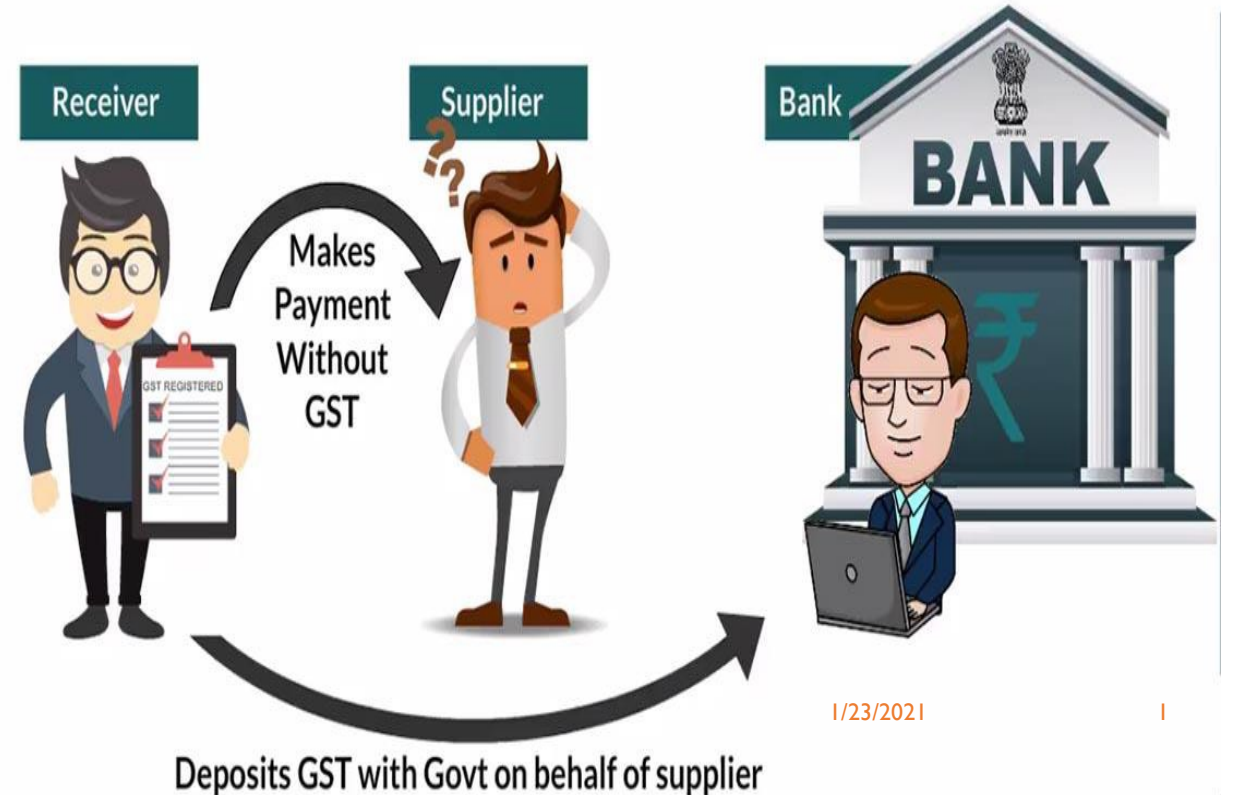


REVERSE CHARGE MECHANISM

WIRC Virtual CPE
Meeting on GST
Date: 23rd Jan 2021



REVERSE CHARGE UNDER GST

The government is **empowered** to notify U/s. 9(3) & 5 (3) the categories of goods or services or both on which tax shall be paid on RCM basis in intra-State as well as inter-State supplies.

*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.*

Thus, the above provision makes the **recipient liable** for paying the tax even if he is not the supplier of goods or services it **become deemed supplier**.

While sections 9(3) of CGST and 5(3) of IGST deal with the **category of goods/services** specified on which RCM shall be applicable, sections 9(4) and 5(4) deal with the **specified class of registered persons** who receive specified goods or services from **unregistered persons** to be liable to discharge GST under RCM as well.

PROCEDURE FOR REVERSE CHARGE

A registered person who is liable to pay tax under section 9(3) or 9(4) of CGST Act

On **Receipts** of Goods and services – Issue an **self Invoice** on date of received of good and services

On **payment** – Payment **voucher** to be issue by recipient

The invoices are required to be uploaded in GSTR 1.

Tax is to be paid in **electronic cash ledger**. **Input Tax Credit** can be availed.

Relaxation in preparing invoices upto 13-10-2017 when tax was payable on all receipts from unregistered person –

Such invoice can be issued on monthly basis in consolidated form, if reverse charge applies under section 9(4) of CGST Act, where value of such supplies **exceeds Rs 5,000** in a day from any or all suppliers - second *proviso* to Rule 46 of CGST and SGST Rules, 2017 [This provision not relevant after 13-10-2017].

