

# Government Provision of Reverse Charge Mechanism (RCM) 2020- A Study

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## Abstract:

The concept of Reverse Charge Mechanism was introduced in erstwhile Service Tax laws. Generally, tax is payable by the person who provides services but under Reverse Charge Mechanism the liability to pay tax has shifted to recipient of services. The concept of Reverse Charge Mechanism is incorporated under GST, but in GST regime Government has notified not only supply of certain services but also supply of certain goods under RCM. The objective of Reverse Charge Mechanism is to widen the scope of levy of tax on unorganized sectors and give exemption to specific class of supplier of goods/services and import of services.

Therefore, under Reverse Charge Mechanism the liability to pay tax is fixed on the recipient of supply of goods or services instead of the supplier or provider in respect of certain categories of goods or services or both under Section 9(3) or Section 9(4) of the CGST Act, 2017 and under sub-section (3) or sub-section (4) of Section 5 of the **IGST Act, 2017**.

Key Words: Reverse, Charge, Mechanism, introduced, , erstwhile, , Service, Tax, laws.

## Introduction:

### Statutory provision of reverse mechanism

Section 2(98) of the **CGST Act, 2017** has defined the term “Reverse Charge” and the same is reproduced as follows:

“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.

The plain reading of the cited definition of reverse charge under GST laws, it is clearly stated that reverse charge is not only confined to services rather the scope of reverse charge is extended to goods also. For more detailed provisions of reverse charge as provided under section and sub-section of the CGST Act, 2017 and IGST Act, 2017 is reproduced in the following paras as under:

Section 9(3) of the CGST Act, 2017 provides the provisions of reverse charge and the same is reproduced as follows:

“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.”

Section 5(3) of the IGST Act, 2017 provides the provisions of reverse charge and the same is reproduced as follows:

“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.”

### Reverse Charge Mechanism in respect of Un-Registered Person:

Section 9(4) of the CGST Act, 2017 provides the provisions of reverse charge and the same is reproduced as follows:

“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 cited provision has been deferred till 30th September, 2019 vide Notification No. 22/2018-Central Tax (Rate) dated 6-8-2018 has been rescinded vide Notification No. 1/2019-Central Tax (Rate) dated 29.1.2019 [said section 9(4) has been forced w.e.f.1.2.2019]. But the list of Goods or services not yet declared by the Government for implementation of the provision.**

Section 5(4) of the IGST Act, 2017 provides the provisions of reverse charge and the same is reproduced as follows:

“The integrated 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 above provision has been deferred till 30th September, 2019 vide Notification No. 23/2018-Integrated Tax., dated 6-8-2018 has been rescinded vide Notification No. 1/2019-Integrated Tax (Rate) dated 29.1.2019 [said section 5(4) has been forced w.e.f.1.2.2019]. But the list of Goods or services not yet declared by the Government for implementation of the provision.**

The above cited provisions of CGST Act, 2017 and IGST Act, 2017 says that there are two types of reverse charge scenarios provided in law. First situation is dependent on the nature of supply and/or nature of supplier. This is covered by Section 9(3) of the CGST/SGST/UTGST Act and Section 5(3) of the IGST Act. Second situation is covered by Section 9(4) of the CGST/SGST/UTGST Act and Section 5(4) of the IGST Act where a taxable supply by any unregistered person to a registered person is covered. Accordingly, whenever a registered person procures supplies from an unregistered supplier, he needs to pay GST on reverse charge basis. However, supplies where the aggregate value of such supplies of goods or services or both received by a registered person from any or all the unregistered suppliers is less than five thousand rupees in a day are exempted vide **Notification No. 8/2017-C.T. (Rate), dated 28-6-2017**.

## GST registration under RCM

As per Section 24 of the CGST Act, 2017, a person who is required to pay tax under reverse charge has to compulsorily register under GST irrespective of the threshold limit of registration and threshold limit of Rs. 20 lakhs/Rs. 40 lakhs (Rs. 10 lakhs for special category States) but special category States threshold exemption is increased to Rs. 20 lakhs, as per **CGST (Amendment) Act, 2018** is not applicable to the Reverse Charge Mechanism.

## Invoicing Rules under RCM

Under reverse charge, the buyer or recipient of goods or services or both has to issue invoice or payment voucher on received of goods or services or both from the supplier as may be the case.

In terms of sub-section (3) of Section 31(3)(f) of the CGST Act, 2017 and read with clause (f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of Section 9 of the CGST Act, shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both; and as per clause (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.

The second proviso to Rule 46 provides that where an invoice is required to be issued under Section 31(3)(f) of the CGST Act, a registered person may issue a consolidated invoice at the end of a month for supplies covered under Section 9(4), the aggregate value of such supplies exceeds rupees five thousand in a day from any or all the supplies.

