


# CA FINAL IDT

**EXAM ORIENTED - 120 HRS**


**2 VIEWS**

**LECTURES WITH  
HARD COPY BOOK**

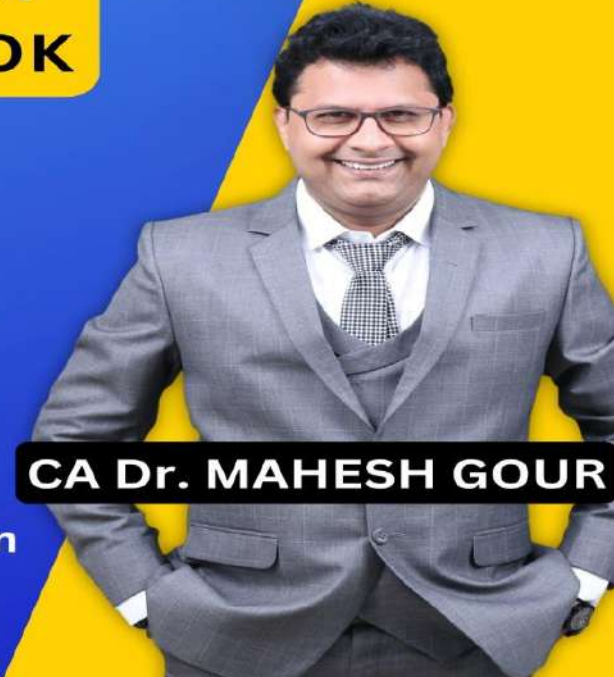


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# CHAPTER 1 SUPPLY UNDER GST

## → GLIMPSES

- Analysis of the taxable event under GST – Supply – its meaning and scope.
- **Section 7(1)(c):** Identify the transactions that will amount to supply even without any consideration. **[Schedule I]**
- **Section 7(1A):** Classify the transactions either as supply or goods or as a supply of services. **[Schedule II]**
- **Section 7(2):** Transactions which will be neither the supply of goods nor the supply of services. **[Schedule III]**
- **Section 8:** Composite and mixed supplies and their taxability under GST.

## → INTRODUCTION

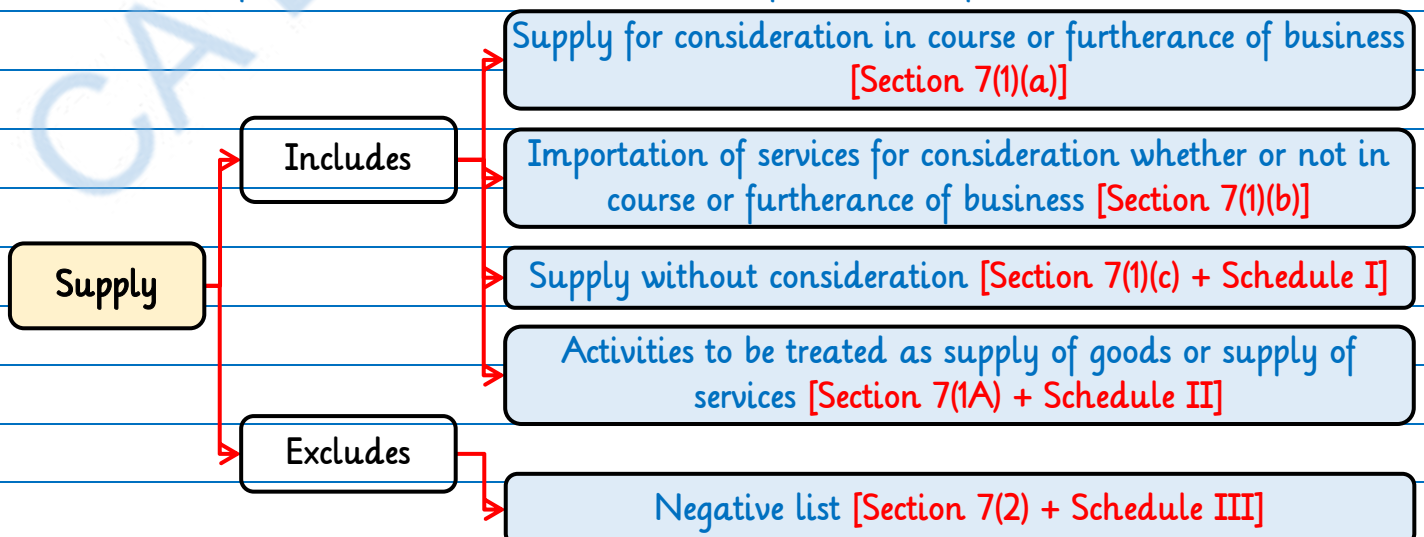
Earlier under indirect tax laws, there were two separate activities, manufacture or sale of goods and the provision of services. In the GST regime, the entire value of these two is taxed in an integrated manner by laying down one comprehensive taxable event i.e. "Supply". Supply of goods or services or both. It means, the term "supply" refers to a broad term which merges all taxable activities of the earlier laws into a single activity.

## → SUPPLY: THE TAXABLE EVENT IN GST

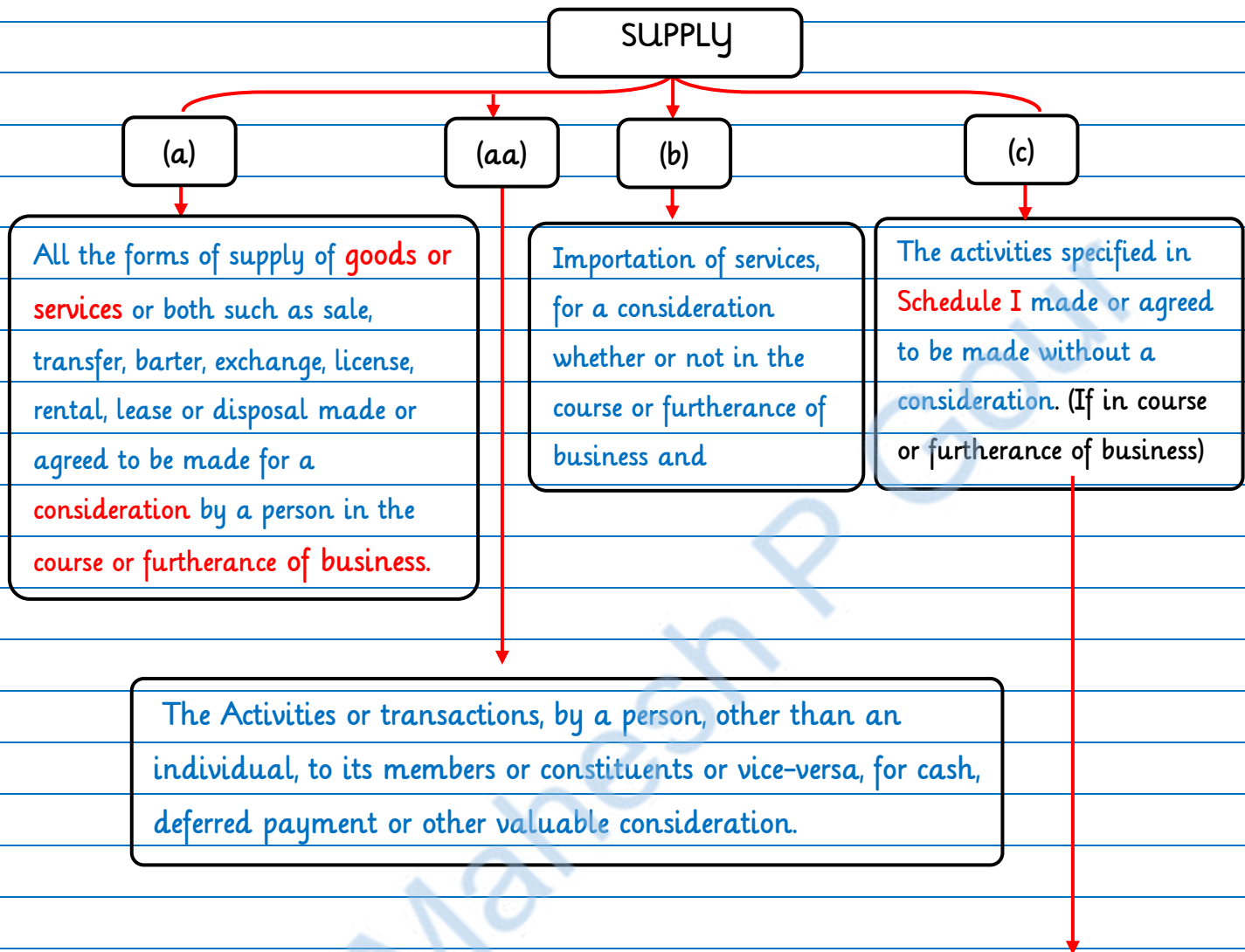
Taxable event in a law is an event, the occurrence or happening of which triggers the imposition of tax. It means the incidence of tax arises only after the occurrence of the taxable event.

### → Meaning And Definitions of Supply:

GST is a tax charged on the supply of goods or services or both made or agreed to be made for a consideration in the course or furtherance of business.



## → 'SUPPLY' AS PER GST LAW [SECTION 7(1) OF CGST ACT]



Activities to be treated as supply even if made without consideration {Section 7(1)(c)}

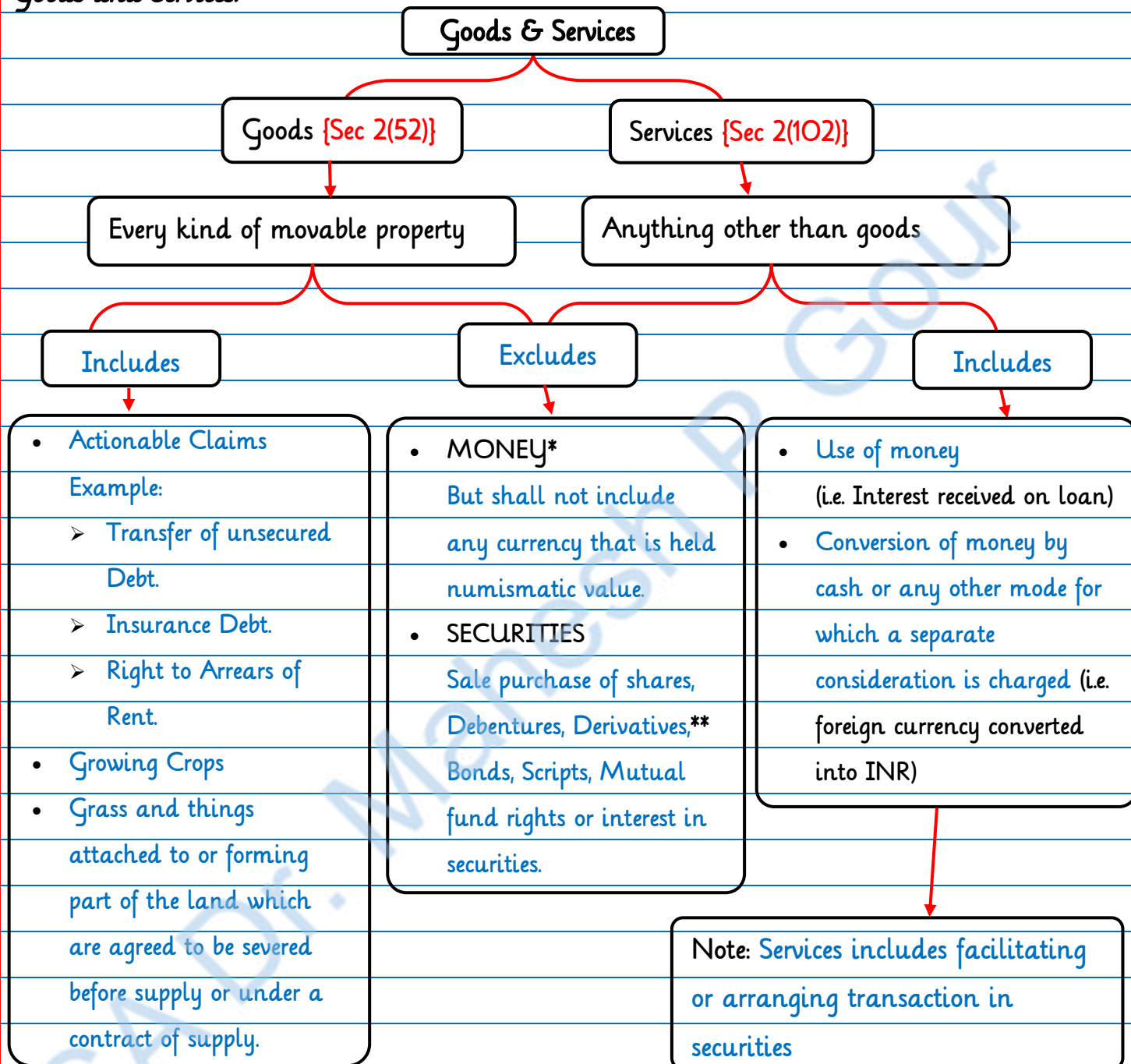
(Key - DRP)

1. Permanent transfer/**Disposal** of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between **related persons** or between **distinct persons** as specified in **section 25**.
3. Supply of goods (not service) between **Principal and Agent** without consideration is also supply.

It may be noted that in case where the invoice is issued by the agent to the customer in his name (vice versa), then such agent shall fall in the above case. It means if the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall in above case.

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

## 1) Goods and Services:



**\*Money:** Money includes: -

- Transactions in Commercial Paper ('CP')
- Certificate of Deposit ('CD') (as they are in the nature of promissory notes)
- Drafts or letters of credit

**\*\*Derivatives:**

'Derivatives' 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.



**Future Contract**  
**Forward Contract**

With Delivery

No GST

GST

Without Delivery

In the form of goods

Not in the form of goods

No GST

## 2) Consideration:

### CONSIDERATION

Payment in money or otherwise  
for supply

Monetary value of any act or forbearance for the supply

By Recipient or any other person

Excluding subsidy given by Central/  
State Government

Note: - Deposit to be considered as payment ONLY WHEN the supplier applies such deposit as consideration for the said supply.

[i.e. non-Refundable deposit or deposit adjusted against rent]

## 3) Business [Section 2(17)]:

- a. → Any trade, commerce, manufacturing
- Profession, vocation
- Adventure
- Wager (a place of bet) or
- Any other similar activity

Whether or not it is a pecuniary benefit (it means intention to earn the profit is not criterion in determining the state of business)

- b. Any activity or transaction in connection with or incidental or ancillary to sub-clause (a)

E.g. Sale of old assets or scrap or capital goods by a trader

- c. Any activity or transaction whether or not there is volume, frequency, continuity of such transaction

E.g. Trader of mobile providing consultancy for how to set up mobile shop to any person for consideration

- d. Any activity or transaction undertaken by CG, SG, LA for public interest.

E.g. Speed post, Express Parcel by Post Office

- e. Any activity or transaction supply or acquisition of goods including Capital Goods

E.g. Sale and purchase of Goods/Machineries

- f. Any activity or transaction related to admission for consideration to any premises.

E.g. Entry tickets for amusement park, cinema theatres, etc.

- g. Any activity or transaction provided by club/association to its members.

E.g. Sports facilities like swimming pool, table tennis, cricket etc.

h. Any activity or transaction provided by race club by way of totalisator or license to book maker in such club.

i. Any activity or transaction services supplied by a person as the holder of an office which has been accepted by him in the course of furtherance of his trade, profession or vocation.

E.g. CA in practice provides CFO or independent director service, he would be covered

## → SCHEDULE I - SUPPLY WITHOUT CONSIDERATION {SEC. 7(1)(c)}

### KEY CODE – DRP

#### 1. Permanent Transfer/*Disposal* of Business Assets, if ITC has Been Availed

EXAMPLE:

A cloth retailer gives from his business stock to his friend free of cost

If ITC has been availed

Deemed Supply

If ITC has not been availed

No supply

Treatment of Transfer of Asset		
ITC Availed	Consideration	Supply
X	X	X
X	✓	✓ 7(1)(a)
✓	X	✓ 7(1)(c) + SH I
✓	✓	✓ 7(1)(a)

#### 2. Supply Between *Related Person* or Distinct Persons [MTP May 19]

Supply of goods or services or both between related person\* or between distinct person\*\* as specified in Sec. 25 will Qualify as supply if it made in the course or furtherance of business.

**\*Related Person**

*Persons including legal person are deemed as related persons if*

- Such persons are officers/directors of one another's business
- Such persons are legally recognised partners
- Such persons are employer & employee
- A third person controls/ owns/ holds (directly/ indirectly)  $\geq 25\%$  voting stock/shares of both of them

- One of them controls (directly/indirectly) the other
- A third person controls (directly/indirectly) both of them
- Such persons together control (directly/indirectly) a third person
- Such persons are members of the same family
  - a) Spouse, Son, Daughter (Dependent or Independent)
  - b) Parents, Grand-Parent, Brother, Sister (If wholly dependent)
- One of them is the sole agent/sole distributor/sole concessionaire of the other

**EXAMPLE:**

Ms. Rakhi holds 35% shares of POR Ltd. and 30% shares of STU Ltd. POR Ltd. and STU Ltd. are related.

M Ltd. has a deciding role in corporate policy, operations management and quality control of K Ltd. It can be said that M Ltd. controls K Ltd. Thus, M Ltd. and K Ltd. are related.

**\*\*Distinct Person**

DISTINCT PERSONS SPECIFIED UNDER SECTION 25	
Separate registration make distinct Person U/S 25(4)	Separate establishment in another State U/S 25(5)
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 person	Separate establishment in another State/UT whether registered or unregistered. Such establishment shall be treated as distinct person.

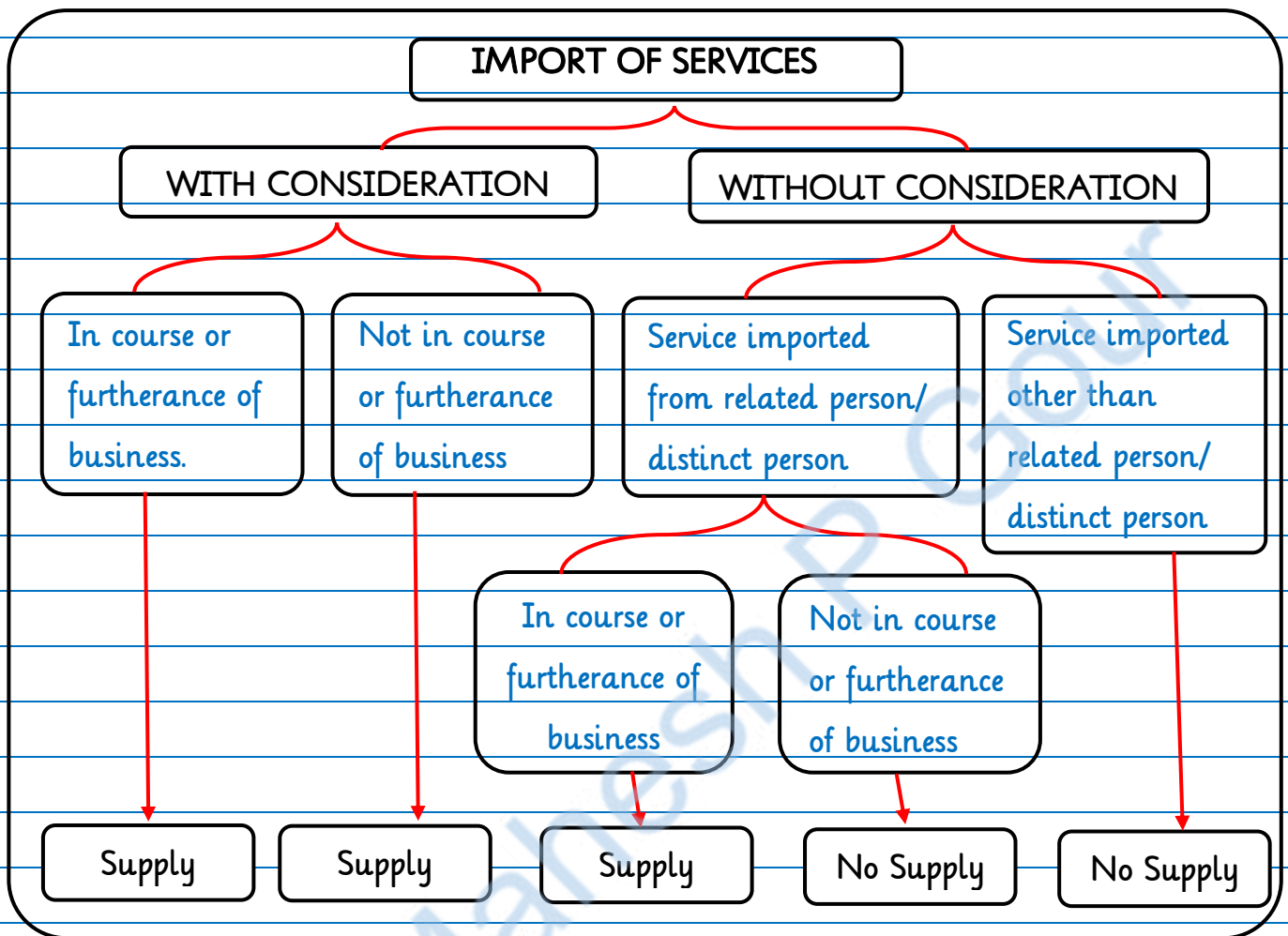
**EXAMPLE:**

Narayan, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of Maharashtra in respect of his branch. Narayan shall be treated as distinct person in respect of registration in Maharashtra and Delhi.

