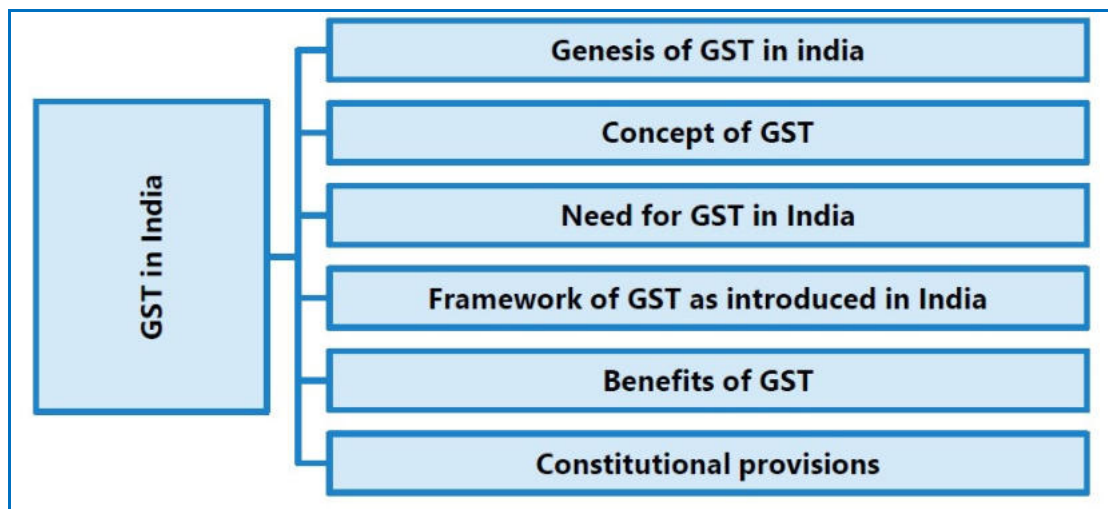


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CHAPTER - 1**GST In India An Introduction****CHAPTER OVERVIEW****1.1 OVERVIEW OF TAXATION SYSTEM IN INDIA**

In any Welfare State, it is the prime responsibility of the Government to fulfill the increasing developmental needs of the country and its people by way of public expenditure. India, being a developing economy, has been striving to fulfill the obligations of a Welfare State with its limited resources; the primary source of revenue being the levy of taxes. Though the collection of tax is to augment as much revenue as possible to the Government to provide public services, over the years it has been used as an instrument of fiscal policy to stimulate economic growth. Thus, taxes are collected to fulfill the socio-economic objectives of the Government.

**Collect taxes from the citizens as honeybees collect nectar from the flowers,
gently and without inflicting pain.**

-Chanakya

Taxes, after all, are dues that we pay for the privileges of membership in an organized society.

-Franklin D. Roosevelt

- Now, the question arises, what is tax? A tax is defined as a "pecuniary burden laid upon individuals or property owners to support the Government, a payment exacted by legislative authority. A tax "is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority".

- In simple words, tax is nothing but money that people pay to the Government, which is used to provide public services.
- A direct tax is a kind of charge, which is imposed directly on the taxpayer and paid directly to the Government by the persons (juristic or natural) on whom it is imposed. A direct tax cannot be shifted by the taxpayer to someone else. A significant direct tax imposed in India is income tax.
- If the taxpayer is just a conduit and at every stage the tax-incidence is passed on till it finally reaches the consumer, who really bears the brunt of it, such tax is indirect tax. An indirect tax can be shifted by the taxpayer to someone else.
- Its incidence is borne by the consumers who ultimately consume the product or the service, while the immediate liability to pay the tax may fall upon another person such as a manufacturer or provider of service or seller of goods.
- Also called consumption taxes, they are regressive in nature because they are not based on the principle of ability to pay. All the consumers, including the economically challenged bear the brunt of the indirect taxes equally.
- Indirect taxes are levied on consumption, expenditure, privilege, or right but not on income or property. Earlier, a number of indirect taxes were levied in India, namely, excise duty, customs duty, service tax, central sales tax (CST), value added tax (VAT), entry tax, purchase tax, entertainment tax, tax on lottery, betting and gambling, luxury tax, tax on advertisements, etc.
- However, indirect taxation in India witnessed a paradigm shift on July 01, 2017 with usherance into a unified indirect tax regime wherein a large number of Central and State indirect taxes were amalgamated into a single tax – Goods and Services Tax (GST). The introduction of GST has been a very significant step in the field of indirect tax reforms in India. Customs duty continues in post-GST regime.
- Economists world over agree that direct and indirect taxes are complementary and therefore, a rational tax structure should incorporate in itself both types of taxes.
- According to the renowned physicist Albert Einstein, “The hardest thing in the world is to understand income tax.” Nevertheless, we are committed to ensure that your journey to India's historic indirect tax system is effortless, engaging, and enjoyable!

At Intermediate level, we will study the select provisions of substantive and procedural law of GST - concept of supply, charge of GST, exemptions, basic concepts of time, value and place of supply, input tax credit, registration, tax invoice, credit and debit notes, accounts and records, e-way bill, returns & payment. Remaining provisions of the GST law and entire Customs law will be discussed at Final level.

1.2 GENESIS OF GST IN INDIA

- In the year 2000, the then Prime Minister mooted the concept of GST and set up a committee to design a Goods and Services Tax (GST) model for the country. In 2003, the Central Government formed a task force on Fiscal Responsibility and Budget Management, which in 2004 strongly recommended fully integrated ‘GST’ on national basis.
- Subsequently, the then Union Finance Minister, Shri P. Chidambaram, while presenting the Union Budget (2006-2007), announced that GST would be introduced from April 1, 2010. Since then, GST missed several deadlines and continued to be shrouded by the clouds of uncertainty.



- The talks of ushering in GST, however, gained momentum in the year 2014 when the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST in the Parliament on 19th December, 2014. The Lok Sabha passed the Bill on 6th May, 2015 and Rajya Sabha on 3rd August, 2016. Subsequent to ratification of the Bill by more than 50% of the States, Constitution (122nd Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became the **Constitution (101st Amendment) Act, 2016**, which paved the way for introduction of GST in India.
- In the following year, on 27th March, 2017, the Central GST legislations - Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were introduced in Lok Sabha. Lok Sabha passed these bills on 29th March, 2017 and with the receipt of the President's assent on 12th April, 2017, the Bills were enacted.



It's a win for democratic ethos of India and a victory for everyone, GST will improve the way of doing business.

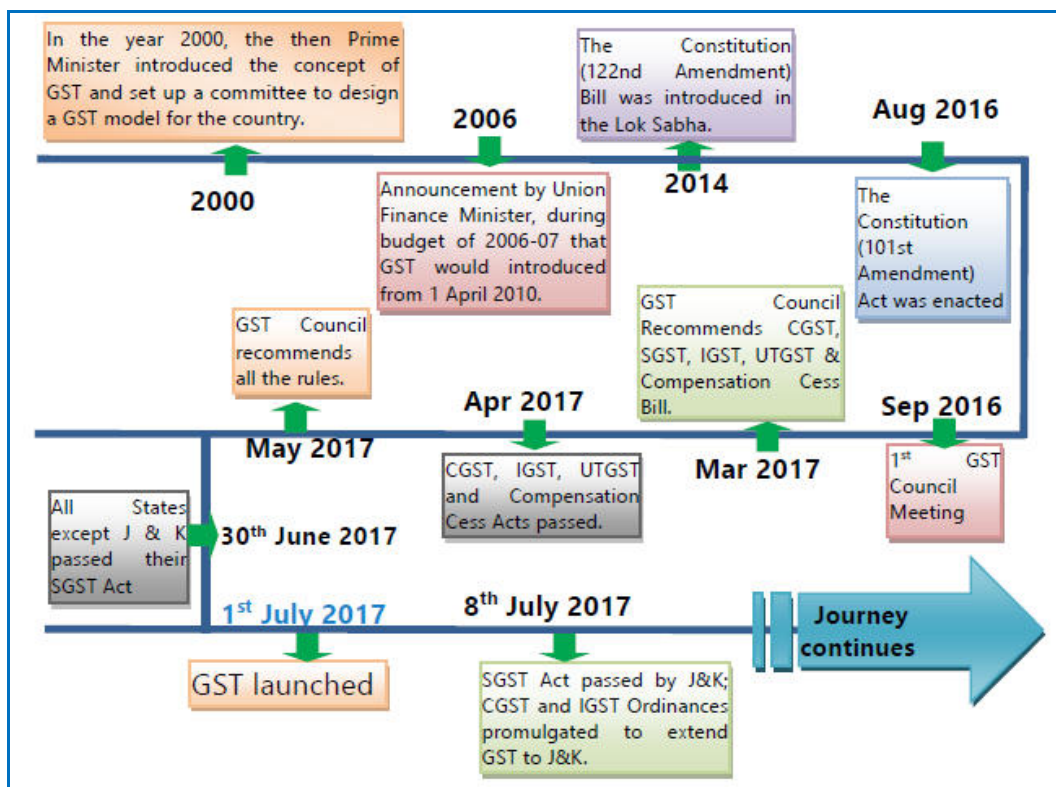
-Narendra Modi

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

It is not the end but start of the Journey.

-Arun Jaitely

- GST law was extended to Jammu and Kashmir on 8th July, 2017.

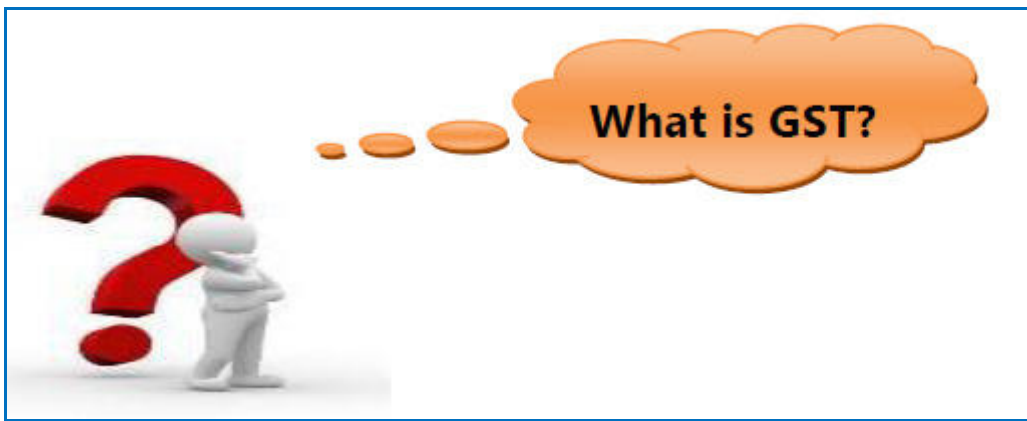


GST is a path breaking indirect tax reform which attempts to create a common national market. GST has subsumed multiple indirect taxes like excise duty, service tax, VAT, CST, luxury tax, entertainment tax, entry tax, etc.

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



1.3 CONCEPT OF GST



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

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

VALUE ADDED TAX

CONTINUOUS CHAIN OF TAX CREDITS

BURDEN BORNE BY FINAL CONSUMER

NO CASCADING OF TAXES

Manufacturer (₹)	Distributor (₹)	Retailer (₹)	Consumer (₹)
Cost: 1,00,000 GST @ 18%= 18,000	Cost: 1,00,000 Profit: 11,200 Sale Price: 1,11,200 GST @ 18% 20,016	Cost: 1,11,200 Profit: 24,640 Sale Price: 1,35,840 GST@ 18% 24,451.20	Cost : 1,60,291.2 (1,35,840+24,451.20)
Input Tax Credit= NIL	Input Tax Credit= 18,000	Input Tax Credit= 20,016	Input Tax Credit= NIL
Paid to Government GST = 18,000	Paid to Government GST = 2,016 (Output tax – Input tax)	Paid to Government GST= 4,435.20 (Output tax – Input tax)	Tax Borne by the Consumer 18,000 + 2,016 + 4, 435.20 = 24,451.20
Value Addition = 1,00,000 GST @ 18% = 18,000	Value Addition= 11,200 GST @ 18% = 2,016	Value Addition = 24,640 GST @ 18% = 4,435.20	Value Addition = NIL

1.4 NEED FOR GST IN INDIA



Under the earlier indirect tax regime, despite the introduction of the principle of taxation of value added in India – at the Central level in the form of CENVAT (Central Excise) and at the State level in the form of State VAT - its application always remained piecemeal and fragmented on account of the following reasons:

- Certain transactions were subject to double taxation and were taxed as both goods and services, since under the earlier regime, distinction between goods and services was often blurred.

Example 1 : Under the earlier tax regime, software was subject to both service tax and VAT. This was so because both sale of goods and provision of service were involved and therefore taxable event under both the Statutes i.e. respective VAT law and service tax law got triggered. This aspect has been taken care of under GST law.

- CENVAT did not include chain of value addition in the distributive trade after the stage of production. Similarly, in the State-level VAT, CENVAT load on the goods was not removed. This led to the cascading of taxes. Below mentioned example illustrates that under the earlier indirect tax regime, when the goods were manufactured and sold, both central excise duty (CENVAT) and State-Level VAT were levied.

Example 2 : Under the earlier tax regime, if goods were manufactured for ₹ 1000/- and excise duty was payable @ 12.5% and VAT was payable @ 14.30%, the billing was being done as under:

Assessable value of goods under excise law	₹ 1,000
Excise duty @ 12.5%	₹ 125
Taxable value for VAT	₹ 1,125
VAT @ 14.30%	₹ 160.88
Total invoice value	₹ 1,285.88

- Though CENVAT and State-Level VAT were essentially value added taxes, set off of one against the credit of another was not possible as CENVAT was a central levy and State-Level VAT was a State levy.
- There were several taxes in the States, such as, Luxury Tax, Entertainment Tax, etc. which were not subsumed in the VAT. Hence for a single transaction, multiple taxes in multiple forms were required to be paid.
- VAT on goods was not integrated with tax on services, at the State level, to remove the cascading effect of service tax. With service sector being the fastest growing sector in the economy, the exclusion of services from the tax base of the States potentially eroded their tax- buoyancy.
- CST was another source of distortion in terms of its cascading nature since it was non-VATABLE. Being an origin based tax, CST was also against one of the basic principles of consumption taxes that tax should accrue to the jurisdiction where consumption takes place.

Example 3 : Under the earlier tax regime, if a dealer in Delhi purchases goods from a manufacturer in Punjab for ₹ 1000 + ₹ 20 (2% CST) = ₹ 1020/- and sells such goods within Delhi for ₹ 1200/-. The tax rate on sales is 12.5% and hence output tax liability is ₹ 150/-. Credit of ₹ 20/- is not allowed while making payment of ₹ 150/- and hence the dealer has to pay ₹ 150 as CONTAINER.

Non-inclusion of several local levies in State VAT such as luxury tax, entertainment tax, etc.


Cascading of taxes on account of (i) levy of Non-VATable CST and (ii) inclusion of CENVAT in the value for imposing VAT

No CENVAT after manufacturing stage

Non-integration of VAT & service tax

Double taxation of certain transactions as both goods and services

GST - A cure for ills of existing Indirect tax regime



GOODS AND SERVICES TAX (GST)
The crucial piece in India's development strategy

- Creating one Economic India
- Fill to 'Make in India' initiative
- Unfettered flow of goods & services
- Increased economic activity to boost employment

NATION TAX MARKET

A comprehensive tax structure covering both goods and services viz. Goods and Services Tax (GST) addresses most of the above stated issues. 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.



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".

1.5 FRAMEWORK OF GST AS INTRODUCED IN INDIA

I] Dual GST:

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



II] CGST/SGST/UTGST/IGST

- GST is a destination-based tax applicable on all transactions involving supply of goods or services or both for a consideration subject to exceptions thereof. GST in India comprises of Central Goods and Services Tax (CGST) - levied and collected by Central Government, State Goods and Services Tax (SGST) - levied and collected by State

CGST/SGST/UTGST/IGST

Governments/Union Territories with Legislatures and Union Territory Goods and Services Tax (UTGST) – levied and collected by Union Territories without Legislatures, on intra-State supplies of taxable goods and/or services. As a general rule, where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as intra-State supply of goods or services respectively.

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



III] Legislative Framework

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

Legislative Framework

Example 4 : In Ladakh, CGST and UTGST is levied on supply of goods or services or both. In Delhi, CGST and SGST is levied on supply of goods or services or both.

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

IV] Classification of goods and services

- HSN (Harmonised System of Nomenclature) is used for classifying the goods under the GST. Chapters referred to in the Rate Schedules for goods are the Chapters of the First Schedule to the Customs Tariff Act, 1975.

Classification of goods and 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). SAC (Services Accounting Code) is used for classifying the services under the GST like HSN for goods.

V] Composition Scheme

- In GST regime, tax (i.e. CGST and SGST/UTGST for intra-State supplies and IGST for inter-State supplies) is payable by every taxable person and in this regard provisions have been prescribed in the law.
- However, for providing relief to small businesses, manufacturers, service providers, suppliers of food articles, traders, etc., making intra-State supplies, a simpler method of paying taxes is prescribed, known as composition levy.

Composition Scheme

VI] 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. Different threshold limits have been prescribed for various States and Union Territories depending upon the fact whether the supplier is engaged exclusively in supply of goods, or exclusively in supply of services or in supply of both goods and services. The threshold limit of aggregate turnover prescribed for various States/UTs are as follows:

Registration

States with threshold limit of ₹ 10 lakh for supplier of goods and/or services	States with threshold limit of ₹ 20 lakh for supplier of goods and/or services	States with threshold limit of ₹ 20 lakh for exclusive supplier of services/both goods and services and threshold limit of ₹ 40 lakh for exclusive supplier of goods making only intra- State supplies
<ul style="list-style-type: none"> • Manipur • Mizoram • Nagaland • Tripura 	<ul style="list-style-type: none"> • Arunachal Pradesh • Meghalaya • Sikkim • Uttarakhand • Puducherry • Telangana 	<ul style="list-style-type: none"> • All other States

However, in certain specified cases mandatory registration is required under GST irrespective of the quantum of aggregate turnover.

VII] Exemptions

Apart from providing relief to small-scale business, the law also contains provisions for granting exemption from payment of tax on essential goods and/or services.

Exemptions

VIII] 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 against the IGST payable on inter-State supply made by him (*order of utilisation of credit is explained in brief below*).

Seamless flow of credit

- The buyer in the importing State is allowed to avail the credit of IGST paid on inter-State purchases

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.
- **Order of utilization of credit** - There is a specified order in which ITC should be utilized. First, IGST credit should be utilized towards IGST payment, and then towards payment of CGST and SGST/UTGST in any order and in any proportion.
- After entire ITC of IGST is utilized, ITC of CGST should be utilized for payment of CGST and IGST in that order. Thereafter, ITC of SGST /UTGST should be utilized for payment of SGST/UTGST and IGST in that order.
- **It may be noted that ITC of CGST cannot be utilized for payment of SGST/UTGST and vice versa.** Also, ITC of SGST/UTGST should be utilized for payment of IGST, only after ITC of CGST has been utilized fully.
- The seamless flow of credit under GST, in case of intra-State and inter-State supplies, can be better understood with the help of the following illustrations:

Intra-State Supply

ILLUSTRATION 1 :

In case of local supply of goods/ services, the supplier would charge dual GST i.e., CGST and SGST at specified rates on the supply.

(i) Supply of goods/ services by A to B

	Amount (in ₹)
Value charged for supply of goods/ services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by A from B for local supply of goods/ services	11,800

The CGST & SGST charged on B for supply of goods/services will be remitted by A to the appropriate account of the Central and State Government respectively.

A is the first stage supplier of goods/services and hence, does not have credit of CGST, SGST or IGST.

(ii) Supply of goods/services by B to C – Value addition @ 20%

B will avail credit of CGST and SGST paid by him on the purchase of goods/ services and will utilise such credit for being set off against the CGST and SGST payable on the supply of goods/services made by him to C.

	Amount (in ₹)
Value charged for supply of goods/ services (₹ 10,000 × 120%)	12,000
Add: CGST @ 9%	1080
Add: SGST @ 9%	1080
Total price charged by B from C for local supply of goods/ services	14160

Computation of CGST, SGST payable by B to Government

	Amount (in ₹)
CGST payable	1080
Less: Credit of CGST	900
CGST payable to Central Government	180
SGST payable	1080
Less: Credit of SGST	900
SGST payable to State Government	180

Note: Rates of CGST and SGST have been assumed to be 9% each for the sake of simplicity.

Statement of revenue earned by Central and State Government

Transaction	Revenue to Central Government (₹)	Revenue to State Government (₹)
Supply of goods/services by A to B	900	900
Supply of goods/services by B to C	180	180
Total	1080	1080

Inter-State Supply

ILLUSTRATION 2 :

In case of inter-State supply of goods/ services, the supplier would charge IGST at specified rates on the supply.

(i) Supply of goods/services by X of State 1 to A of State 1

	Amount (in ₹)
Value charged for supply of goods/services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by X from A for intra-State supply of goods/services	11,800

X is the first stage supplier of goods/services and hence, does not have any credit of CGST, SGST or IGST.

(ii) Supply of goods/services by A of State 1 to B of State 2 – Value addition @ 20%

	Amount (in ₹)
Value charged for supply of goods/services (₹ 10,000 x 120%)	12,000
Add: IGST @ 18%	2,160
Total price charged by A from B for inter-State supply of goods/services	14,160

Computation of IGST payable to Government

	Amount (in ₹)
IGST payable	2,160
Less: Credit of CGST	900
Less: Credit of SGST	900
IGST payable to Central Government	360

The IGST charged on B of State 2 for supply of goods/services will be remitted by A of State 1 to the appropriate account of the Central Government. State 1 (Exporting State) will transfer SGST credit of ₹ 900 utilised in the payment of IGST to the Central Government.

(iii) Supply of goods/services by B of State 2 to C of State 2 – Value addition @ 20%

B will avail credit of IGST paid by him on the purchase of goods/services and will utilise such credit for being set off against the CGST and SGST payable on the local supply of goods/services made by him to C.

	Amount (in ₹)
Value charged for supply of goods/ services (₹ 12,000 × 120%)	14,400
Add: CGST @ 9%	1,296
Add: SGST @ 9%	1,296
Total price charged by B from C for local supply of goods/services	16,992

Computation of CGST, SGST payable to Government

	Amount (in ₹)
CGST payable	1,296
Less: Credit of IGST	1,296
CGST payable to Central Government	Nil
SGST payable	1,296
Less: Credit of IGST (₹ 2,160 - ₹ 1,296)	864
SGST payable to State Government	432

Central Government will transfer IGST credit of ₹ 864 utilised in the payment of SGST to State 2 (Importing State).

Note: Rates of CGST, SGST and IGST have been assumed to be 9%, 9% and 18% respectively for the sake of simplicity.

Statement of revenue earned by Central and State Governments

Transaction	Revenue to Central Government (₹)	Revenue to Government of State 1 (₹)	Revenue to Government of State 2 (₹)
Supply of goods/services by X to A	900	900	
Supply of goods/services by A to B	360		
Transfer by State 1 to Centre	900	(900)	
Supply of goods/services by B to C			432
Transfer by Centre to State 2	(864)		864
Total	1,296	Nil	1,296

IX] GST Common Portal

- Before GST, since the Centre and State indirect tax administrations worked under different laws, regulations, procedures and formats, their IT infrastructure and systems were also independent of each other. Integrating them for GST implementation was complex since it required integrating the entire indirect tax ecosystem so as to bring all the tax administrations (Centre, State and Union Territories) to the same level of IT maturity with uniform formats and interfaces for taxpayers and other external stakeholders.
- Besides, GST being a **destination based tax**, the inter-State trade of goods and services (IGST) needed a robust settlement mechanism amongst the States and the Centre. A Common Portal was needed which could act as a clearing house and verify the claims and inform the respective Governments to transfer the funds. This was possible only with the help of a strong IT infrastructure.
- Resultantly, Common GST Electronic Portal – **www.gst.gov.in** – a website managed by Goods and Services Network (GSTN) [a company incorporated under the provisions of section 8 of the Companies Act, 2013] is set by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States.
- The GST portal is accessible over Internet (by taxpayers and their CAs/Tax Advocates etc.) and Intranet 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.

GST Common Portal



- The functions of the GSTN include facilitating registration; forwarding the returns to Central and State authorities; computation and settlement of IGST; matching of tax payment details with banking network; providing various MIS reports to the Central and the State Governments based on the taxpayer return information; providing analysis of taxpayers' profile.
- However, it is important to note that the Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in [managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India]. E-way bill is an electronic document generated on the GST portal evidencing movement of goods.



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



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

X] GSPs/ASPs

- GSTN has selected certain Information Technology, Information Technology enabled Services and financial technology companies, to be called GST Suvidha Providers (GSPs). GSPs have access to GST System and have the capability to develop applications to be used by taxpayers for interacting with the GSTN.
- GSP develops applications having features like return filing, reconciliation of purchase register data with auto populated data for acceptance/rejection/modification, dashboards for taxpayers for quick monitoring of GST compliance activities. They may also provide role-based access to divide various GST related activities like uploading invoice, filing returns etc., among different set of users inside a company (medium or large companies will need it), applications for tax professional to manage their client's GST compliance activities, integration of existing accounting packages/ERP with GST System, etc.
- GSP is an additional channel being made available for facilitating the taxpayers for performing some of the functions and use of their services is optional. GSPs may take the help of Application Service Providers (ASPs) who act as a link between taxpayers and GSPs.

GSPs/ASPs**XI] Compensation Cess**

- A GST Compensation Cess at specified rate is imposed under the Goods and Services Tax (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed on value of taxable supply. Compensation cess is leviable on intra-State supplies and inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST. Initially, it was levied for a period of 5 years upto 30th June, 2022. However, its levy and collection has been extended till **31st March, 2026**.
- Compensation is to be provided to a State for a period of 5 years from the date on which the State brings its SGST Act into force.

Compensation Cess**XII. GST – A tax on goods and services**

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

- **Alcoholic liquor for human consumption:** is outside the realm of GST. The manufacture/production of alcoholic liquor continues to be subjected to **State excise duty** and inter-State/intra-State sale of the same is subject to **CST/VAT** respectively.
- **Petroleum crude, diesel, petrol, ATF and natural gas:** As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council.



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

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

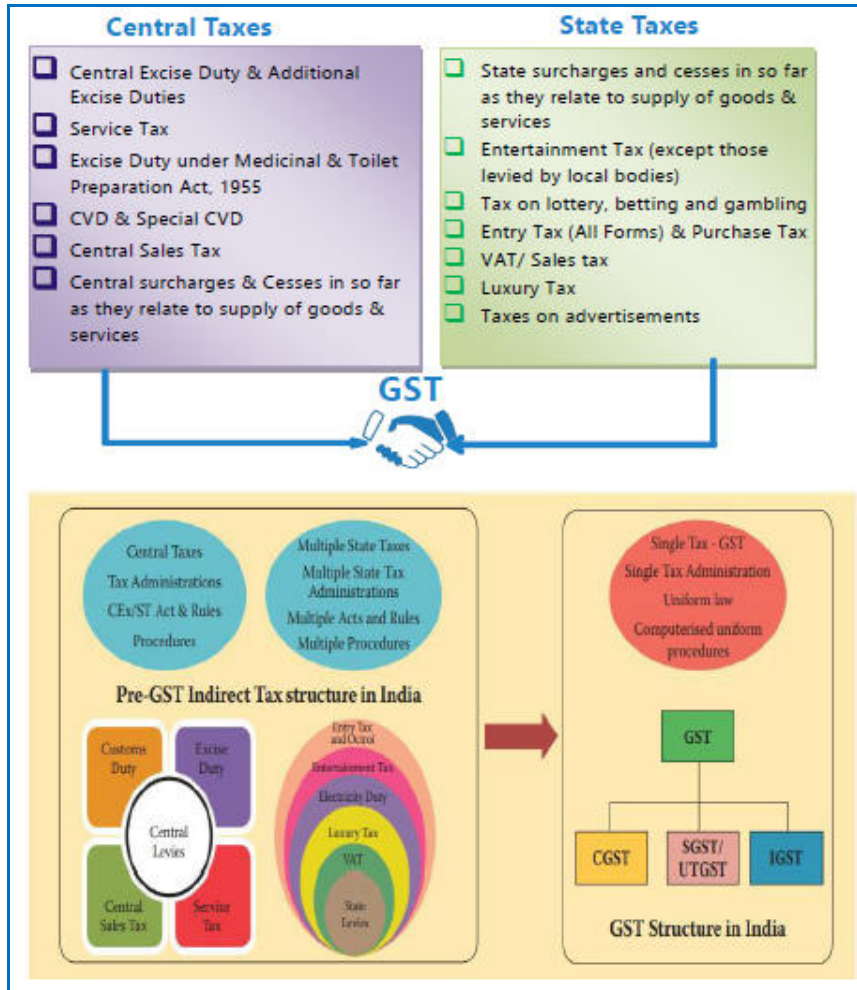
- **Opium, Indian hemp and other narcotic drugs and narcotics:** Opium, Indian hemp and other narcotic drugs and narcotics are within the purview of GST, i.e. GST is leviable on them. However, State Governments have also retained the power to levy excise duties on such products manufactured in India.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

Taxes subsumed in GST

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

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

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



Within GST or outside GST?



Alcohol for human consumption.

Power to tax remains with the State.



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

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



Entertainment tax levied by local bodies.

Power to tax remains with the local bodies.



Tobacco

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

Questions 1 :

Which of the following statements is incorrect?

- Alcoholic liquor for human consumption is outside the realm of GST
- Manufacture/ production of alcoholic liquor is subject to State excise duty.
- Inter- State/intra-State sale of the alcohol is subject to CST/ VAT respectively.
- Alcoholic liquor for human consumption is subject to GST.

1.6 BENEFITS OF GST

GST is introduced with a vision to bring benefits to all the stakeholders of industry, Government and the citizens. GST is a win-win situation for the entire country. It is envisaged that GST will accrue following significant benefits to the stake holders:



Industry



Government



Citizens

Benefits to economy

- Creation of unified national market :** GST aims to make India a common market with common tax rates and procedures and remove the economic barriers, thereby paving the way for an integrated economy at the national level.
- Boost to 'Make in India' initiative:** GST has given 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. Further, all imported goods are being charged integrated tax (IGST) which is more or less equivalent to CGST + SGST. This brings parity in taxation on local and imported goods or services.



- Boost to investments and employment:** The subsuming of major Central and State taxes in GST, complete and comprehensive set-off of input tax on goods and services and phasing out of Central Sales Tax (CST) would reduce the cost of locally manufactured goods and services. Resultantly, the competitiveness of Indian goods and services in the international market may increase to give boost to investments and Indian exports. With a boost in exports and manufacturing activity, more employment would be generated and GDP would increase.



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 in tax structure. The uniformity in laws, procedures and tax rates across the country makes doing business easier. Common definitions, common forms/ formats, common interface through GST portal result in efficiencies and synergies across the board.
- Certainty in tax administration:** Common procedures for registration of taxpayers, refund of taxes, uniform formats of tax return, common tax base, common system of classification of goods or services along with timelines for every activity ensures certainty in tax administration across India.



Easy tax compliance

- Automated procedures with greater use of IT:** GST is largely technology driven. The interface of the taxpayer with the tax authorities is through the common portal (GSTN). There are simplified and automated procedures for various processes such as registration, returns, refunds, tax payments. All processes, like applying for registration, filing of returns, payment of taxes, filing of refund claims etc., are online through GSTN. The human interface between the taxpayer and the tax administration has greatly reduced thereby leading to speedy decisions. The measures like e-Invoice and auto populated returns has eased the compliance for the registered person.
- Easier tax compliance:** Harmonization of laws, procedures and rates of tax has made compliance easier and simple. There are common definitions, common forms/ formats, common interface through common portal (GSTN) resulting in efficiencies and synergies across the board. All this has also helped in reduction in compliance costs, alleviate the need for multiple record keeping for a variety of taxes leading to lesser investment of resources and manpower in maintaining records to the registered person.



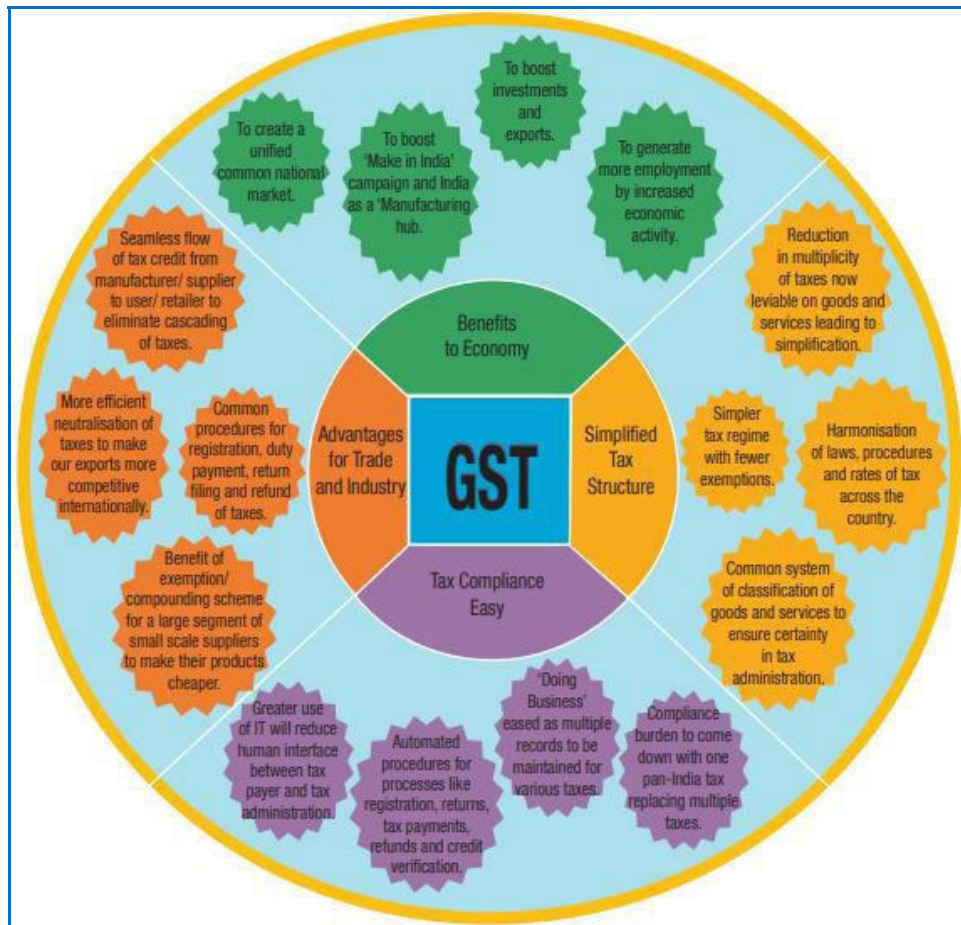
Advantages for trade and industry

- Benefits to industry:** Average tax burden on trade and industry has come down, which has resulted in reduction in prices of goods and services. This has resulted in more consumption, which in turn means more production and thereby boosting the growth of the industries.
- Mitigation of ill effects of cascading:** GST is a destination-based consumption tax. It has been designed in a manner so that tax is collected at every stage and the credit of tax paid at the previous stage is available to set off the tax to be paid at the next stage of transaction. This eradicates “tax on tax” and allows cross utilization of input tax credits which benefit the industry by making the entire supply chain tax neutral.



- Thus, GST prevents cascading of taxes by providing a comprehensive input tax credit mechanism across the entire supply chain. Such a seamless availability of input tax credit across goods or services at every stage of supply helps in mitigating the ill effects of cascading, enables streamlining of business operations, improving competitiveness in the markets in India and across globe.
- Seamless flow of credit**
- Benefits to small traders and entrepreneurs:** GST has increased the threshold limit for GST registration for small businesses. Small businesses have also been provided the benefit of composition scheme. With the creation of a seamless national market across the country, small enterprises will have an opportunity to expand their national footprint with minimal investment.

Composition Levy Scheme

**Questions 2 :**

Presently, _____ is leviable on _____ of petroleum and diesel.

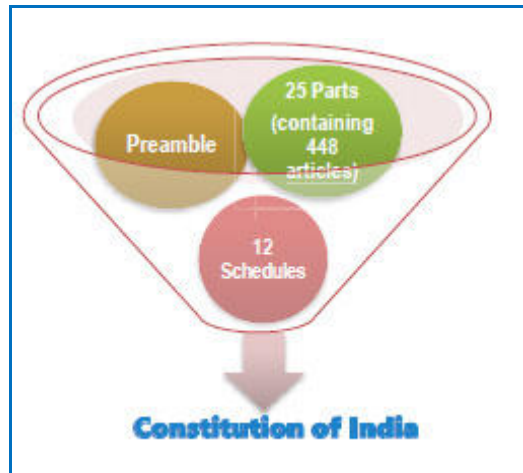
- GST; supply
- Central excise duty; manufacture/production
- Central sales tax; inter-State sale
- Value Added Tax; intra-State sale
- State excise duty; manufacture

Choose the most appropriate option

- | | |
|--------------------------|-----------------|
| (a) (ii), (iii) and (iv) | (b) (i) |
| (c) (i) and (ii) | (d) (i) and (v) |

1.7 CONSTITUTIONAL PROVISIONS

- India has a three-tier federal structure, comprising the Union Government, the State Governments and the Local Government. The power to levy taxes and duties is distributed among the three tiers of Governments, in accordance with the provisions of the Indian Constitution.
- The Constitution of India is the supreme law of India. It consists of a Preamble, 25 parts containing 448 Articles and 12 Schedules.



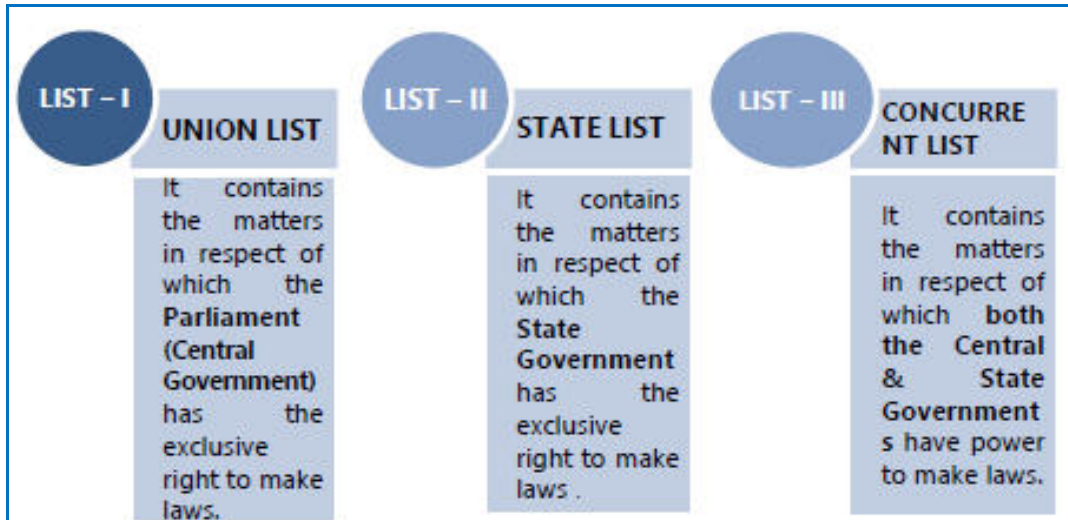
- Power to levy and collect taxes whether, direct or indirect emerges from the Constitution of India. In case any tax law, be it an act, rule, notification or order is not in conformity with the Constitution, it is called *ultra vires* the Constitution and is illegal and void.

Those of us who understand human history know the role taxation has played in shaping the destiny of mankind. The matter of taxes – more specifically, the right to tax – is clearly no stranger to controversy and has frequently served as the catalyst for revolutionary change.

-Owen Arthur

- Thus, a study of the basic provisions of the Constitution is essential for understanding the genesis of the various taxes being imposed in India. The significant provisions of the Constitution relating to taxation are :
 - I. **Article 265 :** Article 265 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. **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 Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.
 - III. **Article 246 :** It gives the respective authority to Union and State Governments for levying tax.

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.



Entries 82 to 91 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.

Income tax is levied by virtue of Entry 82 - Taxes on income other than agricultural income and customs duty vide Entry 83 - Duties of customs including export duties of the Union List.

Power to levy Goods and Services Tax (GST) has been conferred by Article 246A of the Constitution which was introduced by the Constitution (101st Amendment) Act, 2016. Before discussing the significant provisions of the Constitution (101st Amendment) Act, 2016, let us first understand why there arose a need for such constitutional amendment.

Need for 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.
- In the case of inter-State sales, the Centre had the power to levy a tax (the Central Sales Tax), but the tax was collected and retained entirely by the States (from where the movement of goods start). Services were exclusively taxed by the Centre together with applicable cesses, if any. Besides, there were State specific levies like entry tax, Octroi, luxury tax, entertainment tax, lottery and betting tax, local taxes levied by Panchayats etc.
- 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.
- Introduction of the GST required amendment in the Constitution to enable integration of the central excise duty, additional duties of customs, State VAT and certain State specific taxes and service tax into a comprehensive Goods and Services Tax and to empower both Centre and the States to levy and collect it.
- Consequently, Constitution (101st Amendment Act), 2016 (hereinafter referred to as CAA) was passed. It has 20 sections. Newly inserted Article 279A empowering President to constitute GST Council was notified on 12.09.2016. Remaining provisions were notified with effect from 16.09.2016.



- CAA also provides for compensation to States for loss of revenue on account of introduction of goods and services tax. Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years.

Significant provisions of Constitution (101st Amendment) Act, 2016 Key changes in brief

- Concurrent powers on Parliament and State Legislatures to make laws governing taxes on goods and services.
- Levy of integrated goods and services tax on inter-State transactions of goods and services to be levied and 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.
- On the following products GST shall not be levied, till a date to be notified on the recommendations of the GST Council:
 - Petroleum Crude
 - High Speed Diesel
 - Motor Spirit (commonly known as Petrol)
 - Natural Gas
 - Aviation Turbine Fuel
- 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.
- The concept of 'declared goods of special importance' under the Constitution is done away with. Earlier, certain restrictions were placed on the powers of States in regard to tax on such goods.
- Transitional provisions to take care of any inconsistency with respect to any law relating to tax on goods or services or both, in force in any State. Such tax to continue to be in force until amended or repealed or until expiration of one year from commencement of GST, whichever is earlier.

Questions 3 :

_____ is leviable on _____ of Tobacco

- (i) GST; supply
- (ii) Central excise duty; manufacture
- (iii) Central sales tax; inter-State sale
- (iv) Value Added Tax; intra-State sale
- (v) State excise duty; manufacture

Choose the most appropriate option.

- | | |
|-------------------------|-----------------|
| (a) (ii), (iii) and(iv) | (b) (i) |
| (c) (i) and (ii) | (d) (i) and (v) |

Questions 4 :

_____ is leviable on _____ of opium and Indian hemp.

- (i) GST; supply
- (ii) Central excise duty; manufacture
- (iii) Central sales tax; inter-State sale
- (iv) Value Added Tax; intra-State sale
- (v) State excise duty; manufacture

Choose the most appropriate option.

- | | |
|-------------------------|-----------------|
| (a) (ii), (iii) and(iv) | (b) (i) |
| (c) (i) and (ii) | (d) (i) and (v) |

Key changes in detail

Significant amendments made by Constitution Amendment Act are discussed below in detail:

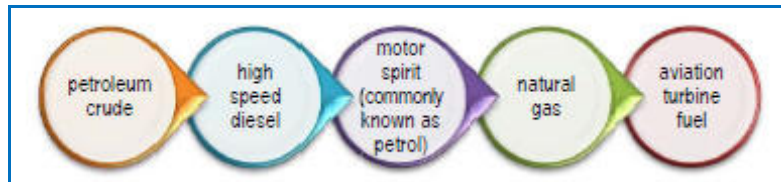
V. Article 246A: Power to make laws with respect to Goods and Services Tax:**Newly inserted Article 246A**

- (1) 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.
- (2) 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.

Explanation - The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.

- This article grants power to Centre and State Governments to make laws with respect to GST imposed by Centre or such State.
- Centre has the exclusive power to make laws with respect to GST in case of inter-State supply of goods and/or services.
- However, in respect to the following goods, the aforesaid provisions shall apply from the date recommended by the GST Council:

Article 246A



- 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.

VI. Article 248 amended: Residuary powers of legislation amended

- 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.
- This article has been amended. Now, this power has been subjected to Article 246A, namely the power to make laws with respect to goods and service tax to be imposed by the Centre and States.

Article 248

VII. Power of Parliament to legislate with respect to a matter in the State List, in the national interest/in case of emergency, extended to GST provided under Article 246A

- 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.
- Similarly, Article 250 grants the Parliament the power to make laws with respect to any of the matters enumerated in the State List if a proclamation of Emergency is in operation.
- Articles 249 and 250 have been amended to grant power to Parliament to make laws with respect to the Goods and Services Tax provided under Article 246A also alongwith the matters in the State list, in the national interest/in case of emergency.

Article 249

Article 250

VIII. Article 268: Duties levied by the Centre but collected and appropriated by the States

- Article 268 pertains to the duties levied by the Centre but 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 CAA 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 service tax to be levied by the Centre and States.

Article 268

IX. Article 268A: Article 268A empowering Union to levy service tax omitted

Service tax was levied in 1994 under the residual Entry 97 of the Union list. Article 268A was inserted by the Constitution (88th) Amendment Act, 2003 to usher in service tax under a separate entry 92C in the Union List. However, it was not notified ever since. This article has been omitted by the CAA.

Article 268A**X. Article 269A: Levy and collection of GST on inter-State supply****Newly inserted article 269A.**

Levy and collection of goods and services tax in course of inter-State trade or commerce

1. Goods and services tax 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 Goods and Services Tax Council.

Explanation : For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

2. The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.
3. Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.
4. Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.
5. Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

- 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 Goods and Services Tax Council.
- 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.
- 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/State1 respectively. This is to facilitate transfer of funds between the Centre and the States.
- 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.

Article 269A

XI. Article 270: Distribution of the goods and services tax (GST) between the Centre and the States

- Article 270 is amended to provide for distribution of the goods and Centre and the States, by order of the President after considering recommendations of the 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.

Article 270**XII. Article 271 amended**

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.

Article 271**XIII. Definitions of ‘Goods and Services Tax’, ‘Services’ and ‘State’ incorporated under Article 366**

The terms Goods and Services Tax, services and State have been defined under respective clauses of Article 366 as follows:

- **Goods and services tax** means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. Consequently, GST can be levied on supply of all goods and services except alcoholic liquor for human consumption.
- **Services** means anything other than goods.
- **State**, with reference to articles 246A, 268, 269, 269A and article 279A, includes a Union territory with Legislature.

Article 366(12A)**Article 366(26A)****Article 366(26B)**

Definition of “goods”: The term goods has already been defined under clause (12) of Article 366 in an inclusive manner to provide that **“goods includes all materials, commodities, and articles”**.

XIV. Article 286: Article 286 imposing restrictions as to imposition of tax on the sale or purchase of goods amended

- 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.

Article 286

XV. GST Council: Article 279A

- 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 GST Council shall consist of the following members, namely:
 - (a) the Union Finance Minister is the Chairperson;
 - (b) the Union Minister of State in charge of Revenue or Finance is the Member;
 - (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government are the Members.
- The Members of the GST Council referred to clause (c) above shall, as soon as may be, choose one amongst themselves to be the Vice- Chairperson of the Council for such period as they may decide.
- The GST Council shall make recommendations to the Union and the States on—
 1. 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;
 2. the goods and services that may be subjected to, or exempted from the goods and services tax;
 3. model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;
 4. the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
 5. the rates including floor rates with bands of goods and services tax;
 6. any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
 7. special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand [*Such States are referred as Special Category States*]; and
 8. any other matter relating to the goods and services tax, as the Council may decide.
- 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.
- While discharging the functions conferred by this article, the GST Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.
- One-half of the total number of Members of the GST Council shall constitute the quorum at its meetings.
- The GST Council shall determine the procedure in the performance of its functions.



- Every decision of the GST Council shall be taken at a meeting, by a majority of not less than three-fourths 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 one-third of the total votes cast, and
 - (b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.
- 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.
- The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute —
 - (a) between the Government of India and one or more States; or
 - (b) between the Government of India and any State or States on one side and 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.

XVI. Article 368 amended

Article 368 has been amended to include Article 279A also within its purview. Consequently, at least two-thirds 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.

Article 368

Questions 5 :

Which of the following taxes is/are not subsumed in GST?

- | | |
|--|---|
| (i) Service tax | (ii) Customs duty |
| (iii) Luxury tax | (iv) Tax on lottery, betting and gambling |
| (v) Entertainment tax levied by local bodies | |
| (a) (ii) | (b) (ii) and (v) |
| (c) (i),(iii) and (iv) | (d) (v) |

TEST YOUR KNOWLEDGE

- Q.1** List some of the benefits that GST may accrue to the economy.
- Q.2** Explain with the help of examples how a particular transaction of goods and services is taxed simultaneously under Central GST (CGST) and State GST (SGST)?
- Q.3** Why was the need to amend the Constitution of India before introducing the GST?

- Q.4** GST is a destination-based tax on consumption of goods or services or both. Discuss the validity of the statement.
- Q.5** Discuss the leviability of GST or otherwise on the following:
- Alcoholic liquor for human consumption
 - Petroleum crude, diesel, petrol, Aviation Turbine Fuel (ATF) and natural gas
 - Tobacco
 - Opium, Indian hemp and other narcotic drugs and narcotics
- Q.6** Under Goods and Services Tax (GST), only value addition is taxed and burden of tax is to be borne by the final consumer. Examine the validity of the statement.
- Q.7** Which are the commodities which have been kept outside the purview of GST? Examine the status of taxation of such commodities after introduction of GST.
- Q.8** A dual GST has been implemented in India. Elaborate.
- Q.9** Discuss Article 269A pertaining to levy and collection of GST on inter-State supply.
- Q.10** Discuss Article 246A which grants the power to make laws with respect to Goods and Services Tax.

ANSWERS/HINTS

- GST may accrue following benefits to the economy:
 - Creation of unified national market:** GST aims to make India a common market with common tax rates and procedures and remove the economic barriers, thereby paving the way for an integrated economy at the national level.
 - Boost to 'Make in India' initiative:** GST may give 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 would make India a manufacturing hub.
 - Boost to investments, exports and employment:** Under the GST regime, the principle of exporting only the cost of goods or services and not taxes is being followed. This may boost Indian exports thereby improving the balance of payments position. Exporters are being facilitated by grant of provisional refund of 90% of their claims within 7 days of issue of acknowledgement of their application, thereby resulting in the easing of position with respect to cash flows.

Further, the subsuming of major Central and State taxes in GST, complete and comprehensive set-off of input tax on goods and services and phasing out of Central Sales Tax (CST) may reduce the cost of locally manufactured goods and services. Resultantly, the competitiveness of Indian goods and services in the international market may increase to give boost to investments and Indian exports.

With a boost in exports and manufacturing activity, more employment would be generated and GDP would increase.
- The Central GST and the State GST is levied simultaneously on every intra-State supply of goods or services or both made by registered persons except the exempted goods and services as well as goods and services which are outside the purview of GST. Further, both are levied on the same price or transaction value. The same can be better understood with the help of following examples :

Example I : Suppose that the rate of CGST is 10% and that of SGST is 10%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company which is also located within the same State for, say ₹ 100, the dealer would charge CGST of ₹ 10 and SGST of ₹ 10 in addition to the basic price of the goods. The CGST component will go into a Central Government account while the SGST portion into the account of the concerned State Government (viz. U.P.).

It is important to note that he might not actually pay ₹ 20 (₹ 10 + ₹ 10) in cash as he would be entitled to set-off this liability against the CGST or SGST paid on his eligible purchases (inputs, input services and capital goods) assuming that all his purchases are intra-State. However, for paying CGST, he would be allowed to use only the credit of CGST paid on his purchases while for SGST he can utilize the credit of SGST alone. CGST credit cannot be used for payment of SGST and *vice versa*.

Example II: Suppose, again the rate of CGST is 10% and that of SGST is 10%. When an advertising company located in Mumbai supplies advertising services to a company manufacturing soap also located within the State of Maharashtra for, let us say ₹ 100, the ad company would charge CGST of ₹ 10 as well as SGST of ₹ 10 at the basic value of the service. The CGST component will go into a Central Government account while the SGST portion into the account of the Maharashtra Government.

He might not actually pay ₹ 20 (₹ 10+₹ 10) in cash as it would be entitled to set-off this liability against the CGST or SGST paid on his eligible purchases (say, of inputs such as stationery, office equipment, services of an artist etc.) assuming that all his purchases are intra-State. However, for paying CGST, he would be allowed to use only the credit of CGST paid on its purchase while for SGST, he can utilise the credit of SGST alone. CGST credit cannot be used for payment of SGST and *vice versa*.

3. Earlier, the fiscal powers between the Centre and the States were clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre had the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States had the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre had the power to levy the Central Sales Tax but the tax was collected and retained entirely by the States. As for services, it was the Centre alone that was empowered to levy service tax.

Introduction of the GST necessitated the amendments in the Constitution so as to simultaneously empower the Centre and the States to levy and collect this tax. The Constitution of India was amended by the Constitution (101st Amendment) Act, 2016 for this purpose. Article 246A of the Constitution introduced thereby empowered the Centre and the States to simultaneously levy and collect the GST.

4. The given statement is valid. GST is a destination-based tax on consumption of goods or services or both. GST is known as destination- based tax since the tax would accrue to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply.

For example, if A in Delhi produces the goods and sells the goods to B in Haryana. In this case, the tax would accrue to the State of Haryana and not to the State of Delhi. On the other hand, under pre-GST regime, origin- based taxation was prevailing in such cases.

Under origin-based taxation, the tax used to accrue to the State from where the transaction originated. In the given case, under origin-based taxation, the central sales tax would have been levied by Centre and collected by the State of Delhi and not by the State of Haryana.