Considering the inconvenience that may be caused to the stakeholders in the procedure under Section 9(4) of the CGST Act, 2017, the Central Government, therefore, issued a **Notification vide No. 8/2017-C.T. (Rate), dated 28-6-2017** has given exemption to intra-State supplies of goods or services or both to the tune

of Rs. 5,000/- in a day from the purview of Section 9(4) which came into effect from 1-7-2017. If the value of the supply is more than Rs. 5,000/- per day then reverse charge is applicable under Section 9(4) and **Vide Notification No. 38/2017-C.T. (Rate), dated 13-10-2017** the threshold limit of Rs. 5,000/- for exemption per day kept abeyance until 31-3-2018 and also with subsequent notifications the time-line has been extended up to 30-9-2019 vide **Notification No. 22/2018-C.T. (Rate), dated 6-8-2018** and the same has been rescinded.

The Central Board of Indirect Taxes & Customs (“CBIC”) has notified that Exemption from tax under ‘Reverse Charge Mechanism (RCM)’ under GST stands rescinded w.e.f. February 1, 2019 in respect of Intra-State Purchases of Goods and Services from Unregistered Dealers (of value upto Rs.5,000 per day), in view of bringing into effect, the amendments (regarding RCM on supplies by unregistered persons) in the Amended CGST/IGST/UTGST Acts, 2018. Consequently **Notification No. 8/2017- Union Territory Tax (Rate), dated the 28th June, 2017, Notification No. 8/2017-Central Tax (Rate), dated the 28th June, 2017, and Notification No. 32/2017-Integrated Tax (Rate), dated the 13th October, 2017**, have been rescinded vide **Notifications No. 1/2019-Central Tax (Rate), No. 1/2019-Integrated Tax (Rate) and No. 1/2019-Union Territory Tax (Rate) all dated 29-1-2019**

### Real Estate Sectors under RCM:

On the recommendations of the GST Council in its 33rd Meeting and decision has taken in its 34th meeting. In case of a project developer or construction of apartment by the developer, 80% of inputs and input services [other than capital goods, TDR/JDA, FSI, long-term lease (premium) shall be purchased from registered persons. On shortfall of purchases from 80% tax shall be paid by the builder @18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @28% under RCM, and on capital goods under RCM at applicable rates in terms of Section 9(4) the CGST Act, 2017, in terms of C.B.I & C., **Notification No. 7/2019-C.T. (Rate), dated 29th March, 2019.**

### Renting of motor vehicles under RCM:

The GST Council in its 37<sup>th</sup> meeting has taken decision to place the supply of renting of motor vehicles under RCM and recommended that the said supply when provided by suppliers paying GST @5% to corporate entities may be placed under RCM. RCM was not recommended for suppliers paying GST @ 12% with full ITC, so that they may have may have the option to continue to avail ITC. RCM otherwise would have blocked the ITC chain for them. Accordingly, the **notification No. 29/2019-Central Tax (Rate) dated 31.12.2019** has been issued with effect from 1.10.2019.

Post issuance of the notification, reference have been received stating that when a service is covered by RCM, GST would be paid by the service recipient and not by the supplier. Therefore, the wording of the notification that “ any person other than a body corporate, paying central tax at the rate of 2.5% is not free from doubt and needs amendment / clarification from the perspective of drafting. C.B.I & C, vide its **Circular no 130/2019–GST dated 31.12.2019**, has clarified that When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. There are only two rates applicable on the service of renting of vehicles, 5% with limited ITC and 12% with full ITC. The only interpretation of the notification entry in question which is not absurd would be that –

- (i) where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and,
- (ii) where the supplier of the service doesn’t charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.

Though a supplier providing the service to a body corporate under RCM may still be paying GST @ 5% on the services supplied to other non-body corporate clients, to bring in greater clarity, serial No. 15 of the **notification No. 13/2017-CT (R) dated 28.6.17** has been amended vide **notification No. 29/2019-CT (R) dated 31.12.19** to state that RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:–

- (a) is other than a body-corporate;

(b) does not issue an invoice charging GST @12% from the service recipient; and (c) supplies the service to a body corporate.

### **Input Tax Credit under RCM**

A supplier cannot take Input Tax Credit of GST paid on goods or services used to make supplies on which the recipient is liable to pay tax under reverse charge.

The recipient can avail Input Tax Credit of GST amount that is paid under reverse charge on receipt of goods or services by him.

GST paid on goods or services under reverse charge mechanism is available as ITC to the registered person provided that such goods or services are used or will be used for business or furtherance of business.

The ITC is availed by recipient cannot be used towards payment of output tax on goods or services, the payment of tax under reverse charge only on cash.