REVERSE CHARGE WHEN SUPPLY IS RECEIVED FROM UNREGISTERED PERSON

In case of receipt of supply of goods or services or both by a registered person from unregistered supplier, IGST/CGST will be payable by the recipient, *in respect of specified categories of goods or services as may be notified by Government on recommendation of GST Council*, and all provisions of CGST Act and IGST 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 9(4) of CGST and SGST Act and section 5(4) of IGST Act. The words in italics inserted *vide* IGST (Amendment) Act, 2018 and CGST (Amendment) Act, 2018. w.e.f. 1-2-2019.

- ***Provision as applicable prior to 1-2-2019*** - In case of receipt of supply of goods or services or both by a registered person from unregistered supplier, IGST/CGST was payable by the recipient - section 9(4) of CGST and SGST Act and section 5(4) of IGST Act, as **existing prior** to amendment.
- This provision applied to **any kind of taxable goods or services or both** supplied by unregistered person to a registered person.
- However, the provision in respect of reverse charge on supplies received from unregistered persons was **suspended** for the period 13-10-2017 to 30-9-2019 - Notification No. 8/2017-CT (Rates) as amended by Notification No. 22/2018-CT (Rate) dated 6-8-2018 and Notification No. 32/2017-IT (Rate) dated 13-10-2017 as amended vide Notification No. 23/2018-IT (Rate) dated 6-8-2018.

REVERSE CHARGE WHEN SUPPLY IS RECEIVED FROM UNREGISTERED PERSON

- Now, the Notification Nos. 8/2017-CT (Rate) dated 28-6-2017 and 32/2017-IT (Rate) dated 13-10-2017 have been rescinded w.e.f. 1-2-2019, as these notifications have become redundant due to amendment in section 9(4) of CGST Act w.e.f. 1-2-2019.

Effective date of exemption from reverse charge for supplies received from unregistered persons - The notification giving exemption from payment of tax under reverse charge was issued on 13-10-2017. As a general principle, any notification has **prospective effect**, unless specified otherwise. Thus, this notification is effective from 13-10-2017.

Time of Supply in **respect of services**, the tax under reverse charge under section 9(4) of CGST and section 5(4) of IGST Act is payable when **payment is made to supplier** or 60 days from date of issue of invoice.

In respect of goods, **time of supply is when goods are received**.

There is a view that the original notification uses the words '**This notification shall come into force with effect from 1-7-2017**'. Hence, once *proviso* is removed on 13-10-2017, the original notification becomes valid w.e.f. 1-7-2017 and there is no reverse charge w.e.f. 1-7-2017 in respect of supplies received from unregistered persons.

Apart from the fact that any notification does not have **retrospective effect unless specified**, this interpretation would mean that all **tax paid** under these provisions would become refundable. Such tax exemption with retrospective effect can be only with approval of Parliament and State legislatures.

Currently Under these provisions, in case of real estate projects, promoters have been made liable to pay tax under reverse charge in respect supplies received from unregistered persons w.e.f. 1-4-2019

PAYMENT OF TAX - REVERSE CHARGE

Payment of tax is governed by section 49 of CGST Act. Clauses (3) and (4) of section 49 are relevant at this juncture and are reproduced below:

- (3) The amount available in the **electronic cash ledger** may be used for making **any payment** towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (4) The amount available in the **electronic credit ledger** may be used for making **any payment towards output tax** under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
- It must be noted that section 49(3) dealing with electronic cash ledger allows using it for making any payment towards tax, interest, penalty, fees or any other amount, whereas, section 49(4) dealing with electronic credit ledger allows using it for making payment towards **output tax** only.

REVERSE CHARGE UNDER GST

Section 2 (82) "**output tax**" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but **excludes** tax payable by him on **reverse charge basis**.

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

The definition of "output tax" clearly **excludes tax payable under RCM** and consequently, electronic credit ledger cannot be used for payment of RCM liability as prescribed under section 49(4). This clearly demonstrates the intention of revenue authorities to discriminate between tax payable in normal course (forward charge) and RCM.

Further, tax paid under RCM is in turn allowed as credit to the recipient of goods or services liable to pay such tax. The same, of course, is subject to **restrictions imposed** by section 17(5) of CGST Act. In other words, the recipient shall be eligible to claim ITC of tax paid under RCM if the same is otherwise not restricted by virtue of any other provision of the law. Certain procedural requirements prescribed under section 16 (eligibility and conditions for taking ITC), section 31 (tax invoice) and CGST Rules such as rule 36

REVERSE CHARGE UNDER GST

Suppose A, the recipient of services on which RCM is applicable, receives supply of service of INR 100 on which GST of INR 18 is payable. It is also assumed that A is having enough balance in his electronic credit ledger to discharge this liability and credit of tax paid under RCM is otherwise not disallowed to him. Journal entries would be as follows:

