

PAPER

5

**FINAL COURSE
STUDY MATERIAL
GROUP-II**

**INDIRECT TAX LAWS
PART I: GOODS AND
SERVICES TAX
MODULE 1 OF 4**

Relevant for May, 2024 and November, 2024 Examinations



Board of Studies (Academic)
**The Institute of Chartered
Accountants of India**

(Set up by an Act of Parliament)

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BEFORE WE BEGIN ...

Indirect Tax Laws: Dynamic Subject Area

In the realm of chartered accountancy education, Indirect Tax Laws has emerged as one of the most dynamically evolving subjects. At the Final level, this subject is divided into two parts: Part I, which covers Goods and Services Tax (GST) for 80 marks, and Part II, which focuses on Customs & Foreign Trade Policy (FTP) for 20 marks. GST has brought a paradigm shift in the country's indirect tax landscape. It aims to create a unified market with consistent tax rates and procedures, breaking down economic barriers and promoting a more integrated national economy. By subsuming most of the erstwhile Central (excise duty, service tax, central sales tax) and State taxes (State-Level VAT) into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it mitigates the ill effects of cascading and improves competitiveness. It follows a multi-stage collection mechanism where tax is collected at every stage and the credit of tax paid at the previous stage is available as a set off at the next stage of transaction.

The nitty-gritties of this new tax law coupled with its inherent dynamism, makes the learning, understanding, application and analysis of the provisions of this law in problem solving both fascinating and challenging.

Know your Study Material

This Study Material is relevant for May 2024 and November 2024 examinations. **The subject matter of Part I: Goods and Services Tax of this Study Material on Indirect Tax Laws is based on the provisions of the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Act, 2017 as amended up to 30.04.2023. Further, the amendments made vide the Finance Act, 2021 and Finance Act, 2023 have also been incorporated.** The amendments made vide Finance Act, 2021 and Finance Act, 2023 and significant notifications and circulars issued upto 30.04.2023, have been indicated in bold italics in this Study Material.

The content discussed in Part II: Customs & FTP is based on the customs laws as amended by the Finance Act, 2023 (amendments which have become effective till

the date of printing of this Study Material) and significant notifications and circulars issued till 30.04.2023. The amendments are indicated in bold italics in the Study Material.

The significant notifications and circulars issued from 01.05.2023 to 31.10.2023 will be compiled as Statutory Update for May 2024 examination and web-hosted on the BoS Knowledge Portal. Similarly, significant notifications and circulars issued from 01.05.2023 to 30.04.2024 will be compiled and web hosted as Statutory Update for November 2024 examination.

Framework of Chapters: Uniform Structure comprising of specific components

Efforts have been made to present the complex indirect tax laws in a lucid manner. Care has been taken to present the chapters in a logical sequence to facilitate easy understanding by the students. The Study Material has been divided into four modules for ease of handling by students. The first three modules are on GST and the fourth module is on Customs and FTP.

The various chapters of this subject have been structured uniformly and comprise of the following components:

	Components of each Chapter	About the component
1.	Learning Outcomes	Learning outcomes which you need to demonstrate after learning each topic have been detailed in the first page of each chapter/unit. Demonstration of these learning outcomes will help you to achieve the desired level of technical competence
2.	Content	The concepts and provisions of indirect tax laws are explained in student-friendly manner with the aid of examples/illustrations/diagrams/flow charts. Diagrams and flow charts would help you understand and retain the concept/provision learnt in a better manner. Examples and illustrations would help you understand the application of concepts/provisions.

		These value additions would, thus, help you develop conceptual clarity and get a good grasp of the topic.
3.	Test Your Knowledge	This section comprises of variety of questions which will help you to analyse the provisions of indirect laws and apply the same in problem solving, thus, sharpening your application skills. In effect, it will test your ability to analyse and apply the concepts/provisions learnt in solving problems and addressing issues. Questions aim to test your analytical ability and interpretational skills.
4.	Answers	After you work out the problems/questions given under the section "Test Your Knowledge", you can verify your answers with the answers given under this section. This way you can self-assess your level of understanding of the provisions or concepts of a chapter.
5.	Significant Select Cases	The recent significant select Supreme Court and High Court rulings in customs law have been reported at the end of chapters of Part II Customs & FTP to help you appreciate the interpretation of the provisions of customs law by the Courts.

Students may make note of the following while reading the Study Material:

- ❑ For the sake of brevity, the "Goods and Services Tax", "Central Goods and Services Tax", "State Goods and Services Tax", "Union Territory Goods and Services Tax", "Integrated Goods and Services Tax", "Central Goods and Services Act, 2017", "Integrated Goods and Services Act, 2017", "Union Territory Goods and Services Act, 2017", "Central Goods and Services Tax Rules, 2017" and "Integrated Goods and Services Tax Rules, 2017" have been referred to as "GST", "CGST", "SGST", "UTGST", "IGST", "CGST Act", "IGST Act", "UTGST Act", "CGST Rules" and "IGST Rules" respectively in Part I: Goods and Services Tax of the Study Material.

- ❑ Unless otherwise specified, the section numbers and rules referred to in the chapters of Part I: Goods and Services Tax pertain to CGST Act and CGST Rules respectively (except Chapter 3: Place of Supply, where the section numbers and rule numbers pertain to IGST Act and IGST Rules).
- ❑ The illustrations, examples, questions and answers given under **'Test Your Knowledge'** in Part I: Goods and Services Tax are solved/answered on the basis of the position of law, as existing on 30.04.2023 **as also amended by the Finance Act, 2021 and Finance Act, 2023**. The reference to years/months subsequent to such date in the examples, illustrations, questions and answers is only for the purpose of explaining the concepts and provisions as the position of law may change subsequently.
- ❑ Though all efforts have been taken in developing this Study Material, the possibilities of errors/omissions cannot be ruled out. You may bring such errors/omissions, if any, to our notice so that the necessary corrective action can be taken.

We hope that these student-friendly features in the Study Material improves your learning curve and sharpens your analytical and interpretational skills.

Happy Reading and Best Wishes!

SYLLABUS

PAPER – 5 : Indirect Tax Laws

(One paper – Three hours – 100 Marks)

Part-I: Goods and Services Tax (80 Marks)

Objective:

To acquire the ability to analyse and interpret the provisions of the goods and services tax law and recommend solutions to case scenarios.

Contents:

1. Goods and Services Tax (GST) Law as contained in the Central Goods and Services Tax (CGST) Act, 2017 and Integrated Goods and Services Tax (IGST) Act, 2017 including

- (i) Case studies based on following:
Levy and collection of CGST and IGST – Application of CGST/IGST law; Concept of supply, inter-State supply, intra-State supply, supplies in territorial waters; Charge of tax including reverse charge; Classification; Exemption from tax; Place of supply; Time of Supply; Value of supply; Input tax credit; Computation of GST liability
- (ii) Procedures under GST including registration, tax invoice, credit and debit notes, electronic way-bill, accounts and records, returns, payment of tax
- (iii) Refunds and case studies based on refund provisions
- (iv) Job work
- (v) Liability to pay in certain cases
- (vi) Administration of GST; Assessment and Audit
- (vii) Inspection, Search, Seizure and Arrest
- (viii) Demand and Recovery; Offences and Penalties

- (ix) Appeals and Revision
- (x) Advance Ruling
- (xi) Ethics under GST
- (xii) Other provisions¹

Part-II: Customs & FTP (20 Marks)

Objective:

To develop an understanding of the customs laws and foreign trade policy and acquire the ability to analyse and interpret the provisions of such laws/concepts.

Contents:

1. Customs Law as contained in the Customs Act, 1962 and the Customs Tariff Act, 1975

- (i) Introduction to customs law including Constitutional aspects
- (ii) Levy of customs duties including application of customs law, taxable event, charge of customs duty, exceptions to levy of customs duty, exemption from custom duty
- (iii) Types of customs duties
- (iv) Classification and valuation of imported and export goods
- (v) Import and Export Procedures including special procedures relating to baggage, goods imported or exported by post, stores
- (vi) Warehousing
- (vii) Refund

¹ The entire CGST and IGST laws are included in the syllabus at the Final level. Any residuary provision under the CGST Act, 2017 and IGST Act, 2017, not covered under any of the above specific provisions, would be covered under "Other provisions". Further, if any new Chapter is included in the CGST Act, 2017 and IGST Act, 2017, the syllabus will accordingly include the provisions relating thereto.

2. Foreign Trade Policy

- (i) Introduction to FTP – legislation governing FTP, salient features of an FTP, administration of FTP, contents of FTP and other related provisions
- (ii) Basic concepts relating to import and export
- (iii) Basic concepts relating to export promotion schemes provided under FTP

Note – While covering the above laws, students should familiarise themselves with the ethical considerations and information technology aspects involved in the compliance of these laws.

If any new legislation(s) is enacted in place of an existing legislation(s), the syllabus will accordingly include the corresponding provisions of such new legislation(s) in place of the existing legislation(s) with effect from the date to be notified by the Institute. Similarly, if any existing legislation ceases to have effect, the syllabus will accordingly exclude such legislation with effect from the date to be notified by the Institute. Students shall not be examined with reference to any particular State GST Law.

Further, the specific inclusions/exclusions in any topic covered in the syllabus will be effected every year by way of Study Guidelines, if required.

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SUPPLY UNDER GST



The section numbers referred to in the Chapter pertain to the CGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- ☐ comprehend the taxable event under GST
- ☐ analyse the taxable event – Supply – its meaning and scope.
- ☐ identify the transactions that will amount to supply even without any consideration.
- ☐ identify the transactions which will be neither the supply of goods nor the supply of services.
- ☐ classify the specified transactions either as supply of goods or as supply of services.
- ☐ explain the meaning of composite and mixed supplies and their taxability under GST.

This chapter explains in detail the concept of taxable event under GST. However, it is advisable to first go through the basic concepts of GST as introduced in India. The same is given at the end of the chapter as **Annexure -1. The same is only for the understanding of the students and is not relevant from the examination point of view.**

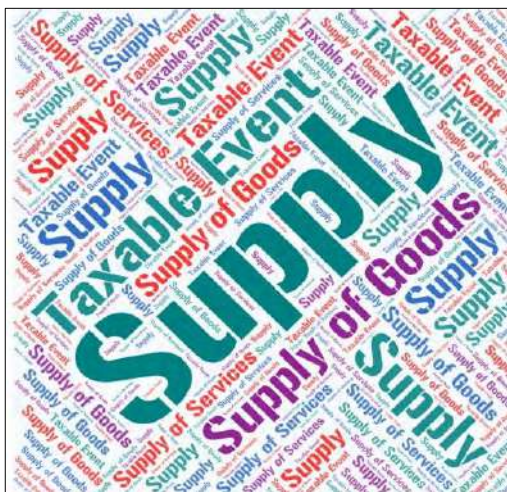


1. TAXABLE EVENT UNDER GST - SUPPLY

A **taxable event** is any transaction or occurrence that results in a tax consequence. Before levying any tax, taxable event needs to be ascertained. It is the foundation stone of any taxation system; it determines the point at which tax would be levied.



Under the earlier indirect tax regime, the framework of taxable event in various statutes was prone to catena of interpretations resulting in litigation since decades. The controversies largely related to issues like whether a particular process amounted to manufacture or not, whether the sale was pre-determined sale, whether a particular transaction was a sale of goods or rendering of services etc.



The GST laws resolve these issues by laying down one comprehensive taxable event i.e.



“Supply” - Supply of goods or services or both. Various taxable events namely manufacture, sale, rendering of service, purchase, entry into a territory of State etc. that existed prior to introduction of GST have been done away with in favour of just one event i.e. **Supply**.

The GST Law, by levying tax on the ‘supply’ of goods and/or services, departs from the historically understood concepts of

'taxable event' under the State VAT Laws, Excise Laws and Service Tax Law i.e. sale, manufacture and provision of services respectively.

In the GST regime, the entire value of supply of goods and/or services is taxed in an integrated manner, unlike the earlier indirect taxes, which were charged independently either on the manufacture or sale of goods, or on the provision of services.



2. RELEVANT DEFINITIONS

❖ **Goods:** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Section 2(52)].

❖ **Services:** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation: For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities [Section 2(102)].

❖ **Principal:** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both [Section 2(88)].

❖ **Competent authority:** means such authority as may be notified by the Government [Section 2(29)].

❖ **Family:** means, —

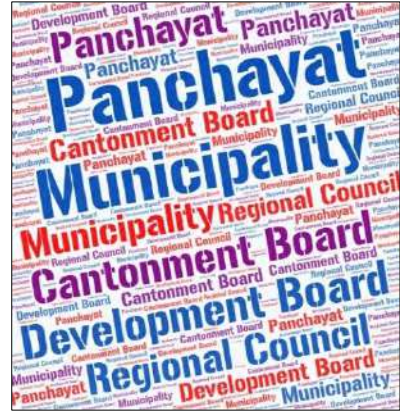
- (i) the spouse and children of the person, and
- (ii) the parents, grand-parents, brothers and sisters of the person **if they are wholly or mainly dependent on the said person** [Section 2(49)].

❖ **Government:** means the Central Government [Section 2(53)].

❖ **Local authority:** means —

- (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution.

- (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution.
- (c) a 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) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006.
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution.
- (f) a Development Board constituted under article 371 and article 371J of the Constitution.
- (g) a Regional Council constituted under article 371A of the Constitution [Section 2(69)].



❖ **Consideration:** in relation to the supply of goods or services or both includes:

- ❑ any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government,
- ❑ the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

However, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the

supplier applies such deposit as consideration for the said supply [Section 2(31)].

❖ **Business:** includes –

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to (a) above;

(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;

(f) admission, for a consideration, of persons to any premises; and

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club

(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

[Section 2(17)].

❖ **Actionable claim:** means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent [Section 2(1) of CGST Act read with section 3 of the Transfer of Property Act, 1882].

- ❖ **Manufacture:** means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term “manufacturer” shall be construed accordingly [Section 2(72)].
- ❖ **Money:** means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75)].
- ❖ **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].
- ❖ **Taxable territory:** means the territory to which the provisions of this Act apply [Section 2(109)].
- ❖ **Non-taxable territory:** means the territory which is outside the taxable territory [Section 2(79)].
- ❖ **India:** means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters. [Section 2(56)].
- ❖ **Supplier:** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].

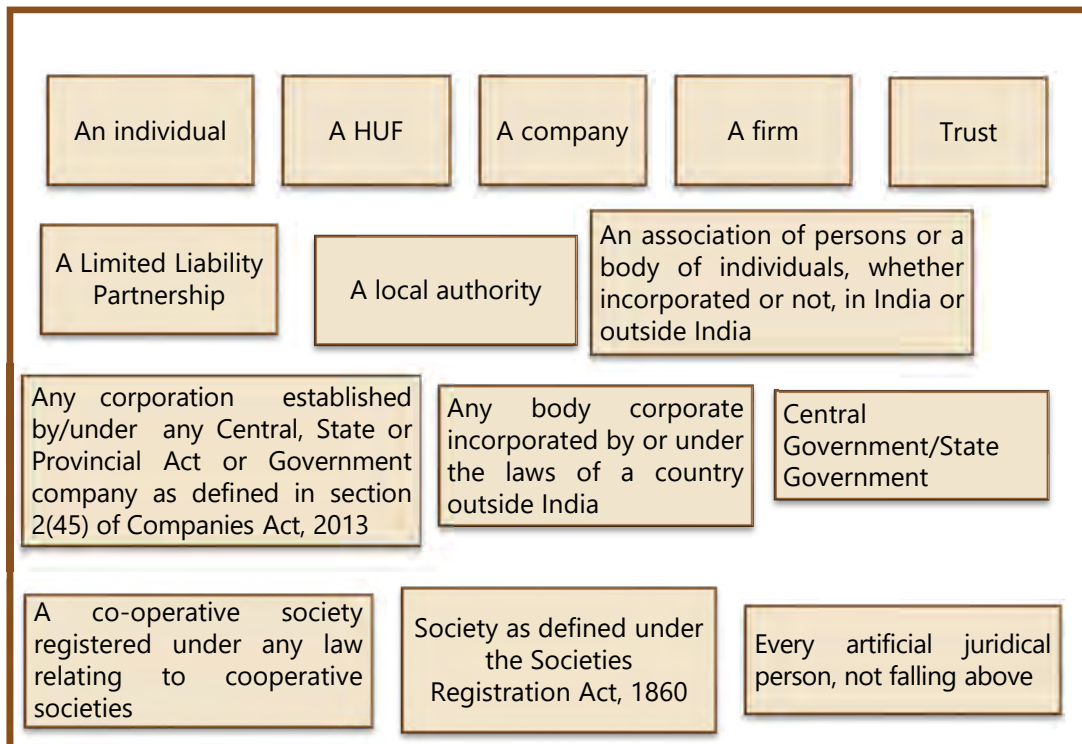
❖ **Recipient:** of supply of goods and/or services means-

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration,
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply

and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

❖ **Person:** includes [Section 2(84)]-





✪ **Definitions in which the expression “means” has been used are exhaustive definitions. Consequently, the scope of these definitions cannot be expanded.**

✪ **Definitions in which the expression “includes” has been used are inclusive and are not exhaustive definitions. Resultantly, the scope of these definitions is wide.**

Our discussion in this Study Material will principally be confined to the provisions of CGST and IGST laws as the specific State GST laws¹ are outside the scope of syllabus.



3. CONCEPT OF SUPPLY [SECTION 7 OF THE CGST ACT]

The concept of ‘**supply**’ is the key stone of the GST architecture. The provisions relating to the meaning and scope of supply are contained in Chapter III of the CGST Act read with various Schedules given under the said Act.

Following sections and schedules shall be discussed in this chapter to understand the concept of supply:

Section 7	Meaning and scope of supply
Section 8	Taxability of composite and mixed supplies
Schedule I	Activities to be treated as supply even if made without consideration
Schedule II	Activities or transactions to be treated as supply of goods or as supply of services

¹ It may be noted that GST laws of all the States and Union Territories are largely based on the CGST Act, 2017.

Schedule III	Activities or transactions which shall be treated neither as supply of goods nor as supply of services.

Provisions of section 7 containing the meaning and scope of supply are as follows:

 STATUTORY PROVISIONS		
Section 7	Meaning and Scope of Supply	
Sub-section	Clause	Particulars
(1)	Supply includes -	
	(a)	all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business
	(aa)	the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment/other valuable consideration. Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.

	(b)	importation of services , for a consideration whether or not in the course or furtherance of business, and
	(c)	the activities specified in Schedule I , made or agreed to be made without a consideration .
(1A)	where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II .	
(2)	Notwithstanding anything contained in sub-section (1),	
	(a)	activities or transactions specified in Schedule III ; or
	(b)	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.	
(3)	Subject to the provisions of sub-sections (1), (1A) & (2), Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as —	
	(a)	a supply of goods and not as a supply of services; or
	(b)	a supply of services and not as a supply of goods.



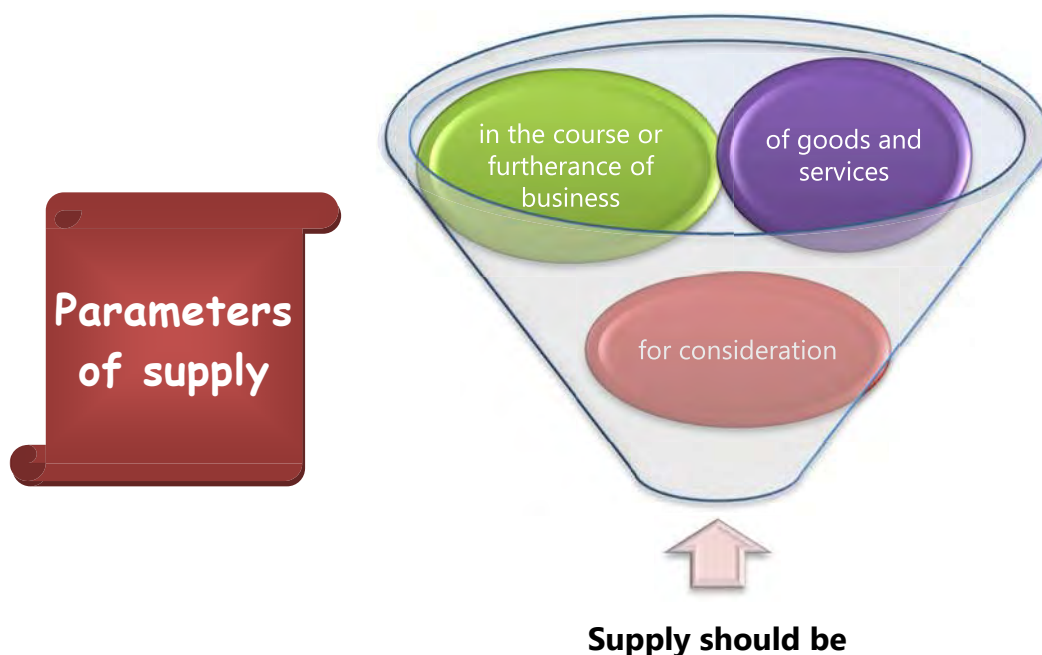
ANALYSIS

The definition of 'supply' as contained in section 7 is an inclusive definition and does not define the term exhaustively. It defines the scope of supply in an inclusive manner. Clause (a) of sub-section (1) illustrates the forms of supply, but the list is not exhaustive. This is further substantiated by the use of words '**such as**' in the definition.

Provisions of scope of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

The meaning and scope of supply in terms of section 7 can be understood in terms of following **parameters**:

1. Supply should be of goods or services.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.



Aforesaid parameters describe the concept of supply. However, there are a few exceptions to 2nd and 3rd parameters *[the requirement of supply being made for a consideration and in the course or furtherance of business]* in the GST law.

Few exceptions have been carved out where a transaction is deemed to be a supply even without consideration *[contained in Schedule I – discussed later in this Chapter]*.

Without Consideration
Schedule - I - Deemed Supply

Import of Services for consideration
Supply even if not in the course or furtherance of business

Similarly, the condition of supply to be made in the course or furtherance of business has been relaxed in case of import of services *[Import of services for a consideration, whether or not in the course or furtherance of business, is treated as supply]*.

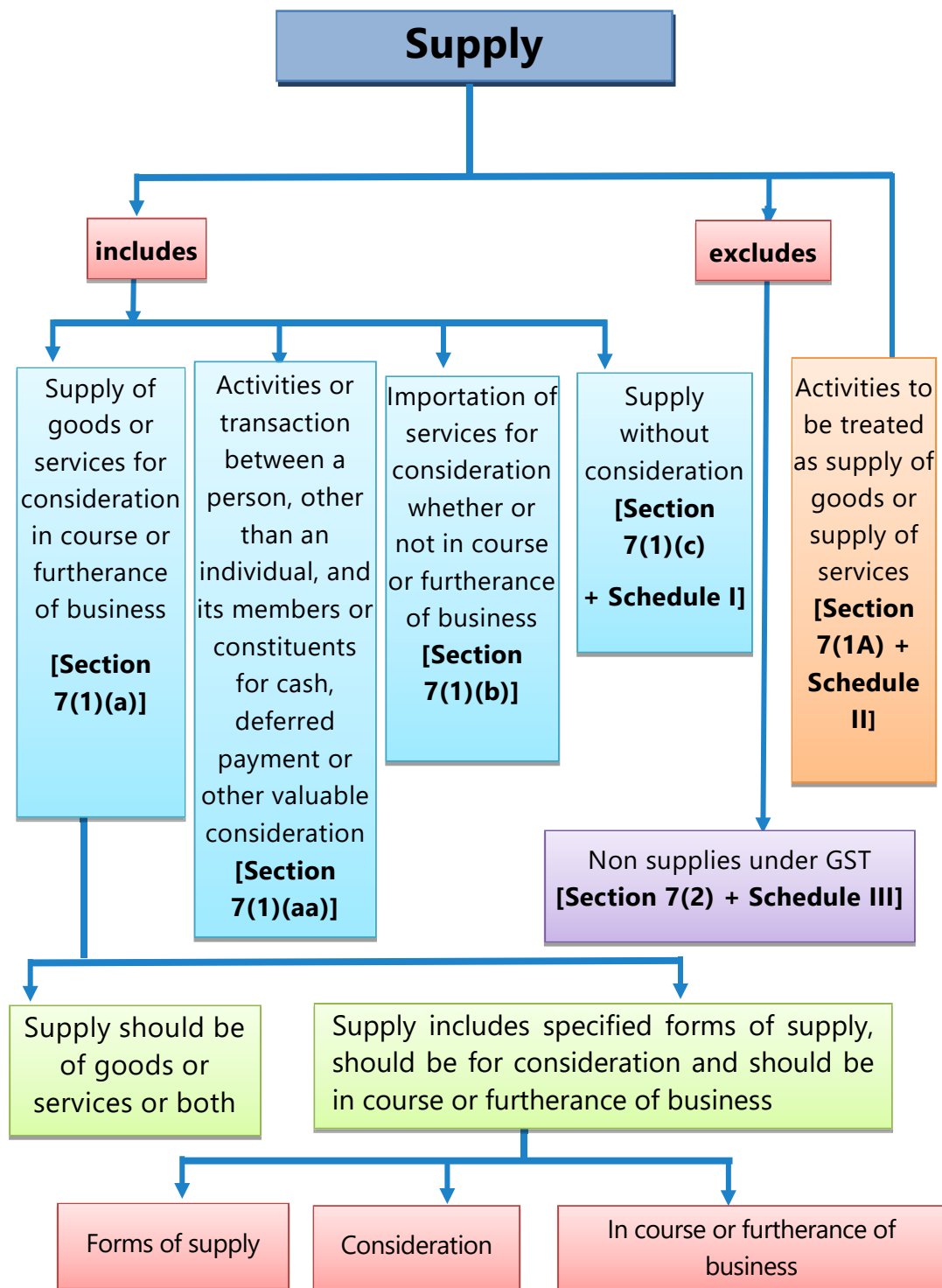
Further, there are also cases where a transaction is kept out of scope of supply despite the existence of the above parameters, i.e. there is a list of activities which are treated neither as a supply of goods nor as a supply of services *[contained in Schedule III – discussed later in this Chapter]*.

Neither Supply of goods nor Supply of services
Schedule - III

Classified either as Supply of goods or as Supply of services
Schedule - II

In other words, they are outside the scope of GST. Besides, GST law has classified certain activities/transactions either as supply of goods or as supply of services in Schedule II *[Discussed later in this Chapter]*.

Government is also empowered to notify transactions that are to be treated as a supply of goods and not as a supply of services, or as a supply of services and not as a supply of goods. In the subsequent paras, the above aspects of supply have been extensively discussed. The discussion has been broadly categorised into following:



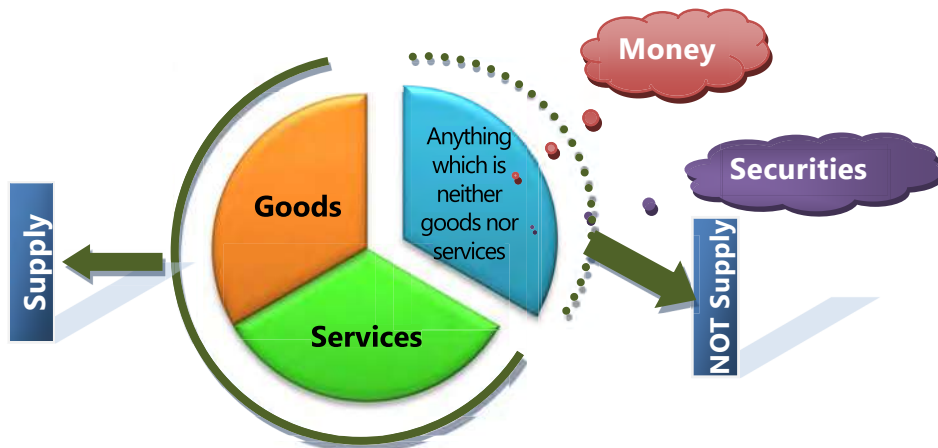
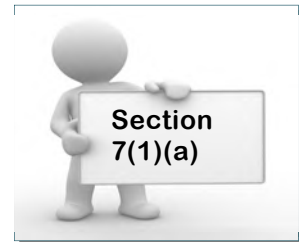


SUPPLY OF GOODS OR SERVICES FOR CONSIDERATION IN COURSE OR FURTHERANCE OF BUSINESS

SUPPLY SHOULD BE OF GOODS OR SERVICES OR BOTH

The definition of supply begins with the term '**Supply includes**', thus making it clear that CGST Act intends to give an extensive meaning to the term 'supply'.

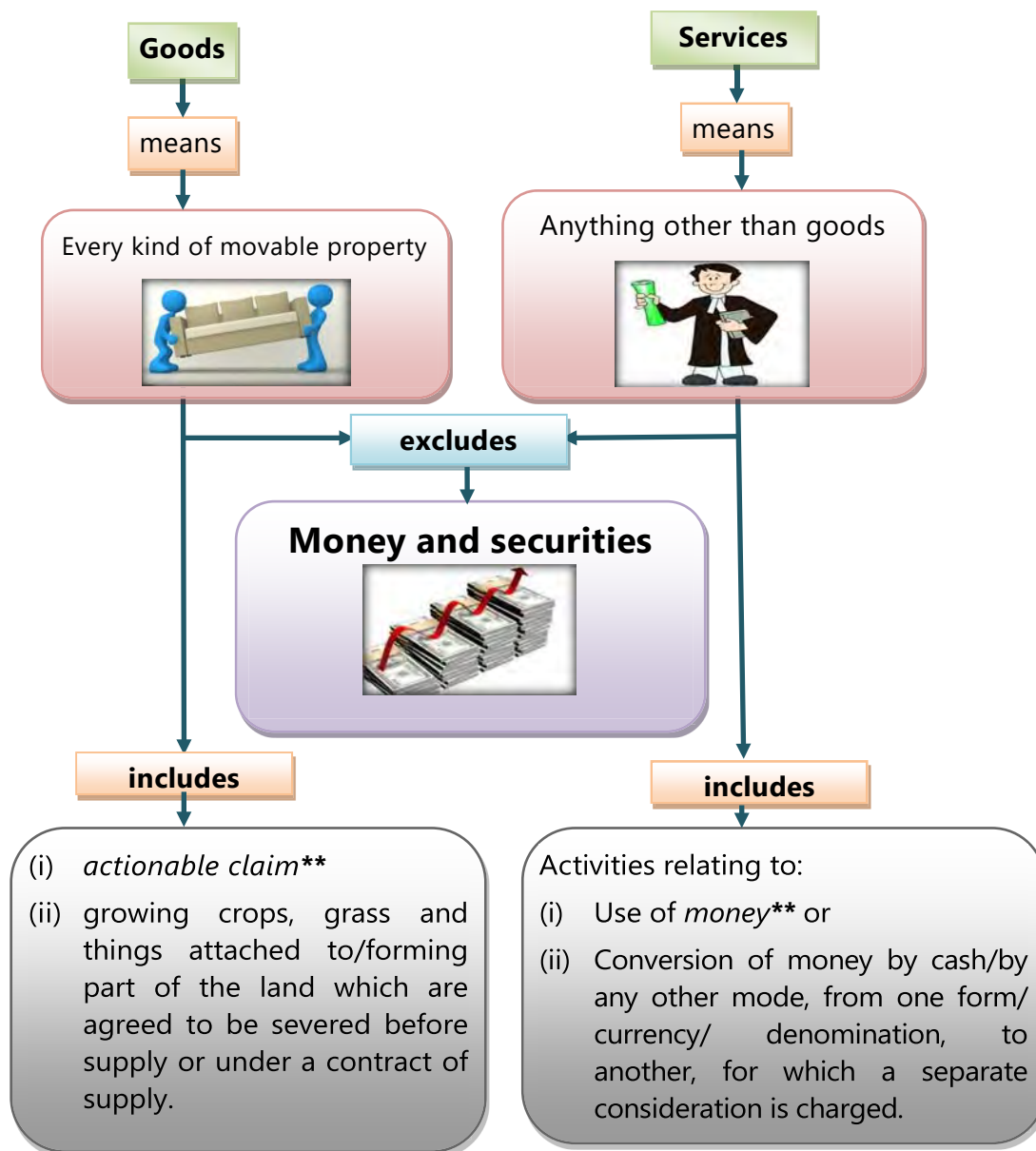
Supply **includes** all forms of supply of goods or services or both. Supply of **anything other than goods or services** like money, securities etc. does not attract GST.



The terms goods and services as defined under the CGST Act have been analysed by way of a diagram on next page.

Anything supplied other than goods or services is outside the scope of supply.

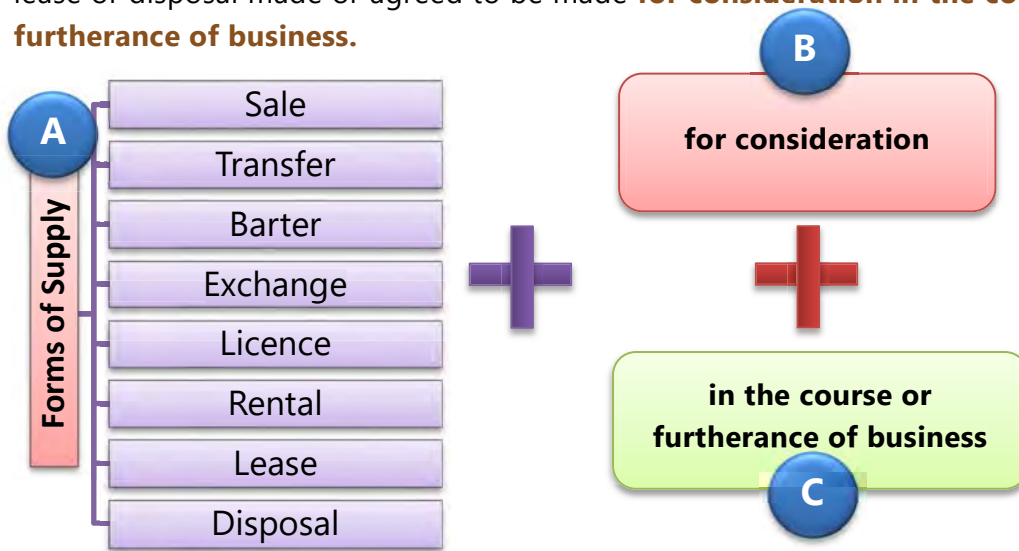




***Please refer the definitions of 'actionable claims' and 'money' as provided in heading 2. – Relevant Definitions.*

SUPPLY INCLUDES SPECIFIED FORMS OF SUPPLY, SHOULD BE FOR CONSIDERATION AND SHOULD BE IN COURSE OR FURTHERANCE OF BUSINESS

The first part of section 7 [Clause (a) of sub-section (1)] includes **all forms of supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for consideration in the course or furtherance of business**.



It is important to note that supply includes ALL forms of supply within its purview, though **eight illustrative forms of supply** have been enlisted in the definition. Further, supply as contemplated in this first part has two pre-requisites:

- ✓ the supply should be for a consideration; and
- ✓ the supply should be in the course or furtherance of business.

We shall first discuss the various forms of supply as illustrated in section 7(1)(a) in detail:

A. FORMS OF SUPPLY

Various forms of supply contemplated in section 7(1)(a) are sale, transfer, barter, exchange, licence, rental, lease or disposal. These forms of supply are only illustrative and not exhaustive. However, none of these terms have been defined under the Act. In order to understand their meaning, we have taken recourse to their dictionary meaning or otherwise and have explained them as follows:

- I. **Sale and Transfer:** The dictionary meaning of term 'sale' is the act of selling; specifically: the transfer of ownership of and title to property from one person to another for a price². As per the Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

Further, the term 'transfer' has been defined in the Black's Law dictionary as to convey or remove from one place, person, etc., to another; pass or hand over from one to another; specifically, to make over the possession or control of.



(1) A shopkeeper sells a pen for ₹ 100 to the buyer. After the sale, the pen belongs to the buyer and shopkeeper does not have any right on the pen. This is a transaction of sale.



(2) A company transfers goods from its factory to the depot for sale purposes. This is 'transfer' of goods where the sale has not yet taken place.

- II. **Barter and Exchange:** The dictionary meaning of term 'barter' is to exchange goods or services for other goods or services instead of using money³. Black's Law dictionary defines the term 'exchange' as an act of giving or taking one thing for another.

While barter deals with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are paid for partly in goods and partly in money. When there is a barter of goods or services, same activity constitutes supply as well as consideration.



(3) When a new car worth ₹ 5,00,000 is purchased in **exchange** of an old car alongwith the monetary consideration of ₹ 4,00,000 paid for the said purchase. – **Exchange transaction**



(4) A doctor got his hair cut from a barber and provides him medical consultancy in return. In this transaction, the doctor provided the medical consultancy services to the barber for which consideration was in the

² www.merriam-webster.com

³ www.macmillandictionary.com

form of hair cutting services provided by the barber. Similarly, the barber provided hair cutting services to the doctor for which consideration was in the form of medical consultancy services provided by the doctor. – **Barter transaction**

- III. Licence, lease, rental and disposal:** The dictionary meaning of the term 'licence' is a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful⁴.

The dictionary meaning of 'rental' is an arrangement to rent something, or the amount of money that you pay to rent something⁵ and that of 'lease' is to make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time⁶.

Black's law dictionary defines disposal as the sale, pledge, giving away, use, consumption or any other disposition of a thing.

Under GST, such licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule II of CGST Act [*Schedule-II has been discussed in detail in the subsequent paras*].

As discussed earlier, one of the parameters to qualify as a supply of goods and/or services is that a supply is made for a consideration. This parameter has been explicated in the following paras:

B. CONSIDERATION

The dictionary meaning of word 'consideration' is payment. Consideration need not always be in the form of money. It can be in money or in kind. It covers anything which might be possibly done, given or made in exchange for something else.

Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person. However, any subsidy given by the Central Government or a State Government is not considered as consideration.

⁴ www.merriam-webster.com

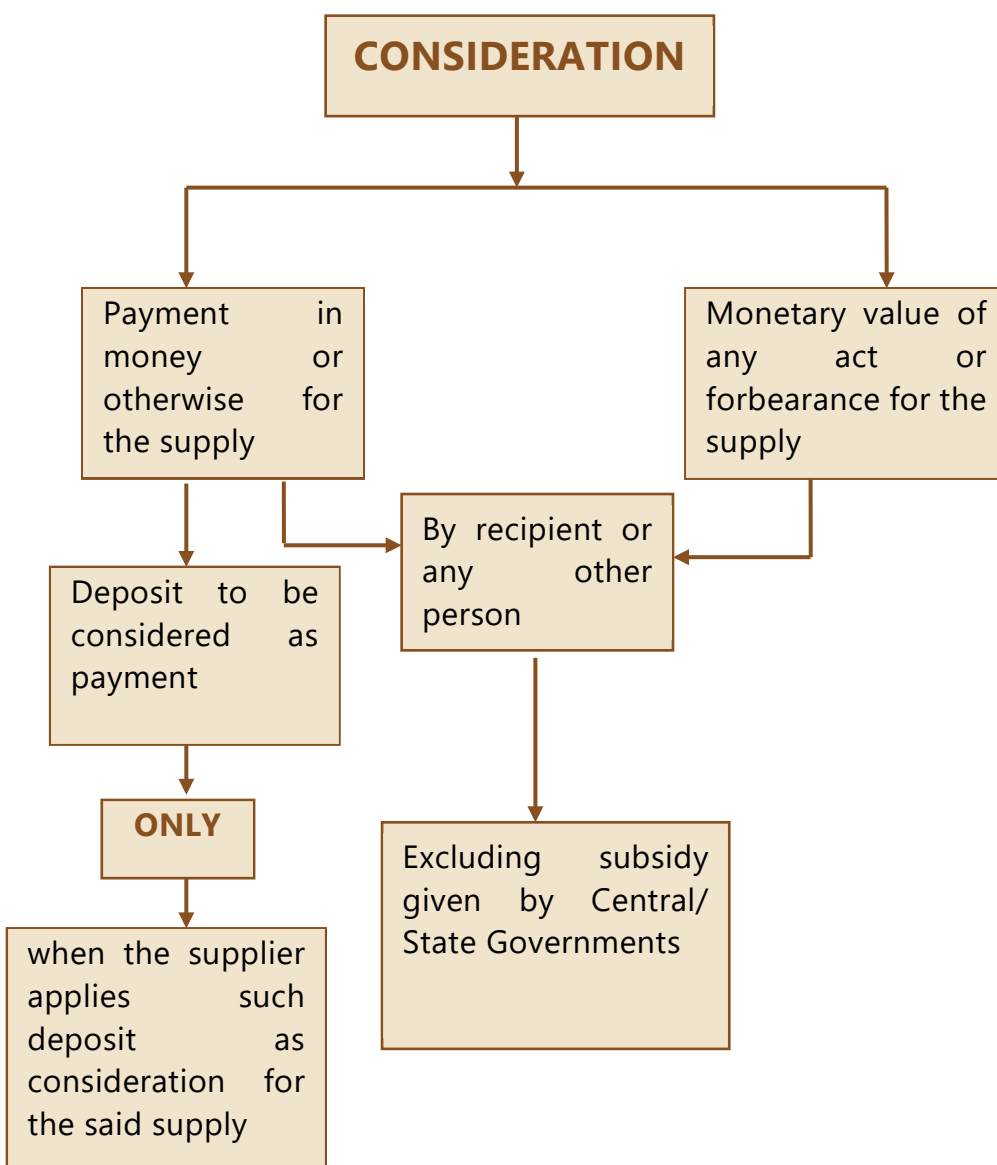
⁵ www.dictionary.cambridge.org

⁶ www.dictionary.cambridge.org

A deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

The term consideration is defined under section 2(31) [Refer heading 'Relevant Definitions'].

The said definition has been depicted in the form of a diagram as follows:



Let us examine the existence of consideration in the following three scenarios:

1.	Donations received by charitable institutions from individual donors, without quid pro quo (something for something)
2.	Art works sent by artists to galleries for exhibition
3.	'No Claim Bonus' offered by an insurance company to the insured

1. Donations received by charitable institutions from individual donors, without quid pro quo⁷

An important feature of consideration is *quid pro quo* [something for something]. Donations received by the charitable organisations are treated as consideration only if there exists, *quid pro quo*, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).

Generally, institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. receive financial help or any other support in the form of donation or gift from the individual donors. In order to express the gratitude towards such help/support, the recipient institutions place a name plate or similar such acknowledgement in their premises.

When the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and **is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business**, then it can be said that there is **no supply** of service for the payment in the form of donation. In other words, there is no obligation (*quid pro quo*) on part of recipient of the donation or gift to do anything (i.e. supply a service). Therefore, there is no GST liability on such payment made.

Some examples of cases where there would be no taxable supply are as follows:-

⁷ any obligation to do anything in return of the donation



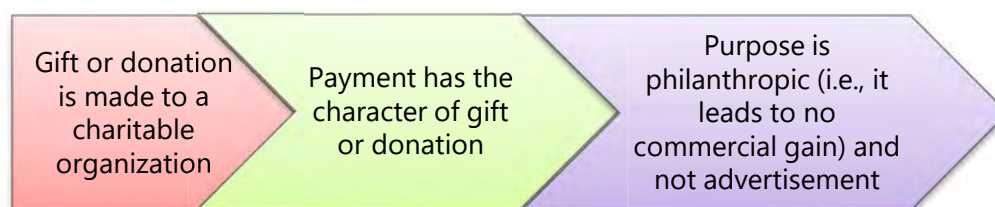
(5) Bhushan donated a blackboard to Yoganisht Sansthan - a charitable yoga institution. Yoganisht Sansthan printed underneath the blackboard so donated - "Good wishes from Mr. Bhushan".



(6) Smt. Durga Devi donated some money to a temple in the memory of her late father. The Temple Trust constructed a room in the temple complex from such donation and wrote "Donated by Smt. Durga Devi in the memory of her father" on the door floor of the room.

In above examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised.

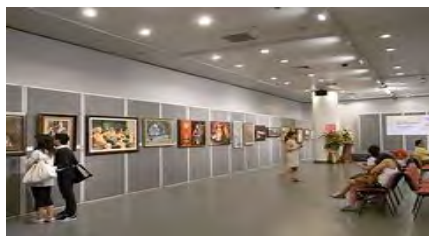
Thus, GST is not leviable where the following three cumulative conditions are satisfied namely:



[Circular No. 116/35/2019 GST dated 11.10.2019]

2. **Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists**

Artists give their work of art to galleries where it is exhibited for supply. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.



It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply [Circular No. 22/22/2017 GST dated 21.12.2017].

3. *No supply of service by the insured to the insurance company in lieu of 'No Claim Bonus' offered by said insurance company to him*

The issue which arose for consideration was whether the deduction on account of 'No Claim Bonus' (NCB) allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s).

As per practice prevailing in the insurance sector, the insurance companies deduct 'No Claim Bonus' from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.

It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.

[Circular No. 186/18/2022 GST dated 27.12.2022]



Any transaction involving supply of goods and/or services without consideration is not a supply unless it is deemed to be a supply under law [in Schedule I of the CGST Act**].

***Provisions of Schedule I have been discussed in detail later in this chapter.*

Another parameter to qualify as supply of goods and/or services is that a supply is made in course or furtherance of business. This parameter has been explained in the following paras:

C. COURSE OR FURTHERANCE OF BUSINESS

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Resultantly, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of 'business'.

Meaning of supply made in the course or furtherance of business: Any activity

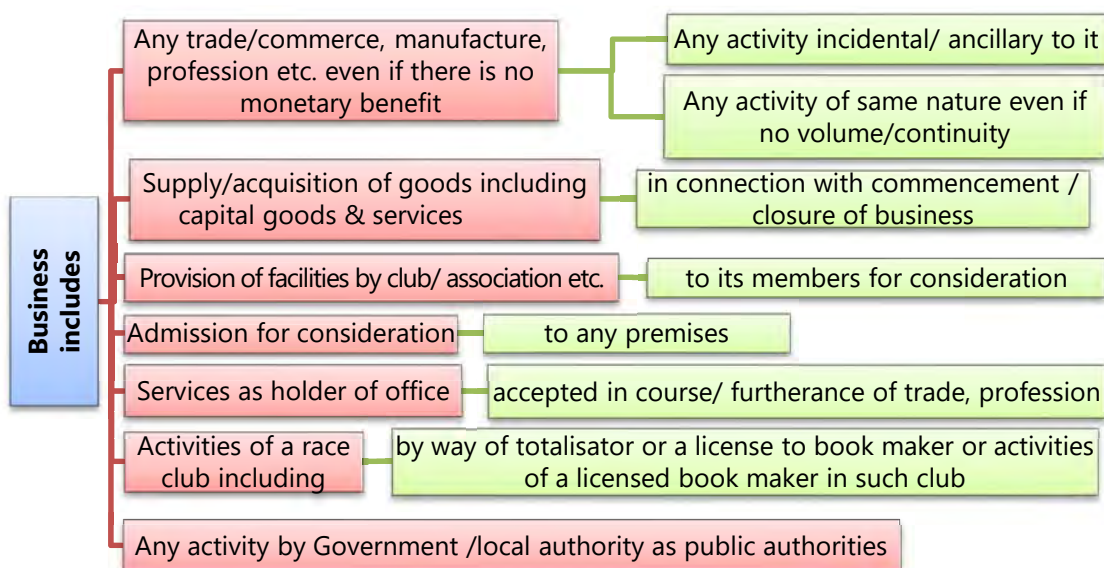


undertaken in course/ furtherance of business would constitute a supply. In order to



understand the term 'in the course or furtherance of business', we need to first understand the term 'business'. Business as defined under section 2(17), *inter alia*, includes any trade, commerce, manufacture, profession, vocation etc. whether or not undertaken for a monetary benefit.

The definition of business has been summarised in the diagram below:



Thus, business includes any activity/transaction which is incidental or ancillary to any trade, commerce, manufacture, profession, vocation, adventure, wager [bet] or any other similar activity. In addition, any activity undertaken by the Central Government or a State Government or any local authority in which they are engaged as public authority shall also be construed as business. For any trade, commerce, or any other similar activity to qualify as business, **frequency, volume, continuity or regularity of such transaction is not a pre-requisite**.

Some of the examples of supply made/not made 'in the course or furtherance of business' are as follows:



(7) Rishabh buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Rishabh to car dealer is not a supply under CGST Act because said supply is not made by Rishabh in the course or furtherance of business⁸.



(8) Manikarnika sold her old gold bangles and earrings to 'Aabhushan Jewellers'. Sale of old gold jewellery by an individual to a jeweller will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual^{9 10}.

Since 'business' includes vocation, therefore supply of goods or service **as a vocation** is also a supply under GST.



(9) Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable

⁸ Clarified vide GST FAQs issued by CBIC

⁹ Clarified by CBIC vide press release dated 13.07.2017 and GST Flyer - 'The meaning and scope of supply'

¹⁰ The view taken in Examples 7 & 8 above is based on the view taken in the Departmental FAQs/ press release. There is another school of thought according to which since the definition of business includes trade, commerce, or any other similar activity, **whether or not there is frequency, volume, continuity or regularity** of such transaction, on literal interpretation, the transactions in the above examples can be considered to be made in the course or furtherance of business and thus, will constitute supply. The taxability of such transactions, however, will have to be examined under the provisions of section 9 [Discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material]. However, since this view may not always lead to logical conclusions, it is more prudent to take a purposive approach as followed in Departmental FAQs/press release given above.

Trust – 'Kind Human'. The sale of paintings by the actor qualifies as supply as it is made in course or furtherance of business.

Facilities provided by the club/association to its members for consideration are provided in course or furtherance of business.



(10) A Resident Welfare Association provides the service of depositing the electricity bills of the residents in lieu of some nominal charges. Provision of service by a club or association or society to its members is included in the definition of 'business'.

Admission of persons to any premises for a consideration is also included in business.



(11) Services by way of admission to circus, cinema halls, amusement parks including theme parks, water parks, etc. are considered as supply as these are services by way of admission of persons to any premises for a consideration.

Business includes activities of a race club including by way of totalisator or a license to book maker¹¹ or activities of a licensed book maker in such club.



(12) Royal Turf Race Club is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator¹². For providing the service of facilitating wagering transactions, Royal Turf Race Club gets commission which is deducted and retained by the club from the total bet value. Said services amount to supply as the activities of a race club are included in business.



There is one exception to this 'course or furtherance of business' rule i.e., import of services for a consideration.

¹¹ Book maker is a person that accepts and pays off bets on sporting and other events at agreed-upon odds.

¹² Totalisator is a device showing the number and amount of bets staked on a race, to facilitate the division of the total among those backing the winner.



From the above discussion, it can be inferred that if an activity or transaction satisfies all the above parameters, as discussed in points A, B and C above, said activity or transaction qualifies as 'Supply under GST'.

After understanding the basic concept of supply, let us now examine taxability of few transactions:

Taxability of Cost Petroleum

When an oil exploration & production contractor gets a license/lease to explore/mine the petroleum crude and/or natural gas from the Government, it enters into a **Production Sharing Contract (PSC)** with the Government. The relationship of the contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee. As per these PSCs, when a contractor discovers oil/gas, he is at first entitled to recover the contract cost [*expenses incurred in exploration, development, production and payment of royalty*] involved in the extraction of oil/gas from the total sale proceeds and thereafter, he is expected to share with the Government the profit from his venture [known as profit petroleum], as per the PSC.



The value of petroleum which the contractor is entitled to take in a year for recovery of the contract costs is called the **cost petroleum**. Further, the total value of petroleum produced and saved from the contract area in a particular period, as reduced by cost petroleum, is called the **profit petroleum**. The **Government's share of profit petroleum** which is the consideration paid by the contractor to the Central Government for the services of grant of license/lease to explore/mine petroleum crude and/natural gas **is exempt from GST**¹³.

The **cost petroleum** is not a consideration received by the contractor for the services provided to Government and thus not taxable *per se*. The reason for the same is that the **contractors carry exploration and production of petroleum for themselves**



¹³ Refer Chapter 4 – Exemptions from GST in this Module of the Study Material for detailed discussion.

and not as a service to Government. They had acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum [*Circular No. 32/06/2018 GST dated 12.02.2018*].

Financial Transactions



Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or



investments in money and other related services. For such services, invariably a variety of instruments are used in the financial markets.

In the following paras, we have examined whether transactions in such instruments qualify as supply? As seen earlier, the **definitions of 'goods' and 'services' specifically exclude both money and securities.**



The definition of '**money**' includes instruments like cheques, drafts, pay orders, promissory notes, letters of



credit, etc. Therefore, activities that are only transactions in such instruments would be outside the definition of service.

Commercial Paper

Money would also include transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD')¹⁴ (as they are in the

Certificate of Deposit

nature of promissory notes), issuance of drafts or letters of credit, etc. While these transactions are outside the ambit of supply, the related activity for which a separate consideration is charged, is chargeable to GST if other elements of taxability are present.

¹⁴ Commercial Paper ('CP') and Certificate of Deposit ('CD') are understood as unsecured money market instruments which may be issued in the form of a promissory note or in a dematerialized form through any of the depositories approved by and registered with SEBI. CPs are normally issued by highly rated companies, primary dealers and financial institutions at a discount to the face value. CDs can be issued by Scheduled Commercial Banks (excluding RRBs and Local Area Banks) and All – India Financial Institutions (FIs) permitted by RBI.

The term '**securities**' shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (SCRA) ¹⁵ [Section 2(101)].

In this regard, there may arise a doubt as to whether a 'derivative' is included within the meaning of 'securities' above and whether derivatives are liable to GST? Before that, let us understand what a derivative means in simple terms. Derivatives are financial contracts/instruments that derive their value from something else, like an underlying asset. They are kind of bets or agreements based on the price/performance of the underlying asset, rather than owning that asset directly. 'Derivatives'¹⁶ are included in the definition of 'securities' under SCRA. As **'derivatives' fall in the definition of securities, they are neither goods nor services and hence, are not liable to GST.**

Derivatives

Two most common types of derivatives are futures contracts and forward contracts. In simple terms, forward and futures contracts are similar to making a promise to buy or sell something, like a commodity (e.g., oil, wheat), financial asset (e.g., stocks, bonds), or even a market index (e.g., S&P 500) at a specific price on a future date. It's an agreement/contract between two parties to buy or sell that something at a specific price on a specific date in the future. On the specified date in future, the

¹⁵ In terms of section 2(h) of SCRA, "securities" includes—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ii) Government securities;

(ia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities.

¹⁶ In terms of section 2(ac) of SCRA, "derivative" includes— (A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security; (B) a contract which derives its value from the prices, or index of prices, of underlying securities. The definition of 'derivatives' in SCRA is an inclusive definition.

contract needs to be settled. These contracts can either be settled by way of actual physical delivery of the underlying asset or by way of net settlement of differential rate with no actual delivery. The primary difference between the futures and forward contract is that futures contracts are standardised derivative contracts, traded on organised exchanges and marked-to-market daily whereas forward contracts are customisable, over-the-counter derivative contracts, not traded on organised exchanges but negotiated between two parties, without any daily mark-to-market requirements.

GST implications on futures contracts:

Since futures contracts are in the nature of derivatives, these qualify as 'securities' and thus, are **not subject to GST**. However, where the futures contracts have a **delivery option** and the settlement of contract takes place by way of actual delivery of underlying commodity/currency, then such **futures contracts would be treated as normal supply of goods and liable to GST**.

Futures contracts**GST implications on forward contracts:**

Where the settlement takes place by way of **actual delivery of underlying commodity/currency**, then such forward contracts would be treated as **normal supply of goods and liable to GST**. Where the settlement takes place by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date, the same would be falling within the purview of 'securities' and thus, are not chargeable to GST.

Forward contracts**GST implications on secured debt:**

Sale, purchase, acquisition or assignment of a secured debt does not constitute a transaction in money; it is in the nature of a derivative and hence a security.

SECURED DEBT**GST implications on transactions in instruments:**

Transactions in instruments like interest rate swaps, and foreign exchange swaps would be excluded from the definition of 'supply' since such instruments are derivatives, being securities, based on contracts of difference.

GST implications on services by way of extending deposits, loans or

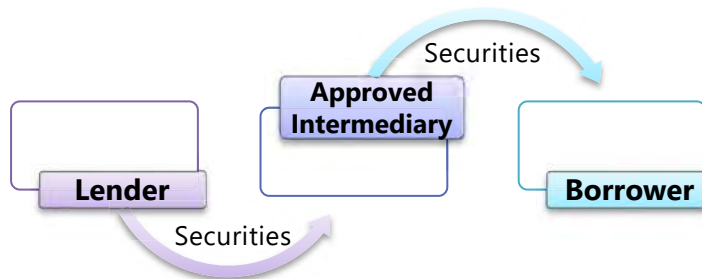
advances: Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount is exempt from the levy of GST. *The same has been discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material.*



It is important to note that GST would be levied on service charges normally charged for various transactions in money including charges for making drafts, issuance charges for letter of credit, etc or service charges or service fees or documentation fees or broking charges or such like fees or charges charged on the derivatives/futures contracts/forward contracts, since the same would be a consideration for provision of service.

Lending of securities - Securities Lending Scheme

Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 (hereafter referred to as SLS) for the purpose of facilitating lending and borrowing of securities. The security lending mechanism is depicted in the diagram below: -



In the above diagram:

- (i) **Lender** is a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme.

- (ii) **Borrower** is a person who borrows the securities under the scheme through an approved intermediary.
- (iii) **Approved intermediary** is a person duly registered by the SEBI under the SLS through whom the lender will deposit the securities for lending and the borrower will borrow the securities.

Under this scheme, **lender of securities** lends securities through an approved intermediary to a borrower, under an agreement, temporarily for a specified period. The lenders earn **lending fee** for lending their securities to the borrowers.

Securities are lent with a condition that the **borrower** will **return equivalent securities** of the same type or class at the end of the specified period along with the corporate benefits¹⁷ accruing on the securities borrowed. The borrower of securities can **further sell or buy these securities**.

In order to lend securities under SLS, **lender enters into an agreement with the approved intermediary** and for the purpose of borrowing of securities, the **borrower enters into an agreement with the approved intermediary**. Thus, there is no direct agreement between the lender and borrower for the lending or borrowing of securities and there is anonymity between them.

The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India.

As seen earlier in this chapter, securities are neither covered in the definition of goods nor covered in the definition of services. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

The **SLS doesn't treat lending of securities as disposal of securities** and therefore is not excluded from the definition of services. The **lending fee** charged from the borrowers of securities **has the character of consideration and is taxable under GST**. Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for **commission or fee** are also **taxable separately** [Circular No. 116/35/2019 GST dated 11.10.2019].

¹⁷ Corporate benefits include dividends (gross), rights, bonus, redemption benefits, interest, or any other right or benefit accruing on the securities lent.

Cash Calls in Joint Venture (JV)

JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame. Whether a cash call is merely a transaction in money or in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case.

'Cash calls' are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget. Let us understand the taxability of cash calls with the help of following examples:



(13) There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member purchases machinery for ₹ 400 for the JV to be used in oil production.

In above case, cash calls will not be subject to GST since the operating member is not carrying out an activity for another for consideration. Here, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.



(14) There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member thereafter uses its own machinery and performs exploration and production activities on behalf of the JV.

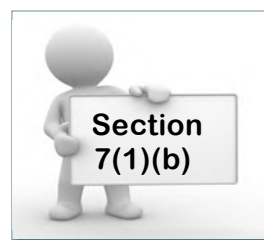
In above case, the operating member uses its own machinery and is therefore providing 'service' within the scope of 'supply' because here operating member is recovering the cost appropriated towards machinery & services from other JV members in their participating interest ratio¹⁸.

¹⁸ Circular No. 35/9/2018 GST dated 05.03.2018

In the subsequent paras, we have discussed the exceptions to the two parameters of supply, *namely*, (i) supply made for consideration, but not in course or furtherance of business and (ii) supply made without consideration.

IMPORTATION OF SERVICES FOR CONSIDERATION WHETHER OR NOT IN COURSE OR FURTHERANCE OF BUSINESS

The connotation of 'supply' gets expanded significantly through the second part of section 7 i.e. 7(1)(b) which brings within the ambit of 'supply', the importation of services for a consideration **whether or not in the course or furtherance of business**. This is the only exception to the condition of supply being made in course or furtherance of business.



(15) Ramaiyaa, a proprietor, has received the architect services for his personal residence from an architect located in New York at an agreed consideration of \$ 5,000. The import of services by Ramaiyaa is supply under section 7(1)(b) though it is not in course or furtherance of business.

ACTIVITIES WITHOUT CONSIDERATION - DEEMED SUPPLY

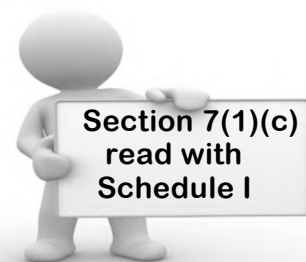
 STATUTORY PROVISIONS	
Schedule-I	Activities to be treated as supply even if made without consideration
Para No.	Particulars
(1)	<i>Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.</i>
(2)	<i>Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business.</i>

	<i>Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.</i>
(3)	<i>Supply of goods — (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.</i>
(4)	<i>Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.</i>



ANALYSIS

As seen earlier, section 7(1)(c) provides that supply includes the activities specified in Schedule I, made or agreed to be made without a consideration. Thus, there are activities or transactions which are treated as supply, **even if they are made without consideration**. These are specifically mentioned in Schedule I appended to the CGST Act. The same has been discussed in the subsequent paras:



As per Schedule I, in the following four cases, activities made without consideration will be treated as supply under section 7:

I. Permanent Transfer/Disposal of Business Assets [Para 1 of Schedule I]:

Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply. However, this provision shall apply only if input tax credit has been availed on such assets.



Therefore, in order to qualify as supply under this para, following conditions need to be satisfied cumulatively:

- ❑ There must be a disposal or transfer of business assets**.
- ❑ Transfer/disposal must be permanent, and
- ❑ ITC must have been availed on such business assets.



In view of the last condition stipulated above, permanent transfer/disposal of following business assets, without consideration, will not be covered within this para and thus will not be deemed as supply:

- (i) Business assets on which ITC is blocked/not available under GST¹⁹.
- (ii) Business assets though eligible for ITC, ITC has not been availed by the registered person.

It's important to note that under GST legislation, there is no specific definition for the term "business asset." Nevertheless, business assets are generally recognized as property or equipment acquired primarily for business purposes. These assets can be grouped into various categories, including current and non-current, short-term and long-term, operating and capitalized, as well as tangible and intangible assets.



(16) Dhruv gives old laptops being used in his business to his friend free of cost. This will qualify as supply provided input tax credit has been availed by Dhruv on such laptops.



(17) A dealer of air-conditioners permanently transfers the motor vehicle free of cost. ITC on said motor vehicle is blocked. The transaction will not constitute a supply as the condition of availment of ITC on the business asset transferred is not fulfilled.

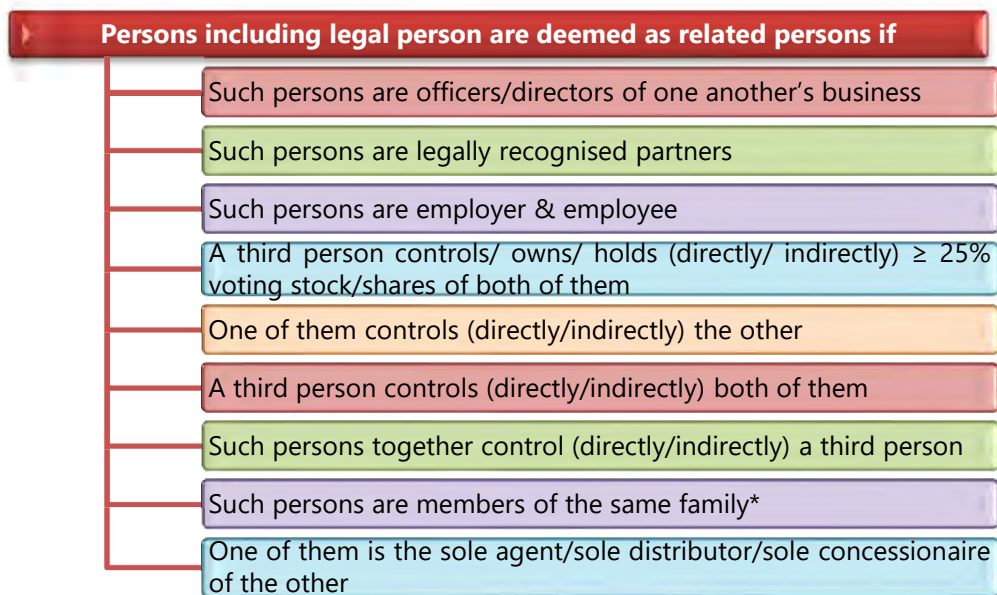
This para is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.

¹⁹ List of the goods and services in respect of which ITC is blocked has been elaborated in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.

II. Supply between related persons or distinct persons [Para 2 of Schedule I]: Supply of goods or services or both between 'related persons' or between 'distinct persons' as specified in section 25, will qualify as supply even if made without consideration **provided the same is made in the course or furtherance of business.**

Let us understand the terms '**related persons**' and '**distinct persons**'.

- (i) **Related persons:** A person who is under influence of another person is called a related person like members of the same family or subsidiaries of a group company etc. Under GST law various categories of related persons have been specified. The term 'related person' has been defined in explanation to section 15. The said definition has been depicted by way of a diagram as follows:



**See the definition of 'family' as provided in heading 2. – Relevant Definitions.*



(18) Ms. Priya holds 30% shares of ABC Ltd. and 35% shares of XYZ Ltd. ABC Ltd. and XYZ Ltd. are related.

(19) Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. It can be said that Q Ltd. controls R Ltd. Thus, Q Ltd. and R Ltd. are related.

- (ii) **Distinct Persons specified under section 25:** Before we go through the statutory provisions of 'distinct persons', let us first have an **overview of the registration provisions** for better understanding of the concept of distinct persons. *Detailed and in-depth analysis of the registration provisions is contained in Chapter 8 – Registration in Module 2 of this Study Material.*

Under GST law, a supplier is required to obtain State-wise registration. He has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit. Thus, he is not required to obtain registration from a State/UT from where he makes a non-taxable/exempt supply.

Since registration under GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates [and makes a taxable supply] under the same PAN. Further, he is normally required to obtain single registration in a State/UT. However, where he has multiple places of business in a State/UT, he can get a single registration for said State/UT. He may also get separate registration for any place(s) of business in such State/UT.

Now, let us understand the concept of distinct persons in simple terms:

The establishments of a person with separate registrations whether within the same State/UT or in different States/UTs are considered as **distinct**

Distinct Persons

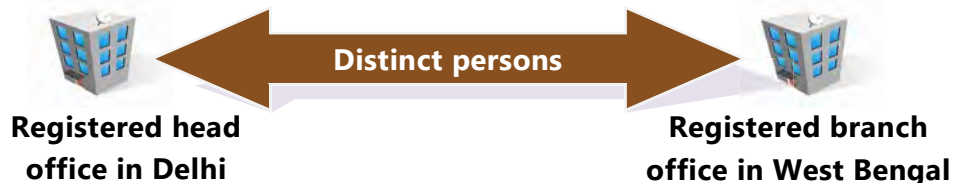
persons. Where a person having one registered establishment in a State/UT has another establishment in a different State/UT [not necessarily registered], these establishments are considered as **establishments of distinct persons.**

Statutory provisions relating to 'distinct persons' are contained in sub-sections (4) and (5) of section 25. They have been explained with examples as follows:

A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as **distinct persons** [Section 25(4)].



(20) Mohan, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of West Bengal in respect of his newly opened branch office. Mohan's registrations under GST under same PAN in West Bengal and Delhi shall be treated as distinct persons.



Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as **establishments of distinct persons** [Section 25(5)].

Further, Explanation 1 to section 8 of the IGST Act stipulates that **establishments of same entity shall be considered as establishments of distinct persons** where a person has:

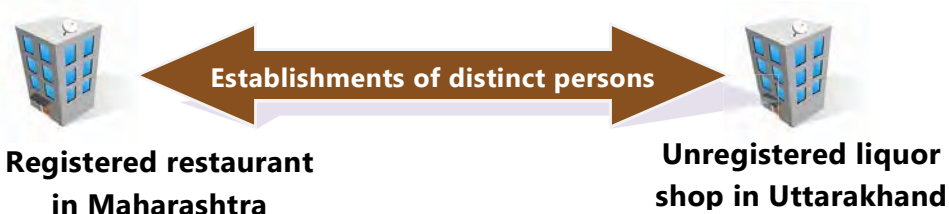
- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment within that State or Union territory.



(21) Rishabh Enterprises, a registered supplier, owns a restaurant in Virar, Maharashtra. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption.

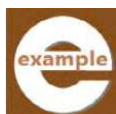
Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Rishabh Enterprises is not required to obtain registration with respect to the same in Uttarakhand.

In this case, restaurant in Maharashtra and liquor shop [though unregistered] in Uttarakhand shall be treated as establishments of distinct persons. Supply by Maharashtra restaurant to Uttarakhand shop, in course or furtherance of business even without consideration will qualify as supply.



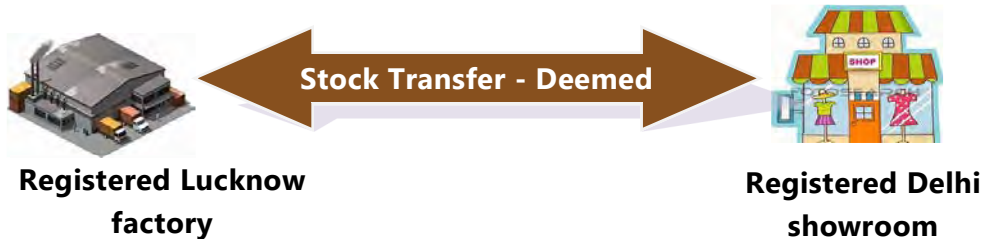
- (iii) **Stock transfers or branch transfers qualify as supply:** It is a common practice in business to transfer goods transferred amongst different units of same entity, for instance, distribution of samples manufactured in a factory to different branches or transfer of goods from factory to depot/showroom for sale therefrom, from one warehouse to another warehouse, from one branch to another branch where the demand of the goods is higher. Since the transfer is within the same business, the transferor unit would not charge any amount to the transferee unit. Similarly, it is also possible that one branch supplies services to another branch of the same entity without consideration. These transactions are termed as self-supplies. Under GST, these transactions though undertaken without consideration, will also qualify as supply, provided the transfer of goods or services is between:

- (i) different locations (with separate GST registrations) of same legal entity as these are transactions between distinct persons, or
- (ii) establishments of distinct persons.



(22) Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir Fabrics are registered in the States where they

are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.



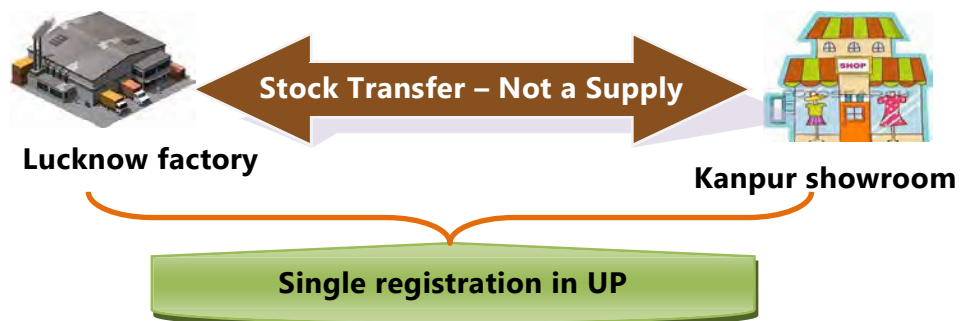
However, transfer between two units of a legal entity under single registration (apparently within same State) will not be considered as supply. This can be understood with the help of the following example:



(23) Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Kanpur so that the same can be sold from there.

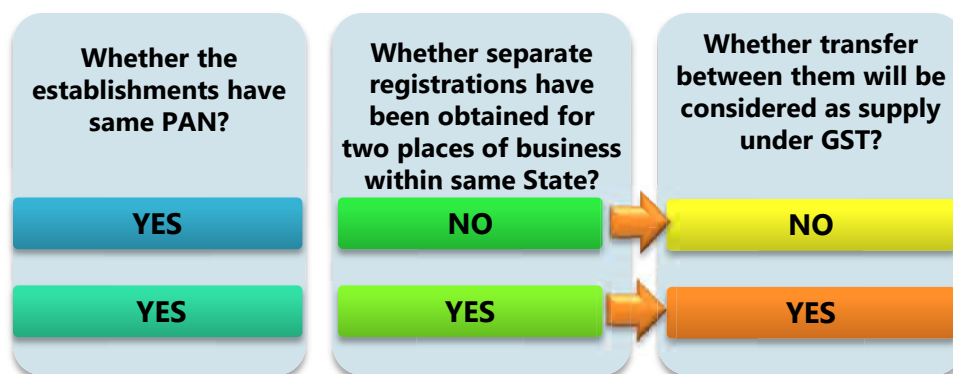
It has taken one registration in the State of Uttar Pradesh declaring Lucknow factory as its principal place of business and Kanpur showroom as its additional place of business.

Since no consideration is charged, supply of goods from factory to retail showroom in same State under single registration does not constitute supply.



However, in the above example, if Raghubir Fabrics obtains separate registrations for Lucknow factory and Kanpur showroom, stock transfer between the Lucknow factory and Kanpur showroom will constitute supply. The concept arising from the above discussion is summarised in

below diagram (assuming a case where there are two places of business in a State):



Moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer, in course or



furtherance of business, do not constitute supply since they are not related persons or distinct persons and there is no consideration involved [Circular No. 47/21/2018 GST dated 08.06.2018].

(iv) Supply of goods or services or both between an employer and employee: In terms of the definition of related person given above, employer and employee are related persons.

However, services provided by an employee to the employer in the course of or in relation to his employment are outside the scope of GST (treated as neither supply of goods nor as supply of services) as per Schedule III of the CGST Act (discussed subsequently in this chapter)].

Gifts by employer to employee

Further, proviso to Para 2 of Schedule I provides that gifts upto ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. However, gifts of value more than ₹ 50,000 made without consideration are supply and are subject to GST, when made in the course or furtherance of business.



The term 'gift' has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift.

Perquisites by employer to employee

Since services by an employee to the employer in the course of or in relation to his employment are outside the scope of GST, supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee will not be subjected to GST.

Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment.



It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee will not be subjected to GST²⁰.

Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre²¹. Consequently, if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST.

²⁰ Circular No. 172/04/2022 GST dated 06.07.2022

²¹ Complete list of the goods and services in respect of which ITC is blocked has been elaborated in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.

The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to company (C2C)²³

III. Principal – Agent [Para 3 of Schedule I]: Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.



Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

Points which merit consideration, in this regard, are as follows:

- Only **supply of goods and not supply of services** is covered here.
- Supply of goods between principal and agent **without consideration** is also supply.

Thus, the **supply of services** between the principal and the agent and vice versa would require “consideration” to be present so as to be considered as supply and thus, making it liable to GST.

Let us first go through the **meaning of terms ‘principal’ and ‘agent’**. Section 2(5) defines **agent** as a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

²² Circular No. 172/04/2022 GST dated 06.07.2022 read with Ministry of Finance’s Press Release on 10.07.2017

²³ It is possible to take an alternative view in this regard. This scenario, i.e. the employer providing services (free of charge) to the employee in lieu of the services provided by the employee to the employer in the course of employment, is an exchange transaction. In an exchange transaction, both the parties independently assess their transaction status. Thus, while service provided by employee to the employer being covered under Schedule III is not a supply, service provided by employer to employee may constitute a supply in terms of section 7(1)(c) read with para 2 of Schedule I since employer and employee are related persons as per explanation to section 15. Provisions of section 15 have been discussed in detail in Chapter 6 – Value of Supply in this Module of the Study Material.

As we can deduce from this definition of agent that (a) the term 'agent' is defined in terms of the various activities being carried out by the person concerned in the principal-agent relationship and (b) the supply/receipt of goods/services has to be undertaken by the agent on behalf of the principal.

Further, the term **principal** has been defined under section 2(88) as a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

In order to determine whether a particular principal-agent relationship falls within the ambit of the Para 3 of Schedule I as discussed above or not, the **DECIDING FACTOR** is **whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not?** In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.



- ❑ Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of Para 3 above.

Invoice for further supply to customer be issued in the agent's name.

- ❑ However, where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Para 3 above.

- ❑ Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by Para 3 above **[Circular No. 57/31/2018 GST dated 04.09.2018]**.

Goods procured on behalf of principal are invoiced in the agent's name.

Where the invoice is issued by the agent to customer in the name of:

Principal

Agent

Whether he will be an agent in terms of Para 3 of Schedule I?

No

Yes

The above clarification can be understood with the help of following scenario based examples:



(24) Anmol appoints Bholu to procure certain goods from the market. Bholu identifies various suppliers who can provide the goods as desired by Anmol and asks the supplier (Golu) to send the goods and issue the invoice directly to Anmol.

In this scenario, Bholu is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Bholu is not an agent of Anmol for supply of goods in terms of Para 3 of Schedule I.



(25) Manimani Bank, a banking company, appoints Mandaar (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders.

The highest bid is accepted and the goods are sold to the highest bidder by Manimani Bank. The invoice for the supply of the goods is issued by Manimani Bank to the successful bidder.

In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mandaar is not an agent of Manimani Bank for the supply of goods in terms of Para 3 of Schedule I.



(26) Gautam, an artist, appoints Gambhir (auctioneer) to auction his painting. Gambhir arranges for the auction and identifies the

potential bidders. The highest bid is accepted and the painting is sold to the highest bidder.

The invoice for the supply of the painting is issued by Gambhir on the behalf of Gautam but in his own name and the painting is delivered to the successful bidder.

In this scenario, Gambhir is not merely providing auctioneering services, but is also supplying the painting on behalf of Gautam to the bidder, and has the authority to transfer the title of the painting on behalf of Gautam. This scenario is covered under Para 3 of Schedule I.



(27) A C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F commission agent is an agent of the principal for the supply of goods in terms of Para 3 of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.



(28) Ravi sells agricultural produce by utilizing the services of Kavi who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Kavi identifies the buyers and sells the agricultural produce on behalf of Ravi for which he charges a commission from Ravi.

As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

In cases where the invoice is issued by Kavi to the buyer, then he is an agent covered under Para 3 of Schedule I²⁴. However, in cases where the invoice is

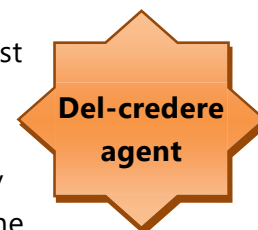
²⁴ It is important to note that services provided by the commission agent for sale or purchase of agricultural produce are exempt supply under GST. Said exemption has been discussed in detail in Chapter 4 Exemptions from GST in this Module of the Study Material.

issued directly by Ravi to the buyer, the commission agent (Kavi) doesn't fall under the category of agent covered under Para 3

Clarification of issues pertaining to Del-credere agent (DCA)

A question was posed by the industry - whether supply between a principal and a Del-credere agent would also get covered under Schedule I. The Government clarified the doubt of the industry by way of following clarification:

Before going through the clarification, let us first understand what is meant by a DCA? In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the **DCA guarantees the payment to the supplier.**



In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent.

In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer.

Circular No. 73/47/2018 GST dated 05.11.2018 has clarified the following issues in this regard:

Sl. No.	Issue	Clarification
1.	Whether a DCA falls under the ambit of agent	As already clarified vide <i>Circular No. 57/31/2018 GST</i> (discussed above), whether or not the DCA will fall under the ambit of agent

	under Para 3 of Schedule I?	under Para 3 of Schedule I depends on the following possible scenarios: ☐ In case where the <u>invoice</u> for supply of goods is issued <u>by the supplier to the customer</u>, either himself or through DCA, the DCA <u>does not fall</u> under the ambit of agent. ☐ In case where the <u>invoice</u> for supply of goods is issued <u>by the DCA in his own name</u>, the DCA <u>would fall</u> under the ambit of agent.
2.	Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I?	In such a scenario, following activities are taking place: 1. Supply of goods from supplier (principal) to recipient; 2. Supply of agency services from DCA to the supplier or the recipient or both; 3. Supply of extension of loan services by the DCA to the recipient. It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply²⁵. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.

²⁵ Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempt supply vide Entry 27 of Notification No. 12/2017 CT(R) dated 28.06.2017 [Discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material].

3.	Where DCA is an agent under Para 3 of Schedule I and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?	In such a scenario following activities are taking place: 1. Supply of goods by the supplier (principal) to the DCA; 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient. It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient. It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per section 15(2)(d)²⁶.

IV. Importation of services [Para 4 of Schedule I]: Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as “supply”.

²⁶ Section 15 has been discussed in detail in Chapter 6 – Value of Supply in this Module of the Study Material.



(29) Jhumroo Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such consultancy services free of cost to its branch office.

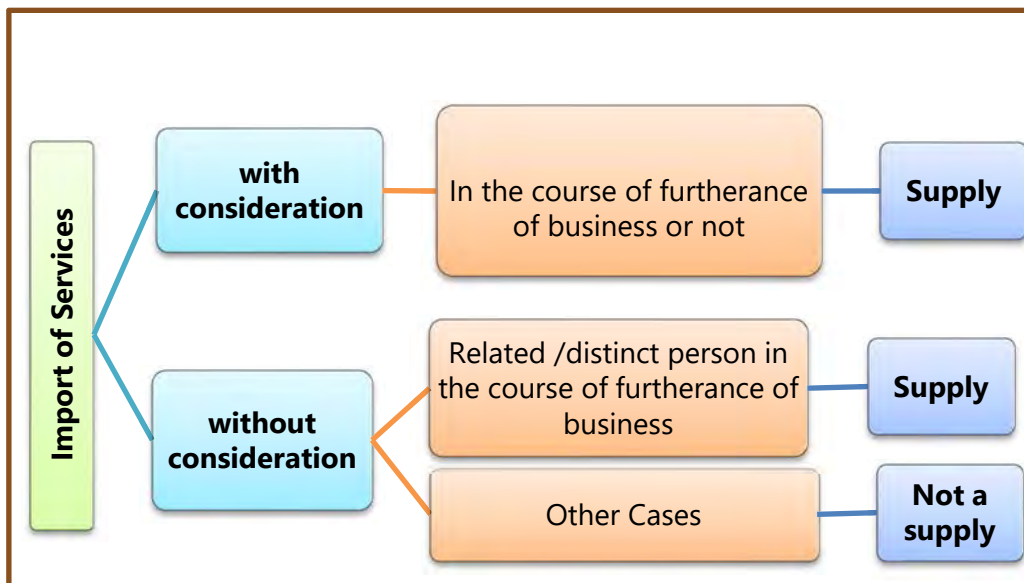
Since Jhumroo Associates and the head office are related persons, services received by Jhumroo Associates will qualify as supply even though the head office has not charged anything from it.



(30) Chakmak, a proprietor registered in Delhi, has sought architect services from his son located in US, with respect to his newly constructed house in Delhi.

Although services have been received by Chakmak without consideration from his son - a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.

However, if in the above case, Chakmak receives architect services without consideration from his son with respect to his office in Delhi, the same shall be treated as supply because the same have been received in the course of business.



In the preceding paras, we have discussed the provisions of Schedule-I which enumerates the cases where an activity is treated as supply even though it is undertaken free of cost. In this backdrop, let us now examine whether the

items given free of cost in case of some of the sales promotion schemes qualify as supply or not.

Clarification on Sales promotion schemes



A number of sales promotion schemes are commonly employed by the businesses to increase sales volume or to encourage the use or trial of a product or service so that new customers get attracted towards their products. For instance, certain sections of trade and industry, such as, pharmaceutical companies often provide drug samples to their stockists, dealers, medical practitioners, etc., or sometimes, companies announce offers like 'Buy One, Get One free' - i.e. buy one soap and get one soap free or get one tooth brush free along with the purchase of tooth paste.



As we have already seen that as per section 7(1)(a), the goods or services which are supplied free of cost (without any consideration) shall not be treated as "supply" except in case of activities mentioned in Schedule I of the CGST Act. In view of the same, few sales promotion schemes have been examined as under:



Free samples and gifts: Samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST²⁷, except where the activity falls within the ambit of Schedule I.



²⁷ ITC on inputs, input services and capital goods to the extent they are used in relation to the gifts/free samples shall be available to the supplier only where the activity of distribution of gifts/free samples falls within the scope of supply supply. The same has been discussed in detail in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.



Buy one get one free offer: It may appear at first glance that in case of offers like “Buy One, Get One Free”, one item is being “supplied free of cost” without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.



Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly – *Concept of composite and mixed supply has been discussed subsequently in this chapter.*

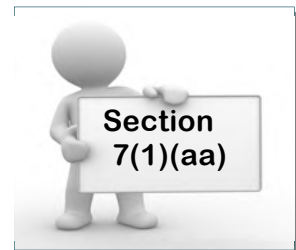
[Circular 92/11/2019 GST dated 07.03.2019]

There has always been an ambiguity as to whether activities/ transactions involving supply of goods/ services, by any person, other than an individual, to its members or vice-versa fall within the purview of supply or not. Clause (aa) to section 7(1) brings in the certainty that said activities/ transactions are covered within the scope of supply under GST and ensures the levy of GST on such activities/transactions. This has been discussed as under:



ACTIVITIES/TRANSACTIONS BETWEEN A PERSON, OTHER THAN AN INDIVIDUAL, AND ITS MEMBERS/ CONSTITUENTS FOR CONSIDERATION

The activities or transactions (involving supply of goods or services) between a person, other than an individual, (i.e. association, club, etc.) and its members or constituents, for cash, deferred payment or other valuable consideration are covered within the ambit of ‘supply’ as per section 7(1)(aa).



Further, explanation to clause (aa) to section 7(1) clarifies that for the purpose of this clause, such person (association, club, etc.) and its members or

constituents shall be deemed to be two separate persons and the supply of activities or transactions between them shall be deemed to take place from one such person to another. The explanation starts with a non-obstante clause and shall therefore, shall have an overriding effect over anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority.

The aforesaid explanation prevents the application of doctrine of mutuality by such person(s)²⁸.



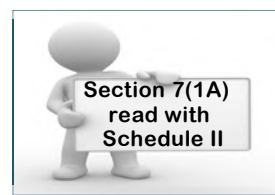
(31) Resident Welfare Association (RWA) of Sanskriti Society supplies air-conditioners to its members at a concessional price.

(32) A Resident Welfare Association collects maintenance charges from its members for services provided.

Here, in both the aforesaid examples, it shall be deemed that the Resident Welfare Association (RWA) and its members are two separate persons and it shall be deemed that the supply has taken place from Resident Welfare Association (RWA) to its members.

ACTIVITIES/TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

Section 7(1A) classifies certain activities/ transactions constituting supply, either as supply of goods or supply of services. Schedule II of the CGST Act contains the list of activities or transactions which have been classified either as supply of goods or supply of service.



This helps in mitigating the ambiguities which existed in earlier laws.

²⁸ Section 7(1)(aa), in effect, overrules the judgment of the Hon'ble Supreme Court in *State of West Bengal v. Calcutta Club Limited* wherein it was held that the transactions between a Club and its members cannot be taxed owing to the doctrine of mutuality, i.e., a person cannot make a profit from himself.



(33) Under earlier tax regime, the restaurants used to charge both service tax and VAT on the value of food served. This is so because both sale of goods and provision of service were involved and therefore taxable event under both the Statutes i.e. respective VAT law and service tax law got triggered.

Under GST, the supply by a restaurant is treated as composite supply [*concept of composite supply is discussed subsequently in this chapter*] since supply of food and service is naturally bundled in ordinary course of business. Further, para 6(b) of Schedule II [*refer table below*] specifically provides that such composite supply shall be treated as supply of service. Hence, the entire value of invoice shall be treated as value of service and leviable to GST accordingly.

The matters listed out in Schedule II are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation. These are as follows:-

Para No.	Activity/ Transaction	Type	Nature of Supply
1.	Transfer	Any transfer of title in goods.  (34) Shivaji sells ready-made garments to its customers.	Supply of Goods
		Any transfer of right in goods/ undivided share in goods without transfer of title thereof.  (35) Genius Equipments Ltd. gives a machinery on rent to Suhaasi Manufacturers.	Supply of Services
		Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a	Supply of Goods

		future date upon payment of full consideration as agreed.  (36) Dhruva Capitals supplied goods on hire purchase basis to customers. (37) Optima Manufacturers supplies toys to retailers on 'sale or return basis'.	
2.	Land and Building	Any lease, tenancy, easement, licence to occupy land²⁹.  (38) Lease agreement for land.	Supply of Services
		Any lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly.  (39) A shop let out in a busy market area.	Supply of Services
3.	Treatment or Process	Any treatment or process which is applied to another person's goods  (40) Damani Dying House dyes the clothes given by Shubham Textiles Ltd. on job work basis.	Supply of Services
4.		Goods forming part of business assets are transferred or disposed of by/under directions of person	Supply of Goods

²⁹ Also refer Circular No.44/18/2018 CGST dated 02.05.2018 discussed subsequently.

	Transfer of Business Assets	carrying on the business so as no longer to form part of those assets.	
		Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/ under directions of person carrying on the business.  (41) A person manufacturing and selling wooden furniture takes one chair manufactured by him for use at his house.	Supply of Services
		Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person.  (42) Arun, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him.	Supply of Goods

		Exceptions: ☐ Business is transferred as a going concern to another person³⁰. ☐ Business is carried on by a personal representative who is deemed to be a taxable person.	
5.	 (43) Renting of a commercial complex. (44) Renting of precincts of a religious place. (45) Renting of property to an educational institution. (46) Permitting use of immoveable property for placing vending/dispensing machines. (b) Construction of complex, building, civil structure, etc. Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.	Supply of Services	

³⁰ Services by way of transfer of a going concern, as a whole or an independent part thereof are exempt supply under GST [Discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material].



(47) Rathi Builders has constructed individual residential units for agreed consideration of ₹ 1.2 crore per unit. ₹ 90 lakh per unit were received before issuance of completion certificate by the competent authority and its first occupation, and balance after completion.

The term **construction** includes additions, alterations, replacements, or remodeling of any existing civil structure.

The expression **competent authority** means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
- (ii) a chartered engineer registered with the Institution of Engineers (India); or
- (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.

(c) Temporary transfer or permitting use or enjoyment of any intellectual property right



(48) Temporary transfer of patent.

(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software

Supply of
Services

	 (49) Suvidha Solutions develops an accounting software for a business firm. (e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.  (50) Cable operator - Sakham has entered into an agreement with Cable operator - Aatmaram that Sakham will not provide cable connections in the specified areas where Aatmaram is providing the connections. Non-compete agreements constitute supply of service. Please refer the detailed discussion on this para of Schedule-II given at the end of the Table. (f) Transfer of right to use any goods for any purpose (whether or not for specified period) for cash, deferred payment or other valuable consideration.  (51) Machinery given on hire.	Supply of Services
6.	Following composite supplies :- ☐ Works contract Works contract: means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of <u>any immovable property</u> wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(119)].	Supply of Services

	❑ Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.	

CBIC has clarified the taxability of tenancy rights, Joint Venture (JV) and Priority Sector Lending Certificates (PSLCs) as under:

1. Taxability of 'tenancy rights' under GST

CBIC has clarified the taxability of 'tenancy rights' under GST as under:

Pagadi system, i.e. transfer of tenancy rights against tenancy premium, is prevalent in some States. In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceeds with owner of land, as laid down in their tenancy agreement. **Alternatively**, the landlord pays to tenant the prevailing tenancy premium to get the property vacated.



It has been clarified that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST.

It is a form of lease or renting of property and such activity is specifically declared to be a service in Para 2 of Schedule II as discussed in table above i.e. any lease, tenancy, easement, licence to occupy land is a supply of services. Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.

The transfer of tenancy rights cannot be treated as sale of land/ building in para 5 of Schedule III. Thus, it is not a negative list activity [*this concept is discussed under next heading*] and consequently, a consideration for the said activity shall attract levy of GST.



To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable *per-se*. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.

However, renting of residential dwelling for use as a residence **to an unregistered person or to a registered sole proprietor taking the residential dwelling on rent on his own account in his personal capacity for use as his residence** is exempt [Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017 – Discussed in Chapter 4 – Exemptions from GST in this Module of the Study Material]. Hence, grant of tenancy rights in a residential dwelling for use as residential dwelling against tenancy premium or periodic rent or both (to above mentioned persons) is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST³¹.

2. Priority Sector Lending Certificates (PSLCs)³²

PSLCs are in the nature of goods³³. PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which earlier attracted VAT.

³¹ Circular No. 44/2018 CT dated 02.05.2018

³² Lending by a commercial bank for specified sectors which have been identified as "**priority sector**" by RBI is called as Priority Sector Lending. Priority Sector Lending Certificates (PSLCs) are a mechanism to enable banks to achieve the priority sector lending target and sub-targets by purchase of these instruments in the event of shortfall. This also incentivizes surplus banks as it allows them to sell their excess achievement over targets thereby enhancing lending to the categories under priority sector. Under the PSLC mechanism, the seller sells fulfilment of priority sector obligation and the buyer buys the obligation with no transfer of risk or loan assets.

³³ RBI's FAQ on PSLCs

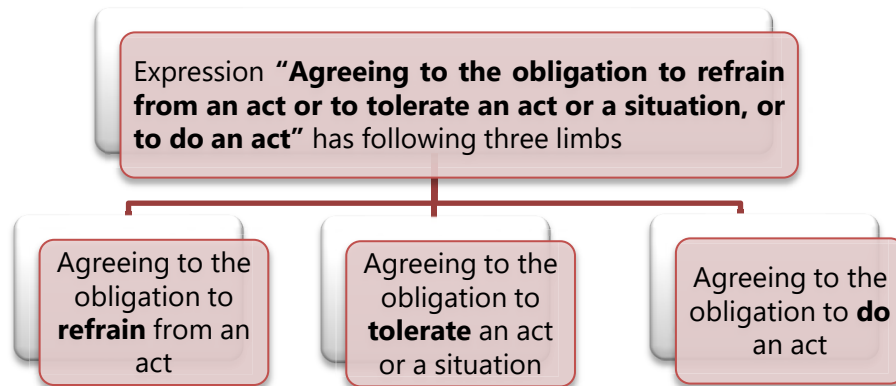
In GST, there is no exemption available to trading in PSLCs. Thus, PSLCs are taxable as goods. GST payable on the certificates would be available as ITC to the bank buying the certificates [*Circular No. 34/08/2018 GST dated 01.03.2018*].

Further, nature of supply of PSLC between banks is supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI [*Circular No. 93/12/2019 GST dated 08.03.2019*].

3. Applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

CBIC has clarified issues with respect to GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law.

Clarification: "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5(e) of Schedule II if the same constitutes a "supply" within the meaning of the CGST Act.



a. Agreeing to the obligation to REFRAIN from an act



(52) Non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.



(53) A builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight.

(54) An industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

b. Agreeing to the obligation to tolerate an act or a situation

This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

c. Agreeing to the obligation to do an act

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

Above three activities must comply with the following conditions:

(1) There must be an expressed or implied agreement or a contract must exist

Above three activities must be under an “agreement” or a “contract” (whether express or implied) to fall within the ambit of para 5(e) of Schedule II. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain or (b) tolerate or (c) do.

Such contractual arrangement must be an *independent arrangement* in its own right. Such arrangement/agreement can take the form of an *independent stand- alone contract* or may form *part of another contract*.

Thus, a person (the first person) can be said to be making a supply

by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

Such a contract cannot be imagined or presumed to exist just because there is a flow of money from one party to another. There must be an expressed or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him.

(2) Consideration must flow in return to this contract/agreement

Some "consideration" must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing.

Taxability of some of the transactions has been discussed in detail as under:

(A) Liquidated Damages

It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Black's Law Dictionary defines 'Liquidated Damages' as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.



The taxability or otherwise of liquidated damages is clarified as under:

It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.

Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not reconstitute the aggrieved person.

A contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are merely a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.



Examples of such cases are:

- (55) Damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,***
- (56) Penalty stipulated in a contract for delayed construction of houses,***
- (57) Forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer.***
- (58) Forfeiture of earnest money by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.***

The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining

from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' irrespective of by what name it is called, otherwise it is not a "supply".

If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'.



On the contrary, consider the following examples:

(59) A contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty.

(60) A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up.

(61) A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer.

(62) A contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty.

(63) Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period.

In the above examples, amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of prepayment of loan and of making arrangements for the intended supply by the tour operator respectively.

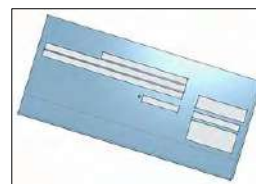
Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where

such supply is taxable.

Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt.

(B) Cheque dishonor fine/ penalty

The supplier wants payment to be received on time and does not want cheque to be dishonoured. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty.



*The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, **cheque dishonor fine or penalty is not a consideration for any service and not taxable.***

(C) Penalty imposed for violation of laws

*Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also **not consideration for any supply received and are not taxable.***



Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit.

Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement

between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration.

In short, fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to tax.

(D) Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment.

The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation.

Further, the employee does not get anything in return from the employer against payment of such amounts.

*Therefore, such amounts recovered by the employer are **not taxable as consideration** for the service of agreeing to tolerate an act or a situation.*

(E) Late payment surcharge or fee

The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last



date of payment of electricity, water, telecommunication services etc.

Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty.

*Even if this service is described as a service of tolerating the act of late payment, it is an **ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply.***

Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.

However, the same cannot be said of cheque dishonor fine or penalty as discussed earlier.

(F) Fixed charges for power

The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge.



The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.

(G) Cancellation charges

It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee.

Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till the exit of the passenger from the destination terminal.



All services such as making available an online portal or convenient booking counters with basic facilities at the



transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.



The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation

service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business. Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply.



(64) Cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

However, as discussed earlier, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money.

Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable³⁴.

³⁴ Circular No. 178/10/2022 GST dated 03.08.2022



NON-SUPPLIES UNDER GST

- I. Activities/transactions specified under Schedule III:** Section 7(2)(a) provides activities or transactions specified in **Schedule III** shall be treated neither as a supply of goods nor a supply of services. Schedule III specifies transactions/ activities which shall be neither treated as supply of goods nor as supply of services. Thus, the activities/transactions specified under this schedule can be termed as Non-Supplies under the GST regime. In a way, it is a "Negative list" for the purposes of taxation in GST.

It is important to note that apart from the activities specified in Schedule III, some activities have been notified by the Government vide different notifications, which are also to be considered as non-supplies. Further, some circulars have been issued clarifying that certain transactions are to be considered as non-supplies.

Hence, our discussion under this heading will revolve around the following:

- A. Non-supplies listed in Schedule III
- B. Non-supplies notified vide notification
- C. Non-supplies clarified by way of circular

A. NON-SUPPLIES LISTED IN SCHEDULE III

Para No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	Services by an employee to the employer in the course of or in relation to his employment. (65) Services provided by casual worker to employer who gives wages on daily basis to the worker are services provided by the worker in the course of employment. (66) Casual workers employed by a construction contractor for execution of a building contract for him are services in the course of employment. Similarly,



casual workers employed by a security services agency for provision of security services to a client are also services in the course of employment.

(67) Annapurna is a director in Nilgiri Ltd. receiving remuneration which is declared as salaries in the books of the company and subject to TDS under section 192 of the Income-tax Act, 1961. In this case, services provided by Annapurna to Nilgiri Ltd. are in course of her employment with the company.

Only services that are provided by the employee to the employer in the course of employment are outside the realm of supply. However, services provided outside the ambit of employment for a consideration would qualify as supply.



(68) Services provided on contract basis by a person to another i.e. principal-to-principal basis are not services provided in the course of employment³⁵.

(69) Any amount paid by employer to employee for not joining a competing business is paid for providing the service of forbearance to act and cannot be considered for providing services in the course of employment.

(70) Annapurna, an independent director in Nilgiri Ltd., receives a sitting fee of ₹ 12,000. Since as per the Companies Act, 2013, independent director should not have been an employee of the company, services provided by Annapurna to Nilgiri Ltd. are not in course of employment.

2.

Services by any court or Tribunal established under any law for the time being in force.

Explanation – The term "**Court**" includes District Court, High Court and Supreme Court³⁵.



³⁵ Discussion based on Service Tax Education Guide issued under erstwhile under service tax law.

Leviability of GST on amounts/fees charged by Consumer Disputes Redressal Commission

In order to provide inexpensive, speedy and summary redressal of consumer disputes, quasi-judicial bodies are set up in each District and State and at the National level, called the District Forums, the State Consumer Disputes Redressal Commissions and the National Consumer Disputes Redressal Commission respectively.

Consumer Disputes Redressal Commissions (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a Tribunal³⁶.

Consequently, fee paid by litigants while registering complaints to said Commissions are not leviable to GST. Any penalty in cash imposed by or amount paid to these Commissions will also not attract GST [Circular No. 32/06/2018 GST dated 12.02.2018].

3.

(a) Functions performed by the Members of Parliament, Members of State Legislature, Members of



³⁶ Consumer Disputes Redressal Commissions are clothed with the characteristics of a Tribunal on account of the following: -

- (1) Statement of objects and reasons as mentioned in the Consumer Protection Bill state that one of its objects is to provide speedy and simple redressal to consumer disputes, for which a quasi-judicial machinery is sought to be set up at District, State and Central levels.
- (2) The President of the District/State/National Disputes Redressal Commissions is a person who has been or is qualified to be a District Judge, High Court Judge and Supreme Court Judge respectively.
- (3) These Commissions have been vested with the powers of a civil court under CPC for issuing summons, enforcing attendance of defendants/witnesses, reception of evidence, discovery/production of documents, examination of witnesses, etc.
- (4) Every proceeding in these Commissions is deemed to be judicial proceedings as per sections 193/228 of IPC. The Commissions have been deemed to be a Civil Court under CrPC.
- (5) Appeals against District Commissions lie to State Commission while appeals against the State Commissions lie to the National Commission. Appeals against National Commission lie to the Supreme Court.

	Panchayats, Members of Municipalities and Members of other local authorities. (b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity.  (71) Duties performed by President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner, C & AG, Chairman of Union Public Service Commission, Attorney General of India, in that capacity. (c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building, (i.e. in case, where entire consideration for sale of building received after issuance of completion certificate or after its first occupation, whichever is earlier).  <i>Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered under this para and accordingly, does not attract GST.</i> <i>However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines</i>

(as may be received by developers) shall attract GST at applicable rate for such services³⁷.

6.

Actionable claims, other than lottery, betting and gambling.

