

### REVERSE CHARGE ON SERVICES under GST (Amended up to 1.10.2023)

Reverse Charge Mechanism based tax payment is required to be done by the recipient in certain cases, following is gist of its applicability.

#### RCM Chart for SERVICES

S. No.	Type of Service	Status of Service Provider (See note 2)	Status of Svs Recipient (Do u fall in this)	Description of Service	Tax payable by Provider	Tax payable by Recipient	Effective from
1	Procurement of goods or service from an unregistered person <b>[See note 4]</b>	Any Unregistered person	Any Registered person	Purchase of any goods and receipt of any service from an unregistered person	Nil	Rate applicable to goods or service recd	From 1.07.2017 to 12.10.2017
2	Import of Services	Any	Any	Any Services provided by a person outside India to any person in India	Nil	Rate applicable to the service	1.07.2017 onwards
3	Insurance agent Services	Any	Any	Services provided by an insurance agent to any person carrying on insurance business	Nil	18%	1.07.2017 onwards
4	Goods Transport by Road (GTA)	Goods Transport Agency (Who has not opted for FCM option in 5% or 12%)	Any person other than a non-business entity <b>(see Note 5)</b>	Service provided by the Good Transport Agency (GTA) in respect of transportation of goods by road.	Nil	5%	1.07.2017 onwards with minor changes
5	Sponsorship Service	Any Person	Firm, LLP, or Company	Service provided by way of sponsorship.	Nil	18%	1.07.2017 onwards
6	Service by an Arbitral Tribunal	Arbitral Tribunal	Business entity located in India <b>(See Note 6)</b>	Service provided by an Arbitral Tribunal	Nil	18%	1.07.2017 onwards



S. No.	Type of Service	Status of Service Provider (See note 2)	Status of Svs Recipient (Do u fall in this)	Description of Service	Tax payable by Provider	Tax payable by Recipient	Effective from
7	Advocate Service (Including Senior Advocates)	Individual or Firm of Advocates	Any (See Note 6)	All Legal services	Nil	18%	1.07.2017 onwards
8	All Services provided by Government or local authority (See Note 7)	Govt. or Local authority	Any business entity	Any Service provided by Government or Local authority except a few services	Nil	18%	1.07.2017 onwards
9	Services provided by Directors (See note 8)	Individual	Company/Body Corporate	Service provided by Directors	Nil	18%	1.07.2017 onwards
10	Recovery Agent Services (See note 9)	Any	Banking Co. or Financial Inst. Or Non-Banking Co.	Service provided by recovery agents to certain persons	Nil	18%	1.07.2017 onwards
11	Transfer or permitting the use or enjoyment of a copyright	Author or music composer, photographer, artist, or the like	Publisher, Music company, Producer, or the like	Transfer or permitting the use or enjoyment of a copyright covered under section 13 (1)(a) of the Copyright Act, relating to original literary, dramatic, musical or artistic works	Nil	18%	From 1.07.2017 with minor changes
12	Services provided by an agent of business correspondent (BC) to BC	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.	Services provided by an agent of business correspondent (BC) to business correspondent (BC).	Nil	18%	From 1.07.2017
13A	Radio taxi, Motor Cab or motorcycle done through an e-commerce operator	Taxi driver or Rent a cab operator	Any Person	services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motorcycle;	Nil	18% by E-Commerce Operator	From 1.07.2017 with minor changes



S. No.	Type of Service	Status of Service Provider (See note 2)	Status of Svs Recipient (Do u fall in this)	Description of Service	Tax payable by Provider	Tax payable by Recipient	Effective from
13B	Accommodation Services through an e-commerce operator	<b>Unregtered</b> Hotel, inns, clubs etc <b>[See note 10]</b>	Any Person	services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	Nil	18% by E-Commerc e Operator	From 1.07.2017
13C	Restaurant Services through E-commerce operator	All types of Restaurants [excl those located in hotel having rooms above 7500]	Any Person	Restaurant Services	Nil	5% by E-Comerce Operator	From 1.01.2022
14	Services provided by Members of Overseeing Committee to RBI	Members of Overseeing Committee to RBI	Reserve Bank of India	Services provided by Members of Overseeing Committee to RBI	Nil	18%	From 13.10.2017
15	Renting of Immovable property	Govt. or Local authority	GST Registered Person	Renting of Immovable Property	Nil	18%	From 25.01.2018
16	Services supplied by individual Direct Selling Agents (DSAs)	Individual, HUF or Proprietor	Bank or non-banking financial company	Services supplied by individual Direct Selling Agents (DSAs)	Nil	18%	From 26.07.2018
17	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory	Services provided by business facilitator (BF) to a banking company	Nil	18%	From 1.01.2019
18	Security services (services of supply of security personnel) <b>[Note 11 &amp; 12]</b>	Any person other than a body corporate	A registered person, located in the taxable territory	Security services (services provided by way of supply of security personnel)	Nil	18%	From 1.01.2019