**Note:** Employee & employer are considered as related party as per explanation to Section 15.

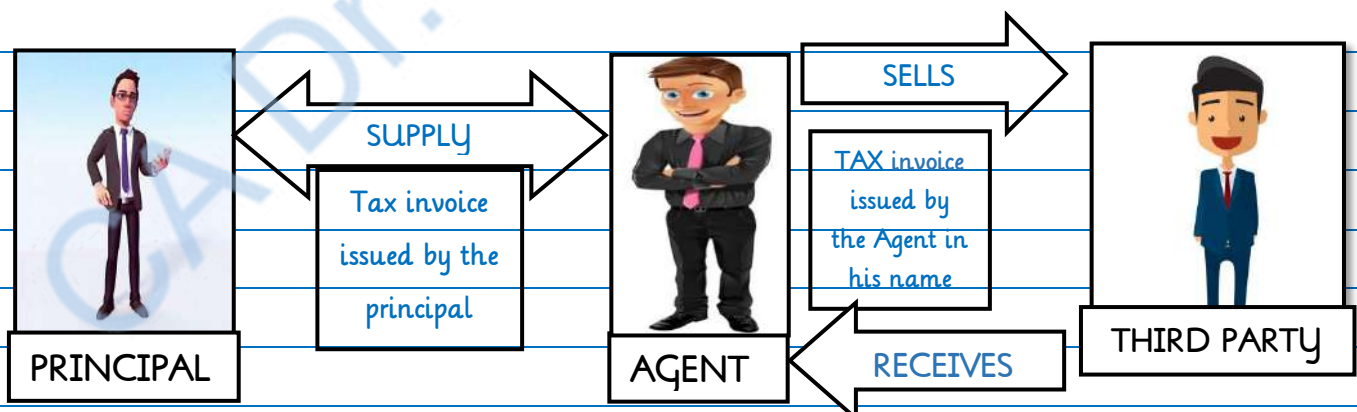
Schedule 1 provides that gifts not exceeding Rs. 50,000 in value in a financial year by an Employer to Employee shall not be treated as supply of goods or services or both.

→ **Sec. 7(1)(b)** Analysis of Importation of Service: **Import of services with consideration not in course or furtherance of business supply.**



### 3. **Principal Agent Relationship**

**Supply of goods** (not service) **between principal and agent without consideration is also supply.**

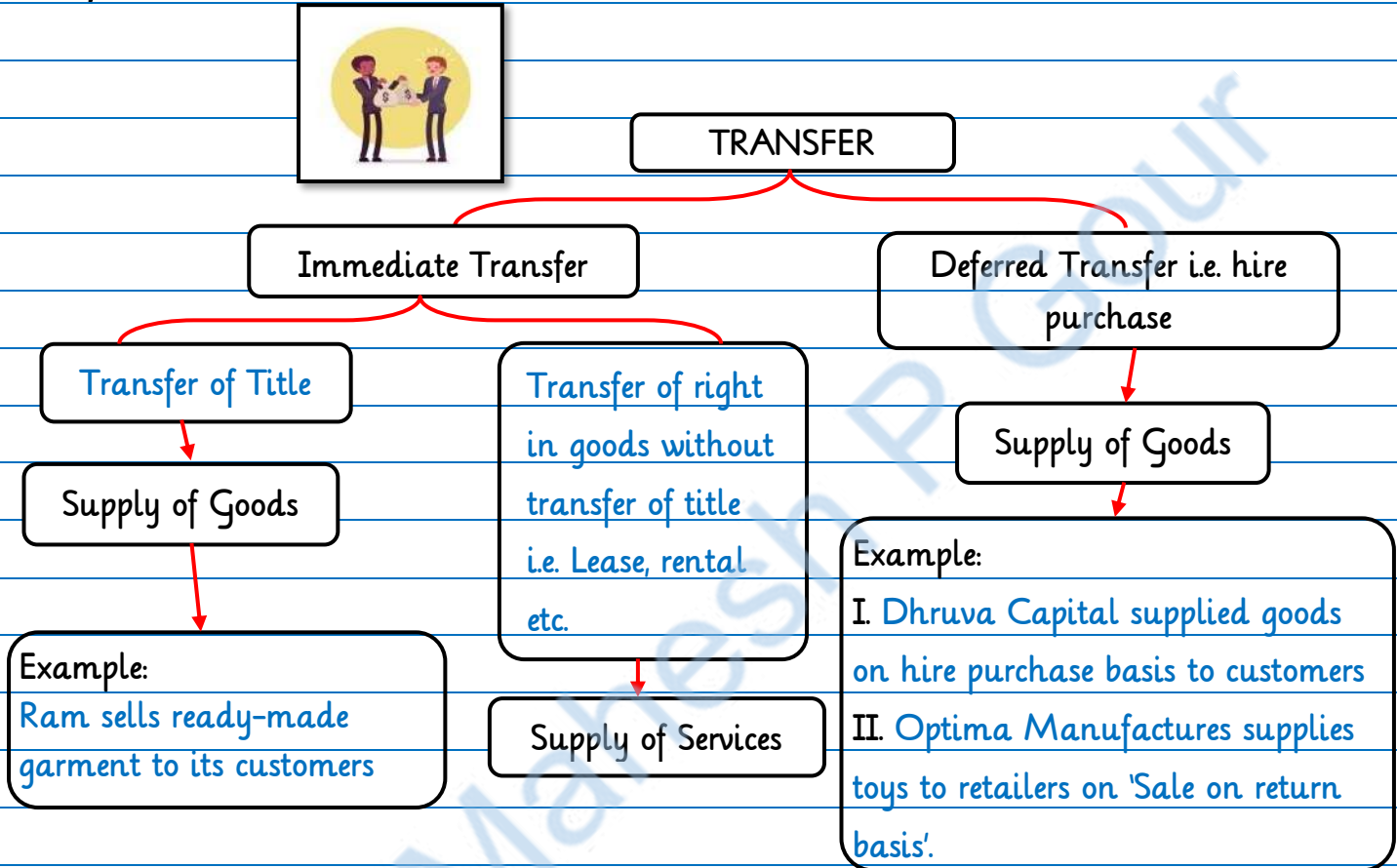




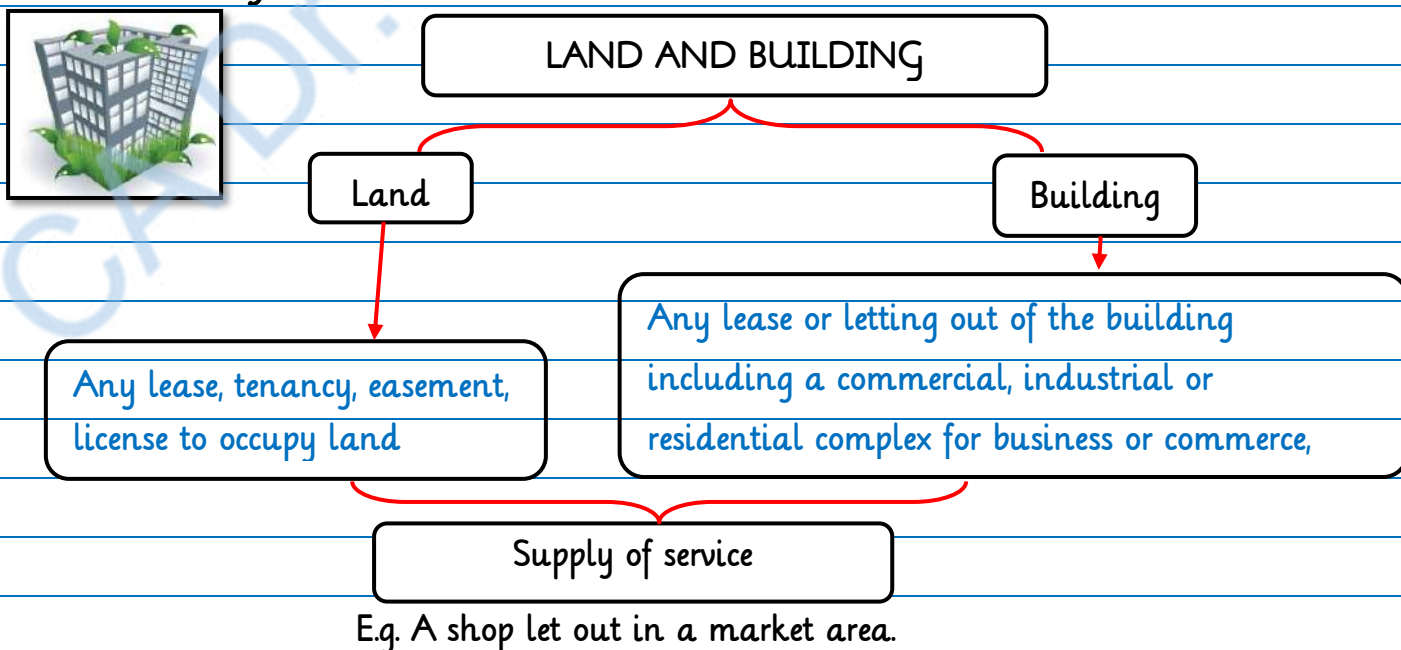
## → SCHEDULE II - ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES [SEC 7(1A)]

→ Section 7(1A) of the Act refers to Schedule II for determining whether a particular transaction is a supply of goods or services.

### 1. Transfer



### 2. Land and Building



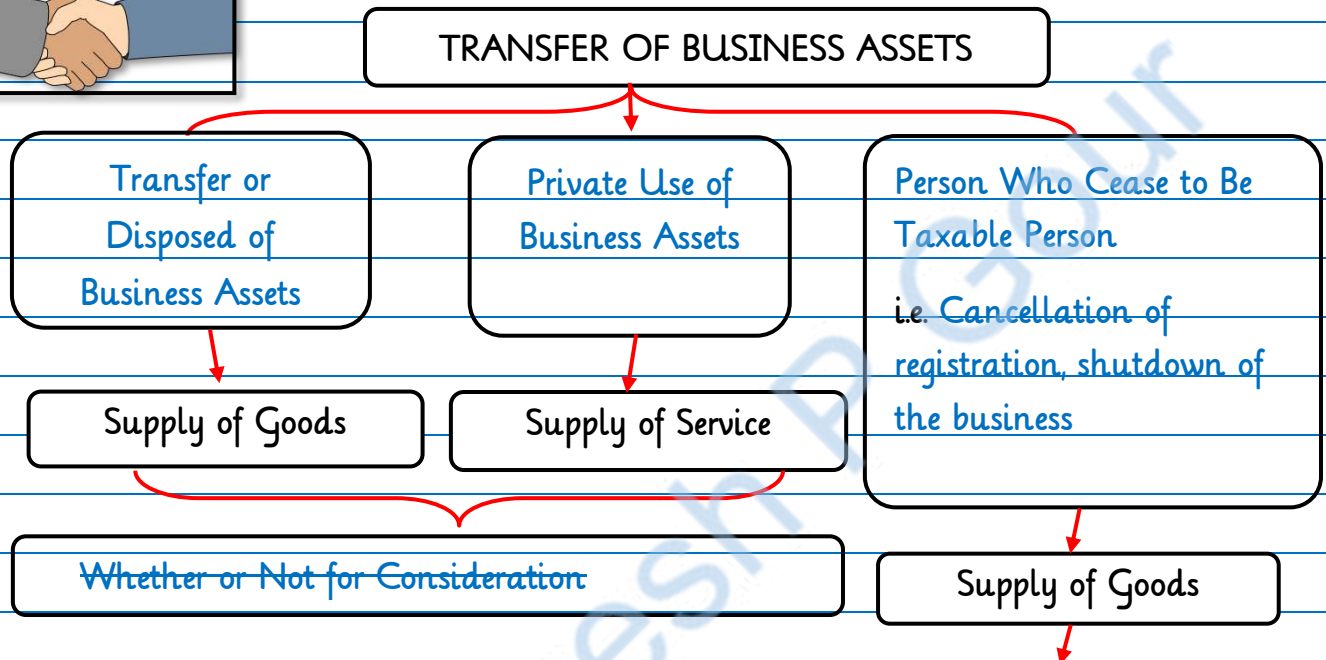
### 3. Treatment or Process (E.g. Job Work)



→ Any treatment or process which is applied to another person's goods is Supply of Services

E.g. Damani dyeing house dye the clothes given by Shubham Textiles Ltd. on job work basis.

### 4. Transfer of Business Assets



Exception:

No GST will be leviable in the following cases.

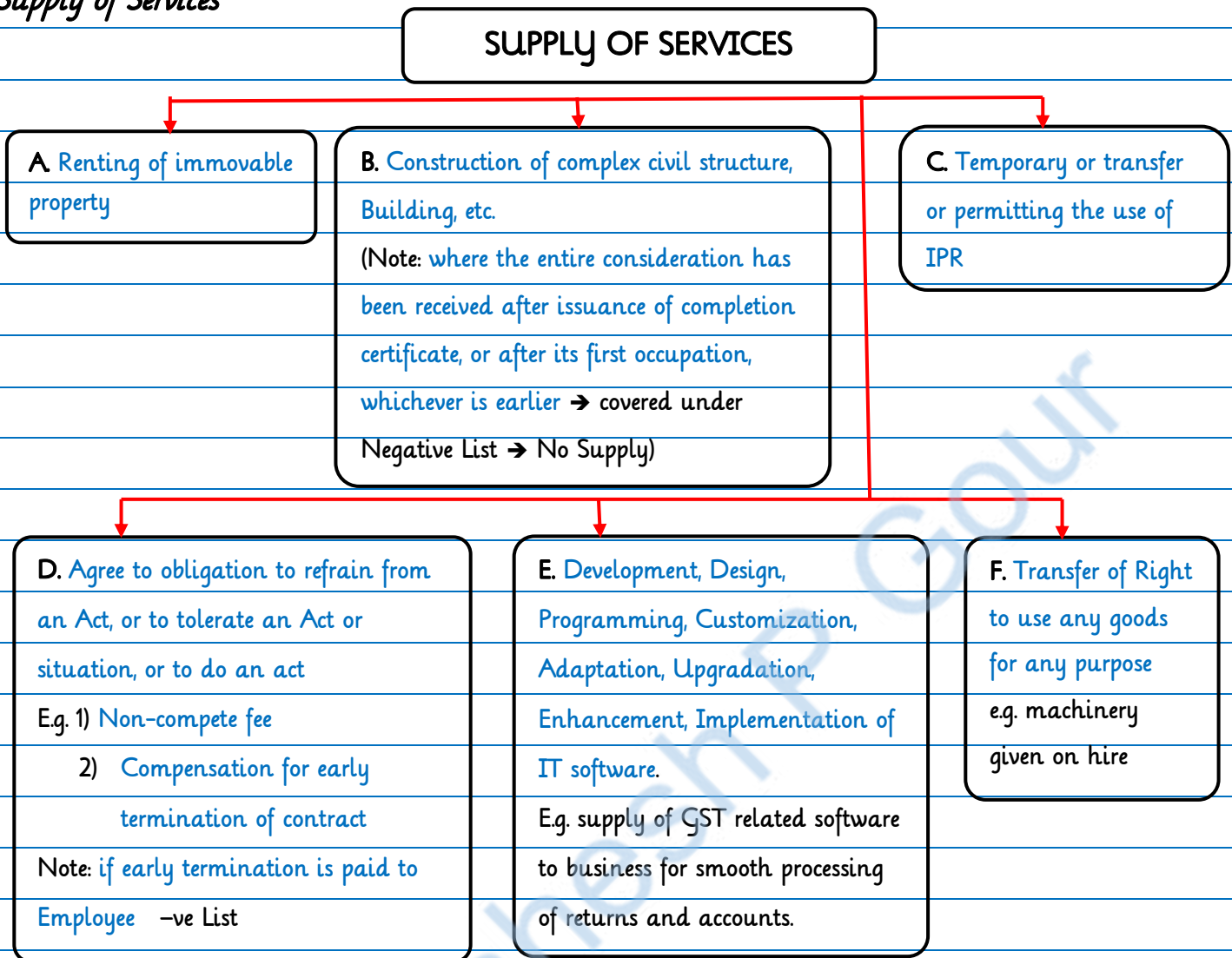
1. Transferred as going concern
2. Business is carried on by a personal representative who is deemed to be a taxable person.

Example:

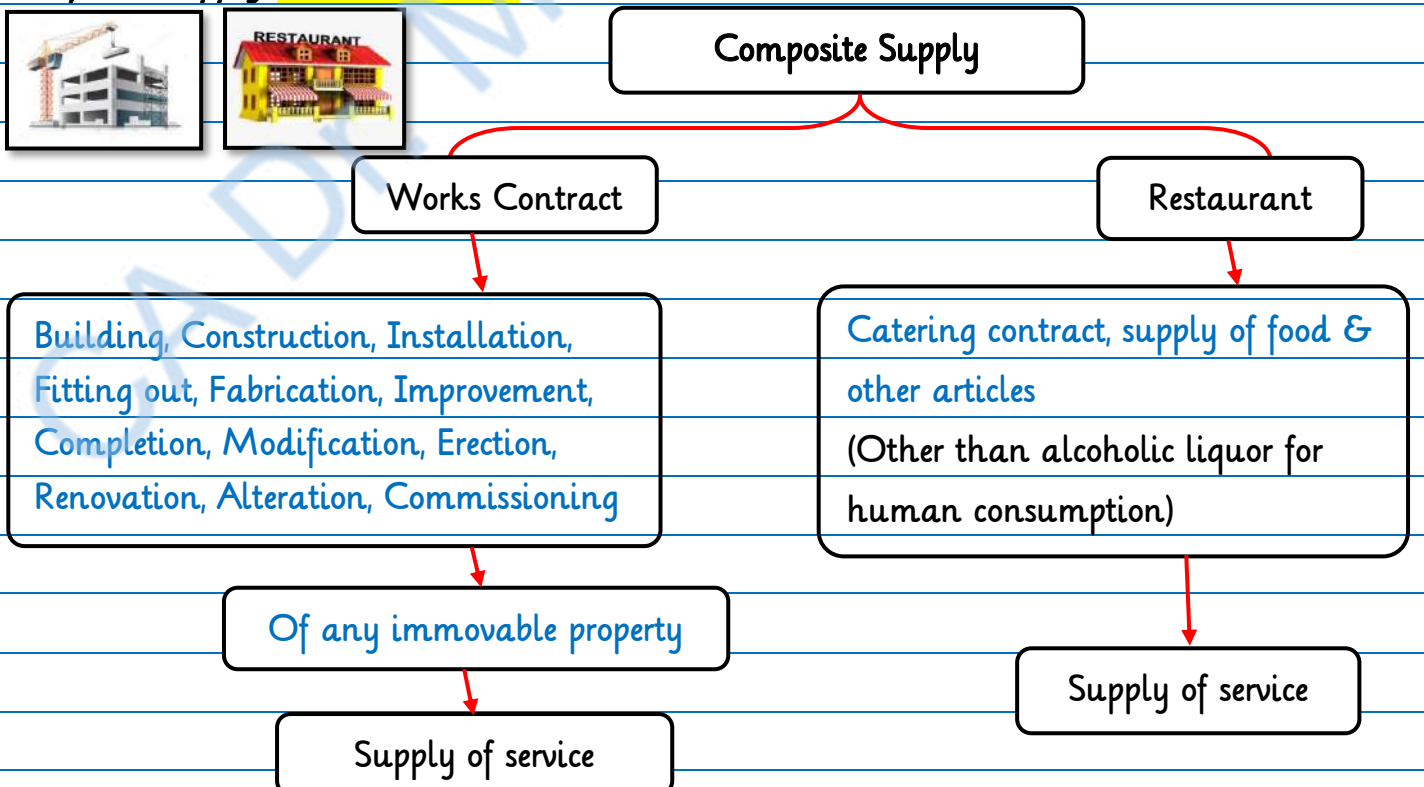
1. A director using car provided for personal travels → Supply of Services
2. Raj, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him and GST shall be payable (It will be treated → Supply of Goods)
3. Mr. Sohail, a sole proprietor, owns a laptop used for making office presentation. He transferred said laptop to his son → Supply of Goods

**Students Note:**

## 5. Supply of Services



## 6. Composite Supply [MCQ-Nov 20]



## 7. Supply of Goods



Supply of Goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

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

Note:

If PSL Supplies Goods to its members, then supply of Goods.

If AOP Supplies Services to its members, then it is Supply of Services.

### → IMPORTANT CLARIFICATION ISSUED BY CBIC

#### 1. TRANSFER OF TENANCY RIGHTS/PAGADI

- Supply of Service and liable to GST (subject to exemption notification)
- Transfer of tenancy rights cannot be treated as sale of Land or Building. The contention that stamp duty and registration charges are levied on such transfers of Tenancy rights, and such transaction will be treated as supply of services
- Renting of residential dwelling for use as a residence is exempt (refer entry 12 → chap 4)
- As regards, service provided by outgoing tenant by way of surrendering the tenancy right against consideration in the form of portion of tenancy premium → liable for GST

#### 2. PRIORITY SECTOR LENDING CERTIFICATES (PSLCS)

Issue	Priority Sector Lending Certificates (PSLCs)
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Clarification	Supply of Goods as per RBI FAQs
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Example:



**Bank A**

Total Loan = ₹100 crore.

PSL Loan = ₹50 crore

PSL target achieved = 50%

Excess PSL = ₹10 crore

Bank A has excess PSL of ₹10 crore that it can sell in form of PSLC to banks like Bank B and earn extra income for that

Bank B can buy PSLC to meet the RBI norms for PSL



**Bank B**

Total Loans = ₹50 crore

PSL Loans = ₹15 crore

PSL target achieved = 30%

PSL Shortfall = ₹5 crore

### 3. SUPPLY OF PRINTED BOOKS, PAMPHLETS, BROCHURES, ENVELOPES ETC

Issue	Supply of printed books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes, etc. printed with design, logo, name, address or other contents supplied by the recipient of such printed goods.
Clarification	In the case of printing of books, pamphlets, brochures, printed books, annual reports, and the like, where only content is pamphlets, supplied by the publisher or the person who owns the brochures, 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 <b>SUPPLY OF SERVICE</b> 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, pre-dominant 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 <b>SUPPLY OF GOODS</b> .

