TWO DAY NATIONAL CONFERENCE ON GST

REVERSE CHARGE MECHANISM UNDER SECTION 9 OF THE CGST ACT WITH SPECIAL EMPHASIS ON GOVERNMENT SERVICES AND SERVICES RECEIVED FROM OUTSIDE INDIA

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Agenda

1. RCM under Section 9(3) and 9(4) of the CGST Act, 2017
2. RCM Notifications
3. Cross-Border Services
4. Intermediary Omission

REVERSE CHARGE MECHANISM UNDER SECTION 9(3) AND 9(4) OF THE CGST ACT

SECTION 9 - LEVY AND COLLECTION

Section 9 of the CGST Act, 2017 provides for the levy and collection of Tax on the supply of goods or services. Under the forward charge mechanism, the supplier is liable to pay GST at the applicable rate on the taxable supplies made by them.

In certain situations, it may not be feasible or practical to collect tax from the supplier. For instance, such situations may arise where:

- the supplier is an unregistered person;
- the supplier is located outside India while the services are received in India; or
- the services are supplied by the Government.

To address such situations, Sections 9(3) and 9(4) of the CGST Act, 2017 provide for the Reverse Charge Mechanism, under which the recipient of the goods or services is liable to pay GST instead of the supplier.

A corresponding provision for inter-State supplies is contained in Section 5(3) and Section 5(4) of the IGST Act, 2017.

REVERSE CHARGE MECHANISM

9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Section 9 (1) provides for the levy of GST on Forward Charge Basis where the supplier of goods or services or both is liable to discharge GST

REVERSE CHARGE MECHANISM

(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.

Notify specific category of supply of goods or services on which RCM should be applicable

(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax 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 such supply of goods or services or both.

Notify class of registered persons who shall discharge GST under RCM

REVERSE CHARGE UNDER IGST ACT, 2017

Section – 5 Levy and Collection of Tax

(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.

(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax 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 such supply of goods or services or both.

Section 5 of the IGST Act, 2017 is a parallel provision to Section 9 of the CGST Act, 2017 which provides for the levy and collection of tax on Interstate supply of goods or services or both

RELEVANT DEFINITIONS

2 (98) Reverse Charge

"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 sub-section (4) of section 5 of the Integrated Goods and Services Tax Act;

Reverse charge means liability to pay tax is on the recipient of supply instead of supplier

2 (94) Registered Person

"registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number;

Registered person is a person registered in terms of CGST Act, 2017

RELEVANT DEFINITIONS

2 (93) Recipient

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,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

2(105) Supplier

"supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied:

Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims;

RCM INVOICE

Section 31. Tax Invoice

(3) Notwithstanding anything contained in sub-sections (1) and (2)—

……

(f) a registered person who is liable to pay tax under ***sub-section (3) or sub-section (4) of section 9 shall, within the period as may be prescribed***, ***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 or both;

(g) a registered person who is liable to pay tax under ***sub-section (3) or sub-section (4) of section 9*** shall ***issue a payment voucher*** at the time of making payment to the supplier.

Explanation.—For the purposes of clause (f), the expression "supplier who is not registered" shall include the supplier who is registered solely for the purpose of deduction of tax under section 51.

Rule 47A: Time limit for issuing tax invoice in cases where recipient is required to issue invoice

Notwithstanding anything contained in rule 47, where an invoice referred to in rule 46 is required to be issued under ***clause (f) of sub-section (3) of section 31*** by a ***registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9***, he shall issue the ***said invoice within a period of thirty days*** from the ***date of receipt of the said supply of goods or services, or both***, as the case may be."

In cases of RCM, the person who is liable to pay tax has to issue a self-invoice **within 30 days** from the **date of receipt of the goods or services** in terms of ***Rule 47A of the CGST Rules, 2017***

TIME OF SUPPLY FOR TRANSACTIONS UNDER REVERSE CHARGE MECHANISM

Position Prior to 01.11.2024

GST under RCM becomes payable in terms of Section 13(3) of the Act, at the **earlier** of the following events:

- Date on which the payment is recorded in the books of accounts of the Company or debited from the Company's bank account; **or**
- Date immediately following 60 days from the date of invoice issued by the supplier of service.

Position Post to 01.11.2024

Post the 2024 Amendment one additional condition was inserted for determining the date for payment of tax for transaction under RCM

Accordingly, GST under RCM becomes payable in terms of Section 13(3) of the Act, at the **earlier** of the following events:

- Date on which the payment is recorded in the books of accounts of the Company or debited from the Company's bank account; **or**
- Date immediately following 60 days from the date of invoice issued by the supplier of service: **or**
- Date of issuance of a self-invoice by a taxpay, which in terms of Section 31(3)(f) of the Act read with Rule 47A of the Rules is ***30 days from the date of receipt of service***

INPUT TAX CREDIT FOR TRANSACTIONS UNDER RCM

2 (62) Input Tax

"input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes-

(a) the integrated goods and services tax charged on import of goods;

(b)the tax payable under the provisions of ***sub-sections (3) and (4) of section 9;***

(c)the tax payable under the provisions of ***sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act***;

(d)the tax payable under the provisions of ***sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act***; or

(e)the tax payable under the provisions of ***sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act***,

but does not include the tax paid under the composition levy;

2 (63) Input Tax Credit

"input tax credit" means the credit of input tax;

Input tax includes tax paid under RCM

INPUT TAX CREDIT FOR TRANSACTIONS UNDER RCM

16. Eligibility and conditions for taking input tax credit

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person

Rule 36: Documentary requirements and conditions for claiming input tax credit

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,—

…

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

A registered person can avail ITC of the tax paid under RCM subject to the conditions prescribed under Section 16 and 17 of the CGST Act, 2017 basis the self invoice raised

REVERSE CHARGE MECHANISM NOTIFICATIONS

RELEVANT NOTIFICATIONS

Section 9(3)- CGST

- **NOTIFICATION NO. 13/2017-CENTRAL TAX (RATE), DATED 28-6-2017**
- Provides for the list of Services on which CGST is to be paid under RCM

Section 5(3) IGST

- **NOTIFICATION NO. 10/2017-INTEGRATED TAX (RATE), DATED 28-6-2017**
- Provides for the list of Services on which the IGST is to be paid under RCM

Section 9(4)-CGST

- **NOTIFICATION NO. 7/2019-CENTRAL TAX (RATE), DATED 29-3-2019**
- Provides for the class of registered persons liable to discharge CGST under RCM

