Reverse Charge Mechanism & ECO

CA Vishal Bhattad

Sec 9(3) CGST/SGST, Sec 5(3) IGST Act:

- Applies to specified goods or services.
- Recipient of the supply is liable to pay tax directly.

Sec 9(4) CGST Act, Sec 5(4) IGST Act):

- Relates to specified goods or services from URP to specified class of registered recipient.
- Tax liability falls on registered recipients.

8.	Sec 9(4)	
Construction	Value of Inputs and Input services purchase from registered supplier is less than 80% (i.e. Extra purchase from unregistered person)	Promotor
	In case of Cement supplied by unregistered person (i.e. purchase from unregistered person)	Promotor
	In case of Capital Goods supplied by unregistered person (i.e. purchase from unregistered person)	Promotor

Reverse Charge Mechanism Under sec 9(3)

Transport Sector

1. GTA

GTA Service (Transportation of goods by road)

Option 1

If GTA opt to pay tax under forward charge

- Take registration under GST
- Pay GST @ 12%
- Issue Tax invoice with declaration of F.C.
- Use ITC of their I/C/G/IS

Note:-
Exemption : If GTA supplies the services to URP other than notified person (URP)

Option 2

If GTA does not opt to pay tax under forward charge.

RCM is applicable

GST is payable by recipient @ 5% subject to following

If GTA service is supplied to any RP under GST

RCM is applicable & R.P is liable to pay tax

Exception :
If GTA service is supplied to Govt./LA/ Govt. Agencies who has taken reg. only for TDS - Service is exempt & no RCM (or F.C.) is payable

If GTA service is supplied to URP

If URP is **notified person**
1) factory, 2) Society
3) Co-Society
4) Body corporate
5) PF/LLP/AOP
6) CTP

RCM is applicable & above notified person is liable to pay tax
Also such notified person need to take compulsory Reg u/s 24

In case of other URP
e.g. Individual /HUF etc.

Service Exempt
No RCM & No F.C.

Sec 9 (5) - CGST liability of E-commerce operator

If there is intrastate supply of specified services through ECO,

- the tax on such supply shall be paid by ECO &
- All provisions of act shall apply to that ECO as if he is the person liable to pay tax in relation to such supply.

Note:- Here, Services are notified by govt. on recommendations of the council

Proviso	If ECO is not having physical presence in taxable territory:-	Person representing ECO in taxable territory for any purpose = Person liable to pay tax
Proviso	If ECO is not having physical presence as well as representative in taxable territory:-	Person shall be appointed by ECO in taxable territory for paying tax = Person liable to pay tax

Definition u/s 2(45):- Electronic Commerce Operator (ECO) means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Sec 9(5) : Liability of ECO for Notifies Services

Entry (a)/(d)

Entry (a)
Passanger transport service by Cab or other motor vehicle

Cab or other motor vehicle

Whenever such service supplied through ECO. ECO is liable to pay tax

Omnibus

If supplier is other than company & supplied services through ECO

If supplier is a company

Supplier is liable to pay tax (eventhough service is supplied through ECO)

Entry (d)
Restaurant service other than specified primises

Whenever service is provided through ECO, Eco is laible to pay tax

Exception:
If restaurant is located in such specified premises (where room rent is more than ₹7500) then supplier (restaurant) is liable to pay tax

In above cases, ECO (other than exceptions) is liable to pay tax, irrespective of fact that supplier is registered or not.

Entry (b)/(c)

(b) Accommodation in Hotel, inn etc
(c) Housekeeping by way of plumbing etc.

If supplier is not liable for registration under GST

If above services supplied through ECO, then Eco is liable to pay tax

If supplier is liable for registration under GST.
If above services services supplied through ECO, then supplier is liable to pay tax & not ECO

Legal Sector

2. Legal Services

Legal Services provided **by** an individual / senior /firm of advocates **to** business entity directly or indirectly.	Any business entity located in the taxable territory

Explanation.- "legal service" 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.".

