

Important Exemptions & RCM

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Reverse Charge Mechanism (RCM):

- Legal Provisions
- Notification
- Few important entries
- Time of supplies
- Other Compliances

Exemptions

- Legal provisions
- Scheme of Exemptions
- Notification
- Relevance of Exemptions
- Importance of claiming exemptions
- Issues in exemptions
- Landmark legal precedent
- Some examples

Reverse Charge Mechanism(RCM)

Sec 2(98) : —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.

Reverse Charge Mechanism(RCM)

Sec 9(3) : 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.

Similarly, Sec 5(3) of the IGST Act.

Reverse Charge Mechanism(RCM)

Sec 2(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,

Reverse Charge Mechanism(RCM)

Notification No. 13/2017-CT(R):

Notifies that on categories of **supply of services mentioned** in column (2) of the Table, **supplied by a person as specified** in column (3) of the said Table, the whole of central tax leviable under section 9 of the CGST Act, shall be paid on reverse charge basis by the **recipient of the such services as specified** in column (4) of the said Table.

S.No	Category of Supply of Services	Supplier of Service	Recipient of service
(1)	(2)	(3)	(4)
1	<p>GTA Service who has not paid 12% GST on transportation of goods service to specified entities</p> <p>Not applicable to GTA service provided to Govt Depts/Local Authorities/Govt Agencies.</p>	GTA	<ul style="list-style-type: none"> a. Factories regd under Factories Act. b. Regd Societies c. Co-operative Societies d. Persons regd under GST Act e. Body Corporate f. Partnership firms/AOP g. Casual Taxable Person

S. No.	Category of Supply of Services	Supplier of Service	Recipient of service
2	Legal services provided <i>“legal service” means 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.</i>	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory.

Aspects for discussion:-

A Ltd has proposed to the services of Deepak a lawyer for consultation on a matter for Rs.1,00,000 due to the complexity of the issue, Deepak in turn has taken opinion from Niranjana a senior advocate and paid Rs.20,000. Deepak has billed the company for Rs.1,20,000. Should A Ltd pay RCM on Rs.1,00,000 or Rs.1,20,000

S. No.	Category of Supply of Services	Supplier of Service	Recipient of service
(1)	(2)	(3)	(4)
3	Services supplied by an arbitral tribunal	An arbitral tribunal.	Any business entity located in the taxable territory
4	Services provided by way of sponsorship	Any person	Any body corporate or partnership firm located in the taxable territory.

S. No.	Category of Supply of Services	Supplier of Service	Recipient of service
(1)	(2)	(3)	(4)
5	<p>Services by Govt/local authority Excluding</p> <p>a. Renting of imm property</p> <p>Services of Dept of post: Speed post/Express parcel /life insurance and agency services provided to other than govt/local authorities</p> <p>c. services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>d. Transportation of goods or passengers</p>	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

S. No.	Category of Supply of Services	Supplier of Service	Recipient of service
(1)	(2)	(3)	(4)
5B	Transfer of development right or FSI for construction of a project by a promoter	Any Person	Promoter
6	Services supplied by a Director	A director of a company of body corporate	The company or a body corporate located in the taxable territory.

S. No.	Category of Supply of Services	Supplier of Service	Recipient of service
(1)	(2)	(3)	(4)
14	Security services (services provided by way of supply of security personnel) provided to a registered person: (Not applicable to service provided to Govt/LA/Govt agencies not providing taxable services and a composite dealer)	Any person other than a body corporate	A registered person, located in the taxable territory

S. No.	Category of Supply of Services	Supplier of Service	Recipient of service
(1)	(2)	(3)	(4)
15	Renting of any motor vehicle designed to carry passengers to a body corporate where the consideration includes the cost of fuel	Any person other than a body corporate and who does not charges 12% GST	Any body corporate located in the taxable territory

S. No.	Category of Supply of Services	Supplier of Service	Recipient of service
(1)	(2)	(3)	(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.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.
10	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.	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.

Time of Supply-Goods [Sec 12(3)]: Earliest of the following;

- a. The date of receipt of the goods
- b. Date of payment
- c. 30 days from the date of issue of the invoice by the supplier
- d. Date of entry in the books of the recipient

Time of Supply-Service [Sec 13(3)]: Earliest of the following;

- a. Date of payment
- b. 60 days from the date of issue of the invoice by the supplier
- c. Date of entry in the books of the recipient

- **Sec 2(6):** Aggregate Turnover shall not include supplies liable for tax under RCM.
- **Sec 2(82):** Tax paid under RCM is not output tax.
- **Sec 16(2):** Reversal of ITC for failure to pay consideration within 180 days is not applicable to RCM supplies.
- **Sec 17(2):** For reversal of ITC, RCM supplies shall be treated as exempt suppl.
- **Sec 24(3):** Compulsory registration for person who is required to pay RCM.
- **Sec 31(3) (f):** shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services.
- **Sec 31(3)(g):** shall issue a payment voucher at the time of making payment to the supplier.