NOTIFICATION NO. 13/2017-CT (RATE), DATED 28.06.2017

S. No.	Description of Service	Supplier of Service	Recipient of Service
1	Services by Goods Transport Agency (GTA) for transportation of goods by road to specified entities	Goods Transport Agency (GTA)	Factories, registered persons, corporate bodies, casual taxable persons in taxable territory
2	Legal services supplied by individual advocate, senior advocate or firm of advocates	Individual Advocate or Advocate Firm	Any business entity in taxable territory
3	Services by an arbitral tribunal to a business entity	Arbitral tribunal	Any business entity in taxable territory
4	Sponsorship services to a body corporate or partnership firm	Any person other than body corporate	Body corporate or partnership firm in taxable territory
5	Services by Central/State/UT Government/local authority to business entities excluding certain exempt services	Governments or local authorities	Business entities in taxable territory
5A	Renting of immovable property by government entities to registered persons	Central/State/UT Government/local authority	Registered persons under CGST Act
5AA	Renting residential dwelling to a registered person	Any person	Registered person
5AB	Renting non-residential property by unregistered persons to registered persons, excluding composition scheme	Any unregistered person	Registered person (excluding composition scheme)
5B	Transfer of development rights or Floor Space Index (FSI) to promoter	Any person	Promoter
5C	Long term lease of land (30 years or more) for construction to promoter	Any person	Promoter
6	Services supplied by directors to company or body corporate	Director	Company or body corporate in taxable territory

NOTIFICATION NO. 13/2017-CT (RATE), DATED 28.06.2017

S. No.	Description of Service	Supplier of Service	Recipient of Service
7	Services by insurance agents to any person carrying on insurance business	Insurance agent	Insurance business entity in taxable territory
8	Services by recovery agents to banking companies, financial institutions, NBFCs	Recovery agent	Banks, financial institutions, NBFCs in taxable territory
9	Transfer or permitting use/enjoyment of copyright by music composer, photographer, artist to music company	Music composer, photographer, artist	Music company, producer in taxable territory
9A	Similar copyright use/enjoyment by author to publisher, with forward charge options	Author	Publisher in taxable territory
10	Services by members of Overseeing Committee to Reserve Bank of India	Members of RBI Overseeing Committee	Reserve Bank of India
11	Services by individual Direct Selling Agents (DSAs) to banking or NBFC entities	Individual DSA (other than firm or body corporate)	Banks or NBFCs in taxable territory
12	Services by Business Facilitators to banking companies	Business facilitator	Banks in taxable territory
13	Services by agents of Business Correspondents to Business Correspondents	Agent of BC	BCs in taxable territory
14	Security services by supply of security personnel to registered person (with exclusions)	Any person other than body corporate	Registered person in taxable territory
15	Renting of motor vehicles to body corporate where provider opts 5% GST and is eligible for ITC	Any person other than body corporate (opted for 5%)	Body corporate in taxable territory
16	Lending securities under SEBI approved scheme	Lender	Borrower through approved intermediary

ENTRY 5: SERVICES BY CENTRAL/STATE/UT GOVERNMENT/LOCAL AUTHORITY TO BUSINESS ENTITIES EXCLUDING CERTAIN EXEMPT SERVICES TO BUSINESS ENTITIES IN TAXABLE TERRITORY (1/9)

RELEVANT DEFINITIONS

Section 2(53) of the CGST Act: **Government**

"*Government*" means the Central Government

Section 2(53) of the SGST Act of each State or Union Territory defines the term "Government" for the purposes of the respective State or Union Territory GST Act.

Business Entity (As per Notification No.12/2017)

"*business entity*" means any person carrying out business;

2 (103) of the CGST Act: **State**

"*State*" includes a Union territory with Legislature;

2 (114) of the CGST Act: **Union Territory**

"*Union territory*" means the territory of—

(a)the Andaman and Nicobar Islands;
(b) Lakshadweep;
(c) Dadra and Nagar Haveli and Daman and Diu;
(d) Ladakh;
(e) Chandigarh; and
(f) other territory

ENTRY 5: SERVICES BY CENTRAL/STATE/UT GOVERNMENT/LOCAL AUTHORITY TO BUSINESS ENTITIES EXCLUDING CERTAIN EXEMPT SERVICES TO BUSINESS ENTITIES IN TAXABLE TERRITORY (2/9)

Section 2(69) of the CGST Act: **Local Authority**

"*local authority*" means—

(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;

(b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal fund or local fund;

Explanation.—For the purposes of this sub-clause-

> (a) "local fund" means any fund under the control or management of an authority of a local self-government established for discharging civic functions in relation to a Panchayat area and vested by law with the powers to levy, collect and appropriate any tax, duty, toll, cess or fee, by whatever name called;
>
> (b) "municipal fund" means any fund under the control or management of an authority of a local self-government established for discharging civic functions in relation to a Metropolitan area or Municipal area and vested by law with the powers to levy, collect and appropriate any tax, duty, toll, cess or fee, by whatever name called.

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371 and article 371J of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution;

Local Authority includes Panchayath, Municipality, Municipal Committee, Cantonment board, Reginal or District council etc

ENTRY 5: SERVICES BY CENTRAL/STATE/UT GOVERNMENT/LOCAL AUTHORITY TO BUSINESS ENTITIES EXCLUDING CERTAIN EXEMPT SERVICES TO BUSINESS ENTITIES IN TAXABLE TERRITORY (3/9)

Definition of Government Authority

Government Authority means an authority or a boards or any other body

- (i) Set up by an Act of Parliament or a State Legislature; or
- (ii) Established by any Government;

With 90 per cent or more participation by way of equity or control, to carry our any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

ENTRY 5: SERVICES BY CENTRAL/STATE/UT GOVERNMENT/LOCAL AUTHORITY TO BUSINESS ENTITIES EXCLUDING CERTAIN EXEMPT SERVICES TO BUSINESS ENTITIES IN TAXABLE TERRITORY (4/9)

Definition of Sovereign Functions

BWSSB v. A. Rajappa And Ors.[CA No. 1555/1970]

The scope of sovereign functions restricted to the specific category of inalienable functions such as defence, peace making or war, foreign affairs, acquisition of a territory and like activities where the state is not answerable to courts.

State of Uttar Pradesh v. Jai Bir Singh [CA No. 897/2002]

The Seven Judge Bench of Supreme Court expressed its disagreement with the earlier decision of the Hon'ble Supreme Court in the Case of BWSSB and referred to Nine Judge Bench to determine what qualifies as sovereign functions. Presently the issue is pending for consideration.

ENTRY 5: SERVICES BY CENTRAL/STATE/UT GOVERNMENT/LOCAL AUTHORITY TO BUSINESS ENTITIES EXCLUDING CERTAIN EXEMPT SERVICES TO BUSINESS ENTITIES IN TAXABLE TERRITORY (5/9)

RELEVANT CIRCULAR

CIRCULAR NO. 245/02/2025-GST dated 28.01.2025

Whether Delhi Development Authority (DDA) is a local authority as per section 2(69) of the CGST Act, 2017?