5. **(a) Alcoholic liquor for human consumption:** is outside the realm of GST. The manufacture/production of alcoholic liquor continues to be subjected to State excise duty and inter-State/intra-State sale of the same is subject to CST/VAT respectively.
- (b) Petroleum crude, diesel, petrol, ATF and natural gas:** As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council.
- Till such date, central excise duty continues to be levied on manufacture/production of petroleum crude, diesel, petrol, ATF and natural gas and inter-State/intra-State sale of the same is subject to CST/ VAT respectively.
- (c) Tobacco:** Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in India. Resultantly, tobacco is subject to GST as well as central excise duty.
- (d) 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.
6. The statement is correct. Goods and Services Tax 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 setoff. Resultantly, only value addition is taxed and burden of tax is to be borne by the final consumer.
7. Article 366(12A) of the Constitution as amended by 101st Constitutional Amendment Act, 2016 defines the Goods and Services tax (GST) as a tax on supply of goods or services or both, except supply of alcoholic liquor for human consumption. Therefore, alcohol for human consumption is kept out of GST by way of definition of GST in the Constitution. Five petroleum products viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel have temporarily been kept out of the purview of GST; GST Council shall decide the date from which they shall be included in GST. The erstwhile taxation system (CST/VAT & central excise) still continues in respect of the said commodities.
8. A dual GST has been implemented in India with the Centre and States simultaneously levying it on a common tax base. The GST levied by the Centre on intra-State supply of goods and / or services is called the Central GST (CGST) and that levied by the States/ Union territory is called the State GST (SGST)/ Union GST (UTGST). Similarly, Integrated GST (IGST) is levied and administered by Centre on every inter-State supply of goods and/or services.

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, keeps with the Constitutional requirement of fiscal federalism.

9. Article 269A of the Constitution stipulates that Goods and Services Tax 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 bylaw on the recommendations of the Goods and Services Tax Council.

Here, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

The amount so apportioned to a State shall not form part of the 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 respectively. This is to facilitate transfer of funds between the Centre and the States.

Parliament is empowered to formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

10. Article 246A stipulates that Parliament, and, 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.

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.

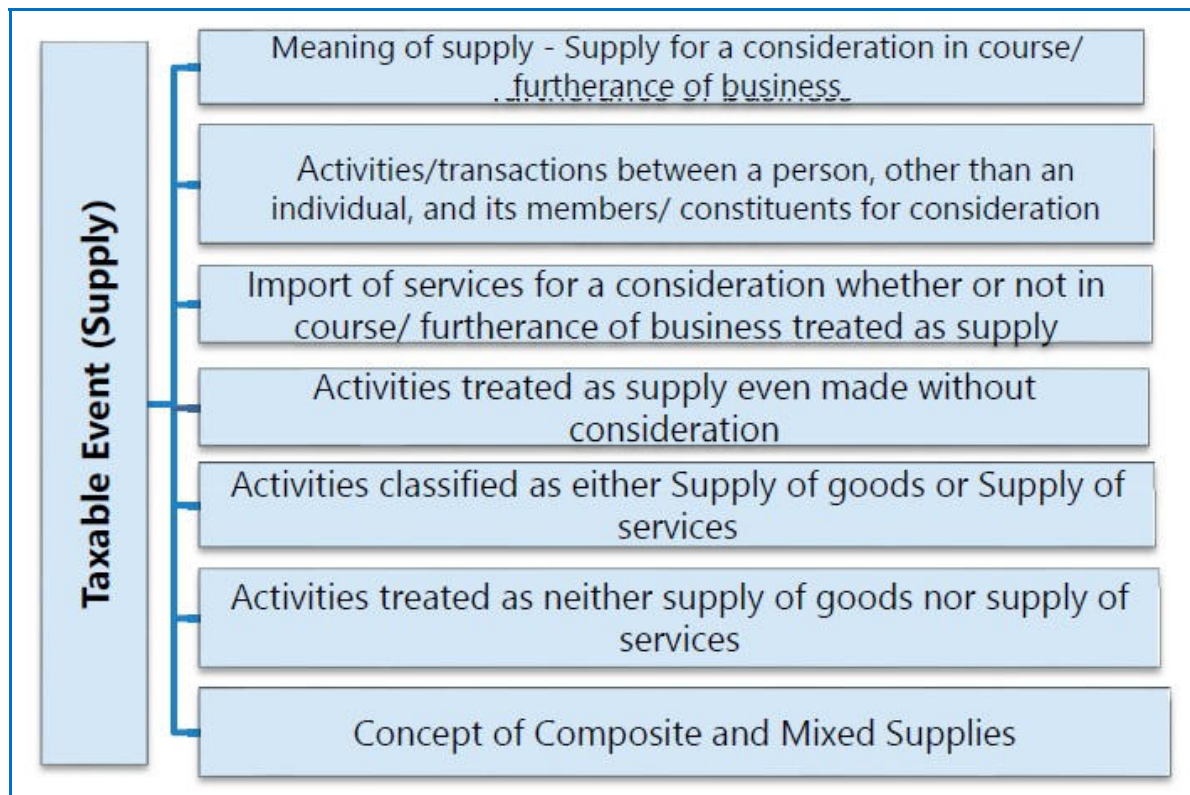
However, in respect to petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel, the aforesaid provisions shall apply from the date to be notified by the Government on the recommendations by the GST Council.



CHAPTER - 2

Supply Under GST

CHAPTER OVERVIEW



2.1 INTRODUCTION :

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

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

The GST laws resolve these issues by laying down one comprehensive taxable event i.e. "Supply" - Supply of goods or services or both.



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

The GST Law, by levying tax on the 'supply' of goods and/or services, departs from the historically understood concepts of 'taxable event' under the State VAT Laws, Excise Laws and Service Tax Law i.e. sale, manufacture and provision of services respectively.

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

2.2 RELEVANT DEFINITIONS :

- **Goods** : means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Section 2(52)].
- **Services**: means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.
- **Explanation** : It is clarified that the expression "services" includes facilitating or arranging transactions in securities [Section 2(102)].
- **Principal** : means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both [Section 2 (88)].
- **Competent authority** : means such authority as may be notified by the Government [Section 2(29)].
- **Family**: means, —
 - (i) the spouse and children of the person, and
 - (ii) the parents, grand-parents, brothers and sisters of the person if they are **wholly or mainly dependent** on the said person [Section 2(49)].
- **Government** : means the Central Government [Section 2(53)].
- **Local authority** : means :
 - (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution.
 - (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution.
 - (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund.
 - (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006.
 - (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution.
 - (f) a Development Board constituted under article 371 and article 371J of the Constitution.
 - (g) a Regional Council constituted under article 371A of the Constitution [Section 2(69)].
- **Consideration** : in relation to the supply of goods or services or both includes :
 - any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or

by any other person but shall not include any subsidy given by the Central Government or a State Government,

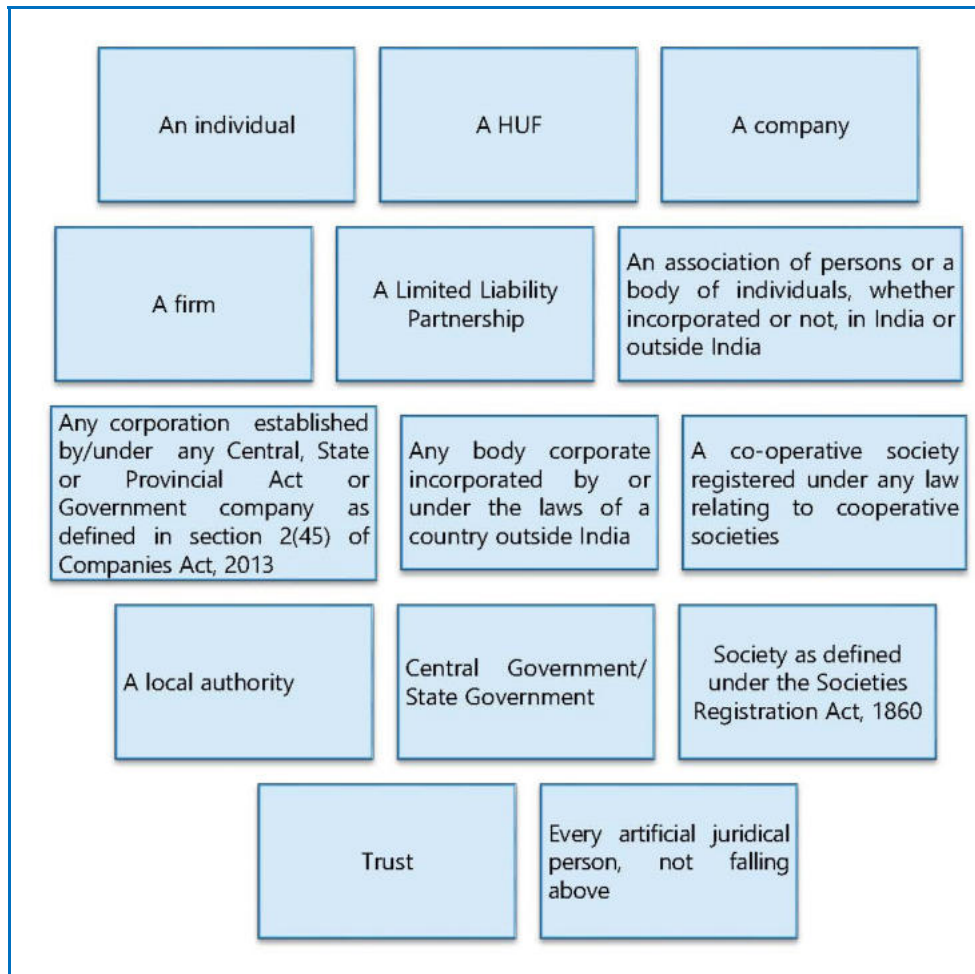
- the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

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

- **Actionable claim** : means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent [Section 2(1) of CGST Act read with section 3 of the Transfer of Property Act, 1882].
- **Manufacture** : means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term “manufacturer” shall be construed accordingly [Section 2(72)].
- **Money** : means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75)].
- **Taxable supply** : means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].
- **Taxable territory**: means the territory to which the provisions of this Act apply [Section 2(109)].
- **Non-taxable territory** : means the territory which is outside the taxable territory [Section 2(79)].
- **India** : means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters. [Section 2(56)].
- **Supplier** : in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].
- **Recipient** : of supply of goods and/or services means-
 - (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration,
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
 - (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

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

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



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

2.3 CONCEPT OF SUPPLY [SECTION 7 OF THE CGST ACT]

The concept of 'supply' is the key stone of the GST architecture. The provisions relating to the meaning and scope of supply are contained in Chapter III of the CGST Act read with various Schedules given under the said Act. Following sections and schedules shall be discussed in this chapter to understand the concept of supply :

Section 7	Meaning and scope of supply
Section 8	Taxability of composite and mixed supplies
Schedule I	Activities to be treated as supply even if made without consideration
Schedule II	Activities or transactions to be treated as supply of goods or as supply of services
Schedule III	Activities or transactions which shall be treated neither as supply of goods nor as supply of services.

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

STATUTORY PROVISIONS		
Section 7	Meaning and Scope of Supply	
Sub-section	Clause	Particulars
(1)	Supply includes -	
	(a)	all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business
	(aa)	the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment/other valuable consideration. Explanation.--For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.
	(b)	importation of services, for a consideration whether or not in the course or furtherance of business, and
	(c)	the activities specified in Schedule I, made or agreed to be made without a consideration,
(1A)	where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.	
(2)	Notwithstanding anything contained in sub-section (1),	
	(a)	activities or transactions specified in Schedule III; or
	(b)	such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council
	shall be treated neither as a supply of goods nor a supply of services.	
(3)	Subject to the provisions of sub-sections (1), (1A) & (2), Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as :	
	(a)	a supply of goods and not as a supply of services; or
	(b)	a supply of services and not as a supply of goods.

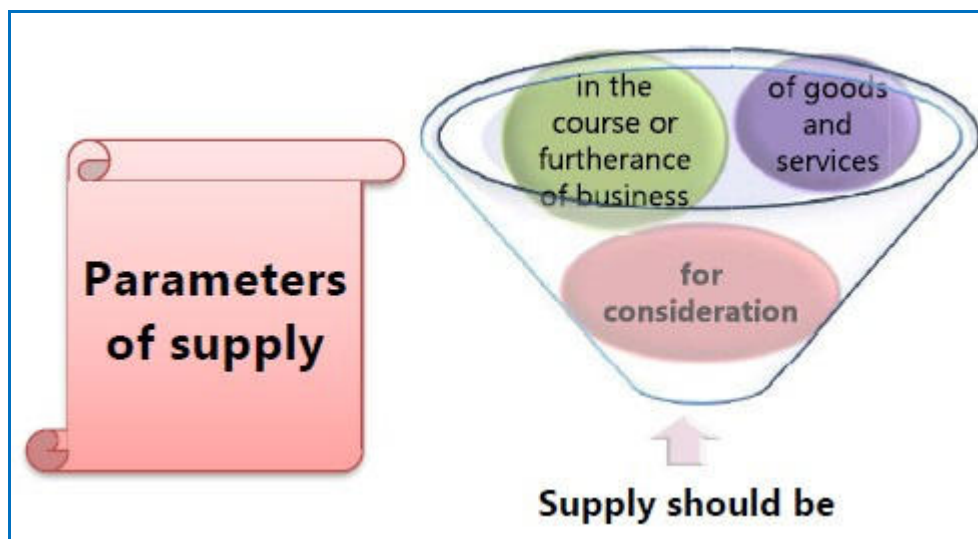
ANALYSIS :

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

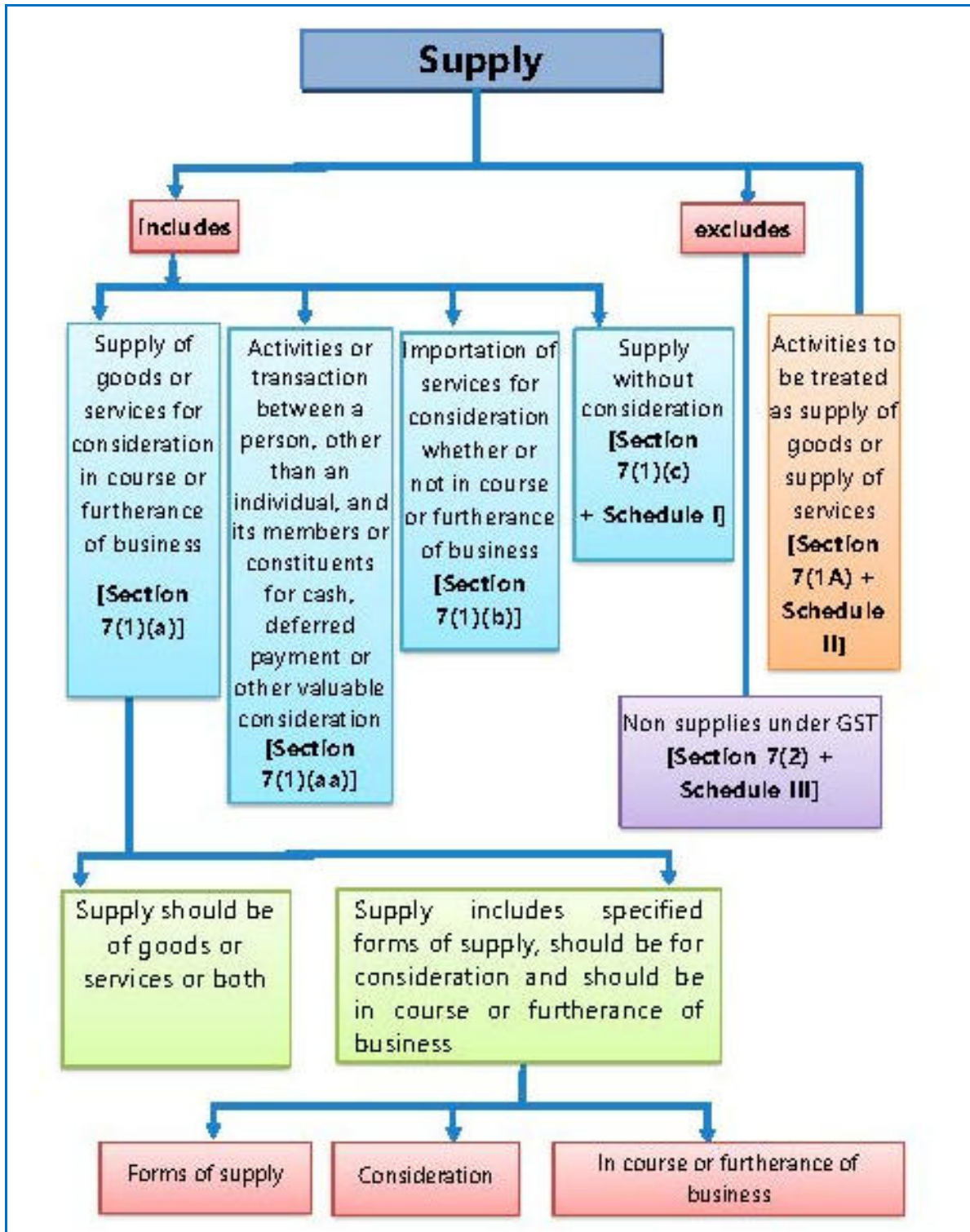
Provisions of scope of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

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

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



- Aforesaid parameters describe the concept of supply. However, there are a few exceptions to 2nd and 3rd parameters [the requirement of supply being made for a
- consideration and in the course or furtherance of business] in the GST law. Few exceptions have been carved out where a transaction is deemed to be a supply even **without consideration** [contained in Schedule I – discussed later in this Chapter]. Similarly, the condition of supply to be made **in the course or furtherance of business** has been relaxed in case of import of services [Import of services for a consideration, whether or not in the course or furtherance of business, is treated as supply].
- Further, there are also cases **where a transaction is kept out of scope of supply despite the existence of the above parameters**, i.e. there is a list of activities which are treated neither as a supply of goods nor a supply of services. In other words, they are outside the scope of GST.
- GST law has classified certain activities/transactions **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.
- In the subsequent paras, the above aspects of supply have been extensively discussed. The discussion has been broadly categorised into following :

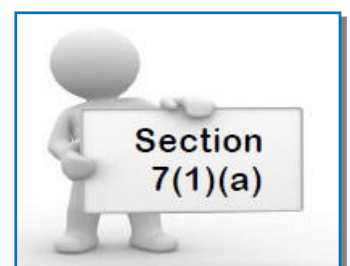


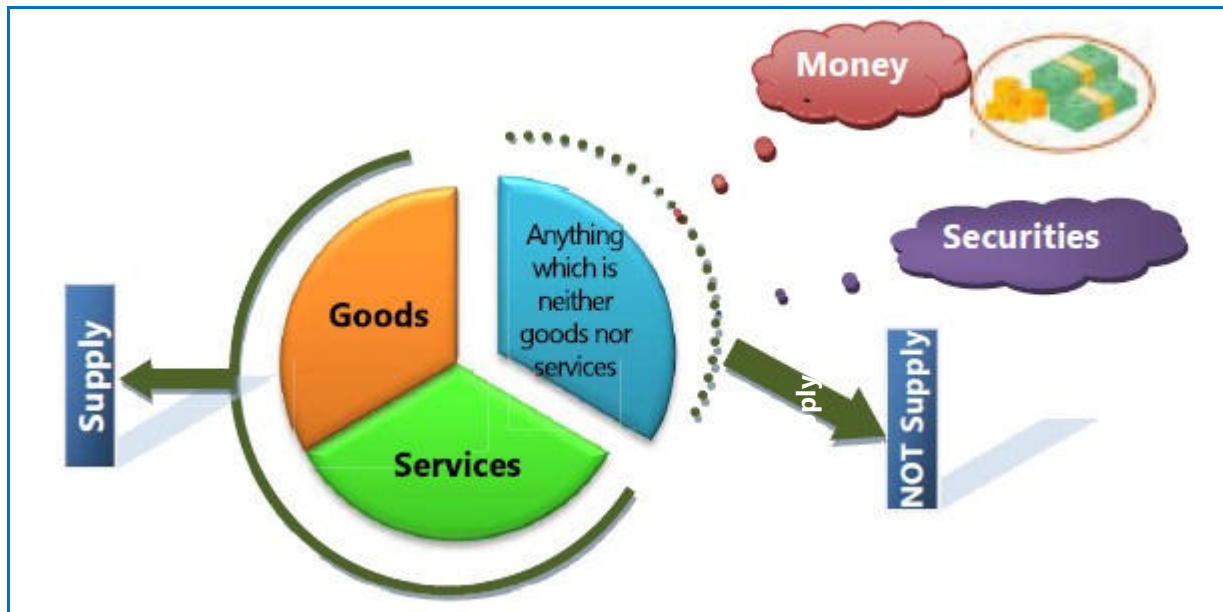
Supply of goods or services for consideration in course or furtherance of business

Supply should be of goods or services or both :

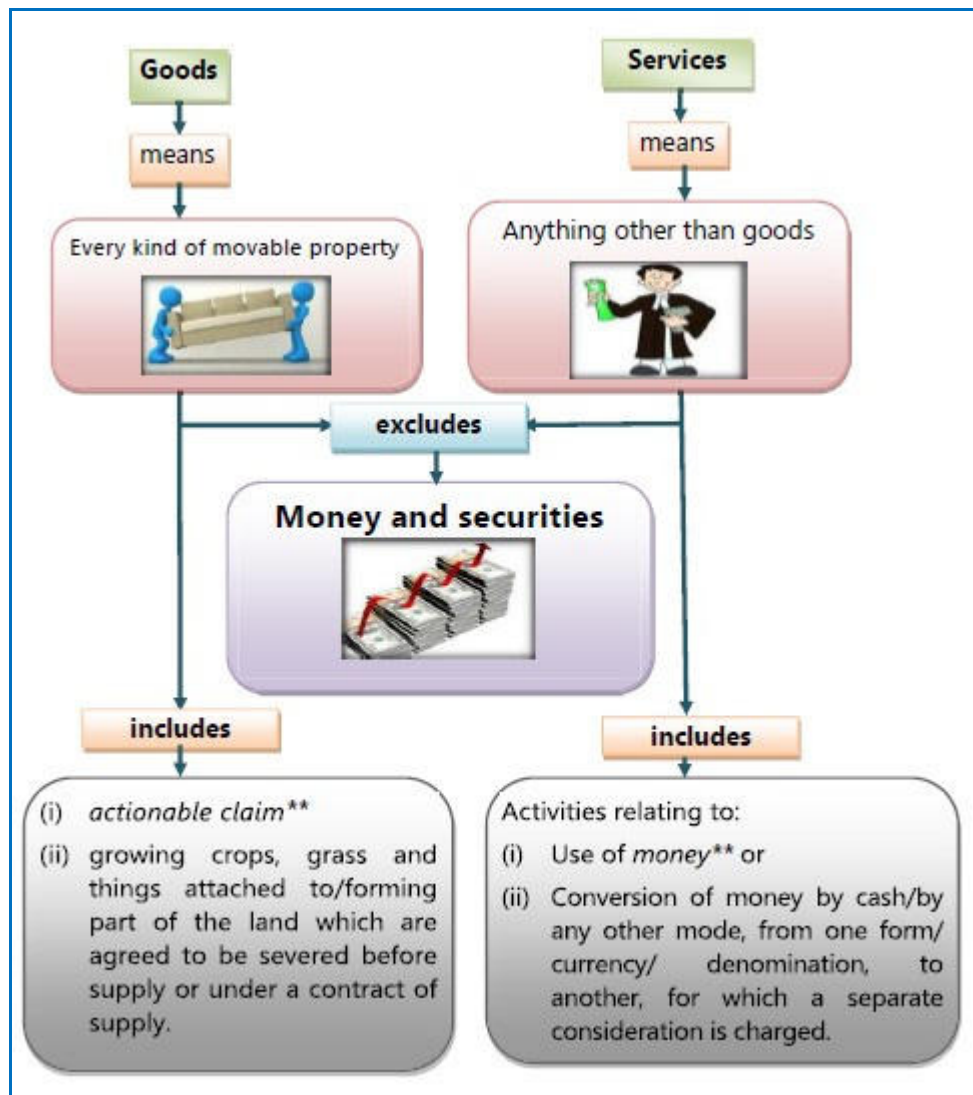
The definition of supply begins with the term '**Supply includes**', thus making it clear that CGST Act intends to give an extensive meaning to the term 'supply'.

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





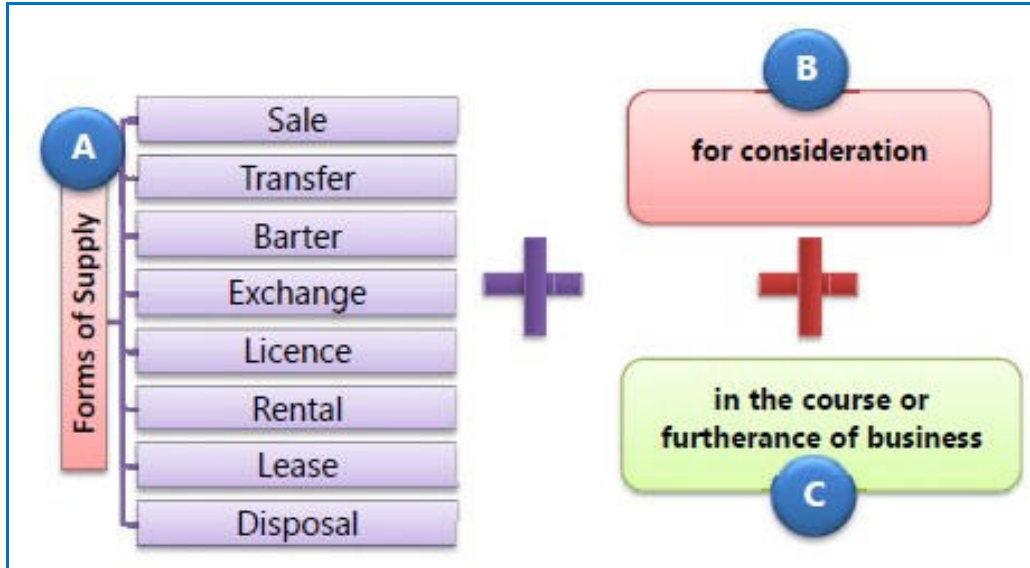
The terms “goods” and “services” as defined under the Act have been analysed by way of a diagram on next page. **Anything supplied other than goods or services is outside the scope of supply.**



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

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

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



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

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

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

A] FORMS OF SUPPLY :

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

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

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

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

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

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

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

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

Example 4 : A doctor got his hair cut from a barber and provides him medical consultancy in return. In this transaction, the doctor provided the medical consultancy services to the barber for which consideration was in the form of hair cutting services provided by the barber. Similarly, the barber provided hair cutting services to the doctor for which consideration was in the form of medical consultancy services provided by the doctor. **Barter transaction**

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

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.

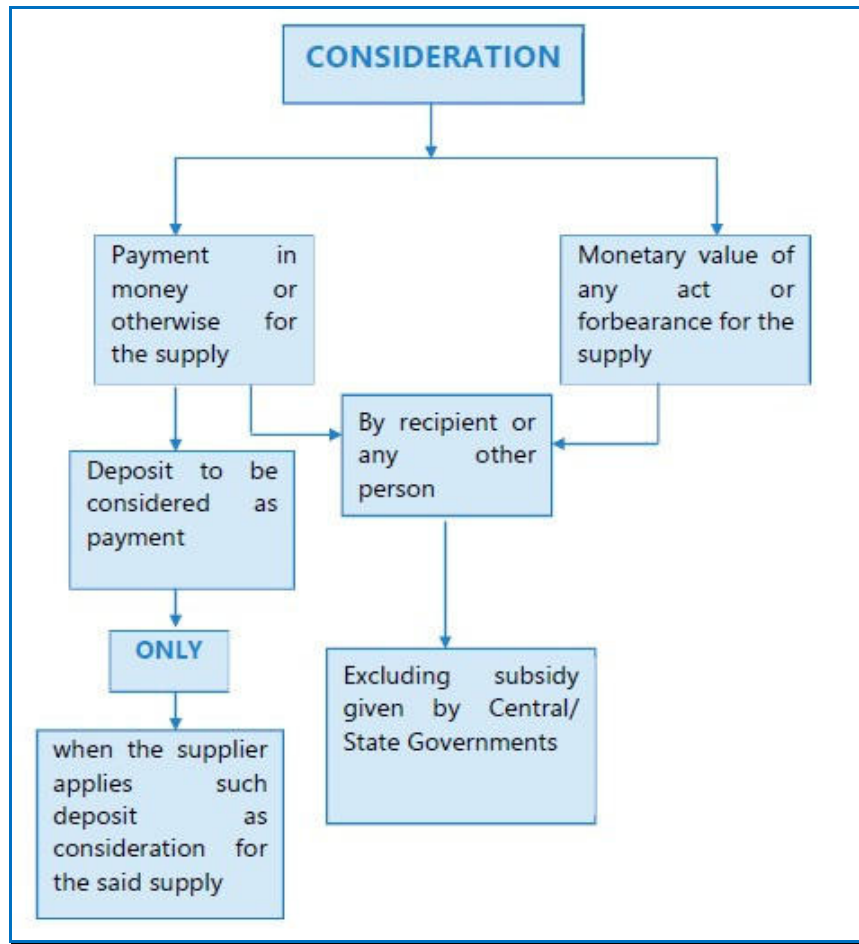
Black's law dictionary defines disposal as the sale, pledge, giving away, use, consumption or any other disposition of a thing. Under GST, such licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule II of CGST Act [*Schedule-II has been discussed in detail in the subsequent paras*].

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

B] CONSIDERATION :

- The dictionary meaning of word 'consideration' is payment. Consideration need not always be in the form of money. It can be in money or in kind. It covers anything which might be possibly done, given or made in exchange for something else.
- Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person. However, any subsidy given by the Central Government or a State Government is not considered as consideration.
- A deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.
- The term consideration is defined under section 2(31) [*Refer heading 'Relevant Definitions'*].

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



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

1. Donations received by charitable institutions from individual donors, without *quid pro quo*
 2. Art works sent by artists to galleries for exhibition
 3. ***'No Claim Bonus' offered by an insurance company to the insured***
1. **Donations received by charitable institutions from individual donors, without *quid pro quo* :**
 - An important feature of consideration is *quid pro quo* [something for something]. Donations received by the charitable organisations are treated as consideration only if there exists, *quid pro quo*, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).
 - Generally, institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. receive financial help or any other support in the form of donation or gift from the individual donors. In order to express the gratitude towards such help/support, the recipient institutions place a name plate or similar such acknowledgement in their premises.
 - When the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and **is not aimed at giving publicity to the donor**, in such manner that it would be an advertising or promotion of his business, then it can be said that there is **no supply** of service for the payment in the form of donation. In other words, there is no obligation (*quid pro quo*) on part of recipient of the donation or gift to do anything (i.e. supply a service). Therefore, there is no GST liability on such payment made.

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

Example 5 : Bhushan donated a blackboard to Yoganisht Sansthan – a charitable yoga institution. Yoganisht Sansthan printed underneath the blackboard so donated - “Good wishes from Mr. Bhushan”.

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

- In above examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised.
- Thus, GST is not leviable where all the following three conditions are satisfied namely:



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

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

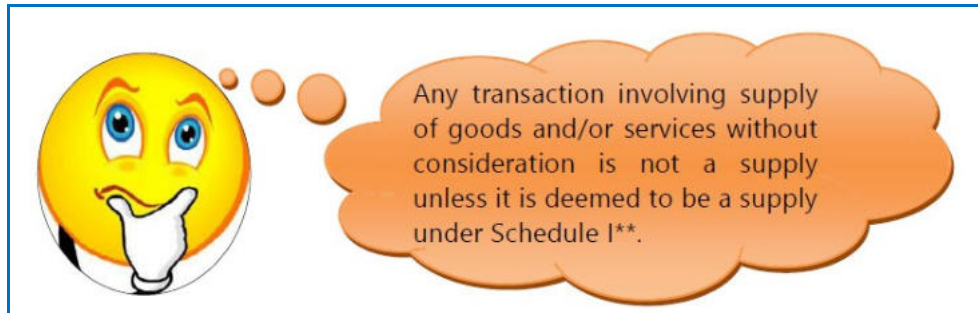
- Artists give their work of art to galleries where it is exhibited for supply.
- However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.
- It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply [Circular No. 22/22/2017 GST dated 21.12.2017].



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

- The issue which arose for consideration was whether the deduction on account of ‘No Claim Bonus’ (NCB) allowed by the insurance company from the insurance premium payable by the insured, can be considered
- as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s).
- As per practice prevailing in the insurance sector, the insurance companies deduct ‘No Claim Bonus’ from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s).
- The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.

- It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company. [Circular No. 186/18/2022 GST dated 27.12.2022]

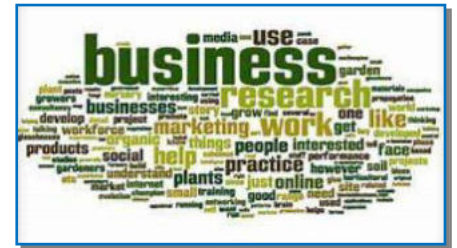


****Provisions of Schedule I have been discussed in detail later in this chapter.**

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

C] IN COURSE OR FURTHERANCE OF BUSINESS :

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

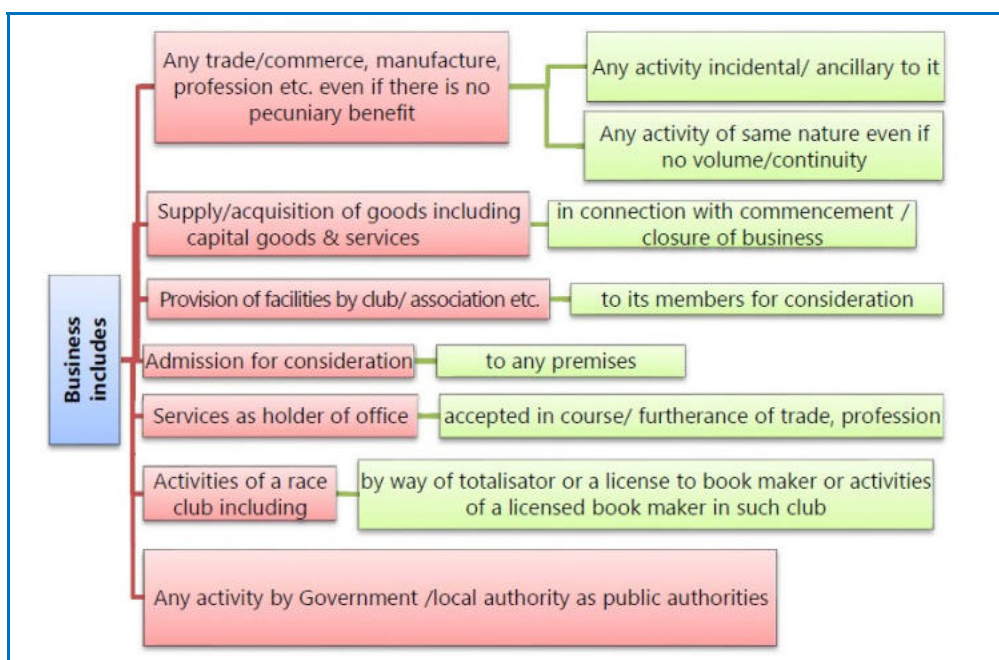


Meaning of supply made in the course or furtherance of business :

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



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



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

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

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

Example 8 : Manikarnika sold her old gold bangles and earrings to 'Aabhusan 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^{P7F}

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

Example 9 : Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust – 'Kind Human'. The sale of paintings by the actor qualifies as supply as it is made in course or furtherance of business.

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

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

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

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

Business includes activities of a race club including by way of totalisator or a license to book maker¹⁰ or activities of a licensed book maker in such club.

Example 12 : Royal Turf Race Club is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator¹¹. For providing the service of facilitating wagering transactions, Royal Turf Race Club gets commission which is deducted and retained by the club from the total bet value. Said services amount to supply as the activities of a race club are included in business.



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

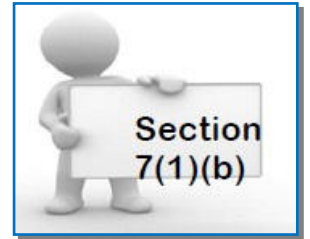
From the above discussion, it can be inferred that if an activity or transaction satisfies all the above parameters, as discussed in points A, B and C above, said activity or transaction qualifies as 'Supply under GST'.

In the subsequent paras, we have discussed the **exceptions to the two parameters of supply**, namely,

- (i) supply made for consideration, but not in course or furtherance of business and
- (ii) supply made without consideration.

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

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



Example 13 : Ramaiyaa, a proprietor, has received the architect services for his personal residence from an architect located in New York at an agreed consideration of \$ 5,000. The import of services by Ramaiyaa is supply under section 7(1)(b) though it is not in course or furtherance of business.

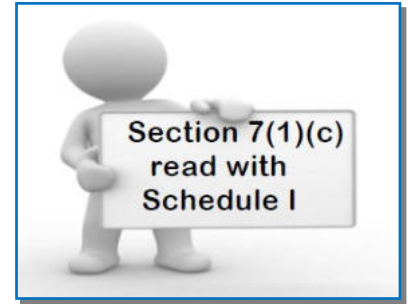
ACTIVITIES WITHOUT CONSIDERATION - DEEMED SUPPLY

STATUTORY PROVISIONS

Schedule-I	Activities to be treated as supply even if made without consideration
Para No.	Particulars
(1)	Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
(2)	Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business. Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
(3)	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.
(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

ANALYSIS :

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



In the past indirect tax regime, in every tax statute, “consideration” played the most important role for levying taxes. For instance, if any service was provided for free to a person, such service was not subject to service tax. However, under GST, the condition of consideration has been dispensed with in certain cases – this is an important departure from the earlier indirect tax regime.

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

- I. Permanent Transfer/Disposal of Business Assets [Para 1 of Schedule I] :** U Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply. However, it is important to note that this provision would apply only if input tax credit has been availed on such assets.

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

- There must be a disposal or transfer of business assets**.
- Transfer/disposal must be permanent.
- ITC must have been availed on such business assets.
- In view of the last condition stipulated above, permanent transfer/disposal of following business assets, without consideration, will not be covered within this para and thus will not be deemed as supply: (
 - i) Business assets on which ITC is blocked/not available under GSTP
 - ii) Business assets though eligible for ITC, ITC has not been availed by the registered person.

**It is important to note that the term business asset has not been defined under the GST law.

Example 14 : Dhruv gives old laptops being used in his business to his friend free of cost. This will qualify as supply provided input tax credit has been availed by Dhruv on such laptops.

Example 15 : A dealer of air-conditioners permanently transfers the motor vehicle free of cost. ITC on said motor vehicle is blocked. The transaction will not constitute a supply as the condition of availment of ITC on the business asset transferred is not fulfilled.

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

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

Let us understand the terms ‘related persons’ and ‘distinct persons’.

- (i) Related persons :** of another person is called a related person like members of the same family or subsidiaries of a group company etc. Under GST law, various categories of related

The term ‘related person’ has been defined in explanation to section 15. The said definition has been depicted by way of a diagram as follows:



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

Example 16 : Ms. Priya holds 30% shares of ABC Ltd. and 35% shares of XYZ Ltd. ABC Ltd. and XYZ Ltd. are related.

Example 17 : Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. It can be said that Q Ltd. controls R Ltd. Thus, Q Ltd. and R Ltd. are related.

(ii) Distinct Persons specified under section 25 : Before we go through the statutory provisions of 'distinct persons', let us first have an overview of the registration provisions for better understanding of the concept of distinct persons. Detailed and in-depth analysis of the registration provisions is contained in Chapter 9 – Registration in Module 2 of this Study Material.

Under GST law, a supplier is required to obtain State-wise registration. He has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit. Thus, he is not required to obtain registration from a State/UT from where he makes a non-taxable 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 can get a single registration for said State/UT. He may also get separate registration for any place(s) of business in such State/UT.

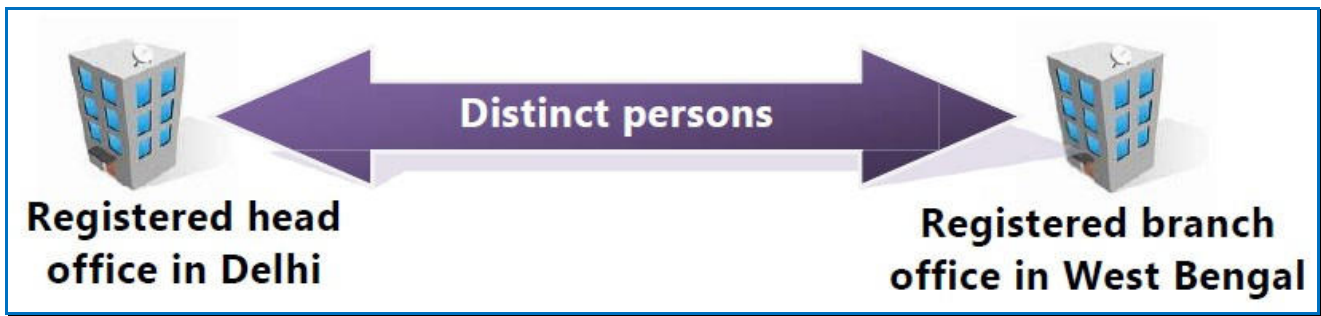
Now, let us understand the concept of distinct persons in simple terms : The establishments of a person with separate registrations whether within the same State/UT or in different States/UTs are considered as **distinct persons**.

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

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

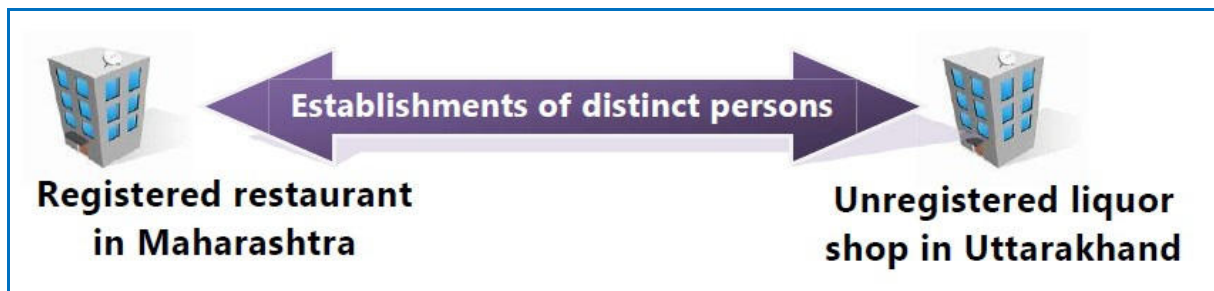
A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as distinct persons U[Section 25(4)].

Example 18 : Mohan, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of West Bengal in respect of his newly opened branch office. Mohan's registrations under GST under same PAN in West Bengal and Delhi shall be treated as distinct persons.



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

Example 19 : Rishabh Enterprises, a registered supplier, owns an airconditioned restaurant in Virar, Maharashtra. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption. Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Rishabh Enterprises is not required to obtain registration with respect to the same in Uttarakhand. In this case, air-conditioned restaurant in Maharashtra and liquor shop [though unregistered] in Uttarakhand shall be treated as establishments of distinct persons. Supply by Maharashtra restaurant to Uttarakhand shop, in course or furtherance of business, even without consideration will qualify as supply



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

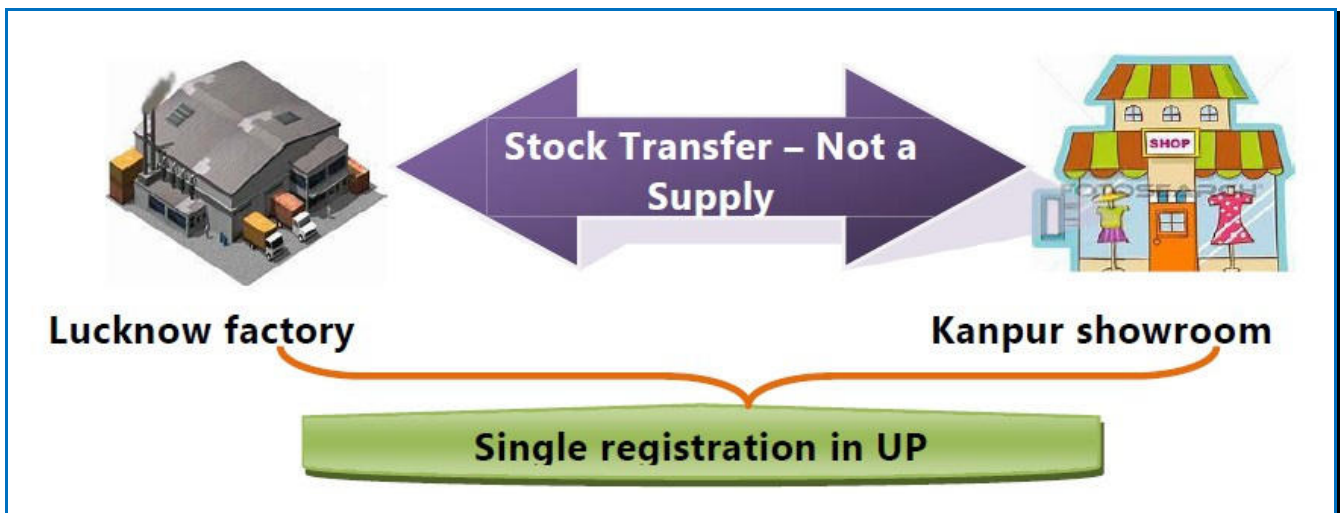
- (i) different locations (with separate GST registrations) of same legal entity as these are transactions between distinct persons, or
- (ii) establishments of distinct persons.

Example 20 : Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir Fabrics are registered in the States where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.

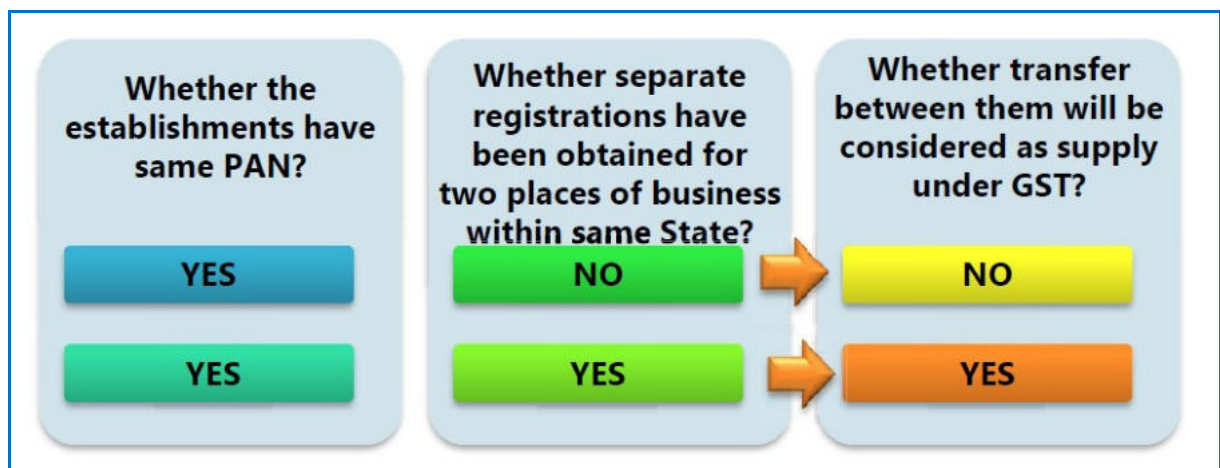


However, transfer between two units of a legal entity under single GST registration (apparently within same State) will not be considered as supply. This can be understood with the help of the following example :

Example 21 : Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Kanpur so that the same can be sold from there. It has taken one registration in the State of Uttar Pradesh declaring Lucknow factory as its principal place of business and Kanpur showroom as its additional place of business. Since no consideration is charged, supply of goods from factory to retail showroom in same State under single registration does not constitute supply.



However, in the above example, if Raghubir Fabrics obtains separate registrations for Lucknow factory and Kanpur showroom, stock transfer between the Lucknow factory and Kanpur showroom will constitute supply. The concept arising from the above discussion is summarized in below diagram (assuming a case where there are two places of business in a State):



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

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

Gifts by employer to employee

Further, proviso to Para 2 of Schedule I provides that gifts upto ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

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



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

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

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



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

Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre¹³. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then 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 cost-to company (C2C)

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

Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply. Points which merit consideration, in this regard, are as follows :

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

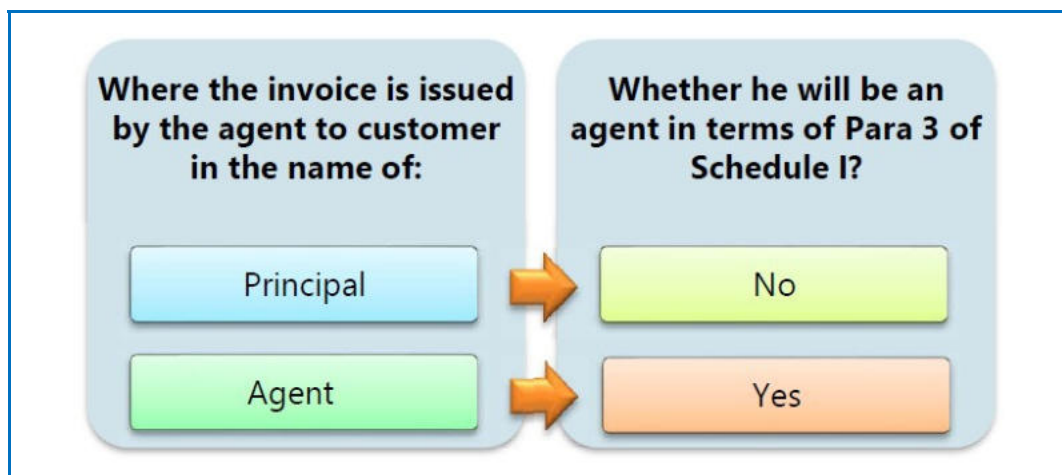
Thus, the supply of services between the principal and the agent and vice versa would require “consideration” to be present so as to be considered as supply and thus, making it liable to GST.

In order to determine whether a particular principalagent 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, where the **invoice is issued by the agent to the customer in the name of the principal**, such agent shall not fall within the ambit of Para 3 above.
- Similarly, where the goods being procured by the agent on behalf of the principal are **invoiced in the name of the agent** then further provision of the said goods by the agent to the principal would be covered by Para 3 above [Circular No. 57/31/2018 GST dated 04.09.2018].



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



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

Example 22 : Anmol appoints Bholu to procure certain goods from the market. Bholu identifies various suppliers who can provide the goods as desired by Anmol and asks the supplier (Golu) to send the goods and to issue the invoice directly to Anmol. In this scenario, Bholu is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Bholu is not an agent of Anmol for supply of goods in terms of Para 3 of Schedule I.

Example 23 : Manimani Bank, a banking company, appoints Mandaar (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by Manimani Bank. The invoice for the supply of the goods is issued by Manimani Bank to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mandaar is not an agent of Manimani Bank for the supply of goods in terms of Para 3 of Schedule I.

Example 24 : Gautam, an artist, appoints Gambhir (auctioneer) to auction his painting. Gambhir arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by Gambhir on the behalf of Gautam but in his own name and the painting is delivered to the successful bidder. In this scenario, Gambhir is not merely providing auctioneering services, but is also supplying the painting on behalf of Gautam to the bidder, and has the authority to transfer the title of the painting on behalf of Gautam. This scenario is covered under Para 3 of Schedule I.

Example 25 : 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.

Example 26 : Ravi sells agricultural produce by utilizing the services of Kavi who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Kavi identifies the buyers and sells the agricultural produce on behalf of Ravi for which he charges a commission from Ravi.

As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction. In cases where the invoice is issued by Kavi to the buyer, then he is an agent covered under Para 3 of Schedule I. However, in cases where the invoice is issued directly by Ravi to the buyer, the commission agent (Kavi) doesn't fall under the category of agent covered under Para 3.

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

- A question was posed by the industry - whether supply between a principal and a Del-credere agent would also get covered under Schedule I. The Government clarified the doubt of the industry by way of following clarification:
- Before going through the clarification let us first understand what is meant by a DCA? In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal.
- The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier.
- In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent.
- In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date.



- This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer.