S. No.	Type of Service	Status of Service Provider (See note 2)	Status of Svs Recipient (Do u fall in this)	Description of Service	Tax payable by Provider	Tax payable by Recipient	Effective from
19	Procurement of goods or service from an unregistered person by a residential real estate builder <b>[See note 13]</b>	Any Unregistered person	Registered builder / developer who has opted to pay tax @5% / 1%	Purchase of any goods and receipt of any service from an unregistered person	Nil	28% on Cement and 18% on other goods or services	From 1.04.2019
20A	Transfer of Development Rights / FSI <b>[See Note 14]</b>	Any Person	Builder / Developer	Services of TDR or FSI for construction of a project	Nil	18%	1.04.2019
20B	Long term lease of land (30 yrs +) <b>[See Note 14]</b>	Any Person	Builder / Developer	Services of Lease of land for construction	Nil	18%	1.04.2019
21	Renting of Passenger Motor Vehicle where Fuel Cost is included <b>[See Note 15]</b>	Any person [excluding a body corporate paying tax @ 5%]	Body Corporate located in India	Renting of a motor vehicle where the supplier is not charging GST @ 12% and where fuel cost is included	Nil	5%	From 1.10.2019
22	Lending of securities under Securities Lending Scheme	Lender	Borrower	Services of lending of securities under Securities Lending Scheme, 1997 of SEBI	Nil	18%	From 1.10.2019
23	Renting of Residential Property <b>[See Note 16]</b>	Any Person	Any Registered Person	Renting of residential dwelling	Nil	18%	From 18.07.2022



B 1301 - 1305, Ratnaakar Nine Square,  
Opp. ITC Narmada, Nr. Keshavbag Party Plot,  
Satellite, Ahmedabad - 380015. Gujarat, India.

**t** +91-79-400 22 628 / 29 / 30  
**e** info@niteshjain.co.in  
**w** www.njjain.com

**in** njjainassociates  
**tw** @associates\_nj  
**f** @njainandassociates

## REVERSE CHARGE ON GOODS under GST

S. No.	HSN	Supplier of Goods	Recipient of Goods	Description of Goods	Tax payable by Supplier	Tax payable by Recipient	Effective from
1.	Any	Located Outside India	Importer	Any Goods which are imported into India	Nil	Rate Applicable	From 1.07.2017
2.	0801	Agriculturist <b>(See Note 17)</b>	Any registered person	Cashew nuts, not shelled or peeled	Nil	Rate Applicable	From 1.07.2017
3.	1404 90 10	Agriculturist <b>(See Note 17)</b>	Any registered person	Bidi wrapper leaves(tendu)	Nil	Rate Applicable	From 1.07.2017
4.	2401	Agriculturist	Any registered person	Tobacco leaves	Nil	Rate Applicable	From 1.07.2017
5.	3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, <b>3301 25 90</b> Effective from <b>1.01.2023</b>	Any Unregistered Person	Any Registered Person	Following essential oils other than those of citrus fruit namely: - (a) Of peppermint (Mentha piperita); (b) Of other mints : Spearmint oil, Water mint-oil (ex-mentha aquatic), Horsemint oil, Bergamentoil, Mentha	Nil	Rate Applicable	From 1.10.2021 With minor changes made on 1.01.2023
6.	5004 to 5006	Manufacturer of silk yarn from raw silk or silk worm cocoons	Any registered person	Silk Yarn	Nil	Rate Applicable	From 1.07.2017
7.	5201	Agriculturist	Any registered person	Raw Cotton	Nil	Rate Applicable	From 15.11.2017
8.	-	State Government, Union Territory or any local authority	Lottery distributor or selling agent.	Supply of lottery	Nil	Rate Applicable	From 1.07.2017
9.	Any Chapter	Government or Local Authority	Any registered person	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Nil	Rate Applicable	From 13.10.2017
10.	Any Chapter	Any registered person	Any registered person	Priority Sector Lending Certificate	Nil	Rate Applicable	From 28.05.2018



B 1301 - 1305, Ratnaakar Nine Square,  
Opp. ITC Narmada, Nr. Keshavbag Party Plot,  
Satellite, Ahmedabad - 380015. Gujarat, India.

