

Amendments in Reverse Charge

Amendment in existing entries of Sec 9(3)

Services

100% liability

1 Supply of Services in relation to transportation of goods by road

By

Goods Transport Agency who has not paid central tax at the rate of 6% (CGST 6% & SGST 6%)
(inserted by N/N 22-2017 C.T. (Rate))



Goods Transport Agency (GTA)

Defined in para 2(ze) of N/N 12/2017 means any person who provides service in relation to transport of goods by road AND issues Consignment Note, by whatever name called.

To

Where a **person liable to pay freight** is

- Any factory** registered under or governed by factories Act, 1948
- Any society registered** under Societies Registration Act, 1860 or under any other law for time being in force in any part of India
- Any **co-operative society** established by or under any;
- Any person registered under CGST Act, under IGST Act, under SGST Act or UTGST Act**
- Any body corporate** established, by or under any law; or
- Any partnership firm** (Including LLP) whether registered or not under any law including **association of persons**
- Any **Casual Taxable Person**

“Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, -
(a) a Department or Establishment of the Central Government or State Government or Union territory; or
(b) local authority; or
(c) Governmental agencies,
Which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services. (N/N 29/2018CT (R) dt 31/12/2018)

Amended

Person Mentioned in (a) to (g) i.e.

- factory
 - Society registered
 - co-operative Society
 - Any person registered under CGST Act, under IGST Act, under SGST Act or UTGST Act
 - Body Corporate
 - Partnership Firm or AOP
 - Casual Taxable Person
- Located in taxable territory

GTA is liable in following cases

- if notified person located in non-taxable territory:
- if person liable to pay freight is not falling under notified categories.

It may be noted that the said services have been simultaneously exempted from payment of tax vide Notification No. 28/2018 CT (R) dated 31.12.2018. Thus, there will be no tax liability in this case. [Refer Chapter 4: Exemptions from GST for discussion on this amendment.]

The above amendment has become effective from 01.01.2019.

Situation	Service Provider – GTA	Service Recipient – Dept. of CG, SG, UT, Local Authority or Govt. Agencies	Taxability
A	Registered	Registered u/s 51 only	
B	Registered	Registered and making taxable supplies	
C	Registered	Un-registered	
D	Un-registered	Un-registered	
E	Un-registered	Registered u/s 51 & not making taxable supplies	
F	Un-registered	Registered and making taxable supplies	

New Category under reverse charge for services added as follows:- (N/N 5/2019 -CT dt 29/03/2019) and (N/N 05/2019 -IT(R) dt 29/03/2019)

5B Services supplied by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project .

Person liable to pay tax is promoter

By

Any Person

To

Promoter

5C Long term lease of land (30 years or more) against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project

Person liable to pay tax is promoter

By

Any Person

To

Promoter

Explanation:-

- (a) The term **“apartment”** shall have the same meaning as assigned to it in clause (e) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).
- (b) the term **“promoter”** shall have the same meaning as assigned to it in clause (zk) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).
- (c) the term **“project”** shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);
- (d) “the term **“Real Estate Project (REP)”** shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).
- (e) The term **“Residential Real Estate Project (RREP)”** shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.
- (f) **“floor space index (FSI)”** shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built.”.

New Category under reverse charge for services added as follows:- (N/N 29/2018 -CT(R) dt 31/12/2018)

12 Services supplied

Newly Inserted

Person liable to pay tax : A banking company located in the taxable territory.

By

Business Facilitator

To

A banking company located in the taxable territory.

Note- The term business facilitator AND Banking company is not been specified in the principal notification. However it has been provided under N/N 12/2017 – CT (R) of exemption & thus same shall be taken into consideration to interpret the meaning of term “Business Facilitator” and “Banking company” which is read as follows:

“2(o) “business facilitator or business correspondent” means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by the Reserve Bank of India;”

- Thus the role of business facilitators is to ensure greater financial inclusion and increasing the outreach of banking sector as they are appointed by Banks as an intermediary.