'Actionable claims' are specifically included in the definition of goods under section 2(52) [Refer the definitions of 'actionable claims' and 'goods' given under heading 'Relevant Definitions']. However, this para of

Schedule III specifically excludes actionable claims, other than lottery, betting and gambling from the ambit of definition of supply.

Co-joint reading of said provisions implies that **only lottery, betting and gambling are treated as supply. All other actionable claims are outside the ambit of definition of supply.**

Other examples of actionable claims are: Right to recover insurance money, claim for arrears of rent, claims for future rents (if these can be assigned), unsecured loans, unsecured debentures, bills of exchange, promissory notes, bank guarantee, Fixed Deposit Receipt, right to the benefit of a contract, etc.



7.

'Merchant trading': Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.



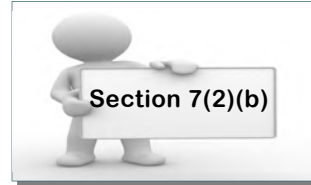
(72) Vivekanand purchased goods from USA and sold it to George in Canada without bringing the goods in

³⁷ Circular No. 177/09/2022 GST dated 03.08.2022

	India. This transaction is neither supply of goods nor supply of services.
8.	(a) 'In-bond sales': Supply of warehoused goods to any person before clearance for home consumption.   (73) Radheyshyam imported some goods in India but kept the goods in custom bonded warehouse without clearing it for home consumption. In the meantime, Radheyshyam sold these goods to Sitaram while they were in warehouse. This transaction between Radheyshyam and Sitaram is neither supply of goods nor supply of services. (b) High Sea Sales: Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.   (74) Prasoon of India imported some goods from Japan. While the goods were in high seas, Prasoon sold the goods to Jinesh in India by way of endorsement of documents of title of goods. This transaction between Prasoon and Jinesh is neither supply of goods nor supply of services.

B. NON-SUPPLIES NOTIFIED VIDE NOTIFICATION

Government is empowered to notify the activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as the activities/transactions which shall be treated neither as supply of goods nor as supply of services. Till now, following two activities/transactions have been notified under said clause:



(i) Activity in relation to Panchayat/Municipality functions: Services

by way of any activity in relation to a function entrusted to a **Panchayat** under article 243G of the Constitution or to a **Municipality** under article 243W of the Constitution are treated neither as a supply of goods nor as a supply of service³⁸.

Panchayat Functions

Municipality Functions

(ii) Grant of alcoholic liquor licence: Services by way of **grant of alcoholic liquor licence by the State Governments** are treated neither as a supply of goods nor as a supply of service³⁹.

Such licence is granted against consideration in the form of licence fee or application fee or by whatever name it is called.



This special dispensation is applicable only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States.

Grant of licence for alcoholic liquor

Hence, this is not applicable/has no precedence value in relation to grant of

³⁸ notified vide Notification No. 14/2017 CT (R) dated 28.06.2017/ Notification No. 11/2017 IT (R) dated 28.06.2017, as amended

³⁹ notified vide Notification No. 25/2019 CT (R) dated 30.09.2019/ Notification No. 24/2019 IT (R) dated 30.09.2019

other licenses and privileges for a fee in other situations, where GST is payable.

It may be noted that services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Tax is required to be paid by the business entities on such services under reverse charge⁴⁰.

C. NON-SUPPLIES CLARIFIED BY WAY OF CIRCULAR

CBIC has clarified that following activities/transactions are non-supplies:

(i) Inter-State movement of various modes of conveyance

Inter-State movement of various modes of conveyance, between distinct persons including-

- Trains,
 - Buses,
 - Trucks,
 - Tankers,
 - Trailers,
 - Vessels,
 - Containers,
 - Aircrafts,
- (a) carrying goods or passengers or both; or
- (b) for repairs and maintenance,

[except in cases where such movement is for further supply of the same conveyance] shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST.

⁴⁰ Circular No. 121/40/2019 GST dated 11.10.2019

However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017**].

(ii) Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes]

Above circular shall *mutatis mutandis* apply to **inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes], [except in cases where movement of such goods is for further supply of the same goods], such **inter-State movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements.**



In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods [Circular No. 21/21/2017-GST dated 22.11.2017].

In the preceding paras, we have discussed, how to determine whether a given activity or transaction constitutes a supply. Once an activity or transaction qualifies as supply, one needs to determine whether the same is leviable to GST or not.

Though the provisions relating to levy and collection of GST have been discussed at length in Chapter 2 – Charge of GST in this Module of the Study Material, a brief idea of the same is provided hereunder.

Supply Leviable to GST

For a supply to attract GST, primarily two additional conditions need to be satisfied. These are – (i) supply must be made by a taxable person and (ii) supply must be a taxable supply. These two additional conditions have been discussed hereunder:

(i) Supply by a taxable person

A supply to attract GST should be made by a taxable person.



A supply attracting GST can be made **TO** a non-taxable person also.

The restriction of being a taxable person is only on the supplier whereas the recipient can be either taxable or non-taxable.

Meaning of taxable person: A "taxable person" is a person who is registered or liable to be registered under section 22 or section 24 [The said sections and the concept of taxable person thereto have been discussed in detail in Chapter 8 – Registration in Module 2 of the Study Material].

Hence, a person who is liable to be registered but does not take a registration and remains an unregistered person shall be construed as a taxable person. Similarly, a person not liable to be registered, but has taken got himself registered by taking a voluntary registration and got himself registered is also a taxable person.

(ii) Taxable supply

For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the GST Law [Section 2(108)] [Refer Chapter-2: Charge of GST in this Module of the Study Material for detailed discussion on leviability of GST].

On the other hand, exempt supply means supply of any goods or services or both which attract **nil rate of tax** or which may be **wholly exempt from tax*** under section 11 of the CGST Act, or under section 6 of the IGST Act, and includes **non-taxable supply** [Section 2(47)]

**Exemptions may be provided to the specified goods or services or to a specified category of persons/ entities making supply [Refer Chapter-4: Exemptions from GST in this Module of the Study Material for detailed discussion].*



4. COMPOSITE AND MIXED SUPPLIES [SECTION 8]

	STATUTORY PROVISIONS
Section 8	<i>Tax liability on composite and mixed supplies</i>
Clauses	<i>Particulars</i>
	<i>The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-</i>
(a)	<i>a composite supply</i> comprising two or more supplies, one of which is a principal supply, shall be treated as a <i>supply of such principal supply</i> ; and
(b)	<i>a mixed supply</i> comprising of two or more supplies shall be treated as supply of that particular <i>supply that attracts highest rate of tax.</i>

GST is payable on goods or services or both at the notified rates. Classification of any supply (whether as goods or services, the category of goods or services) is essential to determine the applicable rate of GST on the particular supply. The application of rates poses no problem if the supply is of individual goods or individual services, which is clearly identifiable and such goods or services are subject to a particular rate of tax.

However, in certain cases, supplies are not so simple and clearly identifiable. Sometimes supplies are a combination of goods or combination of services or combination of both goods and services and each individual component of such supplies may attract a different rate of tax.

In such cases, the rate of tax to be levied on such supplies may be a challenge. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.

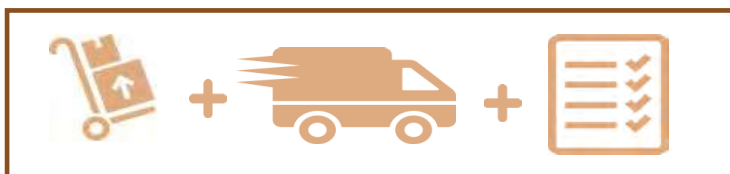
In order to determine whether the supplies are 'composite supply' or 'mixed supply', one needs to determine **whether the supplies are naturally bundled or not naturally bundled in ordinary course of business**. The concept of 'naturally bundled' supplies is emanating from the definition of 'composite supply'.

COMPOSITE SUPPLIES

Composite supply means a supply made by a taxable person to a recipient and:

- comprises two or more taxable supplies of goods or services or both, or any combination thereof.
- which are naturally bundled and supplied in conjunction with each other, in the ordinary course of business
- one of which is a principal supply [Section 2(30)].

This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'.



Principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. [Section 2(90)]

Works contract and restaurant services are classic examples of composite supply, but the GST law identifies both as supply of services *[as you would have seen in the discussion on Schedule II of the CGST Act earlier in this Chapter]* and chargeable to specific rate of tax mentioned against each of such services (works contract or restaurant).

However, in respect of other composite supplies (i.e. other than the two categories mentioned above), the need to determine the supply as a composite one, will arise, so as to determine the appropriate classification of such supply as supply of goods or supply of services as also the appropriate rate of tax.

It will be necessary to determine as to whether a particular supply is naturally bundled in the ordinary course of business and what constitutes principal supply in such composite supplies.

How to determine whether the services are bundled in the ordinary course of business?

Whether the services are bundled in the ordinary course of business or not, would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:

- ❑ **The perception of the consumer or the service recipient** - If large number of service recipient of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.



(75) Mobile phone is always sold with battery.

- ❑ **Majority of service providers in a particular area of business provide similar bundle of services.**



(76) Bundle of services of catering on board and services of transport by air is a bundle offered by a majority of airlines.

- ❑ The **nature of the various services in a bundle of services** will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service, then it would be treated as services bundled in the ordinary course of business.



(77) Service of stay in a hotel is often combined with provision of breakfast and dinner provided free of cost during the stay. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- ❑ **Other illustrative indicators**, not determinative but indicative of bundling of services in the ordinary course of business are:

- ✓ There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
- ✓ The elements are normally advertised as a package.
- ✓ The different elements are not available separately.
- ✓ The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected.



No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

The above principles explained in the light of what constitutes a naturally bundled service can be gainfully adopted to determine whether a particular supply constitutes a composite supply under GST and if so what constitutes the principal supply so as to determine the right classification and rate of tax of such composite supply.

Some of the examples of composite supplies have been given below:



(78) A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:

- Accommodation for the delegates
- Breakfast for the delegates,
- Tea and coffee during conference
- Access to fitness room for the delegates
- Availability of conference room
- Business centre

As is evident a bouquet of services is being provided, many of them are chargeable to different effective rates of tax. If the principal service is described as convention service it is able to capture the entire essence of the package. Thus, the principal service may be judged as convention service and charged to tax accordingly.

However, it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.



(79) Poshak Manufacturers entered into a contract with Cheeku Ltd. for supply of readymade shirts packed in designer boxes at Cheeku Ltd.'s outlet. Further, Poshak Manufacturers would also get them insured during transit. In this case, supply of goods, packing materials, transport & insurance is a composite supply wherein supply of goods is principal supply.



(80) When a consumer buys a television set and he also gets mandatory warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance services are ancillary.



(81) A travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, and the use of airport lounge. In this case, the transportation of passenger, constitutes the pre-dominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary.

How to determine the tax liability on composite supply?: A composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a **supply of such principal supply**. Accordingly, the entire value of composite supply [i.e. main supply + ancillary supply(ies)] shall be classified under the category of main supply and shall be taxed at the GST rate applicable to the main supply. This can be better understood with the help of following example:



(82) Rati Computers supplies laptop (worth ₹ 52,000) alongwith laptop bag (worth ₹ 3,000) to a customer for ₹ 55,000. Being naturally bundled, supply of laptop bag along with the laptop is composite supply which is treated as the supply of the principal supply [viz. laptop]. Assuming that the rate of tax applicable on laptop is 18% and on laptop bag is 28%, in the given case, rate of principal supply, i.e. laptop @ 18% will be charged on the entire value of ₹ 55,000.

CBIC, in the following cases, has clarified issues as to whether the given supplies are composite supply and if yes, what constitutes the principal supply in the given composite supply:

1. Printing industry issues

The printing industry in India in particular faced a dilemma in determining whether the nature of supply provided was that of goods or services. Another doubt was whether in case where certain contracts involved both supply of goods and services, whether the same would constitute a supply of goods or services or if it would be a composite supply and in case it is, then what would constitute the principal supply.



Thus, it is clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only **content is supplied by the publisher** or the person who owns the usage rights to the intangible inputs while the **physical inputs including paper used for printing belong to the printer, supply of printing** [of the content supplied by the recipient of supply] is the **principal supply** and therefore such supplies would constitute **supply of service**.

In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the **printer using its physical inputs** including paper to print the **design, logo etc. supplied by the recipient** of goods, predominant supply is **supply of goods** and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal

supply of goods and therefore such supplies would constitute supply of goods⁴¹.

2. Food supplied to the patients

Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of health care and not separately taxable. However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable⁴².

3. Activity of bus body building

In the case of bus body building, there is supply of goods and services. Thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case⁴³.

4. Retreading of tyres

In retreading of tyres, which is a composite supply, the pre-dominant element is process of retreading which is a **supply of service**. Rubber used for retreading is an ancillary supply.

Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a **supply of goods**⁴⁴.

Retread tyres are revamped tyres on which the worn out tread (the part of the tire that makes contact with the surface of the road) is replaced using new tread.

MIXED SUPPLIES

Mixed supply means:

- ☐ two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person

⁴¹ Circular No. 11/11/2017 GST dated 20.10.2017

⁴² Circular No. 32/6/2018 GST dated 12.02.2018

⁴³ Circular No. 34/8/2018-GST dated 01.03.2018

⁴⁴ Circular No. 34/8/2018-GST dated 01.03.2018

- ❑ for a single price where such supply does not constitute a composite supply [Section 2(74)].

The individual supplies are independent of each other and are not naturally bundled.



How to determine if a particular supply is a mixed supply?: In order to identify if the particular supply is a mixed supply, the first requisite is to rule out that the supply is a composite supply. A supply can be a mixed supply only if it is not a composite supply. As a corollary, it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business, then the possibility of it being a mixed supply needs to be checked.

Once the amenability of the transaction as a composite supply is ruled out, and a single consideration is charged for the entire supply of different components, it would be treated as a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.



(83) A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately or separate prices are charged.



(84) A shopkeeper selling storage water bottles along with refrigerator for a single price. Bottles and the refrigerator can easily be priced and sold independently and are not naturally bundled. So, such supplies are mixed supplies.



(85) A house is given on rent through a single rent deed - one floor of which is to be used as residence and the other for housing a printing press, at a lump sum rent amount. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Said supplies are mixed supply.

How to determine the tax liability on mixed supply?: A **mixed supply** comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax.



(86) Sringer Enterprises supplies 10,000 kits (at ₹ 50 each) amounting to ₹ 5,00,000 to Raghav General Store. Each kit consists of 1 face cream, 1 face tissue packet and 1 nail paint. It is a mixed supply and is treated as supply of that particular supply which attracts highest tax rate. Assuming that the rate of tax applicable on face cream is 18%, on face tissue packet is 28% and on nail paint is 12%, in the given case, highest tax rate [viz. face tissue packet] @ 28% will be charged on the entire value of ₹ 5,00,000.

More than one supply made together and taxed at the individual rates

There can also be a case where an activity/transaction involves more than one supply of goods or services or both, but neither they are composite supplies nor can be categorised as mixed supplies, that is, all supplies carry independent significance. In such a case, if separate consideration is indicated against each supply, each such supply shall be charged at the respective rate applicable to that particular supply.



(87) In case of servicing of cars involving supply of both goods (spare parts) and services (labour) where the value of goods and services are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately⁴⁵.



LET US RECAPITULATE

- ☐ The taxable event under GST is supply. The scope of supply under GST can be understood in terms of following parameters:

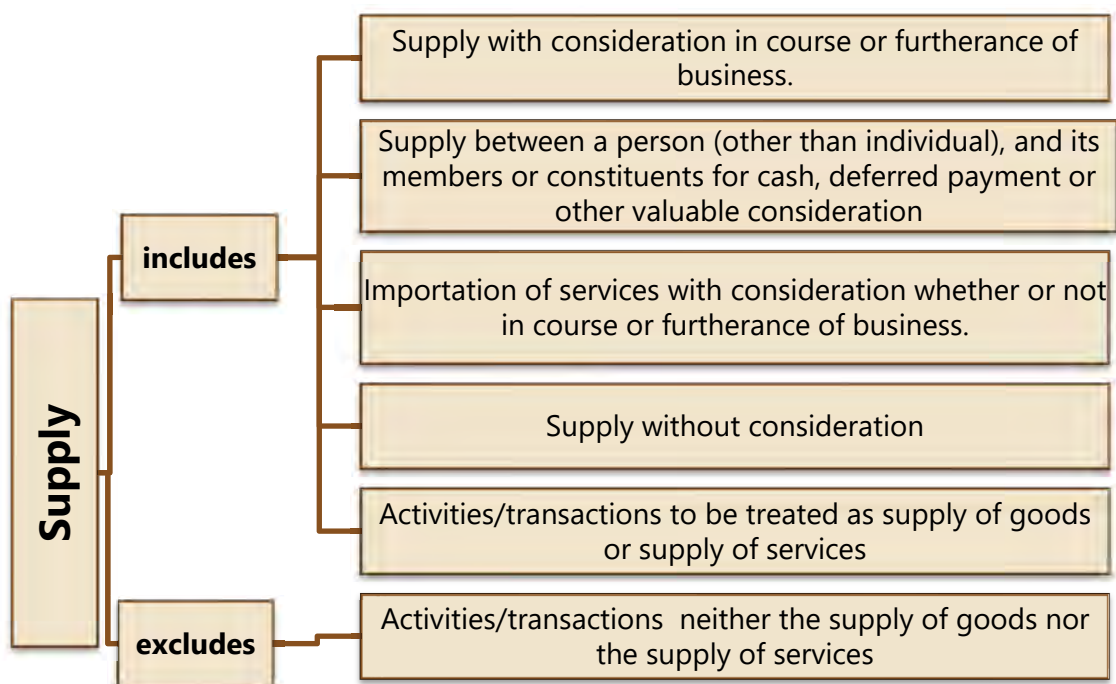
Supply should be of goods or services

Supply should be made for a consideration

Supply should be made in the course or furtherance of business

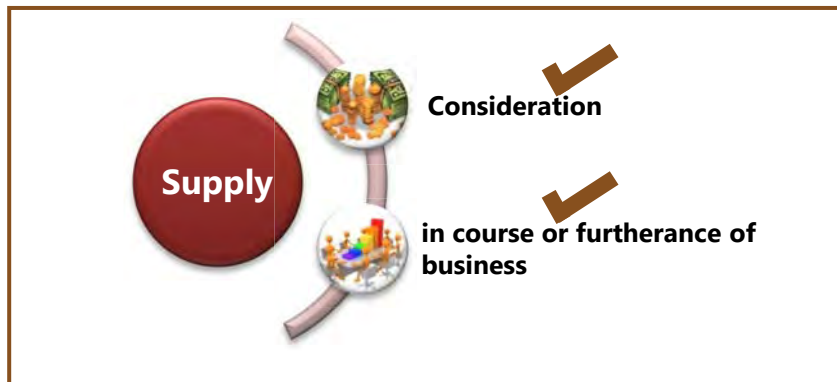
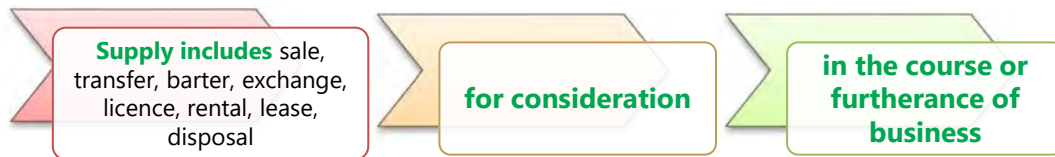
⁴⁵ Circular No. 47/21/2018 GST dated 08.06.2018

- ❑ While these parameters describe the concept of supply, under certain circumstances, transactions have been deemed as supply even when the supply is made without consideration or not in the course or furtherance of business. Activities specified in Schedule I are deemed to be a supply even without consideration. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.
- ❑ Besides, some specified transactions/ activities are neither treated as supply of goods nor a supply of services. Furthermore, certain activities have been categorised as supply of goods or as supply of services.
- ❑ The discussion with respect to supply is broadly categorised into following:

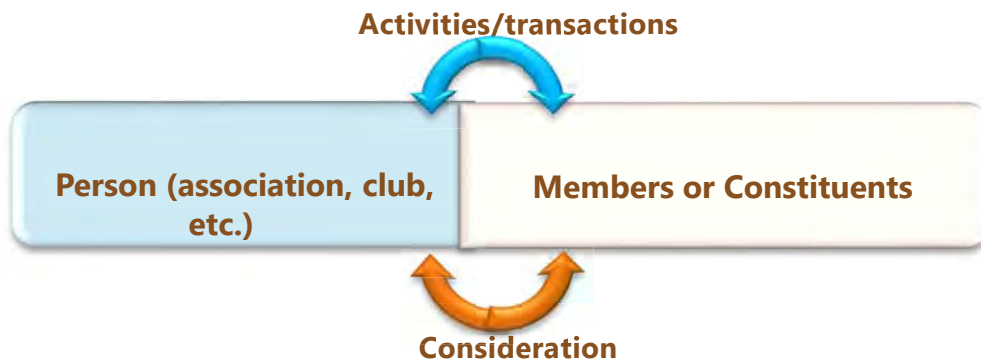


Sub-sections of section 7 alongwith related Schedules have been summarised as follows:

1. Supply for consideration in course or furtherance of business [Section 7(1)(a)]

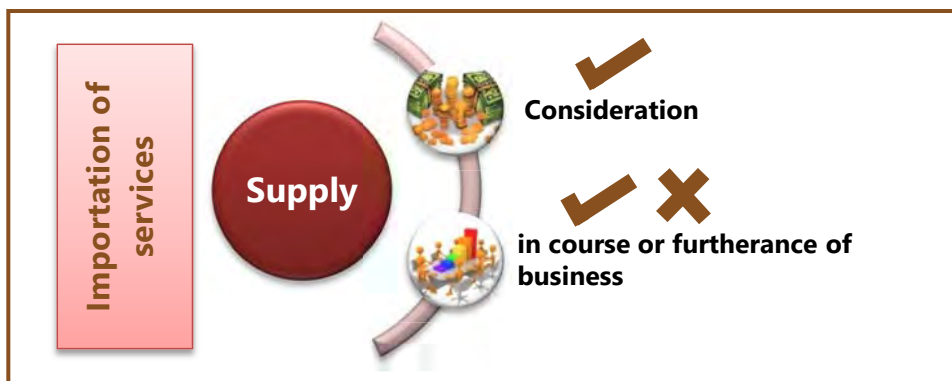


2. Activities/transactions between a person, other than an individual, and its members or constituents for valuable consideration [Section 7(1)(aa)]



3. Importation of services for consideration whether or not in course or furtherance of business [Section 7(1)(b)]

Supply should be in course or furtherance of business. The exception to said rule is import of services is deemed as supply even if the same has been imported not in course/furtherance of business.

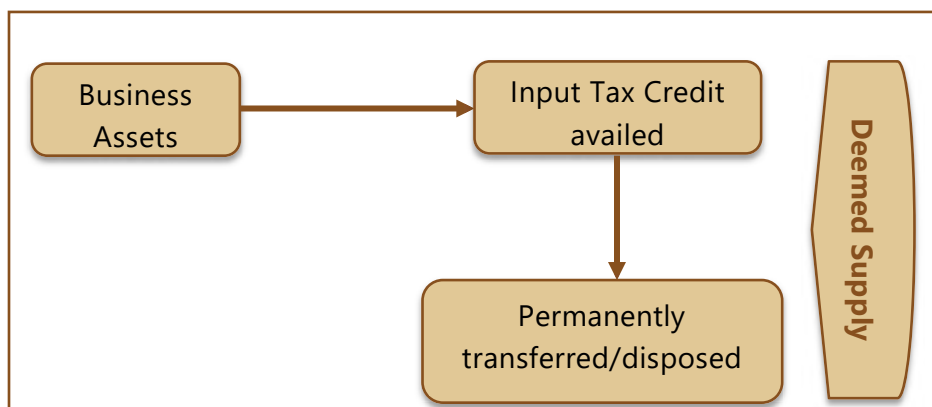


4. Supply without consideration – Deemed Supply [Section 7(1)(c) read with Schedule I]

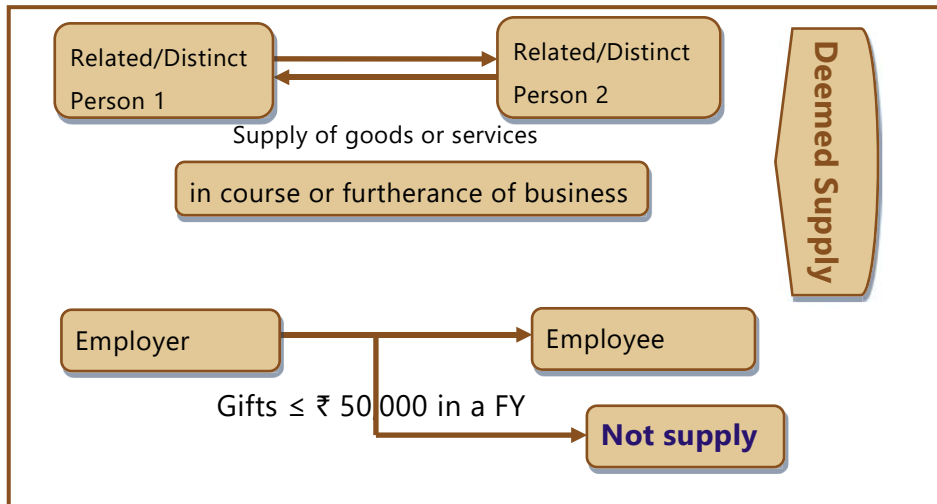
This includes all supplies made to a taxable or non-taxable person, even if the same is without consideration. These are specifically mentioned in Schedule I appended to the CGST Act.

As per Schedule I, in the following four cases, **supplies made without consideration** will be treated as supply under section 7:

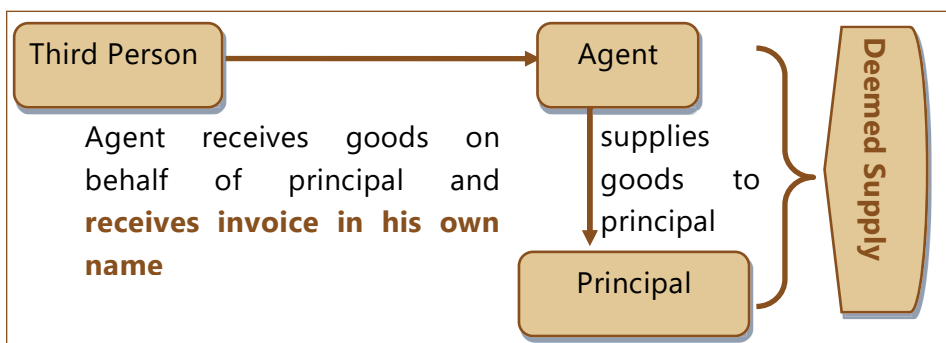
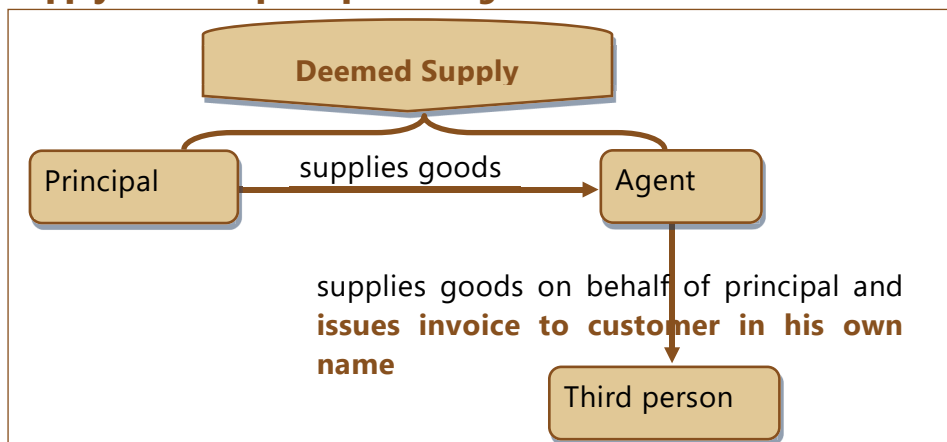
I. Permanent transfer/disposal of business assets



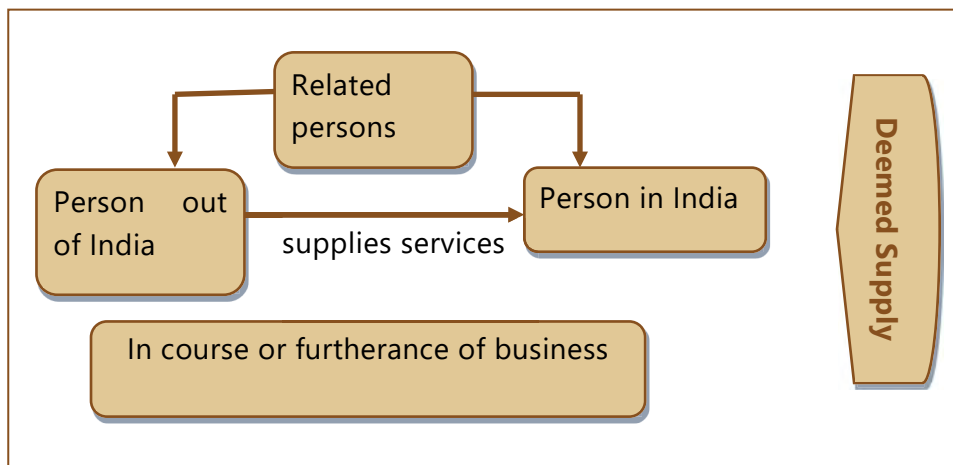
II. Supply between related persons or distinct persons



III. Supply between principal and agent

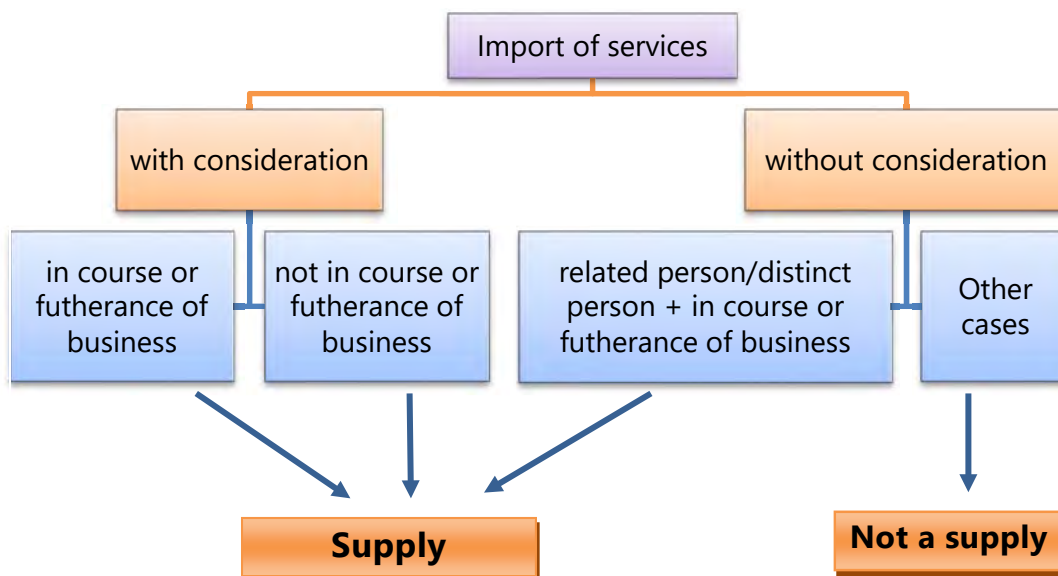


IV. Importation of services



The combined provisions of relating to import of services [as stipulated under section 7(1)(b) and section 7(1)(c) read with Schedule I] have been depicted in the below mentioned diagram:

Import of services



4. Activities or transactions to be treated as supply of goods or supply of services [Section 7(1A) read with Schedule II]

Para No.	Activity/ Transaction	Type	Supply of goods/ services
1.	Transfer	(i) Title in goods (ii) Title in goods under an agreement that property shall pass at a future date.	Goods
		Right/undivided share in goods without transfer of title in them	Services
2.	Land and Building	Lease, tenancy, easement, licence to occupy land	Services
		Lease/letting out of building including a commercial/ industrial/ residential complex for business/ commerce, wholly/ partly.	Services
3.	Treatment or Process	Applied to another person's goods	Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred/disposed of by/under directions of person carrying on business so as no longer to form part of those assets	Goods
		Goods held/used for business are put to private use or are made	Services

		available to any person for use for any purpose other than business, by/under directions of person carrying on the business	
		Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person. Exceptions: ☐ Business transferred as a going concern. ☐ Business carried on by a personal representative who is deemed to be a taxable person.	Goods
5.	Renting of immovable property	Construction of complex, building, civil structure, etc. Exception: Entire consideration received after issuance of completion certificate or after its first occupation, whichever is earlier.	Services
	Temporary transfer or permitting use or enjoyment of any intellectual property right		

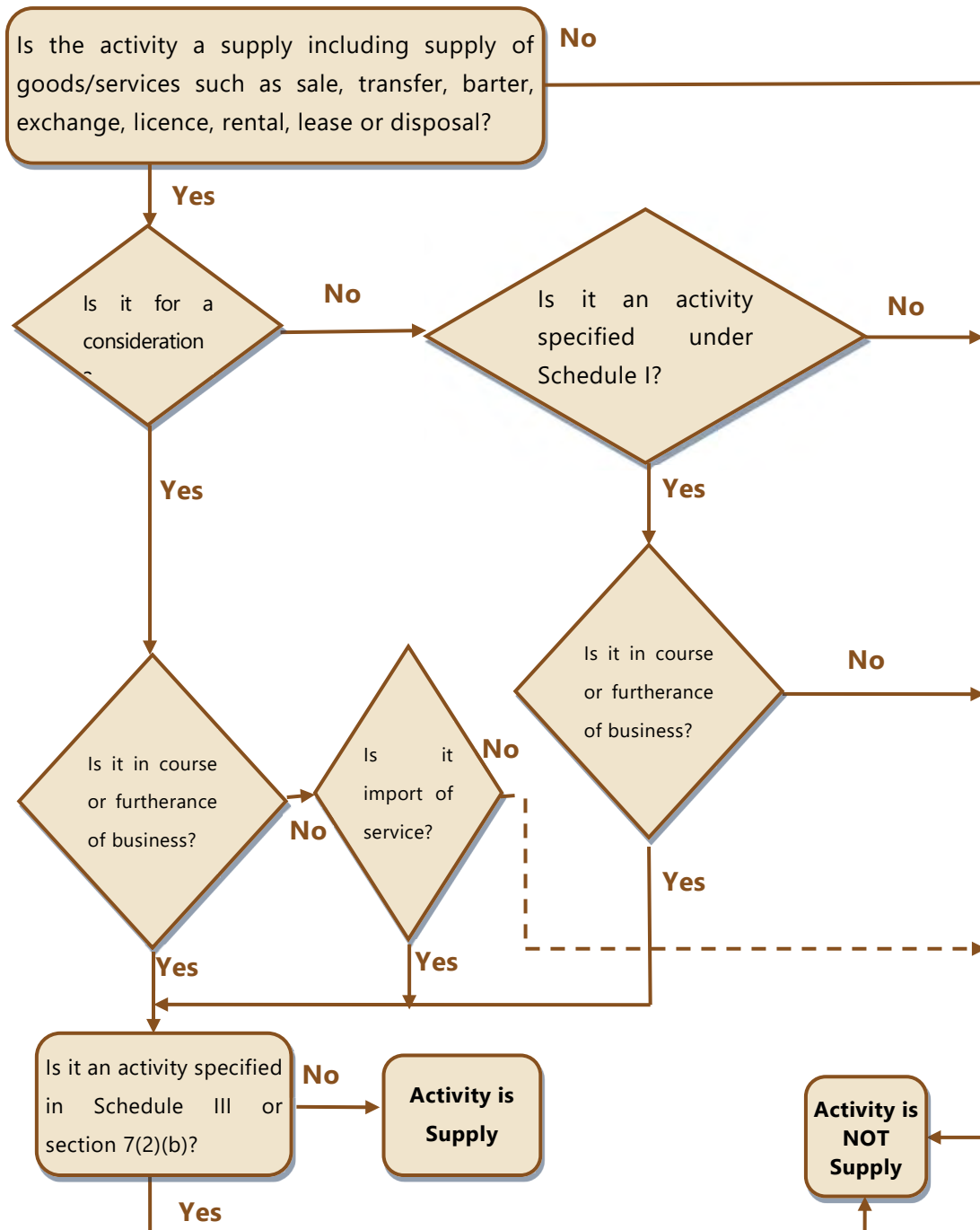
	Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software	Services
	Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.	
	Transfer of right to use any goods for any purpose	
6.	Following composite supplies:- ☐ Works contract ☐ Supply of goods, being food or any other article for human consumption or any drink.	Services

5. Non-supplies under GST [Section 7(2)(a) read with Schedule III]

Para No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	Services by an employee to the employer in the course of or in relation to his employment.
2.	Services by any court or Tribunal established under any law for the time being in force.
3.	(a) Functions performed by Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities & Members of other local authorities;

	(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or (c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.
6.	Actionable claims, other than lottery, betting and gambling.
7.	Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8.	(a) Supply of warehoused goods to any person before clearance for home consumption. (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

The diagram on next page summarises the steps to determine whether an activity undertaken is supply or not.



6. Composite and mixed supplies

	
Composite Supply • Consist of two or more supplies • Naturally bundled • In conjunction with each other • One of which is principal supply • Tax liability shall be rate of principal supply • Example: Charger supplied along with mobile phones.	Mixed Supply • Consist of two or more supply • Not naturally bundled • Though can be supplied independently, still supplied together • Tax liability shall be the rate applicable to the supply that attracts highest rate of tax • Example: A gift pack comprising of chocolates, candies, sweets and balloons.



TEST YOUR KNOWLEDGE

1. *Satyamev Printers is a printing house registered under GST. It receives an order for printing 5000 copies of a book on yoga and meditation authored by a well-known yoga guru. The content of the book is to be provided by the yoga guru to Satyamev Printers. It is agreed that Satyamev Printers will use its own paper to print the said books.*

You are required to determine the rate of GST applicable on supply of printed books by Satyamev Printers assuming that rate of GST applicable on services is 18% whereas the rate of GST applicable on supply of goods is 12%.

2. *Sudama Associates, a registered supplier, disposes the computers owned by the business without consideration and it has not claimed input tax credit on such computers.*

Examine whether the disposal of computers by Sudama Associates qualifies as deemed supply under Schedule I of the CGST Act, 2017.

3. *Shivaji Pvt. Ltd., a registered supplier, supplies the following goods and services for construction of buildings and complexes -*
- *excavators for required period at a per hour rate*
 - *manpower for operation of the excavators at a per day rate*
 - *soil-testing and seismic evaluation at a per sample rate.*

The excavators are invariably hired out along with operators. Similarly, excavator operators are supplied only when the excavator is hired out.

For a given month, the receipts (exclusive of GST) of Shivaji Pvt. Ltd. are as follows:

- *Hire charges for excavators - ₹ 18,00,000*
- *Service charges for supply of manpower for operation of the excavator - ₹ 20,000*
- *Service charges for soil testing and seismic evaluation at three sites - ₹ 2,50,000*

Compute the GST payable by Shivaji Pvt. Ltd. for the given month.

Assume the rates of GST to be as under:

Hiring out of excavators – 12%

Supply of manpower services and soil-testing and seismic evaluation services – 18%

4. *Mr. Kanjilal Adani is an oil exploration & production contractor and is registered under GST in the State of Gujarat. He entered into a Production Sharing Contract (PSC) with Government of Gujarat wherein he gets a license to explore, exploit and sell the petroleum crude and/or natural gas from the Government in Aliabet Oilfield in lieu of royalty and a share in profit petroleum.*

In the month of June, Mr. Kanjilal Adani explored the petroleum reserves at Aliabet Oilfield. He got a portion of the petroleum silt (non-taxable under GST) worth ₹ 3,00,000 as part of compensation. This petroleum silt is part of cost petroleum as per the contract entered with the Government.

Examine the taxability of the petroleum silt received by Mr. Kanjilal Adani under the GST law.

- 5. Angad Private Ltd. is engaged in the business of distribution of construction material. As an incentive, Angad Private Ltd. pays an amount of ₹ 75,000 to its employees upon achieving a specified sales target. The incentive is part of the salary of the employees and applicable tax is deducted at source as per relevant income tax provisions. Angad Private Ltd. is of the view that GST is not leviable on such incentive paid to the employees. Whether the view taken by Angad Private Ltd. is correct?*
- 6. XYZ Consultancy, registered in Bangalore, supplies technical consultancy services to its clients. It has been providing technical services to BA Ltd., Mumbai since past 2 years. Consideration is settled by BA Ltd. assignment-wise. BA Ltd. paid ₹ 37 lakh to XYZ Consultancy on 10th January for XYZ Consultancy agreeing not to provide similar technical services to any other business entity in India or abroad for a period of next 8 years. XYZ Consultancy is of the view that ₹ 37 lakh is not chargeable to tax under GST law.*

You are required to examine whether the view taken by XYZ Consultancy is valid in law. It may be noted that BA Ltd. is not ready to pay any further amount to XYZ Consultancy in addition to the amount already agreed.

- 7. Mokshabhumi Industries has its manufacturing unit in the State of Maharashtra. It stores the finished goods manufactured by it at a depot located in the State of Gujarat. The depot is owned by Punyabhumi Ltd. – a related person of Mokshabhumi Industries. Punyabhumi Ltd. has not charged any consideration from Mokshabhumi Industries for usage of depot for storage purpose. Whether the storage of goods permitted by Punyabhumi Ltd. to Mokshabhumi Industries qualifies as supply under GST?*
- 8. Rob Shareholding Ltd., an approved intermediary, has entered into a agreement wherein certain securities were to be lent to Dhandhan Bank, under Securities Lending Scheme, 1997. Dhandhan Bank shall pay specified lending fee against*

such lending of securities to it. Explain the taxability of transactions involved in the Securities Lending Scheme, 1997.

9. *Krishnadev is a trader based in India. Ramakrishna, brother of Krishnadev, is located in China and is also engaged in business of trading of goods. Krishnadev places an order with Ramakrishna for procurement of certain goods from local market in China. Before the shipment of goods from China to India, Krishnadev sold such goods to Christiano, a trader located in Brazil. The goods were subsequently shipped from China to Brazil. Comment on the taxability of transaction between Krishnadev and Christiano under GST in India.*
10. *Mohandas International entered into a transaction for import of goods from a vendor located in Italy. Due to financial issues, Mohandas International was not in a situation to clear the goods upon payment of import duty. Mohandas International sold the goods to Radhakrishnan Export House by endorsement of title to the goods, while the goods were in high seas. The agreement further provided that Mohandas International shall purchase back the goods in future from Radhakrishnan Export House. Discuss the taxability of transaction(s) involved, under the GST law.*
11. *Mr. Happy has a huge residential property located at a prime location in Mumbai, Maharashtra. He has let out the 1st and 2nd floor to Mr. Peace for residential purposes in April. Mr. Peace surrenders his tenancy rights to Mr. Serene for a tenancy premium of ₹ 10,00,000 on 1st June. Mr. Serene has also paid the applicable stamp duty and registration charges on transfer of tenancy rights. Moreover, Mr. Serene has agreed to pay a monthly rent of ₹ 1,00,000 to Mr. Happy (unregistered under GST) from June.*

Determine the taxability of the transaction(s) involved in the given case, for the month of June.

12. (a) *Rudraksh Kapoor, owner of Rudraksh Publishing House, Ghaziabad, U.P., donated some money to Divyaprakash Charitable Trust in the memory of his late father. The Divyaprakash Charitable Trust constructed a room in the school run by it from such donation and wrote "Donated by Rudraksh Kapoor in the memory of his father" on the door of the room so constructed. Examine whether the money donated by Rudraksh Kapoor is leviable to GST.*

- (b) In the above question, if Divyaprakash Charitable Trust had written on the door of the room constructed from the money donated by Rudraksh Kapoor in the school run by it - "Donated by Rudraksh Publishing House, Ghaziabad, U.P.", would the given transaction/activity qualify as supply?
13. Mrs. Kajal, a registered supplier of Jaipur (Rajasthan), has made the following supplies in the month of January:
- Supply of a laptop along with the laptop bag to a customer of Mumbai for ₹55,000 (exclusive of GST).
 - Supply of 10,000 kits (at ₹50 each) amounting to ₹5,00,000 (exclusive of GST) to Ram Fancy Store in Kota (Rajasthan). Each kit consists of 1 hair oil, 1 beauty soap and 1 hair comb.
 - 100 kits are given as free gift to Jaipur customers (all unrelated) on the occasion of Mrs. Kajal's birthday. Each kit consists of 1 hair oil and 1 beauty soap. Cost of each kit is ₹35. Input tax credit has not been taken on the goods contained in the kit.
 - Event management services provided free of cost to her brother (wholly dependent on her) for his son's marriage function in Indore (Madhya Pradesh). Cost of providing said services is ₹80,000.
 - 1,400 chairs and 100 coolers hired out to Function Garden, Ajmer (Rajasthan) for ₹3,30,000 (exclusive of GST) including cost of transporting the chairs and coolers from Mrs. Kajal's godown at Jaipur to Function Garden, Ajmer. Since Mrs. Kajal is not a GTA, transportation services provided by her are exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017⁴⁶.

Assume rates of GST to be as under:-

S. No.	Particulars	Rate of GST
1.	Laptop	18%
2.	Laptop bag	28%

⁴⁶ Notification No. 12/2017 CT(R) dated 28.06.2017 (containing the list of services exempt from GST) has been discussed in Chapter 4 – Exemptions from GST in this Module of the Study Material.

3.	Hair oil	18%
4.	Beauty soap	28%
5.	Hair comb	12%
6.	Event management service	5
7.	Service of renting of chairs and coolers	12%
8.	Transportation service	5%

From the above information, examine each of the above supplies made by Mrs. Kajal for the month of January and determine the rate of GST applicable on the same.

14. Chandragupta Maurya is an artist who makes contemporary paintings. He is registered in the State of Kolkata. Chandragupta Maurya appoints Dhruv Kumar to auction his painting in Maharashtra. Dhruv Kumar arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by Dhruv Kumar on the behalf of Chandragupta Maurya but in his own name and the painting is delivered to the successful bidder.

Examine whether Dhruv Kumar can be considered as an agent of Chandragupta Maurya under Para 3 of Schedule I of the CGST Act, 2017.



ANSWERS/HINTS

- Section 2(30) provides that a composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Circular No. 11/11/2017 GST dated 20.10.2017 has clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies.

Further, section 8(a) stipulates that a composite supply comprising two or more supplies, one of which is a principal supply, is treated as a supply of such principal supply. Hence, one needs to ascertain what constitutes the principal supply in this supply. As per section 2(90), principal supply is the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

The above circular further clarifies that in the composite supply of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.

Accordingly, in the given case, the supply of printed books by Satyamev Printers is a composite supply wherein the principal supply is supply of printing services. Thus, the rate of GST applicable thereon is the rate applicable on supply of printing services, i.e. 18%.

2. As per section 7(1)(c) read with Schedule I of the CGST Act, 2017, permanent transfer or disposal of business assets is treated as supply even though the same is made without consideration. However, this provision would apply only if input tax credit has been availed on such assets. Therefore, the disposal of computers by Sudama Associates is not a supply as the input tax credit has not been availed on the same.

3. **Computation of GST payable by Shivaji Pvt. Ltd.**

Particulars	Value of supply (₹)	Rate of GST	GST payable (₹)
Hiring charges for excavators	18,00,000	12%	2,16,000
Service charges for supply of manpower for operation of excavators [Refer Note 1]	20,000	12%	2,400

Service charges for soil testing and seismic evaluation [Refer Note 2]	2,50,000	18%	45,000
GST liability			2,63,400

Notes:

1. Since the excavators are invariably hired out along with operators and excavator operators are supplied only when the excavator is hired out, it is a case of composite supply under section 2(30) wherein the principal supply is the hiring out of the excavator.

As per section 8(a), the composite supply is treated as the supply of the principal supply. Therefore, the supply of manpower for operation of the excavators will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.

2. Soil testing and seismic evaluation services being independent of the hiring out of excavator will be taxed at the rate applicable to them, which is 18%.
4. Compensation is received by Mr. Kanjilal Adani in the form of petroleum silt which, as per the contract with the Government of Gujarat, is part of cost petroleum.

As per *Circular No. 32/06/2018 GST dated 12.02.2018*, the **cost petroleum is not a consideration received** by the oil exploration & production contractors for the services provided to Government under a Production Sharing Contract (PSC) and thus not taxable *per se*. The reason for the same is that the contractors carry exploration and **production of petroleum for themselves and not as a service to Government**. They had acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum.

Consequently, the cost petroleum received by Mr. Kanjilal Adani is not taxable under GST.

5. Yes, Angad Private Ltd.'s view is correct. In terms of section 7(2) read with Schedule III of the CGST Act, 2017, services by an employee to employer in the course of or in relation to his employment shall not be treated as supply

under GST. Further, the amount paid as incentive by Angad Private Ltd. is not in the nature of gift, and thus, is not covered under Schedule I. Infact, in the given case, the incentive is part of the salary and is directly linked to the sales target. Therefore, the services provided in course or in relation to employment by the employees for which incentives are given to them shall not be treated as a "supply".

In the light of above discussion, GST is not leviable on the incentive paid by Angad Private Ltd. to its employees.

6. In the given case, XYZ Consultancy is providing the service of agreeing to the obligation to refrain from an act to BA Ltd. against a consideration of ₹ 37 lakh [Schedule II read with *Circular No. 178/10/2022 GST dated 03.08.2022*]. Therefore, the same is liable to tax under GST law. Thus, view taken by XYZ Consultancy is incorrect.
7. As per section 7(1)(c) read with Schedule I, supply of goods or services or both between related persons without consideration when made in the course or furtherance of business qualifies as supply. Thus, the storage services provided by Punyabhumi Ltd. to Mokshabhumi Industries in course or furtherance of business qualify as supply under GST even though no consideration has been charged for the same.
8. Securities Lending Scheme, 1997 (hereafter referred to as SLS) facilitates the lending and borrowing of securities. Securities are neither covered in the definition of goods nor covered in the definition of services. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

However, SLS doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services. The lending fee charged from the borrowers of securities has the character of consideration and is taxable under GST. Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately [*Circular No. 119/38/2019 GST dated 11.10.2019*].

9. The transaction between Krishnadev and Christiano is in the nature of merchant trading. As per Schedule III, transactions involving sale of goods

from a place in non-taxable territory to another place in non-taxable territory, without such goods entering into India, shall be treated neither as supply of goods nor as supply of services under GST. Therefore, the transaction between Krishnadev and Christiano shall not be treated as supply and is thus not leviable to GST.

- 10.** As per Schedule III, high seas sale transactions i.e. supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall be treated neither as supply of goods nor as supply of services under GST. Thus, the sale of goods by Mohandas International to Radhakrishnan Export House in high seas shall not be liable to GST.

Further, the import duty including IGST shall be payable by Radhakrishnan Export House at the time of clearance of goods at port of import. In case the goods are sold back by Radhakrishnan Export House to Mohandas International at a subsequent point of time, the same shall be treated as normal domestic sale transaction and GST shall be applicable on the same subject to other conditions prescribed under GST Law.

- 11.** *Circular No. 44/2018 CT dated 02.05.2018* clarifies that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.

The transfer of tenancy rights cannot be treated as sale of land/ building in Schedule III. Thus, it is not a non-supply under GST and consequently, a consideration for the said activity shall attract levy of GST. Services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

Hence, in the given case, the tenancy premium of ₹ 10,00,000 received by Mr. Peace for surrendering his tenancy rights to Mr. Serene is liable to GST.

The circular further clarifies that since renting of residential dwelling for use as a residence to an unregistered person is exempt [Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017⁴⁷], grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both to an unregistered person is exempt. Consequently, monthly rent ₹ 1,00,000 received by Mr. Happy from Mr. Serene is exempt.

12. Circular No. 116/35/2019 GST dated 11.10.2019 has clarified that in case of donations received by a charitable institution, when the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). Donations received by the charitable organisations are treated as consideration only if there exists, *quid pro quo*, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).

Thus, GST is not leviable where all the following three conditions are satisfied namely:

- ☐ Gift or donation is made to a charitable organization
 - ☐ Payment has the character of gift or donation
 - ☐ Purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement.
- (a) In the backdrop of the above discussion, in the given case, the way the name of Rudraksh Kapoor is displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it is only an expression of gratitude and public recognition of Rudraksh's act of philanthropy and is not aimed at advertising or promoting his business.

⁴⁷ Notification No. 12/2017 CT (R) dated 28.06.2017 (containing the list of services exempt from CGST) has been discussed in Chapter 4 – Exemptions from GST in this Module of the Study Material.

There is no reference/mention of his publishing house which otherwise would have got advertised.

Thus, the money donated by Rudraksh Kapoor is not a leviable to GST.

- (b) In the given case, since the name of Rudraksh Publishing House has been displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it might be aimed at advertising or promoting his business. There is a direct mention of his publishing house which is being advertised. In such a case, it is a supply of service by Divyaprakash Charitable Trust for a consideration received in the form of donation.

13.

S. No.	Particulars	Rate of GST
(i)	Supply of laptop bag along with laptop to Mumbai customer [Being naturally bundled, supply of laptop bag along with the laptop is a composite supply which is treated as the supply of the principal supply [viz. laptop] in terms of section 8(a). Accordingly, rate of principal supply, i.e. laptop will be charged.]	18%
(ii)	Supply of kits to Ram Fancy Store [It is a mixed supply and is treated as supply of that particular supply which attracts highest tax rate [viz. beauty soap] in terms of section 8(b).]	28%
(iii)	Free gifts to customers [Cannot be considered as supply under section 7 read with Schedule I as the gifts are given to unrelated customers without consideration.]	Nil
(iv)	Event management services provided free of cost to her brother [who is a related person] for his son's	5%

	marriage. Thus, said services shall fall within the purview of Schedule I and shall be treated as supply even if made without consideration. Since it is an individual supply, it will be taxed at the rate applicable on said service.	
(v)	Chairs and coolers hired out to Function Garden [Transportation services provided by Mrs. Kajal are exempt. However, since chairs and coolers are hired out along with their transportation, it is a case of composite supply wherein the principal supply is hiring out of chairs and coolers. Accordingly, transportation service will also be taxed at the rate applicable for renting of chairs and coolers*]	12%

**Note: As per section 2(30), composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies. Since in point (v), service of hiring out of chairs & coolers is taxable while transportation service is exempt, it is possible to take a view that this is not a case of composite supply.*

In that case, the two services will be treated as independent services and taxed accordingly.

14. An activity/transaction qualifies as supply under GST only if it is undertaken for a consideration and is in course/furtherance of business. However, supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal is considered as supply even if made without consideration provided the invoice for further supply is issued by the agent in his own name [Section 7(1)(c) read with Para 3 of Schedule I of the CGST Act, 2017].

Circular No. 57/31/2018 GST dated 04.09.2018 provides that where the invoice for further supply of goods is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of Para 3 of Schedule I

In the given case, Dhruv Kumar is not merely providing auctioneering services to Chandragupta Maurya, but is also supplying the painting on behalf of

Chandragupta Maurya to the successful bidder and has the authority to transfer the title of the painting on behalf of Chandragupta Maurya. Dhruv Kumar issued the invoice in his own name for supply of the painting on the behalf of Chandragupta Maurya. Thus, Dhruv Kumar can be considered as an agent of Chandragupta Maurya under Para 3 of Schedule I.

Annexure-1

Goods and Services Tax in India

Goods and Services Tax (GST) is a path breaking indirect tax reform which attempts to create a common national market. GST has subsumed multiple indirect taxes like excise duty, service tax, VAT, CST, luxury tax, entertainment tax, entry tax, etc.

VAT and GST are often used inter-changeably as the latter denotes comprehensiveness of VAT by coverage of goods and services. France was the first country to implement VAT/GST in 1954. Presently, more than 160 countries have implemented VAT/GST in some form or the other because this tax has the capacity to raise revenue in the most transparent and neutral manner. Most of the countries follow unified GST i.e., a single tax applicable throughout the country. However, in federal polities like Brazil and Canada, a dual GST system is prevalent. Under dual system, GST is levied by both the federal and the State Governments.

India has adopted dual GST model because of its unique federal nature.

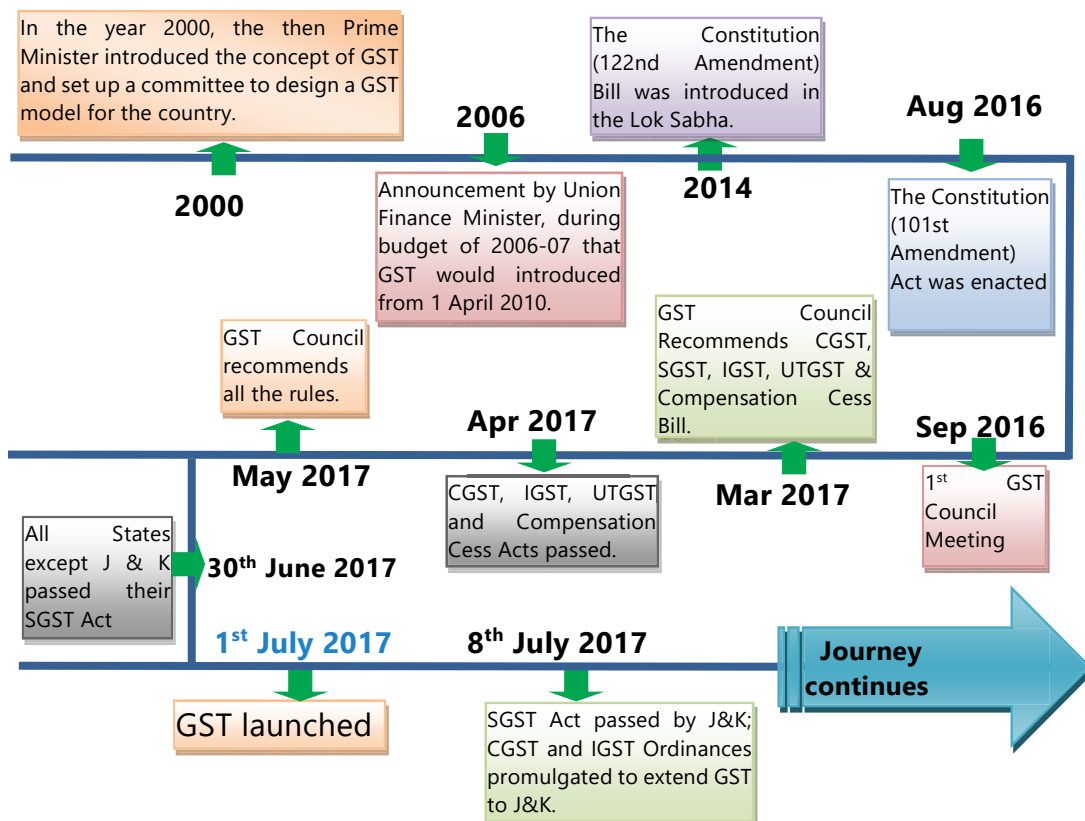
The idea of GST was mooted in the year 2000 when the then Prime Minister set up a committee to design a Goods and Services Tax (GST) model for the country. The talks of ushering in GST, however, gained momentum in the year 2014 when the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST in the Parliament on 19th December, 2014. The Lok Sabha passed the Bill on 6th

May, 2015 and Rajya Sabha on 3rd August, 2016. Subsequent to ratification of the Bill by more than 50% of the States, Constitution (122nd Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became the **Constitution (101st Amendment) Act, 2016**, which paved the way for introduction of GST in India.



In the following year, on 27th March, 2017, the Central GST legislations - Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were introduced in Lok Sabha. Lok Sabha passed these bills on 29th March, 2017 and with the receipt of the President's assent on 12th April, 2017, the Bills were enacted.

The enactment of the Central Acts was followed by the enactment of the State GST laws by various State Legislatures. Telangana, Rajasthan, Chhattisgarh, Punjab, Goa and Bihar were among the first ones to pass their respective State GST laws. By 30th June, 2017, all States and Union Territories had passed their respective SGST and UTGST Acts except Jammu and Kashmir. With effect from 1st July, 2017, the historic indirect tax reform - GST was introduced. GST law was extended to Jammu and Kashmir on 8th July, 2017.



Before we proceed with the finer nuances of Indian GST, let us first understand the basic concept of GST.



- ❑ GST is a value added tax levied on supply i.e., manufacture or sale of goods and provision of services.
- ❑ GST offers comprehensive and continuous chain of tax credits from the producer's point/service provider's point upto the retailer's level/consumer's level thereby taxing only the value added at each stage of supply chain.
- ❑ The supplier at each stage is permitted to avail credit of GST paid on the purchase of goods and/or services and can set off this credit against the GST payable on the supply of goods and services to be made by him. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages.
- ❑ Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system.

Framework of GST as introduced in India

I. Dual GST:

India has adopted a **Dual GST model** in view of the federal structure of the country. Consequently, the Centre and States simultaneously levy GST on taxable supply of goods or services or both which, takes place within a State or Union Territory. Thus, tax is imposed concurrently by the Centre and States, i.e. Centre and States simultaneously tax goods and services. Now, the Centre also has the power to tax intra-State sales & States are also empowered to tax services. GST extends to whole of India including the Union Territory of Jammu and Kashmir.

DUAL GST



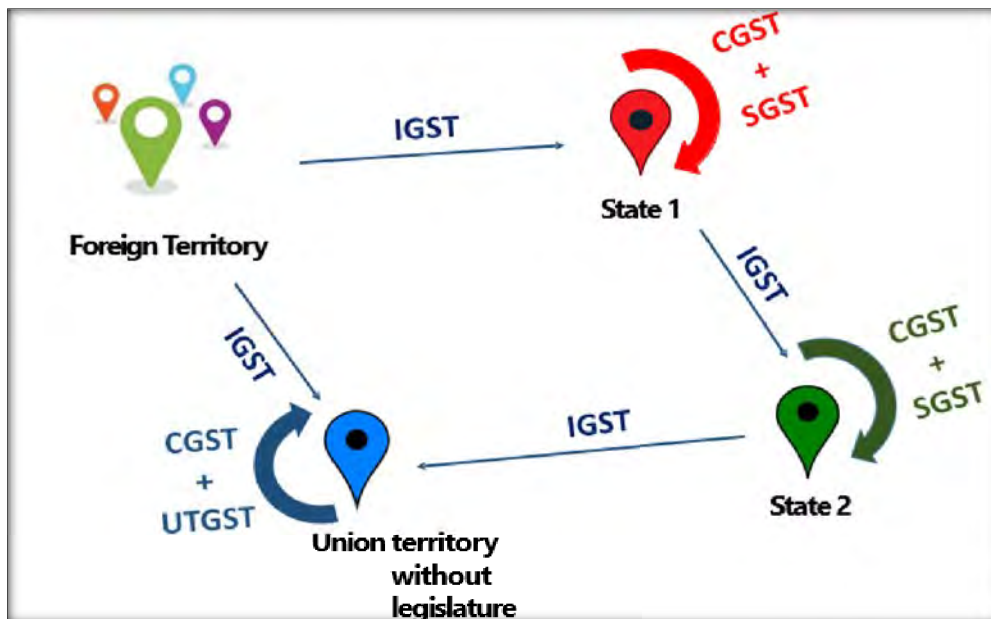
II. CGST/SGST/UTGST/IGST

GST is a destination-based tax applicable on all transactions involving supply of goods or services or both for a consideration subject to exceptions thereof. GST in India comprises of Central Goods and Services Tax (CGST) - levied and collected by Central Government, State Goods and Services Tax (SGST) - levied and collected by State Governments/Union Territories with Legislatures and Union Territory Goods and Services Tax (UTGST) - levied and collected by Union Territories without Legislatures, on intra-State supplies of taxable goods and/or services. As a general rule, where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as intra-State supply of goods or services respectively.

CGST/SGST/UTGST/IGST

Further, where the location of the supplier and the place of supply of goods or services are in (i) two different States or (ii) two different Union Territories or (iii) a State and a Union territory, it is treated as inter-State supply of goods or services respectively. Inter-State supplies of taxable goods and/or services are subject to Integrated Goods and Services Tax (IGST). IGST is the sum total

of CGST and SGST/UTGST and is levied by the Centre on all inter-State supplies.



III. Legislative Framework

There is single legislation – CGST Act, 2017 - for levying CGST. Similarly, Union Territories without Legislatures [i.e. Andaman and Nicobar Islands, Lakshadweep, Ladakh, Dadra and Nagar Haveli & Daman and Diu and Chandigarh] are governed by UTGST Act, 2017 for levying UTGST. States and Union territories with their own legislatures [i.e. Delhi, Jammu and Kashmir and Puducherry] have their own GST legislation for levying SGST.

LEGISLATIVE FRAMEWORK



In Ladakh, CGST and UTGST is levied on supply of goods or services or both. In Delhi, CGST and SGST is levied on supply of goods or services or both.

Though there are multiple SGST legislations, the basic features of law, such as chargeability, definition of taxable event and taxable person, classification and valuation of goods and services, procedure for collection and levy of tax and the like are uniform in all the SGST legislations, as far as feasible. This is necessary to preserve the essence of dual GST.

IV. GST Common Portal

Before GST, since the Centre and State indirect tax administrations worked under different laws, regulations, procedures and formats, their IT infrastructure and systems were also independent of each other. Integrating them for GST implementation was complex since it required integrating the entire indirect tax ecosystem so as to bring all the tax administrations (Centre, State and Union Territories) to the same level of IT maturity with uniform formats and interfaces for taxpayers and other external stakeholders.

Besides, GST being a **destination-based tax**, the inter-State trade of goods and services (IGST) needed a robust settlement mechanism amongst the States and the Centre. A Common Portal was needed which could act as a clearing house and verify the claims and inform the respective Governments to transfer the funds. This was possible only with the help of a strong IT infrastructure.

Resultantly, Common GST Electronic Portal – www.gst.gov.in – a website managed by Goods and Services Network (GSTN) [a wholly owned Government Company] is set by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States.

The GST portal is accessible over Internet (by taxpayers and their CAs/Tax Advocates etc.) and Intranet

The logo for the GST Common Portal, featuring the text "GST COMMON PORTAL" in a bold, sans-serif font, enclosed within a rectangular border with a dashed line.

by Tax Officials etc. The portal is one single common portal for all GST related services.

A common GST system provides linkage to all State/ UT Commercial Tax Departments, Central Tax authorities, Taxpayers, Banks and other stakeholders. The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities.



The functions of the GSTN include facilitating registration; forwarding the returns to Central and State authorities; computation and settlement of IGST; matching of tax payment details with banking network; providing various MIS reports to the Central and the State Governments based on the taxpayer return information; providing analysis of taxpayers' profile.

However, it is important to note that the Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in

[managed by the National Informatics Centre, Ministry of Electronics & Information



Technology, Government of India]. E-way bill is an electronic document generated on the GST portal evidencing movement of goods.

Further, Invoice Registration Portal (IRP) is the website for uploading/reporting of e-invoices by the notified persons*. It is managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India.



**All registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹ 10 crore are required to issue e-invoices.*

V. GSPs/ASPs

GSTN has selected certain Information Technology, Information Technology enabled Services and financial technology companies, to be called GST Suvidha Providers (GSPs). GSPs have access to GST System and have the capability to develop applications to be used by taxpayers for interacting with the GSTN.



GSP develops applications having features like return filing, reconciliation of purchase register data with auto populated data for acceptance/rejection/modification, dashboards for taxpayers for quick monitoring of GST compliance activities. They may also provide role-based access to divide various GST related activities like uploading invoice, filing returns etc., among different set of users inside a company (medium or large companies will need it), applications for tax professional to manage their client's GST compliance activities, integration of existing accounting packages/ERP with GST System, etc.



GSP is an additional channel being made available for facilitating the taxpayers for performing some of the functions and use of their services is optional. GSPs may take the help of Application Service Providers (ASPs) who act as a link between taxpayers and GSPs.

VI. Compensation Cess

A GST Compensation Cess at specified rate is imposed under the Goods and Services Tax (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed



on value of taxable supply. Compensation cess is leviable on intra-State supplies and inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST. Initially, it was levied for a period of 5 years upto 30th June, 2022. However, its levy and collection has been extended till **31st March, 2026**.



Compensation is to be provided to a State for a period of 5 years from the date on which the State brings its SGST Act into force.

VII. GST – A tax on goods and services

GST is levied on all goods and services, except alcoholic liquor for human consumption and petroleum crude, diesel, petrol, ATF and natural gas.

- ❑ **Alcoholic liquor for human consumption:** is outside the realm of GST.

The manufacture/production of alcoholic liquor continues to be subjected to **State excise duty** and inter-State/intra-State sale of the same is subject to **CST/VAT** respectively.



- ❑ **Petroleum crude, diesel, petrol, ATF and natural gas:** As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council.

Till such date, **central excise duty** continues to be levied on manufacture/production of petroleum crude, diesel, petrol, ATF and natural gas and inter-State/intra-State sale of the same is subject to **CST/ VAT** respectively.

- ❑ **Tobacco:** Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in

India. Resultantly, **tobacco is subject to GST as well as central excise duty.**

- ❑ **Opium, Indian hemp and other narcotic drugs and narcotics:** Opium, Indian hemp and other narcotic drugs and narcotics are within the purview of GST, i.e. GST is leviable on them. However, State Governments have also retained the power to levy excise duties on such products manufactured in India. Resultantly, Opium, Indian hemp and other narcotic drugs and narcotics are **subject to GST as well as State excise duties.**
- ❑ Further, **real estate sector** has been kept out of ambit of GST, i.e. GST will not be levied on sale/purchase of immovable property.

Taxes Subsumed in GST

The various central, State and local levies were examined to identify their possibility of being subsumed under GST. While identifying, the following principles were kept in mind:

- (i) Taxes or levies to be subsumed should be primarily in the nature of indirect taxes, either on the supply of goods or on the supply of services.
- (ii) Taxes or levies to be subsumed should be part of the transaction chain which commences with import/ manufacture/ production of goods or provision of services at one end and the consumption of goods and services at the other.
- (iii) The subsuming of taxes should result in free flow of tax credit in intra and inter-State levels. The taxes, levies and fees that were not specifically related to supply of goods & services would not be subsumed under GST.
- (iv) Revenue fairness for both the Union and the States individually would need to be attempted.

Taking the above principles into account, following taxes were subsumed in the GST:

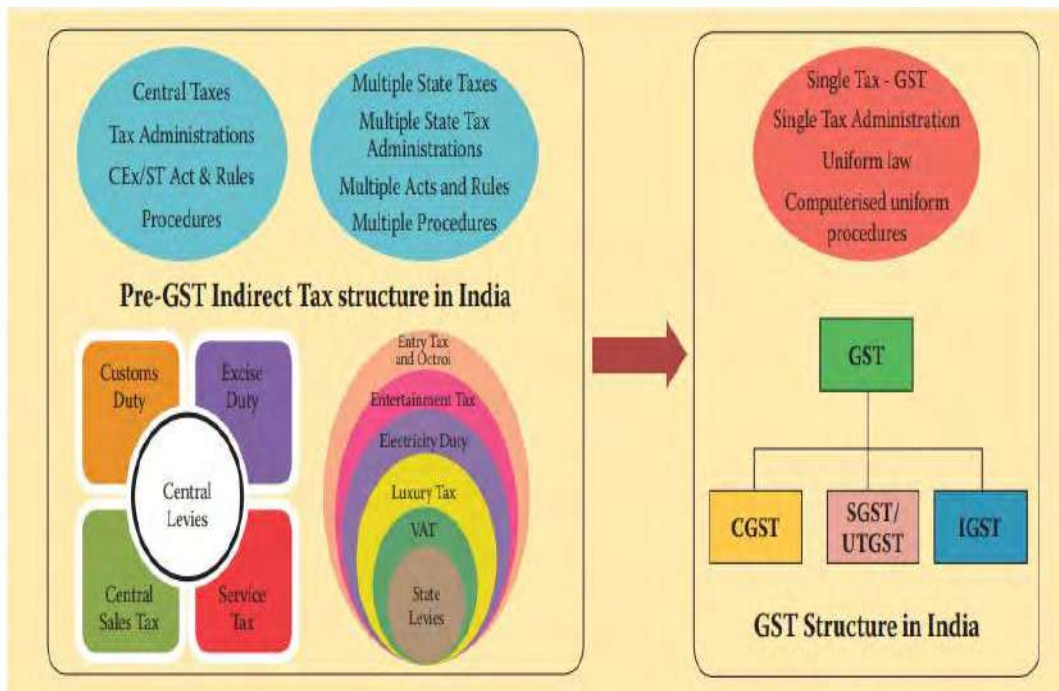
Central Taxes

- ☐ Central Excise Duty & Additional Excise Duties
- ☐ Service Tax
- ☐ Excise Duty under Medicinal & Toilet Preparation Act, 1955
- ☐ CVD & Special CVD
- ☐ Central Sales Tax
- ☐ Central surcharges & Cesses in so far as they relate to supply of goods & services

State Taxes

- ☐ State surcharges and cesses in so far as they relate to supply of goods & services
- ☐ Entertainment Tax (except those levied by local bodies)
- ☐ Tax on lottery, betting and gambling
- ☐ Entry Tax (All Forms) & Purchase Tax
- ☐ VAT/ Sales tax
- ☐ Luxury Tax
- ☐ Taxes on advertisements

GST



Within GST or outside GST



Alcohol for human consumption.

Power to tax remains with the State.



Five petroleum products – crude oil, diesel, petrol, natural gas and ATF.

GST Council to decide the date from which GST will be applicable.



Entertainment tax levied by local bodies.

Power to tax remains with the local bodies.



Tobacco

Within the purview of GST. Power to levy excise duties, also retained.

CHARGE OF GST



The section numbers referred to in the Chapter pertain to the CGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

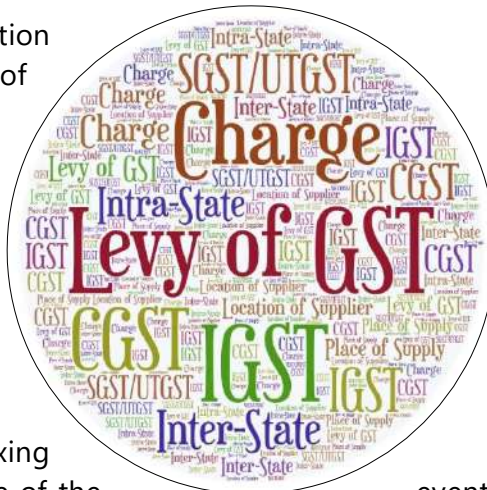
- ❑ explain the extent and commencement of CGST Act, IGST Act, SGST Act & UTGST Act.
- ❑ describe the provisions pertaining to levy and collection of CGST & IGST.
- ❑ identify and analyse the services on which tax is payable under reverse charge mechanism.
- ❑ comprehend and analyse the composition levy- eligibility for the same and conditions to be fulfilled.



1. INTRODUCTION

Power to levy tax is drawn from the Constitution of India. To pave way for the introduction of Goods and Services Tax ("**GST**"), 101st Constitutional Amendment Act, 2016 was passed. By virtue of this Act, enabling provision was made to levy GST on supply of goods or services or both in India. Central excise duty, State VAT and certain State specific taxes and service tax were subsumed into a comprehensive GST.

The very basis for the charge of tax in any taxing statute is the taxable event i.e the occurrence of the event which triggers levy of tax. As discussed earlier, the taxable event under GST is **SUPPLY** [Discussed in detail in Chapter – 1: Supply under GST in this Module of the Study Material]. **CGST and SGST/UTGST** are levied on all **intra-State supplies** of goods and/or services while **IGST** is levied on all **inter-State supplies** of goods and/ or services.



The provisions relating to levy and collection of CGST and IGST are contained in section 9 of the CGST Act, 2017 and section 5 of the IGST Act, 2017, respectively. Let us now have a fundamental idea of intra-State supply and inter-State supply.

As a general rule, where the **location of the supplier** and the **place of supply** of goods or services are **in the same State/Union territory**, it is treated as **intra-State supply** of goods or services respectively.

Similarly, where the **location of the supplier** and the **place of supply** of goods or services are in **(i) two different States or (ii) two different Union Territories or (iii) a State and a Union territory**, it is treated as **inter-State supply** of goods or services respectively.

The concepts of 'place of supply' and meaning of the 'location of the supplier' have been elaborated in the next chapter, Chapter 3 – Place of Supply, in this Module of the Study Material. Consequently, the meaning of terms 'inter-State supply' and 'intra-State supply' has been explained in detail in that chapter.



2. RELEVANT DEFINITIONS

- ❖ **Central tax:** means the central goods and services tax levied under section 9 of the CGST Act [Section 2(21)].
- ❖ **Integrated tax:** means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act [Section 2(58)].
- ❖ **State tax:** means the tax levied under any State Goods and Services Tax Act [Section 2(104)].
- ❖ **Goods:** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply [Section 2(52)].
- ❖ **Aggregate turnover:** means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess [Section 2(6)].
- ❖ **Customs frontiers of India:** means the limits of a customs area [Section 2(4) of the IGST Act]. 'Customs Area' is the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities [Section 2(11) of the Customs Act, 1962].
- ❖ **Non-taxable online recipient** means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation—For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of section 24(vi) of the CGST Act, 2017 [Section 2(16) of the IGST Act, 2017].
- ❖ **Prescribed:** means prescribed by rules made under this Act on the recommendations of the council [Section 2(87)].

- ❖ **Registered Person:** means a person who is registered under section 25 but does not include a person having unique identity number [Section 2(94)].
- ❖ **Reverse charge:** means the liability to pay tax by the recipient of supply of goods or services **or** both instead of the supplier of such goods or services or both under section 9(3)/9(4), or under section 5(3)/5(4) of the IGST Act [Section 2(98)].
- ❖ **Services:** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged [Section 2(102)].

Explanation.—For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities.

- ❖ **Supplier:** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].
- ❖ **Taxable supply:** means a supply of goods and/or services which is leviable to tax under CGST Act [Section 2(108)].
- ❖ **Non-taxable supply:** means a supply of goods or services or both which is not leviable to tax under CGST Act or under IGST Act [Section 2(78)].
- ❖ **Taxable person:** means a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act [Section 2(107)].

It is important to note that a person who is liable to be registered but does not take a registration and remains an unregistered person shall be construed as a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person.

Section 22 enumerates the persons liable to be registered under CGST Act and section 24 lists the persons liable to be registered compulsorily under the GST law. The said sections and the concept of taxable person thereto has been discussed in detail in Chapter 8 – Registration in Module 2 of this Study Material.

❖ **Recipient:** of supply of goods and/or services means-

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration,
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

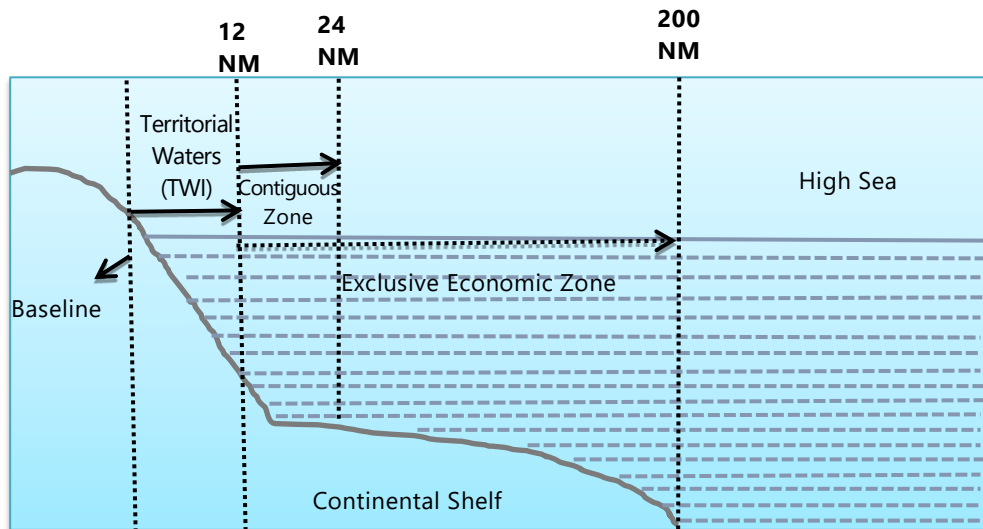
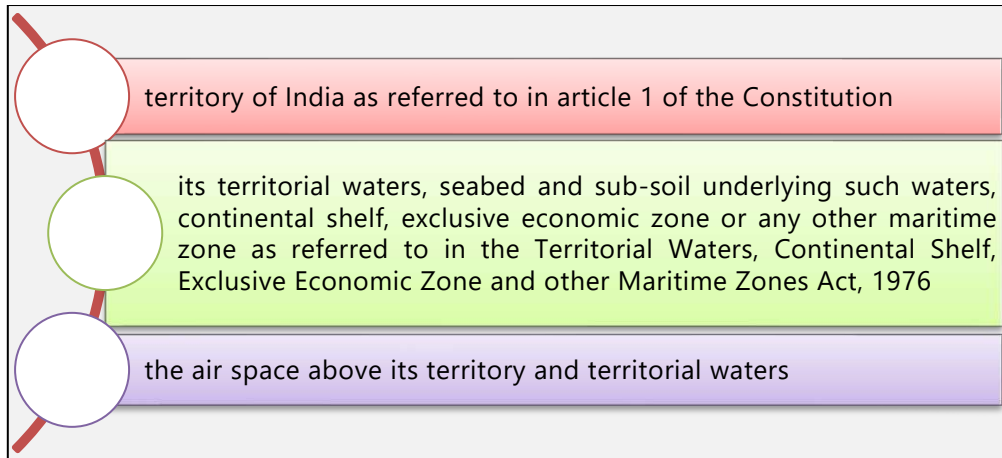


3. EXTENT & COMMENCEMENT OF GST LAW

- (i) **Central Goods and Services Tax Act, 2017** extends to the whole of India [Section 1 of the CGST Act].



India: "India" means [Section 2(56) of CGST Act]-



- (ii) **State GST law** of the respective State/Union Territory with Legislature [Delhi, Puducherry and Jammu & Kashmir]* extends to whole of that State/Union Territory.



(1) Maharashtra GST Act, 2017 extends to whole of the State of the Maharashtra.

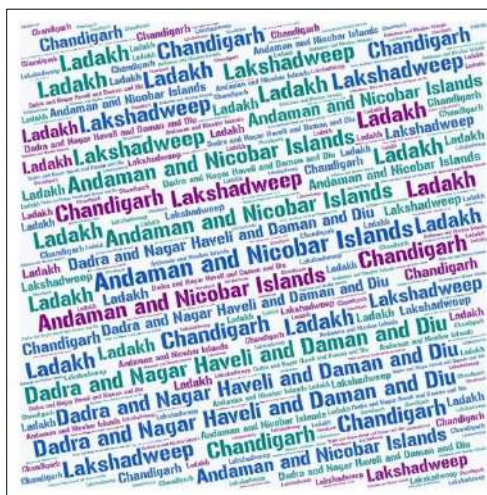
***State:** includes a Union territory with Legislature [Section 2(103) of the CGST Act].

(iii) **Integrated Goods and Services Tax Act, 2017** extends to the whole of India [Section 1 of the IGST Act].

(iv) **Union Territory Goods and Services Tax Act, 2017** extends to the Union territories** of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu, Ladakh¹, Chandigarh and other territory, i.e. the Union Territories without Legislature [Section 1 of the UTGST Act].

****Union territory:** means the territory of—

- the Andaman and Nicobar Islands;
- Lakshadweep;
- Dadra and Nagar Haveli and Daman and Diu;
- Ladakh
- Chandigarh; and
- other territory.



Explanation—For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory [Section 2(114)].

Our discussion in this Study Material will principally be confined to the provisions of CGST and IGST laws as the specific State GST laws are outside the scope of syllabus.

¹ Students may note that the erstwhile State of Jammu and Kashmir is reorganised into the Union territory of Jammu and Kashmir (with Legislature) and Union territory of Ladakh vide the Jammu and Kashmir Reorganisation Act, 2019. Further, the erstwhile Union territories of Dadra and Nagar Haveli and Daman and Diu is merged into a new Union territory of Dadra and Nagar Haveli and Daman and Diu vide the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019.



4. LEVY & COLLECTION OF CGST & IGST [SECTION 9 OF THE CGST ACT & SECTION 5 OF THE IGST ACT]



STATUTORY PROVISIONS

Section 9 of the CGST Act, 2017	Levy and collection (CGST)
Sub-section	Particulars
(1)	Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
(2)	The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
(3)	The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4)	The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.
Section 5 of the IGST Act, 2017	Levy and collection of tax (IGST)
Sub-section	Particulars
(1)	Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both; except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person. Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.
(2)	The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3)	<i>The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.</i>
(4)	<i>The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both</i>



ANALYSIS

Central Goods and Services Tax (**CGST**) shall be **levied** on **all intra-State supplies** of goods or services or both².

The tax shall be **collected** in such manner as may be prescribed and shall be **paid by the taxable person**. However, intra-State supply of **alcoholic liquor for human consumption** is outside the purview of CGST.

Value for levy: Transaction value under section 15 of the CGST Act– *Discussed in detail in Chapter 6 – Value of supply in this Module of Study Material.*

Rates of CGST: Rates for CGST are rates as may be notified by the Government on the recommendations of the GST Council. ***[Discussed in detail subsequently in this Chapter]***. Maximum rate of **CGST** can be 20%.

💡 In case of **inter-State supplies** of goods and/or services, Integrated Goods and Services Tax (**IGST**) is **levied** on the **transaction value** under section 15 of the

² IGST is leviable on import of goods and on import of services.

CGST Act. Since alcoholic liquor for human consumption is outside the purview of GST law, IGST is also not leviable on the same. IGST is the sum total of CGST and SGST/UTGST. Maximum rate of IGST can be 40%.

However, CGST/IGST on supply of the following items has not yet been levied. It shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council:

- ☐ petroleum crude
- ☐ high speed diesel
- ☐ motor spirit (commonly known as petrol)
- ☐ natural gas and
- ☐ aviation turbine fuel

Goods imported into India: All imports are deemed as inter-State supplies and accordingly IGST shall be levied on imported goods in addition to the applicable custom duties.



The integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under the Customs Act, 1962.

The integrated tax on goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

Reverse Charge Mechanism

CGST/IGST shall be **paid by the recipient** of goods or services or both, on reverse charge basis, in the following cases:

- ✓ Supply of such goods or services or both, as **notified by the Government** on the recommendations of the GST Council.

- ✓ Supply of specified categories of goods or services or both **by an unregistered supplier** to specified class of registered persons, as notified by the Government on recommendation of GST Council.

All the provisions of the CGST Act/IGST Act shall apply to the recipient in the aforesaid cases as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. **Let us first understand the concept of reverse charge mechanism:**

Generally, the supplier of goods or services is liable to pay GST. However, under the reverse charge mechanism, the liability to pay GST is cast on the recipient of the goods or services.

Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply [Section 2(98)].

It may be noted that the underlying principle of an indirect tax is that burden of tax has to be ultimately passed on to the recipient. GST being an indirect tax, this principle holds good for GST. Under normal circumstances, the statutory liability to deposit GST and undertake compliances [*i.e. to obtain registration under GST, deposit the tax with the Government, filing returns, etc.*] is on the supplier while he may recover the same from its recipient. However, under reverse charge mechanism, the statutory liability to deposit GST and undertaking compliance requirements, [*i.e. to obtain registration under GST, deposit the tax with the Government, filing returns, etc.*] shifts from supplier to recipient.

There are **two types of reverse charge scenarios** provided in law.

- (i) First scenario occurs in case of supply of specified categories of goods or services, covered by section 9(3) of the CGST/ SGST (UTGST) Act. **Similar provisions are contained under section 5(3) of the IGST Act.**
- (ii) Second scenario occurs in case of supply of specified categories of goods or services made by an unregistered supplier to specified class of registered recipients, covered by section 9(4) of the CGST Act. **Similar provisions are contained under section 5(4) of the IGST Act.** *Goods and services notified under this case have been discussed subsequently in this chapter.*

Goods and services notified under reverse charge mechanism under section 9(3) of the CGST Act/ section 5(3) of the IGST Act are as follows:

A. Supplies of goods taxable under reverse charge, i.e. supply of the goods where tax is payable by the recipient:

Goods like cashewnuts [not shelled/peeled], bidi wrapper leaves, tobacco leaves and raw cotton (when supplied by an agriculturist to any registered person), supply of lottery (when supplied by State Government, Union Territory or any local authority to lottery distributor or selling agent), silk yarn (when supplied by manufacturer of silk yarn to any registered person), used vehicles, seized and confiscated goods, old and used goods, waste and scrap (when supplied by Central Government, State Government, Union Territory or any local authority to any registered person), priority sector lending certificate – when supplied by registered person to any registered person, etc. are taxable under reverse charge³.

B. Supply of services taxable under reverse charge under section 9(3) of the CGST Act, i.e. the services where tax is payable by the recipient:

Notification No. 13/2017 CT (R) dated 28.06.2017 as amended has notified the following categories of supply of services wherein whole of the tax shall be paid on reverse charge basis by the recipient of services:

S. No.	Category of supply of services	Supplier of service	Recipient of Service
1	Supply of services by a Goods Transport Agency (GTA) in respect of transportation of goods by road to- (a) any factory registered under or	Goods Transport Agency (GTA) <i>[Please refer the analysis given subsequently.]</i>	(a) Any factory registered under or governed by the Factories Act, 1948; or (b) any society registered under the

³ Examples of goods on which tax is payable by the recipient under reverse charge have been given hereunder only for the knowledge of the students. These are not relevant for examination purposes.

	governed by the Factories Act, 1948; or (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person.		Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person; located in the taxable territory. [Hereinafter referred as Specified recipients]
However, reverse charge mechanism (RCM) shall not apply to services provided by a GTA, by way of transport of goods in a goods carriage by road to-			

- (a) a Department/ establishment of the Central Government/ State Government/ Union territory; or
- (b) local authority; or
- (c) Governmental agencies,
- which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services⁴.

Further, nothing contained in this entry shall apply where, -

- i. the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge; and**
- ii. the supplier has issued a tax invoice to the recipient charging CGST at the applicable rates and has made the prescribed declaration on such invoice issued by him.**

2	Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly. "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.	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory.

⁴ These services have been simultaneously exempted from GST vide entry 21B of Notification No. 12/2017 CT(R) dated 28.06.2017. Thus, there will be no tax liability in this case. [Refer Chapter 4: Exemptions from GST in this Module of the Study Material for discussion on this exemption].

3	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in taxable territory.
4	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.
5A	Services supplied by Central Government, State Government, Union	Central Government, State	Any person registered under the CGST Act, 2017

	territory/ local authority by way of renting of immovable property to a person registered under CGST Act, 2017	Government, Union territory or local authority	[read with section 20(v) of IGST Act, 2017].
5AA	<i>Service by way of renting of residential dwelling to a registered person</i>	<i>Any person</i>	<i>Any registered person</i>
5B	Services supplied by any person by way of transfer of development rights (TDR) or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter
5C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter ⁵	Any person	Promoter

⁵ Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer are exempt subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.

Exemption of TDR, FSI, long term lease (premium) is withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. In such cases, the liability to pay tax on TDR, FSI, long term lease (premium) has been shifted from land owner to builder under the reverse charge mechanism (RCM) – as illustrated in table above.

6	Services supplied by a director of a company/body corporate to the said company/body corporate.	A director of a company or a body corporate <i>[Please refer the analysis given subsequently.]</i>	Company or a body corporate located in the taxable territory.
7	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.
9	Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.
9A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under section	Author	Publisher located in the taxable territory.

	13(1)(a) of the Copyright Act, 1957 relating to original literary works to a publisher.		
	However, an author can choose to pay tax under forward charge if- (i) he has taken registration under the CGST Act and filed a declaration, in the prescribed form, that he exercises the option to pay CGST on the said service under forward charge in accordance with section 9(1) and to comply with all the provisions as they apply to a person liable for paying the tax in relation to the supply of any goods and/or services and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option; (ii) he makes a declaration on the invoice issued by him in prescribed form to the publisher.		
10	Supply of services by the members of Overseeing Committee to Reserve Bank of India (RBI)	Members of Overseeing Committee constituted by RBI	RBI
11	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership (LLP) firm to bank or non-banking financial company (NBFCs).	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or LLP firm	A banking company or a NBFC, located in the taxable territory
12	Services provided by business facilitator to a banking company.	Business facilitator	A banking company, located in the taxable territory

13	Services provided by an agent of business correspondent to business correspondent.	An agent of business correspondent	A business correspondent, located in the taxable territory.
14	Security services (services provided by way of supply of security personnel) provided to a registered person. However, nothing contained in this entry shall apply to: (i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or	Any person other than a body corporate	A registered person, located in the taxable territory.

	(ii) a registered person paying tax under composition scheme.		
15	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person, other than a body corporate who supplies service to a body corporate & doesn't issue an invoice charging CGST @6% to service recipient. <i>[Please refer the analysis given subsequently.]</i>	Any body corporate located in the taxable territory.
16	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India, as amended	Lender i.e., a person who deposits securities registered in his name/in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under Scheme of SEBI	Borrower i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI.

🔔 All the above services have also been notified for reverse charge under IGST Act vide Notification No. 10/2017 IT (R) dated 28.06.2017 as

amended. In addition to them, following additional services are also notified by said notification for reverse charge under IGST purposes:

S. No.	Category of supply of service	Supplier of service	Recipient of Service
1.	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient [see definitions].
2.	Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory	Importer, located in the taxable territory. Importer, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer [Section 2(26) of the Customs Act, 1962].

For purpose of this above services, following explanations shall apply-

- (a) The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.
- (b) **Body Corporate:** has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.

As per section 2(11) of the Companies Act, 2013, body corporate or corporation includes a company incorporated outside India, but does not include—

- (i) a co-operative society registered under any law relating to co-operative societies; and
 - (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.
- (c) the business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.
- (d) the words and expressions used and not defined in reverse charge notification but defined in the CGST Act, the IGST Act, and the UTGST Act shall have the same meanings as assigned to them in those Acts.
- (e) Limited Liability Partnership formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.
- (f) Insurance agent means an insurance agent licensed under section 42 of the Insurance Act, 1938 who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance [Section 2(10) of the Insurance Act, 1938].
- (g) Renting of immovable property means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.
- (h) the provisions of reverse charge notification, in so far as they apply to the Central Government, State Government, shall also apply to the Parliament and State Legislature, **Courts and Tribunals**.

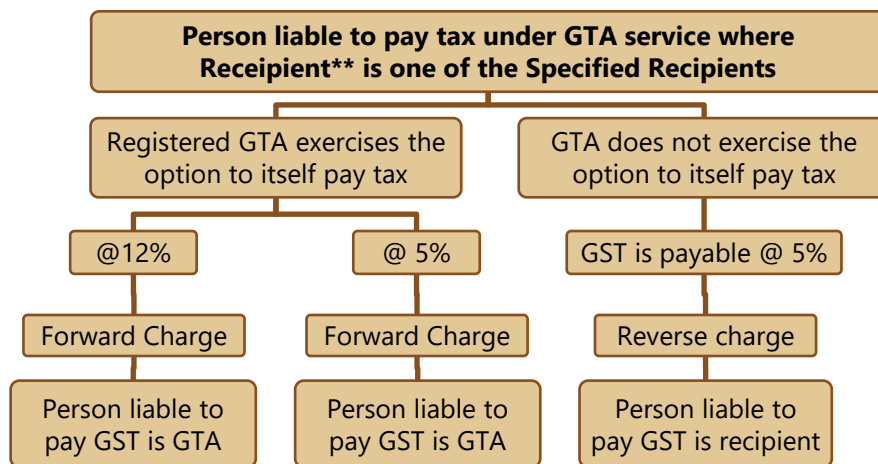
Person liable to pay GST on GTA Services

GTA services are taxable at the following two rates:

- (i) **@ 5%** (2.5% CGST+2.5% SGST/UTGST or 5% IGST) where GTA has not taken the Input Tax Credit (ITC) on goods or services used in supplying GTA service (there can be either of the cases - where GTA exercises the option to itself pay GST at said rate or does not exercise the option to itself pay GST at said rate, on services supplied by it) or
- (ii) **@ 12%** (6% CGST+6% SGST/UTGST or 12% IGST) where GTA exercises the option to itself pay GST at said rate on services supplied by it. In this case, there is no restriction on availing ITC on goods or services used in supplying GTA service by GTA.



In the following paras, we have explained as to who is the person liable to pay tax in case of each of the above two rates:



Note - Where recipient is other than the specified recipients (Unregistered individual end consumer or unregistered casual taxable person), GST will be exempt – Discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material.

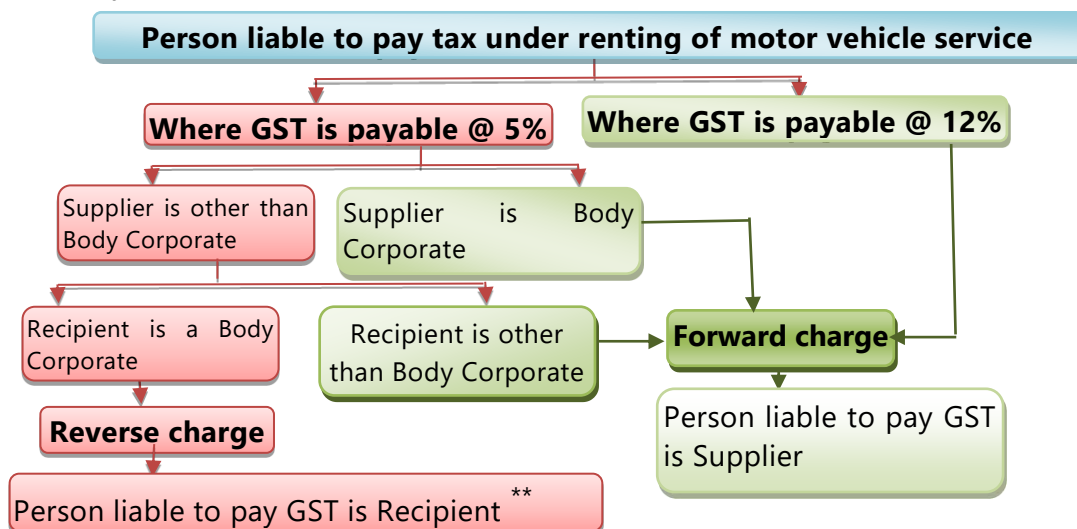
**** Recipient of GTA service** is the person who pays/is liable to pay freight for transportation of goods by road in goods carriage, located in the taxable territory.

Person liable to pay GST on renting of motor vehicles service

Service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient are taxable at the following two rates:

- (i) **@ 5%** (2.5% CGST+2.5% SGST/UTGST or 5% IGST) provided supplier of services has taken only the limited ITC (of input services in the same line of business) or
- (ii) **@ 12%** (6% CGST+6% SGST/UTGST or 12% IGST) where supplier of services opts to pay GST at said rate. In this case, there is no restriction on availing ITC on goods or services used in supplying renting of motor vehicles service by the supplier of service.

In the following paras, we have explained as to who is the person liable to pay tax in case of each of the above two rates⁶:



^{**} It is important to note here that when any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure under RCM. Thus, the notification specifies that RCM is applicable here only when the supplier does not issue an invoice charging GST @12% (6% CGST+6% SGST/UTGST or 12% IGST) from the service recipient.

⁶ Entry 15 of Notification No. 13/2017 CT (R) dated 28.06.2017 read with Circular No. 130/49/2019 GST dated 31.12.2019

Now there may arise a doubt as to whether RCM is applicable on:

(i) service of renting of motor vehicle designed to carry passengers

or

(ii) service of transportation of passengers.

It is clarified⁷ that there is a clear distinction between the two services which is as under:

A. *The two services fall under two different headings in the Tariff.*

B. (i) *Services of renting of motor vehicles designed to carry passengers covers:*

- *renting of motor vehicle*
- *for transport of passengers*
- *for a period of time*
- *where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.*

(ii) *'Passenger transport services' covers passenger transport services over pre-determined routes on pre-determined schedules.*

Accordingly, where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under 'services of renting of motor vehicles designed to carry passengers', and the body corporate shall be liable to pay GST on the same under RCM.

Thus, reverse charge would apply on act of renting of vehicles by body corporate subject to fulfilment of other conditions prescribed for this purpose and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under 'passenger transport

⁷ vide Circular No. 177/09/2022 GST dated 03.08.2022

services' and the body corporate shall not be liable to pay GST on the same under RCM.

Taxability of remuneration paid to the Director

In order to determine the leviability of tax on the remuneration paid to the directors, we first need to ascertain whether the director is an employee of the company or not. Following two situations are possible:

- (i) Services provided by the **independent directors**⁸/those directors (by whatever name called) who are **not employees of the said company** to such company, in lieu of remuneration as the consideration for the said services, are clearly **outside the scope of Schedule III** of the CGST Act⁹ and are therefore taxable. As seen in the table given above illustrating the reverse charge services (Entry No. 6), such remuneration paid to the directors is taxable in hands of the company, on **reverse charge basis**.



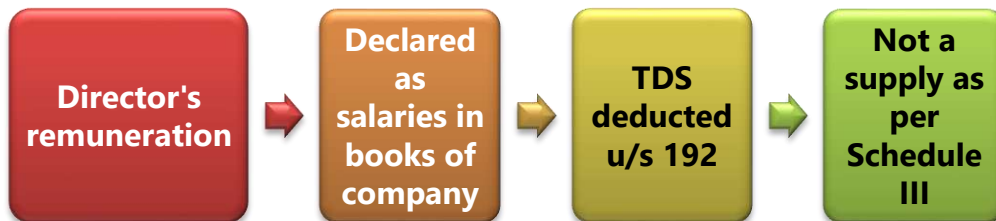
- (ii) In case where it is ascertained that a director, irrespective of name and designation, is an employee, next step would be to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service".

⁸ The definition of "**independent directors**" under section 149(6) of the Companies Act, 2013 read with rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that the **independent director should not have been an employee of the company.**

⁹ As per Para 1 of Schedule III, services by an employee to the employer in the course of or in relation to his employment are non-supplies, i.e. they are neither supply of goods nor supply of services. The provisions of Schedule III have been discussed in detail in Chapter 1 – Supply under GST in this Module of the Study Material.

The part of **director's remuneration** which is **declared as Salaries** in the books of a company and subjected to TDS under section 192 of the Income-tax Act (IT Act), are **not taxable** being consideration for services by an employee to the employer in the course of or in relation to his employment **in terms of Para 1 of Schedule III**.

