

# EAP GURUKUL

## **GST on ROC Services**

(Reverse Charge Mechanism)



## GST on Payment to Registrar of Companies (ROC)

### BACKGROUND

Goods and Service Tax (GST) is introduced in F.Y. 2017-18 and is effective from July 01, 2017. GST subsumed some of the existing Indirect taxes laws. The GST Act has certain clauses which were prevailing in the subsumed indirect tax laws. The reverse charge by Goods / service recipient (RCM) is one such example. However, GST has introduced its own list of Goods and service, for the applicability of RCM.

RCM under GST includes service provided by Government to Business entity, hence it requires Payment of GST under Reverse Charge. There are various services availed by the business entity from the Government. Corporate entities avail various mandatory services from Registrar Of Companies (ROC) which are mandatory under provision of Company Act 2013/ LLP Act 2008, e.g. Registration of Company/LLP, Issuance of CIN/DIN, Registration of Various documents and returns of company (MOA, AOA, Annual returns) etc. and amendments thereof at certain pre-determined ROC fees.

We have analyzed various aspects for the applicability of RCM in case of payment of Fees to ROC and same is provided below.

### APPLICABILITY OF RCM IN CASE OF SERVICES PROVIDED BY GOVERNMENT

The list of various services falling under RCM is Notified by Notification No 13/2017 (R) of CGST Act dated 28/06/2017. Entry No 5 of said notification talks about the taxability of services provided by the Government. Same is reproduced as below:

Sr No	Category of Supply of Services	Supplier of service	Recipient of Service
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity <b>excluding</b> , – (1) renting of immovable property, and (2) services specified below- a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; c) transport of goods or passengers.	Central Government, State Government, Union Territory or Local Authority	Any business entity located in the taxable territory

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By virtue of this entry provision, RCM shall applicable and tax on the same is to be paid by the service recipient, if

- ✚ Service is provided by the Central Government, State Government, Local Authority or Union Territory.
- ✚ It is provided to the any business entity registered under GST law.
- ✚ Consideration for the same is more that Rs 5000 (Entry 9 (R ) of N T 12/2017 dated 26/06/2017) or
- ✚ It is not is nature of Registration required under any law for the time being in force (Entry 47 of N T 12/2017 (R ) dated 26/06/2017).

### MEANING OF CENTRAL GOVERNMENT AND STATE GOVERNMENT.

**In order to decide whether ROC is falling under government or not, we have to analyze the definitions of the various governments. However, what is mean by Central Government, State Government is not defined under CGST law therefore we need to borrow the definitions from General Clause Act, 1897.**

#### 1) Central Government

As per General Clauses Act, 1897 clause 3(8) the 'Central Government', in relation to anything done or to be done after the commencement of the Constitution of India, mean president of India.

As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers' subordinate to him in accordance with the Constitution.

Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President.

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### 2) State Government

As per General Clauses Act, 1897 clause 3 (60), the 'State Government', as respects anything done after the commencement of the Constitution, shall be in a State the Governor, and in an Union Territory the Central Government.

As per Article 154 of the Constitution, the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers' subordinate to him in accordance with the Constitution. Further, as per article 166 of the Constitution, all executive actions of the Government of State shall be expressed to be taken in the name of Governor.

### 3) Local authority

As per the Sec 2(69) of CGST Act, Local authority means the following:

- a) "Panchayat" as defined in clause (d) of article 243 of the Constitution;
- b) "Municipality" as defined in clause (e) of article 243P of the Constitution;
- c) Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- d) Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- e) Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- f) Development Board constituted under article 371 of the Constitution; or
- g) Regional Council constituted under article 371A of the Constitution;

### 4) Ministry of Corporate Affairs (MCA)

The Government of India (Allocation of Business) Rules, 1961 are made by the President of India under Article 77 of the Constitution for the allocation of business of the Government of India. The Ministries/Departments of the Government are created by the President on the advice of the Prime Minister under these Rules. The businesses of the Government are transacted in the Ministries/Departments, Secretariats and offices (referred to as 'Department') as per the distribution of subjects specified in these Rules. Each of the Ministries is assigned to a Minister by the President on the advice of the Prime Minister. Each department is generally under the charge of a Secretary to assist the Minister on policy matters and general administration.<sup>i</sup>

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Article 74(1) of the Constitution provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President, who shall exercise his/her functions in accordance to the advice. The real executive power is thus vested in the Council of Ministers with the Prime Minister as its head. And as per RTI, there are 49 Ministries as there. And Ministry of corporate affairs is one of them.