As per entry at Sr. No. 5 of Notification No. 13/2017-CTR, dated 28-6-2017, services supplied by local authority to a business entity are taxable on Reverse Charge (RCM) basis.

Local authority under section 2(69) of the CGST Act, 2017 has been defined as a "Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund"

It means an authority which is similar to the elected self-governing body such as Municipal Committee and which is entrusted with the control and management of municipal or local fund can be termed as local authority.

DDA does not meet the requirement of local authority as per section 2(69) of the CGST Act, 2017. Thus, the 55th GST Council clarified that DDA cannot be treated as local authority under GST law.

ENTRY 5: SERVICES BY CENTRAL/STATE/UT GOVERNMENT/LOCAL AUTHORITY TO BUSINESS ENTITIES EXCLUDING CERTAIN EXEMPT SERVICES TO BUSINESS ENTITIES IN TAXABLE TERRITORY (6/9)

ISSUES

Consideration vs Fees:

- There is constant friction over what constitutes a "service." Do statutory fees, court fees, or penalties fall under Entry 5?
- The CBIC eventually had to issue circulars clarifying that fines, penalties for breach of contract, and late fees are not "considerations" for a service, but the line between a sovereign function and a taxable service remains blurred in many local municipal transactions.

ENTRY 5: SERVICES BY CENTRAL/STATE/UT GOVERNMENT/LOCAL AUTHORITY TO BUSINESS ENTITIES EXCLUDING CERTAIN EXEMPT SERVICES TO BUSINESS ENTITIES IN TAXABLE TERRITORY (7/9)

RELEVANT CASELAW

In Re: JSW Steel Ltd. 2019 (30) G.S.T.L. 115 (A.A.R.- GST)

FACTS:

- Company obtained lease of land from the Government for the purpose of mining.
- The Company paid Royalty along with other mandatory statutory contributions such as DMF and NMET.
- The Company sought Advance Ruling on applicability of GST under reverse charge mechanism in terms of Notification No. 13/2017-CT (Rate) dated 28.06.2017 as the services are provided by Government

Findings:

- Lease of land by the Government for mining purposes would amount to services provided by the Government.
- The recipient i.e., the Company would be liable to discharge GST under RCM in terms of Section 9(3).

The larger bench of SC has now settled the issue in the case of ***Mineral Area Development Authority Etc vs M/S Steel Authority Of India,*** wherein it has been held that Royalty charged by the State Governments is in the form of consideration and can be subjected to tax.

ENTRY 5: SERVICES BY CENTRAL/STATE/UT GOVERNMENT/LOCAL AUTHORITY TO BUSINESS ENTITIES EXCLUDING CERTAIN EXEMPT SERVICES TO BUSINESS ENTITIES IN TAXABLE TERRITORY (8/9)

RELEVANT CASELAW

In Re: BHARTI HEXACOM LTD. 2021 (49) G.S.T.L. 93 (Commr. Appl. - GST - Raj.)

FACTS:

- The Company procured Telecommunication Licensing Services and Spectrum Allotment services by Government on payment of licence fee and spectrum usage charges.
- The Company for the services availed from the Government discharged GST under reverse charge.
- The Company later filed an application for Refund of GST paid under RCM claiming that the payment made towards the services received from the Government is not taxable.

Findings:

- The activity of grant of license and allocation of spectrum by Government to a private company qualifies as supply in terms of Section 7 of the CGST Act, 2017.
- In terms of Notification 13/2017- CT (Rate) dated 28.06.2017 the license fee paid by the Company qualify as consideration for the services received from the Government which is liable to GST under RCM.
- Accordingly, refund claim was rejected.

ENTRY 5: SERVICES BY CENTRAL/STATE/UT GOVERNMENT/LOCAL AUTHORITY TO BUSINESS ENTITIES EXCLUDING CERTAIN EXEMPT SERVICES TO BUSINESS ENTITIES IN TAXABLE TERRITORY (9/9)

RELEVANT CASELAW

In Re: TATA COFFEE LTD. 2020 (32) G.S.T.L. 120 (A.A.R. – GST – KAR)

FACTS:

- The Company was engaged in coffee/tea/pepper plantations and was transferring and depositing the fallen timbers to nominated Government depot without receipt of consideration. The Government Depot auctioned timber on behalf of the Company. Accordingly, the Company receives consideration after the auction of such fallen timber by the Government depot.
- The Government deport transfers the consideration received from the sale of timbers in auction to the Company after deducting certain charges towards supervision charges for conducting auction.

Findings:

- Since said depot is auctioning goods on behalf of applicant, its activities are fully covered in realm of an agent under GST law. Accordingly, in terms of Entry 3 of Schedule-I to CGST Act transfer of goods from principal to agent would amount to supply even if the same is done without consideration.
- The services provided by the Government Depot is subject to GST under RCM in terms of Notification No. 13/2017

ENTRY 5A: RENTING OF IMMOVABLE PROPERTY BY GOVERNMENT ENTITIES TO REGISTERED PERSONS (1/2)

RELEVANT DEFINITIONS

Government Entity

"Government Entity" means an authority or a boars or any other body including a society, trust, corporation

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

(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 Government or a local authority.

Immovable Property (As per 3.2. Section 3 of the TOPA)

immoveable property does not include standing timber, growing crops or grass: "instrument", means a non-testamentary instrument:"

Immovable Property (As per 3(26) of the General Clauses Act, 1897)

immovable property to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth

2 (94) Registered Person

"*registered person*" means a person who is registered under section 25 but does not include a person having a Unique Identity Number;

ENTRY 5A: RENTING OF IMMOVABLE PROPERTY BY GOVERNMENT ENTITIES TO REGISTERED PERSONS (2/2)

ISSUES

Long-Term Leases vs. Renting:

- The most significant issue is whether a 99-year lease (common with state industrial development corporations like MIDC or RIICO) qualifies as "renting."
- While upfront premiums (salami) for long-term leases of industrial plots have specific exemptions, disputes frequently arise over whether lease renewals or commercial leases by the government would be an additional consideration for such 99 year lease and consequently expemt or would be construed to be independent lease rentals subjected to GST under RCM?

ENTRY 5AA: RENTING RESIDENTIAL DWELLING BY ANY PERSON TO REGISTERED PERSON (1/3)

RELEVANT DEFINITIONS

Residential Dwelling (Taxation of Services: An education Guide)

4.13.1 What is a '*residential dwelling*'?

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.