Further, the part of employee **director's remuneration which is declared separately other than salaries** in the company's accounts and subjected to TDS under section 194J of the IT Act as fees for professional or technical services are **treated as consideration** for providing services which are **outside the scope of Schedule III** and is therefore, taxable. Besides, as already discussed, the recipient of the said services i.e. the company, is liable to discharge the applicable GST on it on **reverse charge basis**¹⁰.



Tax payable by the electronic commerce operator (ECO) on notified services:

The Government may, on the recommendations of the GST Council, notify specific categories of services the tax [CGST/SGST/IGST] on supplies of which shall be paid by the ECO if such services are supplied through it. **ECO** is any person who owns/operates/manages an electronic platform for supply of goods/services/both. *The provisions relating to ECO will be discussed in detail in Chapter 12 – Electronic Commerce Transactions in Module 2 of this Study Material.*

Classification under GST

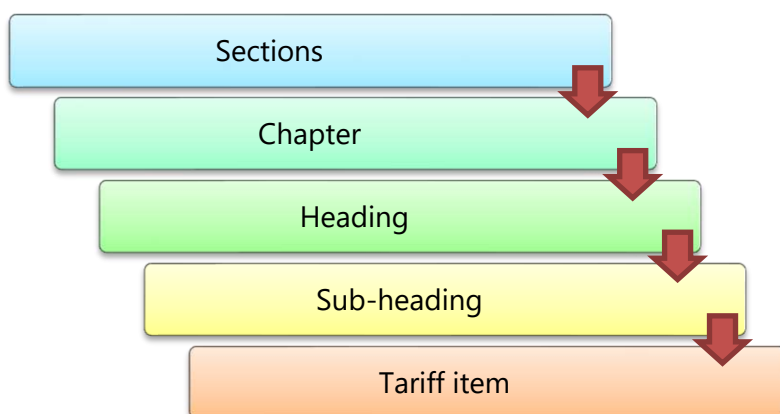
In order to determine the rate applicable on a particular supply of goods or services, one needs to first determine the classification of such goods or services. Classification of goods and services assumes significance since there are different

¹⁰ as clarified vide Circular No 140/10/2020 GST dated 10.06.2020

rates prescribed for supply of different goods and services. Therefore, classification is crucial for determining the rate of tax applicable on a particular product or service.

Classification of Goods

Classification of goods means identification of the chapter, heading, sub-heading and tariff item in which a particular product will be classified.



Chapter, heading, sub-heading and tariff item are referred in the Schedules of rate notification for goods under GST are the Chapter, heading, sub-heading and tariff item of the First Schedule to the Customs Tariff Act, 1975. Indian Customs Tariff is based on HSN. HSN stands for Harmonized System of Nomenclature.

It is a multipurpose international product nomenclature developed by the World Customs Organization (WCO) for the purpose of classifying goods across the World in a systematic manner.

It comprises of about 5,000 commodity groups; each identified by a 6-digit code [code can be extended], arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification. India has extended the HSN codes upto 8-digits.

Along the lines of HSN, the Indian Customs Tariff has a set of Rules of Interpretation of the First Schedule and General Explanatory notes. These rules and the general explanatory notes give clear direction as to how the nomenclature in the schedule is to be interpreted.

These **Rules for Interpretation** including section and chapter notes and the General Explanatory Notes of the First Schedule¹¹ **apply to the interpretation of the rate notification for goods under GST also.**

Consequently, under GST, goods are classified on the basis of HSN in accordance with the **Rules for the Interpretation** of the Customs Tariff. *The same have been discussed in Chapter 3 – Classification of Imported and Export Goods in Module 4 of this Study Material.*

Once classification for a product has been determined on this basis, applicable rate has to be determined as per the rate prescribed in the rate notification issued under GST.

Classification of Services

A new **Scheme of Classification of Services** has been devised under GST. It is a modified version of the United Nations Central Product Classification.

Under this scheme, the services of various descriptions have been classified under various sections, headings and groups. Chapter 99 has been assigned for services. This chapter has following sections:

Section 5 Construction Services

Section 6 Distributive Trade Services; Accommodation, Food and Beverage Service; Transport Services; Gas and Electricity Distribution Services

Section 7 Financial and related services; real estate services; and rental and leasing services

Section 8 Business and Production Services

¹¹ **Sections:** A group of Chapters representing a particular class of goods.

Chapters: Each section is divided into various chapters and sub-chapters. Each chapter contains goods of one class.

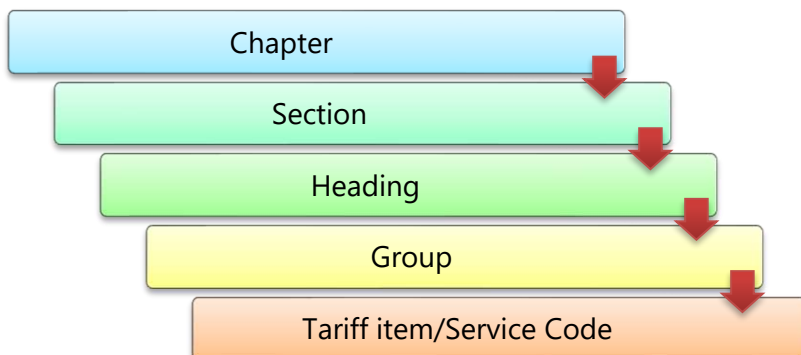
Chapter notes: They are mentioned at the beginning of each chapter. These notes are part of the statute and hence have the legal authority in determining the classification of goods.

Heading: Each chapter and sub-chapter is further divided into various headings.

Sub-heading: Each heading is further divided into various sub-headings.

Section 9 Community, social and personal services and other miscellaneous services

Each section is divided into various headings which is further divided into Groups. Its further division is made in the form of 'Tariff item'/ Service Codes.



Rate of tax is determined in accordance with the Service Code in which the service is classified.

GST Rates prescribed for various goods



Broadly, seven rates of **CGST** have been notified in seven Schedules of rate notification for goods, viz., 0.125%, 0.75%, 1.5%, 2.5%, 6%, 9% and 14%. SGST/ UTGST at the equivalent rate is also leviable.

With regard to **IGST**, broadly seven rates have been notified in seven Schedules of rate notification for goods, viz., 0.25%, 1.5%, 3%, 5%, 12%, 18% and 28%¹².

Certain specified goods have been exempted from tax.



¹² Students may refer the CBIC website for the complete Schedule of GST Rates for goods for knowledge purpose.

GST Rates prescribed for various services



Broadly, six rates of **CGST** have been notified for services, viz., 0.75%, 2.5%, 3.75%, 6%, 9% and 14%¹³. Equivalent rate of SGST/ UTGST is also leviable.



For **IGST**, six rates have been notified for services, viz., 1.5%, 5%, 7.5%, 12%, 18% and 28%¹⁴¹⁵.

For certain specified services, nil rate of tax has been notified.

Services of gambling, services by way of admission to entertainment events/access to amusement facilities including (a) casinos, or race club, clubs or any place having casinos or race clubs or (b) sporting event such as IPL and the events like IPL, services provided by a race club by way of totalisator or a license to bookmaker in such club, gambling etc. attract the highest rate of 28% (CGST @ 14% and SGST @ 14% or IGST @ 28%).

A number of services are subject to a lower rate of 5% (CGST @ 2.5% and SGST @ 2.5% or IGST @ 5%). For instance, GTA service is taxed @ 5% subject to the condition that credit of input tax charged on goods/services used in supplying said service has not been taken. Similarly, tax rate for supply of restaurant service, other than at 'specified premises'¹⁶, is 5% without any input tax credit.

Services not covered under any specific heading are taxed at the rate of 18% (CGST @ 9% and SGST @ 9% or IGST @ 18%).

In the following paras, applicability of GST in real estate sector has been briefly discussed:

¹³ notified vide Notification No. 11/2017 CT (R) dated 28.06.2017

¹⁴ notified vide Notification No. 8/2017 IT (R) dated 28.06.2017.

¹⁵ Students may refer the CBIC website for the complete Schedule of GST Rates for services for knowledge purposes.

¹⁶ "Specified premises" means premises providing "hotel accommodation" services having declared tariff of any unit of accommodation above ` 7,500 per unit per day or equivalent.

GST rates in real estate sector

The effective rate of GST on real estate sector for the new projects by promoters are as follows:

- (i) 1% without ITC on construction of **affordable houses** (area 60 sqm in metros/ 90 sqm in non-metros and value upto ` 45 lakh).
- (ii) 5% without ITC is applicable on construction of:
 - (a) all houses other than affordable houses, and
 - (b) commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions:

Above tax rates shall be available subject to following conditions:

- (a) ITC shall not be available.
- (b) 80% of inputs and input services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be purchased from registered persons¹⁷.

However, if value of inputs and input services purchased from registered supplier is less than 80%, promoter has to pay GST on reverse charge basis, under section 9(4) [discussed earlier], at the

**Supply of services
notified under
section 9(4)**

¹⁷ Discussion in above paras highlighted in brown is solely for the purpose of knowledge of the students and is not meant for examination purposes.

rate of 18% on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).

Further, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement on reverse charge basis, under section 9(4), at the applicable rate which is 28% (CGST 14% + SGST 14%) at present.

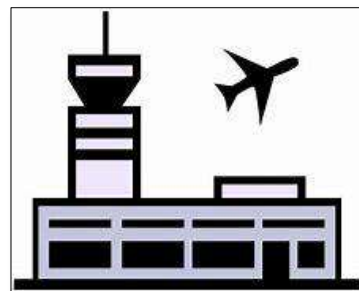
Moreover, GST on capital goods shall be paid by the promoter on reverse charge basis, under section 9(4) at the applicable rates [Notification No. 07/2019 CT (R) dated 29.03.2019/ Notification No. 07/2019 IT (R) dated 29.03.2019].

Levy of GST on Airport Dues

The authority managing the airport (airport operator¹⁸) charges the airport levies, namely, PSF¹⁹ and UDF²⁰ from the embarking passengers at any airport.

In view of the definition of consideration under section 2(31), PSF and UDF charged by airport operators are consideration for providing services to passengers.

Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST.



¹⁸ Generally, an airport licensee appoints an airport operator responsible for overseeing the airport's day-to-day operations and facility management. However, in smaller airports, the roles of airport licensee and airport operator may be fulfilled by the same entity.

¹⁹ PSF is the Passenger Service Fee (PSF) which the airport licensee may collect from the embarking passengers at such rates as specified by the Central Government. The airport licensee shall utilize the said fee for infrastructure and facilitation of the passengers.

²⁰ UDF is the User Development Fee (UDF) which the airport licensee may levy and collect, at a major airport, at the prescribed rate.

PSF and UDF are levied by the airport operators but are collected by the airlines. These charges are collected by the airline as an agent of passengers and is not a consideration for any service provided by the airlines.

Thus, the amount so recovered by airlines will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under rule 33 of the CGST Rules²¹. It is the airport operator which is liable to pay GST on UDF and PSF.

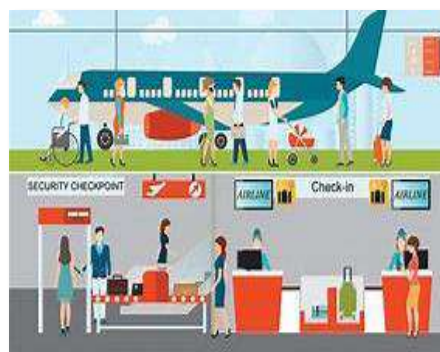
The airline should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport operator, in the invoice issued by airlines to its passengers.

The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator.

The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines (at the time of issue of air ticket and the same is remitted by airlines to airport operators).

Since, the airport operators are collecting PSF and UDF inclusive of GST, there is no question of their not paying GST collected by them to the Government [Circular No. 115/34/2019 GST dated 11.10.2019].



²¹ Rule 33 of the CGST Rules has been discussed in detail in Chapter 6 - Value of Supply in this Module of the Study Material.



5. COMPOSITION LEVY [SECTION 10 OF THE CGST ACT]

 STATUTORY PROVISIONS	
Section 10	Composition levy
Sub-section	Particulars
(1)	Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding,—
	(a) one percent. ²² of the turnover in State or turnover in Union territory in case of a manufacturer
	(b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
	(c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers
	subject to such conditions and restrictions as may be prescribed.
	Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not

²² Rate of tax prescribed in case of a manufacturer is half percent of the turnover in State/UT. The same has been discussed in detail in subsequent paras.

	exceeding one crore and fifty lakh rupees²³, as may be recommended by the Council. Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten percent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher. Explanation - For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.
(2)	The registered person shall be eligible to opt under sub-section (1), if— (a) save as provided in sub-section (1), he is not engaged in the supply of services (b) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act (c) he is not engaged in making any inter-State outward supplies of goods or services (d) he is not engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52; and (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council (f) he is neither a casual taxable person nor a non-resident taxable person. Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-

²³ The turnover limit for composition levy has been increased from ` 50 lakh to ` 1.5 crore vide Notification No. 14/2019 CT dated 07.03.2019.

	tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.
(2A)	Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not— (a) engaged in making any supply of goods or services which are not leviable to tax under this Act; (b) engaged in making any inter-State outward supplies of goods or services; (c) engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52; (d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and (e) a casual taxable person or a non-resident taxable person. Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.
(3)	The option availed of by a registered person under sub-section (1) or sub-section (2A), as the case may be, shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) or sub-section (2A), as the case may be.

(4)	A taxable person to whom the provisions of sub-section (1) or, as the case may be, sub-section (2A) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
(5)	If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.
	Explanation 1 — For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall include the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. Explanation 2 — For the purposes of determining the tax payable by a person under this section, the expression “turnover in State or turnover in Union territory” shall not include the value of following supplies, namely:— (i) supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and (ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.



ANALYSIS

(1) Overview of the Scheme

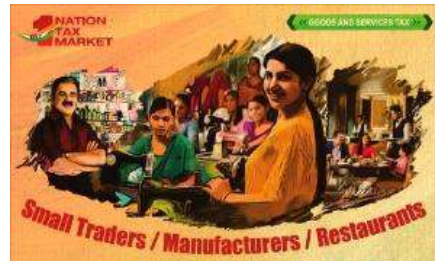
The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to a prescribed limit. The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers.

Voluntary and optional scheme



Initially, the scheme was designed to benefit the small traders, manufacturers and

restaurant service providers. So, the scheme was fundamentally for the suppliers of goods and only for restaurant service providers (not supplying alcoholic liquor for human consumption). However, subsequently, suppliers availing composition scheme were permitted to supply other services also, though only upto a small specified value. This scheme is contained in **sub-sections (1) and (2) of section 10 of the CGST Act (hereinafter referred to as composition scheme for goods)**.



Under this scheme, suppliers of goods have the option to pay tax at the concessional rate of 1% (CGST + SGST/UTGST) of the turnover and restaurant service providers (not supplying alcoholic liquor for human consumption) have the option to pay tax @ 5% (CGST + SGST/UTGST) of the turnover. Small taxpayers with an aggregate turnover in the preceding financial year up to ₹ 1.5 crore are eligible to pay tax at these rates in the current financial year upto an aggregate turnover of ₹ 1.5 crore. However, a person engaged exclusively in supply of services other than restaurant service is not eligible for this composition scheme stipulated under sub-sections (1) and (2).



In order to provide benefit of composition scheme to persons engaged in supply of services other than restaurant service whose aggregate turnover in the preceding financial year is up to ₹ 50 lakh, a scheme to pay tax @ 6% (CGST +



SGST/UTGST) of the turnover was introduced subsequently. A mixed supplier who is primarily engaged in supplying services other than restaurant service along with marginal supply of goods could also avail the benefit

of this scheme. The provisions of this scheme are contained in sub-section (2A) of section 10²⁴.

Essentially, the composition scheme under **sub-section (2A) (hereinafter referred to as composition scheme for services)** is



for small service providers like salon stylist, tailors, etc. This scheme provides an option to such suppliers to pay tax @ 6% of the turnover in the current financial year upto an aggregate turnover of ` 50 lakh.



Suppliers opting for composition levy need not worry about the classification of their goods or services or both, the rate of GST applicable on their goods and/ or services, etc. They are not required to raise any tax invoice, but simply need

**Simple annual
return
Quarterly
payment of tax**

**Easy compliance as
no elaborate
accounts and records
to be maintained**

to issue a Bill of Supply²⁵ wherein no tax will be charged from the recipient.

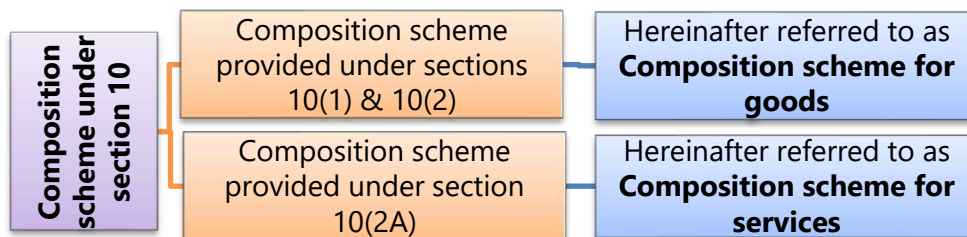
An eligible person opting to pay tax under the composition scheme shall, instead of paying tax on every invoice at the specified rate, pay tax at the prescribed percentage of his turnover every quarter through prescribed form [Form GST CMP 08]. At the end of a quarter, he would pay the tax, without availing the benefit of input tax credit. Return is to be filed annually by a composition supplier.

The provisions relating to composition levy are contained in section 10 of CGST Act, 2017 and Chapter-II [Composition Levy] of Central Goods and Services Tax (CGST) Rules, 2017. The said rules have been incorporated in the discussion in the following paras at the relevant places.

²⁴ This scheme was initially introduced with effect from 1st April, 2019 vide Notification No. 2/2019 CT (R) dated 07.03.2019. With effect from 01.01.2020, the provisions of this scheme have been incorporated in sub-section (2A) of section 10 vide the Finance (No. 2) Act, 2019. It is important to note that Notification No. 2/2019 CT (R) dated 07.03.2019 has not yet been rescinded and is still operational.

²⁵ Discussed in detail in Chapter-9: Tax Invoice, Credit and Debit Notes in Module-2 of this Study Material.

As seen above, section 10 stipulates two types of composition schemes –



Provisions relating to these schemes have been discussed in detail in subsequent paras:

(2) **Turnover limit for opting for composition levy [Section 10(1), 10(2A) & 10(3)]**

Turnover limit in case of composition levy for goods

Section 10(1) provides the turnover limit of ` 50 lakh in the preceding financial year for becoming eligible for composition levy for goods. However, proviso to section 10(1) empowers the Government to increase the said limit of ` 50 lakh upto ` 1.5 crore, on the recommendation of the GST Council. In view of said power of the Government, the turnover limit for composition levy for goods has been increased from ` 50 lakh to ` 1.5 crore vide **Notification No. 14/2019 CT dated 07.03.2019**.

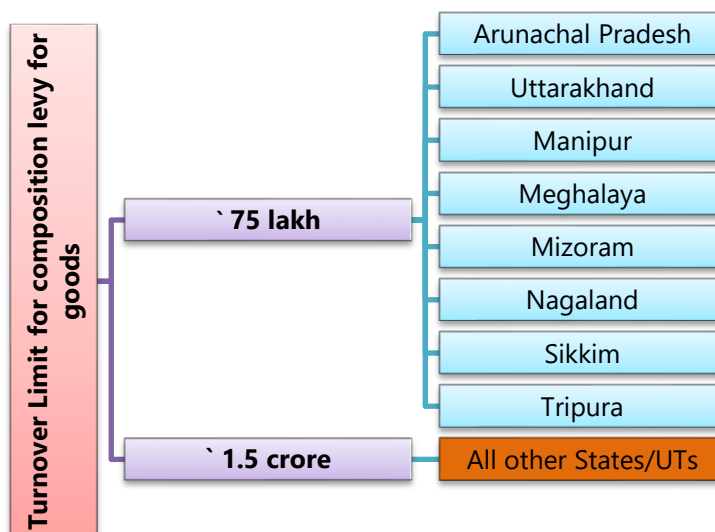


However, the said notification further stipulates that the turnover limit for composition levy for goods shall be ` 75 lakh **in respect of 8 of the Special Category States** namely:

Special Category States	
Arunachal Pradesh	Mizoram
Uttarakhand	Nagaland
Manipur	Sikkim
Meghalaya	Tripura

In case of Special Category States of **Assam, Himachal Pradesh and Jammu and Kashmir**, the turnover limit will be ` 1.5 crore only.

Thus, if the aggregate turnover of a supplier in a State/UT other than Special Category States (except Assam, Himachal Pradesh and Jammu and Kashmir) is upto ` 1.5 crore in the preceding financial year, said supplier is eligible for composition scheme for goods. Further, it is important to note that the aggregate turnover is computed on all India basis for a person having same Permanent Account Number (PAN) – *Refer the definition of aggregate turnover discussed in subsequent paras.*



(3) A shoes' dealer 'Prithviraj' has offices in Maharashtra and Goa. He makes intra-State supply of goods from both these offices.

In order to determine whether 'Prithviraj' is eligible to avail benefit of the composition scheme for goods, turnover of both the offices would be taken into account and if the same does not exceed ` 1.5 crore in the preceding financial year, 'Prithviraj' can opt to avail the composition levy scheme (subject to fulfilment of other prescribed conditions) for goods for both the offices in the current financial year.

Further, the option of a registered person to avail composition scheme for goods shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the threshold limit of ` 1.5 crore [ ` 75 lakh in 8 specified special category States] [Section 10(3)].

Turnover limit in case of composition levy for services

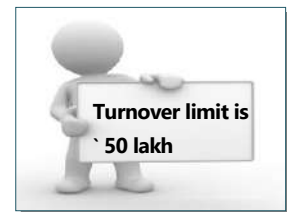
Section 10(2A) provides the turnover limit of ` 50 lakh in the preceding financial year for becoming eligible for composition levy for services.



(4) A hair stylist 'Billoo Barber' has his salon in Delhi and Haryana, making intra-State supplies.

In order to determine whether 'Billoo' is eligible to avail benefit of the composition scheme for services, turnover of both the salons would be taken into account and if the same does not exceed ` 50 lakh in the preceding financial year, 'Billoo' can opt to avail the composition levy scheme (subject to fulfilment of other prescribed conditions) for services for both the salons in the current financial year.

Further, the option of a registered person to avail composition scheme for services shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the threshold limit of ` 50 lakh [Section 10(3)].



To summarise, a registered person opting for composition scheme for goods should have an aggregate turnover upto ` 1.5 crore [ ` 75 lakh in 8 specified Special Category States] in the preceding FY and he can avail the benefit of said scheme²⁶ for the current FY till the time his aggregate turnover in the current FY does not exceed ` 1.5 crore/ ` 75 lakh.

Similarly, a registered person opting for composition scheme for services should have an aggregate turnover upto ` 50 lakh in the preceding FY and he can avail the benefit of said scheme for the current FY till the time his aggregate turnover in the current FY does not exceed ` 50 lakh.

From the above discussion, it is apparent that the term aggregate turnover is of utmost importance. So, let us understand this term in detail.

²⁶ Intimation for opting to pay tax under composition scheme must be filed prior to the commencement of the FY for which said option is exercised [Rule 3].

(3) Aggregate turnover under composition levy [Section 2(6) read with explanation 1 to section 10]

The definition of aggregate turnover as contained in section 2(6) is analysed as follows:

The aggregate turnover is the sum of value of all outward supplies falling in the following four categories:

- ☐ Taxable supplies
- ☐ Exempt supplies
- ☐ Exports of goods or services or both
- ☐ Inter-State supplies

Aggregate turnover

It excludes:

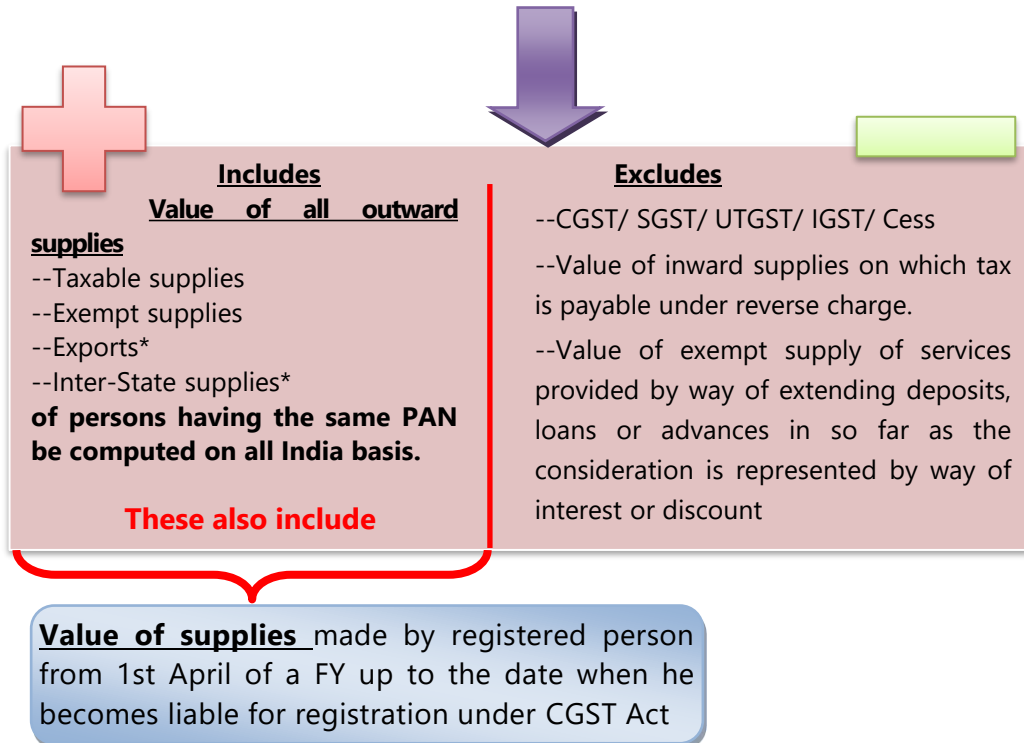
- ☐ The value of inward supplies on which tax is payable by a person on reverse charge basis
- ☐ Taxes including cess paid under GST law.

It is computed on all India basis for a person having same Permanent Account Number (PAN).

Further, explanation 1 to section 10 clarifies that for the purposes of computing **aggregate turnover of a registered person for determining his eligibility to pay tax under this section**, aggregate turnover **includes** value of supplies from 1st April of a FY up to the date of his becoming liable for registration and **excludes** value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

On combined reading of the aforesaid provisions, the method of computing the aggregate turnover for the purpose of determining the eligibility of a registered person for the composition scheme [for both goods and services] can be depicted in a diagram as follows:

While computing the threshold limit of ` 1.5 crore/ ` 75 lakh / ` 50 lakh, inclusions in and exclusions from 'aggregate turnover' are as follows:



**Note: The value of exports and inter-State supplies are relevant only while determining the aggregate turnover of the preceding FY. These values are not relevant for determining the aggregate turnover of the current FY in which the composition supplier has opted for composition levy as he is not permitted to make inter-State supplies and exports in the said FY²⁷.*

(4) **Rates of tax under the composition levy scheme [Section 10(1) and section 10(2A) read with rule 7]**

Rule 7 prescribes the rates at which tax is payable by a registered person opting for composition levy – composition levy for goods and composition levy for services.

²⁷ Section 10(2)(c)

Rates of tax in case of composition levy for goods

A registered person opting for composition levy for goods shall pay tax calculated at the prescribed rates [mentioned in table below] during the current FY, in lieu of the tax payable by him under regular scheme:

S. No.	Category of registered persons	Rate of tax
1	Manufacturers, other than manufacturers of notified goods, i.e. ice cream, pan masala, tobacco, aerated waters, fly ash bricks; fly ash aggregate, fly ash blocks, bricks of fossil meals or similar siliceous earths, building bricks, earthen or roofing tiles.	$\frac{1}{2}\%$ ²⁸ of the turnover in the State/Union territory
2	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II [referred to as "Restaurant service" in discussion under this chapter]	$2\frac{1}{2}\%$ ²⁹ of the turnover in the State/Union territory
3	Any other supplier eligible for composition levy under section 10 of CGST Act and Chapter-II [Composition Levy] of CGST Rules.	$\frac{1}{2}\%$ ³⁰ of turnover of taxable supplies of goods & services in the State/Union territory

Note - Students may note that the 'aggregate turnover' of preceding FY is relevant for the purpose of determining eligibility to avail composition scheme, but the tax has to be paid in accordance with the applicable rates on the 'turnover' (or 'turnover of taxable supplies' in case of third category of registered persons above) in a State/UT. The concept of 'Turnover in the State/UT' under the composition levy has been explained subsequently in this chapter.

²⁸ Effective rate 1% (CGST+ SGST/UTGST)

²⁹ Effective rate 5% (CGST+ SGST/UTGST)

³⁰ Effective rate 1% (CGST+ SGST/UTGST)

Rates of tax in case of composition levy for services

A registered person opting for composition levy for services shall pay tax @ 3% [Effective rate 6% (CGST+ SGST/UTGST)] of the turnover of supplies of goods and services in the State or Union territory.

As seen above, since the tax under composition scheme has to be computed as a specified % of the turnover in State or turnover in Union territory, it is pertinent to understand what is turnover in State or turnover in Union territory.

(5) Turnover in State or turnover in Union territory under composition levy [Section 2(112) read with explanation 2 to section 10]

As per section 2(112), turnover in State/ turnover in Union territory means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within

a State or Union territory by a taxable

Turnover in State/ Union Territory

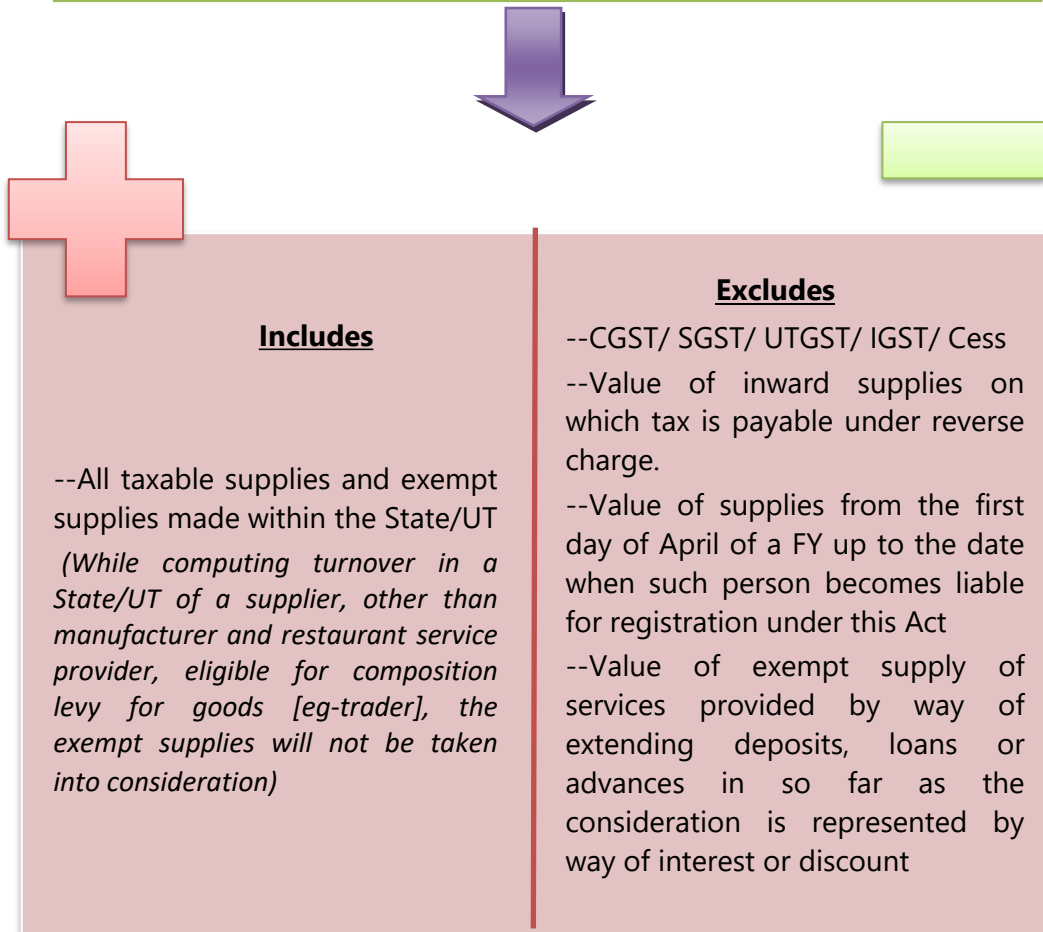
person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.

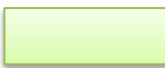
Further, explanation 2 to section 10 clarifies that for the purposes of **determining the tax payable by a person under this section**, the expression turnover in State or turnover in Union territory **shall not include** the value of following supplies, namely:

- (i) supplies from 1st April of a FY up to the date when such person becomes liable for registration under this Act; and
- (ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

On combined reading of the aforesaid provisions, the method of computing the **turnover in a State/UT for paying tax under the composition scheme** can be depicted in a diagram as follows:

While computing the Turnover in a State/UT to pay tax under composition levy, inclusions and exclusions are as follows:



 <u>Includes</u>	<u>Excludes</u> 
--All taxable supplies and exempt supplies made within the State/UT <i>(While computing turnover in a State/UT of a supplier, other than manufacturer and restaurant service provider, eligible for composition levy for goods [eg-trader], the exempt supplies will not be taken into consideration)</i>	--CGST/ SGST/ UTGST/ IGST/ Cess --Value of inward supplies on which tax is payable under reverse charge. --Value of supplies from the first day of April of a FY up to the date when such person becomes liable for registration under this Act --Value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount



(5) A photographer 'Champak' has commenced providing photography services in Delhi from April this year. His turnover for various quarters till December is as follows:

April-June	₹ 20 lakh
July-Sept	₹ 30 lakh
Oct-Dec	₹ 20 lakh

In the given case, since Champak has started the supply of services in the current financial year, his aggregate turnover in the preceding FY is Nil. Consequently, in the current FY, he is eligible for composition scheme for services. He becomes eligible for the registration when his aggregate turnover exceeds ₹ 20 lakh.

While registering under GST, he opts for composition scheme for services.

For determining his turnover of the State for payment of tax under composition scheme for services, turnover of April-June quarter [₹ 20 lakh] shall be excluded as the value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act are to be excluded for this purpose.

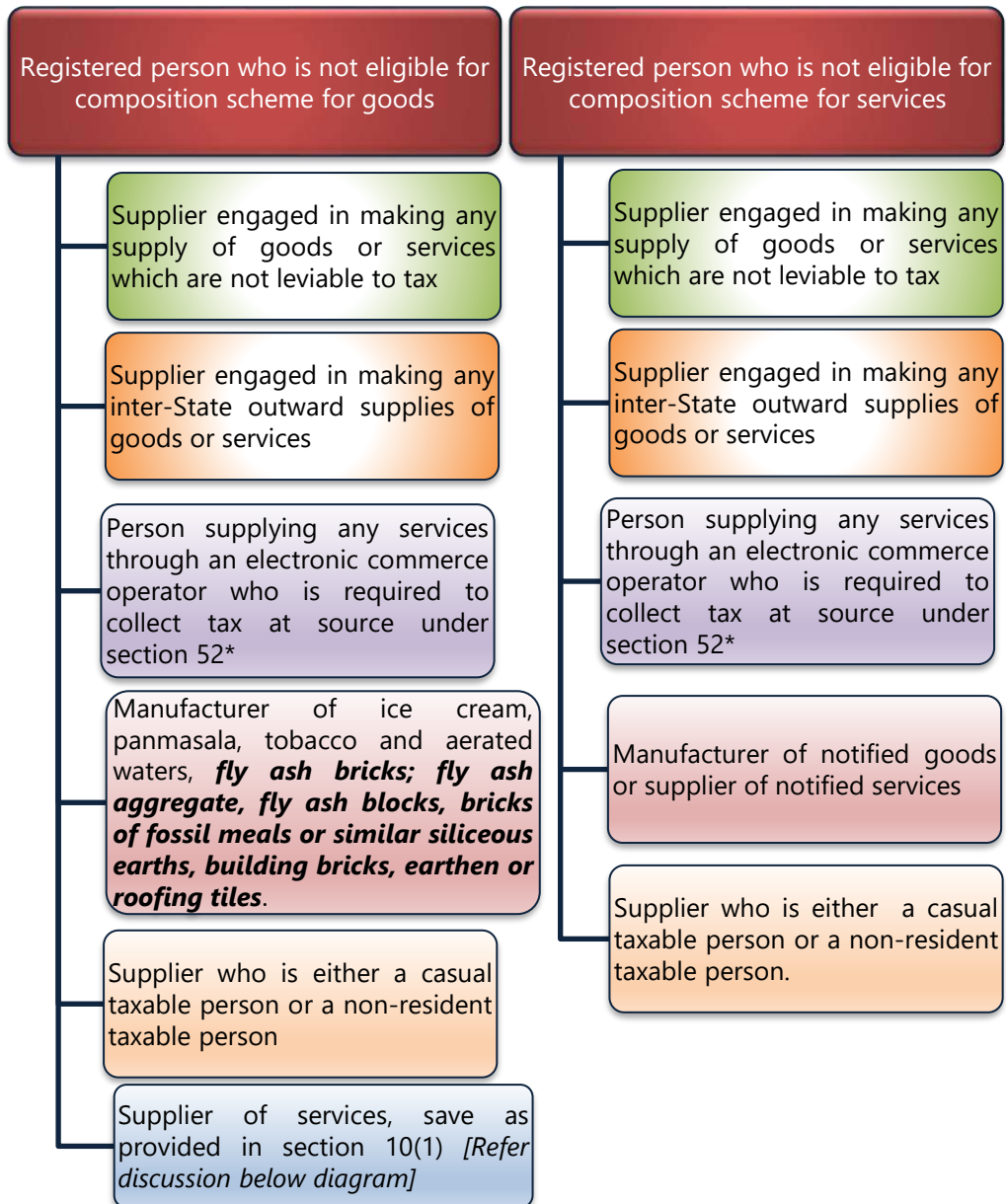
On next ₹ 30 lakh [turnover of July-Sept quarter], he shall pay tax @ 6% [3% CGST and 3% SGST], i.e. CGST ₹ 90,000 and SGST ₹ 90,000.

By the end of July-Sept quarter, his aggregate turnover reaches ₹ 50 lakh*.

Consequently, his option to avail composition scheme for services shall lapse by the end of July-Sept quarter and thereafter, he is required to pay tax at the normal rate of 18%. Thus, the tax payable for Oct-Dec quarter is ₹ 20 lakh × 18%, i.e. ₹ 3,60,000.

**while computing aggregate turnover for determining Champak's eligibility to pay tax under composition scheme, value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act (i.e. turnover of April-June quarter), are included.*

(6) Who are NOT eligible to opt for composition scheme? [Section 10(2) and (2A)]





There is no restriction on composition supplier to receive inter-State inward supplies of goods or services

A person engaged in marginal supply of services other than restaurant service also eligible for composition levy for goods [Second proviso to section 10(1) read with section 10(2)(a)]

Fundamentally, the composition scheme for goods can be availed in respect of goods and only one service namely, restaurant service. However, there are cases where a manufacturer/ trader is also engaged in supply of services other than restaurant service though the percentage of such supply of services is very small as compared to the supplies of goods. There may also be cases where a restaurant service provider is also engaged in supplying a small percentage of other services.

With a view to enable such taxpayers to avail of the benefit of composition scheme for goods, second proviso to section 10(1) permits marginal supply of services [other than restaurant services – not supplying alcoholic liquor for human consumption] for a specified value along with the supply of goods and/or restaurant service, as the case may be. This specified value is value not exceeding:

(a) 10% of the turnover in a State/UT in the preceding financial year

or

(b) ₹ 5 lakh,

whichever is higher.

Thus, it can be inferred that where the turnover of a registered person opting for composition scheme for goods is upto ₹ 50 lakh in the preceding financial year, he can supply services [other than restaurant services] upto a maximum value of ₹ 5 lakh in the current financial year. Further, where the turnover of a registered person opting for composition

scheme is more than ₹ 50 lakh and upto ₹ 1.5 crore in the preceding financial year, he can supply services [other than restaurant services] in the current financial year upto a maximum value of 10% of the turnover in a State/Union territory in the preceding financial year.



(6) Ramsewak is engaged in supply of goods. His turnover in preceding FY is ₹ 60 lakh. Since his aggregate turnover in the preceding FY does not exceed ₹ 1.5 crore, he is eligible for composition scheme for goods in current FY. Further, in current FY, he can supply services [other than restaurant services] upto a value of not exceeding:

(a) 10% of ₹ 60 lakh, i.e. ₹ 6 lakh

or

(b) ₹ 5 lakh,

whichever is higher.

Thus, he can supply services upto a value of ₹ 6 lakh in current FY. If the value of services supplied exceeds ₹ 6 lakh, he becomes ineligible for the composition scheme for goods and has to opt out of the same.

Interest income to be excluded for determining the value of turnover in a State or Union territory under second proviso to section 10(1) [Explanation to second proviso to section 10(1)]

Generally, businesses tend to save and invest money in the form of deposits, loans or advances. However, this way they get engaged in supply of service by way of extending deposits, loans or advances³¹ – a service other than restaurant service. And where the income from such services cause the value of services³² supplied to exceed the value referred in second proviso to section 10(1)³³ [10% of the turnover in the preceding FY in a State/Union territory or ₹ 5 lakh, whichever is higher], said business

³¹ It is, however, pertinent to note that services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount are exempt from GST – Discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material.

³² other than restaurant services

³³ as discussed in preceding paras

would have become ineligible for the composition scheme for goods and one has to opt out of the composition scheme. This can cause a lot of hardship to small businesses.

In view of the above, an explanation is inserted after second proviso to section 10(1) to clarify that for the purposes of second proviso to section 10(1), the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account for determining the value of turnover in a State or Union territory.

Under second proviso to section 10(1), a registered person opting for composition scheme may supply services [other than restaurant services] of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or ` 5 lakh, whichever is higher. **Thus, while computing value of services [other than restaurant services] as referred in this proviso, interest on loans/deposit/advances will not be taken into account.**

The provisions relating to composition levy discussed hereafter are applicable to both composition levy for goods as well as composition levy for services.

(7) Conditions and restrictions for composition levy [Rule 5]

Person opting for composition levy has to comply with the following conditions:

- ☐ he shall pay tax under section 9(3)/9(4)³⁴ (reverse charge) on inward supply of goods or services or both.
- ☐ he is neither a casual taxable person nor a non-resident taxable person
- ☐ he shall mention the words **“composition taxable person, not eligible to collect tax on supplies”** at the top of the bill of supply issued by him; and
- ☐ he shall mention the words **“composition taxable person”** on every notice or signboard displayed at a prominent



³⁴ wherever applicable

place at his principal place of business and at every additional place or places of business.

Further, where the goods held in stock by him are liable to be taxed under reverse charge under section 9(4)³⁵, the tax thereon has been paid under reverse charge under section 9(4).

In addition to the above conditions, **a registered person opting for composition scheme for goods must not be engaged in the manufacture of goods as notified under section 10(2)(e)**, during the preceding FY. The following goods have been hereby notified vide **Notification No. 14/2019 CT dated 07.03.2019** as amended:

Tariff item, subheading, heading or Chapter*	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa 
2106 90 20	Pan masala 
24	All goods, i.e. Tobacco and manufactured tobacco substitutes 
2202 1010	Aerated Waters 

³⁵ This condition applies in case where a builder/promoter opting for composition scheme has the stock of the goods on which he is required to pay GST on reverse charge basis under section 9(4) in one or more of the following cases:

- Builder/promoter must purchase at least 80% of inputs and input services used in supplying the service, from registered persons. In case of shortfall, he's required to pay tax under reverse charge on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).
- Where cement is received from an unregistered person, promoter/builder has to pay tax on supply of such cement under reverse charge and
- GST on capital goods is payable by the promoter on reverse charge basis.

6815	<i>Fly ash bricks; fly ash aggregate; Fly ash blocks</i>
6901 00 10	<i>Bricks of fossil meals or similar siliceous earths</i>
6904 10 00	<i>Building bricks</i>
6905 10 00	<i>Earthen or roofing tiles</i>

** as specified in the First Schedule to the Customs Tariff Act, 1975*

(8) Intimation of opting for composition levy [Rules 3 & 4]



(i) Intimation by person applying for registration:

Any person who is not registered and applies for registration may be given an option to pay tax under composition levy **in Part B of the registration form, viz., Form GST REG-01**. The same shall be considered as an intimation to pay tax under composition levy. Such intimation shall be considered only after the grant of registration to the applicant. The **option to pay tax under composition levy shall be effective from the date from which registration is effective**.

(ii) Intimation by a registered person: A registered person who opts to pay tax under the composition levy scheme shall **electronically file an intimation** in prescribed form on the GST Common Portal [www.gst.gov.in]. The intimation shall be filed **prior to the commencement of the FY** for which said option is exercised.

He shall also furnish the **statement in prescribed form** in accordance with the provisions of rule 44(4) [Discussed in detail in Chapter 7 – Input Tax Credit in Module 2 of this Study Material] **within 60 days** from the commencement of the relevant FY.

Any intimation in respect of any place of business in a State/UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

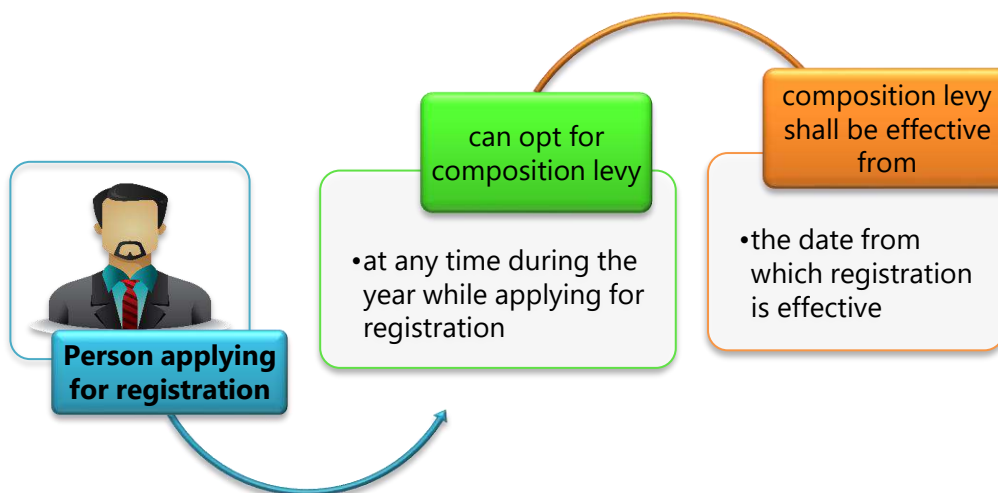
The option to pay tax under composition levy shall be effective from the beginning of the FY³⁶.

A person applying for registration can opt for composition at the time of applying for registration [this time being any time of the financial year] and composition levy shall be effective from the date from which registration is effective.

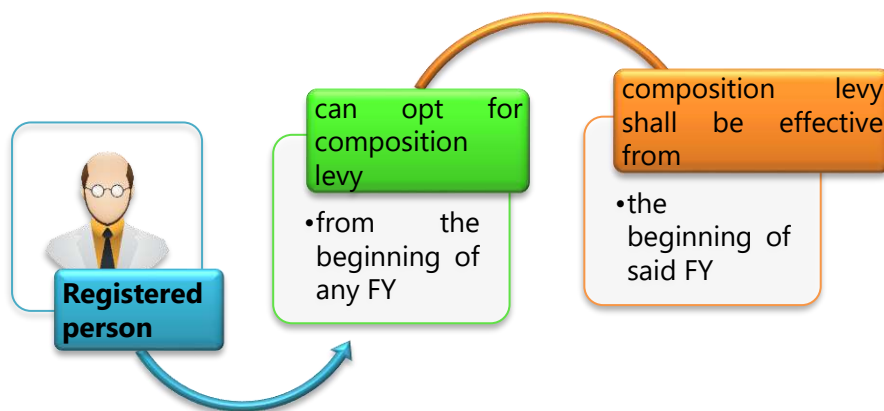


Summary

A registered person can opt for composition scheme from the beginning of any FY and composition levy shall be effective from the beginning of said FY. Intimation for opting to pay tax under composition scheme must be filed prior to the commencement of the FY for which said option is exercised.



³⁶ Registration shall be effective from the date on which **the person becomes liable to registration** where the application for registration has been submitted within a period of thirty days from such date. Where an application for registration has been submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the **grant of registration**. Discussed in detail in Chapter 8 – Registration in Module 2 of this Study Material.



(9) Validity of composition levy [Section 10(3) read with rule 6³⁷]

I. Withdrawal from the composition scheme by a taxpayer who ceases to satisfy any of the prescribed conditions

- ❑ The option exercised by a registered person to pay amount under composition levy shall remain valid so long as he satisfies all the conditions mentioned in the relevant section and rules. For instance, the option to pay tax under composition scheme lapses from the day on which aggregate turnover of a registered person exceeds the specified limit (` 1.5 crore/ ` 75 lakh/ ` 50 lakh) during the FY.
- ❑ Such person is required to pay tax under regular scheme under section 9(1) from the day he ceases to satisfy any of the conditions prescribed for composition levy. He shall issue tax invoice for every taxable supply made thereafter. Further, he is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event.
- ❑ The **effective date from which withdrawal from the composition scheme shall take effect** shall be the date indicated by him in his intimation, but such date may not be prior to the commencement of the financial year in which such intimation is being filed.

³⁷ read with Circular No. 77/51/2018 GST dated 31.12.2018

II. **Withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme**

- ☐ The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in prescribed form.
- ☐ The **effective date from which withdrawal from the composition scheme shall take effect** shall be the date indicated by him in his application, but such date may not be prior to the commencement of the financial year in which such application for withdrawal is being filed.

III. **Denial of option to pay tax under the composition scheme by tax authorities**

- ☐ Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under composition scheme or has contravened the provisions of the CGST Act or provisions of this Chapter, he may issue a show cause notice (SCN) to such person. Upon receipt of reply to SCN, the proper officer shall pass an order either accepting the reply, or denying the option to pay tax under composition scheme from the date of the option or from the date of the event concerning such contravention, as the case may be.
- ☐ **In case of denial of option to pay tax under composition levy by the tax authorities**, the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities. However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/ CGST Rules³⁸.

In each of the above cases, such person may furnish a statement in prescribed form containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn/denied, within a period of 30 days from the date from

³⁸ Circular No. 77/51/2018 GST dated 31.12.2018

which the option is withdrawn/ or from the date of the order denying composition scheme.

Any intimation or application for withdrawal or denial of the option to pay tax under section 10 in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.



(7) A person availing composition scheme during a financial year crosses the turnover of ` 1.5 crore on 9<sup>th</sup> of December. The option availed shall lapse from the day on which his aggregate turnover during the financial year exceeds ` 1.5 crore, i.e. on 9th December, in this case.

(10) Composition scheme to be adopted uniformly by all the registered persons having the same PAN [Proviso to section 10(2) and proviso to section 10(2A)]

All registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme.



(8) A dealer 'Kishorilal & Sons' has two offices in Delhi and is eligible for composition levy for goods. If 'Kishorilal & Sons' opts for the composition scheme for goods, both the offices would pay taxes under composition scheme and abide by all the conditions as may be prescribed for the said composition scheme.

(11) Composition scheme supplier cannot collect tax [Section 10(4)]

Taxable person opting for the composition scheme shall not collect tax from the recipient on supplies made by him. It implies that a composition scheme supplier cannot issue a tax invoice.

(12) Composition scheme supplier cannot enter credit chain [Section 10(4)]

Taxable person opting for the composition scheme shall not be entitled to any credit of input tax.

(13) Imposition of penalty in case of irregular availment of the composition scheme [Section 10(5)]

If a taxable person has paid tax under the composition scheme though he was not eligible for the scheme, the person would be liable to penalty and the provisions of section 73 or 74 of the CGST Act shall be applicable for determination of tax and penalty.



LET US RECAPITULATE

1. Extent & commencement of CGST Act/ SGST Act/ UTGST Act/ IGST Act

Applicability	CGST	SGST	UTGST	IGST
	Intra-State supply			Inter-State supply
States of India	✓	✓		✓
Union Territories with Legislature	✓	✓		✓
Union Territories without Legislature	✓		✓	✓

2. Levy and collection of CGST/IGST

Particulars	CGST	IGST
Levied on	Intra-State supplies of goods/services/both	Inter-State supplies of goods/services/both
Collected and paid by	Taxable person	
Supply outside purview of GST	Alcoholic liquor for human consumption	
Value for levy	Transaction value under section 15 of the CGST Act	

Rates	Rates as notified by Government. Maximum rate of CGST can be 20%.	IGST rate= CGST rate + SGST/UTGST rate Maximum rate of IGST can be 40%.
Supplies on which tax would be levied w.e.f. a notified date	☐ petroleum crude ☐ high speed diesel ☐ motor spirit (commonly known as petrol) ☐ natural gas and ☐ aviation turbine fuel	
Tax payable under reverse charge	☐ Supply of goods or services or both, notified by the Government. ☐ Supply of specified categories of goods or services or both by an unregistered supplier to specified class of registered persons.	
Tax payable by the electronic commerce operator	The Government may notify specific categories of services the tax on supplies of which shall be paid by electronic commerce operator (ECO) as if such services are supplied through it.	

3. Composition levy [Section 10]

Composition levy

- An option for specified categories of small taxpayers to pay GST at a very low rate on the basis of turnover.

Advantages

- Low rates of tax
- Hassle free simple procedures for such taxpayers
- Simple calculation of tax based on turnover
- A very simple annual return

Composition levy provided under section 10(1) and 10(2)

- Referred in this chapter as composition levy for goods

Composition levy provided under section 10(2A)

- Referred in this chapter as composition levy for services

Procedure for opting for the scheme

Category of persons	How to exercise option	Effective date of composition levy
New registration under GST	Intimation in the registration form	From the effective date of registration
Registered person opting for composition levy	Intimation in prescribed form	Beginning of the financial year

Turnover limit for composition levy**Turnover limit in preceding FY to opt for composition levy for goods**

For Special Category States except Assam, Himachal Pradesh and J&K

- ₹ 75 lakh

For remaining States

- ₹ 1.5 crore

Turnover limit in preceding FY to opt for composition levy for services

Turnover for composition levy for services

- ₹ 50 lakh in preceding financial year

Rates of tax

Composition scheme	Category of registered persons	Rate
For goods	Manufacturer	1% ($\frac{1}{2}\%$ CGST + $\frac{1}{2}\%$ SGST/UTGST) of turnover
	Restaurant service providers	5% ($2\frac{1}{2}\%$ CGST + $2\frac{1}{2}\%$ SGST/UTGST) of turnover
	Others	1% ($\frac{1}{2}\%$ CGST + $\frac{1}{2}\%$ SGST/UTGST) of turnover of taxable supplies
For services	All service providers except restaurant	6% (3% CGST + 3% SGST/UTGST) of turnover

Conditions and restrictions for composition levy

Person opting for composition:

is neither a casual taxable person nor a non-resident taxable person

shall pay tax under section 9(3)/9(4) on inward supply

is not engaged in the manufacture of notified goods** (or notified services also in case of composition scheme for services)

shall mention the words “**composition taxable person, not eligible to collect tax on supplies**” at the top of the bill of supply issued by him

shall mention the words “composition taxable person” at a prominent place at his place of business

**** Goods notified for a registered person opting for composition scheme for goods are ice cream, pan masala, tobacco, aerated waters fly ash bricks, fly ash aggregate, fly ash blocks, bricks of fossil meals or similar siliceous earths, building bricks, earthen or roofing tiles.**

Who are NOT eligible to opt for composition scheme?

Registered person who is not eligible for composition scheme for goods	Registered person who is not eligible for composition scheme for services
Supplier engaged in making any supply of goods or services which are not leviable to tax i.e. non-taxable supplies	Supplier engaged in making any supply of goods or services which are not leviable to tax i.e. non-taxable supplies
Supplier engaged in making any inter-State outward supplies of goods or services	Supplier engaged in making any inter-State outward supplies of goods or services
Person supplying any services through an electronic commerce operator who is required to collect tax at source under section 52	Person supplying any services through an electronic commerce operator who is required to collect tax at source under section 52
Manufacturer of ice cream, pan masala, tobacco, aerated waters fly ash bricks, fly ash aggregate, fly ash blocks, bricks of fossil meals or similar siliceous earths, building bricks, earthen or roofing tiles.	Manufacturer of notified goods or supplier of notified services
Supplier who is either a casual taxable person or a non-resident taxable person	Supplier who is either a casual taxable person or a non-resident taxable person.
Supplier of services, save as provided in section 10(1)**	

***A registered person opting for composition scheme for goods is allowed to supply services [other than restaurant services] alongwith supply of goods or supply of restaurant services of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or ` 5 lakh, whichever is higher. Here, while computing turnover in a State/UT, interest on loans/deposit/advances will not be taken into account.*

Other points

Bill of supply shall be issued instead of tax invoice.

Tax shall not be not collected from recipient of supply

Input tax credit shall not be availed

Composition Scheme if availed shall include all registered persons having same PAN

Penalty shall be imposed in case of irregular availment of the composition scheme

**TEST YOUR KNOWLEDGE**

1. *Panini Private Limited, Jaipur, agrees to sponsor a sports event organized by Pink City Club in Jaipur. Panini Private Limited has paid an amount of ₹ 5,00,000 for such sponsorship of the sports event. Consequently, said event was named after the brand name of Panini Private Limited. Examine who is the person liable to pay tax in the given case.*
2. *Arpan Singhania is an executive director in Narayan Limited, Haryana. The company paid him the sitting fee amounting to ₹ 25,000, for the month of January. Further, salary was paid to Arpan Singhania amounting to ₹ 1.5 lakh for the month of January on which TDS was also deducted as per applicable provisions under Income-tax law. Tapasya & Associates, in which Arpan Singhania is a partner, supplied certain professional services to Narayan Limited in the month of January for an amount of ₹ 2 lakh. Discuss the person liable to pay GST in each of the supplies involved in the given case.*
3. *Mr. Rajbeer, a registered person at Delhi, is in the business of selling goods relating to interior decoration under the firm name M/s. Rajbeer & Sons. He has opted for composition scheme for the financial year 2021-22.*

His turnover for current FY ₹ 80 lakh and is expected to achieve ₹ 130 lakh in financial year 2022-23. Discuss whether M/s Rajbeer & Sons can still enjoy the benefits of composition scheme in financial year 2022-23.

His son Karan wants to start business of providing services relating to interior decoration, after completing post-graduation course in interior decoration under same firm name M/s Rajbeer & Sons with effect from 1st April of financial year 2022-23 and wants to enjoy the benefits of composition scheme under GST.

Advise Mr. Rajbeer and his son Karan.

4. *Varun & Arun Associates started a partnership firm of architects in Bhopal (Madhya Pradesh) on 1st April of the current financial year. The firm provides architectural services in Madhya Pradesh only. It provided the following details of its turnover during the current financial year:*

<i>April - June</i>	<i>` 20 lakh</i>
<i>July - Sept</i>	<i>` 30 lakh</i>
<i>Oct - Dec</i>	<i>` 20 lakh</i>

The firm has obtained the registration under section 22 with effect from 1st July and opts to pay tax under composition scheme. Determine the tax liability of Varun & Arun Associates for the quarters: April – June, Jul-Sept and Oct-Dec.

Note: The rates of tax on architectural services are CGST- 9% and SGST-9%.

5. *Examine whether the suppliers are eligible for composition levy under section 10 in the following independent cases in the beginning of financial year 2022-23.*
- (a) *Technology Enterprises, registered in Jalandhar, Punjab, is engaged in manufacturing and supplying computer systems. Its aggregate turnover in the financial year 2021-22 is ` 125 lakh. Technology Enterprises supplies the computer systems manufactured by it within the State of Punjab only. With a view to expand its business operations, it will also start providing the repairing services of computer systems in Punjab in the financial year 2022-23.*
- (b) *M/s. Siddharth & Sons, registered in Delhi, owns a restaurant 'Tasty Foods' with a turnover of ` 112 lakh in the financial year 2021-22. In view of the growing customer demand, it will also start intra-State trading of juices in Delhi from financial year 2022-23.*

- (c) *Sitaram Associates, registered in Sikkim, is engaged in running a restaurant chain 'Veg Kitchen' in the State. It has a turnover of ₹ 73 lakh in the financial year 2021-22. In the financial year 2022-23, it decides to shut down the food chain owing to huge losses being incurred in the said business. Instead, it will start providing intra-State architect services from financial year 2022-23.*
- (d) *Deepti Services Ltd., registered in Uttarakhand, is exclusively providing intra-State hair styling services. It has turnover of ₹ 34 lakh in the financial year 2021-22.*

Will your answer be different, if Deepti Services Ltd. also start intra-State supply of beauty products alongwith providing hair styling services in the financial year 2022-23?

6. *B & D Company, a partnership firm, in Nagpur, Maharashtra is a wholesaler of a taxable product 'P' and product 'Q' exempt by way of a notification. The firm supplies these products only in the eastern part of Maharashtra. All the procurements (both goods and services) of the firm are from the suppliers registered under regular scheme in the State of Maharashtra. The firm pays tax under composition scheme.*

B & D Company has furnished the following details with respect to its turnover (exclusive of taxes):

Particulars	Turnover for the quarter ended 30 th June (₹)	Turnover for the quarter ended 30 th September (₹)
'P'	60,00,000	50,00,000
'Q'	17,65,000	17,00,000

The extract of the only bill book maintained by the firm showed the following details-

Bill No.	Date	Value of products (exclusive of taxes)		
		'P' (₹)	'Q' (₹)	Total (₹)
2306	1 st October	2,00,000	3,000	2,03,000

2307	1 st October	1,36,000	2,250	1,38,250
2308	2 nd October	67000	39,250	1,06,250
2309	3 rd October	58,750	33,750	92,500
2310	5 th October	1,00,000	-	1,00,000
2311	6 th October	94,000	6,000	1,00,000
2312	6 th October	-	17,000	17,000
2313	8 th October	50,000	6,000	56,000
2314	9 th October	60,000	9,000	69,000
2315				
.....				

Further, B & D Company paid freight of ` 1,40,000 to Goods Transport Agency during the period April to October. Assume equal amount of freight is paid each month on the 10th day of each month. Also, assume that the goods for which the freight is paid on 10th day of the month are transported between 11th to 20th day of the month.

All the above amounts are exclusive of taxes, wherever applicable.

Compute the GST liability (ignoring ITC provisions) of B & D Company for the period April to October under composition scheme under sub-sections (1) and (2) of section 10 showing calculations for each quarter separately.

Note: Make suitable assumptions wherever required. Rate of CGST and SGST on service of transportation of goods by GTA is 2.5% each wherein GTA has not opted to pay tax itself. Stock is valued at cost price.

- Shubhlaxmi Foods is engaged in supplying restaurant service in Maharashtra. In the financial year 2021-22, it had a turnover of ` 140 lakh from the restaurant service. Further, it had earned the bank interest of ` 20 lakh from the fixed deposits in said financial year. You are required to advise Shubhlaxmi Foods whether it is eligible for the composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2022-23.

Further, assuming that in the financial year 2022-23, its turnover is ` 130 lakh from the supply of restaurant services and ` 10 lakh from the supply of farm labour in Maharashtra. It has also earned the bank interest of ` 30 lakh from the fixed deposits. Compute the tax payable by Shubhlaxmi Foods in the financial year 2022-23.

8. Bansal and Chandiok started a partnership firm of Chartered Accountants in Jaipur (Rajasthan) on 1st April in the current financial year. The firm specializes in providing audit services to banks in Rajasthan. It provided the following details of its turnover:

Quarter	Amount (in `)
Apr-Jun	10 lakh
Jul-Sep	20 lakh

It crossed the threshold limit of ` 20 lakh on 1st August. Bansal and Chandiok wishes to opt to pay tax at concessional rate under section 10(2A). Examine whether the firm is eligible for this scheme in the current financial year? If yes, then determine the tax payable by it in quarters (i) Apr-Jun & (ii) Jul-Sep?

9. Mr. Prem is running a restaurant in New Delhi. In the financial year 2021-22, it has an aggregate turnover of ` 120 lakh from the restaurant services. In the financial year 2022-23, apart from restaurant service, he also wants to provide food delivery services to other small restaurants. He estimated the turnover of such services is upto ` 5 lakh.

Mr. Prem wishes to opt for composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2022-23. You are required to advise him for same.

10. M/s Heeralal and Sons, registered in Karnataka, has opted to avail the benefit of composition scheme under sub-sections (1) and (2) of section 10 from 1st April, 2022. It has furnished the following details for the quarter ended on 30th June, 2022.

S. No.	Items	`
(i)	Taxable turnover of goods within the State	15,00,000

(ii)	Exempted turnover of goods (exempted by way of notification) within the State	<u>17,00,000</u>
	Total Turnover	<u>32,00,000</u>

Using the above information, calculate tax to be paid by the firm for quarter ended on 30th June, 2022 in following independent situations:

- (i) M/s Heeralal and Sons is a manufacturer
 - (ii) M/s Heeralal and Sons is a trader
11. M/s All-in-One, a partnership concern and a registered supplier under GST, is engaged in providing various services under one roof. It is engaged in paying tax under regular scheme under GST law. The concern provides the following information pertaining to supply made/input services availed by it during the month of March:

	Particulars	
(i)	Provided Direct Selling Agent service to Y Bank Ltd.	4,00,000
(ii)	Provided security services (by way of supply of security personnel) to ABC P. Ltd., a registered person under GST	60,000
(iii)	Provided security services (by way of supply of security personnel) to PSR Trust, an unregistered person under GST	1,00,000
(iv)	Provided renting of motor vehicle for transportation of passengers to Amaze Tours Ltd. and value of supply included cost of fuel	75,000
(v)	Provided renting of motor vehicle for transportation of passengers to Priti & Co., CA firm and value of supply included cost of fuel	40,000
(vi)	Availed representational service from PB and Co., a law firm towards a Consumer Court case	70,000

Determine the GST liability of M/s All-in-One for the month of March by giving necessary explanations for treatment of various items. Rates of GST for both inward and outward supply is CGST/SGST@ 9% each except renting a vehicle, for which CGST/SGST @ 2.5% each is applicable. M/s All-in-One commenced its business from February. All the supplies are intra-State only. Ignore the provisions relating to input tax credit.

12. *MN Ltd. has two registered places of business in the State of Haryana. Its aggregate turnover during the financial year 2021-22 was ` 62 lakh. It wishes to opt for composition levy under sub-sections (1) and (2) of section 10 for one of the place of business in the financial year 2022-23 and wants to continue with registration under regular scheme and pay taxes at the normal rate for the other place of business. Both the places of business are having the same Permanent Account Number issued under the Income-tax Act, 1961. Can MN Ltd. do so? Explain with reason.*
13. *Ranveer Industries, registered in Himachal Pradesh, is engaged in making inter-State supplies of readymade garments. The aggregate turnover of Ranveer Industries in the financial year 2021-22 is ` 70 lakh. It has opted for composition levy under sub-sections (1) and (2) of section 10 in the financial year 2022-23 and paid tax for the April – June quarter of financial year 2022-23 under composition levy.*

The proper officer has levied penalty for wrongly availing the scheme on Ranveer Industries in addition to the tax payable by it.

Examine the validity of the action taken by proper officer.

14. *Mr. Yash, doing business in the State of Kerala, commenced his business in the month of April and provides the following further information.*
- (i) *His intra-State turnover for the first two quarters was as follows:*
- April - June - ` 20 lakh*
- July - September - ` 100 lakh*
- (ii) *In each of the quarters, exempt supply made by him was 25% of the total turnover for the said quarter.*

- (iii) *Since the product supplied by him was eligible for composition scheme, he opted for registration under composition scheme with effect from 1st July.*

You are required to compute the tax payable by Mr. Yash under GST law from the above information:

- (i) *If he is a manufacturer*
(ii) *If he is a trader.*



ANSWERS/HINTS

1. *Notification no 13/2017 CT (R) dated 28.06.2017 as amended* (hereinafter referred to as reverse charge notification), provides that sponsorship services provided by any person to a body corporate or partnership firm located in the taxable territory, shall be liable to GST under reverse charge in the hands of recipient.

In the present case, Pink City Club is the supplier of sponsorship services which is receiving the consideration in the form of sponsorship fee of ₹ 5,00,000 from Panini Private Limited, against the provision of sponsorship service. Since the recipient of sponsorship services- Panini Private Limited is a body corporate, GST on said services is payable by the recipient - Panini Private Limited, under reverse charge.

2. **Sitting fee paid to director** – As per reverse charge notification, tax on services supplied by a director of a company/ body corporate to the said company/ body corporate, located in the taxable territory, is payable under reverse charge. Hence, in the present case, the sitting fee amounting to ₹ 25,000, payable to Arpan Singhania by Narayan Limited, is liable to GST under reverse charge and thus, recipient of service - Narayan Limited – is liable to pay GST on the same.

Salary paid to director - As per *Circular No.140/10/2020 GST dated 10.06.2020*, the part of director's remuneration which is declared as salary in the books of a company and subjected to TDS under section 192 of the

Income-tax Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III. Therefore, in the given case, the salary received by Arpan Singhanian of ₹ 1.5 lakh is not liable to GST.

Services provided by Tapasya & Associates – Tapasya & Associates have rendered certain professional services to Narayan Limited. The fact that Arpan Singhanian is a partner in Tapasya & Associates and a director in Narayan Limited does not have any impact on the taxability of the professional services supplied by Tapasya & Associates to Narayan Limited. The professional services provided by Tapasya & Associates to Narayan Limited are liable to GST under forward charge and thus, supplier - Tapasya & Associates – is liable to pay GST on the same.

3. As per section 10, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore in a State/UT may opt for composition scheme, provided he is, inter alia, engaged in supply of goods and/or restaurant service. However, a person who opts for composition scheme is permitted to supply services other than restaurant service of value not exceeding 10% of turnover in a State/UT in the preceding financial year or ₹ 5 lakh, whichever is higher.

In the given case, M/s. Rajbeer & Sons, engaged in business of selling goods relating to interior decoration, is eligible for composition scheme in the financial year 2022-23 since its aggregate turnover in financial year 2021-22 (viz. ₹ 80 lakh) does not exceed ₹ 1.5 crore.

If Karan wishes to start the business of providing services relating to interior decoration under the same firm name M/s Rajbeer & Sons, the sole proprietorship needs to be first converted into a partnership firm. Further, new GST registration under the new PAN is required to be obtained.

In such a case, the firm can provide services relating to interior decoration up to a value of ₹ 5 lakh (10% of zero turnover of last year or ₹ 5 lakh, whichever is higher) to continue enjoying the benefit of composition scheme in financial year 2022-23.

4. The composition scheme under sub-sections (1) and (2) of section 10 is available in case of goods and restaurant service. Further, marginal services upto specified limit can be provided along with the supply of goods or restaurant service, as the case may be. Since, in the given case, Varun & Arun Associates is exclusively supplying services other than restaurant services, it

is not eligible to pay tax under sub-sections (1) and (2) of section 10. However, section 10(2A) provides an option to a registered person, who is not eligible to pay tax under sub-sections (1) and (2) of section 10, of paying tax @ 6% (CGST-3% and SGST/UTGST-3%) provided his aggregate turnover in the preceding financial year is upto ` 50 lakh. Said person can pay tax @ 6% of the turnover in State or turnover in Union territory up to an aggregate turnover of ` 50 lakh, subject to specified conditions.

In the given case, Varun & Arun Associates has started the supply of services in the current financial year. Therefore, its aggregate turnover in the preceding financial year is Nil. Consequently, it is eligible to avail the benefit of composition scheme under section 10(2A) of the CGST Act in the current financial year. It becomes eligible for the registration when its aggregate turnover exceeds ` 20 lakh. While registering under GST, it has to opt for composition scheme under section 10(2A).

For determining its turnover of the State for payment of tax under composition scheme under section 10(2A), turnover of April-June quarter [` 20 lakh] shall be excluded as the value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act are to be excluded for this purpose.

On next ` 30 lakh [turnover of July-Sept quarter], it shall pay tax @ 6% [3% CGST and 3% SGST], i.e. CGST ` 90,000 and SGST ` 90,000.

By the end of July-Sept quarter, its aggregate turnover reaches ` 50 lakh*.

Consequently, its option to avail composition scheme under section 10(2A) shall lapse by the end of July-Sept quarter and thereafter, it is required to pay tax at the normal rate. Thus, the tax payable for Oct-Dec quarter is ` 20 lakh × 9%, i.e. CGST - ` 1,80,000 and SGST - ` 1,80,000.

**Note - While computing aggregate turnover for determining Varun & Arun Associates' eligibility to pay tax under composition scheme, value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act (i.e. turnover of April-June quarter), are also included.*

5. As per section 10(1), the following registered persons, whose aggregate turnover in the preceding financial year did not exceed ` 1.5 crore, may opt to pay tax under composition levy:

- (i) Manufacturers,
- (ii) Persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II (restaurant services), and
- (iii) Any other suppliers eligible for composition levy.

The composition scheme under sub-sections (1) and (2) of section 10 can essentially be availed in respect of goods and only one service namely, restaurant service. However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in the preceding year or ` 5 lakh, whichever is higher. Further, the registered person should not be engaged in making any inter-State outward supplies of goods or services.

Furthermore, newly inserted section 10(2A) provides an option to a registered person, who is not eligible to pay tax under section 10(1) and 10(2), of paying tax @ 6% (CGST-3% and SGST/UTGST-3%) provided his aggregate turnover in the preceding financial year is upto ` 50 lakh. Said person can pay tax @ 6% of the turnover in State or turnover in Union territory up to an aggregate turnover of ` 50 lakh, subject to specified conditions. One of such conditions is that the registered person should not be engaged in making any inter-State outward supplies of goods or services.

In view of the above-mentioned provisions, the answer to the given independent cases is as under:-

- (a) The turnover limit for being eligible for composition scheme under sub-sections (1) and (2) of section 10 for Jalandhar (Punjab) is ` 1.5 crore in the preceding financial year. Thus, Technology Enterprises can opt for said composition scheme in financial year 2022-23 as its aggregate turnover is less than ` 1.5 crore in the financial year 2021-22 and it is making intra-State supplies. Further, since the registered person opting for composition scheme can also supply services (other than restaurant services) for a value up to 10%

of the turnover in the preceding year or ` 5 lakh, whichever is higher. Thus, Technology Enterprises can supply repair services up to a value of ` 12.5 lakh [10% of `125 lakh] in the financial year 2022-23.

(b) In the given case:-

- (i) the turnover in the preceding year is less than the eligible turnover limit under composition scheme under sub-sections (1) and (2) of section 10 for Delhi, i.e. ` 1.5 crore.
- (ii) the supplier is engaged in providing restaurant service which is an eligible supply under said composition scheme.
- (iii) the supplier wants to engage in trading of goods which is also an eligible supply under said composition scheme.

Thus, M/s. Siddharth & Sons is eligible for composition scheme under sub-sections (1) and (2) of section 10 from the financial year 2022-23.

(c) The turnover limit for being eligible for composition scheme under sub-sections (1) and (2) of section 10 for Sikkim is ` 75 lakh in the preceding financial year. However, a registered person who is exclusively engaged in supplying services other than restaurant services are not eligible for said composition scheme. Thus, Sitaram Associates cannot opt for composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2022-23.

The benefit of composition scheme under section 10(2A) is available in case of a registered person who is not eligible to pay tax under sub-sections (1) and (2) of section 10 provided its aggregate turnover in the preceding financial year does not exceed ` 50 lakh.

Thus, in view of the above-mentioned provisions, Sitaram Associates cannot avail the benefit of composition scheme under section 10(2A) also as its aggregate turnover in the preceding financial year is more than ` 50 lakh.

(d) A service provider can opt for the composition scheme under sub-sections (1) and (2) of section 10 only if he is engaged in supply

of restaurant services. Said scheme permits supply of marginal services for a specified value, but only when the same are supplied along with goods and/ or restaurant service.

Since Deepti Services Ltd. is exclusively engaged in supply of services other than restaurant services, it is not eligible for composition scheme sub-sections (1) and (2) of section 10 even though its turnover in the financial year 2021-22 is less than ` 75 lakh, the eligible turnover limit for Uttarakhand.

However, since Deepti Services Ltd. is not eligible to opt for composition scheme under sub-sections (1) and (2) of section 10 and its aggregate turnover in the financial year 2021-22 does not exceed ` 50 lakh, Deepti Services Ltd. is entitled to avail benefit of composition scheme under section 10(2A) in the financial year 2022-23.

Further, the answer will remain the same even if Deepti Services Ltd. also start supplying beauty products alongwith providing hair styling services in the financial year 2022-23 since it fulfils the conditions laid down for availing the benefit of composition scheme under section 10(2A). It can avail the benefit of composition scheme under section 10(2A) till the time its aggregate turnover in the financial year 2022-23 doesn't exceed ` 50 lakh.

6. As per section 10(3) read with *Notification No.14/2019 CT dated 07.03.2019* as amended, the option availed by a registered person to pay tax under composition scheme under sub-sections (1) and (2) of section 10 shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds ` 1.5 crore [ ` 75 lakh in case of Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir].

As per section 2(6), aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same PAN, to be computed on all India basis but excludes CGST, SGST/UTGST, IGST and GST Compensation Cess.

In the given case, the firm is registered under the composition scheme in the State of Maharashtra. The aggregate turnover of the firm exceeds ` 1.5 crore on 3<sup>rd</sup> October [aggregate of both taxable and exempt turnover from 1<sup>st</sup> April to 3<sup>rd</sup> October, i.e. ` 1,50,05,000 (` 1,44,65,000 + ` 2,03,000 + ` 1,38,250 + ` 1,06,250 + ` 92,500)]

The inward supplies of goods transportation services in respect of which the firm has to pay tax under reverse charge have not been included in the aggregate turnover in terms of section 2(6). The tax is payable under reverse charge on such services as the applicable rate of tax on such services is given as 5% and not 12%, in which case the GTA would have been liable to pay tax under forward charge [Notification No. 13/2017 CT (R) dated 28.06.2017 as amended].

Thus, the firm will have to pay tax under regular scheme (Section 9) from 3rd October.

Output tax liability of B & D Company under composition scheme

During the period when the firm pays tax under composition scheme, i.e. from 1st April to 2nd October, tax will be payable on quarterly basis and no ITC will be available [Section 10(4) read with sub-sections (2) and (7) of section 39].

Further, since the firm is trading in goods, tax will be payable @ ½% [Effective rate - 1% (½% CGST + ½% SGST)] of the turnover of taxable supplies of goods and services (i.e. 'P') in the State [Section 10(1) read with rule 7].

The tax liability for the quarters ended June, September and December under composition scheme will be computed as under-

Particulars	Quarter ended 30 th June (₹)	Quarter ended 30 th September (₹)	Quarter ended 31 st December (₹)
Turnover of 'P' (Taxable supplies)	60,00,000	50,00,000	4,03,000 [2,00,000 + 1,36,000 + 67,000]
CGST @ 0.5% [A1]	30,000	25,000	2,015

SGST @ 0.5% [B1]	30,000	25,000	2,015
Inward supply on which tax is payable under reverse charge [Service of goods transportation availed from a GTA @ 5%]	60,000 [(1,40,000/7) x 3]	60,000 [(1,40,000/7) x 3]	Nil [Paid on 10 th day for goods transported between 11 th to 20 th day of the month, so the same will be assessed under regular scheme]
CGST @ 2.5% [A2]	1,500	1,500	-
SGST @ 2.5% [B2]	1,500	1,500	-
Total CGST [A1 + A2]	31,500	26,500	2,015
Total SGST [B1 + B2]	31,500	26,500	2,015
Total CGST liability for the period from 1st April to 2nd October	60,015 [31,500 + 26,500 + 2,015]		
Total SGST liability for the period from 1st April to 2nd October	60,015 [31,500 + 26,500 + 2,015]		

7. As per section 10(1) read with *Notification No. 14/2019 CT dated 7.03.2019*, a registered person, whose aggregate turnover in the preceding financial year did not exceed ` 1.5 crore, may opt to pay, in lieu of the tax payable by him, an amount calculated at the specified rates if, *inter alia*, he is not engaged in the supply of services other than restaurant services.

However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in a State/Union Territory in the preceding year or ` 5 lakh, whichever is higher [Second proviso to section 10(1)].

Although exempt services are included in determining the value of turnover in a State or Union territory, explanation to section 10(1) clarifies that for the

purposes of second proviso to section 10(1), the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.

Further, the exempt services are also included in the aggregate turnover [Section 2(6)]. However, explanation 1 to section 10 excludes value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount from aggregate turnover.

In this backdrop, in the given case, the aggregate turnover of Shubhlaxmi Foods in the financial year 2021-22 is ` 140 lakh (since bank interest of ` 20 lakh from the fixed deposits will not be taken into account for computing aggregate turnover). Resultantly, it is eligible to opt for composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2022-23.

Further, apart from restaurant services, it can provide services upto ` 14 lakh [i.e. 10% of ` 140 lakh or ` 5 lakh, whichever is higher], in the financial year 2022-23. As already seen, bank interest of ` 20 lakh from fixed deposits will not be considered while determining this limit.

Further, tax payable @ 5% (2½% CGST+ 2½% SGST) of the turnover in the State by Shubhlaxmi Foods in the financial year 2022-23 is as follows:

$$= 5\% \text{ of } ` 1,40,00,000 [ ` 1,30,00,000 + ` 10,00,000]$$

[(Bank interest of ` 30 lakh from the fixed deposits is not considered while computing turnover in the State for determining the tax payable under composition scheme (In terms of explanation 2 to section 10))]

$$= ` 7,00,000 [CGST = ` 3,50,000 \text{ and } SGST = ` 3,50,000]$$

8. The composition scheme under sub-sections (1) and (2) of section 10 is available in case of goods and restaurant service. Further, marginal services upto specified limit can be provided along with the supply of goods or restaurant service, as the case may be. Since, in the given case, Bansal and Chandiok is supplying services other than restaurant services, it is not eligible to pay tax under sub-sections (1) and (2) of section 10. However, section

10(2A) provides an option to a registered person, who is not eligible to pay tax under sub-sections (1) and (2) of section 10, of paying tax @ 6% (CGST-3% and SGST/UTGST-3%) provided his aggregate turnover in the preceding financial year is upto ` 50 lakh. Said person can pay tax @ 6% of the turnover in State or turnover in Union territory up to an aggregate turnover of ` 50 lakh, subject to specified conditions.

In the given case, Bansal and Chandiok has started the supply of services in the financial year 2022-23. Therefore, its aggregate turnover in the financial year 2021-22 is Nil. Consequently, it is eligible to avail the benefit of composition scheme under section 10(2A) of the CGST Act in the financial year 2022-23. It becomes liable to the registration when its aggregate turnover exceeds ` 20 lakh. While registering under GST, it has to opt for composition scheme under section 10(2A).

Tax payable by the firm is as follows:

(i) Apr-Jun quarter: Tax payable by the firm in first quarter is nil since the firm's turnover [` 10 lakh] has not yet exceeded the threshold limit of ` 20 lakh (viz. the threshold limit applicable for registration in the State of Rajasthan).

(ii) July-Sep quarter: While computing the tax payable by the firm in second quarter, the turnover from 1st April to the date from which he becomes liable for registration under the Act is to be excluded. Tax payable will be computed as under-

Total Turnover	` 30,00,000/-
Less: Threshold limit for registration	` 20,00,000/-
Taxable Turnover	` 10,00,000/-
Tax @ 6%	` 60,000/-*

*CGST = ` 30,000 and SGST = ` 30,000

9. As per section 10(1) read with *Notification No.14/2019 CT dated 07.03.2019*, a registered person, whose aggregate turnover in the preceding financial year did not exceed ` 1.5 crore, may opt to pay, in lieu of the tax payable by him, an amount calculated at the specified rates if, *inter alia*, he is not engaged in the supply of services other than restaurant services.

However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in a State/Union Territory in the preceding year or ` 5 lakh, whichever is higher.

In the present case, since the aggregate turnover of Mr. Prem was ` 120 lakh in financial year 2021-22 (i.e. it did not exceed ` 1.5 crore), he is eligible for composition scheme in the financial year 2022-23. Further, in the financial year 2022-23, he can also supply services other than restaurant services for a value upto ` 12 lakh (10% of ` 120 lakh) or ` 5 lakh, whichever is higher. Thus, till the time his turnover from food delivery services does not exceed ` 12 lakh, he is eligible for the scheme.

10. Computation of amount payable under composition scheme

- (i) If M/s Heeralal and Sons is a manufacturer:

Tax is to be paid @ 1% ($\frac{1}{2}\%$ CGST + $\frac{1}{2}\%$ SGST) of the turnover in the State as under:

$$\begin{aligned} & 1\% \text{ of } ` 32,00,000 [ ` 15,00,000 + 17,00,000] \\ & = ` 32,000 [\text{CGST} = ` 16,000 \text{ and SGST} = ` 16,000] \end{aligned}$$

- (ii) If M/s Heeralal and Sons is a trader:

Tax is to be paid @ 1% ($\frac{1}{2}\%$ CGST + $\frac{1}{2}\%$ SGST) of the turnover of **taxable supplies** of goods and services in the State as under:

$$\begin{aligned} & = 1\% \text{ of } ` 15,00,000 \\ & = ` 15,000 [\text{CGST} = ` 7,500 \text{ and SGST} = ` 7,500] \end{aligned}$$

11.

GST liability of M/s All-in-One

	Particulars	Value [₹]	CGST payable [₹]	SGST payable [₹]
A.	GST liability on outward supply			
(i)	Direct selling agent service to Y Bank Ltd. [Tax is payable under forward charge since the supplier of such service is a partnership firm and not an individual.]	4,00,000	36,000 [4,00,000 x 9%]	36,000 [4,00,000 x 9%]
(ii)	Security services to ABC P. Ltd., a registered person [Tax is payable under reverse charge by the recipient since security services are provided by a non-body corporate to a registered person.]	-		
(iii)	Security services to PSR Trust, an unregistered person [Tax is payable under forward charge since security services are provided by a non-body corporate to an unregistered person.]	1,00,000	9,000 [1,00,000 x 9%]	9,000 [1,00,000 x 9%]
(iv)	Renting of motor vehicle to Amaze Tours Ltd. where value included cost of fuel [Tax is payable under reverse charge by recipient since such services are provided by a non-	-		

	body corporate to a body corporate and GST is payable @ 5%.]			
(v)	Renting of motor vehicle to Priti & Co., CA firm, where supply value included cost of fuel [Tax is payable under forward charge since such services are provided by a non-body corporate to a non-body corporate.]	40,000	1,000 [40,000 x 2.5%]	1,000 [40,000 x 2.5%]
Total GST liability on outward supplies			46,000	46,000
B.	GST liability on inward supplies under reverse charge			
(vi)	Availed representational service from PB and Co, a law firm [Legal services provided by a partnership firm of advocates/individual advocate other than a senior advocate to a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration, are exempt from GST. Since M/s All-in-One started its business in February, its turnover in the preceding financial year is zero making it eligible for exemption from registration in the preceding financial year and hence, the legal services	70,000	-	-

	provided to it are exempt from GST.]			
	GST liability on inward supplies under reverse charge		-	-

- 12.** As per proviso to section 10(2), where more than one registered persons are having the same PAN issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the composition scheme under section 10(1) unless all such registered persons opt to pay tax under said composition scheme.

In the given case, since MN Ltd. has two places of business (they are not separate entities under the Income-tax Act, 1961), they would be registered under the same PAN. Therefore, MN Ltd. cannot opt for composition levy for only one of the places of business and pay tax under regular scheme for other place of business.

- 13.** As per section 10(1), a registered person, whose aggregate turnover in the preceding financial year did not exceed ` 1.5 crore in a State/UT [` 75 lakh in case of Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir], may opt for composition scheme.

However, he shall not be eligible to opt for composition scheme if, *inter alia*, he is engaged in making any inter-State outward supplies of goods or services.

In the given case, since Ranveer Industries is engaged in making inter-State supplies of readymade garments, it is not eligible to opt for composition scheme in current year irrespective of its turnover not exceeding the threshold limit of ` 75 lakh in the preceding FY.

Further, if the proper officer has reasons to believe that a taxable person has paid tax under composition scheme despite not being eligible, such person shall, in addition to any tax payable, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis*, apply for determination of tax and penalty.

Thus, the action taken by the proper officer of levying the penalty for wrongly availing the composition scheme is valid in law.

- 14.** As per section 10 read with rule 7, a registered person opting for composition levy for goods pays tax at the rates mentioned below during the current FY, in lieu of the tax payable by him under regular scheme:

Manufacturers, other than manufacturers of notified goods	1% ($\frac{1}{2}\%$ CGST+ $\frac{1}{2}\%$ SGST/UTGST) of the turnover in the State/ Union territory
Trader	1% ($\frac{1}{2}\%$ CGST+ $\frac{1}{2}\%$ SGST/UTGST) of turnover of taxable supplies of goods & services in the State/ Union territory

Turnover prior to getting registered will not be considered for determining the turnover in a State/Union Territory.

(i) If Mr. Yash is a manufacturer

$$\text{CGST} = ₹ 100 \text{ lakh} \times 0.5\% = ₹ 50,000$$

$$\text{SGST} = ₹ 100 \text{ lakh} \times 0.5\% = ₹ 50,000$$

(ii) If Mr. Yash is a trader

$$\text{CGST} = ₹ 75 \text{ lakh (as 25\% of turnover is exempt)} \times 0.5\% = ₹ 37,500$$

$$\text{SGST} = ₹ 75 \text{ lakh (as 25\% of turnover is exempt)} \times 0.5\% = ₹ 37,500$$

PLACE OF SUPPLY



The section numbers referred to in the Chapter pertain to the IGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this Chapter, you will be able to–

- ❑ explain the provisions relating to determination of place of supply of goods, both in case of domestic as well as cross-border transactions and analyse the same to determine the place of supply in a given situation
- ❑ explain the provisions relating to determination of place of supply of services, both in case of domestic as well as cross-border transactions and analyse the same to determine the place of supply in a given situation



1. INTRODUCTION

GST is a destination-based consumption tax, i.e. the tax is levied on the consumption of supply at the destination thereof or at the point of consumption of such supply. The 'place of supply' denotes the place where the supply is consumed. Thus, place of supply determines the jurisdiction where the tax revenue should reach.

Goods, usually being tangible do not pose any significant problems for determination of their place of consumption. Services, usually being intangible pose problems w.r.t determination of place of supply mainly due to following factors:

- ❑ The manner of delivery of a service could be altered easily.

For example, telecom service could change from post-paid to pre-paid or billing address of the customer could be changed, repair or maintenance of software could be changed from onsite to online; banking services earlier required customer to go to the bank, now the customer can avail service from anywhere.

- ❑ Service provider, service receiver and the service provided may not be ascertainable or may easily be suppressed as nothing tangible moves and there would hardly be any trail.

- ❑ For supplying a service, a fixed location of service provider is not mandatory and even the service recipient may receive service while on the move. The



location of billing could be changed overnight.

- Sometime the same element may flow to more than one location, for example, construction or other services in respect of a railway line, a national highway or a bridge on a river which originate in one State and end in the other State.



Similarly, a copyright for distribution and exhibition of film could be assigned for many States in a single transaction or an advertisement or a programme is broadcasted across the country at the same time.



An airline may issue seasonal tickets, containing say 10 vouchers which could be used for travel between any two locations in the country.

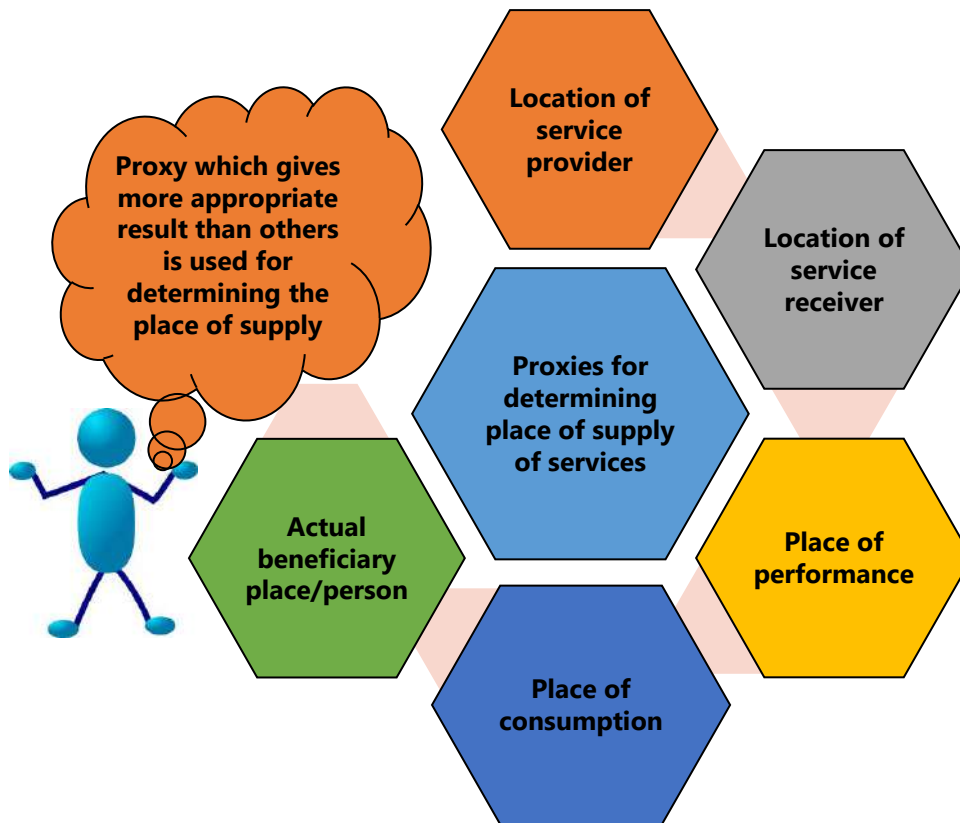


The card issued by New Delhi metro could be used by a person located in Noida, or New Delhi or Faridabad, without the New Delhi metro being able to distinguish the location or journeys at the time of receipt of payment.

- Services are continuously evolving and thus, continue to pose newer challenges. For example, 15-20 years back no one could have thought of DTH, online information, online banking, online booking of tickets, internet, mobile telecommunication etc.

Considering the difficulties in determining the actual place of consumption of services, the various elements involved in a service transaction are used as proxies for determining the place of consumption or place of supply of such services. A proxy which gives more appropriate result than others for determining the place of supply, could be used for determining the place of supply. The various elements used for determining the place of supply of a service are:

- (a) location of service provider
- (b) location of service receiver
- (c) place where the activity takes place/ place of performance
- (d) place where the service is consumed
- (e) place/person to which/whom actual benefit flows



Separate rules for determining place of supply in respect of B2B and B2C transactions

In respect of B2B (business to business) transactions, the supply is made by one registered person to another registered person and the taxes paid are taken as credit by the recipient. Therefore, such transactions are just pass through. GST collected on B2B supplies effectively create a liability for the Government and an asset for the recipient of such supplies in as much as the recipient is entitled to use the input tax credit (ITC) for payment of future taxes. For B2B transactions, the location of recipient takes care in almost all situations as further credit is to be

taken by recipient. The recipient usually further supplies to another customer.

The supply is consumed only when a B2B transaction is further converted into B2C (business to consumer) transaction. In respect of B2C transactions, the supply is made to an unregistered person who consumes the same and the taxes paid actually reach the Government.



Provisions for determination of place of supply in GST law

Basis the above guiding principles, **Chapter V of the IGST Act [Sections 10 to 13]** prescribes the provisions relating to place of supply of goods and services in domestic as well as cross-border transactions. The provisions prescribe both general and specific rules to determine place of supply of goods and services in various circumstances.

The determination of 'place of supply' and the 'location of the supplier' is essential to ascertain the nature of supply, i.e. whether a supply is intra-State or inter- State. In other words, these two factors are required to determine whether a supply is subject to SGST/UTGST plus CGST in a given State/ Union territory or else would attract IGST if it is an inter-State supply.

If an inter-State transaction is wrongly treated as intra-State or *vice-versa* and tax paid accordingly, the correct tax will need to be paid and refund claimed for tax wrongly paid. Though no interest is levied in such a case, procedural requirements increase and working capital gets blocked where the amount involved is huge. Hence, determining correct place of supply is of paramount importance



2. RELEVANT DEFINITIONS

- ❑ **Continuous journey** means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation.—For the purposes of this clause, the term “stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time [Section 2(3)].

The term conveyance has been defined in section 2(34) of the CGST Act to include a vessel, an aircraft and a vehicle.

- ❑ **Export of goods** with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India [Section 2(5)].

This definition is similar to the definition of ‘export’ given under Customs Act, 1962.

- ❑ **Export of services** means the supply of any service when

- (a) the supplier of service is located in India,
- (b) the recipient of service is located outside India,
- (c) the place of supply of service is outside India,
- (d) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (e) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8 [Section 2(6)].

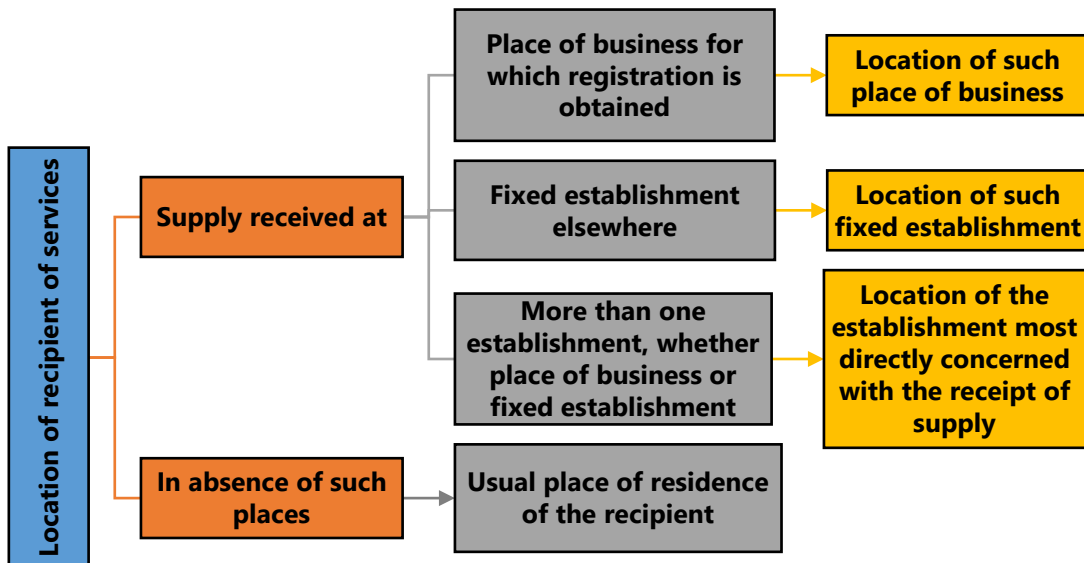
As per Explanation 1 to Section 8, the following are treated as establishments of distinct persons:

- an establishment in India and any other establishment outside India;

- an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
 - an establishment in a State or Union territory and any other establishment registered within that State or Union territory
- ❑ **Fixed establishment** means a place other than the place of business which is characterised by a 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 [Section 2(7)].
- ❑ **Import of goods** with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India [Section 2(10)].
- This definition is again similar to the definition of 'import' under the Customs Act, 1962.
- In *Kiran Spinning Mills v. CC* 1999 (113) ELT 753 (SC 3 member bench), it has been held that import is completed only when goods cross the customs barrier.
- In *Garden Silk Mills Ltd. UOI* 1999 AIR SCW 4150 (SC 3 member bench), it has been held that import of goods in India commences when they enter into territorial waters but continues and is completed when the goods become part of the mass of goods within the country.
- ❑ **Import of services** means the supply of any service, where
- (a) the supplier of service is located outside India,
 - (b) the recipient of service is located in India, and
 - (c) the place of supply of service is in India [Section 2(11)].
- ❑ **Intermediary** means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account [Section 2(13)].
- ❑ **Location of the recipient of services** means:
- (a) where a supply is received at a place of business for which registration has been obtained, the location of such place of business;

- (b) where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
- (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the recipient [Section 2(14)].

The definition of 'fixed establishment' for this purpose has been discussed above. The definition of 'place of business' is discussed later.



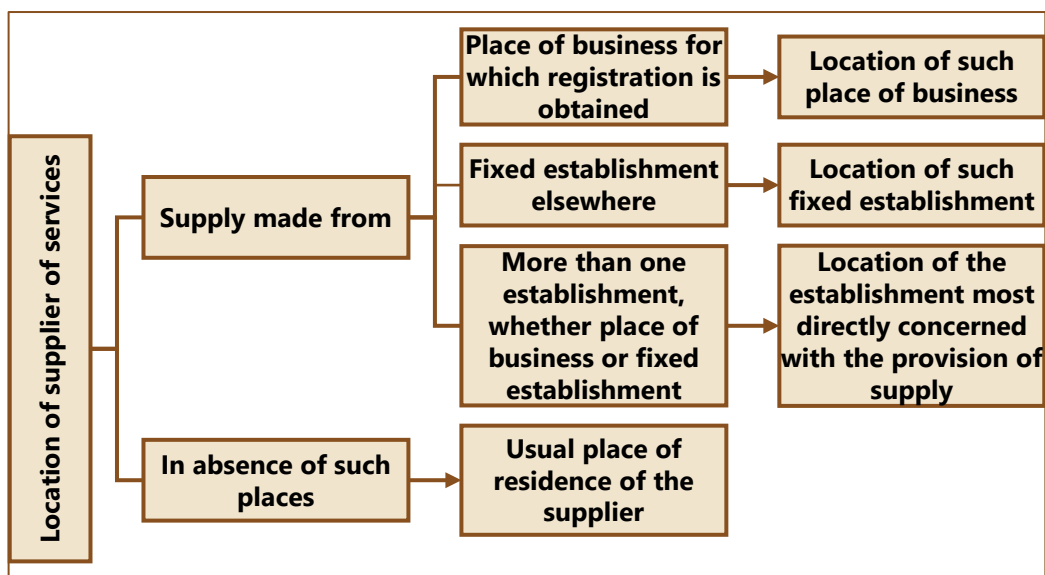
❑ **Location of the supplier of services** means:

- (a) where a supply is made from a place of business for which registration has been obtained, the location of such place of business;

- (b) where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, 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 provision of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the supplier [Section 2(15)].



The above definition relates only to services. The term 'location of supplier of goods' has not been defined in the Act.



- ❑ **Online information and database access or retrieval services** means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,—
- (i) advertising on the internet;
 - (ii) providing cloud services;

- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming [Section 2(17)].



