INDIRECT TAX

Index

Sr. No.	Chapter	Page No
Part 1 - GST		
1	Supply under GST	1 - 88
2	Charge of GST and Composition Levy	89 – 125
3	Place of Supply	126 - 202
4	Exemptions from GST	203 - 283
5	Time of Supply	284 - 297
6	Value of Supply	298 - 337
7	Input Tax Credit	338 - 402
8	Registration	403 - 447
9	Tax Invoice; Credit and Debit Notes	448 - 481
10	Accounts and Records; E-way Bill	482 - 507
11	Payment of Tax	508 - 527
12	Electronic Commerce Transactions under GST	528 - 544
13	Returns	545 - 581
14	Import and Export under GST	582 - 614
15	Refunds	615 - 645
16	Job Work	646 - 655
17	Assessment and Audit	656 - 666
18	Inspection, Search, Seizure and Arrest	667 - 674

19	Administration, Demands and Recovery	675 - 713
20	Liability to Pay in Certain Case	714 - 719
21	Offences and Penalties and Ethical Aspects under GST	720 - 745
22	Appeals and Revision	746 - 772
23	Advance Rulings	773 - 779
24	Miscellaneous	780 - 802
Part - 2		
1	Levy of an Exemptions from Custom Duty	1-33
2	Types of Duty	34 - 53
3	Classification of Imported and Export Goods	54 - 62
4	Valuation under the Customs Act 1962	63 - 84
5	Importation and Exportation of Goods	85 - 119
6	Warehousing	120 - 130
7	Refunds	131 - 138
8	Foreign Trade Policy	139- 193

GOODS AND SERVICES TAX (GST)

PART - 1

TOPIC REFERENCER

- *Definitions*
- *Scope of Supply*
- *Supply with Consideration in Course/ Furtherance of Business*
- *Import of services with Consideration whether or not in Course/ Furtherance of Business*
- *Supply without Consideration*
- *Activities or Transactions treated as Supply of Goods or Supply of Services*
- *Activities Neither Supply of Goods NOR Supply of Services*
- *Taxability of Composite Supply and Mixed Supply*
- *Annexure-1:*
  - ✓ *Genesis of GST in India and Concept of GST*
  - ✓ *Need for GST in India*
  - ✓ *Dual GST Model*
  - ✓ *Goods and Services Tax Portal*
  - ✓ *Constitutional Provisions*
  - ✓ *Goods and Services Tax Council*
  - ✓ *General Definitions*

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

DEFINITIONS

1. What do you mean by goods under CGST Act, 2017.

Solution: The term goods has been defined in Section 2(52) of CGST Act, 2017 as under-

(i) "Goods" means every kind of movable property -

- ✓ other than-
  - money, and
  - securities
- ✓ but includes -
  - actionable claim,
  - growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Section 2(52)]

(ii) Essential ingredients: The essential ingredients in definition of goods are -

a) It should be movable property: The definition of goods itself provides that only movable property shall be considered as goods. In UOI v. Delhi Cloth Mills [1977] ELT 199 (SC) and in South Bihar Sugar Mills v. UOI [1978] ELT 336 (SC), the Supreme Court enunciated the principle that to be called goods, the articles must be such as are capable of being bought and sold in the market. The articles must be something, which can ordinarily come or can be brought to the market to be bought and sold. Thus, immovable properties that are attached to earth, cannot be considered as goods.

b) Money is specifically excluded : The definition of goods specifically excludes Money. The term "Money" has been defined in CGST Act, 2017 as under- **"Money"** means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value. [Section 2(75)]

c) Securities is specifically excluded: The definition of goods specifically excludes Securities. ("Securities" shall have the same meaning as assigned to it in Section 2(h) of the Securities Contracts (Regulation) Act, 1956 [Section 2(101)]. The meaning assigned in said Act is as follows-

'Securities' includes -

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

(ii) Derivative;

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

(iv) Security receipt as defined in section 2(zg) of the securitisation and reconstruction of financial assets and enforcement of security interest act, 2002;

(v) Units or any other such instrument issued to the investors under any mutual fund scheme; "securities" shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in **section 2(9)** of the insurance act, 1938. The implication of exclusion of securities from the definition of goods is that activities that are in the nature of transfer of title by way of sale, redemption, purchase or acquisition of securities on principal-to-principal basis are outside the ambit of supply. *[Explanation]*

Issues:

1) 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.

2) Future Contracts: Future contracts are in the nature of financial derivatives, the price of which is dependent on the value of underlying stocks or index of stocks or certain approved currencies and the settlement happens normally by way of net settlement with no actual delivery. Since future contracts are in the nature of derivatives, these qualify as 'securities' and thus, are not subject to GST.

However, where the future contracts have a delivery option and the settlement of contract takes place by way of actual delivery of underlying commodity/currency, then such future contracts would be treated as normal supply of goods and liable to GST.

3) Forward Contract: A forward contract is an agreement, executed, to purchase or sell a predetermined amount of a commodity or currency at a pre-determined future date at a pre-determined price. The settlement could be by way of actual delivery of underlying commodity/ currency or by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date.

Where the settlement takes place by way of actual delivery of underlying commodity/currency, then such forward contracts would be treated as normal supply of goods and liable to GST.

Where the settlement takes place by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date, the same would be falling within the purview of 'securities' and thus, are not chargeable to GST.

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

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

However, it is important to note that if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged on the derivatives/ future contracts/ forward contracts, the same would be a consideration for provision of service and subject to GST.

6) Actionable claim is specifically included: The definition of goods specifically includes Actionable Claim. The term 'Actionable claim' has been defined in Section 2(1) as follows: "Actionable claim" shall have the same meaning as assigned to it in Section 3 of the Transfer of Property Act, 1882. [Section 2(1)] Accordingly, 'Actionable claim' means a claim to-

(i) any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property; or

(ii) any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Examples of actionable claims are-

a) Unsecured debts,

b) Right to participate in the draw to be held in a lottery,rem
c) Right to benefit of a contract,
d) Debentures;
e) Bills of Exchange;
f) Promissory notes,
g) Bank Guarantee,
h) Fixed Deposit Receipt,
i) Arrears of rent, etc.

One may refer to Section 130 of Transfer of Property Act, 1882 regarding the manner of 'transferring actionable claims. Transfer of actionable claim can be with consideration or without consideration as per the Transfer of Property Act, 1882. Actionable claim represents a debt and the holder of the actionable claim enjoys the right to demand "action" against any person. Acknowledgement of liability by a creditor to honor a claim, when made, does not constitute actionable claim in the hands of such creditor.

The following aspects need to be noted:

Assignment of actionable claim without permanently supplanting the holder of the claim would not be supply. Under the GST regime, actionable claim will be regarded as 'goods' since the definition of goods includes actionable claim A

As per Schedule III of CGST Act, 2017 Actionable claims, other than specified actionable claims shall be regarded as neither as a supply of goods nor a supply of services.

"Specified actionable claim" means the actionable claim involved in or by way of –

(i) betting;
(ii) casinos;
(iii) gambling:
(iv) horse racing;
(v) lottery; or
(vi) online money gaming.

Thus, transactions of betting, casinos, gambling, horse racing, lottery, online money gaming are liable to GST.

[Note: Only those debts which can be enforced through Court of Law, can be said to be actionable claims.]

Case	Tax treatment
If an unsecured debt is transferred to a third person for a consideration	Since unsecured debt is an actionable claim, the activity be treated as goods. However, as per Schedule III of CGST Act, 2017, actionable claims, other specified actionable claims shall be treated neither as a supply of goods nor a supply of services. *Hence, such transfer of unsecured debt will not be subject to GST.*

Sale, purchase, acquisition or assignment of a secured debt like a mortgage	**Not liable to GST.** All secured debts are not actionable claim.They are governed by Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 and such security interest is securities and they are neither goods nor service and not liable to GST. However, if a service fee or processing fee or any other charge is collected in the course of transfer or assignment of a debt then the same would be chargeable to tax.
Transfer of beneficial interest in movable property	Beneficial interest in movable property is a right or expectancy in a movable property like right to receive income accruing from a movable property. It is only if the beneficial interest in such property is transferred to another person for a consideration then the activity of transferring the beneficial interest would not be liable to tax. It may be noted that accrual of income from a movable property could be in the nature of a consideration for service, eg. a hiring fees or a license fee accruing on hiring or licensing of a movable property, then such activity would be liable to tax.
Vouchers that entitle a person to enjoy a service, for example a health club voucher.	Vouchers are not actionable claims and hence the same will be liable to tax. Such a voucher does not create a 'beneficial interest in a movable property but only entitles a person to enjoy a particular service for a single or specified number of times.
Vouchers that entitle a person to enjoy a service, for example a health club voucher.	Such recharge vouchers do not create a 'beneficial interest in a movable property but only enable a person to enjoy a particular service
Recharge vouchers issued by service companies for enabling clients/consumers	Such recharge vouchers do not create a 'beneficial interest in a movable property

to avail services like mobile phone communication, satellite TV broadcasts, DTH broadcasts etc.	but only enable a person to enjoy a particular service.

7) Growing crop etc.: The definition of goods specifically includes growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.
The element of severability is important while deciding on the nature of the property, and this element can be established by ascertaining the nature of the property, intention of the parties and the terms of the contract between them.
Standing trees are not goods and not taxable. However, standing timber falls under the ambit of **"goods"** because timber trees are severed from the land for the purpose of sale and hence they become a commercial commodity.

2. What do you mean by services under CGST Act, 2017.

Solution: The term services has been defined in Section 2(102) of CGST Act, 2017 as under -

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

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

Though supply of securities are not subject to GST, share brokers and stock exchanges will be liable to pay tax on services supplied by them for facilitating or arranging transactions in securities.

(ii) Meaning of Service in common parlance: Service is a type of economic activity that is intangible, is not stored and does not result in ownership. A service is consumed at the point of sale. The benefit of service may last longer.

(iii) Activities regarded as transaction only in money - Not Service: The following are some of the activities which fall under this category-
- a) Principal amount of deposits in, or withdrawals from a bank;
- b) Advancing or repayment of principal sum on loan to some one;

c) Conversion of, say ₹ 500 currency notes into one rupee coins (to the extent amount is received in money form). Thus, transaction in money per-se would be outside the ambit of service.

(iv) Activities relating to use of money or its conversion into another form/ currency/ denomination for consideration included in definition of service: While the transaction in money, per-se, would be outside the ambit of service, the related activity for which a separate consideration is charged would not be treated as a transaction in money and would be chargeable to tax if other elements of taxability are present. For example, a foreign exchange dealer while exchanging one currency for another also charges a commission (often inbuilt in the difference between the purchase price and selling price of forex). The activity of exchange of currency, per-se, would be a transaction only in money, the related activity of providing the services of conversion of forex, documentation and other services for which a commission is charged separately or built in the margins would be very much a 'service'.

3. With reference to CGST Act, 2017 define the following:

⇨ Person ⇨ Taxable territory ⇨ Non-taxable territory ⇨ India ⇨ Supplier ⇨ Recipient ⇨ Specified actionable claim ⇨ Online gaming ⇨ Online money gaming ⇨ business

Term	Definitions
Person	Includes- a) an individual; b) a company; c) a Hindu undivided family; d) a firm; e) a Limited Liability Partnership; f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India; g) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in Section 2(45) of the Companies Act, 2013; h) any body corporate incorporated by or under the laws of a country outside India; i) a co-operative society registered under any law relating to cooperative societies; j) a local authority; k) Central or State Government; l) society as defined under the Societies Registration Act, 1860; m) trust; and

	n) every artificial juridical person, not falling within any of the above. [Section 2(84)]
Taxable territory	Means the territory to which the provisions of this Act apply. [Section 2(109)] CGST Act, 2017 extends to the whole of India including the State of Jammu and Kashmir.
Non-taxable territory	Means the territory which is outside the taxable territory. [Section 2(79)]
India	Means— ✓ the territory of India as referred to in Article 1 of the Constitution, ✓ its territorial waters, ✓ seabed and sub-soil underlying such waters, ✓ continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and ✓ the air space above its territory and territorial waters. [Section 2(56)]
Supplier	In relation to any goods or services or both, shall mean— ✓ the person supplying the said goods or services or both and ✓ shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied. However, a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.*[Section 2(105)]*
Recipient	Recipient of supply of goods or services or both, means— a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration; b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person

	to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied. **[Sec 2(93)]**
Specified actionable claim	Means the actionable claim involved in or by way of— (i) betting; (ii) casinos; (iii) gambling; (iv) horse racing; (v) lottery; or (vi) online money gaming. [Section 2(102A)]
Online gaming	Means offering of a game on the internet or an electronic network and includes online money gaming. [Section 2(80A)]
Online money gaming	Means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force. [Section 2(80B)]
Business	Includes— a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit; b) any activity or transaction in connection with or incidental or ancillary to subclause (a); c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction; d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business; e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members; f) admission, for a consideration, of persons to any premises; g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

	h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. [Section 2(17)] Note: Totalisor is a computerised device that pools the wagers/bets (after deduction of charges and statutory taxes) of various punters [person who places the bet] and also divides the total wager amount to be distributed to the winning punters.

Analysis : The definition may be understood in two parts, namely:-

General activity	Specific activity
Trade, commerce, etc., including incidental activities whether or not there is volume, frequency, continuity or regularity of such transactions. Thus, occasional transactions are subject to GST. Even if there is no profit motive or even if no profit is earned, an activity in the nature of trade, manufacture, commerce, profession may constitute business.	Acquisition of goods including capital goods, supply by association/club, admission of persons to a premises and services by a race club.

The following aspects need to be noted :

- ✓ Government activities excluding sovereign functions are also subject to GST.
- ✓ Wager' is also included in the definition of business to impose GST on betting transactions.
- ✓ Educational services would be covered under profession or business.
- ✓ Charitable or religious activities are not specifically covered.
- ✓ Clause (g) deals with services supplied by a holder of an office. Hence, if a practicing chartered accountant is appointed as an independent director of a company, it means that he accepts this office of directorship in the course or furtherance of his professional practice. Any service provided by him as an independent director to the company appointing him shall be regarded as business.

SCOPE OF SUPPLY

4. What is taxable event in GST.

Solution: Taxable Event is that event, which on its occurrence, creates or attracts the liability to tax. Under earlier system of taxation, there was a lot of litigation relating to taxable event like

whether a particular process amounted to manufacture or not, whether the sale was pre-determined sale, whether a particular transaction was a sale of goods or rendering of services etc. The GST laws resolve these issues by laying down one comprehensive taxable event i.e. : "Supply" – Supply of goods or services or both.

Thus, there is departure from the historically understood concepts of 'taxable event' under the State VAT Laws, Excise Laws and Service Tax Laws i.e. sale, manufacture and service respectively. In the GST regime, the entire value of supply of goods and/or services is taxed in an integrated manner, unlike the earlier indirect taxes, which were charged independently either on the manufacture or sale of goods, or on the provisions of services.

5. Explain the scope of supply

Solution: scope of the supply [section 7]:

(i) Supply includes –

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. It is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another. **[Explanation]**

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration.

(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of Section 7(1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(ii) Notwithstanding anything contained in Section 7(1),–

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

b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

c) shall be treated neither as a supply of goods nor a supply of services.

(iii) Subject to the provisions of Section 7(1), 7(1A) and 7(2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

a) a supply of goods and not as a supply of services; or

b) a supply of services and not as a supply of goods.

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

ANALYSIS OF SCOPE OF SUPPLY

General Analysis: The scope of supply is defined in Section 7 of the CGST Act in an inclusive manner. The modes of supply mentioned in Section 7(1)(a) are only illustrative and not exhaustive. This is substantiated by the use of words **'such as'** in the definition.

The meaning and scope of supply taxable under GST can be understood in terms of following parameters, which can be adopted to characterize a transaction as supply :

a. Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.
b. Supply should be made for a consideration.
c. Supply should be made in the course or furtherance of business.
d. Supply should be made by a taxable person.
e. Supply should be a taxable supply.

Thus, the aforesaid parameters (subject to certain exceptions) are to be satisfied in a transaction to treat it as taxable supply.

Some exceptions have been carved out where a transaction is deemed to be a supply even without consideration. Similarly, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

Further, there are also cases where a transaction is kept out of scope of supply despite the existence of the above parameters, i.e. a list of activities shall be treated as neither supply of goods nor supply of services. Thus, on the said transactions no GST is levied.

Besides, few activities are to be treated either as supply of goods or as supply of services. Government is also empowered to notify transactions that are to be treated as a supply of goods and not as a supply of services, or as a supply of services and not as a supply of goods.

[1] SUPPLY FOR A CONSIDERATION BY A PERSON IN COURSE OR FURTHERANCE OF BUSINESS [SECTION 7(1)(a)]

1) Inclusive meaning: The law has provided an inclusive meaning to the word 'supply' which implies that the specific transactions which are listed in the said section are only illustrative. The word "includes" used in the statutory provisions enlarges the scope of supply. Thus, any supply of goods or services would get covered, even if it is not specified in any of the clauses of section 7(1).
2) Goods or Services: Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.
3) Generic meaning of 'supply': Supply includes all forms of supply of goods or services or both and includes agreeing to supply when they are for a consideration and in the course or furtherance of business. It specifically includes:
   - ✓ Sale Transfer Barter Exchange

- ✓ License Rental; Lease; Disposal

Thus, the forms of supply as contemplated in this first part have two pre-requisites:

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

Now, we will analyse the various modes of supply mentioned herein :

- Sale and Transfer : The dictionary meaning of term 'sale' is the act of selling; specifically: the transfer of ownership of and title to property from one person to another for a price. As per the Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.
- Further, the term 'transfer' has been defined in the Black's Law dictionary as to convey or remove from one place, person, etc., to another; pass or hand over from one to another; specifically, to make over the possession or control of.
- Barter and Exchange : While barter may deal with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are partly paid for in goods and partly in money.
  By making a specific inclusion in the definition of supply, all barters and exchanges would be leviable to GST.
  For example : (i) Buying a new refrigerator in exchange of old refrigerator.
  (ii) A Chartered Accountant supplies accounting and auditing services in consideration of dry cleaning services supplied by dry-cleaner.
- Licence, Lease, Rental etc. : The dictionary meaning of the term 'licence' is a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful.
  Black's law dictionary defines **disposal** as the sale, pledge, giving away, use, consumption or any other disposition of a thing.
  The dictionary meaning of **'rental'** is an arrangement to rent something, or the amount of money that you pay to rent something and that of 'lease' is to make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time.
- Under GST, such licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule-II of CGST Act.

4) Supply should be for Consideration : Supply of goods and services for consideration is always taxable.
   "Consideration" means everything received or recoverable in return for supply of goods or services or both.
   It should involve quid-pro-quo – viz., there should be something in return which the person supplying will obtain from the recipient (except in cases of activities specified in Schedule I where it is deemed to be a supply, even if it is made without consideration).

Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person.

The term consideration has been defined in CGST Act, 2017 as under :

"Consideration" in relation to the supply of goods or services or both includes –

a) any payment made or to be made, whether in money **or** otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government. [Section 2(31)]

Deposit not a consideration unless appropriated by Supplier: However, a deposit given in respect of the supply of goods or services or both shall **not** be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. [Proviso to Section 2(31)]

The following aspects need to be noted:

- It refers to the payment received by the supplier in relation to the supply, whether from the recipient or any other person. Therefore, a third party to a contract can also contribute towards consideration;
- Consideration, therefore, is not the amount that the recipient pays but the amount that the supplier collects whether from the recipient or any third party. This would be particularly relevant in dealing with complex arrangements in digital economy and newage business;
- Consideration can be in the form of money or otherwise. **E.g.**: Under a JDA model, the flats handed by the developer to the landowner will be considered as 'consideration' for the development rights given to the developer by the landowner;
- Clause (b) appears to cost the net so wide to leave nothing to escape its grasp. Sufficient to state here that every act or abstinence that is a motivation to induce a person is already consideration and there is no requirement for it to be in monetary form. Transactions that involve negative consideration or abstinence from doing anything are all examples of consideration due to the language in this clause. Consideration can therefore be–increase in cash or other assets, increase in debt or other liabilities or abstinence/ tolerance of any act;
- Deposits, as such, are not liable to tax. However, where such deposits have been applied as consideration for the supply it would tantamount to making of advances and in such cases, will be liable to tax. Merely altering the nomenclature of the payment as 'deposit' would not change the nature of the receipt. However, trade practices and the terms, used to play an important role in identifying whether an amount is a 'deposit' or an 'advance' or any payment as consideration for the supply;

- The suppliers may have to place the deposits in a separate bank account in case of refundable deposits, to comply with this provision. However, whether the amount is refundable or not is not a criterion to determine whether such amount is a 'deposit'.

Circular No. 22/22/2017-GST dated 21-12-2017	Supply of art work to galleries – Not regarded as supply and not liable to GST: It is further clarified that in case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply. On selection by buyer – GST is leviable : It is only when the buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

(5) Supply should be in the Course or Furtherance of Business : Section 7(1)(a) provides that supply shall be made for a consideration by a person in the course or furtherance of business.

The scope of term business has been explained in the definition above.

The scope of term 'in the course or furtherance of business' is discussed as under:

For a transaction to qualify as 'supply', it is essential that the same is 'in the course or furtherance of business'. This implies that any supply of goods and/or services by a business entity would be liable to tax, so long as it is in the course or furtherance of business. Thus, any activity undertaken included in the definition of business for furtherance or promoting of a business could constitute a supply under GST law.

Supplies which are not in the course of business (or in furtherance of business) will not qualify as 'supply' for the levy of tax, except in case of importation of service for consideration, where the service is considered to be a supply whether or not it is made in the course or furtherance of business.

Examples :

- ✓ Sale of goods in an exhibition, participation in a trade fair, warranty supplies, supply of free samples to induce customers to purchase other goods, sale of used assets, etc. would be in the course of business.
- ✓ When an individual who buys a car for personal use and after a year sells it to a car dealer, the transaction will not be supply, because supply is not made by the individual in the course or furtherance of business. Further, no input tax credit was admissible on such car at the time of its acquisition as it was meant for non-business use.
- ✓ Vidhi sold her old gold bangles and earrings to 'Goldy Jewellers'. Sale of old gold jewellery by an individual to a jeweller will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual.
- ✓ Hussain, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust – 'Omashram'. The sale of paintings by the actor qualifies as supply even though it is a one-time occurrence.

- ✓ Royal Turf Race Club is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator. For providing the service of facilitating wagering transactions, Royal Turf Race Club gets commission which is deducted and retained by the club from the total bet value. Said services amount to supply as the activities of a race club are included in business.
- ✓ A Resident Welfare Association provides the service of depositing the electricity bills of the residents in lieu of some nominal charges. Provision of service by a club or association or society to its members is treated as supply as this is included in the definition of 'business'.
- ✓ Services by way of admission to circus, cinema halls, amusement parks including theme parks, water parks, etc. are considered as supply as these are services by way of admission of persons to any premises for a consideration.

(6) Supply should be made by a Taxable Person: To attract GST, supply has to be made by a taxable person. Hence, a supply between two non-taxable persons does not constitute taxable supply under GST.

The restriction of being a taxable person is only on the supplier whereas the recipient can be either taxable or non-taxable. Further, there is no condition that supply needs to be made to another person, i.e. supplies made to self are also taxable.

"Taxable person" means a person who is registered or liable to be registered under Section 22 or Section 24. [Section 2(107)]

Hence, even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person.

(7) Supply should be Taxable Supply: For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the GST Law. Exemptions may be provided to the specified goods or services or to a specified category of persons/ entities making supply.

Taxability of Cost petroleum :

Concept - Recovery of exploration and production cost i.e. Cost Petroleum :

When an oil exploration & production contractor gets a license/lease to explore/mine the petroleum crude and/or natural gas from the Government, it enters into a Production Sharing Contract (PSC) with the Government

As per the Production Sharing Contract (PSC) between the Government and the oil exploration & production contractors, in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "Cost Petroleum".

Further, the total value of petroleum produced and saved from the contract area in a particular period, as reduced by cost petroleum, is called the **profit petroleum.**

The Government's share of profit petroleum which is the consideration paid by the contractor to the Central Government for the services of grant of license/lease to explore/mine petroleum crude and/natural gas is **exempt from GST vide Notification No. 5/2018-CT (Rate) dated 25-01-2018.**

Cost petroleum is not a consideration for service to GOI and not taxable : The relationship of the oil exploration and production contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee in terms of the Petroleum and Natural Gas Rules, 1959. Having acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum, contractors carry out the exploration and production of petroleum for themselves and not as a service to the Government. Para 8.1 of the Model Production Sharing Contract (MPSC) states that subject to the provisions of the PSC, the Contractor shall have exclusive right to carry out Petroleum Operations to recover costs and expenses as provided in this Contract. The oil exploration and production contractors conduct all petroleum operations at their sole risk, cost and expense. Hence, cost petroleum is not a consideration for service to GOI and thus not taxable per se.

However, cost petroleum may be an indication of the value of mining or exploration services provided by operating member to the joint venture, in a situation where the operating member is found to be supplying service to the oil exploration and production joint venture.

Circular No. 32/06/2018 GST dated 12-02-2018

Supply of securities under Securities Lending Scheme, 1997 by the lender is taxable under GST as lending of securities is not covered under disposal of securities, thus covered under the ambit of service. Lending fees charged by the lender from the borrower is liable to IGST under reverse charge mechanism.

(1) Securities Lending Scheme, 1997 : SEBI has prescribed the Securities Lending Scheme, 1997 for the purpose of facilitating lending and borrowing of securities. Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed. The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India. There is anonymity between the lender and borrower since there is no direct agreement between them.

The lenders earn lending fee for lending their securities to the borrowers. The security lending mechanism is depicted in the diagram below: -

In the above chart :

Intermediary Approved

Approved Intermediary Securities Borrower

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

(ii) Borrower is a person who borrows the securities under the scheme through an approved intermediary.

(iii) Approved intermediary is a person duly registered by the SEBI under the guidelines/ scheme through whom the lender will deposit the securities for lending and the borrower will borrow the securities;

(2) Disposal of securities is not liable to GST: Securities as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956 are not covered in the definition of goods under section 2(52) and services under section 2(102) of the CGST Act. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

Lending of securities – not covered under disposal of securities – covered under the ambit of service : The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. The clause 4 of para 4 relating to the Scheme under the Securities Lending Scheme, 1997 doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.

Lending fees charged by the lender from the borrower – liable to GST : The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lended securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01-07-2017. The nature of tax payable shall be IGST.

Intermediaries service – Liable to GST: Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.

(3) Borrower liable to pay GST under RCM : The borrower of securities shall be liable to discharge GST under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM.

[2] ACTIVITIES/ TRANSACTIONS INVOLVING SUPPLY OF GOODS OR SERVICES BY ANY PERSON, OTHER THAN AN INDIVIDUAL, TO ITS MEMBERS/ CONSTITUENTS OR VICE-VERSA [SECTION 7(1)(aa)]

The term 'supply' includes the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. It is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another. [Explanation]

The intent of the above amendment is to put an end to the ambiguity whether activities/transactions involving supply of goods/ services, by any person, other than an individual, to its members or vice-versa fall within the purview of supply or not. The amendment brings in the certainty that said activities/ transactions are covered within the scope of supply under GST and ensures the levy of GST on such activities/transactions. Thus, concept of mutuality is not prevalent in GST law.

IMPORT OF SERVICES WITH CONSIDERATION WHETHER OR NOT IN COURSE /FURTHERANCE OR BUSINESS

[3] IMPORT OF SERVICES COVERED IN SCOPE OF SUPPLY [SECTION 7(1)(b)]

The term 'supply' includes import of services for a consideration whether or not in the course or furtherance of business.

Section 7(1)(b) has the following essential ingredients :

(a) It is applicable only for services and not for goods.

(b) Services should be provided for a consideration.

(c) Services may be in course of furtherance of business or not. This implies that import of services even for personal consumption would qualify as 'supply' and therefore would be liable to tax.

Example: Mr X, a proprietor, has received the architect services for his house in Jaipur from an architect located in London at an agreed consideration of £ 10,000. The import of services by Mr X is supply under section 7(1)(b) though it is not in course or furtherance of business.

SUPPLY WITHOUT CONSIDERATION

[4] ACTIVITIES SPECIFIED IN SCHEDULE I, MADE OR AGREED TO BE MADE WITHOUT A CONSIDERATION COVERED IN SCOPE OF SUPPLY [SECTION 7(1)(c)]

Supply without consideration - Deemed Supply : This includes all supplies made by a person to a taxable/non-taxable person, even if the same is without consideration. The law provides that in certain activities, even though there is no consideration, the same would be treated as 'supply'. Such activities are listed in Schedule I.

As per Schedule I, in the following four cases, supplies made without consideration will be treated as supply under Section 7 of the CGST Act :

a. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

b. Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business.

2) However, gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

3) Supply of goods—
   i. by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
   ii. by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4) Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

The same are discussed as under—

1) Permanent transfer or disposal of business assets where ITC has been availed on such Assets: The word 'transfer' in this clause suggests that there should be another person who would receive the business assets at the other end.
   Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply. This clause is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.
   The law requires that such transactions should be treated as supply only when any input tax credit has been availed on the business assets. In view of this condition stipulated, permanent transfer/disposal of following business assets, without consideration, will not be covered within this para and thus will not be deemed as supply:
   - ✓ Business assets on which ITC is blocked/not available under GST.
   - ✓ Business assets though eligible for ITC, ITC has not been availed by the registered person

For example, if any organization undertakes renovation of office and on that account transfers its old furniture, on which input tax credit has been availed, without consideration to a charitable institution, the same would amount to permanent transfer or disposal of business asset and will be covered in the scope of supply.

2) Supply of goods and/or services between Related Persons or Distinct Persons : Supply of goods or services or both between—
   - ✓ related persons; or
   - ✓ distinct persons as specified in Section 25,

when made in the course or furtherance of business.

However, gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

The above point has been discussed as under –

Related persons [Explanation to Section 15] :
(a) persons shall be deemed to be "related persons" if—
   (i) such persons are officers or directors of one another's businesses;
   (ii) such persons are legally recognised partners in business;
   (iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
(v) one of them directly or indirectly controls the other;
(vi) both of them are directly or indirectly controlled by a third person;
(vii) together they directly or indirectly control a third person; or
(viii) they are members of the same family;

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

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

Supply of goods or services or both between an employer and employee : By virtue of aforesaid definition of related person, employer and employee are related persons.

However, services provided by an employee to the employer in the course of or in relation to his employment shall not be treated as supply of services [Schedule III].

Gifts by Employer to Employee : Further, Schedule I provides that gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

However, gifts of value more than ₹ 50,000 made without consideration are subject to GST, when made in the course or furtherance of business.

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

Perquisites by employer to employee : It must be noted that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods nor supply of services).

It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.

If services such as membership of a club, health and fitness centre etc. are provided free of charge to all the employees by the employer, the same will not be subjected to GST.

The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the costto company.

Therefore, if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer.
Further, the Input tax credit (ITC) Scheme under GST does not allow ITC of membership of a club, health and fitness centre. [Section 17(5)(b)(ii)]

Distinct persons as specified in Section 25 : Under GST law, a supplier is required to obtain State-wise registration. He has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit. Thus, he is not required to obtain registration from a State/UT from where he makes a non-taxable supply.
Since registration in GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates [and makes a taxable supply] under the same PAN. Further, he is normally required to obtain single registration in a State/UT. However, where he has multiple places of business in a State/UT, he has the option either to get a single registration for said State/UT or to get separate registrations for each place of business in such State/UT.

- Separate registration make Distinct Person [Section 25(4)] : A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.
  For example: Roy, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of Madhya Pradesh in respect of his branch office. Roy shall be treated as distinct persons in respect of registrations in Madhya Pradesh and Delhi.
- Establishment in another state is a Separate Person [Section 25(5)] : Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.
  For example : Maheshwari Enterprises, a registered supplier, owns an air-conditioned restaurant in Jaipur, Rajasthan. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption. Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Maheshwari Enterprises is not required to obtain registration with respect to the same in Uttarakhand. In this case, air-conditioned restaurant in Rajasthan and liquor shop in Raipur [though unregistered] shall be treated as establishments of distinct persons. Supply by Rajasthan office to Uttarakhand office, in course or furtherance of business even without consideration will qualify as supply.
- Stock Transfers or Branch Transfers : Thus, transactions between different locations (with separate GST registrations) of same legal entity (Eg., stock transfers or branch transfers) will qualify as 'supply' under GST which is in contrast to the existing regime.

For example: Acopic faishons transfers 5000 jackets from his factory located in Bhilwara to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Acopic faishons are registered in the States where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.

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

For example : BSL transfers 1000 shirts from his factory located in Bhilwara (Rajasthan) to his retail showroom in Jaipur (Rajasthan) so that the same can be sold from there. It has taken one registration in the State of Rajasthan declaring Bhilwara factory as its principal place of business and Jaipur showroom as its additional place of business. Since no consideration is charged, supply of goods from factory to retail showroom in same State under single registration does not constitute supply.

Circular No. 47/21/2018 GST dated 08-06-2018	Moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer (the two not being related persons or distinct persons) does not constitute a supply as there is no consideration involved.

(3) Supplies by Principal to Agent or Vice Versa : Supply of goods—

a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

Thus, supply of goods by principal to his agent or by agent to his principal even if made without consideration will be considered as supply.

It must be noted here that only supply of goods is covered here.

Thus, the supply of services between the principal and the agent and vice versa would therefore require "consideration" to be considered as supply and thus, to be liable to GST. "Agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another. [Section 2(5)] "Principal" means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both. [Section 2(88)]

Examples:

a) A company is located in the suburbs and employs an agent in the city to undertake sales on behalf of the company. Goods transferred by the company to the premises of the agent in the city would qualify as 'supply'.

b) HML Motors Ltd. engages Bhagwati Cars Ltd. as an agent to sell cars on its behalf. For the purpose, HML Motors Ltd. has supplied 20 cars to the showroom of Bhagwati Cars Ltd. located in Haryana. Supply of cars by HML Motors Ltd. to Bhagwati Cars Ltd. will qualify as supply.

Circular No. 57/31/2018 GST dated 04-09-2018	Scope of Principal-agent relationship in the context of Schedule I of the CGST Act :

- ✓ Issue of invoice by agent for the further supply of goods on behalf of the principal – Deciding Criteria : In order to determine whether a particular principal agent relationship falls within the ambit of the Para 3. of Schedule I as discussed above or not, the deciding factor is whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not? In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.
  - Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of Para 3. above. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Para 3. above.
  - Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by Para 3. above.
- ✓ The above clarification can be understood with the help of following scenario based examples

(1) Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this scenario, Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Para 3. of Schedule I.

(2) M/s. XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s. XYZ. The invoice for the supply of the goods is issued by M/s. XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr. B is not an agent of M/s. XYZ for the supply of goods in terms of Para 3. of Schedule I.

(3) Mr. A, an artist, appoints M/s. B (auctioneer) to auction his painting. M/s. B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s. B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s. B is not merely providing auctioneering services,

but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Para 3. of Schedule I.

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

(5) Mr. A sells agricultural produce by utilizing the services of Mr B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr.
A. As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction. In cases where the invoice is issued by Mr. B to the buyer, the former is an agent covered under Para 3. of Schedule I. However, in cases where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) doesn't fall under the category of agent covered under Para 3.

Circular No. 76/50/2018-GST dated 31-12-2018	Issue: Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST? Clarification: 1) Supply of used vehicles, seized and confiscated goods by Government – falls under the ambit of taxable supply : It may be noted that intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST. 2) **Supply to registered person – Taxability on the reverse charge basis:** Intra-State and inter-State supply respectively of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Central Government, State Government, Union territory or a local authority to any registered person, would be subject to GST on reverse charge basis as per which tax is payable by the recipient of such supplies. 3) Supply to unregistered person – Government to pay GST on forward charge basis : Such supply to an unregistered person is also a taxable supply under GST and the respective Government departments (i.e. Central Government, State Government, Union territory or a local

	authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an unregistered person subject to the provisions of sections 22 and 24 of the CGST Act.

(4) Importation of services : Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as "supply". Importation of services as covered by Section 7(1)(b) does not include importation without consideration. Therefore, this clause is inserted to cover such services that are received from related persons/their establishments outside India without consideration, in the course or furtherance of business shall be treated as "supply". Thus, even if no amount is paid in such case the value have to be determined as per the rules and tax is required to be paid.
For example : Vakil Associates received legal consultancy services from its head office located in Singapore. The head office has rendered such services free of cost to its branch office. Since Vakil Associates and the branch office are related persons, services received by Vakil Associates will qualify as supply even though the head office has not charged anything from it.

[5] ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES AS REFERRED TO IN SCHEDULE II [SECTION 7(1A)]

Section 7(1A) of the CGST Act stipulates that where certain activities or transactions, constitute a supply in accordance with the provisions of section 7(1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II. Thus, it refers to Schedule II for determining whether a particular transaction is a supply of goods or supply of service. This helps in mitigating the ambiguities which existed in earlier laws.
Prior to introduction of GST, there was a lot of controversy that whether a transaction can be regarded as sale of goods or it will be regarded as provision of services. To remove such ambiguities, Section 7(1A) of the Act refers to Schedule II for determining whether a particular transaction is a supply of goods or service.

For example : Under earlier laws, the restaurants used to charge both service tax and VAT on the value of food served. This was so because both sale of goods and provision of services were involved and therefore taxable event under both the Statutes i.e. respective VAT law and service tax law got triggered.
Under GST, the supply by a restaurant is treated as composite supply as food and service is naturally bundled in ordinary course of business. However, Para 6(b) of Schedule II to the CGST Act specifically provides that such composite supply shall be treated as supply of service. Hence, the entire value of invoice shall be treated as value of service and leviable to GST accordingly.

This can be explained by way of example in the following table :

Position under existing Laws		Position under GST	
Food Value = ₹ 100		Food Value = ₹ 100	
Service Charges = ₹ 10		Service Charges = ₹ 10	
VAT @ 14% on food value = ₹ 14	VAT was charged on full value of food	GST @ 18% = ₹ 19.8	The entire supply would be treated as a single composide supply under Gst. The same is taxable as per supply of service @ 18% on the entire value of Supply assuming it is an air-conditioned restaurant
Service Tax @ 6% on food value = ₹ 6 Service Tax @ 15% on service charges = ₹ 1.5	Service tax at abated rate was charged on food value		
Total Taxes paid VAT = ₹ 14 Service Tax = ₹ 7.5 Total = ₹ 21.5	In nutshell, food was taxed twice under VAT laws and service tax laws and service tax was levied on service charges		

The Central Government in order to avoid disputes regarding whether a particular activity/transaction is a activity/ transaction in goods or services, has now, in **Schedule II** specified various activities/ transactions which will be considered either as supply of goods or as supply of services. Thus, thereby leaving no scope for dispute regarding considering a activity/transaction as supply of goods or supply of service.

The activities/ transactions to be treated as supply of goods or supply of services are as under :

	Activity/ Transaction	Type	Nature of Supply
1.	Transfer	a) Transfer of the title in goods	Supply of Goods
		b) Transfer of right in goods or of undivided share in goods without the transfer of title thereof	Supply of Services
		c) Transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed. d) For example, Mr. X provides certain goods to Mr. Y and he permits Mr. Y to use the goods, provided Mr. Y pays for the goods at the end of one	Supply of Goods

		month, when the property of goods will be transferred to Mr. Y. In this case, the ownership is transferred in future. Such transactions will be considered as a transaction in goods and not services. Plasto Manufacturers supplies plastic items to retailers on 'sale or return basis'.	
2.	Land and Building	(a) Lease, tenancy, easement, licence to occupy land	Supply of Services
		(b) Lease or letting out, either wholly or partly, of the building including a commercial, industrial or residential complex for business or commerce. For example: Rentals collected from letting of building shall be taxable as supply of services under GST.	Supply of Services
3.	Treatment or Process	Treatment or process which is applied to another person's goods. For example: If the job-worker carries out any process on input belonging to others, it will be carried out as a service by him.	Supply of Services
4.	Transfer of Business Assets	(a) Goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets.	Supply of Goods
		For example : Mr. X is carrying on the business of consumer durable products. He disposed of a defective refrigerator for ₹ 50,000 to Y whereas its normal price is ₹ 3,50,000. Aforesaid disposal shall be considered as supply of goods by Mr. X.	
		(b) Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business. For example: Managing Director of a company is using car provided by the company for	Supply of Services

		personal purpose for a consideration of ₹ 50,000.	
		(c) Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless— (i) the business is transferred as a going concern to another person; or (ii) the business is carried on by a personal representative who is deemed to be a taxable person. For example: (i) Mr. X & Mr. Y are running a partnership firm and having goods A & B in stock. Mr. X & Mr. Y decide to dissolve the partnership and the goods A & B are taken over by Mr. X and Mr. Y respectively. The business is not continued further. The said clause provides that taking over of goods A & B will be considered as a supply of goods. (ii) Ramesh, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him.	Supply of Goods
5.	(a) Renting of immovable property;		
	(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. Explanation: (1) "Competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—		Supply of Services

	(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or (ii) a chartered engineer registered with the Institution of Engineers (India); or (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority; (2) "Construction" includes additions, alterations, replacements or remodelling of any existing civil structure; For example: Mr X, a promoter, sells a flat in his new building to Mr. Y. Date of completion certificate - 11-3-2024. Part of consideration is received on 10-3-2024 by Mr. X. It will be treated as supply. If entire consideration is received after 11-3-2024, then it would not qualify as a supply.	
	(c) Temporary transfer or permitting the use or enjoyment of any intellectual property right; For example: Pizza Bakers allows the use of its patented process to Domino's Pizza against consideration of ₹ 15 crore.	
	(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software; For example: A company pays programmers to develop an in house accounting software against payment of ₹ 25 lakhs.	
	(e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; For example: Mr. X, an employee of Z Ltd. agrees not to work in the same industry for at least 2 years by signing a non-compete agreement and against payment of ₹ 15 lakhs. This refers to refraining from an act.	
	(f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	
6.	Following composite supplies— (a) works contract as defined in Section 2(119); and (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration. "Works contract" means a contract for—	Supply of Services

	• building, • construction, • fabrication, • completion, • erection, • installation, • fitting out, • improvement, • modification, • repair, • maintenance, • renovation, • alteration or commissioning	

– Circular No. 44/18/2018 CGST dated 02-05-2018	Taxability of 'tenancy rights'/pagadi under GST : It is a form of lease or renting of property and thus is squarely covered under the scope of supply and taxable per se under the CGST Act, 2017.

- ✓ System prevalent : In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.
- ✓ Transfer of tenancy right – Supply of service and liable to GST : The activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in Para 2. of Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.
- ✓ GST is attracted even though stamp duty and registration charges is levied on such premium : Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST since merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.
- ✓ Transfer of tenancy rights – Cannot be regarded as sale of land or building : The transfer of tenancy rights cannot be treated as sale of land/ building in para 5. of Schedule III.

Thus, it is not a negative list activity [this concept is discussed under next heading] and consequently, a consideration for the said activity shall attract levy of GST.

- ✓ To sum up, transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.
- ✓ Further, services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.
- ✓ Grant of tenancy rights in a residential dwelling against tenancy premium – Exempt from tax : As per Entry No. 12 of Notification No. 12/2017-CT (R), any renting of a residential dwelling for use as a residence is exempt. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against premium or periodic rent or both is exempt.

ACTIVITIES NEITHER SUPPLY OF GOODS NOR SUPPLY SERVICE

[6] CERTAIN ACTIVITIES WILL BE NEITHER A SUPPLY OF GOODS, NOR A SUPPLY OF SERVICES [SECTION 7(2)]

Section 7(2) lists down activities which shall not be considered as 'supply' for GST. The said activities can be termed as Negative List under GST regime. They are as under—

a) Activities or transactions specified in Schedule III : The activities or transactions which shall be treated neither as a supply of goods nor a supply of services as per **Schedule III** are as follows:

1) Services by an employee to the employer in the course of or in relation to his employment.
2) Services by any court or Tribunal established under any law for the time being in force. The term "Court" includes District Court, High Court and Supreme Court.

[Explanation 1]

(3) (a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, 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 in that capacity; or

(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

(4) Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

(5) Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

(6) Actionable claims, other than **specified actionable claims6**

"Specified actionable claim" means the actionable claim involved in or by way of-

(i) betting;

(ii) casinos;

(iii) gambling;

(iv) horse racing;

(v) lottery; or

(vi) online money gaming.7 [Section 2(102A)]

(7) Supply of goods from a place in the non-taxable territory to another place in the nontaxable territory without such goods entering into India.

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

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

The term "Warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962. [Explanation 2]

(9) Activity of apportionment of co-insurance premium by the lead insurer to the coinsurer for the insurance services jointly supplied by the lead insurer and the coinsurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured. [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

(10) Services by insurer to the re-insurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the re-insurer on the gross reinsurance premium payable by the insurer to the re-insurer, inclusive of the said ceding commission or the reinsurance commission. [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

(b) Notified activities or transactions undertaken by the Government or local authority in which they are engaged as public authorities: Such activities or transactions undertaken by–

- the Central Government,
- a State Government; or
- any local authority

in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

"Local authority" means—

(a) a "Panchayat" as defined in Article 243

(b) a "Municipality" as defined in Article 243P(e) of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in Section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371 and article 371J of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution. [Section 2(69)]

The Central Government vide Notification No. 14/2017-CT (Rate) dated 28-6-2017 w.e.f. 1.7.2017 as amended by Notification No. 16/2018-CT (Rate) dated 26.07.2018 w.e.f. 27.07.2018 has notified that Services by way of any activity in relation to a function entrusted to a Panchayat under Article 243G of the Constitution or to a Municipality under article 243W of the Constitution undertaken by the Central Government or State Government or Union Territory or any local authority in which they are engaged as public authority shall be treated neither as a supply of goods nor a supply of service.

The Central Government vide Notification No. 25/2019-CT (Rate) dated 30.09.2019 w.e.f. 30.09.2019 has notified that Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called when undertaken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service.

Circular No. 121/40/2019-GST dated 11.10.2019 has clarified that the above special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable. It may be noted that services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Tax is required to be paid by the business entities on such services under reverse charge.

The activities or transactions which shall be treated neither as a supply of goods nor a supply of services as per Schedule III are explained as under —

(1) Services by an employee to the employer in the course of or in relation to his employment : Paragraph 1 of Schedule III of the CGST Act, 2017 specifies that Services by an employee to the employer in the course of or in relation to his employment as neither supply of goods nor supply of services. Any service supplied by an employee to his employer in the course of or in relation to his employment is outside the ambit of GST.

Exclusions under this paragraph shall operate only if there exists an employer and employee relationship between the payer and payee and payment is made in the course of or in relation to his employment. Thus, the amount earned by the employees for supplying services in the course of or in relation to his employment will not be considered as supply, hence will not be liable for GST.

The following aspects are to be noted in this regard :

a. Services supplied outside employment for a consideration – Taxable : Services supplied outside employment for a consideration would be covered under the scope of supply'.
   Example : If an employee supplies his service on contract basis to an associate of the employer, it would be covered under 'supply'.

b. Services supplied on contract basis – Taxable : Services supplied on contract basis i.e. principal to principal basis are not services in the course of employment and therefore are covered within the ambit of supply.

c. Amounts received by an employee from the employer on premature termination of contract of employment – Not regarded as supply : Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amount so paid would not be chargeable to GST.

d. Non competing fees – Taxable : Any amount paid for not joining a competing business would be liable to be taxed as it is paid for supplying the service of forbearance to act.

e. Directors of the company : A whole time director or an executive director is generally regarded as the employee of the company. However, independent directors, nominee directors or non executive directors cannot be regarded as the employees of the company. Hence, activities carried by them for consideration are not excluded from scope of supply. Accordingly, remuneration paid to such directors shall be liable for GST. It must be noted that services provided by the directors to its company are chargeable to GST under reverse charge basis i.e. the company receiving the service is liable to pay GST thereon.

f. Status of services supplied by casual workers or contract labour :

If.....	Then.....
Services supplied by casual worker to employer who gives wages on daily basis to the worker	These are services supplied by the worker in the course of employment.
Casual workers are employed by a contractor, like a building contractor or a security services agency, who deploys them for execution of a contract or for provision of security services to a client	Services supplied by the workers to the contractor are services in the course of employment and hence not taxable. However, services supplied by the contractor to his client by deploying such workers would not be a service supplied by the workers to the client in the course of employment. The consideration received by the contractor would therefore be taxable if other conditions of taxability are present

2. Services by any court or Tribunal established under any law for the time being in force : Fees taken in any Court or tribunal established under any law for the time being in force is outside the scope of supply'.

The Court or Tribunal supplies judicial services to the appellant who file appeals, petitions, special leave petitions. Fees is charged at the time of filing of appeal, petition etc. The quantum of fees is specified in the statutes. Thus, on such fees no GST will be payable.

As per Explanation to Schedule III, "court" includes District Court, High Court and Supreme Court. Thus any amount collected by them under any law for the time being in force will not be subject to GST as it is neither supply of goods nor supply of services.

(3) Functions or duties performed by Constitutional Authorities : As per Paragraph 3 of Schedule III the following transactions or activities shall be regarded neither as supply of goods nor supply of services.

(a) Functions performed by MP's, MLA's etc. : The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

(b) Duties performed by Constitutional Functionaries : The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

Example : Duties performed by President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner, Comptroller and Auditor General of India, Chairman of Union Public Service Commission, Attorney General of India, in that capacity.

(c) Duties performed by Chairperson/ Members of Government Bodies : The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

(4) Services of funeral burial etc. : Paragraph 4 of Schedule III specifies services of funeral, burial, crematorium or mortuary including transportation of the deceased shall not be regarded as supply of services, hence will be outside the purview of GST.

(5) Transactions of Sale of land and Sale of building : As per paragraph 5 of Schedule III sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building is neither supply of goods nor a supply of service and thus not liable to GST. As per paragraph 5(b) of Schedule II, construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier shall be regarded as supply of service.

Explanation :

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

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(iv) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

When the premises are sold during construction of building, it is considered as a supply of service by builder to the prospective buyer and thus, will be liable to GST. However, if it is sold after obtaining Occupation Certificate, it is considered as a transaction in sale of immovable property which is not leviable to tax.

(6) Actionable claims : As per paragraph 6 of Schedule III, Transactions in Actionable claims, other than specified actionable claims[8] shall be regarded neither as supply of goods nor supply of services.

Actionable claims are covered in the ambit of goods. However, transactions in actionable claims other than lottery, betting and gambling shall not be liable for GST. Supply of lottery tickets will be liable for GST. Similarly GST will be payable on supply of betting and gambling.

According to Section 2(102A) of the CGST Act, 2017, "Specified actionable claim" means the actionable claim involved in or by way of—

(i) betting;
(ii) casinos;
(iii) gambling;
(iv) horse racing;
(v) lottery; or
(vi) online money gaming

(7) 'Out and out supplies/ Merchant trading Transactions : As per paragraph 7 of Schedule III, 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 shall be regarded neither as supply of goods nor supply of services.

As an example, a person registered in India procuring goods from China and sending the same directly to the customer in United Kingdom shall not be liable to pay tax on the said supply in view of the above inserted Para.

(8) (a) Supply of warehoused goods before clearance for home consumption: As per Paragraph 8(a) of Schedule III, Supply of warehoused goods to any person before clearance for home consumption shall be regarded neither as supply of goods nor supply of services.

(b) High sea sale transactions : As per Paragraph 8(b) of Schedule III, supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall be regarded neither as supply of goods nor supply of services.

(9) Apportionment of co-insurance premium by the lead insurer to co-insurer : Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of

premium paid by the insured shall be regarded neither as supply of goods nor supply of services. [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

(10) Ceding of Reinsurance Commission : Services by insurer to the re-insurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the re-insurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the re-insurer on the gross reinsurance premium payable by the insurer to the re-insurer, inclusive of the said ceding commission or the reinsurance commission shall be regarded neither as supply of goods nor supply of services. [[Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]]

Circular No. 32/06/2018-GST dated 12-02-2018	GST is not leviable on the fee or penalty or pre-deposit amount charged by Consumer Disputes Redressal Commission office. In order to provide inexpensive, speedy and summary redressal of consumer disputes, quasi-judicial bodies are set up in each District and State and at the National level, called the District Forums, the State Consumer Disputes Redressal Commissions and the National Consumer Disputes Redressal Commission respectively. Consumer Disputes Redressal Commissions (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a Tribunal. Consequently, fee paid by litigants while registering complaints to said Commissions are not leviable to GST. Any penalty in cash imposed by or amount paid to these Commissions will also not attract

Clarification in respect of levy of GST on Director's remuneration [Circular No. 140/10/2020-GST dated 10-06-2020] :

	Issue	Clarification
1.	Leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company.	Remuneration paid to independent/non-employee directors – covered under the ambit of supply- liable to GST under RCM : In respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefor taxable. In terms of entry at Sl. No. 6 of Notification No. 13/2017– CT (Rate) dated 28-06-2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis. Accordingly, it is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the

		said company, is taxable in hands of the company, on reverse charge basis.
2.	Leviability of GST on remuneration paid by companies to the whole time directors including managing director who are employees of the said company.	Remuneration to employee director – if services are provided in course of employment – liable to TDS u/s 192 of the IT Act, 1961 – covered in Schedule – III – not liable to GST. Other services - outside service contract of employment – liable for TDS u/s 194J – covered in the scope of supply – liable for GST under RCM : Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service". The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e. under a contract of service (employment) entered into with the company. It is also pertinent to note that similar identification and treatment of the Director's remuneration is also present in the Income-tax Act, 1961 wherein the salaries paid to directors are subject to 'TDS' u/s 192 of the Income-tax Act, 1961. However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction u/s 194J of the IT Act. It is clarified that the part of Director"s remuneration which are declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017. It is further clarified that the part of employee Director"s remuneration which is declared separately other than "salaries" in the Company"s accounts and subjected to TDS u/s 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of Notification No. 13/2017–CT (Rate) dated 2806-2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

[7] OTHER TRANSACTIONS TO BE NOTIFIED – WHICH QUALIFIES AS 'SUPPLY OF GOODS' OR AS 'SUPPLY OF SERVICES' [SECTION 7(3)]

The Central Government may notify such other transactions to either qualify as 'supply of goods' or as 'supply of services'. This notification must be issued only upon recommendations from the Council.

Section 7(3) is subject to section 7(1), 7(1A) and 7(2) of CGST Act. Thus, notification issued under section 7(3) of CGST Act cannot override any provision of section 7(1), 7(1A) or section 7(2) of CGST Act.

[8] OTHER ASPECTS OF SUPPLY

(1) Self supplies : Inter-state self-supplies such as stock transfers, branch transfers or consignment sales shall be taxable under IGST even though such transactions may not involve payment of consideration. Every supplier is liable to register under the GST law in the State or Union territory from where he makes a taxable supply of goods or services or both in terms of Section 22 of the CGST Act, 2017. However, intra-State self-supplies are not taxable subject to not opting for registration in respect of multiple places of business within a State.

(2) Job work : Goods sent on job work by Principal to job-worker are not liable to GST subject to fulfillment of certain conditions as specified in the CGST Act, 2017. However, any treatment or process which is applied to another person's goods is a supply of service and will be liable for GST.

(3) Goods supplied under free warranty : Where parts are provided to the customer without consideration under warranty, no GST is chargeable on such replacement. Though supply is in course of business, but there is no consideration. The value of supply made earlier includes the charges to be incurred during warranty period. Therefore, the supplier who has undertaken the warranty replacement is not required to reverse input tax credit on the parts/components replaced.

6. Whether transfer of title and / or possession is necessary for a transaction to constitute supply of goods ?

Solution: Tital as well as possession both have to be transferred for a transaction to be consideration as a supply of goods. In case title is not transferred, the transaction would be treated as supply of service in terms of schedule II (1)(b) of the CGST Act. In some cases, possession may be transferred immediately but title my be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods.

OTHER ASPECTS

Circular No. 1/1/2017 IGST dated 07-07-2017	Inter-state movement of various modes of conveyance, carrying goods or passengers is not regarded as supply. However, if it is for repairs and maintenance, it shall be regarded as supply :

	Issue : Whether inter-state movement of various modes of conveyance carrying goods or passengers or both, or for repairs and maintenance, between distinct persons as specified in Section 25(4) of the CGST Act [except in cases where such movement is for further supply of the same conveyance], is leviable to IGST? Clarification : Inter-state movement of goods like movement of various modes of conveyance including Trains, Buses, Trucks, Tankers, Trailers, Vessels, Containers, Aircraft, between distinct persons as specified in Section 25(4) of the CGST Act, may not be treated as supply and consequently IGST will not be payable on such supply. However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance. The CBEC vide Circular No. 21/21/2017-GST dated 22-11-2017 has clarified that Circular No. 1/1/2017-IGST shall mutatis mutandis apply to inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes], and except in cases where movement of such goods is for further supply of the same goods, such inter-state movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements. It is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods.
Circular No. 16/16/2017-GST dated 15-11-2017	Inter-State transfer of aircraft engines, parts and accessories for self use by airlines- liable to GST, however ITC admissible : ✓ Inter-State transfer between related/distinct persons attracts GST : Under Schedule I of the CGST Act, supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business, even if, without consideration, attracts GST. ✓ ITC admissible of GST so paid : It is hereby clarified that credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST on inter-state supply of such aircraft engines, parts & accessories by way of inter-state stock transfers between distinct persons as specified in Section 25 of the CGST Act, notwithstanding that credit of input tax charged on consumption of such goods is not allowed for supply of service of transport of passengers by air in economy class at GST rate of 5%.
Circular No. 11/11/2017-GST dated 20-10-2017	Taxability of printing contracts : Issue : Whether supply of 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 supplies, would constitute supply of goods or supply of services — (i) Content owned by publisher/ author – Paper and printing by printer – is supply of service : In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service. (ii) Supply of printed envelopes, letter cards etc. using design supplied by recipient – is supply of goods : In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods
Circular No. 35/9/2018-GST 05-03-2018	Joint Venture – taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV. (i) Joint- Venture: 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. (ii) Supply of services by JV to members – Regarded as supply : Supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration. (iii) Supplies between JV and members or members Inter Se – liable to GST : Service supplied by member of an unincorporated joint venture (JV) to the

JV or to other members of the JV, or by JV to the members, for a consideration are liable to GST.

(iv) Cash calls/ Capital - mere flow of money - Taxable if by way of advance towards supplies :

- 'Cash calls' are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget.

  Cash calls are capital contributions made by members to the Joint Venture. If cash calls are merely flow of money, it is not supply.
- Payments out cash calls for supplies – Liable to GST : Payments made out of cash calls pooled by a JV, towards taxable services received from a member or a third party is in the nature of consideration and hence attracts GST.

Taxability of cash calls can be further explained by the following illustrations:

	Particulars	Supply whether liable to GST
A	There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member purchases machinery for ₹ 400 for the JV to be used in oil production.	It will not be the subject matter of 'GST' for the reason that the operating member is not carrying out an activity for another for consideration. The money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.
B	There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.	The operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

– Circular No. 34/8/2018-GST dated 01-03-2018 &	Priority Sector Lending Certificates (PSLCs) are in nature of goods and liable to GST. Issue : Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?

Circular No. 93/12/2019-GST dated 8-3-2019	Concept : Lending by a commercial bank for specified sectors which have been identified as "priority sector" by RBI is called as Priority Sector Lending. Priority Sector Lending Certificates (PSLCs) are a mechanism to enable banks to achieve the priority sector lending target and sub-targets by purchase of these instruments in the event of shortfall. This also incentivizes surplus banks as it allows them to sell their excess achievement over targets thereby enhancing lending to the categories under priority sector. Under the PSLC mechanism, the seller sells fulfilment of priority sector obligation and the buyer buys the obligation with no transfer of risk or loan assets. Clarification : In Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity under Section 6(1) of the Banking Regulation Act, 1949. PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT. In GST there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods. GST payable on the certificates would be available as ITC to the bank buying the certificates. Inter-State supply : The nature of supply of PSLC between banks may be treated as a supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI. However, where the bank liable to pay GST has already paid CGST/SGST or CGST/UTGST as the case may be, such banks for payment already made, shall not be required to pay IGST towards such supply.
Circular No. 177/09/2022-TRU dated 03-08-2022	GST is applicable on payment of honorarium to the Guest Anchors : Issue : Applicability of GST on honorarium paid to Guest Anchors. Clarification : It is clarified that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. Services provided by the guest anchors in lieu of honorarium attract GST liability. However, guest anchors whose aggregate turnover in a financial year does not exceed ₹ 20 lakhs (₹ 10 lakhs in case of special category states) shall not be liable to take registration and pay GST.
Circular No. 177/09/2022-TRU dated 03-08-2022	Sale of land after levelling, laying down of drainage lines etc., is covered in schedule III and is not taxable under GST Issue : Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST. Clarification : As per Sl no. (5) of Schedule III of the CGST Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST. Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale

	of land and is covered by Sr. No. 5 of Schedule III of the CGST Act, 2017 and accordingly does not attract GST. However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.
Circular No. 172/04/2022 GST dated 06-07-2022	Perquisites provided in terms of contractual agreement to employee are not liable to GST : Issue : Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST. Clarification : Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee will not be subjected to GST.
Circular No. 196/08/2023-GST dated 17-07-2023	The activity of holding shares by a holding company of the subsidiary company will not be treated as a supply of service and the same will not attract GST. 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 in terms of definition of goods under section 2(52) of CGST Act and the definition of services under Section 2(102) of CGST Act. Further, securities include 'shares' as per definition of securities under section 2(h) of Securities Contracts (Regulation) Act, 1956. This implies that 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. For a transaction/ activity to be treated as supply of services, there must be a supply as defined under section 7 of CGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by

	holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act. Therefore, 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.
– Circular No. 195/07/2023 GST dated 17.07.2023 read with Circular No. 216/10/2024 GST dated 26.06.2024	Clarification on liability to pay GST in respect of warranty replacement of parts and repair services during warranty period. Issue 1 : There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and 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. Whether GST would be payable on such replacement of 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 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 parts and/ or repair service during warranty period. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration. Issue 2 : Whether GST would be payable on replacement of 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 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 parts and/ or

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

Issue 3 : In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer?

Clarification: There can be 4 instances as discussed below:

(a) There may be cases where the distributor replaces the 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.

(b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer.

(c) There may be cases where the distributor replaces the 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 parts so replaced subject to provisions of section 34(2) of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer.

(d) There may be cases where the 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, as the case may be. The manufacturer then provides the said goods or the parts, as the case may be, to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment. In such a case, no GST is payable on such replenishment of goods or the parts, as the case may be.

Issue 4 : 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. **Issue 5** : Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or 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.
Circular No. 213/07/2024-GST dated 26-06-2024	Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company. **Issue** : It has been represented that 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. Doubts are being raised regarding taxability of such a transaction under GST, i.e. whether such transfer of shares/ securities by the foreign holding company directly to the employees of the Indian subsidiary company and subsequent re-imbursement of the cost of such shares/ securities by the Indian

subsidiary company to the foreign holding company can be considered as import of financial services by the Indian subsidiary company from the foreign holding company and whether the same can be considered as liable to GST in the hands of Indian subsidiary company on reverse charge basis.

Clarification : The Board hereby clarifies the issues as under –

The companies are providing option of allotment of securities/shares to their employees as a means of incentivization and the same is commonly referred to as an Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU). Such specific terminology usage depends on the agreed-upon compensation terms between the employer and the employee. ESPPs and ESOPs are typically presented as 'options' granted to employees, whereas RSUs take the form of awards or rewards contingent upon the employee meeting specific performance standards. Regardless of the terminology used, the fundamental essence of the transaction remains the same i.e. the allocation of securities or shares from the employer to employee as part of compensation package with the aim of motivating enhanced performance.

(a) A transaction involving transfer of ESOP/ESPP/RSU to the employees of domestic subsidiary by the foreign holding company appears to involve the following steps:

- The domestic subsidiary company gives option/ facility of ESOP/ESPP/RSU to its employees as part of compensation package as per terms of employment.
- The employees exercise their stock options, either by purchasing shares at the grant price or by holding the options until they vest.
- The foreign holding company of the domestic subsidiary company issues ESOP/ESPP/RSU, which are securities/shares listed on the foreign stock exchange, to the employees of the domestic subsidiary company.
- The foreign holding company transfers the shares directly to the employees of the subsidiary company.
- The domestic subsidiary company generally reimburses the cost of such shares to the foreign holding company on cost-to cost basis either through an actual remittance or through an equity transfer as prescribed by the relevant Indian Accounting Standard.
- The employees hold the shares and may sell them at a later date, if they so choose.

(b) The foreign holding company issues securities/shares as ESOP/ESPP/RSU to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. However, Securities under GST Law are considered neither goods nor services in

	terms of definition of "goods" under section 2(52) of CGST Act and in terms of definition of "services" under Section 2 (102) of the said section. Further, securities include 'shares' as per definition of "securities" under section 2(h) of Securities Contracts (Regulation) Act, 1956. Accordingly, purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services. Therefore, in the absence of such transaction, falling under the supply of 'goods' or 'services' as per GST Act, GST is not leviable on said transaction of sale/purchase/transfer of securities/shares. (c) Further, the companies offer ESOP/ESPP/RSU to their employees to motivate them to perform better, and to retain the employees, by aligning the interest of employees with that of company. The ESOP/ESPP/RSU is a part of remuneration of the employee by the employer as per terms of employment. As per Entry 1 of Schedule III of the CGST Act, the services by an employee to the employer in the course of or in relation to his employment are treated neither as supply of goods nor as supply of services. Therefore, GST is not leviable on the compensation paid to the employee by the employer as per the terms of employment contract which involve transfer of securities/shares of the foreign holding company to the employees of domestic subsidiary company. (d) The foreign holding company directly transfers the shares/securities to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. Reimbursement of such securities/ shares is generally done by domestic subsidiary company to foreign holding company on cost-to-cost basis i.e. equal to the market value of securities without any element of additional fee, markup or commission. Since the said reimbursement by the domestic subsidiary company to the foreign holding company is for transfer of securities/shares, which is neither in nature of goods nor services, 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 under CGST Act. (e) However, 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. In this case, GST will be leviable on such amount of the additional fee, markup, or commission, charged by the foreign holding company from the domestic subsidiary for issuance of its securities/shares to the employees of the latter.

	The GST shall be payable by the domestic holding company on reverse charge basis on such import of services from the foreign holding company. (f) Accordingly, it is clarified that no supply of service appears to be taking place between the foreign holding company and the domestic subsidiary company where the foreign holding company issues ESOP/ESPP/RSU to the employees of domestic subsidiary company, and the domestic subsidiary company reimburses the cost of such securities/ shares to the foreign holding company on cost-to-cost basis. However, in cases where an additional amount over and above the cost of securities/shares is charged by the foreign holding company from the domestic subsidiary company, by whatever name called, GST would be leviable on such additional amount charged as 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 subsidiary company on reverse charge basis in such a case on the said import of services.
Circular No. 215/9/2024-GST dated 26-06-2024	Clarification on taxability of salvage/ wreck value earmarked in the claim assessment of the damage caused to the motor vehicle. The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders. Such damages to the insured vehicle are classified in two categories: (i) Total Loss/ Constructive Total Loss or Cash Loss; and (ii) Partial Loss Situation **Issue** : Whether the insurance company is liable to pay GST on the salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle? **Clarification** : Under GST law, supply is the relevant taxable event for levying tax. For an activity/transaction to be liable to GST, existence of 'supply' as defined under section 7 of CGST Act should be there. Section 7 of CGST Act defines supply to mean 'all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.' In the instant case, insurance companies are providing service of insuring the vehicle/ automobile for any damages and in return, charging consideration in the form of premium charged from the owner of the vehicle. It is also noted that in respect of insurance services being provided by the insurance companies, it is the responsibility of the insurance company to get the damaged vehicle repaired or to compensate the insured person against the damage caused to the vehicle, to the extent covered under the terms of the insurance.

	Any Deduction made by the insurance company from the final claim amount paid to the insured is in the form of deductibles which is pre-decided and mutually agreed by the insured and the insurer while signing the insurance contract. In cases where as per the policy contract, the insurance company's liability to pay the insured is limited to Insured's Declared Value (IDV) of the vehicle less the value of salvage/ wreck in cases of total loss to the vehicle, if the insurance claim is settled by the insurance company as per the terms of the insurance contract by deducting value of salvage/ wreckage from the claim settlement amount, the salvage/ wreckage does not become property of insurance company, and the ownership for such wreckage/ salvage remains with the insured. However, in some cases, the insurance company may support sourcing of competitive quotes from various salvage/ wreckage buyers and the insured may select the best available offer for sale of wreckage or damaged car. The insured may also source quotes from open markets and dispose the wreckage or damaged car to such a buyer. In any case, the ownership of the wreckage vests with the insured and not with the insurance company. The same can be disposed by the insured either directly, or through the garage, or may not be disposed at all, as per his wish and choice. The deduction of the value of salvage from the insurance settlement amount, is as per the terms of the insurance contract, and cannot be said to be consideration for any supply being made by insurance company. Accordingly, in such cases, there does not appear to be any supply of salvage by insurance company and as such, there does not appear to be any liability under GST on the part of insurance company in respect of this salvage value. However, in situations where the insurance contract provides for settlement of claim on full IDV, without deduction of value of salvage/ wreck, the insured will be paid for full claim amount without any deductions on account of salvage value. In such a situation, the salvage becomes the property of Insurance Company after settling the claim for the full amountand the insurance company is obligated to deal with the same or dispose of the same. In such cases, the outward GST liability on disposal/sale of the salvage is to be discharged by the insurance companies. Therefore, in cases where due to the conditions mentioned in the contract itself, general insurance companies are deducting the value of salvage as deductibles from the claim amount, the salvage remains the property of insured and insurance companies are not liable to discharge GST liability on the same. However, in cases, where the insurance claim is settled on full claim amount, without deduction of value of salvage/ wreckage (as per the terms of the contract), 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 buyer.

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

Clarification: "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5(e) of Schedule II to the CGST Act, 2017 if the same constitutes a "supply" within the meaning of the CGST Act.

The said expression has following three limbs: -

(i) Agreeing to the obligation to refrain from an act :

Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

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

(iii) Agreeing to the obligation to do an act :

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

Above three activities must comply with the following conditions:

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

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

Such contractual arrangement must be an independent arrangement in its own right. Such arrangement/ agreement can take the form of an independent stand- alone contract or may form part of another contract. Thus, a person (the first person) can be said to be making

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

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

b) Consideration must flow in return to this contract/ agreement :

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

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

(A) Liquidated Damages :

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

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

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

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

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

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

Examples of such cases are :

a) damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,

b) penalty stipulated in a contract for delayed construction of houses,

c) forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.

The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' irrespective of by what name it is called, otherwise it is not a "supply".

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

On the contrary, consider the following examples :

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

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

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

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

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

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

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

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

(B) Cheque dishonor fine/ penalty :

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

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

(C) Penalty imposed for violation of laws :

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

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

Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration.

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

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

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

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

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

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

(E) Late payment surcharge or fee :

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

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

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

the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.
However, the same cannot be said of cheque dishonor fine or penalty as discussed earlier.

(F) Fixed charges for power :
The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/ DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge. The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/ consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.
Both the components of the price, the minimum fixed charges/ capacity charges and the variable/ energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.

(G) Cancellation charges : It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee.
Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.
Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal.

All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals,
provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.
The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.
Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply.

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.

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

However, as discussed earlier, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

7. What are the different type of supplier under the GST law?

Solution: The different type of supplies under GST law are as under (i) taxable and exempt supplier (ii) inter-state and Intra- State supplies: (iii) Composite and mixed (iv) Zero rated supplies.

8. Defination the following (i) Exempt supply; (ii) Taxable Supply (iii) Non-taxable supply;(iv) Inward- state; and (v) Outword supply

Solution:The different types of supplies under GST law is discussed as under-

(i) "Exempt supply" means supply of any goods or services or both –

1. which attracts nil rate of tax, or
2. which may be wholly exempt from tax under Section 11, or under Section 6 of the IGST Act, and
3. includes non-taxable supply. [Section 2(47)]

Exempt supplies comprise the following three types of supplies :

(a) Supplies taxable at a 'NIL' rate of tax;

(b) Supplies that are wholly exempted from CGST or IGST, by way of a notification;

(c) Non-taxable supplies as defined under Section 2(78) – supplies that are not taxable under the Act (viz. alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption) [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024.].

The following aspects need to be noted :

- Zero-rated supplies such as exports would not be treated as supplies taxable at 'NIL' rate of tax;
- Input tax credit attributable to exempt supplies will not be available for utilisation/set-off

(ii) "Taxable supply" means a supply of goods or services or both which is leviable to tax under this Act. [Section 2(108)]

For a transaction to qualify as a taxable supply, the following components are compulsory :

- The transaction must involve either goods or services, or both of them;
- Such goods or services should not be specified under Schedule III (neither a supply of goods nor a supply of services);
- The transaction should fall within the meaning of 'supply' in terms of Section 7 of the CGST Act;
- The supply should be leviable to GST.

(iii) "Non-taxable supply" means—
a supply of goods or services or both
which is not leviable to tax

a. under this Act or
b. under the Integrated Goods and Services Tax Act. [Section 2(78)]

A transaction must be a 'supply' as defined under the GST law, to qualify as a non-taxable supply under the GST law.

The following aspects need to be noted :

a. Supplies that are excluded from the scope of taxation under GST are covered by this definition – i.e., alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption) [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024.].
b. Stock transfers to unit within the State for which no separate registration is obtained, which does not qualify as a 'supply' as defined u/s 7 of the CGST Act, cannot be said to be a nontaxable supply.
c. Transactions specified in Schedule III which are treated as neither a supply of goods nor a supply of services, would also not qualify as non-taxable supplies.
d. Supplies that enjoy the benefit of being wholly exempted from taxes, nil-rated supplies and zero-rated supplies are also not covered under the ambit of 'non-taxable supplies' given that the goods or services are in fact liable to tax, and such tax is exempted by virtue of an exemption notification, or the tax rate is nil.

(4) "Inward supply" in relation to a person, shall mean receipt of goods or services or both – whether by purchase, acquisition or any other means with or without consideration. [Section 2(67)]

Inward supplies may be of goods or of services, or of both.

a. Definition do not use term supply : The key in this definition is to note that 'inward supply' is not necessarily a supply and has a larger scope by covering 'receipt' of goods or services.

b. Definition uses term Person and not registered or taxable person : It may be questioned as to whether an inward supply is not particular to a registration, or whether an inward supply can be associated with any of the registered persons having the same pan, on the premise that it is in relation to "a person". However, that would not be the intent of the law; it is to enable correlation with a person, whether or not he is a taxable person. In other words, reference to inward supply may be in relation to any person, whether he is registered, or unregistered taxable person, or person not liable to tax.

(5) "Outward supply"—

- ✓ in relation to a taxable person,
- ✓ means supply of goods or services or both, whether by—
  - sale, transfer, barter, exchange,
  - licence, rental, lease or
  - disposal or
  - any other mode,
- ✓ made or agreed to be made by such person in the course or furtherance of business. [Sec 2(83)]

Analysis:

a) Transaction or activity must be supply first : For any transaction or activity to qualify as an outward supply, it must first be a 'supply' in terms of the GST law, unlike inward supplies, which could merely be receipts, not amounting to supply.

b) Person must be taxable person : Further, an outward supply is closely associated with a 'taxable person' being, a unit of a person that has, or is required to have, a separate registration.

c) It must be in course or furtherance of business : The phrase 'outward supply' can be applied to a supply only when such supply is made in the course or furtherance of business. Say, for instance, business assets are put to personal use. In such a case, even if the transaction is deemed to be a supply (made without consideration), it cannot be treated as an 'outward supply', since the application of the business asset for personal use was neither in the course nor furtherance of business.

The following aspects need to be noted :

- ✓ Supplies not qualifying as outward supplies would also be included for the purpose of computing the 'aggregate turnover';
- ✓ In case of a composition supplier, where he engages with a recipient outside the State, and if the transaction does not result in an 'outward supply', (say, sending goods for job work outside the State), the conditions imposed on him as a composition supplier would not be violated (i.e., making inter-State outward supplies);
- ✓ Details of supplies on which tax is payable, but which do not amount to 'outward supplies' would also have to be declared in the return for outward supplies (GSTR-1);
- ✓ By treating goods or services agreed to be supplied as 'outward supply', the law authorises imposition of GST on advance payments.

9. What is need of distinction between supply of goods and supply of service

Solution: Though tax is payable whether supply falls under supply of goods or services, distinction has been made in some cases. This is given in Schedule II.

This distinction is relevant to determine —

- place of supply;
- time of supply;
- valuation; and
- applicability of composition schemes.

TAXABILITY OF COMPOSITE SUPPLY AND MIXED SUPPLY

10. Explain the provision relating to tax liability on "composite supply"and mixed supply

Solution: The relevant provisions are discussed as under –

1. Need for determination of composite and mixed supply : The levy of GST is on individual goods or services or both at the rates applicable to them. There is no difficulty in calculating GST liability if the supply is of individual goods or individual services, which is clearly identifiable and such goods or services are subject to a particular rate of tax.

However, in certain cases, supplies are a combination of goods or combination of services or combination of goods and services both, where each individual component of such supplies may attract a different rate of tax, which poses problem regarding the rate of tax that is to be levied. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.

In order to determine whether the supplies are 'composite supplies' or 'mixed supplies', one needs to determine whether the supplies are naturally bundled or not naturally bundled in ordinary course of business.

(2) "Composite supply" means a supply—

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

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

(3) "Principal supply" means the supply of goods or services—

- which constitutes the predominant element of a composite supply, and
- to which any other supply forming part of that composite supply is ancillary. [Section 2(90)]

(4) "Mixed supply" means—

- ✓ two or more individual supplies of goods or services, or any combination thereof,
- ✓ made in conjunction with each other
- ✓ by a taxable person
- ✓ for a single price
- ✓ where such supply does not constitute a composite supply. [Section 2(74)]

Thus, the individual supplies are independent of each other and are not naturally bundled. As a corollary it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business then it would be a mixed supply.

Once it is proved that the transaction is not a composite supply, it would be a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.

(5) Guiding principles for determining whether a supply is a composite supply or mixed supply :

While there are no infallible tests for such determination, the following guiding principles could be adopted to determine as to whether it would be a composite supply or a mixed supply. However, every supply should be independently analysed.

Description	Composite Supply	Mixed Supply
Naturally bundled	Yes	No
Supplied together	Yes	Yes
Can be supplied separately	No	Yes
One is predominant supply for recipient	Yes	No
Other supply is not 'aim in itself' of recipient	Yes	No
Each supply priced separately	No	No
All supplies are goods	Yes	Yes

All supplies are services	Yes	Yes
One supply is goods and other supply is services	Yes	Yes

(6) Tax liability in case of composite and mixed supply [Section 8] : The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

11. What is the Manner of determining whether the services are bundled in the ordinary course of business?

Solution: Manner of determining whether the services are bundled in the ordinary course of business" Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below,–

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

b) Majority of service suppliers in a particular area of business supplies similar bundle of services.

For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

c) The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of the main service.

d) Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –

(i) There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.

(ii) The elements are normally advertised as a package. The different elements are not available separately.

(iii) The different elements are integral to one overall supply - if one or more is removed, the nature of the supply would be affected.

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

Supply of food and beverages at cinema halls taxable as restaurant service – Circular No. 201/13/2023-GST dated 1-8-2023	
(1)	Supply of food and beverages in a cinema hall is taxable as 'restaurant service' as long as the food or beverages are supplied by way of or as part of a service, and supplied independent of the cinema exhibition service.
(2)	Where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfy the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply

Circular No. 47/21/2018GST dated 08-06-2018	In case of servicing of cars involving supply of both goods (spare parts) and services (labour) where the value of goods and services are shown separately, CBIC has clarified that the goods and services would be liable to tax at the rates as applicable to such goods and services separately.
Retreading of tyres is a supply of services. Supply of retreaded tyres is supply of goods – Circular No. 34/8/2018-GST dated 1-3-2018	
Issue	Clarification
Whether retreading of tyres is a supply of goods or services?	Pre-dominant element is process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods. Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods.
Whether activity of bus body building, is a supply of goods or services?	In the case of bus body building there is supply of goods and services. Thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case.

ANNEXURE-1

GENESIS OF GST IN INDIA AND CONCEPT OF GST

12. What is GST? What are the developments taken place under it ? OR Write a note on Genesis of GST in India.

Solution: The relevant aspects are discussed as under-

(1) Goods and Services Tax: GST is levied on 'supply' of goods or services or both, in India including the Union Territory of Jammu and Kashmir with own legislature. GST is a destination based tax on consumption of goods and services. It is levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as set-off. In a nutshell, only value addition is taxed and burden of tax is to be borne by the final consumer.