Section 2(84) of the CGST Act: *Person*

(84) "*person*" includes-

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a firm;

(e) a Limited Liability Partnership;

(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);

(h) any body corporate incorporated by or under the laws of a country outside India;

(i) a co-operative society registered under any law relating to co-operative societies;

(j) a local authority;

(k) Central Government or a State Government;

(l) society as defined under the Societies Registration Act, 1860 (21 of 1860);

(m) trust; and

The legislature has adopted an expansive and inclusive definition of the term person ensuring that the GST frame work extends not only to natural persons but also various forms of juridical and artificial persons, government bodies, foreign entities

ENTRY 5AA: RENTING RESIDENTIAL DWELLING BY ANY PERSON TO REGISTERED PERSON (2/3)

ISSUES

The "Personal Use" Trap for Proprietors: When the RCM entry was introduced, it created panic among sole proprietors who rented homes for their families in their personal capacity. Because they held a GST number, the authorities expected them to discharge RCM. The Delhi High Court had to intervene (*Seema Gupta v. UOI*), prompting the GST Council to clarify that RCM does not apply if a proprietor takes a residential dwelling in a personal capacity, uses it as their own residence, and does not charge the rent to their business accounts.

Corporate Housing and Blocked ITC: When a company rents a residential apartment to provide rent-free accommodation to an executive or director, the company must pay 18% GST under RCM. However, claiming Input Tax Credit (ITC) on this payment is highly controversial. Tax authorities frequently block it under Section 17(5)(g) of the CGST Act, categorizing it as an "employee benefit" or "personal consumption," effectively making it an absolute tax cost for the business

ENTRY 5AA: RENTING RESIDENTIAL DWELLING BY ANY PERSON TO REGISTERED PERSON (1/3)

RELEVANT CASELAW

In Re: Eastern Condiments ***(2025) 37 Centax 58 (A.A.R. - GST - Ker.)***	The applicant, a registered person under the GST law, had taken residential dwellings on rent from various unregistered landlords to provide accommodation to its employees as a part of their employment terms, without recovering any consideration from them. The applicant sought an advance ruling on whether GST was payable under RCM in terms of Entry 5AA of Notification No. 13/2017-Central Tax (Rate), which covers services by way of renting of residential dwellings to a registered person, and whether input tax credit of the GST paid under RCM would be available.
	The Authority held that Entry 5AA of Notification No. 13/2017 squarely applies to the transaction between the landlords and the applicant, as the service consists of renting a residential dwelling to a registered person. Accordingly, the applicant is liable to discharge GST under RCM on the rent paid to the landlords. The Authority clarified that the subsequent provision of accommodation by the applicant to its employees, being a perquisite provided under the employment contract without any recovery, is a separate transaction covered under Schedule III and is not liable to GST. Consequently, while GST is payable under Entry 5AA on the inward renting service, the applicant is not entitled to avail ITC of the tax paid under RCM, as the inward supply is used for making an outward supply that is outside the scope of GST.

ENTRY 5AB: RENTING NON-RESIDENTIAL PROPERTY BY UNREGISTERED PERSONS TO REGISTERED PERSONS (EXCLUDING COMPOSITION SCHEME)

ISSUES

The Composition Scheme Dichotomy: The government intentionally excluded Composition Scheme dealers from Entry 5AB (commercial rent). However, they forgot or chose not to exclude them from Entry 5AA (residential rent). This creates a strange compliance map: a composition dealer doesn't pay RCM on their commercial shop rent, but if they rent a residential property for business use, they are liable for RCM.

GST LIABILITY ON RENTING OF IMMOVABLE PROPERTY

Property Type	Tenant Status	Purpose of Use	GST Rate	Tax Charge Mechanism	Relevant GST Notifications & Amending Provisions
Residential	Unregistered Person / Salaried Individual	Residential Use	NIL (Exempt)	Not Applicable	Notification No. 12/2017-Central Tax (Rate) (Entry 12).
Residential	Registered Person (e.g., Company, LLP, Firm)	Any Use (Residential/ Guest House/ Office)	18%	RCM (Tenant pays directly to Govt.)	Notification No. 05/2022-Central Tax (Rate)
Residential	Registered Proprietor (in personal capacity)	Own Personal Residence	NIL (Exempt)	Not Applicable	Notification No. 15/2022-Central Tax (Rate)
Commercial (Shop, Office, Warehouse)	Any Tenant	Commercial / Business	18%	Forward Charge (FCM) (Landlord collects GST)	Notification No. 11/2017-Central Tax (Rate)
Commercial (Shop, Office, Warehouse)	Registered Tenant AND Landlord is Unregistered	Commercial / Business	18%	RCM (Tenant pays directly to Govt.)	Notification No. 09/2024-Central Tax (Rate)
Commercial (Shop, Office, Warehouse)	Composition Taxpayer AND Landlord is Unregistered	Commercial / Business	NIL (Exempt)	Not Applicable	Notification No. 07/2025-Central Tax (Rate)
Religious / Charitable Precincts	General Public	Room, Shop, or Community Hall	NIL (Exempt)	Subject to low-rental caps	Notification No. 12/2017-Central Tax (Rate) (Entry 13)

RENTING OF IMMOVABLE PROPERTY

<table>
<tr><td rowspan="2">State of Karnataka v. Taghar Vasudev Ambrish

2025-VIL-94-SC</td><td>The respondent, a co-owner of a residential property, leased the premises to a company, which in turn sub-let the property as hostel accommodation for students and working professionals. The respondent claimed exemption under Entry 13 of Notification No. 9/2017-Integrated Tax (Rate) dated 28.06.2017, contending that the property was rented as a residential dwelling for use as residence. The Revenue challenged the exemption, arguing that the lessee itself did not use the premises as a residence.</td></tr>
<tr><td>The Hon'ble SC upheld the High Court's ruling and held that the exemption under Entry 13 is available as long as the residential property is ultimately used as a residence, irrespective of whether such use is by the lessee or the sub-lessee. The Court adopting the dictionary meaning of the term "residential dwelling", observed that the exemption is activity-specific and not person-specific, and that hostel accommodation used for long-term stay by students and working professionals qualifies for exemption under the said notification. Accordingly, the respondent was held entitled to the GST exemption, and the Revenue's appeal was dismissed.</td></tr>
</table>

OTHER RELEVANT CIRCULARS/ CLARIFICATIONS

CIRCULARS

CIRCULAR NO. 140/10/2020 – GST dated 10.06,2020

Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

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.

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 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.

Accordingly, 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.

CIRCULARS

CIRCULAR NO. 201/13/2023-GST dated 01.08.2023

- **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**:
- 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.
- The 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.

CIRCULAR NO.27/01/2018-GST dated 04.01.2018

Whether legal services other than representational services provided by an individual advocate or a senior advocate to a business entity are liable for GST under reverse charge mechanism?

