

## FAQ's on GST on renting of residential dwelling

*Notification No. 05/2022-Central Tax (Rate), Dated 13 07, 2022*

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### *Summary*

The renting of residential dwellings for residential purposes is generally exempted from GST. However, with effect from July 18, 2022, if this service is provided to a registered person then the exemption would not be available (i.e. GST would be applicable). Further, the registered person receiving the above services would be liable to pay GST under reverse charge.

### **About GST on renting of residential dwelling**

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The service of renting a residential dwelling for residential purposes in all cases was exempted under GST up to July 17, 2022. However, the GST council in its 47<sup>th</sup> GST Council recommended the withdrawal of the given exemption when these services are provided to a registered person. In other words, GST would be applicable when a residential dwelling is rented to a registered person. Further, the notification of reverse charge on services has also been amended to provide that the service by way of renting a residential dwelling to a registered person would be subject to GST under reverse charge. Thus, the registered person receiving the above service would be liable to pay GST under reverse charge.

To sum up the above changes, with effect from 18 July 2022 the GST on renting a residential dwelling to a registered person would be subject to GST under reverse charge.

The GST implications on renting of residential dwelling is summarized as under:

<i>Nature of Property</i>	<i>Property used for</i>	<i>Registration status of recipient</i>	<i>Exemption</i>	<i>Payment liability</i>
Residential Dwelling	Residence	Not Registered	Available	N.A.
Residential Dwelling	Residence	Registered	Not available	Reverse Charge
Residential Dwelling	Non Residence/ commercial	Not registered	Not available	Forward Charge
Residential Dwelling	Non Residence/ commercial	Registered	Not available	Reverse Charge

## *FAQs on renting a residential dwelling*

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### **Q 1. What is the scope of the above exemption?**

The exemption is available on renting of residential dwelling for use as a residence except where the residential dwelling is rented to a registered person. Thus the exemption would be available if the following conditions are satisfied:

- (a) There should be a residential dwelling
- (b) Such residential dwelling is given on a rental basis
- (c) It is used for residence
- (d) It should not be rented to a registered person

### **Q 2. What is the meaning of residential dwelling?**

The phrase 'residential dwelling' has not been defined under the GST laws. In order to understand this term, one can note the following from the judicial dictionaries:

*To dwell connotes, more definitely than to 'reside', a place where a person lives and sleeps (Att. Gen v McLean (1863) I. h. & C 761)*

*The connotation of a dwelling place is different from a mere residence or a mere house in which one finds oneself for a temporary or short period. A dwelling place connotes a sense of permanency, a sense of attachment, and a sense of surrounding, which permits a person to say that this house is his home. (I.T. Commr. Vs Fulabhai Khodabhai, AIR 1958 Bom. 41.)*

From the above, it can be said that a place where one stays on a temporary basis cannot be referred to as a dwelling. Thus, the hotel, motel, inn, guest house, campsite, lodge, house boat, or like places do not qualify as residential dwelling as these are meant for a temporary stay. The person who stays in it does not refer to it as his home. The given position has also been clarified by the CBIC through the Education Guide under the erstwhile regime of Service Tax.

### **Q 3. What is the meaning of the expression 'Residential dwelling use as a residence'?**

The GST exemption is available when the residential dwelling is used for residence purposes.

The word residence is not defined under the GST laws. The judicial dictionaries provide that 'it connotes the idea of home, or at least of habitation, and need not necessarily be permanent or exclusive. The word denotes the place where an individual eats, drinks and sleep, or where his family or his servants eat, drink and sleep<sup>1</sup>.

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<sup>1</sup> R. V North Curry (Inhabitants), (1825) 4 B&C

If the residential property is not let out for residential purposes then the exemption is not available. In other words, when it is used for commercial purposes (say for opening an office), the GST exemption is not available. In such cases, GST would be required to be paid.

Here, it is interesting to note that to claim the exemption the end use of the residential dwelling must be of residence. In other words, the exemption would be available even if the service recipient has not used the rented property himself and further let out the property to someone else for use as a residence. (Example: Mr. A (Landlord) has given its residential house to Mr. B (not registered in GST) who would, in turn, use this property for further rental to an individual (Mr. C - not registered under GST) for use as a residence. In this case, the transaction between A & B would be exempted and not taxable as the rented residential property is used for residence purposes. Further, the transaction between Mr. B and Mr. C would also be exempt from GST).

#### Q 4. Illustrations on scope exemption on residential dwelling

One can refer to the following illustrations to understand the scope of the given exemption (assuming the service recipient is not registered under GST):

<i>Nature of Transaction</i>	<i>Eligibility for exemption</i>
A residential house taken on rent is used only or predominantly for commercial or non-residential use.	The exemption would not be available as the residential dwelling is used for purposes other than as a residence.
If a house is given on rent and the same is used as a hotel or a lodge	The exemption would not be available as the house is used for purposes other than as a residence
Rooms in a hotel or a lodge are let out whether or not for a temporary stay	The exemption would not be available as the room in a hotel does not tantamount to a residential dwelling
The government department allots houses to its employees and charges a license fee	The exemption would be available as the residential dwelling is used by the employee for use as a residence
Furnished flats are given on rent for a temporary stay (a few days)	The furnished flats used for temporary stay is not residential dwelling. Therefore, the exemption would not be available

#### Q 5. Whether the exemption is available when the residential dwelling is rented to a GST-registered person?

With effect from 18<sup>th</sup> July 2022, the given exemption is not available when the residential dwelling is rented to a registered person. Therefore, in such cases, the GST liability would arise.