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

Sl. No.	Issue	Clarification
1	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I?	<p>As already clarified vide Circular No. 57/31/2018 GST (discussed above), whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I depends on the following possible scenarios :</p> <ul style="list-style-type: none"> 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.
2.	Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I?	<p>In such a scenario, following activities are taking place:</p> <ol style="list-style-type: none"> Supply of goods from supplier (principal) to recipient; Supply of agency services from DCA to the supplier or the recipient or both; Supply of extension of loan services by the DCA to the recipient. <p>It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent 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.</p>
3	Where DCA is an agent under Para 3 of Schedule I and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?	<p>In such a scenario following activities are taking place :</p> <ol style="list-style-type: none"> Supply of goods by the supplier (principal) to the DCA; Further supply of goods by the DCA to the recipient; Supply of agency services by the DCA to the supplier or the recipient or both; Extension of credit by the DCA to the recipient. <p>It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.</p> <p>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)</p>

Questions 1 :

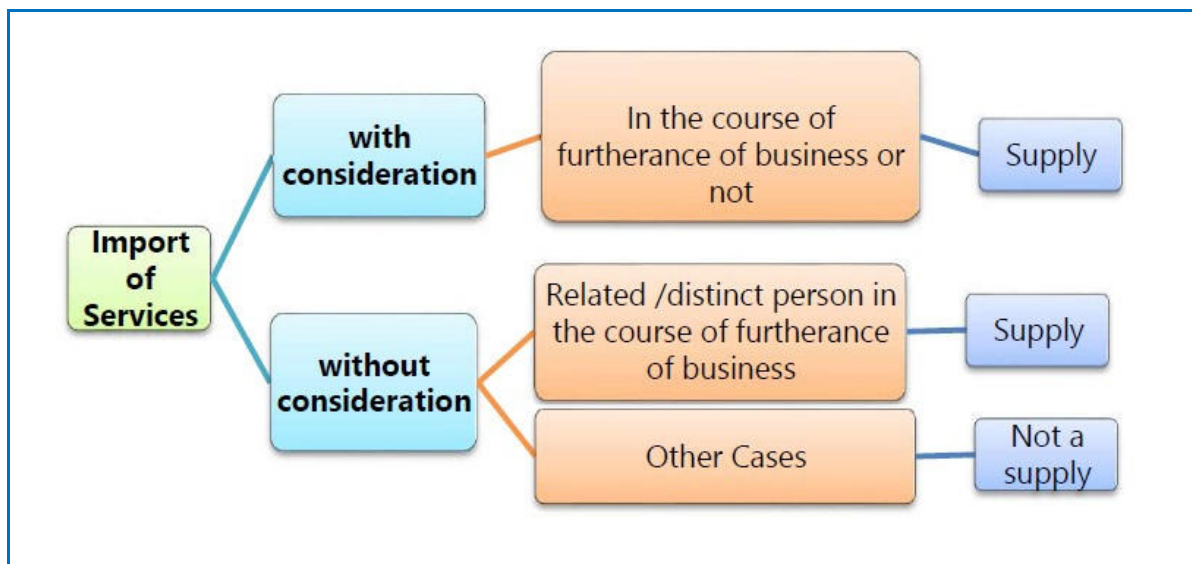
Mr. Handsome, del-credere agent (DCA) of Charm Limited, agrees to raise invoices in his own name and also guarantees for the realization of payments from customers to Charm Limited. In order to realize the payments from customers on time, he extends short-term transaction-based loans to them and charges interest for the same. For the month of March, sale of goods by Mr. Handsome in his DCA capacity is ₹ 2,80,000 and interest earned from the said customers for short term credit facility provided for timely payment of dues is ₹ 20,000. Further, commission charged from Charm Limited in respect of DCA services provided is ₹ 30,000. The value of supply of goods to customers is and value of supply of agency services to Charm Limited is _____

- (a) ₹ 2,80,000; ₹ 30,000 (b) ₹ 20,000; Nil
 (c) ₹ 3,00,000; ₹ 30,000 (d) ₹ 20,000; ₹ 30,000

IV. Importation of services [Para 4 of Schedule I]:U 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”.

Example 27 : Jhumroo Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such consultancy services free of cost to its branch office. Since Jhumroo Associates and the head office are related persons, services received by Jhumroo Associates will qualify as supply even though the head office has not charged anything from it.

Example 28 : Chakmak, a proprietor registered in Delhi, has sought architect services from his son located in US, with respect to his newly constructed house in Delhi. Although services have been received by Chakmak without consideration from his son - a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.



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

In this backdrop, let us now examine whether the items given free of cost in case of some of the sales promotion schemes qualify as supply or not.



Clarification on Sales promotion schemes

A number of sales promotion schemes are commonly employed by the businesses to increase sales volume or to encourage the use or trial of a product or service so that new customers get attracted towards their products.



For instance, certain sections of trade and industry, such as, pharmaceutical companies often provide drug samples to their stockists, dealers, medical practitioners, etc., or sometimes, companies announce offers like 'Buy One, Get One free'

– i.e. buy one soap and get one soap free or get one tooth brush free along with the purchase of tooth paste.



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

- **Free samples and gifts :** Samples which are supplied free of cost, without any consideration, do not qualify as “supply” under GSTP15F 19 P, except where the activity falls within the ambit of Schedule I.
- **Buy one get one free offer :** It may appear at first glance that in case of offers like “Buy One, Get One Free”, one item is being “supplied free of cost” without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.
- Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly – Concept of composite and mixed supply has been discussed subsequently in this chapter. [Circular 92/11/2019 GST dated 07.03.2019]



Questions 2 :

Mr. Venkat hired a professional firm based in UK to receive the legal consultancy services for his family dispute. The services received by Mr. Venkat _____ in case such services are received by Mr. Venkat (I) free of cost; or (II) for a consideration of US\$ 1,000.

- (I) amount to supply; (II) amount to supply
- (I) do not amount to supply; (II) amount to supply
- (I) amount to supply; (II) do not amount to supply
- (I) do not amount to supply; (II) do not amount to supply

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

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

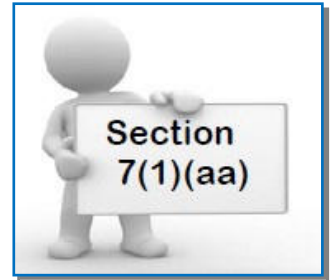
The activities or transactions (involving supply of goods or services) between a person, other than an individual, (i.e. association, club, etc.) and its members or constituents, for cash, deferred payment or other valuable consideration are covered within the ambit of 'supply' as per section 7(1)(aa).

Further, explanation to clause (aa) to section 7(1) clarifies that for the purpose of this clause, such person (association, club, etc.) and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions between them shall be deemed to take place from one such person to another. The explanation starts with a non-obstante clause and shall therefore, shall have an overriding effect over anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority.

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

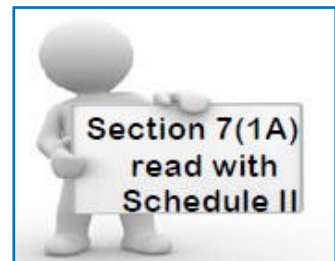
Example 29 : Resident Welfare Association (RWA) of Sanskriti Society supplies air-conditioners to its members at a concessional price.

Example 30 : A Resident Welfare Association collects maintenance charges from its members for services provided. Here, in both the aforesaid examples, it shall be deemed that the Resident Welfare Association (RWA) and its members are two separate persons and it shall be deemed that the supply has taken place from Resident Welfare Association (RWA) to its members.



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

Section 7(1A) classifies certain activities/ transactions constituting supply, either as supply of goods or supply of services. Schedule II to the CGST Act contains the list of activities or transactions which have been classified either as supply of goods or supply of service. This helps in mitigating the ambiguities which existed in earlier laws.



Example 31 : Under earlier tax regime, the restaurants used to charge both service tax and VAT on the value of food served. This is so because both sale of goods and provision of service were involved and therefore taxable event under both the Statutes i.e. respective VAT law and service tax law got triggered.

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

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

Para No.	Activity/ Transaction	Type	Nature of Supply
1.	Transfer	Any transfer of title in goods. Example 32 : Shivaji sells ready-made garments to its customers.	Supply of Goods
		Any transfer of right in goods/ undivided share in goods without transfer of title thereof. Example 33 : Genius Equipments Ltd. gives a machinery on rent to Suhaasi Manufacturers.	Supply of Services
		Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed. Example 34 : Dhruva Capitals supplied goods on hire purchase basis to customers. Example 35 : Optima Manufacturers supplies toys to retailers on 'sale or return basis'.	Supply of Goods
2.	Land and Building	Any lease, tenancy, easement, licence to occupy land Example 36 : Lease agreement for land.	Supply of Services
		Any lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly. Example 37 : A shop let out in a busy market area.	Supply of Services
3.	Treatment or Process	Any treatment or process which is applied to another person's goods Example 38 : Damani Dying House dyes the clothes given by Shubham Textiles Ltd. on job work basis.	Supply of Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred or disposed off by or under directions of person carrying on the business so as no longer to form part of those assets.	Supply of Goods
		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. Example 39 : A person manufacturing and selling wooden furniture takes one chair manufactured by him for use at his house.	Supply of Services

Para No.	Activity/ Transaction	Type	Nature of Supply
		<p>Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person.</p> <p>Example 40 : Arun, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him.</p> <p>Exceptions :</p> <ul style="list-style-type: none"> • Business is transferred as a going concern to another person • Business is carried on by a personal representative who is deemed to be a taxable person. 	Supply of Goods
5.	(a) Renting of immovable property	<p>Example 41 : Renting of a commercial complex.</p> <p>Example 42 : Renting of precincts of a religious place.</p> <p>Example 43 : Renting of property to an educational institution.</p> <p>Example 44 : Permitting use of immovable property for placing vending/dispensing machines.</p>	
	(b) Construction of complex, building, civil structure, etc.	<p>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.</p> <p>Example 45 : Rathi Builders has constructed individual residential units for agreed consideration of ₹ 1.2 crore per unit. ₹ 90 lakh per unit were received before issuance of completion certificate by the competent authority and its first occupation, and balance after completion.</p> <p>The term construction includes additions, alterations, replacements, or remodeling of any existing civil structure.</p> <p>The term 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:—</p> <ol style="list-style-type: none"> an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or a chartered engineer registered with the Institution of Engineers (India); or a licensed surveyor of the respective local body of the city or town or village or development or planning authority. 	Supply of Services

Para No.	Activity/ Transaction	Type	Nature of Supply
	<p>(c) Temporary transfer or permitting use or enjoyment of any intellectual property right</p> <p>Example 46 : Temporary transfer of patent.</p> <p>(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software</p> <p>Example 47 : Suvidha Solutions develops an accounting software for a business firm.</p> <p>(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.</p> <p>Example 48 : Cable operator - Sakharam has entered into an agreement with Cable operator - Aatmaram that Sakharam will not provide cable connections in the specified areas where Aatmaram is providing the connections. Non-compete agreements constitute supply of service.</p> <p>Example 49 : Security deposit forfeited in the event of cancellation of tour package by the customer. Please refer the detailed discussion on this para of Schedule-II given at the end of the Table.</p> <p>(f) Transfer of right to use any goods for any purpose (whether or not for specified period) for cash, deferred payment or other valuable consideration.</p> <p>Example 50 : Machinery given on hire.</p>		
6.	<p>Following composite supplies :-</p> <ul style="list-style-type: none"> Works contract Works contract : means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of 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)]. 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. 		Supply of Services

In this regard, following issues have been clarified by the CBIC :

1. Taxability of 'tenancy rights' under GST

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

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



Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.

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

It is a form of lease or renting of property and such activity is specifically declared to be a service in Para 2 of Schedule II as discussed in table above i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

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

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



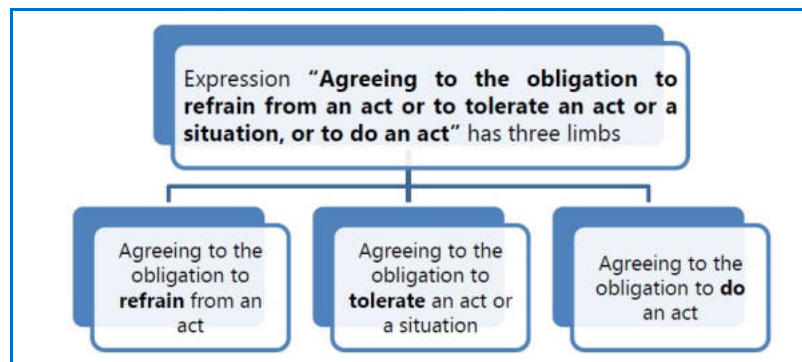
To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.

However, renting of residential dwelling for use as a residence to an unregistered person is exempt [Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017 – Discussed in Chapter 5 – Exemptions from GST in this Module of the Study Material]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both (to an unregistered person) is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST

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

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

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



a. Agreeing to the obligation to REFRAIN from an act :

Example 51 : 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.

Example 52 : 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.

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

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

c. Agreeing to the obligation to do an act

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

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

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

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

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

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

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

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

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

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



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

- It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.
- Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not reconstitute the aggrieved person.
- A contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.
- Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are merely a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

Examples of such cases are :

Example 53 : damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,

Example 54 : penalty stipulated in a contract for delayed construction of houses,

Example 55 : 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 :**

Example 56 : 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.

Example 57 : 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.

Example 58 : A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer.

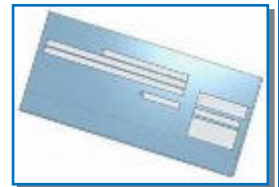
Example 59 : A contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty.

Example 60 : 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 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.



Example 61 : 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 airconditioned 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

Questions 3 :

Which of the following activities/transactions qualify as supply of goods?

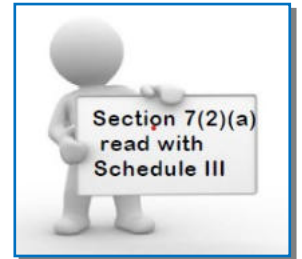
- Dhruvtara Electronics supplies washing machines to its customers.
- Bigbang Steels Ltd. supplies a machinery on rent to Jigayasa Manufacturers.
- Larsen Technicians retreads the tyres given by Deendayal Automobiles on job work basis.
- Vigyaan Technologies develops a customised software for a business school.



NON-SUPPLIES UNDER GST

I. Activities/transactions specified under Schedule III :



- Section 7(2)(a) provides activities or transactions specified in Schedule III shall be treated neither as a supply of goods nor a supply of services. Schedule III specifies transactions/ activities which shall be neither treated as supply of goods nor as supply of services. Thus, the activities/transactions specified under this schedule can be termed as Non-Supplies under the GST regime. In a way, it is a "Negative list" for the purposes of taxation in GST.
- It is important to note that apart from the activities specified in Schedule III, some activities have been notified by the Government vide different notifications, which are also to be considered as non-supplies. Further, some circulars have been issued clarifying that certain transactions are to be considered as non-supplies.





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

- Non-supplies listed in Schedule III
- Non-supplies notified vide notification
- Non-supplies clarified by way of circular

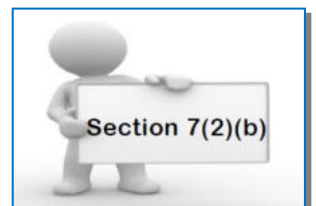
A] NON-SUPPLIES LISTED IN SCHEDULE III

Para No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	<p>Services by an employee to the employer in the course of or in relation to his employment.</p> <p>Example 62 : Services provided by casual worker to employer who gives wages on daily basis to the worker are services provided by the worker in the course of employment.</p> <p>Example 63 : Casual workers employed by a construction contractor for execution of a building contract for him are services in the course of employment. Similarly, casual workers employed by a security services agency for provision of security services to a client are also services in the course of employment.</p> <div style="display: flex; justify-content: space-around;">   </div> <p>Only services that are provided by the employee to the employer in the course of employment are outside the realm of supply. However, services provided outside the ambit of employment for a consideration would qualify as supply.</p> <p>Example 64 : Services provided on contract basis by a person to another i.e. principal-to-principal basis are not services provided in the course of employment</p> <p>(65) Any amount paid by employer to employee for not joining a competing business is paid for providing the service of forbearance to act and cannot be considered for providing services in the course of employment.</p>
2.	<p>Services by any court or Tribunal established under any law for the time being in force. Explanation – The term "Court" includes District Court, High Court and Supreme Court.</p>

Para No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
3.	<p>a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.</p>  <p>(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity.</p> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>Example 66 : 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.</p> </div> <p>(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.</p>
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	<p>Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building. (i.e. in case, where entire consideration for sale of building received after issuance of completion certificate or after first occupation, whichever is earlier)</p>  its
6.	<p>Actionable claims, other than lottery, betting and gambling. 'Actionable claims' are specifically included in the definition of goods under section 2(52) [Refer the definitions of 'actionable claims' and 'goods' given under heading 'Relevant Definitions']. However, this para of Schedule III specifically excludes actionable claims, other than lottery, betting and gambling from the ambit of definition of supply. Co-joint reading of said provisions implies that only lottery, betting and gambling are treated as supply. All other actionable claims are outside the ambit of definition of supply.</p> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>Example 67 : Some of the other examples of actionable claims are: Right to recover insurance money, claim for arrears of rent, claims for future rents (if these can be assigned), unsecured loans, unsecured debentures, bills of exchange, promissory notes, bank guarantee, Fixed Deposit Receipt, right to the benefit of a contract, etc.</p> </div>

B] NON-SUPPLIES NOTIFIED VIDE NOTIFICATION

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



- (i) Activity in relation to Panchayat/Municipality functions :
Services supply of goods nor as a supply of service

Panchayat
Functions

Municipality
Functions

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



Such licence is granted against consideration in the form of licence fee or application fee or by whatever name it is called. supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States.



Hence, this is not applicable/has no 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

C] NON-SUPPLIES CLARIFIED BY WAY OF CIRCULAR

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

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

- Trains,
- Buses,
- Trucks,
- Tankers,
- Trailers,
- Vessels,
- Containers,
- Aircrafts,

(a) carrying goods or passengers or both; or

(b) for repairs and maintenance,

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

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

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

Above circular shall mutatis mutandis apply to inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes], [except in cases where movement of such goods is for further supply of the same goods], such inter-State movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements. In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods [Circular No. 21/21/2017 GST dated 22.11.2017].



Questions 4 :

Which of the following activities are considered neither as supply of goods nor supply of services?

- (a) Inter- State movement of trucks between distinct persons for repairs and maintenance.
- (b) Grant of mining rights by the Governments to businesses.
- (c) Services provided by an employer to the employee.
- (d) Lottery

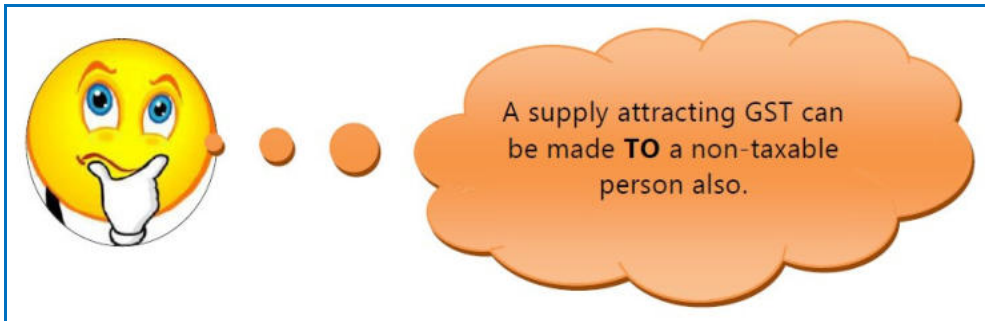
In the preceding paras, we have discussed, how to determine whether a given activity or transaction constitutes a supply. Once an activity or transaction qualifies as supply, one needs to determine whether the same is leviable to GST or not. Though the provisions relating to levy and collection of GST have been discussed at length in Chapter 3 – Charge of GST in this Module of the Study Material, a brief idea of the same is provided hereunder.

Supply leviable to GST

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

(i) Supply by a taxable person

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



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

Meaning of taxable person : A “taxable person” is a person who is registered or liable to be registered under section 22 or section 24 [The said sections and the concept of taxable person thereto have been discussed in detail in Chapter 9 – Registration in Module 2 of the Study Material]. Hence, a person who is liable to be registered but does not take a registration and remains an unregistered person shall be construed as a taxable person. Similarly, a person not liable to be registered, but has got himself registered by taking a voluntary registration and is also a taxable person.

(ii) Taxable supply

- For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the GST Law [Section 2(108)] [Refer Chapter-3 : Charge of GST in this Module of the Study Material for detailed discussion on leviability of GST].

- On the other hand, exempt supply means supply of any goods or services or both which attract nil rate of tax or which may be wholly exempt from tax* under section 11 of the CGST Act, or under section 6 of the IGST Act, and includes non-taxable supply [Section 2(47)]
- *Exemptions may be provided to the specified goods or services or to a specified category of persons/ entities making supply [Refer Chapter-5: Exemptions from GST in this Module of the Study Material for detailed discussion].

2.4 COMPOSITE AND MIXED SUPPLIES [SECTION 8]

STATUTORY PROVISIONS

Section 8	Tax liability on composite and mixed supplies
Clauses	Particulars
	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
	(b) a mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax.

ANALYSIS

- GST is payable on goods or services or both at the notified rates. Classification of any supply (whether as goods or services, the category of goods or services) is essential to determine the applicable rate of GST on the particular supply. The application of rates poses no problem if the supply is of individual goods or individual services, which is clearly identifiable and such goods or services are subject to a particular rate of tax.
- However, in certain cases, supplies are not such simple and clearly identifiable. Sometimes supplies are a combination of goods or combination of services or combination of goods and services both and each individual component of such supplies may attract a different rate of tax.
- In such a case, the rate of tax to be levied on such supplies may be a challenge. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.
- In order to determine whether the supplies are 'composite supplies' or 'mixed supplies', one needs to determine whether the supplies are naturally bundled or not naturally bundled in ordinary course of business. The concept of 'naturally bundled' supplies is emanating from the definition of 'composite supply'.

COMPOSITE SUPPLIES

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

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



- **Principal supply** means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary [Section 2(90)].
- Works contract and restaurant services are classic examples of composite supplies, but the GST law identifies both as supply of services [as you would have seen in the discussion on Schedule II to the CGST Act earlier in this Chapter] and chargeable to specific rate of tax mentioned against each of such services (works contract or restaurant).
- However, in respect of other composite supplies (i.e. other than the two categories mentioned above), the need to determine the supply as a composite one, will arise, so as to determine the appropriate classification of such supply as supply of goods or supply of services as also the appropriate rate of tax.
- It will be necessary to determine as to whether a particular supply is naturally bundled in the ordinary course of business and what constitutes principal supply in such composite supplies.

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

- Whether the services are bundled in the ordinary course of business or not, would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:
 - **The perception of the consumer or the service recipient** - If large number of service recipient of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.

Example 68 : Mobile phone is always sold with battery.

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

Example 69 : Bundle of services of catering on board and services of transport by air is a bundle offered by a majority of airlines.

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

Example 70 : Service of stay in a hotel is often combined with provision of breakfast and dinner provided free of cost during the stay. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- Other illustrative indicators, not determinative but indicative of bundling of services in the ordinary course of business are :
 - ✓ There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
 - ✓ The elements are normally advertised as a package.
 - ✓ The different elements are not available separately.
 - ✓ The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected.

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

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

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

Example 71 : A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:

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

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

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

Example 72 : Poshak Manufacturers entered into a contract with Cheeku Ltd. for supply of readymade shirts packed in designer boxes at Cheeku Ltd.'s outlet. Further, Poshak Manufacturers would also get them insured during transit. In this case, supply of goods, packing materials, transport & insurance is a composite supply wherein supply of goods is principal supply.

Example 73 : When a consumer buys a television set and he also gets mandatory warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance services are ancillary.

Example 74 : A travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, and the use of airport lounge. In this case, the transportation of passenger, constitutes the pre-dominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary.

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

Example 75 : Rati Computers supplies laptop (worth ₹ 52,000) alongwith laptop bag (worth ₹ 3,000) to a customer for ₹ 55,000. Being naturally bundled, supply of laptop bag along with the laptop is composite supply which is treated as the supply of the principal supply [viz. laptop]. Assuming that the rate of tax applicable on laptop is 18% and on laptop bag is 28%, in the given case, rate of principal supply, i.e. laptop @ 18% will be charged on the entire value of ₹ 55,000.

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

1. Printing industry issues

- The printing industry in India in particular faced a dilemma in determining whether the nature of supply provided was that of goods or services. Another doubt was whether in case where certain contracts involved both supply of goods and services, whether the same would constitute a supply of goods or services or if it would be a composite supply and in case it is, then what would constitute the principal supply.
- Thus, it is clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.
- In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.
- In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the printer using its physical inputs including paper to print the design, logo etc. supplied by the recipient of goods, predominant supply is supply of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods



2. Food supplied to the patients

Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of health care and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable³¹.

3. Activity of bus body building

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

4. Retreading of tyres

- In retreading of tyres, which is a composite supply, the pre-dominant element is process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply.
- Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods.
- Retread tyres are revamped tyres on which the worn out tread (the part of the tire that makes contact with the surface of the road) is replaced using new tread.
- **Mixed 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)].
- The individual supplies are independent of each other and are not naturally bundled.



- **How to determine if a particular supply is a mixed supply?** : In order to identify if the particular supply is a mixed supply, the first requisite is to rule out that the supply is a composite supply.
- A supply can be a mixed supply only if it is not a composite supply. As a corollary, it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business, then the possibility of it being a mixed supply needs to be checked.
- Once the amenability of the transaction as a composite supply is ruled out, and a single consideration is charged for the entire supply of different components, it would be treated as a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.

Example 76 : A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately or separate prices are charged.

Example 77 : A shopkeeper selling storage water bottles along with refrigerator for a single price. Bottles and the refrigerator can easily be priced and sold, independently, and are not naturally bundled. So, such supplies are mixed supplies.

Example 78 : A house is given on rent through a single rent deed - one floor of which is to be used as residence and the other for housing a printing press, at a lump sum rent amount. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Said supplies are mixed supply.

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

Example 79 : Sringer Enterprises supplies 10,000 kits (at ₹ 50 each) amounting to ₹ 5,00,000 to Raghav General Store. Each kit consists of 1 shampoo, 1 face wash and 1 kajal pencil. It is a mixed supply and is treated as supply of that particular supply which attracts highest tax rate. Assuming that the rate of tax applicable on shampoo is 18%, on face wash is 28% and on kajal pencil is 12%, in the given case, highest tax rate [viz. face wash] @ 28% will be charged on the entire value of ₹ 5,00,000.

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

Example 80 : In case of servicing of cars involving supply of both goods (spare parts) and services (labour) where the value of goods and services are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately

Questions 5 :

Jaskaran supplies gift packages at ₹ 30 each to its customers. Each package consists of 2 chocolates, 2 fruit juice bottles and a packet of toy balloons. Rates of GST applicable on chocolates, fruit juice bottles and toy balloons are 18%, 12% and 5% respectively. Jaskaran is liable to pay GST @_____.

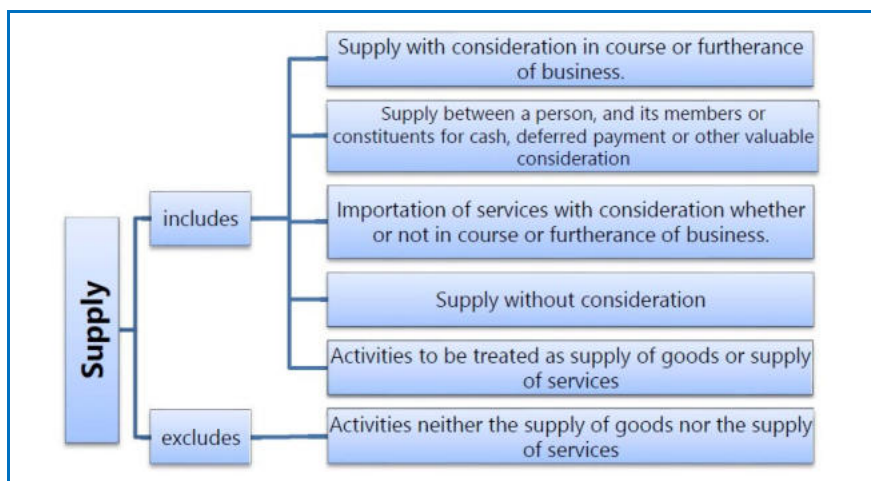
- 18%, 12% and 5% separately on value of supply of chocolates, fruit juice bottles and toy balloons respectively
- 18% on the price charged for the gift package
- 12% on the price charged for the gift package
- 5% on the price charged for the gift package

LET US RECAPITULATE :

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

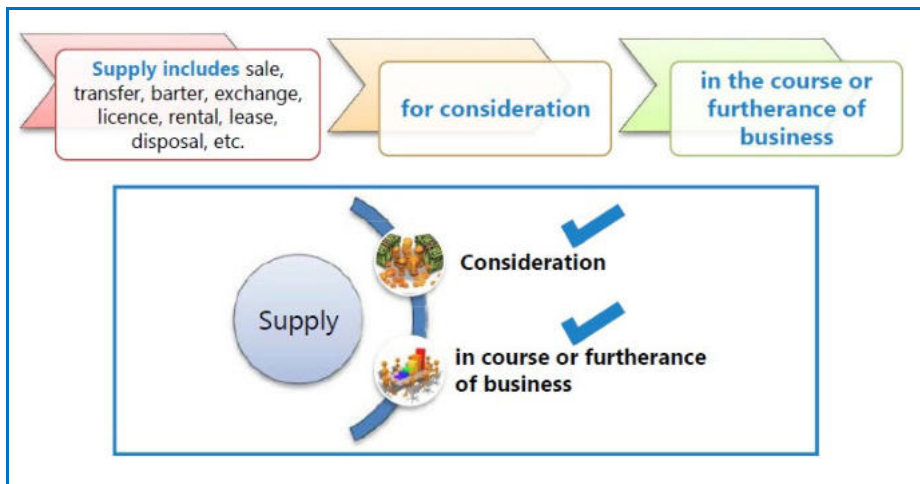
Supply should be of goods or services	Supply should be made for a consideration	Supply should be made in the course or furtherance of business
---------------------------------------	---	--

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

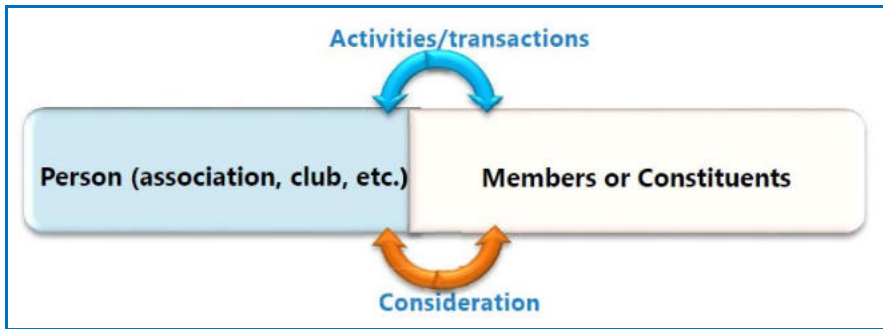


Sub-sections of section 7 alongwith related Schedules has been summarised as follows:

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

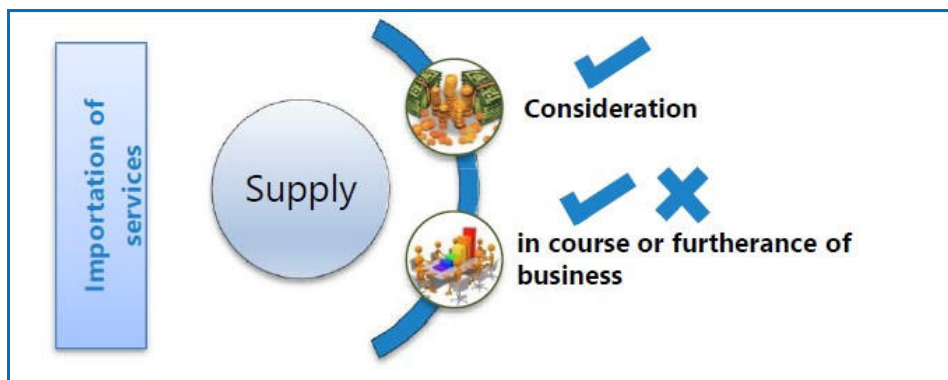


2. Activities/transactions between a person, other than an individual, and its members or constituents for valuable consideration [Section 7(1)(aa)]



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

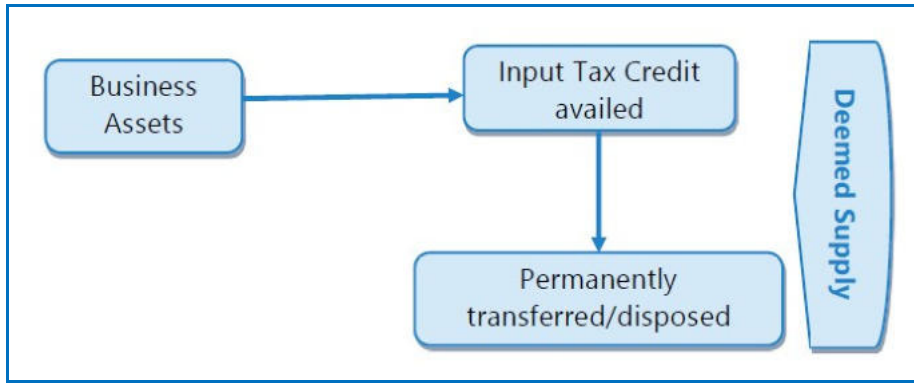
Supply should be in course or furtherance of business. The exception to said rule is import of services is deemed as supply even if the same has been imported not in course/furtherance of business.



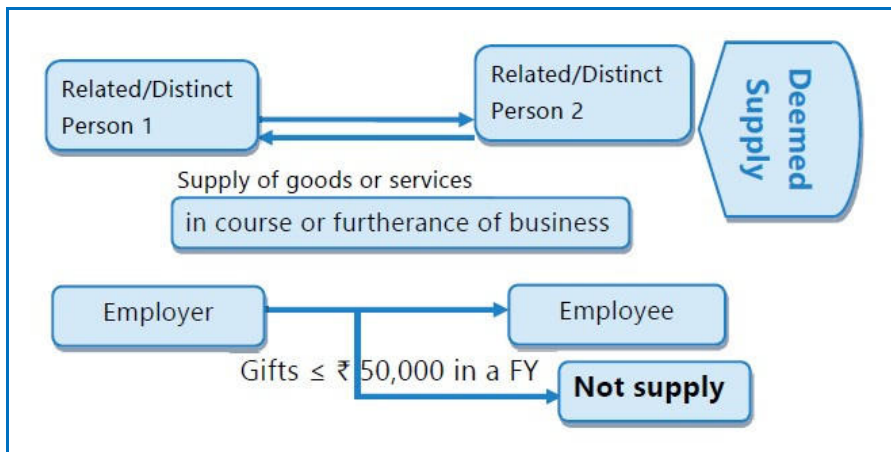
4. Supply without consideration - Deemed Supply [Section 7(1)(c) read with Schedule I]

This includes all supplies made to a taxable or non-taxable person, even if the same is without consideration. These are specifically mentioned in Schedule I appended to the CGST Act. As per Schedule I, in the following four cases, Supplies made without consideration will be treated as supply under section 7:

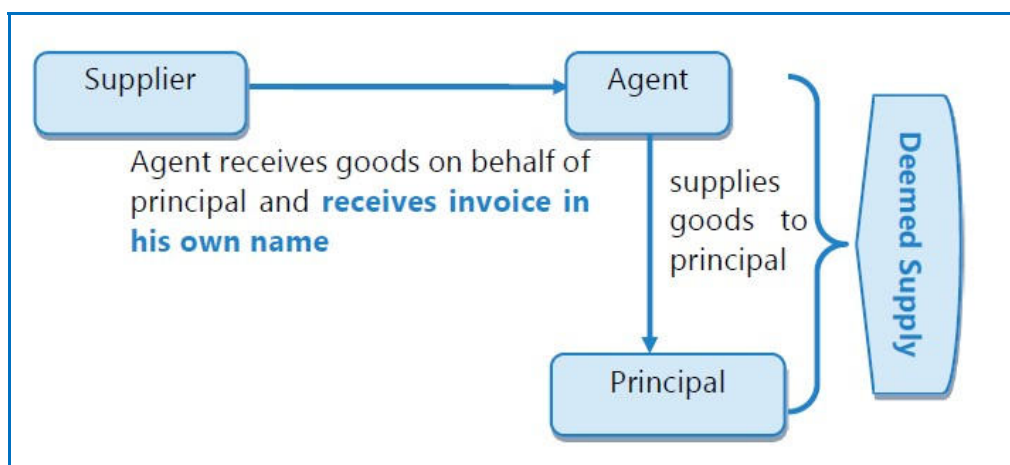
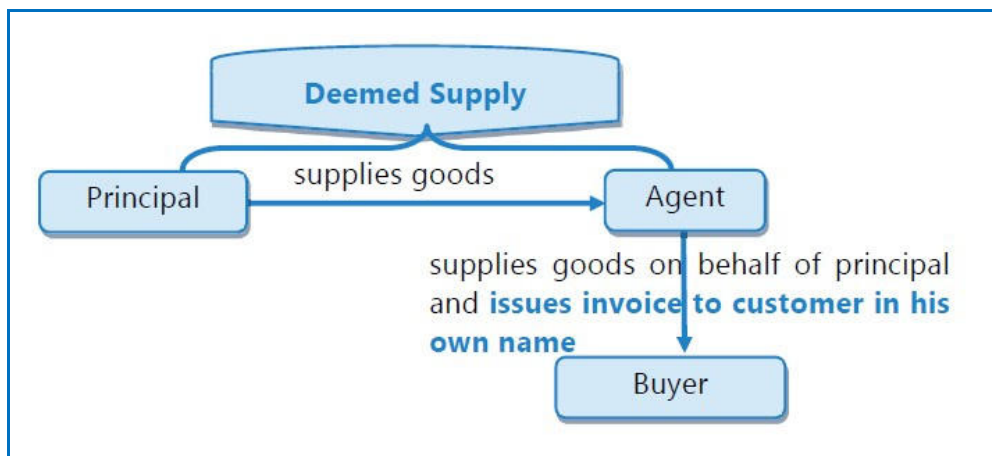
I. Permanent Transfer/Disposal Of Business Assets



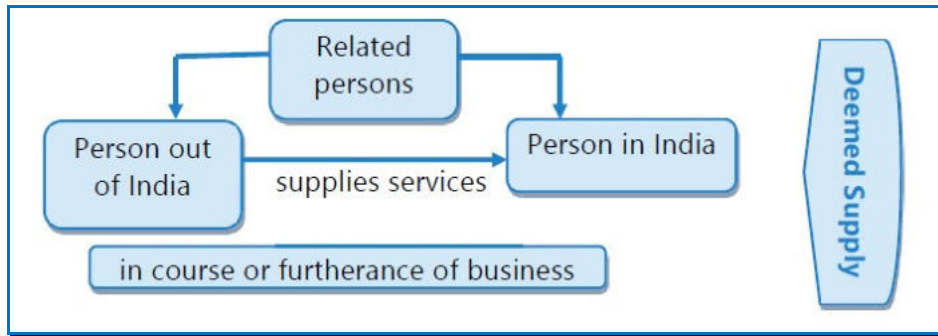
II. Supply Between Related Persons Or Distinct Persons



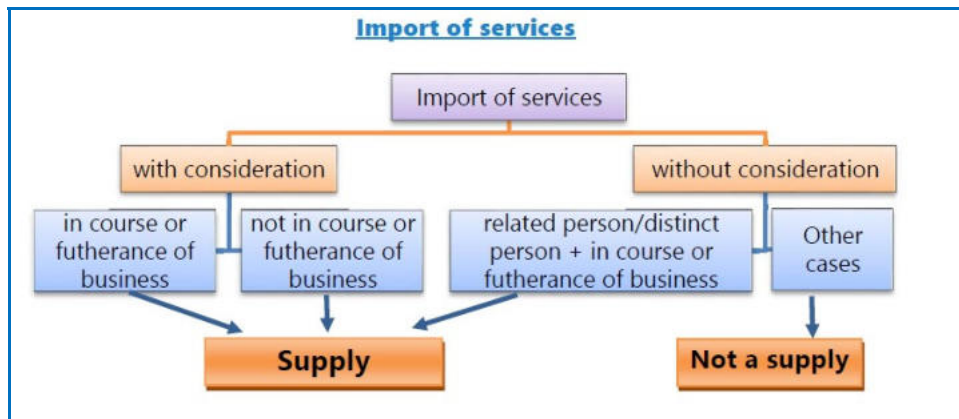
II. Supply Between Principal And Agent



IV. Importation of services



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



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

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

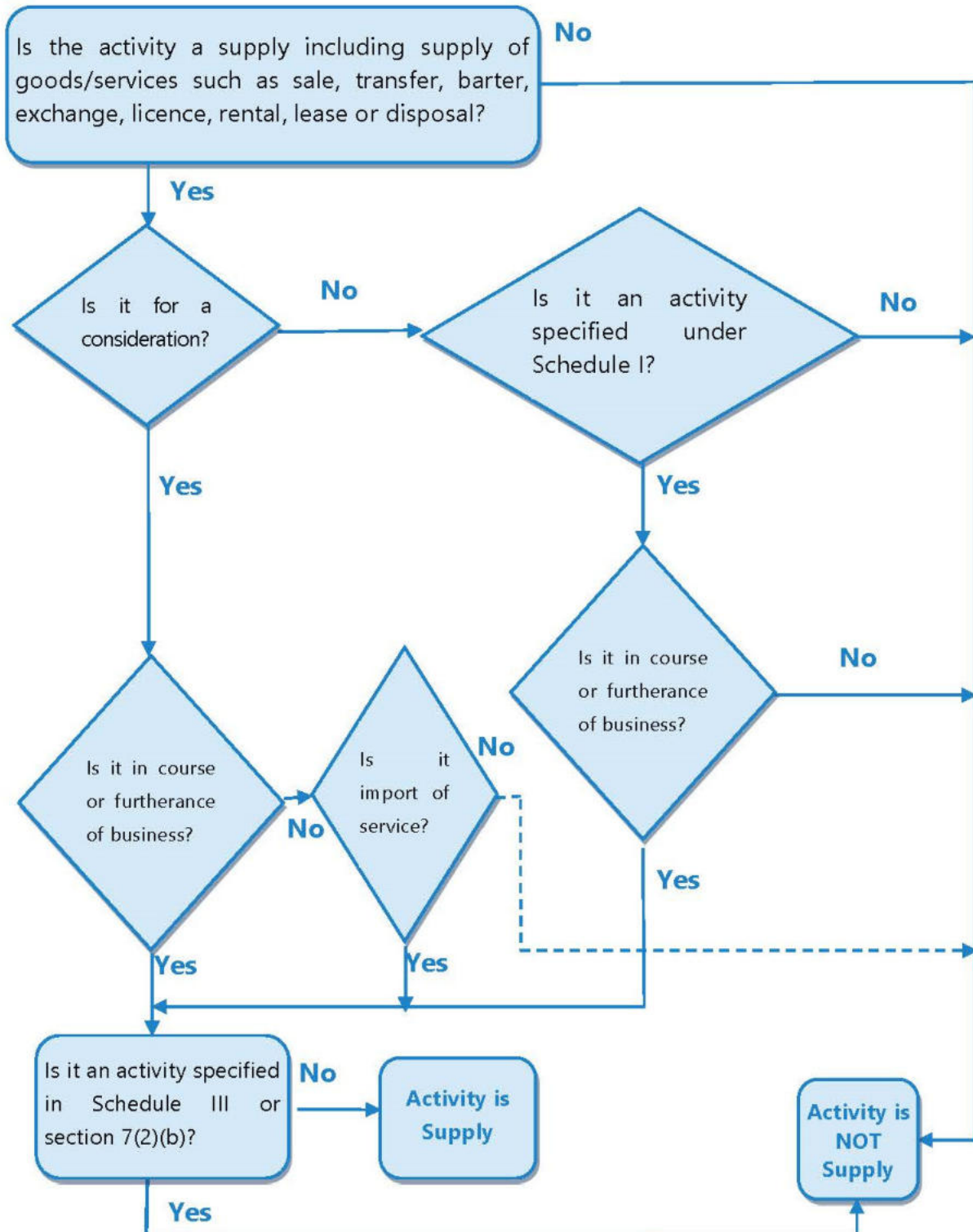
Para No.	Activity/ Transaction	Type	Supply of goods/ services
		<p>Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person.</p> <p>Exceptions :</p> <ul style="list-style-type: none"> • Business transferred as a going concern. • Business carried on by a personal representative who is deemed to be a taxable person. 	Goods
5.	<p>Renting of immovable property Construction of complex, building, civil structure, etc.</p> <p>Exception :</p> <ul style="list-style-type: none"> • Entire consideration received after issuance of completion certificate or after its first occupation, whichever is earlier. • Temporary transfer or permitting use or enjoyment of any intellectual property right • Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software • Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act. • Transfer of right to use any goods for any purpose 	Construction of complex, building, civil structure, etc.	Services
6.	<p>Following composite supplies :</p> <ul style="list-style-type: none"> • Works contract • Supply of goods, being food or any other article for human consumption or any drink 		Services

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



S. No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	Services by an employee to the employer in the course of or in relation to his employment.
2.	Services by any court or Tribunal established under any law for the time being in force
3.	<p>(a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;</p> <p>(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or</p> <p>(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.</p>

S. No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.
6.	Actionable claims, other than lottery, betting and gambling.

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



6. Composite and mixed supplies

	
<p style="text-align: center;">Composite Supply</p> <ul style="list-style-type: none"> •Consist of two or more supplies •Naturally bundled •In conjunction with each other •One of which is principal supply •Tax liability shall be rate of principal supply •Example: Charger supplied alongwith mobile phones. 	<p style="text-align: center;">Mixed Supply</p> <ul style="list-style-type: none"> •Consist of two or more supplies for a single price •Not naturally bundled •Though can be supplied independently, still supplied together •Tax liability shall be the rate applicable to the supply that attracts highest rate of tax •Example: A gift pack comprising of chocolates, candies, sweets and balloons.

TEST YOUR KNOWLEDGE

- Q.1** Meghraj & Co. wishes to commence the business of supplying ready-made garments within Punjab and in the neighbouring States of Delhi and Haryana. Kindly state as to what is the taxable event under GST and leviability of CGST, SGST/UTGST and IGST on the same?
- Q.2** Damodar Private Ltd., registered in Delhi, is planning to transfer some goods to its branch, registered in West Bengal, without any consideration, so that the goods can be sold from the branch. The company believes that the transaction that will be undertaken by it would not qualify as supply as no consideration is involved. Ascertain whether the transfer of goods by Damodar Private Ltd. To its branch office would qualify as supply.
- Q.3** Prithvi Associates is engaged in supply of taxable goods. It enquires from its tax advisor as to whether any activity can be treated as supply even if made without consideration in accordance with the provisions of the GST law. You are required to enumerate such activities, if any.
- Q.4** Composite supply is treated as supply of that particular goods or services which attracts the highest rate of tax, for the purpose of considering tax liability. Examine the validity of the statement.
- Q.5** Transfer of title and/or possession is necessary for a transaction to constitute supply of goods. Examine.
- Q.6** Examine whether the following activities would amount to supply under section 7 read with Schedule I:
- (a) Sulekha Manufacturers have a factory in Delhi and a depot in Mumbai. Both these establishments are registered in respective States. Finished goods are sent from factory in Delhi to the Mumbai depot without consideration so that the same can be sold from the depot.
 - (b) Raman is an architect in Chennai. His brother who is settled in London is a well-known lawyer. Raman has taken legal advice from him free of cost with regard to his family dispute.
 - (c) Would your answer be different if in the above case, Raman has taken advice in respect of his business unit in Chennai?

- Q.7** State whether the following supplies would be treated as supply of goods or supply of services as per Schedule II :
- Renting of immovable property.
 - Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business so as no longer to form part of those assets.
 - Transfer of right in goods without the transfer of title in such goods.
 - Transfer of title in goods under an agreement which stipulates that property shall pass at a future date upon payment of full consideration as agreed.
- Q.8** Determine whether the following supplies would be treated as supply of goods or supply of services as per Schedule II:
- Temporary transfer or permitting use or enjoyment of any intellectual property right.
 - Any treatment or process which is applied to another person's goods.
 - Transfer of title in goods.
- Q.9** The goods supplied on hire purchase basis will be treated as supply of services. Examine the validity of the statement.
- Q.10** Examine whether the activity of import of service in the following independent cases would amount to supply under section 7:
- Miss Shriniti Kaushik received interior decoration services for her residence located at Bandra, Mumbai from Mr. Racheal of Sydney (Australia). The amount paid for the said service is 5,000 Australian dollar.
 - Miss Shriniti Kaushik received interior decoration services for her residence located at Bandra, Mumbai from her brother, Mr. Varun residing in Sydney (Australia) [wholly dependent on Miss Shriniti]. Further, Miss Shriniti did not pay any consideration for the said service.
 - Will your answer change if in the above case, if Miss Shriniti has taken interior decoration services with regard to her business premises and not her residence?
- Q.11** Dumdum Electronics has sold the following electronic items to Akbar Retail Store.
- Refrigerator (500 litres) taxable @ 18%
 - Stabilizer for refrigerator taxable @ 12%
 - LED television (42 inches) taxable @ 12%
 - Split air conditioner (2 Tons) taxable @ 28%
 - Stabilizer for air conditioner taxable @12%
- Dumdum Electronics has issued a single invoice, indicating price of each of the above items separately in the same.
- Akbar Retail Store has given a single cheque of ₹ 1,00,000/- for all the items as a composite discounted price. State the type of supply and the tax rate applicable in this case.
- Q.12** Manikaran, a registered supplier of Delhi, has supplied 20,000 packages at ₹ 30 each to Mukhija Gift Shop in Punjab. Each package consists of 2 chocolates, 2 fruit juice bottles and a packet of toy balloons. Determine the rate(s) of GST applicable in the given case assuming the rates of GST to be as under:

Goods/services supplied	GST rate
Chocolates	18%
Fruit juice bottles	12%
Toy balloons	5%

- Q.13** Gagan Engineering Pvt. Ltd., registered in Haryana, is engaged in providing maintenance and repair services for heavy steel machinery. For carrying out the repair work, Gagan Engineering Pvt. Ltd. sends its container trucks equipped with items like repair equipments, consumables, tools, parts etc. from Haryana workshop to its own repairing centres (registered under GST law) located in other States across India where the clients' machinery are being brought and are being repaired. Discuss the leviability of GST on the inter-State movement of trucks from the workshop of Gagan Engineering Pvt. Ltd. in Haryana to its own repairing centres located in other States across India.
- Q.14** Sarvanna & Sons wishes to start supplying alcoholic liquor for human consumption in the State of Tamil Nadu. Therefore, it applies for license to the Tamil Nadu Government for selling liquor for which the State Government has charged specified fee from it. Examine whether the grant of alcoholic liquor license by the Tamil Nadu Government to Sarvanna & Sons qualifies as supply.

ANSWERS/HINTS

1. Taxable event under GST is the supply of goods or services or both made for consideration in the course or furtherance of business. CGST and SGST will be levied on intra-State supplies. IGST will be levied on inter-State supplies.
2. As per Schedule I read with section 7(1)(c), 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, is deemed as supply even if made without consideration. In the given case, since the Damodar Private Ltd. and its branch located in another State are distinct persons, supply of goods between them would qualify as supply.
3. Section 7(1)(a) stipulates that the supply should be for a consideration and should be in the course or furtherance of business. However, section 7(1)(c) read with Schedule I enumerates the cases where an activity is treated as supply, even if the same is without consideration. These are as follows:
 - (i) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
 - (ii) 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.
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.
 - (iii) 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.
 - (iv) 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.
4. The statement is not correct. For considering tax liability, composite supply is treated as supply of the principal supply. It is the mixed supply that is treated as supply of that particular goods or services which attracts the highest rate of tax.
5. Title as well as possession both need to be transferred for a transaction to be considered 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).

In some cases, possession may be transferred immediately, but title may 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 in terms of Schedule II.

6. (a) Schedule I read with section 7(1)(c), inter alia, stipulates that supply of goods or services or both between related persons or between distinct persons as specified in section 25, is supply even without consideration provided it is made in the course or furtherance of business. Further, a person who has obtained more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as distinct persons [Section 25(4)].

In view of the same, factory and depot of Sulekha Manufacturers are distinct persons. Therefore, supply of goods from Delhi factory of Sulekha Manufacturers to Mumbai Depot without consideration, but in course/furtherance of business, is supply under section 7 read with Schedule I.

- (b) Schedule I read with section 7(1)(c), inter alia, stipulates that import of services by a taxable person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. Explanation to section 15, inter alia, provides that persons shall be deemed to be “related persons” if they are members of the same family. Further, as per section 2(49), 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.

In the given case, Raman has received free of cost legal services from his brother. However, in view of section 2(49)(ii) above, Raman and his brother cannot be considered to be related as Raman’s brother is a well-known lawyer and so, not wholly/mainly dependent on Raman. Further, Raman has taken legal advice from him in personal matter and not in course or furtherance of business. Consequently, services provided by Raman’s brother to him would not be treated as supply under section 7 read with Schedule I.

- (c) In the above case, if Raman has taken advice with regard to his business unit, services provided by Raman’s brother to him would still not be treated as supply under section 7 read with Schedule I as although the same are provided in course or furtherance of business, but are provided without consideration and such services have not been received from a related person.

7. (a) Supply of services
 (b) Supply of goods
 (c) Supply of services
 (d) Supply of goods
8. (a) Supply of services
 (b) Supply of services
 (d) Supply of goods

9. The statement is not correct. Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a future date.

10. (i) Supply, under section 7, inter alia,
- includes import of services for a consideration
 - even if it is not in the course or furtherance of business.

Thus, although the import of service for consideration by Miss. Shriniti Kaushik is not in course or furtherance of business [as the interior decoration services have been availed in respect of residence], it would amount to supply.

- (ii) Schedule I, inter alia, stipulates that import of services by a taxable person from a related person located outside India, without consideration is treated as supply only if it is provided in the course or furtherance of business. Explanation to section 15, inter alia, provides that persons shall be deemed to be “related persons” if they are members of the same family. Further, as per section 2(49), family means, —

- (a) the spouse and children of the person, and
- (b) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person.

In the given case, Miss Shriniti Kaushik has received interior decoration services from her brother. In view of section 2(49)(ii) above, Miss Shriniti and her brother shall be considered to be related as Miss Shriniti’s brother is wholly dependent on her.

However, Miss Shrinti has taken interior decoration services for her residence and not in course or furtherance of business. Consequently, services provided by Miss Shrinti’s brother to her would not be treated as supply under section 7 read with Schedule I.

- (iii) In the above case, if Miss Shriniti has taken interior decoration services with regard to her business premises, services provided by Miss Shriniti’s brother to her would be treated as supply under section 7 read with Schedule I, as the same are provided in course or furtherance of business.