**t** +91-79-400 22 628 / 29 / 30  
**e** info@niteshjain.co.in  
**w** www.njain.com

**in** njainassociates  
**tw** @associates\_nj  
**f** @njainandassociates

## Important Notes

### 1. When to Pay GST in RCM

In case of RCM based tax payments – the tax becomes payable on the earlier of the following 2 dates:

- a. When the payment to the vendor is made
- b. 30 days from the date of the invoice for purchase of **goods**
- c. 60 days from the date of the invoice for **service**

In case where the service was completed and invoice was raised prior to GST date but service tax is not paid, then GST will become payable. In case service tax was paid by the recipient before GST date then he will not be required pay GST again

### 2. How to ascertain Status of Service Provider:

We can ascertain the same from the PAN of the party. Normally Service Tax registration number starts from the PAN. Check the 4th digit of PAN. It denotes Status of Party.

4 <sup>th</sup> digit of PAN or 6 <sup>th</sup> digit of GSTIN	Status
P	Individual
F	Firm
H	HUF
B	Body of Individual
A	Association of Person (AOP)
L	Local Authority
C	Company
T	Trust
J	Artificial Judicial Person

### How to ascertain State of Supplier:

We can ascertain the same from the PAN number of the supplier. The GSTIN always contain 1st two digits as State Code.



### 3. Declaration in Invoice

Every Supplier of goods or services whose supply falls under RCM is required to declare the same in his Tax Invoice

### 4. Purchases from Unregistered Persons:

#### From 1.07.2017 to 12.10.2017

RCM shall apply only where the aggregate value of purchases by a registered person from an unregistered purchases of goods or service from 1 or all the unregistered suppliers exceeds five thousand rupees in a day.

Also note that in case of receipt of inter-state services or goods one shall NOT be required to pay tax under RCM because as per section 24 (i) of CGST and SGST act, the vendor is required to compulsorily register as he is supplying goods or services on inter-state basis.

**Further, effective from 13.10.2017 RCM on procurement from Unregistered persons have been removed and therefore one will not be required to pay any GST on such procurements.**

From 1.02.2019, provisions which provide for applicability of RCM on supplies made by unregistered persons have been amended. Earlier all categories of recipients be it individual, partnership firm or companies receiving supplies made by unregistered persons were falling under RCM.

As per new provisions government can choose to apply RCM only on **certain class of registered persons** who shall then be liable to pay GST on RCM basis on all types of supplies received from unregistered persons. Separate notification specifying type of registered person will be issued, till that time this provision will have no play.

Government has vide notification 2/2019-CTR rescinded notification 8/2017-CTR which gave exemption from liability of RCM on Supply from Unregistered Persons. This would not make any difference whatsoever because the section under which 8/2017-CTR was issued has itself been amended and now to levy tax on supplies from unregistered person government will have to issue a new notification specifying class of registered persons as discussed above.





## 5. GTA Service

The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of RCM.

If the recipient falls in any of the following categories then he will be required to pay GST on RCM basis:

- a. any factory registered under or governed by the Factories Act, 1948;
- b. any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India
- c. any co-operative society established by or under any law;
- d. any person registered under CGST/SGST/UTGST Act;
- e. anybody corporate established, by or under any law; or
- f. any partnership firm whether registered or not under any law including association of persons.
- g. Casual taxable person

### A. Exemption on GST on GTA Service

GTA services provided to following organisations will not be under RCM from 1.01.2019 as the same have been specifically exempted.