(2) Genesis of GST In India:

- Setting up of Empowered Committee in 2000: In 2000, the Vajpayee Government started discussion on GST by setting up an empowered committee. The committee was headed by Asim Dasgupta, (Finance Minister, Government of West Bengal). It was given the task of designing the GST model and overseeing the IT back-end preparedness for its rollout.
- Kelkar task force in 2004: The GST was recommended by the Kelkar Task Force on implementation of the Fiscal Responsibility and Budget Management (FRBM) Act, 2003. The Task Force strongly recommended fully integrated 'GST' on national basis.
- GST proposed in 2007-08: A proposal to introduce a National level Goods and Services Tax (GST) by April 1, 2010 was first mooted in the Budget Speech by the then Union Finance Minister, Shri P. Chidambaram, while presenting the Central Budget of 2007-2008. Since the proposal involved reform/ restructuring of not only indirect taxes levied by the Centre but also the States, the responsibility of preparing a Design and Road Map for the implementation of GST was assigned to the Empowered Committee of State Finance Ministers (EC).
- Constitution Amendment Act: In 2014 the talks of ushering in GST, however, gained momentum when the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST in the Parliament on 19th December, 2014. The Lok Sabha passed the Bill on 6th May, 2015 and Rajya Sabha on 3rd August, 2016. Subsequent to ratification of the Bill by more than 50% of the States, Constitution (122 Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became Constitution (101" Amendment) Act, 2016, which paved the way for introduction of GST in India.
- GST Legislations: The Central GST legislations - Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were introduced in Lok Sabha on 27th March, 2017 and were passed on 29th March, 2017 and with the receipt of the President's assent on 12th April, 2017, the Bills were enacted. The enactment of the Central Acts was followed by the enactment of the State GST laws by various State Legislatures. Telangana, Rajasthan, Chhattisgarh, Punjab, Goa and Bihar were among the first ones to pass their respective State GST laws.
- Roll out of GST: Government rolled out GST w.e.f. 1" July, 2017. GST in the Union Territory of Jammu and Kashmir with own legislature came into force with effect from 8th July, 2017.

  The introduction of Goods and Services Tax (GST) is a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax, it will mitigate cascading or double taxation in a major way and pave the way for a common national market.
- France was the first country to implement GST in the year 1954. Within 62 years of its advent, about 160 countries across the world have adopted GST because this tax has the capacity to raise revenue in the most transparent and neutral manner.

13. Explain briefly the concept of GST.

Solution: Concept of GST: The basic concept of GST is discussed as under-

1) Value added tax: It is a single tax on the supply of goods and services, right from the manufacturer to the consumer with credit of taxes paid at previous stages available as set-off. In a nutshell, only value addition is taxed.
2) Continuous flow of tax credits: GST provides comprehensive and continuous chain of tax credits from the manufacturer's point/service provider's point upto the retailer's level/consumer's level thereby taxing only the value addition at each stage of supply chain.
3) Tax incidence is to be ultimately borne by Final Consumer: GST paid on the procurement of goods and services can be set off against that payable on the supply of goods or services. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages.
4) Mitigation of Cascading/ Double Taxation: GST is levied only on value addition. Thus, it prevents cascading effect of tax i.e. tax on tax. GST does not differentiate between goods and services and thus, the two are taxed at a single rate.

NEED FOR GST IN INDIA

14. What was the need of introduction of GST in India. OR

Enumerate the deficiencies of the existing indirect taxes which led to the need for ushering into GST regime.

Solution: Need for GST in India:

(1) Deficiencies in the existing value added taxation:

a) Excise duty and VAT: In the earlier indirect tax regime, a manufacturer of excisable goods charged excise duty on manufacture and value added tax (VAT) on intra-State sale of goods. However, the VAT dealer on his subsequent intra-State sale of goods charged VAT (as per VAT rate as was applicable in the respective State) on value comprising of (basic value + excise duty charged by manufacturer + profit by dealer).

b) Service tax: Further, service tax was payable on provision of all services other than those covered in the Negative list of services as provided under Section 66D of the Finance Act, 1994 or otherwise exempted vide the Mega Exemption Notification No. 25/2012-ST dated 20-062012.

c) Shortcomings in earlier Indirect Tax System: There were various shortcomings in earlier indirect system of taxation in India. Under the earlier indirect tax structure, the various indirect taxes which were levied were not mutually exclusive. Some of the shortcomings under earlier indirect taxation system were:

- Non-availability of credit of excise duty and service tax for VAT: VAT dealers were not able to take credit of excise duty charged by manufacturers. Duties paid under excise law is subsumed into cost beyond the manufacturing level. Like excise duty, VAT dealers were

not able to take credit of service tax charged by the service providers on various input services.

- No credit of CST: In the absence of credit, CST which was levied on Inter-State sales collected by the origin state added to the cost of product.
- No credit of VAT to Service Providers: The service providers were not allowed to claim any credit for VAT paid on their inputs.
- No credit of Swachh Bharat Cess (SBC) to Manufacturers and Service Providers : SBC 0.5% on value of all taxable services was applicable from 15-11-2015. However, no CENVAT credit was allowed of SBC to the manufacturers as well as service providers.
- No CENVAT credit of Krishi Kalyan Cess (KKC) to Manufacturers: Pursuing an objective to finance and promote initiatives to improve agriculture and farmer welfare, 'KKC' @ 0.5% was levied on the value of all taxable service w.e.f. 01-06-2016. Whilst the CENVAT credit of KKC was allowed to service providers, it was eventually denied to manufacturers, who had a liability of central excise, but did not provided any taxable output services.
- Encroachment on each other's territory by the Centre and the State ending up in Double Taxation: Owing to federal structure of India, where there are two taxing authorities - the Central government and the State Government, the country witnessed overlapping of powers of the State government(s) and the Central Government. Even though past indirect tax system treated goods and services differently, in certain cases where goods, services and other types of supplies were being packaged as composite bundles and offered for sale to consumers under a variety of supply- chain arrangements, there was double taxation. Adopting conservative approach to avoid unnecessary litigation, the trade and industry charged both VAT and service tax on such disputed items.

(2) GST-A cure for ills of existing indirect tax regime:

a) A comprehensive tax structure covering both goods and services viz. Goods and Services Tax (GST) addresses these problems. Simultaneous introduction of GST at both Centre and State levels has integrated taxes on goods and services for the purpose of set-off relief and ensures that both the cascading effects of CENVAT and service tax are removed and a continuous chain of set-off from the original producer's point/service provider's point upto the retailer's level/consumer's level is established

b) In the GST Regime, the major indirect taxes have been subsumed in the ambit of GST. The erstwhile concepts of manufacture or sale of goods or rendering of services are no longer applicable since the tax is now levied on "Supply of Goods and/or services".

DUAL GST MODEL

15. Discuss the dual GST model introduced in India.

Solution: Dual GST Model introduced in India:

(1) Dual GST Model: India has adopted a Dual GST model in view of the federal structure of the country. Centre and States simultaneously levy GST on taxable supply of goods or services or both which, takes place within a State or Union Territory. Thus, tax is imposed concurrently by the Centre and States, i.e. Centre and States simultaneously tax goods and services. GST is levied by the Centre on intra-State supply of goods and/or services called the Central GST (CGST) and that levied by the States/ Union territory is called the State GST (SGST)/UTGST.

Similarly, Integrated GST (IGST) is levied and administered by Centre on every inter-state supply of goods and services. IGST is approximately a sum total of CGST and SGST/UTGST and is be levied by Centre on all inter-State supplies.

GST extends to whole of India including the Union Territory of Jammu & Kashmir with own legislature.

(2) Need of dual GST model: India is a federal country where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which they need to raise resources. A dual GST, therefore, has been introduced keeping with the Constitutional requirement of fiscal federalism.

(3) Administration : Centre levies and administer CGST & IGST while respective States/UTs levies and administer SGST/UTGST

(4) Legislative Framework: There is single legislation - CGST Act, 2017 - for levying CGST. Similarly, Union Territories without State legislatures [Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu, Ladakh and Chandigarh) is governed by UTGST Act, 2017 for levying UTGST. States and Union territories with their own legislatures [Delhi, Jammu & Kashmir and Puducherry] have enacted their own GST legislation for levying SGST.

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

(5) Manner of levy of Dual GST: The Central GST and the State GST are levied simultaneously on every transaction of supply of goods and services except-

- the exempted goods and services,
- the goods which are outside the purview of GST; and
- the transactions which are below the prescribed threshold limits.

Further, both are levied on the same price or value unlike State VAT which was levied on the value of the goods inclusive of CENVAT.

(6) Classification of Goods and Services:

(a) Goods: The goods are classified on the basis of HSN (Harmonised System of Nomenclature) under the GST.

(b) Services: A new Scheme of Classification of Services has been devised wherein the services of various descriptions have been classified under various sections, headings and groups. Each

group consists of various Service Codes (Tariff). Chapters referred are the Chapters of the First Schedule to the Customs Tariff Act, 1975.

(7) Registration: Every supplier of goods and/or services is required to obtain registration in the State/UT from where he makes the taxable supply if his aggregate turnover exceeds the threshold limit during a FY.

States with threshold limit of ₹10 lakh for both goods and service	State with threshold limit of 20 lakh for both goods and service	State with threshold limit of 20 lakh for services and 40 lakh for goods (i.e.persons engaged exclusively in supply of goods
Manipur	Arunachal Pradesh	Jammu and Kashmir
Mizoram	Meghalaya	assam
Nagaland	Sikkim	Himachal Pradesh
Tripura	Uttrakhand	All other State
	Puducherry	
	telangana	

(8) Tax is paid by Taxable Person: In GST regime, tax (i.e. CGST and SGST/UTGST for intra-State supplies and IGST for inter-State supplies) is paid by every taxable person and in this regard provisions have been prescribed in the law.

Composition Scheme and Exemption: For providing relief to small businesses, a simpler method of paying taxes and accounting thereof is also prescribed, known as Composition Scheme. Along with providing relief to small-scale business, the law also contains provisions for granting exemption from payment of tax on specified goods and/or services. Further, for small service providers also, a scheme prescribing concessional rate of tax has been formulated.

(9) Compensation Cess: A GST Compensation Cess at specified rate has been imposed under the Goods and Services Tax (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed on value of taxable supply. Compensation cess is leviable on intra-State supplies and inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST. However, its levy and collection has been extended till 31 March, 2026.

(10) GST - A tax on Goods and Services: GST is levied on supply of all goods and services, except ant liquor for human consumption and petroleum crude, diesel, petrol, ATF and natural gas. The same is discussed as under:

a) Alcoholic liquor for human consumption not leviable to GST: Alcoholic liquor for human consumption is outside the realm of GST. The manufacture/production of alcoholic liquor be subjected to State excise duty and inter-State/intra-State sale of the same is subject to CST / V * AT respectively.

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

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

d) Tobacco: Tobacco is within the purview of GST, 1.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in India. Resultantly, tobacco is subject to GST as well as central excise duty.

e) Opium, Indian hemp and other narcotic drugs and narcotics: Opium, Indian hemp and other narcotic drugs and narcotics are within the purview of GST, i.e. GST is leviable on them. However, State Governments have also retained the power to levy excise duties on such products manufactured in India. Resultantly, Opium, Indian hemp and other narcotic drugs and narcotics are subject to GST as well as State excise duties.

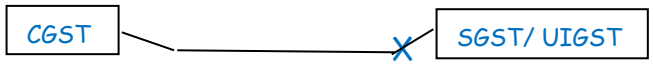
f) Real Estate Sector : Real estate sector has been kept out of ambit of GST, i.e. GST will not be levied on sale/purchase of immovable property. However on supply of construction services, GST is levied.

(11) Manner of utilisation of ITC: Input Tax Credit (ITC) of CGST and SGST/UTGST is available throughout the supply chain, but cross utilization of credit of CGST and SGST/UTGST is not possible, ie. CGST credit Cannot be utilized for payment of SGST/UTGST and SGST/UTGST credit cannot be usilized for payment of best. However, cross utilization is allowed between CGST/SCST/ cannot be utilized for GST can be utilized for the payment of CGST/SGST/UTGST and vice versa.

Summary Chart of flow of ITC under GST:

Transaction within the states/ UT's (Intra-State Transactions)		Inter-State transactions
CGST	SGST/UTGST	IGST
CGST CGST IGST	SGST/UTGST SGST/UTGST IGST	IGST IGST CGST SGST/ UIGST

Credit of CGST/SGST can be utilised only when credit of IGST has been completely utilised. ITC of SGST/UTGST should be utilized for payment of IGST, only after ITC of CGST has been utilized fully.



No Cross utilisation permissible.

(12) Seamless Flow of Credit: Since GST is a destination based consumption tax, revenue of SGST ordinarily accrues to the consuming States. The inter-State supplier in the exporting State is allowed to set off the available credit of IGST, CGST & SGST/UTGST against the IGST payable on inter-State supply made by him. The buyer in the importing State is allowed to avail the credit of IGST paid on inter-State purchase made by him. Thus, unlike the earlier scenario where the credit chain used to break in case of inter-State sales on account of non-VATable CST, under GST regime there is a seamless credit flow in case of inter-State supplies too

The revenue of inter-State sale does not accrue to the exporting State and the exporting State transfers to the Centre the credit of SGST/UTGST used in payment of IGST

The Centre transfers to the importing State the credit of IGST used in payment of SGST/UTGST. Thus, the inter-State trade of goods and services (IGST) needed a robust settiement mechanism amongst the States and the Centre.

A Central Agency is needed which can act as a clearing house and verify the claims and inform the respective Governments to transfer the funds. This is possible only with the help of a strong IT Infrastructure.

GOODS AND SERVICES TAX PORTAL

16. What is GSTN and its role in the GST regime?

Solution: GSTN stands for Goods and Services Tax Network (GSTN). A Special Purpose Vehicle [a company incorporated under the provisions of Section 8 of the Companies Act, 2013] called the GSTN has been set up to cater to the needs of GST. The GSTN provides a shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders for implementation of GST.

Resultantly, Common GST Electronic Portal - www.gst.gov.in - a website managed by GSTN has been set up by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States.

The GST portal is accessible over Internet (by taxpayers and their CAs/Tax Advocates etc.) and Intranet by Tax Officials etc. The portal is one single common portal for all GST related services.

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

professional to tax officials to GST portal to Banks to accounting authorities. Primarily, GSTN provides three front end services to the taxpayers namely registration, payment and return through GST Common Portal.

Functions of GSTN: The functions of the GSTN include-

a. facilitating registration;
b. forwarding the returns to Central and State authorities;
c. computation and settlement of IGST;
d. matching of tax payment details with banking network;
e. providing various MIS reports to the Central and the State Governments based on the tax payer return information;
f. providing analysis of tax payers' profile; and
g. running the matching engine for matching, reversal and reclaim of input tax credit.

However, it is important to note that the Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in [managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India]. E-way bill is an electronic document generated on the GST portal evidencing movement of goods. Further, Invoice Registration Portal (IRP) is the website for uploading/reporting of e-invoices by the notified persons. It is managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India.

17. Write a note on GSP's and ASP's.

Solution: GSP stands for GST Suvidha Provider. A GSP is considered as an enabler for the taxpayer to comply with the provisions of the GST law through its web platform. GSPs develop applications to be used by taxpayers for interacting with the GSTN.

They facilitate the tax payers in uploading invoices as well as filing of returns and act as a single stop shop for GST related services.

They customize products that address the needs of different segment of users. GSPs may take the help of Application Service Providers (ASPs) who act as a link between taxpayers and GSPs.

18. Which of the existing taxes are subsumed under GST? OR

List the central and State levies subsumed in GST in India.

Solution: Taxes subsumed in GST: The following duties/taxes are discontinued and subsumed into GST -

Central Taxes	State Taxes
• Central Excise duty • Duties of Excise (Medicinal and Toilet Preparations) • Additional Duties of Excise (Goods of Special Importance) >	• State VAT • Luxury Tax • Entry Tax (all forms)

• Additional Duties of Excise (Textiles and Textile Products) • Additional Duties of Customs (commonly known as CVD) • Special Additional Duty of Customs (SAD) • Service Tax • Central Sales Tax • Central Surcharges and Cesses so far as they relate to supply of goods and services.	• Entertainment and Amusement Tax (except when levied by the local bodies) • Taxes on advertisements • Purchase Tax • Taxes on lotteries, betting and gambling • State Surcharges and Cesses so far as they relate to supply of goods and services.
The GST Council shall make recommendations to the Union and States on the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed in the GST.	

19. What are the benefits which the Country will accrue from GST?

Solution: GST is a win-win situation for the entire country. It brings benefits to all the stakeholders of industry, Government and the consumer. It will lower the cost of goods and services, give a boost to the economy and make the products and services globally competitive. The significant benefits of GST are discussed hereunder:

(A) Benefits to economy:

i. Creation of common national market. GST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level.

ii. Boost to 'Make in India initiative: GST gives a major boost to the 'Make in India' initiative of the Government of India by making goods and services produced in india competitive in the national as well as international market. This will create India as a - Manufacturing hub.

iii. Enhanced investment and employment: The subsuming of major Central and State taxes in GST,compiete and comprehensive sei-off of input tax on goods and services and phasing out of Central Sales Tax (CST) reduces the cost of locally manufactured goods and services and increases the competitiveness of Indian goods and services in the international market and thus, gives boost to investments and Indian exports. With a boost in exports and manufacturing activity, more employment is generated and GDP is increased.

(B) Simplified tax structure:

Ease of doing business: Simpler tax regime with fewer exemptions along with reduction in multiplicity of taxes under GST has led to simplification and uniformity. The uniformity in laws, procedures and tax rates across the country makes doing business easier. (2) Certainty in tax administration: Common system of classification of goods and services ensures certainty in tax administration across India.

(C) Easy tax compliance:

i. Automated procedures with greater use of IT: There are simplified and automated procedures for various processes such as registration, returns, refunds, tax payments. All interaction is through the common GSTN portal, therefore, less public interface between the taxpayer and the tax administration.

ii. Reduction in compliance costs: The compliance cost is lesser under GST as multiple record-keeping for a variety of taxes is not needed, therefore, there is lesser investment of resources and manpower in maintaining records. The uniformity in laws, procedures and tax rates across the country goes a long way in reducing the compliance cost.

(D) Advantages for trade and industry:

i. Benefits to agriculture and Industry: GST has given more relief to industry, trade and agriculture through a more comprehensive and wider coverage of input tax set-off and service tax set-off, subsuming of several Central and State taxes in the GST and phasing out of CST. The transparent and complete chain of set-offs which results in widening of tax base and better tax compliance also leads to lowering of tax burden on an average dealer in industry, trade and agriculture.

ii. Mitigation of ill effects of cascading: By subsuming most of the Central and State taxes into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it helps in mitigating the ill effects of cascading, improving competitiveness and improving liquidity of the businesses.

iii. Benefits to small traders and entrepreneurs: GST has increased the threshold for GST registration for small businesses. Further, single registration is needed in one State. Small businesses have also been provided the additional benefit of composition scheme. With the creation of a seamless national market across the country, small enterprises have an opportunity to expand their national footprint with minimal investment.

CONSTITUTIONAL PROVISIONS

20. Give a brief note on Constitutional provisions as regards taxation in India?

Solution: Constitutional Provisions: Power to levy and collect taxes emerges from the Constitution of India. Article 245 of the Constitution confers the power on the Parliament and on the legislature of the State for enacting the laws. In case any tax law, be it an act, rule, notification or order is not in conformity with the Constitution, it is called ultra vires the Constitution and is illegal and void.

The significant provisions relating to constitution are as under:

i. Taxes not to be imposed save by authority of law [Article 265]: This Article of the Constitution of India prohibits arbitrary collection of tax. It states that "no tax shall be levied or collected except by authority of law". The term "authority of law" means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.

ii. Extent of laws made by Parliament and by the Legislatures of States [Article 245]: Part XI of the Constitution deals with relationship between the Union and States. The power for enacting the laws is conferred on the Parliament and on the Legislature of a State by Article 245 of the Constitution. The said Article provides as under –

- Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
- No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra- territorial operation.

(iii) Subject matter of laws made by Parliament and by the Legislatures of States [Article 246]: It gives the respective authority to Union and State Governments for levying tax. Whereas Parliament may make laws for the whole of India or any part of the territory of India, the State Legislature may make laws for whole or part of the State.

(iv) Seventh Schedule to Article 246: It contains three lists which enumerate the matters under which the Union and the State Governments have the authority to make laws. The three lists are as follows –

- List I (Union List): The Central Government has exclusive powers to make laws in respect of matters listed here.
- List II (State List): The State Government has the powers to make laws in respect of matters listed here.
- List III (Concurrent List): The authority to make laws in respect of matters listed in the said list is given to both the Central and State Governments.

Entries 82 to 92C of List I enumerate the subjects where the Central Government has power to levy taxes. Entries 45 to 63 of List II enumerate the subjects where the State Governments have the power to levy taxes. Parliament has a further power to make any law for any part of India not comprised in a State even if such matter is included in the State List.

21. Why was the Constitution of India amended recently in the context of GST? (2 Marks, Jan. 2021)

Solution: Constitutional Amendment: The Constitutional provisions hitherto had delineated separate powers for the Centre and the States to impose various taxes. Whereas the Centre levied excise duty on all goods produced or manufactured in India, the States levied Value Added Tax once the goods entered the stream of trade upon completion of manufacture.

With respect to goods imported from outside the country into India, Centre levied basic customs duty and additional duties of customs together with applicable cesses, if any. In case of inter-State sales, the Centre has the power to levy a tax (the Central Sales Tax) but, the tax is collected and retained entirely by the States. As for services, it is the Centre alone that was empowered to levy service tax. Introduction of the GST required amendments in the Constitution so as to simultaneously empower the Centre and the States to levy and collect this tax. The Constitution

of India has been amended by the Constitution (101) Act, 2016 for this purpose. Article 246A of the Constitution empowers the Centre and the States to levy and collect the GST.

22. Explain the significant amendments which were made by Constitution (101" Amendment) Act, 2016. (2 Marks, Jan. 2021)

Solution: The Constitution (101" Amendment) Act, 2016 ('Amendment Act') received presidential assent on 8th September 2016. This Act paves the way for introduction of Goods and Services Tax (GST) by making special provisions with respect to goods and services tax. The Amendment Act contains a total of 20 sections. Out of the same, one section, i.e., Section 12 pertaining to GST Council came into effect from 12th September, 2016

The remaining 19 sections came into effect from 16th September, 2016. The Constitution was amen Union Territuce the GST for conferring concurrent taxing powers on the Centre as well as the States (includes Union Territory with Legislature) to make laws for levying goods and services tax on every transaction of supply of goods or services or both.

The significant amendments made by the Constitution (101" Amendment) Act, 2016 are as follows:

- Parliament and State Legislatures have been given concurrent powers to make laws governing taxes on goods and services.
- Integrated goods and services tax is to be levied on Inter-State transactions of goods and services. The same is collected by the Central Government and apportioned between the Union and the States in the manner provided by Parliament by Law as per the recommendation of the GST Council.
- Principles for determining the place of supply and when a supply takes place in the course of inter-State trade or commerce shall be formulated by the Parliament, by law.
- GST will be levied on all supply of goods and services except alcoholic liquor for human consumption.
- GST shall not be levied on the following products, till a date to be notified on the recommendations of the GST Council:
  (i) Petroleum Crude
  (ii) Natural Gas
  (iii) Motor Spirit (commonly known as Petrol)
  (iv) Aviation Turbine Fuel
  (v) High Speed Diesel
- The Union Government shall retain the power to levy duties of excise on the aforesaid products besides tobacco and tobacco products manufactured or produced in India.
- Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
- The provisions relating to GST Council came into force on 12th September, 2016. President constituted the GST Council on 15th September, 2016.

- The Union Finance Minister is the Chairman of this Council and Ministers in charge of Finance/Taxation or any other Minister nominated by each of the States & UTs with Legislatures are its members. Besides, the Union Minister of State in charge of Revenue or Finance is also its member. The function of the Council is to make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc.

ANALYSIS OF THE CONSTITUTION 101st AMENDMENT ACT, 2016:

Sec.	Particulars	Analysis
1	Short title and commencement	(i) This Act may be called the Constitution (One Hundred and First Amendment) Act, 2016. (ii) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.
2	Article 246A (2 Marks, Jan. 2021): Special provision with respect to goods and services tax. (i) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State. (ii) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.	Concurrent Power: This article grants power to Centre and State Governments to make laws with respect to GST imposed by Centre or such State. Inter state transactions - Exclusive power with Centre: Centre has the exclusive power to make laws with respect to GST in case of inter-State supply of goods and/or services. Petroleum products - Outside purview of GST till Notified Date: However, in respect to the following goods, the aforesaid provisions shall apply from the date recommended by the GST Council: a) Petroleum Crude b) High Speed Diesel c) Motor Spirit (commonly known as Petrol)

	Explanation: The provisions of this article, shall, in respect of goods and services tax referred to in Article 279A(5), take effect from the date recommended by the Goods and Services Tax Council	d) Natural Gas e) Aviation Turbine Fuel Overriding Effect: The provisions of Article 246A are notwithstanding anything contained in Articles 246 and 254. Article 254 deals with the supremacy of the laws made by Parliament
3	Article 248: Residuary powers legislation.	Article 248 grants the residuary powers to Parliament to make laws with respect to any matter not enumerated in the Concurrent List or State List. Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists. Now the amendment prefixes the words "Subject to article 246A" to the existing article thereby making it clear that the Parliament alone does not have the power to frame laws in respect to GST.
4	Article 249: Power of Parliament to legislate with respect to a matter in the State List in the national interest.	Article 249 grants the Parliament the power to make laws with respect to a matter in the State list in national interest in a case where the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting on any matter enumerated in the State List. Article 249 have been amended to grant power to Parliament to make laws with respect to the GST provided under Article 246A
5.	Article 250: Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.	Article 250 provides for Parliament's absolute power to the make laws for the whole or any part of the territory of India matter enumerated in the State List during proclamation of emergency. The amendment has inserted the words goods and services tax in the existing article so

		that Parliament can also make laws with respect to GST during the emergency.
6.	Article 268: Duties levied by the Union but collected and appropriated by the State.	Article 268 pertains to the duties levied by the Centre but the collected and appropriated by the States. It stipulates that such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected in the case where such duties are leviable within any Union territory, by the Government of India, and in other cases, by the States within which such duties are respectively leviable. The Constitution Amendment Act omits "and such duties of excise on medicinal and toilet preparations" from Article 268. Duties of excise on medicinal and toilet preparations have been subsumed into the goods and services tax to be levied by the Centre and States
7.	Omission of Article 268A: Service tax levied by Union and collected by the Union and the States.	Article 268A dealing with service tax levy has been omitted e as a result of which this shall subsume into GST.
8.	Article 269: Taxes levied and collected by the Union but assigned to the States.	Article 269 earlier provided power to the Central Government to levy taxes on sale or purchase of goods and taxes on consignment of goods with respect to Inter-State trade or commerce. Now, the amendment restricts the applicability of the article only on those taxes which are not mentioned in new article 269A.
9.	Article 269A: Levy and collection of goods and services tax in course of inter-State trade or commerce.	Levy of Interstate GST: Article 269A stipulates that GST on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the

		States in the manner as may be provided by Parliament by law on the recommendations of the GST Council. Imports subject to Integrated Tax: Further, import of goods or services or both into India will also be deemed to be supply of goods and/or services in the course of Inter-State trade or Commerce. This will give power to Central Government to levy IGST on the import transactions which were earlier subject to Countervailing duties under the Customs Tariff Act, 1975. Cross utilization of IGST and SGST - not to form part of consolidated fund of India: Where an amount collected as IGST has been used for payment of SGST or vice versa, such amount shall not form part of the Consolidated Fund of India/State. This is to facilitate transfer of funds between the Centre and the States. Supply whether Inter state supply - Principles to be formulated by Parliament: Parliament is empowered to formulate the principles regarding place of supply and when supply of goods, or of services, or both occurs in inter-State trade or commerce.
10	Article 270: Taxes levied and distributed between the Union and the States.	Article 270 is amended to provide for distribution of the goods and services tax between the Centre and the States, by order of the President after considering recommendations of the Finance Commission. This applies for those tax amounts apportioned or payable to the Central Government for taxes levied by it under articles 246A(1) and (2) and Clause (1) of 269A.
11	Article 271: Surcharge on certain duties and taxes for purposes of the Union.	Article 271 empowers Parliament to increase any of the duties, or taxes referred to in articles 269 or 270. It further provides that

		such surcharge is not shareable and remains with the Centre. Now this article is amended to exclude GST from its purview.
12	Article 279A: GST Council	Discussed in Question below.
13	Article 286: Restrictions as to imposition of tax on the sale or purchase of goods.	Article 286 which restrains the States from framing laws for imposition of any tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in course of the import of the goods into, or export of the goods out of, the territory of India. This article has been amended to incorporate the changes arising out of GST by substituting the words "sale or purchase" with "supply" and words "goods" with "goods or services or both". Consequently, States have no right to impose GST on inter-State supply of goods or services or both. It will be levied by Union Government under Article 269A as mentioned earlier. Further, clause (3) of Article 286 which stipulates that any law of a State shall, in so far as it imposes, or authorises the imposition, of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subjected to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax, as Parliament may, by law, specify, has been omitted.
14	Article 366: Definitions. Article 366 sets out definitions. Following new clauses have been inserted- (12A) "Goods and services tax" means any tax on supply of goods, or services or both except taxes on the	New Definitions have been introduced. From the definition of Goods and services Tax as per Article 366(12A), it is clear the alcoholic liquor for human consumption would always remain outside the scope of GST.

	supply of the alcoholic liquor for human consumption; (26A) "Services" means anything other than goods; (26B) "State" with reference to Articles 246A, 268, 269, 269A and Article 279A includes a Union territory with Legislature;	Besides this Article 366(29A) defining deemed sale has not been omitted. Definition of "goods": The term goods has already been defined under Article 366(12) in an inclusive manner to provide that "goods includes all materials, commodities, and articles".
15	Article 368: Power of Parliament to amend the Constitution and procedure therefor.	Article 368 has been amended to include Article 279A also within its purview. Consequently, at least 2 / (3 ^ (rd)) of the majority in each House of the Parliament and ratification by at least half of the States is specifically required to make any amendment in Article 279A relating to GST Council.
	It must be noted that even after the introduction of GST: a. Central excise duty continues to be levied on manufacture/production of tobacco, petroleum crude, diesel, petrol, ATF and natural gas. b. State excise duty is leviable on manufacture/production of alcoholic liquor, opium, Indian hemp and narcotics, and c. VAT is leviable on intra-State sale of petroleum crude, diesel, petrol, ATF, natural gas and alcoholic liquor. Petroleum crude, diesel, petrol, ATF, natural gas are presently not taxable under GST and alcoholic liquor is outside the ambit of GST	

GOODS AND SERVICES TAX COUNCIL

23. What is GST Council. What would be the role of GST Council? (5 Marks, Nov. 2020) OR Enumerate any five matters on which the GST Council may make recommendations under Article 279A of the Constitution of India. (5 Marks, Nov. 2019)

Solution Goods and Services Tax Council [Article 279A]:

1	Constitution of GST Council	Article 279A of the Constitution empowers the President of India to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council). The provisions relating to GST Council came into force on 12-09-2016. The President constituted the GST Council on 15-09-2016.

2	Members of the GST Council	The GST Council shall consist of the following members, namely: - (a) the Union Finance Minister _____ Chairperson; (b) the Union Minister of State in charge of Revenue or Finance _____ Member. (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government _____ Members.
3	Vice-Chairperson	The State Finance Minister's shall choose one amongst themselves as Vice- Chairperson of the Council for such period as they may decide.
4	Role of GST Council	The GST Council shall make recommendations to the Union and the States on- (a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax; a) the goods and services that may be subjected to, or exempted from the goods and services tax; b) model Goods and Services Tax Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-State trade or commerce under Article 269A and the principles that govern the place of supply; c) the threshold limit of turnover below which goods and services may be exempted from goods and services tax; d) the rates including floor rates with bands of goods and services tax; e) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster, f) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and g) any other matter relating to the GST, as the Council may decide.
5.	Effective date of levy of GST on petroleum products	The GST Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

6.	Guiding principles for GST Council	While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need- (a) for a harmonised structure of goods and services tax, and (b) for the development of a harmonised national market for goods and services.
7.	Quorum	One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.
8.	Procedure	The Goods and Services Tax Council shall determine the procedure in the performance of its functions.
9.	Decisions to be taken by GST Council	Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than 3 /4th prime+ of the weighted votes of the members present and voting, in accordance with the following principles, namely:- a) the vote of the Central Government shall have a weightage of 1 / (3rd of the total votes cast, and b) the votes of all the State Governments taken together shall have a weightage of 2 /3rd prime prime of the total votes cast, in that meeting.
10.	Vacancy etc. not to invalidate proceedings	No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of- a) any vacancy in, or any defect in, the constitution of the Council; or b) any defect in the appointment of a person as a Member of the Council; or c) any procedural irregularity of the Council not affecting the merits of the case.
11	Settlement of disputes	The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute a) tween the Government of India and one or more States; or b) between the Government of India and any State or States on one side an one or more other States on the other side; or c) between two or more States, arising out of the recommendations of the Council or implementation thereof. Law

24. Explain the body of GST Law.

Solution: The GST law comprises of the following-

1.	Acts	• Central Goods and Services Tax Act, 2017. • Integrated Goods and Services Tax Act, 2017. • Union Territory Goods and Services Tax Act, 2017. • Goods and Services Tax (Compensation to States) Act, 2017. • State Goods and Services Tax Acts, 2017 [for 28 states and 3 Union Territories deemed to be States].
2.	Rules	• Central Goods and Services Tax Rules, 2017. • Integrated Goods and Services Tax Rules, 2017. • Union Territory Goods and Services Tax Rules, 2017. • State Goods and Services Tax Rules, 2017 [for 28 states and 3 Union Territories deemed to be States]. • Goods and Services Tax (Compensation to States) Rules, 2017. • GST Settlement of Funds Rules, 2017.
3.	Notifications	CGST: Central Tax Notifications [CT] [Non-tariff]; Central Tax (Rate) Notifications [CT (Rate)] [Tariff] IGST: Integrated Tax Notifications [IT] [Non-tariff]; Integrated Tax (Rate) Notifications [IT (Rate)] [Tariff] UTGST: Union Territory Tax Notifications [UTT] [Non-tariff]; Union Territory Tax (Rate) Notifications [UTT (Rate)] [Tariff] GST Cess: Compensation Cess Notifications [GST Compensation Cess] [Non-tariff]; Compensation Cess (Rate) Notifications [GST Compensation Cess (Rate)] [Tariff]
4.	Circulars	• CGST • IGST • UTGST • SGST • GST Compensation Cess

GENERAL DEFINITIONS

1) "Appointed day" means the date on which the provisions of this Act shall come into force. [Section 2(10)]
2) "Board" means the Central Board of Indirect Taxes & Customs constituted under the Central Boards of Revenue Act, 1963. (Section 2(16)]

3) "Cess" shall have the same meaning as assigned to it in the Goods and Services Tax (Compensation to States) Act. (Section 2(22)]

4) "Common portal" means the common goods and services tax electronic portal referred to in Section 146, [Section 2(26)]

The Common Goods and Services Tax Electronic Portal ("GST portal") is a common electronic portal set up by the Goods and Services Tax Nerwork (GSTN) that facilitates among others registration, payment of tax, filing of returns, computation and settlement of IGST, electronic way-bill and other functions under the Act "www.gst.gov.in" and **"www.ewaybillgst.gov.in"** have been notified as Common GST Electronic Portal.

(5) "Common working days" in respect of a State or Union territory shail mean such days in succession which are not deciared as gazetted holidays by the Central Government or the concerned State or Union territory Government. [Section 2(27)]

Common working days refer to such days in succession which are not a declared holiday for the Centre as well as State/Union Territory

The relevance of working days primarily arises in relation to following provisions-

- Section 14 of CGST - Change in rate of tax
- Section 52 of CGST - Tax collection at source
- Section 65 of CCST - Audit
- Section 71 of CGST - Access to business premises
- CGST Rules, 2017 - Registration and Assessment

Example: Every person obtaining a registration under the Act is required to make an online application in the GST portal. The application for registration, along with the accompanying documents will be examined by the Proper Officer and if found in order, the registration will be granted within 7 working days. If the proper officer fails to take any action within 7 working days, the application is deemed approved.

Since the reference to 'common workings days' has been replaced by 'working days', it remains to be seen whether the applicant will be granted a deemed registration after 7 working days in case of inaction by the Proper Officer even if the third day was a holiday for a State.

(6) "Competent authority" means such authority as may be notified by the Government. [Section 2(29)]

(7) "Council" means the GST Council established under article 279A of the Constitution . [Section 2(36)]

(8) "Designated authority" means such authority as may be notified by the Board. [Section 2(40)]

(9) "Existing law" means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation. [Sec. 2(48)]

This covers all the existing Central and State laws (along with the relevant notifications, orders, and regulations), relating to levy of tax on goods or services like Central Excise law, Service Tax law, State VAT laws, etc. Therefore, laws that do not levy tax or duty on goods or services, such as the Indian Stamp Act, 1899, would not be covered here.

(10) "Government" means the Central Government. [Section 2(53)]

(11) "Goods and Services Tax (Compensation to States) Act" means the Goods and Services Tax (Compensation to States) Act, 2017. [Section 2(54)]

The Goods and Services Tax (Compensation to States) Act (for brevity "Compensation Act") provides for compensation to the States for the loss of revenue arising due to implementation of GST for a period of 5 years from the said date of implementation. The cess paid on the supply of goods or services will be available as credit for utilization towards payment of said cess on outward supply of goods and services on which such cess is leviable.

(12) "Manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly. [Section 2(72)]

The term Manufacture is relevant under GST Law in the following cases:

- ✓ Composition levy: Manufacturers of certain notified goods are not eligible for composition levy. Such a restriction is however, not placed on other classes of persons, say traders of the same notified goods.
- ✓ Maintenance of accounts: A manufacturer shall be required to maintain a record of production/ manufacture of goods, in addition to recording the details of inward and outward supplies.
- ✓ Concept of deemed exports: For any goods to qualify as deemed exports, one of the pre-condition is that the goods in question must be manufactured in India. Therefore, even where the goods are of the nature that are notified by the Government as goods that qualify as "deemed exports" on meeting certain conditions, if such goods are not manufactured in India (or, any processing performed on any imported goods does not result in manufacture), they cannot enjoy the benefit of the deeming fiction.

(13) "Notification" means a notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly. [Section 2(80)]

(14) "Prescribed" means prescribed by rules made under this Act on the recommendations of the Council. [Section 2(87)]

The law empowers the Government to issue rules to facilitate the implementation of the provisions of the Act, or to carry out the objects of the law. Whenever the term 'prescribed' is used in the Act, one must draw reference to the relevant rules that may be issued in respect thereof.

(15) "Regulations" means the regulations made by the Board under this Act on the recommendations of the Council. [Section 2(95)]

(16) "Schedule" means a Schedule appended to this Act. [Section 2(100)]

The following three schedules are provided under the CGST Act to describe the extent/ limitation of the meaning of the term 'supply':

(a) Schedule 1: Activities to be treated as supply even if made without consideration.

(b) Schedule II: Activities or Transactions to be treated as supply of goods or supply of services.

(c) Schedule III: Activities or transactions which shall be treated neither as a supply of goods nor a supply of services.

(17) Words and expressions used and not defined in this Act but defined in the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts. [Section 2(120)] Certain words and expressions like exports, import, etc. defined in the IGST/ UTGST/ Compensation laws as are used under the CGST law will have the same meaning as assigned in such laws.

TOPIC REFERENCER

- *Taxable Event*
- *Levy and Collection of IGST*
- *Composition Scheme for Goods*
- *Composition Scheme for Services*
- *Composition Levy – Procedural Requirements*

TAXABLE EVENT

1. What is the taxable event under GST?

Ans: Taxable event under GST is supply of goods or services or both. CGST and SCST/UTGST will be levied on intra-State supplies. IGST will be levied on inter State supplies

Intra-State Supply: Where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as intra-State supply of goods or services respectively

Inter-State Supply: Where the location of the supplier and the place of supply of goods or services are in-

a) two different States; or
b) two different Union Territories; or
c) a State and a Union territory,

it is treated as inter-State supply of goods or services respectively

2. Explain the extent of CGST Act/ SGST Acy UTGST AVIGST Act, 2017

Ans: The extent of the various Acts are discussed as under-

1) CGST Act, 2017: Centrai Goods and Services Tax Act, 2017 extends to the whole of india

- ✓ "India" means-
  - the territory of India as referred to in Article 1 of the Constitution,
  - its territorial waters,
  - seabed and sub-soil underlying such waters,
  - continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and
  - the air space above its territory and territorial waters. [Section 2(56)]
- ✓ "Central tax" means the central goods and services tax levied u/s 9. [Section 2(21)]

(2) State GST Act, 2017: State CST law of the respective State/Union Territory with State Legislature [Delhi,Jammu & Kashmir and Puducherry] extends to whole of that State/Union Territory. For example Rajasthan GST Act, 2017 extends to whole of the State of Rajasthan.

- "State" includes a Union territory with Legislature [Section 2(103))
- Union Territory of Delhi, J&K and Puducherry have Legislatures of their own. Therefore, for the GST law, by the expression 'State', Delhi, Jammu & Kashmir and Puducherry, though Union Territories, will be included. The Legislative Assemblies of Delhi, jammu & Kashmir and Puducherry has passed State GST Acts for intra-State levies, while the remaining 5 Union Territories will be governed commonly under the UTGST Act.
- "State tax" means the tax levied under any State Goods and Services Tax Act. (Section 2(104)]

(3) UTGST Act, 2017 : Union Territory Goods and Services Tax Act, 2017 extends to the Union territories of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu, Ladakh, Chandigarh and other territory, i.e. the Union Territories without State Legislature.

✓ "Union territory" means the territory of—

a) the Andaman and Nicobar Islands
b) Lakshadweep;
c) Dadra and Nagar Haveli and Daman and Diu;
d) Ladakh;
e) Chandigarh; and
f) other territory. [Section 2(114)]

Explanation: The territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory.

✓ "Union territory tax" means the Union territory goods and services tax levied under the Union Territory Goods and Services Tax Act. [Section 2(115)]

✓ "Other territory" includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of clause (114). [Section 2(81)]

By definition, the expression 'other territory' is inclusive of all territories that do not form part of any State (including the three Union Territories with Legislature being Delhi, Jammu & Kashmir and Puducherry), and excludes the Union Territories (i.e., the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu, Ladakh and Chandigarh). All territories that fall within the ambit of 'other territory' as defined above would also form part of the meaning of the term 'Union territory' as defined under Section 2(114), to leave no territory that is claimed by any of the States or Union Territories, outside the scope of taxation under GST, so long as such territory is in India.

(4) "Integrated Goods and Services Tax Act" means the IGST Act, 2017. [Section 2(57)]

It refers to the Act which provides for principles to determine what is an inter-State or intra-State supply, and levy of tax on inter-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption).

"Integrated tax" means the integrated goods and services tax levied under the IGST Act. [Sec 2(58)]

3. Explain the concept of Levy and collection of CGST.

Ans- The charging Section for levy and collection of CGST is Section 9 of CGST Act.2017 The same is discuses as under -

(1) Levy and collection of CGST [Section 9(1)] :There shall be levied a tax—

- ✓ called the Central Goods and Services Tax (CGST)
- ✓ on all intra-State supplies of –
  - goods; or
  - services; or
  - both,

except on the supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or notified spirit used for manufacture of alcoholic liquor; for human consumption [Inserted by the Finance (No.2) Act 2024 w.e.f. 01-11-2024]

- ★ on the value determined under Section 15; and
- ★ at such rates, not exceeding 20%, as may be notified by the Government on the recommendations of the Council; and
- ★ collected in such manner as may be prescribed; and
- ★ shall be paid by the taxable person.

The analysis of provisions of Section 9(1) are as under—

a) Charge is on Supply of Goods or Services or both : Every supply will be liable to tax. Supply should involve goods and/ or services – viz., either as wholly goods or wholly services. Even where a supply involves both, goods and services, the law provides that such supplies would be classifiable either as, supply of wholly goods or wholly services. Schedule II of the Act provides for this classification.

b) Under the GST law, the levy of tax is as follows :
   i. In the hands of the supplier – on the supply of goods and/or services (referred to as tax under forward charge mechanism);
   ii. In the hands of the recipient – on receipt of goods and/or services (referred to as tax under reverse charge mechanism).

c) Intra-State supplies liable to CGST : CGST is leviable on all intra-State supplies of goods or services or both except alcoholic liquor for human consumption and un-denatured extra neutral alcohol or notified spirit used for manufacture of alcoholic liquor; for human consumption. Thus, intra-State supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or notified spirit used for manufacture of alcoholic liquor; for human consumption is outside the purview of CGST.

d) Rate of tax : The rate of tax will be as specified in the notification that would be issued in this regard, **subject to a maximum of 20%.** The rates would be determined by the Government based on the recommendation of the GST Council. At present notified rates are : 0%, 0.05%, 0.125%, 1.5%, 2.5%, 6%, 9% and 14%.

e) Measure of levy – Value : CGST shall be levied on the value of supplies as determined under Section 15 of the CGST Act, 2017.

f) Collection : Tax shall be collected in such manner as may be prescribed.

g) Tax shall be payable by a 'taxable person' : The tax shall be payable by a 'taxable person'. "Taxable person" means a person who is registered or liable to be registered under Section 22 or Section 24 of the CGST Act, 2017. [Section 2(107)]

2) Levy of CGST on petroleum products – To be effective from notified date [Section 9(2)] CGST on the supply of—

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

shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. The levy under Section 9(1) is subject to provisions of Section 9(2).

(3) CGST to be paid on reverse charge basis by recipient on notified goods/ services or both [Section 9(3)]

The Government may,—

- ✓ on the recommendations of the Council,
- ✓ by notification,
- ✓ specify categories of supply of goods or services or both,
- ✓ the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both, and
- ✓ all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

"Reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under Section 9(3)/(4) of CGST Act, 2017 or under Section 5(3)/(4) of the IGST Act, 2017. [Section 2(98)]

Reverse charge applicable for Goods as well as Services : Reverse charge is applicable for goods or services or both. In fact, reverse charge notifications have been issued in respect of goods as well as services.

Reverse charge tax is to be paid through Electronic Cash Ledger : The recipient is liable to pay tax leviable on reverse charge basis through electronic cash ledger. He cannot utilise Input tax credit to pay such tax. He is entitled to take input tax credit of the tax so paid by him on satisfaction of other conditions.

The following aspects need to be noted :

- ✓ Persons required to pay tax under reverse charge are required to obtain registration under the GST whether or not they make any outward supplies, and without having regard to the threshold limits for registration – in case of notified goods and services;
- ✓ Composition suppliers being recipients of supplies on which tax is payable on reverse charge basis, will have to remit tax at the applicable rates, and not the concessional composition tax rates;
- ✓ The recipient paying tax on reverse charge basis, should issue a 'payment voucher' at the time of making payment to the supplier.

(4) CGST to be paid on reverse charge basis by notified persons on notified goods/ services when received from unregistered supplier [Section 9(4)]

The Government may,—

- on the recommendations of the Council,
- by notification,
- specify a class of registered persons who shall,
- in respect of supply of specified categories of goods or services or both received from an unregistered supplier,
- pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and
- all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

Intra-state supplies received by a tax-deductor from any unregistered supplier exempt from GST: Intra-State supplies of goods or services or both received by a deductor under Section 51, from any unregistered supplier, is exempt from the whole of the central tax leviable thereon under Section 9(4), subject to the condition that the deductor is not liable to be registered otherwise than under Section 24(vi). – Notification No. 9/2017-CT (Rate) dated 28-06-2017

Thus, tax under reverse charge is payable by the NOTIFIED class of registered persons on NOTIFIED categories of intra-State supplies of goods and/or services received by such registered persons from any unregistered supplier.

Similarly under section 5(4) of the IGST Act, 2017, tax under reverse charge is payable by the NOTIFIED class of registered persons on NOTIFIED categories of inter-State supplies of goods and/or services received by such registered persons from any unregistered supplier.

The recipient paying tax on reverse charge basis on account of effecting inward supplies from unregistered persons, should issue an invoice in respect of the goods or services inwarded, at the time of receipt of such goods or services.

4. List out categories of goods on which tax will be payable under reverse charge mechanism under CGST Act, 2017.

Ans: Supplies of goods taxable under reverse charge, te. the goods where tax is payable by the recipient : Goods like cashew nuts [not shelled/peeled], bidi wrapper leaves, tobacco leaves, supply of lottery, silk yarn, used vehicles, seized and confiscated goods, old and used goods, waste and scrap, raw cotton, etc. are taxable under reverse charge, i.e. recipient is liable to pay tax.

5. List out categories of services on which tax will be payable under reverse charge mechanism under CGST Act, 2017.

Ans: Categories of services on which tax will be payable under reverse charge mechanism under CGST Act, 2017 [Notification No. 13/2017-CT (Rate) dated 28-06-2017 w.e.f. 01-07-2017]: The Central Government has notified the following categories of supply of services wherein the whole of central tax leviable under Section 9 of the said CGST Act, shall be paid on reverse charge basis by recipient of the such services :-

S.No.	Category of Supply of Service	Supplier of service	Recipient of Service
1	Supply of Services by a Goods Transport Agency (GTA) in respect of transportation of goods by road to— a. any factory registered under or governed by the Factories Act, 1948; or b. any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or c. any co-operative society established by or under any law; or d. any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or e. any body corporate established, by or under any law; or f. any partnership firm whether registered or not under any law including association of persons; or	Goods Transport Agency (GTA)	a. Any factory registered under or governed by the Factories Act, 1948; or b. any society registered under the Societies c. Registration Act, 1860 or under any other law for the time being in force in any part of India; or d. any co-operative society established by or under any law; or e. any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or f. any body corporate established, by or under any law; or g. any partnership firm whether registered or not under any law including association of persons; or any casual person; h. located in the taxable territory. However nothing contained in this entry shall apply where, (i) the supplier has taken registration under the CGST Act, 2017 and exercised

	g. any casual taxable person. RCM not applicable if recipient registered only for TDS: However, nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to,— • A Department or Establishment of the Central Government or State Government or Union territory; or • local authority; or • Governmental agencies, which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.		(ii) the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge; and (iii) the supplier has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has made a prescribed declaration on such invoice issued by him. **If a GTA has exercised the option to pay tax under forward charge for a particular financial year, it shall be deemed that the option has been exercised for the next and future financial years also unless the GTA files a declaration that it wants to revert to the reverse charge mechanism during 1st January to 31st March of the preceding financial year.**
2.	Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly. "Legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory. Business entity being Litigant, applicant or petitioner located in Taxable territory – Deemed Recipient : The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.

3.	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.
4.	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
5.	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding,— i. Renting of immovable property, and ii. services specified below— ✓ services by the Department of Posts and the Ministry of Railways (Indian Railways) ✓ services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; ✓ transport of goods or passengers. "Renting of immovable property" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory. *Effect of amendment: Supply of all goods and services by Indian Railways shall be taxed under Forward Charge Mechanism to enable them to avail ITC.*

5A	Services supplied by the Central Government [excluding the Ministry of Railways (Indian Railways)] State Government, Union territory or local authority by way of renting of immovable property to a person registered under the CGST Act, 2017.	Central Government, State Government, Union territory or local authority	Any person registered under the CGST Act, 2017.
5AA.	Service by way of renting of residential dwelling to a registered person.	Any person	Any registered person.
5AB.	Services by way of renting of any property other than residential dwelling	Any unregistered person.	Any registered person. [Inserted by Notification No. 09/2024-CT (Rate) dated 08-10-2024 w.e.f. 10-10-2024]
5B.	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) construction of a project by a promoter.	Any person	Promoter
5C.	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter	Any person	Promoter
6.	Services supplied by a director of a company or a body corporate to the said company or the body corporate	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.

7.	Services supplied by an insurance agent to any person carrying on insurance business. "Insurance agent" means an insurance agent licensed u/s 42 of the Insurance Act, 1938 who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance. [Section 2(10) of the Insurance Act, 1938]	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
8.	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a nonbanking financial company, located in the taxable territory.
9.	Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered u/s 13(1)(a) of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.
9A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under Section 13(1)(a) of the Copyright Act, 1957	Author	Publisher located in the taxable territory. However, nothing contained in this entry shall apply where, a. the author has taken registration under the CGST Act, 2017, and

	relating to original literary works to a publisher.		filed a declaration, in the specified form before the commencement of financial year with the jurisdictional CGST or SGST commissioner, as the case may be, that he exercises the option to pay central tax on such services in accordance with sec 9(1) of the CGST Act, 2017 under forward charge, and to comply with all the provisions of CGST Act, 2017 as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option; b. the author makes a declaration regarding payment of tax on forward charge on the invoice issued by him in Form GST Inv-I to the publisher.
10.	Supply of services by the members of Overseeing Committee to Reserve Bank of India (RBI)	Members of Overseeing Committee constituted by the RBI	RBI
11.	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs)	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.	A banking company or a nonbanking financial company, located in the taxable territory.

12.	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory.
13.	Services provided by an agent of business correspondent (BC) to business correspondent (BC)	An agent of business correspondent	A business correspondent, located in the taxable territory
14.	Security services (services provided by way of supply of security personnel) provided to a registered person. RCM not applicable if recipient registered only for TDS and in case composition **suppliers** : However, nothing contained in this entry shall apply to,— (i)(a) a Department or Establishment of the Central Government or State Government or UT; or (b) local authority; or (c) Governmental agencies, which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax u/s 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act.	Any person other than a body corporate	A registered person, located in the taxable territory.
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	Any person, other than a body corporate who supplies the service to a body corporate and	Any body corporate located in the taxable territory.

	recipient, provided to a body corporate.	does not issue an invoice charging central tax @ 6% to the service recipient	
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 authorised 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.

Explanation : For purpose of this notification,—

a. Person liable to pay freight is Service Recipient : The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

b. "Body Corporate" has the same meaning as assigned to it in Section 2(11) of the Companies Act, 2013.

As per Section 2(11) of Companies Act, 2013, body corporate or corporation includes a company incorporated outside India, but does not include—

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

c. The words and expressions used and not defined in this notification but defined in the CGST Act, the IGST Act, and the UTGST Act shall have the same meanings as assigned to them in those Acts.

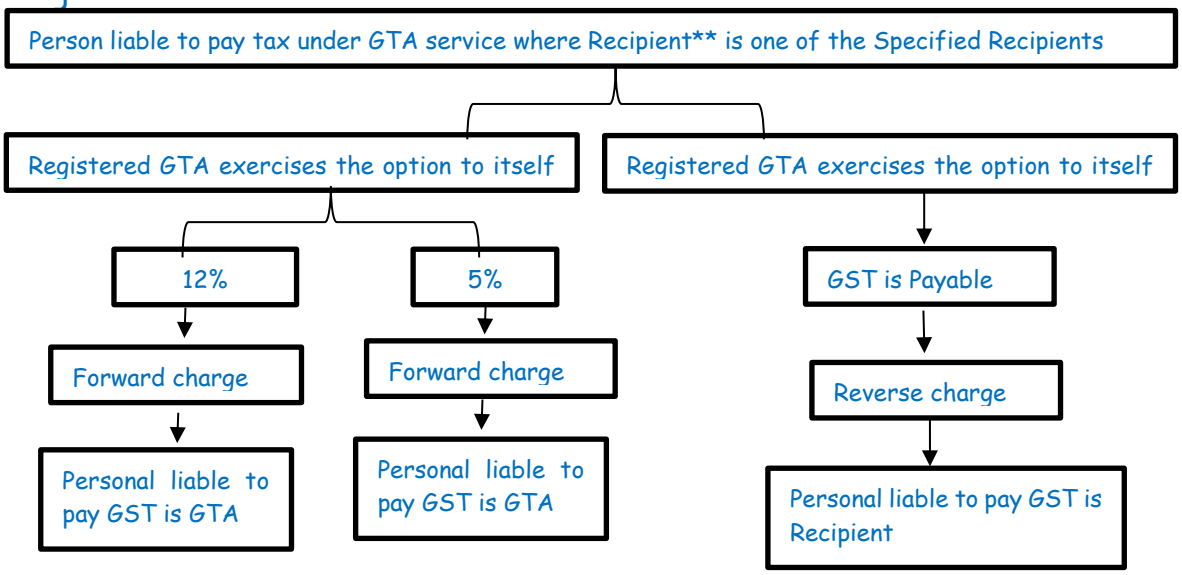
d. A "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.

e. Provisions of this notification, in so far as they apply to the Central Government and State Governments, shall also apply to the Parliament, State Legislatures, Courts and Tribunals.

GTA services are taxable :

i. @ 5% (2.5% CGST + 2.5% SGST/UTGST) provided GTA has not taken the Input tax credit (ITC) on goods and services used in supplying GTA service. Such services are normally taxable under reverse charge mechanism. However, GTA can exercise the option to pay tax under forward charge mechanism. In such a case, GTA has to take registration under the CGST Act, 2017 and has to issue a tax invoice to the recipient charging GST @ 5% and has to make a prescribed declaration on such invoice issued by him.

ii. @ 12% (6% CGST + 6% SGST/UTGST) provided GTA pays GST under forward charge. There is no restriction on availing ITC on goods and services used in supplying GTA service by GTA.



** Recipient of GTA service is the person who pays/is liable to pay freight for transportation of goods by road in goods carriage, located in the taxable territory.

Amendments in GST in real estate sector [Notification No. 07/2019-CT (R) dated 29-03-2019/ Notification No. 07/2019 IT (R) dated 29-03-2019]:

Earlier, the effective rate of GST on real estate sector was 8%/ 12% with ITC. With effect from 01-04-2019, the effective rates of GST for the new projects have been brought down to a large extent. However, the promoters/builders have been given a one-time option to continue to pay tax at the old rates on ongoing projects (buildings where construction and actual booking both have started before 01-04-2019) which have not been completed by 31-03-2019

New effective rates of GST for the new projects by promoters are as follows:

i. New rate of 1% without ITC on construction of affordable houses (area 60 sqm in metros/ 90 sqm in non- metros and value upto ₹45 lakh).

ii. New rate of 5% without ITC shall be applicable on construction of:

   a. all houses other than affordable houses, and

b. commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions:

Above tax rates shall be available subject to following conditions:

a. Input tax credit shall not be available.
b. 80% of inputs and input services (other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be purchased from registered persons.

However, if value of inputs and input services purchased from registered supplier is less than 80%, promoter has to pay GST on reverse charge basis, under section 9(4) of the CGST Act, at the rate of 18% on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).

Further, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement on reverse charge basis, under section 9(4) of the CGST Act, at the applicable rate which is 28% (CGST 14% + SGST 14%) at present.

Moreover, GST on capital goods shall be paid by the promoter on reverse charge basis, under section 9(4) of the CGST Act at the applicable rates.

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

Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.

The liability to pay tax on TDR, FSI, long term lease (premium) has been shifted from land owner to builder under the reverse charge mechanism (RCM).

Circular No. 130/2019 dated 31-12-2019	Reverse Charge Mechanism (RCM) on renting of motor vehicles designed to carry passengers: RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier is other than a body-corporate and does not issue an invoice charging GST @ 12% from the service recipient, and supplies the service to a body corporate.

i. Suppliers of service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient have an option to pay GST either at 5% with limited ITC (of input services in the same line of business) or 12% with full ITC.

ii. When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. There are only two rates applicable on the service of renting of vehicles, 5% with limited ITC and 12% with full ITC. The only interpretation of the notification entry in question which is not absurd would be that –

a) where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and

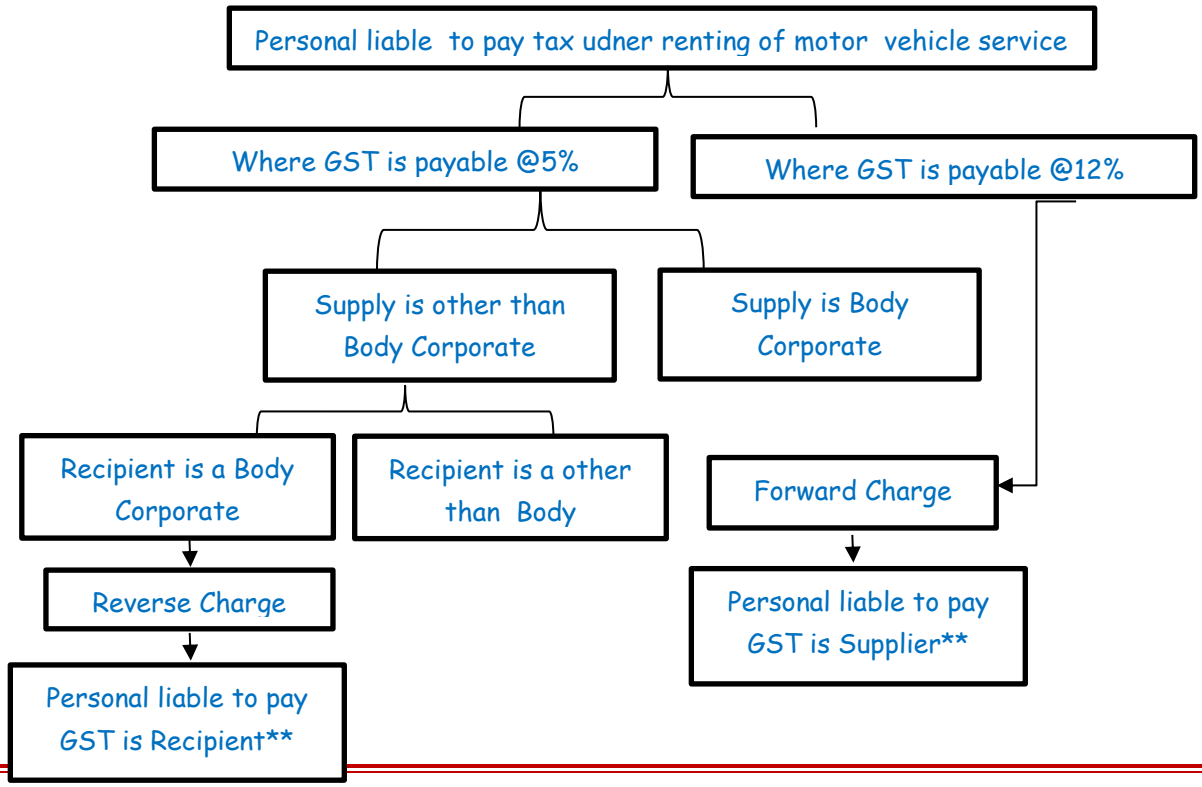
b) where the supplier of the service doesn't charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.

(iii) Though a supplier providing the service to a body corporate under RCM may still be paying GST @ 5% on the services supplied to other non body corporate clients, to bring in greater clarity, serial No. 15 of the notification No. 13/2017-CT (R) dated 28-6-2017 has been amended vide notification No. 29/2019CT (R) dated 31-12-2019 to state that RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:–

a. is other than a body-corporate;

b. does not issue an invoice charging GST @ 12% from the service recipient; and

c. supplies the service to a body corporate.



** It is important to note here that when any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. Thus, in this case, the supplier does not issue an invoice charging GST @ 12% (6% CGST+6% SGST/UTGST or 12% IGST) from the service recipient.

Service of transport of passengers is distinct from service of renting of a vehicle that is used for transport. 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, it shall be liable to pay GST on the same under RCM. —Circular No. 177/09/2022-TRU dated 03-08-2022

Issue	Clarification
Whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966). Renting of Motor vehicle service : Renting of motor vehicle with operator for transport of passengers falls under Heading 9966. 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. 'Passenger transport services' on the other hand fall under Heading 9964. According to the explanatory notes Heading 9964 covers passenger transport services over pre-determined routes on pre-determined schedules. Therefore, a clear distinction exists in service of transport of passengers and renting of a vehicle that is used for transport.	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 Heading 9966 i.e. '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. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent. However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 i.e. passenger transportation services and the body corporate shall not be liable to pay GST on the same under RCM.

Services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity are not taxable under RCM - Circular No. 201/13/2023-GST dated 1-8-2023 :

Issue	Clarification :
Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism.	i. Entry No. 6 of notification No. 13/2017-CTR, dated 28-06-2017 provides that tax on services supplied by director of a company or a body corporate to the said company or the body corporate shall be paid by the company or the body corporate under Reverse Charge Mechanism. ii. It is hereby clarified that 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. 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.

6. What do you mean by E-Commerce.Who are E-commerce operator.Explain the liability of E- Commerce operator to to pay tax on notified Service.

Ans- The relevant provisions are discussed as under-

(1) "Electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network. [Section 2(44)]

(2) "Electronic commerce operator" (ECO) means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. [Section (2(45)]

ECO is engaged in facilitating the supply of any goods and/or services or in providing any information or any other services incidental to or in connection there with but shall not include persons engaged in supply of such goods and/or services on their own behalf. ECO display products as well as services which are actually supplied by some other person to the consumer, on their electronic portal. The consumers buy such goods/services through these portals. On placing the order for a particular product/ service, the actual supplier supplies the selected product/service to the consumer. The price/ consideration for the product/ service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of commission by the ECO.

(3) E-Commerce operator liable to pay tax on notified services [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 (ECO) as if he is the supplier liable for paying the tax in relation to the supply of such services.

No physical presence of e-commerce operator in the taxable territory – Representative liable to pay GST : Where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

No representative in taxable territory : Where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

It is important to note that this exception is carved out only in respect of supply of services through an e-commerce operator and will not be applicable/ relevant to supply of any goods through an e-commerce operator.

	Categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator (ECO) :
Notification No. 17/2017-CT (Rate) dated 28-06-2017 w.e.f.01-07-2017	the tax on intra-State supplies shall be paid by the electronic commerce operator if such services are supplied through ECO – (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, or any other motor vehicle except omnibus; (ia) services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company; (ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration u/s 22(1) of the said CGST Act. (iii) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration u/s 22(1) of the said CGST Act. (iv) supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.

Explanation:

(i) "Radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).

(ii) "Maxicab", "motorcab", "motor cycle, motor vehicle and omnibus" shall have the same meanings as assigned to them respectively in Section 2(22), (25), (27), (28) and (29) of the Motor Vehicles Act, 1988.

As per Motor Vehicles Act, 1988,—

- ✓ "Maxicab" means any motor vehicle constructed or adapted to carry more than 6 passengers, but not more than 12 passengers, excluding the driver, for hire or reward.
- ✓ "Motorcab" means any motor vehicle constructed or adapted to carry not more than 6 passengers excluding the driver for hire or reward.
- ✓ "Motor car" means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage.
- ✓ "Motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimetres;
- ✓ "Omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;
- ✓ "Specified premises" means premises providing hotel accommodation service having declared tariff of any unit of accommodation above ₹ 7,500/- per unit per day or equivalent.

7. Explain the system of classification of goods and services under GST.

Ans- Need of classification: In order to determine the rate applicable on a particular supply of goods or services, one needs to first determine the classification of such goods or services. Classification of goods and services assumes significance since there are different rates prescribed for supply of different goods and services. Therefore, classification is crucial for determining the rate of tax applicable on a particular product or service.

"Classification of goods" means identification of the tariff item, sub-heading, heading and chapter in which a particular product will be classified.

Tariff item, sub-heading, heading and chapters referred in the Schedules of rate notification for goods under GST are the Tariff item, sub-heading, heading and chapters of the First Schedule to the Customs Tariff Act, 1975.

Harmonised System of nomenclature : Indian Customs Tariff is based on Harmonized System of Nomenclature (HSN). It is a multipurpose international product nomenclature developed by the World Customs Organization (WCO) for the purpose of classifying goods across the World

in a systematic manner. It comprises of about 5,000 commodity groups; each identified by a 6 digit code [code can be extended], arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification. India has developed an 8-digit code of HSN.
Rules for interpretation of tariff : Along the lines of HSN, the Indian Customs Tariff has a set of Rules of Interpretation of the First Schedule and General Explanatory notes. These rules and the general explanatory notes give clear direction as to how the nomenclature in the schedule is to be interpreted. These Rules for Interpretation including section and chapter notes and the General Explanatory Notes of the First Schedule apply to the interpretation of the rate notification for goods under GST also.

Consequently, under GST, goods are classified on the basis of HSN in accordance with the Rules for the Interpretation of the Customs Tariff. Once classification for a product has been determined on this basis, applicable rate has to be determined as per the rate prescribed in the rate notification issued under GST.

Classification of services : A new Scheme of Classification of Services has been devised under GST. It is a modified version of the United Nations Central Product Classification. Under this scheme, the services of various descriptions have been classified under various sections, headings and groups. Chapter 99 has been assigned for services. This chapter has following sections:

Section

5 : Construction Services Section

6 : Distributive Trade Services; Accommodation, Food and Beverage Service; Transport Services; Gas and Electricity Distribution Services Section

7 : Financial and related services; real estate services; and rental and leasing services Section

8 : Business and Production Services Section

9 : Community, social and personal services and other miscellaneous services

Each section is divided into various headings which is further divided into Groups. Its further division is made in the form of 'Tariff item'/ Service Codes.

Rate of tax is determined in accordance with the Service Code in which the service is classified.

LEVY AND COLLECTION OF IGST

8. Explain the concept of levy and collection of IGST.

Ans- Levy and collection [Section 5 of IGST Act,2017]:

(1) Levy and collection of IGST - On all inter-State supplies of goods or services or both [Section 5(1)] :

There shall be levied a tax—

- ✓ called the integrated goods and services tax [IGST]
- ✓ on all inter-State supplies of— –
  - goods, or

- services, or
- both,

except on the supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or notified spirit used for manufacture of alcoholic liquor; for human consumption,

- ✓ on the value determined under Section 15 of the CGST Act, and
- ✓ at such rates, not exceeding 40%, as may be notified by the Government on the recommendations of the Council, and
- ✓ collected in such manner as may be prescribed, and
- ✓ shall be paid by the taxable person.

The analysis of provisions of Section 5(1) are as under :

(a) Charge is on supply of goods or services or both : Every supply will be liable to tax. Supply should involve goods and/ or services – viz., either as wholly goods or wholly services.

(b) Inter-State supplies liable to IGST : IGST is leviable on all inter-State supplies of goods or services or both except alcoholic liquor for human consumption and un-denatured extra neutral alcohol or notified spirit used for manufacture of alcoholic liquor; for human consumption. Thus, inter-State supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or notified spirit used for manufacture of alcoholic liquor; for human consumption is outside the purview of IGST.

(c) Rate of tax : The rate of tax will be as specified in the notification that would be issued in this regard, subject to a maximum of 40%.

- ✓ IGST rates prescribed for various goods : Broadly, 0%, 0.1%, 0.25%, 3%, 5%, 12%, 18% and 28% rates of IGST have been notified for goods.
- ✓ IGST rates prescribed for various services : Broadly, four rates of IGST have been notified for services, viz., 5%, 12%, 18% and 28%.

(d) Measure of levy – Value : IGST shall be levied on the value of supplies as determined under Section 15 of the CGST Act, 2017.

(e) Collection : Tax shall be collected in such manner as may be prescribed.

(f) Tax shall be payable by a 'Taxable Person' : The tax shall be payable by a 'taxable person'.

IGST on import of goods : As per proviso to Section 5(1), the integrated tax on goods, **other than** the goods as may be notified by the Government on the recommendations of the Council imported into India shall be levied and collected—per proviso to Section 5(1), the integrated tax on goods imported into India shall be levied and collected—

- ✓ in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975
- ✓ on the value as determined under the Customs Tariff Act, 1975
- ✓ at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962

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

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

However, the credit of such levy be allowed under GST law and thus, it is inherently embedded in the GST mechanism.

Note: While IGST on import of services would be leviable under the IGST Act, the levy of the IGST on import of goods would be levied under the Customs Act, 1962 read with the Custom Tariff Act, 1975.

Supply of online money gaming notified as the supply of goods on import of which, integrated tax shall be levied and collected u/s 5(1) of the IGST Act, 2017 – Notification No. 03/2023-IT, dated 29-09-2023 w.e.f. 01-10-2023,

In exercise of powers conferred under proviso to Section 5(1) of the IGST Act, 2017the Government, on the recommendations of the Council, notifies the supply of online money gaming as the goods on import of which the proviso to Section 5(1) of the said Act shall not apply, but on which integrated tax shall be levied and collected under Section 5(1) of the said Act.

(2) Levy of IGST on petroleum products – to be effective from notified date [Section 5(2)] : The integrated tax on the supply of–

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

shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. The levy under Section 5(1) is subject to provisions of Section 5(2).

(3) IGST to be paid on reverse charge basis by recipient on Notified Goods/ Services or Both [Section 5(3)] :

The Government may,–

- ✓ on the recommendations of the Council,
- ✓ by notification,
- ✓ specify categories of supply of goods or services or both,
- ✓ The tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and
- ✓ all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

List of services taxable under reverse charge, i.e. the services where tax is payable by the recipient Notification No. 10/2017-IT (R) dated 28-06-2017 has notified specified categories of supply of services wherein whole of the IGST shall be paid on reverse charge basis by the recipient of services. All the services which have been notified for reverse charge purposes under CGST Act vide Notification No. 13/2017-CT (R) dated 28-06-2017 w.e.f. 01-07-2017 have also been notified for reverse charge under IGST Act. Further, following two services are additionally included for IGST purposes.

Sl. No.	Category of supply of service	Supplier of service	Recipient of Service
1.	Any service supplied by any person who is located in a nontaxable territory to any person other than non-taxable online recipient.	Any person located in a nontaxable territory	Any person located in the taxable territory **other than** non-taxable online recipient.

(4) IGST to be paid on reverse charge basis by notified persons on notified goods/ services when received from unregistered supplier [Section 5(4)] :

The Government may,—

- ✓ on the recommendations of the Council,
- ✓ by notification,
- ✓ specify a class of registered persons who shall,
- ✓ in respect of supply of specified categories of goods or services or both received from an unregistered supplier,
- ✓ pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and
- ✓ all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

(5) E-Commerce operator liable to pay tax on notified services [Section 5(5)] : The Government may,—

- ✓ on the recommendations of the Council, by notification, specify categories of services,
- ✓ the tax on inter-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.

No physical presence of e-commerce operator in the taxable territory – Representative liable to pay GST : Where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

No representative in taxable territory : Where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Notified services for IGST Act are same as notified under CGST Act : Services which are notified under CGST Act have also been notified under IGST Act vide Notification No. 14/2017-IT (R) dated 28-06-2017.

Supplies of goods taxable under reverse charge, i.e. supply of the goods where tax is payable by the recipient Tax on following goods is payable under reverse charge vide Notification No. 4/2017 IT (R) dated 28.06.2017:

S. No.	Tariff item, sub-heading, heading or chapter	Descrpton of Supply of goods	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 (exmentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (exmentha sylvestries), Bergament oil (exmentha citrate), Mentha arvensis	Any unregistered person	Any registered person
4	5004 to 5006	Silk yarn	Any person who manufacture s silk yarn from raw silk or silk worm cocoons for	Any registered person

			supply of silk yarn	
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 vehicles, seized 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
8.	Chapter 72 to 81	Metal scrap [Inserted by Notification No. 06/2024-IT	Any unregistered person	Any registered person

		(Rate) dated 08-10-2024 w.e.f. 10-10-2024]		

Note – Tax payable on the goods under reverse charge is applicable for the May, 2024 examination. Therefore, students are advised to refer the above list for the examination purposes.

COMPOSITION SCHEME FOR GOODS

9. Explain the provisions relating to Composition scheme under CGST Act, 2017.

Ans: The provisions relating to Composition scheme under CGST Act, 2017 are discussed as under-

(1) Optional Scheme: Tax payment under this scheme is an option available to the taxable person. This scheme is available only to certain eligible taxable persons.

(2) Eligibility - If aggregate turnover is upto ₹ 1.5 crore ₹ 75 lakh in preceding financial year [Section 10(1)]: A registered person, whose aggregate turnover in the preceding financial year did not exceed 1.5 crore, will be eligible to opt for payment of tax under the composition scheme.

However, the aggregate turnover in the preceding financial year shall be ₹ 75 lakh in the case of an eligible registered person, registered under Section 25 of the said Act, in any of the following States, namely:-

Special Category States		
Arunachal Pradesh,	Manipur,	Meghalaya
Mizoram	Nagaland,	Sikkim
Tripura,	Uttarakhand.	
Note: In case of Assam, Himachal Pradesh and Jammu and Kashmir, the turnover limit will be ₹1.5 crore.		

"Aggregate turnover" means the aggregate value of -

all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis),

- ✓ exempt supplies,
- ✓ exports of goods or services or both, and
- ✓ inter-State supplies

of persons having the same Permanent Account Number, to be computed on all India basis,

but excludes -

- ✓ Central tax,
- ✓ State tax,
- ✓ Union territory tax,
- ✓ Integrated tax, and

✓ Cess. [Section 2(6)]

Computation of aggregate turnover for the purpose of eligibility limit [Explanation 1]: For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover"

- ✓ shall include the value of supplies made by such person from the 1" day of April of a financial year upto the date when he becomes liable for registration under this Act,
- ✓ but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

(3) Scheme will be applicable for all goods and restaurant services: Primarily, the composition scheme is available to the suppliers of goods and restaurant service, but composition suppliers are permitted to supply services upto a specified marginal value in the year of opting for composition. It must be noted that a taxable person cannot opt for payment of taxes under composition scheme say for supply of class of goods and services and opt for regular scheme of payment of taxes for supply of other classes of goods and services.

(4) Rates of composite tax [Section 10(1)]: A composition supplier may opt to pay, him under section 9(1), an amount of tax calculated at under mentioned rates- in lieu of the tax payable by

S.No.	Eligible Person	Rate of Tax cannot exceed (% turnover)		Total rate of tax cannot exceed
		CGST	SGST	
(a)	Manufacturer	0.5% of turnover in the state or Union territory	0.5% of turnover in the state or Union territory	1% of the turnover in the State or Union territory
(b)	Restaurant service	2.5% of the turnover in the state or Union territory	2.5% of the turnover in the state or Union territory	5% of the territory in the State or Union territory
(c)	Other Suppliers	0.5% of turnover of taxable supplies of goods and service in the state or Union territory	0.5% of turnover of taxable supplies of goods and service in the state or Union territory	1% of the turnover of taxable supplier of goods and service in the state or Union territory

Services can be supplied by the composition suppliers [Second Proviso to Section 10(1)]: A person who opts to pay tax under (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II i.e. restaurant services), of value –

(a) not exceeding 10% of turnover in a State or Union territory in the preceding financial year; or

(b) ₹5,00,000,

whichever is higher.

Explanation: The value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.

Example: Tolaram is engaged in supply of goods. His aggregate turnover in preceding FY is ₹ 110 lakh.Since his aggregate turnover in the preceding FY does not exceed ₹1.5 crore, he is eligible for composition scheme in current FY. Further, in current FY, he can value of not exceeding: supply services [other than restaurant services] upto a value of not exceeding.

(a) 10% of 110 lakh, i.e. 11 lakh

OR

(b) 5 lakh,

whichever is higher. Thus, he can supply services upto a value of 11 lakh in current FY. If the value of services supplied exceeds 11 lakh, he becomes ineligible for the composition scheme and has to opt out of the composition scheme.

"Turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, UT tax, integrated tax and cess. [Section 2(112)]

Supplies to be excluded for determining turnover in State/ UT for determining payment of tax [Explanation 2]: For the purposes of determining the tax payable by a person under this section, "Turnover in State or turnover in Union territory" shall not include the value of following supplies, namely: -

(i) supplies from the 1 day of April of a financial year upto the date when such person becomes liable for registration under this Act, and

(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

(5) Persons not eligible to opt for Composition Scheme [Section 10(2)]: Broadly, six categories of registered person are not eligible to opt for the composition scheme. These are-

(a) supplier of services other than those mentioned in point no. 4 above.

(b) supplier of goods or services which are not taxable under the CGST Act/SGST Act/UTGST Act;

(c) an inter-State supplier of goods or services;

(d) person supplying goods or services through an electronic commerce operator who is required to collect tax at source under Section 52;

(e) manufacturer of certain notified goods; and

(f) casual taxable person or a non-resident taxable person.

Ineligible Manufacturers: The manufacturer of following goods will not be eligible to opt for composition scheme :

S.No.	Tariff item, sub-heading , heading or Chapter	Description
1.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2.	2106 90 20	Pan masala
2A.	2202 10 10	Aerated Water
3.	24	All goods,i.e. Tobacco and manufactured tobacco substitutes
4.	6815	Fly ash bricks; Fly ash aggregates; Fly ash blocks
5.	6901 00 10	Bricks of fossil meals or similar siliceous earths
6.	6904 10 00	Building bricks
7.	6905 10 00	Earthen or roofing tiles

There is no restriction on Composition Supplier to procure goods from inter-State suppliers.

(6) Applicable for all transactions of registered person with same PAN [Section 10(2)]: All registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one registered person opts for normal scheme, others become ineligible for composition scheme.

Example: If a taxable person has the following businesses separately registered-

- ✓ Sale of footwear (Registered in Karnataka)
- ✓ Sale of mobiles (Registered in Karnataka)
- ✓ Sale of ready-made garments (Registered in Rajasthan)

In the above scenario, the composition scheme would be applicable for all the 3 units. Taxable person will not be eligible to opt for composition scheme say for sale of footwear and sale of mobiles and opt to pay taxes under the regular scheme for Ready-made garments.

(7) Option lapses if aggregate turnover exceeds ₹ 1.5 crore/₹ 75 lakh [Section 10(3)]: The benefit of composition scheme can be availed up to the aggregate turnover of ₹1.5 crore/75 lakh in current financial year. The option availed of by a registered person under Section 10(1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit of ₹ 1.5 crore/ ₹ 75 lakh.

(8) Composition tax not to be Collected from Recipients [Section 10(4)]: A taxable person to whom the provisions of composition scheme applies shall not collect any tax from the recipient on supplies made by him. It means that a composition scheme supplier cannot issue a tax invoice.

(9) Input tax credit cannot be Availed [Section 10(4)]: A taxable person to whom the provisions of composition scheme applies shall not be entitled to any credit of input tax.

(10) Penal Consequences [Section 10(5)]: If the proper officer has reasons to believe that a taxable person has paid tax under composition scheme despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of Section 73 or Section 74 or section 74A [Inserted by the Finance (no.2) Act, 2024 w.e.f. 01-11-2024] shall be applicable for determination of tax and penalty.

(11) Composition scheme not applicable for tax payable under Reverse Charge Mechanism (RCM): It is important to note that for any tax payable under reverse charge mechanism, the option of payment under this scheme will not be available. Rate of tax payable on supplies taxable under RCM will be regular rates and not the composition rate.