11. In the given case, the items supplied by Dumdum Electronics are not naturally bundled in the ordinary course of business. Therefore, such supply is not a composite supply. Further, although Akbar Retail Store has paid a composite discounted price for these goods, Dumdum Electronics has not charged a single price for the said supply. Therefore, said supply is also not a mixed supply. Supply of these goods is, therefore, supply of individual items which are taxable at the respective rates applicable to them.
12. As per section 2(74), 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. Supply of a package containing chocolates, fruit juice bottles and a packet of toy balloons is a mixed supply as each of these items can be supplied separately and is not dependent on any other. Further, as per section 8(b), the mixed supply is treated as a supply of that particular supply which attracts the highest rate of tax. Thus, in the given case, supply of packages is treated as supply of chocolates [since it attracts the highest rate of tax] and the rate of GST applicable on the package of ₹ 6,00,000 (20,000 × ₹ 30) is 18%.
13. As per section 25(4)35, a person who has obtained 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’. Schedule I to the CGST Act specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between ‘distinct persons’ as specified in section 25, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

However, as per CBIC circular, the inter-State movement of various modes of conveyance including, inter alia, trucks, carrying goods or passengers or both or for repairs and maintenance, between 'distinct persons' as specified in section 25(4), not involving further supply of such conveyance, may be treated 'neither as a supply of goods nor supply of service' and therefore, will not be leviable to IGST. Applicable CGST/SGST/IGST, however, shall be leviable on 35 Provisions of section 25(4) have been discussed in detail in Chapter 9 – Registration in Module 2 of this Study Material repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017].

Thus, in the given case, inter-State movement of trucks from the workshop of Gagan Engineering Pvt. Ltd. located in Haryana to its repair centres located in other States is 'neither a supply of goods nor supply of service'.

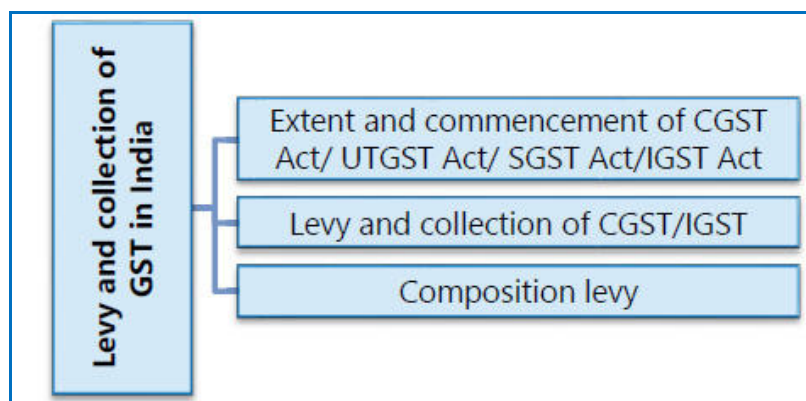
14. Services by way of grant of alcoholic liquor license by the State Governments have been notified to be treated neither as a supply of goods nor as a supply of service. Such licence is granted against consideration in the form of licence fee or application fee or by whatever name it is called. Thus, in the given case, the grant of alcoholic liquor license by the Tamil Nadu Government to Sarvanna & Sons is neither a supply of goods nor a supply of service.



CHAPTER - 3

CHARGE OF GST

CHAPTER OVERVIEW



3.1 INTRODUCTION

- Power to levy tax is drawn from the Constitution of India. To pave way for the introduction of Goods and Services Tax (“GST”), 101st Constitutional Amendment Act, 2016 was passed. By virtue of this Act, enabling provision was made to levy GST on supply of goods or services or both in India. Central excise duty, State VAT and certain State specific taxes and service tax were subsumed into a comprehensive GST [Discussed in detail in Chapter-1: GST in India – An Introduction in this Module of the Study Material].
- The very basis for the charge of tax in any taxing statute is the taxable event i.e the occurrence of the event which triggers levy of tax. As discussed earlier, the taxable event under GST is **SUPPLY** [Discussed in detail in Chapter – 2: Supply under GST in this Module of the Study Material]. **CGST and SGST/UTGST** are levied on all intra- **State supplies** of goods and/or services while **IGST** is levied on all **inter-State supplies** of goods and/ or services.
- The provisions relating to levy and collection of CGST and IGST are contained in section 9 of the CGST Act, 2017 and section 5 of the IGST Act, 2017, respectively. Let us now have a fundamental idea of intra-State supply and inter-State supply.
- As a general rule, where the **location of the supplier** and the **place of supply** of goods or services are **in the same State/Union territory**, it is treated as **intra-State supply** of goods or services respectively. **Intra-State supply**
- Similarly, where the location of the supplier and the place of supply of goods or services are in (i) two different States or (ii) two different Union Territories or (iii) a State and a Union territory, it is treated as inter-State supply of goods or services **Inter-State supply** respectively.
- The concepts of ‘**place of supply**’ and meaning of the ‘**location of the supplier**’ have been elaborated in the next chapter, Chapter 4 – Place of Supply, in this Module of the Study Material. Consequently, the meaning of terms ‘inter-State supply’ and ‘intra-State supply’ has been explained in detail in that chapter.

It is important to note that at intermediate level, provisions pertaining to import and export of goods and/or services have not been covered. These provisions will be discussed in detail at the Final level.

3.2 RELEVANT DEFINITIONS

- **Central tax:** means the central goods and services tax levied under section 9 of the CGST Act [Section 2(21)].
- **Integrated tax:** means the integrated goods and services tax levied under
- **State tax:** means the tax levied under any State Goods and Services Tax Act [Section 2(104)].
- **Goods:** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Section 2(52)].
- **Electronic Commerce:** means the supply of goods or services or both including digital products over digital or electronic networks. [Section 2(44)]
- **Electronic Commerce Operator:** means any person who owns, operates or manages a digital or electronic facility or platform for electronic commerce. [Section 2(45)]
- **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 Integrated Goods and Services Tax 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(79)].
- **Aggregate turnover:** means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account be computed on all India basis **but excludes** central tax, State tax, Union territory tax, integrated tax and cess [Section 2(6)].
- **Prescribed:** means prescribed by rules made under this Act on the recommendations of the council. [Section 2(87)]
- **Business:** includes –

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

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

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

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

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

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

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

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

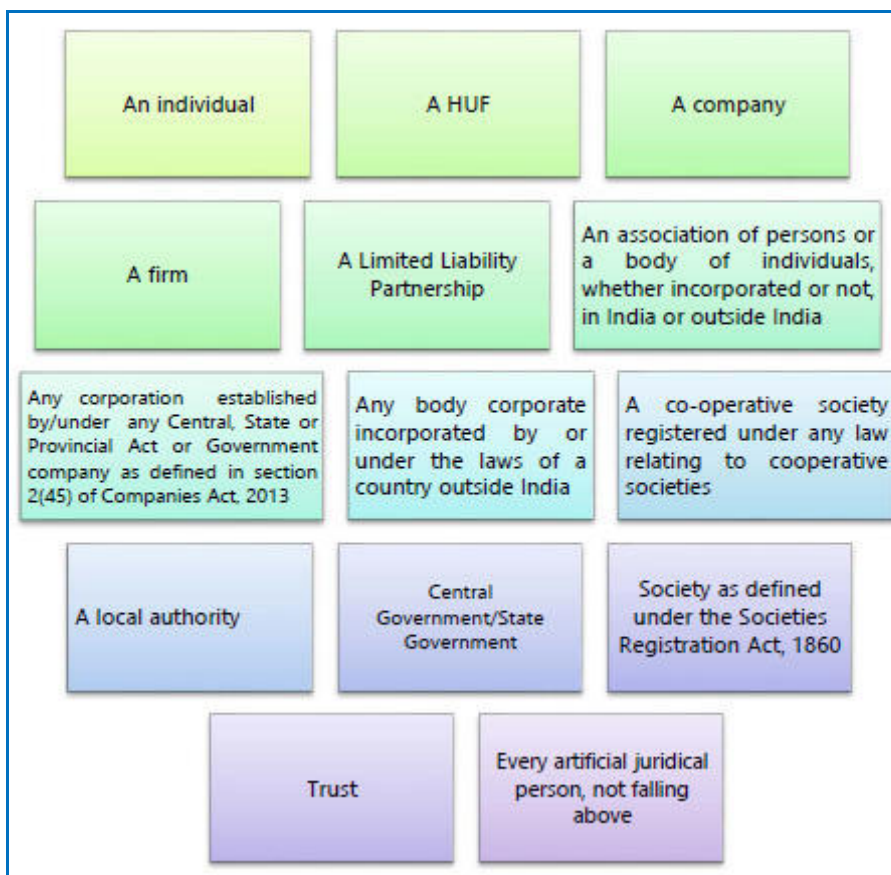
(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

[Section 2(17)].

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

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

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



- **Recipient:** of supply of goods and/or services means-
 - (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration,
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
 - (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

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

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

- **Supplier:** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].
- **Taxable supply:** means a supply of goods and/or services which is leviable to tax under CGST Act [Section 2(108)].
- **Taxable person:** means a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act [Section 2(107)].

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

Section 22 enumerates the persons liable to be registered under CGST Act and section 24 lists the persons liable to be registered compulsorily under the GST law. The said sections and the concept of taxable person thereto has been discussed in detail in Chapter 9 – Registration in Module 2 of this Study Material.

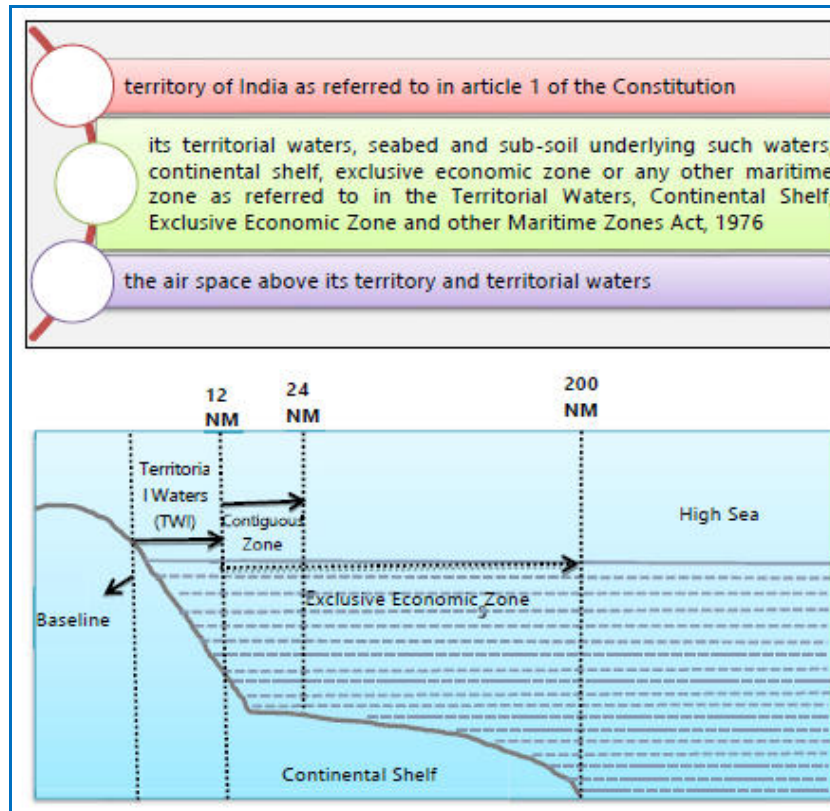
3.3 EXTENT & COMMENCEMENT OF GST LAW

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

India:



“India” means [Section 2(56) of CGST Act]-



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

Example 1 : Maharashtra GST Act, 2017 extends to whole of the State of the Maharashtra.

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

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

**Union territory: means the territory of—

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. |

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

Questions 1 :

Sudhakar Enterprises has undertaken an intra-State supply of taxable goods. CGST and UTGST will be payable on said supply provided the supply is made within _____

- | | |
|------------|---------------------|
| (a) Delhi | (b) Puducherry |
| (c) Ladakh | (d) Jammu & Kashmir |

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

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

STATUTORY PROVISIONS :

Section 9 of the CGST Act, 2017	Levy and collection (CGST)
Sub-section	Particulars
(1)	Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
(2)	The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
(3)	The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
(4)	The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.
(5)	<p>The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra- State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.</p> <p>Provided that 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: Provided further that 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.</p>

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

ANALYSIS :

- Central Goods and Services Tax (**CGST**) shall be **levied** on **all intra-State supplies** of goods or services or both.
- The tax shall be **collected** in such manner as may be prescribed and shall be **paid by the taxable person**. However, intra-State supply of **alcoholic liquor for human consumption** is outside the purview of CGST.

- **Value for levy** : Transaction value under section 15 of the CGST Act– Discussed in detail in Chapter 7 – Value of supply in this Module of Study Material.
- **Rates of CGST** : Rates for CGST are rates as may be notified by the Government on the recommendations of the GST Council. **[Discussed in detail subsequently in this Chapter]**. Maximum rate of **CGST** can be 20%.

In case of inter-State supplies of goods and/or services, Integrated Goods and Services Tax (IGST) is levied on the transaction value under section 15 of the CGST Act. Since alcoholic liquor for human consumption is outside the purview of GST law, IGST is also not leviable on the same. IGST is the sum total of CGST and SGST/UTGST. The maximum rate of IGST can be 40%.

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

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

Tax payable on supply of goods or services or both under reverse charge

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

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

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

Reverse charge mechanism

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

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

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

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

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

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

- A. Supplies of goods taxable under reverse charge, i.e. supply of the goods where tax is payable by the recipient:** Goods like cashewnuts [not shelled/peeled], bidi wrapper leaves, tobacco leaves and raw cotton © The Institute of Chartered Accountants of India (when supplied by an agriculturist to any registered person), supply of lottery (when supplied by State Government, Union Territory or any local authority to lottery distributor or selling agent) , silk yarn (when supplied by manufacturer of silk yarn to any registered person), used vehicles, seized and confiscated goods, old and used goods, waste and scrap (when supplied by Central Government, State Government, Union Territory or any local authority to any registered person), priority sector lending certificate – when supplied by registered person to any registered person, etc. are taxable under reverse charge³.
- B. Supply of services taxable under reverse charge under section 9(3) of the CGST Act, i.e. the services where tax is payable by the recipient:**

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

S. No.	Category of supply of services	Supplier of service	Recipient of Service
1.	Supply of services by a Goods Transport Agency (GTA) in respect of transportation of goods by road to- (a) any factory registered under or 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 cooperative 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 cooperative 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;

S. No.	Category of supply of services	Supplier of service	Recipient of Service
	(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		or (g) any casual taxable person; located in the taxable territory. [Hereinafter referred as Specified recipients]
	<p>However, reverse charge mechanism (RCM) shall not apply to services provided by a GTA, by way of transport of goods in a goods carriage by road to-</p> <p>(a) a Department/ establishment of the Central Government/ State Government/ Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies,</p> <p>which has taken registration under the CGST Act only for the purpose of deducting tax under section 514 and not for making a taxable supply of goods or services⁵.</p> <p>Further, nothing contained in this entry shall apply where, -</p> <p>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</p> <p>ii. the supplier has issued a tax invoice to the recipient charging CGST at the applicable rates and has made the prescribed declaration on such invoice issued by him.</p>		
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.
3.	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in taxable territory.
4.	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
5.	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

S. No.	Category of supply of services	Supplier of service	Recipient of Service
	(2) services specified below- (i) services by the Department of Posts; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.		
5A.	Services supplied by Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under CGST Act, 2017	Central Government, State Government, Union territory or local authority 7	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
6.	Services supplied by a director of a company/ body corporate to the said company/body corporate.	A director of a company or a body corporate	Company or a body corporate located in the taxable territory.
7.	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
8.	Services supplied by a recovery agent to a banking company or a financial institution or a nonbanking financial company.	A recovery agent	A banking company/financial institution or a non-banking financial company, located in the taxable territory.
9.	Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.
9A.	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	Publisher located in the taxable territory.

S. No.	Category of supply of services	Supplier of service	Recipient of Service
	<p>However, an author can choose to pay tax under forward charge if-</p> <p>(i) he has taken registration under the CGST Act and filed a declaration, in the prescribed form, that he exercises the option to pay CGST on the said service under forward charge in accordance with section 9(1) and to comply with all the provisions as they apply to a person liable for paying the tax in relation to the supply of any goods and/or services and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;</p> <p>(ii) he makes a declaration on the invoice issued by him in prescribed form to the publisher.</p>		
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 (LLP) firm to bank or non-banking financial company (NBFCs) .	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or LLP firm	A banking company or a NBFC, located in the taxable territory
12.	Services provided by business facilitator to a banking company .	Business facilitator	A banking company, located in taxable territory
13.	Services provided by an agent of business correspondent to business correspondent .	An agent of business correspondent	A business correspondent, located in the taxable territory.
14.	<p>Security services (services provided by way of supply of security personnel) provided to a registered person. However, nothing contained in this entry shall apply to:</p> <p>(i) (a) a Department or Establishmen t of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies; which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or</p> <p>(ii) a registered person paying tax under composition scheme.</p>	Any person other than a body corporate	A registered person, located in the taxable territory.

S. No.	Category of supply of services	Supplier of service	Recipient of Service
15.	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person, other than a body corporate who supplies service to a body corporate & doesn't issue an invoice charging CGST @ 6% to service recipient.	Any body corporate located in the taxable territory.
16.	Services of lending of securities under Securities Lending Scheme, 19976 ("Scheme") of Securities and Exchange Board of India, as amended	Lender i.e., a person who deposits securities registered in his name/in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under Scheme of SEBI	Borrower i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI.

- All the above services have also been notified for reverse charge under IGST Act vide Notification No. 10/2017 IT (R) dated 28.06.2017 as amended. In addition to them, following service is also notified by said notification under reverse charge for IGST purposes:

Any service supplied by any person who is located in a non-taxable territory to any person located in the taxable territory other than non-taxable online recipient⁷ located in taxable territory. Thus, in case of import of service, tax is payable by the person importing such service⁸.

For purpose of the notification notifying the above services under reverse charge mechanism, following explanations shall apply-

- 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.
- Body Corporate:** has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.
As per section 2(11) of the Companies Act, 2013, body corporate or corporation includes a company incorporated outside India, but does not include—
 - a co-operative society registered under any law relating to co-operative societies; and
 - any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.
- the business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.

- (d) the words and expressions used and not defined in reverse charge notification but defined in the CGST Act, the IGST Act, and the UTGST Act shall have the same meanings as assigned to them in those Acts.
- (e) **Limited Liability Partnership** formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.
- (f) **Insurance agent** means an insurance agent licensed under section 42 of the Insurance Act, 1938 who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance [Section 2(10) of the Insurance Act, 1938].
- (g) **Renting of immovable property** means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.
- (h) the provisions of reverse charge notification, in so far as they apply to the Central Government, State Government, shall also apply to the Parliament and State Legislature, **Courts and Tribunals**.

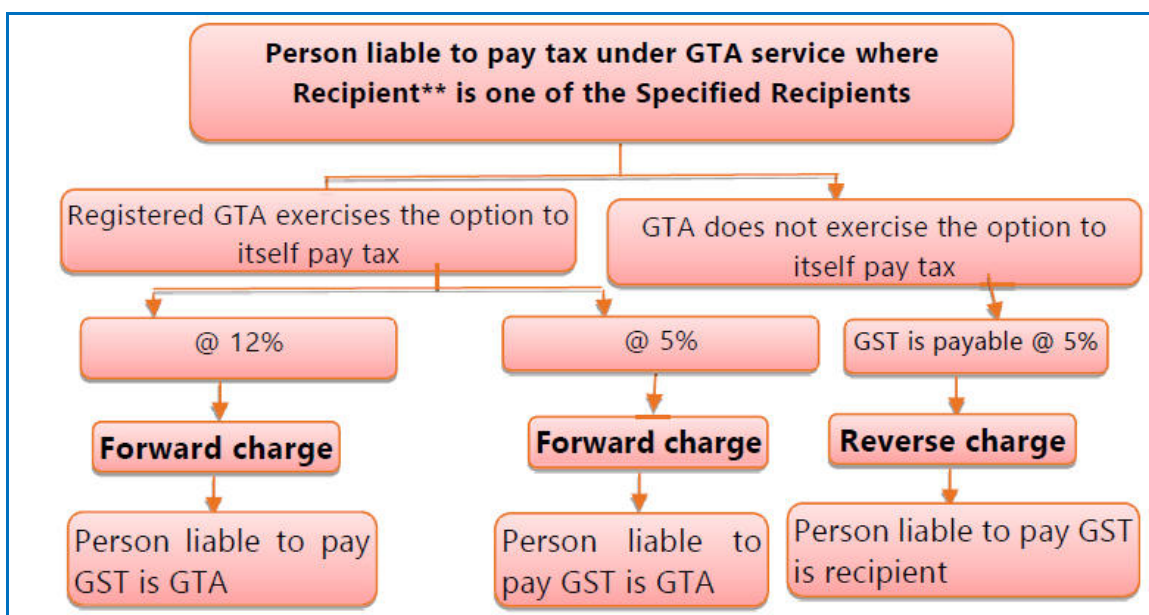
Person liable to pay GST on GTA service

GTA services are taxable at the following two rates:

- (i) **@ 5%** (2.5% CGST+2.5% SGST/UTGST or 5% IGST) where GTA has not taken the Input Tax Credit (ITC) on goods or services used in supplying GTA service (there can be either of the cases - where GTA exercises the option to itself pay GST at said rate or /does not exercise the option to itself pay GST at said rate, on services supplied by it) or
- (ii) **@ 12%** (6% CGST+6% SGST/UTGST or 12% IGST) where GTA exercises the option to itself pay GST at said rate on services supplied by it. In this case, there is no restriction on availing ITC on goods or services used in supplying GTA service by GTA.



In the following paras, we have explained as to who is the person liable to pay tax in case of each of the above two rates:



Note - Where recipient is other than the specified recipients (Unregistered individual end consumer or unregistered casual taxable person), GST will be exempt – Discussed in detail in Chapter 5 – Exemptions under GST in this Module of the Study Material.

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

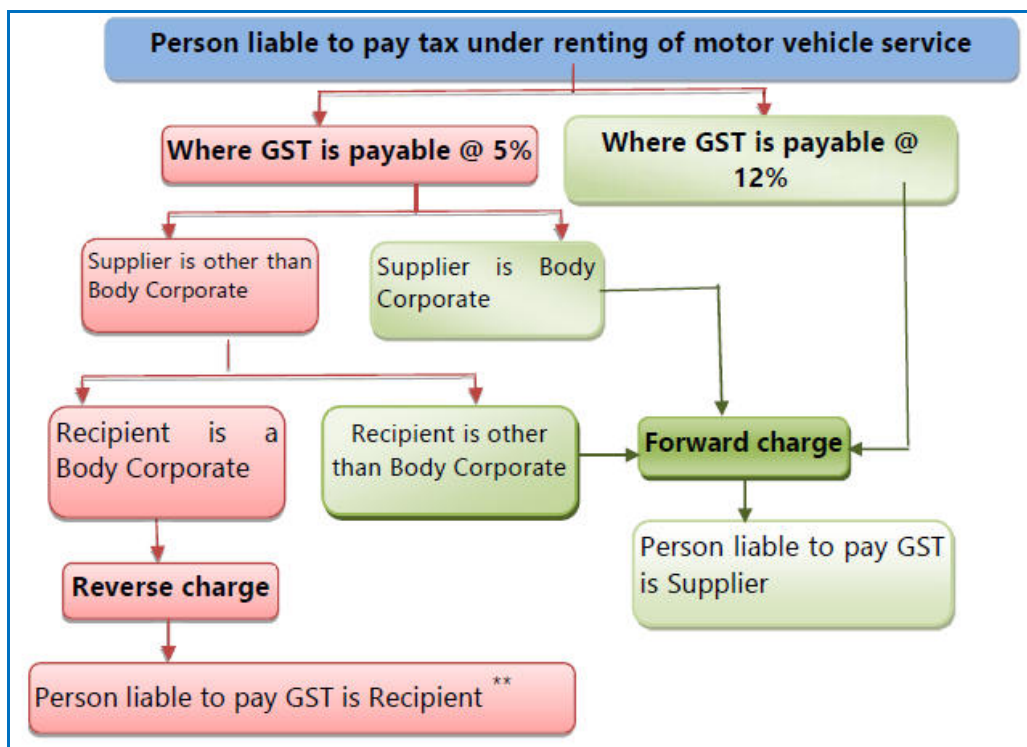
Person liable to pay GST on renting of motor vehicles service

Service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient are taxable at the following two rates:



- (i) @ 5% (2.5% CGST+2.5% SGST/UTGST or 5% IGST) provided supplier of services has taken only the limited ITC (of input services in the same line of business) or
- (ii) @ 12% (6% CGST+6% SGST/UTGST or 12% IGST) where supplier of services opts to pay GST at said rate. In this case, there is no restriction on availing ITC on goods or services used in supplying renting of motor vehicles service by the supplier of service.

In the following paras, we have explained as to who is the person liable to pay tax in case of each of the above two rates :



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

Now there may arise a doubt as to whether RCM is applicable on:

(i) service of renting of motor vehicle designed to carry passengers

or

(ii) service of transportation of passengers.

It is clarified that **there is a clear distinction between the two services** which is as under:

A. The two services fall under two different headings in the Tariff.

B. (i) **Services of renting of motor vehicles designed to carry passengers** covers:

- **renting of motor vehicle**
- **for transport of passengers**
- **for a period of time**
- **where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.**

(ii) **'Passenger transport services'** covers passenger transport services over pre-determined routes on pre-determined schedules.

Accordingly, **where the body corporate hires the motor vehicle** (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the **service would fall under 'services of renting of motor vehicles designed to carry passengers', and the body corporate shall be liable to pay GST on the same under RCM.**

Thus, reverse charge would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

However, **where the body corporate avails the passenger transport service** for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under 'passenger transport services' and **the body corporate shall not be liable to pay GST on the same under RCM.**

In order to determine the leviability of tax on the remuneration paid to the directors, we first need to ascertain whether the director is an employee of the company or not. Following two situations are possible:

- (i) Services provided by the **independent directors**/those directors (by whatever name called) who are **not employees of the said company** to such company, in lieu of remuneration as the consideration for the said services, are clearly **outside the scope of Schedule III** of the CGST Act¹² and are therefore taxable. As seen in the table given above illustrating the reverse charge services (Entry No. 6), such remuneration paid to the directors is taxable in hands of the company, on **reverse charge basis**.
- (ii) In case where it is ascertained that a director, irrespective of name and designation, is an employee, next step would be to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service".

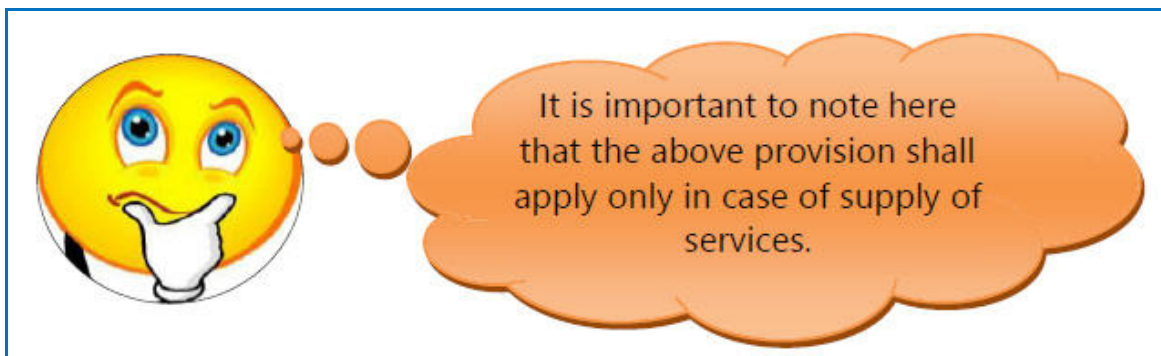
The part of **director's remuneration** which are **declared as Salaries** in the books of a company and subjected to TDS under section 192 of the Income-tax Act (IT Act), are **not taxable** being consideration for services by an employee to the employer in the course of or in relation to his employment **in terms of Para 1 of Schedule III**. Further, the part of employee **director's remuneration which is declared**

Notification No. 17/2017 CT (R) dated 28.06.2017/ Notification No. 14/2017 IT (R) dated 28.06.2017 as amended has notified the following categories of services **supplied through ECO** for this purpose –

- (a) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, **omnibus or any other motor vehicle;**
- (b) 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 under section 22(1) of the CGST Act.
- (c) 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 under sub-section 22(1) of the CGST Act.
- (d) **supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.**

Meaning of various terms

- (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) **Maxi cab:** 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.
Motor cab: 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. Omnibus means any motor vehicle constructed or adapted to carry more than 6 persons excluding the driver.
- (iii) **'Specified premises'** would mean premises providing hotel accommodation service having declared tariff of any unit of accommodation above ₹ 7,500 per unit per day or equivalent.



Tax on above services supplied through ECO shall be paid by the ECO. All the provisions of the CGST/IGST Act shall apply to such ECO as if he is the supplier liable for paying the tax in relation to the supply of above services.

The ECO may, on services notified under section 9(5), including on restaurant service provided through ECO, pay GST, by furnishing the details in Form GSTR-3B14, reporting them as outward taxable supplies.

In this regard, following issues have been clarified:

(i) ECOs not to collect TCS in respect of restaurant services so notified

ECOs will no longer be required to collect TCS (Tax Collected at Source) and file Form GSTR-815 in respect of restaurant services on which it pays tax in terms of section 9(5)16 .

(ii) ECOs not required to take separate registration for paying tax on restaurant service supplied through them

As ECOs are already registered in accordance with rule 8 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5).

(iii) ECO to pay tax on any restaurant services supplied through them

ECOs will be liable to pay GST on any restaurant service supplied through them including services supplied by an unregistered person.

(iv) Supply of restaurant services to be included in aggregate turnover of person supplying restaurant services through ECO

It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed in accordance with definition of aggregate turnover under section 2(6) and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the CGST Act, the person providing restaurant service through ECO shall account for such services in his aggregate turnover.

(v) Restaurant services provided through ECO not to be considered as inward supply for ECOs liable to RCM

ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge) in Form GSTR-3B.

(vi) Reversal of proportionate ITC on input goods and services not required by ECO

ECOs provide their own services as an electronic platform and as an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5). It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO).

(vii) GST to be paid by the supplier on services not notified under section 9(5) of CGST Act but supplied through ECO

In respect of supplies not notified under section 9(5) but supplied through ECO, the liability to pay GST continues on such supplier and ECO shall continue to deposit TCS on such supplies.

(viii) ECO to raise invoice in respect of restaurant service supplied through ECO

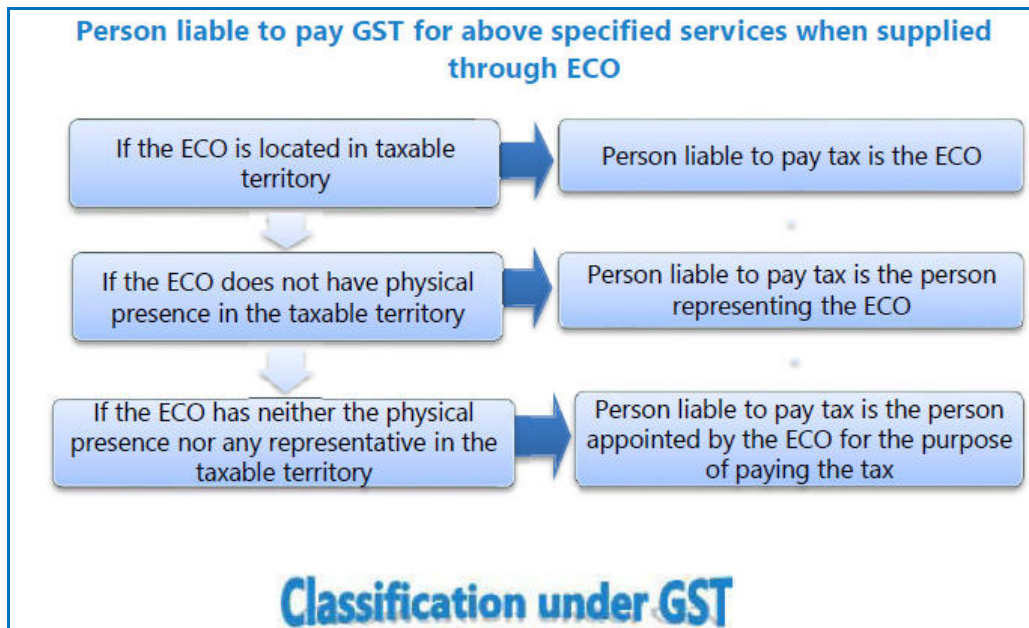
The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

(ix) Billing in case of 'restaurant service' and goods/services other than restaurant service being sold by a restaurant to a customer under the same order

There can a situation where 'restaurant service' and goods or services other than restaurant service are sold by a restaurant to a customer under the same order. The question arises as to who shall be liable for raising invoices in such cases.



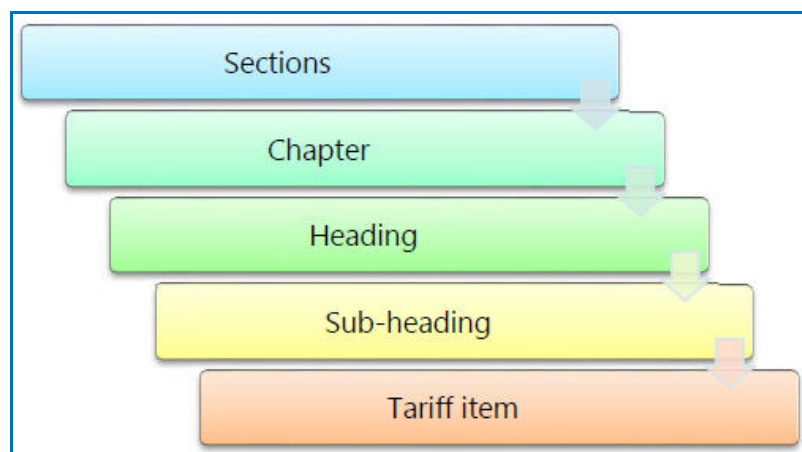
Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the CGST Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.



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

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



Chapter, heading, sub-heading and tariff item are referred in the Schedules of rate notification for goods under GST are the Chapter, heading, sub-heading and tariff item of the First Schedule to the Customs Tariff Act, 1975. Indian Customs Tariff is based on HSN. HSN stands for Harmonized System of Nomenclature. It is a multipurpose international product nomenclature developed by the World Customs Organization (WCO) for the purpose of classifying goods across the World in a systematic manner. It comprises of about 5,000 commodity groups; each identified by a 6 digit code [code can be extended], arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification. India has extended the HSN codes upto 8-digits.

Along the lines of HSN, the Indian Customs Tariff has a set of Rules of Interpretation of the First Schedule and General Explanatory notes. These rules and the general explanatory notes give clear direction as to how the nomenclature in the schedule is to be interpreted. These **Rules for Interpretation** including section and chapter Sections 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.

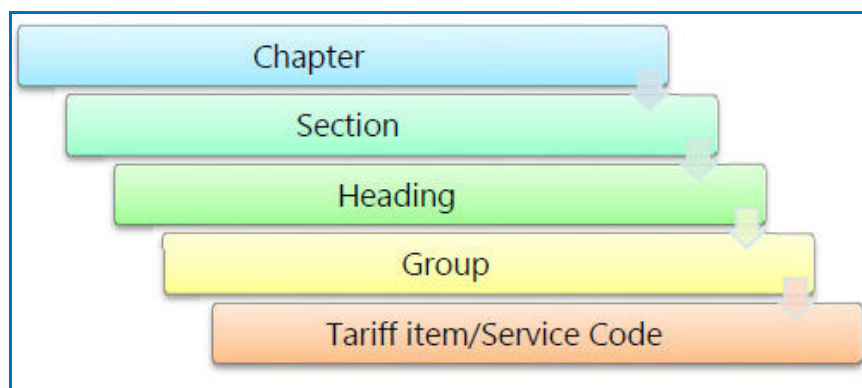
Once classification for a product has been determined on this basis, applicable rate has to be determined as per the rate prescribed in the rate notification issued under GST.

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 are further divided into Groups. Its further division is made in the form of 'Tariff item' / Service Codes.



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

GST Rates prescribed for various goods

Broadly, six rates of CGST have been notified in six Schedules of rate notification for goods, viz., 0.125%, 1.5%, 2.5%, 6%, 9% and 14%. SGST/ UTGST at the equivalent rate is also leviable. With regard to IGST, broadly six rates have been notified in six Schedules of rate notification for goods, viz., 0.25%, 3%, 5%, 12%, 18% and 28%. Certain specified goods have been exempted from tax.

**GST rates
for goods**

GST Rates prescribed for various services

Broadly, six rates of CGST have been notified for services, viz., 0.75%, 2.5%, 3.75%, 6%, 9% and 14%. Equivalent rate of SGST/ UTGST will also be levied. For IGST, six rates have been notified for services, viz., 1.5%, 5%, 7.5%, 12%, 18% and 28%. For certain specified services, nil rate of tax has been notified.

**GST rates
for services**

Services of gambling, services by way of admission to (a) casinos or race clubs or any place having casinos or race clubs or (b) sporting events like IPL, services provided by a race club by way of totalisator or a license to bookmaker in such club, gambling etc. attract the highest rate of 28% (CGST @ 14% and SGST @ 14% or IGST @ 28%).

A number of services are subject to a lower rate of 5% (CGST @ 2.5% and SGST @ 2.5% or IGST @ 5%). For instance, GTA service is taxed @ 5% subject to the condition that credit of input tax charged on goods/services used in supplying said service has not been taken. Similarly, tax rate for supply of restaurant service, other than at 'specified premises²⁴', is 5% without any input tax credit.

Services not covered under any specific heading are taxed at the rate of 18% (CGST @ 9% and SGST @9% or IGST @ 18%).

In the following paras, applicability of GST in real estate sector has been briefly discussed:

GST rates in real estate sector



The effective rate of GST on real estate sector for the new projects by promoters are as follows:

- (i) 1% without ITC on construction of **affordable houses** (area 60 sqm in metros/ 90 sqm in non-metros and value upto ₹ 45 lakh).
- (ii) 5% without ITC is applicable on construction of:
 - (a) all houses other than affordable houses, and
 - (b) commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions:

Above tax rates shall be available subject to following conditions:

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

Supply of services notified under section 9(4)

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

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

Moreover, GST on capital goods shall be paid by the promoter on reverse charge basis, under section 9(4) of the CGST Act at the applicable rates [Notification No. 07/2019 CT (R) dated 29.03.2019/ Notification No. 07/2019 IT (R) dated 29.03.2019].

3.5 COMPOSITION LEVY [SECTION 10 OF THE CGST ACT]

STATUTORY PROVISIONS

Section 10	Composition levy						
Sub-section	Particulars						
(1)	Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding,-- <table border="1" data-bbox="225 1592 1481 1906"> <tr> <td>a</td> <td>one percent.²⁶ of the turnover in State or turnover in Union territory in case of a manufacturer</td> </tr> <tr> <td>b</td> <td>two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and</td> </tr> <tr> <td>c</td> <td>half per cent. of the turnover in State or turnover in Union territory in case of other suppliers</td> </tr> </table>	a	one percent. ²⁶ of the turnover in State or turnover in Union territory in case of a manufacturer	b	two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and	c	half per cent. of the turnover in State or turnover in Union territory in case of other suppliers
a	one percent. ²⁶ of the turnover in State or turnover in Union territory in case of a manufacturer						
b	two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and						
c	half per cent. of the turnover in State or turnover in Union territory in case of other suppliers						
	subject to such conditions and restrictions as may be prescribed.						
	Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore and fifty lakh rupees, as may be recommended by the Council.						

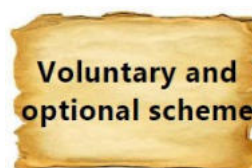
Section 10	Composition levy
Sub-section	Particulars
	<p>Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten percent of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.</p>
	<p>Explanation - For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.</p>
(2)	<p>The registered person shall be eligible to opt under sub-section (1), if-</p> <ul style="list-style-type: none"> (a) save as provided in sub-section (1), he is not engaged in the supply of services (b) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act (c) he is not engaged in making any inter-State outward supplies of goods or services (d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52; (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council; and (f) he is neither a casual taxable person nor a non-resident taxable person. <p>Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Incometax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.</p>
(2A)	<p>Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under subsection (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not--</p> <ul style="list-style-type: none"> (a) engaged in making any supply of goods or services which are not leviable to tax under this Act; (b) engaged in making any inter-State outward supplies of goods or services; (c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52; (d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and (e) a casual taxable person or a non-resident taxable person. <p>Provided that where more than one registered person are having the same Permanent Account Number issued under the Incometax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.</p>

Section 10	Composition levy
Sub-section	Particulars
(3)	The option availed of by a registered person under sub-section (1) or sub-section (2A), as the case may be, shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) or subsection (2A), as the case may be.
(4)	A taxable person to whom the provisions of sub-section (1) or, as the case may be, sub-section (2A) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
(5)	<p>If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.</p> <p>Explanation 1 – For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall include the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.</p> <p>Explanation 2 – For the purposes of determining the tax payable by a person under this section, the expression “turnover in State or turnover in Union territory” shall not include the value of following supplies, namely:--</p> <ul style="list-style-type: none"> (i) supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and (ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

ANALYSIS

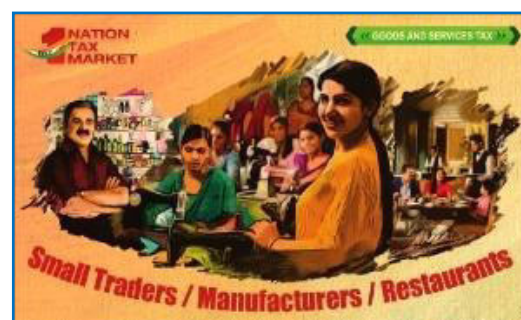
(1) Overview of the Scheme

The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to a prescribed limit. The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers.



Initially, the scheme was designed to benefit the small traders, manufacturers and restaurant service providers. So, the scheme was fundamentally for the suppliers of goods and only for restaurant service providers (not supplying alcoholic liquor for human consumption). However, subsequently, suppliers availing composition scheme were permitted to supply other services also, though only upto a small specified value. This scheme is contained in **sub-sections (1) and (2) of section 10 of the CGST Act (hereinafter referred to as composition scheme for goods)**.

Under this scheme, suppliers of goods have the option to pay tax at



the concessional rate of 1% (CGST + SGST/UTGST) of the turnover and restaurant service providers (not supplying alcoholic liquor for human consumption) have the option to pay tax @ 5% (CGST + SGST/UTGST) of the turnover. Small taxpayers with an aggregate turnover in the preceding financial year up to ₹ 1.5 crore are eligible to pay tax at these rates in the current financial year upto an aggregate turnover of ₹ 1.5 crore. However, a person engaged exclusively in supply of services other than restaurant service is not eligible for this composition scheme stipulated under sub-sections (1) and (2).



In order to provide benefit of composition scheme to persons engaged in supply of services other than restaurant service whose aggregate turnover in the preceding financial year is up to ₹ 50 lakh, a scheme to pay tax @ 6% (CGST + SGST/UTGST) of the turnover was introduced subsequently. A mixed supplier who is primarily engaged in supplying services other than restaurant service along with marginal supply of goods could also avail the benefit of this scheme. The provisions of this scheme are contained in sub-section (2A) of section 10.



Essentially, the composition scheme under sub-section (2A) (hereinafter referred to as composition scheme for services) is for small service providers like salon stylist, tailors, etc. This scheme provides an option to such suppliers to pay tax @ 6% of the turnover in the current financial year upto an aggregate turnover of ₹ 50 lakh.

Suppliers opting for composition levy need not worry about the classification of their goods or services or both, the rate of GST applicable on their goods and/ or services, etc. They are not required to raise any tax invoice, but simply need to issue a Bill of Supply²⁹ wherein no tax will be charged from the recipient.

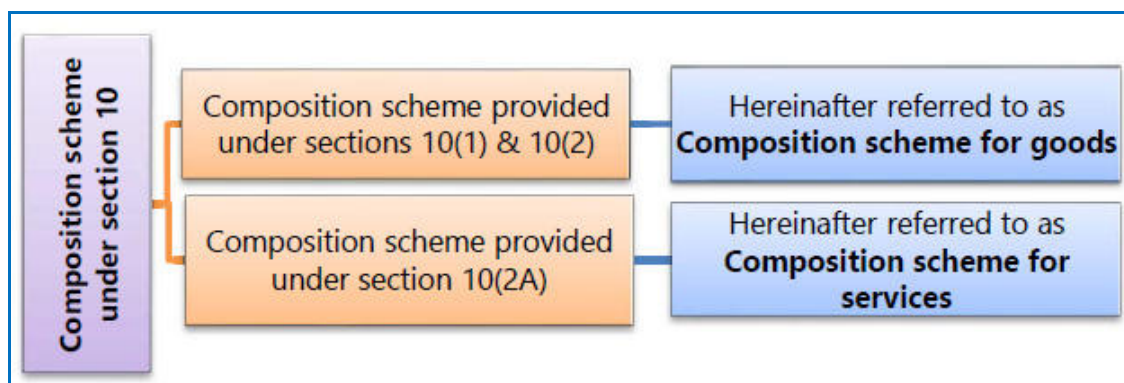
**Easy compliance as
no elaborate
accounts and records**

**Simple annual
return
Quarterly
payment of tax**

An eligible person opting to pay tax under the composition scheme shall, instead of paying tax on every invoice at the specified rate, pay tax at the prescribed percentage of his turnover every quarter through prescribed form [Form GST CMP 08]. At the end of a quarter, he would pay the tax, without availing the benefit of input tax credit. Return is to be filed annually by a composition supplier. Registration under GST law is compulsory for opting for the composition scheme.

The provisions relating to composition levy are contained in section 10 of CGST Act, 2017 and Chapter-II [Composition Levy] of Central Goods and Services Tax (CGST) Rules, 2017. The said rules have been incorporated in the discussion in the following paras at the relevant places.

As seen above, section 10 stipulates two types of composition schemes –



Provisions relating to these schemes have been discussed in detail in subsequent paras:

(2) Turnover limit for opting for composition levy [Section 10(1), 10(2A) & 10(3)]

Turnover limit in case of composition levy for goods

Section 10(1) provides the turnover limit of ₹ 50 lakh in the preceding financial year for becoming eligible for composition levy for goods. However, proviso to section 10(1) empowers the Government to increase the said limit of ₹ 50 lakh upto ₹ 1.5 crore, on the recommendation of the GST Council. In view of said power of the Government, the turnover limit for composition levy for goods has been increased from ₹ 50 lakh to ₹ 1.5 crore vide **Notification No. 14/2019 CT dated 07.03.2019**.

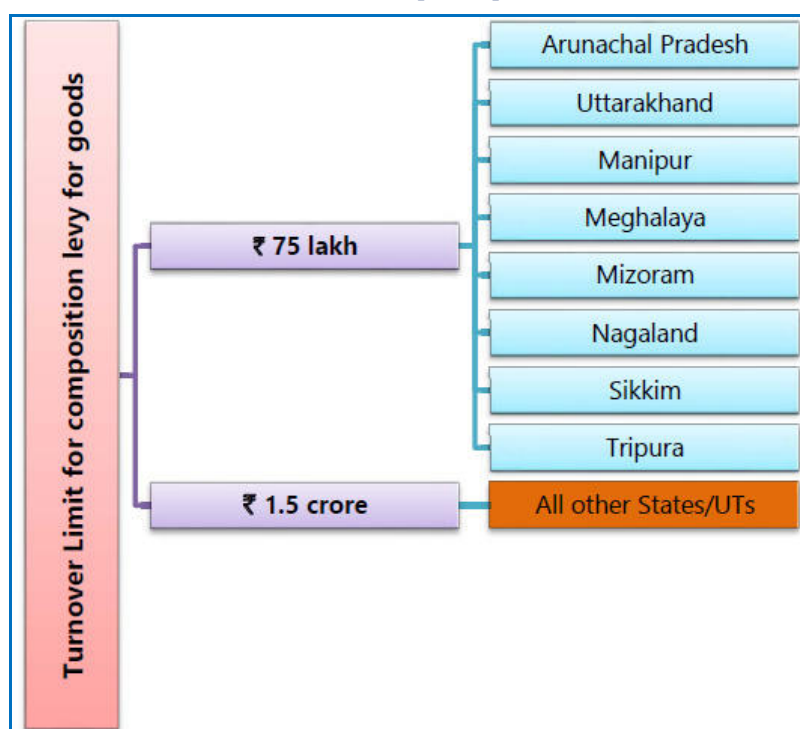


However, the said notification further stipulates that the turnover limit for composition levy for goods shall be ₹ 75 lakh **in respect of 8 of the Special Category States** namely:

Special Category States	
Arunachal Pradesh	Mizoram
Uttarakhand	Nagaland
Manipur	Sikkim
Meghalaya	Tripura

In case of Special Category States of **Assam, Himachal Pradesh and Jammu and Kashmir**, the turnover limit will be ₹ 1.5 crore only.

Thus, if the aggregate turnover of a supplier in a State/UT other than Special Category States (except Assam, Himachal Pradesh and Jammu and Kashmir) is upto ₹ 1.5 crore in the preceding financial year, said supplier is eligible for composition scheme for goods. Further, it is important to note that the aggregate turnover is computed on all India basis for a person having same Permanent Account Number (PAN) – Refer the definition of aggregate turnover discussed in subsequent paras.



Example 2 : A shoes' dealer 'Prithviraj' has offices in Maharashtra and Goa. He makes intra-State supply of goods from both these offices. In order to determine whether 'Prithviraj' is eligible to avail benefit of the composition scheme for goods, turnover of both the offices would be taken into account and if the same does not exceed ₹ 1.5 crore in the preceding financial year, 'Prithviraj' can opt to avail the composition levy scheme (subject to fulfilment of other prescribed conditions) for goods for both the offices in the current financial year.

Further, the option of a registered person to avail composition scheme for goods shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the threshold limit of ₹ 1.5 crore [₹ 75 lakh in 8 specified special category States] [Section 10(3)].

Turnover limit in case of composition levy for services

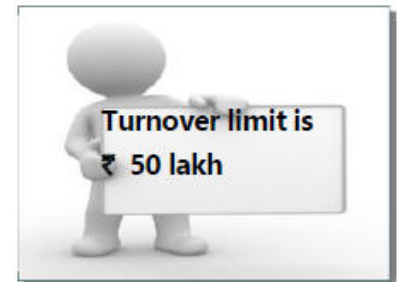
Section 10(2A) provides the turnover limit of ₹ 50 lakh in the preceding financial year for becoming eligible for composition levy for services.

Example 3 : A hair stylist 'Billoo Barber' has his salon in Delhi and Haryana, making intra-State supplies. In order to determine whether 'Billoo' is eligible to avail benefit of the composition scheme for services, turnover of both the salons would be taken into account and if the same does not exceed ₹ 50 lakh in the preceding financial year, 'Billoo' can opt to avail the composition levy scheme (subject to fulfilment of other prescribed conditions) for services for both the salons in the current financial year.

Further, the option of a registered person to avail composition scheme for services shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the threshold limit of ₹ 50 lakh [Section 10(3)].



To summarise, a registered person opting for composition scheme for goods should have an aggregate turnover upto ₹ 1.5 crore [₹ 75 lakh in 8 specified Special Category States] in the preceding FY and he can avail the benefit of said scheme for the current FY till the time his aggregate turnover in the current FY does not exceed ₹ 1.5 crore/₹ 75 lakh.



Similarly, a registered person opting for composition scheme for services should have an aggregate turnover upto ₹ 50 lakh in the preceding FY and he can avail the benefit of said scheme for the current FY till the time his aggregate turnover in the current FY does not exceed ₹ 50 lakh.

From the above discussion, it is apparent that the term aggregate turnover is of utmost importance. So, let us understand this term in detail.

(3) Aggregate turnover under composition levy [Section 2(6) read with explanation 1 to section 10]

The definition of aggregate turnover as contained in section 2(6) of the CGST Act is analysed as follows:

The aggregate turnover is the sum of value of all outward supplies falling in the following four categories:

- Taxable supplies
- Exempt supplies
- Exports of goods or services or both
- Inter-State supplies

Aggregate turnover

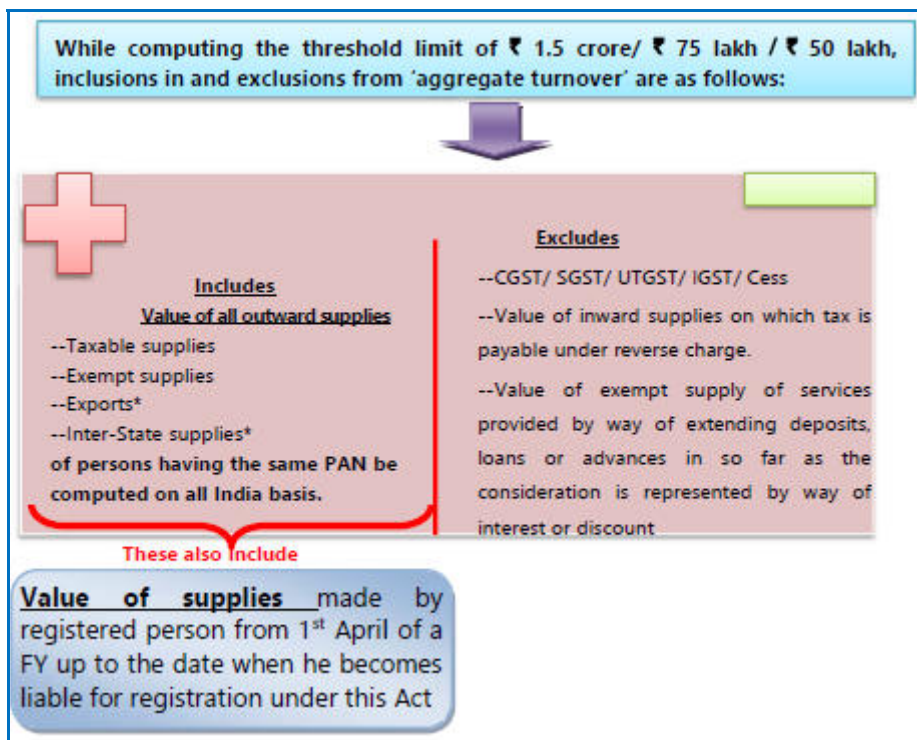
It excludes:

- The value of inward supplies on which tax is payable by a person on reverse charge basis
- Taxes including cess paid under GST law.