❑ **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 [Section 2(85)].



- ❑ **Supply** shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act [Section 2(21)].
- ❑ **Recipient** of supply of goods or services or both, means—
 - where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

- where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
 - where no consideration is payable for the supply of a service, the person to whom the service is rendered,
 - and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93) of the CGST Act].
- ❑ **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105) of the CGST Act].
- ❑ **Words and expressions** used and not defined in the IGST Act but defined in the after supplies Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts [Section 2(24)].



3. PLACE OF SUPPLY OF GOODS OTHER THAN SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA [SECTION 10]

 STATUTORY PROVISIONS		
Section 10	<i>Place of supply of goods other than supply of goods imported into, or exported from India</i>	
Sub-section	Clause	Particulars
(1)	<i>The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—</i>	

	(a)	<i>where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;</i>
	(b)	<i>where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;</i>
	(c)	<i>where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;</i>
	(d)	<i>where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;</i>
	(e)	<i>where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.</i>
(2)		<i>Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.</i>



ANALYSIS

Section 10 prescribes the provisions for determining the place of supply of goods in domestic transactions, i.e. within India. Sub-section (1) of section 10 sets out five rules to provide the place of supply of goods in the following specific situations:

- ❖ Supply involving movement of goods
- ❖ Goods delivered on 'bill to ship to' model
- ❖ Supply not involving movement of goods
- ❖ Goods assembled/installed at site
- ❖ Goods supplied on board a conveyance

Each of the above situation is discussed below. For residual cases, sub-section (2) of section 10 provides that where the place of supply of goods cannot be determined, the Government may prescribe the manner to ascertain the same.

It must be kept in mind that the provisions of section 10 discussed hereunder are all in relation to domestic supply of goods.

(i) Supply involving movement of goods [Section 10(1)(a)]

In case of supply involving movement of goods, the place of supply is the location of the goods at the time when the movement of goods terminates (ends) for delivery to the recipient.

The 'location of the goods' is a question of fact to be ascertained by observing the journey that the goods so supplied make from their origin (from supplier) to termination (with the recipient). This movement, however, can be undertaken by the supplier or recipient or even any other person (like transporter) after having disclosed the destination of the movement of goods.

It is important to understand that this provision does not apply in cases where there is no movement of goods. Also, the provision does not link itself to transfer of property in goods but to the movement of the goods.



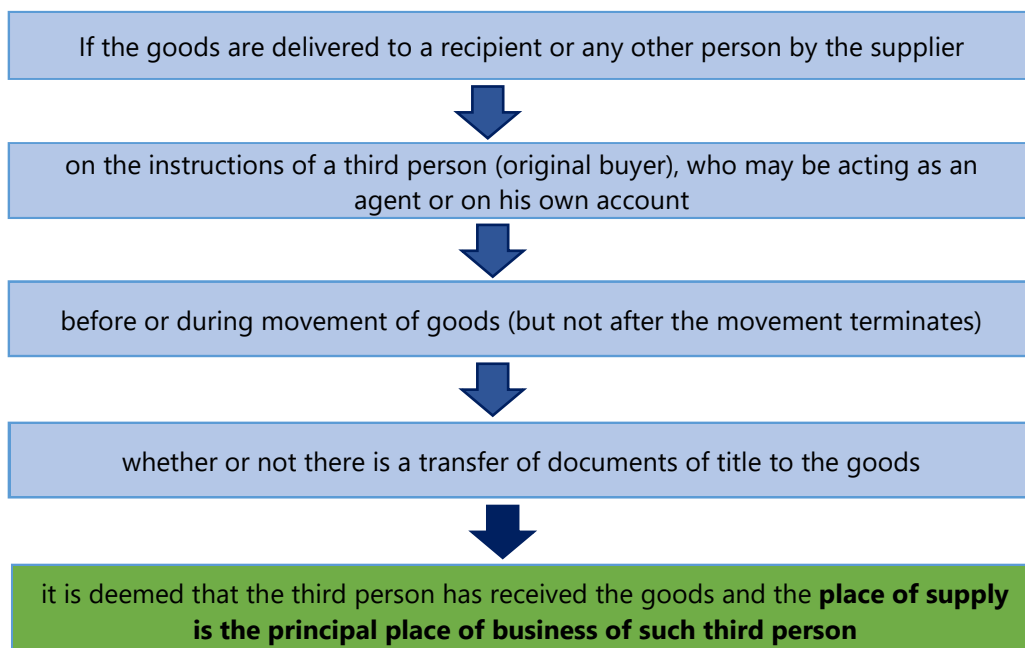
(1) MA Pvt. Ltd. of Nasik, Maharashtra sells 10 refrigerators to MB Pvt. Ltd. of Pune, Maharashtra for delivery at place of business of MB Pvt. Ltd. in Pune. The place of supply is Pune in Maharashtra.

(2) MA Pvt. Ltd. of Nasik, Maharashtra sells 20 refrigerators to MC Pvt. Ltd. of Ahmedabad, Gujarat for delivery at place of business of MC Pvt. Ltd. in Ahmedabad. The place of supply is Ahmedabad.

(ii) Supply involving movement of goods where goods are delivered to recipient on the instruction of third person – ‘Bill to Ship to’ Supply [Section 10(1)(b)]

Clause (b) of section 10(1) lays down the provisions to determine the place of supply in cases where there is a tripartite arrangement of supply, commonly known as ‘bill to ship to’ transactions or where there is a sale of goods in transit by the original buyer/ agents.

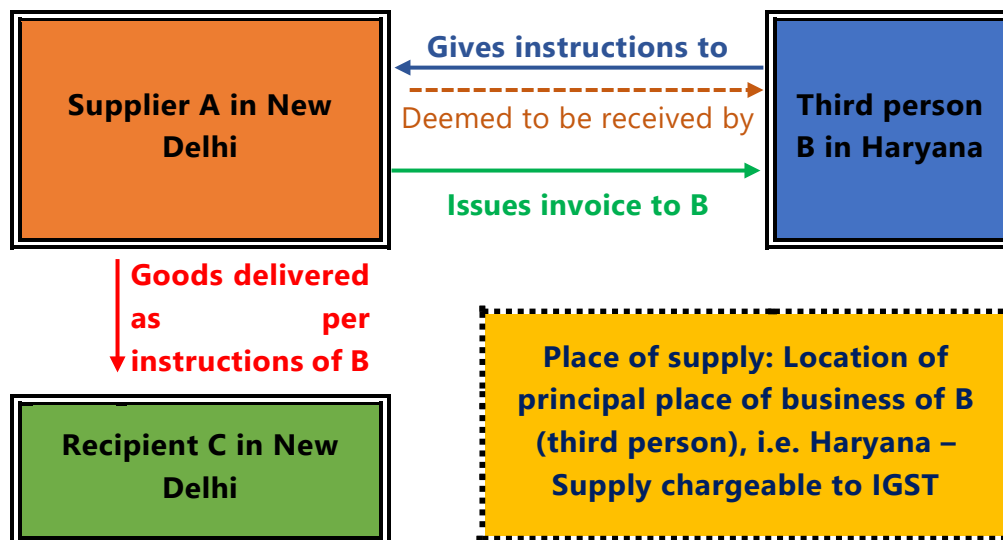
As per section 10(1)(b),



In simple words, **where goods are delivered by the supplier to the recipient at the instruction of a third person, the place of supply is the principal place of business of such third person and not of the actual recipient.**

It is important to identify the two supplies involved in this transaction– one supply is by supplier to third person and second supply is by third person to recipient. This provision deals only with the first limb of supply, i.e. supply by supplier to third person.

Second limb of supply, i.e. supply by third person to recipient will be governed by the provisions of section 10(1)(a), i.e. the place of supply will be the location of the goods at the time when the movement of goods terminates (ends) for delivery to the recipient.

Supply by supplier to third person

Even though section 2(93) of CGST Act defines recipient, *inter alia*, as the 'payer of the consideration'; in this provision, recipient' is the one who actually collects the goods and the third person is the one who enjoys privity with the supplier to be able to direct him to deliver the goods and also usually makes payment to the supplier.

Supply by third person to recipient



(3) X & Co. (a supplier registered in Uttar Pradesh having principal place of business at Noida) asks Y & Co. of Ahmedabad, Gujarat to deliver 50 washing machines to its buyer Z & Co. at Jaipur, Rajasthan. In this case, two supplies are involved, one between X & Co. and Z & Co. and other between Y & Co. and X & Co.

While the former supply is covered under clause (a) of section 10(1), the latter one, i.e. between Y & Co. and X & Co. is covered under clause (b) of section 10(1). Accordingly, in this case, the place of supply of goods is not the location of delivery of such goods (Jaipur) but the principal place of business of third person, i.e. principal place of business of X & Co. located at Noida.

(iii) Supply not involving movement of goods [Section 10(1)(c)]

If the supply does not involve movement of goods, the place of supply is the location of goods at the time of delivery to the recipient.



(4) MA Pvt. Ltd. (New Delhi) has leased its machine (cost ₹ 8,00,000) to MB Pvt. Ltd. (Noida, Uttar Pradesh) for production of goods on a monthly rent of ₹ 40,000. After 14 months MB Pvt. Ltd. requested MA Pvt. Ltd. to sell the machine to it for ₹ 4,00,000, which is agreed to by MA Pvt. Ltd. In this case, there will be no movement of goods and the same will be sold on as is where is basis. Thus, the location of the machine at the time of such sale will be the place of supply, i.e. Noida.

(5) XZ Ltd. (Mumbai, Maharashtra) opens a new branch office at Gurugram, Haryana. It purchases a building for office from KTS Builders (Gurugram). It also enters into a separate contract with KTS Builders for purchase of pre-installed office furniture and fixtures in the building.



Though there will be no GST liability on purchase of building (as sale of building is covered under Schedule III to CGST Act), office furniture and fixtures will be liable to GST. Since there is no movement of office furniture and fixtures, the place of supply of such goods is their location at the time of delivery to the recipient (XZ Ltd.), i.e. Gurugram.

(iv) Supply involving installation or assembly of goods [Section 10(1)(d)]

If the supply involves goods which are to be installed or assembled at site, the place of supply is the place of such installation or assembly.

This is a case of composite supply of goods wherein two supplies are involved, supply of goods and ancillary supply of installation/assembling service. The principal supply is supply of goods which are being installed.



(6) MA Pvt. Ltd. (New Delhi) purchases a machine from MB Pvt. Ltd. (New Delhi) for being installed in its factory at Noida, Uttar Pradesh. The place of supply is the site at which the machine is installed, i.e. Noida.



(7) Pure Refineries (Mumbai, Maharashtra) gives a contract to PQ Ltd. (Ranchi, Jharkhand) to supply a machine which is required to be assembled in a power plant in its refinery located in Kutch, Gujarat. The place of supply is the site of assembly of machine, i.e. Kutch even though Pure refineries is located in Maharashtra.

(v) Goods supplied on board a conveyance [Section 10(1)(e)]

When goods are sold supplied during a journey on board a conveyance, it becomes difficult to determine the place of supply of goods – whether it is the location from where the journey originates or whether it is the destination or whether it is any of the locations covered by the conveyance during the journey. Therefore, section 10(1)(e) specifically provides for determination of place of supply of goods supplied on board a conveyance.



Examples of goods supplied on board a conveyance can be books and miscellaneous items supplied by the hawkers in train, supply of packaged food items on payment basis in aeroplanes, etc.

Section 10(1)(e) lays down that **place of supply of goods supplied on a board a conveyance like aircraft, train, vessel, motor vehicle is the location where such goods have been taken on board.**

Place of supply of goods supplied on board a conveyance is determined under this provision even if the supply has been made by any of the passenger on board the conveyance and not by the carrier of the conveyance.



(8) Mr. X (New Delhi) boards the New Delhi-Kota train at New Delhi. He sells the goods taken on board by him (at New Delhi), in the train, at Jaipur during the journey. The place of supply of goods is the location at which the goods are taken on board, i.e. New Delhi and not Jaipur where they have been sold.



4. PLACE OF SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA [SECTION 11]



STATUTORY PROVISIONS

Section 11	<i>Place of supply of goods imported into, or exported from India</i>	
	Clause	Particulars
	<i>The place of supply of goods,—</i>	
	(a)	<i>imported into India shall be the location of the importer;</i>
	(b)	<i>exported from India shall be the location outside India.</i>



ANALYSIS

Section 11 deals with the determination of place of supply in cases involving import and export of goods¹.

¹ The terms import and export of goods have been explained in detail in Chapter-14 : Import and Export under GST in Module-3 of this Study Material. The definitions of terms "import of goods" and "export of goods" have been given in this Chapter under the heading "Relevant Definitions" for reference.

It must be kept in mind that the provisions of section 11 discussed hereunder are all in relation to cross border supply of goods.

(i) Import of goods [Section 11(a)]

The import of goods has been defined in section 2(10) of the IGST Act as bringing goods into India from a place outside India. All imports are deemed as inter-State supplies and accordingly IGST is levied in addition to the applicable custom duties.

If the goods have been imported in India, the place of supply of goods is the place where the importer is located.



(9) MC Pvt. Ltd. imports electric kettles from China for its Kitchen Store in Noida, Uttar Pradesh. MC Pvt. Ltd. is registered in Uttar Pradesh. The place of supply is Noida.

(ii) Export of goods [Section 11(b)]

Section 2(5) defines export of goods to mean taking goods out of India to a place outside India.

Under the GST Law, export of goods has been treated as:

- inter-State supply
- zero rated supply (i.e. the goods exported are relieved of GST levied upon them either at the input stage or at the final product stage.)

The place of supply in case of export of goods is the place where they have been exported, i.e. the destination outside India.



(10) MR Pvt. Ltd. (New Delhi) exports spices from New Delhi to London, UK. The place of supply is London.



5. PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OF SERVICE AND THE LOCATION OF THE RECIPIENT OF SERVICE IS IN INDIA [SECTION 12]

 STATUTORY PROVISIONS		
Section 12	<i>Place of supply of services where location of supplier of service and the location of the recipient of service is in India</i>	
Sub-section	Clause	Particulars
(1)	<i>The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.</i>	
(2)	<i>The place of supply of services, except the services specified in sub-sections (3) to (14),—</i>	
	(a)	<i>made to a registered person shall be the location of such person;</i>
	(b)	<i>made to any person other than a registered person shall be,—</i>
		(i) <i>the location of the recipient where the address on record exists; and</i>
		(ii) <i>the location of the supplier of services in other cases.</i>
(3)	<i>The place of supply of services,—</i>	
	(a)	<i>directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way</i>

		<i>of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or</i>
	(b)	<i>by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or</i>
	(c)	<i>by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or</i>
	(d)	<i>any services ancillary to the services referred to in clauses (a), (b) and (c),</i>
		<i>shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:</i>
		<i>Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.</i>
		<i>Explanation.—Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.</i>
(4)		<i>The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.</i>
(5)		<i>The place of supply of services in relation to training and performance appraisal to</i>

	(a)	<i>a registered person, shall be the location of such person;</i>
	(b)	<i>a person other than a registered person, shall be the location where the services are actually performed.</i>
(6)	<i>The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.</i>	
(7)	<i>The place of supply of services provided by way of,—</i>	
	(a)	<i>organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or</i>
	(b)	<i>services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,—</i>
	(i)	<i>to a registered person, shall be the location of such person;</i>
	(ii)	<i>to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.</i>
<i>Explanation.—Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.</i>		

(8)	<i>The place of supply of services by way of transportation of goods, including by mail or courier to,—</i> <table> <tr> <td data-bbox="419 305 535 401">(a)</td><td data-bbox="543 305 1264 401"><i>a registered person, shall be the location of such person;</i></td></tr> <tr> <td data-bbox="419 411 535 542">(b)</td><td data-bbox="543 411 1264 542"><i>a person other than a registered person, shall be the location at which such goods are handed over for their transportation.</i></td></tr> </table>	(a)	<i>a registered person, shall be the location of such person;</i>	(b)	<i>a person other than a registered person, shall be the location at which such goods are handed over for their transportation.</i>
(a)	<i>a registered person, shall be the location of such person;</i>				
(b)	<i>a person other than a registered person, shall be the location at which such goods are handed over for their transportation.</i>				
(9)	<i>The place of supply of passenger transportation service to,—</i> <table> <tr> <td data-bbox="419 620 535 716">(a)</td><td data-bbox="543 620 1264 716"><i>a registered person, shall be the location of such person;</i></td></tr> <tr> <td data-bbox="419 726 535 852">(b)</td><td data-bbox="543 726 1264 852"><i>a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:</i></td></tr> </table> <i>Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).</i> <i>Explanation.—For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.</i>	(a)	<i>a registered person, shall be the location of such person;</i>	(b)	<i>a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:</i>
(a)	<i>a registered person, shall be the location of such person;</i>				
(b)	<i>a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:</i>				
(10)	<i>The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.</i>				
(11)	<i>The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall,—</i> <table> <tr> <td data-bbox="419 1557 535 1723">(a)</td><td data-bbox="543 1557 1264 1723"><i>in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable</i></td></tr> </table>	(a)	<i>in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable</i>		
(a)	<i>in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable</i>				

		connection or dish antenna is installed for receipt of services;
	(b)	in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;
	(c)	in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,—
	(i)	through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or
	(ii)	by any person to the final subscriber, be the location where such pre- payment is received or such vouchers are sold;
	(d)	in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:
	Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:	
	Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.	
	Explanation.—Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place	

	<i>of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.</i>	
(12)	<i>The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:</i>	
	<i>Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.</i>	
(13)	<i>The place of supply of insurance services shall,—</i>	
	<i>(a)</i>	<i>to a registered person, be the location of such person;</i>
	<i>(b)</i>	<i>to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.</i>
(14)	<i>The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.</i>	



ANALYSIS

Section 12 contains the provisions for determining the place of supply of services where both the 'location of supplier of services' and the 'location of recipient of

services' are in India. If either of the two persons (supplier or recipient) is outside India, the place of supply is determined by section 13.

Section 12 lays down a default provision to determine the place of supply of services as well as few other provisions to determine place of supply of certain specific services. Thus, place of supply is determined as per default provision in respect of services other than the ones covered by the specific provisions. It is also important to note that in many cases, the section provides different places of supply for a service supplied to registered and unregistered persons.

It must be kept in mind that the provisions of section 12 discussed hereunder are all in relation to domestic supply of services.

(i) Default provision [Section 12(2)]

The default provision is applicable only if the supply of service does not fall in any of the specific cases provided under section 12. It provides that the **place of supply of services made to a registered person is the location of the person receiving the services**. Since the supplier has the GSTIN of the person receiving the service, the location of such GSTIN is the place of supply.

However, if the services is supplied to an unregistered person, the place of supply is:

- a) the location of such unregistered person, if the address of the unregistered person is available in the records of the supplier
- b) the location of the supplier of services in other cases

The provision can be summarized as under:

Nature of Supply	Place of Supply	
	Recipient is registered	Recipient is unregistered
Supply of services other than the ones specified in sub-sections (3) to (14) of section 12	Location of recipient	a) If the address of the unregistered person is available in the records of the supplier, the location of such unregistered person. b) In other cases, the location of the supplier of services



★ *The default presumption for place of supply in respect of registered recipients (B2B supply of services) is the location of such person. Since the recipient is registered, address of recipient is always there and the same can be taken as proxy for place of supply.*

★ *The default presumption for place of supply in respect of unregistered recipients (B2C supply of services) is also the location of recipient. However, in many cases, the address of recipient is not available; in such cases, location of the supplier of services is taken as proxy for place of supply.*



(11) Mr. A (a Chartered Accountant registered in New Delhi) makes a supply of service to his client MB Pvt. Ltd. of Noida, Uttar Pradesh (registered in Uttar Pradesh). In this case, since the supply is made to a registered person, the place of supply is the location of the registered recipient, i.e. Noida.

(12) Mr. A, a Chartered Accountant in Gurugram, Haryana, (registered in Haryana) provides consultancy services to his client Mr. C who is a resident of New Delhi but is not registered under GST.

If the address of Mr. C is available in the records of Mr. A, location of Mr. C, i.e. New Delhi will be the place of supply, else the location of Mr. A, which is Gurugram, will be the place of supply.

(ii) Services in relation to an immovable property or lodging accommodation in a hotel/boat/vessel etc. [Section 12(3)]

Section 12(3) covers supplies of services which are (i) **directly** in relation to an immovable property, or (ii) by way of lodging accommodation in a hotel, etc. or a house-boat or vessel, or accommodation in any immovable property for organizing social, business functions etc. Such services are classified in the following major categories:

- (a) Services provided **directly** in relation to an immovable property including those by
- architects,
 - interior decorators,
 - surveyors,
 - engineers and other related experts,
 - estate agents
- (b) Service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work
- (c) Services provided by way of lodging accommodation by a
- hotel
 - inn
 - guest house
 - homestay
 - club
 - campsite
 - house boat
 - vessel
- (d) Services provided by way of accommodation in an immovable property for organizing
- any marriage/reception or matters related thereto,
 - official, social, cultural, religious or business functions
 - including services provided in relation to such function at such property
- (e) Services ancillary to the above-mentioned services

A red pushpin is pinned to a yellow sticky note. The note contains text about the location of services.

If the immovable property/boat/vessel is located outside India, the location of recipient of the services is the place of supply.

In all above cases, **location of the immovable property or the boat or the vessel or where such immovable property or the boat or the vessel is intended to be located, is the place of supply.**

This provision is applicable on property already constructed/ developed as well as on the property yet to be constructed/ developed.

For example, if the services have been supplied for an immovable property which is yet to be constructed/developed (e.g. architect's services for drawing the plan of a building), the place where such immovable property is intended to be located is the place of supply.



(13) KTS Builders (Mumbai) is constructing a factory building for PLM Pvt. Ltd. (Kolkata), in New Delhi.

The place of supply is the location of the immovable property, i.e. New Delhi.



(14) Shah and Shah, an architectural firm at Kolkata, has been hired by MKF Builders of Mumbai to draw up a plan for a high rise building to be constructed by them in Ahmedabad, Gujarat. The place of supply is the place where the immovable property is intended to be located, i.e. Ahmedabad.

(15) Mr. Ramesh, a Chartered Accountant, (New Delhi) travels to Mumbai for business and stays in a hotel there. The place of supply of accommodation service is the place where the hotel is located, i.e. Mumbai.

(16) Mr. X, a consulting engineer based in Mumbai, Maharashtra renders professional services in respect of an immovable property of Mr. Y (Bangalore) located in Australia. Since the immovable property is located outside India, the place of supply of service is the location of recipient, i.e. Bangalore and not the place where the immovable property is located (Australia)².

² It is important to note that this case should not be confused with the case where either the supplier or recipient is located outside India. Here, the property is located outside India and both supplier and recipients are located in India.

The provision can be summarized as under:

Nature of Supply	Location of immovable property/ boat/ vessel	Place of Supply
Supply of services relating to immovable property or lodging accommodation in a hotel/ boat/ vessel or accommodation in an immovable property for social/ business/ religious/ cultural functions	In India	Location/intended location of such immovable property/ boat/ vessel
	Outside India	Location of the recipient

Immovable property/Boat/Vessel located in more than one State/Union territory

Sometimes immovable property may extend to more than one location, for example, a railway line, a national highway or a bridge on a river may originate in one State and end in the other State or a house boat stay may traverse more than one State.

In such cases, i.e. where the immovable property or boat or vessel is located in more than one State/Union territory, the service is deemed to have been supplied in each of the respective States/Union territories, in proportion to the value for the services determined in terms of the contract or agreement entered into in this regard.



Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services supplied in different

States/Union territories (where the immovable property or boat or vessel is located) is computed in accordance with rule 4 of IGST Rules as under:

S. No.	Type of service in relation to immovable property	Factor which determines the proportionate value of service supplied in different States/Union territories
(a)	Service provided by way of lodging accommodation by hotel, inn, guest house etc. and its ancillary services (other than the cases where such property is a single property located in 2 or more contiguous States/ Union territories or both)	Number of nights stayed in such property <i>Refer Example 17</i>
(b)	• All other services provided in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc. and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in 2 or more contiguous States or/and Union territories • Services ancillary to services mentioned above	Area of the immovable property lying in each State/ Union territories <i>Refer Example 18</i>

(c)	Services by way of lodging accommodation by a house boat or vessel and its ancillary services	Time spent by the boat or vessel in each such State/ Union territories, to be determined on the basis of declaration made by the service provider <i>Refer Example 19</i>



Example 17 - Lodging accommodation by hotel/inn/guest house etc. and ancillary services excluding the property located in 2 or more contiguous States/

Union territories or both

A hotel chain X charges a consolidated sum of ₹ 30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night.



The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively.

The value of services provided will thus be apportioned as ₹ 20,000/- in the Union territory of Delhi and ₹ 10,000/- in the State of Uttar Pradesh.



Example 18 - Other services provided in relation to immovable property

There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified).



The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively.

The value of the service shall be accordingly apportioned between the States.

Example 19 - Lodging accommodation by a house boat or vessel and its ancillary services

A company C provides the service of 24 hours accommodation in a houseboat, which will transit both in Kerala and Karnataka in as much as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider).



The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively.

The value of the service shall be accordingly apportioned between the States.

(iii) Restaurant and catering service, personal grooming, fitness, beauty and health services [Section 12(4)]

The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery is the location where such services are actually performed.





(20) Mr. A, a businessman from Pune dines in a restaurant at Mumbai while on a business trip. The place of supply of restaurant service is the location where such service is performed, i.e. Mumbai.

(21) Mr. Timmy Ferreira, a makeup artist at Kolkata, goes to Jaipur, Rajasthan for doing the makeup of Ms. Simran Kapoor, a Bollywood actress based in Mumbai. The place of supply is the location where such service is performed, i.e. Jaipur.

(iv) Training and performance appraisal services [Section 12(5)]

The place of supply of services in relation to training and performance appraisal depends upon whether the supply is B2B or B2C.

In B2B supply, i.e. **where the recipient of service is a registered person, the place of supply is the location of such person.**

However, in case of B2C supply, i.e. **where the recipient of service is unregistered, the place of supply is the place where the service is actually performed.**



(22) DEO Consultants (Kolkata) impart GST training to accounts and finance personnel of Sun Cements Ltd., Guwahati, Assam (registered office) at the company's Kolkata office which is also registered under GST. Since the contract is entered with Guwahati office, and it being a registered recipient, the place of supply is the location of the registered person, i.e. Guwahati.

(23) Mr. Suresh (unregistered person based in Noida) signs up with Excellent Linguistics (New Delhi) for training on English speaking at their New Delhi Centre. Since the recipient is unregistered, the place of supply is the location where services are provided, i.e. New Delhi.

(v) Services by way of ADMISSION to events/amusement park/other places [Section 12(6)]

The place of supply of following services-

(i) services provided by way of ADMISSION to following types of events:



- (ii) services provided by way of admission to amusement park or any other place
- (iii) services ancillary to the above-mentioned services



is the **place where the event is actually held or where the park or such other place is located.**



(24) Mr. A, a resident of Ghaziabad, Uttar Pradesh, buys a ticket for a circus organized at Gurugram, Haryana by a circus company based in New Delhi. The place of supply is the location where the circus is held, i.e. Gurugram.

(25) Mr. B of New Delhi buys a ticket for an amusement park located in Noida, Uttar Pradesh. The place of the supply is the location where the park is located, i.e. Noida.

(vi) ORGANISATION of events [Section 12(7)]

For supplies related to ORGANIZATION of events or assigning sponsorship to such events, the place of supply depends on whether the supply is made to a registered person or an unregistered person.

When such service is provided to a registered person, the place of supply is location of recipient.

When it is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

The event can be a cultural, artistic, sporting, scientific, educational or entertainment event. It can also be a conference, fair, exhibition, celebration or other similar event.

Place of supply of services ancillary to organisation of such type of events or assigning of sponsorship to such events is also determined under sub-section (7) of section 12, i.e. in the manner described above. The provision can be summarized as under:

Nature of Supply	Place of Supply	
	Recipient is registered	Recipient is unregistered
Organisation of events or services ancillary to the same or assigning of sponsorship to such events	Location of recipient	Location where the event is held
Organisation of events outside India		Location of recipient



(26) Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), at Mumbai. Since the recipient is a registered person, the place of supply is the location of the recipient, i.e. Ahmedabad.

(27) Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), in Mauritius. Since the recipient is a registered person, the place of supply is the location of the recipient, i.e. Ahmedabad.

(28) Grand Wedding Planners (Chennai) is hired by Mr. Ramesh (unregistered person based in Hyderabad) to plan and organise his wedding at New Delhi. The recipient being an unregistered person, the place of supply is the location where the event is held, i.e. New Delhi.



(29) Grand Wedding Planners (Chennai) is hired by Mr. Ramesh (unregistered person based in Hyderabad) to plan and organise his wedding in Seychelles. The recipient being an unregistered person and the event held outside India, the place of supply is the location of the recipient, i.e. Hyderabad and not the location where the event is held, i.e. Seychelles.

Event held in more than one State/Union territory

If the event is held in more than one State/Union territory and a consolidated amount is charged for services relating to such event, the place of supply of such services is deemed to be in each of the respective States/Union territories in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

The above provision is applicable only when the recipient is unregistered, as for a registered recipient, the place of supply is the location of such recipient.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services made in different States/Union territories (where the event is held) is computed in accordance with rule 5 of the IGST Rules by the application of generally accepted accounting principles.



(30) An event management company E has to organize some promotional events in States S1 and S2 for a recipient R (unregistered). 3 events are to be organized in S1 and 2 in S2. They charge a consolidated amount of ₹ 10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as ₹ 6,00,000/- in S1 and ₹ 4,00,000/- in S2.



(vii) Transportation of goods including mail or courier [Section 12(8)]

The place of supply of services by way of transportation of goods, including by mail or courier, etc. provided to a registered person, is the location of such person.

However, where such services are provided to an unregistered person, the place of supply is the location at which such goods are handed over for their transportation.



Where the goods are being transported outside India, i.e. where the destination of goods transported is outside India, and the supplier of services by way of transportation of goods and its recipient are located in India, place of supply will be determined as per above provisions only.



(31) M/s XYZ Pvt. Ltd. is a registered company in New Delhi. It sends its courier to Pune through M/s Brue Air Courier Service. The recipient being registered person, the place of supply is the location of recipient, i.e. New Delhi.

(32) Mr. Y, an unregistered person, of New Delhi sends a courier to his brother in Amritsar, Punjab. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e. New Delhi.

(33) PR Pvt. Ltd., a Goods Transportation Agency based in Kanpur, Uttar Pradesh, is hired by Hajela Enterprises (registered supplier in Kanpur) to transport its consignment of goods to a buyer in New Delhi. The recipient being registered, the place of supply is the location of recipient, i.e. Kanpur.

(34) ST Pvt. Ltd., a Goods Transportation Agency based in Noida, Uttar Pradesh, is hired by Chhaya Trade Links (registered supplier in New Delhi) to transport its consignment of goods to a buyer in Kanpur, Uttar Pradesh. The recipient being registered, the place of supply is the location of recipient, i.e. New Delhi.

(35) Mr. Srikant, a manager in a Bank, is transferred from Bareilly, Uttar Pradesh to Bhopal, Madhya Pradesh. Mr. Srikant's family is stationed in Kanpur, Uttar Pradesh. He hires Goel Carriers of Lucknow, Uttar Pradesh (registered in Uttar Pradesh), to transport his household goods from Kanpur to Bhopal. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e. Kanpur.

(36) M/s JKL Pvt. Ltd. is a registered company in Chennai. It ships goods to its customer in London, United Kingdom through M/s Strong Logistics, a shipping company. The place of supply of services of transportation of goods provided by M/s Strong Logistics to M/s JKL Pvt. Ltd. is the location of the recipient, i.e. Chennai.

(viii) Passenger transportation service [Section 12(9)]

Nature of Supply	Place of Supply	
	Recipient is registered	Recipient is unregistered
Passenger transportation	Location of the recipient	Location where the passenger embarks on the conveyance for a continuous journey [See definition under the heading "Relevant Definitions"]

Issue of right to passage for future use and the point of boarding not known at the time of issue of right to passage

- a) If the **address of the unregistered person** is available in the records of the supplier, the **location of such unregistered person**.
- b) In other cases, the **location of the supplier** of services

The return journey is treated as a separate journey, even if the tickets for onward and return journey are issued at the same time.



(37) Mr. Amar (registered person in New Delhi) travels from Mumbai to Bangalore in Airjet flight. Mr. Amar has bought the tickets for the journey from Airjet's office registered in New Delhi.

The place of supply is the location of recipient, i.e. New Delhi.

(38) Mr. Shyam, an unregistered person, based in Gurugram, Haryana books a two-way air journey ticket from New Delhi to Mumbai on 5th December. He leaves New Delhi on 10th December in a late-night flight and lands in Mumbai the next day. He leaves Mumbai on 14th December in a morning flight and lands in New Delhi the same day.

The return journey is treated as a separate journey, even if the tickets for onward and return journey are issued at the same time. Thus, being an unregistered person, the place of supply for the outward and return journeys are the locations where the unregistered person embarks on the conveyance for the continuous journey, i.e. New Delhi and Mumbai respectively.



Examples of issue of right to passage for future use-point of boarding not known at the time of issue of right

(39) An airline may issue seasonal tickets, containing say 10 voucher which could be used for travel between any two locations in the country.

(40) The card issued by New Delhi metro could be used by a person located in Noida, or New Delhi or Faridabad, without the New Delhi metro being able to distinguish the location or journeys at the time of receipt of payment.

(ix) Service supplied on board a conveyance [Section 12(10)]

Nature of Supply	Place of Supply
Service supplied on board a conveyance*	Location of the first scheduled point of departure of that conveyance for the journey

* Note - Conveyance includes a vessel, an aircraft, a train or a motor vehicle.

You may recollect that the proxy for place of supply of goods on board a conveyance is the location at which the goods are taken on board. Services being intangible, the same proxy cannot be used for determining the place of supply for services supplied on board a conveyance. Therefore, for services, the proxy is the location of the first scheduled point of departure of that conveyance for the journey

However, for determining the place of supply of both goods and services supplied on board a conveyance, no distinction is made between registered and unregistered recipients.



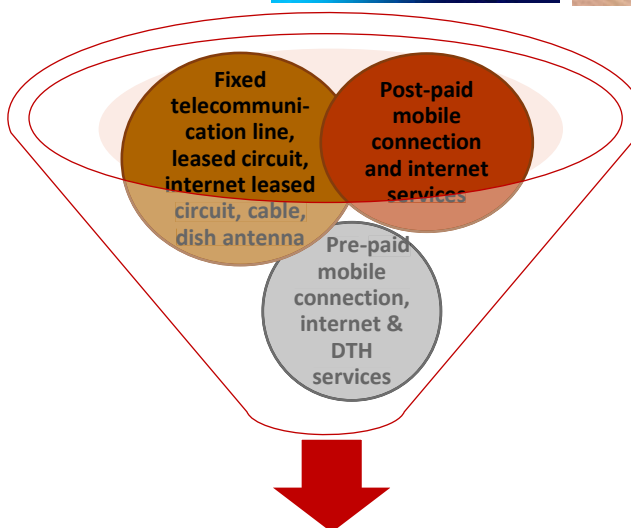
(41) Mr. X is travelling from Delhi to Mumbai in an Airjet flight. He desires to watch an English movie during the journey by making the necessary payment. The place of supply of such service of showing 'movie on demand' is the first scheduled point of departure of the conveyance for the journey, i.e. Delhi.

(x) Telecommunication service [Section 12(11)]

Telecommunication services include the services of telephone, data transfer (internet), broadcasting, cable, DTH (Direct to home) services, etc. Section 12(11) classifies the telecommunication services into 3 categories for the purpose of determining the place of supply as under:



- ❑ Services provided using a fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna
- ❑ Post-paid mobile connection and post-paid internet services
- ❑ Pre-paid mobile connection and pre-paid internet and DTH services



Telecommunication Services

The place of supply of the various types of telecommunication services is tabulated as under:

Nature of Supply	Place of Supply	Recipient
❑ Fixed telecommunication line ❑ Leased circuits ❑ Internet leased circuit ❑ Cable or dish antenna	Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services	ANY PERSON
Post-paid mobile connection	• Location of billing address of the recipient	

and internet services	of services in the records of the supplier of services • Location of the supplier of services, if the address is not available	
Pre-paid mobile connection, internet services and DTH services (recharge coupon, vouchers, net pack etc.)		
Services provided through a ☐ selling agent ☐ re-seller ☐ distributor of subscriber identity module card or recharge voucher	Address of the selling agent/ re-seller/ distributor at the time of supply	
Services provided by any person to final subscriber	Location where such pre-payment is received or such vouchers are sold	
Pre-paid services, the payment for which is made through internet banking/ other electronic mode of payment	Location of the recipient of services in the records of the supplier of services	
Other cases	• The address of the recipient as per the records of the supplier of services • Location of the supplier of services, if the address is not available	



(42) Mr. X (Kolkata) gets a landline phone installed at his home from Skybel Ltd. The place of supply is the location where the telecommunication line is installed, i.e. Kolkata.

(43) Mr. Y (Mumbai) gets a DTH installed at his home from RT Ltd. The place of supply is the location where the DTH is installed, i.e. Mumbai.

(44) Mr. D (Mumbai) takes a post-paid mobile connection in Mumbai from Skybel Ltd and gives his residence address at Mumbai as the address for billing with supplier. The place of supply is the location of billing address of the recipient, i.e. Mumbai.

(45) Mr. E (New Delhi) gets his post-paid mobile bill (billing address New Delhi) paid online from Goa. The place of supply is the location of the billing address of the recipient, i.e. New Delhi.

(46) Mr. C (Pune) purchases a pre-paid card from a selling agent in Mumbai. The place of supply is the address of the selling agent or re-seller, i.e. Mumbai.

(47) Mr. F (Puducherry) gets a pre-paid mobile recharged from a grocery shop in Chennai. The place of supply is the location where such pre-payment is received, i.e. Chennai.

Leased circuit is installed in more than one State/Union territory

If the leased circuit is installed in more than one State/Union territory and a consolidated amount is charged for supply of services, the place of supply is deemed to be in each of the respective States/Union territories in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the value of services supplied in different States/Union territories (where the leased circuit is installed) is determined in accordance with rule 6 of the IGST Rules in proportion to the number of points lying in each such State/ Union territory.

The number of points in a circuit is determined in the following manner-

- (i) In the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points – Refer **Example 48**
- (ii) Any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point – Refer **Example 49 & 50**



Example 48 – Circuit between two points or places

A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence, one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.



Example 49 – Intermediate point or place in the circuit

A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence, one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.



Example 50 – Intermediate point or place in the circuit

A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

(xi) Financial and stock broking services [Section 12(12)]

The place of supply of banking and other financial services, including stock broking services to any person is the **location of the recipient of services in the records of the supplier of services**. However, if the location of recipient of services is not available in the records of the supplier, the place of supply is the **location of the supplier of services**.



(51) Mr. A (Chennai) buys shares from a broker in BSE (Mumbai). The place of supply is the location of the recipient of services in the records of the supplier, i.e. Chennai.

(52) Mr. B (New Delhi) withdraws money from Best Bank's ATM in Amritsar. Mr. B has crossed his limit of free ATM withdrawals. The place of supply is the location of the recipient of services in the records of the supplier, i.e. New Delhi.

(53) Mr. C from Varanasi, Uttar Pradesh, visits a bank registered in New Delhi for getting a demand draft made. Mr. C does not have any account with the said bank. Therefore, since the location of recipient is not available in the records of the supplier, the place of supply is the location of the supplier of services, i.e. New Delhi.

(xii) Insurance services [Section 12(13)]

The place of supply of insurance services is the **location of recipient when provided to a registered recipient**.

If such services are provided to a person other than a registered person, the place of supply is the **location of the recipient of services in the records of the supplier of services**.



(54) Mr. A, CEO of XY Ltd., Mumbai (a company registered in Maharashtra) buys insurance cover for the inventory stored in company's factory located at Mumbai, from Excellent Insurers, Chennai (registered in Tamil Nadu). The place of supply is the location of the registered recipient, i.e. Mumbai.

(55) Ms. B (unregistered resident of Kolkata) goes to her native place Patna, Bihar and buys a medical insurance policy for her parents there from Safe Insurers, Patna (registered in Bihar). The place of supply is the location of the recipient of services in the records of the supplier, i.e. Patna.

(xiii) Advertisement service to the Government [Section 12(14)]

Nature of Supply	Place of Supply
Advertisement service to the Central Government/ State Government/ Statutory body/ Local authority meant for the State/Union territory identified in contract or agreement	Each of such States/ Union territories where the advertisement is broadcasted/ run / played/ disseminated.

The value of such supplies specific to each State/Union territory is in proportion to the amount attributable to the services provided by way of dissemination in the respective States/Union territories determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of advertisement services attributable to different States/Union territories (where the advertisement is broadcasted/ run /played/disseminated) is computed in accordance with rule 3 of IGST Rules as under:

Sl. No.	Type of advertisement	Value of service attributable to dissemination in different States/Union territories where the advertisement is broadcasted/ run /played/disseminated
1.	Advertisements in newspapers and publications	Amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in each State/Union territory <i>Refer Example 56</i>

2.	Advertisements through printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc.	Amount payable for the distribution of a specific number of such material in each State/Union territory <i>Refer Example 57</i>
3.	Advertisements in hoardings (other than those on trains)	Amount payable for the hoardings located in each State/ Union territory <i>Refer Example 58</i>
4.	Advertisements on trains	Amount attributable to each State/Union territory calculated in the ratio of length of the railway track in each of such State/Union territory, for that train <i>Refer Example 60</i>
5.	Advertisements on the back of utility bills of oil and gas companies, etc.	Amount payable to each State/Union territory for the advertisements on bills pertaining to consumers having billing addresses in each of such State/Union territory
6.	Advertisements on railway tickets	Amount attributable to each State/Union territory calculated in the ratio of number of Railway Stations in each of such State/Union territory <i>Refer Example 60</i>
7.	Advertisements on radio stations	Amount payable to such radio station, which by virtue of its name is part of each State/Union territory <i>Refer Example 61</i>
8.	Advertisement on television channels	Amount attributable to each State/Union territory calculated basis the viewership of such channel in each of such State/ Union territory which shall be derived as under: (a) Viewership can be ascertained from the channel viewership figures published by the Broadcast Audience Research

		Council. (b) Figures for the last week of a given quarter is used for calculating viewership for the succeeding quarter. (c) Where the channel viewership figures relate to a region comprising of more than one State/Union territory, the viewership figures for a State/ Union territory of that region, is calculated in ratio of the populations of that State/Union territory, as determined in the latest Census. (d) The ratio of the viewership figures for each State or Union territory so calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State or Union territory <i>Refer Example 62</i>
9.	Advertisements in cinema halls	Amount payable to a cinema hall or screens in a multiplex in each State/ Union territory. <i>Refer Example 63</i>
10.	Advertisements on internet It is deemed that such service is provided all over India.	Amount attributable to each State/Union territory calculated basis the internet subscribers in each of such State/ Union territory which shall be derived in the following manner: (a) Internet subscribers can be ascertained from the internet subscriber figures published by the (b) Telecom Regulatory Authority of India (TRAI). (c) Figures for the last quarter of a given financial year will be used for calculating the number of internet subscribers for the succeeding financial year.

		(d) Where the internet subscriber figures relate to a region comprising of more than one State/Union territory, the subscriber figures for a State/Union territory of that region shall be calculated in the ratio of the populations of that State/Union territory, as determined in the latest census. (e) The ratio of the subscriber figures for each State or Union territory so calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State or Union territory <i>Refer Example 64</i>
11.	Advertisements through SMS	Amount attributable to each State/Union territory calculated on the basis of the telecom subscribers in each of such State/Union territory. (a) Telecom subscribers in a telecom circle can be ascertained from the telecom subscribers figures published by the TRAI. (b) Figures for a given quarter will be used for calculating the subscribers for the succeeding quarter. (c) Where such figures relate to a telecom circle comprising of more than one State/Union territory, the subscriber figures for that State/Union territory shall be calculated in the ratio of the populations of that State/Union territory, as determined in the latest census. <i>Refer Examples 65-68</i>



Example 56 - Advertisements in newspapers and publications

ABC is a government agency which deals with all the advertisement and publicity of the Government. It has various wings dealing with various types of publicity. In furtherance thereof, it issues release orders to various agencies and entities. These agencies and entities thereafter provide the service and then issue invoices to ABC indicating the amount to be paid by them. ABC issues a release order to a newspaper for an advertisement on 'Beti bachao beti padhao', to be published in the newspaper DEF (whose head office is in Delhi) for the editions of Delhi, Pune, Mumbai, Lucknow and Jaipur. The release order will have details of the newspaper like the periodicity, language, size of the advertisement and the amount to be paid to such a newspaper.



The place of supply of this service shall be in the Union territory of Delhi, and the States of Maharashtra, Uttar Pradesh and Rajasthan. The amounts payable to the Pune and Mumbai editions would constitute the proportion of value for the State of Maharashtra which is attributable to the dissemination in Maharashtra. Likewise, the amount payable to the Delhi, Lucknow and Jaipur editions would constitute the proportion of value attributable to the dissemination in the Union territory of Delhi and States of Uttar Pradesh and Rajasthan respectively. DEF should issue separate State-wise and Union territory-wise invoices based on the editions.



Example 57 - Advertisements through printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc.

As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of 1,00,000 pamphlets (at a total cost of ₹ 1,00,000) to be distributed in the States of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States, i.e. Haryana, Uttar Pradesh and Rajasthan, from the Ministry or department concerned at the time of giving the print order. Let us assume that this breakup is 20,000, 50,000 and 30,000 respectively. This breakup should be indicated in the print order.



The place of supply of this service is in Haryana, Uttar Pradesh and Rajasthan. The ratio of this breakup, i.e. 2:5:3 will form the basis of value attributable to the dissemination in each of the three States. Separate invoices will have to be issued State-wise by GH to ABC indicating the value pertaining to that State, i.e. ₹ 20,000 - Haryana, ₹ 50,000 - Uttar Pradesh and ₹ 30,000 - Rajasthan.



Example 58 - Advertisements in hoardings (other than those on trains)

ABC as part of the campaign 'Saakshar Bharat' has engaged a firm IJ for putting up hoardings near the Airports in the 4 metros, i.e. Delhi, Mumbai, Chennai and Kolkata. The release order issued by ABC to IJ will have the city-wise, location-wise breakup of the amount payable for such hoardings.



The place of supply of this service is in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal. In such a case, the amount actually paid to IJ for the hoardings in each of the 4 metros will constitute the value attributable to the dissemination in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal respectively. Separate invoices will have to be issued State-wise and Union territory-wise by IJ to ABC indicating the value pertaining to that State or Union territory.



Example 59 - Advertisements on trains

ABC places an order on KL for advertisements to be placed on a train with regard to the 'Janani Suraksha Yojana'. The length of a track in a State will vary from train to train. Thus, for advertisements to be placed on the Hazrat Nizamuddin Vasco Da Gama Goa Express which runs through Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa, KL may ascertain the total length of the track from Hazrat Nizamuddin to Vasco Da Gama as well as the length of the track in each of these States and Union territory from the website www.indianrail.gov.in.



The place of supply of this service is in the Union territory of Delhi and States of Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra Karnataka and Goa. The value of the supply in each of these States and Union territory attributable to the dissemination in these States will be in the ratio of the length of the track in each of these States and Union territory. If this ratio works out to say 0.5:0.5:2:2:3:3:1, and the amount to be paid to KL is ₹ 1,20,000, then KL will have to calculate the State-wise and Union territory-wise breakup of the value of the service, which will be in the ratio of the length of the track in each State and Union territory.

In the given example, the State-wise and Union territory-wise breakup works out to Delhi (₹ 5,000), Haryana (₹ 5,000), Uttar Pradesh (₹ 20,000), Madhya Pradesh (₹ 20,000), Maharashtra (₹ 30,000), Karnataka (₹ 30,000) and Goa (₹ 10,000). Separate invoices will have to be issued State-wise and Union territory-wise by KL to ABC indicating the value pertaining to that State or Union territory.



Example 60 - Advertisements on railway tickets

ABC has issued a release order to MN for display of advertisements relating to the 'Ujjwala' scheme on the railway tickets that are sold from all the Stations in the States of Madhya Pradesh and Chattisgarh.



The place of supply of this service is in Madhya Pradesh and Chattisgarh. The value of advertisement service attributable to these two States will be in the ratio of the number of railway stations in each State as ascertained from the Railways or from the website www.indianrail.gov.in.

Let us assume that this ratio is 713:251 and the total bill is ₹ 9,640. The breakup of the amount between Madhya Pradesh and Chattisgarh in this ratio of 713:251 works out to ₹ 7,130 and ₹ 2,510 respectively. Separate invoices will have to be issued State-wise by MN to ABC indicating the value pertaining to that State.



Example 61 - Advertisements on radio stations

For an advertisement on 'Pradhan Mantri Ujjwala Yojana', to be broadcast on a FM radio station OP, for the radio stations of OP Kolkata, OP Bhubaneswar, OP Patna, OP Ranchi and OP Delhi, the release order issued by ABC will show the breakup of the amount which is to be paid to each of these radio stations.

The place of supply of this service is in West Bengal, Odisha, Bihar, Jharkhand and Delhi. The place of supply of OP Delhi is in Delhi even though the studio may be physically located in another State. Separate invoices will have to be issued State-wise and Union territory-wise by MN to ABC based on the value pertaining to each State or Union territory.



Example 62 - Advertisement on television channels

ABC issues a release order with QR channel for telecasting an advertisement relating to the 'Pradhan Mantri Kaushal Vikas Yojana' in the month of November, 2017. In the first phase, this will be telecast in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand.

The place of supply of this service is in Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. In order to calculate the value of supply attributable to Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand, QR has to proceed as under —



- I. QR will ascertain the viewership figures for their channel in the last week of September 2017 from the Broadcast Audience Research Council. Let us assume it is 1,00,000 for Delhi and 2,00,000 for the region comprising of Uttar Pradesh and Uttarakhand and 1,00,000 for the region comprising of Bihar and Jharkhand.

- II. Since the Broadcast Audience Research Council clubs Uttar Pradesh and Uttarakhand into one region and Bihar and Jharkhand into another region, QR will ascertain the population figures for Uttar Pradesh, Uttarakhand, Bihar and Jharkhand from the latest census.
- III. By applying the ratio of the populations of Uttar Pradesh and Uttarakhand, as so ascertained, to the Broadcast Audience Research Council viewership figures for their channel for this region, the viewership figures for Uttar Pradesh and Uttarakhand can be calculated. Let us assume that the ratio of the populations of Uttar Pradesh and Uttarakhand works out to 9:1. When this ratio is applied to the viewership figures of 2,00,000 for this region, the viewership figures for Uttar Pradesh and Uttarakhand work out to 1,80,000 and 20,000 respectively.
- IV. In a similar manner, the breakup of the viewership figures for Bihar and Jharkhand can be calculated. Let us assume that the ratio of populations is 4:1 and when this is applied to the viewership figure of 1,00,000 for this region, the viewership figure for Bihar and Jharkhand works out to 80,000 and 20,000 respectively.
- V. The viewership figure for each State works out to Delhi (1,00,000), Uttar Pradesh (1,80,000), Uttarakhand (20,000), Bihar (80,000) and Jharkhand (20,000). The ratio is thus 10:18:2:8:2 or 5:9:1:4:1 (simplification).
- VI. This ratio has to be applied when indicating the breakup of the amount pertaining to each State. Thus, if the total amount payable to QR by ABC is ₹ 20,00,000, the State-wise breakup is ₹ 5,00,000 (Delhi), ₹ 9,00,000 (Uttar Pradesh) ₹ 1,00,000 (Uttarakhand), ₹ 4,00,000 (Bihar) and ₹ 1,00,000 (Jharkhand). Separate invoices will have to be issued State-wise and Union territory-wise by QR to ABC indicating the value pertaining to that State or Union territory.





Example 63 - Advertisements in cinema halls

ABC commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana' to be displayed in the cinema halls in Chennai and Hyderabad. The place of supply of this service is in the States of Tamil Nadu and Telangana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State-wise and Union territory-wise by ST to ABC indicating the value pertaining to that State.



Example 64 - Advertisements on internet

ABC issues a release order to WX for a campaign over internet regarding linking Aadhaar with one's bank account and mobile number. WX runs this campaign over certain websites. In order to ascertain the State-wise breakup of the value of this service which is to be reflected in the invoice issued by WX to ABC, WX has to first refer to the Telecom Regulatory Authority of India figures for quarter ending March, 2017, as indicated on their website www.trai.gov.in. These figures show the service area wise internet subscribers. There are 22 service areas. Some relate to individual States some to two or more States and some to part of one State and another complete State. Some of these areas are metropolitan areas.



In order to calculate the State-wise breakup, first the State-wise breakup of the number of internet subscribers is arrived at. (In case figures of internet subscribers of one or more States are clubbed, the subscribers in each State is to be arrived at by applying the ratio of the respective populations of these States as per the latest census.). Once the actual number of subscribers for each State has been determined, the second step for WX involves calculating the State-wise ratio of internet subscribers. Let us assume that this works out to 8:1:2..... and so on for Andhra Pradesh, Arunachal Pradesh, Assam... and so on. The third step for WX will be to apply these ratios to the total amount payable to WX so as to arrive at the value attributable to each State. Separate invoices will have to be issued State-wise and Union territory-wise by WX to ABC indicating the value pertaining to that State or Union territory.

**Advertisements through SMS**

(65) In the case of the telecom circle of Assam, the amount attributed to the telecom circle of Assam is the value of advertisement service in Assam.

(66) The telecom circle of North East covers the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Manipur and Tripura. The ratio of populations of each of these States in the latest census will have to be determined and this ratio applied to the total number of



subscribers for this telecom circle so as to arrive at the State-wise figures of telecom subscribers. Separate invoices will have to be issued State-wise by the service provider to ABC indicating the value pertaining to that State.

(67) ABC commissions UV to send short messaging service to voters asking them to exercise their franchise in elections to be held in Maharashtra and Goa. The place of supply of this service is in Maharashtra and Goa. The telecom circle of Maharashtra consists of the area of the State of Maharashtra (excluding the areas covered by Mumbai which forms another circle) and the State of Goa. When calculating the number of subscribers pertaining to Maharashtra and Goa, UV has to -

- I. obtain the subscriber figures for Maharashtra circle and Mumbai circle and add them to obtain a combined figure of subscribers;
- II. obtain the figures of the population of Maharashtra and Goa from the latest census and derive the ratio of these two populations;
- III. this ratio will then have to be applied to the combined figure of subscribers so as to arrive at the separate figures of subscribers pertaining to Maharashtra and Goa;
- IV. the ratio of these subscribers when applied to the amount payable for the short messaging service in Maharashtra circle and Mumbai circle, will give breakup of the amount pertaining to Maharashtra and Goa. Separate invoices will have to be issued State-wise by UV to ABC indicating the value pertaining to that State.

(68) The telecom circle of Andhra Pradesh consists of the areas of the States of Andhra Pradesh, Telangana and Yanam, an area of the Union territory of Puducherry. The subscribers attributable to Telangana and Yanam will have to be excluded when calculating the subscribers pertaining to Andhra Pradesh.



6. PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA [SECTION 13]

 STATUTORY PROVISIONS		
Section 13	<i>Place of supply of services where location of supplier or location of recipient is outside India</i>	
Sub-section	Clause	Particulars
(1)		<i>The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.</i>
(2)		<i>The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:</i> <i>Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.</i>
(3)		<i>The place of supply of the following services shall be the location where the services are actually performed, namely:—</i> (a) <i>Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:</i> <i>Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:</i> <i>Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for</i>

		<i>repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.</i>
	(b)	<i>services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.</i>
(4)		<i>The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.</i>
(5)		<i>The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.</i>
(6)		<i>Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.</i>
(7)		<i>Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in</i>

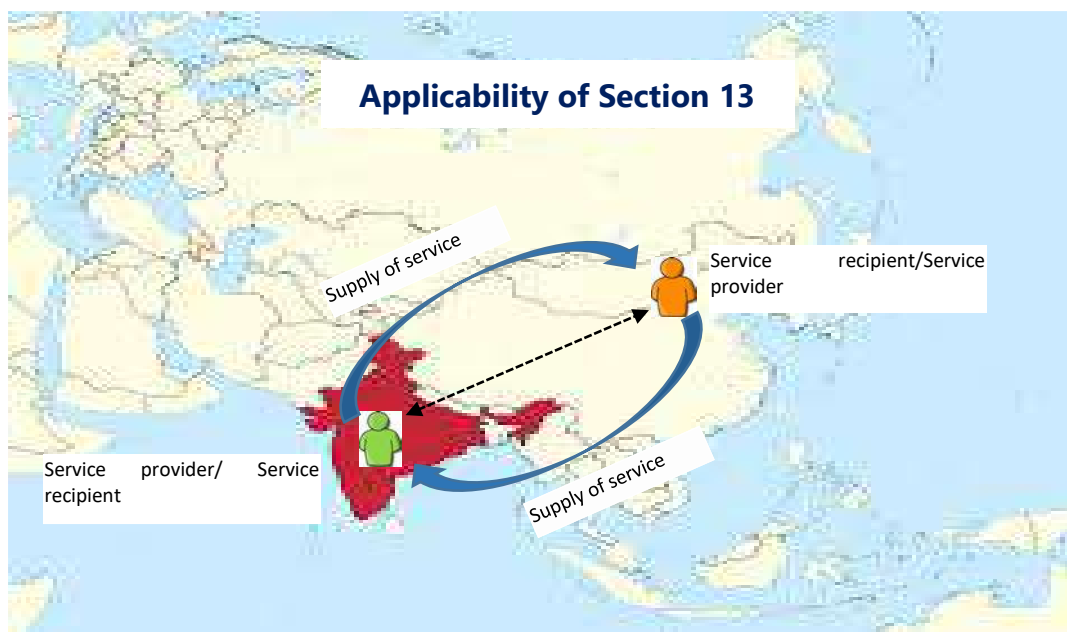
	<i>this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.</i>	
(8)	<i>The place of supply of the following services shall be the location of the supplier of services, namely:—</i>	
	(a)	<i>services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;</i>
	(b)	<i>intermediary services;</i>
	(c)	<i>services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.</i>
	<i>Explanation.—For the purposes of this sub-section, the expression,—</i>	
	(a)	<i>"account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;</i>
	(b)	<i>"banking company" shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;</i>
	(c)	<i>"financial institution" shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934;</i>
	(d)	<i>"non-banking financial company" means,—</i>
	(i)	<i>a financial institution which is a company;</i>
	(ii)	<i>a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or</i>
	(iii)	<i>such other non-banking institution or class of such institutions, as the Reserve Bank of India</i>

			may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.
(10)	The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.		
(11)	The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.		
(12)	The place of supply of online information and database access or retrieval services shall be the location of the recipient of services. Explanation.—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non- contradictory conditions are satisfied, namely:—		
	(a)	the location of address presented by the recipient of services through internet is in the taxable territory;	
	(b)	the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;	
	(c)	the billing address of the recipient of services is in the taxable territory;	
	(d)	the internet protocol address of the device used by the recipient of services is in the taxable territory;	
	(e)	the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;	
	(f)	the country code of the subscriber identity module card used by the recipient of services is of taxable territory;	

	(g)	<i>the location of the fixed land line through which the service is received by the recipient is in the taxable territory.</i>
(13)		<i>In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.</i>



ANALYSIS



Section 13 provides for determination of place of supply of services in cases where either the location of the supplier of services or the recipient of services is outside India. Thus, this section provides the place of supply in relation to international or cross-border supply of services. Place of supply of a service is one of the factors which determines as to whether a service can be termed as import or export of service.

Similar to section 12, section 13 also lays down a default provision to determine the place of supply of services as well as few other provisions to determine place of supply of certain specific services. Thus, place of supply is determined as per

default provision in respect of services other than the ones covered by the specific provisions.

Further, sub-section (13) of section 13 empowers the Central Government to notify services or circumstances for which the place of supply will be the place of effective use and enjoyment of service so as to prevent double taxation/non-taxation of the supply of a service.

It must be kept in mind that the provisions of section 13 discussed hereunder are all in relation to cross border supply of services.

(i) Default provision [Section 13(2)]

The default provision is applicable only if the supply of service does not fall in any of the specific cases provided in section 13.

This provision provides that the place of supply of services is **the location of the recipient of services**.

However, **if the location of the recipient of services is not available** in the ordinary course of business, the place of supply is **the location of the supplier of services**.

The provision can be summarized as under:

Nature of Supply	Place of Supply	
	Location of recipient is available	Location of recipient is not available
Supply of services other than the ones specified in sub-sections (3) to (13) of section 13	Location of the recipient of services	Location of the supplier of services

The principal exceptions to the above default provision relating to place of supply of cross border services are:

- ☐ Performance-based services
- ☐ Services directly in relation to immovable property
- ☐ Admission to and/or organization of events, celebrations etc.

- ☐ Services supplied by a banking company, financial institution, non-banking financial company (NBFS) to account holders
- ☐ Intermediary services
- ☐ Hiring of means of transport other than aircrafts and vessels except yachts, up to a period of one month
- ☐ Passenger transportation services
- ☐ Services on board a conveyance during the course of a passenger transport operation
- ☐ Online information and database access or retrieval services

The place of supply of each of the above exceptions is discussed below.

(ii) Performance based services [Section 13(3)]

Nature of Supply		Place of Supply
(i)	Services requiring physical presence of goods on which the services are to be performed 	Location where the service is actually performed
	Exceptions: Services supplied in respect of goods, that are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs/treatment/process, without being put to any other use in India	☐ Location of the recipient ☐ Location of the supplier, if location of recipient is not available

	Services supplied in respect of goods, that are provided from a remote location by electronic means		Location where goods are situated at the time of supply of services
(ii)	Services supplied to an individual, which require the physical presence of the recipient		Location where the service is actually performed
(iii)	Services at (i) and (ii) above supplied at more than one location including a location in the taxable territory		Location in the taxable territory
(iv)	Services at (i) and (ii) supplied in more than one State/Union territory		Each of State /Union territory

In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India and are not put to any use in India, the place of supply would be determined as per the provisions contained in section 13(2) - *Circular No. 103/22/2019 GST dated 28.06.2019.*



(69) MX Pvt. Ltd. (New Delhi) imports a machine from Germany for being installed in its factory at New Delhi. To install such machine, MX Pvt. Ltd. takes the service of an engineer who comes to India from Germany for this specific installation. The place of supply of installation service, which requires the physical presence of machinery, is the location where the service is actually performed, i.e. New Delhi.

(70) A mobile company located in United States of America (USA) takes services of a software company located in Bangalore for installation of a software in its mobiles in USA. The Indian software company provides its services through electronic means from its office in India. The place of supply is the location where goods (mobile phones) are situated at the time of supply of service, i.e. USA.

(71) ABC Ltd., Hyderabad has exported a machine to a company in Indonesia. The machine stops functioning and is thus, imported by ABC Ltd. for free repairs in terms of the sale contract. The machine is exported after repairs without being put to any use in India. The place of supply of repair service is the location of the recipient, i.e. Indonesia.

(72) QR Pvt. Ltd. imports raw diamonds from a diamond merchant in Belgium for the purpose of cutting, polishing and finishing the same. After the work is completed, the finished diamonds are exported to the diamond merchant in Belgium. The place of supply of the services undertaken by QR Pvt. Ltd. is the location of the recipient, i.e. Belgium.

(73) Mr. X, a hair stylist registered in New Delhi, travels to Singapore to provide his services to Ms. Y, a resident of Singapore. The place of supply is the location where the services are actually performed, i.e. Singapore.

(74) PQR Consultants, New Delhi, bags a contract for doing a market research for a vehicle manufacturing company based in South Korea, in respect of its upcoming model of a car. The research is to be carried out in five countries including New Delhi in India. Since the services are supplied at more than one location including a location in the taxable territory, the place of supply is the location in the taxable territory, i.e. New Delhi.

Value of supply of service supplied in more than one State/Union territory

The value of services supplied

- (i) in respect of goods requiring physical presence of such goods; and
- (ii) to an individual requiring his physical presence

in each State or Union territory - where the service is performed - (when such services are supplied in more than one State/union territory) is in

proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services supplied in different States/Union territories (where the service is performed) is computed in accordance with rule 7 of IGST Rules in the following manner:

S. No.	Cases	Manner of computing the proportionate value of service
(i)	Services supplied on the same goods	Equally dividing the value of service in each of the States/ Union territory where the service is performed <i>Refer Example 75</i>
(ii)	Services supplied on different goods	Considering the ratio of the invoice value of goods in each States/ Union territory, on which service is performed, as the ratio of the value of the service performed in each State/Union territory <i>Refer Example 76</i>
(iii)	Services supplied to individuals	Applying generally accepted accounting principles. <i>Refer Example 77</i>



Example 75 - Services supplied on the same goods

A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.



Example 76 – Services supplied on different goods

A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the Union territory of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.



Example 77 – Services supplied to individuals

A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.

(iii) Services in relation to immovable property [Section 13(4)]

Nature of Supply	Place of Supply
Services supplied directly in relation to an immovable property like ☐ Services of experts and estate agents ☐ Accommodation by a hotel, inn, guest house, club or campsite ☐ Grant of rights to use immovable property ☐ Construction and related services ☐ Services of architects or interior decorators	Location of immovable property located or intended to be located



Above services supplied at more than one location, including a location in the taxable territory	Location in the taxable territory
Above services supplied in more than one State/Union territory	Each of State/Union territory



(78) Mr. C, an architect (New Delhi), provides professional services to Mr. Z of New York in relation to his immovable property located in Pune. The place of supply is the location of immovable property, i.e. Pune.

(79) Mr. C, an architect (New Delhi), enters into a contract with Mr. Z of New York to provide professional services in respect of immovable properties of Mr. Z located in Pune and New York. Since the immovable properties are located in more than one location including a location in the taxable territory, the place of supply is the location in the taxable territory, i.e. Pune.

Manner of determining value of supply of service supplied in more than one State/Union territory

The value of services supplied directly in relation to an immovable property in each State or Union territory – where the service is supplied - (when such services are supplied in more than one State/union territory) is in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services supplied in different States/Union territories (where the service is supplied) is computed in accordance with rule 8 of IGST Rules. Rule 8 lays down that in the absence of any such contract or agreement, the value is determined by applying the provisions of rule 4 of the said rules, *mutatis mutandis*.

Thus, the provisions for determining the proportionate value of services provided directly in relation to an immovable property under section 12(3)

[both the supplier and the recipient are located in India] are applicable for determining the proportionate value of services directly provided in relation to an immovable property under section 13(4) [either the supplier or the recipient is located outside India] as well. *[Rule 4 prescribing the provisions for determining the proportionate value of services provided directly in relation to an immovable property under section 12(3) is discussed earlier in this chapter.]*

(iv) Services by way of admission to and/or organization of events or celebrations etc. [Section 13(5)]

Nature of Supply	Place of Supply
Services supplied by way of admission to or organisation of following: ☐ Cultural, artistic, sporting, scientific, educational, entertainment events ☐ Celebration, conference, fair, exhibition ☐ Similar events  Services ancillary to such admission or organization of event	Place where the event is actually held
Above services supplied at more than one location, including a location in the taxable territory	Location in the taxable territory
Above services supplied in more than one State/Union territory	Each of State/Union territory



(80) A circus team from Russia organizes a circus in New Delhi. The place of supply is the location where the event is actually held, i.e. New Delhi.



(81) An event management company registered in New Delhi organises an art exhibition displaying works of an international painter based in Dubai. The exhibition is organised in 3 countries including New Delhi in India. Since the service is supplied at more than one location including a location in the taxable territory, the place of supply is the location in the taxable territory, i.e. New Delhi.

Manner of determining value of supply of service supplied in more than one State/Union territory

The value of services supplied by way of admission to or organisation of an event in each State or Union territory – where the service is supplied - (when such services are supplied in more than one State/union territory) is in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services supplied in different States/Union territories (where the service is supplied) is computed in accordance with rule 9 of IGST Rules.

Rule 9 lays down that in the absence of any such contract or agreement, the value is determined by applying the provisions of rule 5 of the said rules, *mutatis mutandis*.

Thus, the provisions for determining the proportionate value of services supplied by way of organization of an event under section 12(7) [both the supplier and the recipient are located in India] are applicable for determining the proportionate value of services supplied by way of admission to or organization of an event under section 13(5) [either the supplier or the recipient is located outside India] as well. [Rule 5 prescribing the provisions

for determining the proportionate value of services supplied by way of organization of an event under section 12(7) discussed earlier in this chapter.]

(v) Banking and financial services, intermediary services and hiring of means of transport [Section 13(8)]

Nature of Supply	Place of Supply
Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders [See definition of these terms in Explanation to sub-section (8) of section 13]	Location of the supplier of services
Intermediary [See definition] services	
Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of 1 month	



Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory is exempt from GST vide Notification No. 9/2017 IT(R) dated 28.06.2017¹.



(82) Mr. C, a non-resident, has an NRE account with Varanasi Bank (registered in Uttar Pradesh) in India. The place of supply of banking services provided by the Varanasi Bank to Mr. C, a non-resident customer, is the location of the supplier of service, i.e. Varanasi.



¹ This exemption is subject to conditions specified in Notification No. 9/2017 IT(R) dated 28.06.2017 which has been discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material.

(83) XYZ & Sons, Kolkata, is an agent who facilitates supply of goods between foreign customers and Indian sellers. The place of supply of intermediary services is the location of the supplier of services, i.e. Kolkata.

(84) Mr. D, an unregistered person based in New Delhi hires a yacht from a company based in London, UK for 20 days. The place of supply is the location of the supplier of services, i.e. London.



(vi) Transportation services [Sub-sections (10) and (11) of section 13]

Nature of Supply	Place of Supply
Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey [See definition]
Services provided on board a conveyance during passenger transportation including services intended to be wholly or substantially consumed while on board	First scheduled point of departure of that conveyance for the journey

The place of supply of services of transportation of goods, where location of supplier or location of recipient is outside India will be governed by the default provision section 13(2) *[discussed earlier]*.



(85) Mr. A, a foreign tourist, has booked a ticket for New Delhi-Sri Lanka flight from an airlines registered in New Delhi for a continuous journey without any stopover. The place of supply of services by airlines is the place where the passenger embarks on the conveyance for a continuous journey, i.e. New Delhi.

(vii) Online information and database access or retrieval services (OIDAR) [Section 13(12)]

The place of supply of OIDAR [See definition] is the location of the recipient of services.

It is difficult to determine the location of the recipient in case of OIDAR as such recipients normally access the services online and are not required to disclose their location.



The explanation to sub-section (12) lays down 7 conditions. On satisfying any 2 non-contradictory conditions out of such seven conditions, the service recipient is deemed to be located in the taxable territory, i.e. India.

The **seven conditions** are:

- (a) the recipient gives an Indian address through internet;
- (b) the payment is settled by an Indian credit card/debit card/other card;
- (c) the recipient has an Indian billing address;
- (d) the computer/other device used by the recipient has an Indian IP address;
- (e) the recipient uses an Indian bank account for payment;
- (f) the country code of the subscriber identity module card used by the recipient of services is of India;
- (g) the recipient receives the service through an Indian fixed land line.

(viii) Notified services [Section 13(13)]

In order to prevent double taxation or non-taxation of supply of any service, section 13(13) empowers the Government to notify any service for which the place of supply shall be the place of effective use and enjoyment of service.

The following services have been notified² in this regard:

(1) Research and development services related to pharmaceutical sector

The following research and development services related to pharmaceutical sector [as specified in columns (2) and (3) from Sl. No. 1 to 10 of the table given below] when supplied by a person located in taxable territory to a person located in the non-taxable territory, have been notified as the services for which the place of supply shall be the place of effective use and enjoyment of a service as specified in the corresponding entry in column (4) of the table given below:

Sl. No.	Nature of supply	General description of supply	Place of supply
(1)	(2)	(3)	(4)
1.	Integrated discovery and development	This process involves discovery and development of molecules by pharmaceutical sector for medicinal use. The steps include designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.	When research and development services related to pharmaceutical sector as specified in columns (2) and (3) from Sl. No. 1 to 10 of this table are supplied by a person located in taxable territory to a person located in the non-taxable
2.	Integrated development		
3.	Evaluation of the efficacy of new chemical/	This is in vivo research (i.e. within the animal) and involves	

² vide Notification No. 04/2019 IT dated 30.09.2019

	biological entities in animal models of disease	development of customized animal model diseases and administration of novel chemical in doses to animals to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the service recipient located in non-taxable territory.	territory, the place of supply shall be the location of the recipient of services subject to fulfillment of the following conditions:- (i) Supply of services from the taxable territory is provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory.
4.	Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays	This is in vitro research (i.e. outside the animal). An assay is first developed and then the novel chemical is supplied by the service recipient located in non-taxable territory and is evaluated in the assay under optimized conditions.	(ii) Such supply of services fulfills all other conditions in the
5.	Drug metabolism and pharmacokinetics of new chemical entities	This process involves investigation whether a new compound synthesized by supplier can be	

		developed as new drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal experiments using rat and mice.	definition of export of services, except the condition that place of supply is outside India.
6.	Safety Assessment/ Toxicology	Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development.	
7.	Stability Studies	Stability studies are conducted to support formulation, development, safety and efficacy of a new drug. It is also done to ascertain the quality and shelf life of the drug in their intended	

		packaging configuration.	
8.	Bio-equivalence and Bioavailability Studies	Bio-equivalence is a term in pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bioavailability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action.	
9.	Clinical trials	The drugs that are developed for human consumption would undergo human testing to confirm its utility and safety before being registered for	

		marketing. The clinical trials help in collection of information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of safe dosage	
10.	Bio analytical studies	Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measurement of drugs and their metabolites, and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs and metabolites in biological systems.	

(2) B2B MRO services of aircrafts or aircraft engines/ components/ parts

Description of services or circumstances	Place of supply
Supply of maintenance, repair or overhaul service (hereinafter referred as MRO service) in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a	Location of the recipient of service

person for use in the course or furtherance of business	

(3) B2B MRO services of ships and other vessels, their engines and other components

Description of services or circumstances	Place of supply
Supply of MRO service in respect of ships and other vessels, their engines and other components or parts supplied to a person for use in the course or furtherance of business	The place of supply of services shall be the location of the recipient of service



7. CLARIFICATIONS ON PLACE OF SUPPLY

(1) Place of supply in respect of various cargo handling services provided by ports to clients

The port authorities provide various services to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc.

It is clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in section 12(2) or section 13(2), as the case may be, depending upon the terms of the contract between the supplier and recipient of such services³.



³ Circular No. 103/22/2019 GST dated 28.06.2019

(2) Place of supply in case of software/ design services related to Electronics Semiconductor and Design Manufacturing (ESDM) industry

A number of companies that are part of the growing Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas. The customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks ("IP blocks", reusable units of software logic and design layouts that can be combined to form newer designs). Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.

In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.

The question arose whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of "goods required to be made physically available by the recipient to the provider".

It is observed that in contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.

Therefore, Circular No. 118/37/2019 GST dated 11.10.2019 clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per section 13(2). Provisions of section 13(3)(a) do not apply separately for determining the place of supply for ancillary supply in such cases.

(3) Clarification on doubts related to scope of "Intermediary"

Circular No. 159/15/2021 GST dated 21.09.2021 has clarified the doubts related to the intermediary [See definition] services. The circular clarifies that the concept of intermediary services requires following basic prerequisites:

(i) Minimum of three parties: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons.

It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service.

An intermediary essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and, does not himself provide the main supply.

(ii) Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services:

(1) Main supply, between the two principals, which can be a supply of goods or services or securities;

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals.

This ancillary supply is the supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal-to-principal basis to another person cannot be considered as supplier of intermediary service.

(iii) Intermediary service provider to have the character of an agent, broker/any other similar person: The definition of “intermediary” itself provides that “intermediary service provider means a broker, an agent or any other person, by whatever name called....”.

*This part of the definition is **not inclusive** but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”.*

*The use of the expression “**arranges or facilitates**” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the **role of intermediary is only supportive**.*

(iv) Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary “does not include a person who supplies such goods or services or both or securities on his own account”.

*Use of word “**such**” in the definition with reference to supply of goods or services **refers to the main supply** of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary.*

It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal-to-principal basis, the said supply cannot be covered under the scope of “intermediary”.

(v) Sub-contracting for a service is not an intermediary service: The supplier of main service may outsource the supply of the main service, either fully or partly, to one or more sub-contractors.

Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary.



(86) 'A' and 'B' have entered into a contract as per which 'A' needs to provide a service of, say, annual maintenance of tools and machinery to 'B'. 'A' subcontracts a part or whole of it to 'C'. Accordingly, 'C' provides the service of annual maintenance to 'A' as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of 'A', i.e. to 'B' on behalf of 'A'.

Though 'C' is dealing with the customer of 'A', but 'C' is providing the main supply of annual maintenance service to 'A' on his own account, i.e. on principal to principal basis.

In this case, 'A' is providing supply of annual maintenance service to 'B', whereas 'C' is supplying the same service to 'A'. Thus, supply of service by 'C' will not be considered as an intermediary.

(vi) The specific provision of place of supply of 'intermediary services' under section 13 shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following examples:



(87) 'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.



(88) 'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which "C' may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.



(89) An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of section 2(13).



(90) 'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, 'B' is not an intermediary.

The examples given above are only indicative and not exhaustive. Whether or not a specific service would fall under intermediary services within the meaning of section 2(13), would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in preceding paras, should be kept in consideration.

After understanding the concept of **'place of supply'** and meaning of the **'location of the supplier'**, you will now be in a position to better appreciate the meaning of the terms - **inter-State supply, intra-State supply and supply in course of territorial waters**. Therefore, these terms have been discussed in detail hereunder:



8. INTER-STATE SUPPLY [SECTION 7 OF THE IGST ACT]

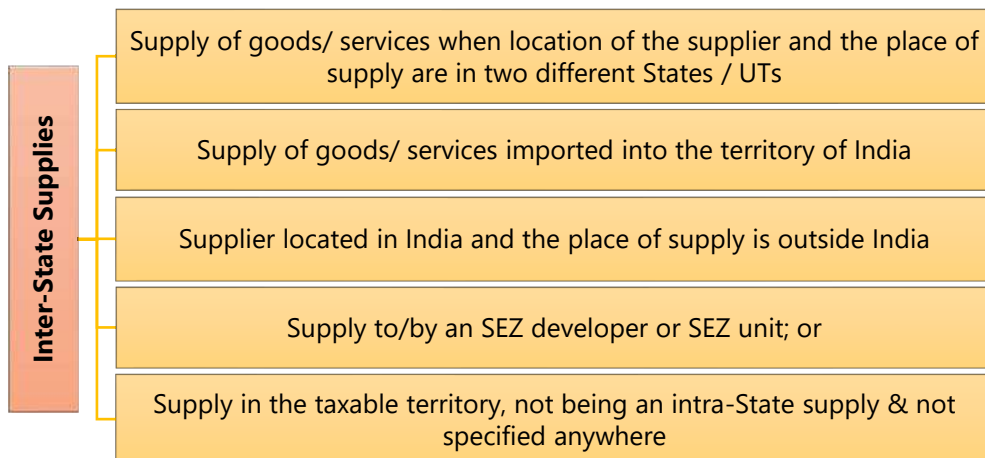
 STATUTORY PROVISIONS	
Section 7	Inter-State Supply
Sub-section	Particulars
(1)	Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in— (a) two different States; (b) two different Union territories; or (c) a State and a Union territory, shall be treated as a supply of goods in the course of inter-State trade or commerce.
(2)	Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.
(3)	Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—

	(a) two different States; (b) two different Union territories; or (c) a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce.
(4)	Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.
(5)	Supply of goods or services or both,— (a) when the supplier is located in India and the place of supply is outside India; (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.



ANALYSIS

This section provides as to when the supplies of goods and/or services shall be treated as **Supply in the course of inter-State trade/commerce**.



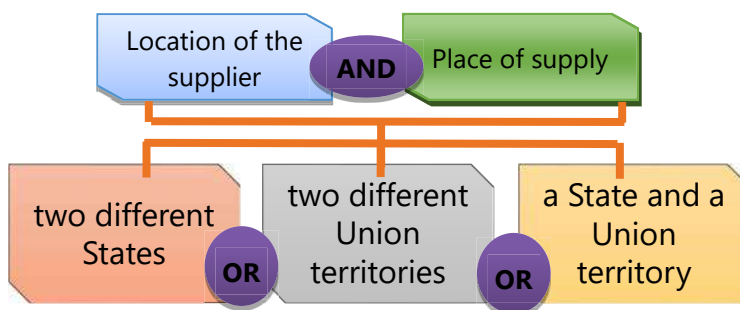
A. SUPPLY OF GOODS' in the course of inter-State trade/commerce [Section 7(1) and (2)]

It primarily covers two kinds of supplies – Supply of goods within India and supply of goods imported into India. The two categories of supplies are discussed hereunder:

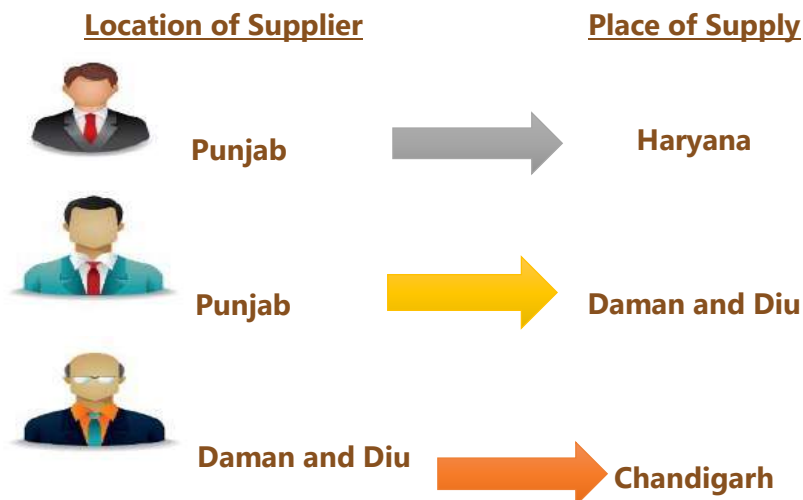


(i) Supplies within India

Supply of goods shall be considered as supply of goods in course of inter-State trade or commerce in the following cases:



The above concept can be easily understood with the help of following examples. In each of the following cases, supplies of goods shall be treated as supply of goods in course of inter-State trade/commerce.



(ii) Supplies from outside India

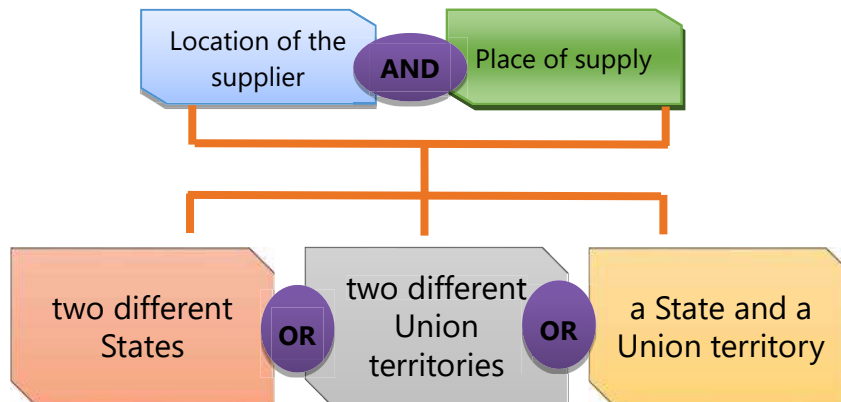
Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be considered as supply of goods in the course of inter-State trade or commerce. Import of goods, means bringing goods into India from a place outside India. Thus, all imports shall be deemed as inter-State supplies and accordingly IGST shall be levied on the imported goods in addition to the applicable custom duties.

**B. 'SUPPLY OF SERVICES' in the course of inter-State trade/commerce [Section 7(3) and 7(4)]**

It primarily covers two kinds of supplies – supply of services within India and import of services into India. The two categories of supplies are discussed hereunder:

(i) Supplies within India

Supply of services shall be considered as supply of services in course of inter-State trade or commerce in the following cases:

**(ii) Import of services into India**

Supply of services which are imported into territory of India, shall be treated as supply of services in the course of inter-State trade or commerce. The term 'import of services' has been defined under section

2(11) of the IGST Act as supply of any service where the supplier is located outside India, the recipient is located in India, and the place of supply of service is in India.

From the aforesaid discussion, it can be inferred that import of goods or services⁴ shall be treated as inter-State supplies and would be subject to IGST.

C. SUPPLY OF GOODS OR SERVICES OR BOTH in the course of inter-State trade or commerce [Section 7(5)]

Certain supplies are treated as supplies in the course of inter-State trade or commerce, and shall equally apply to supply of goods and to supply of services. These have been discussed hereunder:

I. Supply of goods or services or both when the supplier is located in India and the place of supply is outside India



It is important to note here that in this case, location of recipient is not material to qualify as supply in the course of inter-State trade or commerce. However, such supplies of goods and/or services need to satisfy some more conditions to qualify as export of goods and/or services⁵.

II. Supply of goods or services or both to or by a Special Economic Zone developer/ Special Economic Zone unit

SEZ is a geographically bound zone within India where the economic laws relating to export and import are more liberal as compared to

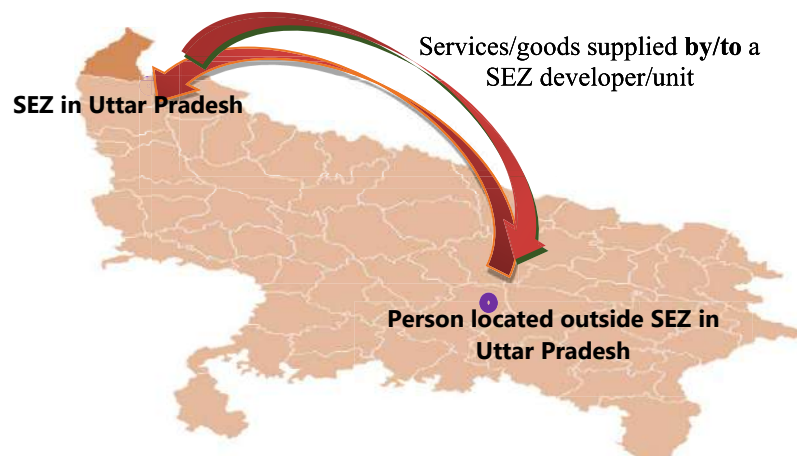
⁴ Provisions relating to import of goods/services have been discussed in detail in Chapter 14 – Import and Export under GST in Module 3 of this Study Material.

⁵ Provisions relating to export of goods/services have been discussed in detail in Chapter 14 – Import and Export under GST in Module 3 of this Study Material.

other parts of the country. For all tax purposes, SEZ is considered to be a place outside India. Any supplies made to SEZ unit/developer or vice versa are inter-State supplies. It is noteworthy that place of supply is not relevant in case of supplies to/from an SEZ unit or developer.

Further, supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit are zero-rated supplies [Section 16 of the IGST Act] – *Discussed in detail in Chapter 14 – Import and Export under GST.*

The same can be understood with the help of the following example:



III. Supply of goods and/or services in the taxable territory, not being an intra-State supply & not covered elsewhere in this section

This is a residuary clause and shall cover all supplies in taxable territory which are neither covered under any provisions [enumerated above] determining inter-State supplies nor are intra-State supplies.



9. INTRA-STATE SUPPLY [SECTION 8 OF THE IGST ACT]



STATUTORY PROVISIONS

Section 8	Intra-State Supply
Sub-section	Particulars
(1)	Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply: Provided that the following supply of goods shall not be treated as intra-State supply, namely:- (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit; (ii) goods imported into the territory of India till they cross the customs frontiers of India; or (iii) supplies made to a tourist referred to in section 15.
(2)	Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply. Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.
	Explanation 1. - For the purposes of this Act, where a person has, - (i) an establishment in India and any other establishment outside India; (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or

	(iii) <i>an establishment in a State or Union territory and any other establishment registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.</i>
	<i>Explanation 2. - A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.</i>

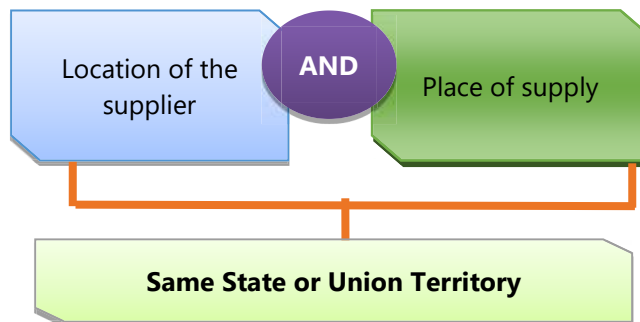


ANALYSIS

This section provides as to when the supplies of goods and/or services shall be treated as **intra-State supply**.

A. Which supplies of goods/services shall be treated as intra-State supplies? [Section 8(1) and 8(2) of the IGST Act]

Supply of goods/services where the location of the supplier and the place of supply of goods/services are in the same State or same Union territory shall be treated as intra-State supply. Such supplies are exigible to CGST and SGST.



The concept discussed above has been explained by way of following examples:

 (91)		
Location of Supplier	Place of Supply	Whether qualifies as intra-State supply?
 Punjab	Punjab	Yes
 London	Delhi	No
 Delhi	Gujarat	No
 Puducherry	Puducherry	Yes

B. Exclusions [Proviso to section 8(1) and proviso to section 8(2) of the IGST Act]

Certain supplies of goods/services shall not be treated as intra-State supplies even when the location of supplier and place of supply fall within the same State/ Union Territory. These supplies are as under:

- ❑ **Supply of goods/services to or by SEZ Unit or SEZ Developer:**
Supply of goods/services to/by a SEZ developer/unit or supply to a SEZ developer/unit shall not be treated as intra-State supply. As already discussed in this chapter, such supplies shall be treated as supply in course of inter-State trade or commerce.
- ❑ **Supply of goods made to a tourist [referred to in section 15 of the IGST Act]:** shall not be considered as intra-State supply. Explanation to section 15 defines tourist as a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.



(95) George, a tourist from USA, visits India and purchases a shawl in Delhi. In this case, even though the place of supply and location of supplier are in the same State, it will be treated as inter-State transaction and will be exigible to IGST.

- ❑ **Goods imported in India:** Goods imported into the territory of India till they cross the customs frontiers of India are supplies in course of inter-State trade/commerce and thus, are excluded from the definition of intra-State supplies.



C. Establishments of distinct persons

Establishments of same entity shall be considered as establishments of distinct persons where a person has:

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory.

Thus, any supply between any of the above establishments shall be treated as supply between establishments of distinct persons. Further, a person carrying on a **business through a branch or an agency or a representational office** in any territory shall be treated as having an **establishment in that territory**.



10. SUPPLIES IN TERRITORIAL WATERS [SECTION 9 OF THE IGST ACT]



STATUTORY PROVISIONS

Section 9

Supplies in territorial waters

Notwithstanding anything contained in this Act -

- (a) where the location of the supplier is in the territorial waters, the location of such supplier; or*
- (b) where the place of supply is in the territorial waters, the place of supply, shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.*



ANALYSIS

This section determines the location of supplier and/or the place of supply when such location of supplier and/or the place of supply is in territorial waters. Before that, let us understand the term “territorial waters”.

The term **‘Territorial waters’** has not been defined in the GST law. However, as per United Nations Convention on the Law of the Sea, the term **‘territorial sea’** is a belt of coastal waters extending atmost 12 nautical miles from the baseline of a coastal state.

Section 3(2) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 stipulates that the limit of territorial waters is the line every point of which is at a distance of 12 nautical miles from the nearest point of the appropriate base line. *Refer the pictorial diagram showing ‘territorial waters’ given on page 3.6 earlier in this chapter.*

Section 9 of the IGST Act provides that where the location of the supplier is in the territorial waters, it shall be deemed that location of such supplier is in the coastal State or Union Territory where the nearest point of the appropriate baseline is located. Similarly, in case where the place of supply is in territorial waters, the place of supply shall be deemed to be in the coastal State or Union Territory where the nearest point of the appropriate baseline is located.



LET US RECAPITULATE

A. Place of supply of goods other than import and export [Section 10]

S. No.	Nature of Supply	Place of Supply
1.	Where the supply involves the movement of goods, whether by the supplier or the recipient or by any other person	Location of the goods at the time at which, the movement of goods terminates for delivery to the recipient
2.	Where the goods are delivered to the recipient or any person on the direction of the third person by way of transfer of title or otherwise	Principal place of business of such third person
3.	Where there is no movement of goods either by supplier or recipient	Location of such goods at the time of delivery to the recipient
4.	Where goods are assembled or installed at site	Place where the goods are assembled or installed
5.	Where the goods are supplied on-board a conveyance like a vessel, aircraft, train or motor vehicle	Place where such goods are taken on-board the conveyance
6.	Where the place of supply of goods cannot be determined in terms of the above provisions	To be determined in the prescribed manner

B. Place of supply of goods imported into, or exported from India [Section 11]

S. No.	Nature of Supply of Goods	Place of Supply
1.	Import	Location of importer
2.	Export	Location outside India

C. Place of supply of services where location of supplier AND recipient is in India [Section 12]

- (i) In respect of the following 12 categories of services, the place of supply is determined with reference to a proxy; rest of the services are governed by the default provision.

S. No.	Nature of Service	Place of Supply
1.	Immovable property related-services including accommodation in hotel/boat/vessel	☐ Location at which the immovable property or boat or vessel is located or intended to be located ☐ If located outside India: Location of the recipient
	If the immovable property or boat or vessel is located in more than one State	Each such State in proportion to the value of services provided in each State – <i>Refer point (ii) below</i>
2.	Restaurant and catering services, personal grooming, fitness, beauty treatment and health service	Location where the services are actually performed
3.	Training and performance appraisal	☐ B2B: Location of such registered person ☐ B2C: Location where the services are actually performed

4.	Admission to an event or amusement park	Place where the event is actually held or where the park or the other place is located
5.	Organisation of an event including ancillary services and assigning of sponsorship to such events	☐ B2B: Location of such registered person ☐ B2C: Location where the event is actually held
		If the event is held outside India: Location of the recipient
	If the event is held in more than one State (in cases of unregistered recipient)	Each such State in proportion to the value of services provided in each State – <i>Refer point (iii) below</i>
6.	Transportation of goods, including mails or courier	☐ B2B: Location of such registered person ☐ B2C: Location at which such goods are handed over for their transportation
7.	Passenger transportation	☐ B2B: Location of such registered person ☐ B2C: Place where the passenger embarks on the conveyance for a continuous journey
8.	Services on board a conveyance	Location of the first scheduled point of departure of that conveyance for the journey
9.	Banking and other financial services including stock broking	☐ Location of the recipient of services in the records of the supplier ☐ Location of the supplier of services if the location of the recipient of services is not available

10.	Insurance services	☐ B2B: Location of such registered person ☐ B2C: Location of the recipient of services in the records of the supplier
11.	Advertisement services to the Government	☐ Each of States/Union territory where the advertisement is broadcasted/ displayed/ run/ disseminated ☐ Proportionate value in case of multiple States – <i>Refer point (iv) below</i>
12.	Telecommunication services	☐ Services involving fixed line, leased and internet leased circuits, dish antenna etc: Location of such fixed equipment ☐ Post-paid mobile/ internet services: Location of billing address of the recipient and if the same is not available, location of supplier ☐ Pre-paid mobile/ internet/DTH services provided: • Through selling agent/ re-seller/ distributor: Address of such selling agent/ re-seller/ distributor in the records of supplier at the time of supply • By any person to final subscriber: Location where pre-payment is received or place of sale of vouchers

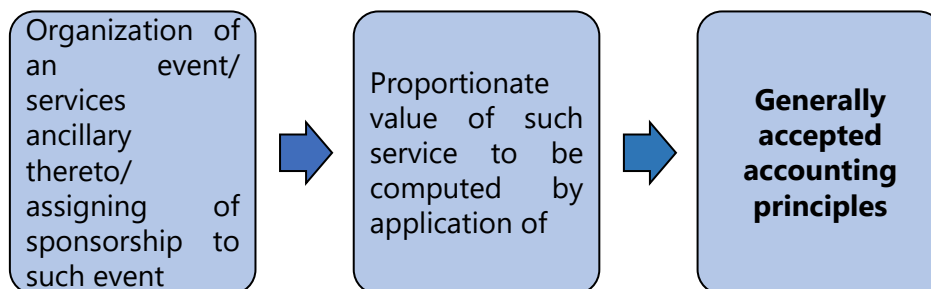
		- When payment made through electronic mode - Location of recipient in records of supplier - Other cases: Address of the recipient in the records of the supplier and if the same is not available, location of supplier
	If the leased circuit is installed in more than one State	Each such State in proportion to the value of services provided in each State – <i>Refer point (v) below</i>

- (ii) Manner of determining proportionate value of immovable property related service attributable to different States/ Union territories – where the immovable property/ boat/ vessel is located - in the absence of a contract or agreement in this regard.

S. No.	Type of service in relation to immovable property	Factor determining the proportionate value of service
(a)	Service provided by way of lodging accommodation by hotel/ inn/guest house etc. and its ancillary services (other than the cases where such property is a single property located in 2 or more contiguous States/ Union territories or both)	Number of nights stayed in such property
(b)	All other services provided in relation to immovable property including organising any marriage or reception etc., accommodation in a single property located in 2 or more contiguous States or/and Union territories, services ancillary to such services	Area of the immovable property lying in each State/ Union territories

(c)	Services by way of lodging accommodation by a house boat or vessel and its ancillary services	Time spent by the boat or vessel in each such State/ Union territories, to be determined on the basis of declaration made by the service provider

- (iii) Manner of determining proportionate value of service relating to organization of event, attributable to different States/Union territories – where the event is held - in the absence of a contract or agreement in this regard



- (iv) Manner of determining proportionate value of advertisement service attributable to different States/Union territories – where the advertisement is broadcasted/ run /played/disseminated - in the absence of a contract or agreement in this regard

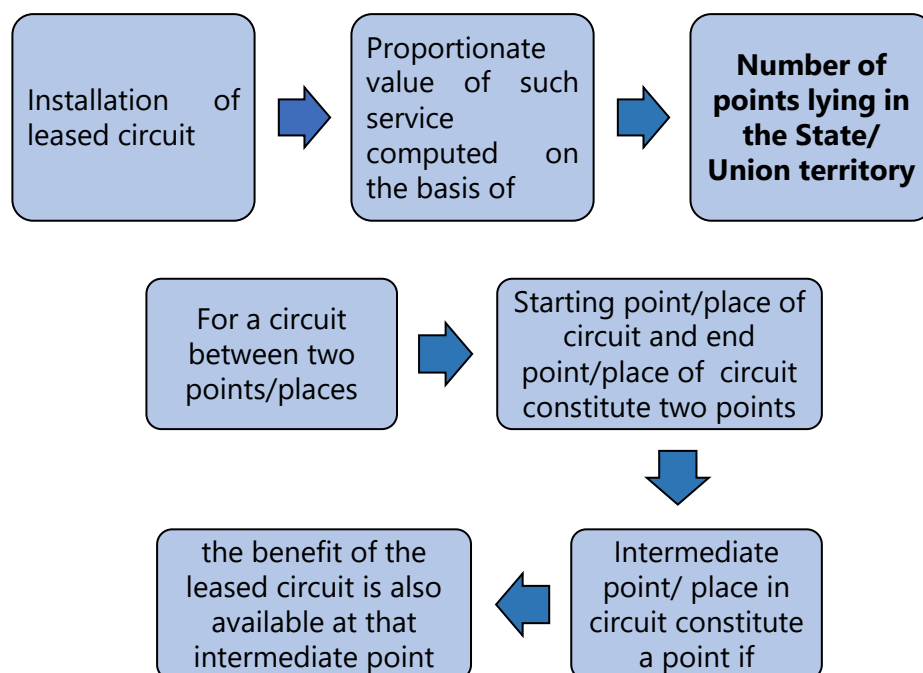
Sl. No.	Type of advertisement	Proportionate value of service
1.	Advertisements in newspapers and publications	Amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in each State/Union territory
2.	Advertisements through printed	Amount payable for the distribution of a specific number of such material

	material like pamphlets, leaflets, diaries, calendars, T-shirts, etc.	in each State/Union territory
3.	Advertisements in hoardings (other than those on trains)	Amount payable for the hoardings located in each State/ Union territory
4.	Advertisements on trains	Amount attributable to each State/Union territory calculated in the ratio of length of the railway track in each of such State/Union territory, for that train
5.	Advertisements on the back of utility bills of oil and gas companies, etc.	Amount payable to each State/Union territory for the advertisements on bills pertaining to consumers having billing addresses in each of such State/Union territory
6.	Advertisements on railway tickets	Amount attributable to each State/Union territory calculated in the ratio of number of Railway Stations in each of such State/Union territory
7.	Advertisements on radio stations	Amount payable to such radio station, which by virtue of its name is part of each State/Union territory
8.	Advertisement on television channels	Amount attributable to each State/Union territory calculated on the basis of the viewership of such channel in each of such State/ Union territory. Viewership figures for the last week of a given quarter as published by BARC can be used for calculating viewership

		for the succeeding quarter. Figures pertaining to more than one State/Union territory are apportioned in ratio of the populations of those States/Union territories, as per the latest Census.
9.	Advertisements in cinema halls	Amount payable to a cinema hall or screens in a multiplex in each State/ Union territory.
10.	Advertisements on internet It is deemed that such service is provided all over India.	Amount attributable to each State/Union territory calculated on the basis of the internet subscribers in each of such State/ Union territory. Internet subscriber figures for the last quarter of a given financial year as published by TRAI can be used for calculating the subscribers for the succeeding financial year. Figures pertaining to more than one State/Union territory are apportioned in the ratio of the populations of those States/Union territories, as per the latest census.
11.	Advertisements through SMS	Amount attributable to each State/Union territory calculated on the basis of the telecom subscribers in each of such State/ Union territory. Telecom subscribers figures in a telecom circle for a given quarter as published by TRAI can be used for calculating the subscribers for the succeeding quarter. Figures pertaining to a telecom circle comprising of more than one State/Union territory are apportioned in the ratio of the

		populations of those States/Union territories, as per the latest census.

- (v) Manner of determining proportionate value of service relating to installation of a leased circuit, attributable to different States/Union territories – where the circuit is installed - in the absence of a contract or agreement in this regard



- (vi) For the rest of the services other than those specified above, the default provision has been prescribed as under:

Default provision for the services other than the 12 specified services		
S. No.	Description of Supply	Place of Supply
1.	B2B	Location of such registered person
2.	B2C	☐ Where the address on record exists: Location of the recipient

		☐ Other cases: Location of the supplier of services

D. Place of supply of services where location of supplier OR location of recipient is outside India [Section 13]

- (i) In respect of the following categories of services, the place of supply is determined with reference to a proxy; rest of the services are governed by the default provision.

