



THE INSTITUTE OF  
CHARTERED ACCOUNTANTS OF INDIA  
(Set up by an Act of Parliament)

**74<sup>th</sup> CA Foundation Day**



Years of

**PUNE BRANCH  
OF WIRC OF ICAI**

**NEWSLETTER**

**Issue No. 7**

**July 2022**

(Subscribers copy not for sale)

## Due Date Calender for the Month July 2022

| SR. NO. | DATE            | TAXATION UPDATES                                 |
|---------|-----------------|--|
| 1.      | 7th July, 2022  | TDS/TCS Payment June 2022                        |
| 2.      | 10th July, 2022 | GSTR 7/8 June 2022                               |
| 3.      | 11th July, 2022 | GSTR 1 June 2022 Monthly                         |
| 4.      | 13th July, 2022 | GSTR 1 Q1 22-23 QRMP<br>GSTR 6 June 2022         |
| 5.      | 15th July, 2022 | TCS Return Q1 22-23<br>PF/ESIC Payment June 2022 |
| 6.      | 18th July, 2022 | CMP 08 Q1 22-23                                  |
| 7.      | 20th July, 2022 | GSTR 3B, GSTR 5/5A<br>June 2022 Monthly          |
| 8.      | 22nd July, 2022 | GSTR 3B Q1 22-23 GROUP A                         |
| 9.      | 24th July, 2022 | GSTR 3B Q1 22-23 GROUP B                         |
| 10.     | 30th July, 2022 | TCS Certificate Q1 22-23                         |
| 11.     | 30th July, 2022 | TDS Return Q1 22-23<br>ITR AY 22-23 Non-Audit    |

### Seminar on "CARO 2020"



From L To R :- CA. (Dr.) S. B. Zaware, CA. (Dr.) Sanjeev Kumar Singhal, Chairman, AASB, ICAI, CA. Chandrashekhar V. Chitale, CCM, ICAI



Participants

## Chairman's Communique

**Dear Professional Colleagues,**

Wishing you all a very Happy CA Day!!!!

Our esteemed Institute completes its 74 years of existence and definitely it is a proud moment for all of us. The ICAI is constantly innovating, upgrading and make it enriching for us members. However, we as members also have a responsibility – infect a duty to our mother institute. In my view, such responsibility is fairly shouldered if we take interest, interact, share your own views- overall participate in all the activities organized by the Institute, as far as possible as your busy schedule permits.



CA. Kashinath Pathare  
Chairman  
Pune Branch of WIRC of ICAI

1st July- Foundation Day was celebrated with lots of activities for members and students for the decreasing work stress and pressures i.e , Walkathon, Poster and slogan competition, Flag hoisting, Health Check-up, Notebook donations, Educational Kit, Cyclothan, Tree Plantation and other sports activities.

As like every year, we at Pune branch are very proud to state that more than 899 bottles of blood on 13 different locations was donated by our CA fraternity.

Regarding celebrations of 74th CA Day across the country video message of President, ICAI and Vice-President, ICAI addressing the CA fraternity for better service.

Pune Branch of WIRC of ICAI has successfully organized two CRET "Outreach Meeting for **Proposed Scheme of Education and Training and the good response received from CA members, student's, Academicians and Public.**

Inaugurated of "Accountancy Museum" in Brihan Maharashtra College of Commerce (BMCC) also arranged the Financial & Tax Literacy Drive on the topic "Finance" for the teachers' & students'

Pune branch shall also focus to organizing programs related to GST, National Conferences, Certificate Courses stress management, practice management and health management.

Do not forget to share your ideas, views and thoughts on any and every matter related to the branch. Assuring you that we shall definitely take cognizance of each and every email, message and verbal communication.