Important Remark:-

RCM if all following conditions are fulfilled	Forward Charge if any of the cond's of RCM not fulfilled	Exemptions [No FC / RCM]
1)Only for legal services supplied by advocate	All other services supplied by Advocate	-
2)Services must be supplied by Individual Advocate/Senior Advocate or firm of Advocate	Legal services supplied by ➲ CA/CS/CMA or other consultant	-
3) Service is supplied to business entity	-	if legal Services supplied to ➲ If service supplied by Adv to other than B.E. - Exempt
4) B.E. (Recipient) is located in taxable territory	If B.E. is located in NTT (Subject to ZRS)	-

3. Arbitral Tribunal

Services **by** Arbitral Tribunal **to** business entity in a TT	Any business entity located in the TT

Un-organised to Organised Service Sector

4. Sponsorship

Sponsorship Service **by** any person **to** any body corporate or partnership firm located in taxable territory.	Such body corporate or Partnership Firm located in a TT.

Important remark

RCM if all following conditions are fulfilled	Forward Charge if any of the cond's of RCM not fulfilled
1) It is applicable only for sponsorship service	1) Advertising/ Marketing services
2) Supplier-Any person	-
3) Recipient-RCM is applicable only if recipient is body corporate / P.F.	3) If recipient is any person other than body corporate/ P.F. e. g. Individual /HUF /Trust etc.
4) Recipient-Body corporate or P.F. must be in TT	4) If Recipient in non taxable territory (Subject to ZRS)

Government Service Sector

5. Government

Any Services provided **by** Government or Local authority **to** business entity other than 1 renting of immovable property/ 2 Service by Department of Post & Ministry of Railways (Indian Railways); 3 Service in relation to Aircraft, Vessel inside / outside precincts of port/airport. 4 transportation of goods or passengers	Any business entity located in the taxable territory

5A. Government

Renting of immovable property **by** CG [excluding Ministry of Railways (Indian Railways)], SG,UT or LA **to** any RP	Any registered person

Important Remark:- **Supply of service by Govt or Local Authority**

Part I (Entry 5)

All services (Other than covered in part II & Part III) supplied to business entity in a TT

RCM is applicable & business entity (recipient) is liable to pay tax (Subject to exemption) (refer exemption chapter)

Part II (Exemption to Entry 5)

Following services supplied by Govt. /LA

1) Dept. of Post & ministry of Indian Railway
2) Services in relation to Vessel/Aircraft at port or airport
3) Transport of goods or Passenger transport service

F.C. is applicable & Govt. /LA (supplier) is liable to payment of tax

Part III (Exemption to Entry 5 & 5A) Renting of Immovable Property

By Govt./ LA (Other than Indian Ministry of Railway)

- If service is supplied to RP: R C M is applicable & R.P is liable to pay tax
- If service supplied to URP (B.E.): F.C. is applicable & Govt./LA is liable to pay tax.

By Indian Railway)

F.C. is applicable (irrespective whether recipient is RP/URP).

Renting of Residential Dwelling and Commercial Property

5AA. Renting of Residential Dwelling

Services **by** Any Person **to** a registered person	Any Registered Person

5AB. Service by way of Renting of any immovable property other than residential Dwelling

Services **by** URP **to** a registered person	Any Registered Person

Construction Service Sector

5B & 5C. Sec 9(3)

Construction (FSI etc.)	Transfer of development rights or Floor Space Index (FSI) **by** any person **to** promotor for construction of a project	Promotor
Construction (lease)	Long term lease of land (30 years or more) **by** any person **to** promotor against consideration in the form of upfront amount for construction of a project	Promotor

6 Director of company

Services **by** director of a company or body corporate **to** the said company or body corporate	Such company or body corporate

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➲ Services supplied by director to company or body corporate in his private or personal capacity such as renting of immovable property are not taxable under RCM.

➲ But if supplied by director as or in capacity of director, it is taxable under RCM.