(12) Customer not entitled to take credit of Composition Tax: Customer who buys goods from registered person who is under composition scheme is not eligible for composition input tax credit because a composition scheme supplier cannot issue a tax invoice.

COMPOSITION SCHEME FOR SERVICES

10. Explain the provisions relating to composition scheme for service suppliers who are not eligible to opt for composition scheme under Section 10(1) and 10(2) of the CGST Act, 2017.

Ans: Composition scheme for services [Section 10(2A)]: The relevant provisions are discussed as under-

(1) Composition scheme for services suppliers - Optional scheme: Section 10(2A) has provided an option to a registered person whose aggregate turnover in the preceding financial year is upto 50 lakh and who is not eligible to pay tax under section 10(1), to pay tax @ 6% (3% CGST and 3% SGST/UTGST). Thus, traders and manufacturers of goods and restaurant service providers who are eligible for composition scheme u/s 10(1) (even if not opted) will not enter this facility.

(2) Conditions: A registered person can claim the benefit of this scheme provided he complies with the following conditions:

(a) His aggregate turnover in the preceding financial year must not exceed 50 lakh. Thus, the registered persons intending to opt for this scheme in the Financial Year 2024-25 should not have aggregate turnover of more than 50 lakhs during the Financial Year 2023-24;

Computation of aggregate turnover for the purpose of eligibility [Explanation 1]: For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this scheme, the expression "aggregate turnover" –

- ✓ shall include the value of supplies made by such person from the 1" day of April of a financial year upto the date when he becomes liable for registration under this Act,
- ✓ but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

(b) He is not engaged in making any supply of goods or services which are not leviable to tax under this Act;

(c) He is not engaged in making any inter-State outward supply – neither of goods nor of services.

(d) He is not engaged in making any supply of geeds or services through an electronic commerce operator who is required to collect tax at source u/s 52;

(e) He is not a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council,
In composition scheme under section 10(1), condition is that the supplier should not be engaged in manufacture of notified goods.

(f) He is not a casual taxable person or a non-resident taxable person.

The supplier of following goods will not be eligible to opt for this scheme

S.No.	Tariff item, sub-heading heading or chapter	Description
1.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2.	2106 90 20	Pan Masala
2A,	2202 10 10	Aerated Water
3.	24	All goods,i.e Tobacco and manufactured tobacco substitutes

(3) Applicable for all transactions of registered person with same PAN: Where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for this scheme unless all such registered persons opt to pay tax under this scheme.

(4) Rates of tax: The rate of tax under this scheme levy is as under-

Eligible Person	Rate of Tax cannot exceed (% of turnover)		Total rate of tax cannot exceed
	CGST	SGST	
Supply supplier and mixed supplier	3% of the turnover of supplies of goods and supplies in the	3% of the turnover of supplier of goods and services in the	6% of the turnover supplier of goods and services in the state or Union territory.

	state or Union territory.	state or Union territory.	

Supplies to be excluded for determining turnover in State/ UT for determining payment of tax [Explanation 2]: For the purposes of determining the tax payable by a person under this section, "Turnover in State or turnover in Union territory" shall not include the value of following supplies, namely: -

(i) supplies from the 1 day of April of a financial year upto the date when such person becomes liable for registration under this Act, and

(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

(5) Option lapses if aggregate turnover exceeds 50 lakh [Section 10(3)]: **The** benefit of composition scheme can be availed up to the aggregate turnover of 50 lakh in current financial year. The option availed of by a registered person under Section 10(2A) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit of ₹ 50 lakh.

(6) Composition tax not to be Collected from Recipients [Section 10(4)]: A taxable person to whom the provisions of composition scheme applies shall not collect any tax from the recipient on supplies made by him. It means that a composition scheme supplier cannot issue a tax invoice.

(7) Input tax credit cannot be Availed [Section 10(4)]: A taxable person to whom the provisions of composition (scheme applies shall not be entitled to any credit of input tax.

(8) Penal Consequences [Section 10(5)]: If the proper officer has reasons to believe that a taxable person has paid tax under composition scheme despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of Section 73 or Section 74 or section 74A [Inserted by the Finance (no.2) Act, 2024 w.e.f. 01-11-2024] shall be applicable for determination of tax and penalty.

(9) Composition scheme not applicable for tax payable under Reverse Charge Mechanism (RCM): It is important to note that for any tax payable under reverse charge mechanism, the option of payment under this scheme will not be available. Rate of tax payable on supplies taxable under RCM will be regular rates and not the composition rate.

(10) Customer not entitled to take credit of Composition tax: Customer who buys goods from registered person who is under composition scheme is not eligible for composition input tax credit because a composition scheme supplier cannot issue a tax invoice.

3. Briefly explain the procedural requirements for opting for composition scheme.

Ans. Intimation for composition levy [Rule 3 and Rule 4]:

i) **Option to pay composite tax along with application for registration – Deemed intimation for Composition Scheme [Rule 3(2)]:** Any person who applies for registration may give an

option to pay tax under composition scheme in Part B of registration form viz. FORM GST REG-01, which shall be considered as an intimation to pay tax under the said Section.

Effective date of Composition Levy: As per Rule 4 of CGST Rules, 2017, such intimation shall be considered only after the grant of registration to the applicant and his option to pay tax under. composition levy shall be effective from the date from which registration is effective

ii) **Filing of intimation before the beginning of Financial Year [Rule 3(3)]: Any** registered person who opts to pay tax under Section 10 shall electronically file an intimation in prescribed form on the common portal prior to the commencement of the financial year for which the option to pay tax under the aforesaid Section is exercised.

Effective date of Composition Levy: As per Rule 4 of CGST Rules, 2017, the option to pay tax under composition levy shall be effective from the beginning of the Financial Year.

Furnishing of ITC declaration within 60 days: He shall furnish the statement in prescribed form [Form GST ITC-03] in accordance with the provisions of Rule 44(4) within a period of 60 days from the commencement of the relevant financial year.

iii) **One intimation applicable for all places in case of same PAN [Rule 3(5)]:** Any intimation in respect of any place of business in any State or Union territory shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

4. What are the Conditions and restrictions for composition levy.

Ans. Conditions and restrictions for composition levy [Rule 5]:

i) Conditions which are to be satisfied for Composition Levy [Rule 5(1)]: The person exercising the option to pay tax under Section 10(1) shall comply with the following conditions, namely:

(a) he is neither a casual taxable person nor a non-resident taxable person;

(b) the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under Section 9(4);

(c) he shall pay tax under Section 9(3)/(4) (reverse charge) on inward supply of goods or services or both;

(d) he was not engaged in the manufacture of goods as notified under Section 10(2)(e) i.e. ice cream, pan-masala, aerated water, tobacco, Fly ash bricks; Fly ash aggregates; Fly ash blocks,, Bricks of fossil meals or similar siliceous earths, Building bricks and Earthen or roofing tiles during the preceding financial year;

(e) he shall mention the words "composition taxable person, not eligible to collect tax on supplies" at the top of the bill of supply issued by him; and

(f) he shall mention the words "composition taxable person" on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

(g) **No need to file fresh intimation every year [Rule 5(2)]:** The registered person paying tax under Section 10 may not file a fresh intimation every year and he may continue to pay tax under the said Section subject to the provisions of the Act and these rules.

5. Explain the provisions regarding validity of composition scheme.

Ans. Validity of composition levy [Rule 6]:

(i) **Option valid – Till satisfaction of Conditions [Rule 6(1)]:** The option exercised by a registered person to pay tax under Section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said Section and under these rules.

(ii) **Mandatory cessation of Composition levy on Violation of Conditions [Rule 6(2)]:** The composite taxable person shall be liable to pay tax under normal scheme from the day he ceases to satisfy any of the conditions mentioned in Section 10 or the provisions of this Chapter.

He shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM GST CMP-04 within 7 days of the occurrence of such event.

(iii) **Application for Withdrawal from Scheme [Rule 6(3)]:** The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04, duly signed or verified through EVC, electronically on the common portal.

(iv) **SCN for cessation of option on Violation of Conditions [Rule 6(4)]:** Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under Section 10 or has contravened the provisions of the Act or Rules, he may issue a notice to such person in FORM GST CMP-05 to show cause within 15 days of the receipt of such notice as to why the option to pay tax u/s 10 should not be denied.

(v) **Reply to SCN [Rule 6(5)]:** The registered person shall reply to the show cause notice issued under Rule 6(4) in FORM GST CMP-06.

Final order within 30 days of Receipt of Reply: The proper officer shall issue an order in FORM GST CMP-07 within a period of 30 days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under Section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.

(vi) **Details of stock to be furnished on opting out of such Scheme [Rule 6(6)]:** Every person who has furnished an intimation under Rule 6(2) or filed an application for withdrawal under Rule 6(3) or a person in respect of whom an order of withdrawal of option has been passed in FORM GST CMP-07 under Rule 6(5), may electronically furnish at the

common portal, either directly or through a Facilitation Centre notified by the Commissioner, a statement in FORM GST ITC-01 containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, within a period of 30 days from the date from which the option is withdrawn or from the date of the order passed in FORM GST CMP07, as the case may be. He shall be entitled to avail input tax credit in respect of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him and on capital goods held by him on the date of withdrawal.

(vii) **Withdrawal applies to all units [Rule 6(7)]:** Any intimation or application for withdrawal under Rule 6(2) or (3) or denial of the option to pay tax under Section 10 in accordance with Rule 6(5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

(viii) **Penalty provisions in case of irregular availment of the composition scheme:** If a taxable person has paid tax under the composition scheme though he was not eligible for the scheme, the person would be liable to penalty and the provisions of Section 73 or 74 of the CGST Act shall be applicable for determination of tax and penalty.

Circular No 77/51/2018GST dated 31-12-2018	**Effective date in case of denial of composition option by tax authorities:** In case of denial of option to pay tax under composition levy by the tax authorities, it has been clarified that the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities. However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/ CGST Rules.

6. Explain the manner of submission of return by the composition/presumptive scheme supplier.

Ans. Form and manner of submission of statement and return [Rule 62 of CGST Rules, 2017]:

i) **Composition/Presumptive scheme taxpayers to file return annually and make payment quarterly:** Every registered person paying tax under section 10 shall electronically furnish
   a) a statement in the prescribed form (GST CMP-08) containing details of payment of selfassessed tax, for every quarter (or part of the quarter), by 18th day of the month succeeding such quarter; and
   b) a return (GSTR 4) for every financial year (or part of the financial year), on or before 30th day of June following the end of such financial year.

ii) **Payment of tax, interest, etc. by electronic cash ledger [Rule 62(2)]:** Every registered person furnishing the statement under Rule 62(1) shall discharge his liability towards tax or interest payable by debiting the electronic cash ledger.

iii) **Contents of information [Rule 62(3)]:** The return furnished shall include the

(a) invoice wise inter-State and intra-State inward supplies received from registered and unregistered persons; and

(b) consolidated details of outward supplies made.

iv) **Obligation to furnish additional returns by composition/presumptive scheme supplier who opts under the scheme from beginning of Financial Year [Rule 62(4)]:** A registered person who has opted to pay tax u/s 10 from the beginning of a financial year shall, where required, furnish the details of outward and inward supplies and return under rule 59, 60 and 61 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

ITC not available [Explanation] Here, the person shall not be eligible to avail ITC on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme.

v) **Furnishing of details on opting out of composition scheme [Rule 62(5)]:** A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish a statement in the prescribed form for the period for which he has paid tax under the composition scheme till 18th day of the month succeeding the quarter in which the date of withdrawal falls and furnish GSTR 4 for the said period till the **30th day of June** following the end of the financial year during which such withdrawal falls.

TOPIC REFERENCER

- *Need for determination of place of supply.....*
- *Definitions*
- *Inter- State Supplies*
- *Intra- State Supplies*
- *Place of Supply of Goods*
- *Place of Supply of Service*
- *Online Information Datebase Access and Retrieval (OIDAR) Service*

1. What is the need for determination of place of supply under GST.OR Explain the significance of the place of supply of goods and services under GST.

Ans- The need for determination of place of supply under GST is as under-

(1) Determination of tax to be levied : The concept of place of supply helps in determining whether a transaction is inter-State or intra State. Which tax is to be levied (IGST or CGST and SGST/UTGST) will depend on whether a particular transaction is an inter-State supply or intra-State supply. Hence, every transaction will have to go through the test of provisions relating to the place of supply in order to determine which tax is to be levied.

If an inter-State transaction is wrongly treated as intra-State or vice-versa and tax is paid accordingly, the correct tax will need to be paid and refund claimed for tax wrongly paid. Though no interest is levied in such a case, procedural requirements increase and working capital gets blocked where the amount involved is huge. Hence, determining correct place of supply is of paramount importance.

(2) Purpose of place of supply provision: The purpose behind the place of supply provisions is two-fold:

(a) In case of cross-border transactions, to determine whether tax is to be levied on a particular transaction.

(b) In the case of domestic transactions, to determine whether a particular transaction is an interstate supply or an intra-State supply.

(3) Place of supply – based on destination/ Consumption Principle : Place of supply provisions have been framed for goods and services, keeping in mind the destination/ consumption principle. In other words, the place of supply is based on the place of consumption of goods or services. Consequently, the state where the 'goods are destined to', will get the GST revenue. Separate provisions for the determination of the place of supply in respect of domestic supplies and cross border supplies have been framed.

(4) Different principles in respect of goods and services : As goods are tangible, the determination of their place of supply, based on the consumption principle, is not difficult. Generally, the place of delivery of goods becomes the place of supply.

However, the services being intangible in nature, it is not easy to determine the exact place where services are supplied due to following factors :

- ✓ There can be an alteration in the manner of delivery of service.
  For example, repair or maintenance of software could be changed from onsite to online, telecom service could change from post-paid to pre-paid or billing address of the customer could be changed, banking services earlier required customer to go to the bank, now the customer can avail service from anywhere.
- ✓ Service provider, service receiver and the service provided may not be ascertainable or may easily be suppressed as nothing tangible moves and there would hardly be any trail.
- ✓ For supplying a service, a fixed location of service provider is not mandatory and the service recipient may receive service even while on the move. The location of billing could be changed overnight
- ✓ Sometimes the same element of service may extend to more than one location, for example, construction or other services in respect of a railway line, a national highway or a bridge on a river which originates in one State and ends in the other State.
  Similarly, a copyright for distribution and exhibition of film could be assigned for many states in a single transaction or an advertisement or a programme is broadcasted across the country at the same time.
  An airline may issue seasonal tickets, containing say 5 leafs which could be used for travel between any two locations in the country.
  The card issued by New Delhi metro could be used by a person located in Noida, or New Delhi or Faridabad, without the New Delhi metro being able to distinguish the location or journeys at the time of receipt of payment.
- ✓ Services are continuously evolving and thus, continue to pose newer challenges.
  For example, 15-20 years back no one could have thought of DTH, online information, online banking, online booking of tickets, internet, mobile telecommunication etc.

(5) Proxies to determine place of supply of services : The various elements involved in a service transaction can be used as proxies to determine the place of supply. The same are discussed below:

(a) location of service supplier;
(b) location of service receiver;
(c) place where the activity takes place/ place of performance;
(d) place where the service is consumed; and
(e) place/person to which/whom actual benefit flows.

Proxy which gives more appropriate result than others is used for determining the place of supply: An assumption or proxy which gives more appropriate result than others for determining the place of supply, can be used for determining the place of supply.

(6) Distinction between B2B and B2C Transactions : A distinction has been made between B2B (Business to Business) & B2C (Business to Consumer) transactions, as B2B transactions are wash transactions since the recipient, also being a registered person, avails ITC and no real revenue accrues to the Government.

For B2B transactions the location of recipient determines the place of supply in almost all situations as further credit is to be taken by recipient. The recipient usually further supplies to another customer.

The supply is consumed only when a B2B transaction is further converted into B2C (business to consumer) transaction. In respect of B2C transactions, the supply is made to an unregistered person who consumes the same and cannot avail ITC, therefore, the taxes paid actually reach the Government.

DEFINITIONS

Term	Definitions
Place of supply	It means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act. [Section 2(86)]
Location of the supplier of services	It means,— (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business; (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment; (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and (d) in absence of such places, the location of the usual place of residence of the supplier. [Section 2(71) of CGST Act, 2017 & Section 2(15) of IGST Act, 2017] Broadly, it is the registered place of business or the fixed establishment of the supplier from where the supply is made. Sometimes, a service provider has to go to a client location for providing service. However, such place would not be considered as the location of the supplier. It has to be either a regular place of business or a fixed establishment, which is having sufficient degree of permanence and suitable structure in terms of human and technical resources. Note: It must be noted that the term 'location of supplier of goods' has not been defined in the Act.
Location of the recipient of services	It means,— (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

	(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment; (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and (d) in absence of such places, the location of the usual place of residence of the recipient. [Section 2(70) of CGST Act, 2017 & Section 2(14) of IGST Act, 2017] Note: It must be noted that the term 'location of recipient of goods' has not been defined in the Act.
Place of business	Includes— (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or (b) a place where a taxable person maintains his books of account; or (c) a place where a taxable person is engaged in business through an agent, by whatever name called. [Section 2(85)] Note: This is an inclusive definition and is applicable for both goods and services.
Fixed establishment	It means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs. [Section 2(50) of CGST Act, 2017 & Section 2(7) of IGST Act, 2017] Thus, following points are relevant— i. it is a place other than the registered place of business; ii. it has sufficient human and technical resources to supply and receive services, thus it is also a place of business; iii. temporary presence of staff by way of a short visit at a place cannot be called as fixed establishment; iv. the number of staff at a location is irrelevant and only the adequacy of the arrangement of human and technical resources to carry out the activities is to be considered; v. permanent nature of the arrangement and location need to be considered.
Usual place of residence	It means— (a) in case of an individual, the place where he ordinarily resides; (b) in other cases, the place where the person is incorporated or otherwise legally constituted. [Section 2(113)]

Address of delivery	It means the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both. [Section 2(2)]
Address on record	It means the address of the recipient as available in the records of the supplier. [Section 2(3)]

2. how will the Determination of establishment Most Directly Concerned with the Supply :be determine?

Ans-Determination of establishment Most Directly Concerned with the Supply : Normally in the case of multiple establishments of a person, it will be the establishment that actually supplies, or receives (i.e. uses or consumes), a service that would be treated as 'directly concerned' with the supply of service, notwithstanding the contractual position, or invoicing or payment.

Further, the same will depend on the facts and supporting documentation, specific to each case.

The documentation will include the following :

- ✓ the contract(s) between the supplier of service and receiver;
- ✓ where there are no written contracts, any written account (documents, correspondence/e-mail etc.) between parties which sets out in detail their understanding of the oral contract;
- ✓ in particular, for suppliers, from which establishment the services are actually supplied;
- ✓ in particular, for receivers, at which establishment the services are actually consumed, effectively used or enjoyed;
- ✓ details of how the business fits into any larger corporate structure;
- ✓ the establishment whose staff is actually involved in the execution of the job;
- ✓ performance agreements (which may be indicative both of the substance and actual nature of work performed at a particular establishment).

INTER-STATE SUPPLIES

3. What is meant by inter state suppliers: OR What the broad principles fir determining the supply of goods and Service in the course of inter state trade or commerce?

Ans-According to Section 7 of the IGST Act, 2017, the broad principles for determining the supply of goods and services in the course of inter state trade or commerce are :

(1) With reference to goods :

Where 'location of the supplier' and 'place of supply' are in different States/ Union territories – Inter-State Supply [Section 7(1)] : Supply of goods where—

- ✓ 'location of the supplier' and
- ✓ 'place of supply'

are in—

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce.

Section 7(1) is subject to the provisions of Section 10 : Section 7(1) is subject to the provisions of Section 10, it implies that the place of supply of goods shall be determined as per Section 10 of the IGST Act and thereafter, Section 7(1) would be applied.

Import of goods – Deemed to be inter-State Supply [Section 7(2)] : Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

"Customs frontiers of India" means the limits of a customs area as defined in Section 2 of the Customs Act, 1962.

"Customs area" means,—

- ✓ the area of a customs station or a warehouse; and
- ✓ includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities. [Section 2(11)]

Location of supplier of goods : Unlike in the case of services, location of supplier of goods is a term that is not defined in the law. This is not an oversight of the draftsmen but a deliberate intention of the lawmakers to leave it to the facts of each case to determine the 'location of supplier of goods'.

The location of supplier of goods is more accurately determined by the physical point where the goods are located under the control of the person wherever incorporated or registered, ready to be supplied instead of relying on a superfluous fact of the registered place of business.

For example : If a company incorporated in Delhi were to place purchase order on a manufacturer in Maharashtra to produce certain articles and sell it on ex-works basis with instructions to retain it until further instructions. This would be a case where the manufacturer in Maharashtra would like to charge IGST because the purchase order is from a customer in Delhi. In this supply, the location of supplier is Maharashtra and place of supply is also Maharashtra. Therefore, the manufacturer is required to charge CGST/ SGST because this supply does not involve any movement and due to the instructions (or lapse of time) delivery is complete in Maharashtra itself.

Now, if instructions are subsequently issued to dispatch the goods to a warehouse in Madhya Pradesh, the supply by the manufacturer having been completed long before these dispatch instructions are received, there is a new supply emerging from Maharashtra to Madhya Pradesh but the supplier in this instance will be the Company in Delhi and not by the manufacturer-supplier in Maharashtra. In this new supply, the location of supplier can either be Delhi – registered place of business – or Maharashtra – the physical point where the goods are situated. The company in Delhi that collects delivery of the goods in Maharashtra and supplies them from Maharashtra to Madhya Pradesh must be liable to pay IGST on this supply.

If however, the delivery by the manufacturer is not completed ex-works but retained to be delivered to Madhya Pradesh at the instruction of the customer in Delhi then it would be a case of supply from Maharashtra to Delhi and from Delhi to Madhya Pradesh.

(2) With reference to services :

Where 'location of the supplier' and 'place of supply' are in different States/ Union territories – Inter-State Supply [Section 7(3)] : Supply of services where—

- ★ the location of the supplier, and
- ★ the place of supply are in –
  - (a) two different States;
  - (b) two different Union territories; or
  - (c) a State and a Union territory,

shall be treated as a supply of services in the course of inter-State trade or commerce.

Section 7(3) is subject to the provisions of Section 12 : Section 7(3) is subject to the provisions of Section 12, it implies that the place of supply of services shall be determined as per Section 12 of the IGST Act and thereafter, Section 7(3) would be applied.

Import of service – Deemed to be inter-State supply [Section 7(4)] : Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

(3) Supply of goods where supplier located in India and the place of supply outside India – Deemed to be inter-State supply [Section 7(5)(a)] : Supply of goods and/or services, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

(4) Supply of goods/ and or services – to/by SEZ developer/ unit - Deemed to be inter-State supply [Section 7(5)(b)] : Supply of goods and/or services to or by a SEZ developer or an SEZ unit, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

(5) Supply of goods/ and or services – Not being an intra-State supply - Deemed to be inter-State supply [Section 7(5)(c)] : Supply of goods or services or both, in the taxable territory, not being an intra-State supply and not covered elsewhere in this Section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Thus, from the above discussion the following supplies shall be inter-State supplies :

(1) Supply of goods from one State or Union Territory to another State or Union Territory.
(2) Supply of services from one State or Union Territory to another State or Union Territory.
(3) Import of goods till they the cross customs frontiers of India.
(3) Import of services.
(4) Export of goods or services.
(5) Supply of goods/services to/by SEZ.
(6) Supplies to international tourists.
(7) Any other supply in the taxable territory which is not intra-State supply.

Circular No. 48/22/2018 GST dated 14-06-2018	Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/ SEZ unit will be treated as an inter-State supply.

Supply of goods/ and or services – Not being an intra-State supply - Deemed to be inter-State Supply : As per section 7(5)(b) of the IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply in the course of inter-State trade or commerce.

Services supplied in relation to immovable property – POS will be location of immovable property However, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.

Specific provision to prevail over general provision : It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision. In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies. It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an interState supply.

INTRA-STATE SUPPLIES

4. Explain the principals for determining when the Suppliers of goods and/or services shall be in the course of intra- state trade or commerce.

Ans- As per Section 8 of the IGST Act, 2017, the broad principles for determining the supplies of goods and/or services in the course of intra-State trade or commerce are :

(1) With reference to supply of goods :

Where the location of the supplier and the place of supply are in the same State or Union territory – Intra-State Supply [Section 8(1)] :

Supply of goods where—

- ✓ the location of the supplier, and
- ✓ the place of supply of goods

are in the same State or same Union territory shall be treated as intra-State supply.

Section 8(1) is subject to the provisions of Section 10: Section 8(1) is subject to the provisions of Section 10, it implies that the place of supply of goods shall be determined as per Section 10 of the IGST Act and thereafter, Section 8(1) would be applied.

Intra-State supply – Exceptions : The following supply of goods shall not be treated as intra-State supply, namely:–

(i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;

(ii) goods imported into the territory of India till they cross the customs frontiers of India; or

(iii) supplies made to a tourist referred to in Section 15.

"Special Economic Zone" shall have the same meaning as assigned to it in Section 2(za) of the Special Economic Zones Act, 2005. [Section 2(19)]

"Special Economic Zone developer" shall have the same meaning as assigned to it in Section 2(g) of the Special Economic Zones Act, 2005 and includes an Authority as defined in Section 2(d) and a Co-Developer as defined in Section 2(f) of the said Act. [Section 2(20)]

(2) With reference to supply of services :

Where 'location of the supplier' and 'place of supply' are in same State/ Union territory – IntraState supply [Section 8(2)] :

Supply of services where—

✓ the location of the supplier; and

✓ the place of supply of services

are in the same State or same Union territory shall be treated as intra-State supply.

Section 8(2) is subject to the provisions of Section 12 : Section 8(2) is subject to the provisions of Section 12, it implies that the place of supply of services shall be determined as per Section 12 of the IGST Act and thereafter, Section 8(2) would be applied.

Exception : The intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

5. Explain the provisions relating to supplies in territorial waters as per Section 9 of the IGST Act,2017

Ans - Supplies in territorial waters [Section 9 of GST Act,2017] Notwithstanding anything contained in this Act,–

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or

(b) where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

PLACE OF SUPPLY OF GOODS

Section	Nature of Transaction	Place of Supply
Place of supply of goods in domestic transactions i.e., within India : The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,–		

10(1)(a)	Where the supply involves MOVEMENT OF GOODS, whether by the supplier or by 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. Note: Thus, irrespective of the number of states the goods pass through during the course of its journey, the state in which the movement of goods terminates for delivery to the recipient is the place of supply of goods.
10(1)(b)	Where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise,	✓ It shall be deemed that the said third person has received the goods; and ✓ The place of supply of such goods shall be the principal place of business of such person. These transactions are also known as Bill to Ship transactions.
10(1)(c)	Where the supply does not involve movement of goods, whether by the supplier or the recipient,	Location of such goods at the time of delivery to the recipient.
10(1)(ca)	Where the supply of goods is made to a person other than a registered person	✓ Location as per the address of the said person recorded in the invoice issued in respect of the said supply and ✓ Location of the supplier where the address of the said person is not recorded in the invoice. ✓ Recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person. [Explanation]
10(1)(d)	Where the goods are assembled or installed at site,	Place of such installation or assembly.
10(1)(e)	Where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle,	Location at which such goods are taken on board.
10(2)	Where the place of supply of goods cannot be determined,	Shall be determined in such manner as may be prescribed.

6. How is the place of supply determined in respect of domestic transactions where supply involves movement of goods.

Ans- (1) Determination of place of supply in respect of domestic transactions where Supply involves Movement of Goods [Section 10(1)(a)] :

In case of supply involving movement of goods, the place of supply is the location of the goods at the time when the movement of goods terminates for delivery to the recipient.

The 'location of the goods' is a question of fact to be ascertained by observing the journey that the goods supplied make from their origin from supplier to termination with the recipient. This movement, however, can be undertaken by the supplier or recipient or even any other person after having disclosed the destination of the movement of goods.

It is important to understand that this provision does not apply in cases where there is no movement of goods. Also, the provision does not link itself to transfer of property in goods but to the movement of the goods.

Examples:

(i) Mr. A of Jaipur, Rajasthan sells 15 air-conditioners to Mr. B of Nasik, Maharashtra for delivery at Mr. B's place of business in Nasik. The place of supply is Nasik in Maharashtra.

(ii) Mr. X of Alwar, Rajasthan sells 15 motor pumps to Mr. Y of Surat, Gujarat for delivery at Mr. Y's place of business in Surat. The place of supply is Surat.

7. What will the place of supply if the goods are delivered by the supplier to a person on the direction of a third person ? OR How is the place of supply determined in respect of Bill to ship transactions.

Ans- The relevant provisions are discussed as under

(a) Applicability : Section 10(1)(b) of the IGST Act, 2017 lays down the provisions to determine the place of supply in cases where there is a tripartite arrangement of supply, commonly known as bill to ship to transactions or where there is a sale of goods in transit by the original buyer/ agents.

(b) Place of supply in respect of Bill to ship transactions – Principal Place of Business of Third Person : As per Section 10(1)(b) of the IGST Act, 2017, the place of supply shall be the principal place of business of third person and he shall be deemed to have received the goods if the following conditions are satisfied :

i. the goods are delivered by the supplier to recipient or any other person;

ii. the goods are thus delivered on the direction of a third person, who may or may not be an agent;

iii. the goods are delivered before or during the movement of the goods, either by way of transfer of documents of title to the goods or otherwise.

iv. Even though Section 2(93) of CGST Act defines recipient, inter alia, as the 'payer of the consideration'; under this provision, recipient is the one who actually collects the goods

and the third person is the one who enjoys privity with the supplier to be able to direct him to deliver the goods.

Where three parties are involved i.e. to say a supplier, a buyer who is not the recipient of goods (referred as third person) and the recipient who actually receives the goods on the directions of the buyer, a fiction is introduced by Section 10(1)(b) of IGST Act, 2017, where by the third person on whose direction the goods are delivered will be considered the recipient of the goods and the place of supply is deemed to be the principal place of business of the said third person (being the first buyer).

It is important to identify the two supplies involved in this transaction – by supplier to third person and by third person to recipient. This provision deals only with the first limb of supply i.e., supply by supplier to third person.

Example: Mr. X (a supplier registered in Rajasthan having principal place of business at Jaipur) asks Mr. Y of Surat, Gujarat to deliver 15 music system to his buyer Mr. Z at Bhopal, Madhya Pradesh. In this case, two supplies are involved, one between Mr. X and Mr. Z and other between Mr. Y and Mr. X.

While the former supply i.e. between Mr. X and Mr. Z is covered under Section 10(1)(a), the latter one i.e., between Mr. Y and Mr. X is covered under Section 10(1)(b). Accordingly, in this case, the place of supply of goods is not the location of delivery of such goods (Bhopal) but the principal place of business of third person i.e., principal place of business of Mr. X located at Jaipur.

8. How place of supply is determine in respect of domestic transactions where supply does not involve movement of goods.

Ans- Supply not involving movement of goods [Section 10(1)(c)] :

If the supply does not involve movement of goods, the place of supply is the location of goods at the time of delivery to the recipient.

Examples:

(i) Mr. X (Jaipur) has leased his machine (Cost ₹ 15,00,000) to Mr. Y (Dewas, Madhya Pradesh) for production of goods on a monthly rent of ₹ 30,000. After 18 months Mr. Y requested Mr. X to sell the machine to him for ₹ 9,00,000, which is agreed to by Mr. X. In this case, there will be no movement of goods and the same will be sold on 'as is where is basis'. Thus, the location of the machine at the time of such sale will be the place of supply i.e., Dewas.

(ii) KK Ltd. (Delhi) opens a new branch office at Noida, UP. It purchases a building for office from FDL Builders (Noida) along with pre-installed office furniture and fixtures. Though there will be no GST liability on purchase of building, office furniture and fixtures will be liable to GST. Since there is no movement of office furniture and fixtures, the place of supply of such goods is their location at the time of delivery to the recipient (KK Ltd.) i.e., Noida.

9. How is the place of supply determined in respect of domestic transactions where the supply of goods is made to a person other than a registered person.

Ans- Determination of place of supply where the supply of goods is made to a person other than registered person [Section 10(1)(ca)] : The place of supply of goods, other than supply of goods imported into, or exported from India, shall where the supply of goods is made to a person other than a registered person, shall, notwithstanding anything contrary contained in Section 10(1)(a)/(c), be –

- ✓ the location as per the address of the said person recorded in the invoice issued in respect of the said supply, and
- ✓ the location of the supplier where the address of the said person is not recorded in the invoice. Recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person. [Explanation]

Circular No. 209/3/2024-GST dated 26-06-2024	Clarification on the provisions of Section 10(1)(ca) of the IGST Act, 2017 relating to place of supply of goods to unregistered persons.

Place of supply of 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 ecommerce 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 ecommerce 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) of IGST Act, where the supply of goods is made to an unregistered person, the place of supply would be the location as per the address of the said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice.

Further, as per Explanation to the said clause, recording the name of the State of the said unregistered person on the invoice shall be deemed to be the recording of the address of the said person. Accordingly, it is clarified that in such cases involving supply of goods to an unregistered person, where the address of delivery of goods recorded on the invoice is different from the billing address of the said unregistered person on the invoice, the place of supply of goods in accordance with the provisions of section 10(1)(ca) of IGST Act, 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.

10. How is the place of supply determine in respect of domestic transactions where supply involved goods which are to be installed or assembled at site.

Ans-Supply involving installation or assembly of goods [Section 10(1)(d)] : If the supply involves goods which are to be installed or assembled at site, the place of supply is the place of such installation or assembly.

11. Determine place of supply where goods are supplied on board a convyance.

Ans-Goods supplied on Board a Conveyance [Section 10(1)(e)] :

Place of supply of goods supplied on board a conveyance like aircraft, train, vessel, motor vehicle is the location where such goods have been taken on board.

Place of supply of goods supplied on board a conveyance is determined under this provision even if the supply has been made by any of the passenger on board the conveyance and not by the carrier of the conveyance.

Examples:

(i) Mr. X (Mumbai) boards the Mumbai-Jaipur train at Mumbai. During the journey, he sells the goods at Kota which were taken on board by him at Mumbai. The place of supply of goods is the location at which the goods are taken on board i.e., Mumbai and not Kota where they have been sold.

(ii) Ms. S, an unregistered person, (New Delhi) is travelling from New Delhi to Kanpur, Uttar Pradesh in a train. The train starts at New Delhi and stops at three stations before reaching Kanpur. The goods were loaded into the train at Aligarh (Uttar Pradesh) – 2nd Station. Ms. S buys goods on board the train. The place of supply is the location at which the goods are taken on board i.e., Aligarh. The location at which Ms. S boards the train is irrelevant.

12. What do you mean by Import and Export of goods.

Ans-the relevant provisions are discussed as under-

(i) "Import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India. [Section 2(10) of IGST Act, 2017]
All imports are deemed as inter-State supplies and accordingly IGST is levied in addition to the applicable custom duties.

(ii) "Export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India. [Section 2(5) of IGST Act, 2017]
Under the GST Law, export of goods has been treated as :

- ✓ inter-State supply
- ✓ 'zero rated supply' i.e., the goods or services exported shall be relieved of GST levied upon them either at the input stage or at the final product stage.

13. Explain the provisions relating to determination of place of supply of goods imported into, or exported form india.

Ans-Place of supply of goods imported into, or exported from India Section 11 of IGST Act ,2017]

Section	Nature of Transaction	Place of Supply
The place of supply of goods imported into, or exported from India, shall be as under,–		
11(a)	Goods imported into India	Location of the importer.
11(b)	Goods exported from India	Location outside India.

14. Explain the provisions relating to determination of Supply of Service when location of supplier and recipient is in India.

Ans- place of supply of services where location of supplier and recipient is in India [Section 12 of the IGST Act, 2017]

Section	Nature of Transaction	Place of Supply
12(1)	Determination of the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.	
12(2)	General provisions : The place of supply of services,–	
	(a) made to a registered person	location of such person;
	(b) made to any person other than a registered person –	
	(i) where the address on record exists;	the location of the recipient
	(ii) in other cases.	the location of the supplier of services
12(3)	Services provided in relation to immovable property–	
	Services,– (a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or coordination of construction work; or	Location at which the immovable property or boat or vessel, as the case may be, is located or intended to be

	(b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or (c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or (d) any services ancillary to the services referred to in clauses (a), (b) and (c),	
	If the location of the immovable property or boat or vessel is located or intended to be located outside India,	Location of the recipient.
	Explanation: Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.	
12(4)	Restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery	Location where the services are actually performed.
12(5)	Services in relation to training and performance appraisal to,–	
	(a) a registered person,	Location of such person;
	(b) a person other than a registered person,	Location where the services are actually performed.
12(6)	Services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment	Place where the event is actually held or where the park or such other place is located.

	event or amusement park or any other place and services ancillary thereto,	
12(7)	Services provided by way of,–	
	(a) organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or	
	(b) services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,–	
	(i) to a registered person,	Location of such person;
	(ii) to a person other than a registered person,	
	If event is held in India	Place where event is actually held
	If event is held outside India	Location of the recipient.
	Explanation: Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.	
12(8)	Services by way of transportation of goods, including by mail or courier to,–	
	(a) a registered person,	Location of such person;
	(b) a person other than a registered person,	Location at which such goods are handed over for their transportation.
12(9)	Passenger transportation service to,–	
	(a) a registered person,	Location of such person;
	(b) a person other than a registered person,	Place where the passenger embarks on the conveyance for a continuous journey.
	Where the right to passage is given for future use and the point of	

	embarkation is not known at the time of issue of right to passage,	
	a) made to a registered person	location of such person;
	b) made to any person other than a registered person–	
	(i) where the address on record exists;	the location of the recipient
	(ii) in other cases.	the location of the supplier of services
	Return Journey to be treated as a separate journey : The return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time. [Explanation] "Continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued. [Section 2(3) of IGST Act, 2017] "Stopover" means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time. [Explanation]	
12(10)	Services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle,	Location of the first scheduled point of departure of that conveyance for the journey.
12(11)	Telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall,–	
	(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna,	Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
	Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed. [Explanation]	

	(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis,	Location of billing address of the recipient of services on the record of the supplier of services;
	(c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on prepayment basis through a voucher or any other means,–	
	(i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher,	Address of the selling agent or reseller or distributor as per the record of the supplier at the time of supply; or
	(ii) by any person to the final subscriber,	Location where such prepayment is received or such vouchers are sold;
	If such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment,	Location of the recipient of services on the record of the supplier of services.
	(d) in other cases,	
	(i) If address of the recipient as per the records of the supplier of services is available	Address of the recipient as per the records of the supplier of services and
	(ii) where such address is not available,	Place of supply shall be location of the supplier of services.
	Where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be the location of the supplier of services. [Applicable for 12(11) (a) to (d) above]	
	"Telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means. [Section 2(110) of CGST Act, 2017]	
12(12)	Banking and other financial services, including stock broking services to any person	Location of the recipient of services on the records of the supplier of services:
	If the location of recipient of services is not on the records of the supplier,	Location of the supplier of services.

12(13)	Insurance services,–	
	(a) to a registered person,	Location of such person;
	(b) to a person other than a registered person,	Location of the recipient of services on the records of the supplier of services.
12(14)	Advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement	✓ Place of supply shall be taken as being in each of such States or Union territories ✓ Value of such supplies specific to each State or Union territory shall be in proportion to: – • amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard, or • in the absence of such contract or agreement, on such other basis as may be prescribed.

15. Explain the general provisions of Section 12 of the IGST Act, 2017 for determination of place of supply of services where both location of supplier and location of recipient are in India.

Ans- The general provisions are discussed as under –

i. Applicability : Section 12 contains the provisions for determining the place of supply of services where both the location of supplier and the location of recipient are in India. If either of the two persons (supplier or recipient) is outside India, the place of supply is determined by Section 13. Thus, Section 12 applies to domestic supply of services. Section 12 lays down a general rule to determine the place of supply of services as well as few other rules to determine place of supply of certain specific services. Thus, place of supply is determined as per general rule in respect of services other than the ones covered by the specific rules. It is also important to note that in many cases, the Section provides different places of supply for a service supplied to registered and unregistered persons.

ii. General Rule/ Default Rule/ Residuary Rule [Section 12(2)] : The rule is applicable only if the supply of service does not fall in any of the specific cases provided under Section 12.

(a) Services supplied to registered person (B2B supply of services) : The rule provides that the place of supply of services made to a registered person is the location of the person receiving the services. Since the supplier has the GSTIN of the person receiving the service, the location of such GSTIN is the place of supply.

Thus, the default presumption for place of supply in respect of registered recipients (B2B supply of services) is the location of such person. Since the recipient is registered, address of recipient is always there and the same can be taken as proxy for place of supply.

(b) Services supplied to unregistered person (B2C supply of services) : If the service is supplied to an unregistered person, the place of supply is :

(i) the location of such unregistered person, if the address of the unregistered person is available in the records of the supplier

(ii) the location of the supplier of services in other cases.

The default presumption for place of supply in respect of unregistered recipients (B2C supply of services) is also the location of recipient. However, in many cases, the address of recipient is not available; in such cases, location of the supplier of services is taken as proxy for place of supply.

Examples:

a. Mr. Y (a Chartered Accountant registered in Jaipur) supplies service to his client Mr. R of Noida, Uttar Pradesh (registered in Uttar Pradesh). In this case, since the supply is made to a registered person, the place of supply is the location of the registered recipient i.e., Noida.

b. Mr. Y, an astrologer in Bhilwara, Rajasthan, (registered in Rajasthan) provides astrology services to his client Mr. C who is a resident of Uttar Pradesh but is not registered under GST. Here, if the address of Mr. C is available on the records of Mr. Y, location of Mr. C i.e., Uttar Pradesh will be the place of supply, else the location of Mr. Y, which is Bhilwara, will be the place of supply.

16. How is the place of supply of services provided directly in relation to immovable property determined when both the supplier of services and recipient of services are located in India.

Ans-Place of supply of services provided directly in relation to immovable property or boat or vessel [Section 12(3)]

In respect of the following services the place of supply shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located :

(a) Services directly in relation to an immovable property, including—

(i) services provided by—

- architects,
- interior decorators,
- surveyors,
- engineers, and
- other related experts or estate agents,

(ii) any service provided by way of grant of rights to use immovable property; or for carrying out or co-ordination of construction work; or

(b) Services by way of lodging accommodation by a –

- hotel,
- inn,

- guest house,
- home stay,
- club or campsite, by whatever name called, and including a
- house boat or
- any other vessel; or

(c) Services by way of accommodation in any immovable property for organising –

- any marriage or reception or matters related thereto,
- official, social, cultural, religious or business function

including services provided in relation to such function at such property; or

(d) any services ancillary to the services mentioned above.

Thus, in all above cases, location of the immovable property or the boat or the vessel is the place of supply.

If the services have been supplied for an immovable property which is yet to be constructed/ developed (e.g. architect's services for drawing the plan of a building), the place where such immovable property is intended to be located is the place of supply.

If Immovable property is located or intended to be located outside India – POS shall be the location of recipient : If the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Immovable property located at more than one State or Union Territory [Explanation] :

Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to—

- the value for services separately collected or determined in terms of the contract or agreement entered into in this regard, or
- in the absence of such contract or agreement, on such other basis as may be prescribed.

For this purpose Rule 4 of IGST Rules, 2017 has been inserted vide Notification No. 4/2018-IT w.e.f. 01-01-2019 which provides that the place of supply of services shall be determined in the following manner namely:-

	Nature of Transaction	Place of Supply
(i)	Services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called and services ancillary to such services :	
	Where such property is a single property located in two or more contiguous States or Union territories or both.	The supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory.
	Cases except where such property is a single property located in two or more	The supply of services shall be treated as made in each of the respective States or

	contiguous States or Union territories or both.	Union territories, in proportion to the number of nights stayed in such property.
(ii)	All other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc.	The supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory.
	Services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services.	The supply shall be treated as made in each of the respective States or Union territories, in proportion to the time spent by the boat or vessel in each such State or Union territory, determined on the basis of a declaration made to the effect by the service provider.
Illustrations:		
1.	Lodging accommodation by hotel/inn/guest house etc. and ancillary services excluding the property located in 2 or more contiguous States/ Union territories or both : A hotel chain X charges a consolidated sum of ₹ 30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as ₹ 20,000/- in the Union territory of Delhi and ₹ 10,000/- in the State of Uttar Pradesh	
2.	Other services provided in relation to immovable property : There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.	
3.	Lodging accommodation by a house boat or vessel and its ancillary services : A company C provides the service of 24 hours accommodation in a houseboat, which is situated both in Kerala and Karnataka inasmuch as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.	

17. How will the place of supply of construction services of a road to be constructed from Delhi to Mumbai covering multiple states be determined.

Ans- As per explanation to Section 12(3) of IGST Act, 2017 where the immovable property is located in more than one side ,the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in the is regard or in, the absence of such contract or agreement ,on such other reasonable basis as may be prescribed in this behalf.

Therefore, the place of supply of construction services of the road Delhi to Mumbai shall be in each of the states be the location where the services are actually performed

18. Explain the place of supply of performance based services for individuals.

Ans-Place of supply of performance based services [Section 12(4) of IGST Act, 2017]: The place of supply of –

- restaurant and catering services,
- personal grooming,
- fitness,
- beauty treatment,
- health service including cosmetic and plastic surgery,

shall be the location where the services are actually performed.

19. Explain the place of supply of training and performance appraisal services.

Ans - Place of the supply of training and performance appraisal services [Section 12(5) of IGST Act, 2017] Place of supply of services in relation to training and performance appraisal to –

(a) a registered person (i.e. B2B supplies), shall be the location of such person;

(b) a person other than a registered person (i.e. B2C supplies), shall be the location where the services are actually performed.

20. What would be the place of supply of services provided for admission of events.

Ans-Place of supply of services provided by way of ADMISSION to events or amusement parks or other places [Section 12(6)] of IGST Act, 2017 : The place of supply of services provided by way of –

✓ ADMISSION to following types of events —

- cultural,
- artistic,
- sporting,
- scientific,
- educational,
- entertainment

✓ admission to amusement park or any other place,

✓ services ancillary to the above mentioned services,

shall be the place where the event is actually held or where the park or such other place is located.

Services ancillary to the services of ADMISSION to the main event : These are the services which assist the recipient of the service to enjoy the main service conveniently. A service which does not constitute for a customer an aim in itself but a means of better enjoying the principal supply, is considered as a supply ancillary to the principal supply.

21. What would be the place of supply of services provided for organizing an event .

Ans-Place of supply of services provided by way of ORGANIZING an event and services incidental thereto [Section 12(7)] the place of supply of services provide by way of-

The place of supply of services provided by way of ,—

(a) ORGANISATION of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or

(b) services ancillary to ORGANISATION of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,—

(i) to a registered person, (ii) to a person other than a registered person,— • if event is held in India • if event is held outside India	Location of such person; Place where event is actually held Location of the recipient.

Event held in more than one State or Union Territory [Explanation] : Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to —

✓ the value for services separately collected or determined in terms of the contract or agreement entered into in this regard, or

✓ in the absence of such contract or agreement, on such other basis as may be prescribed i.e. by application of the generally accepted accounting principles. [Rule 5 of IGST Rules, 2017]

Example: An event management company E has to organise some promotional events in States S1 and S2 for a recipient R. 3 events are to be organised in S1 and 2 in S2. They charge a consolidated amount of ₹ 10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as ` 6,00,000/- in S1 and ₹ 4,00,000/- in S2 .

22. What would the place of supply of services provided for organizing an event, say IPL cricket series which is held in multiple states be?

Ans: In case of an event, if the recipient of service is registered, the place of supply of services for organizing event shall be the location of such person.

However, if the recipient is not registered, the place of supply shall be the place where event is held. Since the event is being held in multiple states and a consolidated amount is charged for such services, the place of supply shall be taken as being in each state in proportion to the value of services so provided in each state. (The Explanation clause to Section 12(7) of the IGST Act).

23. Explain the place of supply of services by way of transportation of goods.

Ans: Place of supply of services by way of transportation of goods [Section 12(8) of IGST Act, 2017]: The place of supply of-

Services by way of transportation of goods, including by mail or courier to,-	Place of Supply
(a) a registered person, (b) a person other than a registered person,	Location of such person; Location at which such goods are handed over for their transportation.

Examples:

(i) M/s. ABC Pvt. Ltd. is a registered company in Jaipur. It sends its courier to Mumbai through M/s. First Fly Courier Service. The recipient being registered person, the place of supply is the location of recipient Le Jaipur.

(ii) Mr. Y, an unregistered person, of Jaipur sends a courier from New Delhi to his friend in Pune, Maharashtra while he was on trip to New Delhi. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation i.e., New Delhi.

24. Explain the place of supply of passenger transportation service.

Ans: Place of supply of passenger transportation service [Section 12(9) of IGST Act, 2017]: The place of supply of passenger transportation service shall be determined as under-

Passenger transportation service to,-	
(a) a registered person, (b) a person other than a registered person,	Location of such person. Place where the passenger embarks on the conveyance for a continuous journey.
Where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, -	
(a) made to a registered person, (b) made to any person other than a registered person-	Location of such person.

(i) where the address on record exists; (ii) in other cases.	The location of the recipient. The location of the supplier of services.

- ✓ Return Journey to be treated as a Separate Journey [Explanation): The return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.
- ✓ "Continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued. [Section 2(3) of IGST Act, 2017]

"Stopover" means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time. [Explanation]

Examples:

i. Mr. A (registered person in Jaipur) travels from New Delhi to Bangalore in Airjet flight. Mr. A has bought the tickets for the journey from Airjet's office registered in New Delhi. The place of supply is the location of recipient te, Jaipur.

ii. Mr. A (an unregistered person) purchased from an aircraft operator, registered in Bengaluru, a single air ticket on Bengaluru – Pune – Ahmedabad – Pune – Bengaluru route with halt at Ahmedabad on either side. This will be treated as continuous journey. However, as per Explanation to Section 12(9), both the journeys onward and return shall be considered separately and taxed as follows:

Onward journey from Bengaluru – Pune Ahmedabad – here, since Mr. A is unregistered person, therefore, the place of supply shall be the place of embarkation of Mr. A for continuous journey. In this case, since Mr. A embarks at Bengaluru airport, therefore, the place of supply shall be Bengaluru. Since the airline is located in Bengaluru, it shall charge CGST/SGST.

Return journey from Ahmedabad – Pune – Bengaluru – in case of return journey, Mr. A shall embark at Ahmedabad airport and therefore, the place of supply shall be Ahmedabad. Here, since the airline is located in Bengaluru, therefore, it shall charge IGST on the return fare.

Examples of issue of right to passage for future use-point of boarding not known at the time of issue of right:

(i) An airline may issue seasonal tickets, containing say 10 leafs which could be used for travel between any two locations in the country.

(ii) The card issued by New Delhi metro could be used by a person located in Noida, or New Delhi or Faridabad, without the New Delhi metro being able to distinguish the location or journeys at the time of receipt of payment.

25. How is the place of supply determined in case of services provided on board a conveyance.

Ans: Place of supply of services on board a conveyance [Section 12(10) of IGST Act, 2017]: The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

It must be noted that the proxy for place of supply of goods on board a conveyance is the location at which the goods are taken on board. Services being intangible, the same proxy cannot be used for determining the place of supply for services supplied on board a conveyance. Therefore, for services, the proxy is the location of the first scheduled point of departure of that conveyance for the journey.

However, for determining the place of supply of both goods and services supplied on board a conveyance, no distinction is made between registered and unregistered recipients.

26. What do you mean by Telecommunication services. Explain the provisions relating to determination of place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services.

Ans: The relevant provisions are discussed as under-

(1) "Telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means. [Section 2(110) of CGST Act, 2017]

(2) Determination of place of supply of Telecommunication Services: As per Section 12(11) of IGST Act, 2017, the place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall, -

(a) Services provided using a fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna: In case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

Leased circuit is installed in more than one State or Union territory and consolidated amount charged for supply - Place of supply is to be determined in terms of contract [Explanation]: Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to –

- ✓ the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or,

- ✓ in the absence of such contract or agreement, on such other basis as may be prescribed.

For this purpose Rule 6 of IGST Rules, 2017 has been inserted vide Notification No. 4/2018-IT w.e.f. 01-01-2019 which provides that the place of supply of services shall be determined in the following manner namely:-

(a) The number of points in a circuit shall be determined in the following manner:

- ✓ in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;
- ✓ any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point,

(b) the supply of services shall be treated as made in each of the respective States or Union territories , in proportion to the number of points lying in the State or Union territory.

Illustration:

1.	A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence, one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.
2.	A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence, one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.
3.	A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively

(b) **Post-paid mobile connection and post-paid internet services:** In case of mobile connection for telecommunication and internet services provided on post-paid basis, be the **location of billing address of the recipient** of services on the record of the supplier of services.

(c) **Pre-paid mobile connection and pre-paid internet and DTH Services :** In cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means, -

(i) through a selling agent or re-seller or a distributor of subscriber identity module card or re-charge voucher,	Address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or

(ii) by any person to the final subscriber,	Location where such prepayment is received or such vouchers are sold;
If such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment,	Location of the recipient of services on the record of the supplier of services.

(d) Other cases: In other cases, be the address of the recipient as per the records of the supplier of services.

(e) Address of the recipient is not available – POS will be Location of Supplier : Where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services.

27. Explain the place of supply of banking and other financial services, including stock broking services.

Ans: Place of supply of banking and other financial services, including Stock Broking Services: As per Section 12(12) of IGST Act, 2017, the place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services.

However, if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

28. Explain the place of supply of Insurance services.

Ans: Place of supply of Insurance Services: As per Section 12(13) of IGST Act, 2017, the place of supply of insurance services shall, –

(a) to a registered person, be the location of such person,

(b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.

29. Explain the place of supply of advertisement services to the Central statutory body or a local authority meant for the States or Union territories. Government,

Ans: Place of supply of advertisement services to the Government: As per Section 12(14) of IGST Act, 2017, the place of supply shall be determined as under–

Nature of Transaction	Place of Supply
Advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement.	Place of supply shall be taken as being in each of such States or Union territories Value of such supplies specific to each State or Union territory shall be in proportion to: ✓ amount attributable to services provided by way of dissemination in the respective States

	or Union territories as may be determined in terms of the contract or agreement entered into in this regard, or ✓ in the absence of such contract or agreement, on such other basis as may be prescribed.

30. How the proportion of value attributable to different States or Union territories shall be determined, in the case of supply of advertisement services to the Government, a statutory body or a local authority, u/s 12(14) of the IGST Act, 2017, in the absence of any contract between the supplier of service and recipient of services.

Ans: Apportionment of IGST with respect to advertisement services u/s 12(14) of the IGST Act, 2017: The proportion of value attributable to different States or Union territories, in the case of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority, under Section 12(14) of the IGST Act, 2017, in the absence of any contract between the supplier of service and recipient of services, shall be determined in the following manner namely:–

(a) Newspapers and publications – On basis of Amount Payable for Publication: In the case of newspapers and publications, the amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in a State or Union territory, as the case may be, is the value of advertisement service attributable to the dissemination in such State or Union territory.

Illustration: ABC is a government agency which deals with the all the advertisement and publicity of the Government. It has various wings dealing with various types of publicity. In furtherance thereof, it issues release orders to various agencies and entities. These agencies and entities thereafter provide the service and then issue invoices to ABC indicating the amount to be paid by them. ABC issues a release order to a newspaper for an advertisement on 'Beti bachao beti padhao', to be published in the newspaper DEF (whose head office is in Delhi) for the editions of Delhi, Pune, Mumbai, Lucknow and Jaipur. The release order will have details of the newspaper like the periodicity, language, size of the advertisement and the amount to be paid to such a newspaper. The place of supply of this service shall be in the Union territory of Delhi, and the States of Maharashtra, Uttar Pradesh and Rajasthan. The amounts payable to the Pune and Mumbai editions would constitute the proportion of value for the state of Maharashtra which is attributable to the dissemination in Maharashtra. Likewise the amount payable to the Delhi, Lucknow and Jaipur editions would constitute the proportion of value attributable to the dissemination in the Union territory of Delhi and States of Uttar Pradesh and Rajasthan respectively. DEF should issue separate State wise and Union territory wise invoices based on the editions.

(b) Advertisements through printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc. – On basis of amount payable for the distribution of a Specific Number of such Material: In the case of printed material like pamphlets, leaflets, diaries, calendars, T shirts etc, the amount payable for the distribution of a specific number of such material in a particular State or Union territory is the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration: As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of one lakh pamphlets (at a total cost of 1 lakh) to be distributed in the states of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States i.e. Haryana, Uttar Pradesh and Rajasthan, from the Ministry or department concerned at the time of giving the print order. Let us assume that this breakup is 20,000, 50,000 and 30,000 respectively. This breakup should be indicated in the print order. The place of supply of this service is in Haryana, Uttar Pradesh and Rajasthan. The ratio of this breakup i.e. 2:5:3 will form the basis of value attributable to the dissemination in each of the 3 States. Separate invoices will have to be issued State wise by GH to ABC indicating the value pertaining to that State ie. 20,000- Haryana, 50,000 - Uttar Pradesh and ₹ 30,000 - Rajasthan.

(c) (i) Hoardings on basis of amount payable for such Hoardings: In the case of hoardings other than those on trains, the amount payable for the hoardings located in each State or Union territory, as the case may be, is the value of advertisement service attributable to the dissemination in each such State or Union territory, as the case may be.

Illustration: ABC as part of the campaign 'Saakshar Bharat' has engaged a firm IJ for putting up hoardings near the Airports in the four metros ie. Delhi, Mumbai, Chennai and Kolkata. The release order issued by ABC to IJ will have the citywise, locationwise breakup of the amount payable for such hoardings. The place of supply of this service is in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal. In such a case, the amount actually paid to IJ for the hoardings in each of the four metros will constitute the value attributable to the dissemination in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal respectively. Separate invoices will have to be issued State wise and Union territory wise by IJ to ABC indicating the value pertaining to that State or Union territory.

(ii) Advertisements on train – Length of the railway track in each State/Union Territory, for that train : In the case of advertisements placed on trains, the breakup, calculated on the basis of the ratio of the length of the railway track in each State for that train, of the amount payable for such advertisements is the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration: ABC places an order on KL for advertisements to be placed on a train with regard to the "Janani Suraksha Yojana". The length of a track in a state will vary from train to

train. Thus for advertisements to be placed on the Hazrat Nizamuddin Vasco Da Gama Goa Express which runs through Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa, KL may ascertain the total length of the track from Hazrat Nizamuddin to Vasco Da Gama as well as the length of the track in each of these States and Union territory from the website www.indianrail.gov.in. The place of supply of this service is in the Union territory of Delhi and States of Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa. The value of the supply in each of these States and Union territory attributable to the dissemination in these States will be in the ratio of the length of the track in each of these States and Union territory If this ratio works out to say 0.5:0.5:2:2:3:3:1, and the amount to be paid to KL is 1,20,000, then KL will have to calculate the Statewise and Union territory wise breakup of the value of the service, which will be in the ratio of the length of the track in each State and Union territory. In the given example the Statewise and Union territory wise breakup works out to Delhi (5,000), Haryana (5,000), Uttar Pradesh (20,000), Madhya Pradesh (20,000), Maharashtra (30,000), Karnataka (30,000) and Goa (10,000), Separate invoices will have to be issued State wise and Union territory wise by KL to ABC indicating the value pertaining to that State or Union territory.

(d) (i) Advertisements on the back of utility bills of oil and gas companies, etc.- On basis of billing address of Consumers: In the case of advertisements on the back of utility bills of oil and gas companies etc, the amount payable for the advertisements on bills pertaining to consumers having billing addresses in such States or Union territory as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory.

(ii) Railway tickets - On basis of no. of Railway Stations: In the case of advertisements on railway tickets, the breakup, calculated on the basis of the ratio of the number of Railway Stations in each State or Union territory, when applied to the amount payable for such advertisements, shall constitute the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration: ABC has issued a release order to MN for display of advertisements relating to the "Ujjwala" scheme on the railway tickets that are sold from all the Stations in the States of Madhya Pradesh and Chattisgarh. The place of supply of this service is in Madhya Pradesh and Chattisgarh. The value of advertisement service attributabie to these two States will be in the ratio of the number of railway stations in each State as ascertained from the Railways or from the website www.indianrail.gov.in.. Let us assume that this ratio is 713:251 and the total bill is 9,640. The breakup of the amount between Madhya Pradesh and Chattisgarh in this ratio of 713:251 works out to 7,130 and 2,510 respectively. Separate invoices will have to be issued State wise by MN to ABC indicating the value pertaining to that State.

(e) Radio Stations - Amount payable to such radio station, which by virtue of its name is part of each State/ Union territory: in the case of advertisements over radio stations the amount payable to such radio station, which by virtue of its name is part of a State or Union territory,

as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory, as the case may be.

Illustration: For an advertisement on Pradhan Mantri Ujjwala Yojana', to be broadcast on a FM radio station OP, for the radio stations of OP Kolkata, OP Bhubaneswar, OP Patna, OP Ranchi and OP Delhi, the release order issued by ABC will show the breakup of the amount which is to be paid to each of these radio stations. The piace of supply of this service is in West Bengal, Odisha, Bihar, Jharkhand and Delhi. The place of supply of OP Delhi is in Delhi even though the studio may be physically located in another state. Separate invoices will have to be issued State wise and Union territory wise by MN to ABC based on the value pertaining to each State or Union territory.

(f) Television channels - On basis of Viewership in each State/ union Territory: In the case of advertisement on television channels, the amount attributabie to the value of advertisement service disseminated in a State shall be calculated on the basis of the viewership of such channel in such State, which in turn, shall be calculated in the following manner, namely:-

(i) Viewership on basis of Broadcast Audience Research Council: The channel viewership figures for that channel for a State or Union territory shall be taken from the figures published in this regard by the Broadcast Audience Research Council;

(ii) Figures of last week of given quarter shall be used: The figures published for the last week of a given quarter shall be used for calculating viewership for the succeeding quarter and at the beginning, the figures for the quarter 1" July to 30th September shall be used for the succeeding quarter 1" October to 31 December;

(iii) Population to be basis if viewership relates to more than one State: Where such channel viewership figures relate to a region comprising of more than one State or Union territory, the viewership figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest Census, to such viewership figures;

(iv) The ratio of the viewership figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

Illustration: ABC issues a release order with QR channel for telecasting an advertisement relating to the "Pradhan Mantri Kaushal Vikas Yojana" in the month of November. In the first phase, this will be telecast in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. The place of supply of this service is in Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. In order to calculate the value of supply attributable to Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand,

(I) QR will ascertain the viewership figures for their channel in the last week of September from the Broadcast Audience Research Council. Let us assume it is one lakh for Delhi and two lakhs for the region comprising of Uttar Pradesh and Uttarakhand and one lakh for the region comprising of Bihar and Jharkhand;

(II) since the Broadcast Audience Research Council clubs Uttar Pradesh and Uttarakhand into one region and Bihar and Jharkhand into another region, QR will ascertain the population figures for Uttar Pradesh, Uttarakhand, Bihar and Jharkhand from the latest census;

(III) by applying the ratio of the populations of Uttar Pradesh and Uttarakhand, as so ascertained, to the Broadcast Audience Research Council viewership figures for their channel for this region, the viewership figures for Uttar Pradesh and Uttarakhand and consequently the ratio of these viewership figures can be calculated. Let us assume that the ratio of the populations of Uttar Pradesh and Uttarakhand works out to 9:1. When this ratio is applied to the viewership figures of two lakhs for this region, the viewership figures for Uttar Pradesh and Uttarakhand work out to 1,80,000 and 20,000 respectively;

(IV) in a similar manner the breakup of the viewership figures for Bihar and Jharkhand can be calculated. Let us assume that the ratio of populations is 4:1 and when this is applied to the viewership figure of one lakh for this region, the viewership figure for Binar and Jharkhand works out to eighty thousand and twenty thousand respectively,

(V) the viewership figure for each State works out to Delhi (1,00,000), Uttar Pradesh (1,80,000), Uttarakhand (20,000), Bihar (80,000) and Jharkhand (20,000). The ratio is thus 10:18:2:8:2 or 5:9:1:4:1 (simplification).

(VI) this ratio has to be applied when indicating the breakup of the amount pertaining to each State. Thus if the total amount payable to QR by ABC is 20 lakh, the State wise breakup is 5 lakh (Delhi), ₹9 lakh (Uttar Pradesh), 1 lakh (Uttarakhand), 4 lakh (Bihar) and ₹1 lakh (Jharkhand). Separate invoices will have to be issued State wise and Union territory wise by QR to ABC indicating the value pertaining to that State or Union territory

(g) **Cinema-hall** – Amount payable to a cinema hall or screens in a multiplex in each State/ Union territory: In the case of advertisements at cinema halls the amount payable to a cinema hall or screens in a multiplex, in a State or Union territory, as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory, as the case may be

Illustration: ABC commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana to be displayed in the cinema halls in Chennai and Hyderabad. The place of supply of this service is in the states of Tamil Nadu and Telengana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State wise and Union territory wise by ST to ABC indicating the value pertaining to that State.

(h) Internet-On basis of Internet subscribers: In the case of advertisements over internet the service shall be deemed to have been provided all over India and the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the internet subscribers in such State or Union territory, which in turn, shall be calculated in the following manner, namely:-

i. the internet subscriber figures for a State shall be taken from the figures published in this regard by the Telecom Regulatory Authority of India;

ii. the figures published for the last quarter of a given financial year shall be used for calculating the number of internet subscribers for the succeeding financial year and at the beginning, the figures for the last quarter of financial year 2022-23 shall be used for the succeeding financial year 2023-24;

iii. where such internet subscriber figures relate to a region comprising of more than one State or Union territory, the subscriber figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest census, to such subscriber figures;

iv. the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for this service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

Illustration: ABC issues a release order to WX for a campaign over internet regarding linking Aadhaar with one's bank account and mobile number. WX runs this campaign over certain websites. In order to ascertain the statewise breakup of the value of this service which is to be reflected in the invoice issued by WX to ABC, WX has to first refer to the Telecom Regulatory Authority of India figures for quarter ending March,, as indicated on their website www.trai.gov.in. These figures show the service area wise internet subscribers. There are twenty two service areas. Some relate to individual States some to two or more States and some to part of one State and another complete State. Some of these areas are metropolitan areas. In order to calculate the State wise breakup, first the State wise breakup of the number of internet subscribers is arrived at. (In case figures of internet subscribers of one or more States are clubbed, the subscribers in each State is to be arrived at by applying the ratio of the respective populations of these States as per the latest census.). Once the actual number of subscribers for each State has been determined, the second step for WX involves calculating the State wise ratio of internet subscribers. Let us assume that this works out to 8:1:2. and so on for Andhra Pradesh, Arunachal Pradesh, Assam..... and so on. The third step for WX will be to apply these ratios to the total amount payable to WX so as to arrive at the value attributable to each State. Separate invoices will have to be issued State wise and Union territory wise by WX to ABC indicating the value pertaining to that State or Union territory

(i) SMS-On basis of subscribers: In the case of advertisements through short messaging service the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the telecommunication(herein after referred

to as telecom) subscribers in such State or Union territory, which in turn, shall be calculated in the following manner, namely:-

a. the number of telecom subscribers in a telecom circle shall be ascertained from the figures published by the Telecom Regulatory Authority of India on its website www.trai.gov.in;
b. the figures published for a given quarter, shall be used for calculating subscribers for the succeeding quarter and at the beginning, the figures for the quarter 1" July to 30th September, shall be used for the succeeding quarter 1™ October, to 31" December;
c. where such figures relate to a telecom circle comprising of more than one State, or Union territory, the subscriber figures for that State or Union territory shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest census, to such subscriber figures.

Illustrations:

	Particulars
1.	In the case of the telecom circle of Assam, the amount attributed to the telecom circle of Assam is the value of advertisement service in Assam.
2.	The telecom circle of North East covers the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Manipur and Tripura. The ratio of populations of each of these States in the latest census will have to be determined and this ratio applied to the total number of subscribers for this telecom circle so as to arrive at the State wise figures of telecom subscribers. Separate invoices will have to be issued State wise by the service provider to ABC indicating the value pertaining to that State.
3.	ABC commissions UV to send short messaging service to voters asking them to exercise their franchise in elections to be held in Maharashtra and Goa. The place of supply of this service is in Maharashtra and Goa. The telecom circle of Maharashtra consists of the area of the State of Maharashtra (excluding the areas covered by Mumbai which forms another circle) and the State of Goa. When calculating the number of subscribers pertaining to Maharashtra and Goa, UV has to- (I) obtain the subscriber figures for Maharashtra circle and Mumbai circle and add them to obtain a combined figure of subscribers; (II) obtain the figures of the population of Maharashtra and Goa from the latest census and derive the ratio of these two populations; (III) this ratio will then have to be applied to the combined figure of subscribers so as to arrive at the separate figures of subscribers pertaining to Maharashtra and Goa; (IV) the ratio of these subscribers when applied to the amount payable for the short messaging service in Maharashtra circle and Mumbai circle, will give breakup of the amount pertaining to Maharashtra and Goa. Separate invoices will have to be issued State wise by UV to ABC indicating the value pertaining to that State.
4.	The telecom circle of Andhra Pradesh consists of the areas of the States of Andhra Pradesh, Telangana and Yanam, an area of the Union territory of Puducherry. The subscribers

	attributable to Telangana and Yanam will have to be excluded when calculating the subscribers pertaining to Andhra Pradesh.

d. the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

31. Explain the provisions for determination of the place of supply of services where location of supplier or location of recipient is outside India.

Ans-PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA [SECTION 13 OF IGST ACT, 2017]

Section	Nature of Transaction	Place of Supply
13(1)	Applicability : The provisions of this Section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.	
13(2)	General Provisions :	
	Services not covered in Section 13(3) to 13(13)	Location of the recipient of services.
	If in above case where the location of the recipient of services is not available in the ordinary course of business.	Location of the supplier of services.
13(3)	Performance Based Services :	
	a. Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services.	Location where the services are actually performed.
	When such services are provided from a remote location by way of electronic means,	Location where goods are situated at the time of supply of services.
	Services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in	Provisions of Section 13(3)(a) will not be applicable and place of supply shall be determined as per Section 13(2).

	India, other than that which is required for such repairs or treatment or process.	
	b. Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.	Location where the services are actually performed.
13(4)	Services relating to Immovable property	
	Services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or coordination of construction work, including that of architects or interior decorators.	Place where the immovable property is located or intended to be located.
13(5)	Services relating to events :	
	Services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation.	Place where the event is actually held.
13(6)	Services provided at more than one location :	
	Where any services referred to in, • Section 13(3) [i.e. Performance Based Services]; or • Section 13(4) [i.e. Services relating to Immovable property]; or	Location in the taxable territory.

	• Section 13(5) [i.e. Services relating to events], is supplied at more than one location, including a location in the taxable territory.	
13(7)	Where any services referred to in, ✓ Section 13(3) [i.e. Performance Based Services]; or ✓ Section 13(4) [i.e. Services relating to Immovable property]; or ✓ Section 13(5) [i.e. Services relating to events], are supplied in more than one State or Union territory.	✓ Place of supply of such services shall be taken as being in each of the respective States or Union territories; and ✓ Value of such supplies specific to each State or Union territory shall be in proportion to – • Value for services separately collected or determined in terms of the contract or agreement entered into in this regard, or • In the absence of such contract or agreement, on such other basis as may be prescribed.
13(8)	Specified Services :	
	a. Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders. Explanation: ✓ "Account" means an account bearing interest to the depositor, and includes a non-resident external account and a nonresident ordinary account; ✓ Banking company" shall have the same meaning as assigned to it u/s 45A(a) of the Reserve Bank of India Act, 1934; ✓ "Financial institution" shall have the same meaning as assigned to it in section 45-I(c) of the Reserve Bank of India Act, 1934; ✓ "Non-banking financial company" means,–	

	1. a financial institution which is a company; 2. a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or 3. such other non-banking institution or class of such institutions, as the RBI may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.	
	(b) Intermediary services	Location of the supplier of services.
	"Intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account; [Section 2(13) of IGST Act, 2017]	
	(c) Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.	Location of the supplier of services.
13(10)	Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey.
13(11)	Services provided on board a conveyance during the course of a passenger transport operation, including services intended to be	First scheduled point of departure of that conveyance for the journey.

	wholly or substantially consumed while on board,	
13(12)	The place of supply of 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 impossible to ensure in the absence of information technology and includes electronic services such as,– a. advertising on the internet; b. providing cloud services; c. provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet; d. providing data or information, retrievable or otherwise, to any person in electronic form through a computer network; e. online supplies of digital content (movies, television shows, music and the like); f. digital data storage; and g. online gaming, excluding the online money gaming as defined in section 2(80B) of the CGST Act, 2017 [Section 2(17) of IGST Act, 2017] Explanation : Person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:–	Location of the recipient of services.

	(a) the location of address presented by the recipient of services through internet is in the taxable territory; (b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory; (c) the billing address of the recipient of services is in the taxable territory; (d) the internet protocol address of the device used by the recipient of services is in the taxable territory; (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory; (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory; (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.	
13(13)	In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.	

32. Explain the general provisions of Section 13 of the IGST Act,2017 for determination of place of supply in relation to cross border supply of services

Ans-The general provisions are discussed as under-

(a) Applicability : Section 13 provides for determination of place of supply of services in cases where either the location of the supplier of services or the recipient of services is outside India. Thus, this Section provides the place of supply in relation to international or cross-border supply of services.

Place of supply of a service is one of the factors which determines as to whether a service can be termed as import or export of service.

Similar to Section 12, Section 13 also lays down a general rule to determine the place of supply of services as well as few other rules to determine place of supply of certain specific services. Thus, place of supply is determined as per general rule in respect of services other than the ones covered by the specific rules.

Further, Section 13(13) empowers the Central Government to notify services or circumstances for which the place of supply will be the place of effective use and enjoyment of service so as to prevent double taxation/ non-taxation of the supply of a service.

(b) General provision or residuary provision : As per the Section 13(2) of IGST Act, 2017, the place of supply of services shall be the location of the recipient of services.

However, where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

33. How is the place of supply of performance based services determined where location of supplier or location of recipient is outside India

Ans-Place of supply of performance based services : As per Section 13(3) of IGST Act,2017 the place of supply of the following services shall be the location where the services are actually performed, namely:-

a) Performance based services in respect of goods provided by recipient for supply of service: Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services, the place of supply shall be the location where the service is actually performed.

b) Services provided from a remote location by way of electronic means : When such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services.

c) General rule applicable when goods that are temporarily imported into India for repairs, etc. The above provision shall not apply in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.

d) Physical presence of recipient required for supply of service : Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services, the place of supply shall be the location where the service is actually performed.

Examples:

i. ABC Ltd. (Registered in Jaipur, Rajasthan) imports a machine from Japan for being installed in its factory at Jaipur. To install such machine, ABC Ltd. takes the service of an engineer

who comes to India from Japan for this specific installation. The place of supply of installation service, which requires the physical presence of machinery, is the location where the service is actually performed i.e., Jaipur.

ii. A software company located in Canada takes services of a software company located in Hyderabad to service its software in Canada. The Indian software company provides its services through electronic means from its office in Hyderabad. The place of supply is the location where goods are situated at the time of supply of service i.e., Canada.

iii. ABC Ltd., Jaipur has exported a machine to a company in Japan. There were technical snags in the machine and is therefore, imported by ABC Ltd. for free repairs as per the terms of the sale contract. The machine is exported after repairs. The place of supply of repair service is the location of the recipient i.e., Japan.

iv. KGK Pvt. Ltd. imports raw diamonds from a diamond merchant in Africa for the purpose of cutting, polishing and finishing the same. After the work is completed, the finished diamonds are exported to the diamond merchant in Africa. The place of supply of job work undertaken by KGK Pvt. Ltd. is the location of the recipient i.e., Africa.

v. Mr. X, a hair stylist registered in Jaipur, travels to Dubai to provide his services to Ms. Y, a resident of Dubai. The place of supply is the location where the services are actually performed i.e., Dubai.

Place of supply of performance based services :

Section	Nature of Supply	Place of Supply
13(6)	Services at (a) and (b) above supplied at more than one location including a location in the taxable territory	**Location in the taxable territory**
13(7)	Services at (a) and (b) supplied in more than one State/Union Territory	Each of State/Union Territory and the value of such supplies specific to each State or Union territory shall be in proportion to— • the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, • in the absence of such contract or agreement, on such other basis as may be prescribed. For this purpose Rule 7 has been inserted in IGST Rules, 2017 vide Notification No. 4/2018 w.e.f. 01-01-2019 which provides that — **a.** in the case of services supplied on the same goods, by equally dividing the

		value of the service in each of the States and Union territories where the service is performed; b. in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory; c. in the case of services supplied to individuals, by applying the generally accepted accounting principles [GAAP].
Illustrations:		
1.	A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.	
2.	A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the Union Territory of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.	
3.	A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.	

Supply of software/ design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware/ test kits is a composite supply, where such testing is an ancillary supply. The place of supply of such service is the location of the service recipient as per Section 13(2) of the IGST Act. – Circular No. 118/37/2019-GST dated 11-10-2019

Issue	Clarification
Issue under consideration : The issue is with regard to determination of place of supply in case of supply of software/design services by a supplier located in taxable territory to a service recipient located in nontaxable territory by using the sample hardware kits provided by the service recipient. Nature of service : A number of companies that are part of the growing Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas. The client/customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks ("IP blocks", reusable units of software logic and design layouts that can be combined to form newer designs). Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs. In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.	Composite supply of chip design/ software development along with software testing cannot be vivisected – Principal supply being chip design/ software development, testing service is ancillary : In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted. Place of supply is location of recipient of service : Therefore, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware/ test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

34. How is the Place of supply of services supplied directly in relation to an immovable property determined where location of supplier or location of recipient is outside India.

Ans-Place of supply of services supplied directly in relation to an immovable property: As per section 13(4) of IGST Act,2017 the place of supply of services supplied directly in relation to an immovable property, including –

- services supplied in this regard by experts and estate agents,
- supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called,
- grant of rights to use immovable property,
- services for carrying out or co-ordination of construction work, including that of architects or interior decorators,

shall be the place where the immovable property is located or intended to be located.

Section	Nature of Supply	Place of Supply
13(6)	Above services supplied at more than one location, including a location in the taxable territory.	Location in the taxable territory.
13(7)	Above services supplied in more than one State/Union Territory.	Each of State/Union Territory and the value of such supplies specific to each State or Union territory shall be in proportion to • the value for services separately collected or determined in terms of the contract or agreement entered into in this regard, or • in the absence of such contract or agreement, on such other basis as may be prescribed. For this purpose Rule 8 has been inserted in IGST Rules, 2017 vide Notification No. 4/2018 w.e.f. 01-012019 which provides that value of supply shall be determined in accordance with the provisions of rule 4 of the IGST Rules, 2017.
Analysis : The service must be supplied directly in relation to immovable property. There must be more than a mere indirect or incidental connection between a service supplied in relation to an immovable property, and the underlying immovable property. This Section does not apply if a supply of service has only an indirect connection with the immovable property, or if the service is only an incidental component of a more comprehensive supply of services.		

Following is the list of services which can be treated as directly in relation to or indirectly in relation to immovable property :

Services supplied directly in relation to immovable property covered by this Section :	Services supplied indirectly in relation to immovable property covered by this Section :
✓ Services supplied in the course of construction, reconstruction, alteration, demolition, repair or maintenance (including painting and decorating) of any building or civil engineering work. ✓ Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts. ✓ Services of real estate agents, auctioneers, architects, engineers and similar experts or professional people, relating to land, buildings or civil engineering works. This includes the management, survey or valuation of property by a solicitor, surveyor or loss adjuster. ✓ Services connected with oil/ gas/ mineral exploration or exploitation relating to specific sites of land or the seabed. ✓ The surveying (such as seismic, geological or geomagnetic) of land or seabed. ✓ Legal services such as dealing with applications for planning permission. ✓ The supply of hotel accommodation or warehouse space. ✓ Renting of immovable property.	✓ Services of a Tax Return Preparer in simply calculating a tax return from figures supplied by a business in respect of rental income from commercial property. ✓ Advice or information relating to land prices or property markets because they do not relate to specific sites. ✓ Land or Real Estate Feasibility studies, say, in respect of the investment potential of a developing suburb, since this service does not relate to a specific property or site. ✓ Repair and maintenance of machinery which is not permanently installed. This is a service related to goods. ✓ Services of an agent who arranges finance for the purchase of a property.

35. How is the place of supply determined in case of services of admission to and organization of event where location of supplier or location of recipient is outside India.

Ans-Place of supply of services supplied by way admission to or organization of Event and incidental Services [Section 13(5)] of IGST Act,2017]:The place of supply of services supplied by way of –

(a) admission to, or organisation of –

- ✓ a cultural, artistic, sporting, scientific, educational or entertainment event, or

- ✓ a celebration, conference, fair, exhibition or similar events, and

(b) services ancillary to such admission or organisation,

shall be the place where the event is actually held.

For example: A circus team from Russia organizes a circus in Jaipur. The place of supply is the location where the event is actually held i.e., Jaipur.

Section	Nature of Supply	Place of Supply
13(6)	Above services supplied at more than one location, including a location in the taxable territory.	Location in the taxable territory
13(7)	Above services supplied in more than one State/Union Territory.	Each of State/Union Territory and the value of such supplies specific to each State or Union territory shall be in proportion to ✓ the value for services separately collected or determined in terms of the contract or agreement entered into in this regard, or ✓ in the absence of such contract or agreement, on such other basis as may be prescribed. For this purpose Rule 9 has been inserted in IGST Rules, 2017 vide Notification No. 4/2018 w.e.f. 01-01-2019 which provides that value of supply shall be determined in accordance with the provisions of rule 5 of the IGST Rules, 2017.

