



CENTRAL WORKING COMMITTEE

No. ASTO/CWC/GST/2018-2022/37

04.08.2022

To
Director (HR)
5th Floor, DUB
ONGC, New Delhi

Sub: Recovery of GST on residential properties leased by ONGC

Respected Sir,

As per the policy of ONGC, the company provides leased accommodation to its executives after taking residences on lease. These leased accommodation are then allotted to its officers and those who avail lease facilities of ONGC has to bear following monetary deductions including tax burden which are as under:

1. Employee has to surrender HRA (27% of basic)
2. Over and above HRA, employee also liable to pay HRR (7.5% of basic)
3. Additionally also pays tax on perquisites arising out lease accommodation

This is to bring to your kind attention that Govt. of India in its 47th GST Council Meeting has brought renting of residential dwellings under the GST tax net. Accordingly renting an immovable property is now considered a supply of service and there is an implication of GST @ 18%. The exemption has been withdrawn vide CGST (Rate) Notification no. 04/2022 dated 13.07.2022. Same has been notified under RCM vide CGST (Rate) Notification no. 05/2022 dated 13.07.2022. In this regard it is imperative to mention that GST will be attracted in the conditions enumerated below:

- a) GST will be applicable if the residential property is rented out to a registered person under GST w.e.f. 18th July 2022.
- b) Liability to pay GST @ 18% under the reverse charge mechanism will arise on the recipient (tenant).

It is learnt that in connection with above-mentioned tax implication, ONGC may form a policy as who will ultimately bear the cost of GST, whether ONGC or an employee, with respect to its leased and rental properties being provided to employees for residential purpose. In this regard we would bring out that this burden cannot be transferred to the employee and as per the GST notification should be borne by ONGC because of following:

1. Circular dated 15.07.2022 is already issued by Corporate Finance that ONGC has to pay the 18% GST in this regard.
2. When a tenant is registered and takes a residential property on rent from any person (registered or unregistered person) GST will be applicable under RCM. Liability to pay GST @ 18% will be of the recipient (tenant/lessee) of service. The recipient will also be able to claim the ITC of the GST paid under reverse charge as the payment of rent will be a business expenditure and the same is not included in the list of blocked ITC u/s 17(5). Therefore, ONGC shall be able to claim ITC.
3. GST will not be applicable/exempted if the residential property is rented out to an **unregistered person** under GST w.e.f. 18th July 2022. therefore Liability to pay GST will not arise as it continues to be specifically exempted vide CGST (Rate) Notification no. 12/2017 dated 28.06.2017 in cases where residential property is rented out to an **unregistered person** under GST.



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4. It is evident from the circular above that GST has to be borne by tenant. As such in the cases of ONGC lease, it is ONGC who happens to be tenant/lessee and employee is a custodian. Moreover such residential accommodation is being provided to the employee in lieu of HRA and additionally also subjected to HRR and perquisite tax which is being charged and recovered from employee.
5. Considerable amount of direct tax is already being attracted and paid by employees in case of availing leased accommodation, over and above direct tax paid, GST which is an indirect tax ideally cannot be attracted and paid by employee for availing leased accommodation. As such it will result in paying direct and indirect tax both by the employees on one particular transection i.e. availing leased accommodation.

As it appears that the intention of the circular with respect to unregistered entity is very well reflected from the fact that Liability to pay GST will not arise as it continues to be specifically exempted in cases where residential property is rented out to an **unregistered person** under GST. Considering this aspect it is clear that government only intend to recover the GST from **person registered** under GST. As such it is ONGC who happens to be GST registered entity and not employee. Also the lessee/tenant will be able to claim the ITC of the GST paid under reverse charge mechanism, as the payment of rent will be a business expenditure, which can only be claimed by GST registered entity and whereas employees are not GST registered entity.

We are also given to understand that other PSUs like GAIL, IOC etc. are in the process of ensuring that the burden of GST is not passed onto the employees and the GST circular is followed in true letter and spirit.

Madam, it is therefore requested that in case any lease accommodation attracts GST then the same should be borne by ONGC and claim ITC as well. Hence the burden of 18% GST should not be put on the employee.

Warm Regards


4/8/22
Amit Kumar
President-CWC

Copy to:

1. Director (Finance)
2. ED-CCF
3. ED-Chief –ER
4. President/Secretary – All ASTO Units.