

DESAI SAKSENA & ASSOCIATES

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Friday Tax Alert

From:

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New Regulation on RCM Self Invoicing

The Central Board of Indirect Taxes and Customs (CBIC) announced Notification No. 20/2024 – Central Tax on October 8, 2024, which brings important updates to the Central Goods and Services Tax (CGST) Rules, 2017. Starting November 1, 2024, these changes will take effect. They include the introduction of Rule 47A, the removal of the second proviso in Rule 46, and changes to the third proviso of Rule 46

This concept has existed for a while, especially for transactions involving the Reverse Charge Mechanism (RCM). What's new is the introduction of a timeline to ensure these invoices are issued on time.

What is Self-invoicing?

Self-invoicing is to be done when goods or services are purchased from an unregistered supplier, and such purchase of goods or services falls under reverse charge. This is because your supplier cannot issue a GST-compliant invoice to you, and thus you become liable to pay taxes on their behalf. Hence, self-invoicing, in this case, becomes necessary.

What's Changing Now?

Amendment to Rule 46:

- a) Omission of second proviso after clause (s) of Rule 46;
- b) Substitution of words "Provided also that in the case of",

The **addition of Rule 47A** establishes a time limit for issuing a tax invoice under Reverse Charge when purchasing goods or services from unregistered suppliers.

Rule 47A read as follows:

"Notwithstanding anything contained in rule 47, where an invoice referred to in rule 46 is required to be issued under clause (f) of sub-section (3) of section 31 by a registered person, who is liable to pay tax under sub-section 3) or sub-section (4) of section 9, he shall issue the said invoice within a period of thirty days from the date of receipt of the said supply of goods or services, or both, as the case may be."

The new rule mandates a 30-day deadline for issuing tax invoices under RCM, ensuring clear compliance requirements for businesses.

Time of Supply for Services [Amendment to Section 13(3) – The Finance (No 2) Act 2024]:

As per Section 13(3) in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely: –

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier, in cases where invoice is required to be issued by the supplier;
- (c) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient.

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From the above, we can conclude that:

- **Time of Supply for Services from Unregistered Suppliers:** This is determined by the earlier of (a) the date of payment recorded in the recipient's accounts or debited from their bank account, or (c) the date the recipient issues the invoice.
- **Time of Supply for Services from Registered Suppliers:** This is determined by the earlier of (a) the date of payment recorded in the recipient's accounts or debited from their bank account, or (b) the date that is 60 days after the invoice date issued by the supplier.

Before vs. After the Updates

Before the Update:

- No fixed deadline for issuing self-invoices under RCM.
- Time of supply rules for services under RCM were less detailed.

After the Update:

- 30-day deadline for self-invoices under Rule 47A.
- Clear rules for determining the time of supply for services under RCM.

GST on Renting of Residential and Commercial Property

As per Entry No. 12 of Notification No. 12/2017-Central Tax(Rate) dated 28-06-2017, Service by way of renting of residential dwelling for use as residence are exempt from levy of GST. However, no such exemption is available in case where the residential dwelling is rented to a registered person.

As per Entry No. 5AA of Notification No. 13/2017-Central Tax(Rate) dated 28-06-2017, Service by way of renting of residential dwelling by ANY PERSON to a registered person is subject to Reverse Charge Mechanism ('RCM'). This entry was applicable w.e.f. 18th July 2022.

The above entry implies that the registered recipient, availing services of renting residential property, is supposed to discharge GST on an RCM basis. In this case, RCM is applicable even if the supplier is unregistered or the property is used for commercial purposes.

Recently, Entry No. 5AB is added to the Notification for levying RCM on commercial properties. The said entry states that RCM is applicable on Service by way of renting of any property other than a residential dwelling by an unregistered person to a registered person. This entry is applicable w.e.f. 10th October 2024.

Notably, Entry No 5AB was introduced pursuant to recommendations made by the GST Council in its 54th meeting held on 9th September 2024 wherein it was recommended to bring renting of commercial property by an unregistered person to a registered person under the Reverse Charge Mechanism (RCM) to prevent revenue leakage

On a combined reading of Entry No. 5AB with the relevant GST Council recommendations, it can be inferred that Reverse Charge Mechanism (RCM) applies to the rental of commercial immovable properties (such as offices, shops, warehouses, malls, etc.) when rented by an unregistered person to a registered person.

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Various Scenarios of Taxability

The below table summarizes liability of GST on renting of residential property in various scenarios:

Use of Property	SUPPLIER	RECIPIENT	TAXABILITY
Residential	Registered/Unregistered	Unregistered	Exempt
Commercial	Registered	Unregistered	Forward Charge
Residential/Commercial	Residential/Commercial	Registered	Reverse Charge

The below table summarizes liability of GST on renting of commercial property in various scenarios:

Use of Property	SUPPLIER	RECIPIENT	TAXABILITY
Residential/Commercial	Registered	Registered	Forward Charge
Residential/Commercial	Unregistered	Registered	Reverse Charge
Residential/Commercial	Registered	Unregistered	Forward Charge

It is to be noted that for the purpose of Renting of Property, Registered person shall not include Person who has opted for composition levy.

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