36. How will you determine the place of supply of services where any services is supplied at more than one location ,Including the location of taxable territory where location of supplier or location of recipient is outside India.

Ans-Place of supply of service where any service is supplied at more than one location [Section 13(6) and Section 13(7) of GST Act,2017]:The relevant provisions are discussed as under-

(a) As per Section 13(6) of IGST Act, 2017, where any service referred to in Section 13(3) or Section 13(4) or Section 13(5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(b) As per Section 13(7) of IGST Act, 2017, where the services referred to in Section 13(3) or Section 13(4) or Section 13(5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories

and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

For this purpose Rule 7, 8 and 9 has been inserted in IGST Rules, 2017 vide Notification No. 4/2018 w.e.f. 01-01-2019 which have been discussed above.

For example: An event management company registered in Jaipur organises road show for educational institution of London. The road show is organised in 3 countries including India (organised at Jaipur). Since the service is supplied at more than one location including a location in the taxable territory, the place of supply is the location in the taxable territory i.e., Jaipur.

37. Mention the services specified in Section 13(8) of the IGST Act,2017 in respect of which the place of supply shall be the location of the supplier of services where location of supplier or location of recipient is outside India.

Ans-Place of supply of specified services [Section 13(8)]: As per Section 13(8) of IGST Act,2017 the place of supply of the following services shall be the location of the supplier of services namely,-

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) intermediary services;

(c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

38. What is the meaning of "account"? What are the services that are supplied by a banking company to an account holder to which Section 13(8) shall be applicable? Also determine the place of supply of services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders where location of supplier or location of recipient is outside India.

Ans: The relevant provisions are discussed as under-

a. "Account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account. [Explanation (a) to Section 13(8) of IGST Act, 2017]

Services supplied to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this Section.

Banking services supplied to persons other than account holders will be covered under the default Section i.e. Section 13(2) of the IGST Act, 2017.

b. Services supplied to account holders in Ordinary Course of Business : The services that are supplied by a banking company or financial institution or non-banking financial company to an "account holder", in the ordinary course of business, are as under,—"

- services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker, etc.;
- transfer of money including telegraphic transfer, mail transfer, electronic transfer, etc.

c. Place of supply of services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders [Section 13(8) of IGST Act, 2017] : The place of supply of services supplied by a banking company, or a financial institution, or a nonbanking financial company, to account holders shall be the location of the supplier of services.

Clarification on place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors. – Circular No 220/14/2024-GST dated 26-06-2024

Issue: Whether the activity of providing Custodial Services by banks or financial institutions to FPIs will be treated as services provided to 'account holder' under Section 13(8)(a) of the IGST Act, 2017? Further, how the place of supply of the said services shall be determined?

Clarification: As per Section 13(8)(a) of IGST Act, Place of Supply of services supplied by banking company or a financial institution or a non-banking company to account holders shall be the location of the supplier of services. In case the services are provided to account holders in the ordinary course of business, the place of supply of services shall be determined as per Section 13(8)(a), otherwise the same will be determined as per Section 13(2) of the IGST Act.

The 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.

Accordingly, it is clarified that the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder' and therefore, the said services are not covered under Section 13(8)(a) of the IGST Act. Therefore, the place of supply of such services is not to be determined under Section 13(8)(a) of the IGST Act but has to be determined under the default provision i.e., Section 13(2) of the IGST Act.

39. What do you mean by Intermediary. How is the place of supply of Intermediary services detern where location of supplier or location of recipient is outside India?

Ans: The relevant provisions are discussed as under-

1. "Intermediary" means –

- ✓ a broker, an agent or any other person, by whatever name called,
- ✓ A who arranges or facilitates the supply of goods or services or both, or securities, between two or persons,
- ✓ but does not include a person who supplies such goods or services or both or securities on his account. [Section 2(13) of IGST Act, 2017]

2. Place of supply of intermediary services [Section 13(8) of IGST Act, 2017] : The place of supply of the intermediary services shall be the location of the supplier of services, where location of supplier or location of recipient is outside India.

3. Exemption in respect of intermediary services [Entry 12AA of Notification No. 9/2017-IT (Rate)] Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory are exempt.
4. Documentation requirement : Following documents shall be maintained for a minimum duration of 5 years :
   a) Copy of Bill of Lading
   b) Copy of executed contract between Supplier/ Seller and Receiver/ Buyer of goods
   c) Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in nontaxable territory
   d) Copy of certificate of origin issued by service recipient located in nontaxable territory
   e) Declaration letter from an intermediary service provider in taxable territory on company letter head confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory.

For example: A travel agent registered in New Delhi books a tour of famous Indian cities for a Dubai resident. The place of supply is the location of the supplier of services i.e., New Delhi.

Clarification on doubts related to scope of "Intermediary" – Circular No. 159/15/2021-GST dated 20-09-2021

(1) Primary Requirements for intermediary services :

(a) Minimum of Three Parties : By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply.

An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and, does not himself provide the main supply.

(b) Two distinct supplies : As discussed above, there are two distinct supplies in case of provision of intermediary services;

i. Main supply, between the two principals, which can be a supply of goods or services or securities;
ii. Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

(c) Intermediary service provider to have the character of an agent, broker or any other similar person : The definition of "intermediary" itself provides that intermediary service provider means a broker, an agent or any other person, by whatever name called....".

This part of the definition is not inclusive but uses the expression "means" and does not expand the definition by any known expression of expansion such as "and includes". The

use of the expression "arranges or facilitates" in the definition of "intermediary" suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

(d) Does not include a person who supplies such goods or services or both or securities on his own account : The definition of intermediary services specifically mentions that intermediary "does not include a person who supplies such goods or services or both or securities on his own account".

Use of word "such" in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of "intermediary".

(e) Sub-contracting for a service is not an intermediary service : An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more subcontractors.

Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary.

For instance, 'A' and 'B' have entered into a contract as per which 'A' needs to provide a service of, say, Annual Maintenance of tools and machinery to 'B'. 'A' subcontracts a part or whole of it to 'C'. Accordingly, 'C' provides the service of annual maintenance to 'A' as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of 'A', i.e. to 'B' on behalf of 'A'. Though 'C' is dealing with the customer of 'A', but 'C' is providing main supply of Annual Maintenance Service to 'A' on his own account, i.e. on principal to principal basis. In this case, 'A' is providing supply of Annual Maintenance Service to 'B', whereas 'C' is supplying the same service to 'A'. Thus, supply of service by 'C' in this case will not be considered as an intermediary.

(f) The specific provision of place of supply of 'intermediary services' under section 13 of the IGST Act shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

(2) Applying the above mentioned guiding principles, the issue of intermediary services is clarified through the following illustrations :

Illustration 1 :

'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is

facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

Illustration 2':

A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which "C' may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

Illustration 3 :

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of Section 2(13) of the IGST Act.

Illustration 4 :

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing/processing their queries/complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, "B' is not an intermediary.

(3) The illustrations given above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise. *Whether or not, a specific service would fall under intermediary services within the meaning of Section 2(13) of the IGST Act, would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in para 3 above, should be kept in consideration.*

Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India. – Circular No. 232/26/2024-GST dated 10-09-2024

It has been represented that some field formations are of the view that the place of supply of data hosting services provided by the service providers located in India to cloud computing service providers located outside India is the location of data hosting service provider in India and therefore, the benefit of export of services is not available on such supply of data hosting services. Thus, clarification has been sought in respect of the following issues –

Issue	Clarification
1. Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/ users/ subscribers as per Section 2(13) of the IGST Act, 2017 and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.	As per section 2(13) of the IGST Act, read with Circular no. 159/15/2021-GST dated 20.09.2021, a broker, agent or any other person who arranges or facilitates the main supply of goods or services or both or securities and has not involved himself in the main supply on his own account is considered as 'intermediary'. Persons who supply goods or services, or both on their own account are not covered in the definition of "intermediary". The cloud computing service providers generally enter into contract with data hosting service providers to use their data centres for hosting cloud computing services. Data hosting service provider either owns premises for data centre or operates data centre on leased premises, procures infrastructure and human resource, handles operations like infrastructure monitoring, IT management and equipment maintenance, etc. to provide the said supply of data hosting services to the cloud computing service providers. The data hosting service provider generally handles all aspects of data centre like rent, software and hardware infrastructure, power, net connectivity, security, human resource, etc. Importantly, the data hosting service providers do not deal with end users/consumers of cloud computing services and may not even know about the end users. It is observed that data hosting service provider provides data hosting services to the cloud computing service provider 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. The cloud computing service provider 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.. The end users/ customers/

	subscribers access cloud computing services seamlessly over the internet through technology hosted on data centers. There appears to be no contact between data hosting service provider and the end users/ consumers/ subscribers of the overseas cloud computing service provider. Thus, it is observed that the data hosting service provider provides data hosting services to the cloud computing service provider on principal-to-principal basis on his own account and is not acting as a broker or agent for facilitating supply of service between cloud computing service providers and their end users/ consumers. Accordingly, it is clarified that in such a scenario, the services provided by data hosting service provider to its overseas cloud computing service providers cannot be considered as intermediary services and hence, the place of supply of the same cannot be determined as per section 13(8)(b) of IGST Act.
2. Whether the data hosting services are provided in relation to goods "made available" by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per section 13(3) (a) of the IGST Act, 2017.	Section 13(3)(a) of the IGST Act provides that in cases where the services are supplied in respect of goods which are made physically available by the recipient of services to service provider, the place of supply will be location of service provider. In the instant scenario, it is observed that the data hosting service provider, as an independent entity, is providing seamless data hosting services to the overseas cloud computing service providers, through the premises, hardware and personnel at the data centre which not only comprises of hardware but also other essential infrastructure (without which the hardware infrastructure cannot be utilized) like ventilation and cooling system, uninterrupted power supply, software, network connectivity, security protocols, etc. which are owned by the data hosting service providers and are independently handled, operated, monitored and maintained by them. These data hosting service providers are charging their clients (cloud computing service providers), the charges for the services being provided by them to these clients as consideration depending on the specific terms and conditions as per agreements between them. From the above, it is observed that throughout the provision of the said services, the data hosting service provider owns premises for data center or operates data center on leased premises, independently handles, monitors and maintains the premises, hardware and software infrastructure, personnel and in such scenario, the overseas cloud computing service providers cannot be considered to own the said infrastructure and make the same

	physically available to the data hosting service provider for supply of the said services. In view of above, it is clarified that data hosting services provided by data hosting service provider to the said cloud computing service providers cannot be considered in relation to the goods "made available" by the said cloud computing service providers to the data hosting service provider in India and hence, the place of supply of the same cannot be determined under section 13(3)(a) of the IGST Act. There may be some cases where some of the hardware required for data hosting service is provided by the recipient of the service, i.e., the cloud computing service provider to the data hosting service provider. Even in these cases, data hosting service provider handles all aspects of data centre, like arranging for the premises, making available software and other hardware infrastructure, power, net connectivity, security, human resource, maintenance etc., for providing data hosting services to the cloud computing service provider. Accordingly, in such cases, though the data hosting services is being provided by the data hosting service provider inter-alia using the hardware made available by the cloud computing service provider, it cannot be said that data hosting service are being provided in relation to the said goods made available by the cloud computing service provider to them. Accordingly, even in these cases, place of supply cannot be determined under section 13(3)(a) of the IGST Act.
3. Whether the data hosting services are provided directly in relation to "immovable property" and whether the place of supply of the same is to be determined as per section 13(4) of the IGST Act.	Section 13(4) of the IGST Act provides for the place of supply where services supplied are directly in relation to immovable property. In the present scenario, it is observed that the data hosting service providers either use owned or leased premises for keeping IT infrastructure and other hardware required for providing data hosting services. They also procure hardware, uninterrupted power supplies, backup generators, ventilation and cooling equipment, network connectivity, fire suppression systems, security, human resource, etc.; handle operations like server monitoring, IT management and equipment maintenance, including repairs and replacements of the same, for providing data hosting services to their clients. Thus, it is observed that data hosting services are not passive supply of a service directly in respect of immovable property but are regarding supply of a comprehensive service related to data hosting

	which involves the supply of various services by the data hosting service provider like operating data centre, ensuring uninterrupted power supplies, backup generators, 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 cloud computing service provider to provide cloud computing services to the end users/customer/ subscribers. Accordingly, it is clarified that in such a scenario, the data hosting services cannot be considered as the services provided directly in relation to immovable property or physical premises and hence, the place of supply of such services cannot be determined under section 13(4) of IGST Act.

The place of supply for the data hosting services provided by data hosting service provider located in India to overseas cloud computing service providers does not appear to fit into any of the specific provisions outlined in sections 13(3) to 13(13) of the IGST Act. Therefore, the place of supply in such cases needs to be determined according to the default provision under section 13(2) of the IGST Act, i.e. the location of the recipient of the services. Where the cloud computing service provider receiving the data hosting services are located outside India, the place of supply will be considered to be outside India according to section 13(2) of the IGST Act.

Accordingly, supply of data hosting services being provided by a data hosting service provider located in India to an overseas cloud computing entity can be considered as export of services, subject to the fulfilment of the other conditions mentioned in section 2(6) of IGST Act.

Clarification in respect of advertising services provided to foreign clients. — Circular No. 230/24/2024-GST dated 10-09-2024

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 such a case, 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, clarification has been sought as to:

Issue	Clarification
1. Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners as per section 2(13) of IGST Act?	As per section 2(13) of IGST Act, read with Circular no. 159/15/2021-GST dated 20.09.2021, a broker, agent or any other person who arranges or facilitates the main supply of goods or services or both or securities and has not involved himself in the main supply on his own account is considered as intermediary. In the instant scenario, it is observed that the foreign clients enter into a comprehensive agreement with advertising companies/ agencies in India and outsource the entire activity of advertising services to the advertising companies/ agencies. Further, these advertising companies/agencies enter into an agreement with the media owners in India for implementing the said media plan and procurement of media space for airing or releasing or printing advertisement. 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. The advertising company is not acting as an agent but has been contracted by the client to procure and provide certain services. The advertising agency 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 is involved in the main supply of advertising services, including resale of media space, to the foreign client on principal-toprincipal basis as detailed above and does not fulfil the criteria of "intermediary" under section 2(13) of the IGST Act. Thus, the same cannot be considered as "intermediary" in such a scenario and accordingly, the place of

	supply in the instant matter cannot be linked with the location of supplier of services in terms of section 13(8)(b) of the IGST Act.
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 CGST Act?	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, in this case, 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 cannot 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. Further, the target audience of the advertisements may be based in India but such target audience cannot be considered as recipient of the said advertising services being supplied by the advertising company as per the definition of the recipient u/s 2(93) of CGST Act. 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.
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) of the IGST Act?	The place of supply of performance based services is provided in section 13(3) of IGST Act. The provisions of section 13(3)(a) pertains to the services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services. However, in the instant matter, there does not appear to be any such involvement of goods which are required to be physically available with supplier of advertising services. Therefore, the said provisions of section 13(3)(a) cannot be made applicable for determination of place of supply of advertising services.

	Further, section 13(3)(b) of IGST Act provides that the place of supply shall be the location where the services are actually performed in case, where, (a) services are supplied to an individual, (b) represented either as the recipient of services or a person acting on behalf of the recipient, and (c) which requires the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services In the present scenario, 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) of the IGST Act for being considered as the services actually performed in India in terms of the said section. Accordingly, it is clarified that the place of supply of advertising services in such cases can neither be determined as per the provision of section 13(3)(a) nor as per the provisions of section 13(3)(b) of IGST Act. Further, it is observed that in the present scenario, the place of supply of the above mentioned advertising services does not appear to be covered under any other provisions of section 13(3) to (13) of the IGST Act. Therefore, in view of foregoing discussion, it appears that 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) of IGST Act, i.e. the place of 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) of IGST Act, and the said service can be considered to be export of services, subject to the fulfilment of conditions mentioned in section 2(6) of IGST Act. However, there may be 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. In such cases, 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 dated 20.09.2021, 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)of IGST Act, i.e. the location of the supplier, i.e. the location of the advertising company.

40. What do you mean by means of transport. How is place of supply of services consisting of hiring of means of transport up to a period of one month determined where the location of supplier or the location of recipient is outside India?

Ans: The relevant provisions are discussed as under-

(1) "Means of transport" means any conveyance designed to transport goods or persons from one place to another.

(2) Hiring of means of transport upto one month – Place of supply shall be the Location of Service Supplier [Section 13(8) of IGST Act, 2017]: The place of supply of services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month shall be the location of the supplier of services.

Thus, if means of transport are supplied on hire for a period of more than one month the place of supply shall be determined as per default Section i.e. Section 13(2) of the IGST Act, 2017.

Similarly if aircrafts and vessels are supplied on hire irrespective of the period of hire, the place of supply shall be determined as per default Section i.e. Section 13(2) of the IGST Act, 2017.

For example: Mr. X, an unregistered person based in Jaipur, leaves for Dubai on holiday. He hires a car from Dubai for 10 days. The place of supply is the location of the supplier of services i.e., Dubai.

41. Explain the place of supply in respect of passenger transportation services where location of supplier or location of recipient is outside India.

Ans: The relevant provisions are discussed as under-

(1) Place of supply in respect of Passenger Transportation Services [Section 13(10) of IGST Act, 2017]: The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.

(2) "Continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued. [Section 2(3) of IGST Act, 2017]

(3) "Stopover" means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time. [Explanation]

All stopovers do not cause a break in continuous journey. Only such stopovers will be relevant for which one or more separate tickets are issued.

Analysis : For a journey to be regarded as continuous journey it is not necessary that a single ticket or invoice must be issued. However, the supplier of service or agent must be one person.

For example: In case of travel on Delhi – London - New York – London - Delhi on a single ticket, if a halt is made at London either on the onward journey or on a return journey or on both, it shall be covered in the definition of continuous journey. However, if a separate ticket is issued, say New York – Boston - New York, the same will be outside the scope of a continuous journey.

If journey is non-continuous – Each journey is Separate : In case the journey is not a continuous journey, each journey shall be regarded as separate journey and the same shall be liable to be taxed accordingly.

For example: Mr. A, a foreign tourist, has booked a ticket for New Delhi - Sri Lanka flight from an airline registered in New Delhi for a continuous journey without any stopover. The place of supply is the place where the passenger embarks on the conveyance for a continuous journey i.e., New Delhi.

42. Explain the place of supply of services provided on board a conveyance during the course of a passenger transport operation where location of supplier or location of recipient is outside India.

Ans: Place of supply of services provided on Board a Conveyance [Section 13(11) of IGST Act, 2017]: The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

43. How is the place of supply determined in case of OIDAR services where location of supplier or location of recipient is outside India.

Ans: The relevant provisions are discussed as under-

(1) Place of supply of OIDAR Services [Section 13(12) of the IGST Act, 2017]: The place of supply of OIDAR services shall be the location of the recipient of services.

(2) Recipient deemed to be located in India if any 2 non-contradictory conditions out of such 7 conditions fulfilled [Explanation]: Person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:-

- ✓ the location of address presented by the recipient of services through internet is in the taxable territory;
- ✓ the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
- ✓ the billing address of the recipient of services is in the taxable territory;
- ✓ the internet protocol address of the device used by the recipient of services is in the taxable territory;
- ✓ the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
- ✓ the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
- ✓ the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

44. Explain the powers of Government to prevent double taxation or non-taxation of the supply of a service.

Ans : As per Section 13(13) of IGST Act, 2017, in order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

The power granted under the rule is to enable the Government to issue notifications to,–

(i) Correct injustice on account of double taxation : Sometimes, the rules that are applicable in a foreign territory may be inconsistent with the rules under the Indian GST laws, thereby leading to double taxation.

(ii) Curb the tax avoidance practices : Due to the cross border nature of many services, it is also possible in certain situations to set up businesses in a non-taxable territory while the effective enjoyment, or in other words consumption, may be in taxable territory.

(iii) Curb ingenious practices : This rule is also meant as an anti-avoidance measure where the intent of the law is sought to be defeated through ingenious practices unknown to the ordinary ways of conducting business.

[Notification No. 04/2019-IT dated 30-09-2019]	Place of supply of research and development services related to pharmaceutical sector: In order to prevent double taxation or non-taxation of supply of any service, section 13(13) of IGST Act empowers the Government to notify any service for which the place of supply shall be the place of effective use and enjoyment of service.
In this regard, with effect from 01-10-2019, the following research and development services related to pharmaceutical sector [as specified in columns (2) and (3) from Sl. No. 1 to 10 of the table given below] when supplied by a person located in taxable territory to a person located in the non -taxable territory, have been notified as the services for which the place of supply shall be the place of effective use and enjoyment of a service [as specified in column (4) of the table given below] :	

Sl. No.	Nature of supply	General description of supply	Place of supply
(1)	(2)	(3)	(4)
1.	(1) Integrated discovery and development	This process involves discovery and development of molecules by pharmaceutical sector for medicinal use. The steps include designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.	When research and development services related to pharmaceutical sector as specified in columns (2) and (3) from Sl. No. 1 to 10 of this table are supplied by a person located in taxable territory to a person located in the nontaxable territory, the place of supply shall be the location of the recipient of services subject to fulfillment of the following conditions:- (i) Supply of services from the taxable territory is provided as per a contract between the service provider located in taxable territory
	(2) Integrated development		
	(3) Evaluation of the efficacy of new chemical/ biological entities in animal models of disease	This is in vivo research (i.e. within the animal) and involves development of customized animal model diseases and administration of novel chemical in doses to animals to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is	

		supplied by the service recipient located in non-taxable territory.	and service recipient located in non-taxable territory. **(ii)** Such supply of services fulfills all other conditions in the definition of export of services, except the condition that place of supply is outside India.
	(4) Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays	This is in vitro research (i.e. outside the animal). An assay is first developed and then the novel chemical is supplied by the service recipient located in nontaxable territory and is evaluated in the assay under optimized conditions.	
	(5) Drug metabolism and pharmacokinetics of new chemical entities	This process involves investigation whether a new compound synthesized by supplier can be developed as new drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal experiments using rat and mice.	
	6) Safety Assessment Toxicology	Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development.	
	7) Stability Studies	Stability studies are conducted to support formulation, development, safety and efficacy of a new drug. It is also done to ascertain the quality and shelf life of the drug in their intended packaging configuration.	
	8) Bio-equivalence and Bio-availability Studies	Bio-equivalence is a term in pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they	

		would be expected to be, for all intents and purposes, the same. Bio-availability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action.	
	(9) Clinical trials	The drugs that are developed for human consumption would undergo human testing to confirm its utility and safety before being registered for marketing. The clinical trials help in collection of information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of safe dosage.	
	(10) Bio analytical studies	Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measurement of drugs and their metabolites, and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs and metabolites in biological systems.	
2.	Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business. [Notification No. 02/2020-IT dated 26-03-2020 w.e.f. 1-4-2020]		The place of supply of services shall be the location of the recipient of service.
3.	B2B supply of maintenance, repair or overhaul service (hereinafter referred to as MRO service) in respect of ships and other vessels, their engines and other components or parts supplied to a person for use in the course or furtherance of business. [Notification No. 03/2021-IT, dated 02-06-2021] By virtue of this notification, if an Indian shipping company has received MRO service in respect of a ship/vessel from a foreign supplier, place of		The place of supply of services shall be the location of the recipient of service.

	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.	

Clarification regarding determination of place of supply in respect of services provided Ports and Services rendered on goods temporarily imported in India [Circular No. 103/22/2019-GST dated 28-06-2019] : The clarification relating to determination of place of supply is as under –

	Nature of services	Place of supply
(1)	Services provided by Ports – Cargo handling : 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 of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/ loading on vessel etc. Doubts have been raised about determination of place of supply for such services i.e. whether the same would be determined in terms of the provisions contained in Section 12(2) or Section 13(2) of the IGST Act, as the case may be or the same shall be determined in terms of the provisions contained in Section 12(3) of the IGST Act.	Place of supply is to be determined as per Section 12(2)/ Section 13(2) of the IGST Act, 2017 : It is hereby clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in Section 12(2) or Section 13(2) of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services
(2)	Services rendered on goods temporarily imported in India : Doubts have been raised about 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 any use in India?	Place of supply to be determined as per Section 13(2) of the IGST Act, 2017 : Place of supply in case of performance based services is to be determined as per the provisions contained in Section 13(3)(a) of the IGST Act and generally the place of services is where the services are actually performed. But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for

		repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process. 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 contained in Section 13(2) of the IGST Act.

Place of supply in case of supply of service of transportation of goods, including through mail and courier shall be determined as per the provisions of Section 13(2) of the IGST Act, 2017 and not as per Section 13(3) of the IGST Act, 2017. – Circular No. 203/15/2023-GST dated 27-10-2023

Issue	Clarification
Section 13(9) of IGST Act, 2017 has been omitted by Finance Act, 2023 w.e.f. 01.10.2023. After the said amendment, doubts have been raised as to whether the place of supply in case 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, will be determined as per Section 13(2) of IGST Act or will be determined as per Section 13(3) of IGST Act.	✓ It is hereby clarified that the place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2) of IGST Act and not as performance based services under Section 13(3) of IGST Act. ✓ Accordingly, in cases where 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. ✓ The place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act .

ONLINE INFORMATION DATABASE ACCESS AND RETRIEVAL SERVICES

45. What do you mean by Online Information Database Access and Retrieval Service.

Ans- Online information database access and retrieval (OIDAR) services is a category of service provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services.

Online information and database access or retrieval services [Section 2(17) of IGST Act, 2017] : "OIDAR services" means services whose delivery is mediated by information technology over the internet nor an electronic network and the nature of which renders their supply impossible to ensure in the absence of information-technology and includes electronic services such as,–

(i) advertising on the internet;
(ii) providing cloud services;
(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
(v) online supplies of digital content (movies, television shows, music and the like);
(vi) digital data storage; and
(vii) online gaming, excluding the online money gaming as defined in Section 2(8OB) of the CGST Act, 2017.

The above definition makes it apparent that in order to determine whether a particular service is an OIDAR service, the following tests need to be applied:

- ✓ Services whose delivery is mediated by information technology over the internet/electronic network AND
- ✓ Services are impossible to ensure in the absence of information technology.

The inclusive part of the definition are only indicative and not exhaustive.

46. List out examples of what could be OIDAR services and what could not be OIDAR services.

Ans: The illustrative list is as under-

Service	Whether Provision of service mediated by information technology over the internet or an electronic network	Whether impossible to ensure in the absence of information technology	OIDAR service
PDF document manually emailed by provider	Yes	No	No
PDF document automatically emailed by provider's system	Yes	Yes	Yes

PDF document automatically downloaded from site	Yes	Yes	Yes
Stock photographs available for automatic download	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable PDFs	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable PDFs plus support from a live tutor	Yes	No	No
Individually commissioned content sent in digital form eg, photographs, reports, medical results	Yes	No	No

Indicative list of OIDAR services :

1.	Website supply, web-hosting, distance maintenance of programmes and equipment	✓ Website hosting and web-page hosting; automated, online and distance maintenance of programmes; ✓ remote systems administration; ✓ online data warehousing where specific data is stored and retrieved electronically; ✓ online supply of on-demand disc space.
2.	Supply of software and updating thereof	✓ Accessing or downloading software (including procurement/ accountancy programmes and anti-virus software) plus updates; ✓ software to block banner adverts showing, otherwise known as Banner blockers ✓ download drivers, such as software that interfaces computers with peripheral equipment (such as printers); ✓ online automated installation of filters on websites; ✓ online automated installation of firewalls.
3.	Supply of images, text and information and making available of databases	✓ Accessing or downloading desktop themes; ✓ accessing or downloading photographic or pictorial images or screensavers;

		✓ the digitised content of books and other electronic publications; ✓ subscription to online newspapers and journals; ✓ weblogs and website statistics; ✓ online news, traffic information and weather reports; online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular such data as continually updated stock market data, in real time); ✓ the provision of advertising space including banner ads on a website/ web page; ✓ use of search engines and Internet directories.
4.	Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events	✓ Accessing or downloading of music on to computers and mobile phones; ✓ accessing or downloading of jingles, excerpts, ringtones, or other sounds; ✓ accessing or downloading of films; ✓ downloading of games on to computers and mobile phones; ✓ accessing automated online games which are dependent on the Internet, or other similar electronic networks, where players are geographically remote from one another.
5.	Supply of distance teaching	✓ Automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student; ✓ workbooks completed by pupils online and marked automatically, without human intervention.

For any supply to be taxable under GST, the place of supply should be in India. In case, both the supplier of OIDAR Service and the recipient of such service is in India, the place of supply would be the location of the recipient of service [Section 12 of the IGST Act].

Further, where the supplier of OIDAR service is located outside India and the recipient is located in India, the place of supply would be India and the transaction would be amenable to tax [Section 13(12) of the IGST Act].

47. Why OIDAR requires a treatment different from other services?

Ans: OIDAR services can be provided online from a remote location outside the taxable territory. A similar service provided by an Indian Service Provider, from within the taxable territory, to recipients in India are taxable.

Further, such services received by a registered entity in India from a location outside the taxable territory are also taxable under reverse charge. The overseas suppliers of such services would have an unfair tax advantage if the services provided by them had been left out of the tax net. At the same time, since the service provider is located overseas and may not be having a presence in India, the compliance verification mechanism becomes difficult. In view of the same, the Government has come out with a simplified scheme of registration for such service providers located outside India.

48. How would OIDAR services be taxable under GST?

Ans: For any supply to be taxable under GST, the place of supply should be in India. In case, both the supplier of OIDAR Service and the recipient of such service is in India, the place of supply would be the location of the recipient of service [Section 12 of the IGST Act].

Further, where the supplier of OIDAR service is located outside India and the recipient is located in India, the place of supply would be India and the transaction would be amenable to tax [Section 13(12) of the IGST Act].

49. Explain the special provision for payment of IGST by a supplier of online information and database access or retrieval services.

Ans: Special provision for payment of tax by a supplier of online information and database access or retrieval services [Section 14]:

(1) Applicability: This Section is applicable in case of-

- ✓ supply of OIDAR services
- ✓ by any person located in a non-taxable territory, and
- ✓ received by a 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.

"Unregistered person" includes a person registered solely in terms of Section 24(vi) of the CGST Act, 2017(i.e. tax deductors at source).

(2) OIDAR Services - Supplier of services liable to pay IGST [Section 14(1)] : If this Section applies the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.

(3) Intermediary deemed to be supplier of service subject to Certain Exceptions [Proviso to Section 14(1)] : If this Section applies—

- ✓ an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be,

- ✓ the recipient of such services from the supplier of services in non-taxable territory, and
- ✓ supplying such services to the non-taxable online recipient.

Thus, if an intermediary located outside India arranges or facilitates supply of such service to a nontaxable online recipient in India, the intermediary would be deemed to be the supplier of the said service, except when the intermediary satisfies the following conditions namely:–

(d) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

(e) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge. This means that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;

(f) the intermediary involved in the supply does not authorise delivery; and

(g) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

(4) Simplified Registration Scheme in respect of OIDAR Services [Section 14(3)] : The supplier of OIDAR services referred above shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government. [Principal Commissioner of Central Tax, Bengaluru West has been notified vide Notification No. 2/2017–IT dated 19-06-2017 w.e.f. 22-06-2017]

Representative of supplier in taxable territory liable to pay tax : Any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier.

Appointment of any person in taxable territory to pay tax : If such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may 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.

(5) Additional provisions for payment of tax for persons supplying OIDAR services from outside India to Non-taxable Online Recipient [Rule 87(2) and 87(3)] : A person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14, or a person supplying online money gaming from a place outside India to a person in India as referred to in section 14A of the IGST Act, 2017 may also make the deposit through international money transfer through Society for Worldwide Inter bank Financial Telecommunication payment network, from the date to be notified by the Board.

50. Explain the Special provision for specified actionable claims supplied by a person located outside taxable territory.

Ans: Special provision for specified actionable claims supplied by a person located outside taxable territory [Section 14A of the IGST Act, 2017] [Inserted by IGST Amendment Act, 2023 w.e.f. 01-10-2023]:

(1) Online gaming supplier located in NTT making supply to person in TT – Liable to pay IGST: A supplier of online money gaming, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.

"Online gaming" means offering of a game on the internet or an electronic network and includes online money gaming. [Section 2(80A) of the CGST Act, 2017]

"Online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force. [Section 2(80B) of the CGST Act, 2017]

(2) Simplified Registration Scheme : The supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in Section 14(2) of this Act.

Representative of supplier in taxable territory liable to pay tax : 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.

Appointment of any person in taxable territory to pay tax : 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.

(3) Access to be blocked in case of non- compliance : In case of failure to comply with above provisions by the supplier of the online money gaming or a person appointed by such supplier or both, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the Information Technology Act.

51. Explain the procedure for grant of registration to a person supplying online information and data base access or retrieval services from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India.

Ans: Grant of registration to a person supplying online information and data base access or retrieval services from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India [Rule 14 of CGST Rules, 2017]:

(1) E-application by supplier of OIDAR services [Rule 14(1)]: Any person supplying OIDAR services from a place outside India to a non-taxable online recipient or any person supplying online money gaming from a place outside India to a person in India shall electronically submit an application for registration, duly signed or verified through EVC, in FORM GST REG-10,

at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) Grant of RC [Rule 14(2)]: The applicant referred to in Rule 14(1) shall be granted registration, in FORM GST REG-06, subject to such conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council.

52. Explain the form and manner of submission of return by persons providing online information and database access or retrieval services.

Ans: Form and manner of submission of return by persons providing online information and data base access or retrieval services and by persons supplying online money gaming from a place outside India to a person in India [Rule 64]:

Every registered person either providing online money gaming from a place outside India to a person in India, or providing online information and data base access or retrieval services from a place outside India to a non- taxable online recipient referred to in section 14 of the IGST Act, 2017 or to a registered person other than a non-taxable online recipient, shall file return in FORM GSTR-5A on or before the 20th day of the month succeeding the calendar month or part thereof.

Note:

TOPIC REFERENCER

- *Exemption from Tax*
- *List of Services Exempt from CGST*
- *List of Services Exempt from IGST*
- *Other Exemptions*

EXEMPTION FROM TAX

1. Explain the power of the Government to grant exemption from tax.

Ans: Power to grant exemption from tax [Section 11]:

(1) General Exemption [Section 11(1)]: Where the Government is satisfied that it is necessary in the public interest so to do, it may, –

- ✓ on the recommendations of the Council,
- ✓ by notification,
- ✓ exempt generally,–
  - either absolutely; or
  - subject to such conditions as may be specified therein,
- ✓ goods or services or both of any specified description
- ✓ from the whole or any part of the tax leviable thereon
- ✓ with effect from such date as may be specified in such notification.

It must be noted that the exemption would be in respect of goods or services or both, and not specifically any classes of persons.

(2) Special exemption or Adhoc Exemption [Section 11(2)]: Where the Government is satisfied that it necessary in the public interest so to do, it may, –

- ✓ on the recommendations of the Council,
- ✓ by special order in each case,
- ✓ under circumstances of an exceptional nature to be stated in such order,
- ✓ exempt from payment of tax any goods or services or both on which tax is leviable.

(3) Power to clarify scope of exemption – Within a period of 1 year from date of issue of exemption notification [Section 11(3)]: The Government may, if it considers necessary or expedient so to do–

- ✓ for the purpose of clarifying the scope or applicability of any notification issued under Section 11(1) or order issued under Section 11(2),
- ✓ insert an explanation in such notification or order, as the case may be,
- ✓ by notification at any time within one year of issue of the notification under Section 11(1) or order under Section 11(2), and
- ✓ every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(4) Unconditional Exemption - Mandatory [Explanation]: Where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both. Thus, the person supplying exempted goods or services or both shall not collect the tax in excess of the effective rate.

POWER NOT TO RECOVER GOODS AND SERVICES TAX NOT LEVIED OR SHORT-LEVIED AS A RESULT OF GENERAL PRACTICE [SECTION 11A] [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

Notwithstanding anything contained in this Act, if the Government is satisfied that—

(a) a practice was, or is, generally prevalent regarding levy of central tax (including non-levy thereof) on any supply of goods or services or both; and

(b) such supplies were, or are, liable to,—

(i) central tax, in cases where according to the said practice, central tax was not, or is not being, levied, or

(ii) a higher amount of central tax than what was, or is being, levied, in accordance with the said practice,

the Government may, on the recommendation of the Council, by notification in the Official Gazette, direct that the whole of the central tax payable on such supplies, or, as the case may be, the central tax in excess of that payable on such supplies, but for the said practice, shall not be required to be paid in respect of the supplies on which the central tax was not, or is not being levied, or was, or is being, short-levied, in accordance with the said practice.

Similar provisions granting power to exempt IGST have been provided under section 6 of the IGST Act.	Clarification on the effective date of insertion of explanation in notification: Section 11(3) of CGST Act provides that the Government may insert an explanation in any notification issued under section 11, for the purpose of clarifying its scope or applicability, at any time within 1 year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification. It is hereby clarified that the explanation having been inserted under section 11(3) of the CGST Act, is effective from the inception of the entry in notification and not from the date from which the notification (that inserted said explanation) becomes effective. For example, the principal Notification No. 11/2017-CT (R) dated 28-06-2017 came into force with effect from 1-07-2017. Thereafter, a new entry - Entry no. 3(vi) is inserted w.e.f. 21-09-2017. Subsequently, an explanation is also inserted with respect to entry no. 3(vi) on 26-07-2018. Although the effective date mentioned in the notification which inserted said explanation is 27-07-2018, said explanation will be effective from the inception of entry in motification ie. 21-09-2017 and not 27-07-2018.

LIST OF SERVICES EXEMPT FROM CGST

Notification No. 12/2017-CT (R) dated 28-06-2017/ Notification No. 9/2017-IT (R) dated 28-06-2017 unless otherwise specified, has exempted the following services wholly from CGST/IGST respectively:

SERVICES BY CHARITABLE INSTITUTION

1. SERVICES BY CHARITABLE ENTITY [Entry 1 of Notification No. 12/2017-CT (Rate)]: Services by an entity registered u/s 12AB of the Income-tax Act, 1961 by way of charitable activities are exempt.

"Charitable activities" means activities relating to-

1) public health by way of, -
   (A) care or counseling of-
      a) terminally ill persons or persons with severe physical or mental disability;
      b) persons afflicted with HIV or AIDS;
      c) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
   (B) Public awareness of preventive health ,family planning or prevention of HIV infection
      a) Advance religion, spirituality or yoga
      b) advancement of educational programmes or skill development relating to, -
         (i) abandoned, orphaned or homeless children;
         (ii) physically or mentally abused and traumatized persons;
         (iii) prisoners; or
         (iv) persons over the age of 65 years residing in a rural area;
         (v) preservation of environment including watershed, forests and wildlife. [Para 2(r) of Notification No. 12/2017-CT (Rate)]

Other Aspects:

(i) Conditions to be satisfied for exemption: In order to claim exemption under Entry 1 of the Notification, following two conditions must be satisfied:
   a. The entity is registered under section 12AB of the Income tax Act, 1961, and
   b. The entity carries out one or more of the specified charitable activities.

   There could be many services provided by charitable trusts registered under section 12AB of the Income-tax Act, 1961 which are not covered by the definition of charitable activities and hence, such services would attract GST.

For instance, grant of advertising rights to a person on the premises of the charitable/religious trust or on publications of the trust, or granting admission to events, functions, celebrations, shows against admission tickets or fee etc. would attract GST.

(ii) Advancement of any other object of general public utility – Not charitable purpose: In case if any charitable trust is carrying out any activities relating to advancement of any other object of general public utility the same shall not be exempt from GST. However, the trust can avail threshold exemption as available to all other taxable services upto 20 lakh. (10 lakhs in State of Manipur, Mizoram, Nagaland, and Tripura).

(iii) Arranging yoga and meditation camp by charitable trusts Circular No. 66/40/2018-GST dated 26-09-2018: As discussed above, services provided by entity registered under section 12AB of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt as such activities are covered in definition of charitable activities.

Fee or consideration charged in any other form from the participants for participating in a religious, yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be exempt.

Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga.

However, if charitable trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable.

(iv) Hospitals managed by charitable trusts: Exemption available to health care services under Entry 74 of the Notification is also applicable to the services provided by a clinical establishment, an authorized medical practitioner or paramedics of a charitable trust also.

(v) GST on services provided TO charitable trusts: Services provided to charitable or religious trusts are not outside the ambit of GST. Unless specifically exempted, all goods and services supplied to charitable or religious trusts are leviable to GST.

Service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors If the same is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, it will not be leviable to GST. [Circular No. 116/35/2019-GST dated 11-10-2019]

Issue	Clarification
Individual donors provide financial help or any other support in the form of donation or gift institutions religious charitable	If the same is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, it will not be leviable to GST – When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed

schools, such to as institutions, organisations, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. Whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.	at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration. Some examples of cases where there would be no taxable supply are as follows:- (a) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution. (b) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation. In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus, where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (Le. it leads to no commercial gain) and not advertisement, GST is not leviable.

(2) RECREATIONAL TRAINING OR COACHING [Entry 80 of Notification No. 12/2017-CT (Rate)]:

Services by way of training or coaching in-

a) recreational activities relating to arts or culture, by an individual, or

b) sports by charitable entities registered u/s 12AB of the Income Tax Act,

are exempt from tax.

Other Aspect:

The exemption with regard to services provided by way of training or coaching in recreational activities relating to arts or culture has a restricted scope. Said exemption is available only when said services are provided by an individual. Similarly exemption in respect of sports activities is available when provided charitable entity registered under section 12AB of Income-tax Act. by

The term recreational activities is very wide. However, under this entry, the scope of training or coaching recreational activities is restricted to the area of arts, culture and sports. Hence, the training or coaching in in recreational activities in the areas other than arts, culture or sports is outside the purview of this entry.

Further, training or coaching relating to all forms of arts, culture or sports is covered under this entry, namely, dance, music, painting, sculpture making, literary activities, theatre, sports etc. of any school, tradition or language or any of the sports.

(3) IMPORT OF SERVICES BY CHARITABLE ENTITY [Entry 10 of Notification No. 9/2017-IT (R)]:

Services received from a provider of service located in a non-taxable territory by an entity registered u/s 12AB of the Income-tax Act, 1961 for the purposes of providing charitable activities are exempt. However, exemption shall not apply to OIDAR services.

(4) SERVICES BY AN OLD AGE HOME [Entry 9D of Notification No. 12/2017-CT (Rate)]: Services by an old age home run by an entity registered u/s 12AB of the Income-tax Act, 1961 to its residents (aged 60 years or more) against consideration upto ₹ 25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance are exempt.

RELIGIOUS SERVICES

5) RELIGIOUS SERVICES [Entry 13 of Notification No. 12/2017-CT (Rate)]:

Services by a person by way of-

a. conduct of any religious ceremony,
b. renting of precincts of a religious place meant for general public, owned or managed by-
   (i) an entity registered as a charitable or religious trust u / s * 12AB of the Income-tax Act, 1961; or
   (ii) a trust or an institution registered under Section 10(23C)(v) of the Income-tax Act, or
   (iii) a body or an authority covered under Section 10(23BBA) of the said Income-tax Act. are exempt

However, nothing contained in entry (b) of this exemption shall apply to. -

(i) renting of rooms where charges are ₹ 1,000 or more per day
(ii) renting of premises, community halls, kalyanmandapam et open area, and the like where charges are ₹ 10,000 or more per day,
(iii) renting of shops or other spaces for business or commerce where charges are ₹ 10,000 or more per month.

"General public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature. (Para 2(as) of Notification No 12/2017-CT (Rate)]
"Religious place" means a place which is primarily meant for conduct of prayers of worship pertaining to a religion, meditation, or spirituality (Part 2(zy) of Notification No. 12/2017-CT (Rate)]

Other Aspects:

(i) Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage, and death involve elaborate religious ceremonies

(ii) Interpretation of term "precincts" as appearing in Exemption Entry: The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place of under the same management as the religious place, may be considered as being located in the precincts of the religious place and extended the benefit of exemption

(iii) Other Activities liable to GST: Activities other than conduct of religious ceremony and renting of precincts of religious place will be taxable irrespective of the manner of the name in which the consideration is received.

For example, if donation is received with specific instructions/mutual understanding between the donor and the receiver that religious place will host an advertisement promoting business of the donor, such donation will be subject to GST However, if donation is received without such instructions or without a quid pro quo in the form of supply of any goods or services by the receiver to the donor, it shall not be subject to GST.

(6) SERVICES BY A SPECIFIED ORGANISATION IN RESPECT OF A RELIGIOUS PILGRIMAGE [Entry 60 of Notification No 12/2017-CT (Rate)]:

Services by a specified organisation in respect of a religious pilgrimage facilitated by the Government of India, under bilateral arrangement are exempt.

"Specified organisation" shall mean, -

i. Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking, or
ii. Committee' or 'State Committee as defined in Section 2 of the Haj Committee Act, 2002 (Parz 2(zzg) of Notification No 12/2017-CT (Ratell

SERVICE RELATING TO AGRICULTURE OR AGRICULTURAL PRODUCE

(7) SERVICES RELATING TO AGRICULTURE OR AGRICULTURAL PRODUCE [ENTRY 54 of Notification No.12/2017-CT (Rate)]:

Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of—

a. agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
b. supply of farm labour;
c. processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

d. renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
e. loading, unloading, packing, storage or warehousing of agricultural produce;
f. agricultural extension services;
g. services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce, are exempt.

- ✓ "Agricultural extension" means application of scientific research and knowledge to agricultural practices through farmer education or training. [Para 2(c) of Notification No. 12/2017-CT (Rate)]
- ✓ "Agricultural Produce Marketing Committee or Board" means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce. [Para 2(e) of Notification No. 2/2017-CT (Rate)]
- ✓ "Agricultural produce" means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. [Para 2(d) of Notification No. 2/2017-CT (Rate)]

Other Aspects :

Plantation crops are agricultural produce	Plantation crops like rubber, green tea or coffee be also covered under agricultural produce.
Pisciculture, Sericulture, floriculture etc. covered	Entry 54 include activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry, etc.
Potato chips or tomato ketchup etc. do not qualify as agricultural produce	In terms of the definition of agricultural produce, only such processing should be carried out as is usually done by cultivator or producers which does not alter its essential characteristics but makes it marketable for primary market. Potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce. Hence, the same are not agricultural produce.
Process which makes agricultural produce marketable in the retail market	The processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, would NOT be covered in this entry. Only such processes are covered in this entry which makes agricultural produce marketable in the primary market.

Cleaning of wheat carried outside the farm – Not liable for GST	It is a process which does not alter essential characteristics of agricultural produce but makes it only marketable for the primary market and therefore would be covered in the exemption entry even if the same is done outside the farm.
Leasing of vacant land with a green house or a storage shed meant for agricultural produce is covered under exemption	If vacant land has a structure like storage shed or a green house built on it which is incidental to its use for agriculture then its lease would be covered under the exemption entry.
Agricultural Extension Services(AES)	The main objective of AES is to transmit latest technical know-how to farmers. It also focuses on enhancing farmers' knowledge about crop techniques and help them to increase productivity. This is done through training courses, kisan call centres, farm visits, on farm trials, kisan melas, kisan clubs, advisory bulletins and the like.
Services covered by Agricultural Produce Marketing Committees (APMC) or Boards	APMC or Boards provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc. However, any service provided by such bodies which is not directly related to agriculture or agricultural produce will be liable to tax e.g. renting of shops or other property.
Testing activities – Covered in exemption	Under testing of agricultural produce, not only seed testing but also other testing activities directly related to production of any agricultural produce like soil testing, animal feed testing, testing of samples from plants or animals, for pests and disease causing microbes are covered in the exemption and hence not liable to GST.
Processed tea, coffee, jaggery and pulses – Not Agricultural produce – Not eligible for exemption [Circular No. 16/16/2017GST dated 15-11-2017]	✓ Black tea, green tea, white tea – Not agricultural produce : Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. on green leaf and is the processed output of the same. ✓ Thus, green tea leaves and not tea is the "agricultural produce" eligible for exemption available for loading, unloading, packing, storage or warehousing of agricultural produce. Same is the case with coffee obtained after processing of coffee beans.

	✓ Jaggery – Not agricultural produce : Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce. ✓ Pulses dehusked or split – Not agricultural produce : Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of de-husking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore pulses (dehusked or split) are also not agricultural produce. ✓ Whole grain pulse – Agricultural produce : However, whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce.

(8) CARRYING OUT AN INTERMEDIATE PRODUCTION PROCESS IN RELATION TO CULTIVATION OF PLANTS AND REARING OF ALL LIFE FORMS OF ANIMALS [ENTRY 55 of Notification No.12/2017-CT (Rate)]

Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce is exempt.

Other Aspect : Milling of paddy into rice – Not eligible for exemption - Liable to GST [Circular No. 19/19/2017GST dated 20-11-2017] : Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested.

Further, processing of paddy into rice is not usually carried out by cultivators but by rice millers. Milling of paddy into rice also changes its essential characteristics. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.

Milling of paddy into rice on job work basis, is liable to GST on the processing charges (and not on the entire value of rice).

(9) ARTIFICIAL INSEMINATION OF LIVESTOCK (OTHER THAN HORSES) [ENTRY 55A of Notification No.12/2017-CT(Rate)]

Services by way of artificial insemination of livestock (other than horses) are exempt.

(10) LOADING, UNLOADING, PACKING, STORAGE OR WAREHOUSING OF RICE [ENTRY 24 of Notification No.12/2017-CT (Rate)]

Services by way of loading, unloading, packing, storage or warehousing of rice are exempt.

(11) WAREHOUSING OF MINOR FOREST PRODUCE [ENTRY 24A of Notification No.12/2017-CT(Rate)]

Services by way of warehousing of minor forest produce are exempt.

(12) STORAGE OR WAREHOUSING OF CEREALS, PULSES ETC [ENTRY 24B of Notification No.12/2017-CT(Rate)]

Services by way of storage or warehousing of cereals, pulses, fruits and vegetables are exempt from tax.

(13) SERVICES IN RELATION TO FRUITS AND VEGETABLES [ENTRY 57 of Notification No.12/2017-CT(Rate)]

Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables are exempt.

(14) SERVICES PROVIDED BY NCCD BY WAY OF COLD CHAIN KNOWLEDGE DISSEMINATION [ENTRY 58 of Notification No.12/2017-CT(Rate)]

Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination are exempt.

EDUCATION SERVICES

(15) SERVICES TO OR BY EDUCATIONAL INSTITUTION [ENTRY 66]

Services provided—

(a) by an educational institution to its students, faculty and staff;

(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;

(b) to an educational institution, by way of,—

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;

(v) supply of online educational journals or periodicals,

are exempt.

However, nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Besides this nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,—

(i) pre-school education and education up to higher secondary school or equivalent; or

(ii) education as a part of an approved vocational education course.

"Educational institution" means an institution providing services by way of,—

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course. [Para 2(y) of Notification No. 12/2017-CT (Rate)]

"Approved vocational education course" means,—

(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Education and Training (NCVET) [Amended by Notification No. 08/2024-CT (Rate) dated 08-10-2024 w.e.f. 10-10-2024] or State Council for Vocational Training (SCVT) offering courses in designated trades notified under the Apprentices Act, 1961; or

(ii) a Modular Employable Skill Course, approved by the National Council for Vocational Education and Training [Amended by Notification No. 08/2024-CT (Rate) dated 08-10-2024 w.e.f. 10-10-2024], run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship. [Para 2(h) of Notification No.12/2017-CT (Rate)]

Note : The Modular Employable Skills is the minimum skill set which is sufficient for gainful employment or self-employment in the world of work. This Scheme provides certification on vocational training from NCVT that is nationally and internationally recognized in world of work in the Government (Centre & State) as well as private sector. It provides employable skills to early school drop-outs, existing workers seeking skill upgradation, workers seeking certification of their skills acquired informally, ITI graduates, etc. to improve their employability and provides certification after completion of the course.

CBSE and SEB's to be treated as Educational Institutions for conduct of examination : For removal of doubts, it is clarified that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.

NTA to be treated as Educational Institution for conduct of examination : Any authority, board or body set up by the Central Government or State Government including National Testing Agency for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions.

Other aspects :

(a)	Meaning of Education	"Education" is not defined in the CGST Act, 2017, but as per Apex Court decision in "Loka Shikshana Trust v. CIT", education is process of training and developing knowledge, skill and character of students by normal schooling. Taxing the Education Sector has always been a sensitive issue, as education is seen more as a social activity than a business one. The Government has a constitutional obligation to provide free and compulsory elementary education to every child. Thus, to promote education, it would be beneficial if educational services are exempted from tax. However, commercialization of education is also a reality. The distinction between core and ancillary education is blurring and education is now an organised industry with huge revenues. The GST law tries to maintain a fine balance whereby core educational services provided and received by educational institutions are exempt and other services are sought to be taxed.
(b)	Education as 'a part' of curriculum for obtaining a qualification recognized by law	It means that only such educational services are exempt as are related to imparting of education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. However, training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification.
(c)	Services provided by boarding schools – Exempt :	Boarding schools provide service of education coupled with dwelling units for residence and food. It will be case of composite supply if charges for education and lodging and boarding are inseparable. Since such services in case of boarding schools are bundled in the ordinary course of business, hence, as per Section 8, bundle of services will be treated as consisting entirely of principal supply being education. In this case since the predominant nature is determined by the service of education, the other service of providing residential dwelling will not be considered for the purpose of determining the tax liability and in this case the entire consideration for the supply will be exempt.

(d)	Services provided by International schools – Exempt	Services provided by international schools giving certifications like IB are equivalent to education upto higher secondary school, hence they are exempt
(e)	Educational Institutions providing non-recognized qualification with recognized qualification courses – Separate services to be assessed separately :	Provision of dual qualifications are two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately. ✓ In case of Artificial Bundling: If an artificial bundle of service is created by clubbing two courses together, then by application of Section 8 it will be a case of mixed supply and it is liable to be treated as a course which attracts the highest liability of GST. ✓ In case of Natural Bundling: However, incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well-being will be an example of naturally bundled course and since Principal supply is exempt, the entire bundle will be exempt. ✓ One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component viz-a-viz the recognized course. If extra billing is being done, it may be a case of artificial bundling of two different supplies, not supplied together in the ordinary course of business, and therefore will be treated as a mixed supply, attracting the rate of the higher taxed component for the entire consideration.
(f)	Private tuition's :	Private tuition is not covered in the entry relating to education and hence the same shall be liable for GST. However, private tutors can avail the benefit of threshold exemption.
(g)	Placement services provided to educational institutions – Taxable	These services do not fall in the category of exempt services provided to educational institutions as these services are for securing job placements for the students. Hence, they are leviable to GST.
(h)	Campus Recruitment fees – Taxable	Fees charged by educational institutions in relation to campus recruitment from prospective employers are liable for GST as such services are not covered in exemption.
(i)	Institutes preparing students for	Institutes that prepare applicants for Board examinations and competitive exams like entrance examinations for Indian

	Competitive Exams – Taxable	Institute of Technology - Joint Entrance Examinations/ Pre Medical Tests, Civil Services exams, etc. are chargeable to GST.
(j)	Postal coaching covered – Taxable :	The coaching provided by postal means would also be covered under the GST and the charges, including the postal charges collected for rendering this service, would be subjected to GST.
(k)	Foreign Courses conducted by private institutes – Taxable :	Sometimes, private institutes conduct courses and issue diplomas or certificates in collaboration with certain foreign institutes or universities. In many cases, private enterprises conduct campus interviews of the students of such institutes and offer them jobs. Such certificates/diplomas may be accepted for higher education abroad. However, such a certificate/ diploma cannot be called as the one 'recognized by the law for the time being in force' unless such a diploma/ certificate has been specifically recognized by the statutory authorities such as UGC, AICTE. Hence, they would be subjected to tax.
(l)	Personality Development Institutes – Liable to GST :	Institutes that offer general course on improving communication skills, personality development, how to be effective in group discussions or personal interviews, general grooming and finishing, etc. are not covered by any of the exemption pertaining to 'vocational training institutes'. Hence, they are liable to GST.
(m)	College Hostel Mess - Taxability	Catering services provided by educational institutions - Exempt: li the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered by the definition given under para 2(y) of Notification No. 12/2017 - CT (Rate), then the same is exempt. Catering services provided by third person in hostel mess - Liable to GST: If the catering services, i.e., supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution, then it is a supply of service to the concerned educational institution. **Note:** It may be noted that said services when provided to an educational institution providing pre-school education or education up to higher secondary school or equivalent are exempt from tax.
(n)	Supply of food in Anganwadis and	Services provided to an educational institution by way of serving of food (catering including mid-day meals)is exempt

	Schools – Exempt from tax :	from levy of GST irrespective of its funding from government grants or corporate donations [under said entry 66 (b)(ii)]. Educational institutions as defined in the notification include aganwadi. Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates. – Circular No. 149/05/2021-GST dated 17-06-2021
(o)	Taxability of services provided by Industrial Training Institutes (ITI) :	✓ Private ITI's qualifies to be educational institutions : Private ITIs qualify as an educational institution if the education provided by these ITIs is approved as vocational educational course as defined above. ✓ Services in respect of designated trades – Exempt, Other Services – taxable : It implies that services provided by a private ITI only in respect of designated trades notified under Apprenticeship Act, 1961 are exempt from GST under Entry 66. Services in other than designated trades are liable to GST. ✓ Conduct of entrance exams of designated trades – Exempt In case of designated trades, services provided by a private ITI by way of conduct of entrance examination against consideration in the form of entrance fee is exempt from GST under Entry 66(aa).Further, in respect of such designated trades, services provided to an educational institution, by way of, services relating to admission to or conduct of examination by a private ITI will also be exempt under Entry 66(b)(iv). However, in case of other than designated trades in private ITIs, GST shall be payable on provision of said services. ✓ Services provided by Government ITI's – Exempt : As far as Government ITIs are concerned, services provided by a Government ITI to individual trainees/students, is exempt under Entry 6 as these are in the nature of services provided by the Central or State Government to individuals. Such exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government ITIs.
(p)	Input Services – Credit not admissible :	✓ Regarding, input services, it may be noted that where output services are exempted, the educational institutions may not be able to avail credit of tax paid on the input

		side. The categories of services known as auxiliary education services, which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, have been exempted [Entry 66(b)(i) to (v)] ✓ Auxiliary education services other than specified in item (b) would not be entitled to any exemption. The exemption also comes with a rider. Auxiliary services of – (i) transportation of students, faculty, and staff, (ii) catering including any mid-day meals scheme sponsored by Government; and (iii) security or cleaning or housekeeping services are exempt only if such auxiliary education services are provided to educational institutions providing services by way of education up to higher secondary or equivalent, (from pre-school to HSC). Thus, if such auxiliary education services are provided to educational institutions providing degree or higher education, the same would not be exempt. ✓ Similarly, services of supply of online educational journals/ periodicals are exempt only if they are provided to an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force. ✓ Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/ MNCs, who come to the institutes for recruiting candidates through campus interviews in relation to campus recruitments. Such services shall also be liable to tax.
(q)	Clarification on GST rate applicable on supply of food and beverage services by educational institution :	It is clarified that supply of food and beverages by an educational institution to its students, faculty and staff, where such supply is made by the educational institution itself, is exempt under Entry No. 66 of Notification No. 12/2017-CT (Rate). However, such supply of food and beverages by any person other than the educational institutions based on a contractual arrangement with such institution is leviable to GST @ 5% if the same is provided to an educational institution other than institution providing pre-school education or education up to higher secondary school or equivalent.

(r)	DG Shipping approved maritime courses conducted by Maritime Training Institutes of India – Exempt from GST – Circular No. 117/36/2019-GST dated 11-10-2019	The Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014. Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST. The exemption is subject to meeting the conditions specified at Sl. No. 66 of the notification No. 12/ 2017-CT (Rate) dated 28.06.2017.
(s)	Supply of various services by National Board of Examination- Services related to conduct of examination – Exempt, Other services – Taxable : Circular No. 151/07/2021 GST dated 17.06.2021	Issue : Taxability of various services supplied by Centre and State Boards such as National Board of Examination (NBE). Services provided by NBE : These services include entrance examination (on charging a fee) for admission to educational institution, input services for conducting such entrance examination for students, accreditation of educational institutions or professional so as to authorise them to provide their respective services. Illustratively, NBE provides services of conducting entrance examinations for admission to courses including Diplomat National Board (DNB) and Fellow of National Board (FNB), prescribes courses and curricula for PG medical studies, holds examinations and grant degrees, diplomas and other academic distinctions. It carries out all functions as are normally carried out by central or state educational boards and is thus a central educational board. NBE is Educational Institution for conduct of examination : According to explanation 3(iv) of the Notification No. 12/2017-CTR, "Central and State Educational Boards" are treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students. Therefore, NBE is an 'Educational Institution' in so far as it provides services by way of conduct of examination, including any entrance examination, to the students. Clarification : (i) GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to

		educational institution [under S. No. 66 (aa) of Notification No. 12/2017-CT(R)]. Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations. (ii) GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards [under S.No. 66(b)(iv) of Notification No. 12/2017-CT(R)]. (iii) GST at the rate of 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test) so as to authorise them to provide their respective services.
(t)	Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions	All services supplied by an 'educational institution' to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt. The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution. Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption. Accordingly, such activities of educational institution are also exempt. – Circular No. 177/09/2022-TRU dated 03-08-2022
(u)	Services provided by Indian Institute of Management	With effect from 31-01-2018, Indian Institutes of Management Act, 2018 came into force. This Act has empowered IIMs to – (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes. Resultantly, all the IIMs are now "educational institutions" as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.

The taxability of services provided by IIMs is as under –

Programmes offered by Indian Institutes of Management	Whether exempt from GST
All long duration programs (one year or more) conferring degree/ diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one-year Post Graduate Programs for Executives.	Exempt from GST
All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law.	Not exempt from GST

(16) AFFILIATION SERVICES PROVIDED TO SCHOOLS BY CBSE/SEB ETC [ENTRY 66A]

Services of affiliation provided by a Central or State Educational Board or Council or any other similar body, by whatever name called, to a school established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity are exempt.

Inserted by Notification No. 08/2024-CT (Rate) dated 08-10-2024 w.e.f. 10-10-2024.

HEALTH CARE SERVICE

(16) HEALTH CARE SERVICES [ENTRY 74 of Notification No. 12/2017 -CT (Rate)]:

Services by way of—

(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; However, the above exemption shall not apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/ Critical Care Unit (CCU)/ Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5,000 per day to a person receiving health care services.

(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above

are exempt.

- ✓ "Clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or

treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases. [Para 2(s) of Notification No. 12/2017-CT (Rate)]

- ✓ "Authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force. [Para 2(k) of Notification No. 12/2017CT (Rate)]
- ✓ "Health care services"—
  - means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, and
  - includes services by way of transportation of the patient to and from a clinical establishment, but
  - does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma. [Para 2(zg) of Notification No. 12/2017-CT (Rate)]

Other aspects :

(i) Recognized Systems of Medicines : In terms of Section 2(h) of the Clinical Establishments Act, 2010, the following systems of medicines are recognized systems of medicines:

- Allopathy
- Yoga
- Naturopathy
- Ayurveda
- Homeopathy
- Siddha
- Unani
- Any other system of medicine that may be recognized by Central Government.

(ii) Paramedics : Paramedics are trained health care professionals, for example nursing staff, physiotherapists, technicians, lab assistants etc. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment. Similar services in independent capacity are also exempted.

(iii) Services other than health care services in clinical establishment's premises : Supply of services other than healthcare services such as renting of shops, auditoriums in the premises of the clinical establishment, display of advertisements etc. will be subject to GST.

GST is not leviable on consultancy charges payable to doctors, consultants etc., retention money and food supplies to patients as advised by doctors. Other supplies of food by a

hospital to patients (not admitted) or their attendants or visitors are liable to GST. – Circular No. 32/06/2018-GST dated 12-2-2018

	Issue	Clarification
1.	Payment by hospitals to doctors etc. : Hospitals hire senior doctors/ consultants/ technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer-employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?	Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.
2.	Retention Money : Hospitals charge the patients, say, ₹ 10,000/- and pay to the consultants/ technicians only ₹ 7,500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?	The entire amount charged by them from the patients including the retention money and the fee/ payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.
3.	Food Supplied to the Patients : Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers.	✓ When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. ✓ If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST. ✓ Food supplied to the in-patients as advised by the doctor/nutritionists is a part of

		composite supply of healthcare and not separately taxable ✓ Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

Services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF) are exempt from GST. – Circular No. 177/09/2022-TRU dated 03-08-2022	
Issue :	Clarification
Applicability of GST on services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF).	The abnormality/disease/ailment of infertility is treated using ART procedure such as IVF. It is clarified that services by way of IVF are also covered under the definition of health care services for the purpose of above exemption notification.

Ambulance services provided National Health Mission (NHM) Circular No. 51/25/2018-GST dated 31-07-2018 :

- National Health Mission (NHM) is a flagship programme of the Government of India wherein the Central Government provides technical and financial support to States to strengthen healthcare systems including for free ambulance services (Dial 102/108 services).
- Dial 108 is the emergency response system primarily designed to attend to patients of critical care, trauma and accident victims etc. while Dial 102 services essentially are for basic patient transport aimed to cater the needs of pregnant women and children, though other categories are also taking benefit and are not excluded.
- Some State Governments themselves provide the free ambulance services to the patients while many States are operating the ambulance service on an outsourced model, i.e., services are provided by a private service provider (PSP) on behalf of State Government and it charges a fee from the State Governments for said ambulance services. However, in both the cases, ambulance services are provided free of cost to the patients.
- Services provided by State Governments and Private Service Providers (PSPs) by way of transportation of patients in ambulance are exempt under Entry 74 above.
- As regards ambulance services provided by PSPs [under NHM] on behalf of State Governments against consideration in the form of fee or otherwise charged from State Government, since ambulance services are an activity in relation to functions entrusted to Panchayats and Municipalities under Article 243G and 243W of the Constitution of India, same would be exempt as under:
  (i) Entry 3 if it is a pure service and not a composite supply involving supply of any goods, and

(ii) Entry 3A if it is a composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply.

(17) SERVICES BY RECOGNISED REHABILITATION PROFESSIONALS [ENTRY 74A of Notification No 12/2017-CT (Rate)]:

Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AB of the Income-tax Act, 1961 are exempt.

(18) VETERINARY SERVICES [ENTRY 46 of Notification No.12.2017-CT (Rate)]:

Services by a veterinary clinic in relation to health care of animals or birds are exempt.

SERVICES PROVIDED BY GOVERNMENT

(19) SERVICES BY GOVERNMENTAL AUTHORITY IN RELATION TO MUNICIPALITY FUNCTIONS [ENTRY 4]

Services by Governmental Authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution are exempt.

"Governmental Authority" means an authority or a board or any other body,—

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution. [Para 2(zf) of Notification No. 12/2017-CT (Rate)]

District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and eligible for the same exemptions from GST as available to any other Governmental Authority – Circular No. 206/18/2023 GST dated 31-10-2023

DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.

These activities are similar to activities that are enlisted in Eleventh Schedule and Twelfth Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/ supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.

Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

Applicability of GST on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the Real Estate (Regulation and Development) Act, 2016. – Circular No. 228/22/2024-GST dated 15-07-2024

Issue: Whether GST is applicable on the statutory collections made by the Real Estate Regulatory Authority (RERA).

Clarification: RERA is constituted under the Real Estate (Regulation and Development) Act, 2016. RERA performs function of regulating the real estate development and construction of the building entrusted to them which fall under Entry No. 1 and 2 of the Twelfth Schedule of the Indian Constitution.

RERA is a 'governmental authority' as per the definition in the exemption notification No.12/2017-CT(R) dated 28.06.2017 and is covered under the scope of entry at Si. No. 4 of notification No. 12/2017-CT(R) dated 28.06.2017.

Thus, it is hereby clarified that statutory collections made by RERA are covered under the Sl. No. 4 of notification No. 12/2017-CT(R) dated 28.06.2017 and hence exempt from tax.

(20) SERVICES BY GOVERNMENTAL AUTHORITY IN RELATION TO PANCHAYAT FUNCTIONS [ENTRY 5 of Notification No.12/2017-CT (Rate)] :

Services by a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution are exempt.

(21) SOVEREIGN SERVICES BY THE CENTRAL GOVERNMENT, STATE GOVERNMENT, UNION TERRITORY OR LOCAL AUTHORITY [ENTRY 6 of Notification No,12/2017-CT (Rate)] [Amended by Notification No.13/2023 -CT (Rate)dated 19-10-2023 w.e.f 20-102023]:

Services by the Central Government, State Government, Union territory or local authority excluding the following services –

i. services by the Department of Posts and the Ministry of Railways (Indian Railways)
ii. services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
iii. transport of goods or passengers; or
iv. any service, other than services covered under entries (a) to (c) above, provided to business entities,

are exempt.

✓ "Aircraft" has the same meaning as assigned to it in Section 2(1) of the Aircraft Act, 1934. [Para 2(f) of Notification No. 12/2017-CT (Rate)]

"Aircraft" means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth's surface and includes balloons,

whether fixed or free, airships, kites, gliders and flying machines [Section 2(1) of the Aircraft Act, 1934].

- ✓ "Airport" has the same meaning as assigned to it in Section 2(b) of the Airports Authority of India Act, 1994. [Para 2(g) of Notification No. 12/2017-CT (Rate)] "Airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in Section 2(2) of the Aircraft Act, 1934 [Section 2(b) of the Airports Authority of India Act, 1994].
- ✓ "Port" has the same meaning as assigned to it in Section 2(q) of the Major Port Trusts Act, 1963 or in Section 3(4) of the Indian Ports Act, 1908.[Para 2(zu) of Notification No. 12/2017-CT (Rate)]
- ✓ "Vessel" has the same meaning as assigned to it in Section 2(z) of the Major Port Trusts Act, 1963. [Para 2(zzo) of Notification No. 12/2017-CT (Rate)]
- ✓ "Business entity" means any person carrying out business. [Para 2(n) of Notf. No. 12/2017-CT (Rate)]

Other Aspects :

(a) Scope of term Government : As per section 2(53) of the CGST Act, 2017, 'Government' means the Central Government. Various State/ Union Territories (with Legislatures) GST Acts define 'Government' as Government of respective State Government/ Union Territory. For Union Territories (without State Legislatures), 'Government' means the Administrator or any Authority or officer authorized to act as Administrator by the Central Government. Regulatory bodies/agencies, for instance, Competition Commission of India, Press Council of India, Directorate General of Civil Aviation, Forward Market Commission, Inland Water Supply Authority of India, Central Pollution Control Board, Securities and Exchange Board of India, do not fall under the definition of Government.

(b) Services provided by Department of Post :

(i) Exempt Services : Basic mail services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams) to meet the universal postal obligations vide Entry 24C of Notification No. 12/2017-CT) (Rate).

(ii) Speed post etc. – Taxable : The services by way of ordinary post (envelopes weighing 10 grams or more), registered post, speed post, express parcel post, life insurance, and agency services provided to a person other than the Government or Union territory are not exempt. In respect of these services the Department of Posts is liable to pay tax without application of reverse charge.

(iii) Agency services – Taxable : The Department of Posts also provides services like distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills on commission basis. These services are in the nature of intermediary and generally called agency services. In these cases, the Department of Posts is liable to pay tax without application of reverse charge.

(c) Services provided by Police or security agencies of Government : Services provided by Police or security agencies of Government to PSU/private business entities are not exempt from GST. Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government for such supply of services.

Example: The Karnataka Cricket Association, Bangalore requests the Commissioner of Police, Bangalore to provide security in and around the Cricket Stadium for the purpose of conducting the cricket match. The Commissioner of Police arranges the required security for a consideration. In this case, services of providing security by the police personnel are not exempt. As the services are provided by Government, Karnataka Cricket Association is liable to pay the tax on the amount of consideration paid under reverse charge mechanism.

Non applicability of GST on General insurance policies provided by Government – Circular No. 16/16/2017-GST dated 15-11-2017 & Circular No. 190/02/2023- GST dated 13-1-2023		
	Issue	Clarification
1.	Is GST leviable on General Insurance policies provided by a State Government to employees of the State government/ Police personnel, employees of Electricity Department or students of colleges/ private schools etc. (a) where premium is paid by State Government; and (b) where premium is paid by employees, students etc.?	It is hereby clarified that services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory are exempt from GST under Entry 40 of Notification No. 12/2017-CT (R). Further, services provided by State Government by way of general insurance (managed by government) to employees of the State government/ Police personnel, employees of Electricity Department or students are exempt vide Entry 6 of Notification No. 12/2017-CT (R) which exempts Services by Central Government, State Government, Union territory or local authority to individuals.
2.	Is GST leviable on accommodation services supplied by Air Force Mess to its personnel	It is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of Notification No. 12/2017–CT (Rate), dated 286-2017 provided the services supplied by such messes

		qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.

(22) SERVICES PROVIDED BY GOVERNMENT/UT OR A LOCAL AUTHORITY TO A BUSINESS ENTITY HAVING AGGREGATE TURNOVER BELOW THRESHOLD LIMIT IN PRECEDING FY - EXEMPT [ENTRY 7 of Notification No. 12/2017 CT(Rate)] [Amended by Notification No.13/2023 CT (Rate)Dated 19-10-2023 w.e.f.20-10-2023]:

Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017 are exempt.

Explanation : The provisions of this entry shall not be applicable to—

a) services,—
   (i) by the Department of Posts and the Ministry of Railways (Indian Railways)
   (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; of transport of goods or passengers; and

b) services by way of renting of immovable property.

- ✓ "Special category States" shall mean the States as specified in Article 279A(4)(g) of the Constitution. [Para 2(zzf) of Notification No. 12/2017-CT (Rate)]
- ✓ "Renting in relation to immovable property" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property. [Para 2(zz) of Notification No. 12/2017-CT (Rate)]

(23) SERVICES PROVIDED BY GOVERNMENT OR A LOCAL AUTHORITY TO ANOTHER GOVERNMENT OR A LOCAL AUTHORITY [ENTRY 8 of Notification No.12/2017 – CT (Rate)] [Amended by Notificaton No.13/2023-CT(Rate) dated 19-10-2023 w.e.f 20-10-2023]

Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority are exempt. However, nothing contained in this entry shall apply to services—

(i) by the Department of Posts and the Ministry of Railways (Indian Railways)
(ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
(iii) of transport of goods or passengers.

(24) SERVICES PROVIDED BY GOVERNMENT OR UT OR A LOCAL AUTHORITY WHERE THE CONSIDERATION FOR SUCH SERVICES DOES NOT EXCEED ₹ 5,000 [ENTRY 9 of Notification No, 12/2017-CT (Rate)] [Amended by Notification No,13/2023 -CT (Rate) dated 19-10-2023 w.e.f. 20-10-2023]:

Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ` 5,000 are exempt.

However, nothing contained in this entry shall apply to—

(i) services by the Department of Posts and the Ministry of Railways (Indian Railways)

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers.

Continuous supply of service : In case where continuous supply of service, as defined in Section 2(33) of the CGST Act, 2017, is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a financial year.

(25) SERVICES BY AN OLD AGE HOME [ENTRY 9D of Notification No, 12/2017-CT (Rate)]:

Services by an old age home run by :

- ✓ Central Government, State Government; or
- ✓ an entity registered under section 12AB of the Incometax Act, 1961

to its residents (aged 60 years or more) against consideration upto ₹ 25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance are exempt.

(27) SERVICES BY MINISTRY OF RAILWAYS (INDIAN RAILWAYS) TO INDIVIDUALS [ENTRY 9E] [Inserted by Notification No. 04/2024-CT (Rate) dated 12-07-2024 w.e.f. 15-07-2024]

Services provided by Ministry of Railways (Indian Railways) to individuals by way of—

(a) sale of platform tickets;

(b) facility of retiring rooms/waiting rooms;

(c) cloak room services;

(d) battery operated car services,

are exempt.

(28) INTER ZONE/ DIVISION SERVICES UNDER MINISTRY OF RAILWAYS (INDIAN RAILWAYS) [ENTRY 9F] [Inserted by Notification No. 04/2024-CT (Rate) dated 12-07-2024 w.e.f. 15-07-2024]

Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/ division(s) under Ministry of Railways (Indian Railways) are exempt.

(29) SERVICES PROVIDED BY SPVS TO MINISTRY OF RAILWAYS (INDIAN RAILWAYS) [ENTRY 9G] [Inserted by Notification No. 04/2024-CT (Rate) dated 12-07-2024 w.e.f. 15-07-2024]

Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways (Indian Railways) by way of allowing Ministry of Railways (Indian Railways) to use the infrastructure built and

owned by them during the concession period against consideration and services of maintenance supplied by Ministry of Railways (Indian Railways) to SPVs in relation to the said infrastructure built and owned by the SPVs during the concession period against consideration are exempt.

(26) SERVICES OF POST CARD, INLAND LETTER ETC. BY POSTAL DEPARTMENT [ENTRY 24C of Notification No.12/2017 -CT (Rate)]

Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams) are exempt from tax.

(27) SERVICES BY WAY OF GUARANTEEING OF LOANS TAKEN BY GOVERNMENT UNDERTAKINGS OR PSU'S FROM THE BANKING COMPANIES AND FI'S [ENTRY 34A of Notification No.12/2017-CT (Rate)]

Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions are exempt.

"Financial institution" has the same meaning as assigned to it in section 45-I(c) of the Reserve Bank of India Act, 1934. [Para 2(zaa) of Notification No. 12/2017-CT (Rate)]

(28) SERVICE PROVIDED BY GOVERNMENT OR UT OR LOCAL AUTHORITY BY WAY OF REGISTRATION ETC. [ENTRY 47 of Notification 12/2017 -CT (Rate)]:

Services provided by the Central Government, State Government, Union territory No.
or local authority by way of—

(a) registration required under any law for the time being in force;

(b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force

are exempt.

(29) SERVICES PROVIDED TO INDIVIDUALS – ISSUANCE OF PASSPORT ETC. [ENTRY 61 of Notification No.12/2017-CT (Rate)]:

Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate are exempt.

(30) SERVICES BY WAY OF GRANTING NATIONAL PERMIT TO A GOODS CARRIAGE [ENTRY 61A of Notification No.12/2017-CT (Rate)]:

Services by way of granting National Permit to a goods carriage to operate through-out India/ contiguous States are exempt.

(31) SERVICE BY WAY OF TOLERATING NON-PERFORMANCE OF A CONTRACT [ENTRY 62 of Notification No.12/2017-CT (Rate)]:

Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract are exempt.

(32) SERVICE BY WAY OF ASSIGNMENT OF RIGHT TO USE NATURAL RESOURCES TO AN INDIVIDUAL FARMER FOR THE PURPOSES OF AGRICULTURE [ENTRY 63 of Notification No.12/2017-CT (Rate)]:

Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products are exempt.

Other Aspects :

Royalty payable to the Government for assignment of rights to use natural resources is covered under GST : The Government provides license to various companies including Public Sector Undertakings for exploration of natural resources like oil, hydrocarbons, iron ore, manganese, etc. For having assigned the rights to use the natural resources, the licensee companies are required to pay consideration in the form of annual license fee, lease charges, royalty, etc to the Government.

The activity of assignment of rights to use natural resources is treated as supply of services and the licensee is required to pay tax on the amount of consideration paid in the form of royalty or any other form under reverse charge mechanism.

Hence, the above exemption is provided when rights are assigned to use natural resources for agricultural purposes to individual farmers.

(33) MERCHANT OVERTIME CHARGES [ENTRY 65 of Notification No.12/2017-CT (Rate)]:

Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges are exempt.

(34) STATE GOVERNMENT'S SERVICES TO EXCESS ROYALTY COLLECTION CONTRACTOR [ENTRY 65B of Notification No, 12/2017-CT Rate]

Services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders are exempt.

Conditions : At the end of the contract period, ERCC shall submit an account to the State Government and certify that the amount of GST deposited by mining lease holders on royalty is more than the GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and where such amount of GST paid by mining lease holders is less than the amount of GST exempted, the exemption shall be restricted to such amount as is equal to the amount of GST paid by the mining lease holders and the ERCC

shall pay the difference between GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and GST paid by the mining lease holders on royalty.

"Mining lease holder" means a person who has been granted mining lease, quarry lease or license or other mineral concession under the Mines and Minerals (Development and Regulation) Act, 1957, the rules made thereunder or the rules made by a State Government under Section 15(1) of the Mines and Minerals (Development and Regulation) Act, 1957.

SERVICES PROVIDED TO GOVERNMENT

(35) PURE SERVICES TO GOVERNMENT/ UT/ LOCAL AUTHORITY IN RELATION TO PANCHAYAT FUNCTIONS/ MUNICIPAL FUNCTIONS [ENTRY 3 of Notification No.12/2017-CT (Rate)]

Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority by way of any activity—

a. in relation to any function entrusted to a Panchayat under article 243G of the Constitution; or
b. in relation to any function entrusted to a Municipality under article 243W of the Constitution,

are exempt.

Other Aspects :

(i) Pure Services : In the context of the language used in the notification, supply of services without involving any supply of goods would be treated as supply of 'pure services'.

For example, supply of man power for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, let us take the example of a governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided to services which involves only supply of services and not for works contract services

(ii) Statutory body, corporation etc. – Not Government or Local Authority : A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a 'local authority'.

Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. It is a settled position of law [Agarwal v. Hindustan Steel AIR [1970] SC (1150)] that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1). Such a statutory body, corporation or an authority as a juridical entity is

separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of 'local authority'. Thus, regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purposes of the GST Acts.