S. No.	Nature of Service	Place of Supply
1.	Services supplied in respect of goods which are required to be made physically available	Location where the services are actually performed
	Services supplied in respect of goods but from a remote location by way of electronic means	Location where the goods are situated at the time of supply of services
	<i>Above provisions are not applicable in case of goods that are temporarily imported into India for repairs/treatment/any process and exported after such repairs/treatment/any process without being put to any other use in India</i>	
2.	Services which require the physical presence of the recipient or the person acting on his behalf with the supplier of services	Location where the services are actually performed
3.	Service supplied directly in relation to an immovable property including accommodation in hotel, boat, vessel	Place where the immovable property is located or intended to be located
4.	Admission to or organisation of an event	Place where the event is actually held

If the above services are supplied at more than one location, i.e. (i) Goods & individual related (ii) Immovable property-related (iii) Event related		
At more than one location, including a location in the taxable territory		Location in the taxable territory
In more than one State		Each such State in proportion to the value of services provided in each State – <i>Refer point (ii) below</i>
5.	Services supplied by a banking company, or a financial institution, or a NBFC to account holders	Location of the supplier of services
	Intermediary services	
	Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month	
6.	Passenger transportation	Place where the passenger embarks on the conveyance for a continuous journey
7.	Services provided on-board a conveyance	First scheduled point of departure of that conveyance for the journey
8.	Online information and database access or retrieval services	Location of recipient of service

- (ii) Manner of determining proportionate value of service relating to (1) goods & individual (2) immovable property (3) admission to/organization of event attributable to different State/Union territories– where such services are supplied - in the absence of a contract or agreement in this regard

S. No.	Cases	Manner of computing the proportionate value of service
1.	Services relating to goods & individual	
	(a) Services supplied on the same goods	Equally dividing the value of service in each of the States/ Union territory where the service is performed
	(b) Services supplied on different goods	Considering the ratio of the invoice value of goods in each States/ Union territory, on which service is performed, as the ratio of the value of the service performed in each State/Union territory
	(c) Services supplied to individuals	Applying generally accepted accounting principles.
2.	Services directly relating to immovable property	In the same manner as is applicable for determining the proportionate value of services provided in relation to an immovable property under section 12(3)
3.	Services relating to admission to/organization of event	In the same manner as is applicable for determining the proportionate value of services provided in relation to organization of an event under section 12(7)

- (iii) For the rest of the services other than those specified above, a default provision has been prescribed as under:

Default provision for the cross-border supply of services other than nine specified services		
S. No.	Description of supply	Place of Supply
1.	Any	☐ Location of the recipient of service ☐ Location of the supplier of service, if location of recipient is not available in the ordinary course of business

(iv) **Place of supply of services notified under section 13(13)**

S. No.	Services notified	Place of supply
1.	Specified research and development services related to pharmaceutical sector supplied by a person located in taxable territory to a person located in the non-taxable territory	Location of recipient of services subject to fulfillment of specified conditions
2.	B2B maintenance, repair or overhaul services of aircrafts, aircraft engines/components/parts	Location of recipient of service
3.	B2B MRO services of ships and other vessels, their engines and other components/ parts	Location of recipient of service



TEST YOUR KNOWLEDGE

1. XY Ltd. (registered in Rajasthan) received legal services from an attorney in UK (unrelated person) in relation to registration of a trademark in UK. A consideration of £ 8,000 was paid by the company to the attorney in UK.

Determine the place of supply for the service and suggest if XY Ltd. is required to pay tax under reverse charge on this transaction.

2. *Damani Industries has recruited Super Events Pvt. Ltd., an event management company of Gujarat, for organising the grand party for the launch of its new product at Bangalore. Damani Industries is registered in Mumbai. Determine the place of supply of the services provided by Super Events Pvt. Ltd. to Damani Industries.*

Will your answer be different if the product launch party is organised at Dubai?

3. *Priyank Sales of Pune, Maharashtra enters into an agreement to sell goods to Bisht Enterprises of Bareilly, Uttar Pradesh. While the goods were being packed in Pune godown of Priyank Sales, Bisht got an order from Sahil Pvt. Ltd. of Shimoga, Karnataka for the said goods. Bisht Enterprises agreed to supply the said goods to Sahil Pvt. Ltd. and asked Priyank Sales to deliver the goods to Sahil Pvt. Ltd. at Shimoga.*

You are required to determine the place of supply(ies) in the above situation.

4. *Musicera Pvt. Ltd. owned by Nitish Daani - a famous classical singer - wishes to organise a 'Nitish Daani Music Concert' in Gurugram (Haryana). Musicera Pvt. Ltd. (registered in Ludhiana, Punjab) enters into a contract with an event management company, Supriya (P) Ltd. (registered in Delhi) for organising the said music concert at an agreed consideration of ₹ 10,00,000. Supriya (P) Ltd. books the lawns of Hotel Dumdum, Gurugram (registered in Haryana) for holding the music concert, for a lump sum consideration of ₹ 4,00,000. Musicera Pvt. Ltd. fixes the entry fee to the music concert at ₹ 5,000. 400 tickets for 'Nitish Daani Music Concert' are sold.*

You are required to determine the gross GST liability in respect of the supply(ies) involved in the given scenario.

Will your answer be different if the price per ticket is fixed at ₹ 450?

Note: Rate of CGST and SGST is 9% each and IGST is 18%. All the amounts given above are exclusive of taxes, wherever applicable.

5. *RST Inc., a corn chips manufacturing company based in USA, intends to launch its products in India. However, the company wishes to know the taste and sensibilities of Indians before launching its products in India. For this purpose, RST Inc. has approached ABC Consultants, Mumbai, (Maharashtra) to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste.*

The survey is to be solely based on the oral replies of the surveyees; they will not be provided any sample by RST Inc. to taste. ABC Consultants will be paid in convertible foreign exchange for the assignment.

With reference to the provisions of GST law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service?

6. *ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation to procuring goods from India. The company identifies the prospective vendor, reviews product quality and pricing and then shares the vendor details with the foreign customer.*

The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it.

The company has charged US \$ 1,00,000 (exclusive of GST) to its foreign customer for the services provided by it. With reference to the provisions of GST law, examine whether the said supply will amount to export of service?

7. *Mr. Murthy, an unregistered person and a resident of Pune, Maharashtra hires the services of Sun Ltd. an event management company registered in Delhi, for organising of the new product launch in Bengaluru, Karnataka.*

- (i) Determine the place of supply of services provided by Sun Ltd.*
- (ii) What would be your answer if the product launch takes place in Bangkok?*
- (iii) What would be your answer if Mr. Murthy is a registered person and product launch takes place in-*
 - (a) Bengaluru*
 - (b) Bangkok?*

8. *Mr. Mahendra Goyal, an interior decorator provides professional services to Mr. Harish Jain in relation to two of his immovable properties.*

Determine the place of supply in the transactions below as per provisions of GST law in the following independent situations:

Case	Location of Mr. Mahendra Goyal	Location of Mr. Harish Jain	Property situated at
I	Delhi	Maharashtra	New York (USA)
II	Delhi	New York	Paris (France)

Explain the relevant provisions of law to support your conclusions.

9. *Asha Enterprises, supplier of sewing machines, is located in Kota (Rajasthan) and registered for purpose of GST in the said State. It receives an order from Deep Traders, located in Jalandhar (Punjab) and registered for the purpose of GST in the said State. The order is for the supply of 100 sewing machines with an instruction to ship the sewing machines to Jyoti Sons, located in Patiala (Punjab) and registered in the said State for purpose of GST. Jyoti Sons is a customer of Deep Traders. Sewing machines are being shipped in a lorry by Asha Enterprises.*

Briefly explain the following:

- (a) *the place of supply;*
 - (b) *the nature of supply:- whether inter-State or intra-State and*
 - (c) *whether CGST/SGST or IGST would be applicable in this case.*
10. *Determine the place of supply for the following independent cases:*
- (i) *Grand Gala Events, an event management company at Kolkata, organises two award functions for Narayan Jewellers of Chennai (Registered in Chennai, Tamil Nadu) at New Delhi and at Singapore.*
 - (ii) *Perfect Planners (Bengaluru, Karnataka) is hired by Dr. Kelvin (unregistered person based in Kochi, Kerala) to plan and organise his son's wedding at Mumbai, Maharashtra.*

Will your answer be different if the wedding is to take place in Malaysia?



ANSWERS/HINTS

1. In the given case, the service provider is outside India, and the service recipient is in India. Thus, the place of supply will be determined on the basis of the provisions of section 13. Since the given service does not get covered under any of the specific provisions of section 13, the place of supply thereof will be governed by the default provision, i.e. place of supply of services will be the location of the recipient of service, which in this case is Rajasthan (India).

Further, the given case is import of service in terms of section 2(11) as the supplier of service is located outside India, the recipient of service is located in India and the place of supply of service is in India. Since the services are imported for a consideration from an unrelated person, the same tantamounts to supply in terms of section 7(1)(b) of CGST Act and are liable to GST.

As per reverse charge *Notification No. 10/2017 IT(R) dated 28.06.2017*, if a service is supplied by a person located in a non-taxable territory to a person located in the taxable territory, other than non-taxable online recipient, the tax is payable by the recipient of service under reverse charge.

Therefore, XY Ltd. will pay GST under reverse charge on ₹ 8000 paid by it to the attorney in UK.

2. Section 12(7)(a)(i) stipulates that when service by way of organization of an event is provided to a registered person, place of supply is the location of such person.

Since, in the given case, the product launch party at Bangalore is organized for Damani Industries (registered in Mumbai), place of supply is the location of Damani Industries, i.e. Mumbai, Maharashtra.

In case the product launch party is organised at Dubai, the answer will remain the same, i.e. the place of supply is the location of recipient (Damani Industries)– Mumbai, Maharashtra.

3. The supply between Priyank Sales (Pune) and Bisht Enterprises (Bareilly) is a bill to ship to supply where the goods are delivered by the supplier [Priyank Sales] to a recipient [Sahil Pvt. Ltd. (Shimoga)] or any other person on the

direction of a third person [Bisht Enterprises]. The place of supply in case of domestic bill to ship to supply of goods is determined in terms of section 10(1)(b).

As per section 10(1)(b), where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.

Thus, in the given case, it is deemed that the Bisht Enterprises has received the goods and the place of supply of such goods is the principal place of business of Bisht Enterprises. Accordingly, the place of supply between Priyank Sales (Pune) and Bisht Enterprises (Bareilly) will be Bareilly, Uttar Pradesh.

This situation involves another supply between Bisht Enterprises (Bareilly) and Sahil Pvt. Ltd. (Shimoga). The place of supply in this case will be determined in terms of section 10(1)(a).

Section 10(1)(a) stipulates that where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Thus, the place of supply in second case is the location of the goods at the time when the movement of goods terminates for delivery to the recipient (Sahil Pvt. Ltd.), i.e. Shimoga, Karnataka.

4. In the given situation, three supplies are involved:

- (i) Services provided by Musicera Pvt. Ltd. to audiences by way of admission to music concert.
- (ii) Services provided by Supriya (P) Ltd. to Musicera Pvt. Ltd. by way of organising the music concert.
- (iii) Services provided by Hotel Dumdum to Supriya (P) Ltd. by way of accommodation in the Hotel lawns for organising the music concert.

The CGST and SGST or IGST liability in respect of each of the above supplies is determined as under:

- (i) As per the provisions of section 12(6), the place of supply of services provided by way of admission to, *inter alia*, a cultural event shall be the place where the event is actually held.

Therefore, the place of supply of services supplied by Musicera Pvt. Ltd. (Ludhiana, Punjab) to audiences by way of admission to the music concert is the location of the Hotel Dumdum, i.e. Gurugram, Haryana.

Since the location of the supplier (Ludhiana, Punjab) and the place of supply (Gurugram, Haryana) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows:

Consideration for supply (400 tickets @ ₹ 5,000 per ticket)
= ₹ 20,00,000

IGST @ 18% on value of supply = ₹ 20,00,000 x 18% = ₹ 3,60,000.

- (ii) Section 12(7)(a)(i) stipulates that the place of supply of services provided by way of organization of, *inter alia*, a cultural event to a registered person is the location of such person.

Therefore, the place of supply of services supplied by Supriya (P) Ltd. (Delhi) to Musicera Pvt. Ltd. (Ludhiana, Punjab) by way of organising the music concert is the location of the registered person, i.e. Ludhiana (Punjab).

Since the location of the supplier (Delhi) and the place of supply (Ludhiana, Punjab) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows:

Consideration for supply = ₹ 10,00,000

IGST @ 18% on value of supply = ₹ 10,00,000 x 18% = ₹ 1,80,000

- (iii) As per the provisions of section 12(3)(c) of the IGST Act, 2017, the place of supply of services, by way of accommodation in any immovable property for organizing, *inter alia*, any cultural function shall be the location at which the immovable property is located.

Therefore, the place of supply of services supplied by Hotel Dumdum (Gurugram, Haryana) to Supriya (P) Ltd. (Delhi) by way of accommodation in Hotel lawns for organising the music concert shall be the location of the Hotel Dumdum, i.e. Gurugram, Haryana.

Since the location of the supplier (Gurugram, Haryana) and the place of supply (Gurugram, Haryana) are in the same State, CGST and SGST will be leviable. Therefore, CGST and SGST leviable will be computed as follows:

Consideration for supply = ₹ 4,00,000

CGST @ 9% on value of supply = ₹ 4,00,000 x 9% = ₹ 36,000

SGST @ 9% on value of supply = ₹ 4,00,000 x 9% = ₹ 36,000

If the price for the entry ticket is fixed at ₹ 450, answer will change in respect of supply of service provided by way of admission to music concert, as mentioned in point (i) above. There will be no IGST liability if the consideration for the ticket is ₹ 450 as the inter-State services by way of right to admission to, *inter alia*, musical performance are exempt from IGST vide *Notification No. 9/2017 IT (R) dated 28.06.2017*, if the consideration for right to admission to the event is not more than ₹ 500 per person. However, there will be no change in the answer in respect of supplies mentioned in point (ii) and (iii) above.

5. As per section 13(2), in case where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. Sub-sections (3) to (13) provide the mechanism to determine the place of supply in certain specific situations.

The given case does not fall under any of such specific situations and thus, the place of supply in this case will be determined under sub-section (2) of section 13. Thus, the place of supply of services in this case is the location of recipient of services, i.e. USA.

As per section 2(6), export of services means the supply of any service when,—

- (a) the supplier of service is located in India;
- (b) the recipient of service is located outside India;
- (c) the place of supply of service is outside India;

- (d) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (e) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Since all the above five conditions are fulfilled in the given case, the same will be considered as an export of service.

- 6.** Section 2(13) defines “intermediary” to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

In this case, since ABC Pvt. Ltd. is arranging or facilitating supply of goods between the foreign customer and the Indian vendor, the said services can be classified as intermediary services.

If the location of the supplier of services or the location of the recipient of service is outside India, the place of supply is determined in terms of section 13. Since, in the given case, the recipient of supply is located outside India, the provisions of supply of intermediary services will be determined in terms of section 13.

As per section 13(8)(b), the place of supply in case of intermediary services is the location of the supplier, i.e. the location of ABC Pvt. Ltd. which is New Delhi.

As per section 2(6) of the IGST Act, 2017, export of services means the supply of any service when,—

- (a) the supplier of service is located in India;
- (b) the recipient of service is located outside India;
- (c) the place of supply of service is outside India;

- (d) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (e) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Since, in the given case, place of supply is in India, this transaction does not tantamount to export of service.

7. (i) As per section 12(7)(a)(ii), when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

Since, in the given case, the service recipient [Mr. Murthy] is unregistered and event is held in India, place of supply is the location where the event is actually held, i.e. Bengaluru, Karnataka. The location of the supplier and the location of the recipient is irrelevant in this case.

- (ii) However, if product launch takes place outside India [Bangkok], the place of supply will be the location of recipient, i.e. Pune, Maharashtra.
- (iii) When service by way of organization of an event is provided to a registered person, place of supply is the location of such person in terms of section 12(7)(a)(i).

Therefore, if Mr. Murthy is a registered person, then in both the cases, i.e. either when product launch takes place in Bengaluru or Bangkok, the place of supply will be the location of recipient, i.e. Pune, Maharashtra.

8. Case I

As per section 12(3), where both the service provider and the service recipient are located in India, the place of supply of services directly in relation to an immovable property, including services provided by interior decorators is the location of the immovable property. However, if the immovable property is located outside India, the place of supply is the location of the recipient.

Since in the given case, both the service provider (Mr. Mahendra Goyal) and the service recipient (Mr. Harish Jain) are located in India and the immovable property is located outside India (New York), the place of supply will be the location of recipient, i.e. Maharashtra.

Case II

As per section 13(4), where either the service provider or the service recipient is located outside India, the place of supply of services directly in relation to an immovable property including services of interior decorators is the location of the immovable property.

Since in the given case, service provider (Mr. Mahendra Goyal) is located in India and service recipient (Mr. Harish Jain) is located outside India (New York), the place of supply will be the location of immovable property, i.e. Paris (France).

9. The supply between Asha Enterprises (Kota, Rajasthan) and Deep Traders (Jalandhar, Punjab) is a bill to ship to supply where the goods are delivered by the supplier [Asha Enterprises] to a recipient [Jyoti Sons (Patiala, Punjab)] on the direction of a third person [Deep Traders].

In case of such supply, it is deemed that the said third person has received the goods and the place of supply of such goods is the principal place of business of such person [Section 10(1)(b)]. Thus, the place of supply between Asha Enterprises (Rajasthan) and Deep Traders (Punjab) will be Jalandhar, Punjab.

Since the location of supplier and the place of supply are in two different States, the supply is an inter-State supply in terms of section 7, liable to IGST.

This situation involves another supply between Deep Traders (Jalandhar, Punjab) and Jyoti Sons (Patiala, Punjab). In this case, since the supply involves movement of goods, place of supply will be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, i.e. Patiala, Punjab [Section 10(1)(a)].

Since the location of supplier and the place of supply are in the same State, the supply is an intra-State supply in terms of section 8, liable to CGST and SGST.

10. (i) When service by way of organization of an event is provided to a registered person, place of supply is the location of such person in

terms of section 12(7)(a)(i).

Since, in the given case, the award functions at New Delhi and Singapore are organized for Narayan Jewellers (registered in Chennai), place of supply in both the cases is the location of Narayan Jewellers, i.e. Chennai, Tamil Nadu.

- (ii) As per section 12(7)(a)(ii), when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

Since, in the given case, the service recipient [Dr. Kelvin] is unregistered and event is held in India, place of supply is the location where the event is actually held, i.e. Mumbai, Maharashtra.

However, if the wedding is to take place outside India [Malaysia], the place of supply is the location of recipient, i.e. Kochi, Kerala.

EXEMPTIONS FROM GST



The section numbers referred to in the Chapter pertain to the CGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- ❑ describe the power of the Government to grant exemption from CGST/IGST.
- ❑ provide an overview of the goods exempt from GST.
- ❑ identify and analyse various services exempt from GST.



1. INTRODUCTION

When a supply of goods and/or services falls within the purview of charging section, such supply is chargeable to GST. However, for determining the liability to pay the tax, one needs to further check whether such supply of goods and/or services are exempt from tax.

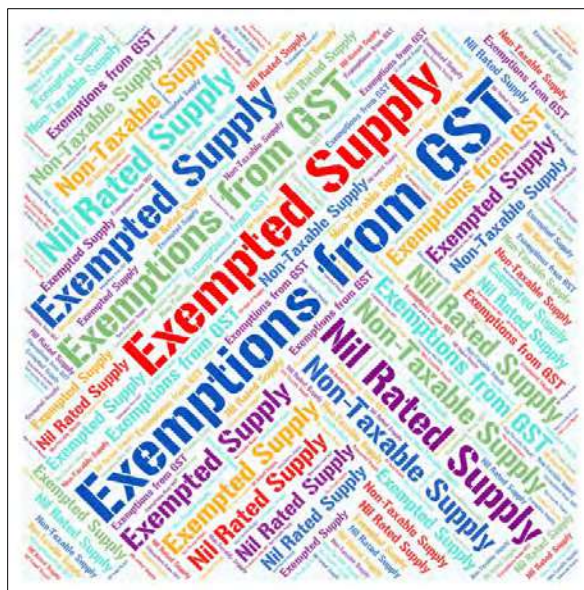
Exempt supply has been defined as supply of any goods or services or both which attracts **nil rate of tax or which may be wholly exempt from tax** and includes **non-taxable supply** [Section 2(47)]. **Non-taxable supply** means a supply of goods or services or both which is

not leviable to tax under CGST Act or under the IGST Act [Section 2(78)]. Thus, under GST, a supply not leviable to tax is also included within the purview of 'exempt supply'.

Supplies not leviable to tax are alcoholic liquor for human consumption, specified petroleum products namely Petroleum Crude, High Speed Diesel, Motor spirit (commonly known Petrol), Natural Gas and Aviation Turbine Fuel.

Power to grant exemption from GST has been granted vide section 11 of the CGST Act and vide section 6 of the IGST Act. State GST laws also contain identical provisions granting power to exempt SGST. Under GST, **essential goods/services, i.e. public consumption products/services, have been exempted**. Items such as unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST. Further, essential services like health care services, education services, etc. have also been exempted.

It is important to note that exemption under GST may be provided in any of the following manner:



(a)	Exemption to specified activities or transactions Sometimes, exemption is provided in respect of specified activities or transactions. Consequently, the status of the supplier or recipient of the activities/transactions becomes immaterial.  (1) Services by way of transfer of a going concern, as a whole or an independent part thereof. (2) Services by way of loading, unloading, packing, storage or warehousing of rice.
(b)	Exemption to specified suppliers At times, exemption is given to specified suppliers only. Here, the status of recipient of the activities or transactions becomes immaterial.  (3) Services provided by the Central Government, State Government, Union territory or local authority where the consideration for such services does not exceed ₹ 5,000. (4) Services by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 by way of charitable activities.
(c)	Exemption to specified recipients In some cases, exemption is given to specified recipient only. Here, the status of supplier of the activities or transactions becomes immaterial.  (5) Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory. (6) Services provided to the Central Government, State Government, Union territory administration under any training programme, for which 75% or more of the total expenditure is borne by the Central Government, State Government, Union territory administration.
(d)	Exemption to specified suppliers and specified recipients Sometimes, exemption is given only when activities or transactions are carried out by specified suppliers for specified recipients only.  (7) Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948.

(8) Services **by** National Pension System (NPS) Trust **to** its members against consideration in the form of administrative fee.

In this chapter, we shall discuss the power to grant exemption from tax under CGST Act/IGST Act, list of services exempt from GST in detail and an overview of the goods exempt from tax.



2. POWER TO GRANT EXEMPTION FROM TAX [SECTION 11 OF THE CGST ACT/SECTION 6 OF THE IGST ACT]



STATUTORY PROVISIONS

Section 11	Power to grant exemption from tax
Sub-section	Particulars
(1)	Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification , exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification
(2)	Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
(3)	The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within

one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.



ANALYSIS

- (i) **Exemption from payment of tax:** GST law empowers the Central Government or State Government as the case may be to grant exemption from tax. The exemption is granted on recommendation of the GST Council.

Exemption can be **from whole** of the tax **or part of the tax**. It should be granted in public interest.

Exemption can be from whole of tax or part of tax

Exemption can be granted by a notification or by a special order

Exemption can be granted to goods or services or both of any specified description, **by way of issuance of notification** either, **absolutely** [i.e. unconditional exemption; exemption is not subject to any condition(s)] or **conditionally** [i.e. exemption is subject to specified condition(s)]. Exemption may be granted **by a special order** in case of the circumstances of an **exceptional nature**.

The **absolute/ unconditional exemption** is **mandatory** in nature. Where the supply of the goods or services or both are **unconditionally exempted from whole of the tax**, the registered person doesn't

Unconditional exemption is mandatory

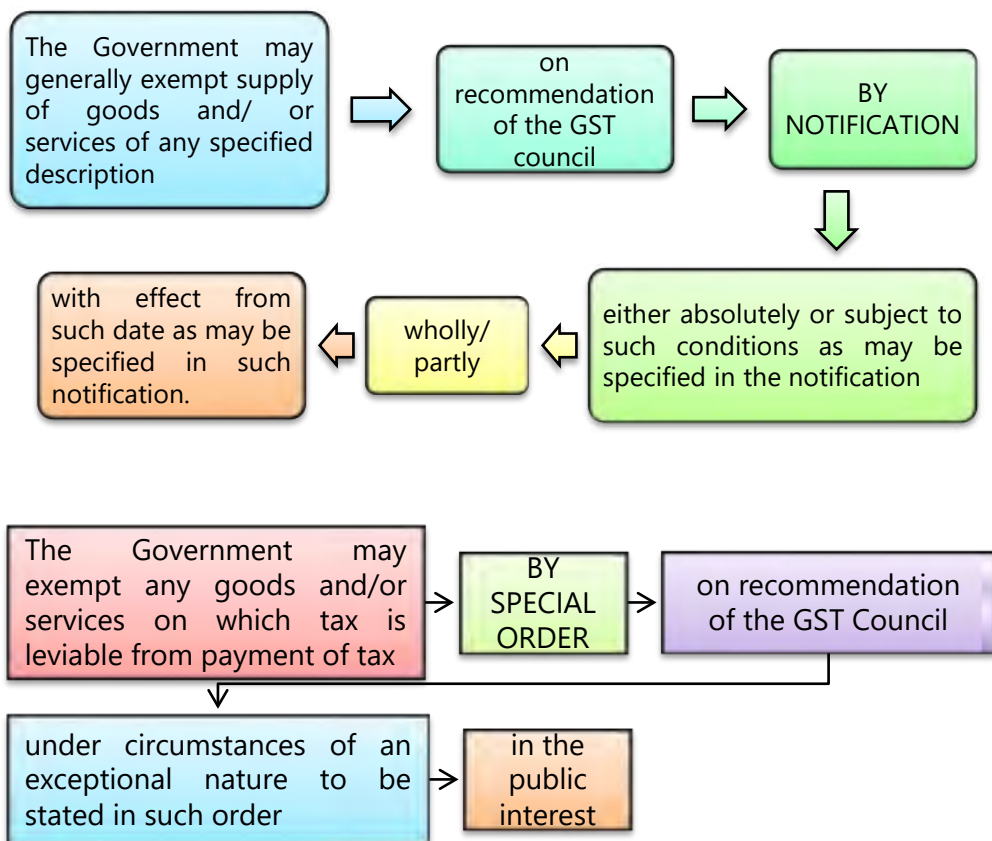
Conditional exemption is optional

have option to collect and pay tax on such supply of goods or services or both. Where the supply of the goods or services or both are **unconditionally exempted from part of the tax**, the

registered person doesn't have option to collect and pay the tax, in excess of the effective rate, on such supply of goods or services or both.

However, where the **exemption is conditional**, it is **at the option** of the registered person whether to avail the same or not.

The above provisions have been explained by way of a diagram as follows:



- (ii) **Explanation inserted within 1 year, for the purpose of clarifying the scope or applicability of any notification/order, to have retrospective effect:** Wherever the Government feels that there is a need to clarify the scope or applicability of any notification/order issued under this section, it can issue an explanation within 1 year of issue of said notification/ order. Such explanation shall have effect as if it was there when first such notification/ order was issued, i.e. explanation so inserted would be effective retrospectively.

It is hereby clarified that the explanation so inserted for a particular entry in the notification, is effective from the inception of the entry in notification and not from the date from which the notification (that inserted said explanation) becomes effective.



(9) Principal Notification No. 11/2017 CT (R) dated 28.06.2017¹ came into force with effect from 01.07.2017. Thereafter, a new entry - Entry no. 3(vi) was inserted w.e.f. 21.09.2017. Subsequently, an explanation was also inserted with respect to entry no. 3(vi) by issue of a notification on 26.07.2018 [i.e. within 1 year of the insertion of entry 3(vi)].

Although the effective date mentioned in the notification which inserted said explanation was 27.07.2018, said explanation will be effective from the inception of entry 3(vi) in notification i.e. 21.09.2017 and not 27.07.2018.

[Circular No. 120/39/2019 GST dated 11.10.2019]



Similar provisions granting power to exempt IGST have been provided under section 6 of the IGST Act.



3. GOODS EXEMPT FROM TAX

A list of items has been notified under section 11(1) of the CGST Act, 2017/ section 6(1) of the IGST Act, 2017. These items have been exempted from whole of the tax.

Under GST, everyday items used by the common man have been included in the list of exempted items.



Items such as unbranded atta/maida/besan, unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST.

Some of the examples of the goods exempted from tax have been provided herein²:

¹ This notification notifies the rate of tax on services.

² Students may go through the complete list of goods exempt from GST on CBIC website – www.cbic.gov.in, for knowledge purposes.

		
Live fish (0301)	Fresh Milk (0401)	Potatoes (0701)
		
Grapes (0806)	Indian National Flag (63)	Plastic Bangles (3926)



4. LIST OF SERVICES EXEMPT FROM TAX

I. SPECIFIC SERVICES EXEMPT FROM CGST AND IGST

Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017³ (hereafter referred to as “the Notification”) unless otherwise specified, has exempted the various services wholly from CGST. Each of the entries of the exemption notification have been discussed below:

1. Services related to charitable and religious activities

Entry No.⁴	Description of services
1	Services by an entity registered under section 12AA/12AB of the Income-tax Act, 1961 by way of charitable activities .

³ Exemption from IGST has been granted to various services vide Notification No. 9/2017 IT (R) dated 28.06.2017. All the services exempted from CGST & SGST/UTGST have also been exempted from IGST.

Apart from these, there are few additional services which have been exempted only under IGST law. Such services have been discussed subsequently in this chapter.

⁴ Entry Nos. mentioned herein correspond to entries in Notification No. 12/2017 CT (R) dated 28.06.2017. However, these entry numbers have been given only for reference purposes and are not relevant for examination purpose.

13	Services by a person by way of- (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA/12AB of the Income-tax Act, 1961 or a trust or an institution registered under section 10(23C)(v) of the Income-tax Act or a body or an authority covered under section 10(23BBA) of the said Income-tax Act. However, nothing contained in entry (b) of this exemption shall apply to- (i) renting of rooms where charges are ₹ 1,000 or more per day; (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹ 10,000 or more per day; (iii) renting of shops or other spaces for business or commerce where charges are ₹ 10,000 or more per month.
60	Services by a specified organisation in respect of a religious pilgrimage facilitated by the Government of India, under bilateral arrangement.
80	Services by way of training or coaching in- (a) recreational activities relating to arts or culture, by an individual, or (b) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act.



ANALYSIS

A. SERVICES PROVIDED BY CHARITABLE/RELIGIOUS TRUST

Entry 1 of the Notification exempts services supplied by an entity registered under section 12AA/12AB of the Income-tax Act, 1961 by way of charitable activities. Thus, in order to claim exemption under Entry 1 of the Notification, following two conditions must be satisfied:-

- The entity should be **registered under section 12AA/12AB of the Income tax Act, 1961**, and
- The entity must carry out one or more of the specified charitable activities.

Before proceeding further, let us first understand the meaning of term '**charitable activities**'. The term 'charitable activities' mean **activities relating** to-

(i) PUBLIC HEALTH by way of-

(A) care or counseling of

- (I) terminally ill persons or persons with severe physical or mental disability;
- (II) persons afflicted with HIV or AIDS;
- (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or



(B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) ADVANCEMENT OF RELIGION, SPIRITUALITY OR YOGA;

(iii) ADVANCEMENT OF EDUCATIONAL PROGRAMMES / SKILL DEVELOPMENT relating to,-

- (A) abandoned, orphaned or homeless children;
- (B) physically or mentally abused and traumatized persons;
- (C) prisoners; or
- (D) persons over the age of 65 years residing in a rural area;

(iv) PRESERVATION OF ENVIRONMENT including watershed, forests & wildlife.

Thus, only those services provided by a charitable and religious trusts [registered under section 12AA/12AB of the Income-tax Act] which fall within the above definition of charitable activities, are eligible for exemption from GST. There could be many other services provided by such charitable and religious trusts which are not covered by the definition of charitable activities and hence, such services would attract GST.

For instance, grant of advertising rights to a person for publicity, on the premises of the charitable/religious trust or on publications of the trust, or granting admission to events, functions, celebrations, shows against admission tickets or fee etc. would attract GST.

In the following paras, we have examined some of the services supplied by the entities registered under section 12AA/12AB of the Income-tax Act:

Management of educational institutions by charitable trusts

- ❑ Activities of schools, colleges or any other educational institutions run by charitable trusts by way of education or skill development of abandoned, orphans, homeless children, physically or mentally abused persons, prisoners or persons over age of 65 years or above residing in a **rural area**, will be considered as charitable activities and income from such supplies will be wholly exempt from GST.
- ❑ The term **rural area** means the area comprised in a village as defined in land revenue records, excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Government or a State Government.



(10) Shiksha Academy, an educational institute run by Sarvsewa Trust, a charitable trust registered under section 12AB of the Income-tax Act, 1961, has organized a Skill Development Programme for the old age people over the age of 65 years residing in Bangalore city (an urban area).

Services provided by Shiksha Academy do not fall within the purview of 'charitable activities'. The activities relating to advancement of skill development relating to persons over the age of 65 years, are covered under the definition of 'charitable activities' only when such persons are residing in rural area.

- ❑ Activities of a school, college or an institution run by a trust which do not come within the ambit of charitable activities will not be exempt under Entry 1. However, such activities may be exempt under Entry 66 [*discussed later in this chapter*] provided the school, college or institution qualifies as an 'educational institution'.

Hostel accommodation provided by trusts

- ❑ Hostel accommodation services provided by trusts to students do not fall within the ambit of charitable activities as defined above.

Religious yatras or pilgrimage

- ❑ Religious yatras/pilgrimage organised by any charitable or religious trust are not exempt.

- ❑ Only such services of religious pilgrimage as are provided by **specified organization** in respect of a religious pilgrimage facilitated by the Government of India (GoI), under bilateral arrangement, are exempt from GST. [See **Entry 60** in above table]. The term **specified organization** as referred herein means-

- Kumaon Mandal Vikas Nigam Limited (KMVN), a Government of Uttarakhand Undertaking; or
- 'Haj Committee of India' or 'State Haj Committee including Joint State Committee'.



- ❑ In short, as per **Entry 60**, the services provided by the Haj Committee and KMVN in relation to pilgrimage to Mecca and Kailash-Mansarovar respectively are not liable to GST.



(11) KMVN supplies numerous services, namely, medical facilities, catering services, security, accommodation services, etc. to the pilgrims undertaking Kailash-Mansarovar pilgrimage. Such services provided by KMVN in respect of the religious pilgrimage to Kailash-Mansarovar are covered under entry 60 and thus, are exempt.

Arranging yoga and meditation camp by charitable trusts

- ❑ As discussed above, services provided by entity registered under section 12AA/12AB of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt as such activities are covered in definition of charitable activities.
- ❑ Fee or consideration charged in any other form from the participants for participating in a religious, yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be exempt.
- ❑ Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga.
- ❑ However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form



including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable⁵.



(12) Bhavyajyoti Foundation, a charitable trust registered under section 12AB of the Income-tax Act, 1961, has organized a 'Meditation Camp' for the old age people. GST would be exempt on the same as services provided by entity registered under section 12AB of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt.

Hospitals managed by charitable trusts

Exemption available to health care services under Entry 74 [discussed later in this chapter] is also applicable to the health care services provided by a **clinical establishment, an authorised medical practitioner or paramedics of a religious or charitable trust** also.

Training or coaching in arts, culture or sports

As per Entry 80, services by way of training or coaching in-

- (a) recreational activities relating to arts or culture, by an individual, or**
- (b) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act**

are exempt from GST.

It is important to note that the exemption with regard to services provided by way of training or coaching in recreational activities relating to arts or culture is available when the same is provided by an individual. Similarly, services of training or coaching in sports are exempt only when such services are provided by a charitable entity registered under section 12AA or 12AB of Income-tax Act.



Let us now analyse the term 'recreational activities'. The term recreational activities is very wide. However, under this entry, the scope of



training or coaching in recreational activities is restricted to the area of arts

⁵ Circular No. 66/40/2018 GST dated 26.09.2018

and culture. Hence, the training or coaching in recreational activities relating to the areas other than arts or culture is outside the purview of this entry.

Further, training or coaching in all forms of arts, culture or sports is covered under this entry, namely, dance, music, painting, sculpture making, literary activities, theatre, etc. of any school, tradition or language or any of the sports.



(13) Manavtaa Sansthaan, a charitable trust registered under section 12AB of the Income-tax Act, 1961, has organized a 'Basketball Training Camp' for teenagers. GST would be exempt on the same as services provided by entity registered under section 12AB of the Income-tax Act, 1961 by way of training or coaching in sports are exempt.

GST on services provided TO charitable trusts

Services provided to charitable or religious trusts are not outside the ambit of GST. *Unless specifically exempted*, all goods and services supplied to charitable or religious trusts are leviable to GST.

B. CONDUCT OF ANY RELIGIOUS CEREMONY

Going through Entry 13(a), it can be inferred that the amount charged, by whatever name called, for the conduct of any religious ceremony is exempt from GST. Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage, and death involve elaborate religious ceremonies.



(14) Raamanand Joshi, a priest, charges ₹ 12,000 for conducting a religious ceremony on the birthday of Ghanshyam's son. The amount charged for the conduct of any religious ceremony is exempt from GST.

C. RENTING OF PRECINCTS OF RELIGIOUS PLACE MEANT FOR GENERAL PUBLIC

- ❑ **Entry 13(b)** exempts renting of precincts of a religious place meant for general public owned by an entity registered under any of the specified sections of the Income Tax Act provided the consideration charged for such renting does not exceed the prescribed ceiling limits as given in said entry. Thus, this exemption is determined on the basis of amount of consideration charged for such renting. Let us understand the



meaning of the terms 'religious place', 'general public' and 'precincts' referred herein.

- ❑ **Religious place** means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality.
- ❑ **General public** means the body of people at large sufficiently defined by some common quality of public or impersonal nature.
- ❑ The word '**precincts**' is not to be interpreted in a restricted manner and **all immovable property of the religious place located within the outer boundary walls** of the complex (of buildings and facilities) in which the religious place is located, is to be considered as being located in the precincts of the religious place. The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place and extended the benefit of above exemption.
- ❑ Activities other than conduct of religious ceremony and renting of precincts of religious place will be taxable irrespective of the manner or the name in which the consideration is received.
- ❑ **For example**, if donation is received with specific instructions/ mutual understanding between the donor and the receiver that religious place will host an advertisement promoting business of the donor, such donation will be subject to GST. However, where the donation is received without such instructions or when the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). In other words, there is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration⁶.

⁶ Discussion under this heading is primarily based on CBIC GST Flyer – Chapter 39 - GST on Charitable and Religious Trusts and other clarifications issued by CBIC.



(15) Durgadevi Trust, a religious trust registered under section 12AB of the Income-tax Act, owns and manages a temple in their locality. It rents the commercial shops located in the precincts of the temple for a rent of ₹ 10,000 per month per shop. The consideration so received is liable to GST as such services are exempt only when the consideration is less than ₹ 10,000 per month.



(16) Sarvodaya Trust, a religious trust, registered under section 10(23BBA) of the Income-tax Act, owns and manages a gurudwara. It rents the community hall located in the precincts of the gurudwara for a rent of ₹ 9,000 per day for a marriage function. The consideration so received is exempt from GST as the consideration is less than ₹ 10,000 per day.

2. Agriculture related services

Entry No.	Description of services
24	Services by way of loading, unloading, packing, storage or warehousing of rice.
24A	Services by way of warehousing of minor forest produce.
24B	<i>Services by way of storage/ warehousing of cereals, pulses, fruits and vegetables.</i>
54	Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of— (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; 

	(b) supply of farm labour; (c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market; (d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use; (e) loading, unloading, packing, storage or warehousing of agricultural produce; (f) agricultural extension services; (g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.
55	Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.
55A	Services by way of artificial insemination of livestock (other than horses).



ANALYSIS

ENTRY 54

The words '**Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products**' used in **Entry 54** include activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry, etc.



Further, the term '**agricultural produce**' means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, **on which either**



no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics, but makes it marketable for primary market. It is important to note that agricultural produce is either subject to no further processing at all or if any processing is undertaken on the agricultural produce it should not alter its essential characteristics but may make it marketable for primary market. Few instances of such processes are the processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, etc.



Let us examine what is exempt under Entry 54.

Entry 54 exempts the agricultural operations directly related to production of any agricultural produce such as cultivation, harvesting, threshing, plant protection or testing. Further, processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like **operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market** are also exempt. In view of the same, following processes are outside the purview of this entry and thus, are liable to GST:-

- (a) **Process which alters the essential characteristics of the agricultural produce:** For instance, potato chips or tomato ketchup, etc. are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case).
- (b) **Process which makes agricultural produce marketable in the retail market:** The processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, would NOT be covered in this entry. Only such

processes are covered in this entry which makes agricultural produce marketable in the primary market and not retail market.

Apart from this, supply of farm labour is also exempt from GST.

Renting or leasing of agro machinery or vacant land

Item (d) of the entry exempts **renting or leasing of agro machinery or vacant land** with or without a structure incidental to its use.



(17) Moolchand has leased out to a farmer – Tulsidas - a vacant land for agriculture. The land has a greenhouse and a storage shed which are incidental to its use for agriculture. Such service of leasing of vacant land with a greenhouse and a storage shed which is incidental to its use for agriculture is exempt from GST.

Agricultural extension services

Item (f) of the entry exempts **Agricultural Extension Services (AES)**. Said services have been defined under the notification to mean the application of scientific research and knowledge to agricultural practices through farmer education or training.

The main objective of AES is to transmit latest technical know-how to farmers. It also focuses on enhancing farmers' knowledge about crop techniques and help them to increase productivity. This is done through training courses, kisan call centres, farm visits, on farm trials, kisan melas, kisan clubs, advisory bulletins and the like.

Agricultural Produce Marketing Committee services

Services by any **Agricultural Produce Marketing Committee** or Board or services provided by a commission agent for sale or purchase of agricultural produce are not liable to GST. Agricultural Produce Marketing Committee or Board means any committee or board set up under a State Law for the time being in force for purpose of regulating the marketing of agricultural produce.

**Agricultural Produce
Marketing Committee**

Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity,

grading facilities etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc.

Services provided by such Agricultural Produce Marketing Committee or Board are covered in item (g) of entry 54. However, any service provided by such bodies which is not directly related to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce, will be liable to tax e.g. renting of shops or other property for commercial purposes.

Warehousing of agriculture produce

Item (e) of Entry 54 exempts loading, unloading, packing, storage or warehousing of agricultural produce. In this regard, following may be noted:

❑ Processed Tea and coffee



Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling,



shaping, refining, oxidation, packing etc. on green leaf and is the processed output of the same. Thus, green tea leaves and not tea is the "agricultural produce" eligible for exemption under entry 54 where such exemption is available for loading, unloading, packing, storage or warehousing of agricultural produce. Same is the case with coffee obtained after processing of coffee beans.

❑ Jaggery



Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce.



❑ Pulses

Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of dehusking or splitting is usually not carried out by farmers or at farm



level but by the pulse millers. Therefore pulses (dehusked or split) are also not agricultural produce. However, whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce.

In view of the above, it is inferred that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (dehusked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce and therefore do not fall within item (e) of entry 54⁷.

ENTRY 55

Custom milling of paddy into rice

Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce is exempt under GST.



Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested.



Further, processing of paddy into rice is not usually carried out by cultivators, but by rice millers. Milling of paddy into rice also changes its essential characteristics.

Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.

In view of the above, it is clarified that milling of paddy into rice is not eligible for exemption under Entry 55⁸.

⁷ Circular No. 16/16/2017 GST dated 15.11.2017

⁸ Circular No. 19/19/2017 GST dated 20.11.2017

3. Educational services

Entry No.	Description of services
66	Services provided - (a) by an educational institution to its students, faculty and staff; (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee; (b) to an educational institution, by way of,- (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (iii) security or cleaning or house-keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution; (v) supply of online educational journals or periodicals. However, nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent. Further, nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,- (i) pre-school education and education up to higher secondary school or equivalent; or (ii) education as a part of an approved vocational education course.



ANALYSIS

Education is fundamental to the nation building process.



The term "Education" is not defined in the CGST Act, 2017, but as per Apex Court decision in "*Loka Shikshana Trust v. CIT*", education is process of training and



developing knowledge, skill and character of students by normal schooling.

Taxing the Education Sector has always been a sensitive issue, as education is seen more as a social activity than a business one. The Government has a constitutional obligation to provide free and compulsory elementary education to every child. Thus, to promote education, it would be beneficial if educational services are exempted from tax.

However, commercialization of education is also a reality. The distinction between core and ancillary education is blurring and education is now an organised industry with huge revenues. The GST law tries to maintain a fine balance whereby core educational services provided and specified services received by educational institutions are exempt and other services are sought to be taxed.



Exemption from GST granted vide Entry 66 stated above can be discussed under two broad categories –output services and input services of an educational institution. The discussion in succeeding paras fundamentally revolves around these two areas:

OUTPUT SERVICES

Services provided **by an educational institution to its students, faculty and staff** and by way of **conduct of entrance examination against consideration** in the form of entrance fee are exempt from GST.

- ❑ Since exemption with respect to said services is available only when these services are provided BY 'educational institution', it is important to analyse the term **EDUCATIONAL INSTITUTION** first:



Educational institution means an institution providing services by way of,-

- (i) **pre-school education** and education up to **higher secondary school** or equivalent;
- (ii) education as a part of a curriculum for obtaining a **qualification recognised by any law** for the time being in force;
- (iii) education as a part of an **approved vocational education** course.

- ❑ It is to be noted that only those institutions, whose operations conform to the specifics given in the definition of the term “educational institution”, would be treated as one entitled to avail exemptions provided by the law.
- ❑ **Sub-clause (ii):** The term **‘education as a part of curriculum for obtaining a qualification recognised by any law for the time being in force’** means

the education delivered as **‘a part’** of the curriculum that has been prescribed for obtaining a qualification prescribed by law. Thus, in order to be covered under Entry 66, the education service should be delivered as part of curriculum. In



view of same, it can be inferred that:

Education services provided	Covered in sub-clause (ii)	Reasons
Conduct of degree courses by colleges, universities or institutions	✓	These courses lead to grant of qualifications recognized by law
Training given by private coaching institutes	✗	Such training does not lead to grant of a recognized qualification.
Education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country	✗	Only a course recognized by an Indian law is covered herein.



(18) ‘Dharam Institute of Technology’ (DIT), a private engineering college in M.P., offers post graduate engineering programmes. All the engineering courses including the distance learning post graduate engineering programme offered by DIT are recognised by the law [The All India Council for Technical Education (AICTE)]. Since DIT imparts education as a part of a curriculum for obtaining a qualification recognised by the Indian law, the same is an educational institution.

- ❑ **Sub-clause (i):** An institution providing pre-school education and education up to higher secondary school or equivalent qualify as an educational institution.



(19) 'Littleways Public School' is a school located in Tamil Nadu. The school has two branches – one is a pre-school and another is a higher secondary school affiliated to CBSE. A pre-school and a higher secondary school are educational institutions. Thus, Littleways Public School qualifies as an educational institution.

- ❑ **Sub-clause (iii):** covers institutions providing services by way of education as a part of approved vocational education course.

An **approved vocational education course** means, -

- ✓ a **course run by an ITI/ ITC⁹** affiliated to the National Council for Vocational Training (NCVT) or State Council for Vocational Training (SCVT) **offering courses in designated trades** notified under the Apprentices Act, 1961** or



- ✓ a **Modular Employable Skill Course**, approved by the NCVT, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship. The Modular Employable Skills is the minimum skill set which is sufficient for gainful employment or self-employment in the world of work. It provides employable skills to early school drop-outs, existing workers seeking skill upgradation, workers seeking certification of their skills acquired informally, etc. to improve their employability and provides certification after completion of the course.



****Designated trade** means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course which the Central Government, after consultation with the Central

⁹ Industrial Training Institute/ Industrial Training Centre

Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of Apprentices Act, 1961¹⁰.



(20) 'Kaladrishti ITI, Gorakhpur is engaged in providing skill development courses in other than designated trades notified under the Apprentices Act, 1961. Since courses offered by Kaladrishti ITI are not in designated trades notified under the Apprentices Act, 1961, education provided by it is not approved as vocational educational course as defined above. Resultantly, it doesn't qualify as an educational institution.

In view of the above definition, some of the institutions providing education services have been examined as under:

Private ITIs

- ❑ **Private ITIs** qualify as an educational institution if the education provided by these ITIs is approved as vocational educational course as defined above.



Accordingly, services provided by a private ITI **only in respect of designated trades notified under Apprentices Act, 1961 are exempt** from GST under this entry. Services in respect of other than designated trades are liable to GST.



Further, in case of designated trades, **services provided by private ITI** by way of **conduct of entrance examination** against consideration in the form of entrance fee will also be exempt.



Moreover, in respect of such designated trades, **services provided TO private ITIs** relating to admission to or **conduct of examination** by a private ITI will also be exempt.

¹⁰ Some of the designated trades notified under the Apprentices Act, 1961 are electrician, wireman, carpenter, plumber, mason, mechanic, tool and die maker, baker and confectioner, weaver, tailor, footwear maker, photographer, beautician, painter, desk top publishing operator, gardener, cable television operator, library assistant, etc.

In case of **other than designated trades** in private ITIs, **GST is payable** on the aforesaid services provided by/to the private ITIs¹¹.

Government ITIs

As far as **Government ITIs** are concerned, services provided by a Government ITI to individual trainees/students, are exempt under Entry 6 as these are in the nature of services provided by the Central or State Government to individuals *[Entry 6 is discussed in detail subsequently]*. Such exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government ITIs¹².

Unrecognized educational institutions

- ❑ Private coaching centres or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution.



(21) 'Super Minds', a coaching institute in Raipur, provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam. Super Minds, being a coaching centre which trains candidates to secure a banking job, is not an educational institution in terms of the exemption notification.

Educational institutions up to Higher Secondary schools

- ❑ By virtue of Entry 66, educational institutions up to Higher Secondary School level do not suffer GST on output services and also on specified input services *[discussed in subsequent paras]*. However, some of the input services like repairs and maintenance etc. provided by private players to educational institutions are subject to GST.

¹¹ Circular No. 55/29/2018 GST dated 09.08.2018

¹² Circular No. 55/29/2018 GST dated 09.08.2018

- ❑ Output services of lodging/boarding in hostels provided by such educational institutions which are providing pre-school education and education up to higher secondary school or equivalent or education leading to a qualification recognised by law, are fully exempt from GST. Annual subscription/fees charged as lodging/boarding charges by such educational institutions from its students for hostel accommodation shall therefore, not attract GST.



- ❑ **Boarding schools** provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of composite supply if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 2(30) read with section 8¹³.

Such services in the case of boarding schools are naturally bundled and supplied in the ordinary course of business. Therefore, the bundle of services will be treated as consisting entirely of the principal supply, which means the service which forms the predominant element of such a bundle.

In this case since the predominant nature is determined by the service of education, the other service of providing residential dwelling will not be considered for the purpose of determining the tax liability and in this case the entire consideration for the supply will be exempt.

Educational institutions providing qualification recognized by law

- ❑ We have already seen that the institutions providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force qualify as educational institutions. However, the question arises that in case where **a course in a college leads to dual qualification only one of which is recognized by law**, would service provided by the college by way of such education be covered by the exemption notification?

¹³ Section 2(30) provides the definition of composite supply and section 8 contains the provisions relating to tax liability on composite and mixed supplies. The concept of composite and mixed supply has been discussed in detail in Chapter 1 – Supply under GST in this Module of the Study Material.

- ❑ Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately.

If an artificial bundle of service is created by clubbing two courses together, when only single fee is charged for both, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a supply which is not bundled in the ordinary course of business, it shall be treated as a mixed supply as per provisions contained in section 2(74)¹⁴ read with section 8.

The taxability will be determined by the supply which attracts highest rate of GST.

- ❑ However, **incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well-being** will be an example of naturally bundled course, and therefore treated as composite supply. One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component viz-a-viz the recognized course. If extra billing is being done, it may be a case of artificial bundling of two different supplies, not supplied together in the ordinary course of business, and therefore will be treated as a mixed supply, attracting the rate of the higher taxed component for the entire consideration¹⁵.

***Incidental
auxiliary courses***



- ❑ Indian Institutes of Management Act, 2017 (IIM Act, 2017) empowers IIMs to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for



¹⁴ Section 2(74) provides the definition of mixed supply.

¹⁵ The view taken in the preceding paras, that education coupled with other incidental services is a composite supply and is exempt since the principal supply [education service] is exempt, is based on the CBIC Flyer - Chapter 40 – 'GST on Education Services'. However, it is also possible to take a different view since as per the definition of composite supply under section 2(30), composite supply consists of two or more **taxable supplies**.

admission to courses or programmes of study, and (iii) specify the academic content of programmes.

- ❑ Resultantly, all the IIMs fall under purview of “educational institutions” as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.
- ❑ IIMs provide various long duration programs (1 year or more) for which they award diploma/ degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017. Services provided by IIMs to their students- in all such long duration programs (one year or more) are exempt from levy of GST.
- ❑ IIMs also provide various short duration/ short term programs (less than 1 year) for which they award participation certificate to the executives/ professionals as they are considered as “participants” of the said programmes. These participation certificates are not any qualification recognized by law.
- ❑ Such participants are also not considered as students of IIM. Services provided by IIMs as an educational institution to such participants is not exempt from GST and GST is payable on the same ¹⁶.

**Long duration programs
of IIMs - Exempt**

**Short duration programs
of IIMs – Not exempt**

Conduct of entrance examination by authority/board/body set up by CG/SG

Any authority, board or body set up by the Central Government or State Government (including National Testing Agency) for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions.



¹⁶ Circular No. 82/01/2019 GST dated 01.01.2019

Central and State Education Boards

It is important to note that the Central and State Educational Boards shall be treated as 'Educational Institution' for the limited purpose of providing services by way of conduct of examination to the students. ***In this regard, following is clarified:***

- ❑ ***Various services are supplied by Centre and State Boards such as National Board of Examination (NBE). These services include entrance examination (on charging a fee) for admission to educational institution, input services for conducting such entrance examination for students, accreditation of educational institutions or professional so as to authorise them to provide their respective services.***
 - ❑ ***For example, NBE provides services of conducting entrance examinations for admission to courses including Diplomat National Board (DNB) and Fellow of National Board (FNB), prescribes courses and curricula for PG medical studies, holds examinations and grant degrees, diplomas and other academic distinctions. It carries out all functions as are normally carried out by central or state educational boards and is thus a central educational board. "Central and State Educational Boards" are treated as educational institutions for the limited purpose of providing services by way of conduct of examination to the students. Therefore, NBE is an 'educational institution' in so far as it provides services by way of conduct of examination, including any entrance examination, to the students.***
- 
- ❑ ***It is clarified that:***
 - (i) ***GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution under Entry 66(aa). Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations.***

- (ii) ***GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards under Entry 66(b)(iv).***
- (iii) ***GST is applicable to other services provided by such Boards, namely of providing accreditation to an institution or to a professional [accreditation fee or registration fee such as fee for FMGE (Foreign Medical Graduate Examination) screening test] so as to authorise them to provide their respective services¹⁷.***

Supply of food in a mess or canteen

- ☐ Educational institutions generally have mess facility for providing food to their students and staff.

Such facility is

- (i) either run by the institution/ students themselves or
- (ii) is outsourced to a third person.



- ☐ **If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered by the definition of 'educational institution' as given above,** then the same is exempt. [covered under item (a) of entry 66].
- ☐ **If the catering services, i.e., supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution,** i.e. the institution outsources the catering activity to an outside contractor, then it is a supply of service to the concerned educational institution by such outside caterer and attracts GST.

However, said services when provided to an educational institution providing pre-school education or education up to higher secondary school or equivalent are exempt from tax [covered under item (b)(ii) of Entry 66].

¹⁷ Circular No. 151/07/2021 GST dated 17.06.2021

Supply of food in anganwadis and schools

- ❑ *An anganwadi, inter alia, provides pre-school non-formal education. Hence, anganwadi is covered by the definition of educational institution (as pre-school).*
- ❑ *As seen above that as per entry 66(b)(ii), any catering service provided to an educational institution (pre-school and schools) is exempt from GST and it includes mid- day meal service also. The **scope of this entry is thus wide enough to cover any serving of any food to a school** (including pre-school).*
- ❑ *It is further clarified that services provided to an educational institution by way of serving of food (catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations.*
- ❑ *Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates¹⁸.*

Entrance fee for conduct of entrance examination/fee for admission/issuance of migration certificate

- ❑ *As discussed earlier, Entry 66 exempts, inter alia, services provided –
(a) by an educational institution to its students, faculty and staff;
(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee.*
- ❑ *Therefore, it can be seen that all services supplied by an 'educational institution' to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt.*
- ❑ *The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for*

¹⁸ Circular No. 149/05/2021 GST dated 17.06.2021

entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution.

- ❑ ***Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption. Accordingly, such activities of educational institutions are also exempt¹⁹.***

Fees charged from prospective employers

Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/MNCs, who come to the institutes for recruiting candidates through campus interviews in relation to campus recruitments. Such services shall also be liable to tax.

Maritime courses approved by DG Shipping

Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (Standards of training, certification and watch-keeping for Seafarers) Rules, 2014.

Therefore, Maritime Training Institutes are educational institutions and the courses conducted by them are exempt subject to fulfilment of other conditions specified herein²⁰.

INPUT SERVICES

- ❑ Regarding, input services, it may be noted that where output services are exempted, the educational institutions may not be able to avail credit of tax paid on the input side. The auxiliary education services *[services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person]* specified in item (b) of entry 66 only have been exempted [Sub-items (i) to (v) of item (b) of Entry 66].

¹⁹ Circular No. 177/09/2022 GST dated 03.08.2022

²⁰ Circular No. 117/36/2019 GST dated 11.10.2019

- ❑ However, the said exemption comes with a rider. Auxiliary services of (i) transportation of students, faculty, and staff, (ii) catering including any mid-day meals scheme sponsored by Government and (iii) security or cleaning or housekeeping services are exempt only if such auxiliary education services are provided to educational institutions providing services by way of education up to higher secondary or equivalent, (from pre-school to HSC).
- ❑ Thus, if such auxiliary education services are provided to educational institutions providing degree or higher education or institutions providing approved vocational education course, the same would not be exempt.
- ❑ Similarly, services of supply of online educational journals/periodicals are exempt only if they are provided to an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force²¹.



(22) Little Millennium – a pre school in outskirts of Mumbai – has subscribed the online journals on child development and experiential learning. Services of supply of online educational journals or periodicals provided, *inter alia*, to an institution providing services by way of pre-school education are not exempt.

(23) SM Transporters has provided services of transportation of students and faculty from their residence to school and back, to Pathwheels School - a higher secondary school. Services of transportation of students, faculty and staff provided, *inter alia*, to an institution providing services by way of education up to higher secondary school or equivalent are exempt.

(24) Shiksha College, offering degree courses (recognised by law), has to conduct its half yearly examination in November. For this purpose, it has paid the honorarium to paper setters and examiners (not on the rolls of Shiksha College) for their services. Further, it availed the printing services for printing the question papers (paper and content are provided by Shiksha College) for conducting examination. Services provided to an educational institution relating to admission to, or conduct of examination by, such institution are exempt. Therefore, services

²¹ The discussion in the foregoing paras is primarily based on CBIC Flyer - Chapter 40 – 'GST on Education Services' unless otherwise specified.

of paper setters and examiners and printing services availed by Shiksha College are exempt.



(26) Gyaani Public School – a higher secondary school – has hired Suvidha Services Ltd. for security and housekeeping services in the school. Security and housekeeping services provided within the premises of, *inter alia*, a higher secondary school are exempt. Therefore, said services provided by Suvidha Services Ltd. are exempt. The school subsequently hired Suvidha Services Ltd. for providing the security and housekeeping services at School's Annual Day function organised in an auditorium outside the school campus. Security and housekeeping services provided to Gyaani Public School for School's Annual Day function organised outside the school campus will be taxable as only the security and housekeeping services performed **within the premises** of the higher secondary school are exempt.

The exemptions available in respect of input and output services of an educational institution have been tabulated as follows:

	Type of educational institution		
	Educational institution providing pre-school education and education up to higher secondary school or equivalent	Educational institution providing education as a part of a curriculum for obtaining a recognised qualification	Educational institution providing education as a part of approved vocational education course
<i>Exempt input services</i>	(i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;	(i) services relating to admission to, or conduct of examination by, such institution	Services relating to admission to, or conduct of examination by, such institution.

	(iii) security or cleaning or house-keeping services performed in such educational institution;	(ii) supply of online educational journals or periodicals	
	(iv) services relating to admission to, or conduct of examination by, such institution		
<i>Exempt output services</i>	Services provided by an educational institution - (a) to its students, faculty and staff; (aa) by way of conduct of entrance examination against consideration in the form of entrance fee.		

4. Health care services

Entry No.	Description of services
46	Services by a veterinary clinic in relation to health care of animals or birds. 
74	Services by way of- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; <i>However, nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day to a person receiving health care services.</i> (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above. 



ANALYSIS



Entry 74 - Health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST [Entry 74(a)].



However, services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day to a person receiving health care services will not be exempt.

The term 'health care services' is defined as follows:

Health care services

- ❑ means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and
- ❑ includes services by way of transportation of the patient to and from a clinical establishment, but
- ❑ does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Health care services



(26) Healthy Nursing Home specializes in undertaking plastic surgeries. One such surgery is conducted to repair cleft lip of a newborn baby. In view of above definition, plastic surgeries are not included in health care services. However, plastic surgery conducted to repair a cleft lip will be included in health care services as it reconstructs anatomy or functions of body affected due to congenital defects (i.e. cleft lip).

(27) Aarogya Multispecialty Hospital provides palliative care to patients facing serious and life-threatening illness. Palliative care is given to improve the quality

of life of patients who have a serious or life-threatening disease, but the goal of such care is not to cure the disease.

On request, such care is also provided to patients at their homes. Health care service means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India. It is immaterial whether such service is provided at the clinical establishment or at the home of the patient or at any other place.

Thus, palliative care for terminally ill patients provided at their homes is included in health care services.

As it is apparent from the definition of health care services, only services in **recognized systems of medicines in India** are exempt under this entry. Following systems of medicines are the recognized systems of medicines in India²²:-

- ☐ Allopathy
- ☐ Yoga
- ☐ Naturopathy
- ☐ Ayurveda
- ☐ Homeopathy
- ☐ Siddha
- ☐ Unani
- ☐ Any other system of medicine that may be recognized by Central Government.

Recognized systems of medicines



(28) Reiki healing treatment is not a recognized system of medicines. Therefore, it is not included in health care services.

Let us now understand the meaning of terms - 'clinical establishment', 'authorised medical practitioner' and 'paramedics'.

- ❖ **Clinical establishment:** means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality

²² Section 2(h) of the Clinical Establishments (Registration and Regulation) Act, 2010

or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases. Thus, diagnostic or investigative services of diseases provided by pathological labs are not liable to GST.



- ❖ **Authorised medical practitioner:** means a medical practitioner registered with any of the councils of recognised system of medicines established/recognised by law in India & includes a medical professional having requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force.

Further, **Paramedics** are trained health care professionals, for example, nursing staff, physiotherapists, technicians, lab assistants etc. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment. Similar services in independent capacity are also exempted.



Rent of rooms provided to in-patients

Rent of the rooms **having room charges upto ₹ 5000 per day to a person receiving health care services** in hospitals is exempt²³.

Services provided by senior doctors/ consultants/ technicians

- ❑ Hospitals hire senior doctors/ consultants/ technicians independently. Such persons do not have any contract with the patient. Hospitals pay them consultancy charges and there is no employer-employee relationship between them.
- ❑ It is clarified by CBIC that services provided by such senior doctors/ consultants/ technicians, whether employees or not, are healthcare services which are exempt from GST [Circular No. 32/06/2018 GST dated 12.02.2018].



Amount charged by hospitals from the patients

- ❑ In above cases, suppose hospitals charge the patients, say, ₹ 10,000/- and pay to the consultants/technicians only ₹ 7,500/- and keep the balance for

²³ Circular No. 27/01/2018 GST dated 04.01.2018 read with proviso to Entry 74(a)

providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc. Going through the definition of health care services [given above], it can be inferred that hospitals also provide healthcare services.

- ❑ The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt [Circular No. 32/06/2018 GST dated 12.02.2018].

Food supplied to the patients

- ❑ Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the hospitals from outdoor caterers.
- ❑ When outsourced, there is no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC.
- ❑ Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable.
- ❑ Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable [Circular No. 32/06/2018 GST dated 12.02.2018]²⁴.



Ambulance services provided National Health Mission (NHM)

- ❑ National Health Mission (NHM) is a flagship programme of the Government of India wherein the Central Government provides technical and financial support to States to strengthen healthcare systems including for free ambulance services (Dial 102/108 services).



²⁴ The view taken in the preceding paras, that health care services coupled with other incidental services is a composite supply and is exempt since the principal supply [health care service] is exempt, is based on Circular No. 32/06/2018 GST dated 12.02.2018. However, it is also possible to take a different view since as per the definition of composite supply under section 2(30) of the CGST Act, composite supply consists of two or more **taxable supplies**.

- ❑ Dial 108 is the emergency response system primarily designed to attend to patients of critical care, trauma and accident victims etc. while Dial 102 services essentially are for basic patient transport aimed to cater the needs of pregnant women and children, though other categories are also taking benefit and are not excluded.
- ❑ Some State Governments themselves provide the free ambulance services to the patients while many States are operating the ambulance service on an outsourced model, i.e., services are provided by a private service provider (PSP) on behalf of State Government and it charges a fee from the State Governments for said ambulance services. However, in both the cases, ambulance services are provided free of cost to the patients.
- ❑ Services provided by State Governments and Private Service Providers (PSPs) by way of transportation of patients in ambulance are exempt under Entry 74 above.
- ❑ As regards ambulance services provided by PSPs [under NHM] on behalf of State Governments against consideration in the form of fee or otherwise charged from State Government, since ambulance services are an activity in relation to 'health and sanitation' and 'public health' functions entrusted to Panchayats and Municipalities under Article 243G and 243W of the Constitution of India²⁵, same would be exempt as under:
 - a. Entry 3 if it is a pure service and not a composite supply involving supply of any goods, and
 - b. Entry 3A if it is a composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply [*Circular No. 51/25/2018 GST dated 31.07.2018*]. [Refer Entry 3 and 3A discussed in detail subsequently under heading 'Services provided to Government'].



²⁵ An illustrative list of functions entrusted to Panchayat and Municipality under Article 243G and 243W respectively of the Constitution of India has been provided subsequently in this chapter under heading 'Services provided by Government'.

Services other than health care services in clinical establishment's premises

- ❑ Supply of services other than healthcare services such as renting of shops, auditoriums in the premises of the clinical establishment, display of advertisements etc. will be subject to GST²⁶.

Services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF)

- ❑ ***As per the definition of health care services given earlier, it means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.***
- ❑ ***Since, the abnormality/disease/ailment of infertility is treated using ART procedure such as IVF, it is clarified that services by way of IVF are also covered under the definition of health care services²⁷.***

5. Services provided by Government

Entry No.	Description of services
4	Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution are exempt.
5	Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.
6	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts ;

²⁶ As clarified by the CBIC GST Flyer – Chapter 39 - GST on Charitable and Religious Trusts

²⁷ Circular No. 177/09/2022 GST dated 03.08.2022

	(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; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.
7	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 Explanation - For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to following services:- (i) item (a), (b) and (c) of Entry 6 above. (ii) services by way of renting of immovable property.
8	Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority. <i>However, nothing contained in this entry shall apply to services referred in item (a), (b) and (c) of Entry 6 above.</i>
9	Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹ 5,000. <i>However, nothing contained in this entry shall apply to services referred in item (a), (b) and (c) of Entry 6 above</i> Further, in case where continuous supply of service* is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a FY. <i>*as defined in section 2(33)</i>
9C	Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.

9D	Services by: an old age home run by: ✓ Central Government, State Government or ✓ an entity registered under section 12AA/12AB of Income-tax Act, 1961 to its residents (aged 60 years or more) against consideration upto ₹ 25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance. 
24C	<i>Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams).</i>
34A	Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings(PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions²⁸.
47	Services provided by the Central Government, State Government, Union territory or local authority by way of- (a) registration required under any law for the time being in force; (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.
61	Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving license, birth certificate or death certificate.
62	Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated

²⁸ Circular No.154/10/2021 GST dated 17.06.2021 reiterates that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt under Entry 34A.

	damages is payable to the Central Government, State Government, Union territory or local authority under such contract.
63	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals , except the rearing of horses, for food, fibre, fuel, raw material or other similar products.
65	Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.
65B	Services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders. However, at the end of the contract period, ERCC shall submit an account to the State Government and certify that amount of GST deposited by mining lease holders on royalty is more than GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and where such amount of GST paid by mining lease holders is less than the amount of GST exempted, the exemption shall be restricted to such amount as is equal to the amount of GST paid by the mining lease holders and the ERCC shall pay the difference between GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and GST paid by the mining lease holders on royalty. Explanation- Mining lease holder means a person who has been granted mining lease, quarry lease or license or other mineral concession under the Mines and Minerals (Development and Regulation) Act, 1957, the rules made thereunder or the rules made by a State Government under section 15(1) of the said Act.

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Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such

other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA/12AB of the Income-tax Act, 1961.



ANALYSIS

Relevant definitions are as under:

❖ **Business entity:** means any person carrying out business.

❖ **Governmental authority:** means an authority or a board or any other body,

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 90%, or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

❖ **Government Entity:** means an authority or a board or any other body including a society, trust, corporation,

(i) set up by an Act of Parliament or State Legislature; or

(ii) established by any Government,

with 90%, or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

❖ **Aircraft:** means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth's



surface and includes balloons, whether fixed or free, airships, kites, gliders and flying machines [Section 2(1) of the Aircraft Act, 1934].

- ❖ **Airport:** means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in section 2(2) of the Aircraft Act, 1934 [Section 2(b) of the Airports Authority of India Act, 1994].

Exemption to services provided by Government

- ❑ **Not all services provided by the Government or a local authority are exempt from tax.** As for instance, following services are not exempt:

- (a) services by the Department of Posts;
- (b) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port;
- (c) transport of goods or passengers; or
- (d) any service, other than services covered under (a) to (c) above, provided to business entities [with aggregate turnover exceeding such amount in the preceding financial year as makes it eligible for exemption from registration under CGST Act].



Services mentioned in clause (a) to (c) above have been referred to as “**specified services**” in discussion hereunder.

Accommodation services supplied by Air Force Mess and other similar messes to its personnel

- ❑ **Accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Entry 6 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority²⁹.**

²⁹ Circular No. 190/02/2023 GST dated 13.01.2023

Let us first understand what does 'Government' and 'local authority' mean?

Meaning of Government

- ❑ As per section 2(53), 'Government' means the Central Government.
- ❑ Various State/ Union Territories (with Legislatures) GST Acts define 'Government' as Government of respective State Government/ Union Territory. For Union Territories (without State Legislatures), 'Government' means the Administrator or any Authority or officer authorized to act as Administrator by the Central Government.
- ❑ Regulatory bodies/agencies, for instance, 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, do not fall under the definition of Government.



Meaning of local authority

- ❑ Local authority is defined in section 2(69) and means the following:
 - ✓ a **"Panchayat"** as defined in clause (d) of article 243 of the Constitution;
 - ✓ a **"Municipality"** as defined in clause (e) of article 243P of the Constitution;
 - ✓ a **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;
 - ✓ a **Cantonment Board** as defined in section 3 of the Cantonments Act, 2006;
 - ✓ a **Regional Council or a District Council** constituted under the Sixth Schedule to the Constitution;
 - ✓ a **Development Board** constituted under article 371 and article 371J of the Constitution; or
 - ✓ a **Regional Council** constituted under article 371A of the Constitution.

Thus, 'local authority' includes only those bodies which are listed in the above definition. It would not include other body which is merely described as a 'local body' by virtue of a local law. For example, local developmental authorities - setup by State Governments to undertake developmental works - like Delhi Development Authority, Ahmedabad Development Authority, Bangalore Development Authority, etc. are not qualified as local authorities.

In the subsequent paras, we have examined some of the Government services:

Services provided to a business entity

- ❑ **Entry 7** provides that services provided to a business entity are exempt if its aggregate turnover is upto such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act.
- ❑ However, this exemption is not applicable to **specified services** and renting of immovable property services. **Renting in relation to immovable property** means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.
- ❑ GST on services, other than **specified services**, supplied by the Central Government, State Government, Union territory or local authority to a business entity [whose turnover exceeds such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act] is payable under reverse charge by such business entity.

However, reverse charge provisions are not applicable to renting of immovable property services provided to unregistered persons and where '**specified services**' are being provided to such business entity [See the reverse charge provisions as discussed in Chapter – 2: Charge of GST in this Module of the Study Material].

Services provided by the Department of Posts

- ❑ Department of Posts provide basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations. It also

provides services of transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.



- ❑ Moreover, it provides services like distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills **on commission basis**. These services are in the nature of intermediary and are generally called **agency services**.
- ❑ Entry 6 stipulates that the services provided by the Central Government, State Government, Union territory or local authority are exempt excluding the services by the Department of Posts. Further, **entry 24C exempts the services provided by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams)**. Thus, on remaining services provided by the **Department of Posts, it is liable to pay tax** without the application of reverse charge.



Services provided by one Department of the Government to another Department of the Government

- ❑ Services (except specified services) provided by one Department of the Central Government/ State Government to another Department of the Central Government/ State Government are exempt under **Entry 8**.

Services by governmental authority by way of any activity in relation to any function entrusted to Panchayat/ Municipality



Services provided by governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the



Constitution³⁰ and services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution³¹ are exempt vide **Entry 4** and **Entry 5** respectively.

Services provided by police/security agencies of Government to PSUs/corporate entities/sports events held by private entities

- ❑ Services provided by Police/security agencies of Government to PSU/private business entities are not exempt from GST.
- ❑ Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government for such supply of services [See the reverse charge provisions as discussed in Chapter – 2: Charge of GST in this Module of the Study Material].



(29) The Karnataka Cricket Association, Bangalore requests the Commissioner of Police, Bangalore to provide security in and around the Cricket Stadium for the purpose of conducting the cricket match. The Commissioner of Police arranges the required security for an agreed consideration. In this case, services of providing security by the police personnel are not exempt. As the services are provided by Government, Karnataka Cricket Association is liable to pay the tax on the consideration paid, albeit under reverse charge mechanism.

³⁰ The functions entrusted to municipality under the 12th Schedule to Article 243W of the Constitution include urban planning including town planning, roads and bridges, public health, sanitation conservancy and solid waste management, fire services, slum improvement and upgradation, promotion of cultural, educational and aesthetic aspects, provision of urban amenities and facilities such as parks, gardens, playgrounds, public amenities including street lighting, parking lots, bus stops and public conveniences, etc.

³¹ The functions entrusted to Panchayat under the 11th Schedule to Article 243G of the Constitution include Agriculture, including agricultural extension, Animal husbandry, dairying and poultry, Fisheries, Small scale industries, including food processing industries, Drinking water, Fuel and fodder, Rural electrification, including distribution of electricity, Health and sanitation, including hospitals, primary health centres and dispensaries, Women and child development, Public distribution system, etc.

Services provided by way of tolerating non-performance of a contract

- ❑ **In case of supplies made to Government, services [provided by Government] by way of tolerating the non-performance of contract by the supplier of service is covered under the exemption under Entry 62.** Thus, any consideration received by the Government from any person or supplier for non-performance of contract is exempted from tax.



(30) Public Works Department of Karnataka entered into an agreement with M/s. ABC, a construction company, for construction of its office complex for an agreed consideration. In the agreement dated 10th July, it was agreed by both the parties that M/s. ABC shall complete the construction work and handover the project on or before 31st December.

It was further agreed that any breach of the terms of contract by either party would give right to the other party to claim for damages or penalty. M/s. ABC did not complete the construction and did not handover the project by the specified date i.e., on or before 31st December. As per the contract, the Department asked for damages/penalty from M/s. ABC and threatened to go to the court if not paid. Resultantly, M/s. ABC paid an amount of ₹ 10,00,000/- to the Department for non-performance of contract. Amount paid by M/s. ABC to Department is exempt from payment of tax.

General Insurance policies provided by a State Government

- ❑ Services provided by State Government by way of general insurance (managed by government) to employees of the State government/Police personnel, employees of Electricity Department or students of colleges/private schools etc. **wherein the total premium for insurance policy is paid by employees, students etc.** are exempt vide entry 6 of the Notification which exempts services by Central Government, State Government, Union territory or local authority to individuals.
- ❑ General Insurance policies provided to employees of the State Government/Police personnel, employees of Electricity Department or students of colleges/private schools etc. **wherein the total premium for insurance policy is paid by the Central Government, State Government, Union territory** are exempt from GST under Entry 40³² which exempts services

³² Entry 40 has been discussed subsequently in this chapter under heading 'Services provided to the Government'.

provided to the Central Government, State Government, Union territory under any insurance scheme are exempt from GST [Circular No. 16/16/2017 GST dated 15.11.2017].

6. Construction services

Entry No.	Description of services
10	Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana. 
10A	Services supplied by Electricity Distribution Utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use.
11	Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex.
41A and 41B	Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer are exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses³³.

³³ These entries have been stated here in simplified form.



ANALYSIS

Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana (hereinafter referred to as PMAY) is a programme launched by the Ministry of Housing and Urban Poverty Alleviation (MoHUPA) which envisions provision of Housing for All by 2022 when the nation completes 75 years of its independence.



The mission seeks to address the housing requirement of urban poor including slum dwellers through following, *inter alia*, programme verticals:

- ❑ Slum rehabilitation of Slum Dwellers with participation of private developers using land as a resource.
- ❑ Promotion of Affordable Housing for weaker section through credit linked subsidy.
- ❑ Affordable Housing in Partnership with Public & Private sectors.
- ❑ Subsidy for beneficiary-led individual house construction/enhancement.

Last component of the mission is assistance to individual eligible families belonging to Economically Weaker Section (EWS) categories to either construct new houses or enhance existing houses on their own to cover the beneficiaries who are not able to take advantage of other components of the mission. Such families may avail specified amount of central assistance for construction of new houses or for enhancement of existing users under the mission.

Entry 10 exempts the services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the PMAY from GST.

The term '**original works**' means- all new constructions;

- ❑ all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;



- ❑ erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

Entry 11 exempts the services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex from GST.

The term '**residential complex**' means any complex comprising of a building or buildings, having more than one single residential unit. Further, '**single residential unit**' means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

7. Passenger transportation services

Entry No.	Description of services
15	Transport of passengers, with/ without accompanied belongings, by – (a) air, in economy class, embarking from or terminating in an airport located in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; (b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than air- conditioned stage carriage. However, nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the CGST, 2017.
16	Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a RCS (Regional Connectivity Scheme) airport, against consideration in the form of viability gap funding.



	However, nothing contained in this entry shall apply on or after the expiry of a period of 3 years from the date of commencement of operations of the RCS airport as notified by the Ministry of Civil Aviation.
17	Service of transportation of passengers, with or without accompanied belongings, by— (a) railways in a class other than— (i) first class; or (ii) an air-conditioned coach; (b) metro, monorail or tramway; (c) inland waterways; (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (e) metered cabs or auto rickshaws (including e-rickshaws). <i>However, nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the CGST, 2017.</i>



ANALYSIS

Services of transportation of passengers are usually chargeable to GST. Entry 6 [Services provided by Government - discussed earlier] specifically excludes the transport of passengers' services provided by the Government or local authority from its purview, which implies that transport of passengers' services provided by the Government or local authority services provided by the Government are also liable to GST.

However, services of transportation of passengers specified in Entries 15, 16 and 17 mentioned above are exempt from GST (whether provided by Government or otherwise) with or without accompanied belongings.

Services provided by way of transportation of passengers have been analysed as follows:

ENTRY 15

Clause (a)

- ❑ Transport of passengers by air, embarking from or terminating in an airport located in the States of North-East India or at Bagdogra located in West Bengal is exempt from GST provided said transportation is in economy class.



(31) Rituraj has booked air tickets in economy class of a flight from Delhi to Guwahati, Assam. Transport of passengers by air terminating in an airport located in Assam is exempt from GST.

Clause (b)

- ❑ Passenger transportation service provided by a non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire are exempt from GST. Conducted tour is a short visit to a place in which someone shows you around and tells you information about it³⁴.

The term **contract carriage** means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

- (a) on a time basis, whether or not with reference to any route or distance; or
- (b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes--
 - (i) a maxicab; and
 - (ii) a motor cab notwithstanding that separate fares are charged for its passengers [Section 2(7) of Motor Vehicles Act, 1988].

³⁴ www.macmillandictionary.com

Further, **radio taxi** means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using the Global Positioning System or General Packet Radio Service.



(32) Subroto has hired a non-air conditioned bus from Mohit Travels for organising a recreation tour from Delhi to Jaipur. Transport of passengers by a non-air-conditioned contract carriage are exempt from GST. However, said transportation of passengers for tourism purposes is excluded therefrom. Therefore, in the given case, passenger transportation services are taxable.

Hiring of non-air conditioned contract carriages by firms for transportation of their employees to and from work

Exemption under this clause would apply to passenger transportation services by non-air conditioned contract carriages where transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider³⁵.

Clause (c)

- ☐ Passenger transportation services provided by a stage carriage other than air-conditioned stage carriage are also exempt.

The term **stage carriage** means a motor vehicle constructed or adapted to carry more than 6 passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey [Section 2(40) of the Motor Vehicles Act, 1988].



(33) The non-air conditioned buses are being operated by a State Transport Corporation for carrying passengers within the State. The passengers are being picked and dropped from and to various points by

³⁵ Circular No. 177/09/2022 GST dated 03.08.2022

issuing individual tickets to the passengers. Such services provided by said State Transport Corporation are exempt from GST.

Proviso

It is important to note that in case where services of transport of passengers, by non-air conditioned contract carriage other than radio taxi excluding tourism, conducted tour, charter or hire or by non-air conditioned stage carriage, are supplied through Electronic Commerce Operator (ECO)³⁶, such services are not exempt from GST. Further, tax on such services shall be paid by ECO.

ENTRY 16

- ❑ Services provided to the Central Government, by way of transport of passengers by air, embarking from or terminating at a RCS airport, against consideration in the form of viability gap funding are exempt.

A **Regional Connectivity Scheme** is introduced to facilitate / stimulate regional air connectivity by making it affordable by supporting airline operators through (1) concessions by Central Government/State Governments and airport operators to reduce the cost of airline operations on regional routes/other support measures and (2) financial (viability gap funding or VGF) support to meet the gap, if any, between the cost of airline operations and expected revenues on such routes.

Under RCS, the underserved airports of India are aimed to be connected to key airports through cheap air flights that will cost ₹ 2,500 for per hour flight.

ENTRY 17

- ❑ Transportation of passengers by following specified modes of transport is exempt:
 - (a) railways in a class other than—
 - (i) first class; or
 - (ii) an air-conditioned coach;

³⁶ Provisions relating to ECOs have been discussed in detail in Chapter 12 –Electronic Commerce Transactions in Module 2 of this Study Material.

- (b) metro, monorail or tramway;
- (c) inland waterways;
- (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
- (e) metered cabs or auto rickshaws (including e-rickshaws).

The term **metered cab** means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder (but does not include radio taxi).

The term **E-rickshaw** means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for carrying goods or passengers, as the case may be, for hire or reward, manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf.



It is important to note that in case where service of transport of passengers by metered cabs or auto rickshaws (including e-rickshaws) are supplied through ECO, such services are not exempt from GST. Further, tax on such services shall be paid by ECO.



Clause (d) of Entry 17

As regards transportation of passengers by vessels in clause (d) of Entry 17 [See the table given above], the words '**other than predominantly for tourism purpose**' qualify the preceding words "**public transport**".

This implies that to qualify for exemption under this entry, the public transport by a vessel between places located in India should not be predominantly for tourism purposes.

Normal public ships or other vessels that sail between places located in India would be covered in this entry even if some of the passengers on board are using the service for tourism because predominantly, such service is not for tourism purpose.

However, services provided by leisure/charter vessels/a cruise ship, predominant purpose of which is tourism, would not be covered in here even if some of the passengers in such vessels are not tourists.



(34) Services by way of transportation of passengers [not predominantly for tourism purpose] on a vessel, from Kolkata to Port Blair (mainland to island) or Port Blair to Neil Island (inter island) is covered in clause (d) of Entry 17 since such transportation is between two places located in India.

Where such public transport is owned by private operators, for instance, private ferries used as means of transport from one island to another in Andaman and Nicobar Islands, exemption under Entry 17(d) would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.

The expression 'public transport' used in this Entry only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc³⁷.

8. Goods transportation services

Entry No.	Description of services
18	Services by way of transportation of goods- (a) by road except the services of—

³⁷ Circular No. 177/09/2022 GST dated 03.08.2022

	(i) a goods transportation agency; (ii) a courier agency; (b) by inland waterways.
20	Services by way of transportation by rail or a vessel from one place in India to another of the following goods – (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (b) defence or military equipments; (c) newspaper or magazines registered with the Registrar of Newspapers; (e) agricultural produce; (f) milk, salt and food grain including flours, pulses and rice; and (g) organic manure.
Goods Transport Agency (GTA) Service	
21	Services provided by a goods transport agency, by way of transport in a goods carriage of – (a) agricultural produce; (d) milk, salt and food grain including flour, pulses and rice; (e) organic manure; (f) newspaper or magazines registered with the Registrar of Newspapers; (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or (h) defence or military equipments.



21A	Services provided by a GTA to an unregistered person, including an unregistered casual taxable person, other than the following recipients, namely: - (a) any factory registered under/governed by the Factories Act, 1948; or (b) any Society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any Co-operative Society established by or under any law for the time being in force; or (d) any body corporate established, by or under any law for the time being in force; or (e) any partnership firm whether registered or not under any law including association of persons; (f) any casual taxable person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.
21B	Services provided by a GTA, by way of transport of goods in a goods carriage, to, - (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.



ANALYSIS

Transportation of goods by rail/vessel/GTA in goods carriage

Exemptions granted to transport of specified goods through rail or a vessel or a by GTA in goods carriage** are presented in the following table:



Transportation of the following goods by rail / vessel / GTA in goods carriage is exempt

(a) agricultural produce (b) milk, salt and food grain including flours, pulses and rice (c) organic manure (d) newspaper or magazines registered with the Registrar of Newspapers (e) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap (f) defence or military equipments	

****Goods carriage** means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

Transportation of goods by road

- ❑ The services of transportation of goods by road are exempt from GST under **Entry 18. Services of GTA and courier services are an exception to this exemption.** However, GTA services provided to an unregistered person [including unregistered casual taxable person³⁸] are exempt from GST by virtue of **Entry 21A.**



- ❑ Further, GTA services provided to registered casual taxable person and

³⁸ The concept of 'casual taxable person' has been discussed in detail in Chapter 8 – Registration in Module 2 of this Study Material.

following persons, whether being a casual taxable person or not, even if unregistered under GST law, are liable to tax:

- (i) a factory registered under Factories Act,
- (ii) society registered under Societies Act,
- (iii) Co-operative society,
- (iv) body corporate and
- (v) partnership firm including AOP.



- ❑ In other words, the GTA services provided to only an unregistered individual end consumer and unregistered casual taxable persons are exempt from GST.
- ❑ Thus, GTA services provided to:
 - ✓ person registered under GST law & registered casual taxable person, and
 - ✓ a factory registered under Factories Act, society registered under Societies Act, Co-operative society, body corporate and partnership firm including AOP – whether or not registered under GST law,
 are liable to tax.
- ❑ Transportation of goods service provided by GTA in a goods carriage, to a Central/State Government (Union Territory) Department or Establishment or local authority or Governmental agencies which has taken registration under GST law only for the purpose of deducting TDS under section 51 and not for making a taxable supply of goods or services are exempt under **Entry 21B**.

Before proceeding further, we shall now understand the meaning of GTA:



Who is a GTA – Goods Transport Agency?

Let us understand the meaning of Goods Transport agency (GTA). Goods transport agency has been defined in the Notification to mean any person who:

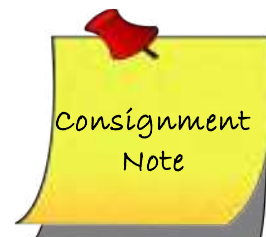
- ❖ provides service **in relation to transport of goods by road** and
- ❖ issues **consignment note**, by whatever name called.
- ❑ Thus, it can be seen that **issuance of a consignment note is the *sine-qua-non* for a supplier of service to be considered as a GTA.** If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of GTA.
- ❑ **If a consignment note is issued, it indicates that the lien on the goods has been transferred** (to the transporter) and the transporter becomes responsible for the goods till its safe delivery to the consignee. It is only the services of such GTA, which assumes agency functions, that has been brought into the GST net.
- ❑ **Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA.** As a result, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at Entry 18, which are exempt from GST.



(35) Hari Prasad owns a single truck and operates it himself. He carries the goods booked for his truck without issuance of consignment note. Services provided by Hari Prasad by way of transportation of goods by road are exempt under Entry 18.

- ❑ **Consignment note** means a document, issued by a GTA against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains:

- ✓ the name of the consignor and consignee,
- ✓ registration number of the goods carriage in which the goods are transported,



- ✓ details of the goods transported,
- ✓ details of the place of origin and destination,
- ✓ gross weight of the consignment;
- ✓ GSTIN of the person liable for paying tax whether consignor, consignee or GTA
- ✓ other particulars as prescribed for a tax invoice³⁹.

Significance of the term 'in relation to' in the definition of GTA

The use of the phrase '**in relation to**' has extended the scope of the definition of GTA. It includes not only the actual transportation of goods, but also various intermediary and ancillary services, such as, loading/ unloading, packing/ unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road.



These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.

In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply. However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies⁴⁰.

³⁹ Meaning of GTA and consignment note elaborated in foregoing paras is primarily based on CBIC GST flyer - Chapter 38 – Goods Transport Agency in GST.

⁴⁰ As clarified in answer to question no. 6 of CBIC FAQs on Transport & Logistics

What is courier agency?

Courier agency has been defined in the Notification to mean any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles.



Express cargo service: Some transporters undertake door-to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles.

Such services are known as 'Express Cargo Service' with assurance of timely delivery. The nature of service provided by 'Express Cargo Service' falls within the scope and definition of the courier agency. Hence, the said service relating to transportation of goods by road is not exempt.

Transport of minerals within a mining area by vehicles deployed with driver for a specific duration of time

The issue which arose for consideration was whether transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time would be covered under Entry 18 which exempts transport of goods by road except by a GTA.



Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.





Such services are nothing but “rental services of transport vehicles with operator”. The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations.

The person who gives the vehicles on rent with operator cannot be said to be supplying the service by way of transport of goods.

*Accordingly, it is clarified that such **renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator and not service of transportation of goods by road.** Consequently, it is not eligible for exemption under Entry 18⁴¹.*

9. Banking and financial services

Entry No.	Description of services
27	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.
27A	Services provided by a banking company to Basic Saving Bank Deposit account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).
34	Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service. Explanation.— For the purposes of this entry, “ acquiring bank ” means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

⁴¹ Circular No. 177/09/2022 GST dated 03.08.2022

39A

Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR).

Explanation.- For the purposes of this entry, the intermediary of financial services in IFSC is a person,-

- (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or
- (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or
- (iii) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or
- (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.



ANALYSIS

Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or investments in money.



Specified banking services exempt from GST vide Entry 27 have been discussed below:

(A) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount:

This entry covers any such service wherein moneys due are allowed to be used or retained on payment of interest or on a discount. The words used are 'deposits, loans or advances' and have to be taken in the generic sense.



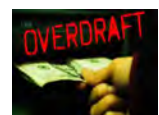
They would cover any facility by which an amount of **money is lent or allowed to be used or retained on payment of** what is commonly called **the time value of money which could be in the form of an interest or a discount**. This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

Interest: means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.



❑ **Illustrations of services exempt under Entry 27** are -

- ✓ Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- ✓ Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.
- ✓ Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans/advances are represented by way of interest.
- ✓ Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.



❑ **Invoice discounting/cheque discounting or any other similar form of discounting** is covered only to the extent consideration is represented by way of discount as such discounting is a manner of extending a credit facility or a loan.

❑ **Service charges/ fees, documentation fees, broking charges, administrative charges, entry charges or such like fees or charges collected over and above interest** on loan, advance or a deposit are not exempt and liable to GST.

Similarly, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged on a derivative/ future contract/ forward contract/ invoice or cheque discounting, the same would be a consideration for supply of service and liable to GST.



(36) Subhashini Bank has collected processing fees from its customers on sanction of loan to them. Interest does not include processing fee on sanction of the loan. Hence, the processing fee is not covered in Entry 27 and is thus, taxable.

Similarly, minimum balance charges collected by the bank from current account and saving account holders are considered as charges collected over and above interest on loan. Hence, the same are not covered in Entry 27 and is thus, taxable.

❑ **Any interest/ delayed payment charges charged to clients for delay in payment of brokerage amount/ settlement obligations/ margin trading facility:**

is exempt from GST since settlement obligations/ margin trading facilities are transactions which are in the nature of extending loans or advances and are covered by Entry 27⁴².

Charges for delayed payment of brokerage/ settlement obligations/ margin trading facility

Exempt

❑ **Charges for late payment of outstanding dues on credit card:**

Interest charged on outstanding credit card balances has been specifically excluded from Entry 27. Hence, the same is liable to GST.

Interest charged on o/s credit card balance

Liable to GST



(37) Tanatan Bank collects interest on credit card issued to its customers by it. Interest involved in credit card services is specifically excluded from Entry 27 & is thus, taxable.

❑ **Collateralized Borrowing and Lending Obligations (CBLO) transactions:**

In CBLO transaction, the borrowing bank pays an

Collateralized Borrowing and Lending Obligations (CBLO)

Exempt

⁴² As clarified vide FAQs on Banking, Insurance and Stock Brokers Sector issued by CBIC.

amount as consideration to the lending bank for funds provided by it for a short term. Such amount would qualify as 'consideration represented by way of interest or discount' and hence, would exempt from GST under Entry 27.

However, if any charges or fees are levied for such transactions, the same would be a consideration and would be liable to GST.

- ❑ **Instruments like repos and reverse repos:** Repos and reverse repos⁴³ are financial instruments of short-term call money market that are normally used by banks to borrow from or lend money to RBI. The margins, called the repo rate or reverse repo rate, in such transactions are nothing but interest charged for lending or borrowing of money. Thus, they have the characteristics of loans and deposits for interest and are accordingly exempt from GST under Entry 27.

Repos
Reverse repos
Exempt

- ❑ **Income from Commercial Paper (CP) or Certificates of Deposit (CD):** As already seen in *Chapter 1 – Supply under GST in this Module of the Study Material*, the transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD') are in the nature of promissory notes. Consequently, they are included in the term 'money' and hence, are not chargeable to GST.

Income from
Commercial Paper
(CP) or Certificates
of Deposit (CD)
Exempt

With regard to income from CPs or CDs, since these are the instruments for lending or borrowing money wherein consideration is represented by way of a discount or subscription to CPs or CDs, the same would be covered by entry 27 and is not liable to GST.

⁴³ Section 45U(c) of the RBI Act, 1934 defines 'repos' as an instrument for borrowing funds by selling securities with an agreement to repurchase the securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed. Section 45U (d) of the RBI Act, 1934 defines 'reverse repos' as an instrument for lending funds by buying securities with an agreement to re-sell the securities on a mutually agreed future date at an agreed price which includes interest for the funds lent.

However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for supply of services and liable to GST.

Service charges

Liable to GST

- ❑ **Assignment or sale of secured or unsecured debts:** As seen in Chapter 1 – Supply under GST in this Module of the Study Material, only actionable claims in respect of lottery, betting and gambling would be taxable under GST. Where sale, transfer or assignment of debts falls within the purview of actionable claims, the same **would not be subject to GST**.



Further, any charges collected in the course of transfer or assignment of a debt would be chargeable to GST, being in the nature of consideration for supply of services.

- ❑ **Interest on debt instruments:** As debt instruments such as debentures, bonds etc. are in the nature of loans, interest thereon will be **exempt from GST**.

- ❑ **Interest on a finance lease transaction:** A finance lease is a method of borrowing against the asset. The interest represents the time value of the money expended by the bank in financing the asset.

However, in a financial lease the ownership of the asset is with the bank. In essence, it is a 'purchase the asset and lend it further' transaction for bank.

Therefore, neither the services are purely in the nature of extending loans nor the consideration for a financial lease is purely in the nature of interest. Thus, interest on finance lease transactions **will be taxable** under GST.

- ❑ **Transactions where loan of one bank is taken over by another bank:** GST will be payable on any transaction processing fees levied for such takeover of loans, but not on the interest component (as interest is exempted).

❑ **Interchange fees on card settlement fees paid/ shared by banks:**

Fees charged for card settlement is a consideration which is part of a separate transaction between the banks which are parties to this transaction and shall be **liable to GST**.

❑ **Securitization transactions undertaken by banks:** Securitized assets are in the nature of securities and hence are not subject to GST.

However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for provision of services related to securitization and would be liable to GST.

**Securitization
transactions
undertaken by
banks**

Exempt

❑ **Additional/ penal interest on the overdue loan:** In cases where the Equated Monthly Instalment (EMI)⁴⁴ is not paid at the scheduled time, there is a levy of additional/ penal interest on account of delay in payment of EMI.

There may arise a doubt as to whether this additional / penal interest on the overdue loan is exempt under Entry 27 or such penal interest is to be treated as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under para 5(e) of Schedule II of the CGST Act, 2017 i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"].

There are two transaction options involving EMI that are prevalent in the trade. These two options, alongwith the GST applicability on them, have been explained with the help of illustrations as under -



(38) X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000. However, X gives Y an option to pay in installments, ₹ 11,000 every month before 10th day of the following month, over next four months (₹ 11,000 × 4 = ₹ 44,000). As per the contract, if

⁴⁴ An Equated Monthly Instalments (EMI) is a fixed amount paid by a borrower to a lender at a specified date every calendar month. EMIs are used to pay off both interest and principal every month, so that over a specified period, the loan is fully paid off along with interest.

there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to ₹ 500/- per month for the delay.

In some instances, X is charging Y ₹ 40,000 for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/ penal interest amounting to ₹ 500 per month for each delay in payment.

In this case, the amount of penal interest is to be included in the value of supply⁴⁵. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.



(39) X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/ penal interest @ 1.25% per month for any delay in payment.

Here, the additional/ penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under exemption Entry 27. Consequently, in this case the 'penal interest' charged thereon on a transaction between Y and M/s. ABC Ltd. would not be subject to GST as the same would be covered under said exemption entry. However, any service fee/ charge or any other charges, if any, are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in exemption notification, and accordingly will not be exempt.

Moreover, the value of supply of mobile by X to Y would be ₹ 40,000 for the purpose of levy of GST.

⁴⁵ Here, the amount of penal interest is to be included in the value of supply in terms of the provisions of section 15(2)(d). Section 15(2)(d) provides that the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. The provisions of section 15 have been discussed in detail in Chapter 6: Value of Supply in this Module of the Study Material.

Since this levy of additional/ penal interest satisfies the definition of "interest" as contained in Entry 27 above, the same cannot be treated as consideration for liquidated damages. Consequently, transaction of levy of additional/ penal interest does not fall within the ambit of Schedule II i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"⁴⁶ [Circular No. 102/21/2019-GST dated 28.06.2019].

(B) Services provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange: The term 'authorised dealer of foreign exchange' means an authorised dealer, money



changer, off-shore banking unit or any other person for the time being authorised under section 10(1) of FEMA, 1999 to deal in foreign



exchange or foreign securities [Section 2(c) of the Foreign Exchange Management Act, 1999].

It is important to note that such services provided to general public will not be covered in this entry as this entry only covers sale or purchase of foreign exchange:-

- (i) amongst banks or
- (ii) amongst authorized dealers of foreign exchange or
- (iii) amongst banks and such dealers.

Services provided by commercial banks to RBI would be taxable as these are not covered by any of the exemptions/exclusions under the GST law.

⁴⁶ Schedule II of the CGST Act, 2017 has been discussed in detail in Chapter 1 – Supply under GST in this Module of the Study Material.

10. Life insurance business services

Entry No.	Description of services
28	Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory and Development Authority Act, 2013. 
29	Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.
29A	Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government.
29B	Services of life insurance provided/agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.
36	Services of life insurance business provided under following schemes- (a) Janashree Bima Yojana; (b) Aam Aadmi Bima Yojana; (c) Life micro-insurance product** as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of ₹ 2,00,000; (d) Varishtha Pension Bima Yojana; (e) Pradhan Mantri Jeevan Jyoti Bima Yojana; (f) Pradhan Mantri Jan Dhan Yojana; (g) Pradhan Mantri Vaya Vandana Yojana. **Life micro-insurance product means any term insurance contract with/without return of premium, any endowment insurance contract

or health insurance contract, with/without an accident benefit rider, either on individual/group basis, as per terms stated in Schedule-II appended to the regulations [Regulation 2(e) of the Insurance Regulatory and Development Authority (Micro-insurance) Regulations, 2005].

11. Services provided by specified bodies

Entry No.	Description of services
30	Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948. 
31	Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952. 
31A	Services by Coal Mines Provident Fund Organisation to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948. 
31B	Services by National Pension System (NPS) Trust to its members against consideration in the form of administrative fee. 

12. General insurance business services

Entry No.	Description of services
35	Services of general insurance business provided under following schemes – (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna ⁴⁷ ; (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women;

⁴⁷ earlier known as Integrated Rural Development Programme

	(f) Agricultural Pumpset and Failed Well Insurance; (g) premia collected on export credit insurance; (h) Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy; (j) Pradhan Mantri Fasal Bima Yojana (PMFBY); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; (o) Coconut Palm Insurance Scheme; (p) Pradhan Mantri Suraksha Bima Yojna; (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. (r) Bangla Shasya Bima
36A	Services by way of reinsurance of the insurance schemes specified in serial number 35 or 36 or 40 ⁴⁸ .

13. Pension schemes

Entry No.	Description of services
37	Services by way of collection of contribution under the Atal Pension Yojana . 
38	Services by way of collection of contribution under any pension scheme of the State Governments.