- a) a Department or Establishment of the Central Government or State Government or Union territory; or
- b) local authority; or
- c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

### B. GTAs who have opted for Forward Charge Tax payments



B 1301 - 1305, Ratnaakar Nine Square,  
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**w** www.njjain.com

**in** njjainassociates  
**tw** @associates\_nj  
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Recipients of GTAs service suppliers, who have exercised the option to pay tax on GTA services under forward charge whereby they would be charging GST (either at 12% or 5%) in their invoice and discharge the liability on their own, shall not be eligible for payment of GST under RCM.

### C. Declaration for opting for Forward Charge Mechanism

As discussed above, GTA service providers are eligible to choose whether they want to fall under FCM whereby they can charge and pay GST or they can choose RCM whereby their customers would be liable to pay GST.

One is required to file a declaration on GSTN for choosing FCM between 1<sup>st</sup> Jan to 31<sup>st</sup> March, once opted, the GTA supplier would be classified under FCM till he chooses to opt out. If any GTA supplier doesn't file this declaration, he would be deemed to have chosen RCM method.

### 6. Advocates and Arbitral tribunals:

- a. Please note the term "Business entity" is not defined anywhere in the GST Law. However, it is defined in Notification 12/2017 CT (Rate) as under:

2 (n) "business entity" means any person carrying out business;

- b. **Legal Services** means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

7. **All Services by the Government or Local Authority:** In case of all services provided by the Government or Local authority which are taxable under the present service tax law except a few listed below the tax on the same shall be payable by the service recipient.

Following services if provided by the Government or Local Authority are not under RCM

Recipient has to pay tax on all Services as explained above except the following services on which the Government will pay the tax.

- i. Renting of immovable property
- ii. Services by the Department of Posts



- iii. Services in relation to an aircraft or a vessel
- iv. Transport of goods or passengers

a. What is the meaning of 'Government'

“Government” means the Central Government, State Government or Union Territory Administration

b. What is the meaning of 'Local Authority'

Local authority means-

- i. a “Panchayat” as defined in clause (d) of article 243 of the Constitution;
- ii. a “Municipality” as defined in clause (e) of article 243P of the Constitution;
- iii. a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Govt or any State Government with the control or management of a municipal or local fund;
- iv. a Cantonment Board as defined in section 3 of the Cantonments Act 2006;
- v. a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- vi. a Development Board constituted under article 371 of the Constitution; or
- vii. a Regional Council constituted under article 371A of the Constitution;

## 8. Services provided by director

Services provided or agreed to be provided by a director of the Company to the said Company would be taxable under reverse charge mechanism wherein the Company would be required to discharge the tax liability in full.

It has been our consistent view (as espoused in all earlier GST alerts on RCM) that, only those services will be covered under this head which are provided by the director **in the capacity of a director** and not otherwise. A director who has rented his office to the company and draws lease rentals will be required to pay tax in his individual capacity and the company will not be required to pay tax on the same under RCM. This view has now been clarified vide circular 201/13/2023 dated 1.08.2023.



Services provided by director who is employee of the company would not get covered under this entry as Schedule III specifically excludes service provided by employee to employer.

**9. Recovery Agent Services:**

Services provided or agreed to be provided by a recovery agent to Banking Company, Financial Institutions or Non-Banking Company in relation of recovery any sum due to such Banking Company, Financial Institutions or Non-Banking Company shall be taxable under Reverse Charge Mechanism. Now the Banking Company, Financial Institutions or Non-Banking Company shall be required to pay tax on the same.

**10. Services provided through E-Commerce Operator**

E-commerce operator would be liable to pay GST in case of Accommodation Services and radio taxi services (at sr. \_\_\_ above) provided through it only where these 2 types of service providers are not liable to obtain registration under section 22. Which in other words means that if any of these 2 service providers has turnover above 20 lacs, he becomes liable to register, hence the liability to pay GST on service supplied through an E-commerce operator would fall on the supplier themselves.

**11. Security services** provided to following organizations will not be under RCM.

- a. a department or Establishment of the Central Government or State Government or Union territory; or
- b. local authority; or
- c. Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.
- d. a registered person paying tax under Composition Scheme.