Particulars	Payment using cash		Payment using credit	
Upon procurement	Expense A/c Dr.	100	Expense A/c Dr.	100
	Interim GST receivable A/c Dr.	18	Interim GST receivable A/c Dr.	18
	To GST payable A/c	18	To GST payable A/c	18
	To Supplier A/c	100	To Supplier A/c	100
Upon payment of tax	E-cash ledger A/c Dr.	18	N.A.	
	To Bank A/c	18		
Upon utilising ledger	GST payable A/c Dr.	18	GST payable A/c Dr.	18
	To e-cash ledger A/c	18	To e-credit ledger A/c	18
Upon booking credit	GST receivable A/c Dr.	18	GST receivable A/c Dr.	18
	Interim GST receivable A/c	18	Interim GST receivable A/c	18

IMPACT OF PAYING RCM BY UTILIZING ELECTRONIC CASH LEDGER

Thus, in both the above scenarios, the position is revenue neutral. Even if the RCM liability is paid by using credit ledger, revenue authorities will get their share of due tax without having the need for assessee to pay additional cash. By allowing only cash ledger to be used for this purpose, the assessee is stuck with extra credit lying with the government which cannot be used for any other purpose. Whereas, if credit ledger is allowed to be used, the cash can be used to pay suppliers early or making loan repayments to the bank or any other purpose at the discretion of the assessee. This will result in meeting immediate liquidity requirements of the business.

Further, since the law itself provides that the recipient can avail ITC of tax paid under RCM, this will get piled up in electronic credit ledger already having unutilized credit balance resulting in creating working capital/liquidity issue for the assessee.

ITC can avail on such services (on which he is liable to pay GST under reverse charge) only after making payment of that tax in his electronic cash ledger - Rule 36(b) of CGST and SGST Rules, 2017.

IMPACT OF PAYING RCM BY UTILIZING ELECTRONIC CASH LEDGER

Suppose in the above example, the credit of tax is restricted by virtue of section 17(5) of CGST Act, the entries would have been looked like this:

Particulars	Payment using cash		Payment using credit	
Upon procurement	Expense A/c Dr.	118	Expense A/c Dr.	118
	To GST payable A/c	18	To GST payable A/c	18
	To Supplier A/c	100	To Supplier A/c	100
Upon payment of tax	E-cash ledger A/c Dr.	18		
	To Bank A/c	18	N.A.	
Upon payment of tax	GST payable A/c Dr.	18	GST payable A/c Dr.	18
	To e-cash ledger A/c	18	To e-credit ledger A/c	18

The position will be similar as explained above except that in this case, the assessee will not be allowed to book credit of tax paid under RCM and has to expense it off. In this case, though credit ledger will not get piled up with extra credit on account of RCM tax paid, the same will result in immediate cash outgo resulting in similar situation discussed above i.e. creating working capital/liquidity issue for the assessee.

SEZ UNIT LIABLE TO PAY GST UNDER REVERSE CHARGE

As per FAQ on GST Chapter 21 Q No. 41 issued by CBI&C on 15-12-2018, SEZ unit will be liable to pay GST under reverse charge, wherever applicable.

Supplies to SEZ unit are zero rated. The supplier is not liable to pay GST. In reverse charge, only liability of supplier is shifted to recipient. If the supplier is not liable to pay GST, where is the question of shifting that liability to recipient?

GENERAL PROVISIONS APPLICABLE WHERE REVERSE CHARGE APPLIES

Aggregate turnover - 'Aggregate turnover' does **not include** value of supplies in which tax is levied under reverse charge – section 2(6) of CGST Act.

Output tax - "Output tax" **excludes tax payable** by him on reverse charge basis - section 2(82) of CGST Act and section 2(18) of IGST Act.

Furnishing details of inward supplies - Every person liable to pay goods and service tax under reverse charge is required to **furnish details of inward supplies** - Section 38(2) of CGST Act.

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

This section overrides section 22 but not section 23 of CGST Act. Section 22 provides for **exemption from registration** when aggregate turnover does not exceed Rs 20 lakhs or Rs. 40 Lacs as the case may be. Section 23 of CGST Act provides for exemption from registration to those who are exclusively engaged in supply of goods or services or both which are not liable to tax or are wholly exempt.

Persons who are exempt from registration under section 23 of CGST Act are not required to register under section 24 of CGST Act.

INTER-STATE TRANSACTIONS - WHETHER IGST PAYABLE OR CGST AND SGST/UTGST PAYABLE UNDER REVERSE CHARGE

If the supplier of service and the recipient of service are in same State, then obviously SGST/UTGST and CGST is payable by the recipient under reverse charge.

Question arises when supplier of service and recipient of service are in different States. For example, recipient of service may be registered in Delhi while the supplier of service may be located in Haryana.

