

GST – Reverse Charge Mechanism (RCM)

WIRC – ICAI - THANE

Definition

Section 2(98) of CGST Act “reverse charge” means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act;

Levy and Collection

Section 9(3) of CGST Act and Section 5(3) of IGST Act provide that 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.

Note:

1. Refer Notification Number 13/2017-Central Tax (Rates) – Services subject to reverse charge.
2. Notification No. 10/2017- Integrated Tax (Rate) – Services subject to reverse charge.
3. Notification No 4/2017 – CT (Rates) and 4/2017 – IT (Rates) – goods covered under reverse charge.

Levy and collection – contd..

Between the two notification 13 Central Tax (Rate) and 10 Integrated Tax (Rate):

Two additional points are covered under notification 10 Integrated Tax (Rate)

Sr.No (1)	Category of Supplier of Services (2)	Supplier of Services (3)	Recipient of Service (4)
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient. (Import of service)	Any person located in a non-taxable territory	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. (Inward Ocean Transport).	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.

Levy and collection – contd..

Section 2(16) of IGST Act “non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

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

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

Levy and collection contd...

Section 9(4) of CGST Act and Section 5(4) of IGST Act provide that 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.

Reverse charge in case of supply from URD – contd....

The provision Section 9(4) of CGST Act and Section 5(4) of IGST Act **will apply if the below conditions are met:**

- There should be a supply of goods or services
- The supply should be in respect of taxable goods/services
- Supply must be *by* an unregistered person.
- Supply must be *to* a registered person
- Supply must be an intra-state supply as compulsory registration is required for inter-state sales

Note: This will also apply to registered persons paying GST under composition scheme.

Reverse charge in case of supply from URD – contd....

Purchase up to 5000 from URD – Exempt

In other words, there is a reverse charge on buying from unregistered dealers if you are dealing with unregistered suppliers and making payments above Rs. 5,000 PER DAY.

Note: Notification No.8/2017-Central Tax (Rate):

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.**

For e.g.

DS and Co. is a registered company and has spent Rs. 9,000 on purchases from a URD. Should it pay GST via RCM (Reverse Charge Mechanism) on Rs. 4,000 (9000-5000)?

Once the limit of Rs. 5,000 in a day is crossed, the GST is payable **on the entire amount of Rs. 9,000 on RCM.**

Note: The above situation can be managed if the supplier can be asked to bill on three different days and the payment is also made on those days.

Reverse charge in case of supply from URD – contd.... Process

1. Look into the expenses daily.
2. Analyse the Profit and Loss accounts (Trial Balance) to check whether any transactions/expenses fall under RCM.
3. Raise invoice on self (Tweet FAQ S.No 50; dated 26th June 2017)
4. One consolidated invoice for all transactions under RCM can be raised on self per month. ((Tweet FAQ S.No 54; dated 26th June 2017)
5. Identify the correct HSN codes for the goods and services.
6. RCM invoices need to be uploaded in GSTR 2.
7. Pay the Tax under RCM in the electronics cash ledger. Cannot be adjusted with ITC (Sec 49(4) read with Sec 2(82) of CGST Act).
8. File the monthly Return.
9. Avail input tax credit once return is filed.

Reverse charge in case of supply from URD – contd.... Process – some examples

Tea from tea vendor	Stationery
Rent	Printing and stationery
Commission payments	Office Maintenance
Vehicle maintenance	Repairs and Maintenance
Professional Fees	Computer maintenance
Consultancy Fees	Legal Fees
Audit Fees	Freight and transportation expenses (GTA)

Reverse charge in case of supply from URD – contd.... Process – some examples

Examples of supplies not covered under RCM:

Exempted goods and services	Salary and wages
Interest	Electricity
Car Fuel (petrol diesel)	Government Fees (registration, MCA fees)

RCM – MRP products

MRP includes GST.

Bought any taxable goods from an URD, MRP price is Rs. 300?

Situation 1

Back calculate to remove GST and then pay GST on the Net Value?

Only problem, is will the supplier accept a lower price? Also under RCM, the recipient is not supposed to collect GST from the supplier.

Situation 2:

Pay GST on the MRP and pay it to the Government and suffer double taxation.?

Opinion: Opt for situation 2.

Time of Supply of goods

Section 12(3) of CGST Act:

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

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

(b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

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

Time of supply of services

Section 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 (AE) (meaning in Sec 92 A of the Income Tax Act) , 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. If AE is located in India, normal provisions of supply shall apply.

Other General Provisions

Section 2(6) of CGST Act, “aggregate turnover” means the aggregate value of all taxable supplies (***excluding the value of inward supplies on which tax is payable by a person on reverse charge basis***), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

Section 2(82) of CGST Act, Output tax excludes GST payable under Reverse Charge.

Section 38(2) of CGST Act, every person liable to pay tax under reverse charge is required to furnish details of inward supplies.

Section 24(iii) of CGST Act, Persons required to pay tax under reverse charge are required to be registered, irrespective of the threshold limit specified.

Explanation: Section 24(iii) is not withstanding section 22(1). So a person below threshold limit not required to be registered if has inward supplies on which RCM is payable will have to obtain registration. Section 24 (iii) does not have a bearing on section 23 which provides for persons not liable for registration.

RCM : Employer Employee

Employer provides bus service, meal coupon, telephone at residence, gives vehicle for official and personal use, uniform and shoes, any GST?

Where the value of such supplies is in the nature of gifts, no GST will apply till value of such gifts exceeds Rs. 50000/- in a financial year. (S.No 68 Tweet FAQ dated 26th June 2017)

RCM : Employer Employee: Govt clarification on 10th July 2017

Gifts up to 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.

It is being reported that gifts and perquisites supplied by companies to their employees will be taxed under 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).

RCM – Input Tax Credit

Input tax credit is available on tax paid under Reverse charge mechanism.

Thank you

Devarajan Swaminathan and Co. – Cost Accountants
11, Vishram Ghar, Shree Nagar, Wagle Estate, Sector 6, Thane (West) – 400604
Contact: Mobile : 9892860244; Email: cmadevarajan@cma-ds.com
Website: www.cma-ds.com