⁴⁸ Entry 40 is discussed subsequently under heading 15. 'Services provided to Government'.

14. Business facilitator/correspondent

Entry 39: Services by the following persons in respective capacities –

- (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
- (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
- (c) business facilitator or a business correspondent to an insurance company in a rural area.



ANALYSIS

It is still a big challenge for India to make the financial services accessible in rural areas. In many rural areas, either there are no banks or number of banks is insufficient. In order to counter this problem and ensure greater financial inclusion, the Reserve Bank of India (RBI) introduced the Business Correspondents and Business Facilitator Model through guidelines in 2006 allowing banks to employ two categories of intermediaries – known as Business facilitators (BFs) and Business correspondents (BCs).

BCs / BFs help villagers to open bank accounts and provide other banking services to them. They act as an intermediary between the bank and its customers. Banks, in turn, pay commission/ fee to the BCs/BFs.

According to the RBI guidelines, while the BCs are permitted to carry out transactions on behalf of the bank as agents, the BFs can refer clients, pursue the clients' proposal and facilitate the bank to carry out its transactions, but cannot transact on behalf of the bank⁴⁹.

⁴⁹ BFs provide a wide range of services including identification of borrowers and fitment of activities, collection and preliminary processing of loan applications, processing and submission of applications to banks, follow-up for recovery, etc. BCs, in addition to these activities, also undertake disbursement of small value credit, recovery of principal / collection of interest, collection of small value deposits, sale of micro insurance/ mutual fund products/ pension products/ other third-party products, receipt and delivery of small value remittances/ other payment instruments, etc.

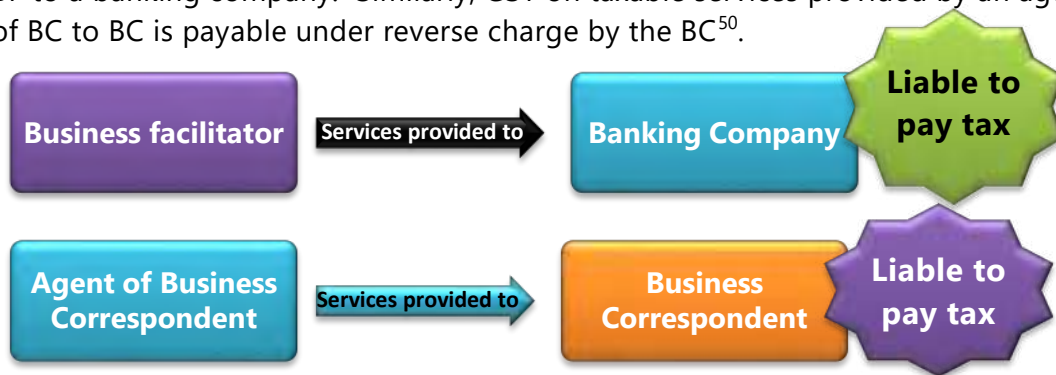
Similarly, insurance companies engage the BCs/BFs to provide the insurance services in remote areas.

Entry 39 exempts the services provided by BF/BC to a banking company with respect to accounts in its rural area branch and services provided by any person as an intermediary to a BF/BC with respect to said services are exempt from GST. Further, the services provided by BF/BC to an insurance company in a rural area are also exempt.

It is important to note that for the purpose of availing exemption from GST under this Entry, services provided by a BF/BC to a banking company in their respective individual capacities should be with respect to accounts in a branch located in the ***rural area*** of the banking company.

Wherever the services provided by BF/BC to banking company and services provided by intermediary of BF/BC to BF/BC do not fall within the scope of this entry, GST is payable on such services.

However, the banking company is the person liable to pay GST under reverse charge in respect of commission/fees charged for the taxable services provided by BF to a banking company. Similarly, GST on taxable services provided by an agent of BC to BC is payable under reverse charge by the BC⁵⁰.



Further, as seen above, as per RBI's guidelines, banks may pay reasonable commission/fee to the BC. The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner.

⁵⁰ Provisions relating to reverse charge mechanism have been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.

The arrangements of banks with the BCs specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the BF/BC.

Hence, banking company is the service provider to the ultimate customer in the BF model/BC model. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via BF/BC⁵¹..

Some relevant definitions under this entry are as follows:

- ❖ **Insurance company:** means a company carrying on life insurance business or general insurance business.
- ❖ **Intermediary** means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account [Section 2(13) of the IGST Act, 2017].
- ❖ **Rural area:** means the area comprised in a village as defined in land revenue records, excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Government or a State Government.
- ❖ Exemption Notification defines BF/BC as an intermediary appointed under the BF model or BC model by a banking company or an insurance company under the guidelines issued by the RBI.

15. Services provided to Government

Entry No.	Description of services
3	Pure services provided TO Government: ☐ Pure services (excluding works contract service or other composite supplies involving supply of any goods)

⁵¹ Circular No. 86/05/2019 GST dated 01.01.2018

	☐ provided to the Central Government, State Government or Union territory or local authority ☐ by way of any activity: ✓ in relation to any function entrusted to a Panchayat under article 243G of the Constitution or ✓ in relation to any function entrusted to a Municipality under article 243W of the Constitution.
3A	Composite supply of goods and services TO Government: ☐ Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply ☐ provided to the Central Government, State Government or Union territory or local authority ☐ by way of any activity: ✓ in relation to any function entrusted to a Panchayat under article 243G of the Constitution or ✓ in relation to any function entrusted to a Municipality under article 243W of the Constitution.
11A	Service provided by Fair Price Shops to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin. 
40	Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory.
72	Services provided to the Central Government, State Government, Union territory administration under any training programme for which 75% or more of the total expenditure is borne by the Central Government, State Government, Union territory administration.

It is clarified⁵² that free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where 75% or more of the expenditure⁵³ is borne by the Government to coaching institutions by way of grant in aid is covered under this entry and hence is exempt from GST.



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Broadly speaking, **Entry 3** exempts the supply of 'pure services' and Entry 3A exempts 'composite supply goods and services', made to Government. Let us first understand what '**supply of pure services**' and '**composite supply of goods and services**' mean under these entries.

Supply of '**pure services**' means supply of services without involving any supply of goods. '**Composite supply of goods and services**' means supply of both goods and services. **Entry 3A** exempts composite supply goods and services to Government provided the value of supply of goods constitutes not more than 25% of value of such composite supply.

Let us understand the concept of supply of 'pure services' and 'composite supply of goods and services' to Government by following examples:



(42) Supply of manpower for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as **supply of pure services**.

⁵² vide Circular No. 164/20/2021 GST dated 06.10.2021

⁵³ This circular was issued prior to amendment in Entry 72 when the exemption was available only when **total expenditure** under the training programme was borne by the Central Government, State Government, Union territory administration.

However, as seen earlier in this chapter, Entry 72 has subsequently been amended and now exemption is available even when **75% or more of the total expenditure** under the training programme is borne by the Central Government, State Government, Union territory administration.

Hence, the words "total expenditure" have been substituted with "75% or more of the total expenditure" in the above discussion pertaining to circular.



(43) A local authority awards the work of maintenance of street-lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, i.e. **composite supply of goods and services**⁵⁴.

Moreover, such services (whether pure or composite) must be provided to the Central Government, State Government or Union territory or local authority **by way of any activity** in relation to any function entrusted to a:

- (i) Panchayat under article 243G of the Constitution (listed in **11th Schedule** to the Constitution) or
- (ii) Municipality under article 243W of the Constitution (listed in **12th Schedule** to the Constitution).

In view of the same, it is clarified that if pure services & composite supplies procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule above, in the manner as a local authority does for the general public, the same are not eligible for exemption under Entries 3 and 3A⁵⁵.

Milling of wheat into flour/paddy into rice for distribution by State Governments under PDS exempt from GST

Public Distribution specifically figures at entry 28 of the 11th Schedule. Thus, composite supply of service by way of milling of wheat and fortification thereof by miller, or of paddy into rice, by any person to a State Government for distribution of such wheat flour under Public Distribution System (PDS) is eligible for exemption under Entry 3A provided that value of goods supplied in such composite supply (goods used for fortification, packing material etc) does not exceed 25% of the value of composite supply. It is a matter of fact as to whether the value of goods in such composite supply is up to 25% and requires ascertainment on case-to-case basis⁵⁶.

⁵⁴ As clarified vide question 25 of CBIC FAQs on Government Services

⁵⁵ Circular No. 177/09/2022 GST dated 03.08.2022

⁵⁶ Circular No. 153/09/2021GST dated 17.06.2021

16. Leasing services

Entry No.	Description of services
41	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of 30 years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area. Upfront amount paid in instalments Aforesaid exemption is admissible irrespective of whether such upfront amount is payable/paid in one/more instalments, provided the amount is determined upfront⁵⁷. <u>Location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease</u> <i>As seen above, <u>upfront amount</u> is exempt from GST. Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing, but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.</i> <i>Accordingly, it is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Entry 41⁵⁸.</i> Explanation - For the purpose of this exemption, the Central Government, State Government or Union territory shall have 20% or more ownership in the entity directly or through an entity which is

⁵⁷ As clarified vide Circular No. 101/20/2019- GST, dated 30.04.2019

⁵⁸ As clarified vide Circular No. 177/09/2022 GST dated 03.08.2022

wholly owned by the Central Government, State Government or Union territory.

Conditions:

1. The leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area.
2. State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard.
3. In case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee/ buyer/ owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty.
4. The lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub- lessee, as well as any subsequent lease/ sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.

17. Legal services

Entry 45: Services provided by-

- (a) an arbitral tribunal to –
 - (i) any person other than a business entity; or
 - (ii) a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;



- (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.
- (b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-
 - (i) an advocate or partnership firm of advocates providing legal services;
 - (ii) any person other than a business entity; or
 - (iii) a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;
 - (iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.
- (c) a senior advocate by way of legal services to-
 - (i) any person other than a business entity; or
 - (ii) a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;
 - (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.



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Relevant definitions are as under:

- ❖ **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.
- ❖ **Advocate:** means an advocate entered in any roll under the provisions of the Advocates Act, 1961 [Section 2(1)(a) of the Advocates Act, 1961].
- ❖ **Arbitral tribunal:** means a sole arbitrator or a panel of arbitrators [Section 2(d) of the Arbitration and Conciliation Act, 1996].



- ❖ **Senior advocate:** An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction.



Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

Under Entry 45, following services are exempt from GST

Legal services provided by --Arbitral tribunal --Partnership firm of advocates or an individual as an advocate other than a senior advocate by way of legal services --Senior advocate by way of legal services	provided to --any person other than BE --Business Entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under GST. --CG/SG/UT/LA/GA/GE

Legal services provided by a partnership firm of advocates/ individual as an advocate other than a senior advocate to another advocate/ partnership firm of advocates providing legal services.

Thus, legal services provided to a business entity with an aggregate turnover exceeding such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017 are liable to GST. Further, tax is payable by the business entity on such services under reverse charge.



(42) Pyarelal & Co. has obtained registration under GST in the preceding financial year as its aggregate turnover exceeded the threshold exemption limit. In the current FY, it sought legal consultancy services for its business from Nyay Advocates – a partnership firm of advocates.

The legal services so received by Pyarelal & Co. are not exempt because its aggregate turnover exceeds the threshold exemption limit of registration in the preceding financial year. Further, the tax on the said legal services is payable by Pyarelal & Co. under reverse charge.

18. Sponsorship of sports events

Entry 53: Services by way of sponsorship of sporting events organised -

- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;
- (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- (c) by the Central Civil Services Cultural and Sports Board;
- (d) as part of national games, by the Indian Olympic Association; or
- (e) under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.



(43) Central Civil Services Cultural and Sports Board organised a cricket tournament for promotion of sports and cultural activities amongst the Central Government Employees. Reliable Industries sponsored said cricket tournament. In the given case, services by way of sponsorship of sporting events organized by the Central Civil Services Cultural and Sports Board are exempt from GST.

19. Skill Development services

Entry No.	Description of services
69	Any services provided by, _ (a) the National Skill Development Corporation (NSDC) set up by the Government of India; (b) a Sector Skill Council (SSC) approved by the NSDC;



	(c) an assessment agency approved by NSDC/SSC; (d) a training partner approved by the NSDC/SSC, in relation to- (i) the National Skill Development Programme implemented by the NSDC; or (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (iii) any other Scheme implemented by the NSDC.	
70	Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.	
71	Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDUGKY) implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training.	

20. Performance by an artist

Entry 78: Services by an artist by way of a performance in folk or classical art forms of-

- (a) music, or
- (b) dance, or
- (c) theatre,



if the consideration charged for such performance is not more than ₹ 1,50,000 are exempt from GST.

The activities by a performing artist in folk or classical art forms of music, dance, or theatre are exempt if consideration does not exceed ₹ 1,50,000. However, if consideration from such activities exceeds ₹ 1,50,000, entire consideration is subject to GST.



Further, all other activities by an artist in **other art forms** e.g. western music or dance, modern theatres, performance of actors in films or television serials would be taxable. Similarly activities of artists in **still art forms** e.g. painting, sculpture making etc. are **taxable**.

However, the exemption shall not apply to service provided by such artist as a brand ambassador.

‘Brand ambassador’ means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person.

21. Right to admission to various events

Entry No.	Description of services
79	Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo**. **Zoo means an establishment, whether stationary or mobile, where captive animals are kept for exhibition to the public and includes a circus and rescue centres but does not include an establishment of a licensed dealer in captive animals [Section 2(39) of the Wild Life (Protection) Act, 1972].
79A	Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites & Remains Act 1958 or any of the State Acts, for the time being in force.
81	Services by way of right to admission to- (a) circus, dance, or theatrical performance including drama or ballet;



(b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event ⌚;

(c) recognised sporting event;

(d) planetarium,

where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than ₹ 500 per person.

⌚ **Recognised sporting event** means any sporting event,-

(i) organised by a **recognised sports body** ●● where the participating team or individual represent any district, state, zone or country;

(ii) organized

(A) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State or zone;

(B) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;

(C) by Central Civil Services Cultural and Sports Board;

(D) as part of national games, by Indian Olympic Association; or

(E) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.

●● **Recognised sports body** means –

(i) the Indian Olympic Association;

(ii) Sports Authority of India;

(iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations;

(iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government;

	(v) the International Olympic Association or a federation recognised by the International Olympic Association; or (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India.

22. Services by an unincorporated body or a non- profit entity

Entry No.	Description of services
77	Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) as a trade union (b) for the provision of carrying out any activity which is exempt from the levy of GST; or (c) up to an amount of ₹7,500 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.
77A	Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,- (i) activities relating to the welfare of industrial or agricultural labour or farmers; or (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of ₹ 1000/- per member per year.



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Co-operative Housing Society

Co-operative Housing Societies are entities registered under the co-operative laws of the respective States. A Co-operative Housing Society is a collective body of persons, who stay in a residential society and as a collective body, they supply certain services to its members, like collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc.



A Co-operative Housing Society is akin to a club, which is composed of its members. Service provided by a Housing Society [Resident Welfare Association (RWA)] to its members is treated as service provided by one person to another. The activities of the housing society/RWA would attract the levy of GST and the housing society would be required to register if its aggregate turnover exceeds the threshold limit and comply with the GST Law, unless specifically exempted.

GST exemption on services provided by a Co-operative Housing Society

If the aggregate turnover of housing society/ RWA providing services to its members is above the applicable threshold limit for registration⁵⁹, it needs to take registration under GST in terms of section 22 [Refer Chapter-8: Registration in Module 2 of this Study Material for detailed discussion on registration]. However, taking registration does not mean that the housing society has to compulsorily charge GST in the monthly maintenance bills raised on its members. If the services provided by it are exempt under an exemption notification, then it is not required to charge GST on the said services, even if it is registered under GST.

For instance, in view of entry 77(c) above, supply of service by a RWA (unincorporated body or a non- profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of ₹ 7500 per month per member for providing services and goods for the common use of its members in a housing society/a residential complex are exempt from GST.

So, there can be case where a society is registered under GST, but the monthly contribution received from all the members is less than ₹ 7,500/- per member (and

⁵⁹ Threshold limit is ₹ 10 lakh for specified Special Category States, namely, Manipur, Mizoram, Nagaland and Tripura and ₹ 20 lakh for all other States.

the amount is for the purpose of sourcing of goods and services from a third person for the common use of its members). In such a case, no GST is to be charged by the housing society on the monthly bill raised by the society.



(44) RWA of Chulbul Housing Society, registered under GST, collected the maintenance charges of ₹ 6,000 per month per member. In this case, no GST is to be charged by the RWA.

However, in above case, if the monthly contribution exceeds ₹ 7,500/- per member, entire contribution is taxable.



(45) If, in above example, other things remaining the same, the RWA of Chulbul Housing Society collected the maintenance charges of ₹ 9,000 per month per member, GST @18% shall be payable on the entire amount of ₹ 9,000 and not on $[\text{₹ } 9,000 - \text{₹ } 7,500] = \text{₹ } 1,500$.

There can also be a case where the aggregate turnover of the society/RWA is less than the applicable threshold limit for registration and the monthly contribution of all the individual members towards maintenance is less than ₹ 7,500/- (such services being exempt). Further, the society is providing no other taxable service to its members or outsiders. In this case, the society (essentially exclusively providing wholly exempt services) need not take registration under GST.



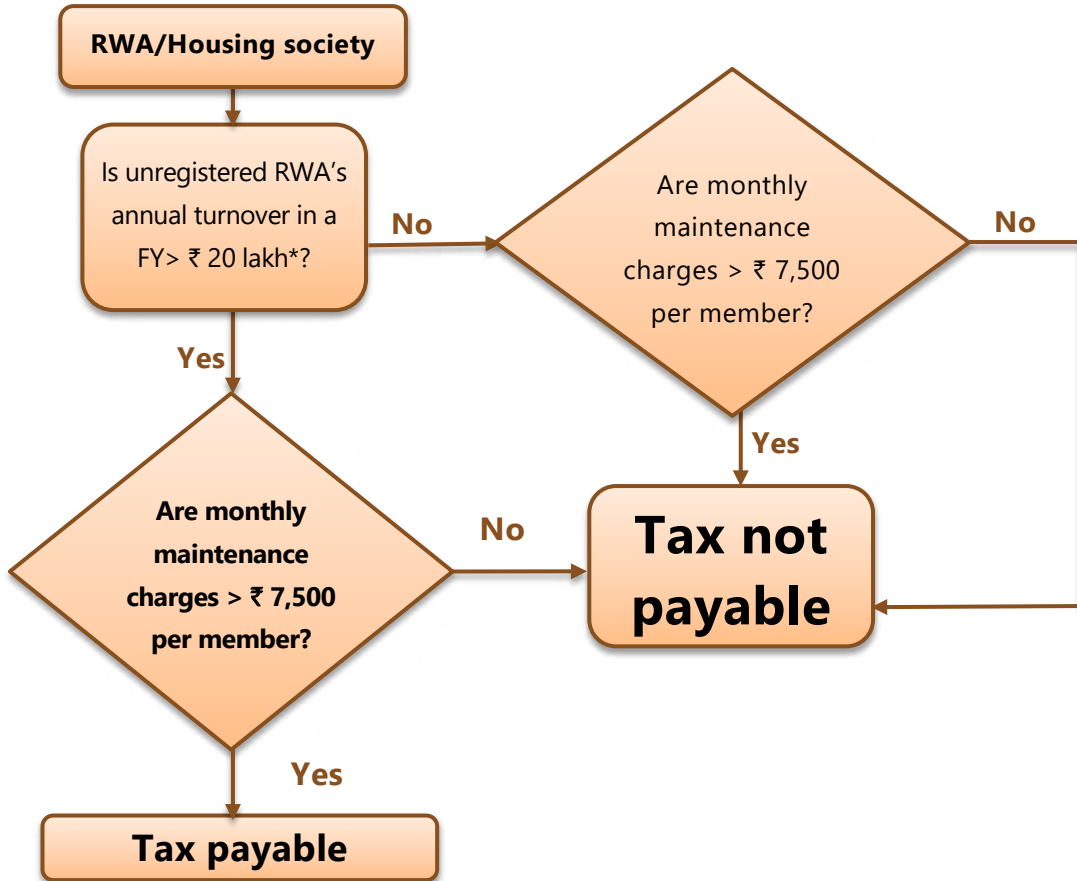
(46) The turnover of RWA of Bulbul Housing Society located in New Delhi in a financial year is ₹ 15 lakh. It has collected the maintenance charges of ₹ 6,000 per month per member. RWA is not providing any other taxable service to its members. In this case, RWA is not required to take registration under GST since its aggregate turnover is less than the applicable threshold limit of ₹ 20 lakh.

However, an RWA is not required to obtain registration even though the amount of maintenance charges exceeds ₹ 7500 per month per member but the aggregate turnover of the RWA in a financial year does not exceed the threshold limit for registration.



(47) In the above example, other things remaining the same, if the maintenance charges collected by the RWA are ₹ 8,000 per month per member, RWA is still not required to take registration under GST since its aggregate turnover is less than the applicable threshold limit of ₹ 20 lakh.

The above discussion has been summarized as under:



* ₹ 10 lakh in case of Special Category States of Manipur, Mizoram, Nagaland and Tripura

Thus, RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than ₹ 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also more than ₹ 20 lakh.

In other words,

Annual turnover of RWA	Monthly maintenance charge	Whether exempt?
More than ₹ 20 lakh*	More than ₹ 7500/-	No

	₹ 7500/- or less	Yes
₹ 20 lakh or less	More than ₹ 7500/-	Yes
	₹ 7500/- or less	Yes

* ₹ 10 lakh in case of Special Category States of Manipur, Mizoram, Nagaland and Tripura

There may also be cases where a person owns 2 or more flats in the housing society/residential complex. The question arises whether the ceiling of ₹ 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person.

As per general business sense, a person who owns 2 or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. Consequently, the ceiling of ₹ 7500/- per month per member shall be applied separately for each residential apartment owned by him.



(48) Gareeb Chand owns two residential apartments in a residential complex and pays ₹ 15,000/- per month as maintenance charges towards maintenance of these two apartments to the RWA (₹ 7,500/- per month in respect of each residential apartment). In this case, the exemption from GST shall be available with respect to maintenance charges paid for each apartment.

It is important to note that RWA is entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services, used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than ₹ 7,500 per month per member. [Refer Chapter-7: Input Tax Credit in Module 2 of this Study Material for detailed discussion on ITC provisions]



(49) RWA of Tintin Housing Society, registered under GST, has collected the maintenance charges of ₹ 9,000 per month per member from 1,000 members of the society in the month of May. For paying the GST of ₹ 16,20,000 [payable @ 18% on the amount of ₹ 90,00,000], RWA can utilise the ITC of GST of

₹ 1,00,000 paid by it on purchase of swings for garden, ITC of ₹ 20,000 on electric cables and ITC of ₹ 15,000 on plumbing services, which were made/availed during the month of May.

★ Statutory dues such as property tax, electricity charges etc. forming part of the monthly maintenance bill raised by the society on its members would be excluded while computing the aforesaid monthly limit of ₹ 7,500.

Taxability of various charges collected by societies

A society may collect the following charges from the members on quarterly basis as follows:

1. Property Tax-actual as per Municipal Corporation of Greater Mumbai (MCGM)
2. Water Tax-Municipal Corporation of Greater Mumbai (MCGM)
3. Non-Agricultural Tax-Maharashtra State Government
4. Electricity charges
5. Sinking Fund-mandatory under the Bye-laws of the Co-operative Societies
6. Repairs & maintenance fund
7. Car parking Charges
8. Non-Occupancy Charges
9. Simple interest for late payment.

CBIC has clarified the taxability of above charges as follows:

1. Services provided by the Central Government, State Government, Union territory or local authority to a person other than business entity, is exempted from GST. So, Property Tax, Water Tax, if collected by the RWA/Co-operative Society on behalf of the MCGM from individual flat owners, then GST is not leviable.
2. Similarly, GST is not leviable on Non-Agricultural Tax, Electricity Charges etc., which are collected under other statutes from individual flat owners. However, if these charges are collected by the Society for generation of electricity by Society's generator or to provide drinking water facility or any other service, then such charges collected by the society are liable to GST.

3. Sinking fund, repairs & maintenance fund, car parking charges, Non-occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members⁶⁰.

23. Other exempt services

Entry No.	Description of services
2	Services by way of transfer of a going concern, as a whole or an independent part thereof. Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service. Transfer of business for a lump sum consideration commonly referred to as slump sale is covered under this entry. Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted.  (50) Royal Hotel Group is in the business of running a chain of restaurants. It intends to sell its business as a going concern. It would not be required to pay GST on such sale of its business.
9B	Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries). <i>In this regard, it is clarified that this entry covers services associated with transit cargo both to and from Nepal and Bhutan. The movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit</i>

⁶⁰ Discussion under this entry in forgoing paras is primarily based on Circular No. 109/28/2019 GST dated 22.07.2019, CBIC GST Flyer 'GST on Co-Operative Housing Societies' and CBIC FAQs on levy of GST on Supply of Services to Co-operative Society.

	cargo to Nepal and Bhutan and is therefore covered by the exemption⁶¹.
12	Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person. Explanation — For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, – (i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and (ii) such renting is on his own account and not that of the proprietorship concern. Thus, renting of residential dwelling either by a registered person or an unregistered person for use as residence to <u>UNREGISTERED PERSON</u> is exempt from GST. Renting of residential dwelling <u>for use as residence</u> to a registered person (other than proprietor covered in explanation above) as well as renting of residential dwelling <u>for commercial use</u> to registered or unregistered person is liable to GST. Further, tax on renting of residential dwelling to a registered person is payable by the registered person under reverse charge⁶² whether such residential dwelling is being used for commercial purposes or residential purposes.
19	Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.
19A	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India. This exemption was available till 30.09.2022.

⁶¹ Circular No. 177/09/2022 GST dated 03.08.2022

⁶² Provisions relating to reverse charge mechanism are contained in Notification No. 13/2017 CT (R) dated 28.06.2017 which has been discussed in detail in Chapter 2 – Charge of GST in this Module of Study Material.

19B	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India. This exemption was available till 30.09.2022.
19C	Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited.
22	Services by way of giving on hire – (a) to a State Transport Undertaking (STU), a motor vehicle meant to carry more than 12 passengers^{**}; or State Transport Undertaking: means any undertaking providing road transport service, where such undertaking is carried on by- - the Central Government or a State Government; - any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950. - any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments. Explanation-For the purposes of this clause, road transport service means a service of motor vehicles carrying passengers or goods or both by road for hire or reward [Section 2(42) of the Motor Vehicles Act, 1988]. Generally, such STUs/ Corporations are established with a view to providing public transport facility to the commuters. If transport undertakings hire the buses on lease basis from private persons on payment of consideration, the services by way of supply of motor vehicles to such STU are exempt from payment of tax. However, supplies of motor vehicles to Government Departments other than the STUs are taxable⁶³. (aa) to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers;

⁶³ As clarified vide question 26 of CBIC FAQs on Government Services

EOV means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one/more electrical batteries fitted to such road vehicle.

The expression “giving on hire” in this entry includes renting of vehicles.

Accordingly, where the said vehicles are rented or given on hire to STUs or Local Authorities, said services are eligible for above exemption irrespective of whether such vehicles are run on routes, timings as decided by the STUs or Local Authorities and under effective control of STUs or Local Authorities which determines the rules of operation or plying of vehicles⁶⁴.

- (b) to a goods transport agency, a means of transportation of goods.



(51) Nishant owns a truck which he has rented to Sindhu and Bansal Transport Agency - a GTA. Services by way of giving on hire a means of transportation of goods [truck in the given case] to a GTA [Sindhu and Bansal Transport Agency], are exempt from tax.

However, if Nishant had rented a vehicle designed to carry passengers to such GTA, said activity is not exempt under this entry.

- (c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

23

Service by way of access to a road or a bridge on payment of **toll charges**.

With regard to said entry, following issues have been clarified:

- (i) ***Ministry of Road Transport and Highways (MORTH) permitted the overloaded vehicles to ply on the national highways after payment of higher toll charges. It has***



⁶⁴ Circular No. 164/20/2021 GST dated 06.10.2021

	<i>been clarified⁶⁵ that overloading charges at toll plazas would get the same treatment as given to toll charges.</i> <i>(ii) MORTH⁶⁶ has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.</i> <i>Essentially, the additional amount collected from the users of the road not having a functional Fastag, is in the nature of toll charges and should be treated as additional toll charges. Therefore, it is clarified⁶⁷ that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.</i>
25	Transmission/distribution of electricity by an electricity transmission/ distribution utility. However, in this regard CBIC has clarified that the other services provided by DISCOMS (distribution companies) to consumer against charges are liable to GST such as,-  i. Application fee for releasing connection of electricity; ii. Rental Charges against metering equipment; iii. Testing fee for meters/transformers, capacitors etc.; iv. Labour charges from customers for shifting of meters or shifting of service lines; v. charges for duplicate bill⁶⁸.
44	Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a financial year subject to the following conditions, namely:-

⁶⁵ vide Circular No. 164/20/2021 GST dated 06.10.2021

⁶⁶ vide circular dated 16.02.2021

⁶⁷ vide Circular No. 177/09/2022 GST dated 03.08.2022

⁶⁸ Circular No. 34/8/2018 GST dated 01.03.2018

	(a) the total turnover had not exceeded ₹ 50 lakh during the preceding financial year; and (b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee. Incubatee: means an entrepreneur located within the premises of a Technology Business Incubator (TBI)/ Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India (NSTEDB) and who has entered into an agreement with the TBI/STEP to enable himself to develop and produce hi-tech and innovative products.
48	Taxable services, provided or to be provided, by a TBI/STEP recognised by NSTEDB or bio- incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India (BIRAC).
49	Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India. 
50	Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material. 
52	Services by an organiser to any person in respect of a business exhibition held outside India.
52A	<i>Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India.</i> <i>However, value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less.</i>

Further, in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.

*Explanation. - **"Foreign tourist"** means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.*



(52) A tour operator provides a tour operator service to a foreign tourist as follows: -

- (a) 3 days in India, 2 days in Nepal; Consideration charged for the entire tour: ₹ 1,00,000/-

Exemption: ₹ 40,000/- (= ₹1,00,000/- x 2/5) or, ₹ 50,000/- (= 50% of ₹ 1,00,000/-) whichever is less, i.e., ₹ 40,000/- (i.e., Taxable value: ₹ 60,000/-);

- (b) 2 days in India, 3 nights in Nepal; Consideration charged for the entire tour: ₹ 1,00,000/-

Exemption: ₹ 60,000 (= ₹ 1,00,000/- x 3/5) or, ₹ 50,000/- (= 50% of ₹ 1,00,000/-) whichever is less, i.e., ₹ 50,000/- (i.e., Taxable value: ₹ 50,000/-);

- (c) 2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour: ₹ 1,00,000/-

Exemption: ₹ 54,545 (= ₹ 1,00,000/- x 3/5.5) or, ₹ 50,000/- (= 50% of ₹ 1,00,000/-) whichever is less, i.e., ₹ 50,000/- (i.e., Taxable value: ₹ 50,000/-).

57

Services by way of **pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling** of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.

58

Services provided by the **National Centre for Cold Chain Development** under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of **cold chain knowledge dissemination**.



59

Services by a **foreign diplomatic mission** located in India.

61A	Services by way of granting National Permit to a goods carriage to operate through-out India/ contiguous States.
65A	 Services by way of providing information under the RTI Act (Right to Information Act, 2005).
68	Services provided to a recognised sports body by- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body; (b) another recognised sports body. However, services by individuals such as selectors, commentators, curators, technical experts are taxable. The service of a player to a franchisee which is not a recognized sports body is also taxable. <i>The term 'recognised sports body' has been defined earlier in this chapter.</i>
76	Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.

Note: For the purpose of this exemption notification, a "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.

GST on payment of honorarium to the Guest Anchors

Circular No. 177/09/2022 GST dated 03.08.2022 clarifies the applicability of GST on honorarium paid to Guest Anchors. Sansad TV and other TV channels invite guest anchors to participate in their shows and pay remuneration to them in the form of honorarium.

It is clarified that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. Services provided by the guest anchors in lieu of honorarium attract GST liability.



However, guest anchors whose aggregate turnover in a financial year does not exceed ₹ 20 lakh (₹ 10 lakh in case of specified Special Category States) shall not be liable to take registration and pay GST.

★ Above services have been exempted from both CGST/SGST/UTGST and IGST⁶⁹. Apart from these services, list of services exempt from IGST by Notification No. 9/2017 IT (R) dated 28.06.2017 as amended also include following services:

S.No.	Description of services
1	Services received from a provider of service located in a non- taxable territory by – (a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession; (b) an entity registered under section 12AA/12AB of the Income-tax Act, 1961 for the purposes of providing charitable activities; or (ba) way of supply of online educational journals or periodicals to an educational institution other than an institution providing services by way of- (i) pre-school education and education up to higher secondary school or equivalent; or (ii) education as a part of an approved vocational education course; (c) a person located in a non-taxable territory. However, the exemption shall not apply to – (i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in

⁶⁹ by virtue of Notification No. 12/2017 CT (R) dated 28.06.2017 as amended (for CGST) and Notification No. 9/2017 IT (R) dated 28.06.2017 as amended (for IGST)

	India received by persons specified in the entry.
2	Services received by the RBI, from outside India in relation to management of foreign exchange reserves. 
3	Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.
4	Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons [in accordance with Explanation 1 in section 8 of the IGST Act] provided the place of supply of the service is outside India [in accordance with section 13 of IGST Act].
5	Import of services by United Nations or a specified international organisation for official use of the United Nations or the specified international organisation. Specified international organisation means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947, to which the provisions of the Schedule to the said Act apply.
6	Import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein shall be exempt from IGST, subject to the conditions, - (i) that the foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein, are entitled to exemption from integrated tax, as stipulated in the certificate issued by the Protocol Division of the Ministry of External Affairs, based on the principle of reciprocity; (ii) that the services imported are for official purpose of the said foreign diplomatic mission or consular post; or for personal use of the said diplomatic agent or career consular officer or members of

	his or her family. (iii) that in case the Protocol Division of the Ministry of External Affairs, after having issued a certificate to any foreign diplomatic mission or consular post in India, decides to withdraw the same subsequently, it shall communicate the withdrawal of such certificate to the foreign diplomatic mission or consular post; (iv) that the exemption from the whole of the integrated tax granted to the foreign diplomatic mission or consular post in India for official purpose or for the personal use or use of their family members shall not be available from the date of withdrawal of such certificate.
7	Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory. Conditions to be fulfilled: Following documents shall be maintained for a minimum duration of 5 years: (1) Copy of Bill of Lading (2) Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods (3) Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in non-taxable territory (4) Copy of certificate of origin issued by service recipient located in non-taxable territory (5) Declaration letter from an intermediary service provider in taxable territory on company letter head confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory.

OTHER EXEMPTIONS

S.No.	Description of services
1	<u>Intra-State supplies received by a TDS deductor from any unregistered supplier exempt from CGST</u> Intra-State supplies of goods or services or both received by a deductor under section 51, from any unregistered supplier, is exempt from the whole of the central tax leviable thereon under section 9(4), subject to the condition that the deductor is not liable to be registered otherwise than under section 24(vi) [Notification No. 9/2017 CT (R) dated 28.06.2017].
2	<u>Services imported by unit/developer in SEZ exempt from IGST</u> All services imported by a unit/developer in the Special Economic Zone (SEZ) for authorised operations are exempt from the whole of the integrated tax leviable thereon under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017 [Notification No. 18/2017 IT (R) dated 05.07.2017].
3	<u>Central Government's share of profit petroleum exempted from CGST</u> Intra-State supply of services by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, has been exempted from so much of CGST as is leviable on the consideration paid to the Central Government in the form of Central Government's share of profit petroleum as defined in the contract entered into by the Central Government in this behalf. 

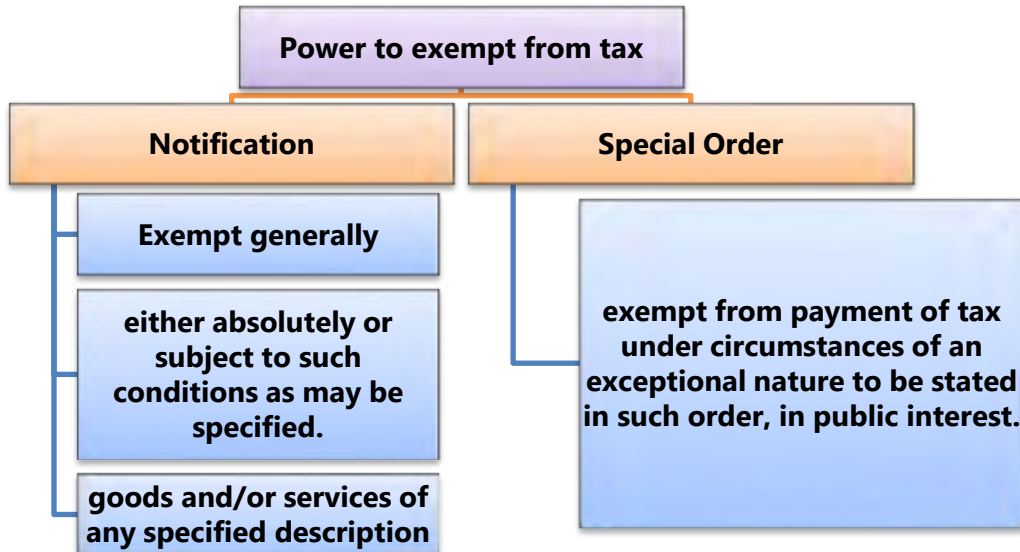
	<i>[Notification No. 5/2018 CT (R) dated 25.01.2018]</i> Parallel exemption from IGST has been extended to inter-State supply of such services vide <i>Notification No. 5/2018 IT (R) dated 25.01.2018.</i>
4	<u>IGST exempted to the extent it is paid on the consideration attributable to royalty and license fee included in transaction value under rule 10(1)(c) of Customs Valuation (Determination of value of imported Goods) Rules, 2007</u> IGST leviable on import of services in relation to temporary transfer or permitting the use or enjoyment of any intellectual property right has been exempted to the extent of the aggregate of the duties of customs leviable under section 3(7) of the Customs Tariff Act, 1975, on the consideration declared under section 14(1) of the Customs Act, 1962 towards royalties and license fees included in the transaction value as specified under rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on which the appropriate duties of customs have been paid <i>[Notification No. 6/2018 IT (R) dated 25.01.2018].</i>

Students may note that some of the entries granting exemption from GST are similar to the negative list entry/entry granting exemption under the erstwhile service tax law. Therefore, clarification pertaining to said negative list entry/exemption provided in the 'Service Tax Education Guide' – an educational aid released for facilitating the stakeholders to obtain preliminary understanding of the provisions, wherever it seems relevant under the GST law, have been incorporated at relevant places.



LET US RECAPITULATE

1. Power to exempt from tax [Section 11 of the CGST Act/ section 6 of IGST Act]



2. List of services exempt from GST

	Exempt Services
Services related to charitable and religious activities	Charitable activities BY an entity registered under section 12AA/12AB of Income-tax Act.
	Services by a person by way of- (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned/managed by institutions/entities/trusts, registered under section 12AA/12AB/10(23C)(v) of the Income tax Act or body/authority covered under section 10(23BBA) of the said Act, except where- (i) charges for renting of rooms $\geq$ ₹ 1,000 per day;

	(ii) charges for renting of premises, community halls, kalyanmandapam, open area, etc. are $\geq$ ₹ 10,000 per day; (iii) charges for renting of shops/spaces for business/commerce are $\geq$ ₹ 10,000 per month.
	Services by a specified organisation [KMVN/Haj Committee] in respect of a religious pilgrimage [Haj and Kailash Mansarovar Yatra].
	Training/coaching in (a) recreational activities relating to arts/culture, by an individual or (b) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act.
Agriculture related services	Loading, unloading, packing, storage or warehousing of rice.
	Warehousing of minor forest produce.
	Services by way of storage/ warehousing of cereals, pulses, fruits & vegetables.
	Artificial insemination of livestock (other than horses).
	Carrying out an intermediate production process as job work in relation to cultivation of plants & rearing of animals [except horses], for food, fibre, fuel, raw material or other similar products or agricultural produce.
	Services relating to cultivation of plants & rearing of animals [except horses], for food, fibre, fuel, raw material or other similar products or agricultural produce by way of – (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; (b) supply of farm labour;

	(c) processes carried out at an agricultural farm including tending, pruning, etc. and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market; (d) renting or leasing of agro machinery or vacant land with/without a structure incidental to its use; (e) loading, unloading, packing, storage or warehousing of agricultural produce; (f) agricultural extension services; (g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale/purchase of agricultural produce.		
Education services	Services provided BY an educational institution (EI): - to its students, faculty and staff; - by way of conduct of entrance examination against consideration in form of entrance fee Services provided TO an EI, by way of,- <table border="1"> <tr> <td> (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government (CG), State Government (SG) or Union Territory (UT); (iii) security/cleaning/housekeeping services performed in such EI; </td><td> These exemptions are only applicable to an institution providing services by way of pre-school education & education up to higher secondary school or equivalent. </td></tr> </table> (iv) services relating to admission to, or conduct of examination by, such EI; (v) supply of online educational journals or periodicals. This exemption is only applicable to an institution providing services by way of education as part of a	(i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government (CG), State Government (SG) or Union Territory (UT); (iii) security/cleaning/housekeeping services performed in such EI;	These exemptions are only applicable to an institution providing services by way of pre-school education & education up to higher secondary school or equivalent.
(i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government (CG), State Government (SG) or Union Territory (UT); (iii) security/cleaning/housekeeping services performed in such EI;	These exemptions are only applicable to an institution providing services by way of pre-school education & education up to higher secondary school or equivalent.		

	curriculum for obtaining qualification recognised by any law for time being in force.
Health care services	Health care services BY a clinical establishment/ authorized medical practitioner/ para-medics <i>However, nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day to a person receiving health care services.</i> Transportation of a patient in an ambulance BY any person other than specified above. Service BY a veterinary clinic in relation to Health care of animals/birds
Services provided by Government	Services by Governmental Authority (GA) by way of any activity in relation to any function entrusted to a Municipality /Panchayat under article 243W/ 243G of Constitution Services by the CG/SG/UT/Local Authority (LA) excluding following services— (a) services by Department of Posts; (b) services in relation to an aircraft/a vessel, inside/outside precincts of a port/airport; (c) transport of goods/passengers; or (d) any service, other than 'specified services' above, provided to business entities. } (a) to (c) hereinafter referred as 'specified services' Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams). Services provided by CG/SG/UT/LA to a business entity (BE)

with an aggregate turnover of up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017. This exemption is not applicable to **specified services** and **renting of immovable property service**.

Services provided by CG/SG/UT/LA **to another** CG/SG/UT/LA. This exemption is not applicable to **specified services**.

Services provided by CG/SG/UT/LA **where consideration for such services does not exceed ₹ 5,000**. This exemption is not applicable to **specified services****.

In case of **continuous supply of service*, the exemption shall apply only where the consideration charged for such service does not exceed **₹ 5,000 in a FY**.

Supply of service by a Government Entity (GE) to CG/SG/UT/LA/any person specified by CG/SG/UT/LA against consideration received from CG/SG/UT/LA, in the form of grants.

Services by an old age home run by CG/SG/an entity registered under section 12AA/12AB of Income-tax Act to its residents (aged ≥60 years) against consideration upto ₹ 25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.

Services supplied by CG/SG/UT to their undertakings or PSUs by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.

Services provided by CG/SG/UT/LA by way of-

- (a) registration required under any law for the time being in force;
- (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.

	Services provided by CG/SG/UT/LA by way of issuance of passport, visa, driving license, birth certificate or death certificate.
	Services provided by CG/SG/UT/LA by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to CG/SG/UT/LA under such contract.
	Services provided by CG/SG/UT/LA by way of assignment of right to use natural resources to an individual farmer for cultivation of plants & rearing of all life forms of animals [except horses], for food, fibre, fuel, raw material or other similar products.
	Services provided by CG/SG/UT by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.
	Services supplied by a SG to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of SG on the mineral dispatched by the mining lease holders subject to specified conditions.
	Services provided by rehabilitation professionals recognised under the RCI Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by CG/SG/UT/an entity registered under section 12AA/12AB of the Income-tax Act, 1961.
Construction services	Pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana.

	Services supplied by Electricity Distribution Utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer/agriculturalist for agricultural use. Pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex. Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer are exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.
Services of transport of passengers (with/ without accompanied belongings)	Such services provided by – (a) <i>air in economy class, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;</i> (b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than air- conditioned stage carriage. <i>However, nothing contained in items (b) and (c) above shall apply to services supplied through an ECO, and notified under section 9(5) of the CGST Act.</i> Such services provided to CG by air, embarking from or terminating at a Regional Connectivity Scheme (RCS) airport, against consideration in the form of viability gap funding. This

	exemption shall apply only till expiry of a period of 3 years from date of commencement of operations of the RCS airport as notified by the Ministry of Civil Aviation. Such services provided by— - railways in a class other than first class/an air-conditioned coach; - metro, monorail or tramway; - inland waterways; - public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and - metered cabs or auto rickshaws (including e-rickshaws). However, nothing contained in item (e) above shall apply to services supplied through an ECO, and notified under section 9(5) of the CGST Act.
Goods transportation services	Services by way of transportation of goods- - by road except the services of— - a goods transportation agency (GTA); - a courier agency; - by inland waterways. Exempt transportation of goods by rail/ vessel/ by GTA in a goods carriage - Agricultural produce - milk, salt and food grain including flours, pulses and rice - organic manure - newspaper or magazines registered with the Registrar of Newspapers - Defence/ military equipments - relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap Services provided by a GTA to an unregistered person, including an unregistered casual taxable person, except following recipients, namely: -

	(a) a factory registered under Factories Act, (b) society registered under Societies Act, (c) Co-operative society, (d) body corporate and (e) partnership firm including AOP; (f) registered casual taxable person. Services provided by a GTA, by way of transport of goods in a goods carriage, to, - (a) a Department or Establishment of the CG/SG/UT; or (b) local authority; or (c) Governmental agencies, which has taken registration only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.
Banking and financial	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers. Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY). Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service. Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees.

Services of Life insurance business	Such services by way of annuity under the National Pension System by Pension Fund Regulatory and Development Authority of India (PFRDA) under PFRDA Act, 2013. Such services by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of CG. Services of life insurance provided/agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force. Such services by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of CG. Such services under following schemes- (a) Janashree Bima Yojana; (b) Aam Aadmi Bima Yojana; (c) Life micro-insurance product** as approved by the Insurance Regulatory and Development Authority (IRDA), having maximum amount of cover of ₹ 2,00,000; (d) Varishtha Pension BimaYojana; (e) Pradhan Mantri Jeevan Jyoti BimaYojana; (f) Pradhan Mantri Jan DhanYogana; (g) Pradhan Mantri Vaya Vandan Yojana.
General insurance business	Such services under following schemes – (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajayanti Gram Swarozgar Yojna⁷⁰; (c) Scheme for Insurance of Tribals;

⁷⁰ earlier known as Integrated Rural Development Programme

	(d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) premia collected on export credit insurance; (h) Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy; (j) Pradhan Mantri Fasal Bima Yojana (PMFBY); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; (o) Coconut Palm Insurance Scheme; (p) Pradhan Mantri Suraksha BimaYojna; (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. (r) Bangla Shasya Bima.
	Services provided to CG/SG/UT under any insurance scheme for which total premium is paid by CG/SG/UT. (C)
	Services by way of reinsurance of the insurance schemes specified in (A) or (B) or (C) above.
Services provided by specified bodies	Services by the Employees' State Insurance (ESI) Corporation to persons governed under the ESI Act, 1948. Services provided by the EPFO to the persons governed under the Employees Provident Funds (EPF) & Miscellaneous Provisions Act, 1952.

	Services by CMPFO to persons governed by Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948. Services by NPS Trust to its members against consideration in the form of administrative fee.
Pension schemes	Services by way of collection of contribution under: • Atal Pension Yojana • any pension scheme of SG
Business facilitator/correspondent	Services by the following persons in respective capacities – (a) business facilitator/business correspondent to a Banking Co. with respect to accounts in its rural area branch; (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or (c) business facilitator/business correspondent to an insurance company in rural area.
Services provided to Government	Following services provided to the CG/SG/UT/LA/GA/GE by way of any activity in relation to any function entrusted to a Panchayat/Municipality under articles 243G/243W of the Constitution: • Pure services • Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply.
	Service provided by Fair Price Shops to CG/SG/UT by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System (PDS) against commission/margin.
	Services provided to CG/SG/UT under any insurance scheme for which total premium is paid by CG/SG/UT.
	Services provided to CG/SG/UT administration under any training programme for which 75% or more of the total expenditure is borne by CG/SG/UT administration.

Leasing services	Upfront amount payable in respect of service by way of granting of long term lease of 30 years, or more of industrial plots/plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20% or more ownership of CGS/SG/UT to the industrial units/developers in any industrial/financial business area subject to specified conditions.	
Legal services	Service provided by	To
	- Arbitral tribunal - Partnership firm of advocates or an individual as an advocate other than a senior advocate by way of legal services - Senior advocate by way of legal services	any person other than BE
		BE with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act
		CG/SG/UT/LA/GA/GE
	Legal services provided by a partnership firm of advocates/ individual as an advocate other than a senior advocate to another advocate/ partnership firm of advocates providing legal services	
Sponsorship of sports events	Sponsorship of sporting events organised - (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country; (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat; (c) by the Central Civil Services Cultural and Sports Board; (d) as part of national games, by the Indian Olympic Association; or	

	(e) under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.
Skill Development services	Services provided by, _ (a) National Skill Development Corporation (NSDC) set up by Gol; (b) Sector Skill Council (SSC) approved by NSDC; (c) assessment agency approved by SSC/NSDC (d) a training partner approved by SSC/NSDC in relation to- (i) the National Skill Development Programme implemented by NSDC; or (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (iii) any other Scheme implemented by NSDC. Services of assessing bodies empanelled centrally by DGT, Ministry of Skill Development and Entrepreneurship by way of assessments under the SDI Scheme. Services provided by training providers (Project implementation agencies) under DDUGKY implemented by Ministry of Rural Development, Gol by way of offering skill or vocational training courses certified by the National Council for Vocational Training (NCVT).
Performance by an artist	Services by an artist by way of a performance in folk or classical art forms of music/ dance/ theatre, if the consideration charged for such performance is not more than ₹ 1,50,000 . This exemption shall not apply to service provided by such artists as a brand ambassador.
Right to admission to various events	Services by way of admission to: (i) museum, national park, wildlife sanctuary, tiger reserve or zoo

	(ii) protected monument declared under the Ancient Monuments and Archaeological Sites & Remains Act 1958/any of the State Acts, for the time being in force. (iii) following events/places where the consideration for right to admission is not more than ₹ 500 per person: (a) circus, dance, or theatrical performance including drama or ballet; (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event; (c) recognised sporting event; (d) planetarium.		
Services by an unincorporated body or a non-profit entity registered under any law for the time being in force	Services by unincorporated body/ non- profit entity to its own members as reimbursement/share of contribution: <table> <tr> <td>(i) As a trade union</td><td>(ii) for providing exempt activity</td></tr> </table> (iii) up to an amount of ₹ 7,500 per month per member for sourcing of goods/services from a third person for the common use of its members in a housing society/residential complex Services provided by such entity/body engaged in- (i) activities relating to the welfare of industrial/agricultural labour or farmers; or (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against membership fee upto ₹ 1000/- per member per year.	(i) As a trade union	(ii) for providing exempt activity
(i) As a trade union	(ii) for providing exempt activity		
Other exempt services	Transfer of a going concern, as a whole or an independent part thereof. Services associated with transit cargo to Nepal and Bhutan (landlocked countries).		

Services by way of renting of residential dwelling for use as residence ***except where the residential dwelling is rented to a registered person.***

Explanation — For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, –

- (i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and***
- (ii) such renting is on his own account and not that of the proprietorship concern.***

Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.

Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India. This exemption is available till 30.09.2022.

Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India. This exemption is available till 30.09.2022.

Services by way of giving on hire –

- (a) to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers;
- (aa) to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers; or
- (b) to a GTA, a means of transportation of goods.
- (c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

	Service by way of access to a road or a bridge on payment of toll charges.
	Transmission/distribution of electricity by an electricity transmission/ distribution utility.
	Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a FY provided:- (a) total turnover had not exceeded ₹ 50 lakh during the preceding FY; and (b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee.
	Taxable services, provided or to be provided, by a Technology Business Incubator/ Science and Technology Entrepreneurship Park (TBI/STEP) recognised by NSTEDB or bio- incubators recognised by BIRAC.
	Services by way of collecting or providing news by an independent journalist, PTI or United News of India.
	Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
	Services by an organiser to any person in respect of a business exhibition held outside India.
	<i>Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India.</i> <i>However, value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less.</i>

Further, in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.

Services by way of **pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling** of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.

Services provided by the **National Centre for Cold Chain Development** under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of **cold chain knowledge dissemination**.

Services by a **foreign diplomatic mission** located in India.

Services by way of granting National Permit to a goods carriage to operate through-out India/ contiguous States

Services by way of **providing information under the RTI Act.**

Services provided to a recognised sports body (RSB) by-

- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a RSB;
- (b) another RSB.

Services by way of **public conveniences** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.

Above services have been exempted from both CGST and IGST. Apart from these services, list of services exempt from IGST also include following services:

Services received from a provider of service located in a non-taxable territory by –

- (a) CG/SG/UT/LA/GA/ an individual **in relation to any purpose other than commerce, industry or any other business or profession;**
- (b) an entity registered under section 12AA/12AB of the Income-tax Act, 1961 for the purposes of providing charitable activities; or

- (ba) way of supply of online educational journals or periodicals to an educational institution other than an institution providing services by way of-
 - (i) pre-school education and education up to higher secondary school or equivalent; or
 - (ii) education as a part of an approved vocational education course;
 - (c) a person located in a non-taxable territory.
- However, the exemption shall not apply to –
- (i) OIDAR services received by persons specified in entry (a) or entry (b); or
 - (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

Services received by the RBI, from outside India in relation to management of foreign exchange reserves.

Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.

Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons provided the place of supply of the service is outside India.

Import of services by UN or a specified international organisation for official use of UN or the specified international organisation.

Import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein subject to specified conditions.

Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory subject to specified conditions.



TEST YOUR KNOWLEDGE

1. *Examine whether the following independent intra-State services are exempt from GST:*
 - (a) *Legal services provided by BMC & Partners, Delhi, a partnership firm of advocates, to Vastukaar Enterprises, Delhi, providing architect services (with preceding financial year's aggregate turnover as ₹21 lakh).*
 - (b) *Minimum balance charges collected by Dhanvarsha Bank from current account and saving account holders.*

2. *Shiva Medical Centre, a Multi-speciality hospital, is a registered supplier in Mumbai. It hires senior doctors and consultants independently, without entering into any employer-employee agreement with them. These doctors and consultants provide consultancy to the in-patients (patients who are admitted to the hospital for treatment) without there being any contract with such patients. In return, they are paid the consultancy charges by Shiva Medical Centre.*

However, the money actually charged by Shiva Medical Centre from the in-patients is higher than the consultancy charges paid to the hired doctors and consultants. The difference amount retained by the hospital, i.e. retention money, includes charges for providing ancillary services like nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc.

The Department took a stand that senior doctors and consultants are providing services to Shiva Medical Centre and not to the patients. Hence, their services are not the health care services and must be subject to GST. Further, GST is applicable on the retention money kept by Shiva Medical Centre.

You are required to examine whether the stand taken by the Department is correct.

3. *Vedanta Hospital, Gurgaon has its own restaurant in the basement of hospital premises - Annapurna Bhawan - which supplies food to its in-patients (patients admitted in the hospital) as per the advice of the doctor/nutritionist. Annapurna Bhawan also supplies food to other patients (who are not admitted) or their*

attendants or visitors. The food is prepared by the employees of the hospital and nothing is outsourced to any third-party vendors. Vedanta Hospital is of the view that all services provided by a clinical establishment are exempt from GST and thus, it is not liable to pay any tax. You are required to test the correctness of the view taken by Vedanta Hospital.

4. Indian Institutes of Management (IIM), Indore organizes a placement drive for the students studying in the campus. Many multinational companies register for the placement program and pay the registration fee of ₹ 1,00,000. IIM, Indore is of the view that such consideration received from multinational companies for participating in the placement program is exempt from GST. Explain whether the view taken by IIM, Indore is correct.
5. India Corporations Ltd., a Public Sector Undertaking (PSU), has taken loan from a banking company - Wellness Bank Ltd. The loan was guaranteed by the Central Government. India Corporations Ltd. defaulted in the repayment of such loan. Examine whether the services of guaranteeing of loan by the Central Government, in the given case, is liable to GST.
6. British High Commission, chief diplomatic mission of the United Kingdom, is located in India and is providing advisory services to the students willing to travel to UK for further studies. The mission has organized a seminar for such students and a registration fee of ₹ 5,000 per student has been charged from the students for the same. You are required to determine whether the advisory services provided by British High Commission are liable to GST.
7. Explain in brief whether the below mentioned independent cases of supply of services provided are exempt or taxable under GST law, providing very brief reasoning:
 - (i) Himalayan Wanderers Campsite, a registered entity under GST, has fixed up various tents in Shimla, for lodging purposes being offered to tourists and trekkers. The details of tents rented by Himalayan Wanderers Campsite on 8th December is as under:

No. of tents rented	Amount of rent charged per tent per day	Nature of occupancy
10	₹ 600	Single
15	₹ 1000	Double

- (ii) *Fables Infotech LLP, a limited liability partnership firm having registered place of business in Hyderabad under GST, entered into a contract with Neeta Services for providing air-conditioned mini vans for 1 year for transportation of its female employees working in night shifts to be picked up from designated spots every day at 9.00 p.m. except weekends and dropped to the office. The same female employees were again picked up from office at 6.30 a.m. every morning except weekends and dropped back at the same spots from where they were picked up.*
 - (iii) *HumTum Services Limited, registered under GST, provided catering services to Baljatan Anganwadi, an educational institute providing pre-school education amounting to ₹ 2,50,000 in the month of February.*
 - (iv) *50 women from different cities pursuing diploma in management courses, participated in the 'Leadership Program' designed especially for women for a duration of 9 months by IIM, Bangalore (a certificate as to their participation was awarded to each one of them after the completion of the programme).*
 - (v) *Mr. Ashok rented his residential flat to his friend Dr. Kishore, who is not registered under GST for use as his medical clinic at a monthly rent of ₹ 15000.*
8. *Determine whether GST is payable in respect of each of the following independent services provided by the registered persons:*
- (1) *Fees of ₹ 10,000 charged from office staff for in-house personality development course conducted by Mungerilal College providing education as part of a curriculum for obtaining a qualification recognised by Indian law.*
 - (2) *Bus fees of ₹ 2,500 per month collected from students by Rosemary College providing education as part of a curriculum for obtaining a qualification recognised by Indian law.*
 - (3) *Housekeeping service provided by M/s. Clean Well to Himavarsha Montessori school, a play school, for cleaning its playground and classrooms for ₹ 25,000 per month.*
 - (4) *Info link supplied 'Tracing Alphabets', an online educational journal, to students of UKG class of Sydney Montessori School for ₹ 2,000.*

9. *Sarva Sugam Charitable Trust, a trust registered under section 12AB of the Income – tax Act, 1961, provides the following information relating to supply of its services for the month of August:*

Particulars	Amount (₹)
<i>Renting of residential dwelling for use as a residence to Mr. Soham, an unregistered person</i>	18,00,000
<i>Renting of rooms for devotees (Charges per day ₹ 750)</i>	6,00,000
<i>Renting of kalyanamandapam (Charges per day ₹ 15,000)</i>	12,00,000
<i>Renting of community halls and open space (Charges per day ₹ 7,500)</i>	10,75,000
<i>Renting of shops for business (Charges per month ₹ 9,500)</i>	4,75,000
<i>Renting of shops for business (Charges per month ₹ 12,000)</i>	7,50,000

Compute the GST liability of Sarva Sugam Charitable Trust for the month of August assuming that the above amounts are exclusive of GST and rate of GST, wherever applicable, is 18%.

Note: The rooms/ Kalyanamandapam/ halls/ open space/ shops owned by the trust are located within the precincts of a religious place, meant for general public, owned by the trust.

10. *Mr. Nagarjun, a registered supplier of Chennai, has received the following amounts in respect of the activities undertaken by him during the month of September:*

S. No.	Particulars	Amount (₹)
(i)	<i>Amount charged for service provided to recognized sports body as selector of national team</i>	50,000
(ii)	<i>Commission received as an insurance agent from insurance company</i>	65,000

(iii)	Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts	15,000
(iv)	Service to foreign diplomatic mission located in India	28,000
(v)	Funeral services	30,000

He received the services from an unregistered goods transport agency for his business activities and paid freight of ₹45,000.

Note: All the transactions stated above are inter-State transactions and also are exclusive of GST.

You are required to calculate gross GST liability (ignoring ITC provisions) of Mr. Nagarjun for the month of September assuming that the rate of GST, wherever applicable, is 18% except the GTA services where the applicable rate of GST is 5%. Working notes should form part of your answer.

11. Vividh Pvt. Ltd. is a supplier of goods and services at Bangalore, registered in the State of Karnataka, having turnover of ₹200 lakh in the last financial year. It has furnished the following information for the month of June.

Particulars	Amount (₹) excluding GST
Services provided by way of a labour contract for repairing a single residential unit otherwise than as a part of residential complex	13,00,000
Fee received from students of a competitive exam training academy run by Vividh Pvt. Ltd.	5,40,000
4 buses each with a seating capacity of 72 passengers given on hire to State Transport Undertaking	6,00,000
Rent paid to Local Municipal Corporation for premises taken on rent for competitive exam training academy	2,50,000
Goods transport services received from a registered GTA which has opted to pay tax itself @ 12%	1,80,000

Compute gross GST liability including tax payable under reverse charge (ignoring ITC provisions) of Vividh Pvt. Ltd. for the month of June assuming that the above amounts are exclusive of GST and rate of GST, wherever applicable, is 18% unless otherwise mentioned.

12. "Chanakya Academy" is registered under GST in the State of Uttar Pradesh. The Academy runs the following educational institutions:

- (i) 'Keshav Institute of Technology' (KIT), a private engineering college in Ghaziabad. KIT also runs distance learning post graduate engineering programmes. Exams for such programmes are conducted in select cities at centres appointed by the KIT. All the engineering courses including the distance learning post graduate engineering programme run by KIT are recognised by the law [The All India Council for Technical Education (AICTE)].
- (ii) 'Little Millennium', a pre-school in Lucknow.
- (iii) 'Bright Minds', a coaching institute in Kanpur. The Institute provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam.
- (iv) 'Spring Model' a higher secondary school affiliated to CBSE Board.

The Academy provides the following details relating to the expenses incurred by the various institutions run by it during the period April to September:

S. No.	Particulars	KIT	Little Millennium	Bright Minds	Spring Model
		(₹)	(₹)	(₹)	(₹)
(i)	Printing services for printing the question papers (paper and content are provided by the Institutions)	2,50,000		1,50,000	2,00,000
(ii)	Paper procured for printing the question papers	4,30,000		2,58,000	3,44,000

(iii)	Honorarium to paper setters and examiners (not on the rolls of the Institution)	5,00,000			
(iv)	Rent for exam centers taken on rent like schools etc., for conducting examination	8,00,000		1,00,000	
(v)	Subscription for online educational journals [Little Millennium has taken the subscription for online periodicals on child development and experiential learning]	4,00,000	80,000	2,20,000	2,40,000
(vi)	Hire charges for buses used to transport students and faculty from their residence to the institutions and back	4,80,000	5,50,000	1,30,000	7,50,000
(vii)	Catering services for running a canteen in the campus for students (Catering services for KIT include a sum of ₹ 60,000 for catering at a student event organised in a	3,20,000	2,60,000	1,80,000	5,00,000

	<i>banquet hall outside the campus)</i>				
(viii)	<i>Security and housekeeping services for the institution(s) (Security and housekeeping services for Spring Model include a sum of ₹ 80,000 payable for security and housekeeping at the student event organised in a banquet hall outside the campus)</i>	<i>6,00,000</i>	<i>4,00,000</i>	<i>3,75,000</i>	<i>4,65,000</i>

With the help of the above details, determine the amount of GST payable, if any, (ignoring ITC provisions) on goods and services received during April to September by the various educational institutions run by the 'Chanakya Academy'; all the amounts given above are exclusive of taxes, wherever applicable.

Note: Rate of GST on goods is 12%, catering service is 5% and on other services is 18%.

13. *M/s A2Z, a proprietary firm registered under GST, is engaged in providing various services under one roof. The firm provides the following information pertaining to supplies made/input services availed by it during the month of March:*

S. No.	Particulars	Amount (₹)
1.	<i>Amount collected for loading, unloading, packing and warehousing of potato chips</i>	<i>15,000</i>

2.	<i>Fees paid for yoga camp conducted by a charitable trust registered under section 12AB of the Income-tax Act, 1961 for employees of the firm</i>	20,000
3.	<i>Interest received on fixed deposits with APNA Bank by the firm</i>	30,000
4.	<i>Professional services provided to foreign diplomatic mission located in India</i>	50,000
5.	<i>Recovery agent services provided to ABC Finance Ltd. - an NBFC located in Delhi</i>	1,00,000
6.	<i>Security services (by way of supply of security personnel) provided to XYZ Ltd. - a registered person under GST</i>	80,000
7.	<i>Receipts from running an educational institution (a Senior Secondary School) for services provided to its students (including receipts for providing residential dwelling service of ₹ 18,20,000 by the institution to the students)</i>	35,00,000
8.	<i>Supply value including cost of fuel for provision of renting of motor vehicle for transportation of passengers' service to NPS Ltd.</i>	88,000

Determine the GST liability (inclusive of liability for the supplies received also) of M/s A2Z for the month of March with necessary explanation for treatment of each item. Rate of tax for both inward and outward supply is CGST and SGST @ 9% each except for the service of renting a vehicle for transportation of passengers for which CGST and SGST @ 2.5% each is applicable. All the supplies are intra-State only. All amounts given hereunder are exclusive of GST.

14. A2X Services Limited, registered under GST, is engaged in providing various services to various educational institutions. The company provides the following information in respect of services provided during the month of April:

S. No.	Description of services provided
(i)	Transportation of students & staff of 'Shiksha University', a Deemed University
(ii)	Catering services provided to 'Rank CBSE School'
(iii)	Security personnel services provided to 'Win CBSE School', for its annual sports day held at SAI Sports Complex owned by Government of India
(iv)	Supply of online periodical science journal to 'Merit CBSE School' for its higher secondary students
(v)	Services, in relation to placement of students, to 'SKILL', a Government recognized vocational training college

Comment on the taxability or otherwise of the above transactions under GST law. State the correct legal provisions for the same.



ANSWERS

1. (a) Services provided by a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017, are exempt from GST vide Notification No. 12/2017 CT (R) dated 28.06.2017 (hereinafter referred to as exemption notification).

Since in the given case, services are being provided by the partnership firm of advocates - BMC & Partners to a business entity - Vastukaar Enterprises whose aggregate turnover in the preceding FY exceeded

₹ 20 lakh i.e. the threshold limit for registration applicable to a service provider in Delhi, said services are not exempt from GST.

- (b) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempt from GST vide exemption notification.

However, service charges/ fees, documentation fees, broking charges, administrative charges, entry charges or such like fees or charges collected over and above interest on loan, advance or a deposit are not exempt and are liable to GST.

In view of the above, minimum balance charges collected by Dhanvarsha Bank from current account and saving account holders are not exempt and are liable to GST.

2. No, the stand taken by the Department is not correct.

Services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST vide exemption notification.

Health care services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Circular No. 32/06/2018 GST dated 12.02.2018 has clarified that the entire amount charged by the hospitals from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt from GST. In view of the same, GST is not applicable on the retention money kept by Shiva Medical Centre.

The circular also clarifies that services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not,

are also healthcare services exempt from GST. Hence, services provided by the senior doctors and consultants hired by Shiva Medical Centre, being healthcare services, are also exempt from GST.

3. Services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST vide exemption notification. *Circular No. 32/06/2018 GST dated 12.02.2018* has clarified that food supplied by the hospital canteen to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare services and is not separately taxable. Thus, it is exempt from GST. However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

In view of the same, GST is not applicable on the food supplied by Annapurna Bhawan to in-patients as advised by doctors/nutritionists while other supplies of food by it to patients (not admitted) or their attendants/visitors are taxable.

4. Indian Institutes of Management Act, 2017 (IIM Act, 2017) empowers IIMs to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes. Resultantly, all the IIMs fall under purview of “educational institutions” as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.

Further, the services provided by an educational institution to its students⁷¹, faculty and staff are exempt from GST vide exemption notification.

However, in the given case, services have been provided by the educational institution (viz. IIM, Indore), to the multinational companies. Therefore, the same is not exempt from GST.

5. Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of

⁷¹ As per Circular No. 82/01/2019 GST dated 01.01.2019, services provided by IIMs to their students who are enrolled for long duration programs (1 year or more) for which they are awarded diploma/ degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017, under such long duration programs are exempt from GST.

guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions are exempt from GST vide exemption notification.

In the present case, Central Government has guaranteed the loan taken by India Corporations Ltd. [a PSU], from Wellness Bank Ltd., [a banking company]. Consequently, services provided by the Central Government, in the form of guarantee of loan, are exempt from tax.

6. Services by a foreign diplomatic mission located in India are exempt from GST vide exemption notification. Hence, in the given case, advisory services by British High Commission located in Delhi to the students are exempt from GST.
7.
 - (i) **Taxable:** Since there is no specific exemption with respect to services provided by a campsite for lodging purposes, services provided by Himalayan Wanderers Campsite are liable to GST.
 - (ii) **Taxable:** Service of transport of passengers provided by Neeta Services are liable to GST since such services are being provided in a contract carriage which is air-conditioned.
 - (iii) **Exempt:** Since catering services provided to an educational institution providing pre-school education are exempt from GST, HumTum Services Limited is not liable to pay GST.
 - (iv) **Taxable:** Since short duration programs provided by IIMs are not any qualification recognized by law, GST is payable in the given case.
 - (v) **Taxable:** Since residential dwelling is rented for use other than residence, GST is payable on the same.
8. (1) Services provided by an educational institution to its students, faculty and staff are exempt from GST vide exemption notification. Educational Institution has been defined to mean, *inter alia*, an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

Since Mungerilal College provides education as part of a curriculum for obtaining a qualification recognised by Indian law, the services

provided by it to its staff by way of conducting personality development course would be exempt from GST, it being an educational institution.

- (2) Since Rosemary College provides education as a part of a curriculum for obtaining a qualification recognised by Indian law, the transport services provided by Rosemary College to its students are exempt from GST.
- (3) Services provided to an educational institution, by way of, *inter alia*, house-keeping services performed are exempt from GST vide exemption notification provided such services are performed in such educational institution. However, such exemption is available only when the said services are provided to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

In view of the above discussion, house-keeping services provided to Himavarsha Montessori Play School are exempt from GST since housekeeping services have been performed in such play school itself.

- (4) Services provided to an educational institution by way of supply of online educational journals or periodicals is exempt from GST vide exemption notification. However, such exemption is not available to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Therefore, supply of online journal to students of UKG class of Sydney Montessori School is not exempt from GST.

- 9. Renting of precincts of a religious place meant for general public, owned/managed by, *inter alia*, an entity registered as a charitable trust under section 12AA/12AB of the Income-tax Act are exempt from GST vide exemption notification. However, said exemption is not available if:
 - (i) charges for rented rooms are ₹ 1,000 per day or more;
 - (ii) charges for rented community halls, Kalyan mandapam, open area are ₹ 10,000 per day or more;
 - (iii) charges for rented shops are ₹ 10,000 per month or more.

Further, services by way of renting of residential dwelling for use as residence to an unregistered person are also exempt vide exemption notification.

Computation of GST liability of Sarva Sugam Charitable Trust for August

Particulars	Value (₹)	GST @ 18% (₹)
Renting of residential dwelling for use as residence to an unregistered person [Exempt vide exemption notification]	18,00,000	Nil
Renting of rooms for devotees [Exempt since charges per day are below ₹1,000]	6,00,000	Nil
Renting of Kalyanamandapam [Taxable since charges per day exceed ₹10,000]	12,00,000	2,16,000
Renting of community halls and open spaces [Exempt since charges per day are below ₹ 10,000]	10,75,000	Nil
Renting of shops for business [Exempt since charges per month are below ₹10,000]	4,75,000	Nil
Renting of shops for business [Taxable since charges per month exceed ₹ 10,000]	7,50,000	<u>1,35,000</u>
Total		3,51,000

10. Computation of gross GST liability of Mr. Nagarjun

Particulars	Value (₹)	IGST (₹)
<i>Supplies on which Mr. Nagarjun is liable to pay GST under forward charge</i>		
Amount charged for service provided to recognized sports body as selector of national team [Note 1]	50,000	9,000

Commission received as an insurance agent from insurance company [Note 2]	Nil	Nil
Amount charged as business correspondent for the services provided to the urban branch of a nationalised bank with respect to savings bank accounts [Note 3]	15,000	2,700
Services provided to foreign diplomatic mission located in India [Note 4]	28,000	5,040
Funeral services [Note 5]	Nil	Nil
<i>Supplies on which Mr. Nagarjun is liable to pay GST under reverse charge</i>		
Services received from GTA [Note 6]	45,000	<u>2,250</u>
IGST payable (Since all the transactions are inter-State transactions, IGST is payable on the same.)		18,990

Notes:

- (1) Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide exemption notification. Thus, service provided as selector of team is liable to GST.
- (2) Commission for providing insurance agent's services is liable to GST. However, the tax payable thereon is to be paid by the recipient of service i.e., insurance company, under reverse charge in terms of *Notification No. 13/2017 CT (R) dated 28.06.2017*⁷². Thus, Mr. Nagarjun will not be liable to pay GST on such commission.
- (3) Services provided by business correspondent to a banking company with respect to accounts in its rural area branch are exempt from GST

⁷² Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.

vide exemption notification. Thus, such services provided in respect of urban area branch will be taxable.

- (4) While services provided by a foreign diplomatic mission located in India are exempt from GST vide exemption notification, services provided to such mission are taxable.
- (5) Funeral services being covered in Schedule III of CGST Act are not a supply and thus, are outside the ambit of GST.
- (6) GST on services provided by a GTA to, *inter alia*, a registered person is payable by the recipient of service i.e., the registered person, under reverse charge in terms of *Notification No. 13/2017 CT (R) dated 28.06.2017* except where GTA is registered and has exercised the option to itself pay tax on said services⁷³. Since in the given case, GTA is unregistered, it could not have exercised the option to pay tax and thus, GST is payable @ 5% under reverse charge mechanism by the recipient – Mr. Nagarjun.

11. Computation of gross GST liability of Vividh Pvt. Ltd.

Particulars	Value of supply (₹)	GST @ 18% (₹)
Services provided by way of labour contracts for repairing a single residential unit otherwise than as a part of residential complex [Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex are exempt vide exemption notification. Labour contracts for repairing, are thus, taxable.]	13,00,000	2,34,000
Fee received from students of competitive exam training academy	5,40,000	97,200

⁷³ Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.

[Fee received from students of competitive exam training academy is taxable as it is not an educational institution since competitive exam training does not lead to grant of a recognized qualification.]		
Buses each with seating capacity of 72 passengers given on hire to State Transport Undertaking [Services by way of giving on hire to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers, are exempt from GST vide exemption notification.]	6,00,000	Nil
<i>Services on which tax is payable under reverse charge:</i>		
Rent paid to Local Municipal Corporation [GST is payable under reverse charge in case of renting of immovable property services supplied by a local authority to a registered person.]	2,50,000	45,000
GTA services availed [Since GTA has opted to pay tax @ 12%, tax is payable under forward charge by GTA only and not by Vividh Pvt. Ltd.]	1,80,000	Nil
Gross GST payable		3,76,200

12. Exemption notification exempts select services provided to an educational institution. Here, the **“educational institution”** means an institution providing services by way of-

- (i) pre-school education and education up to higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course;

The select services which are exempt when provided to an educational institution are-

- (i) transportation of students, faculty and staff;
- (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
- (iii) security or cleaning or house-keeping services performed in such educational institution;
- (iv) services relating to admission to, or conduct of examination by, such institution;
- (v) supply of online educational journals or periodicals.

However, the services mentioned in points (i), (ii) and (iii) are exempt only when the same are provided to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Also, the supply of online educational journals or periodicals is not exempt from GST when provided to-

- (i) pre-school education and education up to higher secondary school or equivalent; or
- (ii) education as a part of an approved vocational education course.

Further, services by way of giving on hire motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent is exempt⁷⁴.

In the given case, all the engineering courses including the distance learning post graduate engineering programme run by KIT are recognised by the law [The All India Council for Technical Education (AICTE)]. Therefore, since KIT imparts education as a part of a curriculum for obtaining a qualification

⁷⁴ as per Entry 22 of Notification No. 12/2017 CT (R)

recognised by the Indian law, the same is an educational institution in terms of the exemption notification.

Similarly, Little Millennium and Spring Model, being a pre-school and a higher secondary school respectively are also educational institutions in terms of the exemption notification.

However, Bright Minds, being a coaching centre, training candidates to secure a banking job, is not an educational institution in terms of the exemption notification. Hence, none of the select services (mentioned above) will be exempt when provided to Bright Minds.

In the light of the foregoing provisions, the amount of GST payable on goods and services received by these educational institutions during April to September is computed as under:

Particulars	KIT	Little Millennium	Bright Minds	Spring Model
	(₹)	(₹)	(₹)	(₹)
Printing services for printing the question papers (paper and content are provided by the Institutions)	Exempt [Services provided to educational institution in relation to conduct of examination]		27,000 [1,50,000 x 18%]	Exempt
Paper procured for printing the question papers [Supply of select services to educational institutions is exempt and not supply of goods to such educational institutions]	51,600 [4,30,000 x 12%]		30,960 [2,58,000 x 12%]	41,280 [3,44,000 x 12%]

Honorarium to paper setters and examiners (not on the rolls of the educational institution)	Exempt [Services provided to educational institution in relation to conduct of examination]			
Rent for exam centres taken on rent like schools etc., for conducting examination	Exempt [Services provided to educational institution in relation to conduct of examination]		18,000 [1,00,000 x 18%]	
Subscription for online educational journals [Little Millennium has taken the subscription for online periodicals on child development and experiential learning]	Exempt	14,400 [80,000 x 18%]	39,600 [2,20,000 x 18%]	43,200 [2,40,000 x 18%]
Hire charges for buses used to transport students and faculty from their residence to the institutions and back	86,400 [4,80,000 x 18%]	Exempt	23,400 [1,30,000 x 18%]	Exempt
Catering services for running a canteen in	16,000	Exempt	9,000	Exempt

the campus for students [Catering service provided to pre-school and the higher secondary school is exempt irrespective of whether the same is provided within or outside the premises of the pre-school and the higher secondary school]	[3,20,000 x 5%]		[1,80,000 x 5%]	
Security and housekeeping services for the institution(s) [Security and housekeeping service provided to pre-school and the higher secondary school for the student event organised in a banquet hall will be taxable as only the security and housekeeping service provided within the premises of the pre-school and the higher secondary school are exempt.]	1,08,000 [6,00,000 x 18%]	Exempt	67,500 [3,75,000 x 18%]	14,400 [80,000 x 18%]

Total GST payable on goods and services received	2,62,000	14,400	2,15,460	98,880

13. Computation of GST liability of M/s A2Z for the month of March:

S. No.	Particulars	CGST (₹)	SGST (₹)
1.	Loading, unloading, packing and warehousing of potato chips [Loading, unloading, packing and warehousing of agricultural produce is exempt. However, potato chips is not an agricultural produce.]	1,350 [15,000 × 9%]	1,350 [15,000 × 9%]
2.	Fees paid for yoga camp [Services provided by a charitable trust registered under section 12AB of the Income-tax Act by way of advancement of yoga are exempt.]	--	--
3.	Interest received on fixed deposits [Services of extending fixed deposits in so far as the consideration is represented by way of interest are exempt.]	--	--
4.	Professional services provided to foreign diplomatic mission located in India [Not specifically exempt.]	4,500 [50,000 × 9%]	4,500 [50,000 × 9%]
5.	Recovery agent services provided to ABC Finance Ltd., an NBFC [Since such services are being provided to an NBFC, tax on the same is payable]	--	--

	by recipient - ABC Finance Ltd. - under reverse charge (RCM). ^{75]}		
6.	Security services provided to XYZ Ltd., a registered person [Since such services are being provided by a non-body corporate to a registered person, tax on the same is payable by recipient - XYZ Ltd. - under reverse charge (RCM) ^{76].}	--	--
7.	Receipts from running an educational institution (including receipts for residential dwelling service) [Services provided by an educational institution and services by way of renting of residential dwelling for use as residence are exempt.]	--	--
8.	Renting of motor vehicle service [Since services of renting of motor vehicle including cost of fuel with tax payable @ 2.5% CGST/SGST is being provided by a non-body corporate to a body corporate, tax on the same is payable by recipient – NPS Ltd. – under RCM ^{77].}	--	--
	Total GST liability	5,850	5,850

⁷⁵ Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST.

⁷⁶ Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.

⁷⁷ Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.

14.

S. No.	Particulars	Taxability
(i)	Transportation of students and staff of deemed university [Taxable since transportation services provided to an educational institution are exempt only if such institution provides pre-school education or education up to higher secondary school or equivalent.]	Taxable
(ii)	Catering services provided to "Rank CBSE School" [Catering services provided to an educational institution providing pre-school education or education up to higher secondary school or equivalent are exempt.]	Exempt
(iii)	Security services to "Win CBSE School" for its annual sports day held at SAI Sports complex [Security services provided to an educational institution providing pre-school education or education up to higher secondary school are exempt provided such services are performed in the premises of such institution. However, in this case, security services are being provided outside the school campus, and hence the same are taxable.]	Taxable
(iv)	Supply of online periodical science journal to school for its higher secondary students [Taxable since educational institutions providing service by way of pre-school education and education upto higher secondary school or equivalent are not eligible for exemption in respect of supply of online educational journals.]	Taxable
(v)	Services in relation to placement of students, to Government recognized vocational training college [Taxable since only services related to admission and conducting exams are exempt for vocational educational institutions.]	Taxable

TIME OF SUPPLY



The section numbers referred to in the Chapter pertain to the CGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After reading this Chapter, you will be able to

- ❑ identify the point in time when the liability to pay GST arises -
 - on supply of goods or services where GST is payable under forward charge
 - on supply of goods or services where GST is payable under reverse charge
 - on supply of vouchers exchangeable for goods and services
 - on supply of goods and services in residual cases
 - in case of enhancement of value of supply on account of interest, late fee/penalty paid for delay in payment of consideration
- ❑ pinpoint the applicable rate of GST in case there is a change in rate of GST in respect of supply of goods or services
- ❑ apply the concepts relating to time of supply of goods and/or services in problem solving

1. INTRODUCTION

GST is payable on supply of goods or services. A supply consists of elements that can be separated in time, like purchase order / agreement, despatch (of goods), delivery (of goods) or provision or performance of service, entry in the records, payment, and entry of the payment in the records or deposit in the bank.

So, the question that arises is - at what point of time in the aforesaid transaction, the GST becomes payable? Does it become payable when an agreement to supply goods or services is made, or when the goods are shipped or the services are provided, or when the invoice is issued or when payment is made? What if the goods are shipped over a period of time? What if the service is provided over a period of time?



***Point in time
when the liability
to pay tax arises***

Provisions relating to '**time of supply**' provide answers to all such and other questions that arise with respect to the time when the liability to pay CGST and SGST/UTGST (intra-State supply) or IGST (inter-State supply) arises. In other words, time of supply indicates the point in time when the liability to pay tax arises. It is important to note here that though the liability to pay tax arises at the time of supply, the same can be paid to the Government by the due dates prescribed with reference to the said 'time of supply'. For instance, if time of supply of a given supply is 25th May, the tax leviable thereon would be payable latest by 20th June, which is the due date prescribed in the CGST Act for suppliers filing GST return on monthly basis.¹

The CGST Act provides separate provisions for time of supply for goods and services vide sections 12 and 13 respectively. Section 14 provides for the method

¹Provisions relating to due date for payment of tax have been discussed in Chapter 11: Payment of Tax in Module 2 of this Study Material.

of determining the time of supply in case there is a change in the rate of tax on supply of goods or services. Sections 12 and 13 employ provisions of section 31 relating to issue of tax invoice as a reference point. Therefore, it will be useful to read this Chapter in conjunction with the provisions relating to tax invoice discussed in detail in *Chapter 9: Tax Invoice, Credit and Debit Notes in Module 2 of this Study Material*.

Events like issuing of invoices, receipt of payment, provision of service, receipt of services as recorded in books of account need to be analysed to determine the time of supply when the tax on supply is payable under forward charge. When the tax on supply is payable under reverse charge, events like date of receipt of goods or services, date of making payment, date of issue of invoice etc. need to be analysed to determine the time of supply. The provisions relating to time of supply essentially fix the tax collection event to the earliest possible time.

In the subsequent pages of this Chapter, sections 12, 13 and 14 are extracted, followed by their analysis, to understand how to determine the time of supply of goods and services respectively. When studying the statutory provisions, the definitions (extracted first) must also be referred to simultaneously, so as to understand the precise meaning of the terms used.

Provisions of time of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

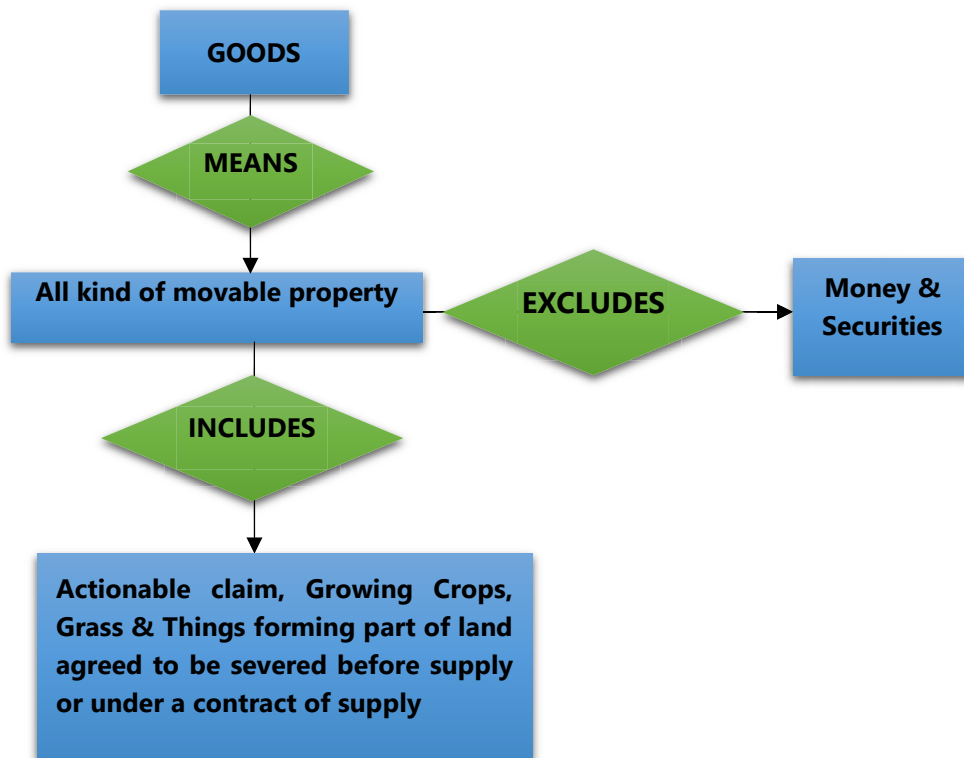


2. RELEVANT DEFINITIONS

- ❖ **Associated enterprises** shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961 [Section 2(12)].

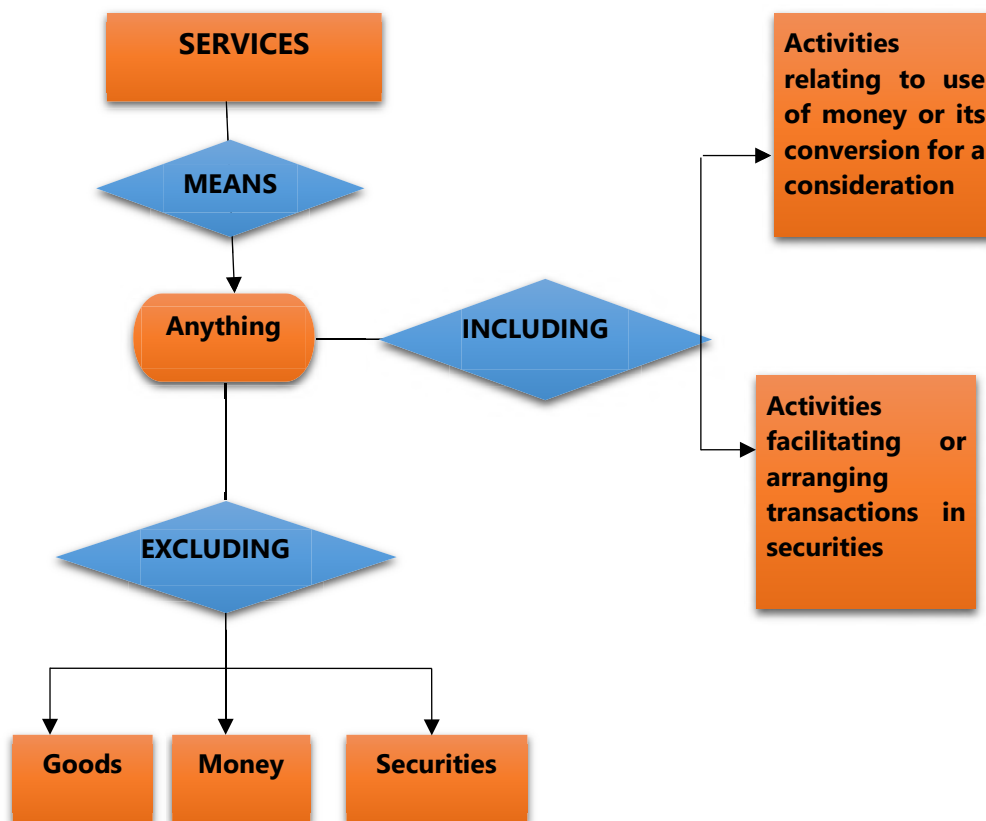
Broadly, an associated enterprise in relation to another enterprise, means an enterprise which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise. *[The detailed definition of associated enterprise may be referred to from Chapter 24: Transfer Pricing and other provisions to check avoidance of tax in the Study Material of Paper 4: Direct Tax Laws and International Taxation.]*

- ❖ **Document** includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000 [Section 2(41)].
- ❖ **Invoice** or **tax invoice** means the tax invoice referred to in section 31 [Section 2(66)].
- ❖ **Goods** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply [Section 2(52)].

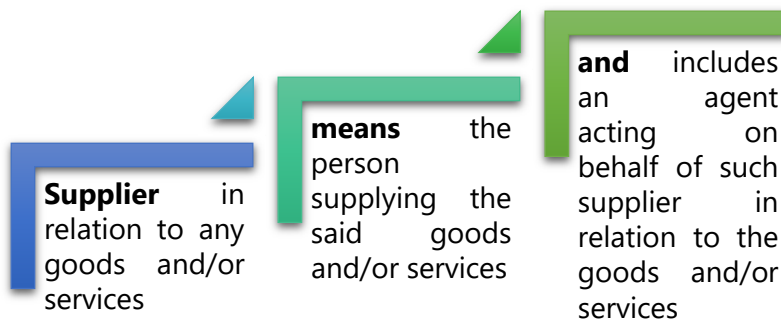


- ❖ **Services** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation—For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities [Section 2(102)].



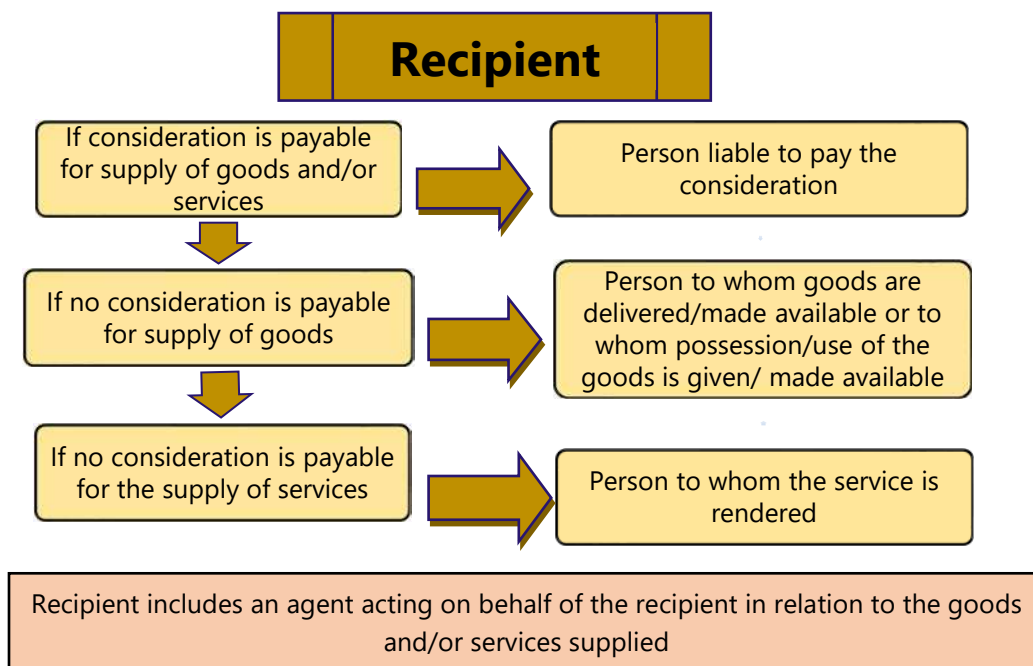
- ❖ **Prescribed** means prescribed by rules made under this Act on the recommendations of the Council [Section 2(87)].
- ❖ **Reverse charge** means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act [Section 2(98)].
- ❖ **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].



❖ **Recipient** of supply of goods or services or both, means—

- where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].



- ❖ **Voucher** means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument [Section 2(118)].



3. TIME OF SUPPLY OF GOODS [SECTION 12]

 STATUTORY PROVISIONS		
Section 12	<i>Time of supply of goods</i>	
Sub-section	Clause	<i>Particulars</i>
(1)		<i>The liability to pay tax on goods shall arise at the time of supply as determined in terms of the provisions of this section.</i>
(2)		<i>The time of supply of goods shall be the earlier of the following dates, namely:-</i>
	(a)	<i>the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or</i>
	(b)	<i>the date on which the supplier receives the payment with respect to the supply²:</i>
		<i>Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount</i>



² Practically, in case of goods, the date of receipt of payment by the supplier is no longer a criterion for determination of time of supply for payment of tax. Refer the 'Analysis' of section 12 given in the ensuing pages for detailed discussion in this regard.

	<i>indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.</i>						
	<i>Explanation 1. For the purposes of clauses (a) and (b), the "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.</i>						
	<i>Explanation 2. For the purpose of clause (b), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.</i>						
(3)	<i>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 earliest of the following dates, namely:</i> <table data-bbox="394 894 1280 1290"> <tr> <td data-bbox="394 894 513 971">(a)</td><td data-bbox="513 894 1280 971"><i>the date of the receipt of the goods, or</i></td></tr> <tr> <td data-bbox="394 971 513 1126">(b)</td><td data-bbox="513 971 1280 1126"><i>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</i></td></tr> <tr> <td data-bbox="394 1126 513 1290">(c)</td><td data-bbox="513 1126 1280 1290"><i>the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:</i></td></tr> </table> <i>Provided that where it is not possible to determine the time of supply under clause (a), (b), or (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.</i>	(a)	<i>the date of the receipt of the goods, or</i>	(b)	<i>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</i>	(c)	<i>the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:</i>
(a)	<i>the date of the receipt of the goods, or</i>						
(b)	<i>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</i>						
(c)	<i>the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:</i>						
(4)	<i>In case of supply of vouchers by a supplier, the time of supply shall be –</i> <table data-bbox="394 1541 1280 1649"> <tr> <td data-bbox="394 1541 513 1649">(a)</td><td data-bbox="513 1541 1280 1649"><i>the date of issue of voucher, if the supply is identifiable at that point; or</i></td></tr> </table>	(a)	<i>the date of issue of voucher, if the supply is identifiable at that point; or</i>				
(a)	<i>the date of issue of voucher, if the supply is identifiable at that point; or</i>						

	(b)	<i>the date of redemption of voucher, in all other cases.</i>
(5)	<i>Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—</i>	
	(a)	<i>in a case where a periodical return has to be filed, be the date on which such return is to be filed; or</i>
	(b)	<i>in any other case, be the date on which the tax is paid.</i>
(6)	<i>The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.</i>	
Section 31 (Relevant Extract)	<i>Tax invoice (to the extent relevant to the time of supply of goods)</i>	
(1)	<i>A registered person supplying taxable goods shall, before or at the time of,—</i>	
	(a)	<i>removal of goods for supply to the recipient, where the supply involves movement of goods; or</i>
	(b)	<i>delivery of goods or making available thereof to the recipient, in any other case,</i>
	<i>issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:</i>	
	<i>Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.</i>	

(4)	<i>In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.</i>
(7)	<i>Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.</i>



Section 12 must be read with section 31, which prescribes in detail the date on which tax invoice for a supply of goods must be issued in various situations.



ANALYSIS

Section 12 provides for the determination of time of supply in the following situations:

- ➔ Supply of goods under forward charge;
- ➔ Supply of goods under reverse charge;
- ➔ Supply of vouchers that can be used to pay for goods;
- ➔ Residual cases
- ➔ Addition to value of supply of goods by way of interest or late fee or penalty for delayed payment.

We consider below how the time of supply is determined in each of these situations.

(i) Time of supply of goods under forward charge [Section 12(2) read with section 31]

As per section 12(2), the time of supply of goods that are taxable under forward charge, is the earlier of the following two dates:

- Date of issue of invoice by the supplier or the last date on which the invoice ought to have been issued in terms of section 31, to the extent the invoice covers the supply of goods; or
- Date of receipt of payment by the supplier, to the extent the payment covers the supply of goods.

No tax payable at the time of receipt of advance for supply of goods – Special procedure for payment of tax in case of supply of goods

In exercise of the powers conferred by section 148³, the Central Government, on the recommendation of the GST Council, has issued *Notification No. 66/2017 CT dated 15.11.2017* to specify that a registered person (excluding composition supplier) should pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31, including in the situations attracting the provisions of section 14.

In simple words, all taxpayers under forward charge (except composition suppliers) are not required to pay GST at the time of receipt of advance in relation to supply of goods. The entire GST shall become payable only when the invoice for the supply of such goods is issued or ought to have been issued. **Thus, time of supply of goods for the purpose of payment of tax is the date of issue of invoice or the last date when the invoice ought to have been issued under section 31.**



The relief of not paying GST on receipt of advance is available only in case of supply of goods and not for supply of services.

³ Section 148 provides that the Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons. The same is discussed in Chapter 24 - on Miscellaneous Provisions of Module 3 of this Study Material.

Meaning of “Date of receipt of payment”

“Date of receipt of payment” in the above situation refers to the date on which the payment is recorded in the books of account of the entity (supplier of goods) that receives the payment, or the date on which the payment is credited to the entity’s bank account, whichever is earlier.

Significance of “to the extent the invoice or payment covers the supply of goods”

Suppose a part of the consideration is paid in advance or invoice is issued for part payment, in such cases the time of supply will not cover the full supply. The supply shall be deemed to have been made only to the extent it is covered by the invoice or the part advance payment.

However, it may be noted that in case of goods (except for composition supplier), tax is payable only on the basis of issuance of invoice/last date for the purpose of issuance of invoice even if any advance or part payment has been received before the issuance of invoice/last date for the purpose of issuance of invoice.



(1) A Ltd. enters into an agreement with B Ltd. to supply 100 kg of raw material. However, A Ltd. supplies only 80 kg of raw material and issues the invoice for the same.

Here, the supply would be deemed to have been made in respect of 80 kg of raw material, i.e. to the extent covered by the invoice. Therefore, the provisions relating to time of supply will only be applicable to supply of 80 kg of raw material and not for entire 100 kg of raw material.

The provisions relating to time of supply of goods as contained in section 12 in case of forward charge read with *Notification No. 66/2017 CT dated 15.11.2017*, have been depicted by way of a diagram given at next page.

Time limit for issuance of invoice for supply of goods under section 31

Section 12(2) refers to the last date on which a supplier is required to issue the invoice under section 31. Following are the relevant provisions of section 31 in this regard:

- As per section 31(1), the invoice needs to be issued either **before** or **at the time** of removal of goods (where supply involves movement of goods) or delivery of goods/ making goods available to recipient (in any other case).
- In case of continuous supply of goods, the invoice should be issued **before** or **at the time** of issuance of periodical statement/receipt of periodical payment [Section 31(4)].

Continuous supply of goods is a supply of goods provided or agreed to be provided continuously or on recurring basis, under a contract, and for which the supplier issues an invoices to the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify [Section 2(32)].

The said term has been discussed in Chapter 9: Tax Invoice; Credit and Debit Notes in Module 2 of this Study Material.

- In case of goods sent or taken on approval for sale or return, invoice should be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier [Section 31(7)].



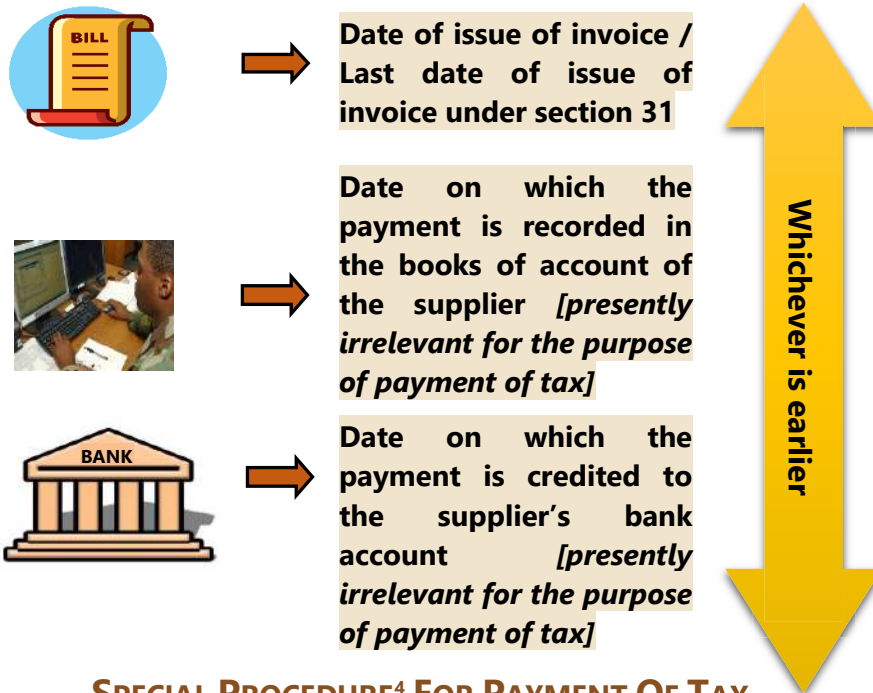
(2) B Ltd. sells goods to C Ltd. on 10th June. The invoice for the same is issued on the same day. Payment for the goods is received on 20th June.