It is computed on all India basis for a person having same Permanent Account Number (PAN).

Further, explanation 1 to section 10 clarifies that for the purposes of computing **aggregate turnover of a registered person for determining his eligibility to pay tax under this section**, aggregate turnover **includes** value of supplies from 1st April of a FY up to the date of his becoming liable for registration and **excludes** value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

On combined reading of the aforesaid provisions, the method of computing the aggregate turnover for the purpose of determining the eligibility of a registered person for the composition scheme [for both goods and services] can be depicted in a diagram as follows:



***Note:** The value of exports and inter-State supplies are relevant only while determining the aggregate turnover of the preceding FY. These values are not relevant for determining the aggregate turnover of the current FY in which the composition supplier has opted for composition levy as he is not permitted to make inter-State supplies and exports in the said FY31.

(4) Rates of tax under the composition levy scheme [Section 10(1) and section 10(2A) read with rule 7]

Rule 7 prescribes the rates at which tax is payable by a registered person opting for composition levy – composition levy for goods and composition levy for services.

Rates of tax in case of composition levy for goods

A registered person opting for composition levy for goods shall pay tax calculated at the prescribed rates [mentioned in table below] during the current FY, in lieu of the tax payable by him under regular scheme:

S. No.	Category of registered persons	Rate of tax
1	Manufacturers, other than manufacturers of notified goods, i.e. ice cream, pan masala, tobacco, aerated waters, fly ash bricks; fly ash aggregate, fly ash blocks, bricks of fossil meals or similar siliceous earths, building bricks, earthen or roofing tiles.	½ % of the turnover in the State/Union territory
2	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II [referred to as “ Restaurant service ” in discussion under this chapter]	2½ % of the turnover in the State/Union territory
3	Any other supplier eligible for composition levy under section 10 of CGST Act and Chapter-II [Composition Levy] of CGST Rules.	½ % of turnover of taxable supplies of goods & services in the State/Union territory

Note - Students may note that the ‘aggregate turnover’ of preceding FY is relevant for the purpose of determining eligibility to avail composition scheme, but the tax has to be paid in accordance with the applicable rates on the ‘turnover’ (or ‘turnover of taxable supplies’ in case of third category of registered persons above) in a State/UT. The concept of ‘Turnover in the State/UT’ under the composition levy has been explained subsequently in this chapter.

ILLUSTRATION 1 :

Taxpayer ‘Tolaram’ is a manufacturer who has opted for composition levy for goods, having one unit – A1 in UP and another unit – A2 in MP. Total turnover of two units in preceding FY was ₹ 115 lakh (₹ 85 lakh + ₹ 30 lakh). Turnover of units A1 and A2 in the first quarter of current financial year is ₹ 5 lakh and ₹ 10 lakh respectively. Compute the amount payable under composition levy under section 10(1) & 10(2) of the CGST Act, 2017 by ‘Tolaram’.

ANSWER :

Unit	Location	Turnover in previous FY	Turnover in 1st quarter of this FY	Total tax (@1%)
A1	U.P.	₹ 85 lakh	₹ 5 lakh	₹ 5,000
A2	M.P.	₹ 30 lakh	₹ 10 lakh	₹ 10,000
Total		₹ 115 lakh	₹ 15 lakh	₹ 15,000

ILLUSTRATION 2

Taxpayer ‘Bholaram’ is a trader (who has opted for composition levy for goods) of both taxable and exempted goods (goods exempted by way of a notification). It has one retail showroom – A1 in Punjab and another retail showroom – A2 in Rajasthan, both selling taxable as well as exempted goods. Total turnover (including taxable and exempted goods) of the two showrooms in last FY was ₹ 115 lakh (₹ 85 lakh + ₹ 30 lakh respectively).

Turnover of showrooms A1 and A2 in the first quarter of current financial year is ₹ 35 lakh [A1 - ₹ 15 lakh (₹ 5 lakh from sale of taxable goods and ₹ 10 lakh from sale of exempted goods) and A2 - ₹ 20 lakh (₹ 10 lakh from sale of taxable goods and ₹ 10 lakh from sale of exempted goods)]. Compute the amount payable under composition levy under section 10(1) & 10(2) of the CGST Act, 2017 by ‘Bholaram’.

ANSWER

Retail showroom	Location	Turnover in previous FY	Taxable turnover* in 1 st quarter of this FY	Total tax (@1%)
A1	Punjab	₹ 85 lakh	₹ 5 lakh	₹ 5,000
A2	Rajasthan	₹ 30 lakh	₹ 10 lakh	₹ 10,000
Total		₹ 115 lakh	₹ 15 lakh	₹ 15,000

***Note :** A supplier, other than manufacturer and restaurant service provider, eligible for composition levy under section 10(1) & 10(2) has to pay tax @ 1% (CGST+ SGST) of the turnover of only taxable supplies of goods and services in the State.

Rates of tax in case of composition levy for services

A registered person opting for composition levy for services shall pay tax @ 3% [Effective rate 6% (CGST+ SGST/UTGST)] of the turnover of supplies of goods and services in the State or Union territory.

ILLUSTRATION 3

Taxpayer 'Padmavati' is a salon stylist, who has opted for composition levy for services, having one branch – B1 in Vasant Kunj, Delhi and another branch –

B2 in Gurgaon, Haryana. Total turnover of the two branches in last FY was ₹ 45 lakh (₹ 25 lakh + ₹ 20 lakh respectively). The turnover of branches B1 and B2 in the first quarter of current financial year is ₹ 5 lakh and ₹ 10 lakh respectively. Compute the amount payable under composition levy under section 10(2A) of the CGST Act, 2017 by 'Padmavati'.

ANSWER

Branch	Location	Turnover in previous FY	Turnover in 1 st quarter of this FY	Total tax (@6%)
B1	Delhi	₹ 25 lakh	₹ 5 lakh	₹ 30,000
B2	Haryana	₹ 20 lakh	₹ 10 lakh	₹ 60,000
Total		₹ 45 lakh	₹ 15 lakh	₹ 90,000

As seen above, since the tax under composition scheme has to be computed as a specified % of the turnover in State or turnover in Union territory, it is pertinent to understand what is turnover in State or turnover in Union territory.

(5) Turnover in State or turnover in Union territory under composition levy [Section 2(112) read with explanation 2 to section 10]

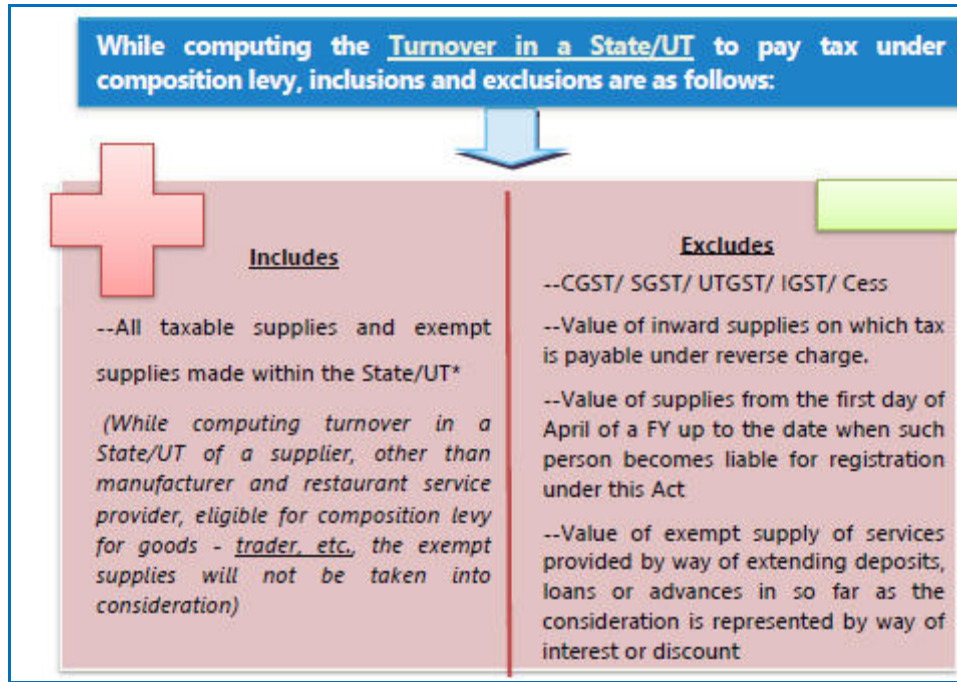
As per section 2(112), turnover in State/ turnover in Union territory means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person,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

Turnover in State
Turnover in Union territory

Further, explanation 2 to section 10 clarifies that for the purposes of **determining the tax payable by a person under this section**, the expression turnover in State or turnover in Union territory shall not include the value of following supplies, namely:

- (i) supplies from 1st April of a FY up to the date when such person becomes liable for registration under this Act; and
- (ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

On combined reading of the aforesaid provisions, the method of computing the **turnover in a State/UT for paying tax under the composition scheme** can be depicted in a diagram on the next page:



Example 4 : A photographer 'Champak' has commenced providing photography services in Delhi from April this year. His turnover for various quarters till December is as follows :

April-June	₹ 20 lakh
July-Sept	₹ 30 lakh
ct-Dec	₹ 20 lakh

In the given case, since Champak has started the supply of services in the current financial year, his aggregate turnover in the preceding FY is Nil. Consequently, in the current FY, he is eligible for composition scheme for services. He becomes eligible for the registration when his aggregate turnover exceeds ₹ 20 lakh. While registering under GST, he opts for composition scheme for services.

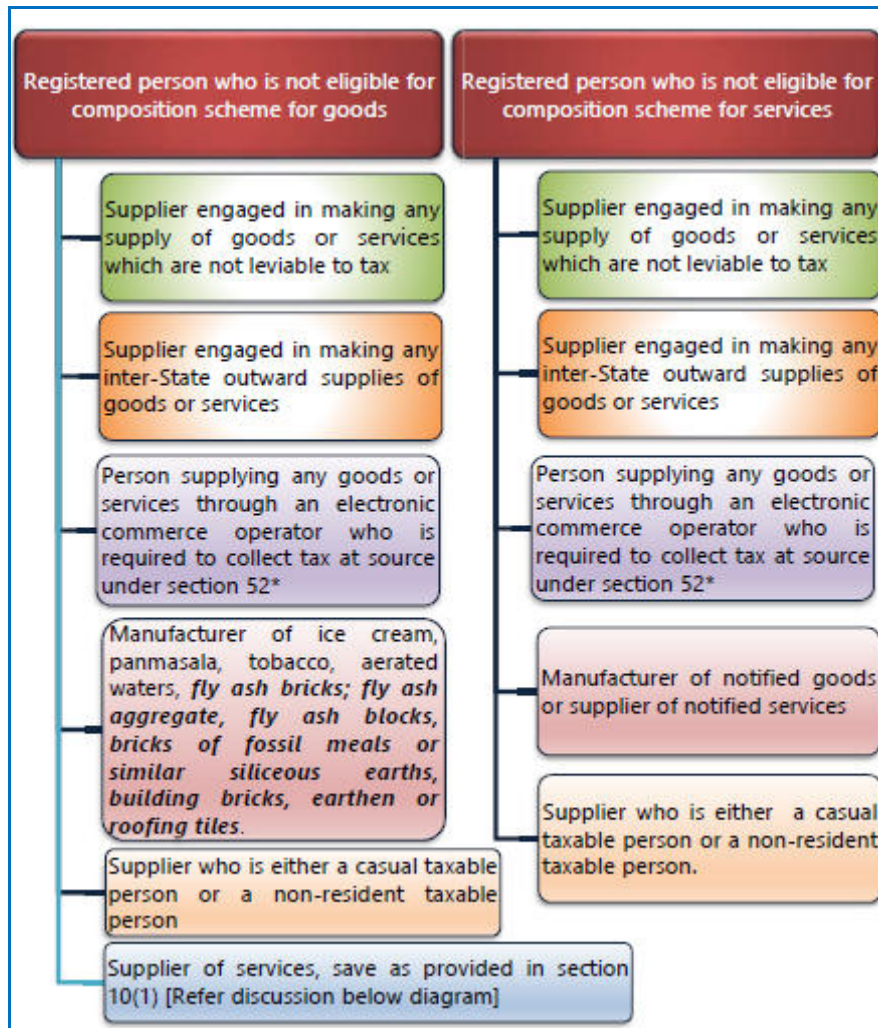
For determining his turnover of the State for payment of tax under composition scheme for services, turnover of April-June quarter [₹ 20 lakh] shall be excluded as the value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act are to be excluded for this purpose.

On next ₹ 30 lakh [turnover of July-Sept quarter], he shall pay tax @ 6% [3% CGST and 3% SGST], i.e. CGST ₹ 90,000 and SGST ₹ 90,000.

By the end of July-Sept quarter, his aggregate turnover reaches ₹ 50 lakh*. Consequently, his option to avail composition scheme for services shall lapse by the end of July-Sept quarter and thereafter, he is required to pay tax at the normal rate of 18%. Thus, the tax payable for Oct-Dec quarter is ₹ 20 lakh × 18%, i.e. ₹ 3,60,000.

*while computing aggregate turnover for determining Champak's eligibility to pay tax under composition scheme, value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act (i.e. turnover of April-June quarter), are included.

(6) Who are NOT eligible to opt for composition scheme? [Section 10(2) and (2A)]



*Section 52 relating to tax collected at source has been discussed in detail in Chapter 14 – Tax Deduction at Source and Collection of Tax at Source in Module 2 of this Study Material.



A person engaged in marginal supply of services other than restaurant service also eligible for composition levy for goods [Second proviso to section 10(1) read with section 10(2)(a)]

Fundamentally, the composition scheme for goods can be availed in respect of goods and only one service namely, restaurant service. However, there are cases where a manufacturer/ trader is also engaged in supply of services other than restaurant service though the percentage of such supply of services is very small as compared to the supplies of goods. There may also be cases where a restaurant service provider is also engaged in supplying a small percentage of other services.

With a view to enable such taxpayers to avail of the benefit of composition scheme for goods, second proviso to section 10(1) permits marginal supply of services [other than restaurant services – not supplying alcoholic liquor for human consumption] for a specified value along with the supply of goods and/or restaurant service, as the case may be. This specified value is value not exceeding:

- (a) 10% of the turnover in a State/U.T. in the preceding financial year or
 - (b) ₹ 5 lakh,
- whichever is higher.

Thus, it can be inferred that where the turnover of a registered person opting for composition scheme for goods is upto ₹ 50 lakh in the preceding financial year, he can supply services [other than restaurant services] upto a maximum value of ₹ 5 lakh in the current financial year. Further, where the turnover of a registered person opting for composition scheme is more than ₹ 50 lakh and upto ₹ 1.5 crore in the preceding financial year, he can supply services [other than restaurant services] in the current financial year upto a maximum value of 10% of the turnover in a State/Union territory in the preceding financial year.

Example 5 : Ramsewak is engaged in supply of goods. His turnover in preceding FY is ₹ 60 lakh. Since his aggregate turnover in the preceding FY does not exceed ₹ 1.5 crore, he is eligible for composition scheme for goods in current FY. Further, in current FY, he can supply services [other than restaurant services] upto a value of not exceeding :

- (a) 10% of ₹ 60 lakh, i.e. ₹ 6 lakh **Or**
 - (b) ₹ 5 lakh,
- whichever is higher.

Thus, he can supply services upto a value of ₹ 6 lakh in current FY. If the value of services supplied exceeds ₹ 6 lakh, he becomes ineligible for the composition scheme for goods and has to opt out of the same.

Interest income to be excluded for determining the value of turnover in a State or Union territory under second proviso to section 10(1) [Explanation to second proviso to section 10(1)]

Generally, businesses tend to save and invest money in the form of deposits, loans or advances. However, this way they get engaged in supply of service by way of extending deposits, loans or advances – a service other than restaurant service. And where the income from such services cause the value of services supplied to exceed the value referred in second proviso to section 10(1) [10% of the turnover in the preceding FY in a State/Union territory or ₹ 5 lakh, whichever is higher], said business would have become ineligible for the composition scheme for goods and one has to opt out of the composition scheme. This can cause a lot of hardship to small businesses.

In view of the above, an explanation is inserted after second proviso to section 10(1) to clarify that for the purposes of second proviso to section 10(1), the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account for determining the value of turnover in a State or Union territory.

Under second proviso to section 10(1), a registered person opting for composition scheme may supply services [other than restaurant services] of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or ₹ 5 lakh, whichever is higher. **Thus, while computing value of services [other than restaurant services] as referred in this proviso, interest on loans/deposit/advances will not be taken into account.**

The provisions relating to composition levy discussed hereafter are applicable to both composition levy for goods as well as composition levy for services.

(7) Conditions and restrictions for composition levy [Rule 5]



Person opting for composition levy has to comply with the following conditions:

- he shall pay tax under section 9(3)/9(4)38 (reverse charge) on inward supply of goods or services or both.
- he is neither a casual taxable person nor a non-resident taxable person
- he shall mention the words “**composition taxable person, not eligible to collect tax on supplies**” at the top of the bill of supply issued by him; and 38 wherever applicable
- 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.



Further, where the goods held in stock by him are liable to be taxed under reverse charge under section 9(4)39, the tax thereon has been paid under reverse charge under section 9(4).

In addition to the above conditions, **a registered person opting for composition scheme for goods must not be engaged in the manufacture of goods as notified under section 10(2)(e)**, during the preceding FY. The following goods have been hereby notified vide **Notification No. 14/2019 CT dated 07.03.2019** as amended:

Tariff item, subheading, heading or Chapter*	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa 
2106 90 20	Pan masala 
24	All goods, i.e. Tobacco and manufactured tobacco substitutes 
2202 10 10	Aerated Waters 
6815	Fly ash bricks; fly ash aggregate; Fly ash blocks
6901 00 10	Bricks of fossil meals or similar siliceous earths
6904 10 00	Building bricks
6905 10 00	Earthen or roofing tiles

* as specified in the First Schedule to the Customs Tariff Act, 1975

(8) Intimation of opting for composition levy [Rules 3 & 4]

(i) Intimation by person applying for registration: Any person who is not registered and applies for registration may give an option to pay tax under composition levy **in Part B of the registration form, viz., Form GST REG-01**. The same shall be considered as an intimation to pay tax under composition levy. Such intimation shall be considered only after the grant of registration to the applicant.

The option to pay tax under composition levy shall be effective from the date from which registration is effective.

(ii) Intimation by a registered person: A registered person who opts to pay tax under composition levy scheme shall **electronically file an intimation** in prescribed form on the GST Common Portal [www.gst.gov.in]. The intimation shall be filed **prior to the commencement of the FY** for which said option is exercised.

He shall also furnish the **statement in prescribed form** in accordance with the provisions of rule 44(4) of CGST Rules, 2017 [Discussed in detail in Chapter 8 – Input Tax Credit in Module 2 of this Study Material] **within 60 days** from the commencement of the relevant FY.

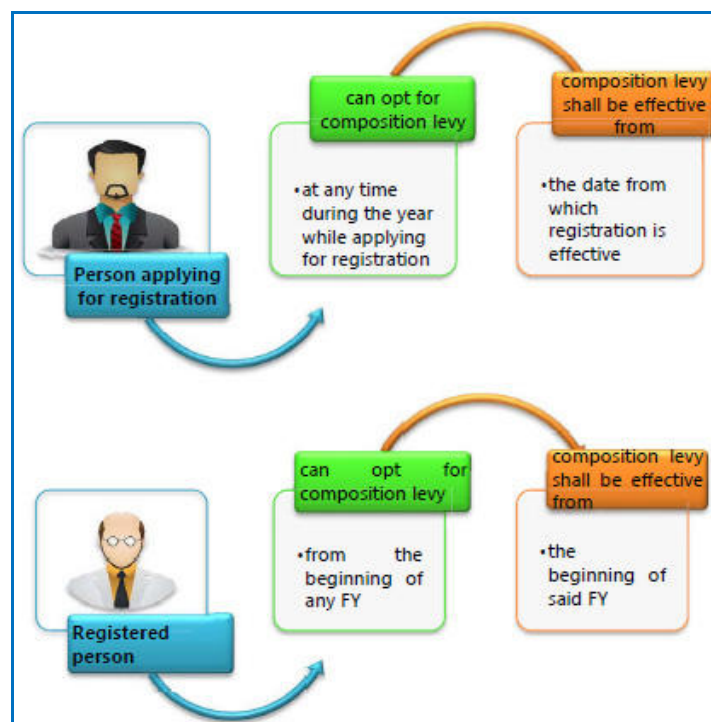
Any intimation in respect of any place of business in a State/UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

Summary :

The option to pay tax under composition levy shall be effective from the beginning of the FY.

A person applying for registration can opt for composition at the time of applying for registration [this time being any time of the financial year] and composition levy shall be effective from the date from which registration is effective.

A registered person can opt for composition scheme from the beginning of any FY and composition levy shall be effective from the beginning of said FY. Intimation for opting to pay tax under composition scheme must be filed prior to the commencement of the FY for which said option is exercised.



(9) Validity of composition levy [Section 10(3) read with rule 6]**I. Withdrawal from the composition scheme by a taxpayer who ceases to satisfy any of the prescribed conditions**

- The option exercised by a registered person to pay amount under composition levy shall remain valid so long as he satisfies all the conditions mentioned in the relevant section and rules. For instance, the option to pay tax under composition scheme lapses from the day on which aggregate turnover of a registered person exceeds the specified limit (₹ 1.5 crore/ ₹ 75 lakh/ ₹ 50 lakh) during the FY.
- Such person is required to pay tax under regular scheme under section 9(1) from the day he ceases to satisfy any of the conditions prescribed for composition levy. He shall issue tax invoice for every taxable supply made thereafter. Further, he is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event.
- The **effective date from which withdrawal from the composition scheme shall take effect** shall be the date indicated by him in his intimation, but such date may not be prior to the commencement of the financial year in which such intimation is being filed.

II. Withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme

- The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in prescribed form.
- The **effective date from which withdrawal from the composition scheme shall take effect** shall be the date indicated by him in his application, but such date may not be prior to the commencement of the financial year in which such application for withdrawal is being filed.

III. Denial of option to pay tax under the composition scheme by tax authorities

- Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under composition scheme or has contravened the provisions of the CGST Act or provisions of this Chapter, he may issue a show cause notice (SCN) to such person. Upon receipt of reply to SCN, the proper officer shall pass an order either accepting the reply or denying the option to pay tax under composition scheme from the date of the option or from the date of the event concerning such contravention, as the case may be.
- **In case of denial of option to pay tax under composition levy by the tax authorities**, the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities. However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/ CGST Rules.

In each of the above cases, such person may furnish a statement in prescribed form containing details of the stock of inputs and inputs contained in semifinished or finished goods held in stock by him on the date on which the option is withdrawn/denied, within a period of 30 days from the date from which the option is withdrawn/ or from the date of the order denying composition scheme.

Any intimation or application for withdrawal or denial of the option to pay tax under section 10 in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

Example 6 : A person availing composition scheme during a financial year crosses the turnover of ₹ 1.5 crore on 9th of December. The option availed shall lapse from the day on which his aggregate turnover during the financial year exceeds ₹ 1.5 crore, i.e. on 9th December, in this case.

(10) Composition scheme to be adopted uniformly by all the registered persons having the same PAN [Proviso to section 10(2) and proviso to section 10(2A)]

All registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme.

Example 7 : A dealer 'Kishorilal & Sons' has two offices in Delhi and is eligible for composition levy for goods. If 'Kishorilal & Sons' opts for the composition scheme for goods, both the offices would pay taxes under composition scheme and abide by all the conditions as may be prescribed for the said composition scheme.

(11) Composition scheme supplier cannot collect tax [Section 10(4)]

Taxable person opting for the composition scheme shall not collect tax from the recipient on supplies made by him. It implies that a composition scheme supplier cannot issue a tax invoice.

(12) Composition scheme supplier cannot enter into credit chain [Section 10(4)]

Taxable person opting for the composition scheme shall not be entitled to any credit of input tax.

(13) Imposition of penalty in case of irregular availment of the composition scheme [Section 10(5)]

If a taxable person has paid tax under the composition scheme though he was not eligible for the scheme, the person would be liable to penalty and the provisions of section 73 or 74 of the CGST Act shall be applicable for determination of tax and penalty.

Questions 4 :

A registered person _____ is not eligible for composition scheme even though his aggregate turnover does not exceed ₹ 1.5 crore in preceding FY.

- (a) trading in pan masala
- (b) manufacturing aerated waters
- (c) receiving any inter-State inward supplies of goods
- (b) making supply of goods exempted by way of a notification

Questions 5 :

Alladin Electronics is engaged in intra-State supply of airconditioners and has an aggregate turnover of ₹ 90 lakh in the preceding financial year. In the current financial year, it wishes to opt for composition scheme under section 10(1) and 10(2). It will start providing services of repairing of air conditioners also from 1st April of current financial year. Alladin Electronics can provide services upto the value of _____ to continue availing benefit of composition levy, in the current financial year.

- (a) ₹ 5 lakh (b) ₹ 4.5 lakh
- (c) ₹ 10 lakh (b) ₹ 9 lakh

LET US RECAPITULATE

1. Extent & commencement of CGST Act/ SGST Act/ UTGST Act/ IGST Act

Applicability	CGST	SGST	UTGST	IGST
	Intra-State supply			Inter-State supply
States of India	✓	✓		✓
Union Territories with Legislature	✓	✓		✓
Union Territories without Legislature	✓		✓	✓

2. Levy and collection of CGST/IGST

Particulars	CGST	IGST
Levied on	Intra-State supplies of goods/services/both	Inter-State supplies of goods/services/both
Collected and paid by	Taxable person	
Supply outside purview of GST	Alcoholic liquor for human consumption	
Value for levy	Transaction value under section 15 of the CGST Act	
Rates	Rates as notified by Government. Maximum rate of CGST can be 20%.	IGST rate= CGST rate + SGST rate/UTGST rate Maximum rate of IGST can be 40%.
Supplies on which tax would be levied w.e.f. a notified date	<ul style="list-style-type: none"> • petroleum crude • high speed diesel • motor spirit (commonly known as petrol) • natural gas and • aviation turbine fuel 	
Tax payable under reverse charge	<ul style="list-style-type: none"> • Supply of goods or services or both, notified by the Government. • Supply of specified categories of goods or services or both by an unregistered supplier to specified class of registered persons. 	
Tax payable by the electronic commerce operator	The Government may notify specific categories of services the tax on supplies of which shall be paid by electronic commerce operator (ECO) as if such services are supplied through it.	

3. Composition levy [Section 10]

Composition levy	Advantages
<ul style="list-style-type: none"> •An option for specified categories of small taxpayers to pay GST at a very low rate on the basis of turnover. 	<ul style="list-style-type: none"> •Low rates of tax •Hassel free simple procedures for such taxpayers •Simple calculation of tax based on turnover •A very simple annual return

Composition levy provided under section 10(1) and 10(2)

• Referred in this chapter as composition levy for goods

Composition levy provided under section 10(2A)

• Referred in this chapter as composition levy for services

Procedure for opting for the scheme

Category of persons	How to exercise option	Effective date of composition levy
New registration under GST	Intimation in the registration form	From the effective date of registration
Registered person opting for composition levy	Intimation in prescribed form	Beginning of the financial year

Turnover limit for composition levy

Turnover limit in preceding FY to opt for composition levy for goods

For Special Category States except Assam, Himachal Pradesh and J&K • ₹ 75 lakh

For remaining States

• ₹ 1.5 crore

Turnover limit in preceding FY to opt for composition levy for services

Turnover for composition levy for services • ₹ 50 lakh

Rates of tax

Composition scheme	Category of registered persons	Rate
For goods	Manufacturer	1% (½% CGST + ½% SGST/UTGST) of turnover
	Restaurant service	5% (2½% CGST + 2½% SGST/UTGST) of turnover
	Others	1% (½% CGST + ½% SGST/UTGST) of turnover of taxable supplies
For services		6% (3% CGST + 3% SGST/UTGST) of turnover

Conditions and restrictions for composition levy

Person opting for composition :

is neither a casual taxable person nor a non-resident taxable person

shall pay tax under section 9(3)/9(4) on inward supply

is not engaged in the manufacture of notified goods** (or notified services also in case of composition scheme for services)

shall mention the words "**composition taxable person, not eligible to collect tax on supplies**" at the top of the bill of supply issued by him

shall mention the words "composition taxable person" at a prominent place at his place of business

** Goods notified for a registered person opting for composition scheme for goods are ice cream, pan masala, tobacco, aerated waters fly ash bricks, fly ash aggregate, fly ash blocks, bricks of fossil meals or similar siliceous earths, building bricks, earthen or roofing tiles.

Who are NOT eligible to opt for composition scheme?

Registered person who is not eligible for composition scheme for goods	Registered person who is not eligible for composition scheme for services
Supplier engaged in making any supply of goods or services which are not leviable to tax i.e. non-taxable supplies	Supplier engaged in making any supply of goods or services which are not leviable to tax i.e. nontaxable supplies
Supplier engaged in making any inter-State outward supplies of goods or services	Supplier engaged in making any inter-State outward supplies of goods or services
Person supplying any goods or services through an electronic commerce operator who is required to collect tax at source under section 52	Person supplying any goods or services through an electronic commerce operator who is required to collect tax at source under section 52
Manufacturer of ice cream, panmasala, tobacco, aerated waters fly ash bricks, fly ash aggregate, fly ash blocks, bricks of fossil meals or similar siliceous earths, building bricks, earthen or roofing tiles.	Manufacturer of notified goods or supplier of notified services
Supplier who is either a casual taxable person or a non-resident taxable person	Supplier who is either a casual taxable person or a non-resident taxable person.
Supplier of services, save as provided in section 10(1)**	

**A registered person opting for composition scheme for goods is allowed to supply services [other than restaurant services] alongwith supply of goods or supply of restaurant services of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or ₹ 5 lakh, whichever is higher. Here, while computing turnover in a State/UT, interest on loans/deposit/advances will not be taken into account.

Other points

Bill of supply shall be issued instead of tax invoice.

Tax shall not be collected from recipient of supply

Input tax credit shall not be availed

Composition Scheme not applicable for tax payable under RCM

Composition Scheme if availed shall include all registered persons having same PAN

Penalty shall be imposed in case of irregular availment of the composition scheme

TEST YOUR KNOWLEDGE

- Q.1** State the person liable to pay GST in the following independent cases provided recipient is located in the taxable territory:
- Services provided by an arbitral tribunal to any business entity.
 - Sponsorship services provided by a company to an individual.
 - Renting of immovable property service provided by the Central Government to a registered business entity.
- Q.2** Vivek Goyal, an independent director, appointed in accordance with the provisions of the Companies Act, 2013, of A2Z Pvt. Ltd., has received sitting fee amounting to ₹ 1 lakh from A2Z Pvt. Ltd for attending the Board meetings. Who is the person liable to pay tax in this case?
- Q.3** Raghu Associates provided sponsorship services to WE-WIN Cricket Academy LLP. Determine the person liable to pay tax in this case.
- Q.4** Legal Fees is received by Sushrut, an advocate, from M/s. Tatva Trading Company, engaged in making taxable supplies and located in Maharashtra, having turnover of ₹ 50 lakh in preceding financial year. Who is the person liable to pay tax in this case?
- Q.5** State the person liable to pay GST in the following independent cases provided recipient is located in the taxable territory:
- Services supplied by an insurance agent to an insurance company.
 - Services supplied by a recovery agent to a car dealer.
 - Security services (services provided by way of supply of security personnel) provided by a partnership firm to a registered person paying tax under regular scheme.
- Q.6** Sultan & Sons, a partnership firm, based in Nagpur, Maharashtra is a wholesaler of a taxable product 'P' and product 'Q' exempt by way of a notification, only within the State of Maharashtra. Its aggregate turnover in the preceding financial year is ₹ 130 lakh. The firm wishes to opt for composition scheme under sub-sections (1) & (2) of section 10 in the current financial year. However, its accountant is of the view that a person engaged in making supply of exempt goods is not eligible for the said scheme. Discuss.
Note : Assume that Sultan & Sons is not engaged in manufacture of goods as notified under section 10(2)(e).
- Q.7** A person availing composition scheme, under sub-sections (1) & (2) of section 10, in Haryana during a financial year crosses the turnover of ₹ 1.5 crore in the month of December. Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e. till 31st March? Please advise.
- Q.8** Determine whether the suppliers in the following cases are eligible for composition levy, under section 10(1) & 10(2), provided their turnover in preceding year does not exceed ₹ 1.5 crore:
- Mohan Enterprises is engaged only in trading of pan masala in Rajasthan and is registered in the same State.
 - Sugam Manufacturers has registered offices in Punjab and Haryana and sells goods manufactured by it in the neighbouring States.

Q.9 Subramanian Enterprises has two registered places of business in Delhi. Its aggregate turnover in the preceding financial year for both the places of business is ₹ 120 lakh. It wishes to pay tax under composition levy, under section 10(1) & 10(2), for one of the places of business for the current financial while continuing paying under normal levy for other. You are required to advise Subramanian Enterprises whether he can do so?

Q.10 Mr. Ajay has a repair centre, registered under GST, where electronic goods are repaired/serviced. His repair centre is located in State of Rajasthan and he is not engaged in making any inter-State supply of services. His aggregate turnover in the preceding financial year (FY) is ₹ 45 lakh.

With reference to the provisions of the CGST Act, 2017, examine whether Mr. Ajay can opt for the composition scheme under section 10(1) & 10(2) for the current financial year? Or whether he is eligible to avail benefit of composition scheme under section 10(2A)? Considering the option of payment of tax available to Mr. Ajay, compute the amount of total tax payable by him in the current F.Y. assuming that his aggregate turnover in the current financial year is ₹ 35 lakh.

Will your answer be different if Mr. Ajay procures few items required for providing repair services from neighbouring State of Madhya Pradesh?

Q.11 M/s United Electronics, a registered dealer, is supplying all types of electronic appliances in the State of Karnataka. Its aggregate turnover in the preceding financial year by way of supply of appliances is ₹120 lakh.

The firm also expects to provide repair and maintenance service of such appliances from the current financial year.

With reference to the provisions of the CGST Act, 2017, examine:

- (i) Whether the firm can opt for the composition scheme, under section 10(1) and 10(2), for the current financial year, as the turnover may include supply of both goods and services?
- (ii) If yes, up to what amount, the services can be supplied?

ANSWERS/HINTS

1. (a) Since GST on services provided or agreed to be provided by an arbitral tribunal to any business entity located in the taxable territory is payable under reverse charge, in the given case, GST is payable by the recipient - business entity.
 - (b) GST on sponsorship services provided by any person to any body corporate or partnership firm located in the taxable territory is payable under reverse charge. Since in the given case, services have been provided to an individual, reverse charge provisions will not be attracted. GST is payable under forward charge by the supplier - company.
 - (c) GST on services supplied by Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under CGST Act, 2017 is payable under reverse charge. Therefore, in the given case, GST is payable under reverse charge by the recipient - registered business entity.
2. GST on supply of services by director of a company to the said company located in the taxable territory is payable on reverse charge basis.
- Therefore, in the given case, person liable to pay GST is the recipient of services, i.e., A2Z Pvt. Ltd.
3. In case of services provided by any person by way of sponsorship to any body corporate or partnership firm, GST is liable to be paid under reverse charge by such body corporate or partnership firm located in the taxable territory.

Further, for the reverse charge purposes, Limited Liability Partnership formed and registered under the provisions of the Limited Liability Partnership Act, 2008 is also be considered as a partnership firm.

Therefore, in the given case, WE-WIN Cricket Academy LLP is liable to pay GST under reverse charge.

4. GST on legal services supplied by an advocate [Mr. Sushrut] to any business entity [M/s. Tatva Trading Company] located in the taxable territory is payable on reverse charge basis.

Therefore, in the given case, person liable to pay GST is the recipient of services, i.e., M/s. Tatva Trading Company.

5. (a) GST on services supplied by an insurance agent to any person carrying on insurance business located in the taxable territory is payable under reverse charge. Therefore, in the given case, GST is payable under reverse charge by the recipient – Insurance Company.
- (b) GST on services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company located in the taxable territory is payable under reverse charge. However, since, in the given case, services are being supplied by a recovery agent to a car dealer, GST is payable under forward charge by the service provider - recovery agent.
- (c) GST on security services (services provided by way of supply of security personnel) provided by any person other than a body corporate to a registered person, located in the taxable territory is payable under reverse charge. Therefore, in the given case, GST is payable under reverse charge by the recipient – registered person receiving the services.

6. The view taken by the accountant of Sultan & Sons is not valid in law. A registered person with an aggregate turnover in a preceding financial year up to ₹ 1.5 crore is eligible for composition levy, under section 10(1) & 10(2), in Delhi. Further, such person must not be engaged in making any supply of goods or services which are not leviable to tax under this Act and must not be engaged in making any inter-State outward supplies of goods or services, for being eligible to pay tax under said scheme.

In the given case, the aggregate turnover of Sultan & Sons does not exceed ₹ 1.5 crore. Further, it is engaged in making only intra-State supply of goods and Product P supplied by it is taxable and Product Q supplied by it is leviable to tax, though exempted by way of notification. Therefore, it is eligible for composition levy under section 10(1) & 10(2) in the current year.

7. No. The option to pay tax under composition scheme lapses immediately from the day on which the aggregate turnover of the person availing composition scheme for goods during the financial year exceeds the specified limit (₹ 1.5 crore). Once he crosses the threshold, he is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event.

Every person who has furnished such an intimation, may electronically furnish at the common portal, a statement in prescribed form containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn, within a period of 30 days from the date from which the option is withdrawn.

8. (i) A supplier engaged in the manufacture of goods as notified under section 10(2)(e), during the preceding FY is not eligible for composition scheme under section 10(1) and 10(2). Ice cream and other edible ice, whether or not containing cocoa, Pan masala, Tobacco and manufactured tobacco substitutes, aerated waters, fly ash bricks, fly ash aggregate, fly ash blocks, bricks of fossil meals or similar siliceous earths, building bricks, earthen or roofing tiles are notified under this category. However, in the given case, since Mohan Enterprises is engaged in trading of pan masala and not manufacture and his turnover does not exceed ₹ 1.5 crore, he is eligible for composition scheme subject to fulfilment of specified conditions.

(ii) Since supplier of inter-State outward supplies of goods or services is not eligible for composition levy, Sugam Manufacturers is not eligible for composition levy.

9. A registered person with an aggregate turnover in a preceding financial year up to ₹ 1.5 crore is eligible for composition levy, under section 10(1) & 10(2), in Delhi. Since the aggregate turnover of Subramanian Enterprises does not exceed ₹ 1.5 crore, it is eligible for composition levy in the current year. However, all registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme. Thus, Subramanian Enterprises either have to opt for composition levy for both the places of business or under normal levy for both the places of business.

10. Section 10(1) provides that a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore (₹ 75 lakh in Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir), may opt to pay, in lieu of the tax payable by him, an amount calculated at the specified rates. However, as per proviso to section 10(1), person who opts to pay tax under composition scheme may supply services other than restaurant services, of value not exceeding 10% of the turnover in a State or Union territory in the preceding financial year or ₹ 5 lakh, whichever is higher.

In the given case, since Mr. Ajay is an exclusive supplier of services other than restaurant services [viz. repair services], he is not eligible for composition scheme under section 10(1) & 10(2).

However, section 10(2A) provides an option to a registered person (subject to certain conditions) whose aggregate turnover in the preceding financial year is upto ₹ 50 lakh and who is not eligible to pay tax under composition scheme under section 10(1) & 10(2), to pay tax @ 3% [Effective rate 6% (CGST+SGST/UTGST)] of the turnover of supplies of goods and services in the State or Union territory.

Thus, in view of the above-mentioned provisions, Mr. Ajay is eligible to avail the composition scheme under section 10(2A) as his aggregate turnover in the preceding FY does not exceed ₹ 50 lakh and he is not eligible to opt for the composition scheme under section 10(1) & 10(2).

Thus, the amount of tax payable by him as per the composition scheme under section 10(2A) is ₹2,10,000 [6% of ₹ 35 lakh].

A registered person cannot opt for composition scheme under section 10(2A), if, inter alia, he is engaged in making any inter-State outward supplies. However, there is no restriction on inter-State procurement of goods. Hence, answer will remain the same even if Mr. Ajay procures few items from neighboring State of Madhya Pradesh.

11. (i) The registered person, whose aggregate turnover in the preceding financial year does not exceed ₹ 1.5 crore, may opt to pay tax under composition levy, under section 10(1) and 10(2).

The scheme can be availed by an intra-State supplier of goods and supplier of restaurant service. However, the composition scheme permits supply of marginal services (other than restaurant services) for a specified value along with the supply of goods and restaurant service, as the case may be.

Thus, M/s United Electronics can opt for composition scheme for the current financial year as its aggregate turnover is less than ₹ 1.5 crore in the preceding financial year and it is not engaged in inter-State outward supplies.

(ii) The registered person opting for composition scheme, under section 10(1) and 10(2), can also supply services (other than restaurant services) for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher, in the current financial year.

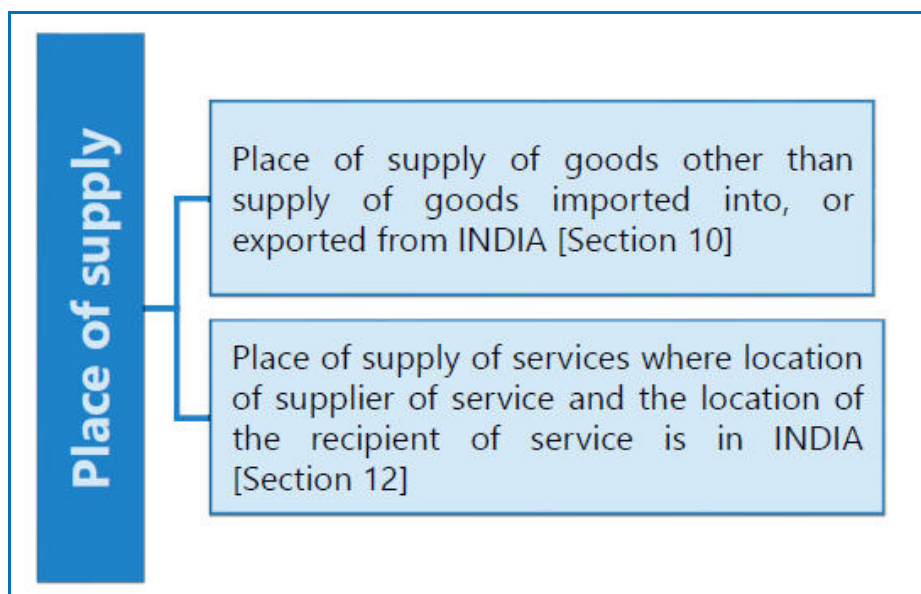
Thus, M/s United Electronics can supply repair and maintenance services up to a value of ₹ 12 lakh [10% of ₹ 120 lakh or ₹ 5 lakh, whichever is higher] in the current financial year.



CHAPTER - 4

PLACE OF SUPPLY

CHAPTER OVERVIEW



4.1 INTRODUCTION

- GST is a destination-based tax, i.e. the tax is levied at the place where the goods or services are consumed, rather than the place where they are produced.
- The determination of '**place of supply**' and the 'location of the supplier' is essential to ascertain the nature of supply, i.e. whether a supply is intra-State or inter- State. In other words, these two factors are required to determine whether a supply is subject to SGST/UTGST plus CGST in a given State/ Union territory or else would attract IGST if it is an inter-State supply.
- If an inter-State transaction is wrongly treated as intra-State or vice-versa and tax paid accordingly, the correct tax will be required to be paid and refund to be 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 the paramount importance.





- Section 2(86) of the CGST Act, 2017 defines 'place of supply' to mean the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act, 2017. Thus, in order to understand the provisions of the place of supply, we need to refer the provisions of the relevant Chapter of the Integrated Goods and Services Tax Act, 2017.
- In simple words, '**place of supply**' is the place where the supply is consumed. Thus, place of supply determines the jurisdiction where the tax revenue should reach.

Now the question arises as how to determine the place of supply?

Goods, usually being tangible do not pose any significant problems for determination of their place of consumption. Services, usually being intangible pose problems w.r.t determination of place of supply mainly due to following factors:

- The manner of delivery of a service could be altered easily.

For example, telecom service could change from postpaid to pre-paid or billing address of the customer could be changed, repair or maintenance of software could be changed from onsite to online; banking services earlier required customer to go to the bank, now the customer can avail service from anywhere.



- Service provider, service receiver and the service provided may not be ascertainable or may easily be suppressed as nothing tangible moves and there would hardly be any trail.
- For supplying a service, a fixed location of service provider is not mandatory and even the service recipient may receive service while on the move. The location of billing could be changed overnight.
- Sometime the same element may flow to more than one location, for example, construction or other services in respect of a railway line, a national highway or a bridge on a river which originate in one State and end in the other State.



Similarly, a copyright for distribution and exhibition of film could be assigned for many States in a single transaction or an advertisement or a programme is broadcasted across the country at the same time.



An airline may issue seasonal tickets, containing say 10 vouchers which could be used for travel between any two locations in the country.

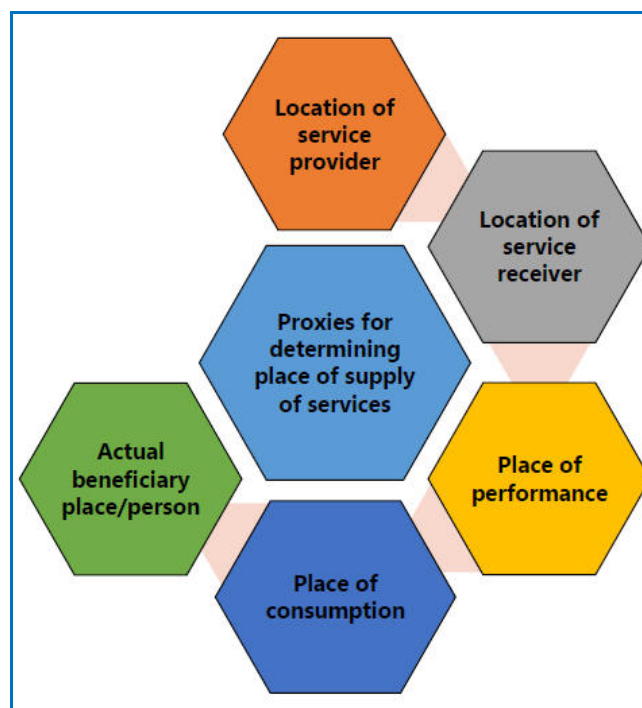
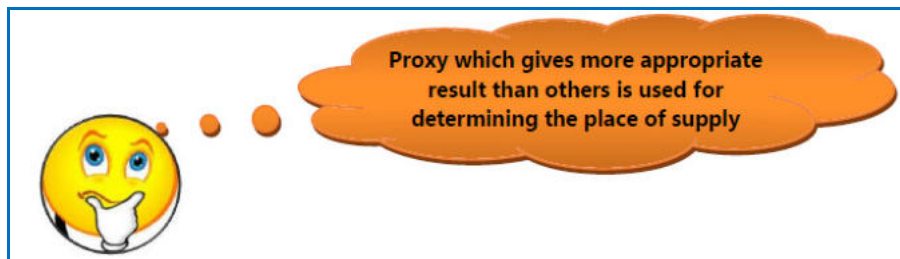
The card issued by New Delhi metro could be used by a person located in Noida, or New Delhi or Faridabad, without the New Delhi metro being able to distinguish the location or journeys at the time of receipt of payment.

- Services are continuously evolving and thus, continue to pose newer challenges. For example, 15-20 years back no one could have thought of DTH, online information, online banking, online booking of tickets, internet, mobile telecommunication etc.

Considering the difficulties in determining the actual place of consumption of services, the various elements involved in a service transaction are used as proxies for determining the place of consumption or place of supply of such services. A proxy which gives more appropriate result than others for determining the place of supply, could be used for determining the place of supply.

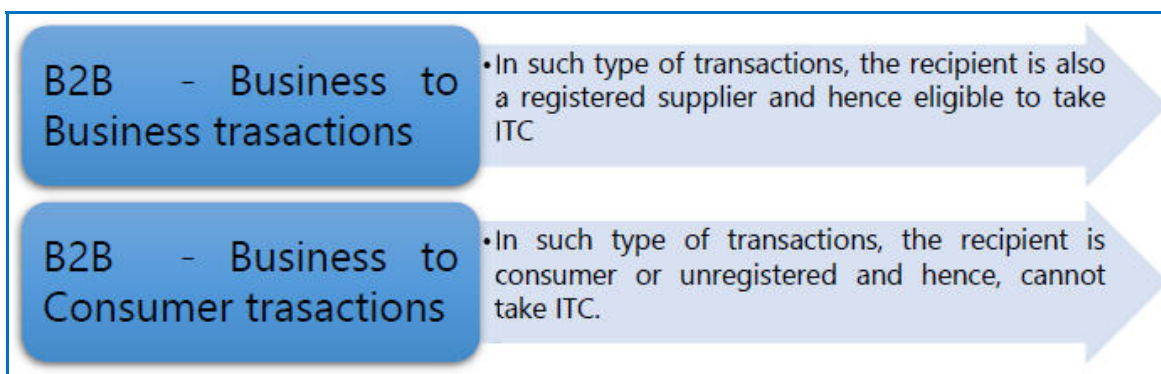
The various elements used for determining the place of supply of a service are:

- location of service provider
- location of service receiver
- place where the activity takes place/ place of performance
- place where the service is consumed
- place/person to which/whom actual benefit flows



Separate rules for determining place of supply in respect of B2B and B2C transactions

- In respect of **B2B (business to business) transactions**, the supply is made by a registered person to another registered person and the taxes paid are taken as credit by the recipient, so such transactions are just pass through. GST collected on B2B supplies effectively create a liability for the Government and an asset for the recipient of such supplies in as much as the recipient is entitled to use the input tax credit (ITC) for payment of future tax liability. **For B2B transactions, the location of recipient takes care in almost all the situations as further credit is to be taken by recipient.** The recipient usually further supplies to another customer.
- The supply is consumed only when a B2B transaction is further converted into B2C (business to consumer) transaction.
- In respect of **B2C transactions**, the supply is made to an unregistered person who consumes the same and the taxes paid actually reach the Government.



Provisions for determination of place of supply in GST law

- Basis the above guiding principles, **Chapter V of the IGST Act [Sections 10 to 14]** prescribes both general and specific rules to determine place of supply of goods and services in various circumstances. These provisions prescribe the provisions relating to place of supply of goods and services in domestic as well as cross-border transactions.
- At the intermediate level, our discussion will be restricted to the provisions relating to the **place of supply of goods and services in domestic transactions** [Section 10 and Section 12] only.

4.2 RELEVANT DEFINITIONS

- Continuous journey means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

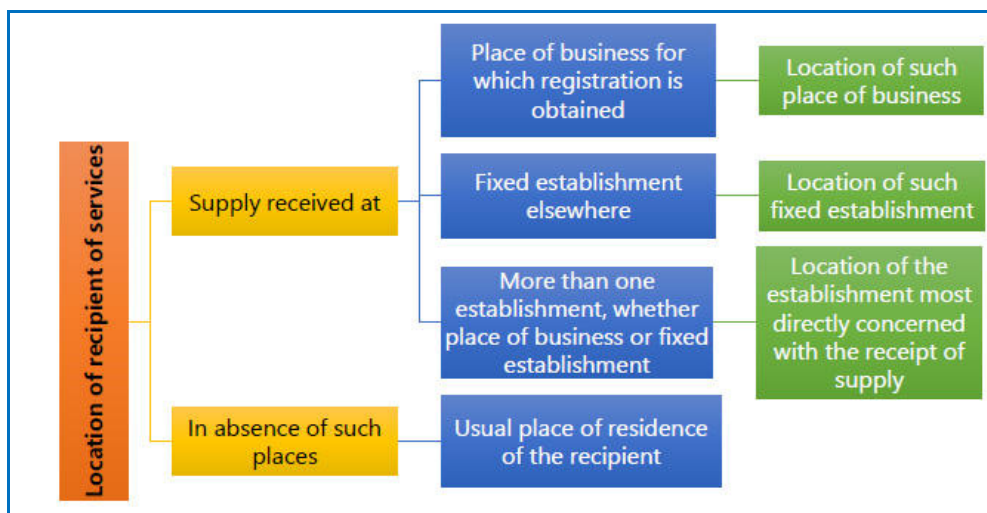
Explanation--For the purposes of this clause, the term “**stopover**” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time [Section 2(3)].

The term **conveyance** has been defined in section 2(34) of the CGST Act to include a vessel, an aircraft and a vehicle.

- **Fixed establishment** means a place other than the place of business which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs [Section 2(7)].