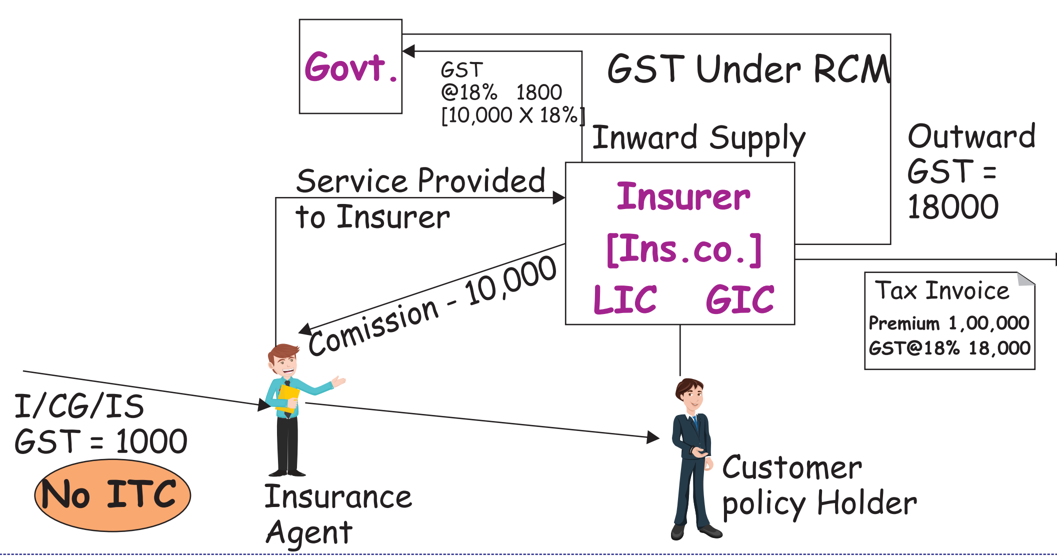
(12) Insurance & Banking Service Sector

7.	Insurance agent
Service by an Insurance Agent to a person carrying insurance business located in taxable territory	Insurer carrying life or general insurance business.

Important Remark

RCM if all following conditions are fulfilled	Forward Charge ifany of the cond's of RCM not fulfilled
1) Only if service supplied by Insurance Agent to Insurance Company	Other suppliers like actuary etc. supplies services to Insurance company
2)Insurance Agent is licensed under Insurance Act.	Insurance Agent is not licensed under Insurance Act

Insurance Agent & Insurer



Statement of Insurance Co. for GST Payable

Outward Tax	18000
Less : ITC	(1800)
Outward Tax	16200
Tax Under RCM	1800
Net Payable	18000

8.	Recovery agent
Services by any recovery agent to a banking company,Financial Institution or NBFC in a taxable territory.	Such banking company, Financial institution or NBFC

Copyright Service Sector

98.	Copyright service
transfer or permitting use or enjoyment of a copyright relating to Original, dramatic, musical works by Music composer, Photographer, Artist to Music company, producer or the like	Music company, producer or the like, located in the taxable territory

Important remark

RCM if all following conditions are fulfilled	Forward Charge if any of the cond's of RCM not fulfilled
1) Copyright relating to original dramatic artistic or musical work	If it is not related to original word
2) Supplier - music composer, photographer or artist	In other case
3) recipient should be music company,producer or like	In case of other recipient
4) Recipeint in taxable territory	If recipient in NTT (Suject to ZRS)

9A.	Copyright relating to literary
Transfer or permitting use or enjoyment of a copyright relating to original literary work by an author to publisher	A Publisher located in the taxable territory

Copyright Services

Entry 9

Supplier
- Music Composer
- Photographer
- Artist

Service
Original
- Dramatic
- Musical
- Artistic

Recipient
Music Company Producer or like in TT

Under RCM recipient is liable to pay tax

Note:- Option of F.C. not available

Entry 9A

Supplier — Service Original literacy work — Recipient

Author

Publisher in TT

Under RCM publisher is liable to pay tax

But

Supplier can shift the liability under F.C. subject to following conditions:
1) Author has taken Registration in GST
2) he has filed declaration to commissioner
   - For payment to tax under F.C.
   - Compliance of all provisions of this act
   - not reversing the option within a period of 1 year
3) He will make declaration in invoice (Invoice - 01)

10.	Members of Overseeing committee	
Supply of Service by Members of Overseeing committee to Reserve Bank of India (RBI)		Reserve Bank of India (RBI)

11.	DSAs		
Services	by Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or LLP	to a banking company or a NBFC	A banking company or a NBFC, located in the taxable territory.