EXEMPTIONS

What is exemption?

The general meaning is - no liability to pay tax.

Definition:

2(47) —exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be **wholly** exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and **includes non-taxable** supply;

Exemptions - Legal Provisions

Sec 11 of the CGST Act - Power to grant exemption:

- Exemption by way of notification
- May be conditional or un-conditional conditional
(Mandatory to avail un- exemptions)
- Exemption may be full or partial
- General Exemption and Special exemption

Relevance of Exemptions

Registration:

- Section 23 of CGST Act provides that any person engaged exclusively in the exempt supplies shall not be liable to registration.
- Section 24 of the CGST Act provides that notwithstanding anything contained in section 22(1) the following ;
 - (iii) persons who are required to pay tax under reverse charge;

Possible two views...

Relevance of Exemptions

Reversal of Input Tax Credit (ITC):

Section 17(2) provides that where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Rule 42: Reversal of ITC on common inputs and input services.

Rule 43: Reversal of ITC on Capital Goods commonly used.

Exempt supplies not to be considered for reversal: (*Explanation to Rule 43*)

- a) Interest income from deposit or lending money.
- b) The value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

Not exempt supplies but to be considered for reversal: *[Section 17(3)]*

- Sale of land and completed building - Schedule III
- Supplies on which GST is to be paid by the recipient (RCM)
- Transactions in securities - Neither goods nor service (1% of the sale value)

Exempt supply in Composite Supply

Sec 2(30) defines —composite supply to mean 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**;

Sec 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;

Exempt supply in Composite Supply...

Where the principal supply is the supply of exempt goods/services, the whole composite supply would be exempt.

- Torrent Power Ltd Vs. UOI 2020 (034) GSTL 0385 (Guj.)
- Shalby Limited [TS(DB)-GST-AAR(GUJ)-2021-191]
- Shifa Hospitals [TS(DB)-GST-AAR(TN)-2019-731]

Exempt supply in Composite Supply...

Buy one Get one free..

Product A (Exempt)

Product B (18% GST)

Product B is given free alongwith Product A

Philips India Ltd Vs. CCE, Pune 1997(91) ELT 540 (SC)-Legitimate business consideration is to be kept in mind

Exempt supply in Mixed Supplies:

Section 2(74) defines —mixed supplyll to mean **two or more individual supplies** of goods or services, or any combination thereof, made **in conjunction** with each other by a **taxable person** for a **single price** where such supply **does not** constitute a composite supply.

Product A (Exempt)

Product B (18%)

Combo pack of Product A & B

Entry No.	Particulars
12	<p>Renting of Residential Dwelling:</p> <p>Services by way of renting of residential dwelling for use as residence. (Heading 9963, 9972)</p>
	<p>Education Guide:</p> <p>The phrase ‘residential dwelling’ has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places meant for temporary stay.</p>

Entry No.	Particulars
2	<p>Transfer of Going Concern:</p> <p>Services by way of transfer of a going concern, as a whole or an independent part thereof.</p>
11	<p>Construction of Individual Residential House</p> <p>Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex.</p>

Entry No.	Particulars
2	<p>Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.</p> <p>Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.</p>

Entry No.	Particulars
2	<p>(zfa) "Government Entity" means an authority or a board or any other body including a society, trust, corporation,</p> <p>(i) set up by an Act of Parliament or State Legislature; or</p> <p>(ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.</p>

Entry No.	Particulars
18	<p>Transportation of Goods (GTO):</p> <p>Services by way of transportation of goods-</p> <p>(a) by road except the services of-</p> <p style="padding-left: 40px;">(i) a goods transportation agency;</p> <p style="padding-left: 40px;">(ii) a courier agency;</p> <p>(b) by inland waterways.</p>

Entry No.	Particulars
21	<p>Services by GTA:</p> <p>Services provided by a goods transport agency, by way of transport in a goods carriage of</p> <ul style="list-style-type: none"> (a) agricultural produce; (b) Consideration less than Rs. 1500/- per carriage (c) Consideration is less than Rs. 750 per consignee. (d) milk, salt and food grain including flour, pulses and rice; (e) organic manure; (f) newspaper or magazines registered with the Registrar of Newspapers; (g) relief materials meant for victims of natural or manmade disasters, calamities, accidents or mishap; or (h) defence or military equipments.

Entry No.	Particulars
74	<p>Services by Healthcare & Clinical Establishments:</p> <p><i>(zg) "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;</i></p>

Entry No.	Particulars
74	<p><i>(s) "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;</i></p>

Entry No.	Particulars
74	<p>Services by way of-</p> <p>(a)healthcare services by a clinical establishment, an authorised medical practitioner or para-medics;</p> <p>(b)services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.</p>

Thank you !

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