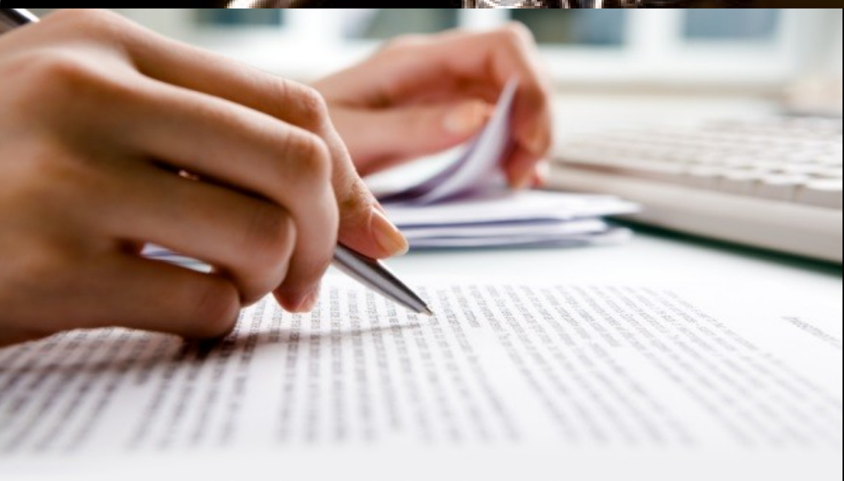

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Recent amendment in Reverse charge mechanism on service of renting of motor vehicle

January 3, 2020

The recent amendment made in Notification No. 13/2017 – CT ('Reverse Charge Notification') regarding service of renting of motor vehicle.

Vide ***Notification No. 22/2019-CGST (Rate) dated September 30, 2019*** *('Notification No.22/2019')*, the Government introduced Reverse Charge mechanism ('RCM') on service of renting of motor vehicle provided by a non-body corporate to a body corporate. Notification No.22/2019 was not properly drafted and created ambiguity in minds of the taxpayers.
[Refer our update 'NITYA's Insight | Issue 63 | Reverse charge mechanism on renting of motor vehicle'].

The Government has now issued ***Notification No.29/2019-CGST (Rate) dated December 31, 2019*** *('Notification No.29/2019')* amending the above entry.

We have tabulated below the expressions used in both the abovementioned Notifications:

Nature of service		**Supplier of Service**		**Recipient of Service**	
Notification No.22/2019	**Notification No.29/2019**	**Notification No.22/2019**	**Notification No.29/2019**	**Notification No.22/2019**	**Notification No.29/2019**
Renting of motor vehicle	Renting of motor vehicle **designed to carry passengers where cost of fuel is included in consideration**	Any person other than body corporate, **paying central tax at the rate of 2.5 percent with input tax credit only of input service in the same line of business**	Any person other than body corporate who **does not issue an invoice charging central tax at the rate of 6 percent**	A body corporate located in the taxable territory	

Notably, language used in Notification No. 22/2019, suggested that RCM would apply only where the service provider was paying GST at the rate of 5%. Hence, RCM was not applicable where the service provider was not required to pay GST including a case where turnover of supplier fell below threshold limit and it was unregistered.

Vide Notification No.29/2019, RCM has been made applicable to all non-body corporate suppliers who provide services to body corporate and does not issue invoice charging GST at the rate of 12%.

CBIC has also issued ***Circular No.354/189/2019-TRU dated December 31, 2019*** clarifying that Notification No.29/2019 should be considered as retrospective and the same represents the logical intent of the Government. Hence, RCM was applicable to all suppliers who did not issue GST invoice charging GST at the rate of 12% during the period October 1, 2019 to December 30, 2019 as well.

NITYA Comments:

For ease of reference, we are tabulating below all possible scenarios:

S. No.	Inclusion of fuel in consideration	Credit taken by Supplier	Applicable rate of tax *(in percent)*	Forward Charge ('FCM') or Reverse Charge ('RCM')		
				Prior to October 1, 2019	October 1, 2019 to December 30, 2019	December 31, 2019 onwards
1.	Yes	No	5	FCM	RCM* *(If supplier was unregistered, RCM was not applicable)*	RCM
2.	Yes	Yes	12	FCM	FCM	FCM
3.	No	NA	12	FCM	FCM	FCM

The present amendment has made RCM for renting of motor vehicles as similar to services of Goods Transport Agency where the service provider has an option to charge GST at the rate of 12 percent (under FCM) if it intends to avail the credit.

*Note: Notification No.29/2019 does not specifically provide that the amendment is retrospective. Further, it is a settled legal principle that a Circular cannot over the express language of the law. The Press Release issued post 37th GST Council meeting provided that Reverse Charge Notification is amended to cover services of suppliers paying GST at the rate of 5 percent on renting of vehicles under RCM. Hence, the Government always intended the amendment to apply only to suppliers already paying tax and this language was expressly incorporated in Notification No.22/2019. To that extent, the present Circular is incorrect in clarifying the amendment to be retrospective.

Notably, GST paid under RCM on service of renting of motor vehicle (for vehicles with seating capacity up to 13 passengers) will become a cost for the taxpayers as the same is not eligible for input tax credit. Hence, if the amount of GST is significant, taxpayers can take a call not to pay GST for the period October 1, 2019 to December 30, 2019. However, if the amount of GST is not significant, taxpayers can deposit the same to avoid any future dispute with the authorities.

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