**Q 6. Who is liable to pay GST when the residential dwelling is rented to a registered person?**

The GST liability on renting the residential dwelling to the registered person is to be paid by the service recipient under reverse charge. It may be noted that reverse charge would be applicable irrespective of the fact whether such residential property is used for residential purposes or otherwise.

**Q 7. We are having commercial shops and some are given on rent to some dealers registered under the GST laws. Who is liable to pay GST in this case?**

The reverse charge is applicable when a residential dwelling is rented to a registered person. There is no change in the scope of taxability of other properties given on a rental basis. In the given case, the supplier is liable to pay GST under the forward charge (assuming the supplier is registered/liable to be registered under GST).

**Q 8. We are having flats in Delhi and some are rented to the individuals that are used for residence. Are we liable to pay any GST on the rent amount?**

No, the GST is exempt in this case. Neither supplier nor recipient is liable to pay any GST in this case. It may be noted that if the recipient is registered under GST law, then GST applicability may arise (refer to FAQ no 9).

**Q 9. I am registered under GST (as selling goods through an E-commerce portal). I have also taken a residential property on rent for my residence. What are the GST implications in this case?**

With effect from July 18, 2022, the GST-registered person receiving the rental services is liable to pay GST to the Government under reverse charge. The literal reading of the law suggests that the GST would be applicable in this case under reverse charge.

Further, the GST paid above is not available as an Input tax credit ('ITC') as the services received are for personal purposes and the GST law allows the ITC for expenses that are incurred in the course or furtherance of business.

In our view, suitable amendments in the current drafting of law should be made to exclude the given scenarios where individuals are made liable to pay GST under reverse charge.

**Q 10. Will the given change in the law impact the taxability of accommodation services provided by hotel, guest house, inn etc.?**

The hotel, inn, guest house *etc.* do not qualify as a residential dwelling (refer to FAQ No 2). Therefore, there would be no implications due to change in the subject provisions of renting of residential dwelling.

**Q 11. What would be GST implications where the residential dwelling is used for commercial purposes (say the rented house is used as a godown by a business entity)?**

The GST liability under reverse charge arises when a residential dwelling is given to a registered person. Therefore, it is important to see the status of the property which is rented. If at the time of rental arrangement such property is not qualifying as a residential dwelling then GST liability would be there under forward charge (i.e. supplier is liable to pay GST to the Government). If the property qualifies as a residential dwelling, GST liability would be there under reverse charge.

A few factors that may be important to determine the status of the property, **in the given case**, are as under:

- (a) Status of property in Municipal Records
- (b) Condition of the property when it is rented (a too old property not in a proper condition for a living)
- (c) Structural status of the property (residential or otherwise) etc.

**Tax position where the supplier is not registered but the recipient is registered under GST**

If the rented property is a residential dwelling then GST liability would arise under reverse charge.

**Tax position where both supplier and recipient are registered under GST**

If the rented property is a residential dwelling then GST liability would arise under reverse charge. The determination of the factual position of the property is important to determine who is liable to pay GST in this case.

**Tax position where the recipient is not registered under GST**

If the rented property is a residential dwelling used for commercial purposes then GST would be liable to be paid by the supplier under forward charge (provided the supplier is registered/liable to be registered under GST).

**Q 12. We are property owners/co-owners providing our residential property on rent to Co-living space companies registered under GST. The service recipient has used the property to provide co-living space to students, professionals, etc. for residence. What would be the GST implications?**

The rental service by the service recipient to the students, professionals, etc. is used for residence and hence is exempt under GST (provided these students and professionals are not registered under GST).

The renting of the residential dwelling to the co-living space companies would be liable to GST under reverse charge. The input tax credit of GST paid under reverse charge by the co-living space companies would not be available as the output supply is exempt from GST.

**Q 13. We are the corporate registered under GST. We take the residential property on rent and provide the same to the employees/directors for their residential use. Are we liable to pay GST under reverse charge?**

The rental service provided by the landlord to the corporate registered under GST is not exempt and liable to GST under reverse charge in the hands of the corporate.

The ITC eligibility would depend on whether the Company is charging any rent from the employees or not. If the full rent is charged then the ITC may not be available as the output supply is exempt from GST.

Notably, if the property is rented to employees as a part of perquisites then one must note that ITC eligibility may be challenged on the ground that it's for personal consumption. If the position is taken that ITC is available, there is no need for any restructuring of the rental arrangements. In other cases, the restructuring of rental arrangements should be explored else the GST paid under reverse charge would become a cost.

**Q 14. What would be the GST liability on availing the renting service of residential property located in Delhi by a person registered in Haryana?**

In our view, the GST is not required to be paid in this case provided you do not have any GST registration in Delhi.

**Q 15. I am a Chartered Accountant who has taken a residential apartment on rent. I am using the same for residential use and for running my office as well. What would be the GST implications?**

The GST exemption is available only when the residential dwelling is used for residence. If the residential dwelling is used for commercial purposes, the exemption would not be available. In this case, if you are registered under GST, the reverse charge would be applicable to the entire rent.

In case you are not registered under GST, the landlord would be liable to pay GST under forward charge (provided he is registered under GST).

The input tax credit of GST paid would be available to the extent used for business purposes. In this regard, Rule 42 of the CGST Rules should be applied for calculating the amount for non-business purposes.

Note: The above comments are for guidance purposes and cannot be construed as a legal advisory. In case of any query, feel free to connect at [connect@taxmann.com](mailto:connect@taxmann.com).