### **Liability arises to pay GST under RCM**

The time of supply is the point when the supply is liable to GST. One of the factors relevant for determining time of supply is the person who is liable to pay tax. In reverse charge, the recipient is liable to pay GST. Thus, time of supply for supplies under reverse charge is different from the supplies which are under forward charge.

### **Time of supply for Goods under reverse charge :**

As per Section 12(3) of the CGST Act, 2017 in case of supplies of goods in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely :-

- (a) date of receipt of goods; or
- (b) date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (c) the date immediately following 30 days from the date of issue of invoice or any other document, or similar other document thereof by the supplier :

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

### **Time of supply for Services under Reverse Charge:**

As per Section 13(3) of the CGST Act, 2017 in case of supplies for Services in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely :-

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (b) the date immediately following 60 days from the date of issue of invoice or any other documents, similar other document thereof by the supplier :

Provided, where it is not possible to determine time of supply by using above methods under clause (a) and clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply.

### **Compliances in respect of supplies under Reverse Charge Mechanism**

(1) As per Section 31 of the CGST Act, 2017 read with Rule 46 of the CGST Rules, 2017, every tax invoice has to mention whether the tax in respect of supply in the invoice is payable on reverse charge. Similarly, this also needs to be mentioned in receipt voucher as well as refund voucher, if tax is payable on reverse charge.

(2) *Maintenance of accounts by registered persons:* Every registered person is required to keep and maintain records of all supplies attracting payment of tax on reverse charge.

(3) Any amount payable under reverse charge shall be paid by debiting the electronic cash ledger. In other words, reverse charge liability cannot be discharged by using input tax credit. However, after discharging reverse charge liability, credit of the same can be taken by the recipient, if he is otherwise eligible.

(4) Invoice level information in respect of all supplies attracting reverse charge, rate wise, are to be furnished separately in column 4B of GSTR-1.

(5) Advance paid for reverse charge supplies is also leviable to GST. The person making advance payment has to pay tax on reverse charge basis.

## Reverse charge on specified goods

The supply of goods under Reverse Charge Mechanism has notified vide **Notification No. 4/2017-C.T. (Rate), dated 28-6-2017** as amended from time to time under Section 9(3) of the CGST Act, 2017 and the same is reproduced in the Table below :-

**Table-1**

S. No.	Tariff Item, Sub-heading, or Chapter	Description of Supply of Goods	Supplier of Goods	Recipient of Supply
(1)	(2)	(3)	(4)	(5)
1.	0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	1404 90 10	Bidi wrapper leaves(tendu)	Agriculturist	Any registered person
3.	2401	Tobacco leaves	Agriculturist	Any registered person
4.	5004 to 5006	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
4A	5201 (Effective from 15-11-2017)	Raw cotton	Agriculturist	Any registered person
5.	—	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent. <i>Explanation.</i> – For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the

				Lotteries (Regulation) Rules, 2010, made under the 2 provisions of sub-section (1) of Section 11 of the Lotteries (Regulations) Act, 1998.
6.	Any Chapter (Effective from 13-10-2017)	Used vehicles seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union territory or a Local authority.	Any registered person
7.	Any Chapter (Effective from 28-5-2018)	Priority Sector Lending Certificate	Any registered person	Any registered person

**Explanation.** – (1) In this Table, “tariff item”, “sub-heading”, “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading or chapter, as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

### Reverse charge on specified services

The supply of services under reverse charge mechanism has been notified vide **Notification No. 13/2017-C.T. (Rate), dated 28-6-2017** as amended from time to time under Section 9(3) of the CGST Act, 2017 and the list of services that will be under reverse charge as notified by the Central Government is given in table below :-

The cited table is showing the list of services as notified by the Government and approved by the GST Council for levy of GST under reverse charge.

### Reference:-

- (a) The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.
- (b) “Body Corporate” has the same meaning as assigned to it in clause (11) of Section 2 of the Companies Act, 2013.
- (c) the business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.
- (d) the words and expressions used and not defined in this notification but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and the Union Territory Goods and Services Tax Act shall have the same meanings as assigned to them in those Acts.
- (e) A “Limited Liability Partnership” formed and registered under the provisions of the Limited Liability Partnership Act, 2008 (6 of 2009) shall also be considered as a partnership firm or a firm.
- (f) “insurance agent” shall have the same meaning as assigned to it in clause (10) of Section 2 of the Insurance Act, 1938 (4 of 1938).
- (g) “renting of immovable property” means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of

- possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.
- (h) provisions of this notification, insofar as they apply to the Central Government and State Governments, shall also apply to the Parliament and State Legislatures.
  - (i) 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 2016).
  - (j) 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 2016).
  - (k) the term “project” shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);
  - (l) “the term “Real Estate Project (REP)” shall have the same meaning as assigned to it in clause (zn) of Section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).
  - (m) 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.
  - (n) “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.