(iii) Functions entrusted to municipality : The functions entrusted to municipality under the Twelfth Schedule to Article 243W of the constitution include urban planning including town planning, roads and bridges, public health, sanitation conservancy and solid waste management, fire services, slum improvement and upgradation, promotion of cultural, educational and aesthetic aspects, provision of urban amenities and facilities such as parks, gardens, playgrounds, public amenities including street lighting, parking lots, bus stops and public conveniences, etc.

(iv) Functions entrusted to Panchayat : The functions entrusted to Panchayat under the Eleventh Schedule to Article 243G of the constitution include Agriculture, including agricultural extension, Animal husbandry, dairying and poultry, Fisheries, Small scale industries, including food processing industries, Drinking water, Fuel and fodder, Rural electrification, including distribution of electricity, Health and sanitation, including hospitals, primary health centres and dispensaries, Women and child development, Public distribution system, etc.

(36) COMPOSITE SUPPLY TO GOVERNMENT/ UT/ LOCAL AUTHORITY IN RELATION TO PANCHAYAT FUNCTIONS/ MUNICIPAL FUNCTIONS – EXEMPT IF VALUE OF GOODS IS NOT MORE THAN 25% OF TOTAL VALUE [ENTRY 3A of Notification No.12/2017 -CT (Rate)]

Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority by way of any activity—

(a) in relation to any function entrusted to a Panchayat under article 243G of the Constitution; or

(b) in relation to any function entrusted to a Municipality under article 243W of the Constitution,

is exempt.

GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS [Circular No. 153/09/2021-GST dated 17-6-2021]	
Issue	**Clarification**
Whether composite supply of service by way of milling of wheat into wheat flour, along-with fortification, by any person to a State Government for distribution of such wheat flour under Public Distribution System is eligible for	Public Distribution specifically figures at entry 28 of the 11th Schedule to the constitution, which lists the activities that may be entrusted to a Panchayat under Article 243G of the Constitution. Hence, said entry No. 3A would

exemption under entry No. 3A of Notification No. 12/2017-CT (Rate) dated 28-06-2017.	apply to composite supply of milling of wheat and fortification thereof by miller, or of paddy into rice provided that value of goods supplied in such composite supply (goods used for fortification, packing material etc) does not exceed 25% of the value of composite supply. It is a matter of fact as to whether the value of goods in such composite supply is up to 25% and requires ascertainment on case-to-case basis.

Sanitation and conservancy services supplied to Army and other Central and State Government departments – Liable to GST. — Circular No. 177/09/2022-TRU dated 03-08-2022	
Issue	Clarification
The exemption under entry 3 & 3A of notification 12/2017-CT (Rate) dated 28-6-2017 has been given on pure services & composite supplies procured by Central Government, State Government, Union Territories or local authorities for performing functions listed in the 11th and 12th schedule of the constitution.	It is clarified that if such services are procured by Indian Army or any other Government Ministry/ Department which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of Notification 12/2017-CT (Rate).

(37) SERVICES PROVIDED TO A GOVERNMENTAL AUTHORITY BY WAY OF WATER SUPPLY ETC. [ENTRY 3B] [Entry 9C of Notification No. 12/2017 CT (Rate)]:

Services provided to a Governmental Authority by way of

(a) water supply;
(b) public health;
(c) sanitation conservancy;
(d) solid waste management; and
(e) slum improvement and upgradation,

are exempt from tax.

(38) SUPPLY OF SERVICE BY A GOVERNMENT ENTITY TO GOVERNMENT, UT, LOCAL AUTHORITY IN FORM OF GRANTS [ENTRY 9C of Notification No.12/2017-CT (Rate)]

Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants is exempt.

"Government Entity" means an authority or a board or any other body including a society, trust, corporation, –

(i) set up by an Act of Parliament or State Legislature; or

(ii) established by any Government,

with 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority. [Para 2(zfa) of Notification No. 12/2017-CT (R)]

(39) SERVICE PROVIDED BY FAIR PRICE SHOPS TO GOVERNMENT/UT'S [ENTRY 11A of Notification No.12/2017-CT (Rate)]]

Service provided by Fair Price Shops to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin is exempt.

(40) SERVICES PROVIDED TO GOVERNMENT/UT'S UNDER ANY INSURANCE SCHEME FOR WHICH TOTAL PREMIUM IS PAID BY THE GOVERNMENT OR UT'S [ENTRY 40 of Notification No.12/2017-CT (Rate)]

Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory are exempt.

(41) SERVICES PROVIDED TO GOVERNMENT/UT'S UNDER ANY TRAINING PROGRAMME FOR WHICH 75% OR MORE OF THE TOTAL EXPENDITURE IS BORNE BY THE GOVERNMENT/UT'S [ENTRY 72 of Notification No.12/2017-CT (Rate)]

Services provided to the Central Government, State Government, Union territory administration under any training programme for which 75% or more of the total expenditure is borne by the Central Government, State Government, Union territory administration are exempt.

Coaching services supplied by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities" are exempt from GST. – Circular No. 164/20/2021-GST dated 06-10-2021

Issue	Clarification
Applicability of GST on free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where entire expenditure is provided by Government to coaching institutions by way of grant in aid.	The scope of Entry 72 is wide enough to cover coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where total expenditure is borne by the Government by way of funding to institute providing such coaching. Accordingly, it is clarified that services provided by any

	institutions/ NGOs under the central scheme of "Scholarships for students with Disabilities" where total expenditure is borne by the Government is covered under entry 72 of notification No. 12/2017CT (Rate) dated 28-06-2017 and hence exempt from GST.

CONSTRUCTION SERVICES

(42) PURE LABOUR CONTRACTS PERTAINING TO THE BENEFICIARY-LED INDIVIDUAL HOUSE CONSTRUCTION OR ENHANCEMENT UNDER THE HOUSING FOR ALL (URBAN) MISSION OR PRADHAN MANTRI AWAS YOJANA [ENTRY 10]

Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana are exempt.

"Original works" means—

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise. [Para 2(zs) of Notification No. 12/2017-CT (Rate)]

(43) SERVICES SUPPLIED BY ELECTRICITY DISTRIBUTION UTILITIES FOR EXTENDING ELECTRICITY DISTRIBUTION NETWORK UPTO THE TUBE WELL OF THE FARMER OR AGRICULTURALIST FOR AGRICULTURAL USE [ENTRY 10A of Notification No. 12/2017-CT (Rate)]:

Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use are exempt.

(44) PURE LABOUR CONTRACT PERTAINING TO A SINGLE RESIDENTIAL UNIT [ENTRY 11]

Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex are exempt.

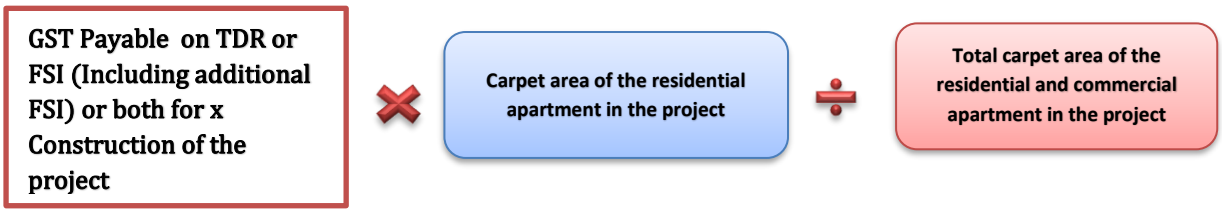
"Residential complex" means any complex comprising of a building or buildings, having more than one single residential unit. [Para 2(zzb) of Notification No. 12/2017-CT (Rate)]

"Single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family. [Para 2(zze) of Notification No. 12/2017-CT (Rate)]

(45) TRANSFER OF DEVEOPMENT RIGHTS AND FSI FOR CONSTRRUCTION OF RESIDENTIAL APARTMENTS [ENTRY 41A of Notification No.12/2017-CT (Rate)]

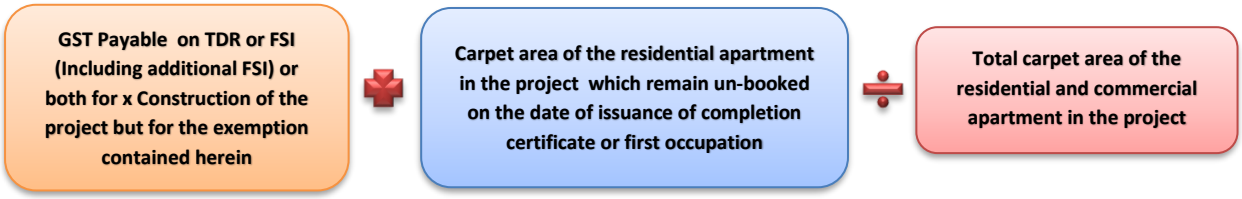
Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 01-04-2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier are exempt.

Computation of amount of exemption : The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under :



Conditions :

Promoter liable to pay tax on RCM basis on unsold flats : The promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner—



Maximum amount of tax payable : The tax payable as above shall not exceed 1% (0.5% CGST and 0.5% SGST) of the value in case of affordable residential apartments and 5% (2.5% CGST and 2.5% SGST) of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation.

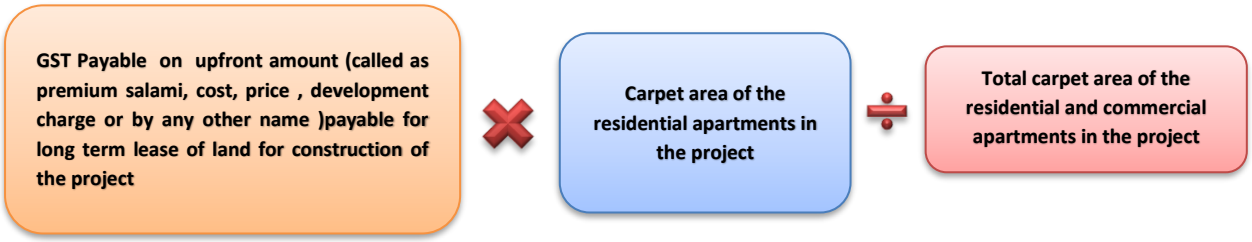
When tax payable : The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier.

(46) LONG TERM LEASE FOR CONSTRUCTION OF RESIDENTIAL APARTMENTS [ENTRY 41B of Notification No.12/2017-CT(Rate)]

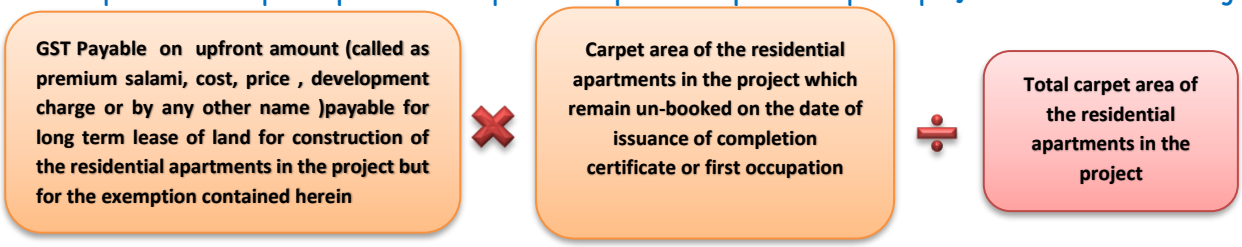
Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of 30 years, or more, on or after 01-04-2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier are exempt.

Computation of amount of exemption : The amount of GST exemption available for construction of residential apartments in the project shall be calculated as under—

Conditions :



Promoter liable to pay tax on RCM basis on unsold flats : The promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in



Maximum amount of tax payable : The tax payable shall not exceed 1% (0.5% CGST and 0.5% SGST) of the value in case of affordable residential apartments and 5% (2.5% CGST and 2.5% SGST) of the value in case of residential apartments other than affordable residential apartments remaining unbooked on the date of issuance of completion certificate or first occupation.

When tax payable : The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.

PASSENGERS BY DIFFERENT SERVICE

(47) TRANSPORT OF PASSENGERS BY DIFFERENT MODES [ENTRY 15 of Notification No.12/2017-CT (Rate)]

Transport of passengers, with or without accompanied belongings, by—

a) air in economy class, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; or

b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or

c) stage carriage other than air-conditioned stage carriage

are exempt.

However, nothing contained in (b) and (c) above shall apply to services supplied through an electronic commerce operator, and notified u/s 9(5) of the CGST Act, 2017.

- ✓ "Contract carriage" has the same meaning as assigned to it in Section 2(7) of the Motor Vehicles Act, 1988. [Para 2(t) of Notification No. 12/2017-CT (Rate)]

  "Contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum—

  a) on a time basis, whether or not with reference to any route or distance; or

  b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes—

  - a maxicab; and
  - a motor cab notwithstanding that separate fares are charged for its passengers.

  [Section 2(7) of Motor Vehicles Act, 1988]
- ✓ "Radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using the Global Positioning System or General Packet Radio Service. [Para 2(zv) of Notification No. 12/2017-CT (Rate)]
- ✓ "Stage carriage" shall have the same meaning as assigned to it in Section 2(40) of the Motor Vehicles Act, 1988. [Para 2(zzh) of Notification No. 12/2017-CT (Rate)]
- ✓ "Stage carriage" means a motor vehicle constructed or adapted to carry more than 6 passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey [Section 2(40) of the Motor Vehicles Act, 1988].

Where transportation takes place over pre-determined route on a pre-determined schedule in non air-conditioned contract carriage same will be exempt from GST. – Circular No. 177/09/2022-TRU dated 03-08-2022

Issue	Clarification
Whether the engagement of non-air conditioned contract carriages by firms for transportation of their employees to and from work is exempt under entry at Sr. No. 15(b) of notification No. 12/2017-CT (Rate) dated 28-06-2017.	It is clarified that 'charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations. In other words, the said exemption would apply to passenger transportation services by non-air conditioned contract carriages falling under Heading 9964 where according to explanatory notes, transportation takes place over predetermined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

(48) VG FUNDING AMOUNT RECEIVED BY AIRLINE OPERATORS UNDER RCS [ENTRY 16 of Notification No.12/2017 -CT (Rate)]

Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a regional connectivity scheme (RCS) airport, against consideration in the form of viability gap funding are exempt.

However, nothing contained in this entry shall apply on or after the expiry of a period of 3 years from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation.

(49) TRANSPORT OF PASSENGERS BY DIFFERENT MODES [ENTRY 17 of Notification No.12/2017 -CT (Rate)]

Service of transportation of passengers, with or without accompanied belongings, by—

a) railways in a class other than—
   (i) first class; or
   (ii) an air-conditioned coach;
(b) metro, monorail or tramway;
(c) inland waterways;
(d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
(e) metered cabs or auto rickshaws (including e-rickshaws)

are exempt.

However, nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator, and notified u/s 9(5) of the CGST Act, 2017.

"E-rickshaw" means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for carrying goods or passengers, as the case may be, for hire or reward, manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf. [Para 2(za) of Notification No. 12/2017CT (Rate)]

"Inland waterway" means national waterways as defined in Section 2(h) of the Inland Waterways Authority of India Act, 1985 or other waterway on any inland water, as defined in Section 2(b) of the Inland Vessels Act, 1917. [Para 2(zi) of Notification No. 12/2017-CT (Rate)]

"Metered cab" means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder (but does not include radio taxi). [Para 2(zp) of Notification No. 12/2017-CT (Rate)]

Other Aspects:

(a) Basics : Services of transportation of passengers are chargeable to GST. Entry 6 [Services provided by Government – discussed earlier] specifically excludes the transport of passengers' services provided by the Government or local authority from its purview, i.e. said services are liable to GST. However, services of transportation of passengers specified in Entries 15, 16 and 17 mentioned above are exempt from GST (whether provided by Government or otherwise) with or without accompanied belongings.

(b) Public transport by vessels other than predominantly for tourism purpose – Not Taxable : The public transport by a vessel should not be predominantly for tourism purposes. Normal public ships or other vessels that sail between places located in India would be covered in exemption entry even if some of the passengers on board are using the service for tourism as predominantly such service is not for tourism purpose.

For example: Services by way of transportation of passengers on a vessel, from Chennai to Port Blair (mainland – island) or Port Blair to Havelock (inter island), are covered in exemption in case the transportation is not predominantly for tourism purpose. Such transportation by a vessel (of any size) is covered in exemption entry since such transportation is between two places located in India.

(c) Services provided by leisure or charter vessels or a cruise ship – Taxable : Services provided by leisure or charter vessels or a cruise ship, predominant purpose of which is tourism, would not be covered in exemption even if some of the passengers in such vessels are not tourists.

(d) Taxes levied be included : The value of any taxable service will include the taxes levied by any Government on any passenger travelling by air, as only taxes levied under GST law are

excluded. Hence, passenger taxes shall form part of taxable value of supply. [Section 15(2) of CGST Act, 2017]

(e) Transport of passengers by ropeway, etc. – Taxable : Transport of passengers, with or without accompanied belongings, by :

(i) ropeway;

(ii) cable car; or

(iii) aerial tramway

is liable to GST.

Circular No. 115/34/2019-GST dated 11-10-2019	PSF and UDF charged by airport operators are consideration for providing services to passengers and therefore liable to GST. PSF and UDF charges collected by the airlines as an agent – airlines not responsible for payment of GST. The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. – Circular No. 115/34/2019-GST dated 11-10-2019

- ✓ Passenger Service Fee (PSF) and User development fees : Passenger Service Fee (PSF) is charged from embarking passengers at such rates as specified by the Central Government. User Development Fee (UDF) are charged by airport operators for providing the services to passengers. The User Development Fees (UDF) shall be collected from the passengers by the airlines at the time of issue of air ticket and the same shall be remitted to Airports Authority of India in the line system/procedure in vogue. For this, collection charges are received by the airlines from AAI, which is not passed on to the passengers in any manner.
- ✓ PSF and UDF – liable to GST : Section 2(31) of the CGST Act states that "consideration" in relation to the supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. Thus, PSF and UDF charged by airport operators are consideration for providing services to passengers and therefore, are liable to GST.
- ✓ PSF and UDF charges collected by the airlines as an agent- airlines not responsible for payment of GST – Airport operator liable to pay GST : PSF and UDF being charges levied by airport operator for services provided to passengers, are collected by the airlines as an agent and is not a consideration for any service provided by the airlines. Thus, airline is not responsible for payment of GST on UDF or PSF provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. It is the licensee, that is the airport operator (AAI, DIAL, MIAL etc) which is liable to pay GST on UDF and PSF.
- ✓ When air lines can be regarded as agent : Airlines may act as a pure agent for the supply of airport services in accordance with rule 33 of the CGST rules. Rule 33 of the CGST rules provides that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,–

- the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- The supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Accordingly, the airline acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers. The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under Rule 33 of the CGST Rules. The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

✓ The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of GST, there is no question of their not paying GST collected by them to the Government.

✓ Collection charges received by airlines liable to GST under forward charge : The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc) and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.

GST is exempt on tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/ Government. – Circular No. 177/09/2022-TRU dated 03-08-2022

Issue	Clarification
Applicability of GST on tickets of private ferry used for passenger transportation.	It is clarified that exemption as per Sl. No 17(d) of notification No. 12/2017-CT (Rate) dated 28-06-2017 would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/ government. It is further clarified that, the

	expression 'public transport' used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

GOODS TRANSPORTATION SERVICES

(50) TRANSPORTATION OF GOODS BY DIFFERENT MODES [ENTRY 18 of Notification No.12-2017-CT (Rate)]:

Services by way of transportation of goods—

a. by road except the services of—
   (i) a goods transportation agency;
   (ii) a courier agency;
b. by inland waterways

are exempt.

- ✓ "Goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. [Para 2(ze) of Notif. No. 12/2017-CT (Rate)]
- ✓ "Courier agency" means any person engaged in the door-to-door transportation of timesensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles. [Para 2(u) of Notification No. 12/2017-CT (Rate)]

Other Aspects:

a. 'Express Cargo Service' - 'Courier Agency' – Taxable : If some transporters undertake doorto-door transportation of goods or articles and make special arrangements for speedy transportation and timely delivery of such goods or articles, then, such services, which are known as 'Express Cargo Service' with assurance of timely delivery, will fall within the definition of 'courier agency'.
b. "Angadia" liable under Courier service : "Angadia" who undertakes delivery of documents, goods or articles received from a customer to another person for a consideration, are covered within the definition of courier and therefore, are liable to GST.

(51) SERVICES BY WAY OF TRANSPORTATION OF GOODS BY AN AIRCRAFT [ENTRY 19 of Notification No.12/2017 -CT (Rate)]:

Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India are exempt

- ✓ Customs station" shall have the same meaning as assigned to it in Section 2(13) of the Customs Act, 1962. [Para 2(v) of Notification No. 12/2017-CT (Rate)]
- ✓ "Customs station" means any customs port, customs airport, international courier terminal, foreign post office or land customs station [Section 2(13) of the Customs Act, 1962]

(52) AIR FREIGHT FOR EXPORT GOODS [ENTRY 19A of Notification No.12/2017 -CT (Rate)]:]

Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India are exempt. However, nothing contained in this entry shall apply after 30-09-2022.

(53) SEA FREIGHT FOR EXPORT GOODS [ENTRY 19B of Notification No.12/2017 -CT (Rate)]:]

Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India are exempt.

However, nothing contained in this entry shall apply after 30-09-2022.

(54) SATELLITE LAUNCH SERVICES [ENTRY 19C of Notification No.12/2017 -CT (Rate)]:

Satellite launch services are exempt

(55) TRANSPORTATION OF CERTAIN GOODS BY RAIL OR VESSEL [ENTRY 20 of Notification No.12/2017 -CT (Rate)]:]

Services by way of transportation by rail or a vessel from one place in India to another of the following goods –

a. relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
b. defence or military equipments;
c. newspaper or magazines registered with the Registrar of Newspapers;
d. agricultural produce;
e. milk, salt and food grain including flours, pulses and rice; and
f. organic manure

are exempt.

(56) SERVICES PROVIDED BY A GOODS TRANSPORT AGENCY [ENTRY 21 of Notification No.12/2017-CT (Rate)] :

Services provided by a goods transport agency, by way of transport in a goods carriage of—

a. agricultural produce;
b. milk, salt and food grain including flour, pulses and rice;

c. organic manure;
d. newspaper or magazines registered with the Registrar of Newspapers;
e. relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
f. defence or military equipments

are exempt.

- ✓ "Goods carriage" has the same meaning as assigned to it in Section 2(14) of the Motor Vehicles Act, 1988. [Para 2(zd) of Notification No. 12/2017-CT (Rate)]
- ✓ "Goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. [Section 2(14) of the Motor Vehicles Act, 1988]

Other aspects :

(i) Goods transport agency has been defined in the Notification to mean any person who:

- provides service in relation to transport of goods by road and
- issues consignment note, by whatever name called.

Thus, it can be seen that issuance of a consignment note is the sine-qua-non for a supplier of service to be considered as a GTA. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of GTA.

If a consignment note is issued, it indicates that the lien on the goods has been transferred (to the transporter) and the transporter becomes responsible for the goods till its safe delivery to the consignee. It is only the services of such GTA, who assumes agency functions, that is being brought into the GST net.

(ii) Individual truck/ tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA. As a result, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at Entry 18 of Notification, which is exempt from GST.

"Consignment note" means a document, issued by a GTA against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains:

- ✓ the name of the consignor and consignee,
- ✓ registration number of the goods carriage in which the goods are transported,
- ✓ details of the goods transported,
- ✓ details of the place of origin and destination,
- ✓ person liable for paying tax whether consignor, consignee or GTA

(iii) Significance of the term 'in relation to' in the definition of GTA : The use of the phrase 'in relation to' has extended the scope of the definition of GTA. It includes not only the actual transportation of goods, but also various intermediary and ancillary services, such as, loading/ unloading, packing/ unpacking, transhipment and temporary warehousing, which are provided in the course of transport of goods by road.

These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.

In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply. However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.

(iv) GTA – Additional requirements : Where the supplier of taxable service is a GTA supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing—

- ✓ the gross weight of the consignment,
- ✓ name of the consigner and the consignee,
- ✓ registration number of goods carriage in which the goods are transported,
- ✓ details of goods transported,
- ✓ details of place of origin and destination,
- ✓ GSTIN of the person liable for paying tax whether as consigner, consignee or goods transport agency, and
- ✓ also containing other information as mentioned under Rule 46. [Rule 54(3)]

(v) **Reverse charge :**

Category of Supply of Services	Supplier of Service	Recipient of Service
Supply of Services by a Goods Transport Agency (GTA) in respect of transportation of goods by road to— a. any factory registered under or governed by the Factories Act, 1948; or b. any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or c. any co-operative society established by or under any law; or d. any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; **or**	Goods Transport Agency (GTA)	a. Any factory registered under or governed by the Factories Act, 1948; or b. any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or c. any co-operative society established by or under any law; or d. any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; **or** e. any body Corporate established, by or under any law; or

e. any body corporate established, by or under any law; or f. any partnership firm whether registered or not under any law including association of persons; or g. any casual taxable person. RCM not applicable if recipient registered only for TDS : However, nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to,– (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies, which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.		f. any partnership firm whether registered or not under any law including association of persons; or g. any casual taxable person; h. located in the taxable territory. However nothing contained in this entry shall apply where,– (i) the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge; and (ii) the supplier has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has made a prescribed declaration on such invoice issued by him. If a GTA has exercised the option to pay tax under forward charge for a particular financial year, it shall be deemed that the option has been exercised for the next and future financial years also unless the GTA files a declaration that it wants to revert to the reverse charge mechanism during 1st 31st March of the preceding financial year.

Note: GTA services are taxable at the following two rates:

(i) @ 5% (2.5% CGST+2.5% SGST/UTGST or 5% IGST) where GTA has not taken the Input Tax Credit (ITC) on goods or services used in supplying GTA service (there can be either of the cases – where GTA exercises the option to itself pay GST at said rate or /does not exercise the option to itself pay GST at said rate, on services supplied by it) or

(ii) @ 12% (6% CGST+6% SGST/UTGST or 12% IGST) where GTA exercises the option to itself pay GST at said rate on services supplied by it. In this case, there is no restriction on availing ITC on goods or services used in supplying GTA service by GTA.

(vi) Time-sensitive Transportation – GTA v. Courier Agency : Time sensitive transportation of goods by road in a goods carriage by a GTA shall be classified as GTA service and not under courier service so long as–

(a) the entire transportation of goods is by road; and

(b) the person transporting the goods issues a consignment note.

(vii) Time-sensitive Transportation – GTA v. Courier Agency : Time sensitive transportation of goods by road in a goods carriage by a GTA shall be classified as GTA service and not under courier service so long as–

a. the entire transportation of goods is by road; and

b. the person transporting the goods issues a consignment note.

Transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time – liable to GST under Rental services of transport vehicles with operator.

- ✓ Whether transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time would be covered under Sr. No. 18 of notification No. 12/2017-CT (Rate) dated 28.06.2017 which exempts transport of goods by road except by a GTA.
- ✓ Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.
- ✓ Such services are nothing but "rental services of transport vehicles with operator". The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations. The person who gives the vehicles on rent with operator can not be said to be supplying the service by way of transport of goods.
- ✓ Accordingly, it is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator falling under Heading 9966 and not service of transportation of goods by road. This being so, it is not eligible for exemption under Sl. No. 18 of notification No. 12/2017-CT (Rate) dated 28.06.2017.

Circular No. 177/09/2022-TRU dated 03-08-2022

(57) SERVICES PROVIDED BY A GOODS TRANSPORT AGENCY TO AN UNREGISTERED PERSON [ENTRY 21A]

Services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the following recipients, namely:

(a) any factory registered under or governed by the Factories Act, 1948; or
(b) any Society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or
(c) any Co-operative Society established by or under any law for the time being in force; or
(d) any body corporate established, by or under any law for the time being in force; or
(e) any partnership firm whether registered or not under any law including association of persons;
(f) any casual taxable person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act

are exempt.

(58) SERVICES PROVIDED BY A GTA TO PERSONS REGISTERED FOR TDS [ENTRY 21B]

Services provided by a goods transport agency, by way of transport of goods in a goods carriage, to, —

(a) a Department or Establishment of the Central Government or State Government or Union territory; or
(b) Mobile local authority;
(c) Governmental agencies,

which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax under Section 51 and not for making a taxable supply of goods or services are exempt.

BANKING AND FINANCIAL SERVICE

(59) SERVICES BY WAY OF EXTENDING DEPOSITS, LOANS OR ADVANCES/ INTER SE SALE OR PURCHASE OF FOREIGN CURRENCY AMONGST BANKS OR AUTHORIZED DEALERS [ENTRY 27]

Services by way of—

(a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);
(b) interse sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers

are exempt.

"Authorised dealer of foreign exchange" shall have the same meaning assigned to "Authorised person" in Section 2(c) of the Foreign Exchange Management Act, 1999. [Para 2(j) of Notification No. 12/2017-CT (Rate)]

"Authorised person" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under Section 10(1) of FEMA, 1999 to deal in foreign exchange or foreign securities. [Section 2(c) of the Foreign Exchange Management Act, 1999]

"Interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised. [Para 2(zk) of Notification No. 12/2017-CT (Rate)]

Services provided by International Finance Corporation (IFC) and Asian Development Bank (ADB) are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act, 1966. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC. – Circular No. 83/02/2019-GST dated 01-01-2019

Other Aspects :

(i) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount : This entry covers any such service wherein moneys due are allowed to be used or retained on payment of interest or on a discount. The words used are 'deposits, loans or advances' and have to be taken in the generic sense.

They would cover any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called the time value of money which could be in the form of an interest or a discount. This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

Illustrations of exempt services –

- ✓ Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- ✓ Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.
- ✓ Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- ✓ Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

(ii) Service charges or administrative charges or entry charges collected over and above interest on loan, advance or a deposit are not exempt and thus, represent taxable consideration.

Similarly, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged on a derivative/ future contract/ forward contract/ invoice or cheque discounting, the same would be a consideration for supply of service and liable to GST.

(iii) Invoice discounting/ cheque discounting or any other similar form of discounting is covered only to the extent consideration is represented by way of discount as such discounting is a manner of extending a credit facility or a loan.

(iv) Any interest/ delayed payment charges charged to clients for delay in payment of brokerage amount/ settlement obligations/ margin trading facility is exempt from GST since settlement

obligations/ margin trading facilities are transactions which are in the nature of extending loans or advances and are covered by Entry 27.

(v) Charges for late payment of outstanding dues on credit card : Interest charged on outstanding credit card balances has been specifically excluded from Entry 27. Hence, the same is liable to GST.

(vi) Collateralized Borrowing and Lending Obligations (CBLO) transactions : In CBLO transaction, the borrowing bank pays an amount as consideration to the lending bank for funds provided by it for a short term. Such amount would qualify as 'consideration represented by way of interest or discount' and hence, would exempt from GST under Entry 27. However, if any charges or fees are levied for such transactions, the same would be a consideration and would be liable to GST.

(vii) Instruments like repos and reverse repos : Repos and reverse repos are financial instruments of short term call money market that are normally used by banks to borrow from or lend money to RBI. The margins, called the repo rate or reverse repo rate, in such transactions are nothing but interest charged for lending or borrowing of money. Thus, they have the characteristics of loans and deposits for interest and are accordingly exempt from GST under Entry 27.

(viii) Income from Commercial Paper (CP) or Certificates of Deposit (CD) : The transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD') are in the nature of promissory notes. Consequently, they are included in the term 'money' and hence, are not chargeable to GST.

With regard to income from CPs or CDs, since these are the instruments for lending or borrowing money wherein consideration is represented by way of a discount or subscription to CPs or CDs, the same would be covered by entry 27 and is not liable to GST. However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for supply of services and liable to GST.

(ix) Assignment or sale of secured or unsecured debts : As seen in Chapter 2 – Supply under GST, only specified actionable claims would be taxable under GST. Where sale, transfer or assignment of debts falls within the purview of actionable claims, the same would not be subject to GST. Further, any charges collected in the course of transfer or assignment of a debt would be chargeable to GST, being in the nature of consideration for supply of services.

(x) Interest on debt instruments : As debt instruments such as debentures, bonds etc. are in the nature of loans, interest thereon will be exempt from GST.

(xi) Interest on a finance lease transaction : A finance lease is a method of borrowing against the asset. The interest represents the time value of the money expended by the bank in financing the asset. However, in a financial lease the ownership of the asset is with the bank. In essence, it is a 'purchase the asset and lend it further' transaction for bank. Therefore, neither the services are purely in the nature of extending loans nor the consideration for a financial lease is purely in the nature of interest. Thus, interest on finance lease transactions will be taxable under GST.

(xii) Transactions where loan of one bank is taken over by another bank : GST will be liable on any transaction processing fees levied for such takeover of loans, but not on the interest component (as interest is exempted).

(xiii) Interchange fees on card settlement fees paid/ shared by banks : Fees charged for card settlement is a consideration which is part of a separate transaction between the banks which are parties to this transaction and shall be liable to GST.

(xiv) Securitization transactions undertaken by banks : Securitized assets are in the nature of securities and hence not subject to GST.

However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for provision of services related to securitization and chargeable to GST.

Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person. – Circular No.218/12/2024-GST dated 26-06-2024

Issue : Whether the activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where there is no consideration in the nature of processing fee/ administrative charges/ loan granting charges etc., and the consideration is represented only by way of interest or discount, will be treated as a taxable supply of service under GST or not.

Clarification :

(i) As per Section 7(1)(c) of the CGST Act, read with Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration. Therefore, it is evident that the service of granting loan/ credit/ advances by an entity to its related entity is a supply under GST.

(ii) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempted under sub entry (a) of entry 27 of Notification No. 12/2017Central Tax (Rate). Therefore, it is clear that the supply of services of granting loans/ credit/ advances, in so far as the consideration is represented by way of interest or discount, is fully exempt under GST.

(iii) It is mentioned that overseas affiliates or domestic related persons are generally charging no consideration in the form of processing fee/ service fee, other than the consideration by way of interest or discount on the loan amount. Doubts are being raised regarding the taxability of the services of processing/ administering/ facilitating the loan in such cases, by deeming the same as supply as per Section 7(1)(c) of the CGST Act, read with Schedule I of CGST Act. The processing fee/ service fee is generally a one-time charge that lenders levy on applicants when they apply for a loan. This fee is generally non-refundable and is used to cover the administrative cost of processing the loan application. Charges of any other nature in respect of loan, other than by way of interest or discount, would represent taxable consideration for providing the facilitation/ processing/ administration services for the loan and hence would be liable to GST.

(iv) It is significant to note that the processing/ service fee is generally charged by the bank/ financial institution from the recipient of the loan in order to cover the administrative cost of processing the loan application. An independent lender may carry out a thorough credit assessment of the potential borrower to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks. Such credit assessment may include understanding the business of the applicant, as well as the purpose of the loan, financial standing and credibility of the applicant, how it is to be structured and the source of its repayment which may include analysis of the borrower's cash flow forecasts, the strength of the borrower's balance sheet, and where any collateral is offered, due diligence on the collateral offered may also be required to be carried out. To cover such costs, the independent lender generally collects a fee that is in the nature of processing fee/ administrative charges/ service fee/ loan granting charges, which is leviable to GST.

(v) However, when an entity is extending a loan to a related entity, it may not require to follow such processes as are followed by an independent lender. For example, it may not need to go through the same process of information gathering about the borrower's business, his financial standing and credibility and other details, as the required information may already be readily available within the group, or between related persons. The lender may not also take any collateral from the borrower. Accordingly, in case of loans provided between related parties, there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan. Therefore, it may not be desirable to place the services being provided for processing the loans by banks or independent lenders vis-a-vis the loans provided by a related party, on equal footing.

(vi) Even in case of loans provided between unrelated parties, there may not be any processing fee/ administrative charges/ loan granting charges etc., based on the relationship between the bank/ independent lender and the person taking the loan. The lender might waive off the administrative charges in full, based on the nature and amount of loan granted, as well as based on the relationship between the lender and the concerned person taking the loan.

(vii) Accordingly, in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in the form of processing/ facilitating/ administering the loan, by deeming the same as supply of services as per Section 7(1)(c) of the CGST Act, read with Schedule I of CGST Act. Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28 of CGST Rules, 2017.

(viii) However, in cases of loans provided between related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount charged by way of interest or discount, the same may be considered to be the consideration for the supply of services of processing/ facilitating/ administering of the loan, which will be liable to GST as supply of services by the lender to the related person availing the loan.

(60) SERVICES PROVIDED TO BSBD A/C HOLDERS UNDER PMJDY [ENTRY 27A of Notification No.12/2017-CT (Rate)]-

Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY) are exempt.

(61) CREDIT CARD, DEBIT CARD, CHARGE CARD OR OTHER PAYMENT CARD SERVICE – EXEMPT UPTO ₹ 2,000 PER TRANSACTION [ENTRY 34 of Notification No.12/2017-CT (Rate)]-

Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service are exempt.

"Acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

(62) SERVICES PROVIDED BY FINANCIAL INTERMEDIARIES LOCATED IN IFSC SEZ [ENTRY 39A of Notification No.12/2017-CT (Rate)]-

Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR) are exempt.

Explanation : The intermediary of financial services in IFSC is a person,—

a) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or
b) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or
c) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or
d) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.

LIFE INSURANCE SERVICES

(63) LIFE INSURANCE SERVICES UNDER NPS [ENTRY 28 of Notification No.12/2017-CT (Rate)]-]

Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 are exempt.

"Life insurance business" has the same meaning as assigned to it in Section 2(11) of the Insurance Act, 1938. [Para 2(zn) of Notification No. 12/2017-CT (Rate)]

(64) LIFE INSURANCE SERVICES TO MEMBERS OF THE ARMY, NAVY & AIR FORCE [ENTRY 29 of Notification No.12/2017-CT (Rate)]-

Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government are exempt.

(65) LIFE INSURANCE SERVICES TO COAST GUARD [ENTRY 29A of Notification No.12/2017-CT (Rate)]-

Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government are exempt.

(66) LIFE INSURANCE SERVICES TO CENTRAL ARMED POLICE FORCE [ENTRY 29B of Notification No.12/2017-CT (Rate)]-

Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force are exempt.

(67) LIFE INSURANCE SERVICES [ENTRY 36 of Notification No.12/2017-CT (Rate)]-

Services of life insurance business provided under following schemes—

a) Janashree Bima Yojana;
b) Aam Aadmi Bima Yojana;
c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of ₹ 2,00,000;
d) Varishtha Pension BimaYojana;
e) Pradhan Mantri Jeevan Jyoti BimaYojana;
f) Pradhan Mantri Jan DhanYojana; Pradhan Mantri Vaya Vandan Yojana are exempt.

"Life micro-insurance product" shall have the same meaning as assigned to it in regulation 2(e) of the Insurance Regulatory and Development Authority (Micro-insurance) Regulations, 2005. [Para 2(zo) of Notification No. 12/2017-CT (Rate)]

SERVICES PROVIDED BY SPECIFIED BODIES

(68) ESI SERVICES [ENTRY 30 of Notification No.12/2017-CT (Rate)]-]

Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948 are exempt.

(69) EPF SERVICES [ENTRY 31 of Notification No.12/2017-CT (Rate)]-]
Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952 are exempt.

(70) SERVICES BY CMPFO [ENTRY 31A of Notification No.12/2017-CT (Rate)]-
Services by Coal Mines Provident Fund Organisation (CMPFO) to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 are exempt.

(71) SERVICES BY NATIONAL PENSION SYSTEM (NPS) TRUST [ENTRY 31B of Notification No.12/2017-CT (Rate)]-
Services by NPS Trust to its members against consideration in the form of administrative fee are exempt.

GENERAL INSURANCE SERVICES

(72) GENERAL INSURANCE SERVICES [ENTRY 35 of Notification No.12/2017-CT (Rate)]-
Services of general insurance business provided under following schemes –

(a) Hut Insurance Scheme;
(b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
(c) Scheme for Insurance of Tribals;
(d) Janata Personal Accident Policy and Gramin Accident Policy;
(e) Group Personal Accident Policy for Self-Employed Women;
(f) Agricultural Pumpset and Failed Well Insurance;
(g) Premia collected on export credit insurance;
(h) Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture;
(i) Jan Arogya Bima Policy;
(j) Pradhan Mantri Fasal BimaYojana (PMFBY);
(k) Pilot Scheme on Seed Crop Insurance;
(l) Central Sector Scheme on Cattle Insurance;
(m) Universal Health Insurance Scheme;
(n) Rashtriya Swasthya Bima Yojana;
(o) Coconut Palm Insurance Scheme;
(p) Pradhan Mantri Suraksha BimaYojna;
(q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999;
(r) Bangla Shasya Bima

are exempt.

"General insurance business" has the same meaning as assigned to it in Section 3(g) of the General Insurance Business (Nationalisation) Act, 1972. [Para 2(zb) of Notification No. 12/2017-CT (Rate)]

(73) RE-INSURANCE SERVICES [ENTRY 36A of Notification No.12/2017-CT (Rate)]-
Services by way of reinsurance of the insurance schemes specified in Entry No. 35/ 36/ 40 are exempt.

Applicability of GST on retrocession services— Circular No. 228/22/2024-GST dtd 15-7-2024	
Issue	Clarification
Whether the term 'reinsurance' as mentioned in Sl. No. 36A of Notification No. 12/2017-CT(R) dated 28-06-2017 includes 'retrocession'.	(a) As per the IRDAI (Re-insurance) Regulations, 2018, 'Retrocession' means a re-insurance transaction whereby a part of assumed reinsured risk is further ceded to another Indian Insurer or a CBR (Cross Border Re-insurer). It is hereby clarified that the term 'reinsurance' as mentioned in Sl. No. 36A of notification No. 12/2017-CT(R) dated 28.06-2017 includes 'retrocession' services.

PENSION SCHEMES

(74) COLLECTION OF CONTRIBUTION UNDER ATAL PENSION YOJANA (APY) [ENTRY 37 of Notification No.12/2017-CT (Rate)]-
Services by way of collection of contribution under the Atal Pension Yojana are exempt.

(75) COLLECTION OF CONTRIBUTION UNDER PENSION SCHEMES OF STATE GOVERNMENT [ENTRY 38 of Notification No.12/2017-CT (Rate)]-
Services by way of collection of contribution under any pension scheme of the State Governments are exempt.

BUSINESS FACILITATOR/ CORRESPONDENT

(76) BUSINESS FACILITATOR/ CORRESPONDENT [ENTRY 39 of Notification No.12/2017-CT (Rate)]-]
Services by the following persons in respective capacities—

a. business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
b. any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
c. business facilitator or a business correspondent to an insurance company in a rural area

are exempt.

- ✓ "Banking company" has the same meaning as assigned to it in Section 45A(a) of the Reserve Bank of India Act, 1934. [Para 2(l) of Notification No. 12/2017-CT (Rate)] "Banking company" means a banking company as defined in Section 5 of the Banking Regulation Act, 1949, and includes the State Bank of India, any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, any corresponding new bank constituted by Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and any other financial institution notified by the Central Government in this behalf [Section 45A(a) of the Reserve Bank of India Act, 1934].
- ✓ "Business facilitator or business correspondent" means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by the Reserve Bank of India. [Para 2(o) of Notification No. 12/2017-CT (Rate)]
- ✓ "Insurance company" means a company carrying on life insurance business or general insurance business. [Para 2(zj) of Notification No. 12/2017-CT (Rate)]
- ✓ "Intermediary" has the same meaning as assigned to it in Section 2(13) of the Integrated Goods and Services Tax Act, 2017. [Para 2(zl) of Notification No. 12/2017-CT (Rate)]
- ✓ "Rural area" means the area comprised in a village as defined in land revenue records, excluding—
  - the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or
  - any area that may be notified as an urban area by the Central Government or a State Government.

  [Para 2(zzc) of Notification No. 12/2017-CT (Rate)]

Other Aspects : It is still a big challenge for India to make the financial services accessible in rural areas. In many rural areas, either there are no banks or number of banks is insufficient. In order to counter this problem and ensure greater financial inclusion, the Reserve Bank of India (RBI) introduced the Business Correspondents and Business Facilitator Model through guidelines in 2006 allowing banks to employ two categories of intermediaries – known as Business facilitators (BFs) and Business correspondents (BCs). BCs/ BFs help villagers to open bank accounts and provide other banking services to them. They act as an intermediary between the bank and its customers. Banks, in turn, pay commission/ fee to the BCs/BFs. According to the RBI guidelines, while the BCs are permitted to carry out transactions on behalf of the bank as agents, the BFs can refer clients, pursue the clients' proposal and facilitate the bank to carry out its transactions, but cannot transact on behalf of the bank.

GST on Services of Business Facilitator (BF) or a Business Correspondent (BC) to Banking Company [Circular No. 86/05/2019-GST dated 01-01-2019]

1. Clarification on value of services by BF/BC to a banking company : The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for

services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner. The arrangements of banks with the Business Correspondents specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/ contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the Business Facilitator/ Correspondent.

Hence, banking company is the service provider in the business facilitator model or the business correspondent model operated by a banking company as per RBI guidelines. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent.

2. Clarification on the scope of services by BF/BC to a banking company with respect to accounts in rural areas : It is clarified that for the purpose of availing exemption from GST, the services provided by a BF/BC to a banking company in their respective individual capacities should fall under the Heading 9971 and that such services should be with respect to accounts in a branch located in the rural area of the banking company. The procedure for classification of branch of a bank as located in rural area and the services which can be provided by BF/BC, is governed by the RBI guidelines. Therefore, classification adopted by the bank in terms of RBI guidelines in this regard should be accepted.

LEASING SERVICES

(77) UPFRONT AMOUNT PAYABLE IN RESPECT OF SERVICE BY WAY OF GRANTING OF LONG TERM LEASE OF INDUSTRIAL PLOTS OR PLOTS FOR DEVELOPMENT OF INFRASTRUCTURE FOR FINANCIAL BUSINESS [ENTRY 41 of Notification No.12/2017-CT (Rate)]-]

Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of 30 years, or more)of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area is exempt.

Conditions :

i. Use for specified purpose : The leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area.

ii. Monitoring by State Government : The State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard.

iii. Tax, interest and penalty payable on violation of conditions : In case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original

lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty.

iv. Agreement to incorporate the terms of condition : The lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub- lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.

Explanation : The Central Government, State Government or Union territory shall have 20% or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory

Upfront amount payable in installments for long term lease of plots – exempt from GST : CBIC vide this Circular has clarified that GST exemption on the upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease (of 30 years, or more) of industrial plots or plots for development of infrastructure for financial business under Entry No. 41 of Exemption Notification 12/2017–CT (R) dated 28-06-2017 is admissible irrespective of whether such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront. – Circular No. 101/20/2019-GST dated 30-04-2019

Issue : Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment.
Clarification : Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.
Accordingly, as per recommendation of the GST Council, it is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of Notification No. 12/2017-CT (Rate) dated 28.06.2017.
– Circular No. 177/09/2022-TRU dated 03-08-2022

LEGAL SERVICES

(78) LEGAL SERVICES [ENTRY 45 of Notification No.12/2017-CT (Rate)]-
Services provided by—

(a)	an arbitral tribunal to –	(i) any person other than a business entity; or (ii) a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017 ; or (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;
(b)	a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to –	(i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity; or (iii) a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017; or (iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;
(c)	a senior advocate by way of legal services to –	(i) any person other than a business entity; or (ii) a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017; (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity,
are exempt.		

- ✓ "Arbitral tribunal" has the same meaning as assigned to it in Section 2(d) of the Arbitration and Conciliation Act, 1996. [Para 2(i) of Notification No. 12/2017-CT (Rate)]
- ✓ "Arbitral tribunal" means a sole arbitrator or a panel of arbitrators. [Section 2(d) of the Arbitration and Conciliation Act, 1996]
- ✓ "Advocate" has the same meaning as assigned to it in Section 2(1)(a) of the Advocates Act, 1961. [Para 2(b) of Notification No. 12/2017-CT (Rate)]
- ✓ "Advocate" means an advocate entered in any roll under the provisions of the Advocates Act, 1961. [Section 2(1)(a) of the Advocates Act, 1961]
- ✓ "Senior advocate" has the same meaning as assigned to it in Section 16 of the Advocates Act, 1961. [Para 2(zzd) of Notification No. 12/2017-CT (Rate)]

Section 16 of the Advocates Act, 1961 provides that an advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction. Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

- ✓ "Legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority. [Para 2(zm) of Notification No. 12/2017-CT (Rate)]

Other Aspects :

(a) Reverse charge :

	Category of Supply of Services	Supplier of service	Recipient of Service (Liable to pay GST)
1.	Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory. Business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services
2.	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.

(b) Circular No. 27/01/2018-GST dated 04-01-2018 – Reverse charge :

Questions/ Clarifications sought	Clarifications
Whether legal services other than representational services provided by an individual advocate or a senior advocate to a business entity are liable for GST under reverse charge mechanism?	Yes. In case of legal services including representational services provided by an advocate including a senior advocate to a business entity, GST is required to be paid by the recipient of the service under reverse charge mechanism, i.e. the business entity.

SPONSORSHIP OF SPORTS

(79) SPONSORSHIP OF SPORTING EVENTS [ENTRY 53 of Notification No.12/2017-CT (Rate)]-

Services by way of sponsorship of sporting events organised—

a. by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;
b. by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
c. by the Central Civil Services Cultural and Sports Board;
d. as part of national games, by the Indian Olympic Association; or
e. under the Panchayat Yuva Kreeda Aur Khel Abhiyaan Scheme

are exempt.

SKILL DEVELOPMENT SERVICES

(80) SERVICES PROVIDED BY NATIONAL SKILL DEVELOPMENT CORPORATION/ SECTOR SKILL COUNCIL/ ASSESSMENT AGENCY/ TRAINING PARTNER [ENTRY 69 of Notification No.12/2017-CT (Rate)] [Amended by Notification No. 08/2024-CT (Rate) dated 08-10-2024 w.e.f. 10-10-2024.]-

Any services provided by,—

(a) the National Skill Development Corporation set up by the Government of India;

(b) the National Council for Vocational Education and Training;

(c) an Awarding Body recognized by the National Council for Vocational Education and Training;

(d) an Assessment Agency recognized by the National Council for Vocational Education and Training;

(e) a Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training

in relation to—

(i) the National Skill Development Programme or any other scheme implemented by the National Skill Development Corporation; or
(ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
(iii) any National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package

are exempt.

(81) SERVICES OF ASSESSING BODIES BY WAY OF ASSESSMENTS UNDER THE SKILL DEVELOPMENT INITIATIVE SCHEME [ENTRY 70 of Notification No.12/2017-CT (Rate)]-

Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme are exempt.

(82) SERVICES PROVIDED BY TRAINING PROVIDERS UNDER DEEN DAYAL UPADHYAYA GRAMEEN KAUSHALYA YOJANA [ENTRY 71 of Notification No.12/2017-CT (Rate)]-

Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Education and Training [Amended by Notification No. 08/2024-CT (Rate) dated 08-10-2024 w.e.f. 10-10-2024.] are exempt.

PERFORMANCE BY ARTIST

(83) ART RELATED SERVICES [ENTRY 78 of Notification No.12/2017-CT (Rate)]- Services by an artist by way of a performance in folk or classical art forms of—

a. music, or
b. dance, or
c. theatre,

If the consideration charged for such performance is not more than ₹ 1,50,000 are exempt. However, the exemption shall not apply to service provided by such artist as a brand ambassador.

"Brand ambassador" means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person. [Para 2(m) of Notification No. 12/2017-CT (Rate)]

Other Aspects :

The activities by a performing artist in folk or classical art forms of music, dance, or theatre are exempt if consideration does not exceed ₹ 1,50,000. However, if consideration from such activities exceeds ₹ 1,50,000, entire consideration is subject to GST.

Further, all other activities by an artist in other art forms e.g. western music or dance, modern theatres, performance of actors in films or television serials would be taxable. Similarly activities of artists in still art forms e.g. painting, sculpture making etc. are taxable.

However, the exemption shall not apply to service provided by such artist as a brand ambassador.

'Brand ambassador' means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person.

RIGHT TO ADMISSION TO VARIOUS EVENTS

(84) SERVICES BY WAY OF ADMISSION TO MUSEUM, NATIONAL PARK ETC. [ENTRY 79 of Notification No.12/2017-CT (Rate)]-

Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo are exempt.

"National park" has the same meaning as assigned to it in Section 2(21) of the Wild Life (Protection) Act, 1972. [Para 2(zq) of Notification No. 12/2017-CT (Rate)]

"Tiger reserve" has the same meaning as assigned to it in Section 38K(e) of the Wild Life (Protection) Act, 1972. [Para 2(zzl) of Notification No. 12/2017-CT (Rate)]

"Wildlife sanctuary" means a sanctuary as defined in the Section 2(26) of The Wild Life (Protection) Act, 1972. [Para 2(zzp) of Notification No. 12/2017-CT (Rate)]

"Zoo" has the same meaning as assigned to it in the Section 2(39) of the Wild Life (Protection) Act, 1972. [Para 2(zzq) of Notification No. 12/2017-CT (Rate)]

(85) SERVICES BY WAY OF ADMISSION TO PROTECTED MONUMENT [ENTRY 79A of Notification No.12/2017-CT (Rate)]-

Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or any of the State Acts, for the time being in force are exempt.

(86) ADMISSION TO ENTERTAINMENT EVENTS OR ACCESS TO AMUSEMENT FACILITIES [ENTRY 81 of Notification No.12/2017-CT (Rate)]-

Services by way of right to admission to—

(a) circus, dance, or theatrical performance including drama or ballet;
(b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;
(c) recognised sporting event;
(d) planetarium,

where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than ₹ 500 per person are exempt.

"Recognised sporting event" means any sporting event,—

(i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country;
(ii) organised—
(A) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
(B) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
(C) by Central Civil Services Cultural and Sports Board;

(D) as part of national games, by Indian Olympic Association; or
(E) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme.
[Para 2(zw) of Notification No. 12/2017-CT (Rate)]

Other Aspects:

(i) Valuation in case of Entry to casinos and Gambling Services : GST would apply on entry to casinos as well as on betting/gambling services being provided by casinos on the transaction value of betting, i.e. the total bet value, in addition to GST levy on any other services being provided by the casinos (such as services by way of supply of food/drinks etc. at the casinos). [Circular No. 27/01/2018-GST dated 04-01-2018]

(ii) Elephant/ camel joy rides – not covered under Passenger Transportation Services : Elephant/ camel joy rides cannot be classified as transportation services. These services will be covered under recreational, cultural and sporting services treating them as joy rides. Threshold exemption being available to small service providers.

SERVICES BY UNINCORPORATED BODY OR NON PROFIT ENTITY

(87) SERVICE BY AN UNINCORPORATED BODY OR A NON- PROFIT ENTITY TO MEMBERS [ENTRY 77 of Notification No.12/2017-CT (Rate)]-

Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –

a. as a trade union;
b. for the provision of carrying out any activity which is exempt from the levy of Goods and service tax; or
c. up to an amount of ₹ 7,500 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex,

are exempt.

"Trade union" has the same meaning as assigned to it in Section 2(h) of the Trade Unions Act, 1926. [Para 2(zzn) of Notification No. 12/2017-CT (Rate)]

Other Aspects :

Co-operative Housing Societies : Co-operative Housing Societies are entities registered under the co-operative laws of the respective States. These are a collective body of persons, who stay in a residential society and as a collective body, they supply certain services to its members, be it collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc.

A Co-operative Housing Society is akin to a club, which is composed of its members. Service provided by a Housing Society to its members is treated as service provided by one person to another. The activities of the housing society would attract the levy of GST and the housing society would be required to register and comply with the GST Law.

Clarification on issues related to GST on monthly subscription/ contribution charged by a Residential Welfare Association from its members. – Circular No.109/28/2019-GST dated 22-07-2019

<table>
<tr><th></th><th>Issue</th><th>Clarification</th></tr>
<tr><td>1.</td><td>Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?
2. A RWA has aggregate turn</td><td>Supply of service by RWA (unincorporated body or a non- profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of ` 7,500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.</td></tr>
<tr><td>2.</td><td>A RWA has aggregate turnover of ₹ 20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than ₹ 7,500/- per month per member?</td><td>No. If aggregate turnover of an RWA does not exceed ₹ 20 lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds ₹ 7,500/- per month per member.
RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than ₹ 7,500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also ₹ 20 lakhs or more.
<table>
<tr><th>Annual turnover of RWA</th><th>Monthly maintenance charge</th><th>Whether exempt?</th></tr>
<tr><td rowspan="2">More than ₹ 20 lakhs</td><td>More than ₹ 7,500/-</td><td>No</td></tr>
<tr><td>₹ 7,500/- or less</td><td>Yes</td></tr>
<tr><td rowspan="2">₹ 20 lakhs or less</td><td>More than ₹ 7,500/-</td><td>Yes</td></tr>
<tr><td>₹ 7,500/- or less</td><td>Yes</td></tr>
</table></td></tr>
<tr><td>3.</td><td>Is the RWA entitled to take input tax credit of GST paid on input and services</td><td>RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water</td></tr>
</table>

	used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than ₹ 7,500/- per month per member?	pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.
4.	Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of ₹ 7,500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person.	As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of ₹ 7,500/- per month per member shall be applied separately for each residential apartment owned by him For example, if a person owns two residential apartments in a residential complex and pays ₹ 15,000/per month as maintenance charges towards maintenance of each apartment to the RWA (₹ 7,500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.
5.	How should the RWA calculate GST payable where the maintenance charges exceed ₹ 7,500/- per month per member? Is the GST payable only on the amount exceeding ₹ 7,500/- or on the entire amount of maintenance charges?	The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed ₹ 7,500/- per month per member. In case the charges exceed ₹ 7,500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are ₹ 9,000/per month per member, GST @ 18% shall be payable on the entire amount of ₹ 9,000/- and not on [₹ 9,000 ₹ 7,500] = ₹ 1,500/-

Clarification regarding the applicability of GST on supply of electricity by the real estate companies, malls, airport operators etc., to their lessees or occupants. — Circular No. 206/18/2023 GST dated 31.10.2023

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. 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.

(88) SERVICE BY AN UNINCORPORATED BODY OR A NON-PROFIT ENTITY TO MEMBERS [ENTRY 77A of Notification No.12/2017-CT (Rate)]-

Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,–

(i) activities relating to the welfare of industrial or agricultural labour or farmers; or

(ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment,

to its own members against consideration in the form of membership fee upto an amount of ₹ 1,000 per member per year are exempt.

OTHER EXEMPT SERVICES

(89) TRANSFER OF GOING CONCERN [ENTRY 2 of Notification No.12/2017-CT (Rate)]-

Services by way of transfer of a going concern, as a whole or an independent part thereof are exempt.

Other Aspects :

(i) Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service.

Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexpected orders, employees, goodwill etc.

Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted.

(ii) As per Para 4(a) of Schedule II, Goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets is regarded as supply of goods. In case transfer is without consideration, it will be liable to GST, if input tax credit was availed on such goods as per clause I of Schedule I.

(iii) As per Para 4 (c) of Schedule II, where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless the business is transferred as a going concern to another person. Thus, transfer as going concern would also not amount to supply of goods as per Schedule II.

(90) SUPPLY OF SERVICES ASSOCIATED WITH TRANSIT CARGO TO NEPAL AND BHUTAN (LANDLOCKED COUNTRIES) [ENTRY 9B of Notification No.12/2017-CT (Rate)]- Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries) are exempt.

Service associated with transit cargo i.e movement of empty containers to and from Nepal and Bhutan is exempt._ Circular No.177/09/2022-TRU dated 03-08-2022	
Issue	Clarification
Applicability of GST on transportation of empty containers returning from Nepal and Bhutan after delivery of transit cargo, to India	It is also clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption.

(91) RENTING OF RESIDENTIAL DWELLING FOR USE AS RESIDENCE [ENTRY 12 of Notification No.12/2017-CT (Rate)] [Inserted by Notification No. 04/2024-CT (Rate) dated 12-07-2024 w.e.f. 15-07-2024]-

Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person are exempt.

Explanation 1: Services by way of renting of residential dwelling to a registered person where, –

(i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and

(ii) such renting is on his own account and not that of the proprietorship concern

shall be exempt.

Explanation 2: Nothing contained in this entry shall apply to –

(a) accommodation services for students in student residences;

(b) accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.

Note: Services by way of renting of residential dwelling for use as residence where the residential dwelling is rented to a registered person is liable to GST under reverse charge mechanism.

(96) SUPPLY OF ACCOMMODATION SERVICES [ENTRY 12A] [Inserted by Notification No. 04/2024-CT (Rate) dated 12-07-2024 w.e.f. 15-07-2024]

Supply of accommodation services having value of supply less than or equal to ₹ 20,000 per

person per month provided that the accommodation service is supplied for a minimum continuous period of 90 days are exempt.

(92) HIRING OF MEANS OF TRANSPORT OF PASSENGERS AND GOODS [ENTRY 22 of Notification No.12/2017-CT (Rate)]-

Services by way of giving on hire –

(a) to a state transport undertaking, a motor vehicle meant to carry more than 12 passengers; or

(aa) to a local authority, an Electrically operated vehicle meant to carry more than 12 passengers; or

(b) to a goods transport agency, a means of transportation of goods; or

(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

are exempt.

"State transport undertaking" has the same meaning as assigned to it in Section 2(42) of the Motor Vehicles Act, 1988. [Para 2(zzk) of Notification No. 12/2017-CT (Rate)]

"State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by –

(i) the Central Government or a State Government;

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950.

(iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments.

Explanation: 'Road transport service' means a service of motor vehicles carrying passengers or goods or both by road for hire or reward [Section 2(42) of the Motor Vehicles Act, 1988].

"Electrically operated vehicle" means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle.

(93) ACCESS TO A ROAD OR A BRIDGE ON PAYMENT OF TOLL CHARGES [ENTRY 23 of Notification No.12/2017-CT (Rate)]-

Service by way of access to a road or a bridge on payment of toll charges is exempt.

Overloading charges at toll plaza - same is exempt from GST - Vide notification dated 25-09-2018, issued by Ministry of Road Transport And Highways, overloaded vehicles were allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate of toll. Therefore, it essence overloading fees are effectively higher toll charges. It is clarified that overloading charges at toll plazas would get the same treatment as given to toll charges. – Circular No. 164 /20/ 2021-GST dated 06-10-2021

Additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST.

Issue : Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST.

Clarification : Essentially, the additional amount collected from the users of the road not having a functional Fastag, is in the nature of Toll Charges and should be treated as additional toll charges.

Therefore, it is clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.

– Circular No. 177/09/2022-TRU dated 03-08-2022

(94) TRANSMISSION OR DISTRIBUTION OF ELECTRICITY BY AN ELECTRICITY TRANSMISSION OR DISTRIBUTION UTILITY [ENTRY 25 of Notification No.12/2017-CT (Rate)]-

Transmission or distribution of electricity by an electricity transmission or distribution utility is exempt.

"Electricity transmission or distribution utility" means –

- ✓ the Central Electricity Authority;
- ✓ a State Electricity Board;
- ✓ the Central Transmission Utility or
- ✓ a State Transmission Utility notified under the Electricity Act, 2003; or
- ✓ a distribution or transmission licensee under the said Act, or
- ✓ any other entity entrusted with such function by the Central Government/ the State Government. [Para 2(z) of Notification No. 12/2017-CT (Rate)

"State Electricity Board" means the Board constituted under section 5 of the Electricity (Supply) Act, 1948. [Para 2(zzi) of Notification No. 12/2017-CT (Rate)]

"State Transmission Utility" shall have the same meaning as assigned to it in Section 2(67) of the Electricity Act, 2003. [Para 2(zzj) of Notification No. 12/2017-CT (Rate)]

"Central Electricity Authority" means the authority constituted under section 3 of the Electricity (Supply) Act, 1948. [Para 2(p) of Notification No. 12/2017-CT (Rate)]

"Central Transmission Utility" shall have the same meaning as assigned to it in Section 2(10) of the Electricity Act, 2003. [Para 2(q) of Notification No. 12/2017-CT (Rate)]

(100)SUPPLY OF SERVICES BY WAY OF PROVIDING METERING EQUIPMENT ON RENT ETC. [ENTRY 25A] [Inserted by Notification No. 08/2024-CT (Rate) dated 08-10-2024 w.e.f. 10-10-2024]

Supply of services by way of

- ➢ providing metering equipment on rent,
- ➢ testing for meters/transformers/capacitors etc.,

- releasing electricity connection,
- shifting of meters/service lines,
- issuing duplicate bills etc.,

which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers are exempt.

(95) TECHNOLOGY BUSINESS INCUBATEE SERVICES [Entry 44 of Notification No. 12/2017-CT (Rate)] :

Services provided by an incubatee up to a total turnover of 50 lakh in a financial year are exempt subject to the following conditions, namely:

(a) the total turnover had not exceeded 50 lakh during the preceding financial year; and

(b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee.

"Incubatee" means an entrepreneur located within the premises of a Technology Business Incubator or Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology,
Government of India and who has entered into an agreement with the Technology Business Incubator or the Science and Technology Entrepreneurship Park to enable himself to develop and produce hi-tech and innovative products. [Para 2(zh) of Notification No. 12/2017-CT (Rate)]

(102) RESEARCH AND DEVELOPMENT SERVICES AGAINST CONSIDERATION RECEIVED IN THE FORM OF GRANTS [ENTRY 44A] [Inserted by Notification No. 08/2024-CT (Rate) dated 08-10-2024 w.e.f. 10-10-2024]

Research and development services against consideration received in the form of grants supplied by —

(a) a Government Entity; or

(b) a research association, university, college or other institution, notified u/s 35(1)(ii)/(iii) of the Income-tax Act, 1961,

are exempt.

However, the research association, university, college or other institution, notified under Section 35(1)(ii)/(iii) of the Income Tax Act, 1961 is so notified at the time of supply of the research and development service.

(96) SERVICES BY TBI/ STEP/ BIO-INCUBATOR [ENTRY 48 of Notification No.12/2017-CT (Rate)]-

Taxable services, provided or to be provided, by a Technology Business Incubator or a Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government

of India or bio-incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India are exempt.

(97) NEWS AGENCY SERVICES [ENTRY 49 of Notification No.12/2017-CT (Rate)]-
Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India are exempt.

(98) SERVICES OF PUBLIC LIBRARIES [ENTRY 50 of Notification No.12/2017-CT (Rate)]-
Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material are exempt.

(99) ORGANISING BUSINESS EXHIBITION OUTSIDE INDIA [ENTRY 52 of Notification No.12/2017-CT (Rate)]-
Services by an organiser to any person in respect of a business exhibition held outside India are exempt.

(100)TOUR OPERATOR SERVICES SUPPLIED TO FOREIGN TOURIST [ENTRY 52A of Notification No.12/2017-CT (Rate)]-
Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India shall be exempt from tax.
Value of services performed outside India : Value of the tour operator service performed outside India shall be lower of the following –
(a) Total consideration charged for the entire tour × Number of days for which the tour is performed outside India ÷ Total number of days comprising the tour, or
(b) 50% of the total consideration charged for the entire tour.
In making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.
"Foreign tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non- immigrant purposes.
Illustrations: A tour operator provides a tour operator service to a foreign tourist as follows:
(a) 3 days in India, 2 days in Nepal; Consideration Charged for the entire tour: ₹ 1,00,000. Exemption: ₹ 40,000 (₹ 1,00,000 × 2 ÷ 5) or, ₹ 50,000 (50% of ₹ 1,00,000) whichever is less, i.e. ₹ 40,000. Taxable value: ₹ 60, 000.
(b) 2 days in India, 3 nights in Nepal; Consideration Charged for the entire tour: ₹ 1,00,000. Exemption: ₹ 60 000(₹ 1,00,000 × 3 ÷ 5) or ₹ 50,000 (50% of ₹ 1,00,000) whichever is less, i.e. ₹ 50,000. Taxable value : ` 50, 000.
(c) 2.5 days in India, 3 days in Nepal; Consideration Charged for the entire tour: ₹ 1,00,000. Exemption: ₹ 54,545 (₹ 1,00,000 × 3 ÷ 5.5), or ₹ 50, 000 (50% of ₹ 1,00,000) whichever is less, i.e., ₹ 50,000. Taxable value : ₹ 50, 000.

(101) SERVICES BY FOREIGN DIPLOMATIC MISSION [ENTRY 59 of Notification No.12/2017-CT (Rate)]-

Services by a foreign diplomatic mission located in India are exempt.

(102)INFORMATION UNDER RTI ACT [ENTRY 65A of Notification No.12/2017-CT (Rate)]-

Services by way of providing information under the Right to Information Act, 2005 are exempt.

(103)SPORTS RELATED SERVICES [ENTRY 68 of Notification No.12/2017-CT (Rate)]-

Services provided to a recognised sports body by—

a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body;
b) another recognised sports body

are exempt.

"Recognised sports body" means—

(i) 5.105 the Indian Olympic Association;
(ii) Sports Authority of India;
(iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations;
(iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government;
(v) the International Olympic Association or a federation recognised by the International Olympic Association; or
(vi) federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India. [Para 2(zx) of Notification No. 12/2017CT (Rate)]

Note : Services by individuals such as selectors, commentators, curators, technical experts are taxable.

QUESTION 1

An individual acts as a referee in a football match organized by Sports Authority of India. He has also acted as a referee in another charity football match organized by a local sports club, in lieu of a lump sum payment. Discuss whether he is required to pay any GST?

ANSWER

Services provided to a recognized sports body by an individual inter alia as a referee in a sporting event organized by a recognized sports body is exempt from GST.

Since in the first case, the football match is organized by Sports Authority of India, which is a recognized sports body, services provided by the individual as a referee in such football match will be exempt.

However, when he acts as a referee in a charity football match organized by a local sports club, he would not be entitled to afore-mentioned exemption as a local sports club is not a recognized sports body and thus, GST will be payable in this case.

(104)PUBLIC CONVENIENCES [ENTRY 76 of Notification No.12/2017-CT (Rate)]-
Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets are exempt.

LIST OF SERVICES EXEMPT FROM IGST

Apart from the above services, list of services exempt from IGST by Notification No. 9/2017-IT (Rate) dated 28-06-2017 also include following three services—

(1) IMPORT OF SERVICES [ENTRY 10 of Notification No.12/2017-CT (Rate)]-
Services received from a provider of service located in a non-taxable territory by –

a. the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
b. an entity registered under section 12AB of the Income-tax Act, 1961 for the purposes of providing charitable activities; or

(ba) way of supply of online educational journals or periodicals to an educational institution other than an institution providing services by way of—
  (i) pre-school education and education up to higher secondary school or equivalent; or
  (ii) education as a part of an approved vocational education course;

(c) a person located in a non-taxable territory

are exempt.

However, the exemption shall not apply to online information and database access or retrieval services received by persons specified in entry (a) or entry (b)[Amended by Notification No. 12/2023-IT (Rate w.e.f. 01-10-2023]

"Online information and database access or retrieval services" shall have the same meaning as assigned to it in clause (17) of the section 2 of the Integrated goods and Services Tax Act, 2017. [Para 2(zr) of Notification No. 12/2017-CT (Rate)]

(2) SERVICES RECEIVED BY RBI FROM OUTSIDE INDIA IN RELATION TO MANAGEMENT OF FOREIGN EXCHANGE RESERVES [ENTRY 42 of Notification No.9/2017-IT (Rate)]-
Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves are exempt.

(3) SERVICES PROVIDED BY A TOUR OPERATOR TO A FOREIGN TOURIST [ENTRY 54 of Notification No.9/2017-IT (Rate)]-

Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India are exempt.

"Tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours. [Para 2(zzm) of Notification No. 12/2017-CT (Rate)]

(4) EXPORT OF SERVICES TO OWN ESTABLISHMENT OUTSIDE INDIA PROVIDED PLACE OF SUPPLY IS OUTSIDE INDIA [ENTRY 10F of Notification No.9/2017-IT (Rate)]-

Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons in accordance with Explanation 1 in section 8 of the IGST Act, 2017 are exempt.

Condition : Place of supply of the service is outside India in accordance with section 13 of IGST Act, 2017.

(5) IMPORT OF SERVICES BY UN OR SPECIFIED INTERNATIONAL ORGANISATION [ENTRY 10G of Notification No.9/2017-IT (Rate)]-

Import of services by United Nations or a specified international organisation for official use of the United Nations or the specified international organisation are exempt.

"Specified international organisation" means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947, to which the provisions of the Schedule to the said Act apply.

(6) IMPORT OF SERVICES BY FOREIGN DIPLOMATIC MISSION OR CONSULAR POST IN INDIA [ENTRY 10H of Notification No.9/2017-IT (Rate)]-

Import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein shall be exempt from IGST, subject to the conditions,—

(i) that the foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein, are entitled to exemption from integrated tax, as stipulated in the certificate issued by the Protocol Division of the Ministry of External Affairs, based on the principle of reciprocity;

(ii) that the services imported are for official purpose of the said foreign diplomatic mission or consular post; or for personal use of the said diplomatic agent or career consular officer or members of his or her family;

(iii) that in case the Protocol Division of the Ministry of External Affairs, after having issued a certificate to any foreign diplomatic mission or consular post in India, decides to withdraw the same subsequently, it shall communicate the withdrawal of such certificate to the foreign diplomatic mission or consular post;

(iv) that the exemption from the whole of the integrated tax granted to the foreign diplomatic mission or consular post in India for official purpose or for the personal use or use of their family members shall not be available from the date of withdrawal of such certificate.

(6) IMPORT OF SERVICES BY AN ESTABLISHMENT OF A FOREIGN AIRLINE COMPANY IN INDIA [ENTRY 10L] [Inserted by Notification No. 08/2024-IT (Rate) dated 08-10-2024 w.e.f. 10-10-2024.]

Import of services by an establishment of a foreign company in India, which is an airline company, from a related person or from any of its other establishments outside India, when made without consideration is exempt.

Conditions:

(a) GST at applicable rates is paid by the establishment of the foreign airline company in India on transport of goods and passengers as may be applicable.

(b) Ministry of Civil Aviation certifies that the establishment of the foreign company in India is that of an airline company which has been designated by the foreign government under the applicable bilateral air services agreement with India.

(c) Ministry of Civil Aviation certifies that on a reciprocal basis, designated Indian airlines are not subject to levy of similar taxes by whatever name called for the same services appearing under the entry, by the Government of the country designating the foreign airline company.

(7) INTERMEDIARIES SERVICES [ENTRY 12AA of Notification No.9/2017-IT (Rate)]-

Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory are exempt.

Documentation requirement : Following documents shall be maintained for a minimum duration of 5 years :

a. Copy of Bill of Lading
b. Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods
c. Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in nontaxable territory
d. Copy of certificate of origin issued by service recipient located in nontaxable territory
e. Declaration letter from an intermediary service provider in taxable territory on company letter head confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory.

OTHER EXEMPTIONS

(1) INTRA-STATE SUPPLIES RECEIVED BY A TAX DEDUCTOR FROM ANY UNREGISTERED SUPPLIER EXEMPT FROM CGST [NOTIFICATION NO. 9/2017-CT (R) DATED 28-06-2017] Intra-State supplies of goods or services or both received by a deductor u/s 51, from any unregistered supplier, is exempt from the whole of the central tax leviable thereon

u/s 9(4), subject to the condition that the deductor is not liable to be registered otherwise than u/s 24(vi).

(2) SERVICES IMPORTED BY UNIT/ DEVELOPER IN SEZ EXEMPT FROM IGST [NOTIFICATION NO. 18/2017-IT (RATE) DATED 05-07-2017]

All services imported by a unit/ developer in the Special Economic Zone (SEZ) for authorised operations are exempt from the whole of the integrated tax leviable thereon under Section 3(7) of the Customs Tariff Act, 1975 read with Section 5 of the IGST Act, 2017.

(3) GOVERNMENT'S SHARE OF PROFIT FROM GRANT OF LICENCE/LEASE TO EXPLORE OR MINE PETROLEUM CRUDE OR NATURAL GAS - EXEMPTION FROM TAX [NOTIFICATION NO. 5/2018-CT (RATE) DATED 25-01-2018]

The Central Government has exempted the intra-State supply of services by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, from so much of the central tax as is leviable on the consideration paid to the Central Government in the form of Central Government's share of profit petroleum as defined in the contract entered into by the Central Government in this behalf.

Parallel exemption from IGST has been extended to inter-State supply of such services vide Notification No. 5/2018-IT (R) dated 25-01-2018.

(4) ROYALTY AND LICENCE FEE INCLUDED IN TRANSACTION VALUE UNDER RULE 10(1)(C) OF CUSTOMS VALUATION RULES - EXEMPTION FROM IGST [NOTIFICATION NO. 6/2018-IT (RATE) DATED 25-01-2018]

The Central Government has exempted the integrated tax on the supply of services, imported into the territory of India, covered by sub-item (c) of item 5 of Schedule II to the CGST Act, 2017 (i.e. temporary transfer or permitting the use or enjoyment of any intellectual property right), to the extent of the aggregate of the duties of Customs leviable u/s 3(7) of the Customs Tariff Act, 1975, on the consideration declared u/s 14(1) of the Customs Act, 1962 towards royalties and license fees included in the transaction value as specified under Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on which the appropriate duties of Customs have been paid.

GOODS EXEMPT FROM GST

A list of items have been notified under section 11(1) of the CGST Act, 2017/ Section 6(1) of the IGST Act, 2017. These items have been exempted from whole of the tax. Since GST is a tax for common man, everyday items used by the common man have been included in the list of exempted items.

Items such as unbranded atta/ maida/ besan, unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST.

Goods imported by unit/ developer in SEZ exempt from IGST : All goods imported by a unit/developer in the Special Economic Zone (SEZ) for authorised operations are exempt from the whole of the integrated tax leviable thereon under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017. [Notification No. 64/2017-Cus dated 05-07-2017]

2. An individual acts as a referee in a football match organized by Sports Authority of India. He has also acted as a referee in another charity football match organized by a local sports club, in lieu of a lump sum payment. Discuss whether he is required to pay any GST?

Ans: Services provided to a recognized sports body by an individual inter alia as a referee in a sporting event organized by a recognized sports body is exempt from GST.

Since in the first case, the football match is organized by Sports Authority of India, which is a recognized body, services provided by the individual as a referee in such football match will be exempt. sports

However, when he acts as a referee in a charity football match organized by a local sports club, he would not be entitled to afore-mentioned exemption as a local sports club is not a recognized sports body and thus, GST will be payable in this case.

TOPIC REFERENCER

- *Time of Supply of Goods*
- *Invoice Provisions in Respect of Goods*
- *Time of Supply of Goods under Forward Charge*
- *Time of Supply of Goods under Reverse Charge*
- *Time of Supply of Vouchers Exchangeable for Goods*
- *Time of Supply of Goods in Residual Cases*
- *Time of Supply of Services*
- *Time of Supply of Services under Forward Charge*
- *Time of Supply of Services under Reverse Charge*
- *Time of Supply of Vouchers Exchangeable for Services*
- *Time of Supply of Services in Residual Cases*
- *Change in Rate of Tax in Respect of Supply of Goods or Services*

TIME OF SUPPLY

1. What is the need to determine time of supply?

Ans: The time of supply fixes the point when the liability to charge GST arises. It also indicates when a supply is deemed to have been made. The CGST/SGST Act provides separate time of supply for goods and services.

INVOICE PROVISIONS IN RESPECT OF GOODS

2. Explain the provisions relating to time limit for issuance of invoice in respect of goods.

Ans: The time limit for issuance of invoice is as under-

(i) Time limit for issuance of invoice in case of Supplier of Goods [Section 31(1)]: A registered person supplying taxable goods shall issue invoice before or at the time of, -

a. removal of goods for supply to the recipient, where the supply involves movement of goods; or

b. delivery of goods or making available thereof to the recipient, in any other case.

(ii) Issuance of invoice in case of Continuous Supply of Goods [Section 31(4)]: In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

"Continuous supply of goods" means-

- ✓ a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis,
- ✓ and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify. [Section 2(32)]

(iii) Goods sent on approval – Invoice Requirements [Section 31(7)] : Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued—

- ✓ before or at the time of supply, or
- ✓ 6 months from the date of removal,

whichever is earlier.

TIME OF SUPPLY OF GOODS UNDER FORWARD CHARGE

3. Explain the provisions relating to time of supply (TOS) of goods in case of forward charge i.e normal supply of goods.

Ans- Time of Supply of goods[Section 12]:

(1) Liability for payment of tax arises at TOS [Section 12(1)] : The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this Section.

(2) Time of Supply of goods – Forward Charge i.e. normal supply of goods [Section 12(2)] : The time of supply of goods shall be the earlier of the following dates, namely:—

(a) (i) the date of issue of invoice by the supplier; or

(ii) the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply.

Determination of date when supplier receives the payment [Explanation 2] : For the purposes of clause (b), "the date on which the supplier receives the payment" shall be –

- ✓ the date on which the payment is entered in his books of account; or
- ✓ the date on which the payment is credited to his bank account,

whichever is earlier.

Small advance upto ₹ 1,000 – date of invoice to be time of supply : Where the supplier of taxable goods receives an amount upto ₹ 1,000 in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Supply deemed to be made to the extent covered by invoice or payment [Explanation 1] : For the purposes of –

- ✓ clause (a) [i.e. the date on which the supplier issues invoice with respect to supply]; and
- ✓ clause (b) [i.e. the date when supplier receives the payment with respect to supply],

"Supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Significance of "to the extent the payment covers the goods" : Suppose, a part of the consideration is paid in advance or invoice is issued for part payment, the time of supply will not cover the full supply. The supply shall be deemed to have been made to the extent it is covered by the invoice or the part advance payment.

Example : X Ltd. enters into an agreement with Y Ltd. to supply 1000 kg of raw material. However, X Ltd. supplies only 800 kg of raw material and issues the invoice for the same. Here, the supply would be deemed to have been made in respect of 800 kg of raw material, i.e. to the extent covered by the invoice. Therefore, the provisions relating to time of supply will also be applicable to supply of 800 kg of raw material and not for entire 1000 kg of raw material.

