

# Renting of Residential Dwelling - Impact of Tweaking the Exemptions on Industry

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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 were exempted from GST.

However, the CBIC, in line with the recommendations made by the GST Council in its 47<sup>th</sup> Meeting held on 28-06-2022 to 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 <i>"except where the residential dwelling is rented to a registered person"</i> .	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 <b>registered person</b>	Any person	Any registered person @ 18% (SAC 997211)

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.

### 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	• In case let out to <b>Registered person - Taxable under Reverse Charge</b>

		<ul style="list-style-type: none"> <li>• In other cases - <b>Exempt</b></li> </ul>
Let out for any non-residential use	Taxable @ 18%	<ul style="list-style-type: none"> <li>• In case let out to <b>Registered person - Taxable under Reverse Charge</b></li> <li>• In other cases - <b>Taxable under forward charge @ 18%</b></li> </ul>
Let out to unregistered person	Completely Exempt	Since, No GST since unregistered - Exempt
Let out to the company (registered) 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 under forward charge 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>
Company owned Staff Quarters provided to employees at concessional rent near factory premises to employees	Completely Exempt	Completely Exempt
Let out to proprietor of GST registered concern for personal use as residence	Completely Exempt	GST liable to be paid under RCM
Let out as Hotel/ Guest house	Comes within the scope of Hotel Accommodation Services	

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