

FROM THE DESK OF B.S.S.Rao.

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Article on “Determination of Place of Supply of Service of Renting of residential property to a Un-registered Person under GST.

Dear Colleagues, Good day to you. I have prepared an article on GST Impact on Rental Income of a Residential House Property given to a registered person and published by Tax guru on 19.07.2022. I have received some queries on how to determine place of supply and under which head of account of GST Tax to be paid, i.e. either IGST or CGST and SGST Act. Kindly elaborate. So, I am trying to explain that, if an unregistered person has taken residential (Dwelling) property from unregistered person and how to discharge and under what head of account to be mentioned on RCM invoice by TENANT.

The Goods and Services Tax is a destination based tax. The Government has designed to tax on goods and Services under GST Law is based on identifying whether the supply made is Inter State supply of services or Intra State supply of services.

In case of Inter State Supply of services, Integrated Goods and Services Tax (IGST) is applicable and in case of Intra State Supply of Service, Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) or Union Territory Goods and Services Tax (UTGST) is applicable.

Section 2(86) of the CGST Act,2017, states that “Place of Supply” means the place of supply as referred to in Chapter –V of the Integrated Goods and Services Tax Act (IGST) 2017.

Section 12 (1) to Section 12(14) of IGST Act,2017 deals with “Determination of Place of Supply of Services” ,i.e. **“Services where location of Supplier and recipient of services is in India”** in various types of Supply of Services .

Meaning of “Location of the recipient of services” under GST Law :

Section 2(14) of the IGST Act,2017,states that “Location of the recipient of Services: means:-

- (a) Where a supply is received at a place of business for which 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 supply 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 , where 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.

Meaning of “Usual Place of Residence” as per GST Law .

Section 2(113) of the CGST Act,2017, states that “usual place of residence “means:-

- (a) In case of an individual, the place where he ordinarily resides,
- (b) In other cases, the place where the person is incorporated or otherwise legally constituted.

Here with I am giving examples to easy to understand about determination of place of supply as per Sec.12(2)(a), Sec.12(2)(b)(i) and Sec.12(2)(b)(ii) of IGST Act.

General Principle:

Section	Situation	Place of Supply
12(2)(a)	Where supply of services made to registered person	Location of recipient of service
12(2)(b)(i)	Where supply is made to an unregistered person where address is available on record	Place of where address is available on record
12(2)(b)(ii)	Where supply is made to an unregistered person where address is not available on record.	Location of the supplier

i).Determination of place of supply shall be “Location of immovable property.

ii). If the immovable property is located in more than one state then the supply shall be treated as made to each state in proportion to the value of services collected or determined.

What is the default presumption for place of supply in respect of unregistered recipient?

In respect of unregistered recipients, the usual place of supply is location of recipient. However, in many cases, the addresses of recipient is not available, in such cases, location of supplier of services is taken as substitute for place of supply.

FAQ's on the above subject:

Q.1. If the taxpayer is located in a State different from the State in which the rented Residential property is situated.

Ans: In this situation, the place of supply shall be the place of residential property, hence, it is inter-State Supply of service and IGST shall be applicable and tenant will be paid @18% GST under IGST Act.

Q.2. Landlord is registered under GST and tenant is un- registered in the same State in which the residential property is situated.

Ans: In this situations, Recipient (un-registered person) shall be liable to discharged GST Tax under CGST @9% and SGST @9% Acts.

Q.3: A XYZ Company takes a villa at Vijayawada to provide residential accommodation as per company policy. The company has taken such villa from a land lord (unregistered person under GST Law) on monthly basis. Under that circumstance, who are liable to pay GST on such monthly rental payment and what is the time limit to discharge GST tax to the Government?

Ans: In this case, M/s. XYZ company, Vijayawada is a tenant, Land lord is also resident of Vijayawada as per Notification No.05.2022-CGST Tax (Rate) dated.13.7.2022, Tenet is liable to pay GST on monthly rental paid on Villa under RCM as Intra-State Supply [i.e.@9%](#) CGST and @9% SGST Acts and eligible to claim ITC as per provisions of the Sec16 & 17 of the CGST Act,2017.

Q.4. Mr. Prasad is having 3 stories residential building at Benguluru. 1st floor is on his registered on his name, 2nd Floor is registered on his wife name and 3rd floor registered on his son's name . 2nd floor has given to Mr.Kumar , is a business men and registered person for used for residential purpose only and 3rd Floor has given to Krishna Rao, is a private employer for used for residential purposes only.. Under the above circumstance, how to determined GST liability and who are liable to pay GST?

Ans: Under the above circumstances, Mr. Prasad, his wife and his son all are un-registered persons(Under GST). 1st floor is self- occupied by Mr. Prasad. with regards to 2nd floor Mr. Kumar (Tenant) is a business men and a registered person (under GST) and used for residential purpose. So, for 2nd floor rental payment, Mr. Kumar (Tenant) will be liable to pay GST @18% under RCM.. With regards to 3rd floor occupied by Mr. Krishna Rao, is a private employ and not a registered person. So, with regards to 3rd floor rental payment , payment of GST doesn't arise.

Q.5:. Mr. Sundar is having 2 residential Flats at Guntur and he is not a registered person (Under GST) and he has given second Flat to Md. Basha (**Tenant**). He is doing departmental stores business and is having GST registrations (under Composition Dealer). Under that circumstance who are liable to pay GST on 2nd Flat rents?

Ans: Under that circumstance Md. Basha (**Tenant**) is liable to pay GST on Second Flat rent used for residential purpose @18% under RCM and not eligible to claim ITC credit as per Section 10(4) of the CGST Act,2017.

Disclaimer: The contents of this article have been prepared on the basis of Press Release by the GST Council issued on the 28th & 29th, June'2022 and Notification No.05/2022-CentralTax, (Rate)dated.05.07.2022 issued by the CBIC. Although care has been taken to ensure the accuracy, completeness and reliability of the information available, the author assumes no liability. Therefore, users of this information are expected to refer the relevant law, the information as given in no case shall be constructed as a professional advice or opinion.

THANK YOU.