In case of reverse charge, the service recipient is only discharging the liability of supplier of service. If the supplier of service was liable to pay tax, obviously he would have paid IGST as the place of supply is Delhi (location of recipient).

Considering from this angle, IGST will be payable by the service recipient under reverse charge.

However, it can be argued that when service recipient is paying tax under reverse charge, he enters into shoes of the supplier of service. He becomes 'deemed supplier'. If so, the location of service recipient (who is deemed as service supplier under reverse charge) and place of supply is in same State/Union Territory and hence CGST and SGST/UTGST should apply.

INTER-STATE TRANSACTIONS - WHETHER IGST PAYABLE OR CGST AND SGST/UTGST PAYABLE UNDER REVERSE CHARGE

While uploading the details of tax paid under reverse charge in table 4B of GSTR-1 return, the service recipient will have to prepare **tax invoice in name of self**. He will indicate his own State as place of supply. In that case, mostly, GSTN system will not accept the invoice if IGST is paid.

Hence, in my view, it is safe to pay CGST and SGST/UTGST, arguing that since self invoice is prepared, the recipient of service is 'deemed supplier' and hence liable to pay CGST and SGST/UTGST.

This can also be justified from the fact that GST is destination based consumption tax and goods or services. Thus, State where goods or services are consumed (i.e. place of supply) should get the revenue of that transaction.

Really, even if IGST is paid, place of supply indicated in GSTR-1 will be the State where the taxable person (recipient) is registered and hence there will be no loss of revenue to State Government.

Services which are subject to reverse charge have been specified in Notification No. 13/2017-CT (Rates) and 10/2017-IT (Rates) both dated 28-6-2017, effective from 1-7-2017. **List in IGST** notification has two additional items –

(a) Import of Services

(b) Inward Ocean transport. These are not included in CGST notification as only IGST applies on these two activities.

REGISTRATION REQUIREMENTS

Persons supplying services where service recipient is liable to pay GST under reverse charge need not register under GST

Persons who are making supplies of taxable goods or services or both, where total tax is payable by recipient of goods or services are exempt from registration under GST Act - Notification No. 5/2017-CT dated 19-6-2017.

Person who is not liable to register as per section 23 is not required to pay GST under reverse charge

As per section 23 of CGST Act, following persons are not required to register under GST - (a) person engaged exclusively in supplying goods or services which are not liable to tax or are wholly exempted (b) agriculturist.

As per Notification No. 5/2017-CT dated 19-6-2017, person who is making supplies where recipient is liable to pay entire tax under reverse charge is not required to register.

Person not required to register under GST is not required to pay GST under reverse charge - It is clear that only a registered person is liable to pay tax. Thus, a person who is not required to register under GST is not required to pay GST under reverse charge.

SUPPLY OF GOODS WHERE GST PAYABLE UNDER RCM

- (a) cashew nuts, bidi wrapper leaves, tobacco leaves, silk yarn and *raw cotton* supplied by agriculturist – registered person receiving goods will be liable
- (b) In case of supply of lottery by State Government, lottery distributor or selling agent is liable
- (c) *In case of Priority Sector Lending Certificate received by any registered person from another registered person, the recipient is liable to pay tax*– Notification No. 4/2017-CT (Rate) and 4/2017-IT (Rate) both dated 28-6-2017 effective from 1-7-2017 [The words 'raw cotton' have been inserted w.e.f. 15-11-2017. Clause in italics inserted w.e.f. 28-5-2018].

Used vehicles, seized and confiscated goods, old and used goods, waste and scrap supplied by Government

In case of used vehicles, seized and confiscated goods, old and used goods, waste and scrap supplied by Central Government, State Government, Union territory or a local authority, the registered person receiving the supply is liable to pay tax under reverse charge - - Notification Nos. 4/2017-CT (Rate) and 4/2017-IT (Rate) both dated 28-6-2017 amended w.e.f. 13-10-2017.

SUPPLY OF GOODS WHERE GST PAYABLE UNDER RCM

Sr. No.	Description of goods	Supplier of goods	Recipient of goods
1	Cashew nuts (not shelled or peeled), bidi wrapper leaves (tendu), tobacco leaves and raw cotton	Agriculturist	Any registered person
2	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons	Any registered person
3	Lottery	State Government, Union Territory or local authority	Lottery distributor or selling agent
4	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
5	Priority Sector Lending Certificate	registered person	Recipient who is registered person

SUPPLY OF SERVICES WHERE GST PAYABLE UNDER RCM

(NOTIFICATION NO. 13/2017-CENTRAL TAX (RATE), DATED 28-6-2017 AMENDED TIME TO TIME)

Supplier of service and category of service	Recipient of service
1. Any service supplied by any person who is located in a non-taxable territory to any person (other than non-taxable online recipient) (This is Import of service)	1. Any person located in the taxable territory (other than non-taxable online recipient). Rate (in most of the case) - IGST @ 18% (there cannot be SGST or CGST on imports)

2. Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road to - (a) any factory registered under or governed territory, except where the GTA (supplier of service) by the Factories Act, or (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or (e) any body corporate established, by or under any law ("Body Corporate" has the same meaning as assigned to it in section 2(11) of the Companies Act, 2013) or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person

2. The recipient is liable if he is located in taxable territory, except where the GTA (supplier of service) is opting to pay tax under forward charge @ 12%. If GTA charges GST in his tax invoice and pays IGST @ 12% the recipient is not liable to pay GST under reverse charge w.e.f. 22-8-2017. If GTA is unregistered or does not charge GST in his invoice, the recipient is liable to pay IGST @ 5%

SUPPLY OF SERVICES WHERE GST PAYABLE UNDER RCM

Supplier of service and category of service

Nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to,

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

Note - In case of services supplied to unregistered person by GTA, the service is exempt w.e.f. 13-10-2017. Thus, after 13-10-2017, the GTA itself is never liable to pay tax, except where the GTA opts to pay tax under forward charge IGST @ 12%

Recipient of service

Note - 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. Thus, he will be liable to pay tax under reverse charge.

GOODS TRANSPORT SERVICES UNDER RCM

Multimodal transportation of goods within India

In case of multimodal transportation of goods, tax rate is IGST 12%. Input Tax Credit is available - Notification No. 11/2017-CT (Rate) and No. 8/2017-IT (Rate) both dated 28-6-2017 as inserted w.e.f. 27-7-2018.

This concessional rate applies only for **multimodal transport within India** - *explanation 2* to item (vi) Sr No. 9 inserted w.e.f. 1-1-2019. The concessional rate was applicable to service of multimodal transport **even when destination was out of India**.

- **Meaning of Multimodal Transportation** - "Multimodal transportation" means carriage of goods by at least two different modes of transport from the place of acceptance of goods to the place of delivery of goods by a multimodal transporter;
- **Mode of Transport** - "Mode of transport" means carriage of goods by road, air, rail, inland waterways or sea;
- **Multimodal transporter** - "Multimodal transporter" means a person who,- (A) enters into a contract under which he undertakes to perform multimodal transportation against freight; *and* (B) acts as principal, and not as an agent either of the consignor, or consignee or of the carrier participating in the multimodal transportation and who assumes responsibility for the performance of the said contract.

GOODS TRANSPORT SERVICES UNDER RCM

Transportation of goods other than multimodal transportation or other than by road, air or water

Transportation of goods **other than** multimodal transportation or other than by road, air or water, the tax rate is IGST 18%. Input Tax Credit is available - Notification No. 12/2017-CT (Rate) and No. 9/2017-IT (Rate) both dated 28-6-2017 as inserted w.e.f. 27-7-2018.

Goods Transport by Road

Services by way of transportation of goods by road except the services of (i) a goods transportation agency (ii) a courier agency are exempt from GST - Notification No. 12/2017-CT (Rate) and No. 9/2017-IT (Rate) both dated 28-6-2017, effective from 1-7-2017.

Meaning of 'Goods Transport Agency' - "Goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called - para 2 of Notification No. 12/2017-CT (Rate) and No. 9/2017-IT (Rate) both dated 28-6-2017, effective from 1-7-2017.

GOODS TRANSPORT SERVICES UNDER RCM

Courier Agency - "Courier agency" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles - para 2 of Notification No. 12/2017-CT (Rate) and No. 9/2017-IT (Rate) both dated 28-6-2017, effective from 1-7-2017.

Rate of GST - The GST rate in case of service supplied by GTA on transportation of goods (including used household goods for personal use) is IGST 5%,. ITC of input services or goods is not available to GTA - Notification No. 11/2017-CT (Rate) and No. 8/2017-IT (Rate) both dated 28-6-2017, effective from 1-7-2017. Once the recipient pays GST @ 5% on reverse charge basis, he can avail its input tax credit.

Option to pay GST @ 12% under forward charge - The GTA has option to pay GST @ 12% under forward charge. In that case, the GTA can avail Input Tax Credit. Since the GTA himself will be paying tax, the recipient is not liable to pay GST under reverse charge [amendment w.e.f. 22-8-2017].

GTA who are having their own vehicles and having huge Input Tax Credit on capital goods may find the option useful. This option may also be suitable for freight forwarders who are providing composite services of packing, clearing and transportation from source to destination basis.