Yes. In case of legal services including representational services provided by an advocate including a senior advocate to a business entity, GST is required to be paid by the recipient of the service under reverse charge mechanism, i.e. the business entity.

REVERSE CHARGE MECHANISM SECTION 9(4)

SECTION 9(4)- PRE AND POST AMENDMENT

Prior to substitution in 2018

The central tax 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.“

The Government may, on the recommendations of the Council, by notification, *__specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax 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 such supply of goods or services or both.

Post 2018 substitution

Substituted by the Central Goods and Services Tax (Amendment) Act, 2018, w.e.f. 1-2-2019.

Prior to 2018 amendment: Every taxable supply received by a registered person from an unregistered supplier attracted GST under the reverse charge mechanism in the hands of registered person in terms of Section 9(4) of the CGST Act

Post 2018 substitution: The scope of applicability of this provision was restricted.

Accordingly, RCM was made applicable only to specified categories of supplies received by notified classes of registered persons from unregistered suppliers.

REVERSE CHARGE ON PURCHASES FROM UNREGISTERED SUPPLIERS- PRE AMENDMENT

- Section 9(4) of the CGST Act, 2017 mandated every registered person to pay GST under Reverse Charge Mechanism (RCM) on taxable procurements from unregistered suppliers.
- Notification No. 8/2017-Central Tax (Rate) dated 28.06.2017 granted exemption only where aggregate procurements from unregistered suppliers did not exceed ₹5,000 per day.
- Consequently, procurements exceeding the threshold attracted GST under RCM.

Practical Issues:

- Significant compliance burden on businesses making routine purchases from small vendors.
- Defeated the objective of providing relief to unregistered suppliers and small businesses.
- Daily monitoring of purchases across multiple locations became administratively cumbersome.
- The GST Council itself acknowledged that the provision created disproportionate compliance with negligible revenue gains.

REVERSE CHARGE ON PURCHASES FROM UNREGISTERED SUPPLIERS- PRE AMENDMENT

?

Whether taxpayers remained liable to pay GST under Section 9(4) for the period **01.07.2017 to 13.10.2017**, notwithstanding the subsequent suspension and eventual substitution of the provision.

Notification No. 38/2017-CT(R) dated 13.10.2017 granted complete exemption from Section 9(4), which was subsequently extended from time to time.

Eventually, the CGST (Amendment) Act, 2018 substituted Section 9(4) with a completely new framework applicable only to notified classes of persons and specified supplies.

The minutes of the 22nd GST Council Meeting reveal that Section 9(4) was never intended to continue in its original form.

The substitution of Section 9(4) was not intended to impose a new levy but to remove an unworkable and burdensome provision.

GST Council records clearly demonstrate that Section 9(4) was considered impractical from the inception of GST.

Parliament ultimately substituted the provision with an entirely different mechanism restricting RCM only to notified persons and specified supplies.

The amendment was therefore curative and remedial rather than creating a new tax regime and therefore has retrospective effect.

NOTIFICATION NO. 07/2019-CT (RATE), DATED 29-03-2019- POST AMENDMENT

Sl. No.	Category of Supply of Goods and Services	Recipient of Goods and Service
1	Supply of goods or services or both required to be purchased by the promoter for construction project	Promoter
2	Cement (CTH 2523)	Promoter
3	Capital goods supplied to a promoter for construction of a project on which tax is payable or paid	Promoter

Supply of Goods or Services for Construction Project – Entry 1 of the Notification

Sl. No.	Category of Supply of Goods and Services	Recipient of Goods and Service
1	Supply of goods or services or both required to be purchased by the promoter for construction project	Promoter

Pursuant to Section 9(4) of the CGST Act read with Notification No. 07/2019-Central Tax (Rate) and Notification No. 11/2017-Central Tax (Rate), promoters opting for the concessional GST regime are required to procure a minimum percentage of inputs and input services from registered suppliers.

80% Procurement Requirement

- A minimum of 80% (by value) of inputs and input services (subject to specified exclusions) used in construction of a project must be procured from registered suppliers.
- The balance up to 20% may be procured from unregistered suppliers without any additional tax implication.

Tax Implication on Shortfall

- If procurement from registered suppliers falls below the prescribed 80% threshold, the promoter is liable to pay GST under RCM on the value of the shortfall.
- Such liability is determined project-wise at the end of the financial year and discharged by the promoter.
- Cement procured from unregistered suppliers is subject to RCM at the applicable GST rate at the time of receipt, irrespective of the 80% threshold.

RELEVANT DEFINITIONS

Promoter (As per Notification No.13/2017)

(j) the term "*promoter*" shall have the same meaning as assigned to in clause (zk) of Section 2 of the Real Estate (Regulation and Development) Act, 2016

Definition of "*Promoter* " *[*As per Real Estate (Regulation And Development) Act, 2016]

(zk) "promoter" means,-

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of-

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.-- For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the 3[person] who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

IGST Under RCM For On-site Services Rendered By Overseas Branch To The Head Office in India

INTRODUCTION

Cross-border transactions in services refers to the supply of services wherein either:

- The supplier is located in one country, and the recipient is located in another, or
- The services are used or consumed outside the country where the supplier is located.

Importance of Place of Supply in cross-border transactions

- Classifying supply as *intra-State*, *inter-State*, *export*, or *import*
- Determining whether tax is to be levied and the person liable to pay such tax (Forward Charge or Reverse Charge)
- Deciding whether the supply attracts GST, or qualifies as export and consequently is eligible for a refund.

INTRODUCTION

Under the Indian GST regime, such transactions are governed under the Integrated Goods and Services Tax Act, 2017, particularly under:

- Section 7 – Inter state supply
- Section 13 – Place of supply where either the supplier or the recipient is located outside India.
- Section 2(6) – Defines *"export of services"*
- Section 2(11) – Defines *"import of services"*
- *Section 2(13)* – Defines *"Intermediary"*
- *Section 2(17)*- Defines "*OIDAR services"*

LOCATION OF SUPPLIER AND RECIPIENT OF SERVICE

Location of the Supplier of Services

“(15) "location of the supplier of services" means,-

- *(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;*
- *(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*
- *(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and*
- *(d) in absence of such places, the location of the usual place of residence of the supplier;”*

LOCATION OF SUPPLIER AND RECIPIENT OF SERVICE

Location of the Recipient of services

“(14) "location of the recipient of services" means,-

- *(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;*
- *(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*
- *(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and*
- *(d) in absence of such places, the location of the usual place of residence of the recipient;”*

The location of the supplier of services/recipient of services is primarily the registered place of business from where the service is supplied/received. If the service is provided/received at a fixed establishment other than the registered office, such fixed establishment is considered the location. In case multiple establishments are involved, the one most directly concerned with the supply is relevant for determining the location. Where none of these apply, the usual place of residence of the supplier/recipient is deemed to be the location.