2(l) “banking company” has the same meaning as assigned to it in clause (a) of section 45A of the Reserve Bank of India Act,1934(2 of 1934)”

Just For Knowledge:-

- Types of services supplied by Business Facilitators** - Business Facilitators provide various services which includes:-
 - Identification of borrowers and fitment of activities
 - Collection and preliminary processing of loan applications including verification of primary information/data
 - creating awareness about saving and other products and education and advice on managing money and debt counselling
 - processing and submission of application of banks
 - promotion and nurturing Self-Help Groups/Joint Liability groups
 - Post -sanction monitoring
 - Monitoring and handholding of Self-Help Groups/Joint Liability Groups/Credit Groups/Other, and
 - Follow up for recovery
- The bank pays to business facilitation in form of commission for providing such services, so as per amendment bank are liable for payment of GST as receiver of service on commission paid by them

13 Services supplied

Person liable to pay tax : A business correspondent, located in the taxable territory

Newly Inserted

By

An agent of Business Correspondent (BC)

To

A business correspondent, located in the taxable territory

Analysis:-

- Business correspondent** - Are appointed by bank after conducting thorough due diligence Business correspondents can be NGOs/MFIs set-up under Societies/Trust Acts, Societies registered under Mutually Aided Co-operative Societies Acts or the Cooperative Societies Acts of States, registered NBFCs not accepting public deposits and post officers
 - Business correspondent supplies all types of services which are provided by business facilitator and in addition they are also engaged into providing small value credit and recovery of the same.
 - The bank pays them in the form of commission or fees for providing such services. These business correspondent have also appointed their agents and paying them commission or fees
- As per the amendment, business correspondents will be liable for the payment of GST as receivers of services on commission paid by the business correspondents to their agent.

14 Services supplied

A registered person, located in the taxable territory

Newly Inserted

By

Security services (services provided by way of supply of security personnel) provided (Any person other than a body corporate)

To

a registered person

Provided that nothing contained in this entry shall apply to, (Exceptions) –

- (a) a Department or Establishment of the Central Government or State Government or Union territory; or
(b) local authority; or
(c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or
- (ii) a registered person paying tax under section 10 of the said Act.

Comment :-

(i) **Service must be supply of security personnel** - The entry cover the security service which is provided by way of supply of security personnel. Therefore it cover only supply of man power for security purpose, such as supply of security man at society/offices/ commercial spaces/bunglows/bouncers/bodygaurd, etc. Hence there must be supply of man or women for security.

(ii) **Following security service are not cover under RCM :-**

a) Dog sniffer b) Investigation Service c) Background check d) CCTV security/IT enable equipment security

(iii) if the services are provided by body corporate, those will continue to be liable under forward charge

(iv) Body corporate as define in section 2(11) of company Act, 2013

Example:- Company, Public Company, One person company, foreign company

(v) Body corporate does include an individual, HUF, A firm (including LLP), AOP or BOI, cooperative society, society.

(vi) Service must be received by Registered person other than specified.

Example : The Professionals Security-Pune, a firm of security agency providing services by way of supply of security personnel to following categories of persons:

- i. XYZ Pvt. Ltd., (company registered under CGST Act, 2017), valuing ₹10 lakhs
- ii. Sindh Co-operative Credit Society, Mumbai which is not registered under CGST Act, 2017, worth 8 lakhs
- iii. Department of Central Government located at Bangalore which has taken registration under CGST Act, 2017 only for the purpose of deducting tax u/s 51 and not for making any taxable supply of goods or services, valuing ₹12 lakhs
- iv. Pune Municipal Corporation registered under CGST Act, 2017 for the purpose of making taxable supply of goods or services. The value of service provided was ₹ 4 lakhs.
- v. Mr. Altaf, from Gujarat (registered under section 10 of CGST Act, 2017) of ₹ 2 lakhs
- vi. Service provided to Star Industries Ltd., USA, value being ₹ 7 lakhs.

Determine the taxable value as well as tax liability of The Professionals Security-Pune assuming CGST @ 9% or SGST @ 9% and IGST @ 18%.

Answer:-

S.No.	Category of Person	Taxability	Taxable Value (₹)	Reason
i.	XYZ Pvt. Ltd. (Registered)	Reverse Charge	-	As per N/N 29/2018; any person other than body corporate providing security service to registered person, then registered person located in taxable territory shall be liable to pay tax on such service
ii.	Sindh Co-op. Credit Society, Mumbai (Un-registered)	Forward Charge	8 lakhs	Reverse charge will be applicable only if service recipient is registered person and Sindh Co-op. Credit Society, Mumbai is not registered under CGST Act. Hence The Professionals Security-Pune will be liable to pay tax on such service
iii.	Department of Central Government, Bangalore (reg. only for deducting TDS)	Forward Charge	12 lakhs	This entry covered in the exception part of N/N 29/2018 and hence tax liability will be on The Professionals Security-Pune under forward charge <i>* Note:- If The Professionals Security – Pune satisfies the conditions laid down in section 16 of IGST Act, 2017, then they can avail the benefit of zero-rated supply in case of export service provided to Star Industries Ltd. USA</i>
iv.	Municipal Corporation (registered and making taxable supply)	Reverse Charge	-	RCM will apply if establishment or department of CG or SG registered under CGST Act for making taxable supply of goods or services
v.	Mr. Altaf, Gujarat (registered u/s 10)	Forward Charge	2 lakhs	This entry covered in the exception part of N/N 29/2018 and hence tax liability will be on The Professionals Security-Pune under forward charge
vi.	Star Industries Ltd., USA	Forward Charge	7 lakhs	RCM will apply only if service provided to registered person located in taxable territory. As Star Industries located in USA which falls outside the taxable territory, The Professionals Security-Pune will be liable to pay tax on such service
	Total		29 lakhs	