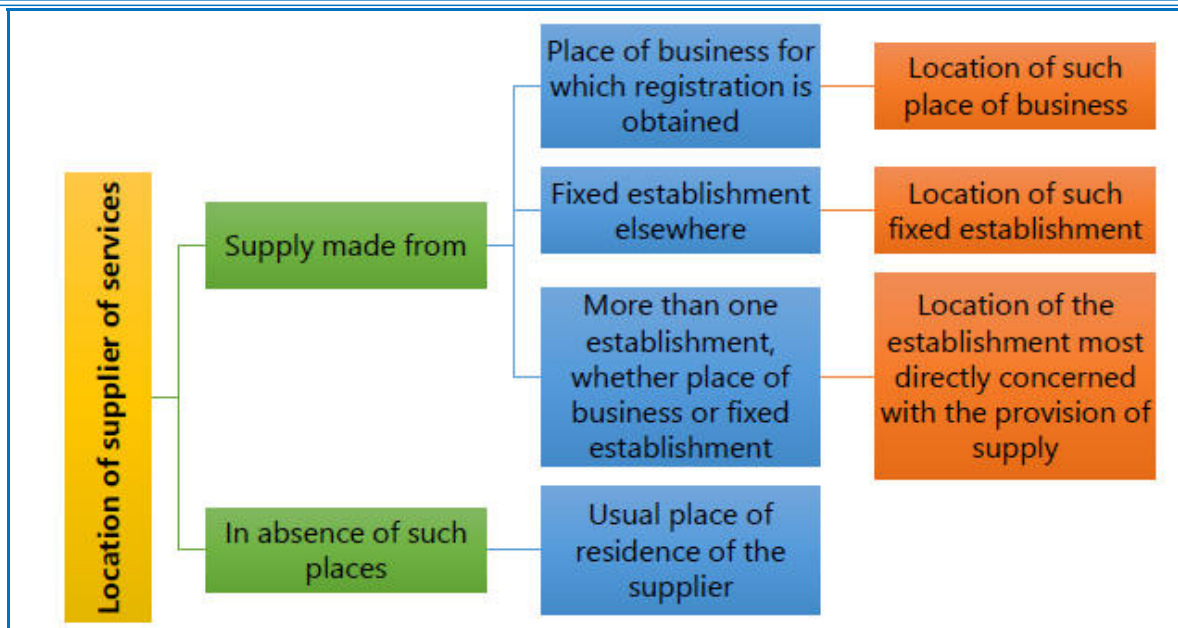
- **Location of the recipient of services** means:
 - where a supply is received at a place of business for which registration has been obtained, the location of such place of business;
 - where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
 - 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
 - in absence of such places, the location of the usual place of residence of the recipient [Section 2(14)].
- The definition of 'fixed establishment' for this purpose has been discussed above. The definition of 'place of business' is discussed later.

The above definition relates only to services. The term 'location of recipient of goods' has not been defined in the Act.



- **Location of the supplier of services** means:
 - where a supply is made from a place of business for which registration has been obtained, the location of such place of business;
 - where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
 - where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and Location of recipient of services
 - in absence of such places, the location of the usual place of residence of the supplier [Section 2(15)].

The above definition relates only to services. The term 'location of supplier of goods' has not been defined in the Act.



As already pointed out that ‘**Location of supplier of goods**’ is not defined in the law, only the location of supplier of services is defined. Services being intangible, sometimes, leave no trail as to the location ‘from’ where they are supplied and for that reason, a specific definition is required. Whereas in case of goods, it is easier to determine as to where the goods are actually ‘located’. Taking a cue from the definition of the place of supply (defined below), location of supplier of goods is where business is ordinarily carried on or where the goods themselves are located.

- **Place of business** includes

- 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
- a place where a taxable person maintains his books of account; or
- a place where a taxable person is engaged in business through an agent, by whatever name called; [Section 2(85)]



This is an inclusive definition and is applicable for both goods and services.

- **Supply** shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act [Section 2(21)].
- **Recipient** of supply of goods or services or both, means—
 - where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
 - where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
 - where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93) of the CGST Act] .

- **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105) of the CGST Act].
- **Words and expressions** used and not defined in the IGST Act but defined in the after supplies Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts [Section 2(24)].

4.3 PLACE OF SUPPLY OF GOODS OTHER THAN SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA [SECTION 10]

STATUTORY PROVISIONS

Section 10	Place of supply of goods other than supply of goods imported into, or exported from India	
Sub-section	Clause	Particulars
(1)		The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,--
	(a)	where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;
	(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;
	(c)	where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;
	(d)	where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;
	(e)	where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.
(2)		Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.

ANALYSIS

Section 10 prescribes the provisions for determining the place of supply of goods in domestic transactions, i.e. within India. Sub-section (1) of section 10 sets out five rules to provide the place of supply of goods in the following specific situations:



- Each of the above situation is discussed below. For residual cases, sub-section (2) of section 10 provides that where the place of supply of goods cannot be determined, the Government may prescribe the manner to ascertain the same.
- **It must be kept in mind that the provisions of section 10 discussed hereunder are all in relation to domestic supply of goods.**

(i) **Supply involving movement of goods [Section 10(1)(a)]**

- **In case of supply involving movement of goods, the place of supply is the location of the goods at the time when the movement of goods terminates (ends) for delivery to the recipient.**
- The 'location of the goods' is a question of fact to be ascertained by observing the journey that the goods so supplied make from their origin (from supplier) to termination (with the recipient). This movement, however, can be undertaken by the supplier or recipient or even any other person (like transporter) after having disclosed the destination of the movement of goods.
- It is important to understand that this provision does not apply in cases where there is no movement of goods. Also, the provision does not link itself to transfer of property in goods but to the movement of the goods.

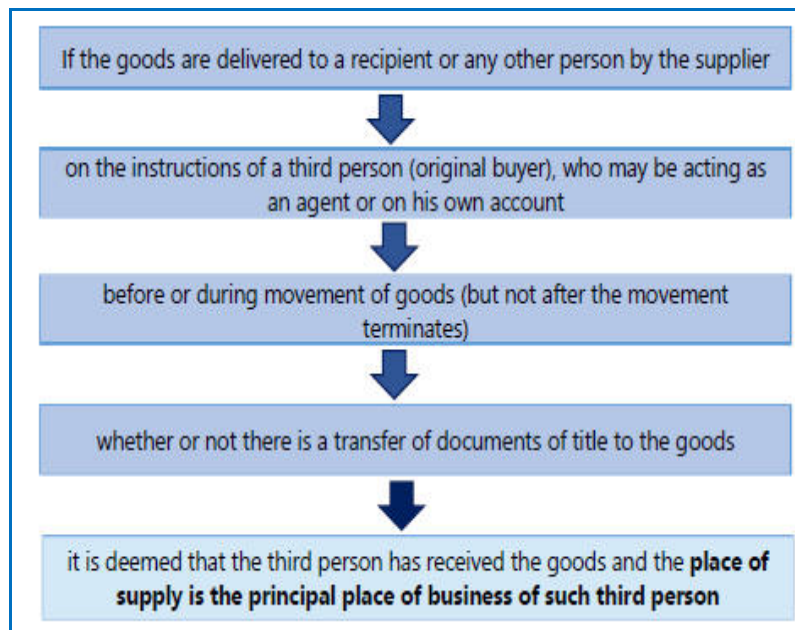
Example 1 : Babban Pvt. Ltd. of Nasik, Maharashtra sells 10 refrigerators to Chaggan Pvt. Ltd. of Pune, Maharashtra for delivery at place of business of Chaggan Pvt. Ltd. in Pune. The place of supply is Pune in Maharashtra.

Example 2 : Babban Pvt. Ltd. of Nasik, Maharashtra sells 20 refrigerators to Dhakkan Pvt. Ltd. of Ahmedabad, Gujarat for delivery at place of business of Dhakkan Pvt. Ltd. in Ahmedabad. The place of supply is Ahmedabad.

(ii) **Supply involving movement of goods where goods are delivered to recipient on the instruction of third person – 'Bill to Ship to' Supply [Section 10(1)(b)]**

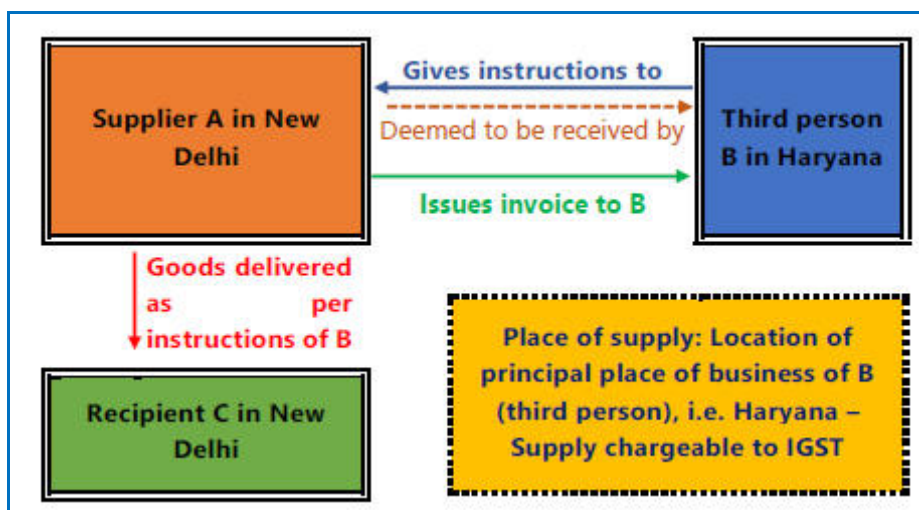
Clause (b) of section 10(1) lays down the provisions to determine the place of supply in cases where there is a tripartite arrangement of supply, commonly known as 'bill to ship to' transactions or where there is a sale of goods in transit by the original buyer/ agents.

As per section 10(1)(b),



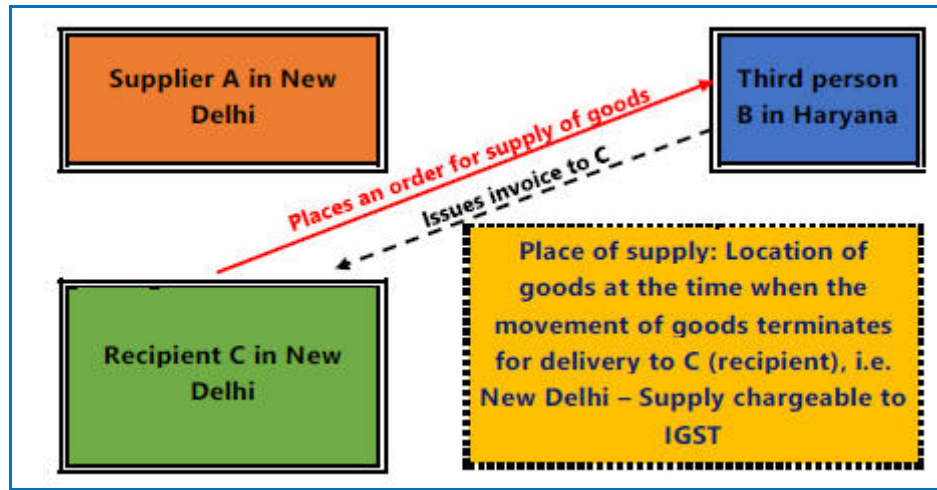
- In simple words, where goods are delivered by the supplier to the recipient at the instruction of a third person, the place of supply is the principal place of business of such third person and not of the actual recipient.
- It is important to identify the two supplies involved in this transaction– one supply is by supplier to third person and second supply is by third person to recipient. This provision deals only with the first limb of supply, i.e. supply by supplier to third person.
- Second limb of supply, i.e. supply by third person to recipient will be governed by the provisions of section 10(1)(a), i.e. the place of supply will be the location of the goods at the time when the movement of goods terminates (ends) for delivery to the recipient.

Supply by supplier to third person



- Even though section 2(93) of CGST Act defines recipient, inter alia, as the 'payer of the consideration'; in this provision, recipient' is the one who actually collects the goods and the third person is the one who enjoys privity with the supplier to be able to direct him to deliver the goods and also usually makes payment to the supplier.

Supply by third person to recipient



Questions 1 :

Tolaram Ltd. (a supplier registered in Uttar Pradesh having principal place of business at Noida) asks Bholaram Ltd. of Ahmedabad, Gujarat to deliver 50 washing machines to its buyer Jholaram Ltd. at Jaipur, Rajasthan. The place of supply of supply between Tolaram Ltd. and Jholaram Ltd. is _____ and place of supply of supply between Bholaram Ltd. and Tolaram Ltd. is _____.

- (a) Rajasthan; Uttar Pradesh (b) Uttar Pradesh; Gujarat;
 (c) Uttar Pradesh; Rajasthan; (d) Rajasthan; Gujarat

(iii) Supply not involving movement of goods [Section 10(1)(c)]

If the supply does not involve movement of goods, the place of supply is the location of goods at the time of delivery to the recipient.

Example 3 : Newton Pvt. Ltd. (New Delhi) has leased its machine (cost ₹ 8,00,000) to Gravity Pvt. Ltd. (Noida, Uttar Pradesh) for production of goods on a monthly rent of ₹ 35,000. After 12 months Gravity Pvt. Ltd. requested Newton Pvt. Ltd. to sell the machine to it for ₹ 5,00,000, which is agreed to by Newton Pvt. Ltd. In this case, there will be no movement of goods and the same will be sold on as is where is basis. Thus, the location of the machine at the time of such sale will be the place of supply, i.e. Noida.



Example 4 : Gangadhar Ltd. (Mumbai, Maharashtra) opens a new branch office at Gurugram, Haryana. It purchases a building for office from Gajodhar Builders (Gurugram). It also enters into a separate contract with Gajodhar Builders for purchase of pre-installed office furniture and fixtures in the building. Though there will be no GST liability on purchase of building (as sale of building is covered under Schedule III to CGST Act), office furniture and fixtures will be liable to GST. Since there is no movement of office furniture and fixtures, the place of supply of such goods is their location at the time of delivery to the recipient (Gangadhar Ltd.), i.e. Gurugram.



(iv) Supply involving installation or assembly of goods [Section 10(1)(d)]

If the supply involves goods which are to be installed or assembled at site, the place of supply is the place of such installation or assembly.

This is a case of composite supply of goods wherein two supplies are involved, supply of goods and ancillary supply of installation/assembling service. The principal supply is supply of goods which are being installed.



Example 5 : Ghoomghoom Pvt. Ltd. (New Delhi) purchases a machine from Dhoom Pvt. Ltd. (New Delhi) for being installed in its factory at Noida, Uttar Pradesh. The place of supply is the site at which the machine is installed, i.e. Noida.



Example 6 : Pure Refineries (Mumbai, Maharashtra) gives a contract to Mowgli Ltd. (Ranchi, Jharkhand) to supply a machine which is required to be assembled in a power plant in its refinery located in Kutch, Gujarat. The place of supply is the site of assembly of machine, i.e. Kutch even though Pure refineries is located in Maharashtra.

**(v) Goods supplied on board a conveyance [Section 10(1)(e)]**

- When goods are sold supplied during a journey on board a conveyance, it becomes difficult to determine the place of supply of goods – whether it is the location from where the journey originates or whether it is the destination or whether it is any of the locations covered by the conveyance during the journey.
- Therefore, section 10(1)(e) specifically provides for determination of place of supply of goods supplied on board a conveyance.
- Examples of goods supplied on board a conveyance can be books and miscellaneous items supplied by the hawkers in train etc.
- Section 10(1)(e) lays down that **place of supply of goods supplied on a board a conveyance like aircraft, train, vessel, motor vehicle is the location where such goods have been taken on board.**
- Place of supply of goods supplied on board a conveyance is determined under this provision even if the supply has been made by any of the passenger on board the conveyance and not by the carrier of the conveyance.

Example 7 : Maurya (New Delhi) boards the New Delhi-Kota train at New Delhi. He sells the goods taken on board by him (at New Delhi), in the train, at Jaipur during the journey. The place of supply of goods is the location at which the goods are taken on board, i.e. New Delhi and not Jaipur where they have been sold.

4.4 PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OF SERVICE AND THE LOCATION OF THE RECIPIENT OF SERVICE IS IN INDIA [SECTION 12]

STATUTORY PROVISIONS

Section 12 Place of supply of services where location of supplier of service and the location of the recipient of service is in India

Sub-section	Clause	Particulars
(1)		The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.
(2)		The place of supply of services, except the services specified in sub-sections (3) to (14),--
	(a)	made to a registered person shall be the location of such person;
	(b)	made to any person other than a registered person shall be,--
	(i)	the location of the recipient where the address on record exists; and
	(ii)	the location of the supplier of services in other cases.
(3)		The place of supply of 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
	(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),
		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:
		Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.
		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.

Sub-section	Clause	Particulars
(4)		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.
(5)		The place of supply of services in relation to training and performance appraisal to
	(a)	a registered person, shall be the location of such person;
	(b)	a person other than a registered person, shall be the location where the services are actually performed.
(6)		The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.
(7)		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, shall be the location of such person;
	(ii)	to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.
		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.
(8)		The place of supply of services by way of transportation of goods, including by mail or courier to,—
	(a)	a registered person, shall be the location of such person;
	(b)	a person other than a registered person, shall be the location at which such goods are handed over for their transportation.
		Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.
(9)		The place of supply of passenger transportation service to,—
	(a)	a registered person, shall be the location of such person;

Sub-section	Clause	Particulars
	(b)	a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:
		Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).
		Explanation.--For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.
(10)		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.
(11)		The place of supply of 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, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
	(b)	in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;
	(c)	in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,—
	(i)	through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or
	(ii)	by any person to the final subscriber, be the location where such pre- payment is received or such vouchers are sold;
	(d)	in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:
		Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:
		Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.
		Explanation.--Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such

Sub-section	Clause	Particulars
		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.
(12)		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:
		Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.
(13)		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.
(14)		The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

ANALYSIS

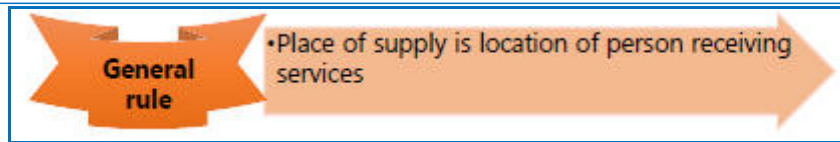
Section 12 contains the provisions for determining the place of supply of services where both the 'location of supplier of services' and the 'location of recipient of services' are in India.

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.

It must be kept in mind that the provisions of section 12 discussed hereunder are all in relation to the domestic supply of services.

(i) General 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. 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.



However, if the services is supplied to an unregistered person, the place of supply is:

- a) the location of such unregistered person, if the address of the unregistered person is available in the records of the supplier
- b) the location of the supplier of services in other cases.

The provision can be summarized as under:

Nature of Supply	Place of Supply	
	Recipient is registered	Recipient is unregistered
Supply of services other than the ones specified in sub-sections (3) to (14) of section 12	Location of recipient	<ol style="list-style-type: none"> a) If the address of the unregistered person is available in the records of the supplier, the location of such unregistered person. b) In other cases, the location of the supplier of services

★ The default presumption for place of supply in respect of registered recipients (B2B supply of services) is the location of such person. Since the recipient is registered, address of recipient is always there and the same can be taken as proxy for place of supply.

★ The default presumption for place of supply in respect of unregistered recipients (B2C supply of services) is also the location of recipient. However, in many cases, the address of recipient is not available; in such cases, location of the supplier of services is taken as proxy for place of supply.

For instance, there are various B2C services where the address of the recipient is not recorded by the supplier of services. For instance, a person may visit a bank branch where he is not a regular customer and may get a demand draft against cash or request for conversion of foreign currency into local currency. The bank branch charges commission towards its consideration for the services supplied by it. The place of supply in such cases would be determined based on the location of the branch of the bank as the bank branch doesn't have the address of the said service recipient as a normal business practice.

Example 8 : Mr. Aryabhatt (a Chartered Accountant registered in New Delhi) makes a supply of service to his client Champak Pvt. Ltd. of Noida, Uttar Pradesh (registered in Uttar Pradesh). In this case, since the supply is made to a registered person, the place of supply is the location of the registered recipient, i.e. Noida.

Example 9 : Mr. Heeralal, a Chartered Accountant in Gurugram, Haryana, (registered in Haryana) provides consultancy services to his client Mr. Pannalal who is a resident of New Delhi but is not registered under GST. If the address of Mr. Pannalal is available in the records of Mr. Heeralal, location of Mr. Pannalal, i.e. New Delhi will be the place of supply, else the location of Mr. Heeralal, which is Gurugram, will be the place of supply.

(ii) **Services in relation to an immovable property or lodging accommodation in a hotel/boat/vessel etc.**
[Section 12(3)]

Section 12(3) covers supplies of services which are (i) **directly** in relation to an immovable property, or (ii) by way of lodging accommodation in a hotel, etc. or a house-boat or vessel, or accommodation in any immovable property for organizing social, business functions etc. Such services are classified in the following major categories :

(a) Services provided **directly** in relation to an immovable property including those by

- architects,
- interior decorators,
- surveyors,
- engineers and other related experts,
- estate agents



(b) Service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work

(c) Services provided by way of lodging accommodation by a:

- hotel
- inn
- guest house
- home stay
- club
- campsite
- house boat
- vessel



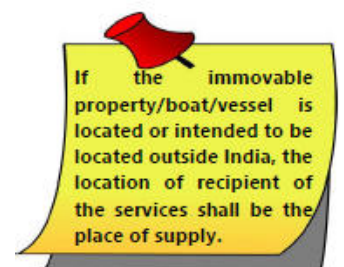
(d) Services provided by way of accommodation in an immovable property for organizing

- any marriage/reception or matters related thereto,
- official, social, cultural, religious or business functions
- including services provided in relation to such function at such property



(e) Services ancillary to the above-mentioned services

- In all above cases, location of the immovable property or the boat or the vessel or where such immovable property or the boat or the vessel is intended to be located, is the place of supply.
- This provision is applicable on property already constructed/ developed as well as on the property yet to be constructed/ developed. For example, if the services have been supplied for an immovable property which is yet to be
- This provision is applicable on property already constructed/ developed as well as on the property yet to be constructed/ developed. For example, if the services have been supplied for an immovable property which is yet to be constructed/developed (e.g. architect's services for drawing the plan of a building), the place where such immovable property is intended to be located is the place of supply.



Example 10 : Sunami Builders (Mumbai) is constructing a factory building for Skylab Pvt. Ltd. (Kolkata), in New Delhi. The place of supply is the location of immovable property, i.e. New Delhi.



Example 11 : Shah and Shah, an architectural firm at Kolkata, has been hired by Maurya Builders of Mumbai to draw up a plan for a high rise building to be constructed by them in Ahmedabad, Gujarat. The place of supply is the place where the immovable property is intended to be located, i.e. Ahmedabad.

Example 12 : Kautilya, a Chartered Accountant, (New Delhi) travels to Mumbai for business and stays in a hotel there. The place of supply of accommodation service is the place where the hotel is located, i.e. Mumbai.

Example 13 : Goluram, a consulting engineer based in Mumbai, Maharashtra renders professional services in respect of an immovable property of Bholuram of Bangalore located in Australia. Since the immovable property is located outside India, the place of supply of service is the location of recipient, i.e. Bangalore and not the place where the immovable property is located (Australia)².

The provision can be summarized as under:

Nature of Supply	Location of immovable property/ boat/ vessel	Place of Supply
Supply of services relating to immovable property or lodging accommodation in a hotel/boat/ vessel or accommodation in an immovable property for social/business/religious/cultural functions	In India	Location of such immovable property/ boat/ vessel
	Outside India	Location of the recipient

Immovable property/Boat/Vessel located in more than one State/Union territory

- Sometimes immovable property may extend to more than one location, for example, a railway line, a national highway or a bridge on a river may originate in one State and end in the other State or a house boat stay may traverse more than one State.
- In such cases, i.e. where the immovable property or boat or vessel is located in more than one State/Union territory, the service is deemed to have been supplied **in each of the respective States/Union territories, in proportion to the value for the services determined in terms of the contract or agreement** entered into in this regard.



Manner of determining proportionate value of service in the absence of a contract or agreement

- In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services supplied in different States/Union territories (where the immovable property or boat or vessel is located) is computed in accordance with rule 4 of the IGST Rules as under:

S. No.	Type of service in relation to immovable property	Factor which determines the proportionate value of service supplied in different States/Union territories
(a)	Service provided by way of lodging accommodation by hotel, inn, guest house etc. and its ancillary services (other than the cases where such property is a single property located in 2 or more contiguous States/ Union territories or both)	Number of nights stayed in such property Refer Example 14 on next page
(b)	<ul style="list-style-type: none"> • All other services provided in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc. and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in 2 or more contiguous States or/and Union territories • Services ancillary to services mentioned above 	Area of the immovable property lying in each State/ Union territories Refer Example 15
(c)	Services by way of lodging accommodation by a house boat or vessel and its ancillary services	Time spent by the boat or vessel in each such State/ Union territories, to be determined on the basis of declaration made by the service provider Refer Example 16

Example 14 - 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 Dondrila Hotel chain 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



Delhi and Uttar Pradesh and the service shall be deemed to have been provided in Delhi and Uttar Pradesh in the ratio of 2:1 respectively. The value of services provided will thus be apportioned as ₹ 20,000/- in Delhi and ₹ 10,000/- in Uttar Pradesh.

Example 15 - 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 Munna Constructions. The ratio of land in the two States works out to 12:8 or 3:2 (simplified).



The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.

Example 16 – Lodging accommodation by a house boat or vessel and its ancillary services A company C provides the service of 24 hours accommodation in a houseboat, which will transit both in Kerala and Karnataka in as much as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the States of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.



Questions 2 :

Brijraj is on a business trip for 5 days where he has to stay for 3 days in Mumbai (Maharashtra) and 2 days in Ahmedabad (Gujarat). He stays in the hotels of Royal Group of Hotels for which a consolidated sum of ` 50,000/- was charged by the hotel for stay in its two establishments in Mumbai and Ahmedabad for 3 nights and 2 nights respectively. The place of supply in this case is in _____.

- (a) Maharashtra and Gujarat both and the service shall be deemed to have been provided in Maharashtra and Gujarat in the ratio 3:2 respectively.
- (b) Maharashtra as his stay was longer in Mumbai.
- (c) Maharashtra and Gujarat both and the service shall be deemed to have been provided in Maharashtra and Gujarat in the ratio 1:1 respectively.
- (b) Gujarat

(iii) Restaurant and catering service, personal grooming, fitness, beauty and health services [Section 12(4)]

The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery is the location where such services are actually performed.



Example 17 : Mr. Dadlani, a businessman from Hyderabad dines in a restaurant at Mumbai while on a business trip. The place of supply of restaurant service is the location where such service is performed, i.e. Mumbai.

Example 18 : Timmy Ferreira, a makeup artist at Kolkata, goes to Jaipur, Rajasthan for doing the makeup of Ms. Simran Kapoor, a Bollywood actress based in Mumbai. The place of supply is the location where such service is performed, i.e. Jaipur.

(iv) Training and performance appraisal services [Section 12(5)]

The place of supply of services in relation to training and performance appraisal depends upon whether the supply is B2B or B2C.

In B2B supply, i.e. where the recipient of service is a registered person, the place of supply is the location of such person.

However, in case of B2C supply, i.e. where the recipient of service is unregistered, the place of supply is the place where the service is actually performed.



Example 19 : Mr. Suresh (unregistered person based in Noida) signs up with Excellent Linguistics (New Delhi) for receiving training on English speaking at their New Delhi Centre. Since the recipient is unregistered, the place of supply is the location where services are provided, i.e. New Delhi.



Questions 3 :

DEO Consultants (Kolkata) impart GST training to accounts and finance personnel of Sun Cements Ltd., Guwahati, Assam (registered office) at the company's Mumbai (Maharashtra) office which is also registered under GST. The contract is entered with Guwahati office. In the given case, place of supply is _____.

- (a) Kolkata (b) Assam
(c) Maharashtra (d) Either Assam or Maharashtra at the option of Sun Cements Ltd

(v) Services by way of ADMISSION to events/amusement park/other places [Section 12(6)]

The place of supply of following services-

- (i) services provided by way of ADMISSION to following types of events:



- (ii) services provided by way of ADMISSION to amusement park or any other place
 (iii) services ancillary to the above-mentioned services

is the **place where the event is actually held or where the park or such other place is located.**

Example 20 : Virubhai Virani, a resident of Ghaziabad, Uttar Pradesh, buys a ticket for a circus organized at Gurugram, Haryana by a circus company based in New Delhi. The place of supply is the location where the circus is held, i.e. Gurugram.

Example 21 : Manasvi of New Delhi buys a ticket for an amusement park located in Noida, Uttar Pradesh. The place of the supply is the location where the park is located, i.e. Noida.

(vi) **ORGANISATION of events [Section 12(7)]**

- For supplies related to **ORGANISATION** of events or assigning sponsorship to such events, the place of supply depends on whether the supply is made to a registered person or an unregistered person.
- **When such service is provided to a registered person, the place of supply is location of recipient.**
- **When it is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.**
- The event can be a cultural, artistic, sporting, scientific, educational or entertainment event. It can also be a conference, fair, exhibition, celebration or other similar event.
- Place of supply of services ancillary to organisation of such type of events or assigning of sponsorship to such events is also determined under subsection (7) of section 12, i.e. in the manner described above. The provision can be summarized as under:

Nature of Supply	Place of Supply	
	Recipient is registered	Recipient is unregistered
Organisation of events or services ancillary to the same or assigning of sponsorship to such events	Location of recipient	Location where the event is held
Organisation of events outside India		Location of recipient

Example 22 : Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), at Mumbai. Since the recipient is a registered person, the place of supply is the location of the recipient, i.e. Ahmedabad.

Example 23 : Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), in Mauritius. Since the recipient is a registered person, the place of supply is the location of the recipient, i.e. Ahmedabad.

Event held in more than one State/Union territory

- If the event is held in more than one State/Union territory and a consolidated amount is charged for services relating to such event, the place of supply of such services is deemed to be in each of the respective States/Union territories in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

- **The above provision is applicable only when the recipient is unregistered, as for a registered recipient, the place of supply is the location of such recipient.**

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services made in different States/Union territories (where the event is held) is computed in accordance with rule 5 of the IGST Rules by the application of generally accepted accounting principles.

Example 24 : An event management company –

Moonlight Events Private Limited – has to organize some promotional events in States S1 and S2 for a recipient Mr. Atmaram (unregistered). 3 events are to be organized in S1 and 2 in S2. They charge a consolidated amount of ₹ 10,00,000 from Mr. Atmaram.



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.

Questions 4 :

Grand Wedding Planners (Chennai) is hired by Laddoo Singh (unregistered person based in Hyderabad) to plan and organise his wedding. The place of supply is (i) _____ if wedding is to be held at New Delhi, or (ii) _____ if wedding is to be held in Seychelles.

- | | |
|--------------------------|---------------------------|
| (a) New Delhi; Hyderabad | (b) New Delhi; Seychelles |
| (c) Chennai; Seychelles | (b) Chennai; Hyderabad |

(vii) Transportation of goods including mail or courier [Section 12(8)]

The place of supply of services by way of transportation of goods, including by mail or courier, etc. provided to a registered person, is the location of such person. However, where such services are provided to an unregistered person, the place of supply is the location at which such goods are handed over for their transportation.

If the goods are transported outside India, the destination of such goods is the place of supply.



Example 25 : M/s Sukhram Pvt. Ltd. is a registered company in New Delhi. It sends its courier to Pune through M/s Brue Air Courier Service. The recipient being registered person, the place of supply is the location of recipient, i.e. New Delhi.

Example 26 : Mr. Bindisaar, an unregistered person, of New Delhi sends a courier to his brother in Amritsar, Punjab. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e. New Delhi.

Example 27 : Pinelaps Pvt. Ltd., a Goods Transportation Agency based in Kanpur, Uttar Pradesh, is hired by Hezal Enterprises (registered supplier in Kanpur) to transport its consignment of goods to a buyer in New Delhi. The recipient being registered, the place of supply is the location of recipient, i.e. Kanpur.

Example 28 : Sukhwinder Transports Pvt. Ltd., a Goods Transportation Agency based in Noida, Uttar Pradesh, is hired by Chhaya Trade Links (registered supplier in New Delhi) to transport its consignment of goods to a buyer in Kanpur, Uttar Pradesh. The recipient being registered, the place of supply is the location of recipient, i.e. New Delhi.

Example 29 : Mr. Srikant, a manager in a Bank, is transferred from Bareilly, Uttar Pradesh to Bhopal, Madhya Pradesh. Mr. Srikant's family is stationed in Kanpur, Uttar Pradesh. He hires Goel Carriers of Lucknow, Uttar Pradesh (registered in Uttar Pradesh), to transport his household goods from Kanpur to Bhopal. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e. Kanpur.

(viii) Passenger transportation service [Section 12(9)]

Nature of Supply	Place of Supply	
	Recipient is registered	Recipient is unregistered
Passenger transportation	Location of the recipient	Location where the passenger embarks on the conveyance for a continuous journey [See definition]
Issue of right to passage for future use and the point of boarding not known at the time of issue of right to passage		a) If the address of the unregistered person is available in the records of the supplier, the location of such unregistered person. b) In other cases, the location of the supplier of services

The return journey is treated as a separate journey, even if the tickets for onward and return journey are issued at the same time.

Example 30 : Mr. Amar (registered person in New Delhi) travels from Mumbai to Bangalore in Airjet flight. Mr. Amar has bought the tickets for the journey from Airjet's office registered in New Delhi. The place of supply is the location of recipient, i.e. New Delhi.

Example 31 : Mr. Subramanian (unregistered person in Chennai) has come to Delhi on a vacation. He buys pre-paid Delhi Metro Card from Delhi Metro (New Delhi) for hassle free commute in the National Capital Region. Recipient being unregistered person, the place of supply is the address of Mr. Subramanian, i.e. Chennai. If address of Mr. Subramanian is not available with the Delhi Metro, the place of supply will be the location of the supplier of services, i.e. New Delhi.

Example 32 : Mr. Shyam, an unregistered person, based in Gurugram, Haryana books a two-way air journey ticket from New Delhi to Mumbai on 5th December. He leaves New Delhi on 10th December in a late-night flight and lands in Mumbai the next day. He leaves Mumbai on 14th December in a morning flight and lands in New Delhi the same day. The return journey is treated as a separate journey, even if the tickets for onward and return journey are issued at the same time. Thus, being an unregistered person, the place of supply for the outward and return journeys are the locations where the unregistered person embarks on the conveyance for the continuous journey, i.e. New Delhi and Mumbai respectively.

Examples of issue of right to passage for future use-point of boarding not known at the time of issue of right

Example 33: An airline may issue seasonal tickets, containing say 10 vouchers which could be used for travel between any two locations in the country.

Example 34 : The card issued by New Delhi metro could be used by a person located in Noida, or New Delhi or Faridabad, without the New Delhi metro being able to distinguish the location or journeys at the time of receipt of payment.

(ix) Service supplied on board a conveyance [Section 12(10)]

Nature of Supply	Place of Supply
Service supplied on board a conveyance*	Location of the first scheduled point of departure of that conveyance for the journey

*** Note -** Conveyance includes a vessel, an aircraft, a train or a motor vehicle.

You may recollect that the proxy for place of supply of goods on board a conveyance is the location at which the goods are taken on board. Services being intangible, the same proxy cannot be used for determining the place of supply for services supplied on board a conveyance. Therefore, for services, the proxy is the location of the first scheduled point of departure of that conveyance for the journey. However, for determining the place of supply of both goods and services supplied on board a conveyance, no distinction is made between registered and unregistered recipients.

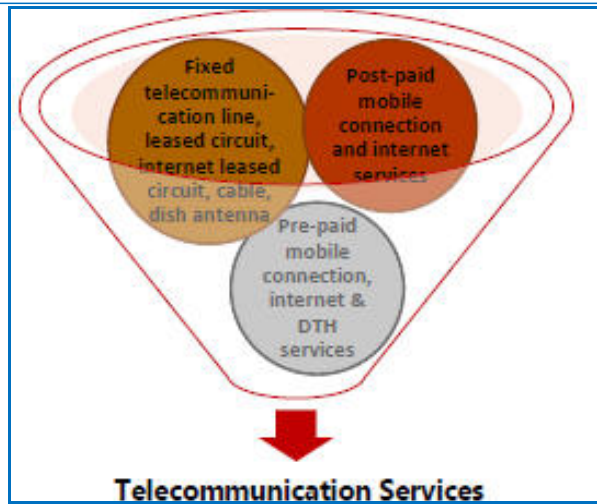
Example 35 : Mr. Raidhan is travelling from Delhi to Mumbai in an Airjet flight. He desires to watch an English movie during the journey by making the necessary payment. The place of supply of such service of showing 'movie on demand' is the first scheduled point of departure of the conveyance for the journey, i.e. Delhi.

(x) Telecommunication service [Section 12(11)]

Telecommunication services include the services of telephone, data transfer (internet), broadcasting, cable, DTH (Direct to home) services, etc. Section 12(11) classifies the telecommunication services into 3 categories for the purpose of determining the place of supply as under:

- Services provided using a fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna
- Post-paid mobile connection and post-paid internet services
- Pre-paid mobile connection and prepaid internet and DTH services





The place of supply of the various types of telecommunication services is tabulated as under:

Nature of Supply	Place of Supply	Recipient
<ul style="list-style-type: none"> Fixed telecommunication line Leased circuits Internet leased circuit Cable or dish antenna 	Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services	ANY PERSON
Post-paid mobile connection and internet services	<ul style="list-style-type: none"> Location of billing address of the recipient of services in the records of the supplier of services Location of the supplier of services, if the address is not available 	
Pre-paid mobile connection, internet services and DTH services (recharge coupon, vouchers, net pack etc.)	Address of the selling agent/ re-seller/ distributor at the time of supply	
Services provided through a <ul style="list-style-type: none"> selling agent re-seller distributor of subscriber identity module card or recharge voucher 		
Services provided by any person to final subscriber	Location where such prepayment is received or such vouchers are sold	
Pre-paid services, the payment for which is made through internet banking/other electronic mode of payment	Location of the recipient of services in the records of the supplier of services	
Other cases	<ul style="list-style-type: none"> The address of the recipient as per the records of the supplier of services Location of the supplier of services, if the address is not available 	

Example 36 : Mr. Samudragupta (Kolkata) gets a landline phone installed at his home in Kolkata from Skybel Ltd. The place of supply is the location where the telecommunication line is installed, i.e. Kolkata.

Example 37 : Mr. Rajkumar (Mumbai) gets a DTH installed at his home in his village in Uttar Pradesh from RT Ltd. The place of supply is the location where the DTH is installed, i.e. Uttar Pradesh.

Example 38 : Mr. Shastri (Mumbai) takes a post-paid mobile connection in Mumbai from Blubel Ltd. and gives his residence address at Mumbai as the address for billing with supplier. The place of supply is the location of billing address of the recipient, i.e. Mumbai.

Example 39 : Mr. George (New Delhi) gets his post-paid mobile bill (billing address New Delhi) paid online from Goa. The place of supply is the location of the billing address of the recipient, i.e. New Delhi.

Example 40 : Mr. Jhumroo (Pune) purchases a pre-paid card from a selling agent in Mumbai. The place of supply is the address of the selling agent or re-seller, i.e. Mumbai.

Example 41 : Mr. Freddy (Puducherry) gets a pre-paid mobile recharged from a grocery shop in Chennai. The place of supply is the location where such pre-payment is received, i.e. Chennai.

Leased circuit is installed in more than one State/Union territory

If the leased circuit is installed in more than one State/Union territory and a consolidated amount is charged for supply of services, the place of supply is deemed to be in each of the respective States/Union territories in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the value of services supplied in different States/Union territories (where the leased circuit is installed) is determined in accordance with rule 6 of the IGST Rules in proportion to the number of points lying in each such State/Union territory.

The number of points in a circuit is determined in the following manner-

- (i) In the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points – Refer Example 42
- (ii) Any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point – Refer Example 43 & 44

Example 42 : Circuit between two points or places Trinity Ltd. installs a leased circuit between the Delhi and Mumbai offices of Inertia Pvt. Ltd. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence, one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.

Example 43 : Intermediate point or place in the circuit Turbo Ltd. installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of Rio Ltd. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence, one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.

Example 44 : Intermediate point or place in the circuit Sriram Ltd. installs a leased circuit between the Kolkata, Patna and Guwahati offices of Srishyam Ltd. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

(xi) Financial and stock broking services [Section 12(12)]



The place of supply of banking and other financial services, including stock broking services to any person is the location of the recipient of services in the records of the supplier of services. However, if the **location of recipient of services is not available in the records**



of the supplier, the place of supply is the location of the supplier of services.

Example 45 : Mr. Debdas (Chennai) buys shares from a broker in BSE (Mumbai). The place of supply is the location of the recipient of services in the records of the supplier, i.e. Chennai.

Example 46 : Mr. Arihant (New Delhi) withdraws money from Best Bank's ATM in Amritsar. Mr. Arihant has crossed his limit of free ATM withdrawals. The place of supply is the location of the recipient of services in the records of the supplier, i.e. New Delhi.

Example 47 : Mr. Rishabh from Varanasi, Uttar Pradesh, visits a bank registered in New Delhi to get a demand draft made. Mr. Rishabh does not have any account with the said bank. Therefore, since the location of recipient is not available in the records of the supplier, the place of supply is the location of the supplier of services, i.e. New Delhi.

(xii) Insurance services [Section 12(13)]

The place of supply of insurance services is the **location of recipient when provided to a registered recipient.**

If such services are provided to a person other than a registered person, the place of supply is the **location of the recipient of services in the records of the supplier of services.**



Example 48 : Mr. Shantaram, CEO of Shaurya Ltd., Mumbai (a company registered in Maharashtra) buys insurance cover for the inventory stored in company's factory located at Mumbai, from Excellent Insurers, Chennai (registered in Tamil Nadu). The place of supply is the location of the registered recipient, i.e. Mumbai.

Example 49 : Ms. Barbie (unregistered resident of Kolkata) goes to her native place Patna, Bihar and buys a medical insurance policy for her parents there from Safe Insurers, Patna (registered in Bihar). The place of supply is the location of the recipient of services in the records of the supplier, i.e. Patna.

(xiii) Advertisement service to the Government [Section 12(14)]

Nature of Supply	Place of Supply
Advertisement service to the Central Government/ State Government/ Statutory body/ Local authority meant for the State/Union territory identified in contract or agreement	Each of such States/ Union territories where the advertisement is broadcasted/ run / played/ disseminated.

The value of such supplies specific to each State/Union territory is in proportion to the amount attributable to the services provided by way of dissemination in the respective States/Union territories determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of advertisement services attributable to different States/Union territories (where the advertisement is broadcasted/ run /played/disseminated) is computed in accordance with rule 3 of the IGST Rules as under:

Sl. No.	Type of advertisement	Value of service attributable to dissemination in different States/Union territories where the advertisement is broadcasted/ run /played/disseminated
1.	Advertisements in newspapers and publications	Amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in each State/Union territory Refer Example 50
2.	Advertisements through printed material like pamphlets, leaflets, diaries, calendars, Tshirts, etc.	Amount payable for the distribution of a specific number of such material in each State/Union territory Refer Example 51
3.	Advertisements in hoardings (other than those on trains)	Amount payable for the hoardings located in each State/ Union territory Refer Example 52
4.	Advertisements on trains	Amount attributable to each State/Union territory calculated in the ratio of length of the railway track in each of such State/Union territory, for that train Refer Example 53
5.	Advertisements on the back of utility bills of oil and gas companies, etc.	Amount payable to each State/Union territory for the advertisements on bills pertaining to consumers having billing addresses in each of such State/Union territory
6.	Advertisements on railway tickets	Amount attributable to each State/Union territory calculated in the ratio of number of Railway Stations in each of such State/Union territory Refer Example 54
7.	Advertisements on radio stations	Amount payable to such radio station, which by virtue of its name is part of each State/Union territory Refer Example 55
8.	Advertisement on television channels	Amount attributable to each State/Union territory calculated basis the viewership of such channel in each of such State/ Union territory which shall be derived as under: (a) Viewership can be ascertained from the channel viewership figures published by the Broadcast Audience Research Council. (b) Figures for the last week of a given quarter is used for calculating viewership for the succeeding quarter.

Sl. No.	Type of advertisement	Value of service attributable to dissemination in different States/Union territories where the advertisement is broadcasted/ run /played/disseminated
		<p>(c) Where the channel viewership figures relate to a region comprising of more than one State/Union territory, the viewership figures for a State/ Union territory of that region, is calculated in ratio of the populations of that State/Union territory, as determined in the latest Census.</p> <p>(d) The ratio of the viewership figures for each State or Union territory so calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State or Union territory</p> <p>Refer Example 56</p>
9.	Advertisements in cinema halls	<p>Amount payable to a cinema hall or screens in a multiplex in each State/ Union territory.</p> <p>Refer Example 57</p>
10.	<p>Advertisements on internet</p> <p>It is deemed that such service is provided all over India.</p>	<p>Amount attributable to each State/Union territory calculated basis the internet subscribers in each of such State/ Union territory which shall be derived in the following manner:</p> <p>(a) Internet subscribers can be ascertained from the internet subscriber figures published by the Telecom Regulatory Authority of India (TRAI).</p> <p>(b) Figures for the last quarter of a given financial year will be used for calculating the number of internet subscribers for the succeeding financial year.</p> <p>(c) Where the internet subscriber figures relate to a region comprising of more than one State/Union territory, the subscriber figures for a State/Union territory of that region shall be calculated in the ratio of the populations of that State/Union territory, as determined in the latest census.</p> <p>(d) The ratio of the subscriber figures for each State or Union territory so calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State or Union territory</p> <p>Refer Example 58</p>
11.	Advertisements through SMS	<p>Amount attributable to each State/Union territory calculated on the basis of the telecom subscribers in each of such State/ Union territory.</p> <p>(a) Telecom subscribers in a telecom circle can be ascertained from the telecom subscribers figures published by the TRAI. Figures for a given quarter will be used for calculating the subscribers for the succeeding quarter.</p>

Sl. No.	Type of advertisement	Value of service attributable to dissemination in different States/Union territories where the advertisement is broadcasted/ run /played/disseminated
		(b) Where such figures relate to a telecom circle comprising of more than one State/Union territory, the subscriber figures for that State/Union territory shall be calculated in the ratio of the populations of that State/Union territory, as determined in the latest census.Refer Examples 59-62

Example 50 - Advertisements in newspapers and publications

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.

Example 51 - Advertisements through printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc.

As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of 1,00,000 pamphlets (at a total cost of ₹ 1,00,000) to be distributed in the States of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States, i.e. Haryana, Uttar Pradesh and Rajasthan, from the Ministry or department concerned at the time of giving the print order. Let us assume that this breakup is 20,000, 50,000 and 30,000 respectively. This breakup should be indicated in the print order. The place of supply of this service is in Haryana, Uttar Pradesh and Rajasthan. The ratio of this breakup, i.e. 2:5:3 will form the basis of value attributable to the dissemination in each of the three States. Separate invoices will have to be issued State-wise by GH to ABC indicating the value pertaining to that State, i.e. ₹ 20,000 - Haryana, ₹ 50,000 - Uttar Pradesh and ₹ 30,000 - Rajasthan.



Example 52 - Advertisements in hoardings (other than those on trains ABC as part of the campaign 'Saakshar Bharat' has engaged a firm IJ for putting up hoardings near the Airports in the 4 metros, i.e. Delhi, Mumbai, Chennai and Kolkata. The release order issued by ABC to IJ will have the city-wise, location-wise breakup of the amount payable for such hoardings.



The place of supply of this service is in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal. In such a case, the amount actually paid to IJ for the hoardings in each of the 4 metros will constitute the value attributable to the dissemination in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal respectively. Separate invoices will have to be issued State-wise and Union territory-wise by IJ to ABC indicating the value pertaining to that State/UT.

Example 53 - Advertisements on trains ABC places an order on KL for advertisements to be placed on a train with regard to the 'Janani Suraksha Yojana'. The length of a track in a State will vary from train to train. Thus, for advertisements to be placed on the Hazrat Nizamuddin Vasco Da Gama Goa Express which runs through Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa, KL may ascertain the total length of the track from Hazrat Nizamuddin to Vasco Da Gama as well as the length of the track in each State 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 Rs. 1,20,000, then KL will have to calculate the State-wise and Union territorywise breakup of the value of the service, which will be in the ratio of the length of the track in each State and Union territory.

In the given example, the State-wise and Union territory-wise breakup works out to Delhi (₹ 5,000), Haryana (₹ 5,000), Uttar Pradesh (₹ 20,000), Madhya Pradesh (₹ 20,000), Maharashtra (₹ 30,000), Karnataka (₹ 30,000) and Goa (₹ 10,000). Separate invoices will have to be issued State-wise and Union territory-wise by KL to ABC indicating the value pertaining to that State or Union territory.

Example 54 - Advertisements on railway tickets ABC has issued a release order to MN for display of advertisements relating to the 'Ujjwala' scheme on the railway tickets that are sold from all the Stations in the States of Madhya Pradesh and Chattisgarh. The place of supply of this service is in Madhya Pradesh and Chattisgarh. The value of advertisement service attributable to these two States will be in the ratio of the number of railway stations in each State as ascertained from the Railways or from the website www.indianrail.gov.in.



Let us assume that this ratio is 713:251 and the total bill is ₹ 9,640. The breakup of the amount between Madhya Pradesh and Chattisgarh in this ratio of 713:251 works out to ₹ 7,130 and ₹ 2,510 respectively. Separate invoices will have to be issued State-wise by MN to ABC indicating the value pertaining to that State.

Example 55 - Advertisements on radio stations For an advertisement on 'Pradhan Mantri Ujjwala Yojana', to be broadcast on a FM radio station OP, for the radio stations of OP Kolkata, OP Bhubaneswar, OP Patna, OP Ranchi and OP Delhi, the release order issued by ABC will show the breakup of the amount which is to be paid to each of these radio stations.



The place of supply of this service is in West Bengal, Odisha, Bihar, Jharkhand and Delhi. The place of supply of OP Delhi is in Delhi even though the studio may be physically located in another State. Separate invoices will have to be issued Statewise and Union territory-wise by MN to ABC based on the value pertaining to each State or Union territory.

Example 56 - Advertisement on television channels ABC issues a release order with QR channel for telecasting an advertisement relating to the 'Pradhan Mantri Kaushal Vikas Yojana' in the month of November, 2017. In the first phase, this will be telecast in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. The place of supply of this service is in Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. In order to calculate the value of supply attributable to Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand, QR has to proceed as under —



- I. QR will ascertain the viewership figures for their channel in the last week of September 2017 from the Broadcast Audience Research Council. Let us assume it is 1,00,000 for Delhi and 2,00,000 for the region comprising of Uttar Pradesh and Uttarakhand and 1,00,000 for the region comprising of Bihar and Jharkhand.
- II. Since the Broadcast Audience Research Council clubs Uttar Pradesh and Uttarakhand into one region and Bihar and Jharkhand into another region, QR will ascertain the population figures for Uttar Pradesh, Uttarakhand, Bihar and Jharkhand from the latest census.
- III. By applying the ratio of the populations of Uttar Pradesh and Uttarakhand, as so ascertained, to the Broadcast Audience Research Council viewership figures for their channel for this region, the viewership figures for Uttar Pradesh and Uttarakhand can be calculated. Let us assume that the ratio of the populations of Uttar Pradesh and Uttarakhand works out to 9:1. When this ratio is applied to the viewership figures of 2,00,000 for this region, the viewership figures for Uttar Pradesh and Uttarakhand work out to 1,80,000 and 20,000 respectively.
- IV. In a similar manner, the breakup of the viewership figures for Bihar and Jharkhand can be calculated. Let us assume that the ratio of populations is 4:1 and when this is applied to the viewership figure of 1,00,000 for this region, the viewership figure for Bihar and Jharkhand works out to 80,000 and 20,000 respectively.
- V. The viewership figure for each State works out to Delhi (1,00,000), Uttar Pradesh (1,80,000), Uttarakhand (20,000), Bihar (80,000) and Jharkhand (20,000). The ratio is thus 10:18:2:8:2 or 5:9:1:4:1 (simplification).
- VI. This ratio has to be applied when indicating the breakup of the amount pertaining to each State. Thus, if the total amount payable to QR by ABC is ₹ 20,00,000, the State-wise breakup is ₹ 5,00,000 (Delhi), ₹ 9,00,000 (Uttar Pradesh) ₹ 1,00,000 (Uttarakhand), ₹ 4,00,000 (Bihar) and ₹ 1,00,000 (Jharkhand). Separate invoices will have to be issued State-wise and Union territory-wise by QR to ABC indicating the value pertaining to that State or Union territory.

Example 57 - Advertisements in cinema halls ABC commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana' to be displayed in the cinema halls in Chennai and Hyderabad. The place of supply of this service is in the States of Tamil Nadu and Telangana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State-wise and Union territory-wise by ST to ABC indicating the value pertaining to that State.



Example 58 - Advertisements on internet ABC issues a release order to WX for a campaign over internet regarding linking Aadhaar with one's bank account and mobile number. WX runs this campaign over certain websites. In order to ascertain the State-wise breakup of the value of this service which is to be reflected in the invoice issued by WX to ABC, WX has to first refer to the Telecom Regulatory Authority of India figures for quarter ending March, 2017, as indicated on their website www.trai.gov.in. These figures show the service area wise internet subscribers. There are 22 service areas. Some relate to individual States some to two or more States and some to part of one State and another complete State. Some of these areas are metropolitan areas.



In order to calculate the State-wise breakup, first the State-wise breakup of the number of internet subscribers is arrived at. (In case figures of internet subscribers of one or more States are clubbed, the subscribers in each State is to be arrived at by applying the ratio of the respective populations of these States as per the latest census.). Once the actual number of subscribers for each State has been determined, the second step for WX involves calculating the State-wise ratio of internet subscribers. Let us assume that this works out to 8:1:2..... and so on for Andhra Pradesh, Arunachal Pradesh, Assam... and so on. The third step for WX will be to apply these ratios to the total amount payable to WX so as to arrive at the value attributable to each State. Separate invoices will have to be issued State-wise and Union territory-wise by WX to ABC indicating the value pertaining to that State or Union territory.

Advertisements through SMS

Example 59 : 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.



Example 60 : 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.

Example 61 : 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.

Example 62 : 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.