Warm Regards,  
CA.Kashinath Pathare,  
Chairman  
Pune Branch of WIRC of ICAI

## 36th Regional Conference of WIRC of ICAI at Pune



Inauguration



Participants



Tree Plantation

## CRET Outreach Meeting to Discuss About Proposed Scheme of Education and Training 2022



## Detailed Analysis of 'Renting of Residential House Property' under GST Laws after amendments with effect from 18/07/2022

Contributed by :- CA. Aumkar Suendra Prachi Gadgil  
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The 47<sup>th</sup> GST council meeting was held on 29<sup>th</sup> June 2022 and certain recommendations were made during the same. One of the recommendations was withdrawal of exemption on '**Renting of residential dwelling to business entities (registered persons)**'. Certainly, there was a instant buzz around as to how exactly the taxability is going to be in this regard. Primarily, the fear that cropped up to all the tenants of residential house properties. To add to those the social media circulations gripped further panic. On 13/07/2022, following the notifications in relation to the above proposed amendment were released.

**Notification 04/2022 Central Tax Rate was regarding the withdrawal of exemptions which envisaged the following entry.**

| Sl. No. | Old Entry  | New Entry (inserted w.e.f 18/07/2022)  |
|---------|--|--|
| 12      | Services by way of renting of residential dwelling for use as residence. | Services by way of renting of residential dwelling for use as residence <b>except where the residential dwelling is rented to a registered person.</b> |

**Notification 05/2022 Central Tax Rate was regarding the new entry in case of payment of tax as required to be made u/s 9(3) of the CGST Act 2017 for payment of tax under the 'Reverse charge mechanism'.**

| Sl. No. | Category of Supply of Services  | Supplier   | Recipient             |
|---------|---|------------|-----------------------|
| 5AA     | Service by way of renting of residential dwelling to a registered person. | Any person | Any registered person |

5AA Service by way of renting of residential dwelling to a registered person. Any person Any registered person To decide on the applicability of tax in the given case, the following questions need to be taken into consideration.

- a. What was the exemption before 18/07/2022 in terms of taxability? What change has been made to the existing exemption?
  - b. What should the taxpayer do now in order to ensure there is compliance' under the GST Laws?
- Let us answer the above questions. The answer however to the above questions is possible only after drawing necessary references from relevant provisions of the GST Laws.

**· Section 7 of the CGST Act Scope of supply. (1) For the purposes of this Act, the expression –supply includes-- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.....)**

The activity of **renting of immovable property**, specifically being 'residential house property', amounts to '**supply**' as it can be very well envisaged under the meaning assigned in the relevant extract of section 7(1) of the CGST Act 2017.

**· As per Schedule II to the CGST Act 2017, (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services**

Thus, on a combined reading of Section 7(1) stated above along with the extract of Schedule II, it is imperative to conclude that the renting of residential house property would amount to 'supply of service'.

**a. What was the exemption before 18/07/2022 in terms of taxability? What change has been made to the existing exemption?**

As per the erstwhile entry in vide notification 12/2017 Central tax rate, the service provided by way of 'renting of residential dwelling, for use as residence' was exempted from the levy of GST. Here the service had two key aspects, 'renting of residential dwelling' (ie to say the property which is being let out was by identification should be a residential house property). The second aspect of the exemption was that the said residential property was being used for the purpose of 'residential dwelling' ie to say the habitat was used for stay purpose and no commercial activity was presumed to be carried out from the said premises (yes work from home's should be strictly ignored here). Thus, prior to 18/07/2022, the above referred activity was completely exempted from GST.

However, if the immovable property which was let out was anything but a 'residential dwelling' there was no exemption existing. Also, if the 'residential dwelling' was let out for any purpose other than 'use as residence' also in such case there was non exemption existing. The same position continues even now.

To answer the second part of the question, the amendment only suggests that the 'renting of residential dwelling for use as residence, will be exempt in all cases other than when the recipient (tenant) is registered person under GST. Ie to say the exemption would otherwise continue however it would only be taxable if the tenant or recipient of services is registered under GST.

Here starts the actual confusion. Whether the supplier is supposed to pay GST? Whether the recipient needs to pay GST? Whether the recipient is to be individual, firm, company? Therefore, we shall try to further check as regards who shall really be liable to pay the GST in such cases.

