

Renting of Immovable Property - Issues in GST

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On various professional and other groups, an issue regarding place of registration is being raised for 'renting of immovable property' services and different opinions are also being expressed.

Registration:

The landlord or the service provider is having property in different states. Is he required to seek registration in each state or it will be sufficient compliance, if he takes registration only in one state where he has got his residence or 'place of business'.

Section 22 of the Central Goods and Services Act, 2017 is as under:

- (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, **from where he makes a taxable supply** of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees.

Provided that where such person makes taxable supply of goods or services or both from any of the special category states, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

This section requires for registration in a state from where taxable supply is made. Can mere existence of an immovable property be sufficient to held that supply is being made from that state. Supply is made from where the supplier is located. Location refers to physical presence and also to carrying on necessary activities for the purpose. In renting, the necessary and recurring activity will be receiving of rent. Further, 'location of the supplier of services' is also defined as under:

2(71) "location of the supplier of services" means, --

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and
- (d) in the absence of such places, the location of the usual place of residence of the supplier.

'Place of business' is defined in section 2(85) as under:

"place of business" includes –

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called

'Fixed establishment' is also defined in section 2(50) as under:

"fixed establishment" means a place (other than the registered place of business) which is characterized by **sufficient degree of permanence and suitable structure in terms of human and technical resources** to supply services, or to receive and use services for its own needs.

Conjoint reading of all the three definitions shows that the supply can be made either from the place of business for which registration has been sought or some other place which has the ingredients of 'fixed establishment'. In absence, place of usual residence will be location of supplier of services.

From the above, it can be said that the location of property is immaterial for seeking registration. The place from where the landlord operates or carries on his normal business or other activities will be 'location of supplier of services' and registration will be required to be taken in which such place falls. After giving the property, the landlord does not have any control over the property, and hence, it can neither be his 'place of business' nor 'fixed establishment'.

If this view that registration is required in each of the state where property is located, it implies that each property is 'place of businesses. If so, while seeking registration, are we required to treat each of the property as my 'place of businesses? In my view, answer is 'no'.

In case of renting of immovable property, the place of immovable property will be the 'place of supply of service'.

GST is said to be destination based tax, i.e. the ultimate tax should go to the state where the services or goods are consumed. From this point of view also, if the location of supplier is in say Lucknow and the property is located in Delhi, it will become inter-state supply and the tax by way of IGST will go to Delhi and there is no loss to the consuming state.

Exemption from registration

If a person is having location in one state and property is situated in another state, it becomes inter-state supply and accordingly, as per provisions of section 24, he will be compulsorily required to seek registration and will not be entitled for exemption of ₹ 20.00 lacs from registration as provided in section 22(1) of the CGST Act.

Maintenance Services

If landlord collects maintenance services from the tenant and pays to the service provider of the building, the situation will not change.

However, if the landlord is owning the building and providing services by engaging staff etc., facts will decide whether it will be fixed establishment in terms of manpower and technology. If so, the landlord will be required to seek registration in that state else, he will not be required. Suppose, only one person is employed as caretaker, who collects rent and attend to day to day problems of the tenants, in my view, it will not make it the fixed establishment of the landlord.