(3)**

*In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.*

- **Value of supply\_Gross**

*Value of supply shall not include any discount by way of issuance of credit note(s) as explained above in para 2 (D)(iii) or by any other means, except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied.*

- **No reversal of ITC on Price Revision**

*There is no impact on availability or otherwise of ITC in the hands of supplier in this case.*

# DISCOUNT AND TAXABILITY IN THE HANDS OF BUYER/RECIPIENT

## Relevant Case Laws

**Supreme Paradise Vs. Assistant Commissioner (St) North 1 Circle, Tirupur held by Madras High Court vide Writ Petition No: 13424, dated: 10-01-2024.**

- There is no scope for confusing the discount offered to the petitioner and the discounted price at which the petitioner effects further sale to its customers.
- They are two independent transactions and there is no scope for intermingling them for demanding tax from the petitioner.
- The discounted price at which the petitioner sells the goods is relevant only for determining the “transaction value” adopted by the petitioner.
- **Santhosh Distributors\_ Kerala AAR and Appellate Order No. AAAR/10/20 dated 01/03/2021**
- **Financial Credit note issued by the Manufacturer to the Distributor/Dealer.**
- **Passed the Discount received to the end Users as discount allowed**
- **The Actual Price-discounted price Or the amount of discount passed on to the end user is “consideration” and needs to be included in valuation Tax needs to be paid on the difference.**
- **The enduser, if registered is only eligible to claim ITC only on Tax charged and Paid by the end user Under Section 16(2)**

## Section 15\_ Valuation

**(2) The value of supply shall include-**

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply

and

**any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;**

2(31) Composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply

2(90) principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary

## **Pure Agent Rule-33 of Valuation Rules**

# GST ON REIMBURSEMENTS

## Case Laws

Citation	Relevant Case laws
<p><a href="#">Re: Indiana Engineering Works (Bombay) (P.) Ltd.</a></p> <p>[2022] 137 taxmann.com 389 (AAR – Maharashtra)</p>	<p><b>Facts</b></p> <ul style="list-style-type: none"><li>• Applicant has <b>let out</b> a floor of his building to a lessee</li><li>• Main Meter is installed in applicant's name who himself pays the electricity charges to the distribution utility</li><li>• Applicant reimburses the electricity charges <b>at actual basis</b> from the lessees, without any value addition, on the basis of <b>separate meter</b></li></ul> <p><b>Held</b></p> <ul style="list-style-type: none"><li>• Lessee cannot run its business without the provision of utility services, like water and electricity, therefore, the charges for electricity and water charges recovered as reimbursements have the nature of incidental expenses, even if recovered at actual basis</li><li>• The supplier is <b>not acting as a 'pure agent'</b> as the service is not acquired from main supplier of electricity on the instructions from the tenant and the activities are provided on own account and are for effective enjoyment of premises</li></ul>

# GST ON REIMBURSEMENTS

## Case Laws

Re: E-Square Leisure (P.) Ltd.

[2019] 104 taxmann.com 121 (AAR – Maharashtra)

### Facts

- Applicant has **rented out** an immovable property along with supply of power through DG set and water through RO
- DG sets are installed by the applicant for generation of electricity in case of power failure
- The utility charges are recovered from lessee based on the reading shown in the **sub-meter** provided by the applicant

### Held

- The utilities such as electricity and water supply are **basic amenities** without which no NOC would be granted to conduct business of running a theatre
- The provision of these utilities would be in the nature of ancillary supply which help in better enjoyment of the main supply and would form **part of composite supply**
- Further, these utilities are provided by the supplier on own account without obtaining any authorization from the recipient of the services, therefore the supplier cannot be said to acting as a pure agent

# GST ON REIMBURSEMENTS

## Case Laws

<p>Re: NCC Urban One Apartment Owners Mutually Aided Co-Op. Society Ltd.</p> <p>[2023] 155 taxmann.com 590 (AAR- Telangana)</p>	<p><b>Facts</b></p> <ul style="list-style-type: none"><li>• Applicant is RWA collecting monthly <b>maintenance charges</b> from members which include <b>common area electricity charges</b></li><li>• The actual common area electricity bill is divided by total carpet area and <b>pro-rata charges</b> are collected from each of the members as per their flat area</li></ul> <p><b>Held</b></p> <ul style="list-style-type: none"><li>• Applicant will be a <b>pure agent</b> in terms of illustration to Rule 33 of the CGST rules. Therefore, the recovery of such expenses is a disbursement and not part of the value supply</li><li>• Electrical energy is exempt from GST and <b>cannot</b> be combined with others supplies as a <b>composite supply</b>. This is because a composite supply, by definition, should consist of two or more taxable supplies</li></ul>
---	--

# GST ON REIMBURSEMENTS

CIRCULAR NO. 206/18/2023 dated 31/10/2023

## Para 3.2

It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, **it forms a part of composite supply** and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the **supply of electricity is an ancillary supply as the case may be**. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.