### 4. BUS BODY BUILDING

Issue	Activity of Bus Body Building.
Clarification	The principal supply may be determined on the basis of facts and circumstances of each case.

### 5. RETREADING OF TYRES

Issue	Retreading of tyres
Clarification	Pre-dominant element is process of retreading which is a <b>SUPPLY OF SERVICE</b> . 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 <b>SUPPLY OF GOODS</b>





## HOLDING SHARES BY A HOLDING COMPANY OF THE SUBSIDIARY COMPANY

Subject to  
Amendment  
issued by ICAI

Issue

Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not.

Clarification

- Securities are considered neither goods nor services
- The securities held by the holding company in the subsidiary company are neither goods nor services
- Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services

Conclusion

The activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

## → SCHEDULE III of CGST ACT, 2017 – NOT TO BE TREATED AS SUPPLY (NEGATIVE LIST)

KEY – C<sub>2</sub>HAI FEN

### 1. C1 – Constitutional authority or Chairperson of Government bodies

- |    |  |
|----|--|
| a) | The functions performed by the MP, MLA, Members of Panchayat, Members of Municipalities and Members of other local authorities.  |
| b) | The duties performed by any person who holds any post in pursuance of the provisions of the Constitution. i.e. Governors of State, C&AG etc.                                     |
| c) | The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Government or local authority.<br>i.e. Chairperson of IRDA, MIDC etc. |

### 2. C2 – Service provided by Court/Tribunal

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

Note: – Amounts/fees charged by Consumer Disputes Redressal Commission:

Fee paid by litigants while registering complaints to Consumer Disputes Redressal Commission are not leviable to GST.

### 3. H – Supply of Goods before removal for Home consumption [Jan 21]

(a) Supply of warehoused goods to any person before clearance for home consumption.

Example: Mr. X imported some goods in India, but kept the goods in custom bonded

warehouse without clearing it for home consumption. In the meantime, Mr. X sold these

goods to Mr. Y while they were in the warehouse. This transaction between Mr. X and Mr. Y

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is neither supply of goods nor supply of services.

(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.

Example: Mr. P of India imported some goods from Japan. While the goods were in high seas, Mr. P sold the goods to Mr. Q in India by way of endorsement of documents of title of goods. This transaction between Mr. P and Mr. Q is neither supply of goods nor supply of services.

#### 4. **A – Actionable claim** (Other than Lottery, Betting etc.)

Casinos, horse racing and online gaming excluded from the purview of Schedule III to clarify their taxability [Entry 6 of Schedule III amended]

Actionable Claims other than

- Betting;
- **Casinos;**
- Gambling;
- **Horse racing;**
- Lottery; or
- **Online money gaming;**

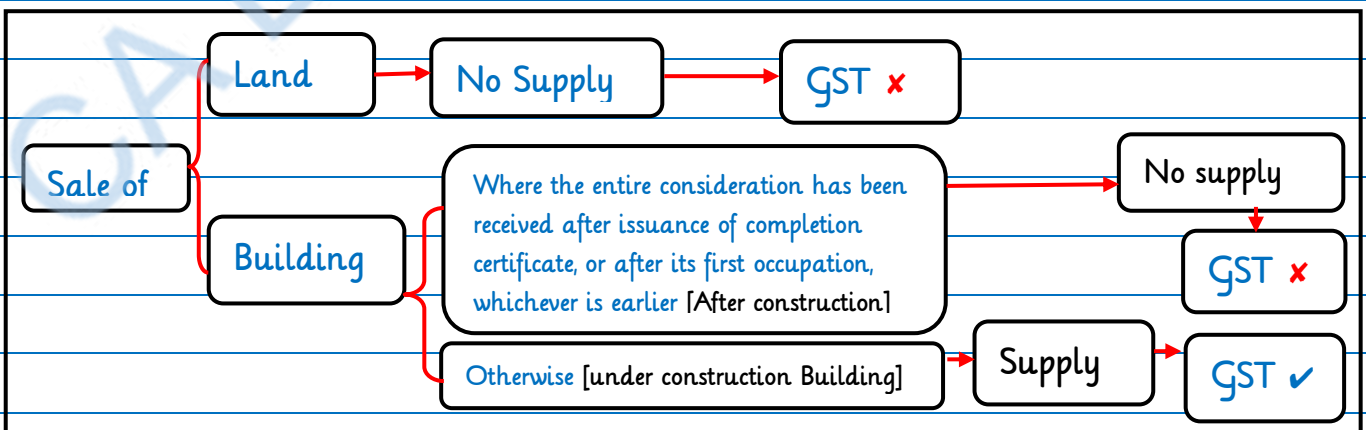
No

Supply

Yes

No Supply

#### 5. **I – Transfer of Immovable property**

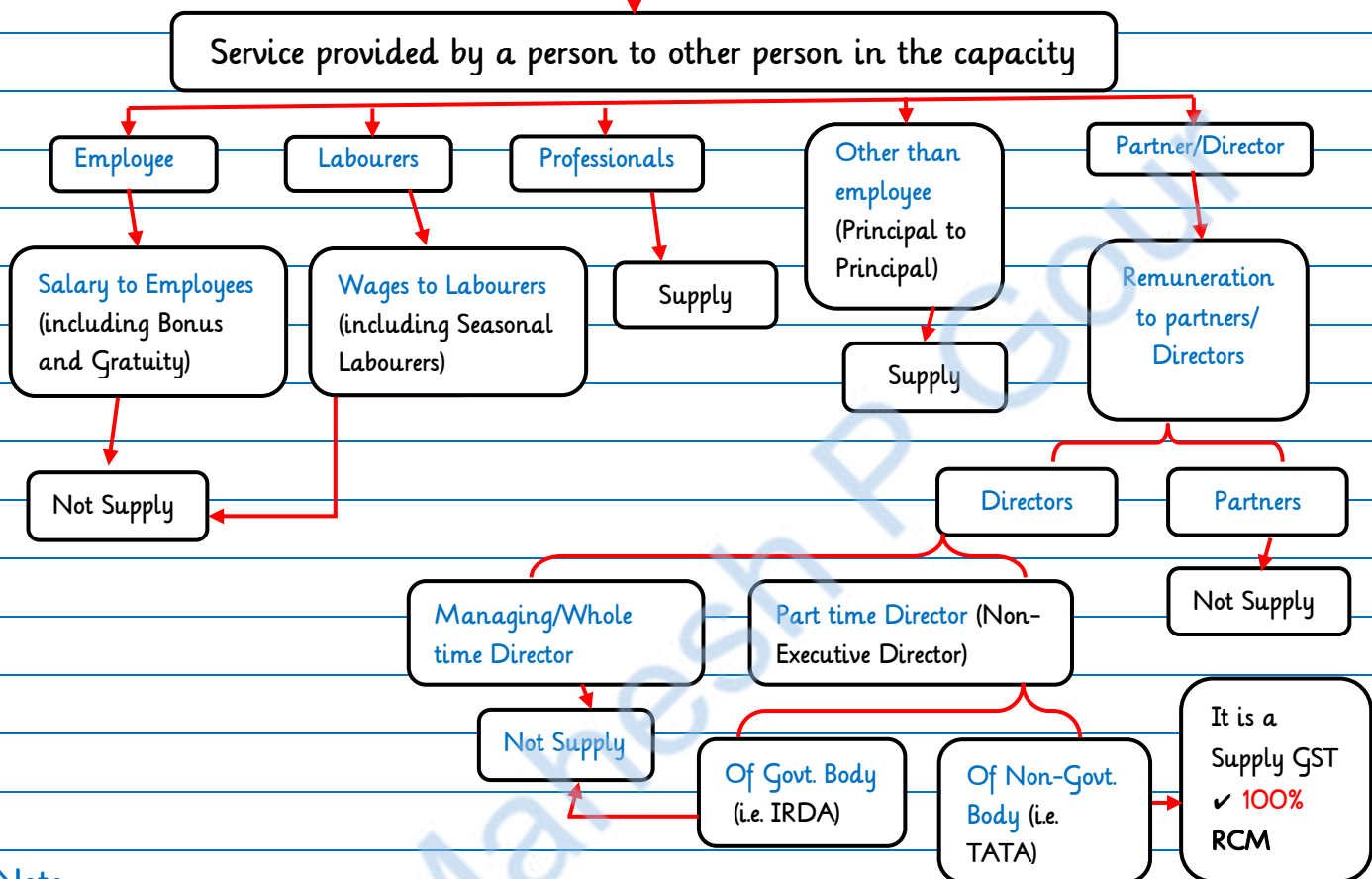


#### 6. **F – Funeral, Burial etc.**

Services of Funeral, Burial, Crematorium or Mortuary including transportation of the deceased.

## 7. **E - Service provided by Employee**

Services by an employee to the employer in the course of or relation to his employment.



Note:

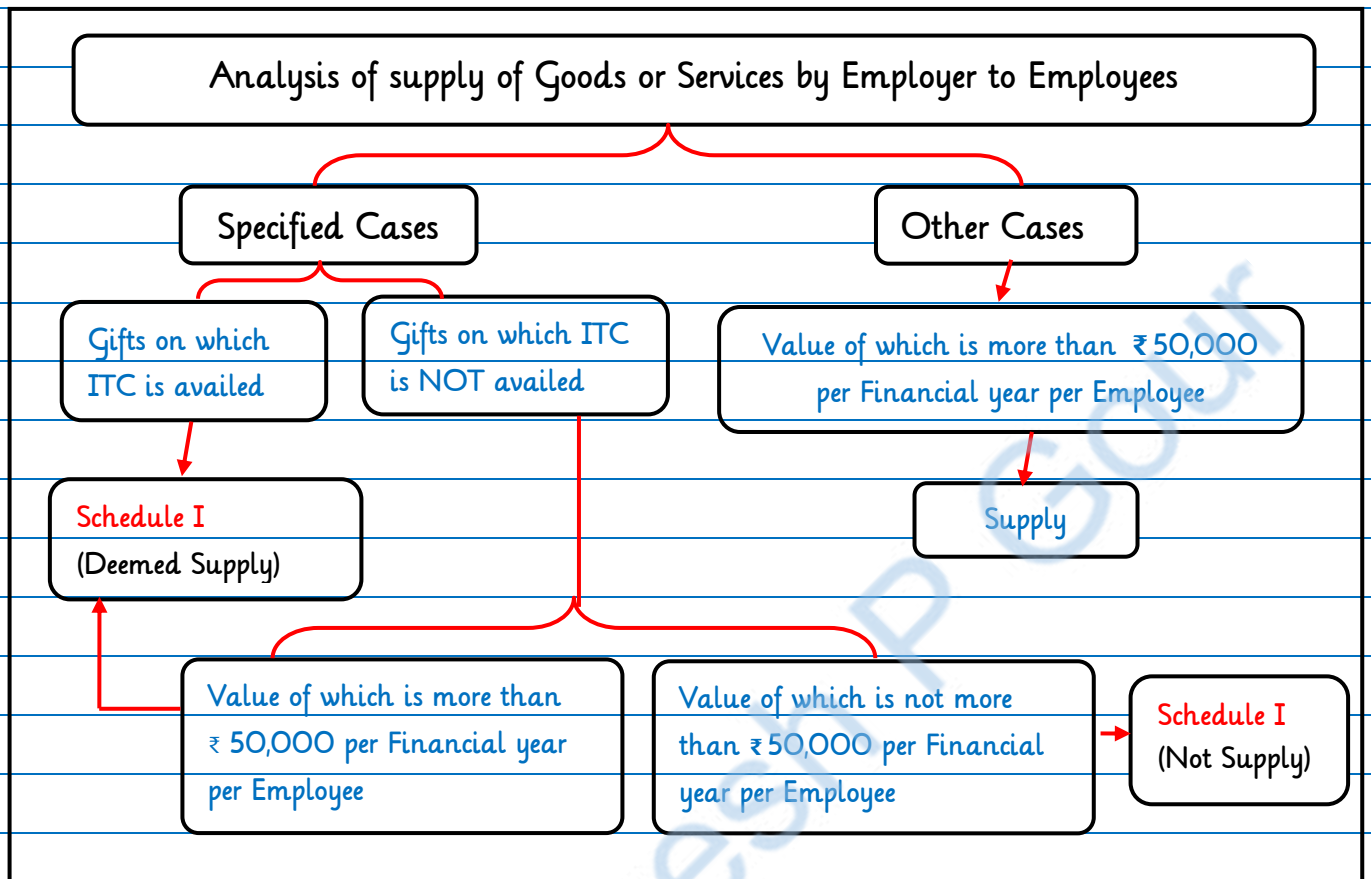
**PERQUISITES PROVIDED IN TERMS OF CONTRACTUAL AGREEMENT TO EMPLOYEE – NOT LIABLE TO GST CIRCULAR NO. 172/04/2022 GST DATED 06.07.2022**

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 GST.

EXAMPLE:

- 1) Services provided otherwise than in course of employment → **Supply**
- 2) Services provided on contract basis – Principal – to Principal → **Supply**
- 3) Amounts received by an employee from employer on premature termination of contract of employment → **No supply**, as it arise in course of employment
- 4) Any amount paid for not joining a competing business would be liable to be taxed be in paid for providing the service of forbearance to act → **Supply**
- 5) Services provided by casual worker to employer who gives wages on daily basis to the worker, services provided by the worker in the course of employment → **No Supply**

**Students Note:**



8. **N - Supply from Non-Taxable Territory** [MTP May 19, Jan 21, MTP Dec 21]

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.

Example: Mr. A purchased goods from China and sold it to Mr. John in Canada without bringing the goods in India. This transaction is neither supply of goods nor supply of services.

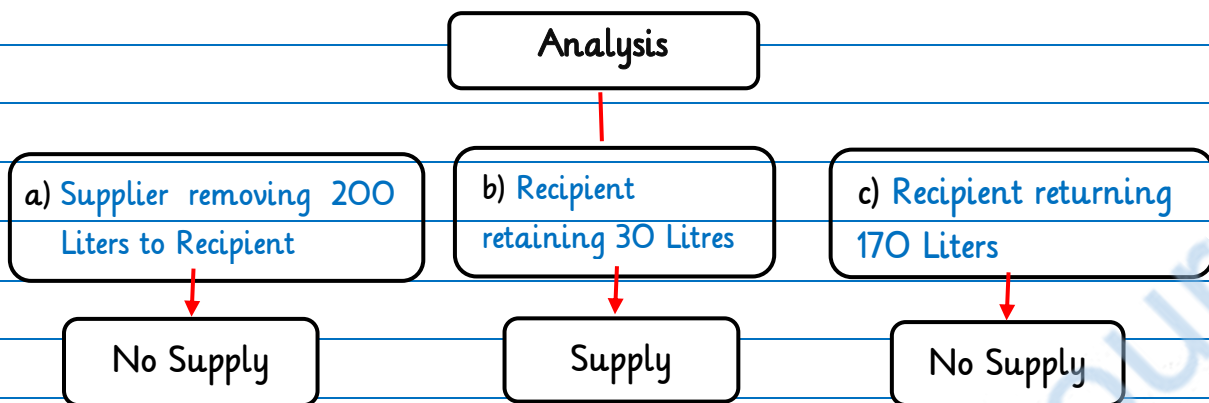
→ **SOME CLARIFICATION ISSUED BY CBIC**

1. **GST ON THE SUPERIOR KEROSENE OIL (SKO)**

Issue	Whether GST is applicable on the Superior Kerosene Oil (SKO) received by recipient or retained by recipient for the manufacture of Linear Alkyl Benzene (LAB)?
Clarification	A SKO retained by recipient will be treated as Supply.

Example: If 200 Liters are transferred by supplier and only 30 Liters are retained by recipient, then supply is only of 30 Liters

**Students Note:**



## 2 TAXABILITY OF COST PETROLEUM (CIRCULAR NO. 32/06/2018 GST DATED 12/02/2018)

- 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.
- 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 exploration and production of petroleum for themselves and not as a service to Government.

## 3 JOINT VENTURE (JV)

Clarification
a) JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of inter-se agreements between members of the JV) holds the key to understanding



of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV.

b) Thus, whether a cash call is merely a transaction in money and hence not 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.

c) "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 works programme and budget.

#### 4. INTER-STATE MOVEMENT OF VARIOUS MODES OF CONVEYANCE

##### Clarification

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 nor supply of services.

#### 5. INTER-STATE MOVEMENT OF RIGS, TOOLS AND SPARES, AND ALL GOODS ON WHEELS

##### Clarification

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 nor supply of service

#### 6. CLARIFICATION ON SCOPE OF PRINCIPAL AND AGENT RELATIONSHIP UNDER SCHEDULE I OF CGST ACT IN THE CONTEXT OF DEL CREDERE AGENT (DCA)

Issue	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?
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Clarification	It depends on the following possible scenarios:
	<ul style="list-style-type: none"> <li>In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the</li> </ul>

ambit of agent.

- In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.

→ **CASE 1. If DCA is not an Agent as per Schedule I**

Issue	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).
Clarification	Interest on Loan → Supply of Service → DCA → Supplier Interest would not form part of the Value of Supply of Goods supplied by the supplier.

→ **CASE 2. If DCA is an Agent as per Schedule I**

Issue	DCA 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 part of the value of supply of goods also or not?
Clarification	Value of Interest: 1. Not Independent Supply 2. It is a part of Value of Goods as per section 15(2)(d) 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. 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) of the CGST Act.

## 7. TREATMENT OF SALES PROMOTION SCHEMES UNDER GST

Case [A]

FREE SAMPLES AND GIFTS

If covered under Schedule I of CGST ACT

If not covered under Schedule I of CGST ACT

Supply

No Supply

Case [B]

**BUY ONE GET ONE FREE OFFER**

Single Price is charged for 2 items

Composite Supply

or

Mixed Supply

GST is leviable

**8 WHETHER GST IS APPLICABLE ON REIMBURSEMENT OF ELECTRICITY CHARGES RECEIVED BY REAL ESTATE COMPANIES, MALLS, AIRPORT OPERATORS ETC. FROM THEIR LESSEES/OCCUPANTS.**

Issue	Doubts were raised on the applicability of GST on supply of electricity by the real estate companies, malls, airport operators etc., to their lessees or occupants.
Clarification	<ul style="list-style-type: none"><li>It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.</li><li>However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.</li></ul>

9. STATE GOVERNMENT PROVIDES SERVICES BY WAY OF GRANT OF ALCOHOLIC LIQUOR LICENSE, AGAINST CONSIDERATION IN THE FORM OF LICENSE FEE OR APPLICATION FEE OR BY WHATEVER NAME IT IS CALLED.



State Govt.

(Supplier)

Grant of alcoholic liquor license

License Fee/Application fee

No supply as per Section 7(2) of the CGST Act, 2017



Any Person

(Recipient)

10. GOODS SENT/TAKEN OUT OF INDIA FOR EXHIBITION OR ON CONSIGNMENT BASIS FOR EXPORT PROMOTION [MCQ-Nov 20]



India

(Supplier)

Goods sent/taken out of India for Exhibition or on Consignment Basis for Export/Import Promotion

No Consideration



Australia Exhibition

(Outside of India)

Covered under Schedule I of CGST Act, 2017

Not Covered under Schedule I of CGST Act, 2017

→ Supply as per Section 7 of CGST Act, 2017  
→ Treated as ZR'S as per Section 16 of IGST Act, 2017

→ No supply as per Section 7 of CGST Act, 2017  
→ No ZR'S as per Section 16 of IGST Act, 2017

11. SERVICES BY WAY OF DISPLAY OF NAME OR PLACING OF NAME OF THE PLATES OF THE DONOR IN THE PREMISE OF CHARITABLE ORGANISATION RECEIVING DONATION OR GIFTS FROM INDIVIDUAL DONORS.

If the following conditions are satisfied

- Gift or Donation is made to a charitable organization
- The payment has the character of gift or donation
- The purpose is philanthropic (i.e. it leads to no commercial gain)
- And not advertisement

GST is not leviable

## 12. CLARIFICATION REGARDING GST APPLICABILITY ON LIQUIDATED DAMAGES, COMPENSATION AND PENALTY ARISING OUT OF BREACH OF CONTRACT OR OTHER PROVISIONS OF LAW [CIRCULAR NO. 178/10/2022 GST DATED 03.08.2022]

Expression "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has three limbs

Agreeing to the obligation to refrain from an act

Agreeing to the obligation to tolerate an act or a situation

Agreeing to the obligation to do an act

- a) Agreeing to the obligation to refrain from an act: - Non-compete agreements
- b) Agreeing to the obligation to tolerate an act or a situation: - Shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker.
- c) Agreeing to the obligation to do an act: - 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

□ Above three activities must comply with the following conditions:

1. There must be an expressed or implied agreement or contract must exist
2. Consideration must flow in return to this contract/agreement

### A. Liquidated Damages

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 retribute the aggrieved person.

the amount paid as 'liquidated damages'

Liquidated damages

→ Compensate for injuring loss or damage

→ No agreement

NO GST

← Not constitute consideration

← Compensation is only flow of money



Examples of such cases are:

1. damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,
2. penalty stipulated in a contract for delayed construction of houses,
3. forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer

#### B. Cheque dishonour fine/ penalty

Such penalty imposed not for tolerating the Act → No consideration → NO GST

#### C. Penalty imposed for violation of laws

E.g – Penalty for traffic violations, or for violation of pollution norms

Not constitute consideration

NO GST

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.

penalties for dissuading



Employer

Employer – forfeiture of salary of employee or recovery of bond.