IMPORT OF SERVICE

Import of Services:

Section 2(11) "import of services" means the supply of any service, where-

(i) the supplier of service is located outside India;

(ii) the recipient of service is located in India; and

(iii) the place of supply of service is in India;

A service is treated as an import when it is supplied by a person located outside India to a recipient in India, and the place of supply is also determined to be in India. Such services are treated as inter-State supplies under Section 7(4) of the IGST Act and attract IGST under reverse charge mechanism (RCM), where the recipient is liable to pay tax.

?

Whether the provision of on-site services by a branch office located outside India to the Customers abroad qualify as "import of service"?

IMPORT OF SERVICE

Can there be import of services between the Distinct Establishments?

Explanation 1 to Section 8 of the IGST Act, 2017 - "*For the purposes of this Act, where a person has—*

(i) an establishment in India and any other establishment outside India;

(ii) an establishment in a State or Union territory and any other establishment outside that State; or

(iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons."

- Under GST, an establishment in India and its other establishment abroad are considered as distinct persons as per Explanation 1 to Section 8 of the IGST Act. The services between such establishments of distinct persons are not supplies between 2 entities and hence there is no liability on the Indian entity to pay tax under RCM.
- The service tax being destination-based consumption tax, the transactions occurring entirely outside India cannot be taxed. By virtue of Section 66A (2), establishment of same entity located in different jurisdictions are deemed distinct only to avoid unintended extra territorial taxation and not create tax liability on service consumed outside India.

IMPORT OF SERVICE

The concept of Import of Service under GST is pari materia to the provision under the Service Tax regime

Section 66A of the Finance Act, 1994 was introduced to levy service tax on services received from outside India where the service provider was located outside India and the recipient was located in India. Since the foreign service provider was outside the jurisdiction of the Indian tax authorities, the provision stipulated payment of tax under reverse charge mechanism, under which the recipient in India was deemed to be the provider of the service and made liable to pay service tax.

- Both laws deem establishments of the same legal entity located in India and outside India to be distinct persons solely for determining the taxability of cross-border services.
- Under both regimes, taxability is based on the place where the service is consumed (Place of Provision of Services Rules, 2012 under Service Tax and Place of Supply provisions under the IGST Act).
- In both regimes, where an import of service is taxable, the recipient in India is liable to discharge tax under the reverse charge mechanism.

IMPORT OF SERVICE

Torrent Pharmaceuticals Ltd. v. Commissioner of S.T. Ahmedabad, *2015 (39) S.T.R. 97 (Tri.- Ahmd)*	The appellant, a pharmaceutical manufacturer with units in India, exported goods directly to overseas customers while maintaining representative branch offices abroad to facilitate its export business. These foreign branch offices neither sold goods nor earned independent revenue and were entirely funded through remittances from the Indian head office, including employee salaries. The Revenue alleged that the remittances constituted consideration for services provided by the overseas branch offices to the Indian head office and sought to levy service tax accordingly.
	The Tribunal held that Section 66A of the Finance Act, 1994 treats an overseas branch and its Indian head office as separate persons only for determining the place of taxation under the reverse charge mechanism. It does not permit taxation of services between different establishments of the same legal entity, as a person cannot render services to itself. The Tribunal also observed that there was no scope for tax avoidance since the appellant was eligible to avail full CENVAT credit.

IMPORT OF SERVICE

Milind Kulkarni v. Commissioner of Central Excise, Pune-I, *2016 (44) S.T.R. 71 (Tri.-Bom)*	The assessee rendered "information technology services" off-shore and on-site through its overseas branches and the expenses of running the said branches were duly met by the assessee. The Department contended that the payment made by the assessee to the said branches were in the nature of consideration for taxable services rendered by branch to head office and contended that the assessee was liable to pay tax on reverse charge basis.
	The Tribunal held that an overseas branch forms part of the same legal entity as the Indian head office and that any activities undertaken by the branch in furtherance of the company's contractual obligations cannot be regarded as taxable services rendered to the head office. It observed that Section 66A(2) is a limited charging provision intended only to determine taxability of services received from abroad and cannot override the commercial and legal unity between a head office and its branches. Accordingly, the Tribunal held that treating such intra-entity activities as taxable services was without authority of law.

IMPORT OF SERVICE

KPIT Technologies v. Commissioner of Central Excise *2017 (7) G.S.T.L. 468*	The appellant, engaged in providing software development and information technology services to overseas customers, operated through overseas branches and permanent establishments to facilitate the execution of export contracts. The Revenue sought to levy service tax under Section 66A of the Finance Act, 1994 on remittances relating to expenditure incurred by these overseas branches, alleging that the branches had rendered Business Auxiliary Services to the Indian head office and that the remittances constituted consideration for such services.
	The Tribunal observed that Section 66A merely creates a legal fiction to treat the recipient as the provider for the limited purpose of levying service tax under RCM and does not deem remittances between a HO and its overseas branches to be consideration for taxable services. It held that a branch and its HO remain the same commercial entity, and in the absence of an identifiable service rendered by the overseas branch to the Indian establishment for consideration, inter-branch remittances cannot be subjected to service tax. The Tribunal further held that Section 66A(2) must be read in conjunction with Section 66A(1) and cannot be invoked as a charging provision.

VALUATION OF IMPORT OF SERVICES- CIRCULAR NO.210/4/2024-GST DATED 26.06.2024

The CBIC vide Circular No. 210/4/2024-GST dated 26.06.2024 clarified that in cases where a foreign affiliate is providing services to related domestic entity and the recipient is eligible for full input tax credit, the value of such supply declared in the invoice by the domestic entity shall be deemed to be the open market value of the said goods or services. Further, where invoice is not issued by the domestic entity for the same services, the value of such services may be deemed to be declared as Nil and may be deemed as open market value.

3.7 In view of the above, it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

PLACE OF SUPPLY OF SERVICES S.13 OF THE IGST ACT, 2017

*"**Section 13. Place of supply of services where location of supplier or location of recipient is outside India**.*
(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.
(2) The place of supply of services, except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:
Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services."

Section 13(2) of the IGST Act, 2017 lays down the default rule for determining the place of supply of services in cases where either the supplier or the recipient is located outside India. According to this provision, the place of supply of services shall be the location of the recipient of services.

This provision is the baseline for determining the taxability in cross border transactions and applies unless the service falls under the specific cases enumerated in sub-sections (3) to (13) of Section 13. Hence, Section 13(2) ensures that services are taxed based on the destination principle, aligning with the fundamental character of GST as a destination-based consumption tax.