### **Conclusion on the Administrative Body (MCA) of ROC:**

Based on the above analysis, we can conclude that the MCA is Government department which is formed by the Central Government and headed by President.

### **LEGAL STANDING OF REGISTRAR OF COMPANIES.**

Provision of Sec 396 in relation to establishment of registration offices under Companies Act 2013 is as follows:

*396. (1) For the purposes of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under the rules made thereunder and for the purposes of registration of companies under this Act, the Central Government shall, by notification, establish such number of offices at such places as it thinks fit, specifying their jurisdiction.*

*(2) The Central Government may appoint such Registrars, Additional, Joint, Deputy and Assistant Registrars as it considers necessary for the registration of companies and discharge of various functions under this Act, and the powers and duties that may be exercisable by such officers shall be such as may be prescribed.*

*(3) The terms and conditions of service, including the salaries payable to persons appointed under sub-section (2), shall be such as may be prescribed.*

*(4) The Central Government may direct a seal or seals to be prepared for the authentication of documents required for, or connected with, the registration of companies.*

Further, as per the Induction Material issued by MCA, ROC function is administered by MCA. All the appointment, Monitoring and instruction are implemented through MCA.

**Conclusion on the Status of the ROC:**

The Companies Act and Function of ROC are administered by Ministry of corporate affairs and therefore we can say that ROC is regulatory body under MCA and directly reporting to the President of India and hence same can be treated as Central Government.

**POSITION UNDER GST LAW FOR TAXATION OF SERVICES PROVIDED BY GOVERNMENT OR THROUGH ITS MINISTRIES**

✚ Section 2(17) of CGST Act 2017 defined Business means,

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*i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;*

✚ However, the chargeability of GST as per the Act depends upon the word “Supply”. The scope of supply is defined under Section 7 of CGST Act 2017. Same time the sub-section 2 excludes certain activity from the scope of supply which state as below,

*Section 7 (2) Notwithstanding anything contained in sub-section (1),*

*i) activities or transactions specified in Schedule III; or*

*ii) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.*

✚ However, the real ambiguity starts with the FAQ's issued by the CBIC on for “Government services” <sup>ii</sup>

While answering to the Question No 10 “Are various regulatory bodies formed by the Government covered under the definition of ‘Government’?” department answered the question as follows,

*No. A regulatory body, also called regulatory agency, is a public authority or a governmental body which exercises functions assigned to them in a regulatory or supervisory capacity. These bodies do not fall under the definition of Government.*

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*Examples of regulatory bodies are - Competition Commission of India, Press Council of India, Directorate General of Civil Aviation, Forward Market Commission, Inland Water Supply Authority of India, Central Pollution Control Board, Securities and Exchange Board of India.*

### Conclusion for the para

- a) As on the date there is no such activities are notified by the Central government under the provision of CGST act 2017 all activity performed by Central Government, State Government, Local authority as Public Authority are classified as 'Supply' under GST Act.
- b) Some of the examples given above contradict to the definition given as per General Clause Act, e g Central Pollution Control Board although it is created by Ministry of Environment, Forest and Climate Change, which is part of Central government.

The answer to the question, GST Department has carved out regulatory Authority from the term "Government" and it may indicate that Scope of RCM will not extend to the ROC (Being regulatory Authority).

FAQ's is GST departments view; however, it does not form part of statute. Placing reliance on the FAQ's framed by the department for the subject, may lead ambiguity, hence not advisable to take decision based on the same.

**EAP's CONCLUSION**

As indicated in the above paras that the nature of services provided by the Central Government should be engaged in capacity as public authorities which shall be termed as business.

However, if the services provided are other than in the nature of 'engaged as public authorities' same shall not be classified as business. As on the date there is no activities which are notified by the Central government under the provision of CGST act 2017, all activity performed by Central Government, State Government, Local authority as Public Authority are classified as 'Supply' under GST Act.

Considering the above, we conclude that the Service Charges/ Fees collected by ROC under the various provision of Companies act 2013 are in the capacity of Public Authority and hence taxable under GST Law and provision of RCM shall be trigger in case payment of Fees made to the ROC.

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<sup>i</sup> Source:- <https://eoi.gov.in/eoisearch/MyPrint.php?0775?001/0006>

<sup>ii</sup> Source:- <https://www.cbic.gov.in/resources//htdocs-cbec/gst/faqs-government-services.pdf>



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