Employee

It's penalty for non-serious employee

Employee does not get anything in return from the employer against payment of such amount

Not taxable

**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.

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.

**F. Fixed charges for power**

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.

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 exit of the passenger from the destination terminal.

*The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle.*

For example: 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.

**13. CLARIFICATIONS: NO SUPPLY OF SERVICE BY THE INSURED TO THE INSURANCE COMPANY IN LIEU OF 'NO CLAIM BONUS' OFFERED BY SAID INSURANCE COMPANY TO HIM**

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]*



## COMPOSITE AND MIXED SUPPLY

*[Nov 17, Nov 19, RTP Nov 19, MTP May 19]*

**[MCQ-NOV 20] [CASE STUDY]**

Composite supply	Mixed Supply
<ul style="list-style-type: none"><li>Comprises two or more taxable supplies of goods or services or both, or any combination thereof.</li><li>Naturally bundled and supplied in conjunction with each other, in the ordinary course of business.</li><li>One of which is a principal Supply.</li><li>Tax Rate of Principal Supply.</li></ul>	<ul style="list-style-type: none"><li>Two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person.</li><li>For a single price where such supply does not constitute a composite supply.</li><li>The individual supplies are independent of each other and are not naturally bundled.</li><li>TAX Rate Supply that attracts Highest Rate of Tax.</li></ul>

### → How to determine Natural Bundle?

The question of bundled supply in the ordinary course of business depends on the normal Practices. Here are some ways to identify them:

1. If buyers mostly expect such services to be provided as a package, then the package will be treated as naturally bundled.

Example: Most business conventions look for combination of hotel accommodation, auditorium and food.

2. If most of the service providers in the industry provide a package of services then it can be considered as naturally bundled.

Example: Air transport and food on board is a bundle offered by most

3. The nature of the various services in a bundle of services will also help to identify whether the services are bundled. If there is a main service and the others are ancillary service then it becomes a bundled service.

Example: Five-star hotels often provide free laundry services on staying at the hotel.

Renting the room is the primary service and laundry is ancillary. A person can opt for laundry services only if he is staying at the hotel.

#### CLARIFICATION: FOODS & BEVERAGES IN CINEMA HALL

Issue	Whether supply of food or beverages in cinema hall is taxable as restaurant service
Clarification	<p>It is hereby clarified that supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:</p> <p>The food or beverages are supplied by way of or as part of a service, and supplied independent of the cinema exhibition service.</p> <p>It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.</p>



#### SALVAGE/WRECK VALUE EARMARKED IN CLAIM ASSESSMENT OF DAMAGE CAUSED TO MOTOR VEHICLE

<p>In case of motor vehicle insurance provided by the insurance companies engaged in providing general insurance services, such companies insure the cost of repairs/damages of motor vehicles incurred by the policyholders.</p> <p>In case a claim is made by an insurer for damage of the motor vehicle, while settling said insurance claim, where the general insurance companies, as per the pre-decided terms of the insurance contract:</p> <p>i) deduct the value of salvage/wreckage of the motor vehicle as deductibles from the claim amount paid to the insured, the salvage remains the property of insured and insurance companies are not liable to discharge GST liability on the same.</p> <p>ii) do not deduct the value of salvage/wreckage of the motor vehicle and pay the full amount of insurance claim, the salvage becomes the property of the insurance company and the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyers.</p>
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## APPLICABILITY OF GST IN RESPECT OF WARRANTY REPLACEMENT OF GOODS OR ITS PARTS AND/REPAIR SERVICES DURING WARRANTY PERIOD

As a commercial practice, the original equipment manufacturers/ suppliers offer warranty for the goods / services supplied by them to the customers. During the warranty period, goods /services are replaced to the customers (either by manufacturer itself or by the distributor on behalf of the manufacturer) and generally, no separate consideration is charged and received at the time of replacement from the customer.

Following issues have been clarified in respect of warranty replacement of goods or its parts and/ repair services provided during the warranty period:

### SCENARIO 1

#### ORIGINAL EQUIPMENT MANUFACTURER OFFERING REPLACEMENT OF GOODS OR ITS PARTS/REPAIR SERVICES UNDER WARRANTY TO THE CUSTOMER



#### Issue

Where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of goods or its parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, whether GST would be payable on such replacement of goods or its parts or supply of repair services, without any consideration from the customer, as part of warranty?

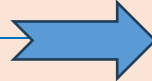
#### Clarification

The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of goods or its parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods.



As such, where the manufacturer provides replacement of parts and/or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of goods or its parts and/ or repair service during warranty period.

No separate charges for such replacement/ repair services



No further GST payable

However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of goods or its parts or for any service, then GST will be payable on such supply with respect to such additional consideration.

No separate charges for such replacement/ repair services



GST will be payable

## SCENARIO 2

**DISTRIBUTOR PROVIDES WARRANTY RELACEMENT AND/OR REPAIR SERVICES TO THE CUSTOMER ON BEHALF OF THE MANUFACTURER**



## TAXABILITY OF THE TRANSACTION/ACTIVITY UNDERTAKEN BETWEEN DISTRIBUTOR AND CUSTOMER

### Issue 1

Whether GST would be payable on replacement of goods or its parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?

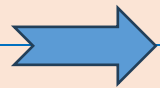
### Clarification

There may be instances where a distributor of a company provides replacement of goods or its parts and/or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said

replacement and/ or repair services from the customer.

In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of goods or its parts and/ or repair services to the customer.

No separate charges for such replacement/repair services



No further GST payable

However, if any additional consideration is charged by the distributor from the customer, either for replacement of goods or its parts or for any service, then GST will be payable on such supply with respect to such additional consideration. Additional consideration charged for such replacement/ repair services.

## TAXABILITY OF THE TRANSACTION/ACTIVITY UNDERTAKEN BETWEEN DISTRIBUTOR AND MANUFACTURER

Issue 2:

Whether any supply is involved between the distributor and the manufacturer in case of replacement of GOODS OR ITS PARTS by distributor?

Clarification:

There can be 4 instances as discussed below:

In case where

Distributor replaces the goods or its part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) SO replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer.

In such a case

GST would be payable by the distributor on the said supply by him to the manufacturer.

Distributor raises a requisition to the manufacturer for the goods or its part(s) to be replaced by him under warranty and the manufacturer then provides the said goods or its part(s)

No GST is payable on such replacement of goods or its part(s) by the manufacturer.

to the distributor for the purpose of such replacement to the customer as part of warranty without separately charging any consideration at the time of such replacement.

Distributor replaces the goods or its part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the goods or its part(s) so replaced subject to provisions of section 34(2).

Accordingly, the tax liability may be adjusted by the manufacturer subject to the condition that such distributor has reversed the ITC availed against such goods/parts.

Distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods or the parts. The manufacturer then provides the said goods or the parts to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment.

No GST is payable on such replenishment of goods or the parts.

Issue 3:

Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such REPAIR SERVICES either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?

Clarification:

In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of section 2(93)(a) of the CGST Act, 2017.

Hence, GST would be payable on such provision of service by the distributor to the manufacturer.

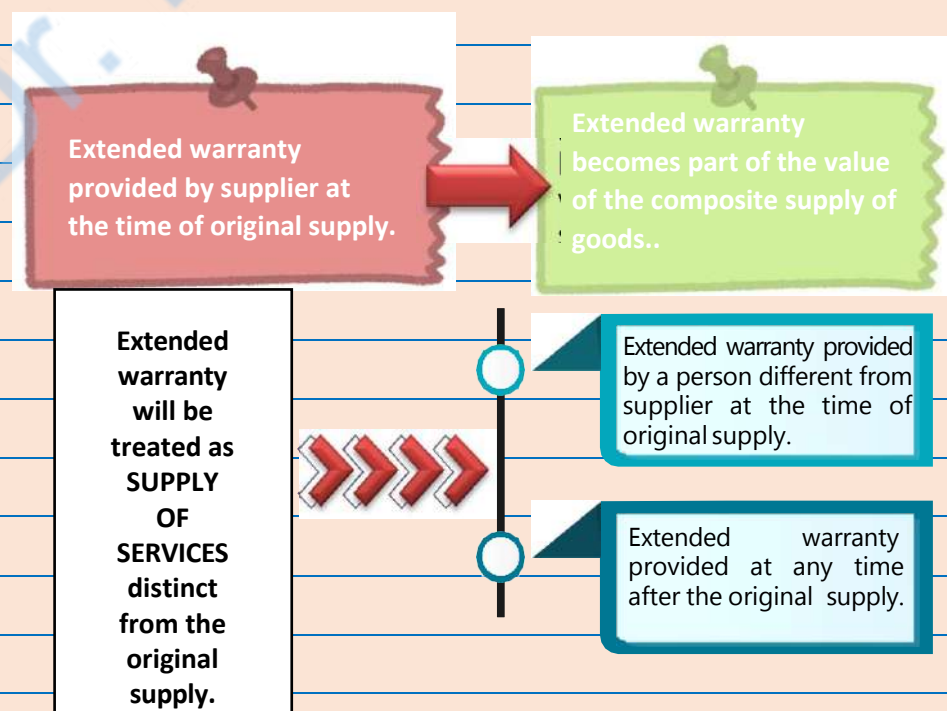
### SCENARIO 3

### EXTENDED WARRANTY

Sometimes companies provide offers of Extended warranty to the customers which can be availed (i) at the time of original supply or (ii) just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?

#### Clarification

- a) If a customer enters into an agreement of extended warranty with the supplier of the goods at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services.
- b) In case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same shall be treated as a supply of services distinct from the original supply of goods and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services.





## APPLICABILITY OF GST ON LOCATION CHARGES OR PREFERENTIAL LOCATION CHARGES (PLC) COLLECTED ALONG WITH CONSIDERATION FOR SALE/TRANSFER OF RESIDENTIAL/COMMERCIAL PROPERTIES

Allowing choice of location of the apartment is integral part of supply of construction services. Therefore, PLC is part of consideration charged for supply of construction services before issuance of completion certificate.

Therefore, PLC paid along with the consideration for the construction services of residential/commercial/industrial complex forms part of composite supply where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply of construction service.



## ESOP/ESPP/RSU PROVIDED BY A COMPANY TO ITS EMPLOYEES THROUGH ITS OVERSEAS HOLDING COMPANY

Some of the Indian companies provide the option to their employees for allotment of securities/shares of their foreign holding company as part of the compensation package as per terms of contract of employment. In such cases, on exercising the option by the employees of Indian subsidiary company, the securities/shares of foreign holding company are allotted directly by the holding company to the concerned employees of Indian subsidiary company and the cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company.

In case where securities/shares of the foreign holding company are transferred to the employees of domestic subsidiary company as Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU) 51, GST is not leviable on the compensation paid to the employee by the employer as per the terms of employment contract since as seen earlier, the purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services. Moreover, the ESOP/ESPP/RSU is a part of remuneration of the employee by the employer as per terms of employment and is covered under Para 1 of Schedule III of the CGST Act.

When reimbursement for transfer of securities/shares (which is neither in the nature of goods nor services) is done by domestic subsidiary



company to foreign holding company on cost-to-cost basis, the same cannot be treated as import of services by the domestic subsidiary company from the foreign holding company and hence, is not liable to GST.

If the foreign holding company charges any additional fee, markup, or commission from the domestic subsidiary company for issuing ESOP/ESPP/RSU to the employees of the domestic subsidiary company, then the same shall be considered to be in nature of consideration for the supply of services of facilitating/arranging the transaction in securities/shares by the foreign holding company to the domestic subsidiary company. The GST shall be payable by the domestic holding company on reverse charge basis on such import of services from the foreign holding company.

**Students Note:**

Students Note:

CA Dr. Mahesh P Gour

# CHAPTER 2 CHARGES OF GST

## → GLIMPSES.

- Intra-State Transfer & Inter-State Transfer:
- Liability To Pay Tax Under CGST/IGST Act:
- Reverse Charge Mechanism
- List of Specified Services Taxable Under Reverse Charge [i.e. The Services Where Tax is Payable By The Recipient] **U/S 9(3)** of CGST Act [In Case Of IGST **U/S 5(3)** Of IGST Act]
- List of Services Taxable Under Reverse Charge, i.e. The Services Where IGST Is Payable By The Recipient
- Tax Payable By E-Commerce Operator On Notified Services [**U/S 9(5)** of CGST Act, 2017]
- Composition Scheme Under CGST Act, 2017 [Section 10]

## → INTRA-STATE SUPPLY & INTER-STATE SUPPLY:

[Nov 17, Jan 21]

Intra-State Supply **U/S 8** of  
**IGST Act.**

Inter-State Supply **U/S 7** of IGST Act.

1. Where the location of the supplier and the place of supply are in –

- Same State
- Same Union territory

2. CGST and State Goods & Services Tax i.e. SGST/ Union Territory Goods & Services Tax i.e. UTGST shall be charged on an Intra-State Supply.

1. Supply of goods/services when location of the supplier and the place of supply are in two different States/UTs.

2. Supply of goods/services imported into the territory of India.

3. Supplier located in India and the place of supply is outside India.

4. Supply to/by SEZ developer or SEZ unit; or

5. Supply to Foreign Tourist

6. Supply in the taxable territory, not being an Intra-State supply & not specified anywhere.

7. IGST shall be charged on an Inter-State Supply.

Example 1:

Place of Supply = Maharashtra  
Place of Supplier = Gujarat



IGST✓

Example 2:

Place of Supply = Punjab  
Place of Supplier = Chandigarh

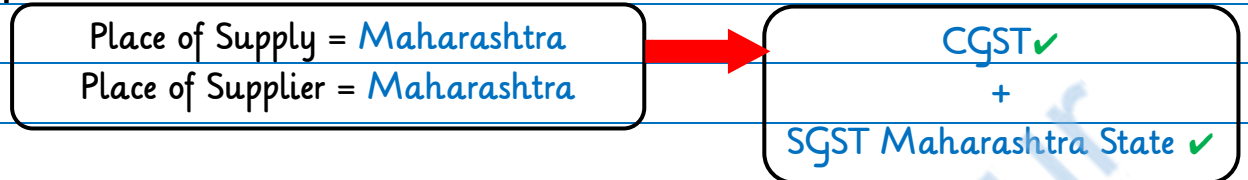


IGST✓

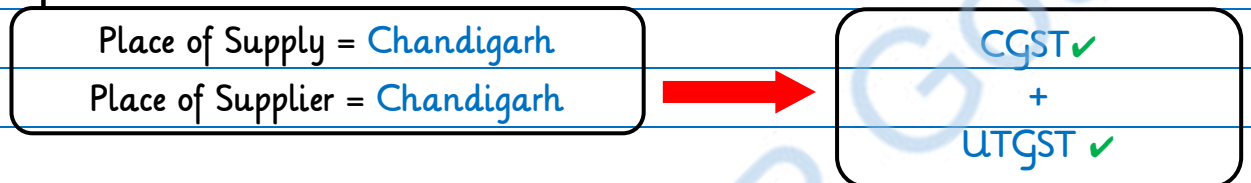
Note: -

Although Chandigarh is located within the State of Punjab, such supply will not be considered as Intra-State supply because Punjab is a state and Chandigarh is a Union Territory. Therefore, such transfer is an Inter-State supply as per **section 7 of IGST Act, 2017**.

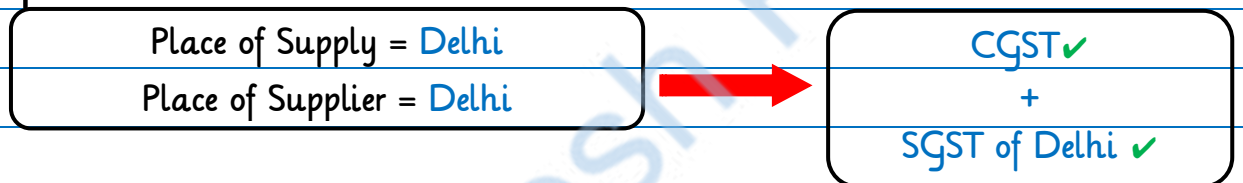
Example 3:



Example 4:



Example 5:



Note: -

State includes a Union Territory with Individual Legislature. Delhi, Puducherry & Jammu & Kashmir have their own individual legislature and hence covered under State GST Law.



## UNION TERRITORY OF INDIA

"Union Territory" means the territory of-

- a) The Andaman and Nicobar Island
- b) Lakshadweep
- c) Dadra & Nagar Haveli and Daman & Diu
- d) Ladakh
- e) Chandigarh
- f) Other territory

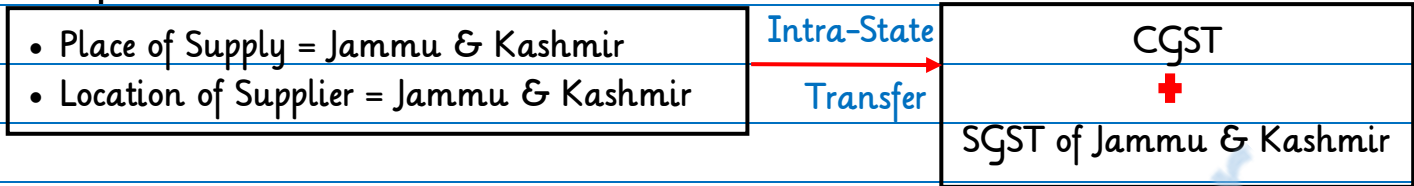
**Students Note:**



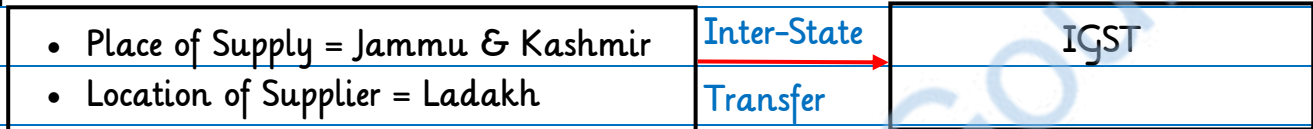
Note:

State includes a Union Territory with Individual legislature, It means Delhi, Puducherry & Jammu & Kashmir (have their own individual legislature), Covered under state GST law.

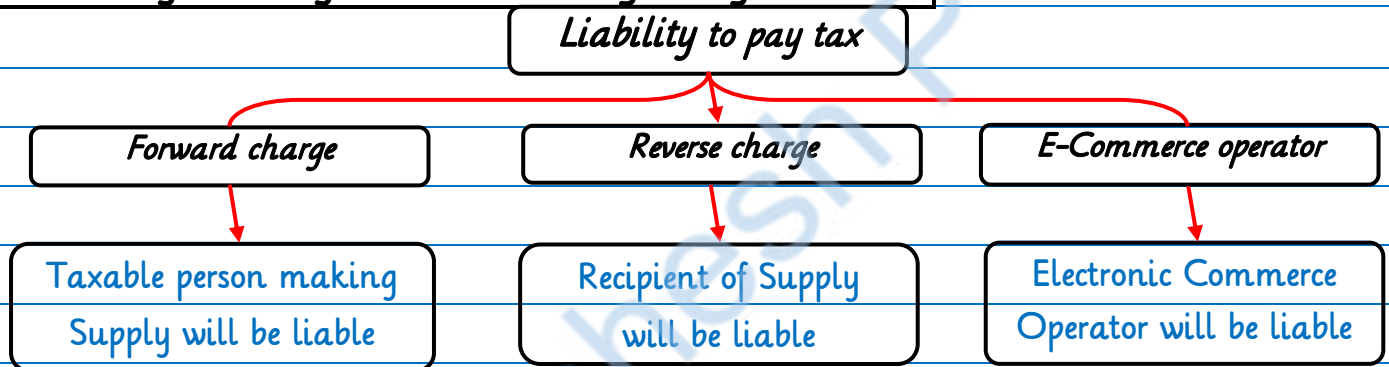
Example 6:



Example 7:



## → LIABILITY TO PAY TAX UNDER CGST/ IGST ACT:



Students Note:

## → REVERSE CHARGE MECHANISM

### Reverse charge mechanism

Specified categories of goods or services or both received from unregistered person  
U/S 5(4) of IGST Act, U/S 9(4) of CGST Act

Section 5(3) of IGST Act, 9(3) of CGST Act

NN 13/2017

Specified Services (discussed under next heading)

NN 4/2017

[Specified Goods]

Under this provision, tax under reverse charge is payable by the NOTIFIED class of registered persons on NOTIFIED categories of supplies of goods and/or services received by such registered persons from any unregistered supplier

Example:

A developer purchased cement from unregistered person [If developer charged GST on sale of flats @1% / 5%]

1. Cashew Nuts
2. Bidi Wrapper
3. Tobacco Leaves
4. Silk yarn
- 4A. Raw Cotton supplied by agriculturist to any registered person.
5. Supply of Lottery by SG/UT/LA to Lottery Distributor or Selling Agent
6. \*Used Vehicles, Seized and Confiscated Goods, old and used goods, waste and scrap