After understanding the concept of '**place of supply**' and meaning of the '**location of the supplier**', you will now be in a position to better appreciate the meaning of the terms - inter-State supply, intra-State supply and supply in course of territorial waters. Therefore, these terms have been discussed in detail hereunder:

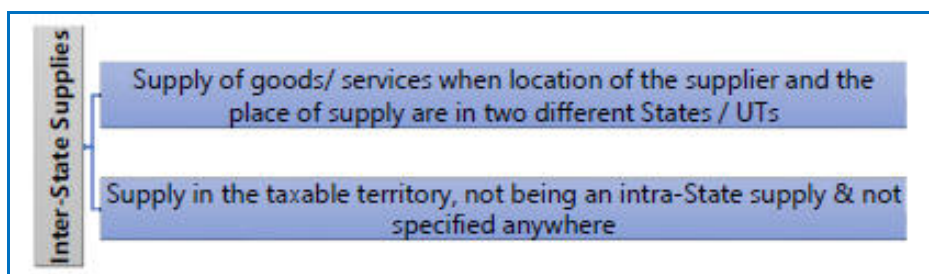
4.5 INTER-STATE SUPPLY [SECTION 7 OF THE IGST ACT]

STATUTORY PROVISIONS

Section 7 (Relevant Extract)	Inter-State Supply
Sub-section	Particulars
(1)	Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in– (a) two different States; (b) two different Union territories; or (c) a State and a Union territory, shall be treated as a supply of goods in the course of inter-State trade or commerce.
(3)	Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in– (a) two different States; (b) two different Union territories; or (c) a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce.
(5)	Supply of goods or services or both,— (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

ANALYSIS

This section provides as to when the supplies of goods and/or services shall be treated as **Supply in the course of inter-State trade/commerce**.



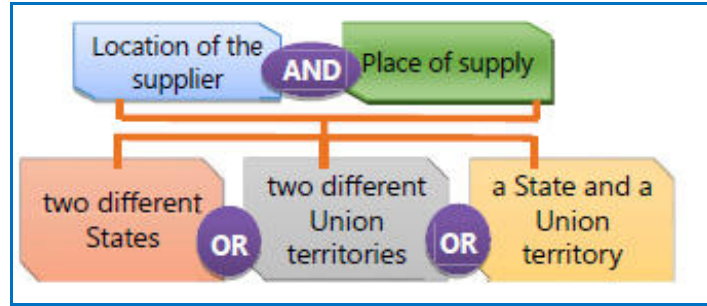
A. 'SUPPLY OF GOODS' in the course of inter-State trade/commerce [Section 7(1) of the IGST Act]

It primarily covers two kinds of supplies – Supply of goods within India and supply of goods imported into India. Our discussion here will be restricted to the supply of goods within India since provisions relating to import and export of goods are not covered at Intermediate level; they have been discussed in detail at Final level.



Supplies within India

Supply of goods shall be considered as supply of goods in course of inter- State trade or commerce in the following cases:



Please note that the place of supply here will be determined based on the provisions of Section 10 as discussed earlier in this Chapter. The above concept can be easily understood with the help of following examples. In each of the following cases, supplies of goods shall be treated as supply of goods in course of inter-State trade/commerce.

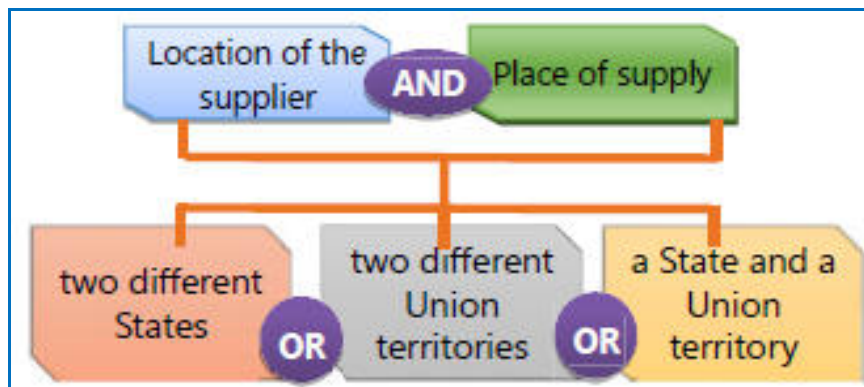
example	Location of Supplier	Place of Supply
(63)	Punjab	Haryana
(64)	Punjab	Daman and Diu
(65)	Daman and Diu	Chandigarh

B. 'SUPPLY OF SERVICES' in the course of inter-State trade/commerce [Section 7(3) of the IGST Act]

It primarily covers two kinds of supplies – supply of services within India and import of services into India. Our discussion here will be restricted to the supply of services within India since provisions relating to import and export of services are not covered at Intermediate level; they have been discussed in detail at Final level.

Supplies within India

Supply of services shall be considered as supply of services in course of inter-State trade or commerce in the following cases:



Please note that the place of supply here will be determined based on the provisions of section 12 as discussed earlier in this Chapter.

C. SUPPLY OF GOODS OR SERVICES OR BOTH in the course of inter-State trade or commerce [Section 7(5)(c) of the IGST Act]

Certain supplies are treated as supplies in the course of inter-State trade or commerce and shall equally apply to supply of goods and to supply of services. Clause (c) of section 7(5) is a residuary clause and stipulates that supply of goods and/or services in the taxable territory, not being an intra-State supply & not covered elsewhere in this section 7(5) are considered as inter-State supplies³.

4.6 INTRA-STATE SUPPLY [SECTION 8 OF THE IGST ACT]

STATUTORY PROVISIONS

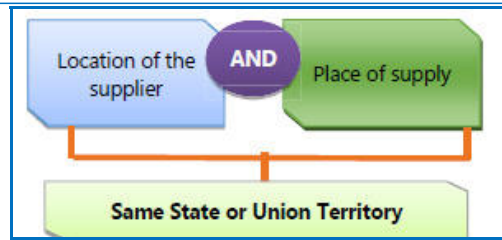
Section 8 (Relevant Extract)	Intra-State Supply
Sub-section	Particulars
(1)	Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply.
(2)	Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply.
	Explanation 1. - For the purposes of this Act, where a person has, - (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or (iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.
	Explanation 2. - A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

ANALYSIS

This section provides as to when the supplies of goods and/or services shall be treated as intra-State supply.

Which supplies of goods/services shall be treated as intra-State supplies? [Section 8(1) and 8(2) of the IGST Act]

Supply of goods/services where the location of the supplier and the place of supply of goods/services are in the same State or same Union territory shall be treated as intra-State supply. Such supplies are exigible to CGST and SGST/UTGST.



The concept discussed above has been explained by way of following examples:

Example	Location of Supplier	Place of Supply	Whether qualifies as intra-State supply?
(66)	Punjab	Punjab	Yes
(67)	London	Delhi	No
(68)	Delhi	Gujarat	No
(69)	Puducherry	Puducherry	Yes

Establishments of distinct persons

Establishments of same entity shall be considered as establishments of distinct persons where a person has:

- (i) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (ii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory⁵.

Thus, any supply between any of the above establishments shall be treated as supply between establishments of distinct persons. Further, a person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

4.7 SUPPLIES IN TERRITORIAL WATERS [SECTION 9 OF THE IGST ACT]

STATUTORY PROVISIONS

Section 9	Supplies in territorial waters
Notwithstanding anything contained in this Act –	
(a) where the location of the supplier is in the territorial waters, the location of such supplier; or	
(b) where the place of supply is in the territorial waters, the place of supply,	
shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.	

ANALYSIS

This section determines the location of supplier and/or the place of supply when such location of supplier and/or the place of supply is in territorial waters. Before that, let us understand the term “territorial waters”.

The term ‘**Territorial waters**’ has not been defined in the GST law. However, as per United Nations Convention on the Law of the Sea, the term ‘**territorial sea**’ is a belt of coastal waters extending atmost 12 nautical miles from the baseline of a coastal state. Section 3(2) of the Territorial Waters, Continental Shelf,

Exclusive Economic Zone and Other Maritime Zones Act, 1976 stipulates that the limit of territorial waters is the line every point of which is at a distance of 12 nautical miles from the nearest point of the appropriate base line. Refer the pictorial diagram showing 'territorial waters' given in Chapter 3 – Charge of GST.

Section 9 of the IGST Act provides that where the location of the supplier is in the territorial waters, it shall be deemed that location of such supplier is in the coastal State or Union Territory where the nearest point of the appropriate baseline is located. Similarly, in case where the place of supply is in territorial waters, the place of supply shall be deemed to be in the coastal State or Union Territory where the nearest point of the appropriate baseline is located.

LET US RECAPITULATE

A. Place of supply of goods other than import and export [Section 10]

S. No.	Nature of Supply	Place of Supply
1.	Where the supply involves the movement of goods, whether by the supplier or the recipient or by any other person	Location of the goods at the time at which, the movement of goods terminates for delivery to the recipient
2.	Where the goods are delivered to the recipient or any person on the direction of the third person by way of transfer of title or otherwise	Principal place of business of such third person
3.	Where there is no movement of goods either by supplier or recipient	Location of such goods at the time of delivery to the recipient
4.	Where goods are assembled or installed at site	Place where the goods are assembled or installed
5.	Where the goods are supplied on-board a conveyance like a vessel, aircraft, train or motor vehicle	Place where such goods are taken on-board the conveyance
6.	Where the place of supply of goods cannot be determined in terms of the above provisions	To be determined in the prescribed manner

B. Place of supply of services where location of supplier AND recipient is in India [Section 12]

(i) In respect of the following 12 categories of services, the place of supply is determined with reference to a proxy; rest of the services are governed by the default provision.

S. No.	Nature of Service	Place of Supply
1.	Immovable property related-services including accommodation in hotel/boat/vessel	<ul style="list-style-type: none"> • Location at which the immovable property or boat or vessel is located or intended to be located • If located outside India: Location of the recipient
	If the immovable property or boat or vessel is located in more than one State	Each such State in proportion to the value of services provided in each State – Refer point (ii) below
2.	Restaurant and catering services, personal grooming, fitness, beauty treatment and health service	Location where the services are actually performed

S. No.	Nature of Service	Place of Supply
3.	Training and performance appraisal	<ul style="list-style-type: none"> B2B: Location of such registered person B2C: Location where the services are actually performed
4.	Admission to an event or amusement park	Place where the event is actually held or where the park or the other place is located
5.	Organisation of an event including ancillary services and assigning of sponsorship to such events	<ul style="list-style-type: none"> B2B: Location of such registered person B2C: Location where the event is actually held <p>If the event is held outside India: Location of the recipient</p>
	If the event is held in more than one State (in cases of unregistered recipient)	Each such State in proportion to the value of services provided in each State – Refer point (iii) below
6.	Transportation of goods, including mails or courier	<ul style="list-style-type: none"> B2B: Location of such registered person B2C: Location at which such goods are handed over for their transportation If the goods are transported outside India: Location of the destination of goods
7.	Passenger transportation	<ul style="list-style-type: none"> B2B: Location of such registered person B2C: Place where the passenger embarks on the conveyance for a continuous journey
8.	Services on board a conveyance	Location of the first scheduled point of departure of that conveyance for the journey
9.	Banking and other financial services including stock broking	<ul style="list-style-type: none"> Location of the recipient of services in the records of the supplier Location of the supplier of services if the location of the recipient of services is not available
10.	Insurance services	<ul style="list-style-type: none"> B2B: Location of such registered person B2C: Location of the recipient of services in the records of the supplier
11.	Advertisement services to the Government	<ul style="list-style-type: none"> Each of States/Union territory where the advertisement is broadcasted/ displayed /run /disseminated Proportionate value in case of multiple States – Refer point (iv) below

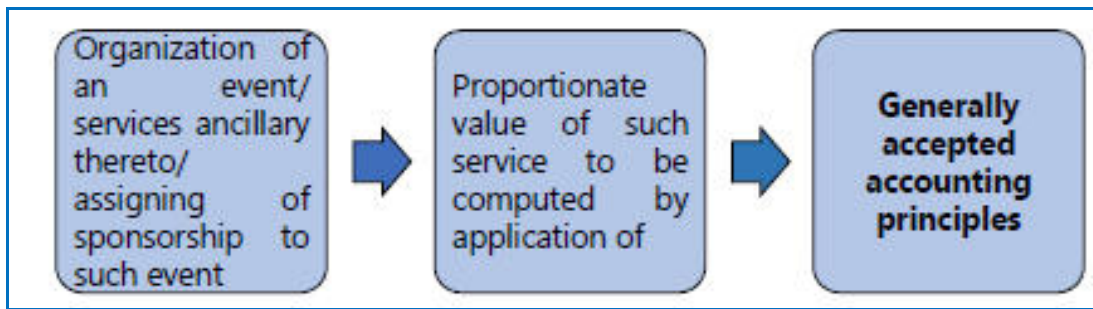
S. No.	Nature of Service	Place of Supply
12.	Telecommunication services	<ul style="list-style-type: none"> Services involving fixed line, leased and internet leased circuits, dish antenna etc: Location of such fixed equipment Post-paid mobile/ internet services: Location of billing address of the recipient and if the same is not available, location of supplier Pre-paid mobile/ internet/DTH services provided: <ul style="list-style-type: none"> Through selling agent/reseller/ distributor: Address of such selling agent/reseller/ distributor in the records of supplier at the time of supply By any person to final subscriber: Location where pre-payment is received or place of sale of vouchers When payment made through electronic mode - Location of recipient in records of supplier Other cases: Address of the recipient in the records of the supplier and if the same is not available, location of supplier
	If the leased circuit is installed in more than one State	Each such State in proportion to the value of services provided in each State – Refer point (v) below

(ii) Manner of determining proportionate value of immovable property related service attributable to different States/Union territories – where the immovable property/boat/vessel is located - in the absence of a contract or agreement in this regard

S. No.	Type of service in relation to immovable property	Factor determining the proportionate value of service
(a)	Service provided by way of lodging accommodation by hotel/ inn/guest house etc. and its ancillary services (other than the cases where such property is a single property located in 2 or more contiguous States/ Union territories or both)	Number of nights stayed in such property
(b)	All other services provided in relation to immovable property including organising any marriage or reception etc., accommodation in a single property located in 2 or more contiguous States or/and Union territories, services ancillary to such services	Area of the immovable property lying in each State/ Union territories

S. No.	Type of service in relation to immovable property	Factor determining the proportionate value of service
(c)	Services by way of lodging accommodation by a house boat or vessel and its ancillary services	Time spent by the boat or vessel in each such State/ Union territories, to be determined on the basis of declaration made by the service provider

- (iii) Manner of determining proportionate value of service relating to organization of event, attributable to different States/Union territories – where the event is held - in the absence of a contract or agreement in this regard

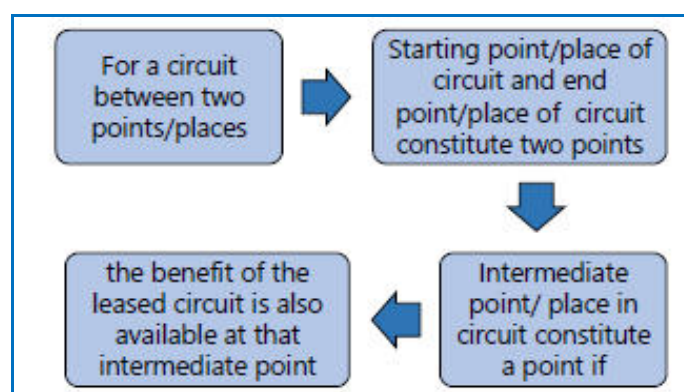
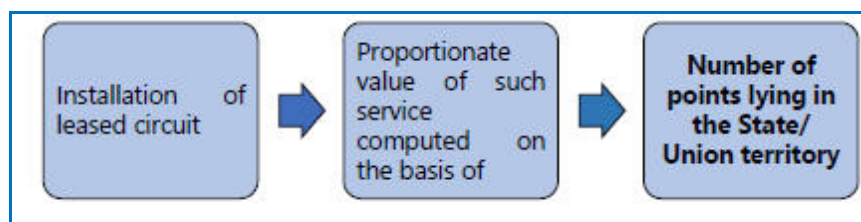


- (iv) Manner of determining proportionate value of advertisement service attributable to different States/Union territories – where the advertisement is broadcasted/ run /played/disseminated - in the absence of a contract or agreement in this regard

Sl. No.	Type of advertisement	Proportionate value of service
1.	Advertisements in newspapers and publications	Amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in each State/Union territory
2.	Advertisements through printed material like pamphlets, leaflets, diaries, calendars, Tshirts, etc.	Amount payable for the distribution of a specific number of such material in each State/Union territory
3.	Advertisements in hoardings (other than those on trains)	Amount payable for the hoardings located in each State/ Union territory
4.	Advertisements on trains	Amount attributable to each State/Union territory calculated in the ratio of length of the railway track in each of such State/Union territory, for that train
5.	Advertisements on the back of utility bills of oil and gas companies, etc.	Amount payable to each State/Union territory for the advertisements on bills pertaining to consumers having billing addresses in each of such State/Union territory
6.	Advertisements on railway tickets	Amount attributable to each State/Union territory calculated in the ratio of number of Railway Stations in each of such State/Union territory
7.	Advertisements on radio stations	Amount payable to such radio station, which by virtue of its name is part of each State/Union territory

Sl. No.	Type of advertisement	Proportionate value of service
8.	Advertisement on television channels	Amount attributable to each State/Union territory calculated on the basis of the viewership of such channel in each of such State/ Union territory. Viewership figures for the last week of a given quarter as published by BARC can be used for calculating viewership for the succeeding quarter. Figures pertaining to more than one State/Union territory are apportioned in ratio of the populations of those States/Union territories, as per the latest Census.
9.	Advertisements in cinema halls	Amount payable to a cinema hall or screens in a multiplex in each State/ Union territory.
10.	Advertisements on internet It is deemed that such service is provided all over India.	Amount attributable to each State/Union territory calculated on the basis of the internet subscribers in each of such State/ Union territory. Internet subscriber figures for the last quarter of a given financial year as published by TRAI can be used for calculating the subscribers for the succeeding financial year. Figures pertaining to more than one State/Union territory are apportioned in the ratio of the populations of those States/Union territories, as per the latest census.
11.	Advertisements through SMS	Amount attributable to each State/Union territory calculated on the basis of the telecom subscribers in each of such State/ Union territory. Telecom subscribers figures in a telecom circle for a given quarter as published by TRAI can be used for calculating the subscribers for the succeeding quarter. Figures pertaining to a telecom circle comprising of more than one State/Union territory are apportioned in the ratio of the populations of those States/Union territories, as per the latest census.

- (v) Manner of determining proportionate value of service relating to installation of a leased circuit, attributable to different States/Union territories – where the circuit is installed - in the absence of a contract or agreement in this regard



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

Default rule for the services other than the 12 specified services

S. No.	Description of Supply	Place of Supply
1.	B2B	Location of such registered person
2.	B2C	<ul style="list-style-type: none"> • Where the address on record exists: Location of the recipient • Other cases: Location of the supplier of services

TEST YOUR KNOWLEDGE

- Q.1** In case of a domestic supply, what is the place of supply where goods are removed?
- Q.2** What will be the place of supply if the goods are delivered by the supplier to another person on the direction of a third person?
- Q.3** What is the place of supply where the goods or services are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle?
- Q.4** The place of supply in relation to immovable property (situated in India) is the location of immovable property. Suppose a road is constructed from Delhi to Mumbai covering multiple states.
- Q.5** What will be the place of supply of construction services?
- Q.6** What would be the place of supply of services provided by an event management company for organizing a sporting event for a Sports Federation which is held in multiple States?
- Q.7** What is the place of supply of services by way of transportation of goods, including by mail or courier when both the supplier and the recipient of the services are located in India?
- Q.8** What will be the place of supply of passenger transportation service, if a person travels from Mumbai to Delhi and back to Mumbai?
- Q.9** What is the place of supply for mobile connection? Can it be the location of supplier?
- Q.10** A person from Mumbai goes to Kullu-Manali and takes some services from ICICI Bank in Manali. What is the place of supply?
- Q.11** An unregistered person from Gurugram travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in Mumbai. What is the place of supply of insurance services ?

ANSWERS/HINTS

- As per section 10(1)(a), the place of supply of goods is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.
- As per section 10(1)(b), it would be deemed that the third person has received the goods and the place of supply of such goods will be the principal place of business of such person.
- As per section 10(1)(e), in respect of goods, the place of supply is the location at which such goods are taken on board.

However, in respect of services, the place of supply is the location of the first scheduled point of departure of that conveyance for the journey in terms of sections 12(10).

4. Where the immovable property is located in more than one State, the supply of service is 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 this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf [Explanation to section 12(3)].

In the absence of a contract or agreement between the supplier and recipient of services in this regard, the proportionate value of services supplied in different States/Union territories (where the immovable property is located) is computed on the basis of the area of the immovable property lying in each State/Union territories [Rule 4 of the IGST Rules].

5. In case of an event, if the recipient of service is registered, the place of supply of services for organizing the event is the location of such person. However, if the recipient is not registered, the place of supply is 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 will be deemed to be in each State in proportion to the value for services determined in terms of the contract or agreement entered into in this regard [Explanation to section 12(7)].

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services made in each State (where the event is held) will be computed in accordance with rule 5 of the IGST Rules by the application of generally accepted accounting principles.

6. If the recipient is registered, the location of such person is the place of supply. However, if the recipient is not registered, the place of supply is the place where the goods are handed over for transportation. Further, if the goods are transported outside India, the destination of such goods is the place of supply [Section 12(8)].

7. If the person is registered, the place of supply of passenger transportation service will be the location of recipient. If the person is not registered, the place of supply for the forward journey from Mumbai to Delhi will be Mumbai, the place where he embarks [Section 12(9)].

However, for the return journey, the place of supply will be Delhi as the return journey has to be treated as separate journey [Explanation to section 12(9)].

8. The location of supplier of mobile services cannot be the place of supply as the mobile companies are providing services in multiple states and many of these services are inter-state. The consumption principle will be broken if the location of supplier is taken as place of supply and all the revenue may go to a few states where the suppliers are located.

The place of supply for mobile connection would depend on whether the connection is on postpaid or prepaid basis. In case of postpaid connections, the place of supply is the location of billing address of the recipient of services on the record of supplier of services.

In case of pre-paid connections, if the service is supplied:-

- (i) through a selling agent or a re-seller or a distributor of SIM card or re-charge voucher, the place of supply is the place 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, the place of supply is the location where such prepayment is received or such vouchers are sold;

(iii) in other cases, the place of supply is the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services.

However, if the recharge is done through internet/e-payment, the location of recipient of service on record of the supplier will be taken as the place of supply [Section 12(11)].

9. The place of supply in case of banking 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 i.e. Kullu-Manali, Himachal Pradesh [Section 12(12)].

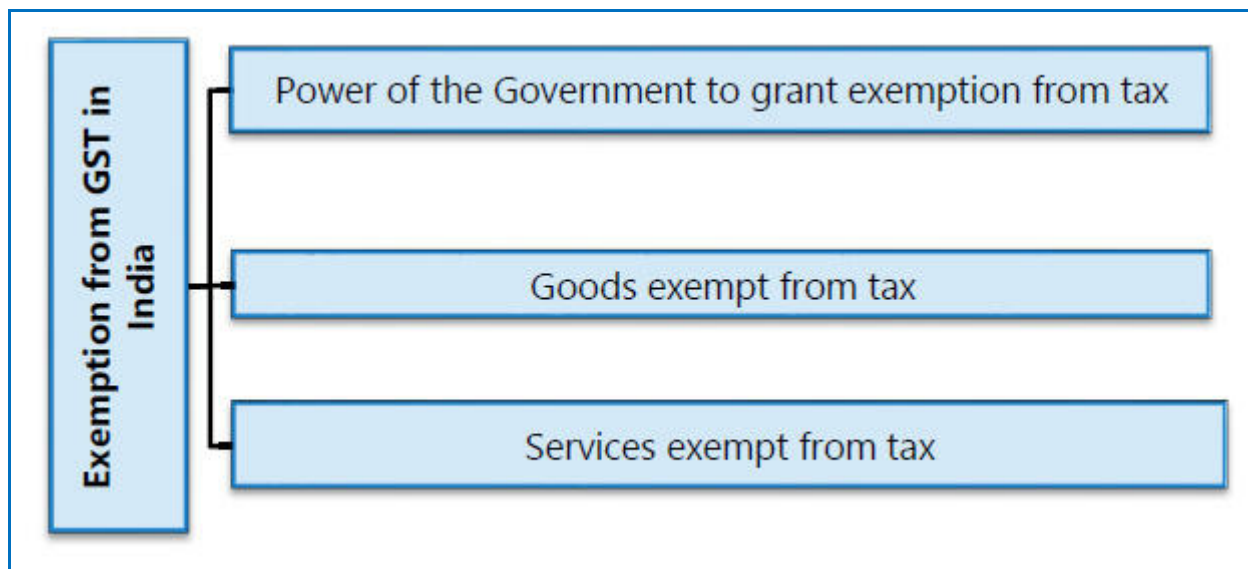
10. When insurance service is provided to an unregistered person, the location of the recipient of services on the records of the supplier of insurance services is the place of supply. So Gurugram is the place of supply [Section 12(13)].



CHAPTER - 5

EXEMPTIONS FROM GST

CHAPTER OVERVIEW



5.1 INTRODUCTION

When a supply of goods and/or services falls within the purview of charging section, such supply is chargeable to GST. However, for determining the liability to pay the tax, one needs to further check whether such supply of goods and/or services are exempt from tax.

Exempt supply has been defined as supply of any goods or services or both which attracts **nil rate of tax** or **which may be wholly exempt from tax** and includes **non-taxable supply** [Section 2(47)].

Non-taxable supply means a supply of goods or services or both which is **not leviable to tax** under CGST Act or under the IGST Act [Section 2(78)]. Thus, under GST, a supply not leviable to tax is also included within the purview of 'exempt supply'.



Supplies not leviable to tax are alcoholic liquor for human consumption, specified petroleum products namely Petroleum Crude, High Speed Diesel, Motor spirit (commonly known Petrol), Natural Gas and Aviation Turbine Fuel.

Power to grant exemption from GST has been granted vide section 11 of the CGST Act and vide section 6 of the IGST Act. State GST laws also contain identical provisions granting power to exempt SGST. Under GST, **essential goods/services, i.e. public consumption products/services, have been exempted.** Items such as unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST. Further, essential services like health care services, education services, etc. have also been exempted.

It is important to note that exemption under GST may be provided in any of the following manner:

- (a) **Exemption to specified activities or transactions** : Sometimes, exemption is provided in respect of specified activities or transactions. Consequently, the status of the supplier or recipient becomes immaterial.

Example 1 : Services by way of transfer of a going concern, as a whole or an independent part thereof.

Example 2 : Services by way of loading, unloading, packing, storage or warehousing of rice.

- (b) **Exemption to specified suppliers** : At times, exemption is given to specified suppliers only. Here, the status of recipient becomes immaterial.

Example 3 : Services provided by the Central Government, State Government, Union territory or local authority where the consideration for such services does not exceed ₹ 5,000.

Example 4 : Services by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 by way of charitable activities.

- (c) **Exemption to specified recipients** : In some cases, exemption is given to specified recipient only. Here, the status of supplier becomes immaterial.

Example 6 : 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.

Example 7 : Services provided to the Central Government, State Government, Union territory administration under any training programme, for which 75% or more of the total expenditure is borne by the Central Government, State Government, Union territory administration.

- (d) **Exemption to specified suppliers and specified recipients** : Sometimes, exemption is given only when activities or transactions are carried out by specified suppliers for specified recipients only.

Example 8 : Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948.

Example 9 : Services by National Pension System (NPS) Trust to its members against consideration in the form of administrative fee.

In this chapter, we shall discuss the power to grant exemption from tax under CGST Act/IGST Act, list of services exempt from GST in detail and an overview of the goods exempt from tax.

5.2. POWER TO GRANT EXEMPTION FROM TAX [SECTION 11 OF THE CGST ACT/SECTION 6 OF THE IGST ACT]

STATUTORY PROVISIONS

Section 11	Power to grant exemption from tax
Sub-section	Particulars
(1)	Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification , exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification
(2)	Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
(3)	The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation – For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

ANALYSIS

(i) **Exemption from payment of tax:** GST law empowers the Central Government or State Government, as the case may be, to grant exemption from tax. The exemption is granted on recommendation of the GST Council.

Exemption can be **from whole** of the tax **or part of the tax**. It should be granted in public interest.

Exemption can be granted by a notification or by a special order

Exemption can be granted to goods or services or both of any specified description, **by way of issuance of notification**, either **absolutely** [i.e. unconditional exemption; exemption is not subject to any condition(s)] or **conditionally** [i.e. exemption is subject to specified condition(s)]. Exemption may be granted **by a special order** in case of the circumstances of an **exceptional nature**.

The **absolute/ unconditional exemption is mandatory** in nature. Where the supply of the goods or services or both are **unconditionally exempted from whole of the tax**, the registered person doesn't have option to collect and pay tax on such supply of goods or services or both.

Exemption can be from whole of tax or part of tax

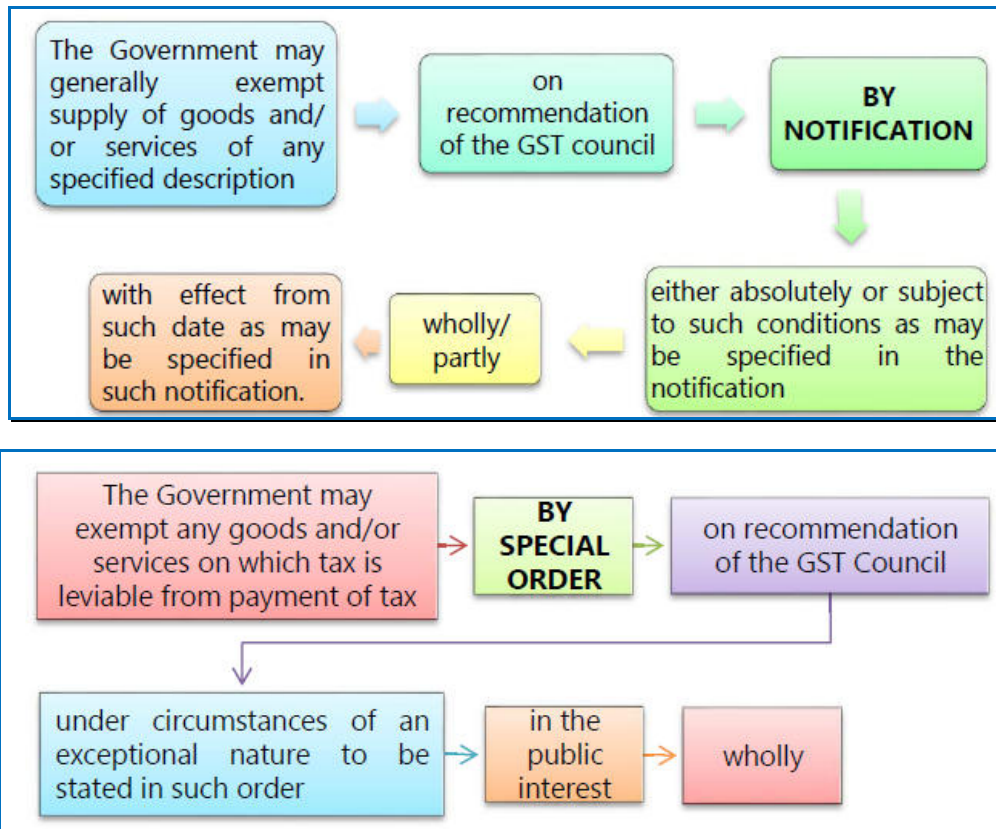
Unconditional exemption is mandatory

Where the supply of the goods or services or both are **unconditionally exempted from part of the tax**, the registered person doesn't have option to collect and pay the tax, in excess of the effective rate, on such supply of goods or services or both.

However, where the **exemption is conditional**, it is **at the option** of the registered person whether to avail the same or not.

Conditional exemption is optional

The above provisions have been explained by way of a diagram as follows:



(ii) Explanation inserted within 1 year, for the purpose of clarifying the scope or applicability of any notification/order, to have retrospective effect: Wherever the Government feels that there is a need to clarify the scope or applicability of any notification/order issued under this section, it can issue an explanation within 1 year of issue of said notification/ order.

Such explanation shall have effect as if it was there when first such notification/ order was issued, i.e. explanation so inserted would be effective retrospectively.

It is hereby clarified that the explanation so inserted for a particular entry in the notification, is effective from the inception of the entry in notification and not from the date from which the notification (that inserted said explanation) becomes effective.

Example 10 : Principal Notification No. 11/2017 CT (R) dated 28.06.2017 came into force with effect from 01.07.2017. Thereafter, a new entry - Entry no. 3(vi) was inserted w.e.f. 21.09.2017. Subsequently, an explanation was also inserted with respect to entry no. 3(vi) by issue of a notification on 26.07.2018 [i.e. within 1 year of the insertion of entry 3(vi)].

Although the effective date mentioned in the notification which inserted said explanation was 27.07.2018, said explanation will be effective from the inception of entry 3(vi) in notification i.e. 21.09.2017 and not 27.07.2018.

[Circular No. 120/39/2019 GST dated 11.10.2019]

Similar provisions granting power to exempt IGST have been provided under section 6 of the IGST Act.

5.3 GOODS EXEMPT FROM TAX

A list of items has been notified under section 11(1) of the CGST Act, 2017/ section 6(1) of the IGST Act, 2017. These items have been exempted from whole of the tax.

Under GST, everyday items used by the common man have been included in the list of exempted items. Items such as unbranded atta/ maida/ besan, unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST.

Some of the examples of the goods exempted from tax have been provided herein:



 Live fish (0301)	 Fresh Milk (0401)	 Potatoes (0701)
 Grapes (0806)	 Indian National Flag (63)	 Plastic Bangles (3926)

5.4. LIST OF SERVICES EXEMPT FROM TAX

I. SPECIFIC SERVICES EXEMPT FROM CGST AND IGST

Notification No. 12/2017 Central Tax (Rate) dated 28.06.20173 (hereafter referred to as “the Notification”) unless otherwise specified, has exempted various services wholly from CGST. Each of the entries of the exemption notification have been discussed below:

1. Services related to charitable and religious activities

Entry No.	Description of services
1	Services by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 by way of charitable activities.
13	Services by a person by way of- (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA or 12AB of the

Entry No.	Description of services
	<p>Income-tax Act, 1961 or a trust or an institution registered under section 10(23C)(v) of the Income-tax Act or a body or an authority covered under section 10(23BBA) of the said Income-tax Act.</p> <p>However, nothing contained in entry (b) of this exemption shall apply to-</p> <ul style="list-style-type: none"> (i) renting of rooms where charges are ₹ 1,000 or more per day; (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹ 10,000 or more per day; (iii) renting of shops or other spaces for business or commerce where charges are ₹ 10,000 or more per month.
60	Services by a specified organisation in respect of a religious pilgrimage facilitated by the Government of India, under bilateral arrangement.
80	<p>Services by way of training or coaching in-</p> <ul style="list-style-type: none"> (a) recreational activities relating to arts or culture, by an individual, or (b) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act.

ANALYSIS

A. SERVICES PROVIDED BY CHARITABLE/RELIGIOUS TRUST

Entry 1 exempts services supplied by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 by way of charitable activities. Thus, in order to claim exemption under Entry 1, following two conditions must be satisfied:-

- (i) The entity should be registered under section 12AA or 12AB of the Income-tax Act, 1961, and
- (ii) The entity must carry out one or more of the specified charitable activities.

Before proceeding further, let us first understand the meaning of term '**charitable activities**'. The term 'charitable activities' mean activities relating to-

- (i) **PUBLIC HEALTH** by way of-

(A) care or counseling of

- (I) terminally ill persons or persons with severe physical or mental disability;
- (II) persons afflicted with HIV or AIDS;
- (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(B) public awareness of preventive health, family planning or prevention of HIV infection;

- (ii) **ADVANCEMENT OF RELIGION, SPIRITUALITY OR YOGA;**

- (iii) **ADVANCEMENT OF EDUCATIONAL PROGRAMMES/SKILL DEVELOPMENT**

relating to,-

(A) abandoned, orphaned or homeless children;

(B) **physically or mentally abused** and traumatized persons;



(C) **prisoners**; or

(D) persons over the age of **65 years** residing in a **rural area**;

(iv) PRESERVATION OF ENVIRONMENT including watershed, forests & wildlife.

Thus, only those services provided by a charitable and religious trusts [registered under section 12AA or 12AB of the Income-tax Act] which fall within the above definition of charitable activities, are eligible for exemption from GST. There could be many other services provided by such charitable and religious trusts which are not covered by the definition of charitable activities and hence, such services would attract GST.

For instance, grant of advertising rights to a person for publicity, on the premises of the charitable/religious trust or on publications of the trust, or granting admission to events, functions, celebrations, shows against admission tickets or fee etc. would attract GST.

In the following paras, we have examined some of the services supplied by the entities registered under section 12AA or 12AB of the Income-tax Act:

Management of educational institutions by charitable trusts

Activities of schools, colleges or any other educational institutions run by charitable trusts by way of education or skill development of abandoned, orphans, homeless children, physically or mentally abused persons, prisoners, or persons over age of 65 years or above residing in a rural area, will be considered as charitable activities and income from such supplies will be wholly exempt from GST.

The term **rural area** means the area comprised in a village as defined in land revenue records, excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Government or a State Government.

Example 11 : Shiksha Academy, an educational institute run by Sarvsewa Trust, a charitable trust registered under section 12AB of the Income-tax Act, 1961, has organized a Skill Development Programme for the old age people over the age of 65 years residing in Bangalore city (an urban area). Services provided by Shiksha Academy do not fall within the purview of 'charitable activities'. The activities relating to advancement of skill development relating to persons over the age of 65 years, are covered under the definition of 'charitable activities' only when such persons are residing in rural area.

Activities of a school, college or an institution run by a trust which do not come within the ambit of charitable activities will not be exempt under Entry 1. However, such activities may be exempt under Entry 66 [discussed later in this chapter] provided the school, college or institution qualifies as an 'educational institution'.

Hostel accommodation provided by trusts

Hostel accommodation services provided by trusts to students do not fall within the ambit of charitable activities as defined above.

Religious yatras or pilgrimage

Religious yatras/pilgrimage organised by any charitable or religious trust are not exempt.

Only such services of religious pilgrimage as are provided by **specified organization** in respect of a **religious pilgrimage facilitated by the Government of India (GoI)**, under bilateral arrangement, are exempt from GST. [See **Entry 60** in above table]. The term **specified organization** as referred herein means-

- Kumaon Mandal Vikas Nigam Limited (KMVN), a Government of Uttarakhand Undertaking; or
- 'Haj Committee of India' or 'State Haj Committee including Joint State Committee'.



In short, as per **Entry 60**, the services provided by the Haj Committee and KMVN in relation to pilgrimage to Mecca and Kailash - Mansarovar respectively are not liable to GST.

Example 12 : KMVN supplies numerous services, namely, medical facilities, catering services, security, accommodation services, etc. to the pilgrims undertaking Kailash-Mansarovar pilgrimage. Such services provided by KMVN in respect of the religious pilgrimage to Kailash-Mansarovar are covered under entry 60 and thus, are exempt.

Arranging yoga and meditation camp by charitable trusts

As discussed above, services provided by entity registered under section 12AA or 12AB of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt as such activities are covered in definition of charitable activities.

Fee or consideration charged in any other form from the participants for participating in a religious, yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be exempt.

Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the **primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga.**

However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable.

Example 13 : Bhavyajyoti Foundation, a charitable trust registered under section 12AB of the Income-tax Act, 1961, has organized a 'Yoga Meditation Camp' for the old age people. GST would be exempt on the same as services provided by entity registered under section 12AB of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt.

Hospitals managed by charitable trusts

Exemption available to health care services under Entry 74 [discussed later in this chapter] is also applicable to the health care services provided by a **clinical establishment, an authorised medical practitioner or paramedics of a religious or charitable trust** also.

Training or coaching in arts, culture or sports

As per Entry 80, services by way of training or coaching in-

- recreational activities relating to arts or culture, by an individual, or
- sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act are exempt from GST.



It is important to note that the exemption with regard to services provided by way of training or coaching in **recreational activities relating to arts or culture** is available when the same is provided by an individual. Similarly, services of training or coaching in **sports** are exempt only when such services are provided by a charitable entity registered under section 12AA or 12AB of Income-tax Act.



Let us now analyse the term '**recreational activities**'. The term recreational activities is very wide. However, under this entry, the scope of training or coaching in recreational activities is restricted to the area of arts and culture. Hence, the training or coaching in recreational activities



relating to the areas other than arts or culture is outside the purview of this entry.

Further, training or coaching in **all forms of arts, culture or sports** is covered under this entry, namely, dance, music, painting, sculpture making, literary activities, theatre, etc. of any school, tradition or language or any of the sports.

Example 14 : Manavta Sansthaan, a charitable trust registered under section 12AB of the Income-tax Act, 1961, has organized a 'Basketball Training Camp' for teenagers. GST would be exempt on the same as services provided by entity registered under section 12AB of the Income-tax Act, 1961 by way of training or coaching in sports are exempt.

GST on services provided TO charitable trusts

Services provided to charitable or religious trusts are not outside the ambit of GST. Unless specifically exempted, all goods and services supplied to charitable or religious trusts are leviable to GST.

B. CONDUCT OF ANY RELIGIOUS CEREMONY

Going through Entry 13(a), it can be inferred that the amount charged, by whatever name called, for the conduct of any religious ceremony is exempt from GST. Religious ceremonies are life-cycle rituals including special religious pujas 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.

Example 15 : Raamanand Joshi, a priest, charges ₹ 12,000 for conducting a religious ceremony on the birthday of Ghanshyam's son. The amount charged for the conduct of any religious ceremony is exempt from GST.

C. RENTING OF PRECINCTS OF RELIGIOUS PLACE MEANT FOR GENERAL PUBLIC

- Entry 13(b) exempts **renting of precincts of a religious place meant for general public** owned by an entity registered under any of the specified sections of the Income Tax Act provided the consideration charged for such renting does not exceed the prescribed ceiling limits as given in said entry. Thus, this exemption is determined on the basis of amount of consideration charged for such renting. Let us understand the meaning of the terms 'religious place', 'general public' and 'precincts' referred herein.
- **Religious place** means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality.
- **General public** means the body of people at large sufficiently defined by some common quality of public or impersonal nature.



- The word '**precincts**' is not to be interpreted in a restricted manner and **all immovable property of the religious place located within the outer boundary walls** of the complex (of buildings and facilities) in which the religious place is located, is to be considered as being located in the precincts of the religious place. The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place and extended the benefit of above exemption.
- Activities other than - conduct of religious ceremony and renting of precincts of religious place - will be taxable irrespective of the manner or the name in which the consideration is received.

For example, if donation is received with specific instructions/mutual understanding between the donor and the receiver that religious place will host an advertisement promoting business of the donor, such donation will be subject to GST. However, where the donation is received without such instructions or when the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). In other words, there is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration⁶.

Example 16 : Durgadevi Trust, a religious trust registered under section 12AB of the Income-tax Act, owns and manages a temple in their locality. It rents the commercial shops located in the precincts of the temple for a rent of ₹ 10,000 per month per shop. The consideration so received is liable to GST as such services are exempt only when the consideration is less than ₹ 10,000 per month.

Example 17 : Sarvodaya Trust, a religious trust, registered under section 10(23BBA) of the Income-tax Act, owns and manages a gurudwara. It rents the community hall located in the precincts of the gurudwara for a rent of ₹ 9,000 per day for a marriage function. The consideration so received is exempt from GST as the consideration is less than ₹ 10,000 per day.

Questions 1 :

ABC Trust, a charitable trust registered under section 12AB of the Income-tax Act, is registered under GST in Rajasthan. It provided coaching for cricket to teenagers, yoga training to middle-aged people and skill development services to persons over the age of 65 years residing in a metro city, in the month of June. ABC Trust is liable to pay GST on:

- (a) Skill development services and yoga training
- (b) Skill development services
- (c) Coaching for cricket, yoga development services training and skill
- (d) Coaching for cricket and yoga training

2. Agriculture related services

Entry No.	Description of services
24	Services by way of loading, unloading, packing, storage or warehousing of rice.
24A	Services by way of warehousing of minor forest produce.
24B	Services by way of storage/ warehousing of cereals, pulses, fruits and vegetables.
54	<p>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—</p> <p>(a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;</p> <p>(b) supply of farm labour;</p> <p>(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;</p> <p>(d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;</p> <p>(e) loading, unloading, packing, storage or warehousing of agricultural produce;</p> <p>(f) agricultural extension services;</p> <p>(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.</p>
55	Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.
55A	Services by way of artificial insemination of livestock (other than horses).



ANALYSIS

ENTRY 54

The words '**Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products**' used in Entry 54 include activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry, etc.



Further, the term '**agricultural produce**' means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, **on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics, but makes it marketable for primary market.**





It is important to note that agricultural produce is either subject to no further processing at all or if any processing is undertaken on the agricultural produce it should not alter its essential characteristics but may make it marketable for primary market. Few instances of such processes are the processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, etc.



Let us examine what is exempt under Entry 54.

Entry 54 exempts the agricultural operations directly related to production of any agricultural produce such as cultivation, harvesting, threshing, plant protection or testing. Further, processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like **operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market** are also exempt. In view of the same, following processes are outside the purview of this entry and thus, are liable to GST:-

- (a) **Process which alters the essential characteristics of the agricultural produce:** For instance, potato chips or tomato ketchup, etc. are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case).
- (b) **Process which makes agricultural produce marketable in the retail market:** The processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, would NOT be covered in this entry. Only such processes are covered in this entry which makes agricultural produce marketable in the primary market and not retail market.

Apart from this, supply of farm labour is also exempt from GST.

Renting or leasing of agro machinery or vacant land

Item (d) of the entry exempts **renting or leasing of agro machinery or vacant land** with or without a structure incidental to its use.



Example 18 : Moolchand has leased out to a farmer – Tulsidas - a vacant land for agriculture. The land has a greenhouse and a storage shed which are incidental to its use for agriculture. Such service of leasing of vacant land with a greenhouse and a storage shed which is incidental to its use for agriculture is exempt from GST.

Agricultural extension services

Item (f) of the entry exempts **Agricultural Extension Services (AES)**. Said services have been defined under the notification to mean the application of scientific research and knowledge to agricultural practices through farmer education or training.

The main objective of AES is to transmit latest technical know-how to farmers. It also focuses on enhancing farmers' knowledge about crop techniques and help them to increase productivity. This is done through training courses, kisan call centres, farm visits, on-farm trials, kisan melas, kisan clubs, advisory bulletins and the like.

Agricultural Produce Marketing Committee services

Services by any **Agricultural Produce Marketing Committee** or Board or services provided by a commission agent for sale or purchase of agricultural produce are not liable to GST. Agricultural Produce Marketing Committee or Board means any committee or board set up under a State Law for the time being in force for purpose of regulating the marketing of agricultural produce.



Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs **collect market fees, license fees, rents etc.**

Services provided by such Agricultural Produce Marketing Committee or Board are covered in item (g) of entry 54. However, any service provided by such bodies **which is not directly related to cultivation** of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce, will be liable to tax e.g. renting of shops or other property for commercial purposes.

Warehousing of agriculture produce

Item (e) of entry 54 exempts loading, unloading, packing, storage or warehousing of **agricultural produce**. In this regard, following may be noted:

Processed Tea and coffee



Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. on green leaf and is the processed output of the same. Thus, green tea leaves and not tea is the “agricultural produce” eligible for exemption under entry 54 where such exemption is available for loading, unloading, packing, storage or warehousing of agricultural produce. Same is the case with coffee obtained after processing of coffee beans.



Jaggery



Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce.



Pulses

Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of dehusking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore, pulses (dehusked or split) are also not agricultural produce. However, whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce.



In view of the above, it is inferred that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (dehusked or split), jaggery, processed spices, processed dry fruits,

processed cashew nuts etc. fall outside the definition of agricultural produce and therefore do not fall within item (e) of entry 54.

ENTRY 55

Custom milling of paddy into rice

Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce is exempt under GST.



Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested.

Further, processing of paddy into rice is not usually carried out by cultivators, but by rice millers.

Milling of paddy into rice also changes its essential characteristics.



Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.

In view of the above, it is clarified that milling of paddy into rice is not eligible for exemption under Entry 55.

Questions 2 :

Which of the following services relating to agriculture are not exempt from GST?

- (a) Loading, unloading, packing, storage or warehousing of rice.
- (b) Milling of paddy into rice
- (c) Agricultural extension services
- (d) Renting of agro machinery

3. Educational services

Entry No.	Description of services
66	Services provided – <ul style="list-style-type: none"> (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,- <ul style="list-style-type: none"> (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;

Entry No.	Description of services
	<p>(v) supply of online educational journals or periodicals.</p> <p>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.</p> <p>Further, nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-</p> <p>(i) pre-school education and education up to higher secondary school or equivalent; or</p> <p>(ii) education as a part of an approved vocational education course.</p>

ANALYSIS

Education is fundamental to the nation building process. The term “Education” is not defined in the CGST Act, 2017, but as per Apex Court decision in “Loka Shikshana Trust v. CIT”, education is process of training and developing knowledge, skill and character of students by normal schooling.

Taxing the Education Sector has always been a sensitive issue, as education is seen more as a social activity than a business one. The Government has a constitutional obligation to provide free and compulsory elementary education to every child. Thus, to promote education, it would be beneficial if educational services are exempted from tax.

However, commercialization of education is also a reality. The distinction between core and ancillary education is blurring and education is now an organised industry with huge revenues. The GST law tries to maintain a fine balance whereby core educational services provided and specified services received by educational institutions are exempt and other services are sought to be taxed.

Exemption from GST granted vide Entry 66 stated above can be discussed under two broad categories – output services and input services of an educational institution. The discussion in succeeding paras fundamentally revolves around these two areas:

Output services

- Services provided **by an educational institution to its students, faculty and staff** and by way of **conduct of entrance examination against consideration in the form of entrance fee** are exempt from GST.
- Since exemption with respect to said services is available only when these services are provided BY ‘educational institution’, it is important to analyse the term **EDUCATIONAL INSTITUTION** first:
- **Educational institution** means an institution providing services by way of,-
 - (i) pre-school education and education up to higher secondary school or equivalent;
 - (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;



(iii) education as a part of an approved vocational education course.

- It is to be noted that only those institutions, whose operations conform to the specifics given in the definition of the term “educational institution”, would be treated as one entitled to avail exemptions provided by the law.
- **Sub-clause (ii)** : The term ‘education as a part of curriculum for obtaining a qualification recognised by any law for the time being in force’ means the education delivered as ‘a part’ of the curriculum that has been prescribed for obtaining a qualification prescribed by law. Thus, in order to be covered under Entry 66, the education service should be delivered as part of curriculum. In view of same, it can be inferred that:

Education services provided	Covered in subclause (ii)	Reasons
Conduct of degree courses by colleges, universities or institutions	✓	These courses lead to grant of qualifications recognized by law
Training given by private coaching institutes	✗	Such training does not lead to grant of a recognized qualification.
Education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country	✗	Only a course recognized by an Indian law is covered herein.

Example 19 : ‘Dharam Institute of Technology’ (DIT), a private engineering college in M.P., offers post graduate engineering programmes. All the engineering courses including the distance learning post graduate engineering programme offered by DIT are recognised by the law [The All India Council for Technical Education (AICTE)]. Since DIT imparts education as a part of a curriculum for obtaining a qualification recognized by the Indian law, the same is an educational institution.

- **Sub-clause (i)**: An institution providing pre-school education and education up to higher secondary school or equivalent qualify as an educational institution.

Example 20 : ‘Littleways Public School’ is a school located in Tamil Nadu. The school has two branches – one is a pre-school and another is a higher secondary school affiliated to CBSE. A pre-school and a higher secondary school are educational institutions. Thus, Littleways Public School qualifies as an educational institution.

- **Sub-clause (iii)** covers institutions providing services by way of education as a part of approved vocational education course.

An approved vocational education course means, -

- a **course run by an ITI/ ITC** affiliated to the National Council for Vocational Training (NCVT) or State Council for Vocational Training (SCVT) **offering courses in designated trades** notified under the Apprentices Act, 1961 or**
- a **Modular Employable Skill** Course, approved by the NCVT, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.
- The Modular Employable Skills is the minimum skill set which is sufficient for gainful employment or self-employment in the world of work. It provides employable skills to early school drop-outs, existing



workers seeking skill upgradation, workers seeking certification of their skills acquired informally, etc. to improve their employability and provides certification after completion of the course.

- ****Designated trade** means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of Apprentices Act, 1961.

Example 21 : Kaladrishti ITI, Gorakhpur is engaged in providing skill development courses in other than designated trades notified under the Apprentices Act, 1961. Since courses offered by Kaladrishti ITI are not in designated trades notified under the Apprentices Act, 1961, education provided by it is not approved as vocational educational course as defined above. Resultantly, it doesn't qualify as an educational institution.

In view of the above definition, some of the institutions providing education services have been examined as under:

Private ITIs

- Private ITIs qualify as an educational institution if the education provided by these ITIs is approved as vocational educational course as defined above.



Accordingly, services provided by a private ITI **only in respect of designated trades notified under Apprentices Act, 1961 are exempt** from GST under

this entry. Services in respect of other than designated trades are liable to GST.



Further, in case of designated trades, **services provided by private ITI** by way of **conduct of entrance examination** against consideration in the form of entrance fee will also be exempt.

Moreover, in respect of such designated trades, **services provided TO private ITIs** relating to admission to or **conduct of examination** by a private ITI will also be exempt.



In case of other than designated trades in private ITIs, GST is payable on the aforesaid services provided by/to the private ITIs.

Government ITIs

As far as **Government ITIs** are concerned, services provided by a Government ITI to individual trainees/ students, are exempt under Entry 6 as these are in the nature of services provided by the Central or State Government to individuals [Entry 6 is discussed in detail subsequently].



Such exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government ITIs.

Unrecognized educational institutions

- Private coaching centres or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution.

Example 22 : 'Super Minds', a coaching institute in Raipur, provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam. Super Minds, being a coaching centre which trains candidates to secure a banking job, is not an educational institution in terms of the exemption notification.