PLACE OF SUPPLY OF SERVICES S.13 OF THE IGST ACT, 2017

Section	Service	Place of supply
Section 13(3)(a)	Services provided in respect of goods that are required to be made physically available by recipient to the supplier in order to provide the service	Location where the services are actually performed
Section 13(3)(b)	Place of supply of services provided to an individual either as recipient of service or person acting on behalf of the recipient of service requiring physical presence of the receiver or person acting on behalf of the recipient	Location where the services are actually performed
Section 13(4)	Directly in relation to immovable property including services supplied by experts, supply of accommodation by a hotel, inn, etc.	location at which immovable property is located or intended to be located
Section 13(5)	Admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition, or similar events and services ancillary to such event	Place where the event is actually held

PLACE OF SUPPLY OF SERVICES S.13 OF THE IGST ACT, 2017

Section	Service	Place of supply
Section 13(8)	a. Services supplied by banking company or a FI or NBFI to account holders b. Intermediary services c. Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month	Location of the supplier of services
Section 13(10)	Passenger transportation service	Place where the passenger embarks on a conveyance for a continuous journey
Section 13(11)	Services on board a conveyance during the course of passenger transportation including services consumed wholly or substantially on board	First scheduled point of departure of that conveyance for the journey
Section 13(12)	Online information and data access and retrieval services	Location of the recipient of services

POSSIBLE SCENARIOS

Place of Supply in India or Outside India?

On-site hardware repairs	• A foreign client sends defective servers or hardware to India for physical repair.
Installation of enterprise systems on imported devices	• Where imported machines (like routers or data terminals) are sent to India for configuration and the services are physically rendered in India.
Testing of drug	• Drug samples are sent to an Indian lab for physical testing or chemical analysis and subsequently, the reports are sent to the clients outside India and samples are either consumed or destroyed in the process of testing by the Indian entity.
Samples of silicon chips made available in case of supply of software services	• Indian entity providing software development services to a foreign entity as an auxiliary activity undertakes testing of the sample silicon chips made available by the foreign entity to ensure proper functioning of the software developed.

OMISSION OF INTERMEDIARY SERVICES

INTERMEDIARY SERVICES

History of Intermediary Services

- Introduced in the year 2012 – Negative List based taxation.
- Purpose was to determine the "Place of Provision of Service".
- Intermediary facilitating the supplier of services were covered.
- Scope expanded from October 2014 to cover intermediary facilitating sale of goods.
- Legacy carried forward to GST Law.

Section 2(13) of "Intermediary" means IGST Act, 2017: a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

DISSECTION OF DEFINITION

"intermediary" means a broker, an agent or any other person, by whatever name called

who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons

- Agency Relationship
- Facilitation or Arrangement of Supply
- On its own account

but does not include a person who supplies such goods or services or both or securities on his own account

Where the Indian entity provides support services for the foreign entity basis the directions of the foreign entity, will the Indian entity qualify as 'intermediary'?

POSITION PRIOR TO 2026 AMENDMENT

PLACE OF SUPPLY FOR INTERMEDIARY SERVICES

Under the IGST Act, 2017, Section 13(8)(b) specifically provides that in the case of intermediary services, the place of supply shall be the location of the supplier, even when the service recipient is located outside India. This provision is a notable exception to the general rule under Section 13(2), which otherwise provides that the place of supply shall be the location of the recipient when either the supplier or recipient is outside India.

Consequently, even if an Indian intermediary is providing services to a foreign client, the place of supply remains within India, and such supply does not qualify as an export of service under Section 2(6) of the IGST Act, as one of the essential conditions namely, the place of supply being outside India is not fulfilled.

This statutory position has led to several disputes and industry concerns, especially in sectors like consulting, commission agency, and BPO/KPO where services are provided on behalf of or arranged for foreign principals and consequently, CBIC clarified this position in Circular No. 159/15/2021-GST, reiterating that intermediary services are excluded from export benefits and are taxable in India despite the foreign recipient.

The requirements for intermediary services in terms of Circular No. 159/15/2021-GST :

- Minimum 3 parties
- Two distinct supplies viz., main supply and ancillary supply
- Intermediary service provider to have the character of an agent, broker or any other similar person
- Does not include a person who supplies such goods or services or both or securities on his own account
- Sub-contracting for a service is not an intermediary service

IMPORTANT CASE LAWS IN INTERMEDIARY

Amazon Development Centre India Private Limited v. Additional Commissioner of Central Tax, GST Appeals-II, Bangalore & Others, **2025-VIL-409-Kar**	The petitioner, engaged in providing IT and ITeS services including customer support to foreign group companies, filed a refund claim for unutilized Input Tax Credit under the IGST Act, 2017. The claim was partially rejected on the ground that the petitioner was acting as an "intermediary" as defined under Section 2(13), and hence the services could not qualify as "export of services" under Section 2(6). The department alleged that the petitioner was merely facilitating customer support services on behalf of its foreign affiliates. The High Court rejected this contention, holding that the petitioner provided the customer support services on its own account, not in a facilitative or agency capacity. The essential elements of intermediary such as the existence of three parties, two distinct supplies, and a subsidiary or facilitating role were absent. The services were rendered on a principal-to-principal basis, and the petitioner had no authority to negotiate or conclude contracts with end customers. Relying also on CBIC Circular No. 159/15/2021-GST, the Court concluded that the petitioner is not an intermediary, and the services qualify as export of services. The refund denial was set aside, and the writ petition was allowed.

This view was further reiterated in the case of *Columbia Sportswear India Sourcing Pvt Ltd Vs Union of India 2025-VIL-512-KAR* and *Athene Technologies India LLP Versus State of Karnataka, (2025) 31 Centax 113 (Kar.)* wherein it was held that provision of business support service and software development services by an by an Indian entity to its overseas group company, on a principal to principal basis would not amount to intermediaries services

56th GST COUNCIL MEETING RECOMMENDATION

56th GST Council recommended amendment in place of supply provisions for intermediary services under section 13(8) of the IGST Act by way of omission of clause (b) of section 13(8) of IGST Act 2017

Accordingly, upon the said amendment, place of supply for "intermediary services" will be determined as per the default provision under section 13(2) of the IGST Act, 2017 i.e. the location of the recipient of such services.

This will help Indian exporters of such services to claim export benefits.

POSITION POST 2026 AMENDMENT

FINANCE ACT, 2026

The Finance Act, 2026 vide Section 157 omitted Section 13(8)(b) of the IGST Act with effect from 30.03.2026 to exclude intermediary services from the said sub-section.

13. Place of supply of services where location of supplier or location of recipient is outside India

...

(8) The place of supply of the following services shall be the location of the supplier of services, namely:--

(a) ...