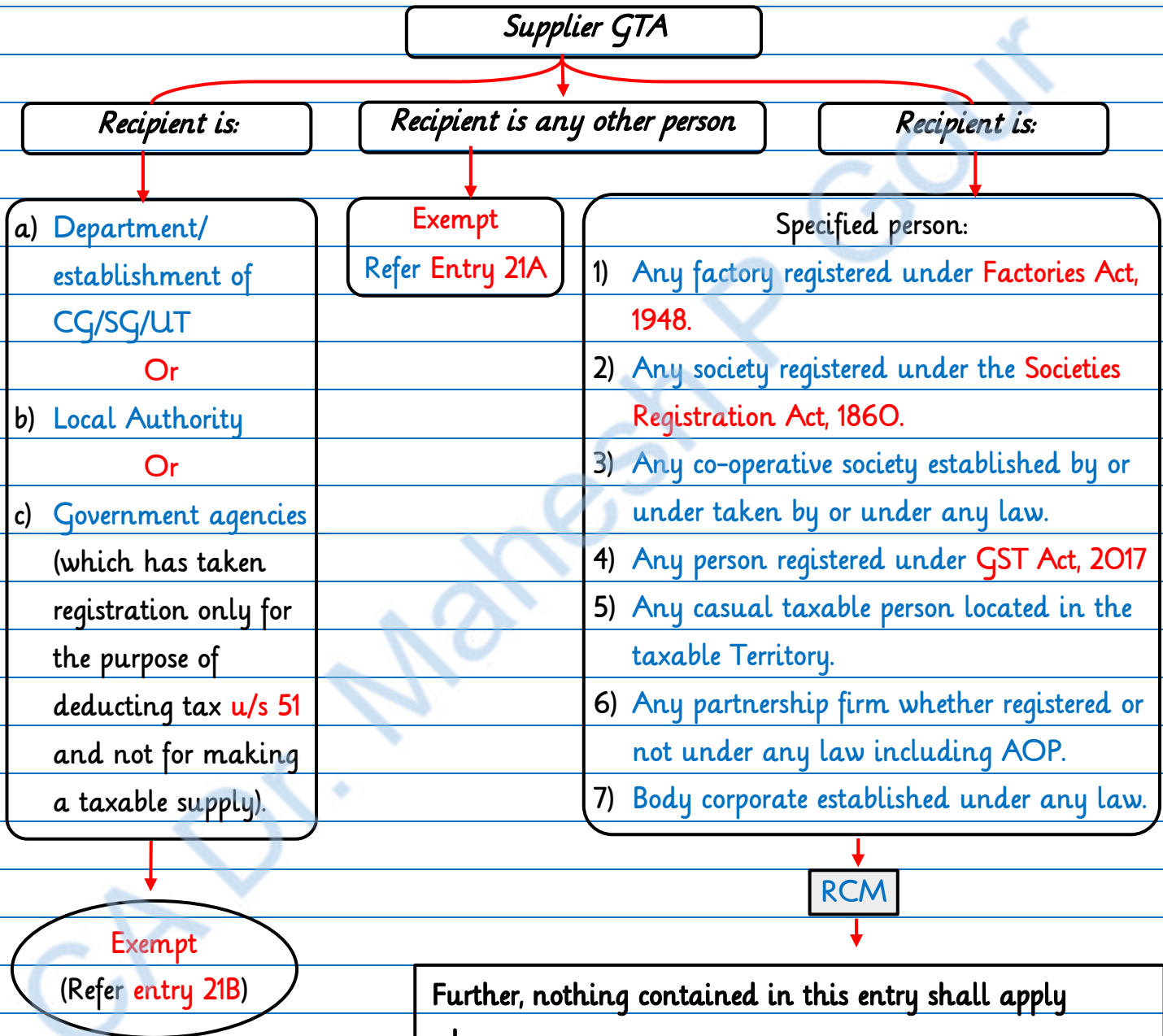
\*Conditions for Reverse Charge are as follows:

- a) If the supplier is Government/Local Authority.
- b) Supply is of used vehicles, seized & confiscated goods, old and used goods, waste & scrap.
- c) Goods Recipient → Any Person.
- d) Import of specified actionable claim of online money gaming

Students Note:

→ LIST OF SPECIFIED SERVICES TAXABLE UNDER REVERSE CHARGE [i.e. THE SERVICES WHERE TAX IS PAYABLE BY THE RECIPIENT] **U/S 9(3) OF CGST ACT**  
[In case of IGST **U/S 5(3) OF IGST ACT**]

→ **S. Nos. 1: Services provided by GTA to specified person [MCQ-Nov 20]**



★ **CG** → Central Government  
**SG** → State Government  
**UT** → Union Territory

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

- 1) 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
- 2) 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

→ **S. Nos. 2 & 3: Legal Services**

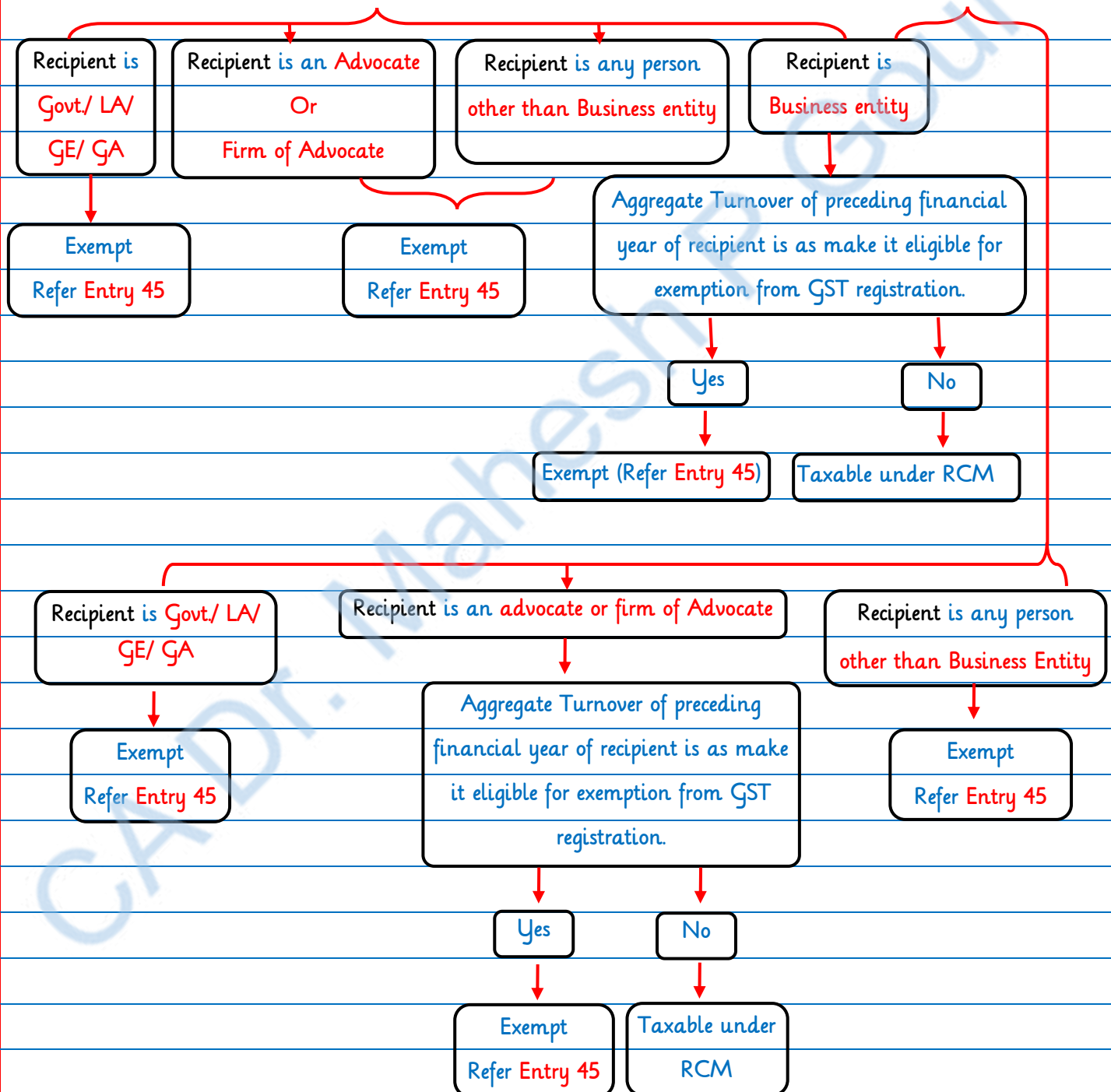
**Legal services provided by Arbitral tribunal/ Advocate**

**S.N. 2: Supplier is**

- Partnership firm of Advocates [NOV 20]
- Individual Advocate [Except senior Advocate]

**S.N. 2: Supplier is senior Advocate**

**S.N. 3: Supplier is Arbitral tribunal**



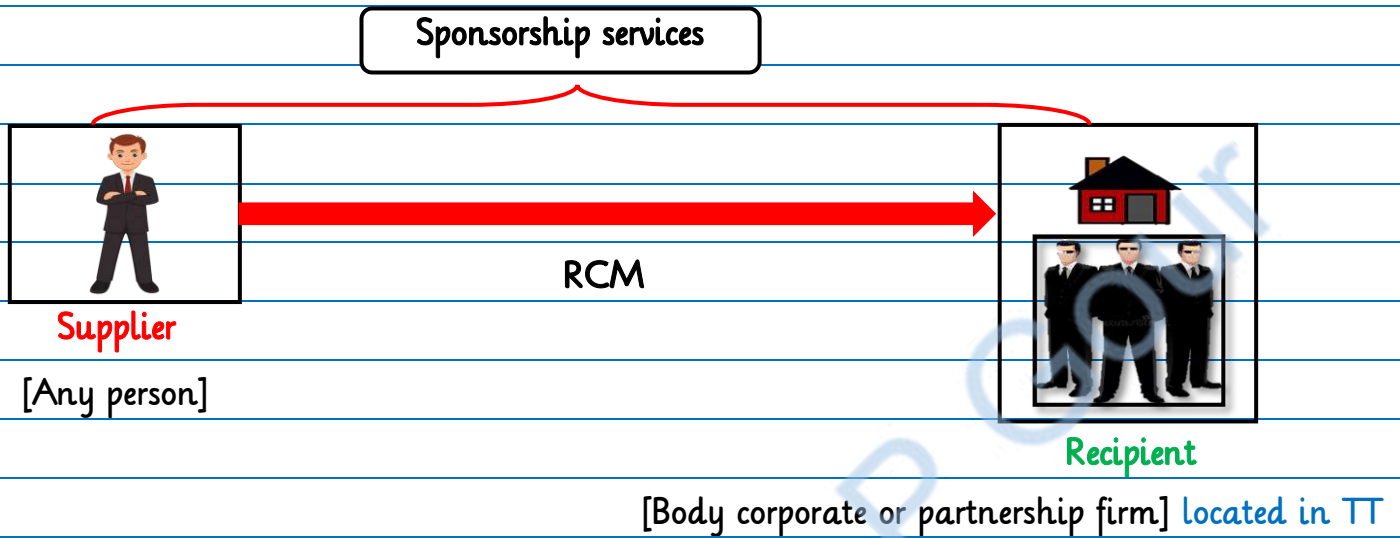
★ GE → Government Entity

GA → Government Authority

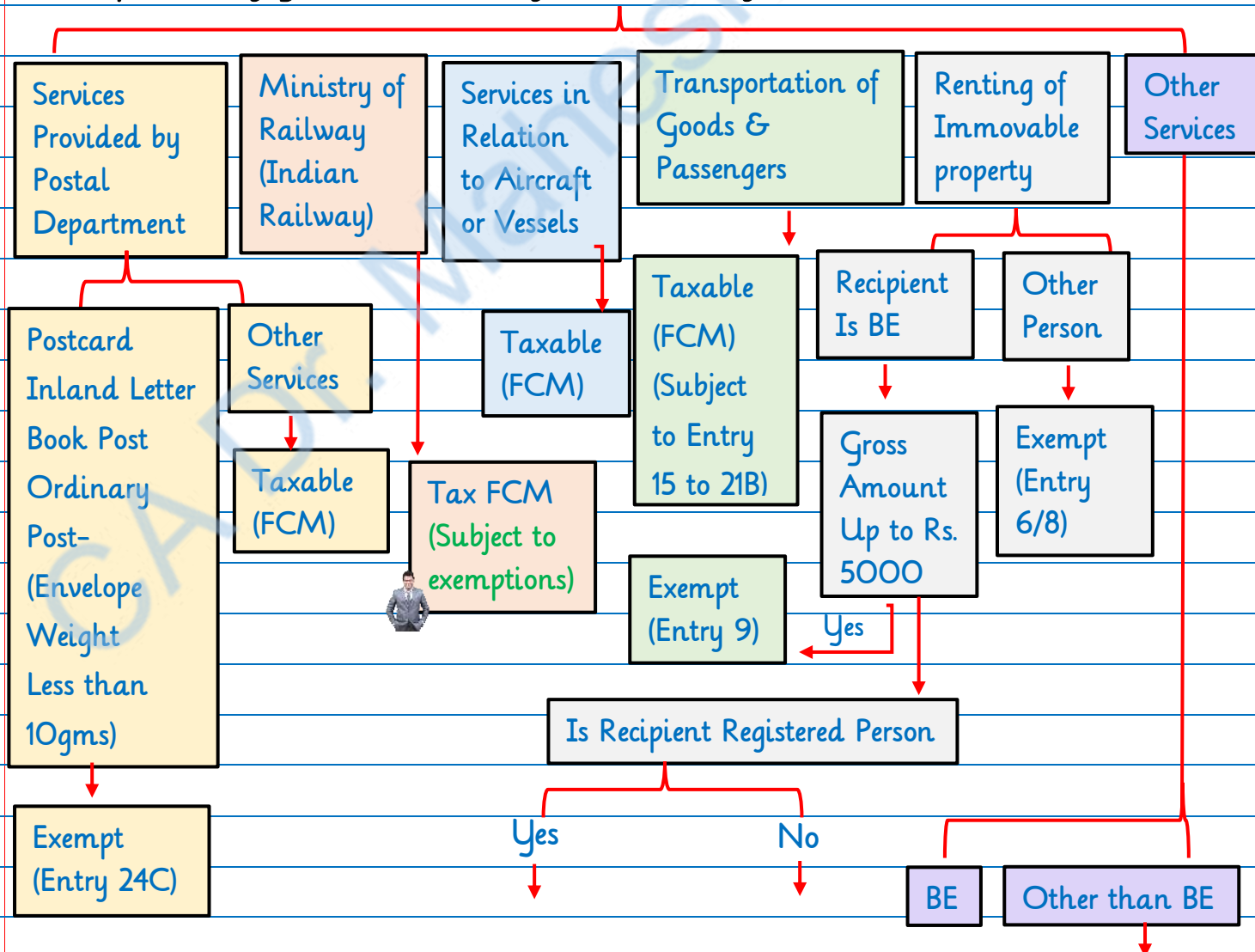
LA → Local Authority

**Students Note:**

→ **S. Nos. 4:** Services provided by way of Sponsorship to any body Corporate/Partnership Firm



→ **Services provided by Govt./Local authority/Union Territory Admin**





BE – Business Entity

Exempt

ATO at Preceding FY of BE  $\leq$  Threshold Limit for registration

Yes

Exempt (Entry 7)

No

Gross Amount Charged For Services  $\leq$  ₹ 5000

Yes

Exempt (Entry 9)

No

Taxable (RCM)

**PROVISIONS OF REVERSE CHARGE MECHANISM (RCM) NOTIFICATION EXTENDED TO THE COURTS AND TRIBUNALS ALSO**

- Notified services supplied by Central Government, State Governments, Parliament and State Legislatures, Court & Tribunal, GST will be paid by the recipient.
- Taxable services supplied by Court & Tribunal such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers, etc.

→ **S. Nos. 5AA: Renting of Residential dwelling**



Services by way of Renting of Residential dwelling



Supplier [Any person]

RCM

Recipient [Registered person under GST]



**S. Nos. 5AB Supply of services:** Services by way of renting of any immovable property other than residential dwelling.

Supplier: Any unregistered person

Recipient: Any registered person

→ **S. Nos. 5B: Transfer of development rights or floor space index (including additional FSI)**



To know more + 91 8459256756



**Supplier**

[Any person]

**RCM**

**Recipient**

[Promoter]

→ **S. Nos. 5C: Long term lease of land (30 years or more)**



**Supplier**

[Any person]

Long term lease of land (30 years or more) for construction of a project by a promoter

Consideration in the form of upfront amount like Premium, Salami, etc. & periodic rent.

**RCM**



**Promoter**

**Analysis of S. Nos. 5B & 5C**



Any Person

Eg. Consideration 10 Cr.

- Transfer of development rights or
- Floor space Index or
- Long term lease of land (30 year or more) against consideration in the form of upfront amount (called as premium/salami etc.)



Promotor or Developer or Builder

Constructed Flats are Sold

Before issuance of completion certificate & tax is paid on them

Consideration ₹10 Cr. will be exempt

Refer Entry Nos. 41A & 41B of Exemption Notification of CGST Act, 2017

After issuance of CC & covered under **Schedule III**

Consideration ₹10 Cr. will be Taxable under RCM

→ **S. Nos. 6, 7 & 8: Services supplied by directors, Insurance agent & Recovery agent**

S. N.	Category of supply of GST	Supplier of Services	Recipient of service (liable for payment of Tax)

6	Services supplied by a <b>Director</b> of a company/body corporate to the said company/body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory as per <b>Sec 2(11) of Companies Act, 2013.</b>
	Do you Know?		
	Services supplied by director of a company in his personal capacity		
	<ul style="list-style-type: none"> <li>Services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM.</li> <li>Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate (but Subject to other entries of RCM)</li> </ul>		
7	Services supplied by an <b>Insurance agent</b> 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 <b>Recovery agent</b> 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.

→ **S. Nos. 9: Services by a Music composer, Photographer & Artist**

S. N.	Category of supply of GST	Supplier of Services	Recipient of service (liable for payment of Tax)
9	Supply of services by Music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under <b>section 13(1)(a)</b> of the Copyright Act, 1957 relating to original dramatic, musical or artistic works	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.

→ **S. Nos. 9A: Supply of Services by Author**

Supplier → Author

Permitting the use of enjoyment of a copyright

Recipient – Publisher in Taxable Territory

Option I

Publisher is liable for payment of tax under RCM

Option II

Author can be liable for payment of tax If:

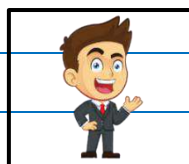
- Author has taken Registration under GST Act
- Filed a declaration in the Form at Annexure I to the GST Commissioner
- He shall not withdraw the option within a period of 1 Year

→ S. Nos. 10 & 11 [NOV 20]

S. N.	Category of supply of GST	Supplier of services	Recipient of service (Liable for payment of Tax)
10	Supply of services by the members of Overseeing Committee to Reserve Bank of India (RBI)	Members of Overseeing Committee constituted by the Reserve Bank of India (RBI)	Reserve Bank of India (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	Bank or NBFCs

→ S. Nos. 12 & 13:

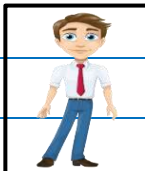

S. N.	Category of supply of GST	Supplier of services	Recipient of service (Liable for payment of Tax)
12	Services provided by Business facilitator to a banking company [Effective from 01/01/2019]	Business facilitator	A banking company, located in the taxable territory



Business Facilitator



Banking Company

Supplier		Recipient	
S. N.	Category of supply of GST	Supplier of Services	Recipient of Services
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.
	[Effective from 01/01/2019]		
			
Agent of Business Correspondent		Business Correspondent (TT)	
Supplier		Recipient	

→ **S.N os. 14: Security Services [NOV 20]**

S. N.	Category of supply of GST	Supplier	Recipient
14	Security Services (services provided by way of supply of security personnel) provided to a registered person.	Any person	A registered person,
	However, nothing contained in this entry shall apply to:	other	person,
	(i)	than a	located in
	a) Department or Establishment of the Central Government or State Government or Union Territory; or	body	the
	Local authority; or	corporate	taxable
	b) Governmental agencies; which has taken registration under the CGST Act 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		territory.
	(ii) A registered person paying tax under composition scheme.		
	[Effective from 01/01/2019]		

**Example:**

Case	Supplier	Recipient	Impact
1.	Mr. A (URP)	Mr. B (RP)	RCM
2.	Mr. A (RP)	Mr. B (URP)	FCM
3.	Mr. A (URP)	Mr. B (URP)	No Tax
4.	Mr. A (RP)	Mr. B (RP under CS)	FCM
5.	Mr. A (RP)	Mr. B (RP)	RCM
6.	Mr. A (RP)	Registered only for Deducting TDS	FCM



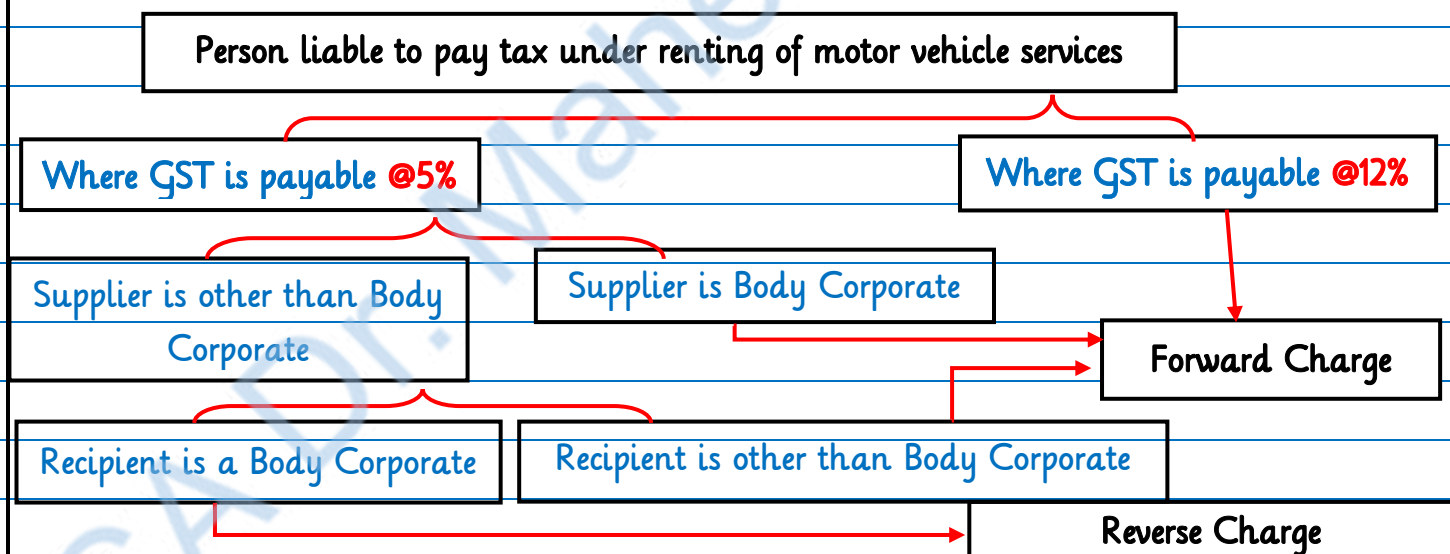
**RP – Registered Person**

**URP – Unregistered Person**

**CS – Composition Scheme**

→ **S. Nos. 15: Renting of motor vehicles [Nov 20]**

S. N.	Category of supply of GST	Supplier of services	Recipient of service (Liable for payment of Tax)
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 To a Body Corporate	Any person other than a Body Corporate, Who supplies the service to a Body Corporate and does not issue an invoice charging GST @12% (CGST @6% + SGST/UTGST @6%) to the service recipient	Any Body Corporate Located in the taxable territory.