SUPPLY OF SERVICES WHERE GST PAYABLE UNDER RCM

Supplier of service and category of service	Recipient of service
<p>3. Services supplied by an individual advocate including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity.</p>	<p>3. Any business entity located in the taxable territory - - Note - 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. Advocate provided to business entity whose aggregate turnover is upto Rs 20 lakhs are exempt, vide Sr Nos 45 Notification No. 12/2017-CT (Rates) and 9/2017-IT (Rates) both dated 28-6-2017, effective from 1-7-2017. In such cases, reverse charge will not apply Rate - IGST @ 18%</p>
<p>4. Services supplied by an arbitral tribunal to a business entity.</p>	<p>4. Any business entity located in the taxable territory. Rate - IGST @ 18%</p>

SUPPLY OF SERVICES WHERE GST PAYABLE UNDER RCM

Supplier of service and category of service	Recipient of service
<p>5. Services provided by any person way of sponsorship to any body corporate or partnership firm</p>	<p>5. Any body corporate or partnership firm located in the taxable territory ("Body Corporate" has the same meaning as assigned to it in section 2(11) of the Companies Act, 2013). Rate - IGST @ 18%</p>
<p>5A. Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the CGST Act [w.e.f. 25-1-2018]</p>	<p>5A. Any person registered under the CGST Act, 2017 Rate - IGST @ 18% [this clause inserted w.e.f. 25-1-2018]</p>
<p>5B. Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter [inserted w.e.f. 1-4-2019].</p>	<p>5B. Promoter Rate - IGST @ 18% or CGST 9% plus SGST/UTGST - 9%. Also provided in Notification Nos. 06/2019-CT (Rate) and 06/2019-IT (Rate) both dated 29-3-2019 effective from 1-4-2019.</p>

SUPPLY OF SERVICES WHERE GST PAYABLE UNDER RCM

- ❖ Eighty percent (80%) of value of input and input services used in supplying construction services taxed at concessional rate to be procured from registered persons.

For calculating shortfall, following procurement should be excluded:

Development rights	High speed diesel	Electricity	Long term lease of land
Motor spirit	Natural gas	FSI	(against upfront payment in the form of premium, salami, development charges etc.)

In case of shortfall of purchases of 80% from registered person:

On shortfall, tax shall be paid by builders under RCM

- 18% on purchases (other than cement) from unregistered person
- 28% on purchases of cement from unregistered person

Supplier of service and category of service	Recipient of service
5C. Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter [inserted w.e.f. 1-4-2019].	5C. Promoter Rate - IGST @ 18% or CGST 9% plus SGST/UTGST - 9%. [this clause inserted w.e.f. 1-4-2019. Also provided in Notification Nos. 06/2019-CT (Rate) and 06/2019-IT (Rate) both dated 29-3-2019 effective from 1-4-2019.

SUPPLY OF SERVICES WHERE GST PAYABLE UNDER RCM

Supplier of service and category of service	Recipient of service
<p>6. Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, -(1) renting of immovable property, and (2) services specified below - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport (iii) transport of goods or passengers.</p>	<p>6. Any business entity located in the taxable territory</p> <p>[These services provided to business entity whose aggregate turnover is upto Rs 20 lakhs are exempt. These services are also exempt if consideration does not exceed Rs 5,000 vide Sr Nos 7 and 9 Notification No. 12/2017-CT (Rates) and Sr No. 47 of Notification No. 9/2017-IT (Rates) both dated 28-6-2017, effective from 1-7-2017. In such cases, reverse charge will not apply].</p> <p>Rate (in most of the cases) - IGST @ 18%</p> <p>Note - In case of service of renting of immovable property, reverse charge has been applicable in cases where recipient of service is registered under CGST Act.</p>

SUPPLY OF SERVICES WHERE GST PAYABLE UNDER RCM

Supplier of service and category of service	Recipient of service
7. Services supplied by a director of a company or a body corporate to the said company or the body corporate.	7. The company or a body corporate located in the taxable territory ("Body Corporate" has the same meaning as assigned to it in section 2(11) of the Companies Act, 2013). Rate - IGST @ 18%

Rajasthan AAR pronounced in the month of Feb. 2020, in case of Clay Craft India Pvt. Ltd. RCM is applicable in case remuneration to all the directors of the company.

As per circular no. 140/10/2020 on 10th of Jun 2020,

Doubts have been raised as to whether the remuneration paid by companies to their directors falls under the ambit of entry in Schedule III of the Central Goods and Services Tax Act, 2017 i.e. **“services by an employee to the employer in the course of or in relation to his employment”** or whether the same are liable to be taxed in terms of notification No.

13/2017 – Central Tax (Rate) dated 28.06.2017 (entry no.6).



DIRECTOR REMUNERATION UNDER RCM

The issue of remuneration to directors has been examined under following two different categories:

- (i) leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company; and

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.

- (i) leviability of GST on remuneration paid by companies to the whole-time directors including managing director who are employees of the said company.