However, it may be noted that in case of goods, tax will be payable only on the issuance of invoice/last date of issuance of invoice even if any advance or part payment has been received before the issuance of invoice/last date of issuance of invoice.

Conclusion : Thus, time of supply of goods shall be the earliest of the following dates :

a. the date of issue of invoice by the supplier; or
b. the last date on which he is required, u/s 31, to issue the invoice with respect to the supply; or
c. the date on which the supplier receives the payment with respect to the supply i.e. earlier of date on which the payment is recorded in the books of account of the supplier or date on which the payment is credited to the supplier's bank account.

However, as per special procedure under section 148 for payment of tax in case of goods, GST is to be paid at the time of supply as specified in section 12(2)(a) i.e. Date of issue of invoice/ Last date of issue of invoice u/s 31. Effectively, case of goods, no GST will be payable on advances received for supply of goods except in case of supply of specified actionable claims.

Exemption to all taxpayers from payment of tax on advances received in case of supply of goods – Tax on 'supply of goods' is to be paid on 'invoice basis' and receipt basis is not applicable [Notification No. 66/2017-CT dated 15-11-2017] [Amended by Notification No. 50/2023-CT w.e.f. 01-10-2023] : The registered person, who did not opt for the composition levy under Section 10 of the said Act, other than the registered person making supply of specified actionable claims as defined in Section 2(102A) of the said Act, shall pay GST on the outward supply of goods –

- ✓ at the time of supply as specified in section 12(2)(a) [i.e. date of issuance of invoice]
- ✓ including in the situations attracting the provisions of section 14 of the said Act, and
- ✓ shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.

In simple words, all taxpayers (except composition suppliers) are exempted from paying GST at the time of receipt of advance in relation to supply of goods. The entire GST shall be

payable only when the invoice for the supply of such goods is issued or ought to have been issued.

A composition supplier has to pay, in lieu of tax payable by him, an amount calculated at the prescribed rate applied on his 'turnover in the State/Union Territory' for a quarter. Therefore, the composition supplier is not required to pay any tax on advance received as the same does not form part of taxable supplies and, in turn, also does not form part of the 'turnover in a State/Union Territory' at the end of the quarter (tax period). Note : The relief of not paying GST at the time of receipt of advance is available only in case of supply of goods, the tax on which is payable under forward charge. In case of reverse charge, GST is payable at the time of payment, if payment is recorded/made before receipt of goods (advance payment).

Effect of amendment : GST on advances received against the supply of specified actionable claims - With effect from 01-10-2023, Notification No. 66/2017-CT dated 15-11-2017 has been amended to provide that the registered persons who are engaged in making supply of specified actionable claims as defined u/s 2(102A) of the CGST Act, 2017 shall be liable to pay GST on the advances received for such supply.

TIME OF SUPPLY OF GOODS UNDER REVERSE CHARGE

4. Explain the provisions relating to time of supply of goods for supplies taxes under reverse charge mechanism ?

Ans- Time of supply in case of supplies taxed under Reverse Charge Mechanism [Section 12(3)] in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the dates, namely:-

a. the date of the receipt of goods; or

b. (i) the date of payment as entered in the books of account of the recipient; or
(ii) the date on which the payment is debited in his bank account,
whichever is earlier; or

c. the date immediately following 30 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

If TOS cannot be determined as above – TOS is date of entry in the books of account of the Recipient of Supply : However, where it is not possible to determine the time of supply under Section 12(3)(a)/(b)/(c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

TIME OF SUPPLY OF VOUCHERS EXCHANGEABLE FOR GOODS

5. Define Voucher.

Ans-"Voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or

both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument. [Section 2(118)]

6. What is time supplier in case of supply of vouchers in respect of goods?

Ans-Time of supply in case of supply of vouchers in respect of goods [Section 12(4)] :In case of supply of vouchers by a supplier, the time of supply shall be-

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases.

TIME OF SUPPLY OF GOODS IN RESIDUAL CASES

7. What is time of supply in residuary cases?

Ans- TOS IN RESIDUARY CASES - DUE DATE OF RETURN OR DATE OF PAYMENT OF TAX [SECTION 12(5)]: Where it is not possible to determine the time of supply as per above provisions, the time of supply shall –

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the tax is paid.

For example: Investigation reveals clandestine removal of goods by a supplier who is not registered under GST. The evidence is in the form of noting, often undated, and some corroborative material. The supplier voluntarily pays tax during the investigation, to close the case. The time of supply will be the date on which the tax is paid, as being unregistered, the supplier is not required to file periodical returns.

8. What is the time of supply applicable with regard to addition in the value by way of interest, late free or penalty or any delayed payment of consideration?

Ans-SPECIAL CHARGES LIKE INTEREST, LATE FEES ETC. – TOS IS DATE OF RECEIPT OF ADDITIONAL AMOUNT [SECTION 12(6)]: The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be **the date on which the supplier receives such addition in value.** In other words the receipt of payment of these amounts are essential to attract levy of tax.

TIME OF SUPPLY OF SERVICES

9. Explain the provisions relating to time limit for issuing tax invoice .

Ans-TIME LIMIT FOR ISSUING TAX INVOICE [RULE 47]

i. Taxable supply of services – Time limit - 30 days from the date of supply of service : The invoice in case of taxable supply of services shall be issued within a period of 30 days from the date of supply of service.

Insurers, banks etc. – Time limit - 45 days : Where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the invoice or any document in lieu thereof is to be issued within 45 days from the date of supply of service.

Cessation of supply of services – Invoice to be issued at the time when Supply Ceases : In case of cessation of supply of services before completion of supply, the invoice (to the extent of the supply made before such cessation) should be issued at the time when the supply ceases.

ii. Issuance of invoice in case of Continuous supply of services [Section 31(5)] : In case of continuous supply of services,—

1.	where the due date of payment is ascertainable from the contract	the invoice shall be issued on or before the due date of payment.
2.	where the due date of payment is not ascertainable from the contract	the invoice shall be issued before or at the time when the supplier of service receives the payment.
3.	where the payment is linked to the completion of an event	the invoice shall be issued on or before the date of completion of that event.

"Continuous supply of services" means—

- ✓ a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding 3 months with periodic payment obligations, and
- ✓ includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify. [Section 2(33)]

TIME OF SUPPLY OF SERVICES UNDER FORWARD CHARGE

10. Explain the provisions relating to time of supply of services.

Ans-Time of supply of services [Section 13]:

(1) Liability for payment of tax arises at TOS [Section 13(1)] : The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this Section.

(2) Determination of time of supply [Section 13(2)] : The time of supply of services shall be the earliest of the following dates, namely:—

(a) (i) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under Section 31; or

(ii) the date of receipt of payment,

whichever is earlier; or

(b) (i) the date of provision of service, if the invoice is not issued within the period prescribed under Section 31; or

(ii) the date of receipt of payment,

whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.

Explanation : For the purposes of clauses (a) and (b) –

i. Deemed supply – To the extent covered by invoice or payment : The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

ii. "Date of receipt of payment" shall be –

- ✓ the date on which the payment is entered in the books of account of the supplier; or
- ✓ the date on which the payment is credited to his bank account,

whichever is earlier.

iii. Small advance upto ₹ 1,000 – Option not to change TOS i.e. TOS may be opted to be date of invoice : Where the supplier of taxable service receives an amount upto ₹ 1,000 in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Circular No. 221/15/2024-GST dated 26-06-2024	Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model.

Issue: Under HAM model of National Highways Authority of India (NHAI), the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over a period of 15-17 years and the payment of the same is spread over the years. What is the time of supply for the purpose of payment of tax on the said service under the HAM model?

Clarification :

(i) Under the Hybrid Annuity Model (HAM) of concession agreements, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O&M) of Highways. The payment terms for the construction portion as well as the O&M portion of the contract are provided in the agreement between National Highways Authority of India (NHAI) and the concessionaire.

(ii) A HAM contract is a single contract for construction as well as operation and maintenance of the highway. The payment terms are so staggered that the concessionaire is held accountable for the repair and maintenance of the highway as well. The contract needs to be looked at holistically based on the services to be performed by the

concessionaire and cannot be artificially split into two separate contracts for construction and operation and maintenance, based on the payment terms. The concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same.

In HAM contract, the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. The same appears to be covered under the 'Continuous supply of services' as defined under section 2(33) of the CGST Act.

As per Section 13(2)(a) of CGST Act, the time of supply in respect of a supply of services shall be the date of issue of Invoice, or date of receipt of payment, whichever is earlier, in cases where invoice is issued within the period prescribed under section 31 of CGST Act. Further, as per Section 13(2)(b) of CGST Act, in cases where invoice is not issued within the period prescribed under section 31, the time of supply of service shall be date of provision of the service or date of receipt of payment, whichever is earlier.

However, as per section 31(5) of CGST Act, in cases of continuous supply of services, where the payment is made periodically, either due on a specified date or is linked to the completion of an event, the invoice is required to be issued on or before the specified date or the date of completion of that event.

Accordingly, as per section 13(2) of CGST Act, read with section 31(5) of CGST Act, time of supply of services under HAM contract, including construction and O&M portion, should be the date of issuance of such invoice, or date of receipt of payment, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. However, in cases, where the invoice is not issued on or before the specified date or the date of completion of the event specified in the contract, as per section 13(2)(b), time of supply should be the date of provision of the service, or date of receipt of payment, whichever is earlier. In case of continuous supply of services, the date of provision of service may be deemed as the due date of payment as per the contract, as the invoice is required to be issued on or before the due date of payment as per the provisions of Section 31(5) of CGST Act.

(iii) In the light of above, it is clarified that the tax liability on the concessionaire under the HAM contract, including on the construction portion, would arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier.

(iv) It is also clarified that as the installments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall

also be includible in the taxable value for the purpose of payment of tax on the said annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act.

Notification No. 06/2019-CT (R) dated 29-03-2019 w.e.f. 01-04-2019	TOS in case of TDR, FSI and long term lease for construction of residential/ commercial apartments – TOS shall arise on shall arise on the date of issuance of completion certificate or on its first occupation, whichever is earlier.

The Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely:–

(i) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

(ii) a promoter, who receives long term lease of land on or after 01-04-2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name), as the registered persons in whose case the liability to pay central tax on,—

(a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);

(b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;

(c) the upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relatable to construction of residential apartments in the project; and

(d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI), shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

TIME OF SUPPLY OF SERVICES UNDER REVERSE CHARGE

11. TIME OF SUPPLY OF SERVICES WHEN SUPPLIES ARE TAXED ON REVERSE CHARGE BASIS [SECTION 13(3)]

Ans-(1) Time of Supply – Date of payment or the date immediately following 60 days from the date of issue of invoice, whichever is earlier : In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely :–

(a) (i) the date of payment as entered in the books of account of the recipient; or

(ii) the date on which the payment is debited in his bank account,

whichever is earlier; or

(b) the date immediately following 60 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier in cases where invoice is required to be issued by the supplier; or

(c) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024].

(2) Time of supply in other cases – TOS - Date of entry in the books of account of the recipient of supply : Where it is not possible to determine the time of supply as per above provisions, the time of supply shall be the date of entry in the books of account of the recipient of supply.

(3) Time of supply in case of associated enterprises : In case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be

(a) the date of entry in the books of account of the recipient of supply; or

(b) the date of payment,

whichever is earlier.

"Associated enterprises" shall have the same meaning as assigned to it in Section 92A of the Income tax Act, 1961. [Section 2(12)]

Broadly, an associated enterprise in relation to another enterprise, means an enterprise which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Circular No.-222/16/2024-GST dated 26-06-2024	Clarification on time of supply of services of spectrum usage and other similar services under GST.

Issue: In cases of spectrum allocation where the successful bidder (i.e. the 'telecom operator') opts for making payments in instalments as mentioned in the Notice Inviting Application (NIA) and Frequency Assignment Letter (FAL) issued by Department of Telecommunications (DoT), Government of India, what will be the time of supply for the purpose of payment of GST on the said supply of spectrum allocation services.

Classification :

(i) Under the spectrum allocation model followed by DoT, bidder (the telecom operator) bids for securing the right to use spectrum offered by the government. Here, service provider is the Government of India (through DoT) and service recipient is the bidder/ telecom operator. The GST is to be discharged on the supply of spectrum allocation services by

the recipient of services (the telecom operator) on reverse charge basis [Notification No. 13/2017-CT (Rate) dated 28th June, 2017 referred].

(ii) In respect of the said supply of spectrum allocation services, if the telecom operator chooses the option to make payment in installments, the payment has to be made spread over the contract period in installments and payment for each installment is to be made after specified periods, as specified in the Frequency Assignment Letter of DoT, which is in the nature of contract. The same is a 'continuous supply of services' as defined under section 2(33) of the CGST Act, since the supply of services (spectrum usage) is agreed to be provided by the supplier (DoT) to the recipient (telecom operator) continuously for a period which is exceeding three months with periodic payment obligations.

As per section 13(1) of CGST Act, the liability to pay tax on supply of services shall arise at the time of supply. In case of forward charge supplies, the time of supply of services is governed by section 13(2) of CGST Act, which is the earlier of date of issue of invoice by the supplier or date of provision of service or the date of payment, as the case maybe. However, in respect of supply of services, on which tax is paid or liable to be paid on **reverse charge basis**, as per Section 13(3) of CGST Act, 2017, the time of supply of services shall be the earlier of the following dates, namely:-

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following **60 days from the date of issue of invoice or any other document**, by whatever name called, in lieu thereof by the supplier.

Some of the field formations are considering the Frequency Assignment Letter issued by DoT as akin to any other document, by whatever name called, in lieu of an invoice mentioned in section 13(3)(b) of CGST Act and are demanding interest on instalments paid after 60 days from the date of issue of the same.

It is observed that Frequency Assignment Letter is in the nature of a bid acceptance document intimating the telecom operator that the result of the auction has been accepted by the competent authority and the details of blocks and spectrum allotted to the telecom operator. The Frequency Allotment Letter also mentions the options and the amounts to be paid by the telecom operator in each of the two options.

Further, as per section 31(5)(a) of CGST Act, in cases of continuous supply of services, where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before such due date of payment. In the instant case, the date of payment to be made by the telecom operator to DoT is clearly ascertainable from the Notice Inviting Applications read with the Frequency Assignment Letter. Accordingly, tax invoice will be required to be issued in respect of the said supply of services, on or before such due date of payment as per the option exercised by the telecom operator.

(iii) In the light of above, it is clarified that in case where full upfront payment is made by the telecom operator, GST would be payable when the payment of the said upfront amount is made or is due, whichever is earlier, whereas in case where deferred payment

is made by the telecom operator in specified installments, GST would be payable as and when the payments are due or made, whichever is earlier.

(iv) It is also clarified that the similar treatment regarding the time of supply, as is discussed in the above paras, may apply in other cases also where any natural resources are being allocated by the government to the successful bidder/ purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services as per the definition under section 2(33) of the CGST Act, with the option of payments for the said services either through an upfront payment or in deferred periodic installments over the period of time.

TIME OF SUPPLY OF VOUCHERS EXCHANGEBLE FOR SERVICES

12. What is time of supply in case of supply of vouchers in respect of services?

Ans- TIME OF SUPPLY IN CASE OF SUPPLY OF VOUCHERS IN RESPECT OF SERVICES [SECTION 13(4)]

In case of supply of vouchers by a supplier, the time of supply shall be –

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases.

TIME OF SUPPLY IN RESIDUARY CASES

13. What is the time of supply of services in residuary cases?

Ans-DETERMINATION OF TIME OF SUPPLY IN RESIDUARY CASES [SECTION 13(5)]

Where it is not possible to determine the time of supply as per above provisions, the time of supply shall—

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the tax is paid.

14. What is the time of supply applicable with regard to addition in the value by way of interest, late fee or penalty or any delayed payment of consideration?

Ans-SPECIAL CHARGES – TOS IS DATE OF RECEIPT OF ADDITIONAL AMOUNT [SECTION 13(6)]

The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

CHANGE IN RATE OF TAX IN RESPECT OF SUPPLY OF GOODS OR SERVICE

15. How will the time of supply will be determined under CGST Act,2017 in case there is any charge in effective rate of tax?

Ans-The relevant provisions are discussed as under-

(1) DETERMINATION OF TIME OF SUPPLY IN CASE OF CHANGE IN RATE OF TAX [SECTION 14]:

Notwithstanding anything contained in Section 12 or Section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely :–

(a) In case the goods or services or both have been supplied BEFORE the change in rate of tax,–

	Condition	Time of Supply	Applicable Rate
(i)	Where the invoice for the same has been issued and the payment is also received after the change in rate of	Earlier of – • Date of receipt of payment, or • Date of issue of invoice.	New Rate
(ii)	Where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax.	• Date of issue of invoice.	Old Rate
(iii)	Where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax.	• Date of receipt of payment.	Old Rate

(ii) In case the goods or services or both have been supplied AFTER the change in rate of tax,–

	Condition	Time of Supply	Applicable Rate
(i)	Where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax.	• Date of receipt of payment	New Rate
(ii)	Where the invoice has been issued and payment is received before the change in rate of tax.	Earlier of – • Date of receipt of payment, or • Date of issue of invoice	Old Rate

(iii)	Where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax.	• Date of issue of invoice	New Rate

(2) "Date of receipt of payment" shall be—

(a) the date on which the payment is entered in the books of account of the supplier; or

(b) the date on which the payment is credited to his bank account,

whichever is earlier.

However, the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after 4 working days from the date of change in the rate of tax.

TOPIC REFERENCER

- *Basis of Payment of GST*
- *Value of Taxable Supply*
- *CGST Rules, 2017 - Chapter IV - Determination of Value of Supply*

BASIS OF PAYMENT OF GST

1. What is the basis on which GST is payable.

Ans: In GST tax is payable on ad-valorem basis i.e., percentage of value of the supply of goods or services. Thus, it becomes important to know how to arrive at the value on which tax is to be paid. Section 15 of the CGST Act along with CGST Rules prescribes the provisions for determining the value of supply of goods and services made in different circumstances and to different persons. Section 15 of the CGST Act provides common provisions for determining the value of goods and services. It provides the mechanism for determining the value of a supply which is made between unrelated persons and when price and only the price is the sole consideration of the supply. When value cannot be determined under Section 15, the same is determined using Chapter IV of CGST Rules: Determination of Value of Supply.

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

2. What do you mean by market value.

Ans: "Market value" shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related. [Section 2(73)]

VALUE OF TAXABLE SUPPLY

3. Explain the provisions relating to value of taxable supply.

Ans: Value of taxable supply [Section 15]: The provisions relating to value of taxable supply are as under-

(1) Value of taxable supply to be Transaction Value [Section 15(1)]: The value of a supply of goods or services or both shall be the transaction value,-

- ✓ which is the price actually paid or payable for the said supply of goods or services or both
- ✓ where the supplier and the recipient of the supply are not related; and
- ✓ the price is the sole consideration for the supply.

Analysis:

(a) Applicability: This section applies to both goods and services supplied for purposes of valuation of the taxable supply. Although contained in the CGST Act, the valuation method provided in this section applies to UTGST, SGST, CGST and IGST. Valuation must be as provided exclusively in this section.

(b) Under Section 15(1), the transaction value which is applicable between unrelated persons where price is the sole consideration for the supply is the price actually paid or payable for the said supply of goods or services or both. This is the price for the specific supply that is being valued. It includes the amount already paid at the time the supply is being valued for tax, as well as the amount payable and not yet paid at that time. The word 'payable' refers to price that is agreed to be paid for the goods/services.

(2) Inclusions in Value of Supply [Section 15(2)] : The value of supply shall include –

(a)	Taxes, duties, cesses, fees and charges except CGST, SGST, UTGST & GST compensation cess [Section 15(2)(a)] :	Any— ✓ taxes, ✓ duties, ✓ cesses, ✓ fees, and ✓ charges levied under any law for the time being in force, other than— ✓ this Act i.e. CGST Act, ✓ the State Goods and Services Tax Act, ✓ the Union Territory Goods and Services Tax Act, and ✓ the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier. Thus, GST and GST cess are not part of taxable value, but other taxes/ cesses/ fees etc. will form part of the value of taxable supply, if separately billed. Note: (i) Transaction value under IGST will include taxes other than IGST and the compensation cess in terms of third proviso to Section 20 of IGST Act. (ii) TCS under Income-tax Act, 1961 not includible in the taxable value for the purpose of GST : The CBIC vide Circular No. 76/50/2018 GST dated 31-12-2018 (amended vide corrigendum dated 07-03-2019) has clarified that for the purpose of determination of value of supply under GST, tax collected at source (TCS) under the provisions of the Income-

		tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.
		Examples: (1) Central excise duty is leviable on manufactured tobacco along with GST, hence Central excise duty will be included in transaction value for supply of tobacco for chargeabilty of GST. (2) In the rent contract, the tenant is required to pay municipal taxes either directly to the local body or to the owner of the premises. Such municipal taxes will form part of transaction value for the supply of renting service. (3) Power to levy entertainment tax is still available with local bodies. The tickets purchased in any entertainment event will include the entertainment tax amount. However, as per the above provisions, entertainment tax included in the ticket will also form part of transaction value.
(b)	Amount incurred by recipient on behalf of the supplier	✓ Supplier' obligation met by recipient to be included : Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both. A supplier may need to incur various expenses in order to make a particular supply of goods/services. In the normal course, he would pay these amounts and they would form part of the value that he charges from the customer (recipient of supply). However, even if the customer makes direct payment of some of such liabilities (of the supplier) to the third parties, and the supplier does not include this amount in his bill, it would still form part of the value of the taxable supply. Examples: (i) ABC & Co. has placed order for supply of certain goods to Mr. Z. As per the contract, Mr. Z is required to deliver the goods to the premises of ABC & Co. Mr. Z hires a transporter for transportation of the goods. However, the lorry receipt indicates that the freight is payable by ABC & Co. In this case, Mr. Z was required to make the payment to the transporter as it was the obligation of Mr. Z to deliver the goods to the premises of ABC & Co. As against Mr. Z making the payment to transporter, the payment is made by ABC & Co. Therefore,

		such payment will form part of transaction value of the goods supplied. Thus, in a contract, the obligation undertaken by the supplier for supplying goods needs to be determined. All the expenses in respect of such obligation must be incurred by the supplier. In case any amount has been incurred by the recipient of supply in connection with the supply, the same will be included in the transaction value. (ii) XYZ Ltd., a supplier of goods has engaged Mr. X as selling agent. The commission to Mr. X has been paid by the recipient of supply. In this case the underlying obligation of payment of selling commission is of XYZ Ltd. as it has engaged the agent to identify prospective customers. If the obligation to pay the agent (the amount towards selling commission) is passed on to the recipient, then the price paid to XYZ Ltd. does not reflect the true value of supply. Had the recipient refused to pay this selling commission to the agent, then XYZ Ltd. would have paid Mr. X and made a corresponding increase in the price of the supply. Thus, the selling commission paid by the recipient to Mr. X is to be included in the value of taxable supply. Payment made on own account of recipient – Not to be included This clause does not authorize every payment where the recipient is the principal creditor/obligor and require these also to be included in the value of supply. Example: Commission paid to buying agent – Not to be included: If the payment is 'buying commission' which is paid by the recipient, then the obligation to pay the agent is always of the recipient and does not require to be included in the value of supply.
(c)	Incidental expenses and amount charged for activities done before delivery	✓ Incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply, and ✓ Any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services. Few examples of such incidental expenses are— ✓ Commission : This may be paid to an agent and recovered from the buyer of the goods/services; this is part of the value of the supply. ✓ Packing, if charged by the supplier to the recipient, is similarly part of the value of the supply.

		✓ Inspection or certification charges are another element that may be added to the value, if billed to the recipient of supply. ✓ Installation and testing charges at the recipient's site will also be added, being an amount charged for something done by the supplier in respect of the supply at the time of making the supply. ✓ Outward freight, transit insurance : Where the supplier agrees to deliver the goods at the buyer's premises and arranges for transport (FOR contract), the contract of supply becomes a composite supply, the principal supply being the supply of goods. Therefore, outward freight becomes part of the value of the composite supply and GST is payable thereon at the same rate as applicable for the relevant goods. However, if the contract for supply is on ex-factory basis where buyer pays the outward freight, the same will not be included in the value of supply of goods. Similarly, in FOR contracts of supply of goods, transit insurance will also become part of the value of composite supply. Examples: (i) M/s. X Company appoints agent Mr. Y to procure orders. Mr. Y procures orders from Mr. A for supply of 100 kg. of goods 'P' at a price of ₹ 100 per kg. M/s X Company supplies the goods to Mr. A and charges him only ₹ 98 per kg. with the instruction to pay ` 2 per kg directly to Mr. Y. Payment by Mr. A to Mr. Y is in connection with the supply of goods made by M/s. X Company to Mr. A. Therefore, ₹ 2 per kg. will be considered as part of transaction value for the purposes of Section 15 and GST will be payable on the commission amount paid by Mr. A to Mr. Y (ii) Mr. X decided to gift an article to his friend. He requests the supplier to pack the goods in a particular packing to give it an attractive look. The amount for the special packing is separately paid by Mr. X to the supplier. The cost of such packing will be included in the value of goods being supplied even if it is separately paid by Mr. X.
(d)	Charges for delayed payment of consideration	Interest or late fee or penalty for delayed payment of any consideration for any supply.

		Example: X Ltd. has supplied goods valued ₹ 1,00,000 to M/s. Y on a credit period of one month. The contract provides for levy of interest at the rate of 18% p.a. on delay in payment. M/s. Y makes payment to X Ltd. after 2 months along with interest of ₹ 1,500. The GST law specifically provides that such interest of ₹ 1,500 will form part of the consideration of supply and GST will be payable on the same
(e)	Subsidies	Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. Explanation: The amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy. Example: The selling price of a geometry box is ₹ 75. For geometry box sold to students in Government schools, a company uses its CSR funds to pay the seller ₹ 50, so that the students pay only ₹ 25 per geometry box. The taxable value of the geometry box will be ₹ 75, as this is a non government subsidy. If the same subsidy is paid by the Central Government or State Government, the taxable value of the geometry box would be ₹ 25.

(3) Exclusion in value of supply [Section 15(3)]:

(a)	Discounts	Discounts given on or before supply: Any discount which is— ✓ given before or at the time of the supply, ✓ if such discount has been duly recorded in the invoice issued in respect of such supply; Example: PRB & Co. gives a discount of 40% on the list price to its distributors. Thus, for a package of product X, in the invoice the list price is mentioned as ₹ 500, on which a discount of 40% is given to arrive at the final price of ₹ 300. The taxable value is ₹ 300, as the discount is allowed at the time of supply and shown in the invoice.
(b)	discount:	Post supply discount: Any discount which is given after the supply has been effected, if— ✓ such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and ✓ input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply. Examples :

(i) The agreement of GL Electrical Appliances with its dealers is that sale of washing machine over 500 pieces in the Diwali month will entitle them to discount of 5% per machine sold in the next month. The next month's stock has already been despatched when the sales figures for the Diwali month are worked out. However, as the agreement was in existence at the time of supply, and the discount can be worked out for each invoice, the taxable value will be billed price minus 5%. The dealer must reverse the proportionate input tax credit on the relevant stock to bring it in line with the reduced tax.

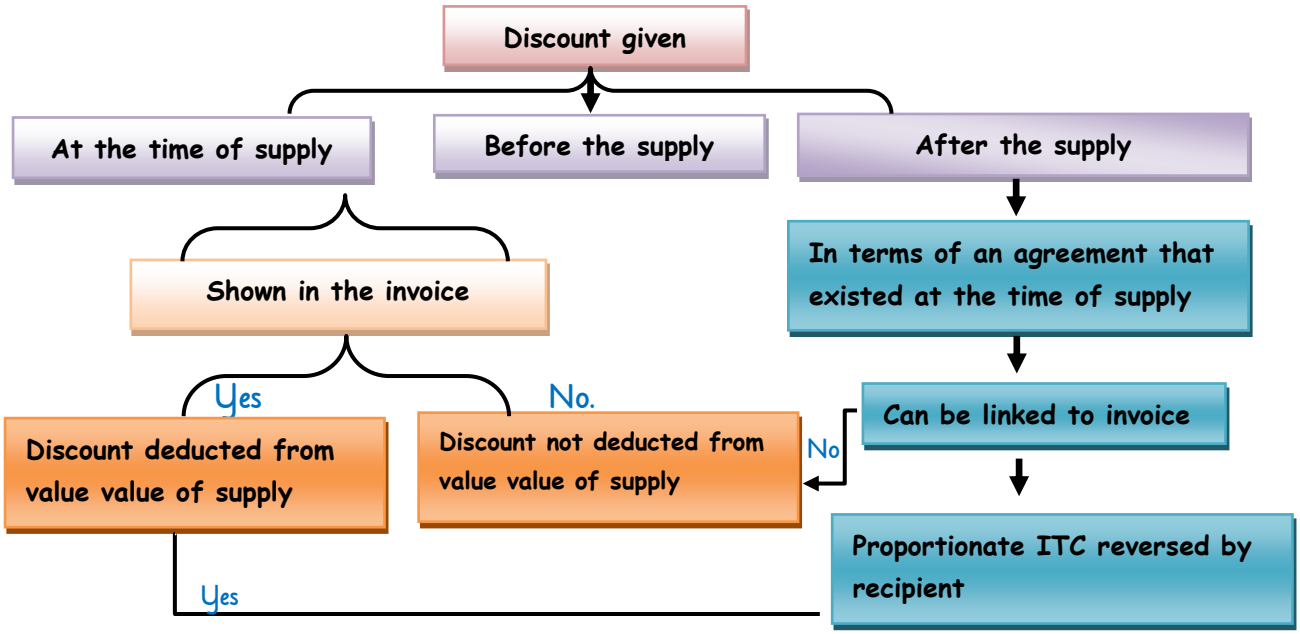
(ii) Tom and John Pvt. Ltd. (TJPL) sold goods to Jeery Pvt. Ltd. (JPL) on 15th January at ₹ 1,00,000 (exclusive of taxes and discounts) and charged ₹ 18,000 as IGST @ 18%. The terms of supply stipulated that discount @ 2% will be given to JPL if it makes the payment within one month of the supply. JPL avails the input tax credit of ₹ 18,000 in the month of January and makes the payment for the goods on 10th February. TJPL issues credit note for ₹ 2,360 [₹ 2,000 for value of discount and ₹ 360 for proportionate IGST leviable thereon] to JPL on 11th February. After receiving credit note, JPL reverses the input tax credit of ₹ 360 attributable to the discount given by the TJPL. TJPL can reduce its GST liability of the month of February by ₹ 360. JPL would have paid ₹ 1,15,640 (₹ 1,00,000 + ₹ 18,000 – ₹ 2,000 – ₹ 360) to TJPL on 10th February.

In the above example, if the terms of supply did not provide for discount @ 2% for payment within one month but TJPL offers such discount to JPL at the time of payment after negotiation, the discount will not be allowed as a deduction from the value. TJPL will issue a commercial credit note for only the value of discount, i.e. for ₹ 2,000. JPL will not reverse any input tax credit and TJPL will also not be able to reduce its GST liability for the month of February. In this case, JPL would pay ₹ 1,16,000 (₹ 1,00,000 + ₹ 18,000 – ₹ 2,000) to TJPL on 10th February.

Non deductible discount : A company announces year end discounts after reviewing dealer performance during the year. The year end discounts are based on performance slabs and are given as cash-back. As these discounts were not known at the time of

		supply of the goods, they will not be deducted from taxable value of those goods.

The provisions relating to discount have been depicted by way of following diagram :

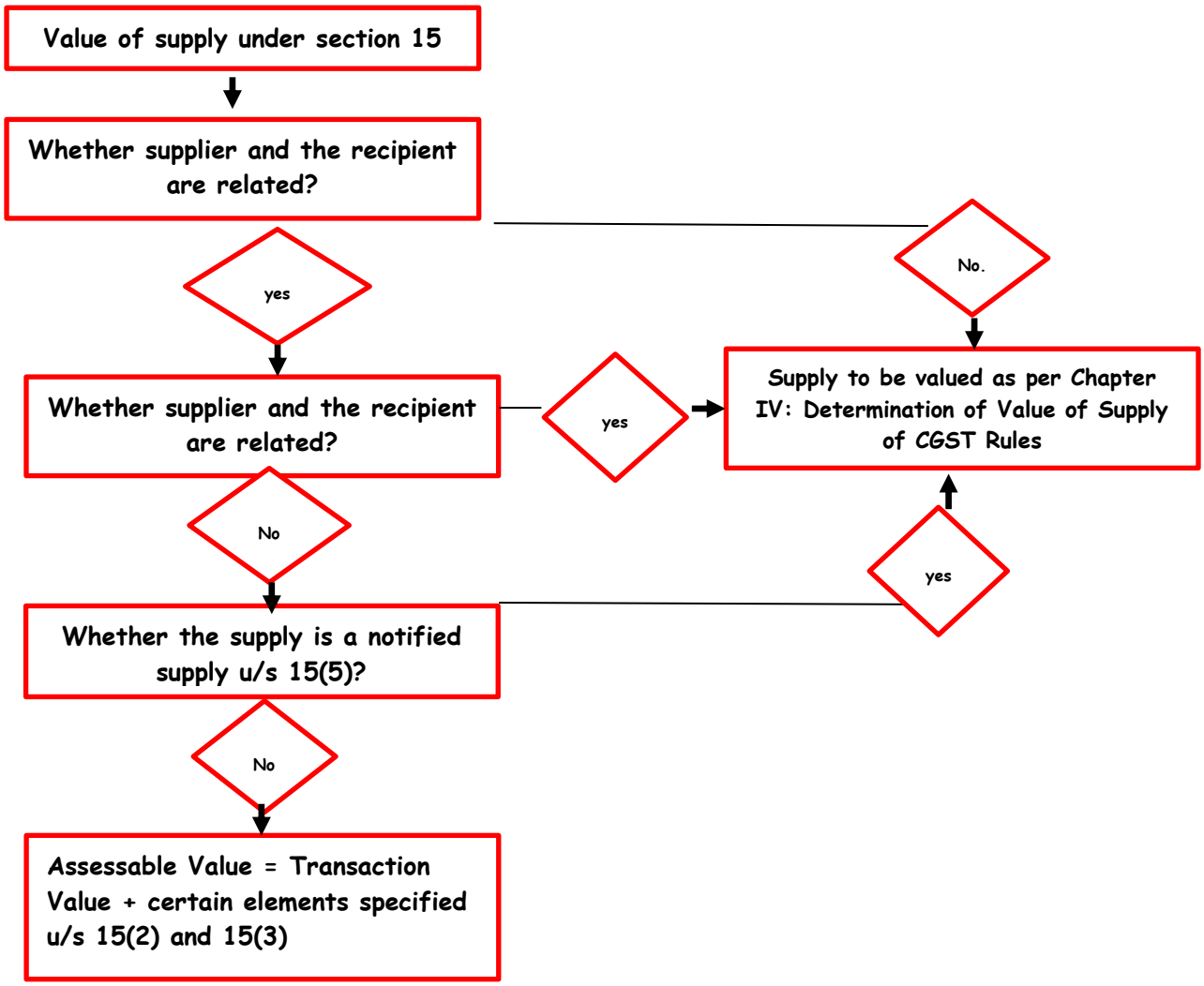


(4) Value cannot be determined as per above provisions - To be determined as per Rules [Section15(4)] : Where the value of the supply of goods or services or both cannot be determined under Section 15(1), the same shall be determined in such manner as may be prescribed.

Chapter IV of CGST Rules, 2017 contains rules for determination of value of supply

Note: Reference to Chapter IV of CGST Rules ,2017 is required only in case where value cannot be determined under section 15(1) of the Act,

Note:



(5) Value of notified supplies – To be determined in Prescribed Manner [Section 15(5)]: Notwithstanding anything contained in Section 15(1)/(4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

The following supplies have been notified in this regard:

(i) supply of online money gaming;

(ii) supply of online gaming, other than online money gaming; and

(iii) supply of actionable claims in casinos. .[Inserted by Notification No.51/2023 CT w.e.f..01-10-2023]

Circular No. 92/11/2019-GST dated 07-03-2019 :	Tax treatment of sales promotion scheme under GST-Free samples and gifts, Buy one get one free offer, Discounts including Buy more, save more offers and Secondary Discounts.
(A) Free samples and gifts :	

(i) It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.

Not regarded as supply : The goods or services or both which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST (except in case of activities mentioned in Schedule I of the said Act).

(ii) Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as 'supply' under GST, except where the activity falls within the ambit of Schedule I of the said Act.

ITC inadmissible, if activity not regarded as supply : Further, Section 17(5)(h) of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration.

However, where the activity of distribution of gifts or free samples falls within the scope of 'supply' on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC

(B) Buy one get one free offer :

(i) Sometimes, companies announce offers like 'Buy One, Get One free' For example, 'buy one soap and get one soap free' or 'Get one tooth brush free along with the purchase of tooth paste'. As per Section 7(1)(a) of the said Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST (except in case of activities mentioned in Schedule I of the said Act).

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

(iii) Taxability to be determined as per section 8 : Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.

(iv) ITC admissible : It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

(C) Staggered Discounts ('Buy more, save more' offers) :

(i) Staggered discount : Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). Such discounts are shown on the invoice itself.

(ii) Periodic/ year ending discounts i.e. Volume discounts : Some suppliers also offer periodic/ year ending discounts to their stockists, etc.
Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end.
In commercial parlance, such discounts are colloquially referred to as "volume discounts".
Such discounts are passed on by the supplier through credit notes.

(iii) Staggered discount/ Volume discounts – deductible as per Section 15(3) : It is clarified that discounts offered by the suppliers to customers (including staggered discount under 'Buy more, save more' scheme and post supply/volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in Section 15(3) of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

(iv) Supplier entitled to avail ITC : It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

(D) Secondary Discounts :

(i) These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s. A supplies 10000 packets of biscuits to M/s. B at ₹ 10/- per packet. Afterwards M/s. A re-values it at ₹ 9/- per packet. Subsequently, M/s. A issues credit note to M/s. B for ₹ 1/- per packet.

(ii) Representations have been received from the trade and industry that whether credit notes(s) u/s 34(1) of the said Act can be issued in such cases even if the conditions laid Section 15(3)(b) of the said Act are not satisfied.
It is hereby clarified that financial/commercial credit note(s) can be issued by the supplier even if the conditions mentioned in Section 15(3)(b) of the said Act are not satisfied.
In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.

(iii) Secondary discounts not deductible : It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in Section 15(3)(b) of the said Act are not satisfied.

(iv) In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above or by any other means, except in cases where the provisions contained in Section 15(3)(b) of the said Act are satisfied.

(v) There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

Circular No. 190/02/2023- GST dated 16-01-2023	GST is not applicable on incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions

- ✓ Under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, the Government pays the acquiring banks an incentive as a percentage of value of RuPay Debit card transactions and low value BHIM-UPI transactions up to ` 2000.
- ✓ The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.
- ✓ The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/ BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the Central Government in the form of incentive. However, it is not a consideration paid by the Central Government for any service supplied by the acquiring bank to the Central Government. The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017.
- ✓ It is hereby clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.

Applicability of GST on the incentive amount shared by acquiring banks with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of Ru-Pay Debit Cards and low value BHIM-UPI transactions. – Circular No. 228/22/2024-GST dated 15-07-2024

Issue	Clarification
Whether GST is applicable on the incentive amount shared by acquiring banks with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay Debit Cards and low	The Gazette Notifications dated 17th December, 2021 and 14th January, 2023 issued by MeitY state that the incentives will be shared by the acquiring banks with other payment system participants and the payment system operator, in the proportion and manner decided by the National Payments Corporation of India (NPCI) in consultation with the participating banks. MeitY pays the incentive to the acquiring bank and it is further shared by the acquiring bank with the issuer bank. Issuer bank further shares the incentive with the Payer Payment Service Provider (PSP), which are typically banks, and the UPI app.

value BHIM-UPI transactions.	The share of incentive paid by the acquiring bank to the issuer bank and further shared by the issuer bank to the Payer PSPs and the UPI app are decided by the NPCI in consultation with participating banks. Payer PSPs may choose to further share this incentive with Third Party App Providers (TPAP). However, the proportion of the incentive shared by Payer PSPs with TPAPs is not being decided by NPCI in consultation with the participating banks for Financial Years 2021-22 and 2022-23 and was determined by the business agreement between the Payer PSPs and TPAP. GST Council in its 53rd meeting held on 22nd June, 2024 has recommended to clarify that further sharing of the incentive amount by the acquiring bank with other stakeholders, up to the point where the incentive is distributed in the proportion and manner as decided by NPCI in consultation with the participating banks under the notified Incentive Scheme, is in the nature of a subsidy and thus, not taxable. Thus, it is hereby clarified that further sharing of the incentive amount by the acquiring bank with other stakeholders, up to the point where the incentive is distributed in the proportion and manner as decided by NPCI in consultation with the participating banks under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, is in the nature of a subsidy and is thus, not taxable.

Circular No. 186/18/2022-GST dated 27-12-2022:

Issue	Clarification
Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?	The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under Section 15(3)(a) of the CGST Act. It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under section 15(3)(a) of the CGST Act for the purpose of calculation of value of supply of the insurance

	services provided by the insurance company to the insured. Accordingly, where the deduction on account of No claim bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.

Circular No. 102/21/2019-GST dated 28-06-2019	Clarification regarding applicability of GST on additional/ penal interest

(1) Equated Monthly Instalments (EMI) : An EMI is a fixed amount paid by a borrower to a lender at a specified date every calendar month. EMIs are used to pay off both interest and principal every month, so that over a specified period, the loan is fully paid off along with interest. In cases where the EMI is not paid at the scheduled time, there is a levy of additional/penal interest on account of delay in payment of EMI.

(2) Issue under Consideration : Whether GST on additional/penal interest on the overdue loan would be exempt from GST in terms of Sl. No. 27 of notification No. 12/2017-CT (Rate) dated 28-6-2017 or such penal interest would be treated as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the CGST Act) i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"].

(3) Clarification : As per the provisions of section 15(2)(d) of the CGST Act, the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. Entry 27 of exemption notification, inter alia, exempts the services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services). Here, interest means interest payable in any manner in respect of any moneys borrowed/debt incurred (including a deposit, claim or other similar right or obligation), but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.

There are two transaction options involving EMI that are prevalent in the trade. In view of the provisions of law discussed in preceding para, these two options, alongwith the GST applicability on them, have been explained with the help of illustrations as under –

Case	Nature of Transaction	Clarification
1.	X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000. However, X gives Y an option to pay in installments, ₹ 11,000 every month before 10th	As per the provisions of Section 15(2)(d) of the CGST Act, the amount of penal interest is to be included in the value of supply. The transaction between X and

	day of the following month, over next four months (₹ 11,000 × 4 = ₹ 44,000). Further, as per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to ₹ 500 per month for the delay. In some instances, X is charging Y ₹ 40,000 for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/ penal interest amounting to ₹ 500 per month for each delay in payment.	Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.
2.	X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/penal interest @ 1.25% per month for any delay in payment.	The additional/penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under Sl. No. 27 of Notification No. 12/2017-CT (Rate) dated 28-06-2017. Accordingly, in this case the 'penal interest' charged thereon on a transaction between Y and M/s. ABC Ltd. would not be subject to GST, as the same would be covered under Notification No. 12/2017-CT (Rate) dated 28-06-2017. The value of supply of mobile by X to Y would be ₹ 40,000 for the purpose of levy of GST.

(4) Additional/ Penal Interest not a consideration for liquidated damages : It is further clarified that the transaction of levy of additional/penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional/penal interest satisfies the definition of "interest" as contained in notification No. 12/2017-CT (Rate) dated 28-06-2017.

(5) Service charges – leviable to GST : It is further clarified that any service fee/charge or any other charges that are levied by M/s. ABC Ltd. in respect of the transaction related to

extending deposits, loans or advances does not qualify to be interest as defined in notification No. 12/2017-CT (Rate) dated 28-06-2017, and accordingly will not be exempt.

Mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, 2017 by the suppliers. – Circular No. 212/6/2024-GST dated 26-06-2024

Issue	Clarification
In cases where the discounts are offered by the suppliers through tax credit notes, after the supply has been effected, the said discount is not to be included in the taxable value only if the condition of section 15(3)(b)(ii) of the CGST Act, for reversal of the input tax credit attributable to the said discount by the recipient, is satisfied. Representations have been received from the trade and the field formations mentioning that there is presently no facility available to the supplier as well as the tax officers on the common portal to verify whether the input tax credit attributable to the said discount has been reversed by the recipient or not. Request has been made to provide a suitable mechanism for enabling the suppliers as well as tax officers to verify fulfilment of the condition of section 15(3)(b)(ii) of the CGST Act regarding proportionate reversal of input tax credit by the recipients in respect of such discounts given by the supplier by issuing tax credit notes after the supply has been effected.	The Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues as under: (a) Wherever any discount is offered by the supplier to the recipient, by issuance of a tax credit note as per section 34 of the CGST Act, after the supply has been effected, the said discount can be excluded from the value of taxable supply only if the conditions of section 15(3)(b) of the CGST Act are fulfilled. Such conditions inter alia includes the requirement of reversal of input tax credit by the recipient attributable to the said discount. (b) However, there is no system functionality/ facility presently available on the common portal to enable the supplier or the tax officer to verify the compliance of the said condition of proportionate reversal of input tax credit by the recipient. (c) In view of the above, till the time a functionality/ facility is made available on the common portal to enable the suppliers as well as the tax officers to verify whether the input tax credit attributable to such discounts offered through tax credit notes has been reversed by the recipient or not, the supplier may procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate reversal of input tax credit at his end in respect of such credit note issued by the supplier. (d) The said CA/CMA certificate may include details such as the details of the credit notes, the details of the relevant invoice number against which the said credit note has been issued, the amount of ITC reversal in respect of each of the said credit notes along with the details of the FORM GST DRC-03/ return/ any other relevant

	document through which such reversal of ITC has been made by the recipient. (e) Such certificate issued by CA or CMA shall contain UDIN (Unique Document Identification Number). UDIN of the certificate issued by CAs can be verified from ICAI website https://udin.icai.org/search-udin. and that issued by CMAs can be verified from ICMAI website https://eicmai.in/udin/VerifyUDIN.aspx. (f) In cases, where the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a Financial Year is not exceeding ₹ 5,00,000, then instead of CA/CMA certificate, the said supplier may procure an undertaking/ certificate from the said recipient that the said input tax credit attributable to such discount has been reversed by him, along with the details mentioned above. (g) Such certificates issued by the CA/CMA or the undertakings/ certificates issued by the recipient of supply, as the case may be, shall be treated as a suitable and admissible evidence for the purpose of section 15(3)(b)(ii) of the CGST Act, 2017. The supplier shall produce such certificates/ undertakings before the tax officers, if required, during any proceedings such as scrutiny, audit, investigations, etc. Even for the past period, where ever any such evidence as per section 15(3)(b)(ii) of CGST Act in respect of credit note issued by the supplier for post-sale discounts is required to be produced by him to the tax authorities, the concerned taxpayer may procure and provide such certificates issued by CA/CMA or the undertakings/ certificates issued by the recipients of supply, as the case may be, to the concerned investigating/ audit/ adjudicating authority as evidence of requisite reversal of input tax credit by his recipients.

4. Explain the provisions relating to rate of exchange of currency, other than India rupees, for determination of value.

Ans- RATE OF EXCHANGE OF CURRENCY, OTHER THAN INDIAN RUPEES, FOR DETERMINATION OF VALUE [Rule 34 of CGST Rules, 2017]

(1) Exchange rate notified by CBIC applicable in case of goods : The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under Section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of Section 12 of the Act.

(2) Exchange rate determined as per GAAP applicable in case of services : The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of Section 13 of the Act.

5. How will the tax amount be determined if value of supply is inclusive of integrated tax, central tax State tax, Union territory tax

Ans- VALUE OF SUPPLY INCLUSIVE OF INTEGRATED TAX, CENTRAL TAX, STATE TAX, UNION TERRITORY TAX [RULE 35 of CGST Rule, 2017]:

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,—

$$\text{Tax amount} = \text{Value inclusive of taxes} \times \frac{\text{Tax rate in \% of IGST or as the case may be CGST, SGST or UTGST}}{(100 + \text{sum of tax rates, as applicable, in \%})}$$

6. Explain briefly the term Related Persons' as per CGST Act,2017?

Ans-The relevant provisions are discussed as under-

(1) RELATED PERSONS [EXPLANATION TO SECTION 15] Persons shall be deemed to be "related persons" if—

(i) such persons are officers or directors of one another's businesses;
(ii) such persons are legally recognised partners in business;
(iii) such persons are employer and employee;
(iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
(v) one of them directly or indirectly controls the other;
(vi) both of them are directly or indirectly controlled by a third person;
(vii) together they directly or indirectly control a third person; or
(viii) they are members of the same family.
(ix) Legal persons included : The term "person" also includes legal persons.

(3) Sole agents are deemed to be related : Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

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

7. Is contract price not sufficient to determine valuation of supply?

Ans- Contract price is more specifically referred to as 'transaction value' and that is the basis for computing tax However ,when the price is influenced by factors like relationship of parties or where certain transactions are deemed to be supply ,which do not have a price,
the value has to be determined in accordance with the chapter IV of CGST Rules,2017,

8. When are the provisions of the Valuation Rules applicable?

Ans- valuation Rules are applicable when-

(i) Consideration either wholly or in part is not in money terms.
(ii) parties are related or it involves supply by any specified category of supplier; and
(iii) transactions value declared is not reliable.

CGST RULES,2017 – CHAPTER IV – DETERMINATION OF VALUE OF SUPPLY

9. Explain the following terms : (a) open market value; (b) Supply of goods or services or both of like kind and quality.

Ans- the relevant terms are explained as under-

(a) "Open market value" of a supply of goods or services or both means –

- ✓ the full value in money to obtain such supply at the same time when the supply being valued is made.
- ✓ excluding the Integrated tax, Central tax, State tax, Union territory tax and the cess payable by a person in a transaction,
- ✓ where the supplier and the recipient of the supply are not related; and
- ✓ price is the sole consideration.

Open market value is not comparable price to unrelated customer. The definition of open market value does not allow comparison of supplies in comparable circumstances. It only requires supply 'at the same time'. So, Open market value is not price in another 'comparable' supply at a close proximity in time. This provision does not provide the manner of adjustments to be made to overcome the effect of those disqualifying circumstances present but simply states that OMV 'shall be' the value of the supply.

(b) "Supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

10. Explain the manner of determination of value of supply of goods or services where the consideration is not wholly in money.

Ans-VALUE OF SUPPLY OF GOODS/SERVICES WHERE THE CONSIDERATION IS NOT WHOLLY IN MONEY [RULE 27]

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,—

(a) be the open market value of such supply;

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of Rule 30 or Rule 31 in that order i.e. the consideration in money plus the money equivalent of the non-money consideration, as worked out based on cost of the supply plus 10% mark-up [Rule 30 regarding cost-based valuation] or by other reasonable means [Best Judgment Method], in that sequence [Rule 31 regarding Residual Method].

Illustration:

(1) Where a new phone is supplied for ₹ 20,000 along with the exchange of an old phone and if the price of the new phone without exchange is ₹ 24,000, the open market value of the new phone is ₹ 24,000.

(2) Where a laptop is supplied for ₹ 40,000 along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is ₹ 4,000 but the open market value of the laptop is not known, the value of the supply of laptop is ₹ 44,000.

Other Aspects : This Rule is applicable if the consideration for a supply of goods and/or services is nonmonetary in nature, either wholly or partly. The methods are to be used in order of sequence; the one coming later in the sequence is applicable only if the previous method(s) are not applicable.

11. Explain the manner of determination of value of supply of goods or services or both between distinct or related persons, other than through an agent .

Ans-VALUE OF SUPPLY OF GOODS OR SERVICES OR BOTH BETWEEN DISTINCT OR RELATED PERSONS, OTHER THAN THROUGH AN AGENT [RULE 28]

(1) General Provisions : The value of the supply of goods or services or both—

- ✓ between distinct persons as specified in Section 25(4) and (5), or
- ✓ where the supplier and recipient are related,

other than where the supply is made through an agent, shall—

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of Rule 30 or Rule 31, in that order i.e. it must be worked out based on the cost of the supply plus 10% mark-up [Rule 30] or by other reasonable means, in that sequence [Rule 31].

(2) Goods supplied as such by recipient – Option to take 90% of price charged by recipient from his unrelated Customer as Value : Where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.

(3) If recipient eligible for ITC – Invoice value acceptable : Where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

(4) Value of supply by way of providing corporate guarantee to banking company/ Financial Institution [Rule 28(2)] : The value of supply of services by a supplier to a recipient who is a related person located in India [Inserted vide Notification No. 12/2024-CT dated 10.07.2024 w.e.f. 26.10.2023.], by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be –

(i) 1% of the amount of such guarantee offered per-annum, or

(ii) the actual consideration,

whichever is higher.

However, where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services

Note :

(1) Applicability : This rule does not provide the value of the supply made through an agent.

(2) The provisions of Section 25(4) and Section 25(5) are as under—

(a) Person having more than one registration - Each such registration to be treated as distinct persons [Section 25(4)] : A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(b) Premises in separate States – Deemed distinct persons [Section 25(5)] : Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(3) It may be recollected that a supply between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business is treated as supply even if made without consideration in terms of paragraph 2 of Schedule I of CGST Act. Thus, rule 28 provides the value of such kind of supplies when the same are made for a consideration as well as when the same are made without consideration.

(4) It is important to note that as per valuation Rule 32(7), the value of taxable services provided by notified class of service providers, without any consideration, between distinct persons is NIL, if ITC thereon is available.

Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST. – Circular No. 204/16/2023-GST dated 27-10-2023

	Issue	Clarification
1.	Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not.	Personal Guarantee provided by director – covered in supply : As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons. As per Section 7(1)(c) of the CGST Act, 2017, read with Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Accordingly, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration. Value of supply – Nil if no consideration is charged. Rule 28 of CGST 2017 prescribes the method for determining the value of the supply of goods or services or both between related parties, other than where the supply is made through an agent. In terms of Rule 28 of CGST Rules, the taxable value of such supply of service shall be the open market value of such supply

		As per mandate provided by RBI in terms of Para 2.2.9 (C) of RBI's Circular No. RBI/2021-22/121 dated 9th November, 2021, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits. As such, when no consideration can be paid for the said transaction by the company to the director in any form, directly or indirectly, as per RBI mandate, there is no question of such supply/ transaction having any open market value. Accordingly, the open market value of the said transaction/ supply may be treated as zero and therefore, taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company. There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.
2.	Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by	Corporate guarantee- covered in ambit of supply: Where the corporate guarantee is provided by a company to the bank/ financial institutions for

	the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.	providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration. Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act. Value of supply – to be determined as per Rule 28(2) : In respect of such supply of services by a person to another related person or by a holding company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value will be determined as per rule 28(2) of CGST Rules irrespective of whether full ITC is available to the recipient of services or not. It is clarified that the Rule 28(2) shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (1) above.

Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons. – Circular No. 225/19/2024-GST dated 11-07-2024

	Issue	Clarification

1.	Whether of rule 28(2) of CGST Rules will apply to the corporate guarantees issued prior to insertion of the said sub-rule on 26th october 2023? Also, where intra-group corporate guarantees have been issued before 26th October 2023, which are still in force today, would they be liable to pay GST on "1% of the amount of such guarantee offered" on such guarantees?	It is to be clarified that the supply of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was taxable even before the insertion of rule 28(2) of CGST Rules with effect from 26th October 2023. Rule 28(2) of CGST Rules is only for determination of the value of the taxable supply of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient and not regarding the taxability of the said supply itself. Prior to the insertion of the said sub-rule, i.e., before 26th October 2023, the valuation of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was to be done as per the provisions of Rule 28 of CGST Rules, as it existed then. Therefore, in respect of supply of services of providing corporate guarantee between related persons, in respect of corporate guarantee issued or renewed before 26th October 2023, the valuation of the said supply is to be done in accordance with Rule 28, as it existed during that time. However, if the corporate guarantee is issued or renewed on or after 26th October 2023, then the valuation of the said supply will be required to be done as per Rule 28(2) of CGST Rules.
2.	In cases where the corporate guarantee is provided for a particular amount, whereas the loan is only partly availed or not availed at all by the recipient, what will be the value of supply of corporate guarantee. Also, whether the recipient would be eligible to avail full ITC	The activity of supply of the service of providing a corporate guarantee is not linked with the actual disbursal of the loan. The service that is provided by the guarantor to the guarantee is that of taking on the risk of default. Therefore, it is clarified that the value of supply of the service of providing a corporate guarantee will be calculated based on the amount guaranteed

	(Input Tax Credit) even before total loan is disbursed?	and will not be based on the amount of loan actually disbursed to the recipient of the corporate guarantee. Further, it is also clarified that the recipient of the service of providing corporate guarantee shall be eligible to avail the ITC, subject to other conditions specified in the Act and the Rules made thereunder, irrespective of when the loan is actually disbursed to the recipient, and irrespective of the amount of loan actually disbursed.
3.	In the case of takeover of existing loans, since there is merely an assignment of an already issued corporate guarantee, whether GST would be applicable again?	In the service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, the supplier of the service is the corporate entity providing the corporate guarantee and the recipient is the related entity for whom the corporate guarantee is provided by the said supplier. Therefore, if the loan issued by the banking company/ financial institution is taken over by another banking company/ financial institution, the said activity of taking over of the loan does not fall under the service of providing corporate guarantee to any banking company or financial institution by a supplier to a recipient. Therefore, it is clarified that in such cases, there will be no impact on GST, unless there is issuance of fresh corporate guarantee or there is a renewal of the existing corporate guarantee. However, if the takeover of the loan is followed/ accompanied by issuance of fresh corporate guarantee, then GST would be payable on the same.
4.	Where corporate guarantee is provided by more than one entity / co-guarantor, what is the amount on which GST is payable by each co-guarantor?	In cases where corporate guarantee is being provided by multiple related entities, the value of such services of providing corporate guarantee shall be the sum of the actual consideration paid/ payable to co-guarantors, if the said amount of total consideration is higher than 1% of the amount of such guarantee offered. In

		cases where the sum of the actual consideration is less than 1% of the amount of such guarantee offered, then GST shall be payable by each co-guarantor proportionately on 1% of the amount guaranteed by them. For instance, if there are two co-guarantors, A and B, who jointly provide a corporate guarantee to a banking/ financial institution on behalf a related recipient C for ₹ 1 crore, then A and B shall each pay GST on 0.5% of the amount guaranteed. However, if in the above case of A and B providing corporate guarantee jointly to a banking/ financial institution on behalf a related recipient C for ₹ 1 crore, A provides guarantee for 60% of the guarantee amount and B provides guarantee for the remaining 40% of the guaranteed amount, then GST shall be payable by A and B proportionately i.e., 0.6% and 0.4% of the amount guaranteed. This is to say that A shall pay GST on 1% of the amount guaranteed by A, i.e., 1% on ₹ 60 lakhs and B shall pay GST on 1% of the amount guaranteed by B, i.e., 1% on ₹ 40 lakhs.
5.	Where intra-group corporate guarantee is issued, whether GST may be paid by the recipient under reverse charge, as in the absence of actual invoice and payment, the recipient entity may not be able to claim input tax credit of tax paid by the domestic guarantor?	It is clarified that in cases where domestic corporates issue intra-group guarantees, GST is to be paid under forward charge mechanism, and invoice is to be issued by the supplier of the service of providing corporate guarantee to the related recipient under Section 31 of CGST Act, 2017 read along with the relevant rules. However, in cases where such guarantee is provided by the foreign/ overseas entity for a related entity located in India, then GST would be payable under reverse charge mechanism, by the recipient of service, i.e., the related entity located in India.
6.	Whether the discharge of tax liability on corporate guarantee @ 1% of such guarantee offered is to be	Rule 28(2) of CGST Rules has been amended retrospectively with effect from 26th October

	done one time or on yearly basis or on monthly basis and when issued for a fixed term of say, five years or ten years as per tenure of the loan?	2023, vide notification No. 12/2024 -CT dated 10.07.2024. Therefore, it is clarified that the value of supply of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient shall be 1% of the amount guaranteed per annum or the actual consideration, whichever is higher. Accordingly, the value of supply of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient for a particular number of years shall be 1% of the amount of such guarantee offered multiplied by the number of years for which the said guarantee is offered or the actual consideration whichever is higher. In addition to the above, in cases where the corporate guarantee is provided for a period less than a year, say 6 months (half a year), then in those cases as well, the valuation may be done on proportionate basis for the said period, i.e., in this case, the value of the said supply of services may be taken as half of 1% of the amount of such guarantee offered (6/12×1%), or the actual consideration, whichever is higher. To illustrate the same, if a corporate guarantee is issued for a period of say five years, then the value of such guarantee is to be calculated at 1% per year of the amount of such guarantee offered, or the actual consideration, whichever is higher, i.e., the value of such corporate guarantee provided would be 5% of the amount guaranteed or the actual consideration, whichever is higher. Therefore, GST would be payable on such amount at the time of issuance of such corporate guarantee, i.e., 5% of the amount guaranteed or the actual consideration, whichever is higher.

		However, if a corporate guarantee is issued, say for a period of one year and is renewed five times, for a period of one year each, then tax would be payable on 1% of the amount of such guarantee offered, or the actual consideration, whichever is higher, on the issue of such corporate guarantee in the first year as well as on every renewal in subsequent years.
7.	Whether the benefit of second proviso to sub-rule (1), which states that value declared in invoice is deemed to be the open market value in cases where full input tax credit is available to the recipient of services, is not applicable in cases falling under sub-rule (2)?	Proviso has been inserted in Rule 28(2) of CGST Rules, retrospectively with effect from 26th October 2023 vide notification No. 12/2024-CT dated 10.07.2024, similar to that provided in the second proviso to Rule 28(1) of CGST Rules, to provide the benefit in cases involving supply of service of corporate guarantees provided between related persons. Accordingly, it is clarified that in cases involving the supply of service of corporate guarantees provided between related persons, where full input tax credit is available to the recipient of services, the value declared in the invoice shall be deemed to be the value of supply of the said service.
8.	Whether the valuation in terms of Rule 28(2) of CGST Rules will apply to the export of the service of providing corporate guarantee between related persons?	As per the amendment done in rule 28(2) of CGST Rules retrospectively w.e.f. 26th October 2023 vide notification No. 12/2024-CT dated 10.07.2024, the provisions of the said sub-rule will not apply in cases where the recipient of the services of providing corporate guarantee between related persons is located outside India. Accordingly, the provisions of the said sub-rule shall not apply to the export of the services of providing corporate guarantee between related persons.

Clarification on valuation of supply of import of services by a related person where recipient is eligible to full input tax credit. – Circular No. 210/4/2024-GST dated 26-06-2024		
	Issue	Clarification

	Representations have been received from trade and industry stating that demands are being raised by some of the field formations against the registered persons seeking tax on reverse charge basis in respect of certain activities undertaken by their related persons based outside India, by considering the said activities as import of services by the registered person in India, based on an expansive interpretation of the deeming fiction in S. No. 4 of Schedule I of CGST Act, though no consideration is involved in the said activities and the same are not considered as supplies by the said related person in India. It has been represented that the same treatment, which is being given to domestic related parties/ distinct persons as per clarification provided by Circular No. 199/11/2023-GST dated 17.07.2023, may also be provided in cases where a foreign entity is providing service to its related party located in India, in cases where full ITC is available to the said recipient located in India.	(1) The second proviso to Rule 28 (1) of CGST Rules, is applicable in all the cases involving supply of goods or services or both between the distinct persons as well as the related persons, in cases where full ITC is available to the recipient. Accordingly, it is evident that the clarification which has been issued vide Circular No. 199/11/2023-GST dated 17.07.2023 (as discussed above) in respect of supplies of services between distinct persons in cases where full ITC is available to the recipient, is equally applicable in respect of import of services between related persons. (2) In case of import of services by a registered person in India from a related person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism. In such cases, the registered person in India is required to issue self-invoice under Section 31(3)(f) of CGST Act and pay tax on reverse charge basis. (3) In view of the above, it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

12. Explain the provisions relating to value of supply of goods between principal and his agent.

Ans- VALUE OF SUPPLY OF GOODS MADE OR RECEIVED THROUGH AN AGENT [RULE 29]

(1) General Provisions : The value of supply of goods between the principal and his agent shall—

(a) be the open market value of the goods being supplied, or

(b) at the option of the supplier, be 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.

Example: Where a principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of ₹ 5,000 per quintal on the day of supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of ₹ 4,550 per quintal. The value of the supply made by the principal shall be ₹ 4,550 per quintal or where he exercises the option the value shall be 90% of ₹ 5,000 i.e. ₹ 4,500 per quintal.

(2) If value cannot be determined as above – Value to be determined as per Rule 30/31 : Where the value of a supply is not determinable as per the above provision, the same shall be determined by the application of Rule 30 or Rule 31 in that order.

Thus, the following values have to be considered sequentially to determine the taxable value :

(a) Value of supply based on cost i.e. cost of supply plus **10%** mark-up

(b) Value of supply determined by using reasonable means consistent with principles & general provisions of GST law (Best Judgment Method).

(3) Analysis : Specific provisions have been made where sale is made through Consignment Agent. This is because property in goods does not pass to Consignment Agent when goods are despatched to him on consignment basis.

Term	Meaning
Agent	It means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another – Section 2(6) of CGST Act.
Principal	It means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both – Section 2(88) of CGST Act.

Liability only of Consignment Agent, not of commission agents : The agent will be liable for GST on value goods or services only if he undertakes to supply any goods or services or both on behalf of any principal (like consignment agent). However, if the agent does not supply goods or services, he is not liable for GST on value of goods or services. **For example**, in case of commission agent, he does not undertake supply of goods or services. He will be liable for GST only on his commission. He is not covered under this clause.

Provision does not apply when sale is to selling agent on principal to principal basis : The rule 29 really covers only C&F Agents who store and sale goods on behalf of Principal. This rules does not cover distributor or selling agents who purchase goods from Principal and then sale on their own. Here, their relations are on Principal to Principal basis.

Circular No. 73/47/2018-GST dated 05-11-2018	Scope of principal and agent relationship under Schedule I of CGST Act, 2017 in the context of del-credre agent.

Meaning of del-credere agent (DCA) : DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal and guarantees the payment to the supplier. For guarantying the payment to the supplier, the commission paid to the DCA may be relatively higher than that paid to a normal agent. In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer. The CBIC vide this have clarified the issues regarding the valuation of supplies from Principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself.

	Issue	Clarification
(i)	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?	It depends on the following possible scenarios : ✓ 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 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.
(ii)	Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under	Where DCA is not agent of the supplier – Interest charged on short term loans provided by DCA to recipient of goods not to be included in the value of supply of goods. In such a scenario following activities are taking place: (1) Supply of goods from supplier (principal) to recipient; (2) Supply of agency services from DCA to the supplier or the recipient or both; (3) Supply of extension of loan services by the DCA to the recipient. It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary

	Para 3 of Schedule I of the CGST Act?	short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier. It may be noted that vide notification No. 12/2017-CT (Rate) dated 28-06-2017 (S.No. 27), services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) has been exempted.
(iii)	Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?	When DCA is agent of the supplier and makes payment to the supplier and charges interest from the buyer – interest to be included in the value of supply of the goods charged by DCA to the buyer. In such a scenario following activities are taking place : (1) Supply of goods by the supplier (principal) to the DCA; (2) Further supply of goods by the DCA to the recipient; (3) Supply of agency services by the DCA to the supplier or the recipient or both; (4) Extension of credit by the DCA to the recipient. It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient. It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per Section 15(2)(d) of the CGST Act.

13. Explain the provisions relating to value of supply of goods or services or both based on cost.

Ans- VALUE OF SUPPLY OF GOODS OR SERVICES OR BOTH BASED ON COST [RULE 30]

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be 110% of the—

- ✓ cost of production or manufacture; or
- ✓ cost of acquisition of such goods; or
- ✓ cost of provision of such services.

Note : Service providers have the option to directly move to Rule 31 bypassing Rule 30.

14. Explain the provision s relating to residual method for determination of value of supply of goods or services or both.

Ans- RESIDUAL METHOD FOR DETERMINATION OF VALUE OF SUPPLY OF GOODS OR SERVICES OR BOTH [RULE 31]:

(1) Residual Method : Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of Section 15 and the provisions of this Chapter.

For example: A cosmetics company buys its products from a subcontractor, who supplies "testers" of each product, to be placed in retail outlets, free of charge. These are of different size from the product that is sold. The company and the sub-contractor are related persons. The sub-contractor does not have details of cost of acquisition of such testers. As none of the methods in rules 27 to 30 will work for valuing these testers, the value will have to be determined by using reasonable means consistent with the principles and general provisions of section 15 and the Rules. A possible method may be pro rata reduction of the price based on difference in size from the product that is sold.

(2) Service supplier can opt for Rule 31 disregarding Rule 30 : In the case of supply of services, the supplier may opt for this Rule, ignoring Rule 30.

15. How value supply is determined in case of lottery betting gambling and house racing.

Ans- VALUE OF SUPPLY IN CASE OF LOTTERY, BETTING, GAMBLING AND HORSE RACING [RULE 31A]:

(1) Value of supply of lottery : The value of supply of lottery shall be deemed to be 100/128 –

(a) of the face value of ticket, or

(b) of the price as notified in the Official Gazette by the Organising State,

whichever is higher.

"Organising State" means the State Government which conducts the lottery either in its own territory or sells its tickets in the territory of any other State.

(2) Betting, Gambling or Horse Racing : The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.

16. How value of supply is determined in case of online gaming including online money gaming.

Ans- VALUE OF SUPPLY IN CASE OF ONLINE GAMING INCLUDING ONLINE MONEY GAMING [RULE 31B]:

(1) Value in case of online gaming = Total amount paid/deposited with the supplier : The value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player.

"Online gaming" means offering of a game on the internet or an electronic network and includes online money gaming.

"Online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.

(2) Amount refunded to the player not to be deducted : Any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

(3) Winnings used for further playing – not to be considered as the amount paid to or deposited: Any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player. [Explanation]

17.How Value of supply is determined in case actionable claims in case of casino.

Ans- VALUE OF SUPPLY OF ACTIONABLE CLAIMS IN CASE OF CASINO [RULE 31C]

(1) Value of supply of actionable claims in casino – Total amount paid/deposited : The value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

a. purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or
b. participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.

(2) Amount refunded to the player not to be deducted : However, any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

(3) Winnings used for further playing – not to be considered as the amount paid to or deposited : Any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

18.Explain the general provisions relating to determination of value in respect of certain supplies of services as provided in Rule 32 of CGST Rules, 2017

Ans-Determination of value in respect of certain supplies [Rule 32]:

- ✓ This rule provides the valuation methods for five specific supplies which are as under-
  - a. Purchase or sale of foreign currency including money changing.
  - b. Booking of tickets for air travel by an air travel agent.
  - c. Life insurance business.
  - d. Supply of second hand goods.
  - e. Redeemable vouchers/ stamps/coupons/tokens.
- ✓ This rule overrides other rules of valuation. Thus, the supplies prescribed in this rule need not be valued by sequentially following Rules 27 to 31.
- ✓ The valuation methods prescribed under this rule are optional; the supplier can use them if he so desires. He can also opt to value his supplies in accordance with other valuation rules.

19. Explain the provisions relating to value of supply of services in relation to purchase or sale of foreign currency, including money changing.

Ans-The Relevant provisions are as under-

(a) Value of supply of services in relation to purchase or sale of foreign currency, including Money Changing [Rule 32(2)(a)] :The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:

(i) For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the,–

Case	Value of supply
Purchase of foreign currency by service supplier	(RBI reference rate at that time – Buying rate) × Total units of currency.
Sale of foreign currency by service supplier	(Selling rate – RBI reference rate at that time) × Total units of currency.

(ii) If RBI reference rate is not available : In case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money.

(iii) In case where neither of the currencies exchanged is Indian Rupee : In case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

i.e.

Particulars	Amount
Amount 1 = Foreign Currency sold × RBI Reference Rate of that currency to Indian rupees Amount 2 = Foreign Currency Bought × RBI Reference Rate of that currency to Indian rupees	xxx xxx
Gross Indian Rupees = Amount 1 or Amount 2, whichever is less	xxx
Value = 1% of the Gross Indian Rupees	xxx

(b) Option to determine value in relation to supply of foreign currency, including money changing [Rule 32(2)(b)] :

At the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be—

	For an amount –	Value of supply shall be calculated at the rate of –
1.	Upto ₹ 1,00,000	✓ 1% of the gross amount of currency exchanged; or ✓ ₹ 250, whichever is higher.
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 1,000 + 0.5% of the gross amount of currency exchanged.
3.	Exceeding ₹ 10,00,000	✓ ₹ 5,500 + 0.1% of the gross amount of currency exchanged; or ✓ ₹ 60,000, whichever is lower.
Such option shall not be withdrawn during the remaining part of that financial year.		

20. Explain the provisions relating to value of supply of services in relation to booking of tickets for travel by air provided by an air travel agent.

Ans-Value of supply of services in relation to booking of tickets for travel by air provided by an air travel agent [Rule 32(3)] :

The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated—

(a) @ 5% of the basic fare in the case of domestic bookings, and

(b) @ 10% of the basic fare in the case of international bookings of passage for travel by air.

"Basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline. **[Explanation]**

21. Explain the provisions relating to value of supply of services in relation to life Insurance business.

Ans-Value of supply of services in relation to life insurance business [Rule 32(4)] The value of supply of services in relation to life insurance business shall be,—

(a) Policy with dual benefits of risk coverage and investment - If the amount allocated for investment/ savings is intimated to the policy holder at the time of the Supply of Service : The gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;

(b) In case of Single Premium Annuity Policies : In case of single premium annuity policies other than (a), 10% of single premium charged from the policy holder; or

(c) In other cases : In all other cases, **25%** of the premium charged from the policy holder in the first year and **12.5%** of the premium charged from the policy holder in subsequent years.

(d) Non applicability in case of Risk Premium Only : Nothing contained above shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

22. Explain the provisions relating to value of supply of second hand goods?

Ans- Special provision relating to determination of value of second hand goods – Margin Scheme [Rule 32(5)]

Where a taxable supply is provided by a person—

- ✓ dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and
- ✓ where no input tax credit has been availed on the purchase of such goods, the value of supply shall be—
- ✓ the difference between the selling price and the purchase price, and
- ✓ where the value of such supply is negative, it shall be ignored.

Analysis: Normally GST is charged on the transaction value of the goods. However, in respect of second hand goods, a person dealing in such goods may be allowed to pay tax on the margin i.e., the difference between the value at which the goods are supplied and the price at which the goods are purchased. The purpose of the margin scheme is to avoid double taxation as the goods, having once borne the incidence of tax, re-enter the supply chain. Persons who purchase second hand goods after payment of tax to supplier of such goods, are governed by this valuation rule only when they do not avail ITC on such input supply. If ITC is availed, then such supply is governed by normal GST valuation provisions

No reverse charge on registered person if he purchases second hand goods from Unregistered Person : The Central Government vide Notification No. 10/2017-CT (Rate) dated 28-06-2017 w.e.f. 01-07-2017 has exempted intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under Rule 32(5) of the CGST Rules, 2017, from any supplier, who is not registered, from the whole of the central tax leviable thereon under Section 9(4) of the CGST Act, 2017. Similar exemptions are also there in respective SGST Acts.

Value of Second Hand Goods :

When ITC is not availed [Margin Scheme]	When ITC is availed
✓ Value = Selling price – Purchase price ✓ Selling price is < than Purchase price Ignore negative value ✓ CGST on second hand goods received from unregistered supplier is exempt	Normal valuation as per other applicable provisions

Purchase value of goods repossessed from defaulting borrower : The purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by 5% points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

The same is summarized as under –

If the defaulting borrower is unregistered	If the defaulting borrower is registered
Purchase value = Purchase price in the hands of such borrower reduced by 5% for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession	The repossessing lender agency will discharge GST at the supply value without any reduction from actual/notional purchase value

23. Explain the provisions relating to value of a taken ,or a voucher,or a coupan,or a stamp (other than postage stamp).

Ans-Value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) [Rule 32(6)] The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

24. Explain the special provisions relating to determination of value of services provided by notified service providers between distinct persons as specified in Section 25.

Ans: Value of supply of notified services between distinct persons [Rule 32(7)]: The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in Paragraph 2 of Schedule I of the said Act between distinct persons as referred to in Section 25, where input tax credit is available, shall be deemed to be NIL.

25. Who is pure agent. Explain the provisions relating to value of supply of services in case of pure agent.

Ans: Value of supply of services in case of pure agent [Rule 33]: The relevant provisions are discussed as under-

1. "Pure agent" means a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

2. Expenditure or costs incurred by supplier as 'pure agent' of recipient of supply to be Excluded: The expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

For example: Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies. The fees charged by the Registrar of the companies registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

TOPIC REFERENCER

- *Definitions*
- *Eligibility and Conditions for Taking ITC*
- *Apportionment of Credit and Blocked Credits*
- *Utilization of Input Tax Credit*
- *Manner of Distribution of Credit by ISD*

DEFINITIONS

1. Define the following with reference to input tax credit:

Term	Definitions
Capital goods	Means goods,— ✓ the value of which is capitalised in the books of account of the person claiming the input tax credit, and ✓ which are used or intended to be used in the course or furtherance of business. [Section 2(19)]
Input	Means any goods— ✓ other than capital goods ✓ used or intended to be used by a supplier in the course or furtherance of business. [Section 2(59)]
Input service	Means any service used or intended to be used by a supplier in the course or furtherance of business. [Section 2(60)]
Input tax	In relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes— a) the integrated goods and services tax charged on import of goods; b) the tax payable under the provisions of Section 9(3) and Section 9(4); c) the tax payable under the provisions of Section 5(3) and Section 5(4) of the Integrated Goods and Services Tax Act; d) the tax payable under the provisions of Section 9(3) and Section 9(4) of the respective State Goods and Services Tax Act; or e) the tax payable under the provisions of Section 7(3) and Section 7(4) of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy. [Section 2(62)]

Input tax credit	Means the credit of input tax. [Section 2(63)]
Output tax	In relation to a taxable person, means— ✓ the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent ✓ but excludes tax payable by him on reverse charge basis. [Section 2(82)]
Input Service Distributor	Means an office of the supplier of goods or services or both which— ➢ receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under Section 9(3)/9(4) i.e. under RCM ➢ for or on behalf of distinct persons referred to in section 25, ➢ and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20. [Section 2(61)] [Amended by Finance Act, 2024 w.e.f. 01-04-2025]
Taxable supply	Means a supply of goods or services or both which is leviable to tax under this Act. [Section 2(108)]
Exempt supply	Means – ✓ supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the IGST Act, and ✓ includes non-taxable supply. [Section 2(47)]
Non-taxable supply	Means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act. [Section 2(78)]
Inward supply	In relation to a person, shall mean— ✓ receipt of goods or services or both ✓ whether by purchase, acquisition or any other means ✓ with or without consideration. [Section 2(67)]
Outward supply	In relation to a taxable person, means— ✓ supply of goods or services or both, ✓ whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, ✓ made or agreed to be made by such person in the course or furtherance of business. [Section 2(83)]

Input service distributor	Means an office of the supplier of goods or services or both which— ✓ receives tax invoices issued under section 31 towards the receipt of input services, and ✓ issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services ✓ to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office. [Section 2(61)]
Aggregate Turnover	Means the aggregate value of— ✓ all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), ✓ exempt supplies, ✓ exports of goods or services or both, and ✓ inter-State supplies of persons having the same PAN, to be computed on all India basis,— but excludes— ✓ Central tax, ✓ State tax, ✓ Union territory tax, ✓ Integrated tax, and ✓ Cess. [Section 2(6)]
Electronic credit ledger	Means the electronic credit ledger referred to in Section 49(2). [Section 2(46)]
Electronic cash ledger	Means the electronic cash ledger referred to in Section 49(1). [Section 2(43)]
Taxable person	Means a person who is registered or liable to be registered under section 22 or section 24. [Section 2(107)]
Tax period	Means the period for which the return is required to be furnished. [Section 2(106)]
Registered person	Means a person who is registered under section 25 but does not include a person having a Unique Identity Number. [Section 2(94)]
Quarter	Shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year. [Section 2(92)]

ELIGIBILITY AND CONDITIONS FOR TAKING ITC

2. Explain the eligibility and conditions for taking input tax credit

Ans- ELIGIBILITY AND CONDITIONS FOR TAKING INPUT TAX CREDIT [SECTION 16]:

(1) Only registered person eligible to take ITC [Section 16(1)] :

Every registered person shall,—

- ✓ subject to such conditions and restrictions as may be prescribed, and
- ✓ in the manner specified in Section 49,

be entitled to take credit of input tax—

- ✓ charged on any supply of goods or services or both to him
- ✓ which are used or intended to be used in the course or furtherance of his business, and

the said amount shall be credited to the electronic credit ledger of such person.

Analysis :

(a) Registration under GST : Registration under GST is mandatory requirement for claiming input tax credit. Thus, every registered person shall be entitled to ITC charged on inward supply of goods and/or services. This is subject to the provisions relating to use of ITC u/s 49 and the conditions and restrictions in the rules. [Section 49 prescribes provisions relating to payment of tax, interest, penalty & other amounts.]

(b) Goods/Services to be used for business purposes : ITC will be available on goods and/or services which are used in the course or furtherance of the business. The "intention to use" the goods and/or services in the course or furtherance of business would also lead to availing of credit on such goods and/or services. Thus, tax paid on goods and or/services which are used or intended to be used for non-business purposes cannot be availed as credit

(c) ITC will be credited in Electronic credit ledger.