*The circular clarified 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, it is clarified that 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. **[Circular No. 177/09/2022 GST dated 03.08.2022]**

### Analysis of S.N. 15

S. No.	Particulars	CGST	SGST	IGST	Impact
1.	Mr. 'X' (RP) provide services by way of, Renting of any other motor vehicle designed to carry passengers to Body Corporate [ITC Not allowed except ITC of Input Services in Same link of Business]	2.5%	2.5%	5%	RCM
2.	Mr. 'X' (RP) provide services by way of, Renting of any motor vehicle designed to carry passengers [Full ITC allowed]	6%	6%	12%	FCM
3.	Mr. 'X' (URP) provide services by way of, Renting of any motor vehicle designed to carry passengers to Body Corporate	No GST & No Tax Invoice	No GST & No Tax Invoice	No GST & No Tax Invoice	RCM

### → S. Nos. 16: Lending of securities

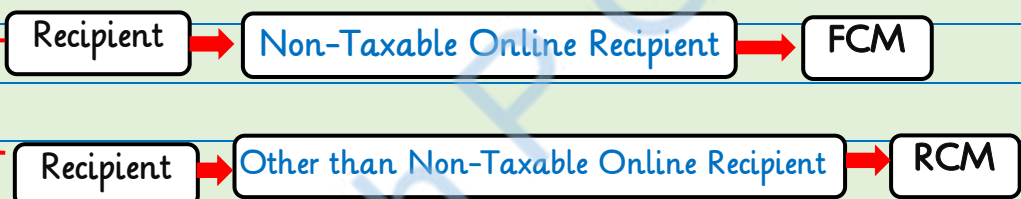
S. N.	Category of supply of GST	Supplier of services	Recipient of service (Liable for payment of Tax)
16	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of SEBI as amended.	Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorized on his behalf with an approved intermediary for the purpose of lending under the scheme of SEBI.	Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI.

## → LIST OF SERVICES TAXABLE UNDER REVERSE CHARGE, i.e. THE SERVICES WHERE IGST IS PAYABLE BY THE RECIPIENT

S. N.	Category of supply of GST	Supplier of services	Recipient of service (Liable for payment of Tax)
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 (NTT)	Any person located in the taxable territory other than non-taxable online recipient



Supplier (NTT)



### Section 2(16): Non-taxable Online Recipient

*"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, any person registered u/s 24(vi) of CGST Act shall be treated as unregistered person for the purpose of said clause.*

### Section 2(17): online information and database access or retrieval services

"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 *essentially automated and involving minimal human intervention and* impossible to ensure in the absence of information technology and includes electronic services such as, –

- advertising on the internet;
- providing cloud services;
- provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- online supplies of digital content (movies, television shows, music and the like);
- digital data storage; and

vii) online gaming;

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

S. N.	Tariff item, sub-heading, heading or Chapter	Description of supply of	Supplier of goods	Recipient of supply
1	0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2	1404 90 10	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3	2401	Tobacco leaves	Agriculturist	Any registered person
3A	3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	Following essential oils other than those of citrus fruit namely: - a) Of peppermint (Mentha piperita) b) Of other mints: Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis	Any unregistered person	Any registered person
4.	5004 to 5006	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
4A	5201	Raw cotton	Agriculturist	Any registered person

5	-	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent.
				Explanation.- For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of section 11(1) of the Lotteries (Regulation) Act, 1998.
6	Any Chapter	Used seized vehicles, and confiscated goods, old and used goods, waste and scrap	Central Government excluding Ministry of Railways (Indian Railways), State Government, Union territory or a local authority	Any registered person
7	Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person

## → TAX PAYABLE BY E-COMMERCE OPERATOR ON NOTIFIED SERVICES

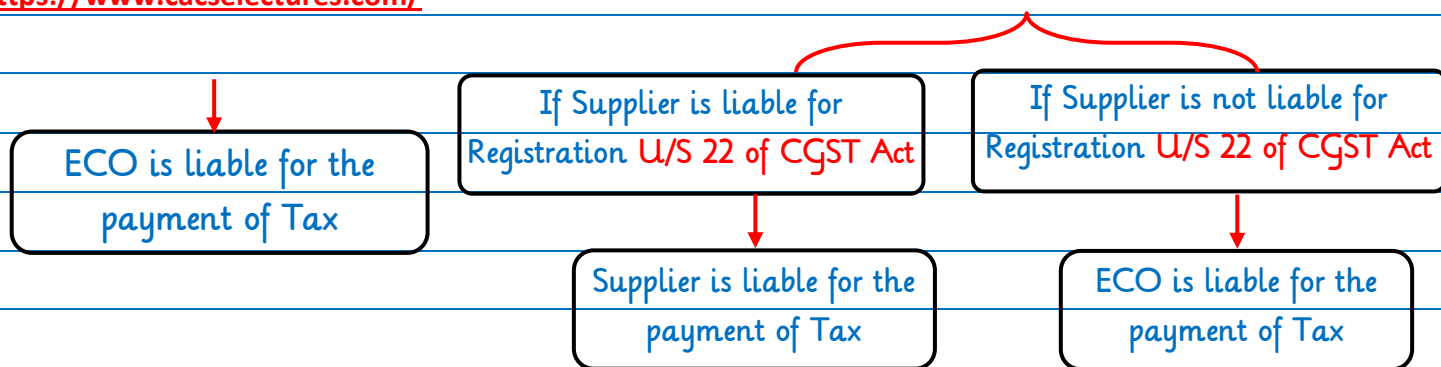
[U/S 9(5) OF CGST ACT, 2017] [Nov 18]

*Services supplied through ECO are notified for this purpose*

*Services supplied through ECO are notified for this purpose* [MTP Dec 21]

(a) Transportation of passengers by a radio-taxi, motor car, maxi cab and motor cycle, ~~omnibus~~ or any other motor vehicle

(b) Accommodation for lodging or residential purpose in hotels, inn, guest house etc;  
(c) Housekeeping such as Plumbing, Carpentering etc.



(d) Zomato, Swiggy etc.

Applicable in exams, if it is in supplementary issued by ICAI

#### (1) Restaurant Services by E-Commerce

On September 17, it was decided at the Goods and Services Tax Council meeting that e-commerce operators be made liable to pay tax on services provided through them namely transport of passengers, by any type of motor vehicles- restaurant services provided, with some exceptions. This will become effective January 1, 2022, said a statement issued by the Finance Ministry after the GST Council meeting.

- NN 17/2021 wherein E-commerce platforms ("ECO") Zomato, Swiggy are liable to pay tax on the restaurant services effective 1st January, 2022. The liability to pay taxes on the non- restaurant services as per this directive still lies with the restaurants themselves.
- Further Circular No. 167/23/2021-GST dated 17.11.2021 issued for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through ECO.
- ECO is now made liable to pay GST on "restaurant services" provided through the e-Commerce platform.
- This change is not applicable for restaurant services provided from a premise with declared of Rs. 7,500/- or above per day.
- Swiggy, Zomato qualifies etc is qualify as an "e-commerce operator" under Section 2(45) of tariff CGST Act, 2017.

#### (2) What is Restaurant Services?

As per NN.11/2017 – CTR, "Restaurant service means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied". A restaurant is a place which is in the business of preparing and serving food in the premises or as takeaway.



*An illustration under this category is provided below:*

- a) Restaurants located in a premise where declared tariff is not exceeding Rs. 7,500 per day and providing restaurant services.
- b) Food and beverage sold as a part of restaurant services and which qualifies as restaurant services.
- c) Cloud kitchens providing restaurant services etc.
- d) Stand-alone restaurants which are not ice cream parlors or bakeries.

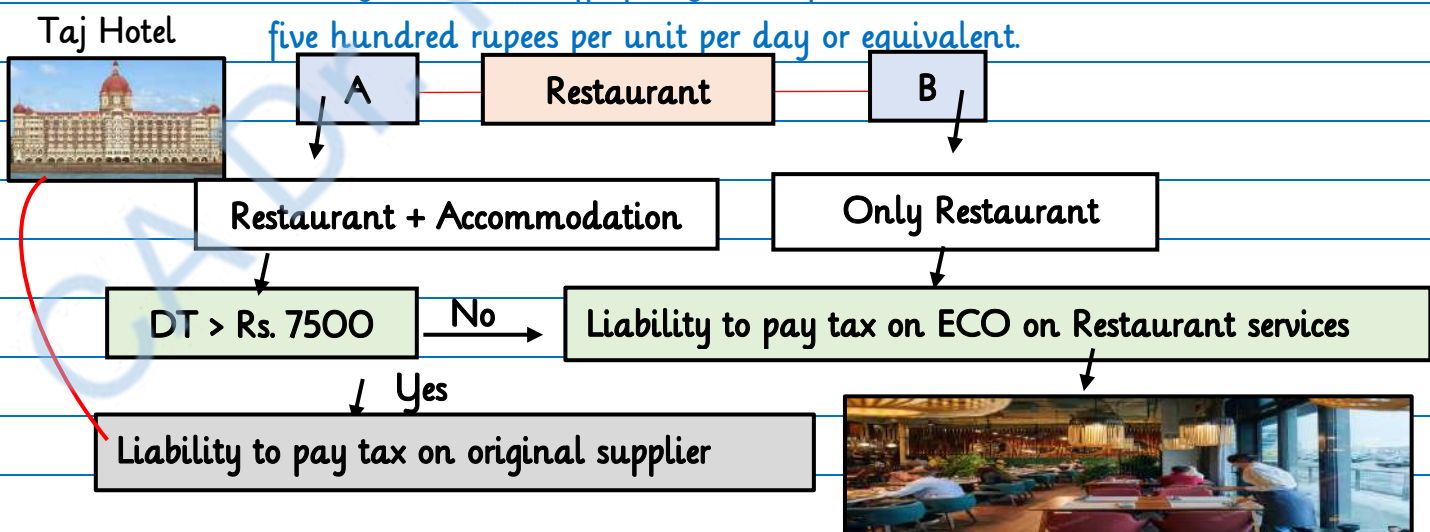
As per NN. 17/2021, Zomato, Swiggy shall be responsible for charging, collecting and paying GST @ 5% on supply of "restaurant services" made by such restaurant thru the ECO platform. For Restaurant with No GSTIN, ECO will be responsible for charging, collecting, paying GST @5% on total order value.

Section 9(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

**NN. 17/2021**

supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.

specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.



*If ECO is located outside India*

If the ECO is located in taxable territory

No ↓



Person liable to pay tax is the ECO

If the ECO does not have physical presence in the taxable territory

Person liable to pay tax is the person representing the ECO

No

If the ECO has neither the physical presence nor any representative in the taxable territory

Person liable to pay tax is the person appointed by the ECO for the purpose of paying the tax

## → COMPOSITION SCHEME UNDER CGST ACT, 2017 [SECTION 10(1)(2) & 10(2A)]

[May 18, Nov 18, RTP Nov 19, Nov 19] [RTP, MCQ, CASE STUDY, Nov 20] [RTP Nov 20, MTP Dec 21]

Composition scheme & concessional rate scheme **May 23**

Basis	Composition Scheme u/s 10(1) & 10(2)	Concessional Rate Scheme								
		(Presumptive Scheme) (Sec 10(2A))								
1. Optional scheme	It is an optional scheme	It is an optional scheme								
2. Eligible Person	➤ Manufacturer [other than notified Goods]	➤ Exclusively engaged in								
3. Fly Ash Bricks, Earthen Roofing tiles	<div>Notified Goods: (Key:- PITAB) (i) Ice cream and other edible ice, whether or not containing cocoa. (ii) Pan Masala (iii) Tobacco and manufactured tobacco substitutes (iv) Aerated Water (v) Fly ash bricks/blocks, building bricks, bricks of fossil, earthen/roofing tiles, etc.</div>	supplying services other than restaurant services. ➤ Any person who is not eligible for composition scheme.  (Except Manufacturer of Notified Goods)								
	➤ Trader									
	➤ Service Provider [only supplier making supplies under Schedule II → para 6 → Clause 6(b) [Restaurant service]									
4. Aggregate Turnover (ATO) for Eligibility	Applicable to registered person, whose aggregate turnover in preceding year is not exceeding ₹ 1.5 crore or ₹ 75 Lacs [in special category states]	Aggregate Turnover in preceding year is not exceeding ₹ 50 Lacs								
<div>Subject to Amendment issued by ICAI</div>	<div>Special Category State [Key -STNAM3 UK]</div> <table><tr><td>Sikkim</td><td>Tripura</td><td>Nagaland</td><td>Arunachal Pradesh</td></tr><tr><td>Manipur</td><td>Meghalaya</td><td>Mizoram</td><td>Uttarakhand</td></tr></table>		Sikkim	Tripura	Nagaland	Arunachal Pradesh	Manipur	Meghalaya	Mizoram	Uttarakhand
	Sikkim	Tripura	Nagaland	Arunachal Pradesh						
	Manipur	Meghalaya	Mizoram	Uttarakhand						
Note	The registre perosn supplying goods within the state through E commerce operator to									

		opt for the composition scheme provided the aggregate turnover in the preceding financial year does not exceed ₹ 50 lakhs			
5. Tax Rate	Registered person is a	CGST	SGST		➤ CGST → 3% of ATO ➤ SGCT → 3% of ATO
	Manufacturer	0.5% of ATO	0.5% of ATO		
	Trader	0.5% of Taxable supply	0.5% of Taxable supply		
	Restaurant	2.5% of ATO	2.5% of ATO		
6. Is composition scheme holder eligible for making supply of service [other than restaurant service]	Composition scheme taxpayers permitted to render services other than restaurant services upto a specified limit: This specified value is not exceeding: a) 10% of the turnover (Excluding interest on loan advance & deposit) in a State/Union territory in the preceding financial year; or b) ₹ 5 lakh, [Whichever is higher.]				
	Aggregate Turnover				
7. Aggregate Turnover	Inclusions		Exclusions		
	Value of all outward supplies i.e. –		➤ CGST		
	➤ Taxable supplies		➤ SGST		
	➤ Exempt supplies		➤ UTGST		
	➤ Exports		➤ IGST		
	➤ Inter-State supplies		➤ Cess		
	of persons having same PAN to be computed on all India basis		➤ Value of inward supplies on which tax is payable under reverse charge.		
Note: –	1) Interest income on loan, advance and deposit to be excluded while computing aggregate turnover.				
8. Who cannot opt for Composition Scheme u/s 10 & 10(2A)	a) A service provider (except Restaurant Services and a Registered person whose Value of Service < 10% of the Turnover in a state/UT in preceding F.Y. OR ₹ 5 Lakh, whichever is Higher) (This point is only applicable for composition Scheme u/s 10) b) Person making non-taxable supplies (Alcohol, Petrol and Supplies under Schedule III) c) Person making Inter-State supply of goods/services.				

- d) He is engaged in making any supply of inter-state supply of goods or services through an ECO who is required to collect tax at source u/s 52.
- e) Manufacturer of notified goods.
- f) Non-resident Taxable Person or Casual Taxable Person
- g) Registered persons dealing with specified actionable claims, which have been distinctly defined, will not be eligible for the composition levy under section 10 of the CGST Act.

#### 9. Something To Know

- 1) The option availed by a registered person u/s 10 shall lapse with effect from the day on which aggregate T/O during Financial year exceeds limits specified. [Same in U/S 10(2A)]
- 2) Composition scheme to be adopted uniformly by all the registered persons having the same PAN. [Same in u/s 10(2A)]
- 3) A taxable person who is covered u/s 10 & 10(2A) shall neither collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
- 4) There is no restriction on Composition Supplier to procure goods or received services from Inter-State Supplier.
- 5) A taxable person [u/s 10 & 10(2A)] shall mention the words "Composition Taxable Person". On sign board displayed at prominent place at his Principal place of Business and Additional place of Business.
- 6) A taxable person shall pay Tax under RCM on inward supply of goods or services u/s 9(3)/ 9(4). [Same in u/s 10(2A)]
- 7) 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

#### ONLINE MONEY GAMING

Government empowered to notify goods for whom proviso to section 5(1) is not applicable for levy and collection of IGST and in whose case, IGST shall be levied and collected in the manner specified in section 5(1) only [Proviso to section 5(1) amended]

With effect from 01.10.2023, supply of online money gaming has been notified for the said purpose vide Notification No. 03/2023 IT dated 29.09.2023. This implies that import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.



Import of Goods

No Customs duty But IGST will be applicable

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# CHAPTER 3 PLACE OF SUPPLY

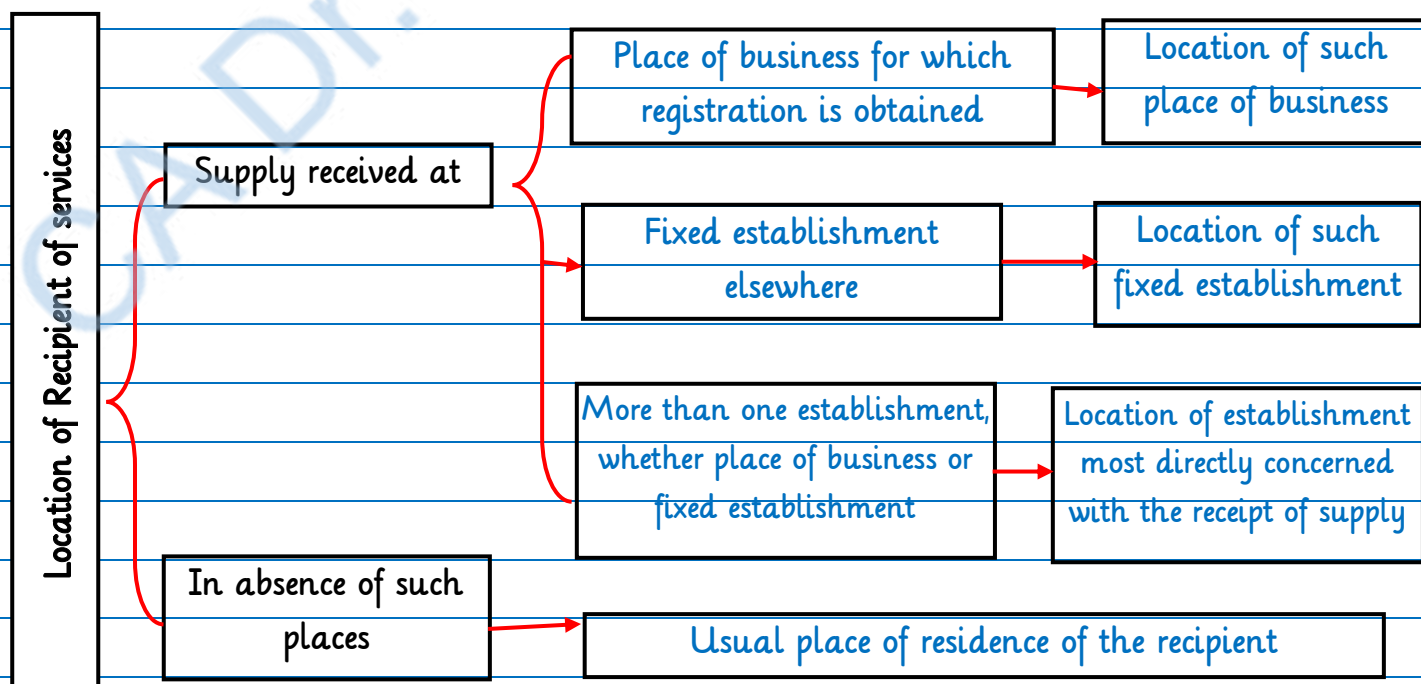
## → GLIMPSES

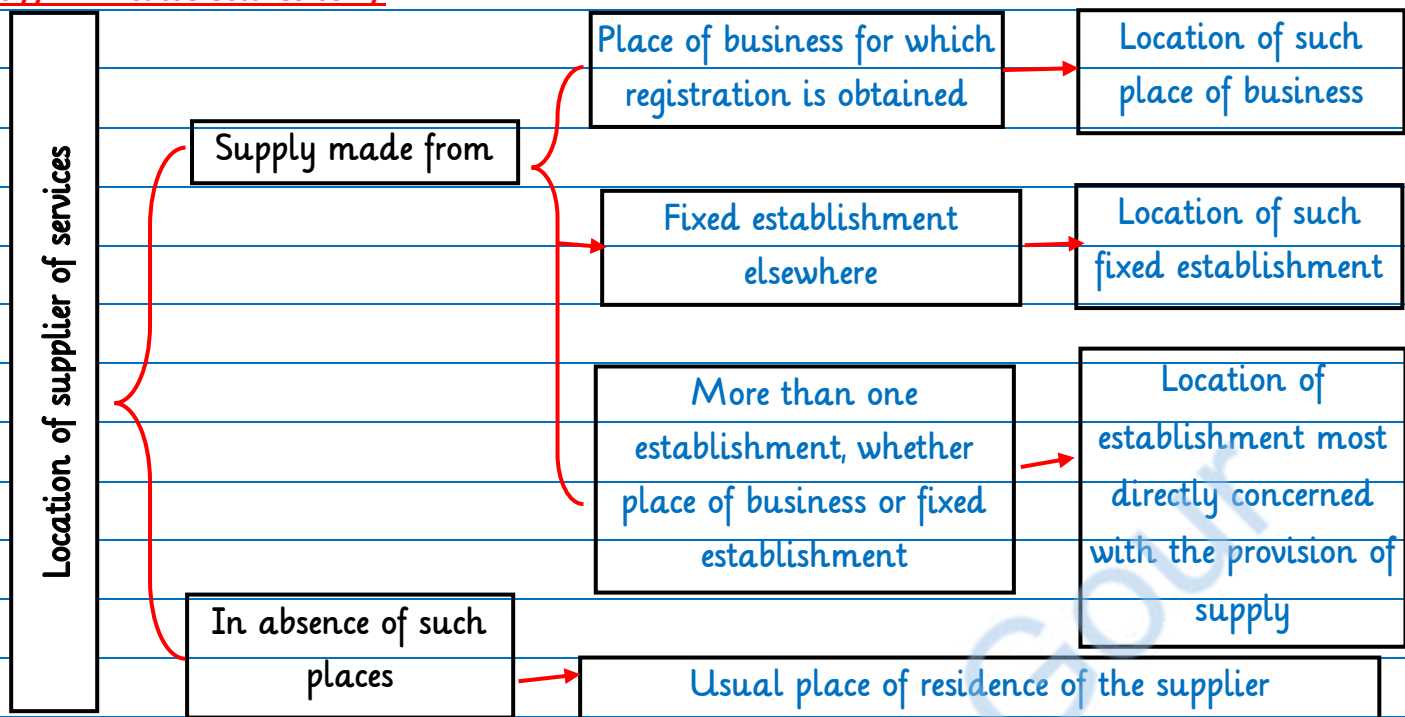
- Place of Supply of Goods other Than Import and Export [Section 10]
- Place of Supply of Goods Imported Into or Exported From India [Section 11]
- Place of Supply of Services Where Location of Supplier and Recipient Is In India [Section 12]
- Place of Supply of Services Where Location of Supplier or Recipient is Outside India [Section 13]
- Some Clarification Issued By ICAI
- Clarification Regarding Determination of Place of Supply in Certain Cases
- Clarification Regarding Determination of Place of Supply in Case of Software/design Services
- Related To Electronics Semi-Conductor and Design Manufacturing (ESDM) Industry.