***As per provisions of Section 9(3) of the CGST Act 2017, 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***

Now, we shall take the cognizance of the notification 5/2022 Central Tax rate as stated above. Here the entry (5AA) inserted in the said notification suggests that 'supplier of services (owner of residential dwelling), being any person, if has let out the said residential house property to a 'GST registered recipient', then the tax on such transaction is supposed to be borne by the said 'GST registered recipient'. Now the issue in here is that the withdrawal of exemption notification as very specifically limited to say that exemption is withdrawn only if the 'residential dwelling is let out for use as residence', whereas the notification wherein the mechanism to pay GST under reverse charge has been brought in suggests that 'if residential dwelling is let out to registered person', then such registered person should bear GST under reverse charge mechanism. Thus, the reverse charge mechanism in fact lays further problems that even if the residential dwelling may or may not be used for residential use still the recipient would be entailed to pay the GST under reverse charge mechanism. We firmly are of the view that the 'entry 5AA' needs some very quick clarifications.

There are issues with respect to claiming of Input tax credit in all cases. Altogether if the renting is for residential dwelling, then the highly perceived possibility would be that the input tax credit would be blocked under provisions of section 17(5) since the same would be considered to be use for personal consumption of the person staying in such property. Only the case where the residential dwelling is let out for commercial usage, we are of the view that there would be no issue in claiming the Input tax credit since for the recipient in such case it would constitute as 'place of business' and he shall be entitled to claiming Input tax credit as per provisions of section 16 of the CGST Act and also since the same not being specifically blocked under provisions of section 17(5).

After considering the combined reading of the two new notifications viz '4/2022 and 5/2022 Central tax rate', the following tax matrix can be formed. The possibility of levy of taxes post 18/07/2022 can be summarised as under.

| Sr No | Residential dwelling let out for what type of usage? | Registration status of Owner of House property | Registration status of Tenant of house property | GST applicability and Person liable to pay GST   |
|-------|--|--|---|--|
| 1     | Residential usage purpose                            | Not registered under GST                       | Not registered under GST                        | No GST payable, still would continue to remain exempted                                      |
| 2     | Residential usage purpose                            | Not registered under GST                       | Registered under GST                            | Taxable and recipient to pay GST under reverse charge mechanism                              |
| 3     | Residential usage purpose                            | Registered under GST                           | Not Registered under GST                        | No GST payable, still would continue to remain exempted                                      |
| 4     | Residential usage purpose                            | Registered under GST                           | Registered under GST                            | Taxable and recipient to pay GST under reverse charge mechanism                              |
| 5     | For commercial usage                                 | Registered under GST                           | Not registered under GST                        | Taxable and owner would be required to pay GST under forward charge mechanism                |
| 6     | For commercial usage                                 | Registered under GST                           | Registered under GST                            | Taxable, but considering new entry 5AA recipient to pay GST under reverse charge mechanism** |

\*\* We wish to state that, a plain reading of entry 5AA suggests that in such case as well the recipient shall be liable to pay the GST under reverse charge mechanism.

#### **b. What should the taxpayer do in order to ensure compliance under the GST laws?**

Referring to the above matrix, wherein the recipient (tenant who is registered person) needs to start to pay the GST under reverse charge mechanism. Since the same has been brought into effect from 18/07/2022, the same is due on rent accruing from such date. One question that can still come here is, whether the aspect of 'registered person' should be considered as 'registered under GST Laws' or 'should hold registration in the state/UT where such residential property is located' is relevant?

**Section 2(94) of the CGST Act defines 'registered person' means a person who is registered under section 25 but does not include a person having a Unique Identity Number.**

Thus, in our view, it would be pertinent to note that the act per-se does not make any alternate identity of a person being registered under a particular state but it is more in nature of 'registered under GST Laws'. Thus, in our view, if any recipient holds a GST registration under GST Laws and has taken any 'residential dwelling' on rent, then would be required to pay GST under reverse charge mechanism in that state where such 'residential dwelling' is located. The reason being, as per provisions of section 12(3) of the IGST Act 2017, the 'Place of supply' in case of services in relation to immovable property will always be the 'location of such immovable property'.