(2) Conditions to be satisfied for taking ITC [Section 16(2)] : No registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,–

Possession of tax paying document : He is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.

(i) Documents on basis of which ITC can be availed [Rule 36(1)] : The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,–

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of Section 31;

(b) Invoice issued by recipient (receiving goods and/or services from unregistered supplier) along with proof of payment of tax (in case of reverse charge);

(c) a debit note issued by a supplier in accordance with the provisions of Section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) Revised Invoice;

(f) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor.

Note: Section 16 and the CGST Rules do not specify that a particular copy of the invoice alone will form the basis of taking ITC. However, rule 48 of the CGST Rules specifies that the original copy is for the recipient of goods. The original copy may preferably be kept for record to support the credit entry.

(ii) Documents must contain all applicable particulars and relevant information to be furnished by Registered person [Rule 36(2)] : Input tax credit shall be availed by a registered person only if all the applicable particulars are contained in the said document.

However, if the said document does not contain all the specified particulars but contains the details of—

- ✓ the amount of tax charged,
- ✓ description of goods or services,
- ✓ total value of supply of goods or services or both,
- ✓ GSTIN of the supplier and recipient and
- ✓ place of supply in case of inter-State supply,

input tax credit may be availed by such registered person.

(iii) ITC cannot be availed on tax demands on account of fraud etc. [Rule 36(3)] : No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts under section 74 [Amended Vide Notification No. 20/2024-CT dated 08-10-2024 w.e.f. 08-10-2024].

(aa) the details of the invoice or debit note referred above has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37.

Restrictions on availment of ITC [Rule 36(4)] : No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under Section 37(1) unless,–

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 as amended in FORM GSTR-1A if any [Inserted vide Notification No. 12/2024-CT dated 10.07.2024] or using the invoice furnishing facility; and

(b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under Rule 60(7).

GSTR-1 is a monthly/quarterly statement containing details of outward supplies made by a registered supplier. Such details of outward supplies furnished by the supplier are communicated and made available electronically (auto populated) to the respective recipient(s) in **GSTR-2A GSTR-2B is an auto-drafted ITC statement generated for every registered person based on GSTR-1s filed by supplier.**

Invoice Furnishing Facility (IFF) is a facility provided to quarterly taxpayers who are in QRMP scheme, to file their details of outward supplies in first two months of the quarter, to pass on the credit to their recipients.

b) Receipt of Goods/ Services : He has received the goods or services or both.

Delivery of goods or services at registered persons direction is valid receipt of goods or services [Explanation] : It shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

Thus, "Bill to Ship to" Model, where the goods are delivered to a third party on the direction of the registered person who purchases the goods from the supplier is also included for the purpose of ITC. Similarly, services may also be provided to a third party by the service provider (supplier) on the direction of the service recipient (registered person). In this case also, though the service recipient (registered person) does not receive the service, by virtue of explanation to section 16(2)(b) it is deemed that the registered person (service recipient) has received the service and will be entitled to take input tax credit.

Examples:

i. Goods : X is a trader who places an order on Y for a consignment of chemicals. X receives a buying order from Z for the same quantity of chemicals. X instructs Y to deliver the goods to Z, and in turn he raises an invoice on Z. Though the goods are not physically received at the premises of X, the condition of Section 16(2)(b) is satisfied, and X is entitled to ITC on the consignment.

ii. Services : The registered head office (Jaipur, Rajasthan) of JJ Pvt. Ltd. enters into a contract with SS Pvt. Ltd. of Jaipur, Rajasthan for repair and maintenance of computers systems installed at its registered branch office in Bengaluru, Karnataka. SS Pvt. Ltd. issues an invoice on JJ Pvt. Ltd., Jaipur for the services provided by it. Though the actual services are received by the branch office and not by the head office, section 16(2)(b) allows ITC of such repair and maintenance services to head office.

(ba) ITC must not be restricted : The details of input tax credit in respect of the said supply communicated to such registered person u/s 38 has not been restricted;

(c) Tax charged is actually paid to Government : Subject to the provisions of Section 41 the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply.

Presently, suppliers are required to file GSTR-1 (Statement of details of outward supplies), the details of which get auto-populated in GSTR-2A of the recipient for viewing. Further, GSTR-

2B, an auto-drafted ITC statement, is also generated for the taxpayer based on GSTR-1 filed by the supplier. On the basis of the details available in GSTR-2A and GSTR-2B, the taxpayer takes provisional ITC on self-assessment basis in GSTR-3B for discharging the tax liability.

(d) Furnishing of return : He has furnished the return under Section 39. Presently, a summary return in form GSTR-3B is being filed on monthly basis. Thus, a taxpayer should file GSTR-3B to avail ITC on eligible inward supplies.

(e) Goods received in lots or instalments – ITC can be taken upon receipt of the last lot or instalment: Where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment.

(3) ITC not admissible if deprecation claimed on tax component [Section 16(3)] : Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the ITC on the said tax component shall not be allowed.

Thus, in respect of the tax paid on such items, double benefit cannot be claimed under Income-tax Act, 1961 and GST laws simultaneously. In other words, either depreciation on the tax component can be claimed under Income-tax Act or ITC of such tax paid can be availed under GST laws.

(4) Burden of proof – Person taking the credit [Section 155] :

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

3. What is the time limit for taking ITC?

Ans-Time Limit for availing ITC [Section 16(4)] :A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after—

- ✓ 30th day of November following the end of financial year to which such invoice or debit note pertains, or
- ✓ furnishing of the relevant annual return,

whichever is earlier.

Exception : It must be further noted that the time limit under section 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.

In respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the 30-11-20213.

[Amended by the Finance (No.2) Act, 2024 w.e.f. 01-07-2017]

(6) Time limit for availment of ITC on restoration of registration [Section 16(6)]: Where registration of a registered person is cancelled u/s 29 and subsequently the cancellation of registration is revoked by any order, either u/s 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted u/s 16(4) on the date of order of cancellation of

registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,–

a. filed up to 30th November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or
b. for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within 30 days from the date of order of revocation of cancellation of registration,

whichever is later.

(7) No refund of tax paid or input tax credit reversed [Section 151] : No refund shall be made of all the tax paid or the input tax credit reversed, which would not have been so paid, or not reversed, had the above provisions been in force at all material times. [Inserted by the Finance (No.2) Act, 2024 w.e.f. 01-07-2017]

Clarification on time limit under Section 16(4) of CGST Act, 2017 in respect of RCM supplies received from unregistered persons. – Circular No. 211/5/2024-GST dated 26-06-2024 [Amended by the Finance (No.2) Act, 2024 w.e.f. 01-11-2024]

(1) Issue : It has been represented that in some cases, where tax is payable on reverse charge basis by the recipient, such as, where an activity is performed by the overseas related person for the entity located in India and no consideration is involved, such an activity may not be considered as supply of services by the concerned recipient in India and accordingly, no invoice is issued as well as no tax is paid by the said recipient under RCM in respect of the same. However, later on, either on their own on the basis of some clarification issued by the department or on the basis of some court judgment or on being pointed out by the tax authorities during scrutiny or audit or otherwise, the said recipient issues the invoice and pays the tax under RCM, along with interest, and claims input tax credit on such tax paid. It has been represented that some of the field formations are taking the view that in such cases, the relevant year of the invoice for the purpose of section 16(4) of CGST Act is the year in which the said supply was received and accordingly, the time limit for availment of ITC under section 16(4) of CGST Act is only upto the September/ November of the following financial year, i.e. the financial year following the financial year in which the said services was received.

On the other hand, industry has represented that as the invoice in respect of such supplies received from unregistered supplier, where tax has to be paid by the recipient on RCM basis, is to be issued by the recipient as per section 31(3)(f) of CGST Act, the relevant year of invoice for the purpose of section 16(4) of CGST Act is the financial year in which such invoice has been issued and accordingly, ITC should be available on the said invoice under section 16(4) of CGST Act till the September/ November of the financial year following the financial year in which such invoice has been issued. Request has been made to issue clarification in the matter to avoid litigation.

(2) Clarification : The Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies the issue as follows :

(a) As per section 16(2)(a) of CGST Act, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.

(b) Rule 36(1)(b) of the CGST Rules prescribes that input tax credit shall be availed by a registered person inter-alia on the basis of an invoice issued in accordance with the provisions of section 31(3)(f) of CGST Act, subject to the payment of tax.

(c) Further, section 31(3)(f) of CGST Act provides that a registered person, who is liable to pay tax under section 9(4)/(3), shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both. Accordingly, where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient is required to issue invoice as per section 31(3)(f) of CGST Act and pay the tax in cash on the same under RCM.

(d) It can be seen that section 16(4) of CGST Act links the time limit for ITC availment with the financial year to which the invoice or debit note pertains. In case of supplies where the supplier is unregistered and recipient is registered and the tax has to be paid by the recipient on RCM basis, the recipient is required to issue invoice in terms of the provisions of section 31(3)(f) of CGST Act and pay the tax on the same in cash under RCM.

Further, ITC cannot be availed by a registered person in respect of any supply of goods or services or both received by him, as per the provisions of section 16(2)(a) of CGST Act, unless he is in possession of a tax invoice or debit note or such other tax paying documents as may be prescribed.

(e) A combined reading of the above provisions leads to a conclusion that as ITC can be availed by the recipient only on the basis of invoice or debit note or other duty paying document, and as in case of RCM supplies received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself, the relevant financial year, to which invoice pertains, for the purpose of time limit for availment of ITC under section 16(4) of CGST Act in such cases shall be the financial year of issuance of such invoice only. In cases, where the recipient issues the said invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax.

(f) Accordingly, it is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of CGST Act, the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of CGST Act will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST Act, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of CGST Act. In case, the recipient issues the invoice

after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action under the provisions of Section 122 of CGST Act.

4. Explain the provisions of reversal of input tax credit in case of non-payment of consideration?

Ans-The provisions of reversal of ITC in case of non payment of consideration are discussed as under-

(1) Payment is not made within 180 days from date of invoice – ITC availed is to be paid along with interest :

As per Second Proviso to Section 16(2), where a recipient fails to pay—

- ✓ to the supplier of goods or services or both,
- ✓ the amount towards the value of supply along with tax payable thereon,
- ✓ within a period of 180 days from the date of issue of invoice by the supplier,

an amount equal to the input tax credit availed by the recipient shall be paid by him along with interest payable u/s 50 thereon (i.e. 18% p.a.), in such manner as may be prescribed. **[Amended by the Finance Act,2023 w.e.f.1-10-2023]**

Re-credit when payment is made subsequently : However, the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon. In case part payment has been made to the supplier, proportionate credit would be allowed.

(2) Exceptions : This condition of payment of value of supply plus tax within 180 days does not apply in the following situations :

a) Supplies on which tax is payable under reverse charge

b) Deemed supplies without consideration i.e. value of supplies made without consideration as specified in Schedule I of the said Act.

c) The value of supplies on account of any amount added in accordance with the provisions Section 15(2)(b) shall be deemed to have been paid for the purposes of the second proviso to Section 16(2), i.e. additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply.

Note : Under situations given in points (b) & (c), the value of supply is deemed to have been paid.

5. What are procedural requirements for Reversal of ITC in case of non payment of consideration.

Ans-REVERSAL OF ITC IN CASE OF NON-PAYMENT OF CONSIDERATION [RULE 37]:The procedural requirement are discussed as under-

(1) Payment is not made within 180 days from date of invoice – ITC availed is to be paid along with interest : A registered person, who has availed of input tax credit on any inward supply

of goods or services or both, but fails to pay to the supplier thereof, the amount towards the value of such supply, whether wholly or partly, along with the tax payable thereon, within 180 days from the date of invoice, shall pay or reverse an amount equal to the input tax credit availed in respect of such supply, proportionate to the amount not paid to the supplier, along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of 180 days from the date of the issue of the invoice.

Exceptions : This condition of payment of value of supply plus tax within 180 days does not apply in the following situations :

(a) Supplies on which tax is payable under reverse charge.

(b) Deemed supplies without consideration i.e. value of supplies made without consideration as specified in Schedule I of the said Act.

(c) Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply.

Note : Under situations given in points (b) & (c), the value of supply is deemed to have been paid.

(3) Re-credit when payment is made subsequently [Rule 37(2)] : Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit paid earlier.

(4) Reavailing of credit reversed earlier – Time limit provisions for taking credit not applicable [Rule 37(4)] : The time limit of availing credit as specified in Section 16(4) shall not apply to a claim for reavailing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

6. Explain the provisions relating to Reversal of input tax credit in the case of non-payment of tax by the supplier and re- availment thereof .

Ans-REVERSAL OF INPUT TAX CREDIT IN THE CASE OF NON-PAYMENT OF TAX BY THE SUPPLIER AND RE-AVAILMENT THEREOF [RULE 37A OF CGST RULES, 2017]:

(1) Reversal of ITC in case GSTR- 3B has not been furnished by his supplier : Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 as amended in FORM GSTR-1A if any [Inserted vide Notification No. 12/2024-CT dated 10.07.2024] or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be

reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th November following the end of such financial year:

(2) Interest liability in case of non reversal of ITC by 30th November : Where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest @ 18% p.a.

(3) Re-availment of ITC : Where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.

APPORTIONMENT OF CREDIT AND BLOCKED CREDITS

7. Explain the concept of ineligible credits or blocked credits.

Ans-The relevant provisions are discussed as under :

1) INELIGIBLE INPUTS/ CAPITAL GOODS/ INPUT SERVICES – BLOCKED CREDITS [SECTION 17(5)]: Input tax credit of tax paid on almost every inputs and input services used for supply of taxable goods or services or both is allowed under GST except a small list of items provided under section 17(5). The negative list covers mainly items of personal consumption, inputs use of which results into formation of an immovable property (except plant and machinery), telecommunication towers, pipelines laid outside the factory premises, etc. and taxes paid as a result of detection of evasion of taxes. The same is discussed here under :

2) Items Ineligible for credit [Section 17(5)] : ITC shall not be available in respect of the following, namely:

(a)	Motor vehicles for transportation of persons	Motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), However, credit will be available when they are used for making the following taxable supplies, namely: a. further supply of such motor vehicles; or b. transportation of passengers; or c. imparting training on driving such motor vehicles.
(aa)	Vessels and Aircraft	However, credit will be available when they are used— (i) for making the following taxable supplies, namely:— (A) further supply of such vessels or aircraft; or (B) transportation of passengers; or (C) imparting training on navigating such vessels; or (D) imparting training on flying such aircraft;

		(ii)for transportation of goods.
(ab)	Insurance, Repairs and Maintenance of Motor Vehicles, vessels and aircraft :	Services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa). However, the input tax credit in respect of such services shall be available— (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein; (ii) where received by a taxable person engaged— ✓ in the manufacture of such motor vehicles, vessels or aircraft; or ✓ in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;
	Analysis ✓ Scope of Motor Vehicles : Motor vehicles exclude – • vehicle running upon fixed rails • special purpose vehicles for being used in a factory or any enclosed premises • vehicle with less than 4 wheels fitted with engine capacity of upto 25cc (Thus, railways, two/three wheelers with engine capacity of upto 25cc, bicycle etc. do not fall in the definition of motor vehicle.) ✓ Expanding the scope of ITC available on motor vehicles : Section 17(5)(a) provides that the restriction of availing shall only apply to such kind of motor vehicles (specified vehicles) which are for the transportation of persons not having approved seating capacity exceeding 13 persons (including driver). The restriction shall also apply to aircraft and vessels. Hence, input tax credit shall not be restricted in case of any other motor vehicle [e.g. goods transportation vehicle or vehicle having seating capacity exceeds 13 persons (bus)]. Even in respect of specified vehicles, input tax credit shall be available if the concerned registered supplier who intends to avail such credit is engaged in the business of (a) further supply of such vehicles or (b) transportation of passengers or (c) using the same in imparting training skills. In respect of motor vehicle used for the purpose of transportation of goods, the same is not be covered under the ambit of blocked credit, hence input tax credit shall be admissible in respect of such motor vehicles. Input tax credit will also be allowed on dumpers, tippers etc. ✓ Expenses related to motor vehicle : The input tax credit in respect of general insurance, servicing, repair and maintenance of the motor vehicle which is not entitled for Input tax credit shall also not be allowed. Hence, one has to now see whether the	

		input tax credit is available or not in respect of the motor vehicle for which such expenses have been incurred. If such motor vehicle is eligible for input tax credit, then expenses pertaining to such motor vehicle shall also be eligible for input tax credit. It may also be noted that input tax credit shall also be available in respect of services of general insurance, servicing, repair and maintenance where the registered receiver is engaged in the manufacture of such motor vehicles, vessels or aircraft; or is in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him. Examples : 1. ITC on cars purchased by a manufacturing company for official use of its employees is blocked. 2. ITC on cars purchased by a car dealer for sale to customers is allowed. 3. ITC on cars purchased by a company engaged in renting out cars for transportation of passengers, is allowed. 4. ITC on cars purchased by a car driving school is allowed. 5. ITC on buses (seating capacity for 24 persons) purchased by a company for transportation of its employees from their residence to office and back, is allowed. 6. ITC on trucks purchased by a company for transportation of its finished goods is allowed. 7. ITC on aircraft purchased by a manufacturing company for official use of its CEO is blocked. 8. ITC on aircraft purchased by an Aviation School providing training on flying aircrafts, is allowed. 9. ITC on general insurance taken on a car used by employees of a manufacturing company for official purposes, is blocked. 10. ITC on maintenance & repair services availed by a company for a truck used for transporting its finished goods, is allowed. 11. ITC on general insurance services taken on cars manufactured by a car manufacturing company is allowed
(b)	Food and beverages, Outdoor Catering, Beauty Treatment etc	(i) the following supply of goods or services or both— ✓ food and beverages, ✓ outdoor catering, ✓ beauty treatment, ✓ health services, ✓ cosmetic and plastic surgery, ✓ leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) above except when used for the purposes specified therein, ✓ life insurance, and

		✓ health insurance. However, the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply; (ii) membership of a club, health and fitness centre; and (iii) travel benefits extended to employees on vacation such as leave or home travel concession. However, the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.
	Analysis :Expanding the scope of ITC for Section 17(5)(b)— (1) Food & beverages, outdoor catering as well as health services : Input tax credit in respect of food and beverages and outdoor catering will be permitted if provision of such goods or services is obligatory for an employer to provide to its employees under any law for the time being in force and where such inward supply is used by a registered person for making an outward taxable supply of the same category of goods or services or as an element of taxable composite or mixed supply. Hence, in case of a factory covered under the Factories Act (having more than 250 workers) it is obligatory for a factory to provide the canteen facility to its workers and hence input tax credit in respect of the tax charged by the canteen contractor shall be admissible. Similarly even in case of health services, life insurance and health insurance; Input Tax Credit shall be admissible if the same is obligatory on the employer to provide to its employees under any law for the time being in force. It may however be noted that there is difference between health insurance and an accidental policy. Accidental policy is expressly not restricted under any provisions of Section 17(5). Hence input tax credit in respect of such accidental policy shall be available even if the same is not obligatory under any law for the time being in force. (2) Rent-a-cab : The input tax credit in respect of leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) shall be available only if they are used for the purposes specified in the exception to said clauses. In other words, input tax credit shall be available of tax paid on leasing, renting or hiring in following circumstances :	

		(a) Motor vehicles not referred under clause (a). i.e. Motor vehicles for transportation of persons having approved seating capacity of more than 13 persons. (b) Motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) but used for making following taxable supplies : (i) Further supply of such vehicles; (ii) Transportation of passengers; and (iii) Using the same in imparting training skills. (c) Vessels or aircraft used for transportation of goods. ITC on such services is allowed in the case of sub-contracting, i.e. when such services are used by the taxpayer who is in the same line of business. (3) Availment of ITC not blocked in case of leasing, other than leasing of motor vehicles, vessels and aircrafts. – Circular No. 172/04/2022-GST dated 06-07-2022 Examples : (i) A manufacturing company purchases food items for being served to its customers, free of cost. ITC on such goods is blocked. (ii) XY & Co., a caterer of Jodhpur, has been awarded a contract for catering in a marriage to be held at Jaipur. The firm has given the contract for supply of snacks, to be served in the marriage, to PQ & Sons, a local caterer of Jaipur. ITC on such outdoor catering services availed by XY & Co., is allowed. (iii) ITC on outdoor catering services availed by a footwear exporter for a marketing event organised for its prospective customers, is blocked. (iv) Outdoor catering service is availed by a company to run a free canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. ITC on such outdoor catering is allowed. (v) The Managing Director of a company has taken membership of a club, the fees for which is paid by the company. ITC on such service is blocked. (vi) A company avails services of a travel agency for organizing a free vacation for its top performing employees. ITC on such services is blocked.
(c)	Works contract services	Works contract services when supplied for construction of an immovable property. However, credit is allowed— (i) Where it is an input service for further supply of works contract service. (ii) Where it is supplied for construction of plant and machinery. Explanation : (1) "Plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services

		or both and includes such foundation and structural supports but excludes— (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises. (2) "Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property. Analysis: (1) Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. [Section 2(119)] (2) ITC on works contract services for construction of an immovable property is blocked. However ITC on works contract services can be availed only by that taxpayer who is in the same line of business, i.e. only a works contractor can avail ITC on works contract services received by him (sub-contracting). (3) Plant and machinery affixed permanently to the earth constitutes an immovable property. However, ITC on works contract services used for construction of such plant and machinery is allowed as an exception. Thus, ITC on works contract services availed for construction of eligible plant and machinery is allowed to the recipient irrespective of the line of business of such recipient. For instance, ITC on works contract services for construction of machinery fixed to earth by a foundation, would be allowed. However, ITC on works contract services for construction of telecommunication towers, would be blocked. (4) As per the definition of term Construction, if re-construction, renovation, additions or alterations or repairs are not capitalized, it would not tantamount to construction under GST law. Consequently, ITC on

		works contract services availed for such construction (which is not capitalized) whether for any immovable property or for any plant and machinery, would be allowed to all the recipients irrespective of their line of business. Examples : (i) ITC on works contracts services availed by a software company for construction of its office, is blocked. (ii) XY & Co., a works contractor of Jaipur, has been awarded a contract for construction of a commercial complex in Alwar. The firm avails services of PQ & Co., a local works contractor of Alwar, for the construction of complex. ITC on such works contract services availed by XY & Co., is allowed. (iii) ITC on works contract services availed by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed. (iv) ITC on works contract services availed by a manufacturing company for construction of pipelines to be laid outside its factory, is blocked. (v) A consulting firm has availed services of a works contractor for repair of its office building. The company has booked such expenditure in its profit and loss account. ITC on such services is allowed. (vi) A telecommunication company has availed services of a works contractor for repair of its office building. The company has capitalized such expenditure. ITC on such services is blocked.
(d)	Inputs and Input services for construction of immovable property :	Goods or services or both received by a taxable person for construction of an immovable property on his own account including when such goods or services or both are used in the course or furtherance of business. However, credit is allowed if they are is supplied for construction of plant and machinery. Analysis: ITC on goods and/or services used in the construction of an immovable property is blocked only in those cases where the taxable person constructs the immovable

		property for his own use even if the immovable property being constructed is used in the course or furtherance of his business. The discussion on terms, 'construction' and 'plant and machinery' for works contract services [Elaborated in point (c) above] applies to construction on own account also. Examples : (i) A company buys cement, tiles etc. and avails the services of an architect for construction of its office building. ITC on such goods and services is blocked. (ii) MN & Constructions procures cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients. ITC on such goods and services is allowed to MN & Constructions. (iii) A company buys cement, tiles etc. and avails the services of an architect for renovation of its office building. The company has booked such expenditure in its profit and loss account. ITC on such goods and services is allowed. (iv) ITC on goods and/or services used by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.
(e)	Inputs under Composition scheme	Goods or services or both on which tax has been paid u/s 10. Since a composition supplier cannot collect any tax on its supplies, from the recipient of its supplies, it is obvious that no ITC can be availed in respect of such supplies by the recipients. Nevertheless, section 17(5)(e) specifically blocks the ITC on inward supplies received by a taxable person from a composition supplier.
(f)	Inputs by Non-resident	Goods or services or both received by a non-resident taxable person except on goods imported by him. Analysis: A non-resident taxable person has no fixed place of business in India but he sporadically supplies goods or services in India. Tax paid on goods and/or services received by such non-resident taxable person, is not available as ITC. Whereas ITC on goods imported by a non-resident taxable person is allowed, ITC on services imported by him is blocked.

(fa)	Goods or services for CSR Expenditure	Goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013
(g)	Personal consumption	Goods or services or both used for personal consumption. The term 'personal consumption' has not been defined in the GST law. Thus, it may be understood in the general sense which would mean non-business use.
(h)	Lost, stolen goods etc.	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Analysis: Input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail the input tax credit.
(i)	Evasion, confiscation etc.	Any tax paid in accordance with the provisions of section 74 in respect of any period up to Financial Year 2023-24 [Substituted by the Finance Act (No. 2) Act, 2024 w.e.f. 01-11-2024. Prior to substitution it was : Any tax paid in accordance with the provisions of sections 74, 129 and 130.] (These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances).

Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement-reg. – Circular No. 217/11/2024-GST dated 26-06-2024

	Issue	Clarification
1.	(i) The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the	Under reimbursement mode of claim settlement, the insured avails repair services from non-network garages with which the insurance companies do not have routine business relationship. The said garages issue the

	policyholders and settle the claims in two modes i.e., Cashless or Reimbursement. Whether ITC is available to insurance companies in respect of repair expenses reimbursed by the insurance company in case of reimbursement mode of claim settlement.	invoice in the name of the insurance company while not extending credit facility for the repair costs. Accordingly, the policy holder/ insured makes payment of such repair services, and subsequently, the insurance company reimburses the approved claim cost to the insured. Section 17(5) of the CGST Act provides that ITC in respect of services of repair of motor vehicles shall be available where received by a taxable person engaged in the supply of general insurance services in respect of motor vehicles insured by him. Section 16 of CGST Act provides that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 of the said Act, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. Further, section 2(93) of CGST Act defines "recipient" of supply of goods or services or both, as the person who is liable to pay the consideration, where such consideration is payable for the said supply of goods or services or both. Moreover, as per section 2(31) of CGST Act, "consideration" includes any payment made or to be made in relation to supply of the goods or services or both, whether by the recipient or by any other person. In reimbursement mode of claim settlement, the payment is made by the insurance company for the approved cost of repair services through reimbursement to the insured. Further, irrespective of the fact that the payment of the

		repair services to the garage is first made by the insured, which is then reimbursed by the insurance company to the insured to the extent of the approved claim cost, the liability to pay for the repair service for the approved claim cost lies with the insurance company, and thus, the insurance company is covered in the definition of "recipient" in respect of the said supply of services of vehicle repair provided by the garage under section 2(93) of CGST Act, to the extent of approved repair liability. Moreover, availment of credit in respect of input tax paid on motor vehicle repair services received by the insurance company for outward supply of insurance services for such motor vehicles is not barred under section 17(5) of CGST Act. Accordingly, it is clarified that ITC is available to Insurance Companies in respect of motor vehicle repair expenses incurred by them in case of reimbursement mode of claim settlement.
2.	Where the invoice raised by the garage also includes an amount in excess of the approved claim cost, the insurance company only reimburses the approved claim cost to the garage after considering the standard deductions viz. the compulsory deductibles to be borne by the insured, depreciation, improvements outside the coverage, value of salvage of the damaged parts of the motor vehicles, etc. The remaining amount is to be paid by the insured to the garage. What is the extent of ITC available to the insurer in such cases?	In cases where the garage issues two separate invoices in respect of the repair services, one to the insurance company in respect of approved claim cost and second to the customer for the amount of repair service in excess of the approved claim cost, input tax credit may be available to the insurance company on the said invoice issued to the insurance company subject to reimbursement of said amount by insurance company to the customer. However, if the invoice for full amount for repair services is issued to the insurance company while the insurance company makes reimbursement to the insured only for the approved claim cost, then, the input tax credit may be available to the insurance company only to the extent of reimbursement of the approved claim cost to the insured, and not on the full invoice value.

3.	Whether ITC is available to the insurer where the invoice for the repair of the vehicle is not in name of the insurance company.	In such a case, condition of clause (a) and (aa) of section 16(2) of CGST Act is not satisfied and accordingly, input tax credit will not be available to the insurance company in respect of such an invoice.

Clarification on availability of input tax credit on ducts and manholes used in network of optical fiber cables (OFCs) in terms of section 17(5) of the CGST Act, 2017. – Circular No. 219/13/2024-GST dated 26-06-2024

	Issue	Clarification
1.	Whether the input tax credit on the ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services is barred in terms of section 17(5)(c)/(d) of the CGST Act, read with Explanation to section 17 of CGST Act ?	(1) Section 17(5) of the CGST Act provides that input tax credit shall not be available, inter alia, in respect of the following: (i) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service; or (ii) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. (2) Explanation in section 17 of CGST Act provides that the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes land, building or any other civil structures; telecommunication towers; and pipelines laid outside the factory premises. (3) Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services. The OFC

		network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance. In view of the Explanation in section 17 of the CGST Act, it appears that ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another. Moreover, ducts and manholes used in network of optical fiber cables (OFCs) have not been specifically excluded from the definition of "plant and machinery" in the Explanation to section 17 of CGST Act, as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises. (4) Accordingly, it is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fiber cables (OFCs), either u/s 17(5)(c)/(d) of CGST Act.

Clarification on availability of input tax credit in respect of demo vehicles. – Circular No. 231/25/2024-GST dated 10-09-2024– Circular No. 219/13/2024-GST dated 26-06-2024

The demo vehicles are the vehicles which the authorised dealers for sale of motor vehicles are required to maintain at their sales outlet as per dealership norms and are used for providing trial run and for demonstrating features of the vehicle to the potential buyers. These vehicles are purchased by the authorised dealers from the vehicle manufacturers against tax invoices and are typically reflected as capital assets in books of account of the authorized dealers. As per dealership norms, these vehicles may be required to be held by the authorized dealers as demo vehicle for certain mandatory period and may, thereafter, be sold by the dealer at a written down value and applicable tax is payable at that point of time.

Reference has been received to issue clarification regarding availability of input tax credit in respect of demo vehicles on the following issues:

	Issue	Clarification
1.	Availability of input tax credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of section 17(5)(a) of CGST Act.	Section 17(5)(a) of CGST Act provides that input tax credit shall not be available in respect of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making following taxable supplies, namely: (A) further supply of such motor vehicles; or (B) transportation of passengers; or (C) imparting training on driving such motor vehicles. The intention of law, as it appears from the use of expression 'when they are used for making the following taxable supplies' in section 17(5)(a) of CGST Act, is to exclude certain cases (based on the nature of outward taxable supplies being made using the said motor vehicle) from the restriction on availment of input tax credit in respect of the specified motor vehicles i.e. motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver). The taxable supplies, permitted for the purpose of being excluded from the blockage of input tax credit as per provisions of section 17(5)(a) of CGST Act, being further supply of such motor vehicles, transportation of passengers and imparting training on driving such motor vehicles. As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it is quite apparent that demo vehicles cannot be said to be used by the authorized dealer for providing taxable supply of transportation of passengers or imparting training on driving such motor vehicles. Therefore, demo vehicles are not covered in the exclusions specified in sub-clauses (B) and (C) of section 17(5)(a) of CGST Act.

		Accordingly, it is to be seen whether or not the Demo vehicles in question can be said to be used for making "further supply of such motor vehicles", as specified in the sub-clause (A) of section 17(5)(a) of CGST Act. Regarding the provision for blockage of input tax credit in respect of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), the usage of the words "such motor vehicles" instead of "said motor vehicle", in sub-clause (A) of section 17(5)(a) of CGST Act, implies that the intention of the lawmakers was not only to exclude from the blockage of input tax credit, the motor vehicle which is itself further supplied, but also to exclude from the blockage of input tax credit, the motor vehicle which is being used for the purpose of further supply of similar type of motor vehicles. As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it helps the potential buyers to make a decision to purchase a particular kind of motor vehicle. Therefore, as demo vehicles promote sale of similar type of motor vehicles, they can be considered to be used by the dealer for making 'further supply of such motor vehicles'. Accordingly, input tax credit in respect of demo vehicles is not blocked under section 17(5)(a) of CGST Act, as it is excluded from such blockage in terms of sub-clause (A) of the said clause. There may be some cases where motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver) are used by an authorized dealer for purposes other than for making further supply of such motor vehicles, say for

		transportation of its staff employees/ management etc. In such cases, the same cannot be said to be used for making 'further supply of such motor vehicles' and therefore, input tax credit in respect of such motor vehicles would not be excluded from blockage in terms of subclause (A) of section 17(5)(a) of CGST Act. Further, there may be cases where the authorized dealer merely acts as an agent or service provider to the vehicle manufacturer for providing marketing service, including providing facility of vehicle test drive to the potential customers of the vehicle on behalf of the manufacturer and is not directly involved in purchase and sale of the vehicles. In such cases, the sale invoice for the vehicle is directly issued by the vehicle manufacturer to the customer. For providing facility of vehicle test drive to the potential customers of the vehicle, the dealer purchases demo vehicle from the vehicle manufacturer. The dealer may sell the said demo vehicle to a customer after a specified time or kilometres as per agreement with the vehicle manufacturer on payment of applicable GST. In such a case, the authorized dealer is merely providing marketing and/or facilitation services to the vehicle manufacturer and is not making the supply of motor vehicles on his own account. Therefore, the said demo vehicle cannot be said to be used by the dealer for making further supply of such motor vehicles. Accordingly, in such cases, input tax credit in respect of such demo vehicle would not be excluded from blockage in terms of sub-clause (A) of section 17(5) (a) of CGST Act and therefore, input tax credit on the same would not be available to the said dealer.
2.	Availability of input tax credit on demo vehicles in cases where such vehicles are	As per provisions of section 16(1) of CGST Act, every registered taxpayer is entitled to take input

	capitalized in the books of account by the authorized dealers.	tax credit charged on any supply of goods and services made to him, where such goods or services are used in the course or furtherance of business of such person, subject to such conditions and restrictions as may be prescribed and in the manner which is specified. Further, "goods" has been defined in section 2(52) of CGST Act, as, "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. Also, section 2(19) of CGST Act defines "capital goods" as, "capital goods" means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business. As mentioned in paras above, as the demo vehicles are used by the authorized dealers to promote further sale of motor vehicles of the similar type and therefore, such vehicles appear to be used in the course or furtherance of business of the authorized dealers. Where such vehicles are capitalized in the books of accounts by the authorized dealer, the said vehicle falls in the definition of "capital goods" under section 2(19) of CGST Act. As per provision of section 16(1) of CGST Act, subject to such conditions and restrictions as may be prescribed, a recipient of goods is entitled to take input tax credit in respect of tax charged on the inward supply of any goods, which as per definition of "goods" under section 2(52) of CGST Act, includes even capital goods. Further, section 2(19) of CGST Act also recognizes that capital goods are used or

		intended to be used in the course or furtherance of business. Accordingly, availability of input tax credit on demo vehicles is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers, subject to other provisions of the Act. However, it is to be mentioned that in case of capitalization of demo vehicles, availability of input tax credit would be subject to provisions of section 16(3) of CGST Act, which provides that where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed. It is further mentioned that in case demo vehicle, which is capitalized, is subsequently sold by the authorized dealer, the authorized dealer shall have to pay an amount or tax as per provisions of section 18(6) of CGST Act read with rule 44(6) of the CGST Rules, 2017.

Clarification on availability of input tax credit (ITC) in respect of warranty replacement of parts and repair services during warranty period. – Circular No. 195/07/2023 GST dated 17.07.2023 read with Circular No. 216/10/2024 GST dated 26.06.2024		
	Issue	Clarification
1.	There are cases 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 in	In such cases, 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, as the case may be and/or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of

	such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of goods or its parts, as the case may be or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?	goods or its parts, as the case may be and/or repair services to the customer during the warranty period, is not required to reverse the ITC in respect of the said replacement of goods or its parts, as the case may be or on the repair services provided.
2.	Where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether the distributor would be required to reverse the ITC in respect of such replacement of parts?	There can be 4 instances as discussed below: (a) There may be cases where the distributor replaces the 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 and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of the CGST Act, 2017. In such case, no reversal of ITC by the distributor is required in respect of the same. (b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is

		required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty. (c) There may be cases where the distributor replaces the 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 parts so replaced subject to provisions of section 34(2) of the CGST Act, 2017. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced. (d) There may be cases where the 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, as the case may be. The manufacturer then provides the said goods or the parts, as the case may be, to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment. In such a case, no GST is payable on such replenishment of goods or the parts, as the case may be. Further, no reversal of ITC is required to be made by the manufacturer in respect of the goods or the parts, as the case may be, so replenished to the distributor.
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	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 and the

	debit note, whether ITC is available on such activity?	manufacturer would be entitled to avail the ITC of the same, subject to other conditions of the CGST Act, 2017.

8. Explain the provisions relating to apportionment of credit.

Ans-APPORTIONMENT OF CREDIT [SECTION 17]

(1) Goods/ Services partly used for business and partly for other use – Pro-rata credit admissible [Section 17(1)] :

Where the goods or services or both are used by the registered person—

- ✓ partly for the purpose of any business; and
- ✓ partly for other purposes,

the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) ITC restricted to goods/ services used for taxable supplies if the same are used for effecting taxable as well as Exempt Supplies [Section 17(2)] :

Where the goods or services or both are used by the registered person—

- ✓ partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act, and
- ✓ partly for effecting exempt supplies under the said Acts,

the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Note: Section 16(2) of the IGST Act specifies that ITC may be availed on inward supplies for making zero-rated supply, notwithstanding the exempt nature of the zero-rated supply.

"Zero-rated supply" is an expression that covers two kinds of supplies : (i) exports, and (ii) supplies to a SEZ or SEZ developer for their authorised operations.

Therefore, ITC is available on goods and/or services used for supplies made in the course of export or to an SEZ unit or SEZ developer.

(3) Inclusions in exempt supplies and valuation [Section 17(3)] : The value of exempt supply u/s 17(2) shall be such as may be prescribed, and shall include—

- ✓ supplies on which the recipient is liable to pay tax on reverse charge basis,
- ✓ transactions in securities,
- ✓ sale of land and subject to Paragraph 5(b) of Schedule II, sale of building i.e. sale of land and sale of building when entire consideration is received after completion certificate issued by the competent authority.

Value of exempt supply not to include Schedule III activities except sale of land/ building and Supply of warehoused goods before clearance for home consumption [Explanation]: For the purpose of Section 17(3) the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except

(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and

(ii) the value of such activities or transactions as may be prescribed in respect of paragraph 8(a) of the said Schedule.

Thus, transactions of sale of land and sale of building post completion in para 5 and supply of warehoused goods to any person before clearance for home consumption as specified in para 8(a) of schedule -III shall be treated as exempt supply for the purpose of restricting the input tax credit attributable thereto

For other transactions specified in Schedule III, ITC shall be admissible.

Note: The value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Exempt supply to include supplies on RCM Applies : The value of exempt supplies shall include supply on which tax is paid under Reverse Charge basis. Supplies in respect of which the outward supplier is not liable to pay tax but the recipient is made liable to pay the tax, then due to Section 17(3), for the limited purpose of restricting input tax credit to the supplier (who is not made responsible to pay tax due to RCM provisions) the value of these supplies will be regarded as 'exempt supplies' while arriving at the net available input tax credit.

(4) Exempt supply – Exclusions [Explanation 1 to Rule 43] :

For the purposes of Rule 42 and Rule 43, it is hereby clarified that the aggregate value of exempt supplies shall exclude :

a. the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and
b. the value of supply of Duty Credit Scrips.

(5) **Valuation of supply of warehoused goods before clearance for home consumption [Explanation 3 to Rule 42]** : for the purpose of rule 42 and this rule,The value of activities or transactions mentioned in Paragraph 8(a) of Schedule III of the Act which is required to be included in the value of exempt supplies under Explanation (b) to Section 17(3) of the Act shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.

(6) Attributable Credit to be determined in accordance with Rules [Section 17(6)] : The Government may prescribe the manner in which the credit referred to in Section 17(1) and 17(2) may be attributed.

9. Explain the manner of determination of input tax credit in certain cases and reversal thereof.

Ans-MANNER OF DETERMINATION OF ITC IN CERTAIN CASES i.e. CASES WHERE INPUTS/ INPUT SERVICES ARE USED FOR TAXABLE AS WELL AS EXEMPT SUPPLIES AND REVERSAL THEREOF [RULE 42]

1) ITC treatment where inputs/ input services are used for taxable as well as exempt supplies [Rule 42(1)] : The input tax credit in respect of—
   - inputs; or
   - input services, which attract the provisions of Section 17(1)/(2),—

(a) being—
   (i) partly used for the purposes of business; and
   (ii) partly for other purposes,

OR

(b) being—
   (i) partly used for effecting taxable supplies including zero rated supplies; and
   (ii) partly for effecting exempt supplies,

shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,

Step 1 – Compute common credit :

Total input tax involved on inputs & input services in a tax period Less: Input tax on inputs & input services that are intended to be used exclusively for nonbusiness purposes Less: Input tax on inputs & input services that are intended to be used exclusively for exempt supplies Less: Input tax on inputs & input services which are ineligible for credit [Blocked credits u/s 17(5)]	T (T1) (T2) (T3)
ITC credited to Electronic Credit Ledger Less: ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	(C1) (T4)
Common ITC available for apportionment	C2
✓ 'T1', 'T2', 'T3' and 'T4 shall be determined and declared by the registered personal at summary level in FORM GSTR-3B ✓ Where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T1 and T2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T4 ✓ The portion identified as pertaining to taxable supplies in 'C2 ' will be allowed as ITC.	

Step 2 – Compute credit attributable to exempt supplies (ineligible credit) by apportionment of common credit :

- ✓ The amount of input tax credit attributable towards exempt supplies, be denoted as calculated as 'D1 and calculated as-

$$D1 = (E \div F) \times C2 \text{ i.e.,}$$

The amount of input tax credit attributable towards exempt supplies ,be denoted as "D1" = The aggregate value of exempt supplies during the tax period i.e. "E" / The total turnover in the State of the registered person during the tax period i.e. "F" × Common credit i.e. "C2"

Turnover details not available - Values for the last tax period may be used : Where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Duties and taxes to be excluded [Explanation] : The aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution (i.e. Central Excise duty), entry 92A of List I of the Seventh Schedule to the Constitution (i.e. Central Sales Tax) and entry 51 (i.e. State Excise duty) and 54 of List II of the said Schedule i.e. (State VAT);

Presently,—

(i) Central excise duty is leviable on manufacture/production of tobacco, petroleum crude, diesel, petrol, ATF and natural gas;

(ii) State excise duty is leviable on manufacture/production of alcoholic liquor, opium, Indian hemp and narcotics, and

(iii) VAT is leviable on intra-State sale of petroleum crude, diesel, petrol, ATF, natural gas and alcoholic liquor.

(iv) CST is leviable on inter-State sale of petroleum crude, diesel, petrol, ATF, natural gas and alcoholic liquor.

Petroleum crude, diesel, petrol, ATF, natural gas are presently not taxable under GST and alcoholic liquor is outside the ambit of GST. Thus, supply of both these products (petrol/petroleum products and alcoholic liquor) being non-taxable under GST, will be exempt supplies u/s 2(47) and taxes/duties leviable thereon will be excluded from the value thereof for the purpose of apportionment of credit.

- ✓ The amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes—

$$D2 = 5\% \text{ of } C2$$

Step 3 – Compute eligible credits : The remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C3

where,—

$$C3 = C2 - (D1 + D2)$$

Note: The amount 'C3', 'D1' and 'D2' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03.

Step 4 – Restrict ineligible credits :

The amount equal to aggregate of 'D1' Mobile ' and 'D2 ' shall be [reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03.

2) Final calculation of ITC [Rule 42(2)] : The input tax credit determined under Rule 42(1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and—

a. Where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds theaggregate of the amounts determined under Rule 42(1) in respect of 'D1' and 'D2 ' such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount @ 18% p.a. for the period starting from the first day of April of the succeeding financial year till the date of payment; or

b. Where the aggregate of the amounts determined under Rule 42(1) in respect of 'D1' and 'D2 ' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' such excessamount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

Clarification on the requirement of reversal of input tax credit in respect of the portion of the premium for life insurance policies which is not included in taxable value-reg. – Circular No.214/8/2024-GST dated 26-06-2024

Issue : Whether the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of CGST Rules applicable for life insurance business, shall be treated as pertaining to a non-taxable supply/ exempt supply for the purpose of reversal of Input tax credit as per section 17(1) of CGST Act read with Rule 42 & 43 of CGST Rules.

Clarification :

'Life insurance business' has been defined in Section 2(11) of the Insurance Act, 1938 as below:

(i) "Life insurance business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include —

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,

(b) the granting of annuities upon human life ; and

(c) the granting of superannuation allowances and benefit payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons ;

Explanation : For the removal of doubts, it is hereby declared that life insurance business shall include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section.

(ii) Life insurance companies are providing service of insuring the life of the insured and in return, are charging consideration in the form of premium from the insured. A number of life insurance companies are providing policies which may consist of a component of investment in addition to the component for the risk cover of the life insurance and accordingly, in such cases, the premium charged also includes the component which is allocated for investment or saving on behalf of the policy holder. As per definition of 'Life insurance business' provided in Section 2(11) of the Insurance Act, 1938, life insurance business includes any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer. Accordingly, such life insurance policies, which also include a component of investment along with the component of risk cover for life insurance, are also covered under life insurance business.

- It is mentioned that value of supply of services in relation to life insurance business is to be determined as per provisions of rule 32(4)of CGST Rules. The said sub-rule provides that the value of supply of services in respect of life insurance business is primarily to be determined by deducting the amount of premium allocated for investment/savings on behalf of the policy holder from the gross premium charged from the policy holder. The said sub-rule also provides for determination of value of supply of such services based on certain percentage of the gross premium in other situations. However, where the entire premium is only towards the risk cover in life insurance, the value of supply is not required to be determined under the said sub-rule as in such cases whole of the consideration i.e. gross premium is towards life insurance services.
- As per section 2(47) of the CGST Act, exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the IGST Act, 2017 (hereinafter referred to as the "IGST Act"), and includes non-taxable supply. The said definition of exempt supply has the following three limbs: -
  (a) Supply of service which is nil rated;
  (b) Supply of service which is wholly exempted from tax under section 11 of CGST Act or under Section 6 of IGST Act; or
  (c) Supply of service which is non-taxable supply.

Further, as per section 2(78) of CGST Act, non-taxable supply means a supply of goods or services or both which is not leviable to tax under the CGST Act or under the IGST Act.

It is mentioned that there is no doubt about taxability of supply of service of providing life insurance services by the insurance company to the insured/ policy holder but the only issue is regarding the treatment of the amount of premium which is not included in the taxable value of supply, as determined under the provisions of Rule 32(4) of CGST Rules. The service of providing life insurance cover is neither nil rated, nor there is any notification issued under section 11 of CGST Act by virtue of which the said service or any portion of the said service has been exempted from GST.

It is also mentioned that the supply can be considered as a non-taxable supply only when it is not leviable to tax under the CGST Act or under the IGST Act. It is not a case where the tax is not leviable on the supply of life insurance services provided by life insurance companies to the insured/policy holder. The value of the said supply of service in respect of life insurance business as determined under Rule 32(4) of CGST Rules, 2017 may not include some portion of gross premium as per methodology provided in the said rule. This portion of premium which is not includible in taxable value as per provisions of Rule 32(4) of CGST Rules is neither nil rated, nor wholly exempted from tax under section 11 of CGST Act and also not a non-taxable supply. Therefore, just because some amount of consideration is not included in value of taxable supply as per the provisions of the statute, it cannot be said that the said portion of consideration becomes attributable to a non-taxable or exempt supply.

Further, Rule 42 of the CGST Rules provides for reversal of input tax credit in certain scenarios. As per the said rule, only that input tax credit which attract the provisions of Section 17(1)/(2) of the CGST Act needs to be determined and reversed thereof. Further, Section 17(1)/(2) of the CGST Act restrict the amount of credit only in a case where the registered person uses the goods or services partly for business or other purposes or partly for making taxable supplies or exempt supplies. However, as discussed above, the portion of premium, which is not includible in taxable value of supply as per Rule 32(4) of CGST Rules, cannot be considered as pertaining to an exempt supply.

(iii) In view of this, it is clarified that the amount of the premium for taxable life insurance policies, which is not included in the taxable value as determined under rule 32(4) of CGST Rules, cannot be considered as pertaining to a non-taxable or exempt supply and therefore, there is no requirement of reversal of input tax credit as per provisions of Rule 42 or rule 43 of CGST Rules, read with Section 17(1) and Section 17(2) of CGST Act, in respect of the said amount.

10. Explain the manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.

Ans-MANNER OF DETERMINATION OF ITC IN RESPECT OF CAPITAL GOODS AND REVERSAL THEREOF IN CERTAIN CASES [RULE 43]

(1) Attribution of credit of capital goods used partly for business and partly for non business purposes/ partly for effecting taxable supply and partly for effecting exempt supplies : The input tax credit in respect of capital goods, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

Step 1 – Determination of common credit 'Tc' on capital goods as under :

(a) Capital goods exclusively used for non-business purposes/for effecting exempt supplies – ITC shall not be taken : The amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-3B and shall not be credited to his electronic credit ledger;

(b) Capital goods exclusively used for effecting taxable supplies including zero rated supplies - ITC shall be taken : The amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in FORM GSTR-3B and shall be credited to the electronic credit ledger;

(c) Other capital goods - ITC to be credited in electronic ledger : The amount of input tax in respect of capital goods not covered under clauses (a) and (b) above (i.e., the capital goods which are used/ intended to be used commonly for making taxable as well as exempt supplies & business & non-business purposes), denoted as "A", being the amount of tax as reflected on the invoice, shall be credited directly to the electronic credit ledger and the validity of the useful life of such goods shall extend upto 5 years from the date of the invoice for such goods.

Change from exclusive use for exempted supplies to common use : However, where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as "A" shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a), denoted as "Tie"shall be calculated @5% point for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed.

However, the amount "Tie" shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.

Section 18(4) - Not Applicable - An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of Section 18(4), if it is subsequently covered under this clause.

(d) Common credit of capital goods : The aggregate of the amounts of "A" credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as "Tc" shall be the common credit in respect of such capital goods.

Change from exclusive use for taxable including zero rated supplies to common use : However, where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value **"Tc"**

Step 2 – Determination of common credit during the useful life of capital goods for a tax period: The amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'Tm' as calculated

$$Tm = Tc \div 60$$

Useful life of capital goods – 5 years from the date of invoice [Explanation] : For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as 5 years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.

Step 3 - Apportion common credit attributable to exempt supplies as under : The amount of common credit attributable towards exempted supplies, be denoted as 'Te'and calculated as —

$$Te = (E \div F) \times Tm \text{ i.e.,}$$

$$\text{The amount of input tax credit attributable towards exempt supplies, be denoted as "Te"} = \frac{\text{The aggregate value of exempt supplies during the tax period i.e. "E"}}{\text{The total turnover in the State of the registered person during the tax period i.e. "F"}} \times Tm$$

Turnover details not available - Values for the last tax period may be used : Where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of **'E/F'** shall be calculated by taking values of **'E'** and **'F'** of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Duties and taxes to be excluded [Explanation] : The aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution (i.e. Central Excise duty), entry 92A of List I of the Seventh Schedule to the Constitution (i.e. Central Sales Tax) and entry 51 (i.e. State Excise duty) and 54 of List II of the said Schedule i.e. (State VAT);

Step 5 : Restrict ineligible credit :

The amount **Te** along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

Separate computation for CGST/ SGST/ UTGST and IGST : The amount Te shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR 3B.**

Exempt supply – Exclusions [Explanation 1] : For the purposes of Rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude :

(a) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(b) the value of supply of Duty Credit Scrips.

11. Explain the Special provisions for availment of ITC in case of banking company and financial institution including NBFC.

Ans- SPECIAL PROVISIONS FOR ITC IN CASE OF BANKING COMPANY AND FINANCIAL INSTITUTION INCLUDING NBFC [SECTION 17(4) READ WITH RULE 38]:

1) 50% of ITC can be availed : A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to –
   - ✓ either comply with the provisions of Section 17(2); or
   - ✓ avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month and the balance amount of input tax credit shall be reversed in Form GSTR-3B.
2) 50% restriction not applicable in case of supplies made to its own establishment : The restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number. In such cases 100% tax credit shall be availed.
3) Non availment of ITC for non business use and of blocked credits : Credit of tax paid on inputs and input services that are used for non-business purposes and items mentioned under section 17(5) [blocked credits] cannot be availed.
4) Option once exercised cannot be withdrawn during Financial Year : The option once exercised shall not be withdrawn during the remaining part of the financial year.

UTILIZATION OF INPUT TAX CREDIT

12. How ITC is availed and Utilised.

Ans-The provision relating to availment and utilization of ITC are as under-

(1) Availment of input tax credit [Section 41(1)] : Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

Reversal of credit if tax has not been paid by the supplier [Section 41(2)] : The credit of input tax availed by a registered person in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed.

Re-availment of ITC when tax deposited by the supplier : Where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

(2) Utilization of ITC – For payment of output tax : ITC is credited to a registered person's electronic credit ledger. The person may use this to pay his output tax liability. The use of ITC for payment of tax on inter-state supplies is the point in which GST differs sharply from the previous system of central and state taxation.

(3) Manner of utilization of amount in Electronic Credit Ledger [Section 49(5)] : The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

a. Credit of IGST – to be utilised for payment of IGST, CGST, SGST and UTGST sequentially : Integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

b. Credit of CGST – to be utilised for payment of CGST and IGST sequentially : The central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

c. Credit of SGST – to be utilised for payment of SGST and IGST sequentially : The State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
However, the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

d. Credit of UTGST – to be utilised for payment of UTGST and IGST sequentially : The Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
However, the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

e. Credit of CGST – Cannot be utilised for payment of SGST and UTGST : The central tax shall not be utilised towards payment of State tax or Union territory tax; and

f. Credit of SGST/ UTGST – Cannot be utilised for payment of CGST : The State tax or Union territory tax shall not be utilised towards payment of central tax.

4) Utilisation of ITC subject to certain conditions [Section 49A] : Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the ITC available on account of integrated tax has first been utilised fully towards such payment.

5) Order of utilisation of input tax credit [Section 49B] : Notwithstanding anything contained in this Chapter and subject to the provisions of Section 49(5)(e)&(f), the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

Order of utilization of input tax credit [Rule 88A] : Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order.

However, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

6) Sequence of utilisation of Input tax credit at a glance : The sequence of utilisation of ITC has been specified in sections 49, 49A and 49B of CGST Act and Rule 88A of CGST Rules. The provisions as applicable are summarised below :

Input Tax Credit	First to be utlised for payment of	If balance, can be utilised for	Remarks
IGST	IGST	CGST or SGST/ UTGST at option of taxable person	CGST or SGST/UTGST credit can be utilised only after credit of IGST is fully utilized
CGST	CGST	IGST	CGST credit can be utilised only after all credit of IGST is utilized
SGST/UTGST	SGST/UTGST	IGST	SGST/UTGST credit can be utilised only after all credit of IGST is utilised Besides this SGST/UTGST credit can be utilised for payment of IGST only after the ITC of CGST has been utilized fully

[Circular No. 98/17/2019-GST dated 23-04-2019] :	Clarification in respect of utilization of ITC under GST : ITC of Integrated tax can be utilised towards the payment of Central tax and State tax/ Union territory tax, in any order subject to the condition that the entire ITC on account of Integrated tax is completely exhausted first before the input tax credit on account of Central tax or State tax/ Union territory tax can be utilized

(1) The newly inserted Section 49A of the CGST Act provides that the input tax credit of Integrated tax has to be utilized completely before input tax credit of Central tax/ State tax can be utilized for discharge of any tax liability. Further, as per the provisions of section 49 of the CGST Act, credit of Integrated tax has to be utilized first for payment of Integrated tax, then Central tax and then State tax in that order mandatorily. This led to a situation, in certain cases, where a taxpayer has to discharge his tax liability on account of one type of tax (say State tax) through electronic cash ledger, while the input tax credit on account of other type of tax (say Central tax) remains un-utilized in electronic credit ledger.

(2) The newly inserted rule 88A in the CGST Rules allows utilization of input tax credit of Integrated tax towards the payment of Central tax and State tax, or as the case may be, Union territory tax, **in any order** subject to the condition that the entire input tax credit on account of Integrated tax is completely exhausted first before the input tax credit on account of Central tax or State/Union territory tax can be utilized. It is clarified that after the insertion of the said rule, the order of utilization of input tax credit will be as per the order (of numerals) given below:

Input tax Credit on account of	Output liability on account of Integrated tax	Output liability on account of Central tax	Output liability on account of State tax / Union Territory tax
Integrated tax	(I)	(II) In any order and in any proportion	
(III) Input tax credit on account of Integrated tax to be completely exhausted mandatorily			
Central tax	(V)	(IV)	Not permitted
State tax/Union Territory tax	(VII)	Not permitted	(VI)

Thus, the sequence of utlisation e numerals given in above table can be further explained in the following manner:

(I) IGST credit should first be utilized towards payment of IGST.

(II) Remaining IGST credit, if any, can be utilized towards payment of CGST and SGST/UTGST in any order and in any proportion, i.e. remaining ITC of IGST can be utilized –

- ✓ first towards payment of CGST and then towards payment of SGST; or
- ✓ first towards payment of SGST and then towards payment of CGST; or

- ✓ towards payment of CGST and SGST simultaneously in any proportion e.g. 50: 50, 30: 70, 40: 60 and so on.

(III) Entire ITC of IGST should be fully utilized before utilizing the ITC of CGST or SGST/UTGST.

(IV) & (V) ITC of CGST should be utilized for payment of CGST and IGST in that order. ITC of CGST cannot be utilized for payment of SGST/UTGST

(VI) & (VII) ITC of SGST /UTGST should be utilized for payment of SGST/UTGST and IGST in that order. However, ITC of SGST/UTGST should be utilized for payment of IGST, only after ITC of CGST has been utilized fully. ITC of SGST/UTGST cannot be utilized for payment of CGST.

Hence cross-utilization of credit is available only between CGST - IGST and SGST/UTGST - IGST. The main restriction is that the CGST credit cannot be utilized for payment of SGST/UTGST and SGST/UTGST credit cannot be utilized for payment.

(3) The following illustration would further amplify the impact of newly inserted Rule 88A of the CGST Rules :

Illustration: Amount of Input tax Credit available and output liability under different tax heads—

HEAD	Output Liability	Input tax Credit
Integrated tax	1,000	1,300
Central tax	300	200
State tax/Union Territory tax	300	200
Total	1,600	1,700

Option 1:

Input tax Credit on account of –	Discharge of output liability on account of Integrated tax	Discharge of output liability on account of Central tax	Discharge of output liability on account of State tax / Union Territory tax	Balance of Input Tax Credit
Integrated tax	1,000	200	100	0
Input tax Credit on account of Integrated tax has been completely exhausted				
Central tax	0	100	-	100
State tax/Union territory tax	0	-	200	0
Total	1000	300	300	100

Option 2:

Input tax credit on account of –	Discharge of output liability on account of	Discharge of	Discharge of output liability on account of	Balance of Input Tax Credit

	Integrated tax	output liability on account of Central tax	State tax / Union Territory tax	
Integrated tax	1000	100	200	0
Input tax credit on account of Integrated tax has been completely exhausted				
Central tax	0	200	-	0
State tax/Union territory tax	0	-	100	100
Total	1000	3000	300	100

13. Explain the conditions for use of amount available in electronice credit ledger:

Ans- CONDITIONS OF USE OF AMOUNT AVAILABLE IN ELECTRONIC CREDIT LEDGER [RULE 86A]

(1) Restriction on utilization of balance in EcrL – Conditions : The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as–

(a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 :

(i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(ii) without receipt of goods or services or both; or

(b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

(c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36, may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2) Utilization of balance when conditions cease to exist : The Commissioner, or the authorised officer may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Maximum period of restriction - One year : Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.

14. Explain the Restrictions on use of amount available in electronice credit ledger.

Ans- Restrictions on use of amount available in electronic credit ledger [Rule 86B]: The relevant provisions are discussed as under –

(1) ITC to be utilised to the extent of 99% of the output tax liability : The registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of 99% of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds ₹ 50 lakh.

Note: This limit is not be checked with respect to preceding financial year but for each month for which return is being filed. Therefore, in cases wherein turnover of taxable supply does not exceed ₹ 50 lakh then this restriction would not be applicable and supposedly in subsequent month, if the turnover exceeds ₹ 50 lakh, then restriction would have to be checked.

(2) Non applicability : However, the said restriction shall not apply where –

(a) Payment of income tax of more than ₹ 1,00,000 :

(i) the registered person; or

(ii) the proprietor or karta or the managing director; or

(iii) any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than ₹ 1,00,000 as income tax under the Income-tax Act, 1961 in each of the last two financial years for which the time limit to file return of income under section 139(1) of the said Act has expired.

(b) Refund of ITC of more than ₹ 1,00,000 : The registered person has received a refund amount of more than ₹ 1,00,000 in the preceding financial year on account of unutilised input tax credit–

(i) on account of zero rated supply; or

(ii) on account of inverted tax structure.

c) Cumulative discharge of tax liability of more than 1% during the financial year : The registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year.

d) Specified registered person : The registered person is –

(i) Government Department; or

(ii) a Public Sector Undertaking; or

(iii) a local authority; or

(iv) a statutory body.

(3) Removal of restrictions : The Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verification's and such safeguards as he may deem fit.

AVAILABILITY OF CREDIT IN SPECIAL CIRCUMSTANCES

15. Explain the provisions relating ot availability of credit in special circumstance.

Ans- AVAILABILITY OF CREDIT IN SPECIAL CIRCUMSTANCES [SECTION 18]

(1) Availability of ITC in Special Circumstances [Section 18(1)] : Subject to such conditions and restrictions as may be prescribed—

(a) ITC available on opening stock of inputs at the time of Registration [Section 18(1)(a)] : A person—

- ✓ who has applied for registration under this Act within 30 days from the date on which he becomes liable to registration, and
- ✓ has been granted such registration

shall be entitled to take credit of input tax in respect of—

- ✓ inputs held in stock;
- ✓ inputs contained in semi-finished goods; and
- ✓ inputs contained in finished goods held in stock

on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

(b) ITC available on opening stock of inputs at the time of Voluntary Registration [Section 18(1)(b)] : A person who takes registration under Section 25(3) i.e. voluntary registration shall be entitled to take credit of input tax in respect of—

- ✓ inputs held in stock;
- ✓ inputs contained in semi-finished goods; and
- ✓ inputs contained in finished goods held in stock

on the day immediately preceding the date of grant of registration.

(c) ITC available on opting out of Composition Scheme [Section 18(1)(c)] : Where any registered person ceases to pay tax under Section 10 i.e. Composition scheme, he shall be entitled to take credit of input tax in respect of—

- ✓ inputs held in stock;
- ✓ inputs contained in semi-finished goods;
- ✓ inputs contained in finished goods held in stock, and
- ✓ on capital goods

on the day immediately preceding the date from which he becomes liable to pay tax u/s 9.

Reduced credit available in respect of capital goods : The credit on capital goods shall be reduced by such percentage points as may be prescribed.

(d) ITC available on conversion of exempt supply into taxable supply [Section 18(1)(d)] : Where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of—

- ✓ inputs held in stock;
- ✓ inputs contained in semi-finished goods;
- ✓ inputs contained in finished goods held in stock, and
- ✓ on capital goods exclusively used for such exempt supply

on the day immediately preceding the date from which such supply becomes taxable.

Reduced credit available in respect of capital goods : The credit on capital goods shall be reduced by such percentage points as may be prescribed.

(2) Time limit to take ITC – ONE year from date of issue of tax invoice [Section 18(2)] : A registered person shall not be entitled to take input tax credit under Section 18(1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(3) Amount to be calculated in prescribed manner [Section 18(5)] : The amount of credit under Section 18(1) shall be calculated in such manner as may be prescribed.

16. Explain the manner of claiming credit in special circumstances.

Ans- MANNER OF CLAIMING CREDIT IN SPECIAL CIRCUMSTANCES [RULE 40]

Conditions subject to which ITC can be claimed [Rule 40(1)] : The input tax credit claimed in accordance with the provisions of Section 18(1) on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of Section 18(1)(c)/(d), shall be subject to the following conditions, namely,—

(a) Credit on capital goods to be claimed after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from date of invoice : The input tax credit on capital goods, in terms of Section 18(1)(c) and (d), shall be claimed after reducing the tax paid on such capital goods by 5% points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.

(b) Electronic declaration of eligibility to avail ITC to be filed within 30 days : The registered person shall within a period of 30 days from the date of becoming eligible to avail the input tax credit under Section 18(1), or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in FORM GST ITC-01 to the effect that he is eligible to avail the input tax credit as aforesaid:

Deemed extension : Any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(c) Declaration to contain details of stock of inputs/ capital goods : The declaration shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods–

(i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under Section 18(1)(a);

(ii) on the day immediately preceding the date of the grant of registration, in the case of a claim under Section 18(1)(b);

(iii) on the day immediately preceding the date from which he becomes liable to pay tax under Section 9, in the case of a claim under Section 18(1)(c);

(iv) on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under Section 18(1)(d);

(d) Declaration to be certified by CA/ CMA if ITC claimed exceeds ₹ 2,00,000 : The details furnished in the declaration shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds ₹ 2,00,000;

(e) Verification of ITC claimed with details furnished by suppliers : The input tax credit claimed in accordance with the provisions of Section 18(1)(c) & (d) shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1 and in FORM GSTR-1A, if any [Inserted vide Notification No. 12/2024-CT dated 10.07.2024.] or as the case may be, in FORM GSTR-4, on the common portal.

The above provisions can be summarised as under :

Entitlement of ITC at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Sub-sections (1) and (2) of Section 18 read with Rule 40 of CGST Rules] :

S. No	Persons eligible to take credit	Goods entitled to ITC		Restriction/ conditions
		Inputs held in stock/ capital goods	As on	
1.	Person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date from which he becomes liable to pay tax	ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.
2	Person who is not required to register, but obtains voluntary registration	Inputs held in stock and inputs contained in semi-finished Or finished goods held in stock	The day immediately preceding the date of registration	
3.	Registered person who ceases to pay composition tax and switches to regular scheme	Inputs held in stock and inputs contained in semi-finished Or finished goods held in stock and capital goods	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme	✓ ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from

4	Registered person whose exempt supplies become taxable supplies	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and capital goods exclusively used for such exempt supply	The day immediately preceding the date from which such supply becomes taxable	the date of invoice. ✓ ITC claimed shall be verified with the corresponding details furnished by the corresponding supplier. ✓ ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.

Procedural Compliances : In all the above cases the following procedural compliances are required to be followed as per provisions of Rule 40 of CGST Rules, 2017.

(1) Filing of electronic declaration of stock : The registered person has to make an electronic declaration in the FORM GST ITC-01 on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in column (4) of table above.

(2) Time limit of filing declaration : The declaration is to be filed within 30 days (extendable by Commissioner/ Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC.

(3) Certification by CA/CMA : If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds ₹ 2,00,000, the declaration needs to be certified by a practicing Chartered Accountant/Cost Accountant.

17. Explain the provisions relating to Reversal of ITC on switching to composition levy or exit from tax- paying status.

Ans: The relevant provisions are discussed as under-

(1) ITC Reversal on switching to composition scheme/ goods or services becomes wholly exempt [Section 18(4)]: Where any registered person who has availed of input tax credit-

- ✓ opts to pay tax under Section 10 i.e. composition levy or,
- ✓ where the goods or services or both supplied by him become wholly exempt,

he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of-

- ✓ inputs held in stock;
- ✓ inputs contained in semi-finished goods;
- ✓ inputs contained in finished goods held in stock, and
- ✓ capital goods, reduced by such percentage points as may be prescribed,

on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption.

Balance credit to lapse: After payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

(2) Amount to be calculated in prescribed manner [Section 18(5)]: The amount payable above shall be calculated in such manner as may be prescribed.

18. Explain the manner of reversal of credit if registration of taxable person is cancelled/ or if the asssessee opts for composition levy.

Ans: Manner of reversal of credit under special circumstances [Rule 44]:

(1) Reversal of ITC [Rule 44(1)]: The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of Section 18(4) or Section 29(5) i.e. cancellation of registration, be determined in the following manner, namely,-

(a) For inputs - Credit to be calculated proportionately on the basis of corresponding invoices for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;

(b) For capital goods - Credit to be calculated on pro rata basis taking useful life of capital goods 5 years for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as .

Illustration: Capital goods have been in use for 4 years, 6 month and 15 days.
The useful remaining life in months = 5 months ignoring a part of the month.
Input tax credit taken on such capital goods = C
Input tax credit attributable to remaining useful life = C multiplied by 5/60

(2) Separate determination for CGST/SGST/UTGST and IGST [Rule 44(2)]: The amount, as specified in Rule 44(1) shall be determined separately for ITC of central tax, State tax, Union territory tax and integrated tax.

(3) Tax invoices of inputs not available - Credit amount to be estimated on basis of market price [Rule 44(3)]: Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount under Rule 44(1) based on the prevailing market

price of the goods on the effective date of the occurrence of any of the events specified in Section 18(4) or, as the case may be, Section 29(5).

(4) Furnishing of details of credit [Rule 44(4)]: The amount determined under Rule 44(1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in FORM ITC-03, where such amount relates to any event specified in Section 18(4) and in FORM GSTR-10, such amount relates to the cancellation of registration. GST where

(5) Details certified by CA/ CMA to be furnished [Rule 44(5)]: The details furnished in accordance with Rule 44(3) shall be duly certified by a practicing chartered accountant or cost accountant.

19. Expalain The ITC implications on supply of capital goods or plant and machinery on which ITC has been taken.

Ans- the relevant provisions are discussed as under-

(1) Supply of plant and machinery after use – Credit implications [Section 18(6) read with Rule 40(2)] :

In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay higher of the following amounts:

- ✓ an amount equal to the ITC taken on the said capital goods or plant and machinery reduced @ 5% points for every quarter or part thereof from the date of the issue of the invoice for such goods, or
- ✓ the tax on the transaction value of such capital goods or plant and machinery determined under section 15.

(2) Refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap – Tax leviable on transaction value is to be paid : Where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

(3) Determination of amount of credit in relation to capital goods [Rule 44(6)] : The amount of input tax credit for the purposes of Section 18(6) relating to capital goods shall be determined in the same manner as specified in Rule 44(1)(b) and the amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

Amount determined is greater than tax on transaction value – To be added to output tax liability : Where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in FORM GSTR-1.

20. Explain the provisions relating to transfer of ITC on account of change in constitution of registered person.

Ans- TRANSFER OF ITC ON ACCOUNT OF CHANGE IN CONSTITUTION OF REGISTERED PERSON [SECTION 18(3)]: Where there is a change in the constitution of a registered person on account of—

- ✓ sale,
- ✓ merger,
- ✓ demerger,
- ✓ amalgamation,
- ✓ lease; or
- ✓ transfer of the business,

with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such—

- ✓ sold,
- ✓ merged,
- ✓ demerged,
- ✓ amalgamated,
- ✓ leased, or
- ✓ transferred business in such manner as may be prescribed

21. Explain the proceducer of transfer of credit on sale,merger amalgamation,lease or transfer of a business:

Ans-Transfer of credit on sale, merger, amalgamation, lease or transfer of a business [Rule 41] :

(1) Details of transfer of business to be furnished electronically along with request application for transfer of ITC : A registered person shall, in the event of sale, merger, demerger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized ITC lying in his electronic credit ledger to the transferee.

ITC to be apportioned on basis of value of assets in case of demerger : In the case of demerger, the ITC shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

"Value of assets" [Explanation]means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

(2) Certificate of CA/CMA to be furnished certifying transfer of liabilities : The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(3) Transfer details to be accepted by transferee : The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

(4) Proper Accounting of inputs and capital goods by transferee : The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

Input tax credit - Transfer of input tax credit in case of death of sole proprietor - Circular No. 96/15/2019-GST dated 28-03-2019 :

(1) Section 29(1)(a) of the CGST Act provides that reason of transfer of business includes "death of the proprietor". Similarly for the purpose of Section 18(3), Section 22(3), Section 85(1) of the CGST Act and Rule 41(1) of the CGST Rules, i.e. transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.

(2) Continuation of business on death of sole – proprietor – ITC treatment : In case of death of sole proprietor if the business is continued by any person being transferee or successor, the input tax credit which remains un-utilized in the electronic credit ledger is allowed to be transferred to the transferee as per provisions and in the manner stated below –

(a) Registration liability of the transferee/successor : Transferee/Successor shall be liable to be registered with effect from the date of such transfer or succession, where a business is transferred to another person for any reasons including death of the proprietor. While filing application in FORM GST REG-01 electronically in the common portal the applicant is required to mention the reason to obtain registration as "death of the proprietor".

(b) Cancellation of registration on account of death of the proprietor : Section 29(1)(a) of the CGST Act, allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration in FORM GST REG-16 electronically on common portal on account of transfer of business for any reason including death of the proprietor. In FORM GST REG-16, reason for cancellation is required to be mentioned as "death of sole proprietor". The GSTIN of transferee to whom the business has been transferred is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee.

(c) Transfer of input tax credit and liability :

(i) In case of death of sole proprietor, if the business is continued by any person being transferee or successor of business, it shall be construed as transfer of business.

(ii) Section 18(3) of the CGST Act, allows the registered person to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee in the manner prescribed in rule 41 of the CGST Rules, where there is specific provision for transfer of liabilities.

(iii) As per Section 85(1) of the CGST Act, the transferor and the transferee/successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business "in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever".

(iv) Furthermore, Section 93(1) of the CGST Act provides that where a person, liable to pay tax, interest or penalty under the CGST Act, dies, then the person who continues business after his death, shall be liable to pay tax, interest or penalty due from such person under this Act. It is therefore clarified that the transferee/successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.

(d) Manner of transfer of credit : As per Rule 41(1) of the CGST Rules, 2017, in case of transfer of business on account of death of sole proprietor, the transferee/successor shall file FORM GST ITC-02 in respect of the registration which is required to be cancelled on account of death of the sole proprietor. FORM GST ITC-02 is required to be filed by the transferee/successor before filing the application for cancellation of such registration. Upon acceptance by the transferee/successor, the un-utilized input tax credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

Clarification in respect of apportionment of input tax credit (ITC) in cases of business reorganization u/s 18(3) of CGST Act read with rule 41(1) of CGST Rules, 2017 – Circular No. 133/03/2020-GST dated 23-03-2020

	Issue	Clarification
(a)	(i) In case of demerger, proviso to rule 41(1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or at all-India level.	Demerger – Value of assets for apportionment purposes – to be taken at State Level and not at All India level : Proviso to Rule 41(1) of the CGST Rules provides for apportionment of the input tax credit in the ratio of the value of assets of the new units as specified in the demerger scheme. Further, the explanation to Rule 41(1) of the CGST Rules states that "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon. Under the provisions of the CGST Act, a person/ company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. Accordingly, for the purpose of apportionment of ITC pursuant to a demerger under Rule 41(1) of the CGST Rules, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level.

		Illustration : A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth ₹ 100 crore, while its assets in State of M.P. and U.P are ₹ 60 crore and ₹ 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to ₹ 30 Crore are transferred to company ABC in State of M.P, while assets amounting to ₹ 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to ₹ 40 crore at all-India level are transferred from XYZ to ABC). The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. 30/60 = 0.5 and not on the basis of all-India ratio of value of assets, i.e. 40/100=0.4. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P., i.e. 10/40 = 0.25.
	(ii) Is the transferor required to file FORM GST ITC-02 in all States where it is registered?	No. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.
(b)	The proviso to rule 41(1) of the CGST Rules explicitly mentions 'demerger' Other forms of business reorganization where part of business is hived off or business in transferred as a going concern etc. have not been covered in the said rule. Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the proviso to rule 41(1) of the CGST Rules, 2017 shall be applicable to calculate the amount of transferable ITC?	Yes, the formula for apportionment of ITC, as prescribed under proviso to rule 41(1) of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.

(c)	(i) Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess?	No, the ratio of value of assets, as prescribed under proviso to Rule 41(1) of the CGST Rules, shall be applied to the total amount of unutilized ITC of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee. Illustration A: The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are ₹ 5 lakh, ₹ 5 lakh and ₹ 10 lakh respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B. Accordingly, the amount of ITC to be transferred from A to B shall be 60% of ₹ 20 lakh (total sum of CGST, SGST and IGST credit) i.e. 12 lakh.
	(ii) How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/ CGST/ SGST) while filing of FORM GST ITC-02 by the transferor?	The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to be transferred, as determined under rule 41(1) of the CGST Rules [refer 3 (c) (i) above]. However, the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head.

(1)	(2)	(3)	(4)	(5)	(6)
State	Asset Ratio of Transferee	Tax Heads	ITC balance of Transferor (preapportionment) as on the date of filing FORM GST ITC-02)	Total amount of ITC transferred to the Transferee under FORM GST ITC02	ITC balance of Transferor (post apportionment) after filing of FORM GST ITC- 02) [Col (4) – Col (5)]
Delhi	70%	CGST	10,00,000	10,00,000	0
		SGST	10,00,000	10,00,000	0
		IGST	30,00,000	10,00,000	15,00,000
		Total	50,00,000	35,00,000	**15,00,000**
Haryana	40%	CGST	25,00,000	3,00,000	22,00,000
		SGST	25,00,000	5,00,000	20,00,000

		IGST | 20,00,000 | 20,00,000 | - Total | 70,00,000 | 28,00,000 | 42,00,000
(d)	(i) In order to calculate the amount of transferable ITC, the apportionment formula under proviso to rule 41(1) of the CGST Rules has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor?	According to Section 18(3) of the CGST Act, "Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may beprescribed." Further, rule 41(1) of the CGST Rules prescribes that the registered person shall file the details in FORM GST ITC-02 for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. A conjoint reading of section 18(3) of the CGST Act along with rule 41(1) of the CGST Rules would imply that the apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC-02 by the transferor.
	(i) Which date shall be relevant to calculate the ratio of value of assets,as the prescribed in the proviso to rule 41(1) of the CGST Rules,2017 ?	According to section 232(6) of the Companies Act, 2013, "The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date". The said legal provision appears to indicate that the "appointed date of demerger" is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger. Therefore, for the purpose of apportionment of ITC under rule 41(1) of the CGST Rules, the ratio of the value of assets should be taken as on the "appointed date of demerger". In other words, for the purpose of apportionment of ITC under rule 41(1) of the CGST Rules, while the ratio of the value of assets should be taken as on the "appointed date of demerger", the said ratio is to be applied on the ITC

		balance of the transferor on the date of filing FORM GST ITC- 02 to calculate the amount to transferable ITC.

22. Explain the provisions relating to transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory.

Ans: Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory [Rule 41A]:

1) Details of transfer of ITC to be furnished on account of separate registration for multiple places of business: A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of Rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner.

   ITC to be apportioned on basis of value of assets: The input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration

   "Value of assets" means the value of the entire assets of the business whether or not input tax credit has been availed thereon. [Explanation]

2) Transfer details to be accepted by transferee: The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.

AVAILABILITY OF CREDIT IN SPECIAL CIRCUMSTANCES

23. Explain the manner of distribution of credit by Input Service Distributor. OR What are the conditions applicable to Input Service Distributor to distribute the credit? (4 Marks, Nov. 2018)

Ans: Manner of distribution of credit by Input Service Distributor [Section 20] [Amended by Finance Act, 2024 w.e.f. 01-04-2025]:

(1) Compulsory registration as ISD : Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under section 9(3)/(4), for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under section 24(viii) and shall distribute the input tax credit in respect of such invoices.

(2) ITC to be distributed in prescribed manner : The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax u/s 9(3)/(4) paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed..

(3) ISD invoice : The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit, in such manner as may be prescribed.

24. Explain the procedure for distribution of input tax credit by Input Service Distributor.

Ans: Procedure for distribution of input tax credit by Input Service Distributor [Rule 39] [Amended vide Notification No. 12/2024-CT dated 10-07-2024 w.e.f. yet to be notified.]:

(1) Manner and conditions for distribution of ITC [Rule 39(1)]: An Input Service Distributor shall distribute input tax credit in the manner and subject to the following conditions, namely, -

(a) Credit to be distributed in same month : The input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period;

(f) the input tax credit that is required to be distributed in accordance with the provisions of (d) and (e) above to one of the recipients "R1", whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipients who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C1" to be calculated by applying the following formula-

$$C1 = (t1 \div T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t1" is the turnover, as referred to in clause (d) and (e), of person R1 during the relevant period, and

"T"" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of clause (d) and (e);

"C1" i.e. ITC to be distributed to one of the recipient "R1" = Turnover of person "R1"during the relevant period i.e."t1" / Aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of Rule 39(1)(d)/(e) i.e. "T" x Amount of credit to be distributed i.e. "C"

g) the Input Service Distributor shall, in accordance with the provisions of (d) and (e), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of Section 17(5)or otherwise) and the amount of eligible input tax credit;

h) the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of (d) and (e);

i) ITC of IGST to be distributed as IGST : the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

j) the input tax credit on account of central tax and State tax or Union territory tax shall–

(i) ITC of CGST and SGST/ UTGST to be distributed as CGST and SGST/ UTGST respectively if recipient is in same State : in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;

(ii) ITC of CGST and SGST/ UTGST to be distributed as IGST if recipient is in different State : in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient as referred to in (d) and (e);

k) Issuance of invoice : the Input Service Distributor shall issue an Input Service Distributor invoice, as provided in Rule 54(1), clearly indicating in such invoice that it is issued only for distribution of input tax credit;

l) Credit note to be issued on reduction of credit distributed : the Input Service Distributor shall issue an Input Service Distributor credit note, as provided in Rule 54(1), for reduction of credit in case the input tax credit already distributed gets reduced for any reason;

m) Additional ITC to be distributed in above manner : any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (j) and the amount attributable to any recipient shall be calculated in the manner provided

in clause (f) and such credit shall be distributed in the month in which the debit note is included in the return in FORM GSTR-6;

n) Reduction of ITC distributed on account of credit note received from supplier – To be apportioned to recipient in the same ratio as of original distribution : any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (f), and the amount so apportioned shall be-

(i) reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6; or

(ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.