## → INTRODUCTION

The basic principle of GST is that it should effectively tax the consumption of such supplies at the destination thereof or as the case may be at the point of consumption. The place of supply provisions determine the place i.e., taxable jurisdiction where the tax should reach. The place of supply and the location of the supplier are the two determinants 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.

## → LOCATION OF RECIPIENT OF SERVICES/SUPPLIER OF SERVICES





## → PLACE OF SUPPLY OF GOODS OTHER THAN IMPORT AND EXPORT [SECTION 10]

[RTP-Nov 18 & Nov 19, May 18, May 19]

Sec. No.	Nature of Supply	Place of Supply
10(1)(a)	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.
10(1)(b) [MTP Dec 21]	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, it shall be deemed that the third person has received the goods.	The principal place of business of such third person.
10(1)(c)	Where there is no movement of goods either by supplier or recipient.	Location of such goods at the time of delivery of the recipient.
10(1)(ca)	Place of supply of goods (B to C) purchased own the counter in one state and thereafter, transport the Goods to another state (Generally, the state where he resides)	<div> <div>Where the address of the unregistered person is recorded in the invoice</div> <div> <div>Yes</div> <div>POS is location as per address of unregistered person recorded in the invoice</div> </div> <div>No</div> <div>POS is location of the Supplier</div> </div>

10(1)(d)	Where goods are assembled or installed at site.	The place where the goods are assembled or installed.
10(1)(e)	Where the goods are supplied on-board a conveyance like a vessel, aircraft, train or motor vehicle [RTP-May 21]	The place where such goods are taken on-board a conveyance.
10(2)	Where the place of supply of goods cannot be determined in terms of the above provisions.	It shall be determined in such manner as may be prescribed.

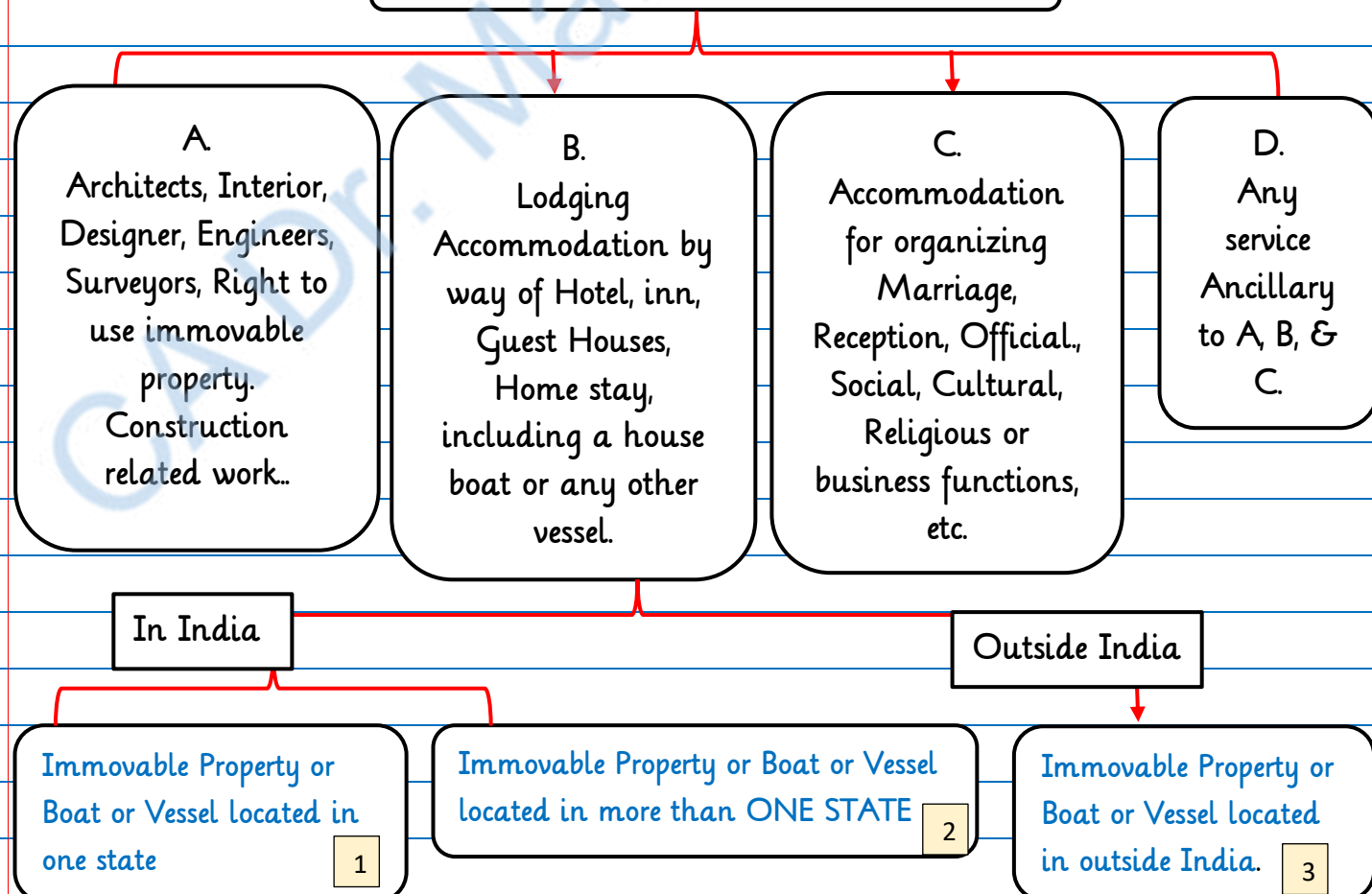
## → PLACE OF SUPPLY OF GOODS IMPORTED INTO OR EXPORTED FROM INDIA [SECTION 11] [RTP-Nov 19, Jan 21, RTP-May 21]

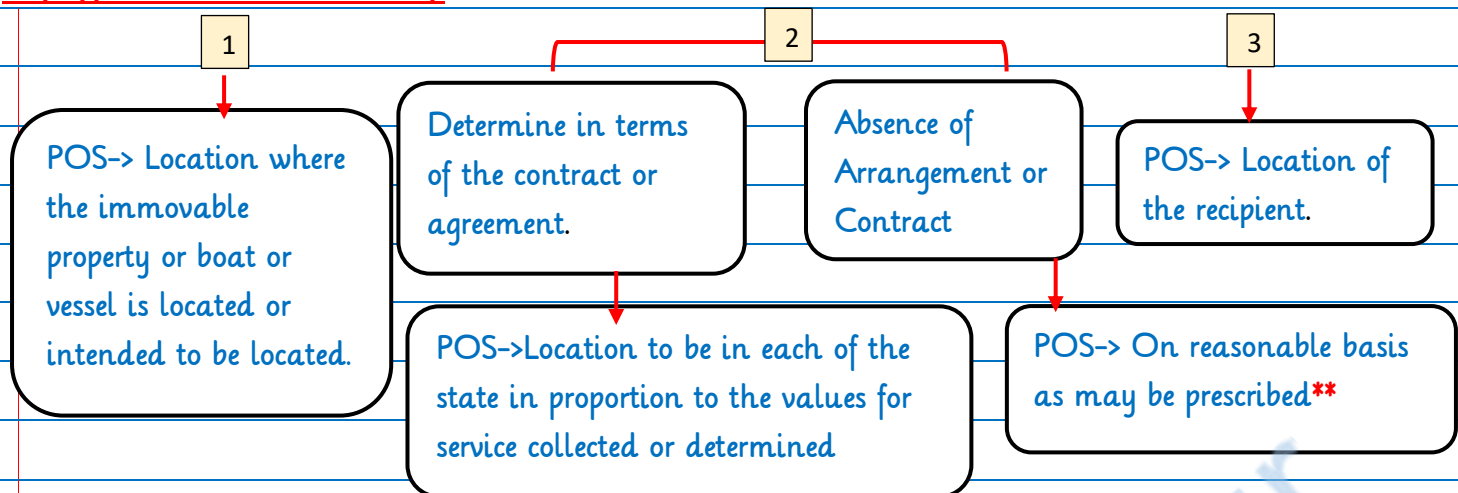
Sec. No.	Nature of Supply	Place of Supply
11(a)	Import	Location of Importer
11(b)	Export	Location outside India

## → 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 default provision.

### SEC 12(3): IMMOVABLE PROPERTY





Prescribed Manner**				
Sr. No.		Type of service in relation to immovable property		Factor which determines the proportionate value of services
(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 or more contiguous States/UT or both) single property located in 2		Number of nights stayed in such property
(b)		All other services provided in relation to immovable property including <ul style="list-style-type: none"> <li>Services by way of accommodation in any immovable property for organizing any marriage or reception etc.</li> <li>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 UT Services ancillary to services mentioned above</li> </ul>		Area of the immovable property lying in each State/ UT
(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/UT, to be determined on the basis

of declaration made by  
the service provider

#### 12(4) Certain performance based services

Nature of supply Restaurants and catering services, personal grooming, fitness, beauty treatment and health service including cosmetic & plastic surgery.

Place of supply Location where the services are actually performed

#### 12(5) Training and performance appraisal service [RTP Dec 21]

Nature of supply Training and performance appraisal

Place of supply → B2B: Location of such registered person

→ B2C: Location where the services are actually performed

#### 12(6) Admission to an event [Jan 21]

Nature of supply Admission to an event or amusement park, i.e. sporting event, educational event, fair, exhibition, amusement etc.

Place of supply Place where the event is actually held or where the park or the other place is located

#### 12(7) Organising of event & ancillary services to organization of event & assigning of sponsorship to such event

[May 18, Nov 18, RTP-Nov 18, RTP-May 19, MTP Dec 21]

Nature of supply Organization of an event and sponsorship services

Place of supply → 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)

Event held in more than one State and consolidated amount charged

Determinable in terms of contract or agreement

Absence of contract or arrangement → the value is determined in accordance with rule 5 by the application of generally accepted accounting principles

POS → location to be in each States in proportion to the value for services determined

		12(8) Transportation of Goods including mail or courier [Jan 21, RTP-May 21]
Nature of supply		Transportation of goods, including mails or courier
Place of supply		→ B2B: Location of such registered person.
		→ B2C: Location at which such goods are handed over for their transportation.
Subject to Amendment issued by ICAI		Supplier and Recipient are in India and goods are transported outside India, then place of supply is destination of goods. i.e. outside India.
		12(9) Transportation of passengers
Nature of supply		Passenger Transportation
Place of supply		→ B2B: Location of such registered person.
		→ B2C: Location where the passenger embarks on the conveyance for a continuous journey
		12(10) Services on board conveyance [Jan 21]
Nature of supply		Services on board conveyance
Place of supply		Location of the first scheduled point of departure of that conveyance for the journey.
		12(11) Telecommunication services, cable & DTH, etc. [Jan 21]
Nature of supply		Telecommunication services, Data Transfer broadcasting, Cable, DTH Services
Place of supply		→ Services involving fixed line, circuits, dish etc. → Location of such fixed Equipment
		→ Mobile/Internet post-paid services: Location of billing address of the Recipient
		→ Service provided through a selling Agent/Reseller: Address of the selling Agent/Reseller.
		→ Sale of pre-paid voucher: Location where such vouchers are sale
		→ Other Cases: Address of the recipient in records
		[Jan 21, RTP-May 21] 12(12) Banking and other financial services including stock broker
Nature of supply		Banking and other financial services
Place of supply		→ Location of the recipient of services on the records of the supplier
		→ If the location of the recipient of services is not available: Location of



the Supplier

12(13) Insurance services

Nature of supply Insurance Services

Place of supply → B2B: Location of such registered person.

→ B2C: Address on Records

12(14) Advertisement Services to the Government [RTP-May 20]

Nature of supply Advertisement Services to the Government

Place of supply → Each of States/Union Territory where the advertisement is broadcasted/displayed/run.

→ In case of multiple States → as per prescribed manner.

Prescribed Manner

S. No.	Type of Advertisement	Factor which determines the proportionate value of service attributable to the dissemination in each state/union territory
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 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.
3	Advertisements in hoardings (other than those on trains)	Amount payable for the hoardings located in each State/Union territory.
4	Advertisements on trains	Length of the railway track in each State/Union Territory, for that train.
5	Advertisements on the back of utility bills of oil and	Amount payable for the advertisements on bills pertaining to consumers having billing addresses in each State/Union territory.

			gas companies, etc.	
		6	Advertisements on railway tickets	Number of Railway Stations in each 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	Number of viewers of such channel in each State/Union Territory. Viewership can be ascertained from the channel viewership figures published by the Broadcast Audience Research Council. Figures for the last week of a given quarter will be used for calculating viewership for the succeeding quarter. 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, will be calculated in ratio of the populations of that State/Union territory, as determined in 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	In case of advertisements over internet, the advertisement service shall be deemed to have been provided all over India. Thus, the value of such service will be apportioned amongst all States and UTs, of India in the manner prescribed therein. Manner Prescribed: Number of internet subscribers in each State/ Union Territory Internet subscribers can be ascertained from the internet subscriber figures published by the Telecom Regulatory Authority of India (TRAI). 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.
			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.
	11	Advertisements through SMS	Number of telecom subscribers in each State/Union Territory
			Telecom subscribers in a telecom circle can be ascertained from the telecom subscribers figures published by the TRAI. Figures for a given quarter will be used for calculating the subscribers for the succeeding quarter.
			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.

(II) For the rest of the services other than those specified above, the default provision has been prescribed as under:

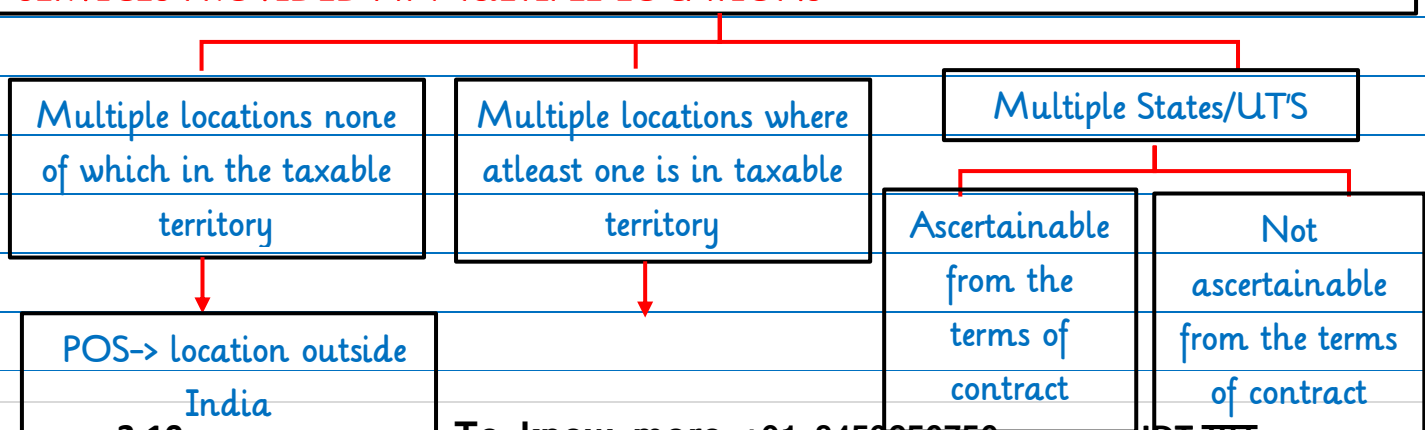
Default rule for services other than 12 specified services		
	Description of Supply	Place of Supply
12(2)	Any services not	→ B2B: Location of registered person
[Jan 21]	covered u/s 12(3) to	→ B2C:
	12(14)	• Where the address of record exists: Location of the recipient
		• Other Cases: Location of the supplier of services

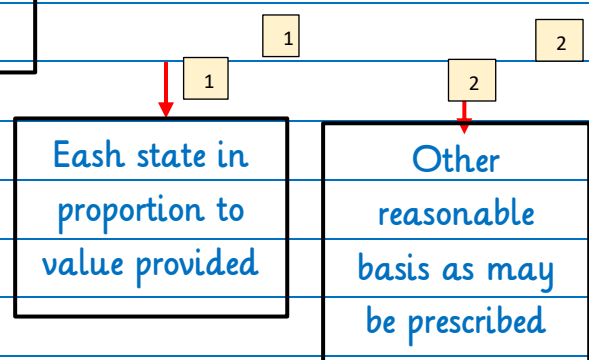
## → PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR RECIPIENT IS OUTSIDE [SECTION 13]

(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 default provision.

Section No.	Nature of supply	Place of supply
<b>13(3): Performance Based services</b>	<ul style="list-style-type: none"> <li>Services supplied in respect of goods which are required to be made physically available</li> </ul>	Location where the services are actually performed
<b>[Nov 20]</b>	<ul style="list-style-type: none"> <li>Services supplied in respect of goods but from a remote location by way of electronic means</li> </ul>	Location where the <b>goods are situated</b> at the time of supply of services
	<ul style="list-style-type: none"> <li>In case of goods that are temporarily imported into India for repairs and re-exported after repairs before being used in India.</li> </ul>	[Refer <b>section 13(2)</b> ]
	<ul style="list-style-type: none"> <li>Services which require the physical presence of the recipient or the person acting on his behalf with the supplier of services</li> </ul>	Location where the services are <b>actually performed</b>
<b>13(4): Place of supply for immovable Property</b>	Services supplied directly in relation to an immovable property	Place where the <b>immovable property is located</b> or intended to be located
<b>[May 18, Jan 21, RTP-May 21]</b>		
<b>13(5): Admission to or organisation of event including the services ancillary to admission</b>	Admission to or organisation of an Event	Place where the <b>event is actually held</b>

**SEC. 13(6) & 13(7): PERFORMANCE BASED / IMMOVABLE PROPERTY/ EVENT BASED SERVICES PROVIDED AT MULTIPLE LOCATIONS**





Note:

As per section 13(7) of the IGST Act, if such services are supplied in more than one State/ UT, the place of supply of such services is taken as being in each such State/ UT and the value of such supplies is determined in terms of the contract or agreement entered into in this regard. In the absence of a such contract or agreement, the value is determined in accordance with rule 7 in the following manner:

Sr. 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/ UT where the service is performed
(ii)	Services supplied on different goods	Considering the ratio of the invoice value of goods in each States/ UT, on which service is performed, as the ratio of the value of the service performed in each State/UT
(iii)	Services supplied to individuals	Applying generally accepted accounting principles

**State and where the location of supplier or the recipient is outside India new rule 8 of the IGST Rules**

As per section 13(7) of the IGST Act, the place of supply of services supplied, in relation to an immovable property, in more than one State/ UT is taken as being in each such State/UT and the value of such supplies is determined in terms of the contract or agreement entered into in this regard. Rule 8 of the IGST Rules 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.