#### **Now let us understand a practical case.**

**Q Ltd holds a registration in the state of 'Maharashtra'. Q Ltd has a new office to be set up in the state of 'Goa' and for preliminary research it sends 5 staff to stay in 'Goa'. For this purpose, Q Ltd has taken 2 flats belonging to same owner. Now the total rent for 2 flats is Rs 18 Lakhs for the entire year. The owner is not registered (assuming his aggregate turnover does not exceed Rs 20 Lakhs. Q Ltd is of the view that since Q Ltd currently does not hold a registration in 'Goa' they shall be considered as 'not registered under GST' thus no tax is required to be paid under reverse charge mechanism.**

After considering the provisions stated above, we are of the view that the entry 5AA inserted specifies that the recipient needs to be a 'any registered person' and as per meaning assigned in definition stated above it means a person who has been registered under the provisions of GST Laws. Thus, in our view Q Ltd, cannot hold itself as 'not being registered', in fact Q Ltd would be required to seek registration in the state of 'Goa' and pay GST under reverse charge mechanism.

Above are the possible legal implications in our view. The challenge is where a recipient is a proprietor of a business, holds a GST registration in his own PAN. If he stays in a 'residential dwelling' then he would be taking a unfortunate 'hit' of the tax liable to be paid under reverse charge mechanism in such a case. He would not even be able to claim the Input tax credit. This would lead to additional cost of rent for him. We have made the assertions stated above on basis of a strictly made legal interpretations of the newly introduced notifications. We sincerely hope the GST council takes cognizance of two vital aspects.

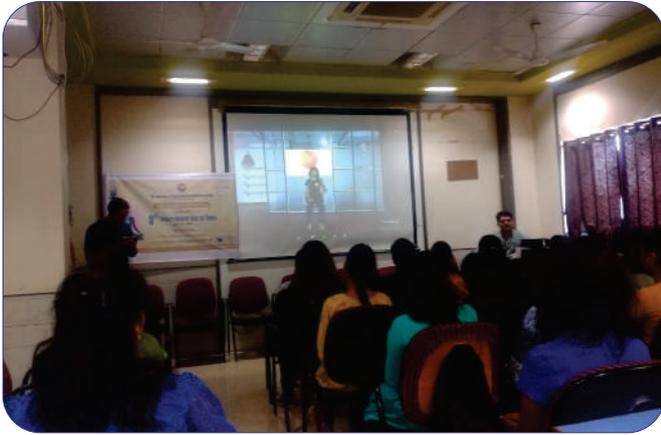
1. There needs to be a clarity in scope of taxability. If it is intended to be only on registered person being business entity then the same must be clarified at the earliest. (only a limb of this could be observed in the press release of 47<sup>th</sup> Council meeting wherein it was stated that the withdrawal of exemption would be in case of renting of 'residential dwelling' to business entity (registered persons)).

2. If however, it is not as mentioned in point 1, then at least there needs a rate rationalization (from 18% to lowest possible %). A person merely because holds a registration as a proprietor as stated above should not be made to take a 18% hit for tax where he is not even entitled to claim 'Input tax credit'.

***Disclaimer: The views expressed above are on the basis of our understanding of the GST Laws, rules and regulations. The GST authorities, courts, tribunals, may hold a view which may be different from above.***



## Celebration of 8th International Day of Yoga



## CSR Activity - Served Breakfast to the Varkaris



## VCM on "MSME Central Government Subsidy Schemes (Opportunities for CAs)"



1st Row L To R :- CA. G. B. Modi - Speaker, CA. Avanti Gadgil - MOC, CA. Kashinath Pathare, Chairman - Pune ICAI  
2nd Row L To R :- CA. Rajesh Agrawal, Vice-Chairman - Pune ICAI,  
CA. Dheeraj Kumar Khandelwal, Chairman, Committee on MSME & Start Up - ICAI

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