## Para 3.3

However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, **it will not form part of value of their supply**. Further, where they charge for electricity on **actual basis that is**, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, **they will be deemed to be acting as pure agent for this supply**



# GST ON REIMBURSEMENTS-EMPLOYEE FROM EMPLOYER

## Schedule III

1. Services by an employee to the employer *in the course of or in relation to his employment.*

## Schedule I

2. Supply of goods or services or both between related persons or between distinct persons as specified in [section 25](#), when made in the course or furtherance of business:

**Provided that 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.**

*Explanation to section 15*

(a) persons shall be deemed to be "related persons" if—

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

**(iii) such persons are employer and employee;**

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

## Circular 178 dated 3<sup>rd</sup> August 2022

### Para-7

.....

forfeiture of salary or payment of amount as per the employment bond for leaving the employment before the minimum agreed period, penalty for cheque dishonour etc. are not a consideration for tolerating an act or situation. They are rather amounts recovered for not tolerating an act or situation and to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. **Further, such amounts do not constitute payment (or consideration) for tolerating an act, because there cannot be any contract: (a) for breach thereof, or (b) for holding more stock than permitted under the mining contract, or (c) for leaving the employment before the agreed minimum period or** (d) for doing something leading to the dishonour of a cheque. As has already been stated, unless payment has been made for an independent activity of tolerating an act under an independent arrangement entered into for such activity of tolerating an act, **such payments will not constitute 'consideration' and hence such activities will not constitute "supply" within the meaning of the Act.**

Relevant Case: Kerala High Court

**Manappuram Finance Ltd. v. Assistant Commissioner of Central Tax and Excise\* GOPINATH P., J. W.P. (C) NO. 27373 OF 2022 circular followed,**

# GST ON ADVANCES-GOODS

## Time of Supply-Goods-Section 12

(2) The time of supply of goods **shall be the earlier of the following dates**, namely:—

(a) the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or

~~(b) the date on which the supplier receives the payment with respect to the supply;~~

**Notification** 66/2017-CENTRAL TAX, DATED 15-11-2017

AS AMENDED BY NOTIFICATION NO. 50/2023 - CENTRAL TAX, DATED 29-9-2023

.....

the Central Government, on the recommendations of the Council, hereby notifies the registered person who did not opt for the composition levy under section 10 of the said Act 1 **[, other than the registered person making supply of specified actionable claims as defined in clause (102A) of section 2 of the said Act,]** as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, .....

## Time of Supply-Goods-Section 13

(2) The time of supply of services **shall be the earliest of the following dates,** namely:—

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
- (b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

## Definition of Consideration 2(31)

**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;**

## Case Laws

**Hindustan Shipyard Ltd. v. CCE, C & ST [2020] 110 taxmann.com 528 (Hyd. - CESTAT)**

### **Facts of the case**

Indian Navy awarded contract to Hindustan shipyard

Indian Navy paid advance to the Hindustan shipyard

The advance is paid for the upgradation of Infrastructure at their Shipyard for facilitation of work

Revenue contended this is an advance and tax needs to be paid on the date of receipt

### **Held.**

- **It is only a mobilisation advance not linked to any signed contract for rendering services**
- **Also held that, Indian Navy may award future signed contract and amount paid may be adjusted against such contract.**
- **It is not clear as to what stage the contract will be awarded and what contract will be awarded to conclude that the amount is chargeable to ST.**

## Case Laws

**Thermax Instrumentation Ltd. v. CCE [Application No. ST/S/114/12, dated 2-12-2015]**

### **Facts of the case**

The appellant undertakes erection, commissioning, and installation services for customers

10% of the contract value was collected upfront

Bank guarantee was provided the Thermax

Contract payments were progressive in nature

Thermax adjusted the advance money from each of the billing proportionately

Thermax paid service tax on each of the billing when it is raised.

Revenue demanded service tax for advance.

Thermax contended the advance was only Security deposit and shown as CL in Balance Sheet.

### **Held:**

After analysing the contractual terms, sample invoices and the books of accounts of appellant,

CESTAT noted that the advance is only an amount given as kind of earnest money and for which appellant gives a bank guarantee to the customers for the corresponding equal amount and concluded that ,

**It is more in the nature of deposits and ST was not payable**

## Case Laws

### SP Singala Gujarat AAAR

**Mobilization advance was received.**

**The advance was adjusted against running bills,**

**Time of supply was contested,**

**Held, Taxable at the time of receipt of Advances**

**Relied on Thermax Instrumentation but not accepted by AAAR,**

## Government Views

No. RW/G-20017/26/2018-W&A  
Government of India  
Ministry of Road Transport & Highways  
(Planning zone)  
Transport Bhawan, 1, Parliament Street, New Delhi - 110001

---

- (iv) GST shall be payable on Bonus for early completion as per clause 23.5 of the MCA without any Input Tax Credit. However, if any input tax credit is availed by the Concessionaire, the benefit of such ITC shall be passed on to the Ministry/ concerned Executing Agency.