Time of supply of goods for the purpose of payment of tax is 10th June being the date of issue of invoice in terms of section 31.

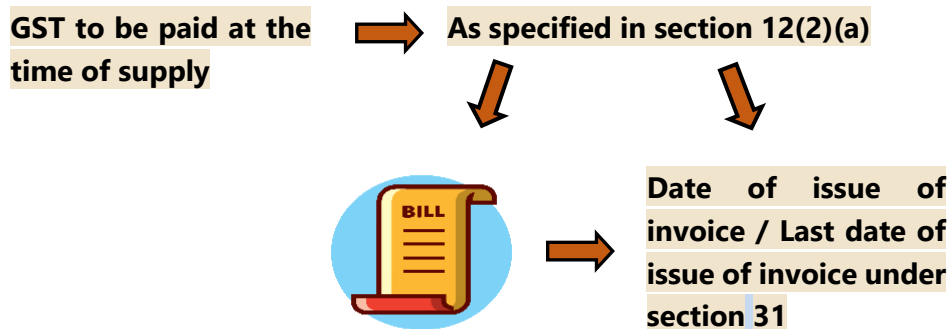
(3) B Ltd. sells goods to C Ltd. on 10th June. The invoice for the same is issued on 10th June. Payment for the goods is received on 5th June.

Time of supply of goods for the purpose of payment of tax is 10th June being the date of issue of invoice in terms of section 31.

TIME OF SUPPLY OF GOODS UNDER FORWARD CHARGE AS PER SECTION 12



SPECIAL PROCEDURE⁴ FOR PAYMENT OF TAX IN CASE OF GOODS



Effectively, in case of goods, no GST is payable at the time of receipt of advance for supply of goods.

⁴ under section 148 of the CGST Act



(4) B Ltd. sells goods to C Ltd. on 10th June. The invoice for the same is issued on 12th June. Payment for the goods is received on 20th June. Time of supply of goods for the purpose of payment of tax is 10th June being the last date on which invoice ought to have been issued in terms of section 31.



(5) B Ltd. enters into a contract with C Ltd. for supply of goods over a period of one year starting from the month of January. As per the contract, C Ltd. makes payment on 10th day of each month. B Ltd. issues the invoice on the same day. Time of supply of the goods for the purpose of payment of tax will be 10th day of each month.



(6) B Ltd. sends goods to C Ltd. for sale on approval basis on 10th January. C Ltd. approves the goods on 15th August. B Ltd. should issue the invoice on 10th July as the supply gets fructified after six months from the date of removal. Time of supply of the goods for the purpose of payment of tax is 10th July being the last date on which invoice ought to have been issued in terms of section 31.

Excess payment upto ₹ 1000: Option of taking invoice date as time of supply

In terms of the proviso to sub-section (2) of section 12, for a payment of up to ₹ 1,000 received in excess of the value of the goods invoiced, the supplier can choose to take the date of invoice issued with respect to such excess amount as the time of supply of goods for such excess value. Since GST on supply of goods is payable only on the basis of issuance of invoice⁵, this provision is practically irrelevant for supply of goods.

⁵ as per Notification No. 66/2017 CT dated 15.11.2017



If neither the date of invoice nor the date of payment is available, the time of supply is determined in terms of the residual provisions under sub-section (5) of section 12 [discussed under point (iv)].

(ii) Time of supply of goods under reverse charge [Section 12(3)]

The time of supply of goods on which GST is payable on reverse charge basis under sub-sections (3)

Goods supplied under reverse charge

and (4) of section 9 of CGST Act is determined in terms of section 12(3)(a), (b) and (c), as follows:

The time of supply for such goods will be the earliest of the following dates:

- Date on which the goods are received, or
- Date on which payment is recorded in the books of account of the recipient, or the date on which the same is debited in his bank account, whichever is earlier, or
- Date immediately following 30 days from the date of issue of invoice (or document by some other name in lieu of invoice) by the supplier.

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of goods in the books of account of the recipient of supply.

The provisions relating to time of supply of goods in case of reverse charge are depicted by way of a diagram given at a subsequent page.



The relief of not paying GST at the time of receipt of advance is available only in case of supply of goods, the tax on which is payable under forward charge. In case of reverse charge, GST is payable at the time of payment, if payment is recorded/made before receipt of goods (advance payment).



(7) B Ltd. sells goods to C Ltd. on 4th June. The goods are taxable under reverse charge. Invoice for the same is issued on 4th June. C Ltd. receives the goods on 12th June.

C Ltd. records the payment in the books of account on 30th June and the same is debited from the bank account of C Ltd. on 2nd July.

Time of supply of the goods is 12th June being the earliest of the **three** stipulated dates namely:

- date of receipt of goods,
- date of payment and
- date immediately following 30 days of issuance of invoice.



(8) B Ltd. sells goods to C Ltd. on 4th June. The goods are taxable under reverse charge. Invoice for the same is issued on 4th June. C Ltd. receives the goods on 6th July.

C Ltd. records the payment in the books of account on 21st July and the same is debited from the bank account of C Ltd. on 31st July.

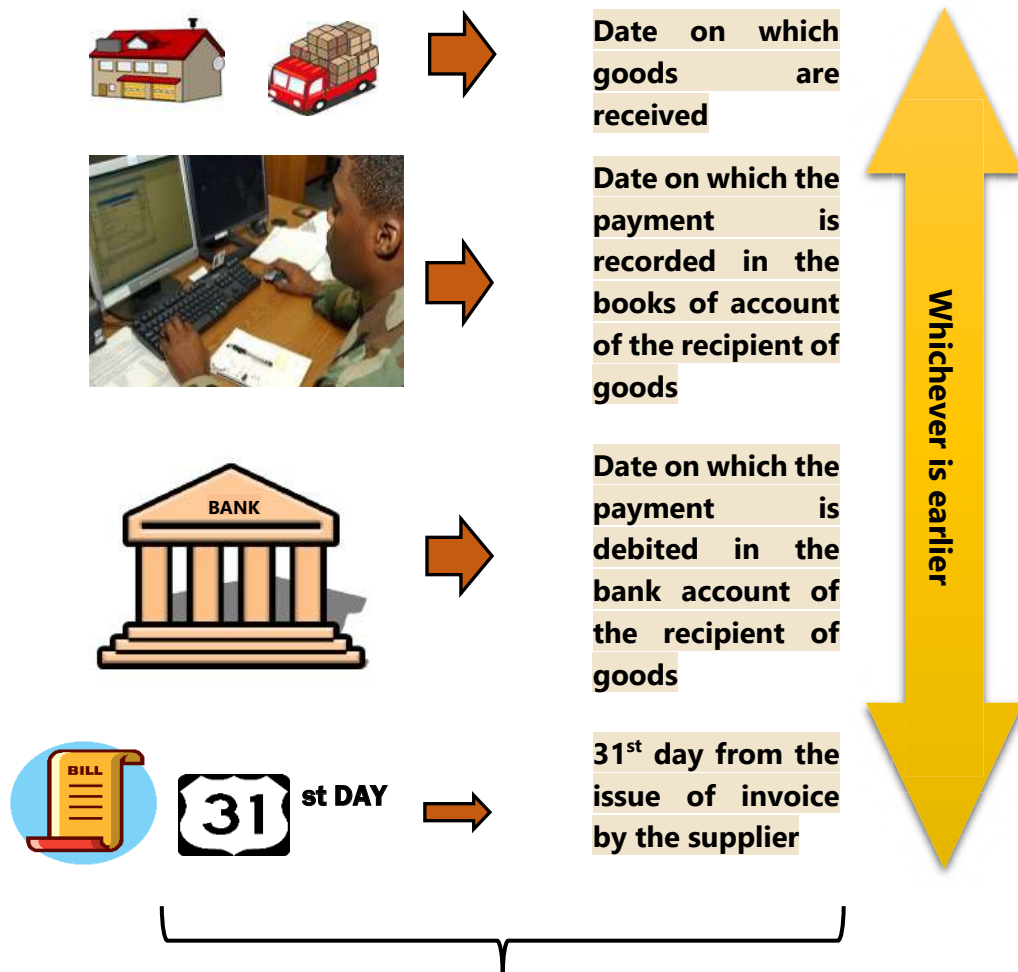
Time of supply of the goods is 5th July being the earliest of the three stipulated dates namely, date of receipt of goods, date of payment and date immediately following 30 days of issuance of invoice.



(9) B Ltd. sells goods to C Ltd. on 4th June. The goods are taxable under reverse charge. Invoice for the same is issued on 4th June. C Ltd. receives the goods on 27th June.

C Ltd. records the payment in the books of account on 10th June and the same is debited from the bank account of C Ltd. on 2nd July.

Time of supply of the goods is 10th June being the earliest of the three stipulated dates namely, date of receipt of goods, date of payment and date immediately following 30 days of issuance of invoice.

TIME OF SUPPLY OF GOODS UNDER REVERSE CHARGE

If it is not possible to determine the time of supply through above parameters,

THEN

TIME OF SUPPLY WILL BE



Date on which goods are recorded in the books of account of the recipient of supply

(iii) Time of supply of vouchers exchangeable for goods [Section 12(4)]

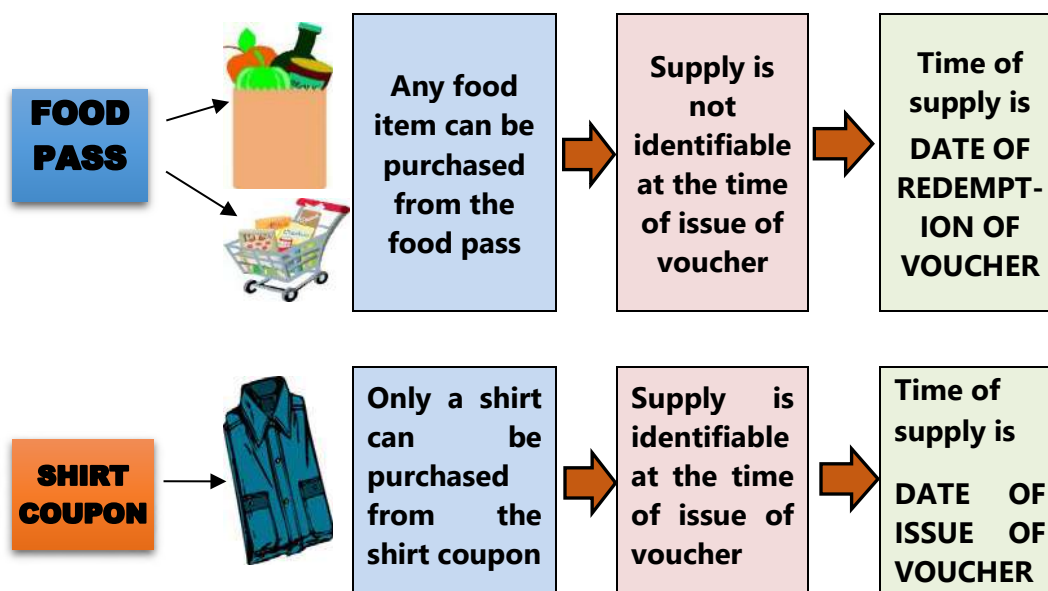
As commonly understood, vouchers are instruments that can be exchanged as payment for goods or services of the designated value. As per the definition, vouchers are instruments, that certain persons (potential suppliers) are obliged to accept as consideration, part or full, against supply of goods and/or services. The instrument or its related documentation sets out the terms and conditions of use, the goods and/or services covered, and the identity of the potential suppliers of such goods and/or services.

As per section 12(4), the time of supply of vouchers exchangeable for goods is-

- Date of issue of the voucher, if the supply that it covers is identifiable at that point, or
- Date of redemption of the voucher in other cases.

The provisions relating to time of supply of vouchers exchangeable for goods are depicted by way of diagram given below.

TIME OF SUPPLY OF VOUCHERS EXCHANGEABLE FOR GOODS





(10) A Ltd. sells food coupons to B Ltd. The company gives these coupons to its employees as part of the agreed perquisites. The coupons can be redeemed for purchase of any item of food / provisions in the outlets that are part of the program.

As the supply against which the coupon will be redeemed is not known on the date of the sale of the coupon, the time of supply of the coupon will be the date on which the employee redeems it against food / provision items of his choice.



(11) With each purchase of a large pizza during the Christmas week from Perfect Pizza, one can buy a voucher for ₹ 20 which will be redeemable till 5th Jan for a small pizza. As the supply against which the voucher will be redeemed is known on the date of issue of the vouchers, the time of supply is the date of issue of the voucher.

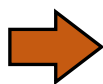
(iv) Time of supply of goods in residual cases [Section 12(5)]

If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 12, in the following manner:

- Due date for filing of the periodical return, or
- In any other case, date on which GST is paid.

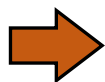
TIME OF SUPPLY OF GOODS IN RESIDUAL CASES

Where a periodical return is to be filed



TIME OF SUPPLY IS THE DATE ON WHICH RETURN IS REQUIRED TO BE FILED

OTHER CASES



TIME OF SUPPLY IS THE DATE ON WHICH GST IS PAID

(v) Time of supply in case of enhancement in value on account of interest/late fee etc. for delayed payment of consideration [Section 12(6)]

Commercially, most of the contracts of supplies stipulate payment of interest/late fee/penalty etc. in case of payment of consideration beyond the agreed time period. Such interest/late fee/penalty etc. is includible in value of taxable supply *[This concept has been*

discussed in detail in Chapter 6 - Value of Supply in this Module of the Study Material]. So, the point to consider here is that when the liability to pay GST would arise in such cases of addition in value.

Section 12(6) prescribes that time of supply in case of addition in value on account of interest/ late fee/penalty for delayed payment of consideration for goods is the date on which the supplier receives such addition in value.

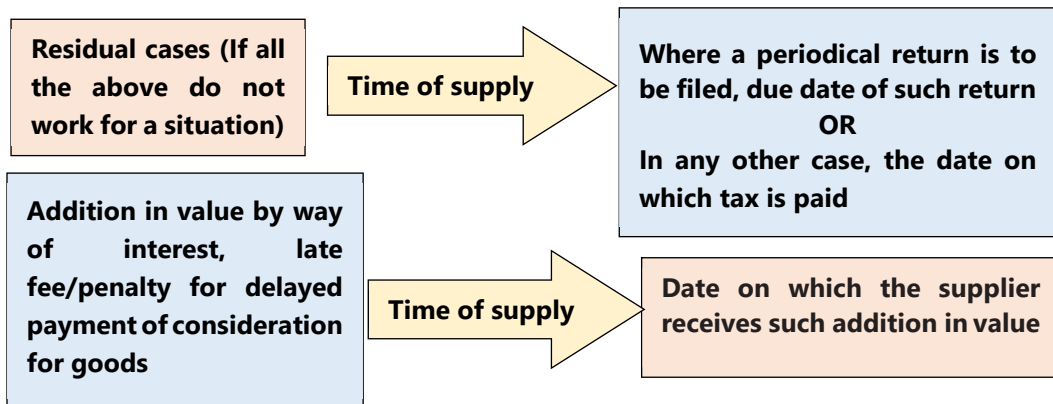
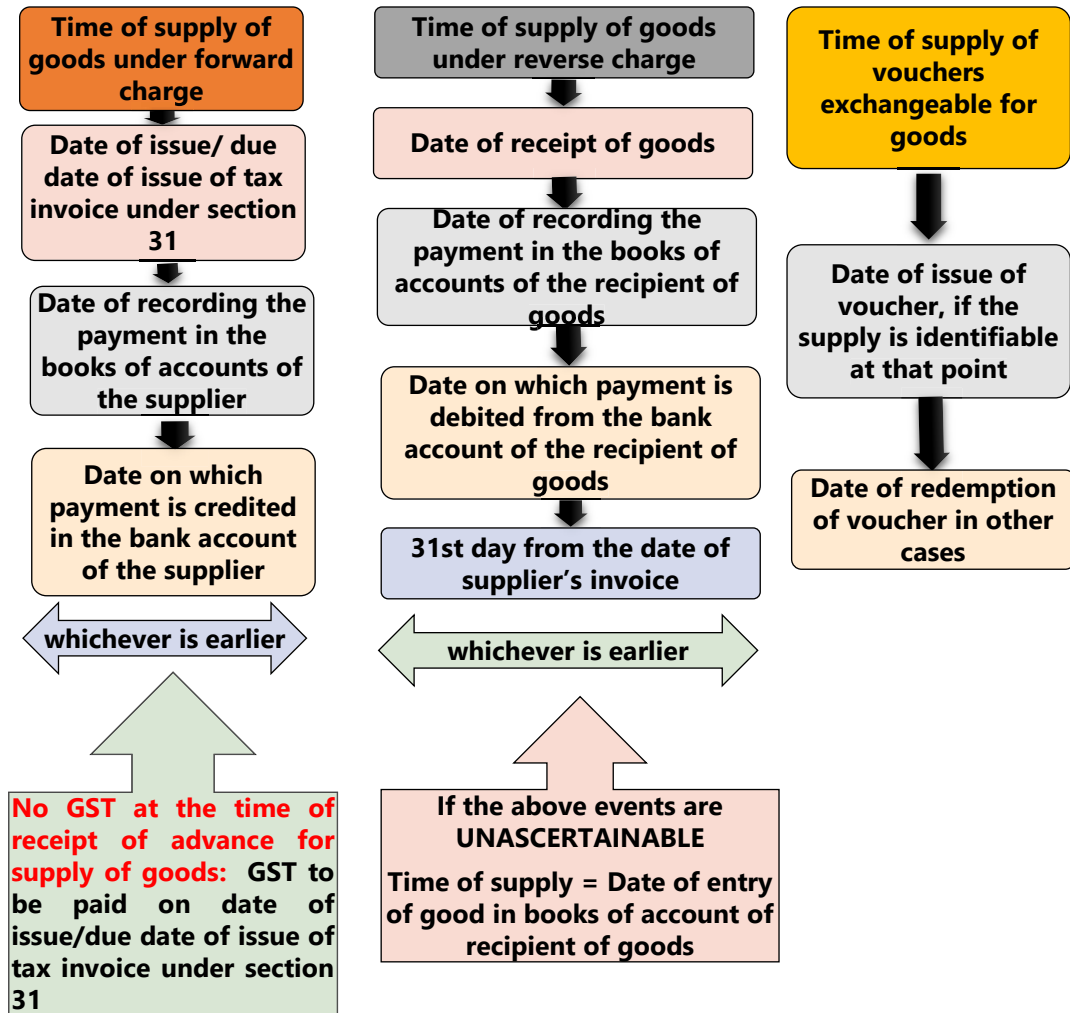


(12) A Ltd. sold goods to B Ltd. on 6th June with a condition that interest @ 2% per month will be charged if B Ltd. failed to make payment within 15 days of the delivery of the goods. Goods were delivered as also the invoice was issued on 6th June. B Ltd. paid the consideration for the goods on 6th July along with applicable interest.

Time of supply for the goods sold is the date of issue of invoice, i.e. 6th June and the time of supply for addition in value by way of interest is the date when such addition in value is received by A Ltd., i.e. 6th July.

**INTEREST OR LATE
FEE FOR DELAYED
PAYMENT OF
CONSIDERATION**

 **The provisions relating to time of supply of goods as contained in section 12 are summarised in the diagram given on next page.**





4. TIME OF SUPPLY OF SERVICES [SECTION 13]



STATUTORY PROVISIONS

Section 13	Time of supply of services	
Sub-section	Clause	Particulars
(1)		The liability to pay tax on services shall arise at the time of supply, as determined in terms of the provisions of this section.
(2)		The time of supply of services shall be the earliest of the following dates, namely:-
	(a)	the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
	(b)	the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
	(c)	the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:
	Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.	
	Explanation - For the purposes of clauses (a) and (b) -	
	(i)	the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.
	(ii)	"the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier

		<i>or the date on which the payment is credited to his bank account, whichever is earlier.</i>
(3)	<i>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-</i>	
	<i>(a)</i>	<i>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</i>
	<i>(b)</i>	<i>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:</i>
	<i>Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:</i>	
	<i>Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.</i>	
(4)	<i>In case of supply of vouchers by a supplier, the time of supply shall be-</i>	
	<i>(a)</i>	<i>the date of issue of voucher, if the supply is identifiable at that point; or</i>
	<i>(b)</i>	<i>the date of redemption of voucher, in all other cases;</i>
(5)	<i>Where it is not possible to determine the time of supply of services under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall</i>	
	<i>(a)</i>	<i>in a case where a periodical return has to be filed, be the date on which such return is to be filed; or</i>
	<i>(b)</i>	<i>in any other case, be the date on which the tax is paid.</i>
(6)	<i>The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any</i>	

	<i>consideration shall be the date on which the supplier receives such addition in value.</i>								
Section 31	<i>Tax invoice (to the extent relevant to time of supply of services)</i>								
(2)	<i>A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:</i> <i>Provided that the Government may, on the recommendations of the Council, by notification,—</i> <table> <tr> <td><i>(a)</i></td><td><i>specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;</i></td></tr> <tr> <td><i>(b)</i></td><td><i>subject to the condition mentioned therein, specify the categories of services in respect of which—</i> <table> <tr> <td><i>(i)</i></td><td><i>any other document issued in relation to the supply shall be deemed to be a tax invoice; or</i></td></tr> <tr> <td><i>(ii)</i></td><td><i>tax invoice may not be issued.</i></td></tr> </table> </td></tr> </table>	<i>(a)</i>	<i>specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;</i>	<i>(b)</i>	<i>subject to the condition mentioned therein, specify the categories of services in respect of which—</i> <table> <tr> <td><i>(i)</i></td><td><i>any other document issued in relation to the supply shall be deemed to be a tax invoice; or</i></td></tr> <tr> <td><i>(ii)</i></td><td><i>tax invoice may not be issued.</i></td></tr> </table>	<i>(i)</i>	<i>any other document issued in relation to the supply shall be deemed to be a tax invoice; or</i>	<i>(ii)</i>	<i>tax invoice may not be issued.</i>
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<i>(ii)</i>	<i>tax invoice may not be issued.</i>								
(5)	<i>Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—</i> <table> <tr> <td><i>(a)</i></td><td><i>where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;</i></td></tr> <tr> <td><i>(b)</i></td><td><i>where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;</i></td></tr> <tr> <td><i>(c)</i></td><td><i>where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.</i></td></tr> </table>	<i>(a)</i>	<i>where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;</i>	<i>(b)</i>	<i>where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;</i>	<i>(c)</i>	<i>where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.</i>		
<i>(a)</i>	<i>where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;</i>								
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<i>(c)</i>	<i>where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.</i>								
(6)	<i>In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time</i>								

when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

Chapter VI: Tax Invoice, Credit and Debit Notes of CGST Rules

Rule 47

Time limit for issuing tax invoice

The invoice referred to in rule 46, in case of taxable supply of services, shall be issued within a period of thirty days from the date of supply of service:

Provided that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty five days from the date of supply of service:

Provided further that an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.



ANALYSIS



Section 13 must be read with section 31 and rule 47 of CGST Rules, which prescribe in detail the date on which tax invoice for a supply of service must be issued in various situations.

Section 13 provides for the determination of the time of supply in the following situations:

- ➔ Supply of service taxable under forward charge,
- ➔ Supply of service taxable under reverse charge,
- ➔ Supply of vouchers that can be used to pay for services,

- ➔ Residual cases,
- ➔ Addition to value of supply of services by way of interest or late fee or penalty for delayed payment.

Below we shall consider these in detail.

(i) Time of supply of services under forward charge [Section 13(2) read with section 31 and rule 47 of CGST Rules]

For supply of service on which the supplier is liable to pay tax, the time of supply will be the earlier of the dates arrived at by methods (A) and (B), as follows:

- (A) Date of issue of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services), whichever is earlier, if the invoice is issued within the time prescribed under section 31;
- (B) Date of provision of service or date of receipt of payment (to the extent the payment covers the supply of services), whichever is earlier, if the invoice is not issued within the time prescribed under section 31,

If the above two methods [(A) and (B)] are not applicable, the time of supply will be the date on which the recipient of service shows receipt of the service in his books of account.

Meaning of “date of receipt of payment”

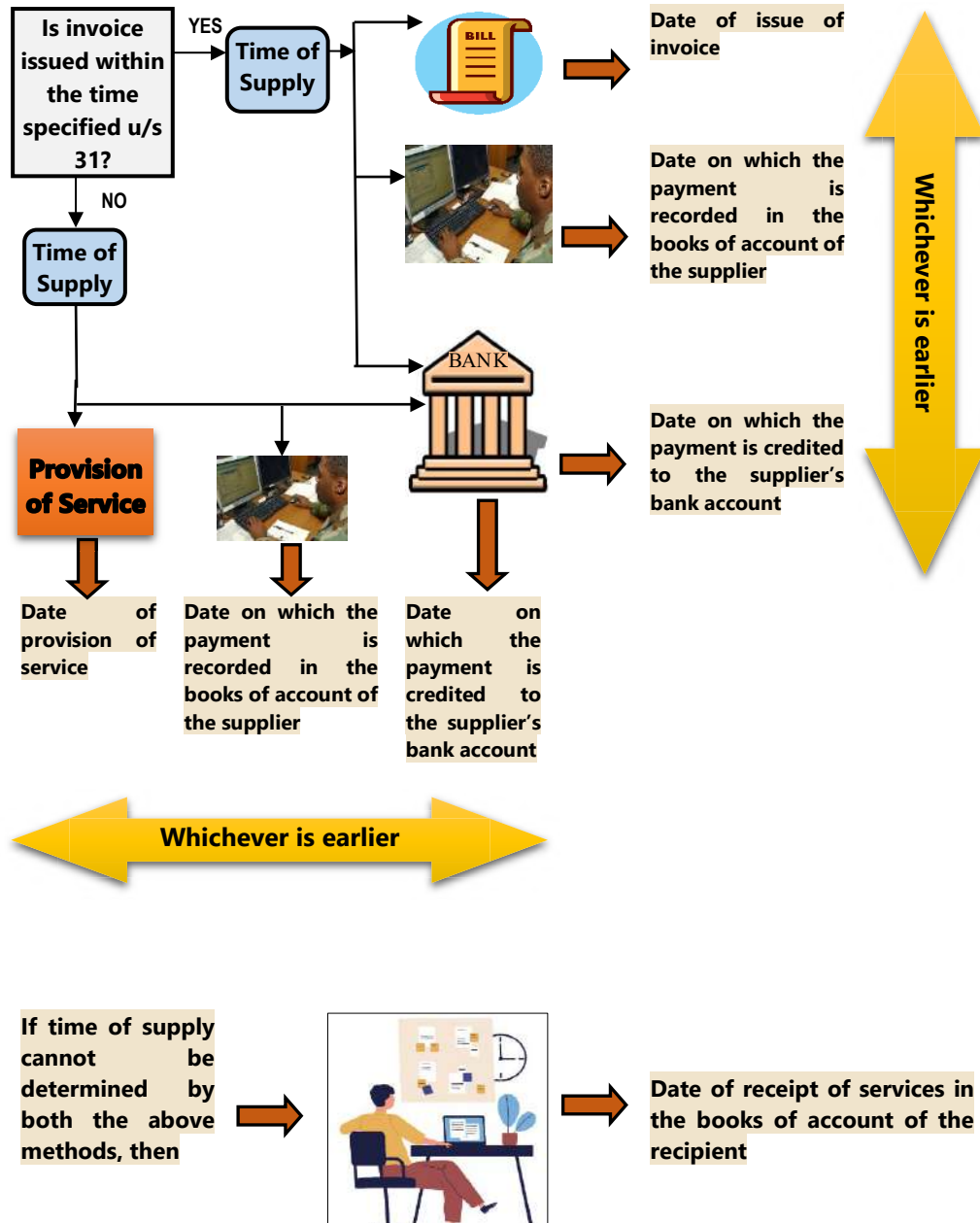
“Date of receipt of payment” in the above situation refers to the date on which the payment is recorded in the books of account of the supplier that receives the payment, or the date on which the payment is credited to the supplier’s bank account, whichever is earlier.

Significance of “to the extent the payment covers the services”

Suppose a part of the consideration is paid in advance or invoice is issued for part payment, the time of supply will not cover the full supply. The supply shall be deemed to have been made to the extent it is covered by the invoice or the part payment and time of supply shall be determined accordingly.

The provisions relating to time of supply of services in case of forward charge can be depicted by way of a diagram given hereunder.

TIME OF SUPPLY OF SERVICES UNDER FORWARD CHARGE



Time limit for issuance of invoice for supply of services under section 31

The criteria to determine the time of supply of services depend upon whether the invoice is issued within the time prescribed under section 31.

Following are the relevant provisions in this regard:

- As per section 31(2) read with rule 47, the tax invoice needs to be issued either before the provision of service or within 30 days (45 days in case of **insurance companies/ banking companies/ financial institutions including NBFCs**) from the date of supply of service.

30 days

45 days
- In case of insurance companies/ banking companies/ financial institutions including NBFCs/ telecom companies/ notified supplier of services making taxable supplies between distinct persons as specified in section 25⁶, invoice may be issued before or at the time of recording such supply in the books of account or before the expiry of the quarter during which the supply was made [Second proviso to rule 47].
- In case of continuous supply of services, the invoice should be issued either:

Continuous supply of services

 - (i) on/ before the due date of payment - where the due date of payment is ascertainable from the contract or
 - (ii) before/ at the time when the supplier of service receives the payment - where the due date of payment is not known
 - (iii) on/ before the date of completion of the milestone event - where the payment is linked to completion of an event [Section 31(5)].

⁶ Concept of distinct persons has been discussed in Chapter 1: Supply under GST in this Module of the Study Material.

Continuous supply of services are provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding 3 months with periodic payment obligations and includes supply of such services as the Government may notify [Section 2(33)]. *The said term has been discussed in Chapter 9: Tax Invoice; Credit and Debit Notes in Module 2 of this Study Material.*

- In case of cessation of supply of services before completion of supply, the invoice should be issued at the time when the supply ceases to the extent of the supply made before such cessation. [Section 31(6)].

Cessation of supply of services



(13) A Ltd. provides services to B Ltd. on 10th June. A Ltd. issues the invoice for the services on 15th June. Payment is received in the bank account of A Ltd. on 20th June and is recorded in the books of account of A Ltd. on 30th June.

Date of receipt of payment is 20th June being the earlier of two stipulated dates namely, date on which the payment is recorded in the books of account of the supplier and date on which the payment is credited to the supplier's bank account.

Since the invoice is issued within 30 days from the date of supply of service, time of supply of services is 15th June being the earlier of the two stipulated dates namely, date of issuance of invoice and date of receipt of payment.

(14) A Ltd. provides services to B Ltd. on 10th June. A Ltd. issues the invoice for the services on 7th July. Payment is received in the bank account of A Ltd. on 20th June and is recorded in the books of account of A Ltd. on 30th June.

Date of receipt of payment is 20th June being the earlier of two stipulated dates namely, date on which the payment is recorded in the books of account of the supplier and date on which the payment is credited to the supplier's bank account.

Since the invoice is issued within 30 days from the date of supply of service, time of supply of services is 20th June being the earlier of the two stipulated

dates namely, date of issuance of invoice and date of receipt of payment.

(15) A Ltd. provides services to B Ltd. on 10th June. A Ltd. issues the invoice for the services on 15th July. Payment is received in the bank account of A Ltd. on 20th June and is recorded in the books of account of A Ltd. on 30th June.

Here, invoice is not issued within 30 days of provision of service. Therefore, time of supply of services is 10th June being the earlier of the two stipulated dates namely, date of provision of service and date of receipt of payment.

Excess payment upto ₹ 1000: Option of taking invoice date as time of supply

In terms of the proviso to sub-section (2) of section 13, for a payment of up to ₹ 1,000 received in excess of the invoice value, the supplier can choose to take the date of invoice issued with respect to such excess amount as the time of supply of services in relation to this excess value. In other words, if advance upto ₹ 1,000 is received with respect to any services, GST is not payable at that stage; GST will be payable when invoice is raised. This provision facilitates the supplier to defer payment of tax on small amounts typically received by him in excess of the invoice amount.

This provision has been made as in case of monthly/periodical bills like telephone bills or electricity bills, customers often pay slightly higher amounts than bill amounts. It would have been very cumbersome to pay GST on such petty advances and adjust them later, as legally, 'receipt voucher' is required to be issued under GST when advance against services is received.



(16) A telephone company receives ₹ 5000 against an invoice of ₹ 4800. The excess amount of ₹ 200 can be adjusted against the next invoice.

The company has the option to take the date of the next invoice as the time of supply of service in relation to the amount of ₹ 200 received in excess against the earlier invoice.

(ii) Time of supply of services taxable under reverse charge [Section 13(3)]

The time of supply of service on which GST is payable on reverse charge basis (except on services received from associated enterprises located outside India) under sub-sections (3) and (4) of section 9 is determined in terms of section 13(3)(a) and (b) as follows:

The time of supply for such service will be the earlier of the following:

- Date of payment, or
- Date immediately following 60 days from the date of issue of invoice (or any other document in lieu of invoice) by the supplier.

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of the service in the books of account of the recipient of supply.

Meaning of “Date of payment”

“Date of payment” in the above situation refers to the date on which the payment is recorded in the books of account of the recipient of service, or the date on which the payment is debited from the recipient’s bank account, whichever is earlier.

Date of payment

Import of services between associated enterprises

In the case of service received from an associated enterprise⁷ located outside India, the time of supply will be the date of payment for the service, or the date of entry of the service in the books of account of the recipient, whichever is earlier.

⁷ Associated enterprises shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961. Broadly, an associated enterprise in relation to another enterprise, means an enterprise which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

The provisions relating to time of supply of services in case of reverse charge can be depicted by way of a diagram given on next page.



(17) A Ltd. provides services to B Ltd. on 10th June. The services are taxable under reverse charge. A Ltd. issues the invoice for the services on 15th June. Payment is debited from the bank account of B Ltd. on 20th June and is recorded in the books of account of B Ltd. on 30th June.

Time of supply of services is 20th June being the earliest of the three stipulated dates namely, date on which payment is recorded in the books of account of recipient of services, date on which payment is debited from the bank account of the recipient of services and date immediately following 60 days since issue of invoice.



(18) A Ltd. provides services to B Ltd. on 10th June. The services are taxable under reverse charge. A Ltd. issues the invoice for the services on 15th June. Payment is debited from the bank account of B Ltd. on 20th September and is recorded in the books of account of B Ltd. on 15th September.

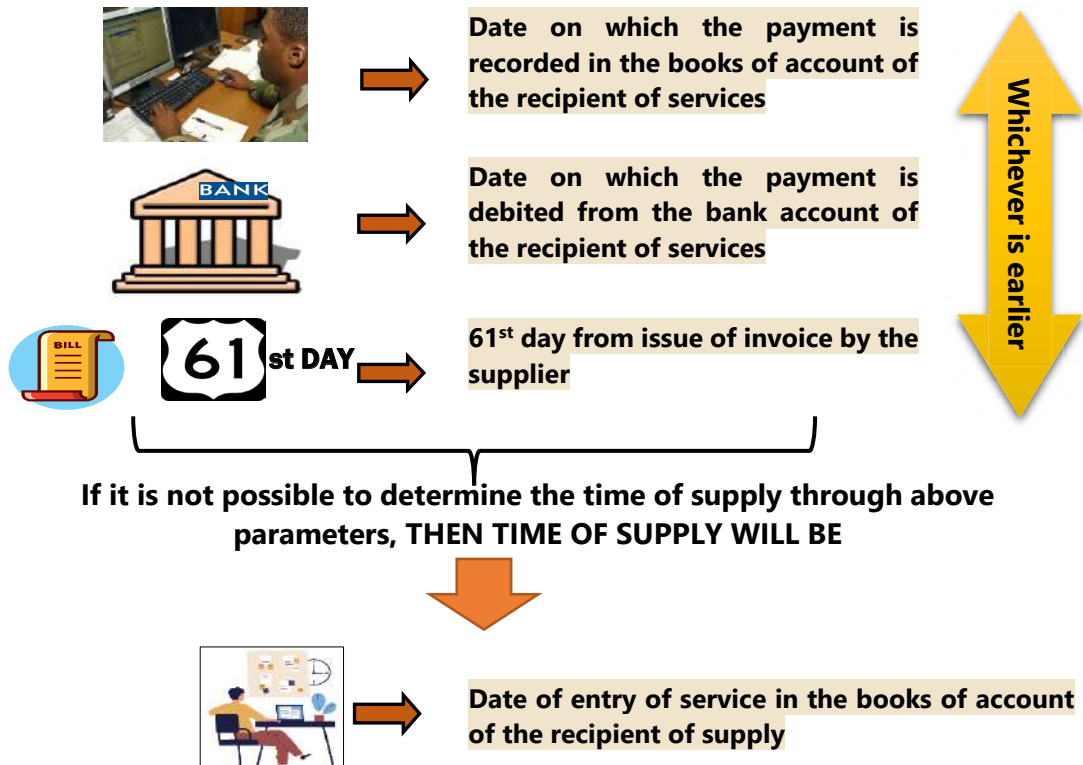
Time of supply of services is 15th August being the earliest of the three stipulated dates namely, date on which payment is recorded in the books of account of recipient of services, date on which payment is debited from the bank account of the recipient of services and date immediately following 60 days since issue of invoice.



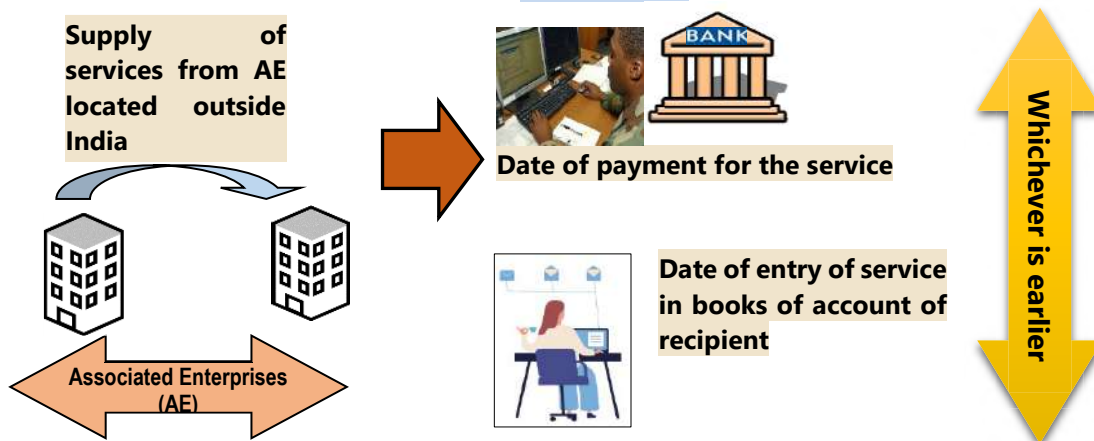
(19) A Inc., a foreign company, and B Ltd., an Indian company, are associated enterprises. A Inc. provides technical services to B Ltd. Vide an email dated June 4th, A Inc. informs B Ltd. the cost of technical services provided to it. B Ltd. transfers the payment to A Inc. on 12th August.

Time of supply of services is 12th August being the date of payment as there is no prior entry of the amount in the books of account of B Ltd.

TIME OF SUPPLY OF SERVICES UNDER REVERSE CHARGE



TIME OF SUPPLY IN CASE OF IMPORT OF SERVICES FROM ASSOCIATED ENTERPRISES



(iii) Time of supply of vouchers exchangeable for services [Section 13(4)]

The term voucher has already been explained under the Heading "Time of Supply of Goods". The time of supply of vouchers that are exchangeable for services is stipulated as:-

- the date of issue of the voucher - if the supply is identifiable at that point,
- or
- the date of redemption of the voucher - in other cases.



(20) A Ltd., a company providing hospitality services, enters into agreement with B Ltd. by which B Ltd. markets A Ltd.'s hotel rooms and sells coupons / vouchers redeemable for a discount against stay in the hotel.

As the supply against which the voucher will be redeemed is identifiable, the time of supply of the voucher will be its date of issue.

(iv) Time of supply of services in residual cases [Section 13(5)]

If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 13, in the following manner:

- Date on which periodical return for the period is required to be filed, or
- In any other case, date on which GST is paid.

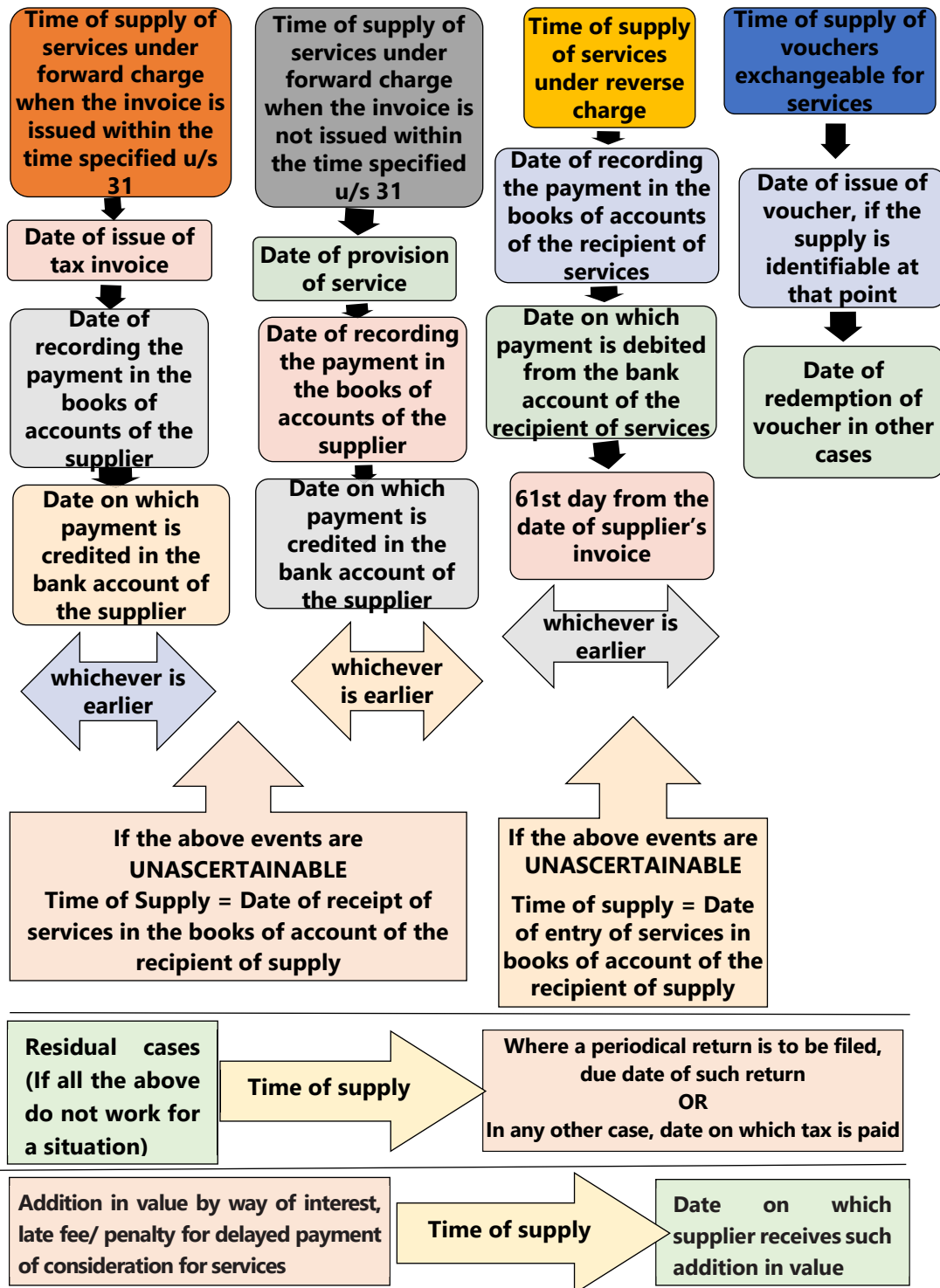
(v) Time of supply in case of enhancement of value on account of interest/late fee etc. for delayed payment of consideration [Section 13(6)]

The provisions for time of supply in case of addition in value by way of interest, late fee/penalty for delayed payment of consideration are the same for goods and services.

Section 13(6) prescribes that time of supply in case of addition in value by way of interest/ late fee/penalty for delayed payment of consideration for a service is the date on which the supplier receives such addition in value.



The provisions relating to time of supply of services as contained in section 13 are summarised in the diagram given on next page.





5. CHANGE IN RATE OF TAX IN RESPECT OF SUPPLY OF GOODS OR SERVICES [SECTION 14]



STATUTORY PROVISIONS

Section 14	Change in rate of tax in respect of supply of goods or services	
Clause	Particulars	
Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both shall be determined in the following manner, namely:—		
(a)	in case the goods or services or both have been supplied before the change in rate of tax,—	
	(i)	where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
	(ii)	where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
	(iii)	where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;
(b)	in case the goods or services or both have been supplied after the change in rate of tax,—	
	(i)	where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or

	(ii)	where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
	(iii)	where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:
Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.		
Explanation — For the purposes of this section, "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.		



ANALYSIS



When there is a change in effective rate of tax, we have to identify -

- ☐ **the date of change in rate of tax,**
- ☐ **the date of supply of goods or services,**
- ☐ **the date of issue of invoice, and**
- ☐ **the date of receipt of payment**

The time of supply is determined according to a combination of these dates.

When the rate of tax is changed before , and a transaction of supply of goods or services gets completed in all its documentary and financial aspects, the law makes specific provisions for ascertaining the time of supply of the goods or service for the purpose of payment of tax.

The three markers for identifying time of supply are actual supply, invoice and payment. These can occur in differing sequences. Their occurrence before and after the change of effective rate of tax determines the time of supply of the service.

Of the three markers (supply, invoice, payment), -

- if issue of invoice and receipt of payment are both before the change in rate, the time of supply is the date of the earlier of these two events;
- if supply and issue of invoice are before the change in rate, the date of issue of invoice is the time of supply;
- if supply and receipt of payment are before the change in rate, the date of receipt of payment is the time of supply.
- If supply and receipt of payment are after the change in rate, the date of receipt of payment is the time of supply;
- If issue of invoice and receipt of payment are after the change in rate, the date of the earlier of these two events is the time of supply;
- If supply and issue of invoice are after the change in rate, the date of issue of invoice is the time of supply.

It can be seen from a study of these provisions, that the timing of two out of the three markers (supply, invoice, payment) determines the time of supply. If any two of them occur before the change in rate of tax, the time of supply will fall in the period prior to change in rate of tax i.e., old rate will be applicable. However, if any two of them occur after the change in rate of tax, the time of supply will fall in the period after the change in rate of tax i.e., new rate will be applicable.

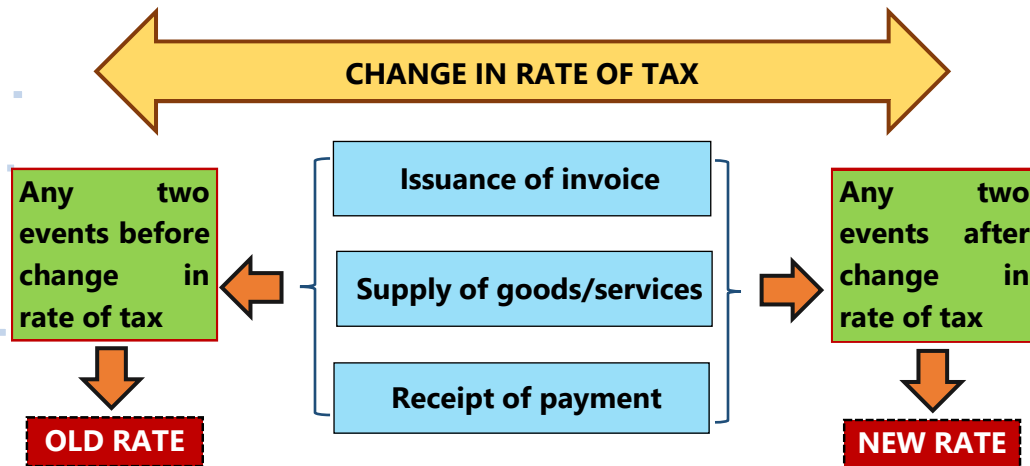
Further, it may be noted that for supply of goods by a registered person (excluding composition supplier), GST is to be paid on the outward supply of goods on the date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31 - *Notification No. 66/2017 CT dated 15.11.2017 (Refer point (i) of Analysis under Heading 3: Time of Supply of Goods [Section 12])*.

Meaning of “Date of receipt of payment”

Here, “date of receipt of payment” refers to the date on which the payment is entered in the books of accounts of the supplier, or the date on which the payment is credited in his bank account, whichever is earlier.



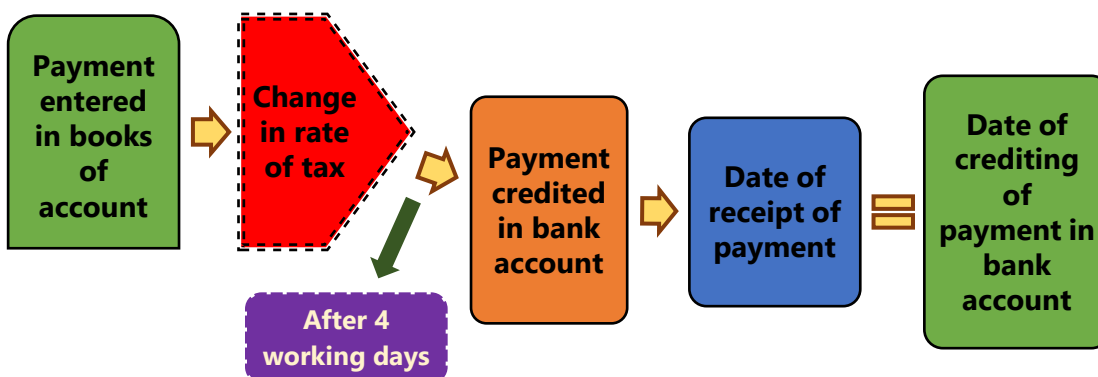
(21) Mr. A, an interior decorator, designs and renovates the office of XYZ in June. The invoice is to be raised after approval of the work. In the meantime, the rate of tax is changed on 5th July. Invoice is raised and payment made later in July. Here, the time of supply is after the change in rate of tax, though the service was completed prior to the change.



(22) A Ltd. makes custom-made precision tools for which it takes full advance with the purchase order. One such order is received on 13th April and full amount is paid with the order. The tools are manufactured and delivered on 22nd May. Invoice is also issued on the same day. In the meanwhile, rate of tax was increased on the tools of this description from 20th May onwards. Here, increased rate of tax will be applicable as goods are supplied and invoice issued after 20th May.

Date of crediting of payment in bank account to be the “date of receipt of payment” if such crediting takes place after 4 working days of change in rate of tax

Where the payment is credited in the bank account after 4 working days from the date of change in the rate of tax, the date of receipt of payment will be the date of credit in the bank account. In other words, in such a case, the date of recording the payment in the books of account will not be considered as the date of receipt of payment even though if the same precedes the date of crediting of payment in the bank account.



(23) Rate of tax is changed on 10th July. Receipt of payment is recorded in the books of account of the supplier on 8th July. The payment is credited in the supplier's bank account on 15th July. The Bank was open all days between 10th and 15th July. Here, the date of receipt of payment is 15th July.



LET US RECAPITULATE

The provisions relating to time of supply of goods and services can be better understood if the same are studied simultaneously appreciating the similarities and differences between the two. Therefore, such provisions have been summarised by way of a comparison table to help students remember and retain the provisions in a better and effective manner:

TIME OF SUPPLY WHERE TAX IS PAYABLE UNDER FORWARD CHARGE

Time of supply of goods [Section 12(2)]	Time of supply of services [Section 13(2)]
<u>Earliest of the following:</u> → Date of issue of invoice by the supplier or the last date on which he is required under section 31, to issue the invoice under	(a) Invoice issued within the time period prescribed under section 31 <u>Earliest of the following:</u>

section 31(1) with respect to the supply → Date on which the supplier receives the payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier) with respect to the supply – <i>presently irrelevant for purpose of payment of tax</i> No GST at the time of receipt of advance for supply of goods: In case of supply of goods by a registered person under forward charge (excluding composition supplier), GST is to be paid on the outward supply of goods on the date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31 [Notification No. 66/2017 CT dated 15.11.2017].	→ Date of issue of invoice by the supplier → Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier) (b) Invoice not issued within the time period prescribed under section 31 <u>Earliest of the following:</u> → Date of provision of service → Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier) (c) When the above events are unascertainable → Date on which the recipient shows the receipt of services in his books of account

TIME LIMIT FOR RAISING INVOICES

Supply of goods [Section 31(1)]	Supply of services [Section 31(2)]
Before or at the time of,- (a) removal of goods for supply to the recipient, where the supply involves movement of goods, or (b) delivery of goods or making available thereof to the recipient, in any other case	Before or after the provision of service but within 30 days [45 days in case of insurance companies/banking and financial institutions including NBFCs] from the date of supply of services

TIME OF SUPPLY WHERE TAX IS PAYABLE UNDER REVERSE CHARGE

Time of supply of goods [Section 12(3)]	Time of supply of services [Section 13(3)]
<u>Earliest of the following:</u> → Date of receipt of goods, or → Date of payment as entered in the books of account of the recipient or the date on which the payment is debited from his bank account, whichever is earlier, or → 31st day from the date of issue of invoice by the supplier	<u>Earliest of the following:</u> → Date of payment as entered in the books of account of the recipient or the date on which the payment is debited from his bank account, whichever is earlier, or → 61st day from the date of issue of invoice by the supplier
Where the above events are not ascertainable, the time of supply shall be the date of entry in the books of account of the recipient of supply	
	<u>Import of service from associated enterprise</u> Date of entry in the books of account of the recipient or the date of payment, whichever is earlier

TIME OF SUPPLY OF VOUCHERS EXCHANGEABLE FOR GOODS AND SERVICES

Supply of vouchers exchangeable for goods and services [Sections 12(4) and 13(4)]
(a) Supply of goods or services is identifiable at the time of issue of voucher → Date of issue of the voucher (b) Other cases → Date of redemption of the voucher

TIME OF SUPPLY OF GOODS AND SERVICES IN RESIDUAL CASES

Supply of goods and services in residual cases [Sections 12(5) and 13(5)] i.e where it is not possible to determine the time of supply under the other provisions

- (a)** Where a periodical return is required to be filed
 - Due date of filing such return
- (b)** Other cases
 - Date of payment of tax

TIME OF SUPPLY FOR ADDITION IN VALUE BY WAY OF INTEREST/ LATE FEE/PENALTY FOR DELAYED PAYMENT OF CONSIDERATION

Addition in value by way of interest, late fee/penalty for delayed payment of consideration

Time of Supply → Date on which the supplier receives such addition in value

CHANGE IN RATE OF TAX

In case of change in rate of tax, determination of rate of tax depends upon three events namely,-

- ☐ Date of supply of goods or services,
- ☐ Date of invoice; and
- ☐ Date of receipt of payment

If any two of the above events occur before the change of rate, the time of supply is before the change of rate. If any two of them occur after the change of rate, the time of supply is after the change of rate and the new rate becomes applicable to the supply. However, in case of supply of goods by a registered person (excluding composition supplier), GST is to be paid on the date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31 [*Notification No. 66/2017 CT dated 15.11.2017*].

Using this principle, time of supply of services, in case of change in rate of tax, can be determined as under:

Supply	Issue of invoice	Receipt of payment	Time of supply
BEFORE	BEFORE	AFTER	Date of issue of invoice
BEFORE	AFTER	BEFORE	Date of receipt of payment
BEFORE	AFTER	AFTER	Date of issue of invoice or date of receipt of payment, whichever is earlier
AFTER	AFTER	BEFORE	Date of issue of invoice
AFTER	BEFORE	AFTER	Date of receipt of payment
AFTER	BEFORE	BEFORE	Date of issue of invoice or date of receipt of payment, whichever is earlier



The provisions relating to time of supply of vouchers that are exchangeable for goods are same as that of the vouchers that are exchangeable for services. Similarly, the provisions relating to time of supply of goods falling in the residual category are same as that of the time of supply of services falling in the residual category. Also, the provisions relating to time of supply for addition in value by way of interest, late fee/penalty for delayed payment of consideration are same for goods and services.

Furthermore, concepts like meaning of "Date of receipt of payment", significance of words "to the extent the invoice or payment covers the supply" are also same for goods and services.

Students may make a note of the above points as it will help them in understanding and remembering the provisions in a better manner.



TEST YOUR KNOWLEDGE

1. *Kanchenjunga Pvt. Ltd. supplies taxable goods to Sutlej Pvt. Ltd. for ₹ 2,50,000 on 23rd June and issues the invoice on 25th June. Payment for the goods is made by Sutlej Pvt. Ltd. on 15th July.*

Determine the time of supply of goods for the purpose of payment of tax.

2. *I buy a set of modular furniture from a retail store. Invoice is issued to me and I make the payment. The furniture is to be delivered to me later in the week when a technician is available to assemble and install it. The next day the rate of tax applicable to modular furniture is revised upward, and the store sends me a supplementary invoice with the delivery note accompanying the furniture to collect the differential amount of tax.*

Is this correct on store's part? Explain.

3. *An online portal, Best Info, raises invoice for database access on 21st February on Roy & Bansal Ltd. The payment is made by Roy & Bansal Ltd. by a demand draft sent on 25th February, which is received and entered in the accounts of Best Info on 28th February. Best Info encashes the demand draft and thereafter, gives access to the database to Roy & Bansal Ltd from 3rd March. In the meanwhile, the rate of tax is changed from 1st March.*

Determine the time of supply of the service of database access by Best Info.

4. *Trust Industries Ltd. has entered into a contract with VST Ltd. to supply gas by a pipeline to VST Ltd. for a period of one year. As per the terms of the contract-*
 - (i) *VST Ltd. shall make monthly payments [Payment for a month shall be made by 7th day of the next month]*
 - (ii) *Every quarter, Trust Industries Ltd. shall issue a statement of account showing the quantity and value of goods dispatched, payments received and payment due.*
 - (iii) *The differential amount, if any, as mentioned in the statement of account shall be paid by VST Ltd.*

The details of the various events are:

August 5, September 5, October 6	Payments of ₹ 2 lakh made in each month for the quarter July-September
October 3	Statement of accounts for the quarter July – September issued by the supplier showing amount of ₹ 2,56,000 as unpaid
October 17	Balance payment of ₹ 56,000 received by supplier for the quarter July – September

Determine the time of supply of goods for the purpose of payment of tax.

5. Renudhoot Ltd. enters into a contract with XYZ Ltd. on 2nd July 2022 for a period of 2 years for construction of a new building - to be used for commercial purposes - for a total consideration of ₹ 150 lakh. As per the terms of contract, Renduhoot Ltd. is required to make payment at different stages of completion of the building namely, 50%, 75% and 100%.

Determine the time of supply using relevant details given as under:

Stage	Date of various stages	Date of issuance of invoice	Date of payment	Amount paid (₹)
Initial booking	02.07.2022	02.07.2022	02.07.2022	15 lakh
50% completion of building	15.03.2023	22.03.2023	29.03.2023	60 lakh
75% completion of building	20.06.2023	24.07.2023	23.07.2023	35 lakh
100% completion of building	30.09.2023	30.09.2023	20.09.2023	40 lakh

6. *Mint Industries Ltd., a registered supplier, imports business support services from Green Inc. of USA on 13th August. The relevant invoice for \$ 1,20,000 is raised by Green Inc on 18th August. Mint Industries Ltd. makes the payment against the said invoice as follows:*

Case I	22 nd September
Case II	27 th December

Determine time of supply in each of the aforesaid cases.

7. *Kothari Ltd., Mumbai, holds 51% of shares of Wilson Inc., a USA based company. Wilson Inc. provides business auxiliary services to Kothari Ltd. From the following details, determine the time of supply of service provided by Wilson Inc:*

Agreed consideration	US \$1,00,000
Date on which services are provided by Wilson Inc.	16 th June
Date on which invoice is issued by Wilson Inc.	19 th August
Date of debit in the books of account of Kothari Ltd.	30 th September
Date on which payment is made by Kothari Ltd.	23 rd December

8. *Basis the following information, determine the time of supply:*

S. No.	Event	Date
(1)	Commencement of provision of service	05 th June
(2)	Completion of service	10 th October
(3)	Invoice issued	20 th October
(4)	Payment received by cheque and entered in the books	15 th October
(5)	Amount credited in Bank account	18 th October
(6)	Rate changed from 12% to 18%	16 th October

Note: Assume that all the days covered in the above case are working days.

9. KLM Ltd., a publishing and printing house registered in Maharashtra, is engaged in supply of books, letter cards, envelopes, guides and reference materials. The following information is provided by the company:

Event	Printing of books	Printing of envelopes
Date of entering into printing contract	16 th March	20 th March
Date of receipt of advance	20 th March	25 th March
Date of completion of printing	10 th April	5 th April
Date of issue of invoice	15 th May	10 th April
Date of removal of books and letter heads to buyer	13 th May	7 th April
Date of receipt of balance payment	31 st May	30 th April

In respect of printing of books, content was supplied by the author. For printing of envelopes, the design and logo were supplied by the buyer.

Determine the time of suppl(ies) for the purpose of payment of tax.

10. Andes Pvt. Ltd., a registered supplier, manufactures product 'A' and 'B'. While 'A' is taxable under forward charge, 'B' is taxable under reverse charge. The following details are provided in relation to two individual supplies of products 'A' and 'B' made by the company:

S. No.	Date	Event
(i)	10 th February	Payment of ₹ 1,00,000 made by buyer for supply of 'A' to be delivered in the month of March
(ii)	13 th February	Receipt of ₹ 1,00,000 [as mentioned in point (i) above]
(iii)	17 th February	Payment of ₹ 2,00,000 made by buyer for supply of 'B' to be delivered in the month of March
(iv)	20 th February	Receipt of ₹ 2,00,000 [as mentioned in point (iii) above]

(v)	5 th March	Product 'A' manufactured and removed
(vi)	6 th March	Receipt of product 'A' [as mentioned in point (v) above] by the buyer
(vii)	10 th March	Product 'B' manufactured and removed
(viii)	23 rd March	Receipt of product 'B' [as mentioned in point (vii) above] by the buyer
(ix)	4 th March	Invoice for ₹ 2,00,000 issued for supply of 'A'
(x)	11 th March	Invoice for ₹ 4,00,000 issued for supply of 'B'
(xi)	25 th March	Payment made by the buyer of 'A'
(xii)	31 st March	Payment [as mentioned in point (xi) above] received
(xiii)	1 st April	Payment made by the buyer of 'B'
(xiv)	4 th April	Payment [as mentioned in point (xiii) above] received

Determine the time of suppl(ies) of goods for the purpose of payment of tax.



ANSWERS/HINTS

- In terms of section 12(2), the time of supply of goods is the earlier of, the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, *Notification No. 66/2017 CT dated 15.11.2017* specifies that a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

As per section 31(1), invoice for supply of goods should be issued before or at the time of removal of goods for supply to the recipient, where supply involves movement of goods. Therefore, time of supply of goods is 23rd June

being the last date on which invoice ought to have been issued and not 25th June when the invoice is actually issued.

2. No, the store is not correct in issuing supplementary invoice with revised rate of tax. The revised rate of tax is not applicable to the transaction, as the issuance of invoice as well as receipt of payment occurred before the supply. Therefore, in terms of section 14(b)(ii), the time of supply is earlier of the two events namely, issuance of invoice or receipt of payment, both of which are before the change in rate of tax, and thus, the old rate of tax remains applicable.
3. As issuance of invoice and receipt of payment (entry of the payment in Best Info's accounts) occurred before the change in rate of tax, the time of supply of service by the online portal is earlier of the date of issuance of invoice (21st February) or date of receipt of payment (28th February) i.e., 21st February. This would be so even though the service commences after the change in rate of tax [Section 14(b)(ii)].
4. As per *Notification No. 66/2017 CT dated 15.11.2017*, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31. As per section 31(4), in case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice is issued before or at the time of each such statement is issued or, as the case may be, each such payment is received.

Therefore, invoices should be issued for ₹ 2 lakh each on or before August 5, and September 5, when monthly payments of ₹ 2 lakh are received. Further, invoice should also be issued for differential payment of ₹ 2,56,000 on or before October 3, when statement of account is issued

Thus, assuming that the invoice is issued on August 5, September 5 and October 3, the time of supply for the purpose of payment of tax will be August 5 and September 5 respectively for goods valued at ₹ 2 lakh each and October 3 for the goods valued at ₹ 2,56,000.

5. As per section 13, the time of supply of services is the earlier of the dates arrived at by methods (A) and (B), as follows:

- (A) Date of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services), whichever is earlier, if the invoice is issued within the time prescribed under section 31;
- (B) Date of provision of service or date of receipt of payment (to the extent the payment covers the supply of services), whichever is earlier, if the invoice is not issued within the time prescribed under section 31

Since in the present case, the construction services are provided under a contract for a period exceeding three months with periodic payment obligations, such services would fall within the ambit of term "continuous supply of services" as defined under section 2(33).

As per section 31(5), in case of continuous supply of services, the invoice should be issued either (i) on/ before the due date of payment or (ii) before/ at the time when the supplier of service receives the payment, if the due date of payment is not known (iii) on/ before the date of completion of the milestone event when the payment is linked to completion of an event [Section 31(5)].

Accordingly, the time of supply with respect to each of the stages of completion is as follows:

Stages of completion	Time of supply
Initial booking	Since invoice is issued within the prescribed time limit, earlier of the date of issue of invoice or date of receipt of payment is the time of supply. However, date of issuance of invoice (02.07.2022) and date of receipt of payment (02.07.2022) are the same. Therefore, time of supply is 02.07.2022.
50%	Since invoice has not been issued on or before the date of 50% completion, earlier of date of provision of service (15.03.2023) or date of receipt of payment (29.03.2023), i.e. 15.03.2023 is the time of supply.
75%	Since invoice has not been issued on or before the date of 75% completion, earlier of date of provision of service

	(20.06.2023) or date of receipt of payment (23.07.2023), i.e. 20.06.2023 is the time of supply.
100%	Since invoice is issued within the prescribed time limit, earlier of the date of issue of invoice (30.09.2023) or date of receipt of payment (20.09.2023), i.e. 20.09.2023 is the time of supply.

6. In case of services supplied by any person located in a non-taxable territory to any person other than non-taxable online recipient, tax is payable under reverse charge by the person located in the taxable territory [Notification No. 10/2017 IT (R) dated 28.06.2017]. Hence, in the given case, since the business support services are provided by Green Inc (located in non-taxable territory) to Mint Ltd. (person other than non-taxable online recipient and located in taxable territory), tax is payable under reverse charge by Mint Ltd.

The time of supply of services taxable under reverse charge is the earlier of the following:

- Date of payment, or
- Date immediately following 60 days since issue of invoice (or any other document in lieu of invoice) by the supplier.

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of the service in the books of account of the recipient of supply.

In view of the aforesaid provisions, the time of supply in each of the given cases will be as under:

CASE	Time of supply
CASE I	Since Mint Ltd makes the payment within 60 days of the date of issue of invoice, the time of supply is the date of payment, i.e. 22 nd September.
CASE II	As Mint Ltd. makes the payment after 60 days from the date of invoice, time of supply is the date immediately following the said period of 60 days, i.e. 61 st day which is 18 th October.

7. Since Kothari Ltd. holds 51% shares of Wilson Inc., Kothari Ltd. and Wilson Inc. are 'associated enterprises' as per section 92A of the Income-tax Act, 1961. As per second proviso to section 13(3), in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply is the earlier of the following two dates:

Date of entry in the books of account of the recipient of supply [which is Kothari Ltd. in the present case]	30 th September
OR	OR
Date of payment [by Kothari Ltd. in the present case]	23 rd December

Thus, time of supply is 30th September.

8. The explanation to section 14 lays down that the date of receipt of payment is the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier. However, the date of receipt of payment is the date of credit in the bank account if such credit in the bank account is after 4 working days from the date of change in the rate of tax.

In the given case, the payment has been credited in the bank account within 4 working days from the date of change in the rate of tax. Therefore, the date of receipt of payment is 15th October being the date of entry in the books of account of the supplier which is earlier than the date of credit of the payment in the bank account (18th October).

As per section 14(a)(iii), in case of change in rate of tax, if the service is supplied before the change in rate of tax and the invoice is issued after the change in rate of tax but the payment is received before such change in rate of tax, the time of supply is the date of receipt of payment.

Therefore, applying the provisions of section 14(a)(iii) to the given case, the time of supply is 15th October.

9. As per *Circular No. 11/11/2017 GST dated 20.10.2017*, in case of printing of books where only content is supplied by the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore, such supplies would constitute **supply of service**.

In case of supply of printed envelopes by the printer using its physical inputs including paper to print the design, logo etc. supplied by the recipient of goods, predominant supply is supply of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore, such supplies would constitute **supply of goods**.

Accordingly, the time of supply of books and envelopes will be governed by sections 12 and 13 respectively.

In terms of section 12(2), the time of supply of goods is the earlier of, the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, *Notification No. 66/2017 CT dated 15.11.2017* specifies that a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

As per section 31(1), invoice for supply of goods should be issued before or at the time of removal of goods for supply to the recipient, where supply involves movement of goods. Therefore, in the given case, the last date by which invoice ought to have been issued is 7th April. Thus, the time of supply of envelopes for the purpose of payment of tax is 7th April.

As per section 13, the time of supply of services is the earlier of the dates arrived at by methods (A) and (B), as follows:

- (A) Date of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services), whichever is earlier, if the invoice is issued within the time prescribed under section 31;

- (B) Date of provision of service or date of receipt of payment (to the extent the payment covers the supply of services), whichever is earlier, if the invoice is not issued within the time prescribed under section 31.

Since in the given case, invoice for the services is not issued within 30 days, the time of supply for the advance received is the date of receipt of payment, i.e. 20th March being earlier than the date of provision of service. However, the time of supply for the balance payment is the date of provision of service, i.e. 10th April being earlier than the date of receipt of balance payment.

- 10.** In terms of section 12(2), the time of supply of goods is the earlier of, the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, *Notification No. 66/2017 CT dated 15.11.2017* specifies that a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

Also, it is important to note that the relief of not paying GST at the time of receipt of advance is available only in case of supply of goods, the tax on which is payable under forward charge. In case of reverse charge, GST is payable at the time of payment, if payment is recorded/made before receipt of goods (advance payment) [Section 12(3)].

Therefore, time of supply of product 'A', which is taxable under forward charge, is 4th March being the date of issue of invoice. However, time of supply of product 'B', which is taxable under reverse charge, is 17th February to the extent of ₹ 2,00,000 paid as advance being the earliest of the three stipulated dates namely, date of receipt of goods (23rd March), date of payment (17th February) and date immediately following 30 days of issuance of invoice (11th April). For balance ₹ 2,00,000, the time of supply of product 'B' is 23rd March being the earliest of the three stipulated dates namely, date of receipt of goods (23rd March), date of payment (1st April) and date immediately following 30 days of issuance of invoice (11th April).

VALUE OF SUPPLY



The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

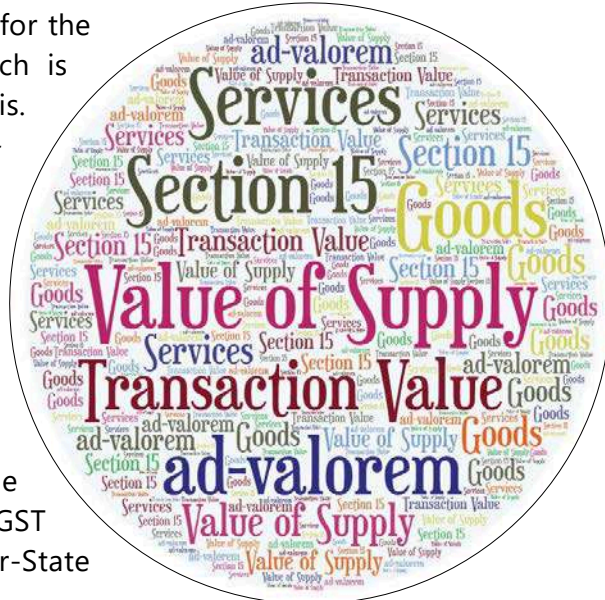
- ❑ comprehend and analyse as to what constitutes the value of a taxable supply of goods / services when the supply is made to an unrelated person and price is the sole consideration for the supply
- ❑ identify the various inclusions in/exclusions from the value of supply
- ❑ comprehend and analyse the various rules providing the mechanism to value a supply in situations where transaction value cannot be adopted and in respect of certain special supplies
- ❑ compute the value of a taxable supply in different scenarios



1. INTRODUCTION

Every fiscal statute makes provision for the determination of value as tax which is normally payable on *ad-valorem* basis. In GST also, tax is payable on *ad-valorem* basis i.e., percentage of value of the supply of goods or services.

Thus, it becomes important to know how to arrive at the value on which tax is to be paid. Provisions relating to 'value of supply' set out the mechanism to compute such value basis which CGST and SGST/UTGST (intra-State supply) and IGST (inter-State supply) should be paid.



Section 15 of the CGST Act supplemented with the rules under Chapter IV: Determination of Value of Supply of the CGST Rules, 2017 prescribes the provisions for determining the value of supply of goods and services made in different circumstances and to different persons.

Section 15 of the CGST Act provides common provisions for determining the value of supply of goods and services. Sub-section (1) of section 15 provides the mechanism for determining the value of a supply which is made between unrelated persons and when price and only the price is the sole consideration for the supply.

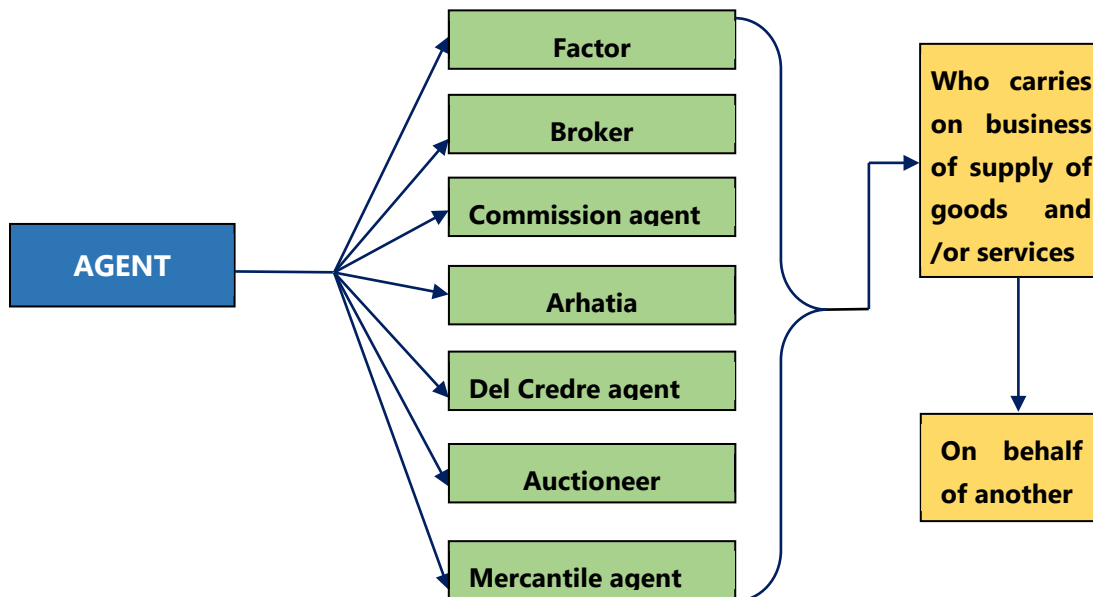
In most of the cases of regular normal trade, the invoice value (i.e. transaction value) is the taxable value, which is specified under section 15(1). However, when value cannot be determined under section 15(1); and for certain specific transactions, the value is determined using Chapter IV: Determination of Value of Supply of CGST Rules.

Provisions of value of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.



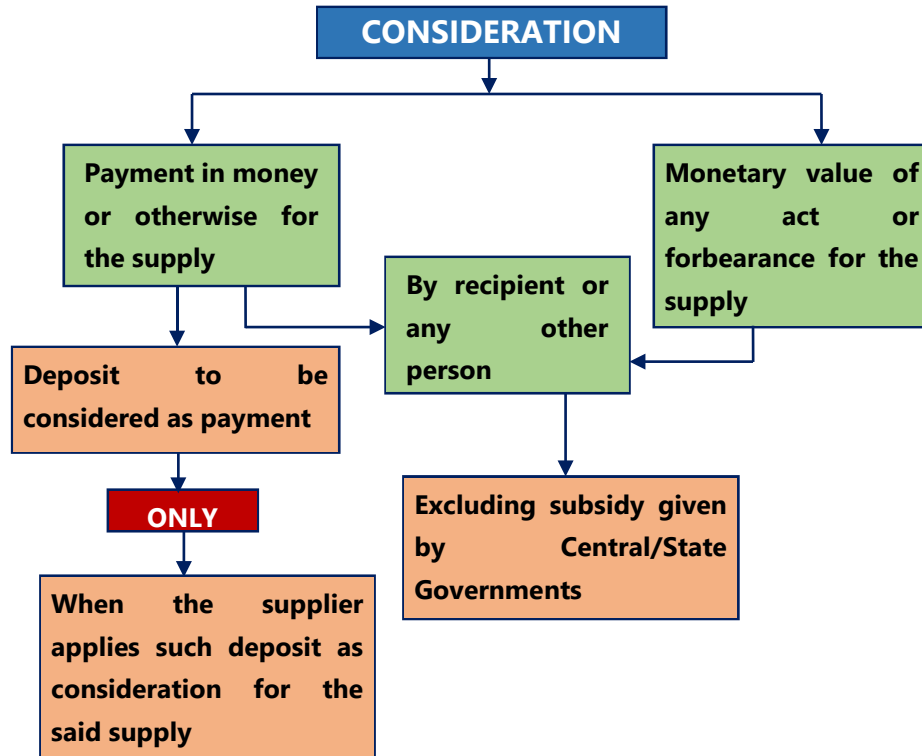
2. RELEVANT DEFINITIONS

- ❖ **Agent** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].



- ❖ **Consideration** in relation to the supply of goods or services or both includes –
 - any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
 - the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply [Section 2(31)].

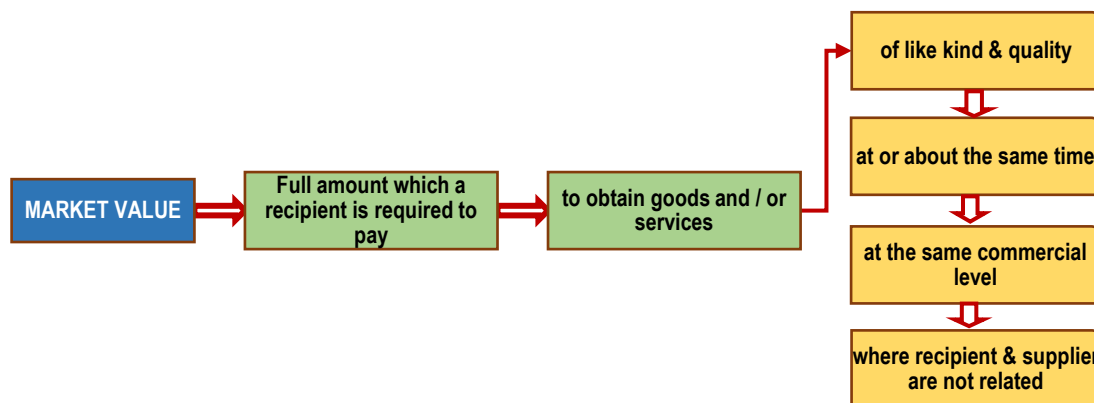


❖ **Family** means,—

- (i) the spouse and children of the person, and
- (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person [Section 2(49)].

❖ **Goods** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply [Section 2(52)].

❖ **Market value** shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related [Section 2(73)].

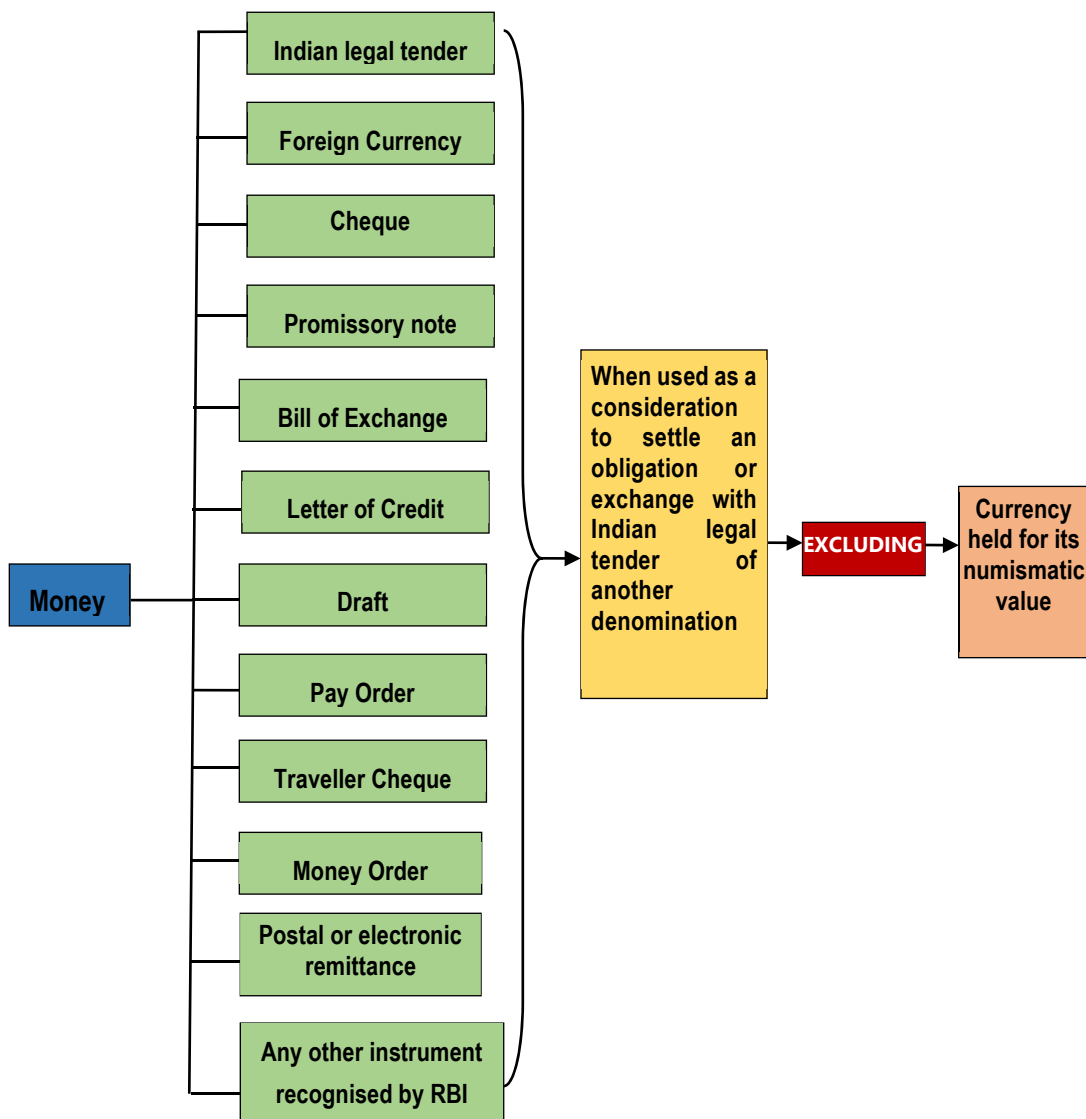


❖ **Person** includes-

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;
- (d) a firm;
- (e) a Limited Liability Partnership;
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013;
- (h) any body corporate incorporated by or under the laws of a country outside India;
- (i) a co-operative society registered under any law relating to cooperative societies;
- (j) a local authority;
- (k) Central Government or a State Government;
- (l) society as defined under the Societies Registration Act, 1860;
- (m) trust; and

(n) every artificial juridical person, not falling within any of the above [Section 2(84)].

- ❖ **Money** means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75)].



- ❖ **Prescribed** means prescribed by rules made under this Act on the recommendations of the Council [Section 2(87)].
- ❖ **Principal** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both [Section 2(88)].
- ❖ **Recipient** of supply of goods or services or both, means—
 - (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
 - (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].
- ❖ **Services** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation - For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities [Section 2(102)].
- ❖ **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].
- ❖ **Voucher** means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument [Section 2(118)].



3. VALUE OF SUPPLY [SECTION 15]

 STATUTORY PROVISIONS		
Section 15	Value of taxable supply	
Sub-section	Clause	Particulars
(1)		<i>The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.</i>
(2)		<i>The value of supply shall include-</i>
	(a)	<i>any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;</i>
	(b)	<i>any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;</i>
	(c)	<i>incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;</i>

	(d)	interest or late fee or penalty for delayed payment of any consideration for any supply; and
	(e)	subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.
	<i>Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.</i>	
(3)	The value of the supply shall not include any discount which is given	
	(a)	before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
	(b)	after the supply has been effected, if—
	(i)	such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
	(ii)	input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.
(4)	Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.	
(5)	Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.	

Explanation—For the purposes of this Act,—	
(a)	<i>persons shall be deemed to be "related persons" if—</i>
	(i) <i>such persons are officers or directors of one another's businesses;</i>
	(ii) <i>such persons are legally recognised partners in business;</i>
	(iii) <i>such persons are employer and employee;</i>
	(iv) <i>any person directly or indirectly owns, controls or holds twenty-five percent or more of the outstanding voting stock or shares of both of them;</i>
	(v) <i>one of them directly or indirectly controls the other;</i>
	(vi) <i>both of them are directly or indirectly controlled by a third person;</i>
	(vii) <i>together they directly or indirectly control a third person; or</i>
	(viii) <i>they are members of the same family;</i>
(b)	<i>the term "person" also includes legal persons;</i>
(c)	<i>persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related</i>



ANALYSIS

The CGST law has different provisions for determining the value of a supply of goods / services in the following situations:

- A.** Supplies made solely for a price in money (monetary consideration), to unrelated persons - Valuation governed by sub-section (1) of section 15;
- B.** Supplies made solely for non-monetary consideration, or for part monetary consideration and part non-monetary consideration, or involving additional

consideration, or to related persons – Valuation governed by sub-section (4) of section 15 read with relevant rules

- C. Supplies of specified categories of goods or services – Valuation governed by sub-section (5) of section 15 read with relevant rules

A. Supplies to unrelated persons where price is the sole consideration

(i) Transaction value [Section 15(1)]

When a transaction of supply of goods / services is made

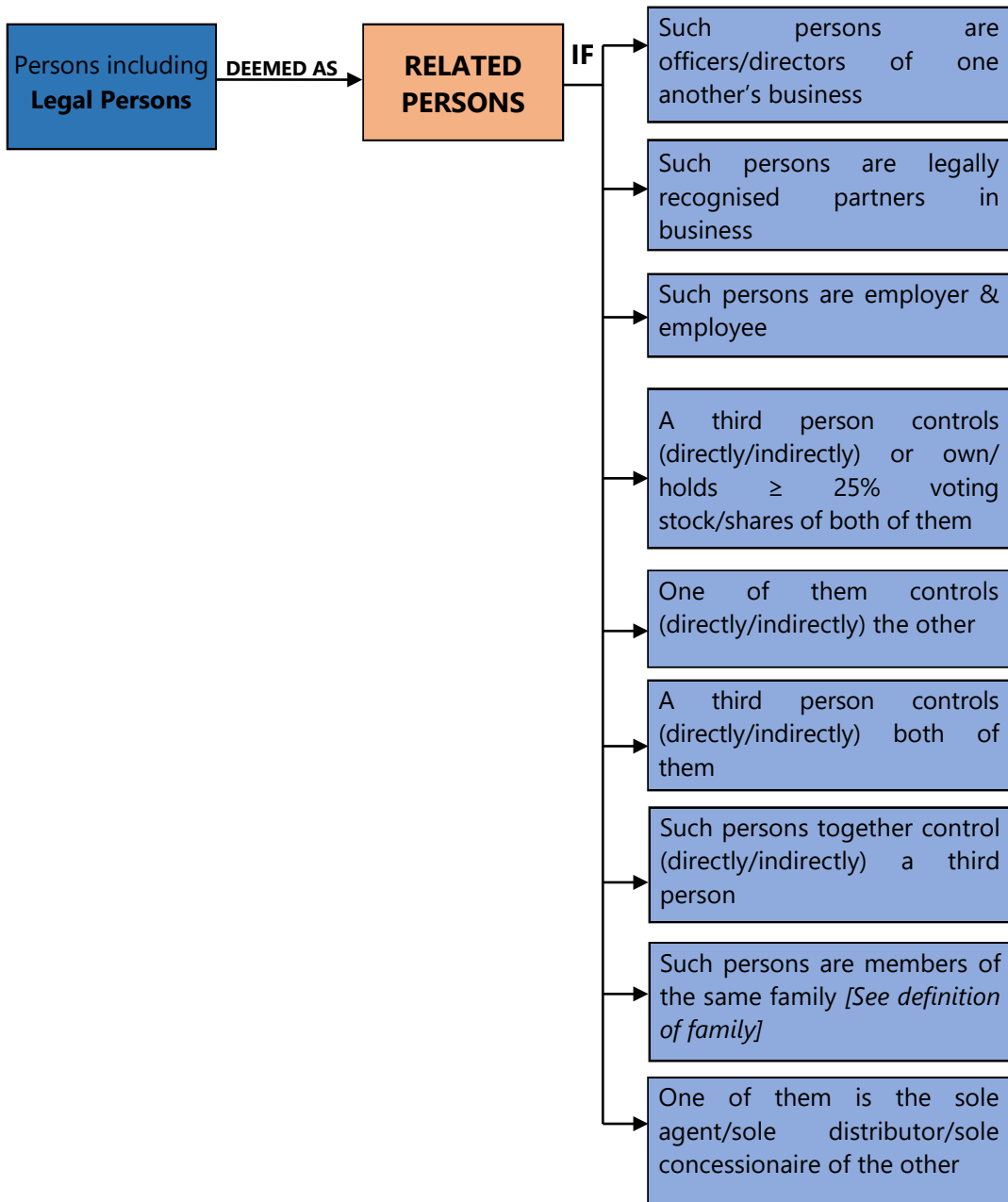
- between two persons (see definition of "person") who are not related to each other (see definition of "related person" in 'Explanation' to section 15), and
- price is the sole consideration (see definition of consideration) for the supply,

the value of the supply is the **"transaction value"**.



The definition of 'related person' under the explanation to section 15 covers various situations of control, including sole agent, sole distributor and sole concessionaire. The concept of related person has been presented by way of a diagram in ensuing pages.

Therefore, if the supply is between persons who are related in terms of the explanation to section 15, the value of the supply would not be the transaction value but would be determined through the valuation rules provided in the CGST Rules. Only when the supply is between unrelated persons and price is the sole consideration, the value thereof would be the transaction value in terms of section 15(1).

Related Persons [Explanation to section 15]

(1) Ms. Priya holds 30% shares of ABC Ltd. and 35% shares of XYZ Ltd. ABC Ltd. and XYZ Ltd. are related.

(2) Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. It can be said that Q Ltd. controls R Ltd. Thus, Q Ltd. and R Ltd. are related.

(3) Alpha Ltd. controls the composition of Board of directors of Beta Ltd. and Gama Ltd. It is said to control both Beta Ltd. and Gama Ltd. Beta Ltd. and Gama Ltd. are related persons.

(4) Brita Ltd. and Grita Ltd. together control Margarita Ltd. Brita Ltd. and Grita Ltd. are related persons.

Under section 15(1), the transaction value which is applicable between unrelated persons where price is the sole consideration for the supply is -

the price actually paid or payable for the said supply of goods or services or both.

This is the price for the specific supply that is being valued. It includes the amount already paid at the time the supply is being valued for tax, as well as the amount payable and not yet paid at that time. The word 'payable' refers to price that is agreed to be paid for the goods / services.



(5) Wholesale price for 1 MT of cement sold by X Ltd. in the ordinary course of business: ₹ 7,000.

Price of 1 MT of cement sold by X Ltd. to an unrelated customer Y : ₹ 6,700.

Value of supply made by X Ltd. to Y is ₹ 6,700 which is the price actually paid or payable and not the wholesale price.



The value of taxable supply of goods and services shall ordinarily be 'the transaction value' which is the price paid or payable, when the parties are not related and price is the sole consideration. Section 15 of the CGST Act further elaborates various inclusions and exclusions from the ambit of transaction value. For example, the transaction value shall not include refundable deposit, discount allowed subject to certain conditions.

(ii) Inclusions in value [Section 15(2)]

The value of supply includes certain elements which are enumerated and discussed below.

- ☐ Taxes, duties, cesses, fees and charges other than CGST, SGST, UTGST, GST Compensation Cess, if charged separately
- ☐ Payments to third parties → Any amount that the supplier is liable to pay in relation to supply but which has been incurred by the recipient of the supply and not already included in the price.
- ☐ Incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply
- ☐ Any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of goods /supply of services
- ☐ Interest or late fee or penalty for delayed payment of consideration
- ☐ Subsidies, directly linked to the price, other than subsidies given by the Central Government or State Governments

The above elements are discussed below.

Taxes other than GST & GST Compensation Cess [Section 15(2)(a)]

Any taxes, duties, cesses, fees and charges levied under any law for the time being in force except the CGST Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier, are includible in the value of supply. In case of inter-State supply liable to IGST, the value of supply will include taxes other than IGST and the GST Compensation Cess in terms of third proviso to section 20 of IGST Act. In effect, all the taxes, duties etc. which are not subsumed in GST form part of the taxable value for the purpose of levying GST.

For instance, if a supplier of goods pays municipal tax in relation to the goods being supplied and charges the same separately, such tax will form part of the value of supply.

TCS under Income-Tax Act, 1961 not includible in the taxable value for the purpose of GST

CBIC vide *Circular No. 76/50/2018 GST dated 31.12.2018* (amended vide corrigendum dated 7.03.2019) has clarified that for the purpose of determination of value of supply under GST, tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax. In other words, TCS under Income-Tax Act, 1961 (though other than GST) is not includible in the taxable value for the purpose of GST as it is only a modality for collection of tax.

Payments made to third parties by the recipient on behalf of the supplier in relation to the supply [Section 15(2)(b)]

A supplier may need to incur various expenses in order to make a particular supply of goods / services. In the normal course, he would pay these amounts and they would form part of the price that he charges from the customer (recipient of supply). However, even if the customer makes direct payment of some of such liabilities (of the supplier) to the third parties, and the supplier does not include this amount in his bill, it would still form part of the value of the supply.

A point to note here is that amount paid by the recipient to third parties will be added to the value under this clause only when the supplier is under contractual liability to make payment to such third parties and the said payment is in relation to such supply.



(6) Grand Biz contracts with ABC Co. to conduct a dealers' meet. In furtherance of this, Grand Biz contracts with vendors to deliver goods / services, like water, soft drinks, audio system, projector, catering, flowers etc. at the venue on the stipulated dates at the stipulated prices. Grand Biz is liable to make these payments as contracted.

The soft drinks supplier wants payment upon delivery; ABC Co. agrees to pay the bill raised by the soft drinks vendor on Grand Biz on receiving the crates of soft drinks. This amount is not billed by Grand Biz to ABC Co. However, it would be added to the value of supply provided by Grand Biz to ABC Co. for payment of GST.

Valuation of supply made by a component manufacturer using moulds and dies owned by Original Equipment Manufacturers (OEM) sent free of cost (FOC) to him

Circular No. 47/21/2018 GST dated 08.06.2018 has clarified that while calculating the value of the supply made by the component manufacturer using moulds and dies owned by Original Equipment Manufacturers (OEM) sent free of cost (FOC) to him, the value of such moulds and dies shall not be added to the value of supply made by him because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b).

However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components¹.



This clarification affirms the view that if an element or a constituent of a supply, which the supplier is responsible to incur/provide for the same, is actually paid for or made by the recipient, the value of such element or constituent of the supply is to be added to the value of the supply being charged by the supplier. If, however, the supplier is not responsible to incur/provide for such element or constituent and the recipient provides for the same, the respective value is not to be added to the value of supply.

Incidental expenses [Section 15(2)(c)]

Incidental expenses, such as, commission and packing charged by the supplier or anything else done by the supplier in relation to the supply at the time of or before delivery of goods or supply of services must be added to value.

¹ Aspects relating to reversal of input tax credit on moulds and dies supplied free of cost, which have been clarified in this Circular, have been included in Chapter 7: Input Tax Credit in Module 2 of this Study Material.



(7) Commission: This may be paid to an agent and recovered from the buyer of the goods/services; this is part of the value of the supply.

(8) Packing, if charged by the supplier to the recipient, is similarly part of the value of the supply.

(9) Inspection or certification charges is another element that will be added to the value, if incurred before/at the time of supply and billed to the recipient of supply.

(10) Installation and testing charges at the recipient's site will also be added, being an amount charged for something done by the supplier in respect of the supply at the time of making the supply.

(11) Weighment charges, loading charges, designing charges etc. incurred before/at the time of supply will be added to the value, if billed to the recipient of supply.

Outward freight, transit insurance

Where the supplier agrees to deliver the goods at the buyer's premises and arranges for transport and insurance the contract of supply becomes a composite supply; the principal supply being the supply of goods. Therefore, outward freight and transit insurance become part of the value of the composite supply and GST is payable thereon at the same rate as applicable for the relevant goods. However, if the contract for supply is on ex-factory basis where buyer pays the outward freight and insurance, the same will not be included in the value of supply of goods.

Interest, late fee or penalty for delayed payment [Section 15(2)(d)]

The value for a supply will include not only the base price but also the charges for delay in payment.



(12) A supply priced at ₹ 2,000 is made, with a credit period of 1 month for payment. Thereafter interest @ 12% is chargeable. The payment is received after the lapse of two months from the date of supply. The amount of interest @ 12% p.a. (i.e. 1% per month) on ₹ 2,000 for one month after the free credit period of one month, is ₹ 20. Such interest will be added to the value and thus, the value of supply will work out to be ₹ 2,020, assuming the interest to be exclusive of GST.



Time of supply for such interest/ late fee/ penalty is the date when such amount is received by the supplier. Further, since such charges are an addition in the value of supply, same rate of tax as applicable on the main supply of goods / service are applicable on such charges as well.

Subsidies linked with price [Section 15(2)(e)]

Subsidy is a sum of money given to keep the price of a service or commodity low. The subsidy is added to the value of supply of the supplier who receives the subsidy. It must be noted that only subsidies directly linked to the price of goods/services are added to the value. Blanket subsidy/donation received are not includible in the value. Note that if the subsidy is given by the State or Central Government, it is not to be added to the value of supply.



(13) The selling price of a notebook is ₹ 50. For notebooks sold to students in Government schools, a company uses its CSR funds to pay the seller ₹ 30, so that the students pay only ₹ 20 per notebook. The value of the notebook will be ₹ 50, as this is a non-government subsidy. If the same subsidy is given/granted by the Central Government or State Government, the value of the notebook would be ₹ 20.

Incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions considered as subsidy

Under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM- UPI transactions, Ministry of Electronics and Information Technology (MeitY) pays the acquiring banks an incentive as a percentage of value of RuPay Debit card transactions and low value BHIM-UPI transactions up to ₹ 2000. The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.

The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other

card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the Central Government in the form of incentive.

However, it is not a consideration paid by the Central Government for any service supplied by the acquiring bank to the Central Government. The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15.

It is hereby clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable².

(iii) Exclusion of discounts from value [Section 15(3)]

Discounts are a common phenomenon for businesses. Numerous kinds of discounts are given by the suppliers to their customers namely, trade discounts, cash discounts, quantity/volume/performance discounts etc. Such discounts are reduced from the sale price of the supply. Since, the value of a taxable supply is the transaction value, GST is leviable on the value after deducting the discounts.

However, not all discounts offered by the supplier to their customers are allowed as a deduction from the value. Only such discounts which satisfy the conditions prescribed in section 15(3), are allowed as deduction from the value. The essence of the conditions prescribed in section 15(3) is that the price as established at the time of supply should form the basis of value. The discounts which do not fulfill the conditions specified in section 15(3) are not deductible from the value, i.e. GST in such a case is levied on the gross value of the supply without considering the discount.

Discounts that are allowed as deduction from the value are as follows:

- (a) Discounts given before or at the time of supply and shown in the tax invoice** – Example for such discount can be discounts that are

² Circular No. 190/02/2023 GST dated 13.01.2023

offered for making the payment at the time of supply itself. Such discounts are thus, recorded in the invoice and thus, GST is charged on the gross value less discount duly recorded in the invoice.

- (b) Post supply discounts-** It is not always commercially feasible to determine all discounts before or at the time of supply or record them in the invoice. For instance, cash discount given for making the payment within a stipulated time. Even though the discount is established before/at the time of supply, the supplier cannot record such discount in the invoice as he does not know if the buyer will make the payment within the stipulated time. Likewise, in case of quantity/volume/performance discount also, the supplier is not aware before/at the time of supply as to whether the buyer would purchase the requisite quantity within the stipulated time. Therefore, in this case also, the discount cannot be recorded in the invoice. In such cases, initially the GST is paid on the gross value indicated in the invoice without considering the discount. The supplier, however, passes the discount to the buyers subsequently by issuing credit notes.