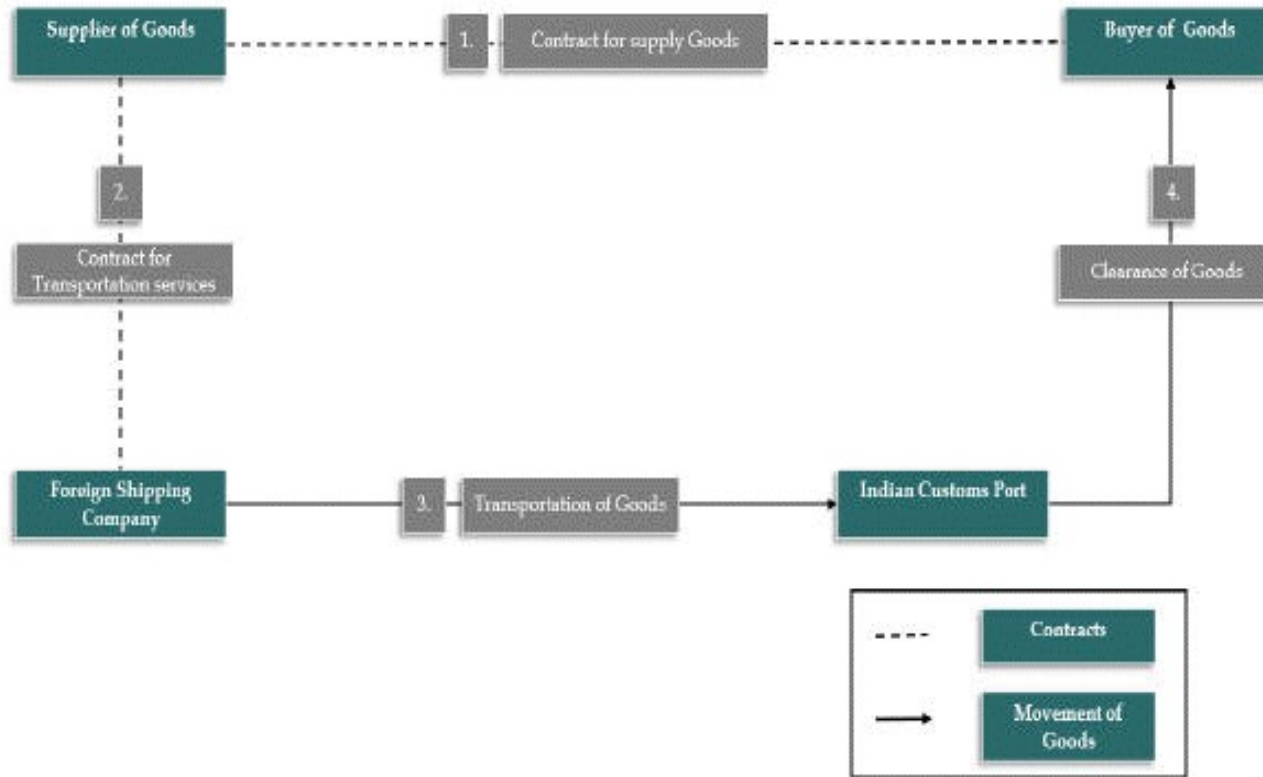
Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a “*contract of service*”) or is there any element of “*contract for service*”. The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e. under a contract of service (employment) entered into with the company, following additional conditions.

1. TDS is deducted under Section 192 of IT Act.
2. Director remuneration declared as Salary in the books of Accounts of the company.

SUPPLY OF SERVICES WHERE GST PAYABLE UNDER RCM

Supplier of service and category of service	Recipient of service
<p>8. Services supplied by an insurance agent to any person carrying on insurance business.</p> <p>"Insurance agent" shall have the same meaning, as assigned to it in section 2(10) of the Insurance Act,</p>	<p>8. Any person carrying on insurance business, located in the taxable territory</p> <p>Rate - IGST @ 18%</p>
<p>9. Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.</p>	<p>9. A banking company or a financial institution or a non-banking financial company, located in the taxable territory.</p> <p>Rate - IGST @ 18%</p>
<p>10. Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.</p>	<p>10. Importer, as defined in clause (26) of section 2 of the Customs Act, 1962, located in the taxable territory.</p> <p>Rate - IGST @ 5% If value of ocean freight is not available, it shall be taken as 10% of CIF Value – Explanation 4 to Notification No. 8/2017-IT (Rate) dated 28-6-2017.</p>

GST ON OCEAN FREIGHT



Under the CIF Contracts in case export of goods to India (in other words importation of goods in India) the foreign supplier undertakes responsibility to deliver goods up to Indian Customs port. In this regard, the foreign supplier may engage foreign shipping line for transporting goods up to the Indian port.

TRANSPORTATION OF GOODS BY A VESSEL FROM A PLACE OUTSIDE INDIA UP TO THE CUSTOMS STATION OF CLEARANCE IN INDIA.