~~(b) intermediary services;~~

The said Amendment is made in line with the recommendation of the 56th GST Council meeting. As an effect of omission, the place of supply for intermediary services will now governed under the default rule provided under Section 13(2) of the IGST Act wherein the place of supply is the location of the recipient of services.

This puts an end to the long-standing litigation in the industry which was settled by the decision of the various High Courts specifically, the Karnataka High Court in case of ***Amazon Development Centre India Pvt. Ltd. v. Additional Commissioner of Central Tax (2025) 30 Centax 516 (Kar.)***

The omission of Section 13(8)(b) marks a significant policy shift by restoring the default place of supply rule for intermediary services. This enables qualifying intermediary services provided to overseas recipients to be treated as exports, reduces litigation, and strengthens India's position as a global service hub

However, the absence of a savings clause may give rise to transitional disputes concerning pending proceedings and past transactions

SCOPE OF OMISSION AND REPEAL

Section 6 of the General Clauses Act, 1897: Effect of repeal

Where this Act, or **any Central Act or Regulation** made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, **unless a different intention appears**, the **repeal shall not**

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

SCOPE OF OMISSION AND REPEAL

<table>
<tr>
<td rowspan="3">Hikal Ltd vs. Union of India & others

2025-VIL-959-Bom</td>
<td>The petitioners had challenged the constitutional validity Rule 96(10) and Rule 89(4) as being ultra vires to the provision of refund enshrined under Section 16 of the IGST Act, 2017 and Section 54 of the CGST Act, 2017, as the Rule 96(10) imposed restrictions that were otherwise not contemplated under the Statute.

One of the principal issue before the Hon’ble Court was whether the provisions of Section 6 of the General Clauses Act, 1897 would apply to the omission of the aforementioned rules by way Notification No. 20/2024-CT dated 08.10.2024</td>
</tr>
<tr>
<td>The omission without saving clause will obliterate the statute from the statute book and any proceedings which have not culminated in a final judgment prior to the omission are abated at the consummation of the omission. Accordingly, omission of the said Rules would erase these Rules from existence as if they had never been enacted or passed, and they should be regarded as provisions that never existed, except in relation to ‘transactions past and closed’. Further, on the issue of applicability of Section 6 of the General Clauses Act, the Hon’ble Court held that the same is not applicable since the Rule was omitted by way of a Notification and therefore the saving clause provided under the said Section will not save the pending proceedings.</td>
</tr>
<tr>
<td>Omission or Repeal without any savings clause to protect pending proceedings would result in ‘such pending proceedings lapsing’ and no longer being sustainable, as the provisions of Section 6 of the General Clauses Act do not apply to repeals or omissions caused by subordinate legislation such as Rules.</td>
</tr>
</table>

SCOPE OF OMISSION AND REPEAL

Rayala Corporation (P) Ltd and Ors vs. Director of Enforcement, New Delhi **AIR 1970 SC 494**	The issue before the Hon'ble Apex Court was whether prosecution could be initiated for a contravention of Rule 132-A of the Defence of India Rules, 1952, after the said Rule had been omitted.
	Section 6 of the General Clause Act **applies only to repeal and not to omission**, and further, that it **applies only to Central Acts or Regulations and not to Rules**. Consequently, it was held that said prosecution is not saved by the General Clauses Act and hence the same would not be sustained after the omission of the Rule.
	However, this judgment does not have discussion on whether the expressions '*repeal*' and '*omission*' are conceptually distinct or interchangeable.

SCOPE OF OMISSION AND REPEAL

Kolhapur Canesugar Works Ltd vs. Union of India **2000-VIL-29-SC-CE**	The Court examined the scope of Section 6 of the General Clauses Act, 1897 in the context of the repeal or omission of rules. The Constitution Bench reaffirmed the decision in *Rayala Corporation (Supra)*, holding that Section 6 is applicable only to the repeal of Central Acts and Regulations, and not to the omission or repeal of rules. The Court further observed that, under the common law, the repeal, deletion, or omission of a statutory provision ordinarily obliterates it as if it had never existed, unless its operation is preserved by a saving clause such as Section 6. The expressions "repeal," "omission," and "deletion" were interchangeably used throughout the judgment, thereby leading to ambiguity on the meaning associated to the said terms. This judgement also did not decisively clarify whether omission is fundamentally different from repeal.

This view of the Apex Court that Section 6 of the General Clauses Act is applicable only for repels and not to omissions was further reiterated in ***General Finance Co. and Ors vs. Assistant Commissioner of Income Tax, Punjab, AIR 2002 SC 3126***

SCOPE OF OMISSION AND REPEAL

Fibre Boards (P) Ltd., Bangalore vs. Commissioner of Income Tax, Bangalore **(2015) 8 SCR 906**	The Hon'ble Apex Court in this case while considering the omission of Chapter XXII-B of the Income Tax Act by way of Finance Act, took a divergent view from the decisions in *Rayala Corporation (supra)* and *Kolhapur Canesugar (supra)* The Court observed that the aforementioned decisions pertained to deletion of the Rules. Since, the saving clause under Section 6 of the General Clauses Act was held to not apply to a Rule, it was wholly unnecessary to state that the Section 6 is applicable only to repeals and not to omissions. Accordingly, the findings of the Constitution Bench in *Rayala Corporation (supra)* on applicability of Section 6 for omission cannot be held to be in the nature of a *ratio decidendi* and is merely a *obiter dicta*. It was further observed that the decision in *Rayala Corporation (supra)* was passed without considering Section 6A of the General Clauses Act which indicates that a repeal by an amending Act can be done by way of express omission. Accordingly, the Court held that the expression "repeal" in Sections 6 and 24 of the General Clauses Act is broad enough to encompass repeals effected by way of express omission, thereby extending the applicability of the saving provision to such omissions.

IMPLICATIONS OF THE JUDICIAL EVOLUTION

In light of the judicial developments and the statutory framework of Section 6 and 6A of the General Clauses Act, it can be concluded that savings clause is applicable for omission as well.

Accordingly, the omission of Section 13(8)(b) of the IGST Act, 2017 operates as a repeal and the pending proceedings are saved by those provisions unless a clear and contrary legislative intention is discernible.

Considering the dichotomy of the cases decided, it is open to courts to determine whether the omission of Section 13(8)(b) of the IGST Act would have has retrospective effect or not, which will in turn decide the fate of all pending proceedings.

In this regard, it can be argued that the legislative intention behind the omission of Section 13(8)(b) of the IGST Act was intended to resolve the long-standing litigation surrounding the provision and to align the place of supply framework with the destination-based principle of taxation. In view of this, omission ought not to be saved by the provisions of the General Clauses Act

THANK YOU