

All is well with RCM on Renting of motor vehicles?

(G. Natarajan, Advocate, Swamy Associates)

Ever since Notification 13/2017 Central Tax (Rate) Dt. 28.06.2017 was amended vide Notification 22/2019 Central Tax (Rate) Dt. 30.09.2019, introducing Reverse Charge Mechanism (RCM) for services of renting of motor vehicles, widespread confusions were renting the air due to the language of the amendment. It was a great mystery to find out which cases will attract RCM and which will not.

Good, well after nearly 3 months, the Government has once again amended the provisions to bring in clarity and also issued a circular to clarify the intention (Notification 29/2019 Central Tax (Rate) DT. 31.12.2019 and Circular No. 130/49/2019 Dt. 31.12.2019. The amendment reads as under.

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
15	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent. to the service recipient	Any body corporate located in the taxable territory.

It may be noted that the following rates of GST are applicable on such services on optional basis.

- (i) 5 % with no ITC, except ITC on services of obtaining such vehicles on hire for supplying the service.
- (ii) 12 % with all ITC.

The above amendment has also been clarified in the Circular referred to above. It has also been clarified that such clarification would apply from 01.10.2019, i.e. the date of effect of the original amendment. The effect of the amendment is explained below.

- (i) No RCM if the supplier of Service is a body corporate. Under forward charge, he has the option to pay 5 % GST with ITC of only same line of business or 12 % with full ITC.
- (ii) No RCM if the recipient of service is not a body corporate. In such cases, the supplier has the option to pay 5 % GST with ITC of only same line of business or 12 % with full ITC.
- (iii) If the supplier of service is a non body corporate and the recipient of service is a body corporate, RCM applies, subject to the below conditions.
- (iv) If the supplier of service avails all ITC and chooses to charge 12 % GST, no RCM applies.
- (v) In all other cases, RCM applies, i.e. there is no option for the supplier of service to pay 5 % GST under forward charge, by availing only same line of business ITC.
- (vi) To put it simply, if the supplier of service is not a body corporate and the recipient of service is a body corporate and when the supplier of service does not charge any GST in his invoice, the service recipient shall pay GST @ 5 % under RCM.
- (vii) If a supplier of service (who is not a body corporate) provides services to both body corporate customers as well as non body corporate customers, for non body corporate customers, GST is payable by the supplier under forward charge (either @ 5 % with ITC of only same line of business or @ 12 % with full ITC); for body corporate customers, it shall be either 12 % GST with full ITC under forward charge; or 5 % GST under RCM payable by the recipient.

Good that the Government has clarified the vexatious issue, before it takes an ugly turn in the form of disputes. Hope whatever method was followed from 01.10.2019 to 31.12.2019, the department graciously accept the same, so long as GST is paid by someone, rightly or wrongly.

But, a little peep back into the history would reveal the following. The 5 % GST rate with ITC of same line of business was introduced from 13.10.2017. This was

necessitated due to the fact that the renting of motor vehicles industry runs on “attachment vehicles”. The principal service provider (who supplies vehicles to the ultimate customers) would not own the vehicles but would obtain them from various other owners. In such situation, the GST payable by such owners would not be entitled for ITC in the hands of the principal service provider, thereby leading to cost escalation. In order to obviate this genuine difficulty, ITC only on same line of business was allowed from 13.10.2017, while paying GST @ 5 %.

It may also be noted that in the hands of service recipients, ITC in respect of renting of motor vehicles is allowed only in respect of vehicles having a seating capacity of more than 13 passengers and ITC in respect of smaller vehicles are not entitled. So, the user industry would always expect a lower rate of 5 % on renting of small vehicles.

Now, with the present amendment and clarification, a non body corporate service provider has no option to pay GST @ 5 % by availing ITC of only same line of business. Either he has to avail all ITC and pay 12 % (which would be objected to by the customers who are not entitled for ITC in case of smaller vehicles), or leave it to RCM. As the GST payable by the vehicle owners when they provide the vehicles to the principal service providers thus becomes a cost in the hands of the principal service providers, alas, the pre 13.10.2017 problem is back!

The above problem is explained as below.

Facts	Pre 01.10.2019	Post 01.10.2019
A (Non body corporate) gives his car on hire to B (Non body Corporate) for Rs.10,000. B is supplying such vehicles to C (Body Corporate) for Rs.12,000 (with 20 % profit)	A would charge 5 % GST on B (Rs.500). B would avail ITC of it. B would charge 5 % GST on C (Rs.600). The total cost in the hands of C would be RS.12,600	A would charge 5 % GST on B (Rs.500). B could not avail ITC of it and hence cost in the hands of B would be Rs.10,500. If he wants to maintain his earlier profit margin of 20 %, he has to charge Rs.12,100 on C. C would be liable to pay 5 % GST on Rs.12,100 under RCM (Rs.605). It may be noted that the cost in the hands of C goes up by Rs.105 (From Rs.12,600 to Rs.12,705)

(Published in www.taxindiaonline.com on 01.01.2020)

