

Impact of GST on Renting of Residential Dwelling and Accommodation Services

Date of Issue: 15th July 2022

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Shelter is a basic human need crucial for survival. It provides security, personal safety and protection from the weather, and prevents ill health and disease. Adequate housing provides people with dignity and the opportunity to lead a normal life.

To provide the shelter to everyone and to provide the residential dwelling at a low cost, Government had exempted the services by way of renting of residential dwelling for use as residence. As per S. No. 12 of Notification No. 12/2017-Central Tax (Rate)/ S. No. 13 of Notification No. 9/2017-Integrated Tax (Rate), services by way of renting of residential dwelling for use as residence is exempted from GST.

However, the CBIC, in line with the recommendations made by the GST Council in its 47th Meeting held on 29.06.2022, has curtailed the exemption and made the following services taxable under reverse charge by way of Notification No. 04/2022-CT(R) dated 13-07-2022 read with Notification No. 05/2022-CT(R) dated 13-07-2022:

Notification No. 12/2017-CT(Rate) as amended vide Notification No. 04/2022-CT(Rate)				
S. No	Heading	Description of Services	Rate	Condition
12	Heading 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person.	Nil	Nil

Notification No. 13/2017-CT(Rate) as amended vide Notification No. 05/2022-CT(Rate)			
S. No.	Category of Supply of Services	Supplier of service	Recipient of Service

5AA	Service by way of renting of residential dwelling to a registered person	Any person	Any registered person
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On the other hand, Government had also exempted services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation below or equal to one thousand rupees per day or equivalent as per S. No. 14 of Notification No. 12/2017-Central Tax (Rate)/ S. No. 15 of Notification No. 9/2017-Integrated Tax (Rate) as amended from time to time.

However, the CBIC, in line with the recommendations made by the GST Council in its 47th Meeting held on 29.06.2022, has curtailed the exemption and made the following services taxable under GST by way of Notification No. 04/2022-CT(R) dated 13-07-2022 by amending Notification No. 12/2017-CT(R) dated 28.06.2017 read with Notification No. 03/2022-CT(R) dated 13-07-2022 by amending Notification No. 11/2017-CT(R) dated 28.06.2017:

Notification No. 11/2017-CT(Rate) as amended vide Notification No. 03/2022-CT(Rate)				
S. No.	Heading	Description	Rate [CGST]	Condition
7	Heading 9963 (Accommodation, food and beverage services)	Supply of 'hotel accommodation' having value of supply of a unit of accommodation above one thousand rupees but less than or equal to seven thousand five hundred rupees per unit per day or equivalent.	6%	-

Notification No. 12/2017-CT(Rate) as amended vide Notification No. 04/2022-CT(Rate)				
S. No	Heading	Description of Services	Rate	Condition
14	Heading 9963	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having "value of supply" of a unit of accommodation below or equal to one thousand rupees per day or equivalent.	Nil	Nil

Thus, the services by way of supply of hotel accommodation' having value of supply of a unit of accommodation less than or equal to seven thousand five hundred rupees per unit per day or equivalent shall be taxable @ 12% under GST.

Now, we shall analyze the implication on the taxability of such services after withdrawal of exemption on the above services.

Important Definitions

Residential Dwelling

The phrase 'residential dwelling' has not been defined in the Act. as per 'Taxation of Services – Education Guide dated 20-06-2012 issued by CBEC (now CBIC) under earlier service tax regime at serial no. 4.13.1 has clarified the meaning of term 'residential dwelling' as follow:

4.13.1 What is a 'residential dwelling'?

The phrase 'residential dwelling' has not been defined in the Act (service tax law). 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.

Thus, on the basis of above definition it can be inferred that the term residential dwelling shall not include hotel, motel, inn, guest house, camp-site, lodge, house boat, or like places as these places are meant for the temporary stay only.

Hotel Accommodation

As per Explanation to Notification no 12/2017 - CGST (Rate) dated 28-06-2017 as amended from time to time, Hotel accommodation is defined as follows;

(xxxiv) 'Hotel accommodation' means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation.

Other Definitions

As per Explanation to Notification no 12/2017 – CGST (Rate) dated 28-06-2017 as amended from time to time,

(xxxv) 'Declared tariff' means charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.

(xxxvi) '*Specified premises*' means premises providing 'hotel accommodation' services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.

Impact of the amendment on Residential Accommodation Services

Nature of Residential Accommodation	Taxability before change	Taxability after change
Let out for residential use	Completely Exempt	<ul style="list-style-type: none"> In case let out to Registered person under GST- Taxable under Reverse Charge In other cases- Exempt
Let out for any non-residential use	Taxable @ 18%	<ul style="list-style-type: none"> In case let out to Registered person under GST- Taxable under Reverse Charge In other cases- Taxable under forward charge @ 18%
Let out as Hotel/ Guesthouse	Comes within the scope of Hotel Accommodation Services	
Let out to Employee on personal name	Completely Exempt	Since, the employee is not registered- Exempt
Let out to the company who gives it to the employee	Completely Exempt	<p>Taxable in hands of the Company under Reverse Charge.</p> <p>Tax shall not be levied in the hands of the Company on providing such residential accommodation to its employees, in terms of the contractual agreement with its employees, as per Entry 1 of Schedule III to CGST Act, 2017.</p>

Impact of the amendment on Hotel Accommodation Services

Nature of Hotel Accommodation	Taxability before change	Taxability after change
Having value of supply of a unit less than INR 7,500 per unit per day or equivalent.	Completely Exempt	Taxable @ 12% in hands of the Service Provider
Having value of supply of a unit equal to or more than INR 7,500 per unit per day or equivalent.	Taxable @ 18%	No Change

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