(2) Distribution of credit to distinct persons : For the distribution of credit in respect of input services, attributable to one or more distinct persons, subject to levy of tax under Section 9(3)/(4), a registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note as per the provisions of Rule 54(1A) to transfer the credit of such common input services to the Input Service Distributor, and such credit shall be distributed by the said Input Service Distributor in the manner as provided in Rule 39(1)

(3) Reduction of ITC distributed on account of any other reason – Above procedure is to be followed [Rule 39(2)]: If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process specified in Rule 39(1)(j)/(n) shall apply, mutatis mutandis, for reduction of credit.

(4) ISD invoice to be issued to recipient of credit [Rule 39(3)]: Subject to Rule 39(2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in Rule 39(1)(h)/(i), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in FORM GSTR-6 for the month in which such credit note and invoice was issued.

Explanation : For the purpose of this rule, the term –

(i) Relevant period shall be—

(a) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(b) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(ii) "Recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(iii) "Turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

5) Contents of ISD invoice and ISD credit note [Rule 54]: The ISD invoice and ISD credit note must contain the following information:

i. Name, address and GSTIN of the ISD and recipient of credit;
ii. A consecutive serial number up to 16 characters, containing alphabets or numerals or special characters or any combination thereof, for a financial year;
iii. Date of issue;
iv. Amount of the credit distributed;
v. Signature of the ISD or his authorized representative.

Relaxation for banks & FI's: If the ISD is a banking company/financial institution including NBFC, the document for distributing credit need not be serially numbered.

i. Transfer of credit on common input services to ISD by holder of same PAN and State code Documentary requirements [Rule 54(1A)]:

ii. A registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note to transfer the credit of common input services the Input Service Distributor, which shall contain the following details :- to

(i) name, address and GSTIN of the registered person having the same PAN and same State code as the ISD;
(ii) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
(iii) date of its issue;
(iv) GSTIN of supplier of common service and original invoice number whose credit is sought to be transferred to the ISD;
(v) name, address and GSTIN of the ISD;
(vi) taxable value, rate and amount of the credit to be transferred; and
(vii) signature or digital signature of the registered person or his authorised representative.

iii. The taxable value in the invoice issued above shall be the same as the value of the common services.

6) Explain the manner of recovery of credit distributed in excess.

Ans: Manner of recovery of credit distributed in excess [Section 21]: Where the Input Service Distributor distributes –

- ✓ the credit in contravention of the provisions contained in Section 20 A
- ✓ resulting in excess distribution of credit to one or more recipients of credit,

the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of Section 73 or 74 or Section 74A[Inserted by the Finance (No.2) Act, 2024 w.e.f. 01-11-2024.], as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

ISD – Manner of recovery of excess credit [Circular No. 71/45/2018-GST dated 26-10-2018] : The CBIC has clarified the following in respect of recovery of credit distributed in excess:

- ✓ The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by using FORM GST DRC-03.
- ✓ If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of section 73 or 74 of the CGST Act as the case may be. FORM GST DRC-07 can be used by the tax authorities in such cases.
- ✓ It is further clarified that the ISD would also be liable to a general penalty under the provisions contained in section 122(1)(ix) of the CGST Act.

7) Explain the manner of submission of return by an Input Service Distributor (ISD).

Ans: The manner of submission of return by an Input service distributor is as under –

1) ISD to furnish monthly return by 13th of next month [Section 39(4)] : Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within 13 days after the end of such month.
2) Extension by Commissioner [Section 39(6)]: The Commissioner may, for reasons to be recorded in writing,by notification, extend the time limit for furnishing the returns under this Section for such class of registered persons as may be specified therein.
3) Form and manner of submission of return by an input service distributor [Rule 65]: Every Input Service Distributor shall, on the basis of details contained in FORM GSTR-6A, and where required, after adding, correcting or deleting the details, furnish electronically the return in FORM GSTR-6, containing the details of tax invoices on which credit has been received and those issued under Section 20, through the common portal either directly or from a Facilitation Centre notified by the Commissioner.

TOPIC REFERENCER

- *Persons Liable for Registration*
- *Persons Exempt from Registration*
- *Compulsory Registration*
- *Procedure for Registration*
- *Registration of Non-resident and Casual Taxable Person*
- *Amendment and Cancellation of Registration*

PERSONS LIABLE FOR REGISTRATION

1. Briefly explain the need and general aspects of registration under GST law.

Ans: Registration under any taxation system is necessary for identification of tax payers ensuring tax compliance in the economy. Under indirect tax regime, without registration, a person can neither collect tax from his customers nor claim any credit of tax paid by him.

(1) Advantages of registration: Registration under Goods and Service Tax (GST) regime will confer following advantages to the business:

(a) Legally recognized as a supplier of goods or services.

(b) Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.

(c) Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.

(2) No centralized registration : Under GST, registrations need to be taken State-wise, i.e. there are no centralized registrations under GST. A business entity having its branches in multiple States will have to take separate State wise registration for the branches in different States.

(3) One registration per State: Further, within a State, an entity with different branches would have single registration wherein it can declare one place as principal place of business (PPoB) and other branches as additional place(s) of business (ApoB).

(4) Separate registration in respect of multiple places of business within a State : However, a business entity having separate places of business in a State may obtain separate registration for each of its place of business otherwise a given PAN based legal entity would have one registration number – Goods and Services Tax Identification Number (GSTIN) per State.

(5) No tax specific registration : Registration under GST is not tax specific, which means that there is single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses.

2. Expain are the persons liable for registration under GST law?

10.2 PERSONS LIABLE FOR REGISTRATION [SECTION 22]

(1) Every supplier liable to be registered if aggregate turnover in financial year exceeds ₹ 20 lakhs/ ₹ 10 lakhs in Special Category States [Section 22(1)] :

Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds ₹ 20 lakhs.

However, where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ₹ 10 lakh. [First Proviso to Section 22(1)]

However, the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover from ` 10 lakh to such amount, not exceeding ₹ 20 lakh and subject to such conditions and limitations, as may be so notified. [Second Proviso to Section 22(1)]

The Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from ₹ 20 lakh to such amount not exceeding ₹ 40 lakh in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified. [Third Proviso to Section 22(1)]

Explanation: A person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Special Category States for the purpose Section 22: Only Mizoram, Tripura, Manipur and Nagaland are Special Category States for the purpose of section 22.

Thus, the threshold limit of ₹ 10 lakhs is applicable for the State of Manipur, Mizoram, Nagaland, and Tripura.

It must be noted that if a person having place of business in different States across India has one branch in any of the States being Manipur, Mizoram, Nagaland, and Tripura, the threshold limit for GST registration will be reduced to ₹ 10 lakh.

Authors Note: It must be noted that the Central Government vide Notification No. 10/2019-CT dated 07-03-2019 w.e.f. 01-04-2019 as amended by Notification No. 15/2022-CT w.e.f. 18-07-2022 has provided that any person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed ₹ 40 lakh is exempt from obtaining registration. However, the exemption is not applicable for the following persons :

a. persons required to take compulsory registration under section 24 of the Act;
b. persons engaged in making supplies of the goods being –
   (i) Ice cream and other edible ice, whether or not containing cocoa,
   (ii) Pan masala,
   (iii) Tobacco and manufactured tobacco substitutes,

(iv) Fly ash bricks; Fly ash aggregates; Fly ash blocks,
(v) Bricks of fossil meals or similar siliceous earths,
(vi) Building bricks and
(vii) Earthen or roofing tiles.

c. persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and

d. persons exercising option of voluntary registration or such registered persons who intend to continue with their registration under the Act.

Present position of registration in respect of exclusive suppliers of goods is as follows:

	Threshold	State
1.	Upto ₹ 10 lakhs	Manipur; Mizoram; Nagaland; Tripura.
2.	Upto ₹ 20 lakhs	Specified States: Arunachal Pradesh, Meghalaya, Sikkim and Uttarakhand. Other than Specified States/UT : Telangana, Puducherry
3.	Upto ₹ 40 lakhs	All States other than 1 and 2

Threshold limit for registration: Thus, the above amendments can be summarised as under –

States with threshold limit of ₹ 10 lakh for both goods and services	States with threshold limit of ₹ 20 lakh for both goods and services	State with threshold limit of 20 lakh for service and 40 lakh for goods (i.e persons engaged exclusively in supply of supply)
Manipur Mizoram Nagaland Tripura	Arunachal Pradesh Meghalaya Sikkim Uttarakhand Puducherry Telangana	Jammu and Kashmir Assam Himachal Pradesh All other States

Aggregate turnover [Section 2(6)] :

"Aggregate turnover" means the aggregate value of –

- ✓ all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis),
- ✓ exempt supplies,
- ✓ exports of goods or services or both, and
- ✓ inter-State supplies

of persons having the same Permanent Account Number, to be computed on all India basis, but excludes –

- ✓ Central tax,

- ✓ State tax,
- ✓ Union territory tax,
- ✓ Integrated tax, and
- ✓ Cess.

Analysis of Aggregate turnover :

1.	Aggregate turnover to include total turnover of all branches with same PAN	Aggregate turnover of persons having the same Permanent Account Number is to be computed on all India basis. For example: A dealer 'D' has two offices – one in Rajasthan and another in Madhya Pradesh. In order to determine whether 'D' is liable for registration, turnover of both the offices would be taken into account and only if the same exceeds ` 40 lakh, 'D' is liable for registration.
2.	Outward Supplies taxed on reverse charge basis – to be included in turnover of the supplier	It must be noted that Outward Supplies taxable under reverse charge would continue to be part of the 'aggregate turnover' of the supplier of such supplies.
3.	Aggregate turnover to include all supplies made on behalf of principal	"Aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his Principals. For example: Ragini Enterprises has appointed M/s. Kamal & Associates as its agent. All the supplies of goods made by M/s. Kamal & Associates as agent of Ragini Enterprises will also be included in the aggregate turnover of M/s. Kamal & Associates.
4.	Supply of goods by Jobworker to be included in supplies of Principal	The supply of goods, after completion of job-work, by a registered job-worker shall be treated as the supply of goods by the principal, and the value of such goods shall not be included in the aggregate turnover of the registered job-worker.
5.	Aggregate turnover' v. 'Turnover in a State'	The aggregate turnover is different from turnover in a State. The former is used for determining the threshold limit for registration as well as eligibility for composition scheme. However, the composition levy in respect of suppliers of goods as well as for service suppliers would be calculated on the basis of 'turnover in the State'. Besides this in case of the

		distribution of credit that is attributable to two or more units of the person, the credit shall be distributed amongst such units on a pro rata basis (i.e., ratio of their respective 'turnover in State' to the aggregate of the 'turnover in State' of all such units).
6.	No centralized registration	Every supplier liable for registration will have to take a separate registration in every state even though such supplier may be supplying goods or services or both from more than one State as a single entity.

Examples relating to threshold limit :

(i) Hemant of Himachal Pradesh is exclusively engaged in intra-State supply of furniture. His aggregate turnover in the current financial year is ₹ 25 lakh. In view of the discussion in the above paras, the applicable threshold limit for registration for Hemant in the given case is ₹ 40 lakh. Thus, he is not liable to get registered under GST.

If in above example, all other things remaining the same, Hemant is exclusively engaged in supply of ice-cream instead of furniture, he will not be eligible for higher threshold limit of ₹ 40 lakh and the applicable threshold limit for registration in that given case will be ₹ 20 lakh. Thus, Hemant will be liable to get registered under GST.

If instead of ice-cream, Hemant is exclusively engaged in supply of taxable services, the applicable threshold limit for registration will still be ₹ 20 lakh. Thus, Hemant will be liable to get registered under GST.

Further, if Hemant is engaged in supply of both taxable goods and services, the applicable threshold limit for registration will be ₹ 20 lakh. Thus, Hemant will be liable to get registered under GST.

(ii) Sultan of Telangana is exclusively engaged in intra-State supply of leather products. Its aggregate turnover in the current financial year is ₹ 25 lakh.

Since Sultan is making taxable supplies from Telangana, he will not be eligible for higher threshold limit available in case of exclusive supply of goods. The applicable threshold limit for registration for Sultan in the given case is ₹ 20 lakh. Thus, he is liable to get registered under GST.

If in above example, all other things remaining the same, Sultan is exclusively engaged in supply of taxable services instead of leather products, the applicable threshold limit for registration will still be ₹ 20 lakh. Thus, Sultan will be liable to get registered under GST.

Further, if Sultan is engaged in supply of both taxable goods and services, the applicable threshold limit for registration will be ₹ 20 lakh only. Thus, Sultan will be liable to get registered under GST.

(iii) Karmveer of Mizoram is exclusively engaged in intra-State supply of toys. Its aggregate turnover in the current financial year is ₹ 15 lakh. Since Karmveer is making taxable supplies

from Mizoram which is a Special Category State, the applicable threshold limit for registration for Karmveer in the given case is ₹ 10 lakh. Thus, he is liable to get registered under GST.

If in above example, all other things remaining the same, Karmveer is exclusively engaged in supply of taxable services instead of toys, the applicable threshold limit for registration will still be ₹ 10 lakh. Thus, Karmveer will be liable to get registered under GST. Further, if Karmveer is engaged in supply of both taxable goods and services, the applicable threshold limit for registration in that given case will be ₹ 10 lakh only. Thus, Karmveer will be liable to get registered under GST.

(iv) Ramesh of Assam is exclusively engaged in intra-State supply of footwear. Its turnover in the current FY from Assam showroom is ₹ 28 lakh. It has another showroom in Tripura with a turnover of ₹ 11 lakh in the current FY. Since Ramesh is engaged in supplying footwear from a Special Category State, the applicable threshold limit for him gets reduced to ₹ 10 lakh. Further, Ramesh is liable to get registered under GST in both Assam and Tripura on his aggregate turnover crossing the threshold limit of ₹ 10 lakh.

(2) Registration required only for a place of business from where taxable supply takes place : A person is required to obtain registration with respect to his each place of business in India from where a taxable supply has taken place. However, a supplier is not liable to obtain registration in a State/UT from where he makes an exempt/non-taxable supply.

Example : Mishra Enterprises is engaged in supply of taxable goods in Maharashtra. It also supplies alcoholic liquor for human consumption from Nagaland. Its turnover in the current financial year is ₹ 34 lakh in Maharashtra and ₹ 8 lakh in Nagaland. Since Mishra Enterprises is exclusively engaged in making taxable supplies of goods from Maharashtra, the applicable threshold limit for obtaining registration is ₹ 40 lakh. However, the threshold limit will not be reduced to ₹ 10 lakh in this case, as supply of alcoholic liquor for human consumption from Nagaland (one of the Special Category States) are non-taxable supplies.

In the given case, since the aggregate turnover of Mishra Enterprises exceeds the applicable threshold limit of ₹ 40 lakh, it is liable to obtain registration. It will obtain registration in Maharashtra, but is not required to obtain registration in Nagaland as he is not making any taxable supplies from said State.

(3) Transfer of business – Transferee to obtain fresh registration [Section 22(3)]: Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise [including transfer/change in the ownership of business due to death of the sole proprietor], to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

(4) Transfer under scheme for amalgamation/ demerger – Transferee liable to be registered from date of incorporation [Section 22(4)] : In a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall

be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

PERSONS EXEMPT FROM REGISTRATION

3. Who are the persons are not liable for registration under GST law.

Ans-

(1) Persons not liable for registration [Section 23(1)]: The following persons shall not be liable for registration,

a. Person exclusively making supply of non taxable goods or services or both : Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax under this Act or under the IGST Act.

b. Person exclusively making supply of wholly exempted goods or services or both : Any person engaged exclusively in the business of supplying goods or services or both that are wholly exempt from tax under this Act or under the IGST Act.

c. Agriculturist : An agriculturist, to the extent of supply of produce out of cultivation of land. "Agriculturist" means an individual or a Hindu Undivided Family who undertakes cultivation of land–
   - ✓ by own labour, or
   - ✓ by the labour of family, or
   - ✓ by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family. [Section 2(7)]

The following aspects need to be noted :

- ✓ An agriculturist is not liable to obtain registration under the Act to the extent of supply of produce out of cultivation of land.
- ✓ The scope of the definition is restricted to an Individual or a Hindu Undivided Family. Any other "person" as defined in Section 2(84), carrying on the activity of agriculture will not be considered as an agriculturist and hence will not be exempted from registration provisions as provided in Section 23 (1)(b), of the Act.

(2) Notified category of persons [Section 23(2)] : The Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act. This section has been retrospectively amended from 01-07-2017, so as to provide overriding effect to this subsection over Section 22(1) and section 24 of the said Act1

Notification No. 10/2019-CT dated 07-03-2019 w.e.f. 01-	Suppliers of goods having aggregate turnover not exceeding ₹ 40 lakh – Exempt from obtaining registration :

04-2019 as amended by Notification No. 15/2022-CT, dated 13-7-2022, w.e.f. 18-7-2022	The Central Government, has specified the following category of persons, as the category of persons exempt from obtaining registration under the said Act, namely,- Any person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed ₹ 40 lakh, except, (i) persons required to take compulsory registration u/s 24 of the said Act; (ii) persons engaged in making supplies of the goods being – a. Ice cream and other edible ice, whether or not containing cocoa; b. Pan masala; c. Tobacco and manufactured tobacco substitutes; d. Fly ash bricks; Fly ash aggregates; Fly ash blocks; e. Bricks of fossil meals or similar siliceous earths; f. Building bricks; and g. Earthen or roofing tiles. (iii) persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and (iv) persons exercising option of voluntary registration under the provisions of Section 25(3), or such registered persons who intend to continue with their registration under the said Act.
Notification No. 10/2017-IT dated 13-10-2017 w.e.f. 13-10-2017 as amended by Notification No. 3/2019-IT dated 29-1-2019	Person making interstate supplies of taxable services having aggregate turnover not exceeding ₹ 20 lakh – Exempt from obtaining registration : The Central Government has specified the persons making inter-State supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding ₹ 20 lakh in a financial year as the category of persons exempted from obtaining registration. However, aggregate value of such supplies, to be computed on all India basis, should not exceed ₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland as specified in Section 22. Example: M/s. X & Co., located in Delhi, is engaged in supply of taxable goods in the neighbouring States of Punjab and Haryana. Its aggregate turnover in current FY is ₹ 15 lakh. Since it is engaged in making inter-State taxable supply of goods, it is required to register mandatorily under GST irrespective of its aggregate turnover. However, if in the above case, M/s. X & Co. is engaged in inter-State supply of taxable services instead of goods, it will be eligible for exemption from registration till its aggregate turnover does not exceed ₹ 20 lakh.

Notification No. 5/2017-CT dated 19-06-2017 w.e.f. 22-06-2017	Persons only engaged in making taxable supplies, total tax on which is liable to be paid on reverse charge basis – Exempt from obtaining registration : The Central Government has specified the persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under Section 9(3) of the said Act as the category of persons exempted from obtaining registration under the aforesaid Act. However, nothing contained in this notification shall apply to any person engaged in the supply of metal scrap, falling under Chapters 72 to 81 in the first schedule to the Customs Tariff Act, 1975 [Inserted vide Notification No. 24/2024-CT dated 09-10-2024 w.e.f. 10-10-2024] Example: Vakil and Associates is a law firm engaged exclusively in supplying legal consultany services liable to tax under reverse charge. Thus, it is exempt from registration as it is engaged exclusively in making supplies, tax on which is liable to be paid on reverse charge basis.
Notification No. 03/2018-IT dates 22-10-2018	Persons making inter-State taxable supplies of notified handicraft goods up to ₹ 20 lakh : The Central Government has specified the following persons making inter-State supplies of goods have been exempted from obtaining registration: a. Persons making inter-State taxable supplies of notified handicraft goods b. Persons making inter-State taxable supplies of notified products, when made by craftsmen predominantly by hand even though some machinery may also be used in the process. Conditions to be fulfilled : (i) The aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of ₹ 20 lakh (₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) in a FY. (ii) Such persons have obtained a PAN and have generated an eway bill Example: HastShilp Pvt. Ltd., located in Rajasthan, is a supplier of taxable and notified handicraft goods. It supplies these goods in the neighbouring States of Delhi and Haryana. Its aggregate turnover in the month of April is ₹ 15 lakh. Although Hastshilp Pvt. Ltd. is engaged in making interState supplies of taxable goods, it is not liable to obtain registration

	till its aggregate turnover does not exceed ₹ 20 lakh as it has availed the exemption from registration under.
Notification No. 56/2018-CT, dated 23-10-2018	Casual taxable persons making taxable supplies of handicraft goods and Handmade shawls, stoles etc. – Exempt from obtaining registration. The Central Government has specified casual taxable persons making taxable supplies of handicraft goods as the category of persons exempted from obtaining registration. However, the aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of ₹ 20 lakhs in a financial year (₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland). Obtaining of PAN and Generation of E-way Bill : The casual taxable persons mentioned above shall obtain a Permanent Account Number and generate an e-way bill in accordance with the provisions of Rule 138 of the CGST Rules, 2017. Exemption available to persons making exempt interstate supplies of handicrafts : The above exemption shall be available to such persons who are making inter-State taxable supplies of handicraft goods and are availing the benefit of Notification No. 3/2018-IT dated 22-10-2018. Exemption in respect of inter-state supplies of specified goods made by craftsmen: Exemption is also available to such persons making inter-State taxable supplies of the specified products when made by the craftsmen predominantly by hand even though some machinery may also be used in the process. However, the aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of ₹ 20 lakhs in a financial year (₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland). Such persons making inter-State taxable supplies shall be required to obtain a Permanent Account Number and generate an e-way bill in accordance with the provisions of rule 138 of the CGST Rules, 2017.
	Job-workers engaged in making interstate supply of services – exempt from obtaining registration. The Central Government has specified the job workers engaged in making inter-State supply of services to a registered person as the category of persons exempted from obtaining registration. However, nothing contained in this notification shall apply to a job-worker – (i) who is liable to be registered under Section 22(1) or who opts to take registration voluntarily under Section 25(3) of the said Act; or

	(ii) who is involved in making supply of services in relation to the goods mentioned against serial number 5 (Jewellery, goldsmiths' and silversmiths' wares and other articles) in the Annexure to Rule 138 of the CGST Rules, 2017.
Notification No. 7/2017-IT dated 14-09-2017 as amended by Notification No. 2/2019-IT dated 29-1-2019	Suppliers of services supplying services through an e-commerce platform – Exempt from obtaining registration. The Central Government has exempted the persons making supplies of services, other than supplies specified under Section 9(5) of the said Act through an electronic commerce operator who is required to collect tax at source under Section 52 of the said Act, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of ₹ 20 lakh in a financial year, as the category of persons exempted from obtaining registration under the said Act. However, the aggregate value of such supplies, to be computed on all India basis, should not exceed an amount of ₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland.
Notification No. 34/2023- CT dated 31-7-2023 w.e.f 01-10-2023	Exemption to persons making supply of goods through e-commerce operator subject to fulfillment of specified conditions : The Central Government has exempted the persons making supplies of goods through an electronic commerce operator who is required to collect tax at source u/s 52 of the said Act and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union territory in accordance with the provisions of Section 22(1) of the said Act, from obtaining registration under the said Act, subject to the following conditions, namely i) such persons shall not make any inter-State supply of goods; ii) such persons shall not make supply of goods through electronic commerce operator in more than one State or Union territory; iii) such persons shall be required to have a Permanent Account Number issued under the Income-tax Act, 1961; iv) such persons shall, before making any supply of goods through electronic commerce operator, declare on the common portal their Permanent Account Number issued under the Income-tax Act, 1961, address of their place of business and the State or Union territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;

	v) such persons have been granted an enrolment number on the common portal on successful validation of the Permanent Account Number; vi) such persons shall not be granted more than one enrolment number in a State or Union territory; vii) no supply of goods shall be made by such persons through electronic commerce operator unless such persons have been granted an enrolment number on the common portal; and viii) where such persons are subsequently granted registration under section 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration.
Circular No. 57/31/2018 GST dated 04-09-2018	Services provided by the commission agent for sale/purchase of agricultural produce Registration requirements : This circular lays down the deciding factor to determine whether a particular principal-agent relationship falls within the ambit of the Para 3 of Schedule I to CGST Act, 2017. Said circular clarifies it further, taking the help of 4 different scenarios [discussed in detail in Chapter 2 – Supply under GST]. Scenario 4 in said circular is as follows : Mr. A sells agricultural produce by utilizing the services of Mr. B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr. B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction. In cases where the invoice is issued by Mr. B to the buyer, the former is an agent covered under Para 3 of Schedule I. However, in cases where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) doesn't fall under the category of agent covered under Para 3. Since services by any APMC/ board/ services provided by the commission agents for sale or purchase of agricultural produce are exempt from GST, such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered in accordance with provisions of section 23(1)(a). Further, according to section 24(vii), a person is liable for mandatory registration if he makes taxable supply of goods or services or both on behalf of other taxable persons. Accordingly, the requirement of compulsory registration for commission

	agent, under the said clause shall arise when both the following conditions are satisfied, namely: a. the principal should be a taxable person; and b. the supplies made by the commission agent should be taxable. Generally, a commission agent under APMC Act makes supplies on behalf of an agriculturist. As per provisions of section 23(1)(b), an agriculturist who supplies produce out of cultivation of land is not liable for registration and therefore does not fall within the ambit of the term 'taxable person'. Thus, a commission agent who is making supplies on behalf of such an agriculturist – not a taxable person – is not liable for compulsory registration u/s 24(vii). However, where a commission agent is liable to pay tax under reverse charge, such an agent will be required to get registered compulsorily u/s 24(iii) of the CGST Act.

COMPULSORY REGISTRATION

4. Explain the categories of perosons who are required to be registered under CGST Act,2017.

Ans-COMPULSORY REGISTRATION IN CERTAIN CASES [SECTION 24]: The following category of persons are mandatorily required to obtain the registration under GST irrespective of their turnover:

(i) persons making any inter-State taxable supply [It must be noted that Central Government has granted exemption from Registration to person making interstate supplies of taxable services having aggregate turnover not exceeding ₹ 20 lakh (₹ 10 lakhs in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland)]

(ii) Casual taxable person (CTP) who does not have a fixed place of business in the State or Union Territory from where he wants to make supply; [However, threshold limit of ₹ 20 lakh (₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) is available in case of CTP who is making inter-State taxable supplies of notified handicraft goods and availing the benefit of exemption from registration as mentioned in point (i) above.]

(iii) persons who are required to pay tax under reverse charge i.e. recipient of supply is liable to pay tax;

(iv) person who are required to pay tax under Section 9(5) i.e. E-Commerce operator who is required to pay tax on specified services;

(v) non-resident taxable persons making taxable supply;

(vi) persons who are required to deduct tax u/s 51, whether or not separately registered under this Act;

(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

(viii) Input Service Distributor, whether or not separately registered under this Act;

(ix) persons who supply goods or services or both, other than supplies specified under Section 9(5), through such electronic commerce operator who is required to collect tax at source under Section 52 [Persons who are suppliers of service and supplying services through e-commerce operator are not required to register under GST if their aggregate turnover is less than ₹ 20 lakhs per annum (₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland)]

(x) every electronic commerce operator who is required to collect tax at source under section 52; [Thus, small e-commerce operators who are not required to collect tax at source u/s 52 would now be eligible for availing the threshold exemption limit benefit for registration purposes.]

(xi) every person supplying online information and database access or retrieval (OIDAR) services from a place outside India to a person in India, other than a registered person;

(xii) every person supplying online money gaming from a place outside India to a person in India; and

(xiii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

5. Explain the procedure for making application for registration ,

PROCEDURE FOR REGISTRATION [SECTION 25]

(1) Application to be made within 30 days in every State/ UT in which such person is liable for Registration [Section 25(1)]: Every person who is liable to be registered shall apply for registration in every such State or Union territory in which he is so liable within 30 days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed.

Supplier making supply from TWI – Registration to be obtained from nearest coastal State or Union territory [Explanation]: Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

Separate registrations for SEZ units and Non - SEZ units: A person having a unit, as defined in the SEZ Act, 2005, in a SEZ or being a SEZ developer shall have to apply for a separate registration, as distinct from his place of business located outside the SEZ in the same State or Union territory.

For example: Raheja Services Ltd. is engaged in taxable supply of services in Rajasthan. The turnover of Raheja Services Ltd. exceeded ` 20 lakh on 1st September. It is liable to get registered by 1st October in the State of Rajasthan.

(2) One registration per State [Section 25(2)] : A person seeking registration under this Act shall be granted a single registration in a State or Union territory. Thus, if within a State, an entity with different branches would have single registration wherein it can declare one place as principal place of business (PPoB) and other branches as additional place of business (APoB).

Separate registration for multiple place of business in a State/ UT: A person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.

However, separate registration for each place of business shall be granted provided all separately registered places of business of such person pay tax on supply of goods/services/both made to another registered place of business, of such person and issue a tax invoice/bill of supply, for such supply. Separate registration application needs to be filed for each place of business.

Composition levy in case of separate registration for multiple places of business within a State/UT :

- If a person is paying tax for one of his places of business under normal scheme, he shall not pay tax under composition levy for any other place of business.
- If one of the places of business [separately registered] of a registered person becomes ineligible to pay tax under composition levy, all other registered places of business of said person would also become ineligible to pay tax under composition levy.
- The provisions of rules 9 and 10 relating to verification and grant of registration shall mutatis mutandis apply to an application submitted under this rule.

(3) Voluntary registration – All provisions of Registration Applicable [Section 25(3)] : A person who is not liable to be registered under Section 22 or Section 24 may get himself registered voluntarily. In case of voluntary registration, all provisions of this Act, as are applicable to a registered person, shall apply to voluntarily registered person.

Advantages of Voluntary registration : Voluntary registration is advantageous for the persons which supply of goods or services or both to registered persons. The reason for the same is that by virtue of Section 9(4) of the CGST Act, in case of supplies of notified goods and services received from unregistered supplier by registered recipient, recipient has to pay the tax under reverse charge.

Therefore, business units would prefer receiving supplies from the registered persons only. Thus, voluntary registration enables a supplier of goods or services or both to enhance its business to business transactions.

However, once a person obtains voluntary registration, he has to pay tax even though his aggregate turnover does not exceed ₹ 40 lakh/ ₹ 20 lakh/ ₹ 10 lakh.

(4) Person having more than one registration – Each such registration to be treated as Distinct Persons [Section 25(4)]: A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Premises in separate States – Deemed Distinct Persons [Section 25(5)]: Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) PAN mandatory for obtaining Registration [Section 25(6)]: Every person shall have a Permanent Account Number issued under the Income-tax Act, 1961 in order to be eligible for grant of registration.

TAN mandatory: However, a person required to deduct tax under Section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

(7) Authentication of registered person by Aadhaar number [Section 25(6A)]: Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed.

Alternate means of authentication if Aadhaar number not assigned: However, if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe.

Authentication failure - Registration Invalid: In case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

(8) Authentication by Aadhaar number for grant of registration [Section 25(6B)] : On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

Alternate means of authentication if Aadhaar number not assigned: If an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

Vide Notification No. 18/2020–CT dated 23-03-2020, the Central Government has notified 01-04-2020 as the date from which an individual shall undergo authentication, of Aadhaar number, as specified in rule 8 of the CGST Rules, 2017, in order to be eligible for registration.

(9) Non Individuals - Authentication by Aadhaar number of authorised persons [Section 25(6C)] : On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendations of the Council, specify in the said notification.

Alternate means of authentication if Aadhaar number not assigned : Where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

The Central Government vide Notification No. 19/2020 dated 23-03-2020 has notified 01-04-2020, as the date, from which the –

(a) authorised signatory of all types;

(b) Managing and Authorised partners of a partnership firm; and

(c) Karta of an Hindu undivided family,

shall undergo authentication of possession of Aadhaar number, as specified in rule 8 of the CGST Rules, 2017, in order to be eligible for registration under GST.

(10) Non-applicability [Section 25(6D)]: The provisions of Section 25(6A)/(6B)/(6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

Aadhaar number [Explanation] : It shall have the same meaning as assigned to it in section 2(a) of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

Class of persons who do not require Aadhaar authentication or furnishing of proof of Aadhaar number at the time of grant of registration [Notification No. 03/2021-CT dated 23-02-2021 w.e.f. 23-02-2021] :

The Central Government has notified the following class of persons on whom the provisions of Aadhar authentication for grant of registration shall not apply:

(a) a person who is not a citizen of India; or

(b) a Department or establishment of the Csentral Government or State Government; or

(c) a local authority; or

(d) a statutory body; or

(e) a Public Sector Undertaking; or

(f) a person applying for registration under the provisions of section 25(9) of the CGST Act i.e. UIN Holders.

(11) Non-resident taxable person – Registration can be granted on basis of other documents [Section 25(7)] : A non-resident taxable person may be granted registration on the basis of such other documents as may be prescribed.

(12) Failure to obtain registration – Mandatory Registration [Section 25(8)] : Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

(13) Unique Identity Number (UIN) to be granted to specialized agency of UNO/ Consulate/ Embassy of foreign country/ Other notified persons [Section 25(9)] : Notwithstanding anything contained in sec. 25(1)–

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and
(b) any other person or class of persons, as may be notified by the Commissioner,
shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.
This UIN is needed for claiming refund of taxes paid on notified supplies of goods and/or services received by them, and for such other purpose as may be notified.

(14) RC/ UIN to be granted or rejected after due verification [Section 25(10)] : The registration or the Unique Identity Number shall be granted or rejected after due verification within 3 working days from the date of submission of application.

(15) RC to be issued in Prescribed Form [Section 25(11)] : A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

(16) RC/ UIN not granted within prescribed period – Deemed to be Granted [Section 25(12)] : A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under Section 25(10), if no deficiency has been communicated to the applicant within that period.

APPLICATION FOR REGISTRATION [RULE 8]

(i) Declaration of PAN mandatory [Rule 8(1)] : Every person who is liable to be compulsorily registered under Section 25(1) and every person seeking voluntary registration under Section 25(3) shall, before applying for registration, except—

- ✓ a non-resident taxable person
- ✓ a person required to deduct tax at source under Section 51,
- ✓ a person required to collect tax at source under Section 52, and
- ✓ a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in Section 14 of the IGST Act, 2017 or a person supplying online money gaming from a place outside India to a person in India referred to in section 14A under the IGST Act, 2017

shall, before applying for registration, declare his—

- ✓ Permanent Account Number,
- ✓ State or Union territory

in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner

Separate application for registration as ISD : Every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

(ii) Validation of PAN [Rule 8(2)] : The PAN shall be validated online by the common portal from the database maintained by the CBDT and shall also be verified through separate one-time passwords sent to the mobile number and e-mail address linked to the PAN.

(iii) Temporary reference number [Rule 8(3)] : On successful verification of the Permanent Account Number, mobile number and email address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

(iv) Submission of application [Rule 8(4)] : Using the reference number generated, the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code (EVC), along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(v) Aadhaar Authentication [Rule 8(4A) & (4B)] : Where an applicant, other than a person exempt from Aadhar authentication, opts for authentication of Aadhaar number, he shall, while submitting the application, undergo authentication of Aadhaar number.

The date of submission of the application in such cases shall be –

(a) the date of authentication of the Aadhaar number, or

(b) 15 days from the submission of the application in Part B of FORM GST REG-01,

whichever is earlier:

Biometric-based Aadhaar authentication : Every application made under by a person, other than a person exempt from Aadhar authentication, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under Section 25(6C) where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the notified Facilitation Centres and the application shall be deemed to be complete only after completion of the said process.

The Central Government may notify the States or Union territories wherein the provisions of biometric-based Aadhaar authentication will not apply.

It has been further provided that every application made under Rule 8(4) by a person, other than a person exempt from Aadhar authentication, who has not opted for authentication of Aadhaar number, shall be followed by taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under Section 25(6C) where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centers notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after successful

verification as specifed here. [Inserted vide Notification No. 12/2024-CT dated 10-07-2024 w.e.f. yet to be notified]

(vi) E- acknowledgement [Rule 8(5)]: On receipt of an application under rule 8(4)/8(4A), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

(vii) Temporary reference number for casual taxable person [Rule 8(6)] : A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of Section 27 and the acknowledgement shall be issued electronically only after the said deposit.

6. Explain the procedure relationg to verification of the application and its approval.

Ans-VERIFICATION OF THE APPLICATION AND APPROVAL [RULE 9]

(1) Application found in order – Approval to grant RC within 7 working days [Rule 9(1)] : The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of 7 working days from the date of submission of the application.

However, where—

a. a person, other than a person exempt from Aadhar authentication, fails to undergo authentication of Aadhaar number or does not opt for authentication of Aadhaar number; or

b. a person, who has undergone authentication of Aadhaar number, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or

c. the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

The registration shall be granted within 30 days of submission of application, after physical verification of the place of business in the presence of the said person6 in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit.

2) Deficiency found in application – E-Notice within 7 working days [Rule 9(2)] : Where the application submitted is found to be deficient, either in terms of any information or any document required to be furnished under the said rule, or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith, he may issue a notice to the applicant electronically in FORM GST REG-03 within a period of 7 working days from the date of submission of the application.

However, where–

(a) a person, other than a person exempt from Aadhar authentication, fails to undergo authentication of Aadhaar number or does not opt for authentication of Aadhaar number; or

(b) a person, who has undergone authentication of Aadhaar number, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or

(c) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business, the notice in FORM GST REG-03 may be issued not later than 30 days from the date of submission of the application.

E-Clarification, information etc. within 7 working days of receipt of notice : The applicant shall furnish such clarification, information or documents electronically, in FORM GST REG-04, within a period of 7 working days from the date of the receipt of such notice.

Explanation : The purposes of this sub-rule, the expression "clarification" includes modification or correction of particulars declared in the application for registration, other than Permanent Account Number, State, mobile number and e-mail address declared in Part A of FORM GST REG-01.

(3) Approval to grant registration within 7 working days from the date of receipt of such clarification or information or documents [Rule 9(3)] : Where the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within a period of 7 working days from the date of the receipt of such clarification or information or documents.

(4) Rejection of application if no reply is received within 7 days [Rule 9(4)] : Where no reply is furnished by the applicant in response to the notice or where the proper officer is not satisfied with the clarification, information or documents furnished, he shall, for reasons to be recorded in writing, reject such application and inform the applicant electronically in FORM GST REG-05.

(5) Deemed approval [Rule 9(5)] : If the proper officer fails to take any action,

a) within a period of 7 working days from the date of submission of the application in cases where a person successfully undergoes authentication of Aadhaar number or is exempt from Aadhaar authentication; or

b) within a period of 30 days from the date of submission of the application in cases where a person is in cases where a person fails to undergo Aadhaar authentication or does not opt for Aadhaar authentication; or

c) within a period of 7 working days from the date of the receipt of the clarification, information or documents furnished by the applicant in cases where Proper Officer issues notice seeking clarification, information or documents from the applicant, the application for grant of registration shall be deemed to have been approved.

PROCEDURE FOR REGISTRATION

PART-1

Every person liable to get registered and person seeking voluntary registration shall, before applying For registration declare his PAN ,State /UT in PART A of FORM GST REG-01 on GST Common Portal

PAN validate online by Comman portal from CBDT datebase and shall also be verified throught seprate OTP's sent the mobile number and e-mail address linked to the PAN

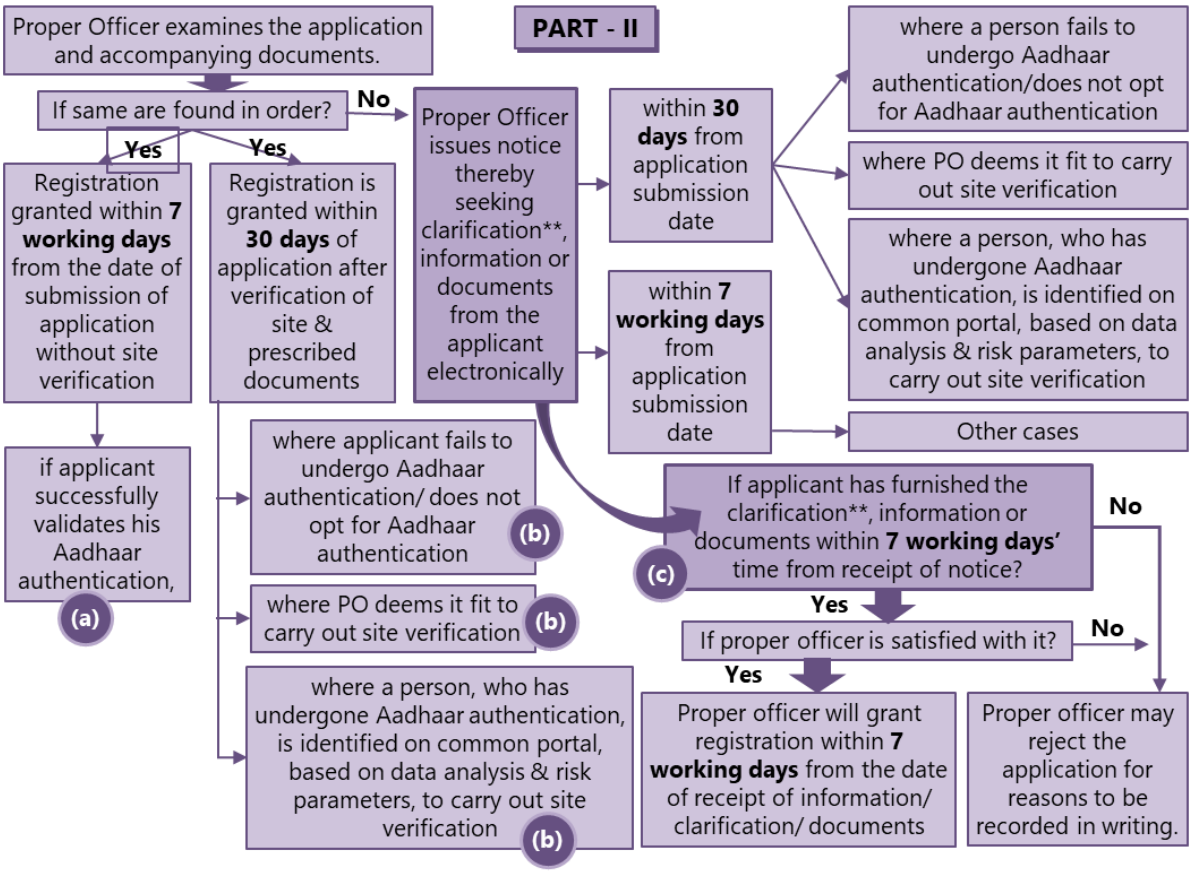
Tamporary Reference Number (TRN) is generated and communication to the applicant on the validated mobile number and e-mail address.

Using TRN, applicant shall electronically submit application in Part B of application form, along with specified documents at the Common Portal. Part B of application contains the details, such as, constitution of business, jurisdiction, option for
composition, date of commencement of business, reason to obtain registration, address of PPOB and nature of activity carried out therein, details of APoB, details of bank account(s), details of authorized signatory, aadhaar authentication, etc.

On receipt of such application, an acknowledgement in the prescribed form shall be issued to the applicant electronically. A Causal Taxable Person (CTP) applying for registration gets a TRN for making an advance deposit of tax in his electronic cash ledger and an acknowledgement is issued only after said deposit.

Application shall be forwarded to the Proper Officer.

The procedure after receipt of application by the Proper Officer is depicted in Part II of the diagram.



**Clarification includes modification/correction of particulars declared in the application for registration, other than PAN, State, Mobile No. & E-mail address.

★ Deemed Approval of Application

If the proper officer fails to take any action in the following cases within the stipulated time, the application for grant of registration shall be deemed to have been approved –

In cases where a person is (b) covered in above	within a period of **30 days** from the date of submission of the application
in case of a person covered (a) in above	within a period of **7 working days** from the date of submission of the application
in cases covered (c) in above	within **7 working days** from the date of receipt of clarification, information or documents furnished by the applicant

7. Write a note on physical verification of business premises.

Ans-PHYSICAL VERIFICATION OF BUSINESS PREMISES IN CERTAIN CASES [RULE 25 of CGST Rules, 2017 [Amended by Notification No, 38/2023 w.e.f.04-08-2023]:

(1) Physical verification after grant of registration : Where the proper officer is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM

GST REG-30 on the common portal within a period of 15 working days following the date of such verification.

(2) Physical verification before grant of registration : Where the physical verification of the place of business of a person is required before the grant of registration in the circumstances specified in the proviso to Rule 9(1), the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal at least 5 working days prior to the completion of the time period specified in the said proviso.

8. Explain the procedure for issuance of registration certificate.

Ans-ISSUE OF REGISTRATION CERTIFICATE [RULE 10]

(1) Grant of RC on approval of application – 15 digit GSTIN [Rule 10(1)] : Where the application for grant of registration has been approved, a certificate of registration in FORM GST REG-06 showing the principal place of business and additional place or places of business shall be made available to the applicant on the common portal and a Goods and Services Tax Identification Number (GSTIN) shall be assigned subject to the following characters, namely:

(a) two characters for the State code;

(b) ten characters for the PAN or the Tax Deduction and Collection Account Number;

(c) two characters for the entity code; and

(d) one checksum character.

(2) If application made within 30 days - Registration effective from the date on which the person becomes liable to registration [Rule 10(2)] : The registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date.

Example: Solutions Services Ltd. is engaged in taxable supply of services in Rajasthan. The turnover of Solution Services Ltd. exceeded ₹ 20 lakh on 1st September.it is liablef to get registration by 1st October [30 days] in the State of Rajasthan. It applies for registration on 25th September and is granted registration certificate on 5th October. The effective date of registration of Solution Services Ltd. is 1st September.

(3) If application not made within 30 days - Registration effective from the date of grant of Registration [Rule 10(3)] : Where an application for registration has been submitted by the applicant after the expiry of 30 days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration.

Example: Solutions Services Ltd. is engaged in taxable supply of services in Rajasthan. The turnover. of Solution Services Ltd. exceeded ₹ 20 lakh on 1st September.it is liablef to get registration by 1st October [30 days] in the State of Rajasthan. It applies for registration on 15th Octuber and granted registration certification on 20th October. The effective date of registration of Solution Services Ltd. Is 20th October.

(4) RC to be digitally signed [Rule 10(4)] : Every certificate of registration shall be duly signed or verified through electronic verification code by the proper officer under the Act.

(5) Grant of RC within 3 working days [Rule 10(5)] : Where the registration has been granted under Rule 9(5), the applicant shall be communicated the registration number, and the certificate of registration under rule 9(1), duly signed or verified through electronic verification code, shall be made available to him on the common portal, within a period of 3 days after the expiry of the period specified in Rule 9(5).

(6) Furnishing of Bank Account Details [Rule 10A] : After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a GSTIN has been assigned, the registered person, except those who have been granted registration under rule 12 (i.e. registered persons required to deduct tax at source or to collect tax at source) or, as the case may be rule 16 (i.e. persons who take suo motu registration), shall–

- ✓ within a period of 30 days from the date of grant of registration, or
- ✓ before furnishing the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using invoice furnishing facility,

whichever is earlier, furnish information with respect to details of bank account on the common portal. [Amended by Notification No, 38/2023 CT dated 04-08-2023]

9. Explain the provisions relating to Adhaar authentication for registered persons.

Ans- AADHAAR AUTHENTICATION FOR REGISTERED PERSON [RULE 10B]:

(1) Purposes for which Aadhar Authentication is required : The registered person, other than a person notified under section 25(6D), who has been issued a certificate of registration shall, undergo authentication of the Aadhaar number for the following purposes :

a. For filing of application for revocation of cancellation of registration in FORM GST REG-21 under rule 23;
b. For filing of refund application in FORM RFD-01 under rule 89;
c. For refund under rule 96 of the integrated tax paid on goods exported out of India.

(2) Persons whose Aadhar authentication will be done :

	Category of person	Person whose Aadhar authentication is required
1.	Proprietorship firm,	Proprietor
2.	Partnership firm	Any partner
3.	Hindu Undivided Family	Karta
4.	Company	Managing Director or any whole time Director,
5.	AOP / BOI/ Society	Any of the Members of the Managing Committee
6.	Trust	Trustee in the Board of Trustees
And Authorised signatory		

(3) Documents to be furnished if Aadhar Number is not assigned : If Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –

(a) her/his Aadhaar Enrolment ID slip; and

(b) (i) Bank passbook with photograph; or

(ii) Voter identity card issued by the Election Commission of India; or

(iii) Passport; or

(iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988

Such person shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.

10. Explain the conditons subject to which separate registration can be granted for multiple place of business within a State or a Union territory.

Ans- SEPARATE REGISTRATION FOR MULTIPLE PLACES OF BUSINESS WITHIN A STATE/ UT [RULE 11]

(1) Conditions for separate registration for multiple places of business within a State/UT [Rule 11(1)] : Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place of business under section 25(2) shall be granted separate registration in respect of each such place of business subject to the following conditions, namely:–

a. such person has more than one place of business as defined in section 2(85);

b. such person shall not pay tax under section 10 for any of his places of business if he is paying tax under section 9 for any other place of business;

Explanation: Where any place of business of a registered person that has been granted a separate registration becomes ineligible to pay tax under section 10, all other registered places of business of the said person shall become ineligible to pay tax under the said section.

c. all separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.

(2) Separate registration application for each places of business [Rule 11(2)] : A registered person opting to obtain separate registration for a place of business shall submit a separate application in FORM GST REG-01 in respect of such place of business.

(3) Verification and grant of Registration Certificate [Rule 11(3)] : The provisions of rule 9 and rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this rule.

11. Explain the procedure of sou moto registration.

Ans-SUO MOTO REGISTRATION [RULE 16]

(1) Temporary Registration by Proper Officer [Rule 16(1)] : Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in FORM GST REG-12.

(2) Effective date of registration [Rule 16(2)] : The registration shall be effective from the date of such order granting registration.

(3) Application for registration to be made within 90 days of temporary registration ; if appeal filed against order of temporary registration is dismissed – Within 30 days of appellate order [Rule 16(3)] : Every person to whom a temporary registration has been granted shall, within a period of 90 days from the date of the grant of such registration, **submit an** application for registration in the form and manner provided in Rule 8 or Rule 12.
Where the said person has filed an appeal against the grant of temporary registration, in such case, the application for registration shall be submitted within a period of 30 days from the date of the issuance of the order upholding the liability to registration by the Appellate Authority.

(4) Verification and grant of registration certificate [Rule 16(4)] : The provisions relating to verification and issue of registration certificate [as contained in Rules 9 and 10] shall, mutatis mutandis, apply to an application submitted under this rule.

(5) GSTIN to be effective from date of temporary registration [Rule 16(5)] : **The** Goods and Services Tax Identification Number assigned shall be effective from the date of the order granting registration under rule 16(1).

12. Explain the manner of Display of registration certificate and GSTIN.

Ans-DISPLAY OF REGISTRATION CERTIFICATE AND GSTIN ON THE NAME BOARD [RULE 18 of CGST Rules ,2017]

(1) (RC to be displayed at Principal and Additional place of business : Every registered person shall display his certificate of registration in a prominent location at his principal place of business and at every additional place or places of business.

(2) GSTIN to be displayed on the Name Board : Every registered person shall display his Goods and Services Tax Identification Number on the name board exhibited at the entry of his principal place of business and at every additional place or places of business.

13. Write a note an Method of authentication.

Ans-METHOD OF AUTHENTICATION [RULE 26 of CGST Rules ,2017]

(1) E-Applications, replies etc. to be authenticated by E-signature [Rule 26(1)] : All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of

these rules shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Board in this behalf.

Digital signature mandatory for companies : A registered person registered under the provisions of the Companies Act, 2013 shall furnish the documents or application verified through digital signature certificate.

(2) Signature [Rule 26(2)] : Each document including the return furnished online shall be signed or verified through EVC—

	Registered Person	Document including the return furnished online to be verified
(a)	Individual	✓ by the individual himself, or ✓ where he is absent from India, by some other person duly authorised by him in this behalf, and ✓ where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
(b)	Hindu undivided family	✓ by a Karta, and ✓ where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorised signatory of such Karta;
(c)	Company	✓ by the chief executive officer, or ✓ by authorised signatory thereof;
(d)	Government/ Governmental agency/ Local authority	✓ by an officer authorised in this behalf;
(e)	Firm	✓ by any partner thereof, not being a minor, or ✓ by authorised signatory thereof;
(f)	Association of Persons	✓ by any member of the association or persons, or ✓ by authorised signatory thereof;
(g)	Trust	✓ by the trustee or any trustee, or ✓ by authorised signatory thereof; or
(h)	Any other person	✓ by some person competent to act on his behalf,
or by a person authorised in accordance with the provisions of Section 48 i.e. Goods and services tax practitioners.		

(3) E-notices certificates, etc. to be authenticated by DSC [Rule 26(3)] : All notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer authorised to issue such notices or certificates or orders, through digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Board in this behalf.

14. Explain the procedure for assignment of unique identity number to certain special entities.

Ans-ASSIGNMENT OF UNIQUE IDENTITY NUMBER TO CERTAIN SPECIAL ENTITIES [RULE 17 of CGST Rules,2017]

(1) E-Application for grant of UIN [Rule 17(1)] : Every person required to be granted a Unique Identity Number (UIN) may submit an application electronically in FORM GST REG-13, duly signed or verified through EVC at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) UIN applicable to the territory of India [Rule 17(1A)] : The Unique Identity Number granted to a person under Section 25(9)(a) shall be applicable to the territory of India.

(3) UIN to be assigned and RC to be given within 3 working days [Rule 17(2)] : The proper officer may, upon submission of an application in FORM GST REG-13 or after filling up the said form or after receiving a recommendation from the Ministry of External Affairs, Government of India, assign a UIN to the said person and issue a certificate in **FORM** GST REG-06 within a period of 3 working days from the date of the submission of the application.

15. Explain the provisions of deemed registration.

Ans-DEEMED REGISTRATION [SECTION 26] :The provisions of deemed registration are as under-

(1) RC/ UIN granted under SGST/UTGST Act – Deemed registration under CGST Act : The grant of registration or the UIN under the SGST Act or the UTGST Act shall be deemed to be a grant of registration or the UIN under this Act subject to the condition that the application for registration or the UIN has not been rejected under this Act within the time specified in Section 25(10).

(2) Rejection of registration application under SGST/ UTGST Act – Deemed rejection under CGST Act : Any rejection of application for registration or the UIN under the SGST Act or the UTGST Act shall be deemed to be a rejection of application for registration under this Act.

REGISTRATION OF NON-RESIDENT AND CASUAL TAXABLE PERSO

16. What is the difference between casual and non-resident taxable persons?

Ans- Casual and Non-resident taxable persons are separately defined in the CGST Act in Sections 2(20) and 2(77) respectively. Some of the differences are outlined below:

Casual Taxable Person	Non-resident Taxable Person
"Casual taxable person" means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business. [Section 2(20)]	"Non-resident taxable person" means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India. [Section 2(77)]
He has a Permanent Account Number.	He does not have a PAN. A non-resident person, if having PAN may take registration as a casual taxable person.
Application form for registration is same as for normal taxable persons viz GST REG-01.	Different application form for registration by nonresident taxable person viz GST REG-09.
He has to undertake transactions in the course or furtherance of business.	There is no such requirement.
He has to file normal GSTR-1 and GSTR-3B returns.	He has to file a separate simplified return in the format GSTR-5.
He can claim ITC of all inward supplies.	He can get ITC only in respect of import of goods.

17. Explain special provisions relating to registration in case of casual taxable person and non-resident taxable person.

Ans: Special provisions relating to casual taxable person and non-resident taxable person [Section 27 and Rule 13 of CGST Rules, 2017]:

(1) Casual/ NR taxable person - Application to be made at least 5 days prior to the Commencement of Business [Section 25] : A casual taxable person or a non-resident taxable person shall apply for registration at least 5 days prior to the commencement of business.

(2) E-Application by non-resident taxable person at least 5 days prior to Commencement of Business [Rule 13(1)] : A non-resident taxable person shall electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through electronic verification code, in FORM GST REG-09, at least 5 days prior

to the commencement of business at the common portal either directly or through a Facilitation Centre notified by the Commissioner.

Foreign tax identification number to be given by business entity incorporated or established outside India : In case of a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its PAN, if available.

(3) Application to be signed by Authorised Signatory [Rule 13(4)] : The application for registration made by a non-resident taxable person shall be duly signed or verified through electronic verification code by his authorised signatory who shall be a person resident in India having a valid Permanent Account Number.

(4) Advance deposit to be made equivalent to the estimated tax liability [Section 27(2)] : A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.

Additional deposit in case of extension – Equal to additional tax : Where any extension of time is sought, such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.

(5) Amount deposited to be credited to Electronic cash ledger [Section 27(3)] : The amount of estimated tax deposited shall be credited to the electronic cash ledger of such person and shall be utilised in the manner provided under Section 49. [Section 49 provides for manner of payment of tax.]

(6) Temporary reference number for making an advance deposit of tax [Rule 13(2)] : A person applying for registration as a non-resident taxable person shall be given a temporary reference number by the common portal for making an advance deposit of tax and the acknowledgement shall be issued electronically only after the said deposit in his electronic cash ledger.

(7) Verification and grant of registration certificate [Rule 13(3)] : The provisions relating to verification and issue of registration certificate [as contained in Rules 9 and 10] shall, mutatis mutandis, apply to an application submitted under this rule.

(8) Casual/ non-resident taxable person - Registration valid upto period specified or 90 days [Section 27(1)] : The certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for-

- ✓ the period specified in the application for registration; or
- ✓ 90 days from the effective date of registration,

whichever is earlier.

Extension for further period of 90 days : The proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of 90 days by a further period not exceeding 90 days.

Taxable supplies to be effected only after the issuance of RC : Such person shall make taxable supplies only after the issuance of the certificate of registration.

18. Explain the procedure for obtaining extension in period of operation by casual taxable person and non- resident taxable person.

Ans-Extension in period of operation by casual taxable person and non-resident taxable person [Rule 15 of CGST Rules, 2017] :

a. Application for extension before the end of the validity of registration period : Where a registered casual taxable person or a non-resident taxable person intends to extend the period of registration indicated in his application of registration, an application in FORM GST REG-11 shall be submitted electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner, by such person before the end of the validity of registration granted to him.

b. Acknowledgement of application only on advance deposit of tax : The application shall be acknowledged only on payment of the amount specified in Section 27(2).

CTP – Advance tax to be deposited while taking registration should be 100% of the estimated tax liability payable in cash i.e. Estimated Gross tax liability after deducting the due eligible ITC which might be available to CTP – Circular No. 71/45/2018-GST dated 26-10-2018

Issue	Clarification
Whether the amount required to be deposited as advance tax while taking registration as a casual taxable person (CTP) should be 100% of the estimated gross tax liability or the estimated tax liability payable in cash should be calculated after deducting the due eligible ITC which might be available to CTP?	(1) While applying for registration as a casual taxable person, the FORM GST REG-1 seeks information regarding the "estimated net tax liability" only and not the gross tax liability. (2) It is accordingly clarified that the amount of advance tax which a casual taxable person is required to deposit while obtaining registration should be calculated after considering the due eligible ITC which might be available to such taxable person.
Whether period of operation by causal taxable person can be extended beyond the period of 180 days (90 days original period and 90 days extension), as mandated in law.	(1) It is clarified that in case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person. (2) While applying for normal registration the said person should upload a copy of the

	allotment letter granting him permission to use the premises for the exhibition and the allotment letter/consent letter shall be treated as the proper document as a proof for his place of business. (3) In such cases he would not be required to pay advance tax for the purpose of registration. (4) He can surrender such registration once the exhibition is over.

19. Explain the procedure for grant of registration to a person supplying online information and data base access or retrieval services from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India. access or retrieval services

Ans: Grant of registration to a person supplying online information and data base from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India [Rule 14 of CGST Rules, 2017]:

(1) E-application by supplier of OIDAR services [Rule 14(1)] : Any person supplying OIDAR services from a place outside India to a non-taxable online recipient or any person supplying online money gaming from a place outside India to a person in India shall electronically submit an application for registration, duly signed or verified through EVC, in FORM GST REG-10, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) Grant of RC [Rule 14(2)] : The applicant referred to in Rule 14(1) shall be granted registration, in FORM GST REG-06, subject to such conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council.

AMENDMENT AND CANCELLATION OF REGISTRATION

20. Explain the provisons relating to amendment of registration"

Ans-AMENDMENT OF REGISTRATION [SECTION 28]

(1) Change in information relating to RC/ UIN to be furnished to Proper Officer [Section 28(1)]: Every registered person and a person to whom a UIN has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration or subsequent thereto, in prescribed form within 15 days from such change.

(2) Approval/ Rejection of amendments [Section 28(2)] : The proper officer may, on the basis of information furnished above or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed.

Approval not required for amendment in prescribed particulars : Approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed. Opportunity of being heard before rejection : The proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.

(3) Rejection or approval of amendments under SGST/ UTGST Act – Deemed rejection or approval under CGST Act [Section 28(3)] : Any rejection or approval of amendments under the SGST Act or the UTGST Act, as the case may be, shall be deemed to be a rejection or approval under this Act.

21. Explain the procedure of amendment of registration.

Ans- amendment of registration. [Rule 19 of CGST Rules, 2017]

(1) E-Application for change in particulars within 15 days of such change [Rule 19(1)] : Where there is any change in any of the particulars furnished in the application for registration or for UIN, either at the time of obtaining registration or UIN or as amended from time to time, the registered person shall, within a period of 15 days of such change, submit an application, duly signed or verified through electronic verification code, electronically in FORM GST REG-14, along with the documents relating to such change at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Approval of amendment:

a. In case of amendment of core fields of information, approval of amendment within 15 days : Where the change relates to core field of information i.e. ,—
   i) legal name of business;
   ii) address of the principal place of business (PPoB) or any additional place(s) of business (APoB); or
   iii) addition, deletion or retirement of partners or directors, Karta, Managing Committee, Board of Trustees, Chief Executive Officer or equivalent, responsible for the day to day affairs of the business,

   which does not warrant cancellation of registration under section 29, the proper officer shall, after due verification, approve the amendment within a period of 15 working days from the date of the receipt of the application in FORM GST REG-14 and issue an order in FORM GST REG-15 electronically and such amendment shall take effect from the date of the occurrence of the event warranting such amendment;

b. Change to be effective in all registrations obtained on basis of same PAN : The change relating to core field information in any State or Union territory shall be applicable for all registrations of the registered person obtained under the provisions of this Chapter on the same PAN;

c. Where change relates to non-core fields of information – To be effective upon submission of the application : Where the change relates to any particulars other than those

specified in (a) above, the certificate of registration shall stand amended upon submission of the application in FORM GST REG-14 on the common portal;

Change in the mobile number or e-mail address of the authorised signatory – Online verification for such change through OTP : Any change in the mobile number or e-mail address of the authorised signatory submitted under this rule, as amended from time to time, shall be carried out only after online verification through the common portal in the manner provided under Rule 8(2).

d. Fresh registration in case of change in PAN : Where a change in the constitution of any business results in the change of the Permanent Account Number of a registered person, the said person shall apply for fresh registration in FORM GST REG-01.

(2) Retrospective amendment to be effective on Commissioner's order [Rule 19(1A)] : Any particular of the application for registration shall not stand amended with effect from a date earlier than the date of submission of the application in FORM GST REG-14 on the common portal except with the order of the Commissioner for reasons to be recorded in writing and subject to such conditions as the Commissioner may, in the said order, specify.

(3) SCN to be issued prior to rejection of Amendment Application [Rule 19(2)] : Where the proper officer is of the opinion that the amendment sought is either not warranted or the documents furnished therewith are incomplete or incorrect, he may, within a period of 15 working days from the date of the receipt of the application in FORM GST REG-14, serve a notice in FORM GST REG-03, requiring the registered person to show cause, within a period of 7 working days of the service of the said notice, as to why the application shall not be rejected.

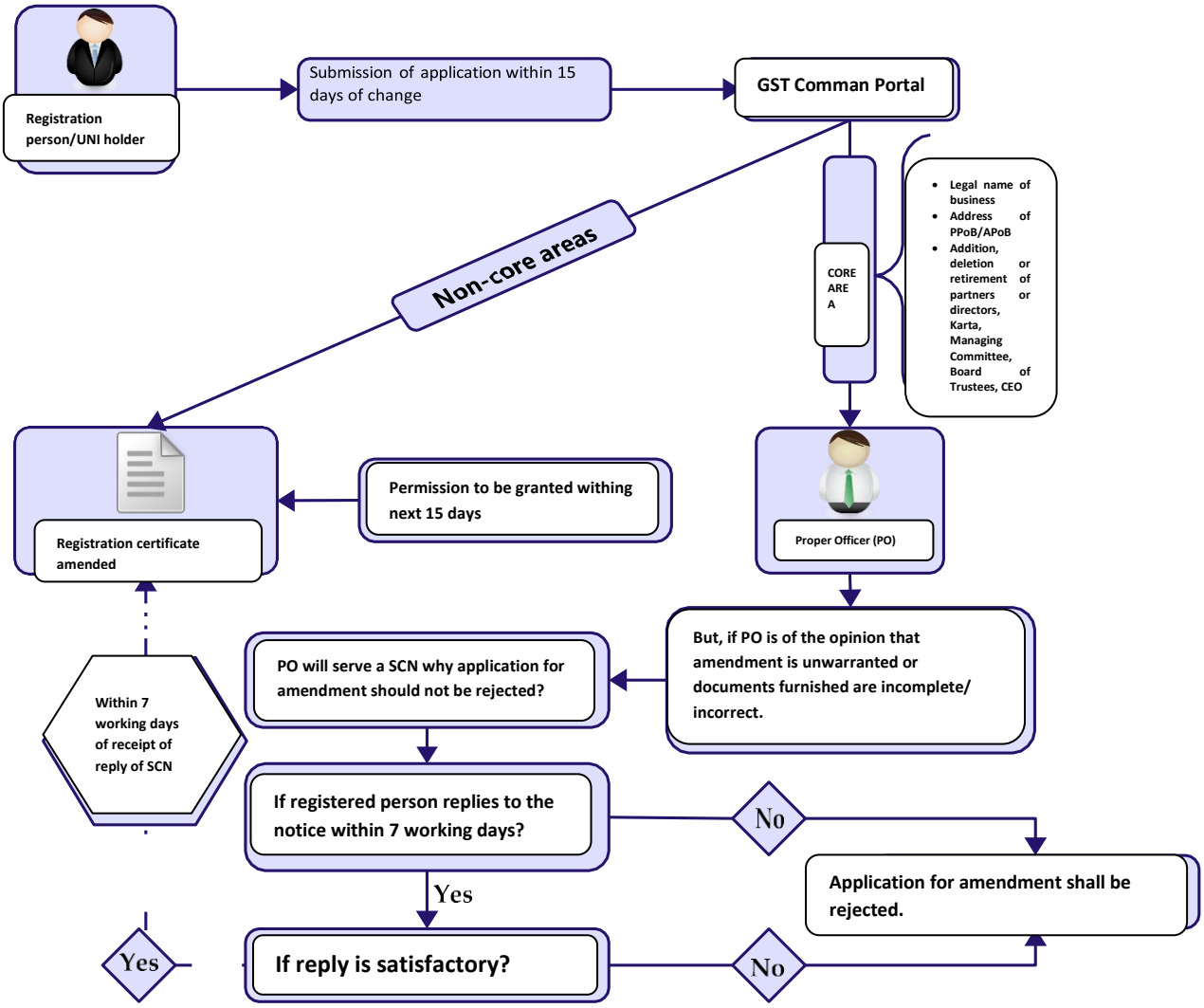
(4) Reply to SCN within 7 days [Rule 19(3)] : The registered person shall furnish a reply to the notice to show cause, in FORM GST REG-04, within a period of 7 working days from the date of the service of the said notice.

(5) Rejection of Application [Rule 19(4)] : Where the reply furnished is found to be not satisfactory or where no reply is furnished within the prescribed period, the proper officer shall reject the application and pass an order in FORM GST REG-05.

(6) Deemed Amendment [Rule 19(5)] : If the proper officer fails to take any action,—

(7) within a period of 15 working days from the date of submission of the application, or

(8) within a period of 7 working days from the date of the receipt of the reply to the notice to show cause, the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.



If the proper officer fails to take any action,

- within a period of 15 working days from the date of submission of the application, or If the proper officer fails to take any action,
- within a period of 7 working days from the date of the receipt of the reply to the show cause notice, t the certificate of registration shall stand amended to the extent applied for and the amended certificate s shall be made available to the registered person on the common portal

22. Explain the provisions relating to cancellation or suspension of registration.

Ans-CANCELLATION OR SUSPENSION OF REGISTRATION [SECTION 29]

i) Cancellation of registration either suo motu or on application by registered person [Section 29(1)] : The proper officer may,—

✓ either on his own motion, or

- ✓ on an application filed— –
  - by the registered person, or
  - by his legal heirs, in case of death of such person

  cancel the registration, in such manner and within such period as may be prescribed,

  Circumstances in which registration is cancelled : The registration can be cancelled having regard to the following circumstances where,—

(a) the business has been—
- ✓ discontinued,
- ✓ transferred fully for any reason including death of the proprietor,
- ✓ amalgamated with other legal entity,
- ✓ demerged, or
- ✓ otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person, other than the person registered under section 25(3) i.e. Voluntary Registration, **is no longer liable to be registered** under section 22 or Section 24 or intends to optout of the registration voluntarily made under section 25(3).

Suspension of registration during pendency of cancellation of proceedings : During pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

(2) Cancellation of registration by proper officer – Reasons thereof [Section 29(2) and Rule 21 of CGST Rules, 2017] : The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,–

a. a registered person has contravened such provisions of the Act or the rules made thereunder i.e. —
   - i) he does not conduct any business from the declared place of business; or
   - ii) he issues invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder.
   - iii) he violates the provisions of Section 171 [i.e. Anti Profiteering Measure] of the Act or the rules made thereunder;
   - iv) violates the provision of rule 10A (i.e. Furnishing of Bank Account Details)
   - v) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or
   - vi) furnishes the details of outward supplies in FORM GSTR-1 as amended in FORM GSTR-1A if any [Amended by Notification No. 12/2024–CT dated 10-07-2024] under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or
   - vii) violates the provision of rule 86B i.e. utlises ITC in excess of 99% of output tax liability; or
   - viii) violates the provisions of third or fourth proviso to Rule 23(1) (i.e. Failure to furnish

pending returns within 30 days from the date of order of revocation of cancellation of registration); or [Amended by Notification No. 12/2024-CT dated 10-07-2024]

ix) being a registered person required to file return u/s 39(1) for each month or part thereof, has not furnished returns for a continuous period of six months;

x) being a registered person required to file return u/s 39(1) under QRMP scheme for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.

(b) a person paying tax u/s 10 (i.e. composition supplier) has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or

(c) any registered person, other than a composition supplier, has not furnished returns for a such continuous tax period as may be prescribed; or

(d) any person who has taken voluntary registration under Section 25(3) has not commenced business within 6 months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

Opportunity of being heard : The proper officer shall not cancel the registration without giving the person an opportunity of being heard.

Suspension of registration during pendency of cancellation of proceedings : During pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

Voluntary registration can be cancelled at any time. Application for cancellation of voluntary registration can be considered even before the expiry of one year from the effective date of registration.

(3) Cancellation of registration – Not to affect tax liability [Section 29(3)] : The cancellation of registration under this Section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) Cancellation under SGST/ UTGST Act – Deemed cancellation under CGST Act [Section 29(4)] : The cancellation of registration under the SGST Act or the UTGST Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) On cancellation - Pay ITC availed on goods in stock or output tax whichever is higher [Section 29(5)] : Every registered person whose registration is cancelled shall pay an amount calculated in such manner as may be prescribed, by way of debit in the electronic credit ledger or electronic cash ledger,-

✓ equivalent to the credit of input tax in respect of— –

- inputs held in stock,
- inputs contained in semi-finished goods, or
- inputs contained in finished goods held in stock, or
- capital goods or plant and machinery

on the day immediately preceding the date of such cancellation, or

- ✓ the output tax payable on such goods,

whichever is higher.

Payment in case of capital goods : In case of capital goods or plant and machinery, the taxable person shall pay—

- ✓ an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed i.e. ITC involved in the remaining useful life in months of the capital goods will be reversed on pro-rata basis, taking the useful life as 5 years; or
- ✓ the tax on the transaction value of such capital goods or plant and machinery u/s 15,

whichever is higher.

23. Explain the procedure to be followed by registered person seeking cancellation of registration.

Ans-(1) Application for cancellation of registration [Rule 20 of CGST Rules,2017] : A registered person, other than –

- ✓ a person to whom a registration has been granted under rule 12 i.e. tax deductor or tax collector, or
- ✓ a person to whom a Unique Identity Number has been granted under rule 17,

seeking cancellation of his registration shall electronically submit an application in FORM GST REG-16, including therein,–

- ✓ the details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock and of capital goods held in stock on the date from which the cancellation of registration is sought,
- ✓ liability thereon,
- ✓ the details of the payment, if any, made against such liability, and

may furnish, along with the application, relevant documents in support thereof, at the common portal within a period of 30 days of the occurrence of the event warranting the cancellation, either directly or through a Facilitation Centre notified by the Commissioner.

(2) Cancellation of registration [Rule 22 of CGST Rules, 2017] :

(i) SCN for cancellation of registration [Rule 22(1)] : Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of 7 working days from the date of the service of such notice, as to why his registration shall not be cancelled.

(ii) Reply to SCN [Rule 22(2)] : The reply to the show cause notice shall be furnished in FORM GST REG–18 within 7 working days from the date of service of notice.

(iii) Order for Cancellation of Registration [Rule 22(3)] : Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his

registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG19, within a period of 30 days from—

- the date of application or, as the case may be,
- the date of the reply to the show cause issued under Rule 22(1) or Rule 21A(2),

cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5).

(iv) Dropping of proceedings for cancellation of Registration [Rule 22(4)] : Where the reply furnished under rule 22(2) or in response to the notice issued under rule 21(2A) is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG-20.

However, where the person instead of replying to the notice served under rule 22(1) for contravention of the provisions contained in Section 29(2)(b)/(c), furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20.

(v) Applicability to legal heirs [Rule 22(5)] : The provisions of Rule 22(3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

24. Explain the procedure to be followed by Proper Officer for Suspension of Registration.

Ans- Suspension of Registration [Rules 21A]

(1) Deemed suspension on application for cancellation of registration [Rule 21A(1)] : Where a registered person has applied for cancellation of registration under rule 20, the registration shall be deemed to be suspended from—

- ✓ the date of submission of the application; or
- ✓ the date from which the cancellation is sought,

whichever is later, pending the completion of proceedings for cancellation of registration under rule 22.

(2) Suspension of registration by Proper Officer [Rule 21A(2)] : Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22.

(3) Suspension of registration on account significant differences or anomalies in returns and statement of outward/ inward supplies [Rule 21A(2A)] :

Where,

a. a comparison of the returns furnished by a registered person under section 39 with the details of outward supplies furnished in FORM GSTR-1 as amended in FORM GSTR-1A if any [Amended by Notification No. 12/2024-CT dated 10-07-2024] or the details of

inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1 or in FORM GSTR-1A of the previous tax period, if any [Amended by Notification No. 12/2024-CT dated 10-07-2024], or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, or

b. there is a contravention of the provisions of rule 10A by the registered person i.e. bank account details has not been furnished,

the registration of such person shall be suspended.

Said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time.

In this intimation for suspension and notice for cancellation of registration, the said differences, anomalies or non-compliances and asking him to explain, within a period of 30 days, as to why his registration shall not be cancelled.

(4) Taxable supplies not to be effected/ return not to be filed during suspension [Rule 21A(3)] : A registered person, whose registration has been suspended, shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.

(5) Meaning of expression "shall not make any taxable supply" [Explanation] : The expression "shall not make any taxable supply" shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.

No refund during suspension period [Rule 21A(3A)] : In cases where the cancellation is initiated by the Department on its own and registration of a person has been suspended, such person shall not be granted any refund under section 54, during the period of suspension of his registration

(6) Revocation of suspension [Rule 21A(4)] : The suspension of registration shall be deemed to be revoked upon completion of the proceedings by the proper officer and such revocation shall be effective from the date on which the suspension had come into effect.

However, the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.

Revocation of suspension on furnishing of returns : Where the registration has been suspended under Rule 21A(2A) for contravention of the provisions contained in section 29(2)(b)/(c) i.e. non furnishing of returns and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

Revocation of suspension on furnishing of bank account details : Where the registration has been suspended under Rule 21(2A) for contravention of provisions of rule 10A and the

registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon compliance with the provisions of rule 10A10

(7) (Revised tax invoice and First return provisions applicable [Rule 21A(5)] : Where any order having the effect of revocation of suspension of registration has been passed, the provisions of Section 31(3) (a) i.e. Revised tax Invoice and section 40 i.e. First Return in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

25. Explain the procedure to be followed by Proper Officer for cancellation of registration.

Ans- Cancellation of registration [Rule 22 of CGST Rules, 2017] :

(i) SCN for cancellation of registration [Rule 22(1)] : Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of 7 working days from the date of the service of such notice, as to why his registration shall not be cancelled.

(ii) Reply to SCN [Rule 22(2)] : The reply to the show cause notice shall be furnished in FORM GST REG–18 within 7 working days from the date of service of notice.

(iii) Order for Cancellation of Registration [Rule 22(3)] : Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG19, within a period of 30 days from—

- ✓ the date of application or, as the case may be,
- ✓ the date of the reply to the show cause issued under Rule 22(1) or Rule 21A(2), cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5).

(iv) Dropping of proceedings for cancellation of Registration [Rule 22(4)] : Where the reply furnished under rule 22(2) or in response to the notice issued under rule 21(2A) is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG-20.

However, where the person instead of replying to the notice served under rule 22(1) for contravention of the provisions contained in Section 29(2)(b)/(c), furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20.

(v) Applicability to legal heirs [Rule 22(5)] : The provisions of Rule 22(3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

26. Explain the proceducer for revocation of cancellation of registration.

Ans- REVOCATION OF CANCELLATION OF REGISTRATION [SECTION 30 of Rules ,2017] [Amended by Notification No.38/2023 CT w.e.f. 01/10/2023]

(1) Application for restoration of registration to be made within 30 days from Service of Cancellation Order [Section 30(1)] : Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in such manner, within such time and subject to such conditions and restrictions, as may be prescribed.[Amended by finance Act,2023 w.e.f 01-01-2023]

(2) Acceptance/ Rejection of Application [Section 30(2)] : The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application.

Opportunity of being heard – Before Rejection : The application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

Restoration subject to prescribed conditions : Such revocation of cancellation of registration shall be subject to such conditions and restrictions, as may be prescribed. [Inserted by the Finance (No. 2) Act, 2024 w.e.f. 01-11-2024]

(3) Restoration of RC under SGST/ UTGST Act - Deemed restoration under CGST Act [Section 30(3)] : The revocation of cancellation of registration under the SGST Act or the UTGST Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

27. Explain the proceducer for revocation of cancellation of registration.

Ans- PROCEDURE FOR REVOCATION OF CANCELLATION OF REGISTRATION [RULE 23 of Rules,2017] [Amended by Notification No, 38/2023 CT w.e.f. 01,10-2023]:

(1) Restoration Application – to be filed in 90 days - [Rule 23(1)] : A registered person, whose registration is cancelled by the proper officer on his own motion, may, subject to the provisions of rule 10B, submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of 90 days from the date of the service of the order of cancellation of registration, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Extension - 180 days : Such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding 180 days.

Cancellation on account of failure to furnish returns – Restoration Application shall not be filed until returns furnished and tax has been paid : No application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person

to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.

Pending returns to be filed before revocation of cancellation of registration : All returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of 30 days from the date of order of revocation of cancellation of registration:

However, where the registration has been cancelled w.e.f., the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of 30 days from the date of order of revocation of cancellation of registration.

From the combined reading of aforesaid provisions, it can be inferred that where the registration has been cancelled with effect from the date of order of cancellation of registration,

(i) all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed, and

(ii) all returns required to be furnished in respect of the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of 30 days from the date of the order of revocation.

However, where the registration has been cancelled with retrospective effect, the application for revocation of cancellation of registration can be filed, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of 30 days from the date of order of such revocation of cancellation of registration.

(2) Order for Approval/ Rejection of restoration application [Rule 23(2)] :

a. Order for approval of restoration application : Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in FORM GST REG-22 within a period of 30 days from the date of the receipt of the application and communicate the same to the applicant.

b. Order for rejection of restoration application : The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in FORM GST REG-05, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

(3) Issuance of SCN before Rejection [Rule 23(3)] : The proper officer shall, before passing the rejection order, issue a notice in FORM GST REG-23 requiring the applicant to show cause as to why the application submitted for revocation should not be rejected and the applicant shall furnish the reply within a period of 7 working days from the date of the service of

the notice in FORM GST REG-24.

(4) Disposal of application [Rule 23(4)] : Upon receipt of the information or clarification in FORM GST REG-24, the proper officer shall proceed to dispose of the application in the manner specified in Rule 23(2) within a period of 30 days from the date of the receipt of such information or clarification from the applicant.