Tax liability of The Professionals Security - Pune will be as follows:-

S.No.	Particulars	(₹) in Lakhs	CGST @ 9%	SGST @ 9%	IGST @ 18%
1.	Intra-State Supply	8	72,000	72,000	-
2.	Inter-State Supply	14	-	-	2,52,000
3.	Export	7	-	-	1,26,000*
	Total Tax Liability		72,000	72,000	3,78,000

Note : If the professionals Security - Pune satisfies the conditions laid down in section 16 of IGST Act, 2017, then they can avail the benefit of zero-rated supply in case of export service provided to Star Industries Ltd. USA

Important comment

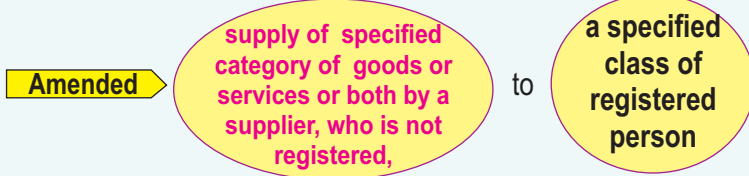
Applicable to all services notified under reverse charge

With effect from 01.01.2019, a new clause has been inserted in the Explanation to reverse charge notifications stipulating that the provisions of this notification, in so far as they apply to the Central Government, State Government, shall also apply to the Parliament and State Legislature.

Amendment in Reverse Charge Sec 9(4)

Sec 9(4) (CGST) Reverse Charge - when supply of goods or services by unregistered person to registered person

The central tax in respect of the



shall be paid by such person on reverse charge basis as the recipient of such supply of 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.

Analysis

As per the erstwhile provision, tax under reverse charge was payable by ALL registered persons on ALL intra-State supplies of goods and/or services received by such registered persons from any unregistered supplier. However, such tax liability had been deferred vide an exemption notification.

Under the amended provision, tax under reverse charge is payable by the NOTIFIED class of registered persons on NOTIFIED categories of intra-State supplies of goods and/or services received by such registered persons from any unregistered supplier.

Similar amendment has also been carried out in section 5(4) of the IGST Act by the IGST (Amendment) Act, 2018. Consequently, tax under reverse charge is payable by the NOTIFIED class of registered persons on NOTIFIED categories of inter-State supplies of goods and/or services received by such registered persons from any unregistered supplier.

Amendments in GST in Real Estate Sector

1 value of inputs and input services purchased from registered supplier is less than 80% **Person liable to pay tax is promoter**

By To Newly Inserted

Purchase from unregistered person

promoter

2 In case of Cement **Person liable to pay tax is promoter**

By To Newly Inserted

Cement is received from unregistered person

promoter

Note :

- (i) Promoter has to pay GST under section 9(4) of the CGST Act, at the rate of 18% on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).
- (ii) Where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement on, under section 9(4) of the CGST Act, at the applicable rate which is 28% (CGST 14% + SGST 14%) at present.
- (iii) Moreover, GST on capital goods shall be paid by the promoter on reverse charge basis, under section 9(4) of the CGST Act at the applicable rates.

Just for Knowledge

Earlier, the effective rate of GST on real estate sector was 8%/12% with ITC. With effect from 01.04.2019, the effective rates of GST for the new projects have been brought down to a large extent.

However, the promoters/builders have been given a one-time option to continue to pay tax at the old rates on ongoing projects (buildings where construction and actual booking both have started before 01.04.2019) which have not been completed by 31.03.2019.

New effective rates of GST for the new projects by promoters are as follows:

- (i) **New rate of 1% without ITC on construction of affordable houses (area 60 sqm in metros/ 90 sqm in non-metros and value upto ₹ 45 lakh).**
- (ii) **New rate of 5% without ITC shall be applicable on construction of:**
 - (a) **all houses other than affordable houses, and**
 - (b) **commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.**

Conditions:

Above tax rates shall be available subject to following conditions:

- (a) Input tax credit shall not be available.
- (b) 80% of inputs and input services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be purchased from registered persons.