Important remark

RCM if all following conditions are fulfilled	Forward Charge if any of the cond's of RCM not fulfilled
1)RCM is applicable only if services is supplied by Individual DSA	If service is supplied by body corporate, partnership Firm or LLP
2) Recipient is banking or NBFC	If recipient is ➲ Financial institution or ➲ any other person
3) Recipient is located in taxable territory	If recipient is located in non- taxable territory

12.	Business Facillator
Services supplied by Business Facilitator to A banking company located in the taxable territory.	Banking company located in Taxable Territory

Important remark - (Business facilator to Bank)

RCM if all following conditions are fulfilled	Forward Charge if any of the cond's of RCM not fulfilled	Exemptions
1) RCM is applicable only if supplier is Business facilitator	1) If supplier is ➲ Business correspondent or ➲ other	business facilitator to a banking company with respect to accounts in its rural area branch
2) Recipient is banking company only	2) If service is supplied to others like Insurance company, FI or NBFC etc.	
3) Recipient is located in TT	3) Banking company located in NTT	

13. Agent of Business Correspondent

Services supplied **by** An agent of Business Correspondent (BC) **to** A business correspondent, located in the taxable territory	Business correspondent located in TT

Services BF/BC:-

GSTN

under RCM bank is liable to pay

GST under RCM

Business facilitator

RCM Services

Banking Company

RCM Services

Business Correspondent

Services

Forward charge is applicable & business correspondent is liable to pay tax

Agent

14. Security Services

Supply Security services (as a security personnel) **by**	Any person other than a body corporate **to**	to a registered person (other than - department of Govt. / LA/ Govt. authority/ RP u/s 10.)	RP located in Taxable Territory

Important remark

RCM if all following conditions are fulfilled	Forward Charge if any of the cond's of RCM not fulfilled
1) Service is supplied only by way of supply of security personal	If security service supplied by other ways e.g. dog sniffer, CCTV investigation etc.
2) Supplier is any person other than body corporate	If Supplier is body Corporate
3) Recipient is registered person under GST	If recipient is ➲ URP or ➲ RP but CG, SG LA and etc. registered only for TDS ➲ RP u/s 10

Circular No.:- 177/09/2022

Issue:- The Question which arose for consideration is whether RCM is applicable on
1) Services of renting of motor vehicle designed to caryy passengers or 2) Service of transportation of passengers

RCM would apply on renting of vehicles if the body corporate use in the manner as it likes subject to agreement with the person providing vehicle on rent.

RCM would not apply on transportation of passengers if body corporate avails said service for specific journeys or voyages and does not take vehicle on rent for any period of time.

15. Renting of motor vehicle

Service	by	to	Liability
Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged .	any person other than body corporate (does not issue an invoice charging CGST @ 6 % and SGST 6% to the service recipient)	Any body corporate	Any body corporate located in Taxable Territory

Important Remark:-

Motor Vehicle

Renting of Motor vehicle(M.V.)

Goods transported service by road [Refer Entry 1]

Passenger transport services

Forward Charge

Renting of M.V. designed to carry passenger [e.g. car/bus/auto etc.]

Renting of M.V. designed to transport goods [e.g. truck /tractor etc.]

Forward Charge is applicable

cost of fuel is included in a consideration

Cost of fuel not included in a consideration

Forward charge is applicable

Supplier of service	Recipient
Any person other than body corporate	Any body corporate in taxable territory

If above both conditions are fulfilled

RCM is applicable & recipient i.e body corporate is liable to pay tax

If above both conditions are not fulfilled

Forward charge is applicable

Other Service Sector

16. Lending of security

Lending of securities **by** lender **to** borrower	Borrower i.e. a person who borrows the securities

17. Import service

Any service supplied **by** Any person from a non taxable territory **to** Any person other than non taxable online recipient (NTOR)	Any person located in taxable territory

Sec 2(16):- NTOR means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation:— "unregistered person" includes a person registered solely u/s 24(vi) to deduct tax.