**9. Mobilization advance:**

Applicability of GST on mobilization advance shall be as follows -

- (i) If the mobilization advance is refundable as per the Contract Agreement, no GST shall be payable on mobilization advance.
- (ii) If the mobilization advance is recoverable as per the Contract Agreement in future bills, then GST shall be applicable. It shall be paid by the concerned executing agency/ RO/ PD at the applicable rates and shall be suitably adjusted at the time of recovery of the Mobilization Advance.



## Section 9: Levy

Levy of GST on value of supply made by a taxable person for a consideration and in the course of or furtherance of business.

## Section 7-Taxable Event- Supply

**Sec 7(1)(c):** Activities listed in Schedule I to CGST Act to be supply even if made without consideration

### **SCHEDULE -I**

#### **ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION**

##### **Entry 2.**

**Supply of goods or services or both between related persons or between distinct persons as specified in [section 25](#), when made in the course or furtherance of business:**

##### **Section 25(4)**

Two or more registration of the same Entity in the same state.

Two or more registration of the same Entity in the different state.

##### **Section 25(5)**

Establishment Registered in one state and establishment in another State

# MEANING OF CROSS CHARGE AND ISD

## Analysis of Specific Advance Rulings

**Columbia Asia Hospitals (P.) Ltd., In re [[2018] 96 taxmann.com 245/69 GST 427/15 GSTL 722 (AAR-KARNATAKA) ]**

- Services of employee at the HO (like IT services, Payroll Services, HR Services) to the distinct person shall be treated as supply and the same is liable to tax.
- Further AAAR also observed that there is a fundamental difference between the concept of ISD and Cross Charge.
- In the ISD concept, only ITC on input services which are attributable to other distinct entities are distributable.
- Whereas, in case of cross charge mechanism, all expenses incurred by a distinct person which benefits other distinct persons is required to be cross charged.

**Cambins India Ltd., In re [[2022] 134 taxmann.com 342/58 GSTL 549/90 GST 753 (AAAR-MAHARASHTRA)]**

- Activity of HO availing ITC for common input supplies on behalf of BOs does qualify as supply and would attract the levy of GST.
- The AAAR also held that the HO is not entitled to avail the ITC of such common input supplies.
- HO must register itself as an ISD and distribute such availed common ITC to the company's branch offices/units.

# MEANING OF CROSS CHARGE AND ISD

## Analysis of Specific Advance Rulings

**B G Shirke Construction Technology (P.) Ltd., In re [[2021] 132 taxmann.com 124/55 GSTL 174/88 GST 831 (AAR-MAHARASHTRA)]**

- Managerial and leadership services provided by the Registered/Corporate Office to its Group Companies/sites is to be considered as “supply of service“ under Entry No. 2 to Schedule I and liable to GST.
- The Applicant can continue to charge certain lump sum amount, as has been done in the past, in terms of second Proviso to Rule 28 of CGST Rules, 2017 , as most of the recipients of such services are eligible for full credit, barring one or two related persons, who would comply with the provisions of Section 17 of CGST Act, 2017, at their respective

# MEANING OF CROSS CHARGE AND ISD-Circular 199/11/2023 dated 17<sup>th</sup> July 2023

## Para-1

### Third Party Services,

Exclusively for branch offices/Common Input Services

Audit Fee

Advertisement

Can choose ISD under Section 20 with Rule 39

OR

Cross Charge by issuing a Tax invoice under section 31

If chooses for ISD Mechanism should compulsorily registered under Section 24(1) (viii)

Both possible only if only if the said services have actually been provided to the concerned BOs.

## Para-2

### Internally generated Services

1. Procurement Services

2. IT system management services

3. CEO/CFO/CS services

4. HR services

5. Marketing services

the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit Rule 28

irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.

Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.

## Para-3

In respect of internally generated services the cost of salary of employees of the HO, is not mandatorily required to be included while computing the taxable value even in cases where full input tax credit is not available to the concerned BO.

## Para-1

### Third Party Services,

Exclusively for branch offices/Common Input Services

Audit Fee

Advertisement

Can choose ISD under Section 20 with Rule 39

**ISD Mechanism should compulsorily registered under  
Section 24(1) (viii)**

# RCM\_ DIRECTORS

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.