## SEC 13(8): OTHER SPECIFIED SERVICES

Service provided by banking company/ financial institution/ non-banking financial company to account holders

Intermediary services sec 2(13) of IGST Act 2017  
Eg. Recovery agent, commission agent, travel agent, tour operator

Service consisting of means of hiring of means of transport upto a period of one month (including yachts but excluding aircrafts and vessels)

POS = Location of Suppliers

Subject to Amendment issued by ICAI

13(9) Transportation of goods	<del>Transportation of goods, other than by way of mail or courier.</del>	Place of destination of such goods.
Note	Transportation of goods including Mail & Courier => (Refer Sec 13(2))	
13(10): Transportation of passenger	Passenger transportation.	Place where the passengers embarks on the conveyance for a continuous journey.
13(11) Services provided on-board a conveyance.	Services provided on-board a conveyance.	First scheduled point on departure of that conveyance for the journey.
13(12): Online information and database access or retrieval services	Online information and database access or retrieval services. E.g., (a) Advertising on the internet (b) Providing cloud services (c) Provision of e-books, movie, music, software and other intangibles via internet (d) Providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network (e) Online supplies of digital	Location of recipient of service.



content (movies etc.)

(f) Digital data storage

(g) Online gaming

*Note: - recipient deemed to be in taxable territory if atleast two of the following conditions are satisfied:*

- Location of the address presented by recipient of service via internet is in taxable territory
- Debit/credit/any other card for settlement of payment has been issued in the taxable territory
- Billing Address of recipient of service is in the taxable territory
- IP address of the device used by the recipient is in the taxable territory
- Bank of recipient in which the account used for payment is maintained in the taxable territory
- Country code of SIM card used by the recipient is of taxable territory
- Location of fixed landline through which service is received by the recipient is in taxable territory

### 13(2) Residual method

(II) For the rest of the services other than those specified above, a default provision has been prescribed as under section 13(2):

Default Rule for the cross-border supply of services other than nine specified services

Sr. No.	Description of Supply	Place of Supply
13(2)	Any services which specified is not cover under Sec. 13(3) to 13(12)	→ 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.)

### 14A Special provision for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India

Online Money Gaming

S = NTT      R = TT → Sec. 14A

i) Supplier shall obtain a single registration under the simplified registration scheme [Rule 8(1) & Rule 14 of CGST Rule 2017]

ii) Any person located in the taxable territory representing such supplier for any purpose in the

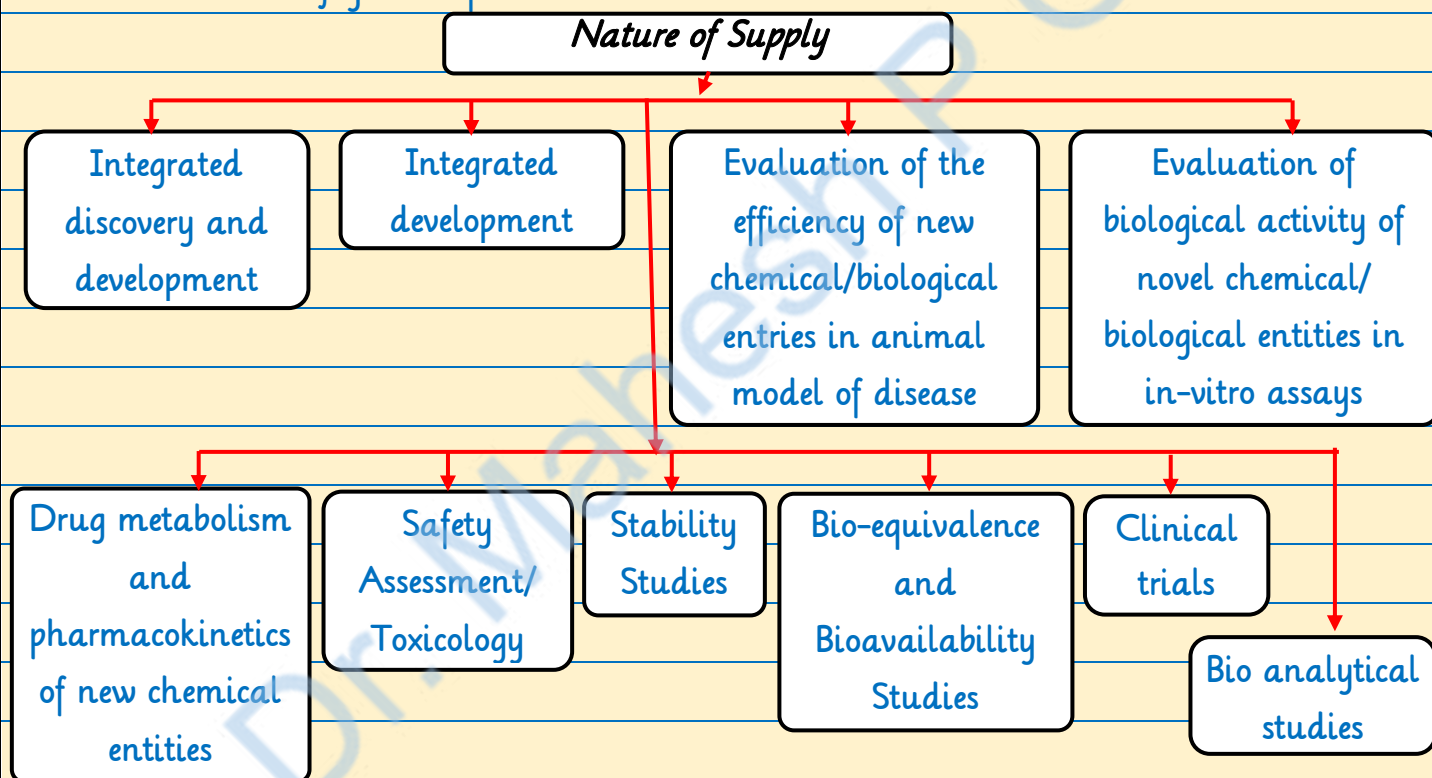
taxable territory shall get registered and pay the integrated tax on behalf of the supplier.

- iii) If such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

## → SOME CLARIFICATION ISSUED BY ICAI

### 1. PLACE OF SUPPLY OF RESEARCH AND DEVELOPMENT SERVICES RELATED TO PHARMACEUTICAL SECTION

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 effective use and enjoyment of a service.



Place of supply– Location of the Recipient of services, subject to fulfilment of the following

- 1) Supply of services as per the Contract between Service Provider (TT) and service Recipient (NTT)
- 2) Such supply of services fulfilment all other Conditions in the definition of Export services (Except the condition that Place of Supply is outside India)

### 2. SERVICES PROVIDED BY PORTS:

#### Issue:

Various services are being provided by the port authorities 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.

**Clarification:**

Such services are ancillary to or related to cargo handling services 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) of the IGST Act**, as the case may be, depending upon the terms of the contract between.

**3. SERVICES RENDERED ON GOODS (UNPOLISHED DIAMONDS) TEMPORARILY IMPORTED IN INDIA: [NOV 20, Q3 b – 4 Marks]**

**Issue:**

What would be the place of supply in case of supply of various services on unpolished Diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to use in India?

**Clarification:**

In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contains in **section 13(2) of the IGST Act**.

**4. DETERMINATION OF PLACE OF SUPPLY IN CASE OF SOFTWARE/ DESIGN SERVICES RELATED TO ELECTRONICS SEMI-CONDUCTOR AND DESIGN MANUFACTURING (ESDM) INDUSTRY**

The place of supply of software/design by supplier located in taxable territory recipient located in non-taxable territory by using sample prototype hardware/test kits in a composite supply, where such testing in an ancillary supply, is the location of the service recipient as per **section 13(2) of the IGST Act**, do not apply separately for determining the place of supply for ancillary supply in such cases.

**5. MAINTENANCE, REPAIRS & OVERHAUL SERVICES IN RESPECT OF AIRCRAFT [SECTION 13(13) OF IGST ACT]**

Location of Supplier → TT

Location of Recipient → NTT

Supply of maintenance, repairs & Overhaul services in respect of

- Aircraft
- Aircraft Engines
- Other Aircraft Components or Part.

POS → Location of Recipient

[Section 13(13) of IGST Act, 2017]

**6. PLACE OF SUPPLY OF B2B MRO SERVICES IN CASE OF SHIPPING INDUSTRY SHALL BE THE LOCATION OF THE RECIPIENT**

Section 13 of the IGST Act determines the place of supply of services where location of supplier or location of recipient is outside India.

The place of supply of maintenance, repair or overhaul service in respect of ships and other vessels, or parts thereof as follows.

The place of supply in respect of B2B supply of maintenance, repair or overhaul service (Hereinafter referred to as MRO services) 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 shall be the location of the recipient of service. By virtue of this notification, if an Indian shipping company has received MRO service in respect of ship/vessel from a foreign supplier, place of supply of such service is in India (Location of recipient being in India) and said service would qualify as an 'import of service'. Resultantly, GST is payable under reverse charge on these services.

**Note: -** In the absence of such notification, the place of supply of such MRO service provided by a foreign supplier to an Indian shipping company would have been the location where the services are actually performed, determined in terms of section 13(3)(a) of the IGST Act. Accordingly, the place of supply of such would have been outside India and thus, they would not have qualified as import of services, thus, not been liable to GST.

Subject to  
Amendment  
issued by ICAI

**7. PLACE OF SUPPLY IN CASE OF SUPPLY OF SERVICES IN RESPECT OF ADVERTISING SECTOR**

Issue 1:	There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?
Clarification:	The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use

		an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act.	
	Issue 2:	There may be another case where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertisement company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?	
	Clarification:	In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) of IGST Act.	
8	<b>PLACE OF SUPPLY IN CASE OF SUPPLY OF THE "CO-LOCATION SERVICES"</b>		
	Issue 1:	whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping/storing company's hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located; or ii. whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT)	
	Subject to Amendment issued by ICAI		



		Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire protection system, network connectivity, backup facility, firewall services, 24 hrs. monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc.
Issue 2:		whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire protection system, network connectivity, backup facility, firewall services, 24 hrs. monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc.
Clarification	1)	It is clarified that the Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services" (S.No. 3 of Explanatory notes of SAC-998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web-based interface relating to the hosting and operation of the servers.
	2)	In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property.



Therefore, the place of supply of the colocation services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service.

3) However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.



### PLACE OF SUPPLY OF THE GOODS (PARTICULARLY BEING SUPPLIED THROUGH E- COMMERCE PLATFORM) TO UNREGISTERED PERSONS WHERE BILLING ADDRESS IS DIFFERENT FROM THE ADDRESS OF DELIVERY OF GOODS

**Issue:** Mr. A (unregistered person) located in X State places an order on an e-commerce platform for supply of a mobile phone, which is to be delivered at an address located in Y State. Mr. A, while placing the order on the e-commerce platform, provides the billing address located in X State. In such a scenario, what would be the place of supply of the said supply of mobile phone, whether the State pertaining to the billing address i.e. State X or the State pertaining to the delivery address i.e. State Y?

**Clarification** As per the provisions of section 10(1)(ca) discussed above, the place of supply of goods shall be the address of delivery of goods recorded on the invoice i.e. State Y in the present case where the delivery address is located.

Also, in such cases involving supply of goods to an unregistered person, where the billing address and delivery address are different,

the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply of the said supply of goods.



### PLACE OF SUPPLY IN CASE OF SUPPLY OF SERVICE OF TRANSPORTATION OF GOODS, INCLUDING THROUGH MAIL AND COURIER WHERE EITHER SUPPLIER/RECIPIENT IS OUTSIDE INDIA

As seen earlier in this chapter, there is no specific provision for determining the place of supply of service of transportation of goods, including through mail and courier in cases where location of supplier of services or location of recipient of services is outside India. Thus, the place of supply of said services will be determined by the default rule under section 13(2). Accordingly, in cases where the location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.



### CLARIFICATION ON PLACE OF SUPPLY OF CUSTODIAL SERVICES PROVIDED BY BANKS TO FOREIGN PORTFOLIO INVESTORS (FPIs)

Banks enter into custodial agreements with the FPIs for the provision of the custodial services. The main activity carried out by banks as a custodian is maintaining the account of the securities held by the FPIs. Custodial services to FPIs involve keeping their investments safe and handling transactions, like buying and selling stocks. This makes it easier for FPIs to invest in another country without worrying about the regulatory requirements.

It is important to note that section 13(8)(a) covers a situation where services are supplied by banking company or a financial institution or a non-banking company to account holders. However, custodial services are not considered to be covered under the services provided by bank to account holders, but have been considered to be covered under the services which are not provided to account holder. Thus, the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to

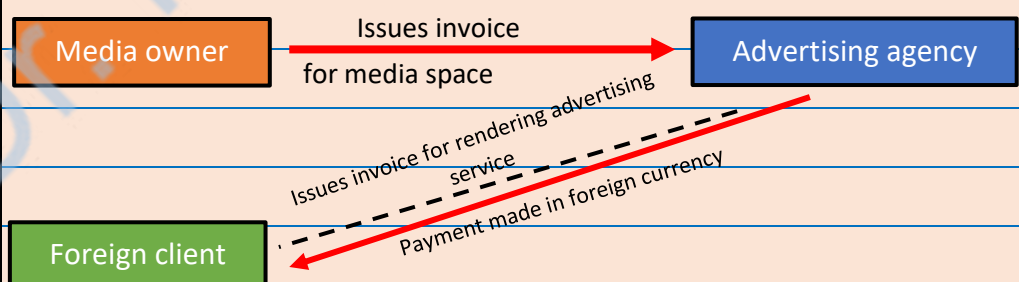
'account holder'. Therefore, the said services are not covered under section 13(8) (a) and the place of supply of custodial services will not be determined under section 13(8)(a). Therefore, the place of supply of such services is to be determined under the default provision i.e., section 13(2).



## PLACE OF SUPPLY OF ADVERTISING SERVICES PROVIDED TO FOREIGN CLIENTS

A foreign company or firm hires an advertising company/agency in India for advertisement of its goods or services and may enter into a comprehensive agreement with the advertising company/agency encompassing all the issues related to advertising services ranging from media planning, investment planning for the same, creating and designing content, strategizing for maximum customer reach, the identification of media owners, dealing with media owners, procuring media space, etc. for displaying/broadcasting/printing of advertisement including monitoring of the progress of the same. In short, the advertising agency provides a one-stop solution to the client who outsources the entire activity to the agency.

In this scenario, media owners raise invoice to the advertising agency for inventory costs, which are then paid by the advertising agency. Subsequently, the advertising agency raises invoice to the foreign client for the rendered advertising services and receives the payments in foreign exchange from the foreign client.




In this regard, following has been clarified:

**Issue 1:** Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners as

**Clarification:** The advertising agency, in this case, enters into two agreements:

- i) With the client located outside India for providing a one stop solution starting from designing the advertisement to its display in the media as agreed to with the client. The advertising

	company raises invoice to its foreign client for the above advertising services and the payments of the same is received from the foreign client in foreign exchange.
	ii) With the media company to procure media space for display of the advertisement and to monitor campaign progress based on data shared by the media company. The media company bills the advertising agency and the payment for same is made by the advertising agency to the media company
	Thus, the agreement, in the instant case, is in the nature of two distinct principal-to-principal supplies and no agreement of supply of services exists between the media company and the foreign client. Thus, the advertising company is not acting as an agent but is providing the services to the client on its own account.
	In view of above, it is clarified that in the present scenario, the advertising company does not fulfil the criteria of "intermediary" under section 2(13).
Issue 2:	Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the "recipient" of the services being supplied by the advertising company under section 2(93) of the CGST Act, 2017?
Clarification	As per section 2(93) (a) of the CGST Act, the "recipient" of the services means the person who is liable to pay consideration where a consideration is payable for the supply of goods or services or both. In the instant scenario, the foreign client is liable to pay the consideration to advertising company for the supply of advertising and not the consumers or the target audience that watches the advertisement in India. Further, even if a representative of the said foreign client based in India, including a subsidiary or related person of the said foreign client, is interacting with the advertising company on behalf of the said foreign client, the said representative based in India can also not be considered as a recipient of the service, if the agreement is between the foreign client and the advertising company, the invoice is being issued for the said service by the advertising company to the foreign client and the payment for the said service is received by the

	advertising company directly from the said foreign client
	Therefore, in view of above, it is clarified that the recipient of the advertising services provided by the advertising company in such cases is the foreign client and not the Indian representative of the foreign client based in India or the target audience of the advertisements, as per section 2(93) of the CGST Act, 2017.
Issue 3:	Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3)?
Clarification	<p>In the instant matter, there does not appear to be any such involvement of goods which are required to be physically available with the supplier of advertising services. Therefore, the provisions of section 13(3) (a) [discussed earlier] cannot be made applicable for determination of place of supply of advertising services. Further, the supply of advertising services does not require physical presence of the recipient (foreign client or representative or a person acting on his behalf) with the advertising company for availing the said advertising services. Thus, the said supply of advertising services cannot be considered as being covered under section 13(3)(b) [discussed earlier].</p> <p>In view of the above discussion, the place of supply of the said advertising service being supplied by the advertising company to the foreign clients can only be determined as per the default provision, i.e. section 13(2), i.e. the location of the recipient of the services. Since the recipient of the advertising services in such scenario is the foreign client, who is located outside India, the place of supply of the said services appears to be the location of the said foreign client i.e. outside India as per section 13(2), and the said service can be considered to be export of services, subject to the fulfilment of conditions mentioned in section 2(6).</p>
	<p><b>PLACE OF SUPPLY IN CASES WHERE THE ADVERTISING COMPANY LOCATED IN INDIA MERELY ACTS AS AN AGENT OF THE FOREIGN CLIENT IN ENGAGING WITH THE MEDIA OWNER FOR PROVIDING MEDIA SPACE TO THE FOREIGN CLIENT</b></p> <p>In cases where the advertising company located in India merely acts</p>



as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client, the agreement/ contract for providing the media space and broadcast of the advertisement is directly between media owner and the foreign client. The media owner directly invoices the foreign client for providing the media space and broadcast of the advertisement and the foreign client remits the payment for the said services directly to the media owner. In such instances, the services of providing media space and broadcasting the advertisement are directly provided by the media owner to the foreign client. In such cases, the advertising company is merely facilitating the provision of the said services of providing media space and broadcasting the advertisement between the foreign client and the media owner and does not provide the said services on its own account. The advertising company invoices the foreign client for the facilitation services provided by it. Consequently, in such cases, the advertising company is an "intermediary" in accordance with section 2(13) of the CGST Act, 2017, [as elucidated in Circular No. 159/15/2021-GST discussed above in respect of the said services of facilitating the foreign client] and accordingly, the place of supply in respect of the said services provided by the advertising company to the foreign client is determinable as per section 13(8)(b), i.e. the location of the supplier, i.e. the location of the advertising company.



### PLACE OF SUPPLY OF DATA HOSTING SERVICES PROVIDED BY SERVICE PROVIDERS LOCATED IN INDIA TO CLOUD COMPUTING SERVICE PROVIDERS LOCATED OUTSIDE INDIA

Data Hosting Service Providers (DHSPs) in India offer storage space and technical infrastructure to hold data for foreign Cloud Computing Service Providers (CCSPs). These CCSPs rely on Indian data centers to securely store and manage large amounts of information. This allows them to serve their clients without having their own physical storage in India. Under this business model,

i) A contract is entered into between CCSPs and DHSPs wherein CCSPs will use the data centres of DHSPs for hosting cloud



computing services.

## DATA HOSTING SERVICES

ii) DHSP either:

- owns premises for data centre or
- operates data centre on leased premises.

iii) It independently:

- procures infrastructure and human resource, and
- handles all aspects of data centre like rent, software and hardware infrastructure, power, net connectivity, security, human resource, etc. (even in case where some hardware is provided by CCSPs),
- handles operations like infrastructure monitoring, IT management and equipment maintenance, etc.

to provide the said supply of data hosting services to CCSPs.

iv) There is no contact between DHSP and the end users/consumers/subscribers of the foreign CCSP.

v) DHSP provides data hosting services to the CCSPs:

- on a web platform through computing and networking equipment
- for the purpose of:
  - Collecting
  - Storing
  - Processing
  - Distributing or
  - allowing access to

large amounts of data.

vi) Data hosting services are:

- not passive supply of a service directly in respect of immovable property,
- comprehensive services related to data hosting which involves the supply of various services by DHSP like:
  - operating data center,
  - ensuring uninterrupted power supplies,
  - backup generators, network connectivity, backup facility,
  - firewall services

– monitoring and surveillance service

for ensuring continuous operations of the servers and related hardware, etc.

which are essential for CCSP to provide cloud computing services to end users/customer/subscribers.

## CLOUD COMPUTING SERVICES

vii) CCSP provides cloud-based applications and software services to various end users/customers/subscribers for data storage, analytics, artificial intelligence, machine learning, processing, database analysis and deployment services, etc.

viii) The end users/ customers/ subscribers access cloud computing services seamlessly over the internet through technology hosted on data centers.

## CLARIFICATION

With regard to data hosting services, it is observed that:

a) DHSP provides data hosting services to the CCSP on principal-to-principal basis on his own account and is not acting as a broker or agent for facilitating supply of service between CCSPs and their end users/consumers.

b) Data hosting services provided by DHSP to the said CCSPs cannot be considered in relation to the goods "made available" by the said CCSPs to the DHSP in India.

c) Data hosting services cannot be considered as the services provided directly in relation to immovable property or physical premises.

In terms of the above discussion, it is inferred and clarified that the place of supply in such cases needs to be determined according to the default provision under section 13(2), i.e. the location of the recipient of the services. Thus, where the CCSP receiving the data hosting services are located outside India, the place of supply will be considered to be outside India. Accordingly, supply of data hosting services being provided by a DHSP located in India to an overseas CCSP can be considered as export of services, subject to the fulfilment of the other conditions mentioned in section 2(6).

The above discussion has been depicted by way of a diagram below:





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