Post supply discounts, i.e. the discounts that are given after supply is made are allowed as a deduction from the value of supply if the following two conditions are satisfied:

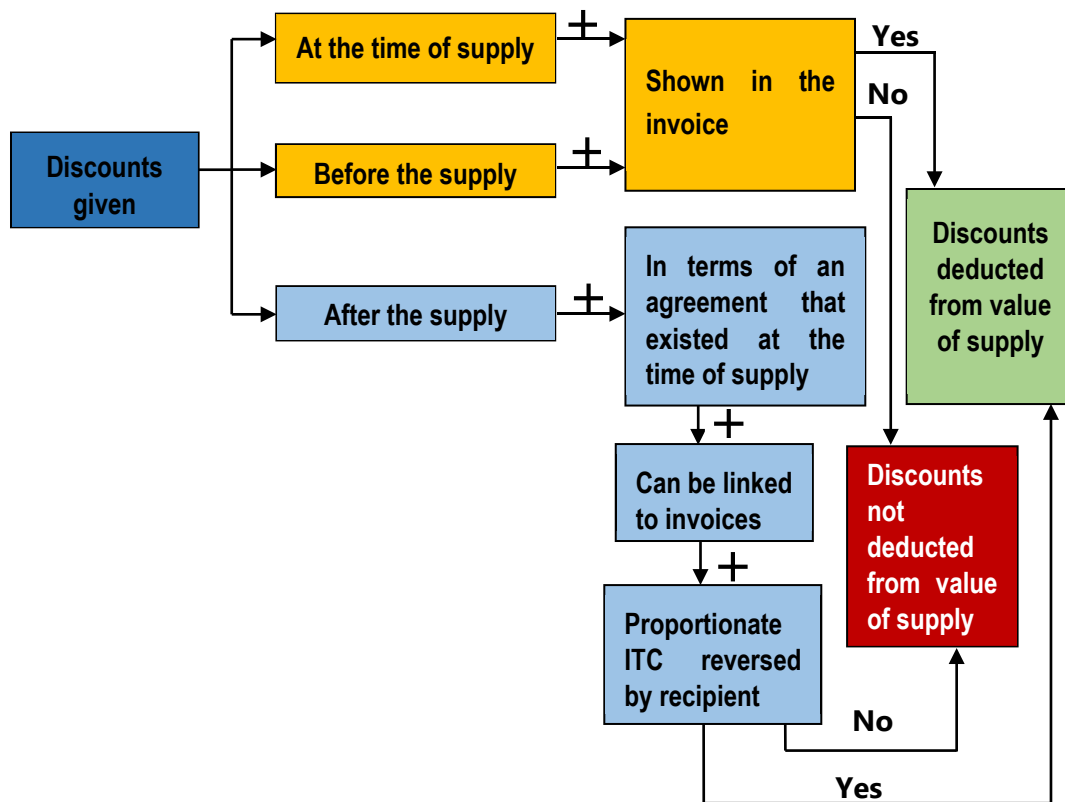
- Discount is in terms of an agreement that existed at the time of supply and can be worked out invoice-wise; and
- Proportionate input tax credit is reversed by the recipient - The buyer would have availed input tax credit of GST payable on the gross value specified in the invoice. Thus, when a credit note³ is issued to him by the supplier for the discount, the buyer will reverse the proportionate credit; consequent to which, the supplier's output tax liability will be reduced by the same amount.

If any of the above conditions are not satisfied, the GST liability of supplier cannot be reduced. The supplier, however, can issue a

³ Credit notes governed under GST law are issued under section 34. Provisions of section 34 are discussed in Chapter 9: Tax Invoice; Credit & Debit Notes in Module 2 of this Study Material.

commercial credit note⁴ for the value of discount. In such a scenario, the buyer will not be required to reverse any input tax credit.

The provisions relating to allowability of discount as a deduction from the value have been depicted by way of a diagram given in the next page.



Allowability of certain specific types of discounts offered by the suppliers as clarified vide Circular No. 92/11/2019 GST dated 07.03.2019

- (i) **Staggered discounts ('Buy more, Save more' offers):** In case of staggered discounts, rate of discount increases with increase in purchase volume. For example – One may get 10 % discount for purchases above ₹ 5,000/-, 20% discount for purchases above ₹ 10,000/-

⁴ A commercial credit note is not governed under GST law and is issued only for the value of discount/reduction in value of the supply, without any GST.

and 30% discount for purchases above ₹ 20,000/-. Such discounts are shown on the invoice itself.

Such discounts are excluded to determine the value of supply.

- (ii) **Periodic / year ending discounts/volume discounts:** These discounts are offered by the suppliers to their stockists, etc. For example- Get additional discount of 1% if you purchase 10,000 pieces in a year, get additional discount of 2% if you purchase 15,000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.

Such discounts are excluded to determine the value of supply provided they satisfy the parameters laid down in section 15(3) including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

- (iii) **Secondary discounts:** These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10,000 packets of biscuits to M/s B at ₹ 10/- per packet. Afterwards, M/s A re-values it at ₹ 9/- per packet. Subsequently, M/s A issues credit note to M/s B for ₹ 1/- per packet.

Such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in section 15(3)(b) are not satisfied.

It may be noted that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in section 15(3)(b) are not satisfied. Such credit notes do not include GST, and do not have any impact on value of supply for the purposes of GST.



Examples of discount deductible from value of supply

(14) Royal Biscuit Co. gives a discount of 30% on the list price to its distributors. Thus, for a carton of Spice biscuit, in the tax invoice the list price is mentioned as ₹ 200, on which a discount of 30% is given to arrive at

the final price of ₹ 140. The value is ₹ 140, as the discount is allowed at the time of supply and shown in the invoice.

Post supply discounts

(15) The agreement of Raju Electrical Appliances with its dealers is that purchase of rice cookers over 1,000 pieces in the Diwali month shall entitle them to discount of 5% per cooker. Therefore, the quantum of discount can be determined only at the end of Diwali month. However, since the agreement relating to discount was in existence at the time of supply, and the discount can be worked out for each invoice, such post supply discount will be allowed as a deduction from the value of supply of rice cookers.

Raju Electrical Appliances can issue credit note for discount of 5% of the value of goods along with GST and claim adjustment of excess tax paid. The dealer must reverse the proportionate input tax credit on the relevant stock to bring it in line with the reduced tax.

(16) Pink and Blue Pvt. Ltd. (PBPL) sold goods to Orange Pvt. Ltd. (OPL) on 15th January at ₹ 50,000 (exclusive of taxes and discounts) and charged ₹ 9,000 as IGST @ 18%. The terms of supply stipulated that discount @ 2% will be given to OPL if it makes the payment within one month of the supply. OPL avails the input tax credit of ₹ 9,000 in the month of January and makes the payment for the goods on 10th February. PBPL issues credit note for ₹ 1180 [₹ 1,000 for value of discount and ₹ 180 for proportionate IGST leviable thereon] to OPL on 11th February. After receiving credit note, OPL reverses the input tax credit of ₹ 180 attributable to the discount given by the PBPL. PBPL can reduce its GST liability of the month of February by ₹ 180. OPL would have paid ₹ 57,820 (₹ 50,000 + ₹ 9,000 - ₹ 1,000 - ₹ 180) to PBPL on 10th February.

Examples of discount not deductible from value of supply

(17) In the above example, if the terms of supply did not provide for discount @ 2% for payment within one month but PBPL offers such discount to OPL at the time of payment after negotiation, the discount will not be allowed as a deduction from the value. PBPL will issue a commercial credit note for only the value of discount, i.e. for ₹ 1,000. OPL will not reverse any input tax credit and PBPL will also not be able to reduce its GST liability for the month of February. In this case, OPL would pay ₹ 58,000 (₹ 50,000 + ₹ 9,000 - ₹ 1,000) to PBPL on 10th February.



(18) A company announces turnover discounts after reviewing dealer performance during the year. The discounts are based on performance slabs and are given as cash-back. As these discounts were not known at the time of supply of the goods, they will not be deducted from value of those goods. Hence, the company will not be able to adjust excess tax paid from its tax liability.

No Claim Bonus permissible as deduction under section 15(3)(a) for the purpose of calculation of value of supply of the insurance services provided by insurance company to insured

The issue which arose for clarification was whether 'No Claim Bonus' (NCB) provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured.

The insurance companies make the disclosure of the fact of availability of discount in form of NCB, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the NCB in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of NCB in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under section 15(3)(a).

Since as per section 15(3)(a), value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply, it is, therefore, clarified that NCB is a permissible deduction under said section for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured.

Accordingly, where the deduction on account of NCB is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of NCB mentioned on the invoice⁵.

⁵ Circular No. 186/18/2022 GST dated 27.12.2022

ILLUSTRATION 1

BW Ltd. manufactures tobacco products. It has provided the following particulars relating to goods sold by it to CF Ltd.

Particulars	₹
Price of the goods (exclusive of all taxes/duties and discounts)	60,000
Excise duty	6,000
Packing charges	2,000
Freight (arranged by BW Ltd.)	1,600
Total amount billed to CF Ltd. before any discount	69,600
Discount @ 2% of the price of goods recorded in the invoice	

The final amount charged from CF Ltd. is ₹ 69,600 less discount @ 2%.

Determine the value of taxable supply made by BW Ltd.

ANSWER**Computation of value of taxable supply**

Particulars	₹
Price of the goods (exclusive of taxes and discounts)	60,000
Add: Excise duty [Note 1]	6,000
Packing charges [Note 2]	2,000
Freight [Note 3]	1,600
Less: Discount @ 2% on ₹ 60,000 [Note 4]	(1,200)
Value of taxable supply	68,400

Notes:

- (1) As per section 15(2)(a), any taxes, duties, cesses, fees and charges other than CGST, SGST, UTGST, IGST and GST Compensation Cess, if charged separately by the supplier should be included in the value of supply. Thus, excise duty charged separately has been added in the value.

- (2) As per section 15(2)(c), incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply should be included in the value. Thus, packing charges have been added in the value.
- (3) Since transport is arranged by the supplier, the contract of supply becomes a composite supply; the principal supply being the supply of goods. Therefore, freight becomes part of the value of the composite supply.
- (4) As per section 15(3)(a), the value of the supply does not include any discount which is given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply. Therefore, since in this case, discount is known at the time of supply and recorded in the supply, it is deductible from the value.

ILLUSTRATION 2

SA Ltd. is a manufacturer of biscuits. The price of a 200 gm pack of biscuit sold by SA Ltd. is ₹ 30. It has received price linked subsidy of ₹ 5 per pack of biscuit sold from NM Ltd. as part of NM Ltd.'s CSR activity. SA Ltd. supplied 1000 packs of biscuits @ ₹ 25 per pack to one of its wholesalers namely, MA Pvt. Ltd. during a tax period. Loading charges of ₹ 1200 have also been charged separately from MA Pvt. Ltd. MA Pvt Ltd. delayed the payment of consideration and thus, paid ₹ 5,000 as interest (no separate amount of GST is paid on the interest by MA Ltd.) in the next tax period. Assume the rate of GST to be 18%.

Determine the value of taxable supply made by SA Ltd.

ANSWER

Computation of value of taxable supply

Particulars	₹
Price of 1,000 packs of biscuits @ ₹ 25	25,000
Add: Subsidy received from NM Ltd. @ ₹ 5 for 1000 packs of biscuits [Note 1]	5,000
Loading charges [Note 2]	1,200
Interest for delay in payment of consideration [Note 3] (rounded off)	4,237
Value of taxable supply	35,437

Notes:

- (1) As per section 15(2)(e), subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments should be included in the value.
- (2) As per section 15(2)(c), incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services should be included in the value.
- (3) As per section 15(2)(e), interest or late fee or penalty for delayed payment of any consideration for any supply should be included in the value. However, as per section 12(6), the time of supply to the extent it relates to an addition in the value of supply by way of interest is the date when such interest is received. In the given case, since GST has not been paid separately on the interest, the same is inclusive of GST. Thus, the value has been computed by making back calculations $\left[\frac{\text{Interest}}{100 + \text{tax rate}} \times 100 \right]$. The time of supply in relation to the addition in value by way of such interest will fall in the next tax period on the date when the same is received.

B. Supplies where value cannot be determined u/s 15(1) [Sub-section (4) of section 15]

Section 15(4) lays down that where sub-section (1) is not applicable, i.e. if the transaction is with a related party, and/or price is not the sole consideration for the supply of goods / services, then the value will be determined in the manner as prescribed (see the definition of 'prescribed'), which means as stipulated in the rules for valuation, i.e. Chapter IV: Determination of Value of Supply of CGST Rules. Rules 27 to 31 of the CGST Rules provide the mechanism to determine value in all such scenarios. These rules are discussed under Heading 4 in the ensuing pages of this Chapter.

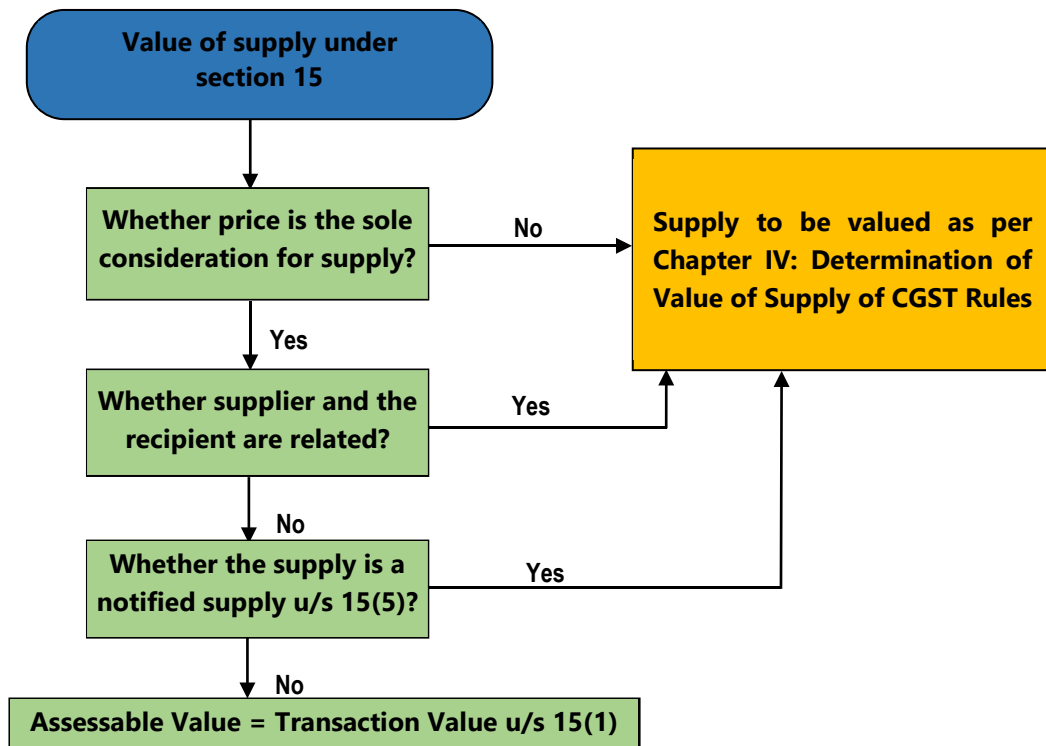
C. Supplies of specified categories of goods or services [Sub-section (5) of section 15]

Section 15(5) lays down that in respect of certain notified supplies also, the value will be determined in the manner as stipulated in the rules for valuation.

Thus, the methodology of transaction value will not apply for such notified categories of transactions; instead the rules will prescribe a different method of determining value for these notified transactions. At present, the rules have prescribed a different valuation method for

- (i) the service of purchase or sale of foreign currency including money changing,
- (ii) the service of booking air tickets by an air travel agent,
- (iii) life insurance service
- (iv) buying and selling of second hand goods,
- (v) vouchers, token, coupons or stamps (other than postage stamps) redeemable against goods or services;
- (vi) services provided without consideration between distinct persons under GST law that are different units of the same legal entity.
- (vii) supply in case of lottery, betting, gambling and horse racing

The scheme of valuation as provided under section 15 is depicted by way of a diagram given below:





4. RULES FOR VALUATION OF SUPPLY OF GOODS AND/OR SERVICES



CHAPTER IV: DETERMINATION OF VALUE OF SUPPLY OF CGST RULES

Rule 27

Value of supply of goods or services where the consideration is not wholly in money.-

Sub-rule

Clause

Particulars

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,-

(a)

be the open market value of such supply;

(b)

if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c)

if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d)

if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

Illustration:

(1) *Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand rupees, the open market value of the new phone is twenty four thousand rupees.*

- (2) Where a laptop is supplied for forty thousand rupees along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of the laptop is forty four thousand rupees.

Rule 28**Value of supply of goods or services or both between distinct or related persons, other than through an agent.-**

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a)	be the open market value of such supply;
(b)	if the open market value is not available, be the value of supply of goods or services of like kind and quality;
(c)	if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

Rule 29**Value of supply of goods made or received through an agent.-**

The value of supply of goods between the principal and his agent shall-

	(a)	be the open market value of the goods being supplied, or at the option of the supplier, be 90 percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient. <i>Illustration: A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of five thousand rupees per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of four thousand five hundred and fifty rupees per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90 percent of five thousand rupees i.e., four thousand five hundred rupees per quintal.</i>
	(b)	where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.
Rule 30	Value of supply of goods or services or both based on cost.- Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.	
Rule 31	Residual method for determination of value of supply of goods or services or both.- Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:	

	<i>Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.</i>	
Rule 31A	<i>Value of supply in case of lottery, betting, gambling and horse racing</i>	
(1)	<i>Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.</i>	
(2)	<i>The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.</i>	
	<i>Explanation: - For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.</i>	
(3)	<i>The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.</i>	
Rule 32	<i>Determination of value in respect of certain supplies.-</i>	
Sub-rule	Clause	Particulars
(1)	<i>Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.</i>	
(2)	<i>The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:-</i>	
	(a)	<i>for a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:</i>

		Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be one percent of the gross amount of Indian Rupees provided or received by the person changing the money:						
		Provided further that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to one percent of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the Reserve Bank of India.						
		Provided also that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.						
	(b)	at the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be- <table><tr><td>(i)</td><td>one percent of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;</td></tr><tr><td>(ii)</td><td>one thousand rupees and half of a percent of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and</td></tr><tr><td>(iii)</td><td>five thousand and five hundred rupees and one tenth of a percent of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees.</td></tr></table>	(i)	one percent of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;	(ii)	one thousand rupees and half of a percent of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and	(iii)	five thousand and five hundred rupees and one tenth of a percent of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees.
(i)	one percent of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;							
(ii)	one thousand rupees and half of a percent of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and							
(iii)	five thousand and five hundred rupees and one tenth of a percent of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees.							
(3)		The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of five percent of the basic fare in the						

	case of domestic bookings, and at the rate of ten percent of the basic fare in the case of international bookings of passage for travel by air. <i>Explanation.- For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.</i>						
(4)	The value of supply of services in relation to life insurance business shall be,- <table> <tr> <td>(a)</td><td>the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;</td></tr> <tr> <td>(b)</td><td>in case of single premium annuity policies other than (a), ten percent of single premium charged from the policy holder; or</td></tr> <tr> <td>(c)</td><td>in all other cases, twenty five percent of the premium charged from the policy holder in the first year and twelve and a half percent of the premium charged from the policy holder in subsequent years:</td></tr> </table> Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.	(a)	the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;	(b)	in case of single premium annuity policies other than (a), ten percent of single premium charged from the policy holder; or	(c)	in all other cases, twenty five percent of the premium charged from the policy holder in the first year and twelve and a half percent of the premium charged from the policy holder in subsequent years:
(a)	the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;						
(b)	in case of single premium annuity policies other than (a), ten percent of single premium charged from the policy holder; or						
(c)	in all other cases, twenty five percent of the premium charged from the policy holder in the first year and twelve and a half percent of the premium charged from the policy holder in subsequent years:						
(5)	Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored: Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points						

	<i>for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.</i>						
(6)	<i>The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.</i>						
(7)	<i>The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.</i>						
Rule 33	<i>Value of supply of services in case of pure agent.</i> <i>Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-</i> <table> <tr> <td><i>(i)</i></td><td><i>the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;</i></td></tr> <tr> <td><i>(ii)</i></td><td><i>the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and</i></td></tr> <tr> <td><i>(iii)</i></td><td><i>the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.</i></td></tr> </table> <i>Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-</i>	<i>(i)</i>	<i>the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;</i>	<i>(ii)</i>	<i>the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and</i>	<i>(iii)</i>	<i>the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.</i>
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<i>(iii)</i>	<i>the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.</i>						

	(a)	<i>enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;</i>
	(b)	<i>neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;</i>
	(c)	<i>does not use for his own interest such goods or services so procured; and</i>
	(d)	<i>receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.</i>
<i>Illustration.- Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.</i>		
Rule 34	Rate of exchange of currency, other than Indian rupees, for determination of value.-	
Sub-rule	Particulars	
(1)	<i>The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.</i>	
(2)	<i>The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.</i>	

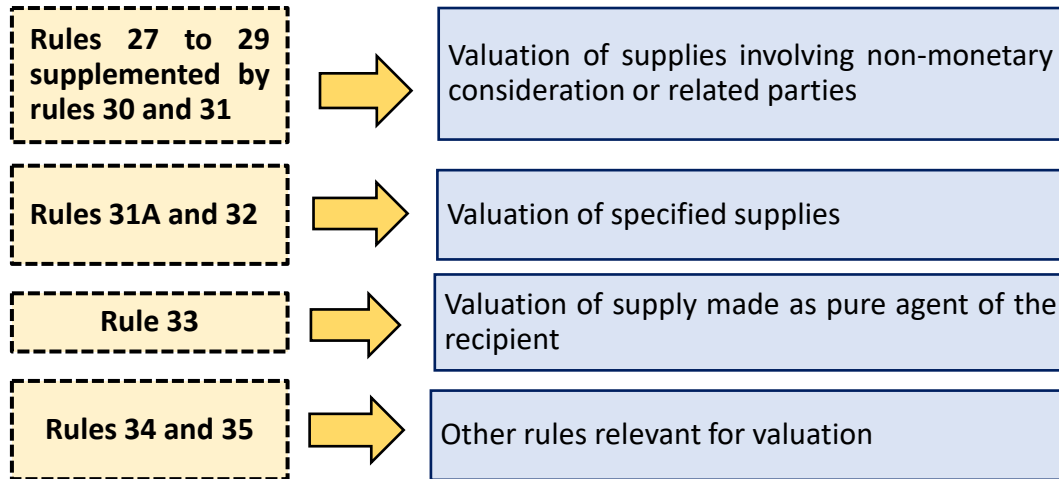
Rule 35	Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax.- Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,- $\text{Tax amount} = (\text{Value inclusive of taxes} \times \text{tax rate in \% of IGST or, as the case may be, CGST, SGST or UTGST}) \div (100 + \text{sum of tax rates, as applicable, in \%})$
Explanation.- For the purposes of the provisions of this Chapter, the expressions-	
(a)	"open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;
(b)	"supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.



ANALYSIS

When a supply cannot be valued in terms of section 15(1) as also in case of certain specified supplies, valuation rules need to be resorted to. Rules 27-35 of Chapter IV of CGST Rules provide the different methods of valuation in such scenarios.

Rules 27 to 35 may be categorized as under for the purpose of discussion:



Rule 27 - Value of supply of goods or services where the consideration is not wholly in money

If the consideration for a supply of goods and /or services is wholly or partly in non-monetary terms, the supply is valued in accordance with provisions of rule 27.

Examples of supplies valued as per rule 27

- **Barter transaction**
- **Exchange transaction**
- **Permanent transfer or disposal of business assets where input tax credit has been availed on such assets**

The methods provided in rule 27 are to be used in order of sequence, i.e. the one coming later in the sequence is applicable only if the previous method(s) are not applicable.

Rule 27 lays down the following methods to value a supply when the consideration thereof is not solely in terms of money:

- (a) The open market value of such supply;

- (b) If open market value of the supply is not known, the consideration in money plus the money equivalent of the non-money consideration, if such amount is known at the time of supply;
- (c) If the value cannot be determined under the previous two clauses, the value of supply of goods and/or services of like kind and quality;
- (d) Finally, if the value is not ascertainable by using the above methods, the consideration in money plus the money equivalent of the non-money consideration, as worked out based on cost of the supply plus **10%** mark-up [Rule 30-Cost based valuation] or by other reasonable means [Rule 31-Best Judgement method] in that sequence.

First, rule 30 is to be applied, if that is not feasible, rule 31 is to be applied. However, in case of supply of services, the supplier has an option to skip rule 30 and directly apply rule 31. *[Rule 30 regarding cost-based valuation and rule 31 regarding reasonable means are discussed in subsequent pages of this Chapter].*

To understand the method of valuation provided in the above rule, the concepts of 'Open Market Value' and 'Supply of like kind and quality' need to be understood first.



What is open market

Open market value means

- ✓ **full value of money excluding taxes under GST law,**
- ✓ **payable by a person to obtain such supply**
- ✓ **at the time when supply being valued is made,**
- ✓ **provided such supply is between unrelated persons and**
- ✓ **price is the sole consideration for such supply.**

What is supply of like kind and quality?



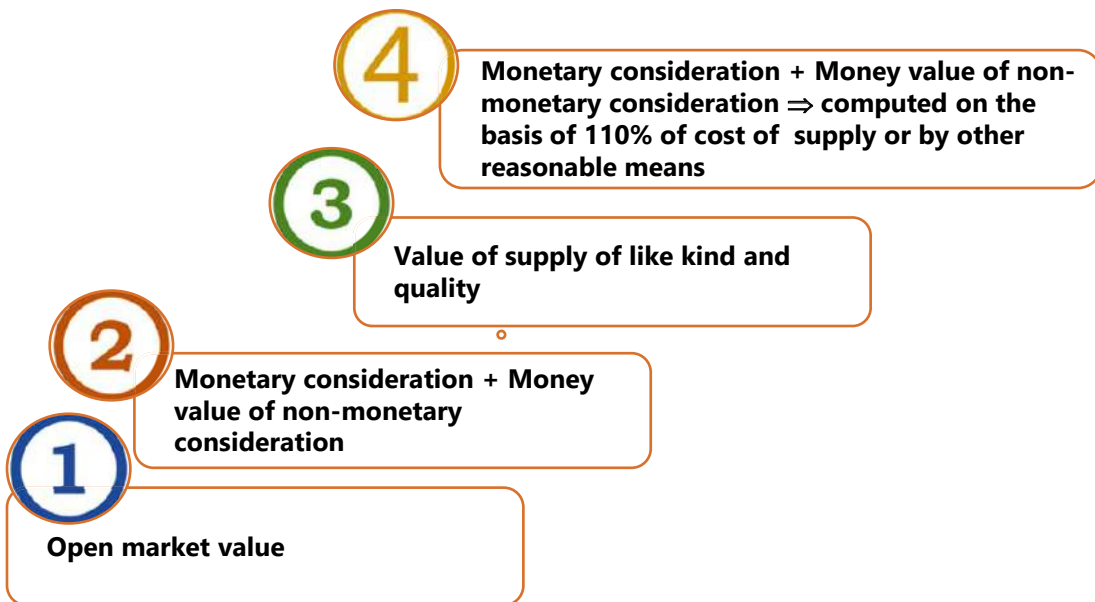
Supply of like kind & quality means

- ✓ **any other supply made under similar circumstances,**
- ✓ **which is same or closely or substantially resembles**
- ✓ **in respect of characteristics, quality, quantity, functionality, reputation**
- ✓ **to the supply being valued.**



(19) X Pvt. Ltd. offers a new mobile phone worth ₹ 20,000/- to Y in exchange of old mobile phone and cash payment of ₹ 16,000. Exchange value of old phone lowers the price of a new phone. The known market value of the new phone (without exchange of old phone), i.e. the open market value is ₹ 20,000, which is the taxable value in this case.

(20) Laptop is manufactured and supplied for ₹ 40,000. Further, a printer valued ₹ 4,000 is also received in the barter. Market value of the laptop is not known. Its taxable value will be ₹ 44,000.



Rule 28 - Value of supply of goods or services or both between distinct or related persons, other than through an agent

A person who is under influence of another person is called a related person like members of the same family (*See definition of family*) or subsidiaries of a group company etc. Under GST law various categories of related persons have been specified and as relation may influence the price between two related persons therefore, special valuation rule has been framed to arrive at the taxable value of transactions between related persons.

Rule 28 deals with transactions between related persons [See definition of related person in Explanation to section 15] and between 'distinct persons' as specified under section 25, which means different registrations/establishments of the same entity (with same PAN) [Refer Chapter 8: Registration in Module 2 of this Study Material for a detailed discussion on the concept of 'distinct persons']. **This rule, however, does not provide the value of the supply made through an agent.**

It may be recollected that a supply between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business is treated as supply even if made without consideration in terms of paragraph 2 of Schedule I of CGST Act. **Thus, rule 28 provides the value of such kind of supplies when the same are made for a consideration as well as when the same are made without consideration.**

The concept of related person has been explained by way of diagram given in the preceding pages.



Example of related person

(21) Mr. A and Mr. B are legally recognised partners in the partnership firm A&B Co. Mr. A & Mr. B are related persons. Thus, a transaction of supply between Mr. A & Mr. B in the course or furtherance of business is treated as supply even if made without consideration.



★ **A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act [Section 25(4)].**

★ **Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act. [Section 25(5)].**

Examples of supplies valued as per rule 28

- Intra-State stock transfer of goods between different registrations of an entity under same PAN
- Inter-State stock transfer of goods between different registrations of an entity under same PAN
- Import of services by a company from a holding/ subsidiary company in course or furtherance of business

The methods of valuation of transactions between related persons and between distinct persons, **in the sequence in which they are to be applied, are as follows:**

- the open market value of such supply;
- if open market value is not available, the value of supply of goods or services of like kind and quality;

- if value cannot be determined under the above methods, it must be worked out based on the cost of the supply plus **10% mark-up** [Rule 30 regarding cost-based valuation has been discussed in subsequent pages of this Chapter] or by other reasonable means, in that sequence [Rule 31 regarding reasonable means has been discussed in subsequent pages of this Chapter].



If the goods are intended to be supplied AS SUCH by the recipient

Value = 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer

However, it is not mandatory for the supplier to adopt this method of valuation. He can opt to value his goods in accordance with the valuation methods prescribed in clause (a), (b) or (c) above.

It is important to note that as per valuation rule 32(7), the value of taxable services provided by notified class of service providers, without any consideration, between distinct persons is NIL, if ITC is available.

Rule 32 has been discussed in detail in subsequent pages of this Chapter. The valuation mechanism prescribed in rule 28 read with rule 32(7) has been explained by way of a flow diagram in the ensuing pages.

Value declared is accepted when recipient is eligible for full input tax credit

As mentioned in sticky note on previous page, where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services. This provision is applicable only in following cases:

- (a) distinct person as specified in section 25(4) and 25(5) of CGST Act i.e. where same person with single PAN has taken separate registration in different States or even in the same State
- (b) related person.

The rationale behind this simplified valuation is that since the recipient can take entire input tax credit, there cannot be any intention to evade tax. It enables 'ease of doing business' as it simplifies the valuation in case of transactions between related persons and reduces disputes and litigation.



(22) ABC Pvt. Ltd., a registered supplier, is a manufacturer of taxable goods. The company's factory is located in Noida, Uttar Pradesh and depot in Gurugram, Haryana. Gurugram depot is eligible for full ITC.

Noida factory agrees to supply goods worth ₹ 1,00,000 to a customer of Gurugram depot (on its behalf). Noida factory ships the goods directly to the customer in Gurugram and bills the Gurugram depot. Noida factory has the option of billing to Gurugram depot at ₹ 90,000 (90% of ₹ 1,00,000). It can also bill the Gurugram depot on actual cost as Gurugram depot is eligible for full ITC.

In the same scenario, if goods are replaced by services, the option of valuing the services @ 90% of value charged by the recipient to unrelated customer will not be available. However, since recipient is eligible for full ITC, the value of supply of service declared in the invoice shall be taken as open market value (taxable value).

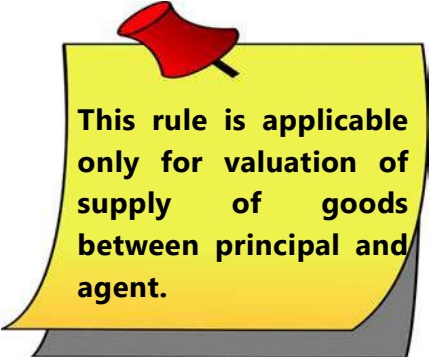
Rule 29 – Value of supply of goods or received through an agent

Supply of goods between principal and agent⁶ [Refer definitions of principal and agent under Heading 2: Relevant Definitions] is valued by the following methods, **applied in sequence:**

- (a) Open market value of goods being supplied

OR

90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer



This rule is applicable only for valuation of supply of goods between principal and agent.

[Supplier has the option to choose either of the two methods]



(23) ABC Ltd. supplies goods to its agent and the agent is supplying goods of like kind and quality in subsequent supplies at a price of ₹ 1,000 per unit on the day of the supply.

ABC Ltd. also supplies goods to an unrelated customer at the price of ₹ 950 per unit on the day of the supply. The value of the supply made by ABC Ltd. to agent shall be ₹ 950 per unit or where it exercises the option, the value shall be 90% of ₹ 1,000 i.e., ₹ 900 per unit.

- (b) In case value cannot be determined under (a) then following values have to be considered sequentially to determine the taxable value:
- i. Value of supply based on cost i.e. cost of supply plus 10% mark-up

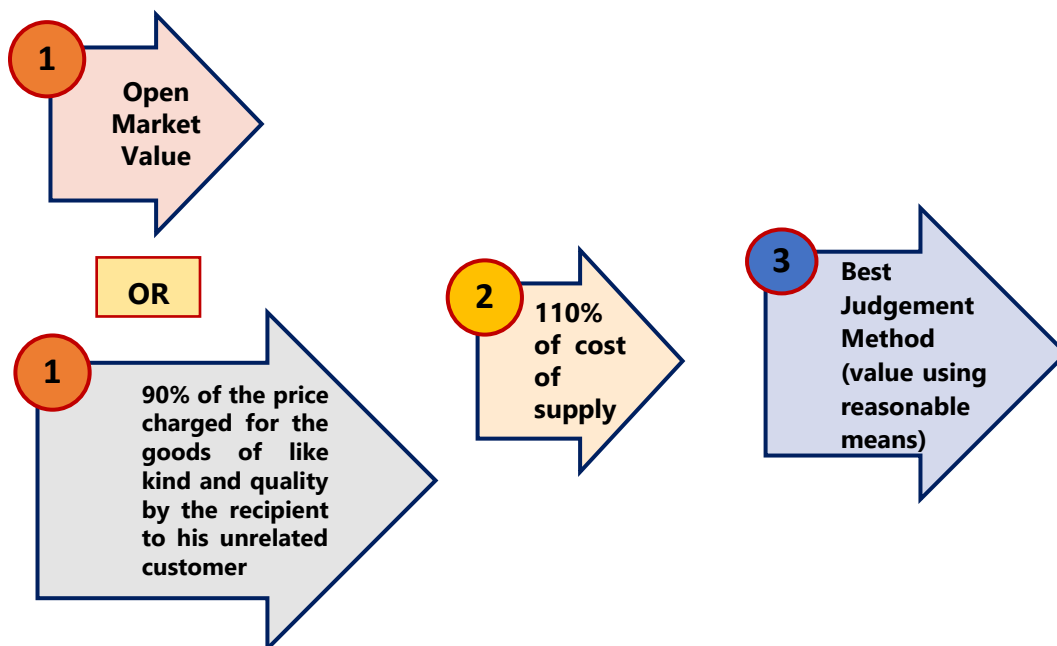
⁶ The relationship between principal agent has been discussed in detail in Chapter 1: Supply under GST in this Module of this Study Material.

- ii. Value of supply determined by using reasonable means consistent with principles & general provisions of GST law (Best Judgement Method)

It may be noted that only the supply of goods between principal and agent is valued vide this rule. Therefore, supply of services like commission-based services provided by a commission agent for procuring orders, undertaking market research etc. are not valued as per rule 29.

Examples of supplies valued as per rule 29

- Supply of goods by a principal to his agent when the agent supplies the goods on behalf of the principal
- Supply of goods by an agent to his principal when the agent receives the goods on behalf of the principal



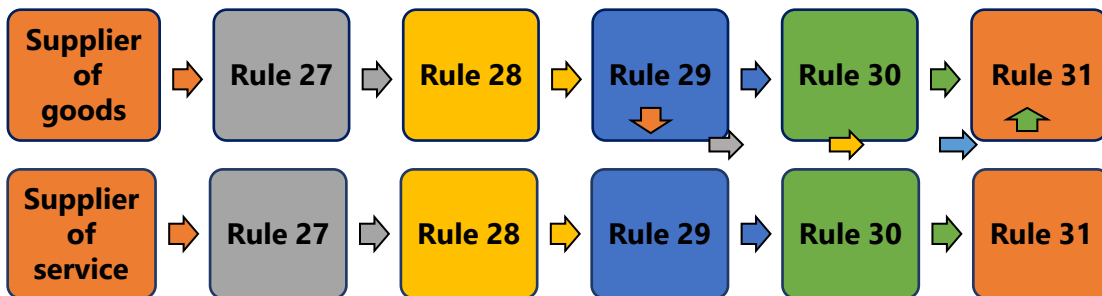
Rule 30 – Value of supply of goods or services or both based on cost

If the value of a supply of goods and/or services cannot be worked out by the foregoing methods, its value will be 110% of the cost of production/manufacture/acquisition of such goods or cost of provision of such services.

Rule 31 – Residual method for determination of value of supply of goods or services or both [Best Judgement Method]

The supplier of goods needs to sequentially follow rules 27 to 30 before valuing goods as per this residual rule 31. Service providers, however, have the option of valuing services as per rule 30 or rule 31 after sequentially following rules 27 to 29.

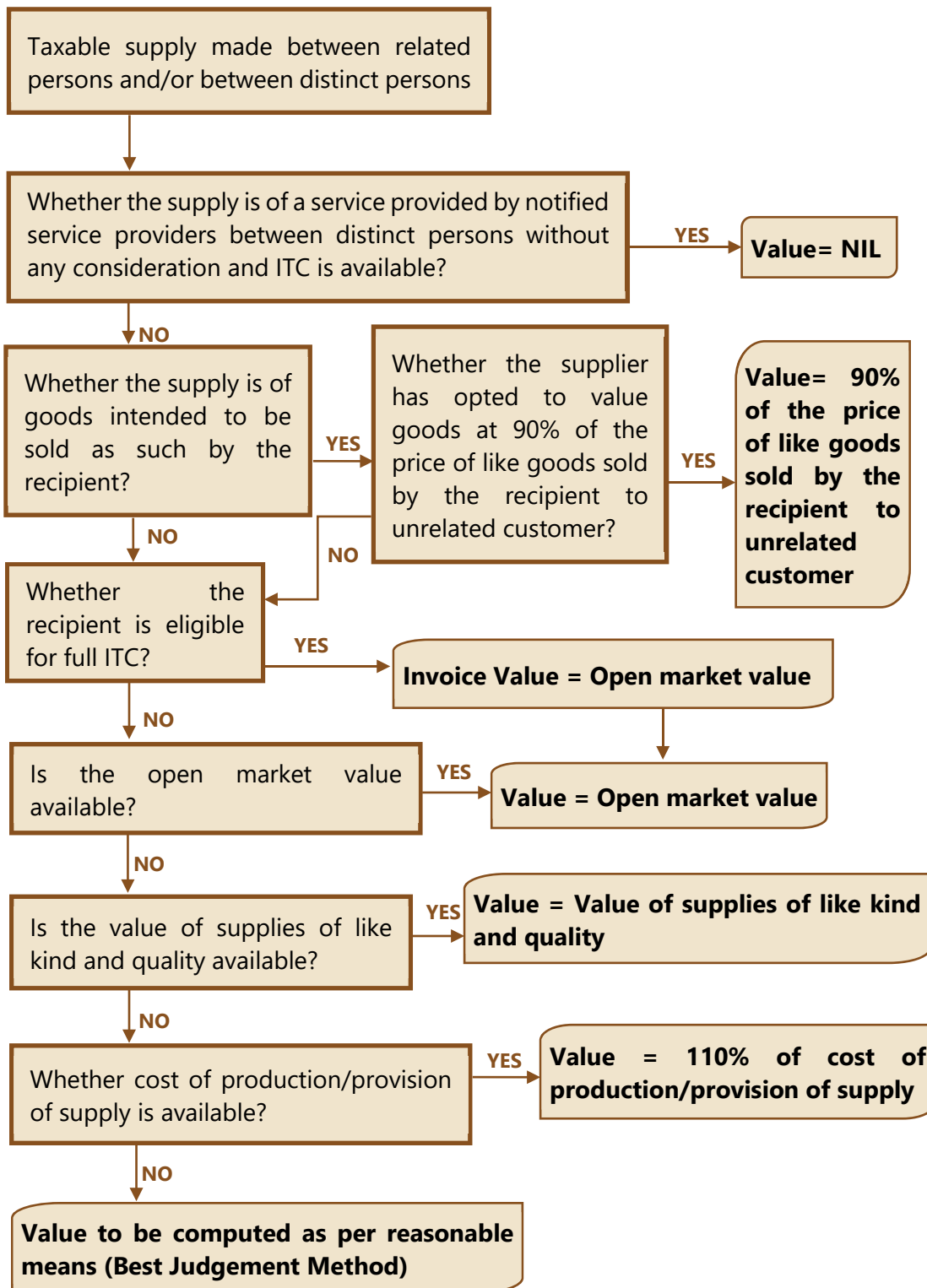
The residual method consists of determination of value by using reasonable means consistent with the principles and general provisions of section 15 and these Rules.



(24) A cosmetics company buys its products from a subcontractor, who supplies “testers” of each product, to be placed in retail outlets, free of charge. These are of different size from the product that is sold.

The company and the sub-contractor are related persons. The sub-contractor does not have details of cost of acquisition of such testers. As none of the methods in rules 27 to 30 will work for valuing these testers, the value will have to be determined by using reasonable means consistent with the principles and general provisions of section 15 and the Rules.

A possible method may be *pro rata* reduction of the price based on difference in size from the product that is sold.



Rule 31A – Value of supply in case of lottery, betting, gambling and horse racing

A new rule 31A has been inserted in CGST Rules to provide for valuation of supply of lottery and actionable claim in the form of chance to win in betting, gambling or horse racing in a race club. The rule provides that valuation of such supplies will be governed by the specific provisions set out in the said rule and not by any other valuation rule.

Supply	Value
Supply of lottery by the Organising State Organising State means the State Government which conducts the lottery either in its own territory or sells its tickets in the territory of any other State	Higher of the two amounts to be deemed as the value 100/128 of the face value of ticket OR 100/128 of the price as notified in the Official Gazette by the organising State
Supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club	100% of the face value of the bet or the amount paid into the totalisator*

* *Totalisator is a computerised device that pools the wagers/bets (after deduction of charges and statutory taxes) of various persons placing the bet and also divides the total wager amount to be distributed to the winning persons.*



(25) The Government of a State runs a lottery where face value of a lottery ticket is ₹ 250 and the price notified by the State Government in the Official Gazette is ₹ 240. Here, the value of lottery is ₹ 195.313, i.e. higher of ₹ 195.313 ($250 \times 100/128$). or ₹ 187.50 ($240 \times 100/128$).

(26) The Government of a State runs a lottery where face value of a lottery ticket is ₹ 250 and the price notified by the State Government in the Official Gazette is ₹ 260. Here, the value of lottery is ₹ 203.13, i.e. higher of ₹ 195.313 ($250 \times 100/128$) or ₹ 203.13 ($260 \times 100/128$).

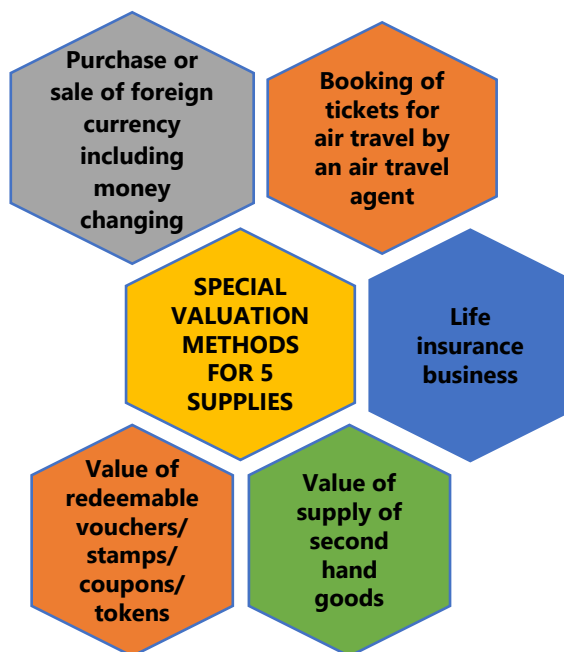
Rule 32 – Determination of value in respect of certain supplies

★ *Rule 32 provides the valuation methods for five specific supplies.*

★ *Rule 32 overrides other rules of valuation. Thus, the supplies prescribed in this rule need not be valued by sequentially following rules 27 to 31.*

★ *The valuation methods prescribed under rule 32 are optional; the supplier can use them if he so desires. He can also opt to value his supplies in accordance with other valuation rules.*

The special provisions related to determination of value of such specific supplies are discussed below:



(i) Special provision relating to determination of value of service of purchase or sale of foreign currency including money changing [Sub-rule (2)]

The value of service in relation to purchase or sale of foreign currency, including money changing, is determined by either of the two methods:

Method-1**Case 1: Transaction where one of the currencies exchanged is Indian Rupees**

The value of supply is difference between buying rate or selling rate of currency and RBI reference rate for that currency at the time of exchange multiplied by total units of foreign currency.

However, if RBI reference rate for a currency is not available then value of supply is **1%** of the gross amount of Indian Rupees provided/ received by the person changing the money.



(27) On 10th May, Mr. Doshi converted USD \$ 100 into ₹ 7,400 @ ₹ 74 per USD through Eastern Money Changers. RBI reference rate on 10th May for US \$ is ₹ 75 per US \$. The value of supply in this case is $(₹ 75 - ₹ 74) \times \$ 100 = ₹ 100$ and GST will be levied on this amount.

If the RBI reference rate is not available, then 1% of ₹ 7,400 i.e., ₹ 74 will be the value of supply of service.

Case 2: Transaction where neither of the currencies exchanged is Indian Rupees

The value of supply is 1% of the lesser of the two amounts the person changing the money would have received by converting (at RBI reference rate) any of the two currencies in Indian Rupees.



(28) US \$ 9,000 are converted into UK £ 4,500. RBI reference rate at that time for US \$ is ₹ 74 per US dollar and for UK £ is ₹ 98 per UK Pound. In this case, neither of the currencies exchanged is Indian Rupee.

Hence, in the given case, value of taxable service would be 1% of the lower of the following:-

(a)	US dollar converted into Indian rupees	=	$\$ 9,000 \times ₹ 74$	=	₹ 4,41,000
(b)	UK pound converted into Indian rupees	=	$£ 4,500 \times ₹ 98$	=	₹ 6,66,000
	Value of supply of service	=	1% of ₹ 4,41,000 = ₹ 4,410		

Method-2

The person supplying the service may also exercise the following option (based on slab rates) to ascertain the value of service, however, once opted he cannot withdraw it during the remaining part of the financial year:

S. No.	Currency exchanged	Value of supply
1.	Upto ₹ 1,00,000	1% of the gross amount of currency exchanged OR ₹ 250, whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 1,000 + 0.50% of the (gross amount of currency exchanged - ₹ 1,00,000)
3.	Exceeding ₹ 10,00,000	₹ 5,500 + 0.1% of the (gross amount of currency exchanged - ₹ 10,00,000) OR ₹ 60,000, whichever is lower

ILLUSTRATION 3

X Pvt. Ltd., a money changer, has exchanged US \$ 10,000 to Indian rupees @ ₹ 74 per US \$. X Pvt. Ltd. wants to value the supply in accordance with rule 32(2)(b) of CGST Rules.

Determine the value of supply made by X Pvt. Ltd.

ANSWER

As per rule 32(2)(b) of CGST Rules, the value in relation to the supply of foreign currency, including money changing, is deemed to be-

- (i) 1% of the gross amount of currency exchanged for an amount up to ₹ 1,00,000, subject to a minimum amount of ₹ 250;
- (ii) ₹ 1,000 and 0.5% of the gross amount of currency exchanged for an amount exceeding ₹ 1,00,000 and up to ₹ 10,00,000.

Therefore, the value of supply, made by X Pvt. Ltd., under rule 32(2)(b) of CGST Rules is computed as under:

Particulars	₹	₹
Value of currency exchanged in Indian rupees [₹ 74 x US \$ 10,000]	7,40,000	
Upto ₹ 1,00,000		1,000
For ₹ 6,40,000 [0.50% x ₹ 6,40,000]		<u>3,200</u>
Value of supply		4,200

(ii) **Special provision relating to determination of value of service of booking of tickets for air travel by an air travel agent [Sub-rule (3)]**

Value of service of booking of tickets for air travel by an air travel agent is 5% of basic fare in case of domestic travel and 10% of basic fare in case of international travel.

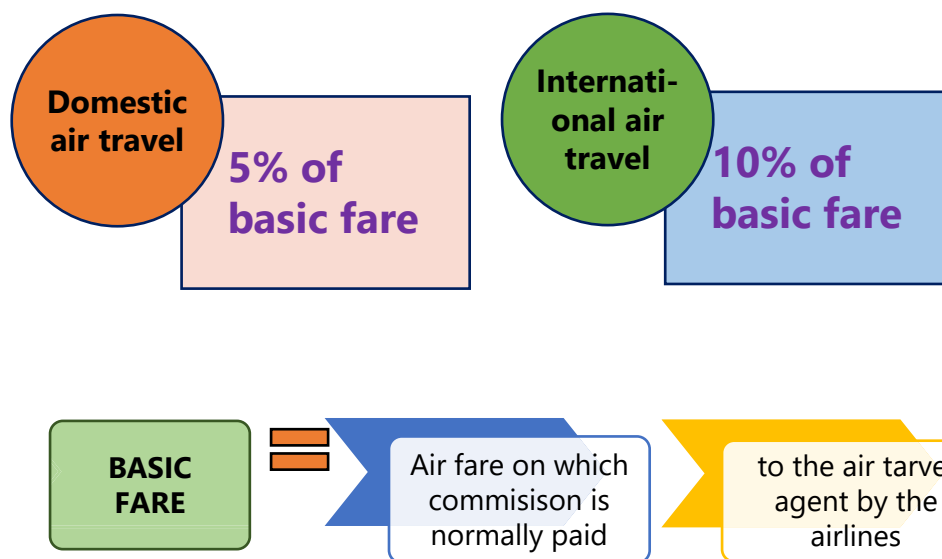


ILLUSTRATION 4

UB & Sons is an air travel agent. Compute the value of supply of service made by the firm during a month with the help of following particulars furnished by it:

<i>Particulars</i>	<i>Basic fare (₹)</i>	<i>Other charges and fee (₹)</i>	<i>Taxes (₹)</i>	<i>Total value of tickets (₹)</i>
<i>Domestic Bookings</i>	1,00,900	9,510	4,990	1,15,400
<i>International Bookings</i>	3,16,880	20,930	15,670	3,53,480

ANSWER

Computation of value of supply of services made by UB & Sons in a month

Particulars	₹	₹
Basic fare in case of domestic bookings	1,00,900	
Value of supply @ 5% [A] Refer Note below		5,045
Basic fare in case of international bookings	3,16,880	
Value of supply @ 10% [B] Refer Note below		<u>31,688</u>
Value of supply [A] + [B] (rounded off)		36,733

Note:

As per rule 32(3) of CGST Rules, the value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent is 5% of the basic fare in the case of domestic bookings, and 10% of the basic fare in the case of international bookings.

(iii) Special provision relating to determination of value of service in relation to life insurance business [Sub-rule (4)]

Value of life insurance service varies with nature of insurance policy. The details are as follows:

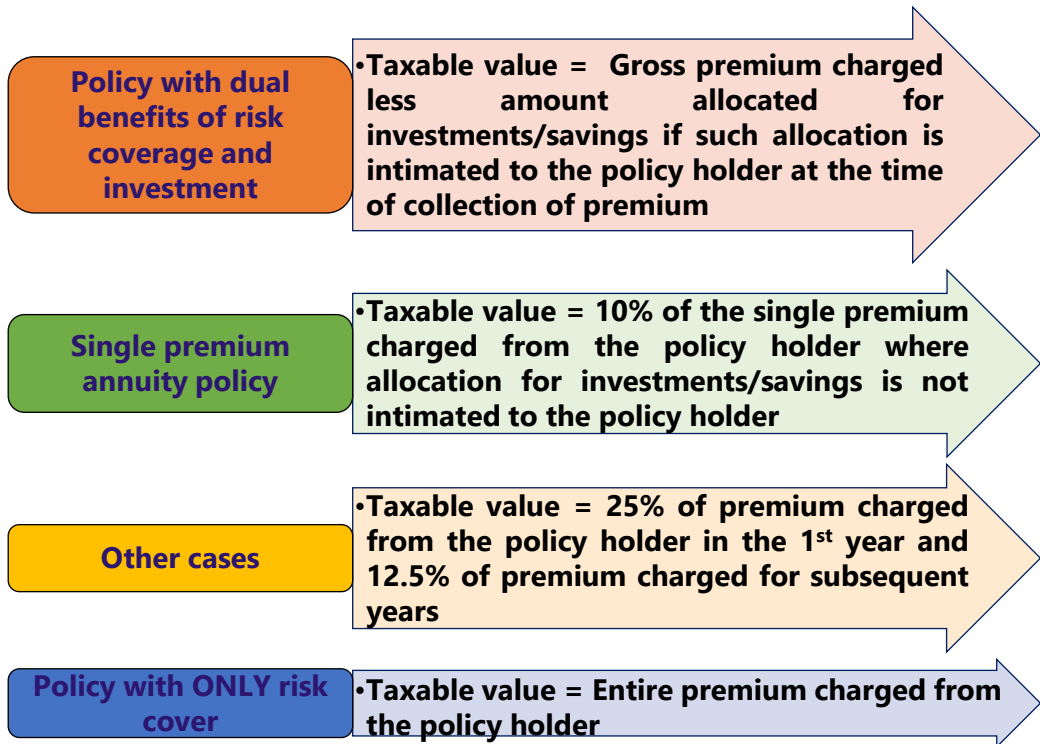


ILLUSTRATION 5

Arihant Life Insurance Company Ltd. (ALICL) has charged gross premium of ₹ 180 lakh from policy holders with respect to life insurance policies in the 2020-21; out of which ₹ 100 lakh have been allocated for investment on behalf of the policy holders.

Compute the value of supply of life insurance services provided by ALICL:

- if the amount allocated for investment has been intimated by ALICL to policy holders at the time of supply of service.
- if the amount allocated for investment has not been intimated by ALICL to policy holders at the time of providing of service.
- if the gross premium charged by ALICL from policy holders is only towards risk cover.

Note: ALICL has started its operations in the year 2020-21. Thus, the entire gross premium of ₹ 180 lakh is the premium for the first year of all the policies. ALICL has not issued any single premium annuity policy.

ANSWER

As per rule 32(4), of the CGST Rules, value of supply of services in relation to life insurance services is

- (a) the gross premium reduced by the amount allocated for investment on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;
- (b) in all other cases, 25% of the premium in the 1st year and 12.5% of the premium in subsequent years

However, where the entire premium paid by the policy holder is only towards risk cover, such gross premium is the value of supply of life insurance services.



In the light of the aforesaid provisions, value of supply of life insurance services provided by ALICL in financial year 2020-21 will be computed as follows:

- (i) Amount allocated for investment intimated to policy holder at the time of supply of service

Value of service = ₹ (180-100) lakh = ₹ 80,00,000

- (ii) Amount allocated for investment not intimated to policyholders at the time of supply of service

Value of service = 25% of ₹ 180 lakh = ₹ 45,00,000

- (iii) Gross premium received is only towards risk cover

Value of service = ₹ 180 lakh

(iv) Special provision relating to determination of value of second hand goods by a dealer of second hand goods – Margin Scheme [Sub-rule (5)]

Normally GST is charged on the transaction value of the goods. However, in respect of second hand goods, a person dealing in such goods may be allowed to pay tax on the margin, i.e. the difference between the value at which the goods are supplied and the price at which the goods are purchased, if ITC is not availed. If there is no margin, no GST is charged for such supply.



The purpose of the margin scheme is to avoid double taxation as the goods, having once borne the incidence of tax, re-enter the supply chain.

The taxable value of supply of second hand goods, i.e. used goods as such or after such minor processing which does not change the nature of goods is the difference between the purchase price and the selling price, provided no ITC has been availed on purchase of such goods. However, if the selling price is less than purchase price, that negative value is ignored.

VALUE OF SECOND HAND GOODS

When ITC is not availed [Margin Scheme]

- Value = Selling price - Purchase price
- Selling price < Purchase price
⇒ Ignore negative value
- CGST on second hand goods received from unregistered supplier exempt

When ITC is availed

- Normal valuation as per other applicable provisions



(29) A company X Ltd., which deals in buying and selling of second hand cars, purchases a second hand Maruti Alto Car of March, 2015 make (Original price ₹ 5 lakh) for ₹ 3 lakh from an unregistered person. It incurs ₹ 30,000 on minor refurbishing and sells the car for ₹ 3,50,000. The company does not avail any ITC. The value for GST purpose shall be ₹ 50,000, i.e. the difference between the selling and the purchase price of the company.



★ *Persons who purchase second hand goods after payment of tax to supplier of such goods, are governed by this valuation rule only when they do not avail ITC on such input supply. If ITC is availed, then such supply is governed by normal GST valuation provisions.*

★ *Margin scheme is available only for supply of used goods by a person dealing in buying and selling of second-hand goods.*

Old and used motor vehicles⁷:

Different rates of taxes have been prescribed for old and used vehicles depending upon the size and engine capacity of such motor vehicles and value of supply in such case, when ITC is not availed, is value that represent margin of the supplier, on supply of such goods determined as follows

(i) **In case of a registered person who has claimed depreciation under section 32 of the Income-Tax Act, 1961 on the said goods,**

- Value = Consideration received - Depreciated value on the date of supply,
- Consideration < Depreciated value $\Rightarrow$ Ignore negative value

(ii) **In any other case**

- Value = Selling price - Purchase price
- Selling price < Purchase price $\Rightarrow$ Ignore negative value

When ITC is availed

Normal valuation as per other applicable provisions

Purchase value of supply of goods repossessed from a defaulting borrower

Many a times goods taken on loan are repossessed by the lender in the event of default in payment of the loan. The purchase value of such repossessed asset is-

⁷ vide Notification No. 8/2018 CT(R) dated 25.01.2018

If the defaulting borrower is un-registered

Purchase value = Purchase price in the hands of such borrower reduced by 5% for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession

If the defaulting borrower is registered

The repossessing lender agency will discharge GST at the supply value without any reduction from actual/notional purchase value

(v) Special provisions relating to determination of value of redeemable vouchers/stamps/coupons/tokens [Sub-rule (6)]

The value of a token, voucher or coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods and/or services is equal to the money value of the goods and/or services redeemable against such token, voucher, coupon or stamp.



(30) If ₹ 1,500 worth of meal coupons are supplied by the taxable person, the value of supply of such coupons under GST law will also be ₹ 1,500.

(vi) Special provisions relating to determination of value of services provided by notified service providers between distinct persons [Sub-rule (7)]

Value of taxable services provided by notified class of service providers, without consideration, between distinct persons [as referred to in Para 2 of Schedule 1 of CGST Act], **is deemed to be NIL if ITC is available.**

No such services have been notified so far.

Rule 33 – Value of supply of services in case of pure agent

Supply as a pure agent is an independent concept relevant for valuation. It may happen sometimes that a supplier making a supply also incurs some expense for the recipient which is not a part of the supply made by him. If such expense is incurred by the supplier as a pure agent of the recipient, it is not includible in the value of supply; if not incurred as pure agent, the same is includible in the value of supply.



Broadly speaking, a pure agent is one who while making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies from the recipient of the main supply.

While the relationship between them (provider of service and recipient of service) in respect of the main service is on a principal to principal basis, the relationship between them in respect of other ancillary services is on pure agent basis.

The concept of '**pure agent**' is identical to concept of '**Reimbursement of expenses incurred by supplier on behalf of customer**'. Since GST is on 'supply of goods or services', transactions which are not part of 'supply' will not form part of value of goods or services supplied.

However, if such expenses are part of supply of goods or services, these cannot get covered under concept of 'pure agent' or 'reimbursement of expenses incurred by supplier on behalf of buyer'.



(31) A is an importer and B is a custom broker. A approaches B for customs clearance work in respect of an import consignment. The clearance of import consignment and delivery of the consignment to A would also require taking service of a transporter. So A, also authorises B, to incur expenditure on his behalf for procuring the services of a transporter and agrees to reimburse B for the transportation cost at actuals.

Here, B is providing customs brokers service to A, which would be on a principal-to-principal basis.

The ancillary service of transportation, is procured by B on behalf of A as a pure agent and expenses incurred by B on transportation should not form part of value of customs broker service provided by B to A. This, in sum and substance is the relevance of the pure agent concept in GST.

The important thing to note is that a pure agent does not use the goods or services so procured for his own interest and this fact has to be determined from the terms of the contract.

In the illustration of importer and customs broker given above, assuming that the contract was for clearance of goods and delivery to the importer at the price agreed upon in the contract, the customs broker would be using the transport service for his own interest (as the agreement requires him to deliver the goods at the importers place) and thus, would not be considered as a pure agent for the services of transport procured.

Another important fact is that the person who provides any service as a pure agent receives only the actual amount for the services provided. Coming back to our example of importer and customs broker, the agreement provides reimbursement of transport services utilised at actuals.

In this case, let's say the value of transport service was ₹10,000/-. If the customs broker charges any amount more than ₹10,000/-, then he will not be considered as a pure agent for the services of transport and the value of transport service will be included in the value of his customs broker service.

Relevance of pure agent under GST: Expenditure/costs incurred as pure agent excluded from value of supply

Subject to fulfilment of certain conditions, the **expenditure and costs incurred by the supplier as a pure agent of the recipient of supply of service, has to be excluded from the value of supply.**

The preceding paras explained who is considered as a pure agent. The valuation rules provide that expenditure incurred as pure agent, are excluded from the value of supply, and thus, also from aggregate turnover.

However, such exclusion of expenditure incurred as pure agent is possible only and only if all the conditions required to be considered as a pure agent and further conditions stipulated in the rules are satisfied by the supplier in each case.

Expenditure or costs incurred by the supplier of services ('S') as pure agent of the recipient of services ('R') is excluded from the value of supply, if all the following conditions (in addition to the conditions required to be satisfied to be considered as a pure agent) are satisfied:

- ☐ The payment arises out of a contract between 'R' and a third party, and 'S' acts as pure agent of 'R' when he makes the payment;
- ☐ 'R' authorizes 'S' to make payment on his behalf;
- ☐ 'S' shows the payment separately in the invoice issued by him to 'R';
- ☐ The supplies procured by 'S' from the third party as pure agent of 'R' are in addition to the supplies that he provides on his own account.

'Pure agent' here means a person 'S' who -

- ➔ enters into contractual agreement with 'R' to act as his pure agent to incur expenditure/costs in the course of supply of goods and /or services;
- ➔ does not hold or intends to hold any title to the goods and / or services so procured or supplied as pure agent of 'R';
- ➔ does not use for his own interest such goods or services so procured; and
- ➔ receives only the actual amount incurred to procure such goods or services (apart from the amount for the services provided on his own account)



The supplier needs to fulfil **ALL** the above conditions in order to qualify as a pure agent. In case the conditions are not satisfied, such expenditure incurred is included in the value of supply under GST.

The following illustration will make the concept clearer:



(32) Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B.

- Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies.
- The fees charged by the Registrar of the Companies for registration and approval of the name are compulsorily levied on B.
- A is merely acting as a pure agent in the payment of those fees.
- Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

Some examples of expenditure/costs incurred as pure agent are:

(33) Port fees, port charges, custom duty, dock dues, transport charges etc. paid by customs broker on behalf of the owner of goods.

(34) Expenses incurred by C&F agent and reimbursed by principal such as freight, godown charges.

(35) Suppose a customs broker issues an invoice for reimbursement of a few expenses and for consideration towards agency service rendered to an importer. the amounts charged by the customs broker are as below:

S.No.	Component charged in invoice	Amount
1	Agency income	₹ 10,000/-
2	Traveling expenses; Hotel expenses	₹ 15,000/-
3	Customs duty	₹ 55,000/-
4	Docks dues	₹ 5000/-

In the above situation, agency income and travelling/ hotel expenses shall be added for determining the value of supply by the customs broker whereas docks dues and the customs duty shall not be added to the value, provided the conditions of pure agent are satisfied.

(36) If supply contract is ex-factory, but the supplier pays freight to transporter for convenience and then recovers the same, it will not form part of 'value'.

(37) Advocate paying Court fees on behalf of client.

The pure agent concept is very important for businesses as it has direct implications on the value of taxable supply. It has direct bearing on the amount of GST charged on a particular supply. It also has bearing on the aggregate turnover of the supplier and therefore, on calculating the threshold limit for registration.

Whenever the supplier intends to act as a pure agent, care should be taken to ensure that the conditions specified for such pure agents and other conditions given in the valuation rules are also met so that only the real value of the service provided is subjected to GST.

Taxability of airport levies collected by airlines as pure agent - Circular No. 115/34/2019 GST dated 11.10.2019

Services provided by an airport operator to passengers against consideration in the form of user development fee (UDF) and passenger development fee (PSF) are liable to GST⁸. PSF and UDF are collected by the airlines as an agent and is not a consideration for any service provided by the airlines.

Thus, airline is not responsible for payment of GST on UDF or PSF provided the airline satisfies the conditions prescribed for a pure agent under rule 33. It is the licensee, that is the airport operator which is liable to pay GST on UDF and PSF.

The airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers.

The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF

⁸ The chargeability of USF and PSF has been explained in detail by Circular No. 115/34/2019 GST dated 11.10.2019. The same has been discussed in Chapter 2: Charge of GST of this Module of the Study Material.

by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers.

In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under rule 33.

The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

Rule 34 – Rate of exchange of currency, other than Indian rupees, for determination of value

Goods: The relevant rate of exchange for determining the value of taxable goods is the rate notified by CBIC under section 14 of the Customs Act, 1962, prevalent on the date of time of supply of said goods.

Services: The relevant rate of exchange for determining the value of taxable service is the rate determined as per GAAP, prevalent on the date of time of supply of said service.

Rule 35 – Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

Where the value of supply is inclusive of GST, the tax amount is determined in the following manner:

Tax amount = (Value inclusive of taxes x GST rate in %) [IGST or CGST, SGST/UTGST] / (100 + sum of GST rates in %)

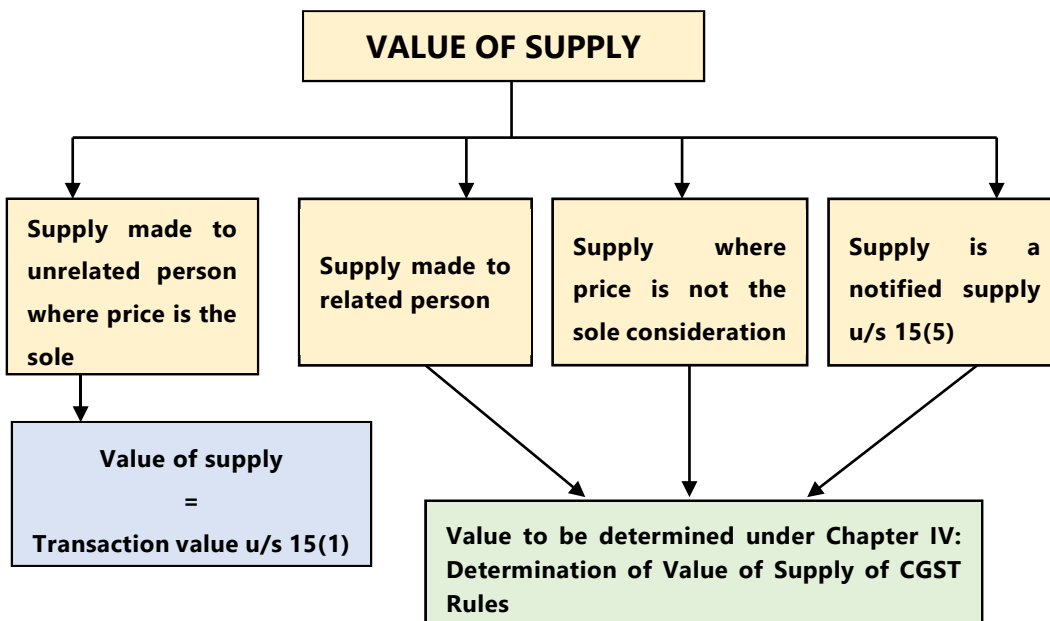


(38) If the value inclusive of tax is ₹ 100/- and applicable GST rate is 18% [IGST or CGST, SGST/UTGST] then,

Tax amount = $(100 \times 18) / (100 + 18) = 1800 / 118 = ₹ 15.25$



LET US RECAPITULATE



Inclusions in value u/s 15(2)

- ⇒ Taxes other than GST
- ⇒ Third party payments made by recipient in relation to supply, which supplier was liable to pay and were not included in the price
- ⇒ Incidental expenses including anything done by the supplier in respect of the supply till delivery of goods/supply of services, if charged to recipient
- ⇒ Subsidies directly linked to price of supply other than the ones given by Central/State Governments
- ⇒ Interest/late fee/penalty for delay in payment of consideration

Exclusions from value u/s 15(2)

- ⇒ Discounts given before or at the time of supply and recorded in the invoice
- ⇒ Post supply discount/incentive, if known in advance & linked with invoices and proportionate input tax credit reversed by the recipient

VALUATION RULES

RULE 27: Consideration not wholly in money

Value shall be either of the following in the given order:

- open market value
- total of consideration in money + amount equal to the consideration not in money
- value of supplies of like kind and quality
- consideration in money + money value of non-monetary consideration computed as per rule 30 or 31 in that order.

RULE 28: Supply between distinct/ related persons, other than agent

Value shall be either of the following in the given order:

- open market value
 - value of supplies of like kind and quality
 - value as per rule 30 or 31 in that order.
- ◆ Option to supplier to value goods sold as such by recipient ⇒ Value = 90% of price charged by recipient to its unrelated customer
- ◆ Recipient eligible for ITC ⇒ invoice value = open market value (taxable value)

RULE 29: Supply made/received through an agent

Value shall be either of the following in the given order:

- open market value or 90% of price charged by recipient to his unrelated customer for supplies of like kind and quality;
- value as per rule 30 or 31 in that order.

RULE 31A: Value of supply of lottery, chance to win in betting/ gambling/ horse racing in race club

Lottery organised by State Government - 100/128 of the face value of ticket OR 100/128 of the price as notified in the Official Gazette by the organising State, whichever is higher

Actionable claim in form of chance to win in betting, gambling or horse racing in a race club - 100% of the face value of the bet or the amount paid into the totalisator

Organising State - State Government which conducts the lottery either within the State or outside the State

RULE 30: Value based on cost

Value shall be 110% of cost of production/acquisition/ provision of goods or services

RULE 31: Residual method (Best Judgement Method)

Value shall be determined using reasonable means consistent with the principles and general provisions of section 15 & valuation rules. For services, rule 31 can be adopted before rule 30.

VALUATION RULES

RULE 32: Value in respect of certain specific supplies

⇒ **Purchase/sale of foreign currency:** 1st method-Value = [Buying/Selling rate - RBI reference rate at that time] x total units of currency. If no RBI reference rate, value = 1% of INR received/provided. If the currencies exchanged are not in INR, value = lesser of the 2 amounts that would have been received by converting any of currencies into INR at RBI reference rate
OR 2nd method

Currency	Value
Upto ₹ 1,00,000	1% or ₹ 250 whichever is higher
From ₹ 1,00,001 to ₹ 10,00,000	₹ 1,000 + 0.5%
From ₹ 10,00,001	₹ 5,500 + 0.1% subject to maximum of ₹ 60,000

⇒ **Booking of tickets by air travel agent:** Value = 5% of basic fare for domestic bookings and 10% of the basic fare for international bookings.

⇒ **Life insurance business:** If amount allocated for investment is intimated - Value = Gross premium less amount allocated for investment; Single premium annuity policies where amount allocated for investment is not intimated - Value = 10% of single premium; Other cases - Value = 25% of premium in 1st year and 12.5% of premium in subsequent years; Policy only towards risk cover - Value = Entire premium

⇒ **Buying & selling of second hand goods:** Value = Selling price - Buying price (ignore if value is negative); Purchase value of goods repossessed from unregistered borrower = Purchase price - 5% per quarter or part thereof from date of purchase till the date of disposal by the person making repossession

⇒ **Coupon/voucher:** Value = money value of supplies redeemable against such voucher/coupon

⇒ **Notified services between distinct persons without consideration:** Value = Nil, if ITC is available

RULE 33: Supply as a pure agent

Costs incurred by the supplier as a pure agent of recipient shall be excluded from value

RULE 34: Rate of exchange for determination of value

Goods = Rate notified by CBIC under Customs Act on the date of time of supply of such goods;

Services = Rate as per GAAP on the date of time of supply of such services

Rule 35: Value inclusive of taxes

Where value of supply is inclusive of CGST, SGST/UTGST or IGST, the tax amount is calculated by making back calculations. Tax amount = (Value inclusive of GST x GST rate in % of IGST or CGST, SGST/UTGST)/100 + sum of applicable GST rates in %)



TEST YOUR KNOWLEDGE

1. *Income tax collected at source should be included in value of the supply in terms of section 15(2)(a). Examine the correctness of the statement.*
2. *How should the supply made by a component manufacturer be valued, when he uses moulds and dies owned by the original equipment manufacturer sent free of cost to him? Explain.*
3. *Examine whether the following discounts ought to be excluded to determine the value of supply:*
 - (i) *Company offering 20% discount for single purchase above ₹ 10,000*
 - (ii) *Company offering additional discount of 1% on purchase of 10,000 pieces in a year*
 - (iii) *After selling a product, the company re-valued the product at a lower value and issued credit note to the buyer for the differential amount.*
4. *Rajesh & Co., a partnership firm, provides financial and management consultancy to a group of companies for an annual retainerhip fee of ₹ 15 lakh. Further, the firm is provided with a car (along with a driver) for its exclusive use throughout the year. The fuel cost is also borne by the Group. Rajesh & Co. pays GST on the amount of ₹ 15 lakh.*

Is the value for the service provided by Rajesh & Co. correct under GST law? If not, please elaborate.
5. *The supplies of commodity 'y' to the market are channelled through a State Marketing Corporation which conducts an auction each day to arrive at the price. Gupta and Co. supplies commodity 'y' through the State Marketing Corporation.*

How will the supply of 'y' made by Gupta and Co. to State Marketing Corporation be valued for paying tax?
6. *Easy Coupons Ltd. sells coupons that are redeemable against specified luxury food products at retail outlets. Each coupon is sold for value of ₹ 900 but is redeemable for supplies worth ₹ 1000.*

What is the value of supply of such coupon under GST law?

7. A pharmaceutical company supplies a drug intermediate to its own unit in another State for conversion into formulations. The drug intermediate is exclusive to this company, and there is no market sale in India of this drug intermediate. Goods of like kind and quality are also not available. After conversion, the finished product is sold from the said unit itself by the company.

How will the value of the supply of this drug intermediate be determined under GST law?

8. Dushyant rents out a commercial building owned by him to Bharat for the month of December, for which he charges a rent of ₹19,50,000. Dushyant pays the maintenance charges of ₹1,00,000 (for the December month) as charged by the local society. These charges have been reimbursed to him by Bharat. Also, Dushyant has paid municipal tax of ₹2,85,000 which he has not charged from Bharat.

You are required to determine the value of supply and the GST liability of Dushyant for the month of December assuming CGST and SGST rates to be 9% each.

Note: All the amounts given above are exclusive of GST.

9. Vayu Ltd. provides you the following particulars relating to goods supplied by it to Agni Ltd.:

Particulars	Amount (₹)
List price of the goods (exclusive of taxes/duties and discounts)	76,000
Special packing at the request of customer to be charged to the customer	5,000
Duty levied by local authority on the sale of such goods	4,000
CGST and SGST charged separately in invoice	14,400
Price linked subsidy received from an NGO in relation to the goods sold (The price of ₹76,000 given above is after considering the subsidy)	5,000

Vayu Ltd. offers 3% discount on the list price of the goods which is recorded in the invoice for the goods.

Determine the value of taxable supplies made by Vayu Ltd.

10. Binaca Electronics Ltd. (hereinafter referred to as BEL) is engaged in manufacturing televisions. It is registered in the State of Haryana. It has appointed distributors across the country who sell the televisions manufactured by it.

The maximum retail price (MRP) printed on the package of a television is ₹ 12,000. The applicable rate of GST on televisions is 18%. BEL dispatches the stock of televisions to its distributors ordered by them on a quarterly basis.

In order to promote its sales, the Sales Head of BEL has formulated a sales promotion scheme on 1st April. Under this scheme, BEL offers a discount of 10% (per television) on televisions supplied to the distributors if the distributors sell 500 televisions in a quarter.

The discount is offered on the price at which the televisions are sold to the distributors (excluding all charges and taxes).

It appoints Shah Electronics (an unrelated party as per GST Law) as its distributor in Haryana on 1st April and dispatches 750 televisions on 8th April as stock for the quarter April-June.

BEL has sold the televisions to distributor - Shah Electronics at ₹ 8,400 per television (exclusive of applicable taxes). Shah Electronics has requested BEL for a special packing of the televisions delivered to it for which BEL has charged ₹ 1,200 per television.

Shah Electronics places a purchase order of 1,000 televisions with BEL for the quarter July-September. The distributor reports sales of 700 televisions for the quarter April-June and 850 televisions for the quarter July-September.

The discount policy offered by BEL as explained above is also available to Shah Electronics as per the distributorship agreement.

While Shah Electronics reverses the input tax credit availed for the quarter July-September, it has failed to reverse the input tax credit availed for the quarter April-June.

Examine the scenario with reference to section 15 and compute the taxable value of televisions supplied by BEL to Shah Electronics during the quarters April-June and July-September assuming the rate of tax applicable on the televisions as 18%.

11. Prada Forex Private Limited, registered in Delhi, is a money changer. It has undertaken the following purchase and sale of foreign currency:

- (i) 1,000 US \$ are purchased from Nandi Enterprises at the rate of ₹ 74 per US \$. RBI reference rate for US \$ on that day is ₹ 74.60.
- (ii) 2,000 US \$ are sold to Menavati at the rate of ₹ 74.50 per US\$. RBI reference rate for US \$ for that day is not available.

Determine the value of supply in each of the above cases in terms of rule 32(2)(a) and rule 32(2)(b).

12. Rolly Polly Manufacturers Ltd., registered in Mumbai (Maharashtra), is a manufacturer of footwear. It imports a footwear making machine from USA. Rolly Polly Manufacturers Ltd. enters into a contract with Rudra Logistics, a licensed customs broker with its office at Ahmedabad (Gujarat), to meet all the legal formalities in getting the said machine cleared from the customs station.

Apart from this, Rolly Polly Manufacturers Ltd. authorises Rudra Logistics to incur, on its behalf, the expenses in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd. which shall be reimbursed by Rolly Polly Manufacturers Ltd. to Rudra Logistics on the actual basis in addition to agency charges.

Rudra Logistics provided following details in the invoice issued by it to Rolly Manufacturers Ltd.:

S. No.	Particulars	Amount (₹)
(i)	Agency charges	5,00,000
(ii)	Unloading of machine at Kandla port, Gujarat	50,000

(iii)	Charges for transportation of machine from Kandla port, Gujarat to its Rudra Logistics' godown in Ahmedabad, Gujarat	25,000
(iv)	Charges for transportation of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra	28,000
(v)	Prepared and submitted Bill of Entry and paid customs duty	5,00,000
(vi)	Dock dues paid	50,000
(vii)	Port charges paid	50,000
(viii)	Hotel expenses	45,000
(ix)	Travelling expenses	50,000
(x)	Telephone expenses	2,000

Compute the value of supply made by Rudra Logistics with the help of given information.

Would your answer be different if Rudra Logistics has charged ₹ 13,00,000 as a lump sum consideration for getting the imported machine cleared from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd.?

13. Rustagi & Co. manufactures customized products at its unit situated and registered in Madhya Pradesh. Cost of production of 1,000 products for Rustagi & Co. is ₹ 20,00,000.

These products require further processing before sale, and for this purpose products are transferred from its Madhya Pradesh unit to its another unit situated and registered in Himachal Pradesh. The value declared on the invoice for such transfer is the cost of production of such products.

The Himachal Pradesh unit, apart from processing its own products, engages in processing of similar products of other persons who supply the products of

the same kind and quality. Thereafter, the Himachal Pradesh unit sells these processed products to wholesalers. There are no other factories in the neighbouring area which are engaged in the same business as that of Himachal Pradesh unit.

1,000 units of the products of same kind and quality are supplied to Himachal Pradesh unit, at the time when goods are sent by Madhya Pradesh unit, by another manufacturer located in Himachal Pradesh.

The ex-factory price of such goods is ₹ 19,00,000. The Himachal Pradesh unit of Rustagi & Co. is eligible for full ITC.

Determine the value of 1000 products supplied by Rustagi & Co. to its Himachal Pradesh unit.

14. Dev Enterprises is the supplier of water coolers. Dev Enterprises supplied water coolers to an unrelated party, Vimal Traders for consideration of ₹ 2,95,000 (inclusive of GST @ 18%). Vimal Traders also gave some materials to Dev Enterprises [valuing ₹ 10,000 (exclusive of GST)] as an additional consideration for such supply.

At the same time, Dev Enterprises has supplied the same goods to another unrelated person at price of ₹ 2,97,360 (inclusive of GST@18%).

You are required to:

- (1) Determine the value of goods supplied by Dev Enterprises to Vimal Traders.
 - (2) What would your answer be if price of ₹ 2,97,360 is not available at the time of supply of goods to Vimal Traders? Explain briefly.
15. Chirayu Life Insurance Company Limited (CLICL) has collected premium from policy subscribers. It does not intimate the amount allocated for investment to subscribers of the policy at the time of supply of insurance services. The company has provided the following details in relation to its receipts:

Sl. No.	Particulars	Amount
1.	Premium for only risk cover	25,00,000
2.	Premium from new policy subscribers	40,00,000

3.	Renewal premium	80,00,000
4.	Single premium on annuity policy	1,00,00,000

All amounts are exclusive of tax. You are required to compute the value of supply by CLICL in terms of rule 32(4).

16. *Aviant Ltd., registered in Noida (Uttar Pradesh), is a supplier of machinery used for making bottle caps. The supply of machinery is effected as under:*

- *The wholesale price of the machinery (excluding all taxes and other expenses) at which it is supplied in the ordinary course of the business to various customers is ₹42,00,000.*

However, the actual price at which the machinery is supplied to an individual customer varies within a range of $\pm 10\%$ depending upon the terms of contract of supply with the particular customer.

- *Apart from the price of the machinery, Aviant Ltd. charges from the customer the following incidental expenses:*
 - ◆ *associated handling and loading charges of ₹10,000*
 - ◆ *installation and commissioning charges of ₹1,00,000*
- *The machinery can be dismantled and erected at another site, if required. The above charges are compulsorily levied in case of each supply of machinery.*
- *Transportation of machinery to the customer's premises is arranged by Aviant Ltd. through a third-party service provider [Goods Transport Agency (GTA)].*

The customer enters into a separate service contract with the GTA and pays the freight directly to it.

- *A cash discount of 2% on the price of the machinery is offered at the time of supply, if the customer agrees to make the payment within 15 days of the receipt of the machinery at his premises.*

In the event of failure to make the payment within the stipulated time, the company-

- ◆ recovers the discount given at the time of receiving payment from the customer (no separate amount of GST is recovered); and
 - ◆ charges simple interest @ 1% per month or part of the month (no separate amount of GST is recovered) on the total amount due from the customer (towards the machinery supplied) from the date of making the supply till the date of payment. However, no interest is charged on the tax dues.
- For every machinery supplied, Aviant Ltd. receives a price linked subsidy of ₹ 2,00,000 from its holding company Diligent Ltd.

Aviant Ltd. has supplied a machinery to an unrelated party, Daffodil Pvt. Ltd. on 29th August at a price of ₹ 40,00,000 (excluding all taxes). Invoice was issued on 29th August by Aviant Ltd.

The corporate office of Daffodil Ltd., which is at New Delhi, has entered into contract with Aviant Ltd. for supply of machinery. However, the machinery has been installed at Daffodil Pvt. Ltd's registered manufacturing unit located in Gurugram (Haryana). Daffodil Pvt. Ltd. has paid the freight directly to the GTA.

Discount @ 2% on the price of machinery excluding taxes was given to Daffodil Pvt. Ltd. as it agreed to make the payment within 15 days. However, Daffodil Pvt. Ltd. paid the consideration on 30th September.

Assume the rates of taxes to be as under:

Bottle cap making machine		
CGST – 6%	SGST – 6%	IGST – 12%
Service of transportation of goods		
CGST – 2.5%	SGST – 2.5%	IGST – 5%
Other services involved in the above supply		
CGST – 9%	SGST – 9%	IGST – 18%

Calculate the GST liability [CGST, SGST or IGST, as the case may be] with respect to the supply of machinery and support your conclusions with legal provisions in the form of explanatory notes.

Make suitable assumptions, wherever needed.



ANSWERS/HINTS

1. The statement is not correct. CBIC vide *Circular No. 76/50/2018 GST dated 31.12.2018* (amended vide corrigendum dated 7.03.2019) has clarified that for the purpose of determination of value of supply under GST, tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.
2. *Circular No. 47/21/2018 GST dated 08.06.2018* has clarified that while calculating the value of the supply made by the component manufacturer using moulds and dies owned by Original Equipment Manufacturers (OEM) sent free of cost (FOC) to him, the value of such moulds and dies shall not be added to the value of supply made by him because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b).

However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components.

3. (i) The given case is a case of staggered discounts where rate of discount increases with increase in purchase volume. Such discounts are shown on the invoice itself. Therefore, the same are excluded to determine the value of supply.
- (ii) The given case is a case of volume discount which are offered by the suppliers to their stockists, etc. Such discounts are established in terms of an agreement entered into at or before the time of supply which can be specifically linked to the relevant invoices though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. Such type of volume discounts are excluded/deducted to determine the value of supply provided they satisfy the parameters laid down in section 15(3) including the reversal of ITC by the recipient of the supply as is

attributable to the discount on the basis of document (s) issued by the supplier.

- (iii) This is a case of secondary discounts. These are the discounts which are not known at the time of supply or are offered after the supply is already over as per the agreement made at or before the time of supply. Therefore, such discounts shall not be excluded while determining the value of supply.
4. Rajesh & Co. gets a car along with driver (including the fuel) for the whole year, which is an additional non-monetary consideration for its services. The equivalent monetary value of such additional consideration must be added to the retainership fee (₹ 15 lakh) in order to arrive at the value of the taxable service provided by Rajesh & Co, as per rule 27 relating to valuation.
5. The State Marketing Corporation is an 'agent' in the meaning of the expression as defined in section 2(5), which includes an auctioneer. Therefore, the value of supply of 'y' will be determined in terms of rule 29 relating to valuation.

There is no open market for the first supply of commodity 'y', as it is compulsorily supplied to the State Marketing Corporation. However, Gupta & Co. has the option of valuing the supply of 'y' at 90% of price of goods of like kind and quality sold by the State Marketing Corporation to its unrelated customers.

If the value cannot be determined by this method, it needs to be determined on the basis of the cost plus 10% mark up as per rule 30 or on the basis of Best Judgement Method as per rule 31, in that order.

6. In terms of rule 32(6) relating to valuation, the value of a coupon is equal to the money value of the goods redeemable against it. Therefore, though the coupon is sold for ₹ 900, its value is ₹ 1000.
7. Since the supply is made to a distinct person, the same will be valued in accordance with rule 28 relating to valuation.

There is no open market value of the drug intermediate as also there are no like goods. Therefore, value of supply of such drug intermediate will be determined in terms of clause (c) of rule 28 i.e., by using rule 30. Thus, the value of supply of such drug intermediate will be 110% of its cost of production or manufacture.

However, if the recipient unit is eligible for full ITC, the value declared in the invoice by the supplier will be deemed to be the open market value of the drug intermediate and thus, the invoice value will be the value of taxable supply.

8. Computation of the value of supply and the GST liability of Dushyant for the month of December

Particulars	Amount (₹)
Rent of the commercial building	19,50,000
Maintenance charges paid to the local society, reimbursed by Bharat [Note 1]	1,00,000
Municipal tax paid by Dushyant [Note 2]	Nil
Value of supply	20,50,000
CGST @ 9%	1,84,500
SGST @ 9%	1,84,500

Notes:

- (1) Since such charges are reimbursed by the tenant (Bharat), such charges ultimately form part of the rent paid by Bharat to Dushyant and thus, form part of the value as per section 15(2)(c).
- (2) Since municipal tax is paid by the supplier (Dushyant) and not charged to the recipient, the same is not includible in the value.

9. Computation of value of taxable supplies by Vayu Ltd.

Particulars	₹
List price of the goods	76,000
Add: Special packing [Note 1]	5,000
Duty levied by local authority on sale of goods [Note 2]	4,000
CGST and SGST charged [Note 2]	-
Subsidy received from an NGO [Note 3]	5,000

Less: Discount offered = 3% of List price = ₹ 76,000 × 3% [Note-4]	(2,280)
Value of taxable supplies	87,720

Notes:

1. Being incidental expenses charged by the supplier to the recipient of supply, packing charges are includible in the value as per section 15(2)(c).
 2. Taxes, duties, etc. levied under any law for the time being in force other than CGST, SGST/UTGST, IGST are includible in the value as per section 15(2)(a).
 3. Subsidy directly linked to the price received from a non-Government body is includible in the value in terms of section 15(2)(e).
 4. Since discount is known at the time of supply, it is deductible from the value in terms of section 15(3)(a).
- 10.** Section 15(3)(a) allows discounts to be deducted from the value of taxable supply if the same is given before or at the time of the supply and if such discount has been duly recorded in the invoice issued in respect of such supply. In other words, pre-supply discounts recorded in invoices are allowed as deduction.

Further, post supply discounts are also allowed as deduction from the value of supply under section 15(3)(b) if-

- (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

In the given case, Shah Electronics is entitled for 10% discount on televisions supplied by BEL for the quarters April-June as well as July-September as it has sold more than 500 televisions in each of these quarters. However, since the sales targets are achieved after the entire stock for the respective quarters of April-June and July-September has been dispatched, the discounts on the

televisions supplied to Shah Electronics for the quarters of April-June and July-September is a post-supply discount.

Such post-supply discount will be allowed as a deduction from the value of supply since the discount policy was known before the time of such supply and the discount can be specifically linked to relevant invoices (invoices pertaining to televisions supplied to Shah Electronics for the quarters of April-June and July-September) provided Shah Electronics reverses the input tax credit attributable to the discount on the basis of document issued by BEL.

The value of supply for the quarters of April-June and July-September will thus, be computed as under:

Computation of value of supply for the quarter - April-June

Particulars	Amount (₹)
Price at which the televisions are supplied to Shah Electronics [Note 1]	8,400
Add: Packing expenses [Note 2]	1,200
Less: Discount [Note 3]	Nil
Value of taxable supply of one unit of television	9,600
Value of taxable supply of televisions for the quarter April-June [₹ 9,600 x 750]	72,00,000

Notes:

- (1) The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of section 15(1) presuming that the supplier and the recipient of supply are not related and price is the sole consideration for the supply as the supplier and recipient are not related parties.
- (2) The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c).
- (3) Since Shah Electronics has not reversed the input tax credit attributable

to such discount on the basis of document issued by BEL, the conditions specified in section 15(3)(b) have not been fulfilled. Thus, the post-supply discount will not be allowed as deduction from the value of supply.

Computation of value of supply for quarter - July-September

Particulars	Amount (₹)
Price at which the televisions are supplied to Shah Electronics [Note 1]	8,400
Add: Packing expenses [Note 2]	1,200
Less: Discount [Note 3]	(840)
Value of taxable supply of one unit of television	8,760
Value of taxable supply of televisions for the quarter July-September [₹ 8,760 x 1,000]	87,60,000

Notes:

- (1) The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of section 15(1) presuming that the supplier and the recipient of supply are not related and price is the sole consideration for the supply as the supplier and recipient are not related parties.
 - (2) The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c).
 - (3) Since all the conditions specified in section 15(3)(b) have been fulfilled, the post-supply discount will be allowed as deduction from the value of supply. The input tax credit to be reversed will work out to be ₹1,51,200 $[1,000 \times (8,400 \times 10\%) \times 18\%]$.
- 11.** Rule 32(2) prescribes the provisions for determining the value of supply of services in relation to the purchase or sale of foreign currency, including money changing.

Determination of value under rule 32(2)(a)

- (i) Value of supply of services for a currency, when exchanged from, or to, Indian Rupees, shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency. Thus, value of supply is:

= (RBI reference for US \$ - Buying rate of US \$) × Total number of units of US \$ bought

= (74.6 – 74) × 1,000

= ₹ 600/-

- (ii) When the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money. Thus, value of supply is:

= 1% of the gross amount of Indian Rupees received

= 1% of (74.50 × 2,000) = ₹ 1,490/-

Determination of value under rule 32(2)(b)

Rule 32(2)(b) provides that value in relation to the supply of foreign currency, including money changing shall be deemed to be –

S. No.	Currency exchanged	Value of supply
1.	Upto ₹ 1,00,000	1% of the gross amount of currency exchanged OR ₹ 250 whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 1,000 + 0.50% of the (gross amount of currency exchanged - 1,00,000)
3.	Exceeding ₹ 10,00,000	₹ 5,500 + 0.1% of the (gross amount of currency exchanged - 10,00,000) OR ₹ 60,000 whichever is lower

Thus, the value of supply in the given cases would be computed as under:

- (i) Gross amount of currency exchanged = ₹ 74 × 1,000 = ₹ 74,000.

Since the gross amount of currency exchanged is less than ₹ 1,00,000, value of supply is 1% of the gross amount of currency exchanged i.e. 1% of ₹ 74,000 or ₹ 250, whichever is higher, i.e. = ₹ 740/-

- (ii) Gross amount of currency exchanged = ₹ 74.50 × 2,000 = ₹ 1,49,000.

Since the gross amount of currency exchanged exceeds ₹ 1,00,000 but is less than ₹ 10,00,000, value of supply is ₹ 1,000 + 0.50% of (₹ 1,49,000 - ₹ 1,00,000), i.e. = ₹ 1,245/-

12. As per explanation to rule 33, a “pure agent” means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The supplier needs to fulfil **all** the above conditions in order to qualify as a pure agent.

In the given case, Rudra Logistics has entered into a contractual agreement with recipient of supply, Rolly Polly Manufacturers Ltd., to incur, on behalf of such recipient, the **expenses mentioned in S. No. (ii) to (vii)** incurred in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of the recipient. Further, Rudra Logistics does not hold any title to said services and does not use them for his own interest.

Lastly, Rudra Logistics receives only the actual amount incurred to procure such services in addition to agency charges. Thus, Rudra Logistics qualifies as a pure agent.

Further, rule 33 stipulates that notwithstanding anything contained in the provisions of Chapter IV – Determination of Value of supply, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely-

- (I) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (II) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (III) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Since conditions (I) to (III) mentioned above are satisfied in the given case, expenses (ii) to (vii) incurred by Rudra Logistics as a pure agent of Rolly Polly Manufacturers Ltd. shall be excluded from the value of supply.

Accordingly, value of supply made by Rudra Logistics is as follows:

Particulars	Amount (₹)
Agency charges	5,00,000
Add: Unloading of machine at Kandla port, Gujarat	Nil
Charges for transport of machine from Kandla port, Gujarat to its godown in Ahmedabad, Gujarat	Nil
Charges for transport of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra	Nil

Customs duty	Nil
Dock charges	Nil
Port charges	Nil
Hotel expenses	45,000
Travelling expenses	50,000
Telephone expenses	2,000
Value of supply	5,97,000

Yes, the answer would be different. If lump sum amount of ₹ 13,00,000 is paid then the value of supply shall be ₹ 13,00,000 and tax shall be charged on value of supply since individual cost are not given.

- 13.** As per section 25(4), a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act. Therefore, units of Rustagi & Co. in Madhya Pradesh and Himachal Pradesh are distinct persons under GST.

As per rule 28, the value of the supply of goods between distinct persons, other than where the supply is made through an agent, shall –

- (a) be the open market value of such supply;
- (b) if open market value is not available, be the value of supply of goods of like kind and quality;
- (c) if value cannot be determined under the above methods, be cost of the supply plus 10% mark-up or be determined by other reasonable means, in that sequence.

Rule 28 also provides that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.

Further, rule 28 provides that where the recipient is eligible for full input tax credit, the value declared in the invoice by the supplier shall be deemed to be the open market value of the goods or services.

In the given case, the option of valuing the goods @ 90% of the price charged by the recipient to his unrelated customer is not available as the goods are not further supplied 'as such' but only after processing at Himachal Pradesh unit. However, since the Himachal Pradesh unit is eligible for full ITC, the value declared by the Madhya Pradesh unit in the invoice for transfer of such products, i.e. ₹ 20,00,000 shall be deemed to be the open market value of the products.

Thus, the value of 1000 products supplied by Rustagi & Co. to its Himachal Pradesh unit in terms of rule 28 is the open market value of such products which is ₹ 20,00,000.

- 14. (1)** In the given case, price is not the sole consideration for the supply. Apart from monetary consideration, the buyer has given some material to the supplier as consideration for such supply. Hence, the value of the supply cannot be determined on the basis of the transaction value in terms of section 15(1).

Here, the value will be determined with the help of rule 27 which specifies that where the consideration for a supply is not wholly in money, the value will be the open market value.

Open market value of a supply means the full value in money, excluding the applicable GST, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

Therefore, in the given case, the open market value of the goods supplied is ₹ 2,52,000 ($₹ 2,97,360 \times 100/118$) and is therefore, the value of such goods.

- (2)** Rule 27 further provides that if open market value of the supply is not known, the value of the supply will be the consideration in money plus the money equivalent to the non-monetary consideration, if such amount is known at the time of supply.

Therefore, the value in the given case will be (₹ 2,95,000 x 100/118) + ₹ 10,000, which is ₹ 2,60,000.

15. As per rule 32(4), the value of supply of services in relation to life insurance business, when the amount allocated for investment/ savings on behalf of the policy holder is not intimated to the policy holder at the time of supply of service, is-

- (i) in case of single premium annuity policies, 10% of single premium charged from the policy holder;
- (ii) in all other cases, 25% of the premium charged from the policy holder in the first year and 12.5% of the premium charged from the policy holder in subsequent years;
- (iii) in case the entire premium paid by the policy holder is only towards the risk cover in life insurance, the premium so paid.

Therefore, in the given case, the value of the services provided by CLICL will be computed as under:

Computation of value of supply for CLICL

Particulars	Amount (₹)
Premium for only risk cover	25,00,000
Premium from new policy subscribers 25% of ₹ 40,00,000	10,00,000
Renewal premium 12.5% of ₹ 80,00,000	10,00,000
Single premium on annuity policy 10% of ₹ 1,00,00,000	10,00,000
Total value of supply	55,00,000

16. **Computation of GST liability of Aviant Ltd.**

Particulars	(₹)
Price of machine [Note 1]	40,00,000
Add: Handling and loading charges [Note 2]	10,000

Installation and commissioning charges [Note 3]	1,00,000
Transportation cost [Note 4]	Nil
Price linked subsidy from Diligent Ltd. [Note 5]	<u>2,00,000</u>
Total price of the machine	43,10,000
Less: 2% cash discount on price of machinery = ₹ 40,00,000 × 2% [Note 6]	<u>(80,000)</u>
Taxable value of supply	42,30,000
Tax liability for the month of August [Note 10]	
IGST @ 12% [Note 7 and Note 8] – [A]	5,07,600
Tax liability for the month of September [Note 10]	
Interest collected @ 2% on ₹ 41,10,000 [Note 9]	82,200
Add: Cash discount recovered [Note 9]	<u>80,000</u>
Value of interest and cash discount inclusive of tax	1,62,200
IGST = (₹1,62,200/112) × 12 – [B]	17,379
Total IGST payable on the machinery [A] + [B]	5,24,979

Notes:

- (1) As per section 15(1), the value of a supply is the transaction value i.e., the price actually paid or payable for the said supply when the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
- (2) All incidental expenses charged by the supplier to the recipient of a supply are includible in the value of supply in terms of section 15(2)(c).
- (3) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c).

- (4) Transportation cost has not been included in the value of supply of the machinery as it is a separate service contract between the customer and the third-party service provider. The customer pays the freight directly to the service provider.

The supplier (Aviant Ltd), in this case, merely arranges for the transport and does not provide the transport service on its own account. Therefore, there will be no impact from valuation point of view on transport expenses incurred for supply of machinery as the supplier is not the party to such supply of services.

- (5) Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments are includible in the value of supply in terms of section 15(2)(e).
- (6) Cash discount was deducted by Aviant Ltd. upfront at the time of supply on 1st August, and hence, the same is excluded from the value of supply as it did not form part of the transaction value.
- (7) In the given case-
- ◆ the location of the supplier is in Noida (UP); and
 - ◆ the place of supply of machinery is the place of installation of the machinery i.e., Gurugram (Haryana) in terms of section 10(1)(d) of the IGST Act, 2017.

Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply will be leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

- (8) The given supply is a composite supply involving supply of goods (machinery) **and** services (handling and loading and installation and commissioning) where the principal supply is the supply of goods.

As per section 8(a), a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Thus, tax rate applicable to the goods (machinery) has been considered.

- (9) Interest for the delayed payment (which excludes subsidy related amount of Rs 2,00,000 as the same was not recoverable from the

recipient) of any consideration for any supply is includible in the value of supply in terms of section 15(2)(d). Further, cash discount recovered will also be includible in the value of supply as now the transaction value i.e., the price actually paid for the machinery is devoid of any discount.

The cash discount recovered and interest respectively are inclusive of tax. Thus, tax payable thereon has to be computed by making back calculations in terms of rule 35.

- (10) Invoice for the supply has been issued on 29th August. Thus, the time of supply of goods is 29th August in terms of section 12(1)(a).

As per section 12(6), the time of supply in case of addition in value by way of interest, late fee, penalty etc. for delayed payment of consideration for goods is the date on which the supplier receives such addition in value. Thus, the time of supply of interest received and cash discount recovered on account of delayed payment of consideration is 30th September, the date when the full payment was made. The supplier may issue a debit note for such interest and cash discount recovered.