# DIRECTORS REMUNERATION AND SITTING FEES

**Circular 140 dated 10<sup>th</sup> June 2020**

2. The issue of remuneration to directors has been examined under following two different categories:

- (i) leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company; and
- (ii) leviability of GST on remuneration paid by companies to the whole-time directors including managing director who are employees of the said company.

# DIRECTORS REMUNERATION AND SITTING FEES

Circular 140 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**

4.1 The primary issue to be decided is whether or not a 'Director' is an employee of the company. In this regard, from 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.



# DIRECTORS REMUNERATION AND SITTING FEES

**Circular 140 dated 10<sup>th</sup> June 2020**

4.2 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. In terms of entry at Sl. No. 6 of the Table annexed to notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

4.3 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 hands of the company, on reverse charge basis.

# DIRECTORS REMUNERATION AND SITTING FEES

Circular 140 dated

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

5.1 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

Page 2 of 3

---

**Circular No: 140/10/2020 - GST**

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.

5.2 It is also pertinent to note that similar identification (to that in Para 5.1 above) and treatment of the Director’s remuneration is also present in the Income Tax Act, 1961 wherein the salaries paid to directors are subject to Tax Deducted at Source ('TDS') under Section 192 of the Income Tax Act, 1961 ('IT Act'). However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.

# DIRECTORS REMUNERATION AND SITTING FEES

**Circular 140 dated 10<sup>th</sup> June 2020**

5.3. 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.

5.4 It is further clarified that the part of employee Director's remuneration which is declared separately 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. Further, in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

6 It is requested that suitable trade notices may be issued to publicize the contents of this circular.

# DIRECTORS REMUNERATION AND SITTING FEES

**Circular 201 dated 13<sup>th</sup> June 2023**

**Subject: Clarifications regarding applicability of GST on certain services – reg.**

Representations have been received seeking clarifications on the following issues

1. Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism;

# DIRECTORS REMUNERATION AND SITTING FEES

## Circular 201 dated 13<sup>th</sup> June 2023

**Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism:**

2. Reference has been received requesting for clarification whether services supplied by a director of a company or body corporate in personal or private capacity, such as renting of immovable property to the company, are taxable under Reverse Charge Mechanism (RCM) or not.

# DIRECTORS REMUNERATION AND SITTING FEES

## Circular 201 dated 13<sup>th</sup> June 2023

2.1 Entry No. 6 of notification No. 13/2017 CTR dated 28.06.2017 provides that tax on services supplied by director of a company or a body corporate to the said company or the body corporate shall be paid by the company or the body corporate under Reverse Charge Mechanism.

2.2 It is hereby 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 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 notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.

(2 17) "business" includes—

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

## **Calcutta Club\_ Supreme Court**

[ (aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.

**Explanation.**—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]



# KERALA HIGHCOURT IMA CASE

The above provision and the retrospective effect given to it with effect from 01.07.2017 were challenged before the Kerala High Court by the Indian Medical Association. A learned single judge of the Court, in his judgement dated 23.07.2024 [[2024-TIOL-1236-HC-KERALA-GST](#)], **while upholding the constitutional validity of the above amendment, held the retrospective effect given to it as bad;** that the provisions of Section 7(1)(aa) will have prospective operation with effect from 01.01.2022.

The Division Bench has held 11th April 2025 [[2025-TIOL-598-HC-KERALA-GST](#)] that the principle of "*mutuality of interest*" is constitutionally recognized by various judgements of the Supreme Court. So, if at all this principle has to be overcome, the same is possible only by way of a constitutional amendment and a mere amendment in the GST law is not sufficient. The Court also referred to the 46th constitutional amendment, whereby a principle of "*deemed sale*" was brought in through Article 366 (29A) to overcome various judgements, interpreting the constitutional term "*sale*". Though the amendment in Section 7 of the GST Act itself has thus been struck down, for the record, the Court has also held that any retrospective amendment in tax laws, creating liabilities is also bad.



# KERALA HIGHCOURT IMA CASE

Notwithstanding the fear lingering in one's mind, whether this judgement also will be overruled by a retrospective constitutional amendment, the immediate effect of this judgment are;

- (i) Any club or association, whether incorporated as an entity or not cannot be said to making any supply of goods or services to its own members and such transactions would not be liable to GST.
- (ii) Can the club or association claim refund of the taxes collected from its members and paid to Government? Though normally refunds are not allowed under tax law, if such tax is collected from another person (referred to as unjust enrichment), since the club or association and its members are not treated as distinct persons, it cannot be said that the tax has been collected from any other person and hence the doctrine of unjust enrichment cannot apply here. So, the club or association should be entitled to claim refund of taxes paid so far.

**Source: Article by Adv. G.Nataraj,TIOL**

# THANK YOU!!!!!!!!!!

**OPEN FOR QUESTIONS!!!!!!**

**Disclaimer:** *The views expressed are strictly of the author. The contents of this Presentation/article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.*