Under the GST Law, tax is levied on supply of goods/services and in general tax is payable by the supplier. However, Section [5\(3\)](#) and [5\(4\)](#) of the IGST Act **create an exception** to the above by **casting liability** on the **recipient** to pay IGST on reverse charge basis in specified cases.

Section 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*

TRANSPORTATION OF GOODS BY A VESSEL FROM A PLACE OUTSIDE INDIA UP TO THE CUSTOMS STATION OF CLEARANCE IN INDIA.

Time of Supply

The taxable event under the GST regime is supply. Section [13\(3\)](#) of the CGST Act deals with the time of supply for reverse charge transactions. As per this, time of supply shall be earliest of the following:

- a. Date of payment by the recipient
- b. The date immediately after 60th day from date of supplier's invoice.

In the present case, practically, it is not possible to comply with the above provision as the importer neither receives any invoice from the foreign shipping company and nor does it make any payment to the foreign shipping company.

In other words, GST Law does not provide any mechanism for establishing the time of supply of transportation service provided by foreign shipping line where the Indian importer liable to pay IGST on reverse charge basis.

TRANSPORTATION OF GOODS BY A VESSEL FROM A PLACE OUTSIDE INDIA UP TO THE CUSTOMS STATION OF CLEARANCE IN INDIA.

In one of such writ petitions, M/s. Mohit Minerals Private Limited being a writ applicant sought to challenge the levy of IGST on ocean freight services under RCM before the Hon'ble Gujarat High Court

The writ-applicant in seeking the declaration that the levy of the integrated tax on the Ocean Freight under the impugned Notifications was not permissible on the basis of submissions, *inter alia*, re-produced here-in-below

1. The writ-applicant discharges the customs duty at the time of importation and such customs duty is paid on the value of the imported goods which includes the value of Ocean Freight, as determined on the value under Section 14 of the Customs Act, 1962 and Rules made thereunder
2. both, the service provider and the service recipients are outside India and such a levy goes beyond the mandate of Section 1 of the IGST Act, 2017, which extends to the whole of India and not outside India.

TRANSPORTATION OF GOODS BY A VESSEL FROM A PLACE OUTSIDE INDIA UP TO THE CUSTOMS STATION OF CLEARANCE IN INDIA.

Reliance is placed on a decision of the Delhi High Court in the case of erstwhile service tax law, wherein it is held that the services rendered outside India cannot be brought to tax by a delegated legislation by fixing a deeming provision without amending the relevant statute. It is an essential legislative function. The same analogy is sought to be extended in the present case also.

It has been argued that as per Section 5(3) of the IGST Act, the tax liability could be shifted on the 'recipient' on reverse charge basis by issuing the Notification. However, as per the impugned Entry 10 of the Notification No.10/2017 – Integrated Tax (Rate), dated 28.6.2017, the liability has been shifted on the 'importer' and not on the 'recipient'; that too, the transaction not exigible to tax under the Act. The said means of shifting liability is contrary to the provisions of Section 5(3) of the Act, Therefore, the impugned Entry 10 of the Notification No.10/2017 – Integrated Tax (Rate), dated 28.6.2017, is *ultra vires* to sub-section (3) of Section 5 of the Act, Therefore, the same is liable to be quashed.

SUPPLY OF SERVICES WHERE GST PAYABLE UNDER RCM

Supplier of service and category of service	Recipient of service
<p>11. Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like.</p>	<p>11. Publisher, music company, producer or the like, located in the taxable territory. Rate - IGST @ 12%</p>
<p>12. Supply of services by the members of Overseeing Committee to Reserve Bank of India</p>	<p>12. Reserve Bank of India. [inserted w.e.f. 13-10-2017]. Rate - IGST @ 18%</p>
<p>13. Supply of services by individual Direct Selling Agent (DSAs) other than a body corporate, partnership or LLP to bank or NBFC</p>	<p>13. Banking company or NBFC located in the taxable territory [inserted w.e.f. 27-7-2018] Rate - IGST @ 18%</p>

SUPPLY OF SERVICES WHERE GST PAYABLE UNDER RCM

Supplier of service and category of service	Recipient of service
<p>14. Services provided by business facilitator (BF) to a banking company.</p>	<p>14. Banking company located in the taxable territory [inserted w.e.f. 1-1-2019] Rate - IGST @ 18%.</p>
<p>15. Services provided by an agent of business correspondent (BC) to business correspondent</p>	<p>15. Business Correspondent located in the taxable territory [inserted w.e.f. 1-1-2019] Rate - IGST @ 18%</p>
<p>16. Security services (services provided by way of supply of security personnel) provided to a registered person, provided by any person other than body corporate.</p> <p>Nothing contained in this entry shall apply to, - (i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under composition scheme under section 10 of CGST Act.</p>	<p>16. Registered person located in the taxable territory [inserted w.e.f. 1-1-2019] Rate - IGST @ 18%.</p>



THANK YOU

CA. Dilip Kumar Gupta