**12. Time of Supply for Security Services**

As Security Services are now brought into the RCM net, question would arise as to the taxability of invoices being raised for period on or before December 2018, who would be



liable to pay GST for such past period invoices whose payments are made in January 19 or thereafter. Thumb rule of any tax law is that once a time for payment of tax has been affixed, it cannot be again subjected to the time of supply test. Hence, where the invoice has been issued on or before 31.12.2018, then the Security Service Supplier will be liable to pay tax irrespective of the fact as to when the payment is received by him. If the invoice is made on or after 1.01.2019 then the service recipient would only be liable to pay tax.

There could be 3 different scenarios possible going forward

- a. Services completed and invoice made on or before 31.12.2018 but payment made after 31.12.2018.

As discussed above, Security Service Supplier will be liable to pay tax irrespective of the fact as to when the payment is received by him.

- b. Services completed on or before 31.12.2018 but invoice as well as payment made in January 2019

Service Recipient will be liable to pay GST

- c. Services completed, invoice as well as payment made on or after 31.12.2018

Service Recipient will be liable to pay GST

Similar issue arose in Service tax regime as well and it was clarified as under:

***10.1.7 Is the reverse charge applicable on services provided and complete before 1.7.2012 though payments were made after 1.7.2012?***

*For any service whose point of taxation has been determined and whole liability affixed before 1.7.2012 the new provisions will not apply. Merely because payments are being made after 1.7.2012 will not add any additional liability on the service receiver in respect of such services.*

### **13. Procurement of goods or services by a builder / developer in a residential real estate project from unregistered persons**

Detailed analysis on this issue can be found in our alert placed at following link.



B 1301 - 1305, Ratnaakar Nine Square,  
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**e** info@niteshjain.co.in  
**w** www.njjain.com

**in** njjainassociates  
**tw** @associates\_nj  
**f** @njainandassociates

<https://njain.com/gst-alert-1-1920-changes-in-gst-law-for-real-estate-sector-2/>

#### 14. Transferable Development Right, Floor Space Index and Long-term lease

From 1.04.2019 onwards TDR, FSI and Long-term lease of land have been put under RCM both for commercial as well as residential real estate projects, tax on the same would be payable by the promoter of the project. However, for residential projects, exemption has also been granted whereby proportionate value of TDR/FSI would be taxed based on the unsold units on the day the project receives Occupation certificate.

#### 15. RCM on Renting of motor vehicle Services was introduced in GST w.e.f. 1.10.2019 however some doubts arose due to the way the entry was worded. Council has issued notification 29/2019-CTR to reword the entry so that doubts can be addressed.

RCM shall be applicable on the service by way of renting of any motor vehicle (MV) when following conditions are met:

- a. MV is designed to carry passengers
- b. Cost of fuel is included in the invoice value
- c. Supplier is not a body-corporate;
- d. Recipient (Customer) is ONLY a body Corporate
- e. Supplier does not issue an invoice charging GST @12% from the service recipient.

**This provision will be applicable from 1.10.2019 onwards.**

#### 16. Renting of Residential Property

Detailed analysis on this issue can be found in our alert placed at following link.

<https://njain.com/gst-alert-12-renting-of-residential-unit-to-registered-person-proprietor-2/>

#### 17. Agriculturist as defined in section 2 (7) of the CGST Act

(7) “agriculturist” means an individual or a Hindu Undivided Family who undertakes cultivation of land—



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**w** www.njain.com

**in** njainassociates  
**tw** @associates\_nj  
**f** @njainandassociates

(a) by own labour, or

(b) by the labour of family, or

(c) by servants on wages payable in cash or kind or by hired labour under

personal supervision or the personal supervision of any member of the family;

## 18. Reverse Charge on Ocean Freight

### a. From 1.07.2017 to 30.09.2023

As per notification, GST on Ocean freight services provided by a person located outside India to an importer located in India, was payable by the Importer located in India under RCM. However, Supreme Court in the case of Mohit Minerals, had struck down this levy, hence practically no tax was payable under RCM. Infact tax paid by the Importers was to be refunded due to this judgement.

### b. From 1.10.2023 onwards

Ocean freight services provided by a person located outside India to a person located in India have been exempted.

*Formulated by:*

*N J Jain & Associates*

**Chartered Accountants**

**CA Nitesh Jain**

Managing Partner

**CA Praveen Maheshwari**

Partner

**CA Gaurav Khetan**

Partner

**CA Jay Dalwadi**

Partner

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**in** njjainassociates  
**tw** @associates\_nj  
**f** @njainandassociates