Educational institutions up to Higher secondary schools

- By virtue of Entry 66, educational institutions up to Higher Secondary School level do not suffer GST on output services and also on specified input services [discussed in subsequent paras]. However, some of the input services like repairs and maintenance etc. provided by private players to educational institutions are subject to GST.
- Output services of lodging/boarding in hostels provided by such educational institutions which are providing pre-school education and education up to higher secondary school or equivalent or education leading to a qualification recognised by law, are fully exempt from GST. Annual subscription/fees charged as lodging/boarding charges by such educational institutions from its students for hostel accommodation shall therefore, not attract GST.
- **Boarding schools** provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of composite supply if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 2(30) read with section 8.



Such services in the case of boarding schools are naturally bundled and supplied in the ordinary course of business. Therefore, the bundle of services will be treated as consisting entirely of the principal supply, which means the service which forms the predominant element of such a bundle.

In this case since the predominant nature is determined by the service of education, the other service of providing residential dwelling will not be considered for the purpose of determining the tax liability and in this case, the entire consideration for the supply will be exempt.

Educational institutions providing qualification recognized by law

- We have already seen that the institutions providing services by way of education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force qualify as educational institutions.

However, the question arises that in case where **a course in a college leads to dual qualification only one of which is recognized by law**, would service provided by the college by way of such education be covered by the exemption notification?

- Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately.

If an artificial bundle of service is created by clubbing two courses together, when only single fee is charged for both, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a supply which is not bundled in the ordinary course of business, it shall be treated as a mixed supply as per provisions contained in section 2(74) read with section 8.

The taxability will be determined by the supply which attracts highest rate of GST.

- However, **incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well-being** will be an example of naturally bundled course, and therefore treated as composite supply. One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component viz-a-viz the recognized course.

*Dual
qualifications
where only one is
recognised by law*

*Incidental
auxiliary courses*

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.

IIMs

- Indian Institutes of Management Act, 2017 (IIM Act, 2017) empowers IIMs to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes.
- Resultantly, all the IIMs fall under purview of “educational institutions” as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.
- IIMs provide various **long duration programs (1 year or more)** for which they award **diploma/ degree certificate** duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017. Services provided by IIMs to their students in all such long duration programs (one year or more), are exempt from levy of GST.
- IIMs also provide various **short duration/short term programs (less than 1 year)** for which they award **participation certificate** to the executives/ professionals as they are considered as “participants” of the said programmes. These participation certificates are not any qualification recognized by law.
- Such participants are also not considered as students of IIM. Services provided by IIMs as an educational institution to such participants is not exempt from GST and GST is payable on the same.



Long duration programs of IIMs - Exempt

Short duration programs of IIMs - Not exempt

Conduct of entrance examination by authority/board/body set up by CG/SG

Any authority, board or body set up by the Central Government or State Government (including National Testing Agency) for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions.



Central and State Education Boards

It is important to note that the Central and State Educational Boards shall be treated as ‘Educational Institution’ for the limited purpose of providing services by way of conduct of examination to the students. **In this regard, following is clarified:**

- Various services are supplied by Centre and State Boards such as National Board of Examination (NBE). These services include entrance examination (on charging a fee) for admission to educational institution, input services for conducting such entrance examination for students, accreditation of educational institutions or professional so as to authorise them to provide their respective services.
- For example, NBE provides services of conducting entrance examinations for admission to courses including Diplomat National Board (DNB) and Fellow of National Board (FNB), prescribes courses and curricula for PG medical studies, holds examinations and grant degrees, diplomas and other academic distinctions.

- It carries out all functions as are normally carried out by central or state educational boards and is thus a central educational board. “Central and State Educational Boards” are treated as educational institutions for the limited purpose of providing services by way of conduct of examination to the students. Therefore, NBE is an ‘educational institution’ in so far as it provides services by way of conduct of examination, including any entrance examination, to the students.
- It is clarified that:
 - (i) GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution under Entry 66(aa). Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations.
 - (ii) GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards under Entry 66(b)(iv).
 - (iii) GST is applicable to other services provided by such Boards, namely of providing accreditation to an institution or to a professional [accreditation fee or registration fee such as fee for FMGE (Foreign Medical Graduate Examination) screening test] so as to authorize them to provide their respective services.



Supply of food in a mess or canteen

- Educational institutions generally have mess facility for providing food to their students and staff. Such facility is either:
 - (i) run by the institution/ students themselves or
 - (ii) outsourced to a third person.
- **If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered by the definition of ‘educational institution’ as given above, then the same is exempt [covered under item (a) of entry 66].**
- **If the catering services, i.e., supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution, i.e. the institution outsources the catering activity to an outside contractor, then it is a supply of service to the concerned educational institution by such outside caterer and attracts GST.**



However, said services when provided to an educational institution providing pre-school education or education up to higher secondary school or equivalent are exempt from tax [covered under item (b)(ii) of Entry 66].

Supply of food in anganwadis and schools

- An anganwadi, inter alia, provides pre-school non-formal education. Hence, anganwadi is covered by the definition of educational institution (as pre-school).
- As seen above that as per entry 66(b)(ii), any catering service provided to an educational institution (pre-school and schools) is exempt from GST and it includes mid- day meal service also. **The scope of this entry is thus wide enough to cover any serving of any food to a school (including pre-school).**

- It is further clarified that services provided to an educational institution by way of serving of food (catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations.
- Hence, **servicing of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.**

Entrance fee for conduct of entrance examination/ fee for admission/issuance of migration certificate

- As discussed earlier, Entry 66 exempts, inter alia, services provided –
 - (a) by an educational institution to its students, faculty and staff;
 - (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee.
- Therefore, it can be seen that all services supplied by an 'educational institution' to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt.
- The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution.
- Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption. Accordingly, such activities of educational institutions are also exempt.

Fees charged from prospective employers

Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/MNCs, who come to the institutes for recruiting candidates through campus interviews in relation to **campus recruitments**. Such services shall also be liable to tax.

Maritime courses approved by DG Shipping

- Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014.
- Therefore, Maritime Training Institutes are educational institutions and the courses conducted by them are exempt subject to fulfilment of other conditions specified herein.

Input services

- Regarding, input services, it may be noted that where output services are exempted, the educational institutions may not be able to avail credit of tax paid on the input side. The auxiliary education services [services which educational institutions ordinarily carry out themselves, but may obtain as outsourced services from any other person] specified in item (b) of entry 66 only have been exempted [Sub-items (i) to (v) of item (b) of Entry 66].



- However, the said exemption comes with a rider. Auxiliary services of (i) transportation of students, faculty, and staff, (ii) catering including any midday meals scheme sponsored by Government and (iii) security or cleaning or housekeeping services are exempt only if such auxiliary education services are provided to educational institutions providing services by way of education up to higher secondary or equivalent, (from pre-school to HSC).
- Thus, if such auxiliary education services are provided to educational institutions providing degree or higher education or institutions providing approved vocational education course, the same would not be exempt.
- Similarly, services of supply of online educational journals/periodicals are exempt only if they are provided to an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force.

Example 23 : Little Millennium – a pre school in outskirts of Mumbai – has subscribed the online journals on child development and experiential learning. Services of supply of online educational journals or periodicals provided, inter alia, to an institution providing services by way of pre-school education are not exempt.

Example 24 : SM Transporters has provided services of transportation of students and faculty from their residence to school and back, to Pathwheels School - a higher secondary school. Services of transportation of students, faculty and staff provided, inter alia, to an institution providing services by way of education up to higher secondary school or equivalent are exempt.

Example 25 : Shiksha College, offering degree courses (recognised by law), has to conduct its half yearly examination in November. For this purpose, it has paid the honorarium to paper setters and examiners (not on the rolls of Shiksha College) for their services. Further, it availed the printing services for printing the question papers (paper and content are provided by Shiksha College) for conducting examination. Services provided to an educational institution relating to admission to, or conduct of examination by, such institution are exempt.

Therefore, services of paper setters and examiners and printing services availed by Shiksha College are exempt.

Example 26 : Gyaani Public School – a higher secondary school – has hired Suvidha Services Ltd. for security and housekeeping services in the school. Security and housekeeping services provided within the premises of, inter alia, a higher secondary school are exempt. Therefore, said services provided by Suvidha Services Ltd. are exempt.

The school subsequently hired Suvidha Services Ltd. for providing the security and housekeeping services at School's Annual Day function organised in an auditorium outside the school campus. Security and housekeeping services provided to Gyaani Public School for School's Annual Day function organised outside the school campus will be taxable as only the security and housekeeping services performed within the premises of the higher secondary school are exempt.

The exemptions available in respect of input and output services of an educational institution have been tabulated as follows :

Type of educational institution

	Educational institution providing pre-school education and education up to higher secondary school or equivalent	Educational institution providing education as a part of a curriculum for obtaining a recognized qualification	Educational institution providing education as a part of approved vocational education course
Exempt input services	(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	(i) services relating to admission to, or conduct of examination by, such institution (ii) supply of online educational journals or periodicals	Services relating to admission to, or conduct of examination by, such institution.
Exempt output services	Services provided by an educational institution - (a) to its students, faculty and staff; (aa) by way of conduct of entrance examination against consideration in the form of entrance fee.		

Questions 3 :

Which of the following educational services are not exempt from GST ?

- JEE Mains entrance exam conducted by National Testing Agency.
- Long (2 years) conducted by Management duration programs Indian Institutes of
- Coaching for preparation of UPSC entrance examination provided by perfect coaching classes .
- Catering services provided to Little Angels Public School

4. Health care services

Entry No.	Description of services
46	Services by a veterinary clinic in relation to health care of animals or birds.
74	Services by way of- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; However, nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day to a person receiving health care services. (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.



ANALYSIS

Entry 74 - Health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST [Entry 74(a)].

However, services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day to a person receiving health care services will not be exempt.

The term '**health care services**' is defined as follows:

Health care services

- means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in **any recognized 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.
- As it is apparent from the definition of health care services, only services in **recognized systems of medicines in India** are exempt under this entry.

Health care services

Following systems of medicines are the recognized systems of medicines in India :-

- Allopathy
- Yoga
- Naturopathy
- Ayurveda
- Homeopathy
- Siddha
- Unani
- Any other system of medicine that may be recognized by Central Government

Recognized systems of medicines

Let us now understand the meaning of terms - 'clinical establishment', 'authorised medical practitioner' and 'paramedics'.

Clinical establishment: means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.



Thus, diagnostic or investigative services of diseases provided by pathological labs are not liable to GST.

Authorised medical practitioner: means a medical practitioner registered with any of the councils of recognised system of medicines established/recognised by law in India & includes a medical professional having requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force.



Further, **Paramedics** are trained health care professionals, for example, nursing staff, physiotherapists, technicians, lab assistants etc. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment. Similar services in independent capacity are also exempted.



Rent of rooms provided to in-patients

Rent of the rooms **having room charges upto ₹ 5000 per day to a person receiving health care services** in hospitals is exempt.

Services provided by senior doctors/ consultants/ technicians

- Hospitals hire senior doctors/ consultants/ technicians independently. Such persons do not have any contract with the patient. Hospitals pay them consultancy charges and there is no employer-employee relationship between them.
- It is clarified by CBIC that services provided by such senior doctors/ consultants/ technicians, whether employees or not, are healthcare services which are exempt from GST [Circular No. 32/06/2018 GST dated 12.02.2018].

Amount charged by hospitals from the patients

- In above cases, suppose hospitals charge the patients, say, ₹ 10,000/- and pay to the consultants/technicians only ₹ 7,500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc. Going through the definition of health care services [given above], it can be inferred that hospitals also provide healthcare services.
- The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt [Circular No. 32/06/2018 GST dated 12.02.2018].



Food supplied to the patients

- Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the hospitals from outdoor caterers.
- When outsourced, there is no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC.
- Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable.
- Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable [Circular No. 32/06/2018 GST dated 12.02.2018].



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.

Services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF)

- As per the definition of health care services given earlier, it means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of

medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

- **Since, the abnormality/disease/ailment of infertility is treated using ART procedure such as IVF, it is clarified that services by way of IVF are also covered under the definition of health care services.**

ILLUSTRATION 1

Good Health Medical Centre, a clinical establishment, offers the following services:

- Reiki healing treatments.
- Plastic surgeries. One such surgery was conducted to repair cleft lip of a new born baby.
- Air ambulance services to transport critically ill patients from distant locations to the Medical Centre.
- Palliative care for terminally ill patients. On request, such care is also provided to patients at their homes. (Palliative care is given to improve the quality of life of patients who have a serious or life-threatening disease but the goal of such care is not to cure the disease).
- Alternative medical treatments by way of yoga.

Good Health Medical Centre also operates a cord blood bank which provides services in relation to preservation of stem cells.

Good Health Medical Centre is of the view that since it is a clinical establishment, all the health care services provided by it as well as all the taxable services provided to it are exempt from GST.

You are required to examine the situation in the light of relevant statutory provisions.

Answer :

Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST under Entry 74. In light of the same, the eligibility to exemption in respect of each service offered by Good Health Medical Centre is examined below:

- Not Exempt.** Since reiki healing is not a recognized system of medicine in terms of section 2(h) of Clinical Establishments Act, 2010, it would not be exempt and thus, GST would be payable thereon.
- Exempt.** Health care service does not include, inter alia, 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.

Therefore, plastic surgeries will not be entitled to the said exemption and thus, GST would be payable thereon. However, plastic surgery conducted to repair a cleft lip will be eligible for exemption as it reconstructs anatomy or functions of body affected due to congenital defects (cleft lip).

- Exempt.** Health care service includes services by way of transportation of the patient to and from a clinical establishment. Thus, air ambulance service to transport critically ill patients to Good Health Medical Centre would be eligible for exemption under the said notification.
- Exempt.** Health care service means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India. It is immaterial whether such service is provided at the clinical establishment or at the home of the patient or at any other place. Thus, palliative care for terminally ill patients is exempt.

(v) **Exempt.** Since Yoga is a recognized system of medicine in terms of section 2(h) of Clinical Establishments Act, 2010, the same would be eligible for exemption under the said notification.

Further, services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are not exempt from GST. Therefore, services provided in relation to preservation of stem cells by the cord blood bank operated by Good Health Medical Centre will be liable to GST.

It is important to note that Entry 74 of the exemption notification grants exemption to health care services provided BY a clinical establishment and not to services provided TO a clinical establishment. Therefore, Good Health Medical Centre's contention that since it is a clinical establishment, all the services provided to it are also exempt from GST is not correct in law.


Questions 4 :

Which of the following services provided by Healthy Wealthy Nursing Home are not exempt from GST?

- (a) Renting of rooms with per day charges of ` 6,000 to inpatients.
- (b) Food supplied to inpatients.
- (c) Healing of patients through naturopathy
- (d) Services provided in Intensive Care Unit for which `12,000 are charged per day.

5. Services provided by Government

Entry No.	Description of services
4	Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution are exempt.
5	Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.
6	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts ; (b) services in relation to an aircraft or a vessel , inside or outside the precincts of a port or an airport; (c) transport of goods or passengers ; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities .
7	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017. Explanation - For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to following services:- (i) item (a), (b) and (c) of Entry 6 above. (ii) services by way of renting of immovable property .

Entry No.	Description of services
8	<p>Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority.</p> <p>However, nothing contained in this entry shall apply to services referred in item (a), (b) and (c) of Entry 6 above.</p>
9	<p>Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹ 5,000.</p> <p>However, nothing contained in this entry shall apply to services referred in item (a), (b) and (c) of Entry 6 above</p> <p>Further, in case where continuous supply of service* is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a FY.</p> <p>*as defined in section 2(33)</p>
9C	<p>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.</p>
9D	<p>Services by: an old age home</p> <p>run by:</p> <ul style="list-style-type: none"> • Central Government, State Government or • an entity registered under section 12AA or 12AB of the Incometax Act, 1961 <p>to its residents (aged 60 years or more)</p> <p>against consideration upto ₹ 25,000 per month per member,</p> <p>provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.</p> 
24C	<p>Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams).</p>
34A	<p>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.</p>
47	<p>Services provided by the Central Government, State Government, Union territory or local authority by way of-</p> <ol style="list-style-type: none"> (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.

Entry No.	Description of services
61	Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving license, birth certificate or death certificate.
62	Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.
63	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals , except the rearing of horses, for food, fibre, fuel, raw material or other similar products.
65	Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.
65B	<p>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.</p> <p>However, 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.</p> <p>Explanation- Mining lease holder means a person who has been granted mining lease, quarry lease or license or other mineral concession under the Mines and Minerals (Development and Regulation) Act, 1957, the rules made thereunder or the rules made by a State Government under section 15(1) of the said Act.</p>
74A	<div style="display: flex; align-items: flex-start;">  <div style="flex-grow: 1;"> <p>Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA or 12AB of the Income-tax Act, 1961.</p> </div>  </div>

ANALYSIS

Relevant definitions are as under:

- **Business entity:** means any person carrying out business.
- **Governmental authority:** means an authority or a board or any other body,
 - (i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government, with 90%, or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

- **Government Entity:** means an authority or a board or any other body including a society, trust, corporation,

(i) set up by an Act of Parliament or State Legislature; or

(ii) established by any Government,

with 90%, or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

- **Aircraft:** means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth's surface and includes balloons, whether fixed or free, airships, kites, gliders and flying machines [Section 2(1) of the Aircraft Act, 1934].
- **Airport:** means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in section 2(2) of the Aircraft Act, 1934 [Section 2(b) of the Airports Authority of India Act, 1994].



Exemption to services provided by Government

- **Not all services provided by the Government or a local authority are exempt from tax.**

As for instance, following services are not exempt:

- services by the Department of Posts;
- services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port;
- transport of goods or passengers; or
- any service, **other than** services covered under (a) to (c) above provided to business entities [with aggregate turnover exceeding such amount in the preceding financial year as makes it eligible for exemption from registration under CGST Act].



Services mentioned in clause (a) to (c) above have been referred to as “**specified services**” in discussion hereunder.

Applicability of GST on accommodation services supplied by Air Force Mess and other similar messes to its personnel

- Accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Entry 6 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.

Let us first understand what does ‘Government’ and ‘local authority’ mean?

Meaning of Government

- As per section 2(53), ‘Government’ means the Central Government.
- Various State/ Union Territories (with Legislatures) GST Acts define ‘Government’ as Government of respective State Government/ Union Territory. For Union Territories (without State Legislatures), ‘Government’ means the Administrator or any Authority or officer authorized to act as Administrator by the Central Government.



- Regulatory bodies/agencies, for instance, Competition Commission of India, Press Council of India, Directorate General of Civil Aviation, Forward Market Commission, Inland Water Supply Authority of India, Central Pollution Control Board, Securities and Exchange Board of India, do not fall under the definition of Government.

Meaning of local authority

- Local authority is defined in section 2(69) and means the following:
 - a “**Panchayat**” as defined in clause (d) of article 243 of the Constitution;
 - a “**Municipality**” as defined in clause (e) of article 243P of the Constitution;
 - a **Municipal Committee, a Zilla Parishad, a District Board**, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
 - a **Cantonment Board** as defined in section 3 of the Cantonments Act, 2006;
 - a **Regional Council or a District Council** constituted under the Sixth Schedule to the Constitution;
 - a Development Board constituted under article 371 and article 371J of the Constitution;
 - a **Regional Council** constituted under article 371A of the Constitution. Thus, ‘local authority’ includes only those bodies which are listed in the above definition. It would not include other body which is merely described as a ‘local body’ by virtue of a local law. For example, local developmental authorities - setup by State Governments to undertake developmental works - like Delhi Development Authority, Ahmedabad Development Authority, Bangalore Development Authority, etc. are not qualified as local authorities.

In the subsequent paras, we have examined some of the Government services:

Services provided to a business entity

- Entry 7 provides that services provided to a business entity are exempt if its aggregate turnover is upto such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act.
- However, this exemption is not applicable to **specified services**, and renting of immovable property. **Renting in relation to immovable property** means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.
- GST on services, other than **specified services**, supplied by the Central Government, State Government, Union territory or local authority to a business entity [whose turnover exceeds such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act] is payable under reverse charge by such business entity.

However, reverse charge provisions are not applicable to renting of immovable property services provided to unregistered persons and where ‘**specified services**’ are being provided to such business entity [See the reverse charge provisions as discussed in Chapter – 3: Charge of GST in this Module of the Study Material].

Services provided by the Department of Posts

- Department of Posts provide basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations. It also provides services of transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.
- Moreover, it provides services like distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills **on commission basis**. These services are in the nature of intermediary and are generally called **agency services**.
- Entry 6 stipulates that the services provided by the Central Government, State Government, Union territory or local authority are exempt excluding the services by the Department of Posts. Further, **entry 24C exempts the services provided by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams)**. Thus, on remaining services provided by the **Department of Posts, it is liable to pay tax** without the application of reverse charge.



Services provided by one Department of the Government to another Department of the Government

- Services (except specified services) provided by one Department of the Central Government/ State Government to another Department of the Central Government/ State Government are exempt under Entry 8.

Services by governmental authority by way of any activity in relation to any function entrusted to Panchayat/ Municipality



Services provided by governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution and services by a governmental authority by way of any activity in relation to any function entrusted to



a Panchayat under article 243G of the Constitution are exempt vide Entry 4 and Entry 5 respectively.

Services provided by police/security agencies of Government to PSUs/corporate entities/sports events held by private entities

- Services provided by Police/security agencies of Government to PSU/private business entities are not exempt from GST.
- Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government for such supply of services [See the reverse charge provisions as discussed in Chapter – 3: Charge of GST in this Module of the Study Material].



Example 28 : The Karnataka Cricket Association, Bangalore requests the Commissioner of Police, Bangalore to provide security in and around the Cricket Stadium for the purpose of conducting the cricket match.

The Commissioner of Police arranges the required security for an agreed consideration. In this case, services of providing security by the police personnel are not exempt. As the services are provided by Government, Karnataka Cricket Association is liable to pay the tax on the consideration paid, albeit under reverse charge mechanism.

Services provided by way of tolerating non-performance of a contract

- Non-performance of a contract or breach of contract is one of the conditions normally stipulated in the Government contracts for supply of goods or services. The agreement entered into between the parties stipulates that both the service provider and service recipient abide by the terms and conditions of the contract.
- In case any of the parties breach the contract for any reason including nonperformance of the contract, then such person is liable to pay damages in the form of fines or penalty to the other party. **Tolerating non-performance of a contract is an activity or transaction which is treated as a supply of service [as per Schedule II – as explained in Chapter 2 – Supply under GST in this Module of the Study Material] and the person is deemed to have received the consideration in the form of fines or penalty and is, accordingly, required to pay tax on such amount.**
- However, **in case of supplies made to Government, services [provided by Government] by way of tolerating the non-performance of contract by the supplier of service is covered under the exemption under Entry 62.** Thus, any consideration received by the Government from any person or supplier for non-performance of contract is exempted from tax.

Example 29 : Public Works Department of Karnataka entered into an agreement with M/s. ABC, a construction company, for construction of its office complex for an agreed consideration. In the agreement dated 10th July, it was agreed by both the parties that M/s.

ABC shall complete the construction work and handover the project on or before 31st December.

It was further agreed that any breach of the terms of contract by either party would give right to the other party to claim for damages or penalty.

M/s. ABC did not complete the construction and did not handover the project by the specified date i.e., on or before 31st December.

As per the contract, the Department asked for damages/penalty from M/s. ABC and threatened to go to the court if not paid. Resultantly, M/s. ABC paid an amount of ₹ 10,00,000/- to the Department for non-performance of contract. Amount paid by M/s. ABC to Department is exempt from payment of tax.

6. Construction services

Entry No.	Description of services
10	Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.
10A	Services supplied by Electricity Distribution Utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use.
11	Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex.



ANALYSIS :

Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana (hereinafter referred to as PMAY) is a programme launched by the Ministry of Housing and Urban Poverty Alleviation (MoHUPA) which envisions provision of Housing for All by 2022 when the nation completes 75 years of its independence.

The mission seeks to address the housing requirement of urban poor including slum dwellers through following, inter alia, programme verticals:

- Slum rehabilitation of Slum Dwellers with participation of private developers using land as a resource.
- Promotion of Affordable Housing for weaker section through credit linked subsidy.
- Affordable Housing in Partnership with Public & Private sectors.
- Subsidy for beneficiary-led individual house construction/enhancement.

Last component of the mission is assistance to individual eligible families belonging to Economically Weaker Section (EWS) categories to either construct new houses or enhance existing houses on their own to cover the beneficiaries who are not able to take advantage of other components of the mission. Such families may avail specified amount of central assistance for construction of new houses or for enhancement of existing users under the mission.

Entry 10 exempts the services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the PMAY from GST.

The term '**original works**' means-

- all **new constructions**;
- all types of **additions and alterations to abandoned or damaged structures** on land that are required to make them workable;
- erection, commissioning or **installation of plant, machinery or equipment** or structures, whether pre-fabricated or otherwise.



Entry 11 exempts the services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex from GST.

The term '**residential complex**' means any complex comprising of a building or buildings, having more than one single residential unit. Further, '**single residential unit**' means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

7. Passenger transportation services

Entry No.	Description of services
15	Transport of passengers, with/ without accompanied belongings, by – <ol style="list-style-type: none"> 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; non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or

Entry No.	Description of services
	(c) stage carriage other than air- conditioned stage carriage. However, nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the CGST, 2017.
16	Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a RCS (Regional Connectivity Scheme) airport , against consideration in the form of viability gap funding. However, nothing contained in this entry shall apply on or after the expiry of a period of 3 years from the date of commencement of operations of the RCS airport as notified by the Ministry of Civil Aviation.
17	Service of transportation of passengers, with or without accompanied belongings, by— (a) railways in a class other than— (i) first class; or (ii) an air-conditioned coach; (b) metro, monorail or tramway; (c) inland waterways; (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (e) metered cabs or auto rickshaws (including e-rickshaws). However, nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the CGST, 2017.

ANALYSIS

Services of transportation of passengers are usually chargeable to GST. Entry 6 [Services provided by Government - discussed earlier] specifically excludes the transport of passengers' services provided by the Government or local authority from its purview, which implies that transport of passengers' services provided by the Government or local authority 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.

Services provided by way of transportation of passengers have been analysed as follows:

Entry 15

Clause (a)

- Transport of passengers by air, embarking from or terminating in an airport located in the States of North-East India or at Bagdogra located in West Bengal is exempt from GST provided said transportation is in economy class.

Example 30 : Rituraj has booked air tickets in economy class of a flight from Delhi to Guwahati, Assam. Transport of passengers by air terminating in an airport located in Assam is exempt from GST.

Clause (b)

- Passenger transportation service provided by a non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire, are exempt from GST.

- Conducted tour is a short visit to a place in which someone shows you around and tells you information about it.

The term **contract carriage** means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

- (a) on a time basis, whether or not with reference to any route or distance; or
- (b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes--
 - (i) a maxicab; and
 - (ii) a motor cab notwithstanding that separate fares are charged for its passengers [Section 2(7) of Motor Vehicles Act, 1988].

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

Example 31 : Subroto has hired a non-air conditioned bus from Mohit Travels for organising a recreation tour from Delhi to Jaipur. Transport of passengers by a non-air-conditioned contract carriage are exempt from GST. However, said transportation of passengers for tourism purposes is excluded therefrom. Therefore, in the given case, passenger transportation services are taxable.

Hiring of non-air conditioned contract carriages by firms for transportation of their employees to and from work

Exemption under this clause would apply to passenger transportation services by **non-air conditioned contract carriages where transportation takes place over pre-determined route on a pre-determined schedule**. The **exemption shall not be applicable** where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

Clause (c)

- Passenger transportation services provided by a stage carriage other than air conditioned stage carriage are also exempt.

The term **stage carriage** means a motor vehicle constructed or adapted to carry more than 6 passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey [Section 2(40) of the Motor Vehicles Act, 1988].

Example 32 : The non-air conditioned buses are being operated by a State Transport Corporation for carrying passengers within the State. The passengers are being picked and dropped from and to various points by issuing individual tickets to the passengers. Such services provided by said State Transport Corporation are exempt from GST.

Proviso

It is important to note that in case where services of transport of passengers, by non-air conditioned contract carriage other than radio taxi excluding tourism, conducted tour, charter or hire or by non-air conditioned stage carriage, are supplied through Electronic Commerce Operator (ECO), such services are not exempt from GST. Further, tax on such services shall be paid by ECO.

Entry 16

- Services provided to the Central Government, by way of transport of passengers by air, embarking from or terminating at a RCS airport, against consideration in the form of viability gap funding are exempt.

A **Regional Connectivity Scheme** is introduced to facilitate / stimulate regional air connectivity by making it affordable by supporting airline operators through (1) concessions by Central Government/State Governments and airport operators to reduce the cost of airline operations on regional routes/other support measures and (2) financial (viability gap funding or VGF) support to meet the gap, if any, between the cost of airline operations and expected revenues on such routes.

Under RCS, the underserved airports of India are aimed to be connected to key airports through flights that will cost ₹ 2,500 for per hour flight.

Entry 17

- Transportation of passengers by following specified modes of transport is exempt:
 - railways in a class other than—
 - first class; or
 - an air-conditioned coach;
 - metro, monorail or tramway;
 - inland waterways;
 - public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
 - metered cabs or auto rickshaws (including e-rickshaws).

The term **metered cab** means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder (but does not include radio taxi).

The term **E-rickshaw** means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for carrying goods or passengers, as the case may be, for hire or reward, manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf.

It is important to note that in case where service of transport of passengers by metered cabs or auto rickshaws (including e-rickshaws) are supplied through ECO, such services are not exempt from GST. Further, tax on such services shall be paid by ECO.



Clause (d) of Entry 17

As regards transportation of passengers by vessels in clause (d) of Entry 17 [See the table given above], the words '**other than predominantly for tourism purpose**' qualify the preceding words "**public**

transport”. This implies that to qualify for exemption under this entry, the public transport by a vessel between places located in India should not be predominantly for tourism purposes.

Normal public ships or other vessels that sail between places located in India would be covered in this entry even if some of the passengers on board are using the service for tourism because predominantly, such service is not for tourism purpose. However, services provided by leisure/charter vessels/a cruise ship, predominant purpose of which is tourism, would not be covered in here even if some of the passengers in such vessels are not tourists.

Example 33 : Services by way of transportation of passengers [not predominantly for tourism purpose] on a vessel, from Kolkata to Port Blair (mainland to island) or Port Blair to Neil Island (inter island) is covered in clause (d) of Entry 17 since such transportation is between two places located in India.

Where such public transport is owned by private operators. For instance, private ferries are used as means of transport from one island to another in Andaman and Nicobar Islands. Exemption under Entry 17(d) would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.

The **expression ‘public transport’ used in this Entry only means that the transport should be open to public.** It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.




Questions 5 :

Which of the following services are not exempt from GST ?

- Services of transportation of employees in air conditioned vans for pick up and drop over predetermined route on a predetermined schedule.
- Transportation of passengers by railways in sleeper class.
- Transportation of passengers in autorickshaw.
- Transportation of passengers by air, in economy class, from Delhi to Manipur.

8. Goods transportation services

Entry No.	Description of services
18	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.

Entry No.	Description of services
20	<p>Services by way of transportation by rail or a vessel from one place in India to another of the following goods –</p> <p>(a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;</p> <p>(b) defence or military equipments;</p> <p>(c) newspaper or magazines registered with the Registrar of Newspapers;</p> <p>(e) agricultural produce;</p> <p>(f) milk, salt and food grain including flours, pulses and rice; and</p> <p>(g) organic manure.</p>  
	Goods Transport Agency (GTA) Service
21	<p>Services provided by a goods transport agency, by way of transport in a goods carriage of –</p> <p>(a) agricultural produce;</p> <p>(d) milk, salt and food grain including flour, pulses and rice;</p> <p>(e) organic manure;</p> <p>(f) newspaper or magazines registered with the Registrar of Newspapers;</p> <p>(g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or</p> <p>(h) defence or military equipments.</p> 
21A	<p>Services provided by a GTA to an unregistered person, including an unregistered casual taxable person, other than the following recipients, namely: -</p> <p>(a) any factory registered under/governed by the Factories Act, 1948; or</p> <p>(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</p> <p>(c) any Co-operative Society established by or under any law for the time being in force; or</p> <p>(d) any body corporate established, by or under any law for the time being in force; or</p> <p>(e) any partnership firm whether registered or not under any law including association of persons;</p> <p>(f) any casual taxable person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.</p>
21B	<p>Services provided by a GTA, by way of transport of goods in a goods carriage, to, -</p> <p>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.</p>

ANALYSIS

Transportation of goods by rail/vessel/GTA in goods carriage

Exemptions granted to transport of specified goods through rail or a vessel or by a GTA in goods carriage** are presented in the following table:

Transportation of the following goods by rail / vessel / GTA in goods carriage is exempt
(a) agricultural produce
(b) milk, salt and food grain including flours, pulses and rice
(c) organic manure
(d) newspaper or magazines registered with the Registrar of Newspapers
(e) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap
(f) defence or military equipments

****Goods carriage** means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

Transportation of goods by road

- The services of transportation of goods by road are exempt from GST under **Entry 18**. Services of GTA and courier services are an exception to this exemption. However, GTA services provided to an unregistered person [including unregistered casual taxable person] are exempt from GST by virtue of Entry 21A.
- Further, GTA services provided to registered casual taxable person and following persons, even if unregistered under GST law, are liable to tax:
 - (i) factory registered under Factories Act,
 - (ii) society registered under Societies Act,
 - (iii) Co-operative society,
 - (iv) body corporate and
 - (v) partnership firm including AOP.
- In other words, the GTA services provided to only an unregistered individual end consumer, whether being a casual taxable person or not, are exempt from GST.
- Thus, GTA services provided to:
 - person registered under GST law & registered casual taxable person, and
 - a factory registered under Factories Act, society registered under Societies Act, Co-operative society, body corporate and partnership firm including AOP – whether or not registered under GST law, are liable to tax.
- Transportation of goods service provided by GTA in a goods carriage, to a Central/State Government (Union Territory) Department or Establishment or local authority or Governmental agencies which has taken registration under

GST law only for the purpose of deducting TDS under section 51 and not for making a taxable supply of goods or services are exempt under **Entry 21B**.

Before proceeding further, we shall now understand the meaning of GTA:



Who is a GTA – Goods Transport Agency?

Let us understand the meaning of Goods Transport agency (GTA). Goods transport agency has been defined in the Notification to mean any person who:

- ❖ provides service **in relation to transport of goods by road** and
- ❖ issues **consignment note**, by whatever name called.

- Thus, it can be seen that **issuance of a consignment note is the sine-qua-non for a supplier of service to be considered as a GTA**. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of GTA.
- **If a consignment note is issued, it indicates that the lien on the goods has been transferred** (to the transporter) and the transporter becomes responsible for the goods till its safe delivery to the consignee. It is only the services of such GTA, which assumes agency functions, that has been brought into the GST net.
- **Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA**. As a result, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at Entry 18 of Notification, which are exempt from GST.

Example 34 : Hari Prasad owns a truck and operates it himself. He carries the goods booked for his truck without issuance of consignment note. Services provided by Hari Prasad by way of transportation of goods by road are exempt under Entry 18.

- **Consignment note** means a document, issued by a GTA against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains:
 - the name of the consignor and consignee,
 - registration number of the goods carriage in which the goods are transported,
 - details of the goods transported,
 - details of the place of origin and destination,
 - gross weight of the consignment;
 - GSTIN of the person liable for paying tax whether consignor, consignee or GTA
 - other particulars as prescribed for a tax invoice³⁷.



Significance of the term 'in relation to' in the definition of GTA

The use of the phrase '**in relation to**' has extended the scope of the definition of GTA. It includes not only the actual transportation of goods, but also

various intermediary and ancillary services, such as, loading/ unloading, packing/ unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.

In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply. However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.



What is courier agency?

Courier agency has been defined in the Notification to mean any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles.



Express cargo service: Some transporters undertake door-to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles.

Such services are known as 'Express Cargo Service' with assurance of timely delivery. The nature of service provided by 'Express Cargo Service' falls within the scope and definition of the courier agency. Hence, the said service relating to transportation of goods by road is not exempt.

Transport of minerals within a mining area by vehicles deployed with driver for a specific duration of time

The issue which arose for consideration was whether transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time would be covered under Entry 18 which exempts transport of goods by road except by a GTA.

Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.

Such services are nothing but "rental services of transport vehicles with operator". The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations.

The person who gives the vehicles on rent with operator cannot be said to be supplying the service by way of transport of goods.

Accordingly, it is clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator and not service of transportation of goods by road. Consequently, it is not eligible for exemption under Entry 18.

Questions 6 :

Which of the following services provided by Sundar Transporters, a GTA, are not exempt from GST?

- (a) Transport of organic manure to Agro Brothers Ltd.
- (b) Transportation of household items provided to Mrs. Riddhima (unregistered).
- (c) Transportation of goods provided to Malhotra & Malhotra Co. – a unregistered partnership firm.
- (d) Transportation of goods provided to Municipal Corporation of Delhi.

9. Banking and financial services

Entry No.	Description of services
27	<p>Services by way of—</p> <ol style="list-style-type: none"> (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.
27A	Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).
34	<p>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.</p> <p>Explanation.— For the purposes of this entry, “acquiring bank” means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.</p>
39A	<p>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).</p> <p>Explanation.- For the purposes of this entry, the intermediary of financial services in IFSC is a person,-</p> <ol style="list-style-type: none"> (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or (iii) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.

ANALYSIS

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

Specified banking services exempt from GST vide Entry 27 have been discussed below:



(A) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount: This entry covers any such service wherein moneys due are allowed to be used or retained on payment of interest or on a discount. The words used are 'deposits, loans or advances' and have to be taken in the generic sense.

They would cover any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called the time value of money which could be in the form of an interest or a discount. **This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.**



Interest: means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.



• **Illustrations of services exempt under Entry 27** are -

- Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.
- Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans 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.



- **Service charges/ fees, documentation fees, broking charges, administrative charges, entry charges or such like fees or charges collected over and above interest** on loan, advance or a deposit are not exempt and thus, represent taxable consideration.
- **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.
- **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.
- **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.
- **Additional/ penal interest on the overdue loan:** In cases where the Equated Monthly Instalment (EMI) is not paid at the scheduled time, there is a levy of additional/ penal interest on account of delay in payment of EMI.

There may arise a doubt as to whether this additional / penal interest on the overdue loan is exempt under Entry 27 or such penal interest is to be treated as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II i.e. “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”]

There are two transaction options involving EMI that are prevalent in the trade. These two options, alongwith the GST applicability on them, have been explained with the help of illustrations as under –

Example 35 : X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000. However, X gives Y an option to pay in installments, ₹ 11,000 every month before 10th day of the following month, over next four months (₹ 11,000/- × 4 = ₹ 44,000/-). As per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to ₹500/- per month for the delay.

In some instances, X is charging Y ₹ 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/ penal interest amounting to ₹ 500/- per month for each delay in payment.

In this case, the amount of penal interest is to be included in the value of supply. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.

Example 36 : X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/ penal interest @ 1.25% per month for any delay in payment.

Here, the additional/ penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under exemption Entry 27. Consequently, in this case the 'penal interest' charged thereon on a transaction between Y and M/s. ABC Ltd. would not be subject to GST as the same would be covered under said exemption entry. However, any service fee/ charge or any other charges, if any, are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in exemption notification, and accordingly will not be exempt.

Moreover, the value of supply of mobile by X to Y would be ₹ 40,000/- for the purpose of levy of GST.

Since this levy of additional/ penal interest satisfies the definition of “interest” as contained in Entry 27 above, the same cannot be treated as consideration for liquidated damages. Consequently, transaction of levy of additional/ penal interest does not fall within the ambit of Schedule II i.e. “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” [Circular No. 102/21/2019-GST dated 28.06.2019].

(B) Services provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange: The term ‘authorised dealer of foreign exchange’ means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under section 10(1) of FEMA, 1999 to deal in foreign exchange or foreign securities [Section 2(c) of the Foreign Exchange Management Act, 1999].



It is important to note that such services provided to general public will not be covered in this entry as this entry only covers sale or purchase of foreign exchange:-

- (i) amongst banks or
- (ii) amongst authorized dealers of foreign exchange or
- (iii) amongst banks and such dealers.



Services provided by commercial banks to RBI would be taxable as these are not covered by any of the exemptions/exclusions under the GST law.

ILLUSTRATION 2 :

M/s. Apna Bank Limited, a scheduled commercial bank, has furnished the following details for the month of August:

Particulars	Amount [₹ in crores] (excluding GST)
Extended housing loan to its customers	100
Processing fees collected from its customers on sanction of loan	20
Commission collected from its customers on bank guarantee	30
Interest income on credit card issued by the bank	40
Interest received on housing loan extended by the bank	25
Minimum balance charges collected from current account and saving account holder	01

Compute the value of taxable outward supply.

ANSWER

Computation of value of taxable outward supply of M/s. Apna Bank Limited for the month of August:

Particulars	Amount in crores (₹)
Housing loan extended to customers	
[Since money does not constitute goods, extending housing loan is not a supply.]	Nil
Processing fee collected on sanction of loan [Interest does not include processing fee on sanction of the loan. Hence, the same is taxable.]	20
Commission collected on bank guarantee [Any commission collected over and above interest on loan, advance or deposit are not exempt.]	30
Interest income on credit card issued by the bank [Services by way of extending loans in so far as the consideration is represented by way of interest are exempt from tax. However, interest involved in credit card	40

Particulars	Amount in crores (₹)
services is specifically excluded from this exemption entry.]	
Interest received on housing loan [Services by way of extending loans in so far as the consideration is represented by way of interest are exempt from tax.]	Nil
Minimum balance charges collected from current account and saving account holder [Any charges collected over and above interest on loan, advance or deposit are not exempt.]	01
Value of taxable outward supply	91

Questions 7 :

Which of the following amounts received by Sindhbad Bank are not exempt form GST ?




- Cheque discounting charges received
- Interest on overdraft facility
- Charges for late payment of outstanding dues on credit card
- Interest received on housing loan

10. Life insurance business services

Entry No.	Description of services
28	Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013.
29	Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.
29A	Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government.
29B	Services of life insurance provided/agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.
36	Services of life insurance business provided under following schemes- <ol style="list-style-type: none"> Janashree Bima Yojana; Aam Aadmi Bima Yojana; Life micro-insurance product** as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of ₹ 2,00,000;

Entry No.	Description of services
	(d) Varishtha Pension Bima Yojana; (e) Pradhan Mantri Jeevan Jyoti Bima Yojana; (f) Pradhan Mantri Jan Dhan Yojana; (g) Pradhan Mantri Vaya Vandan Yojana. **Life micro-insurance product means any term insurance contract with/without return of premium, any endowment insurance contract or health insurance contract, with/without an accident benefit rider, either on individual/group basis, as per terms stated in Schedule-II appended to the regulations [Regulation 2(e) of the Insurance Regulatory and Development Authority (Micro-insurance) Regulations, 2005].

11. Services provided by specified bodies

Entry No.	Description of services
30	Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948. 
31	Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952. 
31A	Services by Coal Mines Provident Fund Organisation to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.
31B	Services by National Pension System (NPS) Trust to its members against consideration in the form of administrative fee. 

12. General insurance business services

Entry No.	Description of services
35	Services of general insurance business provided under following schemes – (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna44; (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 Bima Yojana (PMFBY);

Entry No.	Description of services
	(k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; (o) Coconut Palm Insurance Scheme; (p) Pradhan Mantri Suraksha Bima Yojna; (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. (r) Bangla Shasya Bima
36A	Services by way of reinsurance of the insurance schemes specified in serial number 35 or 36 or 4045.

13. Pension schemes

Entry No.	Description of services
37	Services by way of collection of contribution under the Atal Pension Yojana.
38	Services by way of collection of contribution under any pension scheme of the State Governments.

14. Business facilitator/correspondent

Entry 39: Services by the following persons in respective capacities –

- business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
- any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
- business facilitator or a business correspondent to an insurance company in a rural area.

ANALYSIS

It is still a big challenge for India to make the financial services accessible in rural areas. In many rural areas, either there are no banks or number of banks is insufficient. In order to counter this problem and ensure greater financial inclusion, the Reserve Bank of India (RBI) introduced the Business Correspondents and Business Facilitator Model through guidelines in 2006 allowing banks to employ two categories of intermediaries – known as Business facilitators (BFs) and Business correspondents (BCs).

BCs/BFs help villagers to open bank accounts and provide other banking services to them. They act as an intermediary between the bank and its customers. Banks, in turn, pay commission/ fee to the BCs/BFs.

According to the RBI guidelines, while the BCs are permitted to carry out transactions on behalf of the bank as agents, the BFs can refer clients, pursue the clients' proposal and facilitate the bank to carry out its transactions, but cannot transact on behalf of the bank⁴⁶.

Similarly, insurance companies engage the BCs/BFs to provide the insurance services in remote areas.

Entry 39 exempts the services provided by BF/BC to a banking company with respect to accounts in its rural area branch and services provided by any person as an intermediary to a BF/BC with respect to said services are exempt from GST.

Further, the services provided by BF/BC to an insurance company in a rural area are also exempt.

It is important to note that for the purpose of availing exemption from GST under this Entry, services provided by a BF/BC to a banking company in their respective individual capacities should be with respect to accounts in a branch located in the **rural area** of the banking company.

Wherever the services provided by BF/BC to banking company and services provided by intermediary of BF/BC to BF/BC do not fall within the scope of this entry, GST is payable on such services.

However, the banking company is the person liable to pay GST under reverse charge in respect of commission/fees charged for the taxable services provided by BF to a banking company. Similarly, GST on taxable services provided by an agent of BC to BC is payable under reverse charge by the BC.

Further, as seen above, as per RBI's guidelines, banks may pay reasonable commission/fee to the BC. The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner.

The arrangements of banks with the BCs specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the BF/BC.


Hence, banking company is the service provider to the ultimate customer in the BF model/BC model. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via BF/BC.

Other relevant definitions under this entry are as follows:

- **Insurance company:** means a company carrying on life insurance business or general insurance business.
- **Intermediary** means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account [Section 2(13) of the IGST Act, 2017].
- **Rural area:** means the area comprised in a village as defined in land revenue records, excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Government or a State Government.
- Exemption Notification defines BF/BC as an intermediary appointed under the BF model or BC model by a banking company or an insurance company under the guidelines issued by the RBI.

15. Services provided to Government

Entry No.	Description of services
3	Pure services provided TO Government: <ul style="list-style-type: none"> • Pure services (excluding works contract service or other composite supplies involving

Entry No.	Description of services
	supply of any goods) <ul style="list-style-type: none"> • provided to the Central Government, State Government or Union territory or local authority • by way of any activity: <ul style="list-style-type: none"> • in relation to any function entrusted to a Panchayat under article 243G of the Constitution or • in relation to any function entrusted to a Municipality under article 243W of the Constitution.
3A	Composite supply of goods and services TO Government: <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> • in relation to any function entrusted to a Panchayat under article 243G of the Constitution or • in relation to any function entrusted to a Municipality under article 243W of the Constitution.
11A	Service provided by Fair Price Shops to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin. 
40	Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory.
72	Services provided to the Central Government, State Government, Union territory administration under any training programme for which 75% or more of the total expenditure is borne by the Central Government, State Government, Union territory administration. It is clarified that free coaching services provided by coaching institutions and NGOs under the central scheme of “Scholarships for students with Disabilities” where 75% or more of the expenditure is borne by the Government to coaching institutions by way of grant in aid is covered under this entry and hence is exempt from GST.

ANALYSIS

Entry 3 exempts the **supply of ‘pure services’** to Government. Supply of **‘pure services’** means supply of services without involving any supply of goods.

Further, **‘composite supply of goods and services’*** to Government is exempted vide **Entry 3A**.

*in which value of supply of goods constitutes not more than 25% of value of such composite supply.

Let us understand the concept of supply of ‘pure services’ and ‘composite supply of goods and services’ to Government by following examples:

Example 37 : Supply of manpower for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services.

Example 38 : A local authority awards the work of maintenance of street-lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, i.e. composite supply of goods and services.

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 Entries 3 and 3A50.

16. Leasing services

Entry No.	Description of services
41	<p>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.</p> <p>Upfront amount paid in instalments</p> <p>Aforesaid exemption is admissible irrespective of whether such upfront amount is payable/paid in one/more instalments, provided the amount is determined upfront⁵¹.</p> <p>Location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease</p> <p>Upfront amount is exempt from GST. Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing, but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.</p> <p>Accordingly, it is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Entry 41.</p> <p>Explanation - For the purpose of this exemption, the Central Government, State Government or Union territory shall have 20% or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.</p> <p>Conditions:</p> <ol style="list-style-type: none"> 1. The leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area. 2. State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard.

Entry No.	Description of services
	<p>3. In case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee/ buyer/ owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty.</p> <p>4. The lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub- lessee, as well as any subsequent lease/ sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.</p>

17. Legal services

Entry 45: Services provided by-

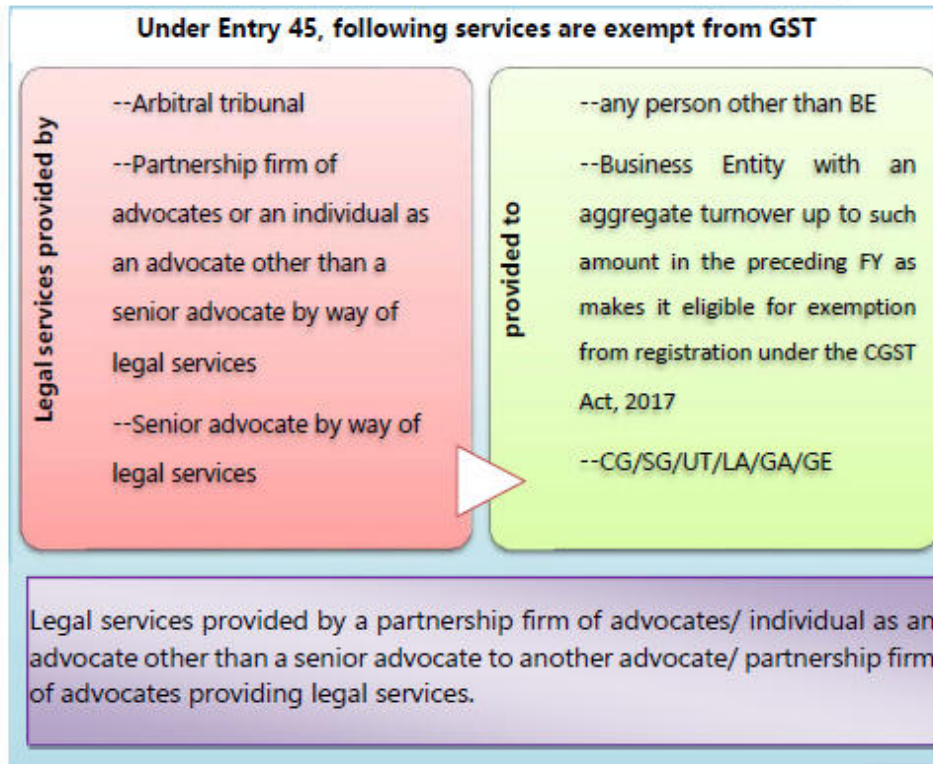
- (a) an arbitral tribunal to –
 - (i) any person other than a business entity; or
 - (ii) a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;
 - (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.
- (b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-
 - (i) an advocate or partnership firm of advocates providing legal services;
 - (ii) any person other than a business entity; or
 - (iii) a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;
 - (iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.
- (c) a senior advocate by way of legal services to-
 - (i) any person other than a business entity; or
 - (ii) a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017.
 - (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.

ANALYSIS

Relevant definitions are as under:

- **Legal service:** means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.
- **Advocate:** means an advocate entered in any roll under the provisions of the Advocates Act, 1961 [Section 2(1)(a) of the Advocates Act, 1961].

- **Arbitral tribunal:** means a sole arbitrator or a panel of arbitrators [Section 2(d) of the Arbitration and Conciliation Act, 1996].
- **Senior advocate:** An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction. Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.



Thus, legal services provided to a business entity with an aggregate turnover exceeding such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017 are liable to GST. Further, tax is payable by the business entity on such services under reverse charge.

Example 39 : Pyarelal & Co. has obtained registration under GST in the preceding financial year as its aggregate turnover exceeded the threshold exemption limit. In the current FY, it sought legal consultancy services for its business from Nyay Advocates – a partnership firm of advocates. The legal services so received by Pyarelal & Co. are not exempt because its aggregate turnover exceeds the threshold exemption limit of registration in the preceding financial year. Further, the tax on the said legal services is payable by Pyarelal & Co. under reverse charge.

Questions 8 :

Which of the following services are liable to GST ?

- Services provided by business correspondent to a banking company with respect to accounts in its urban area branch.
- Legal services provided by senior advocate to an unregistered business entity.
- Services provided by a banking company to Basic Saving Bank A/c under PM Jan Dhan Yojana.
- Services by way of collection of contribution under Atal Pension Yojana.

18. Sponsorship of sports events

Entry 53: Services by way of sponsorship of sporting events organised -

- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;
- (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- (c) by the Central Civil Services Cultural and Sports Board;
- (d) as part of national games, by the Indian Olympic Association; or
- (e) under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.

19. Skill Development services

Entry No.	Description of services
69	<p>Any services provided by, -</p> <ul style="list-style-type: none"> (a) the National Skill Development Corporation set up by the Government of India; (b) a Sector Skill Council approved by the National Skill Development Corporation; (c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation; (d) a training partner approved by the National Skill Development Corporation or the Sector Skill Council, <p>in relation to-</p> <ul style="list-style-type: none"> (i) the National Skill Development Programme 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 other Scheme implemented by the National Skill Development Corporation.
70	<p>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.</p>
71	<p>Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDUGKY) implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training.</p>

20. Performance by an artist

Entry 78: Services by an artist by way of a performance in folk or classical art forms of-

- (a) music, or
- (b) dance, or
- (c) theatre,

if the consideration charged for such performance is not more than ₹ 1,50,000 are exempt from GST.

The activities by a performing artist in folk or classical art forms of music, dance, or theatre are exempt if **consideration** does not exceed ₹ 1,50,000. However, if consideration from such activities exceeds ₹ 1,50,000, entire consideration is subject to GST.

Further, all other activities by an artist in **other art forms** e.g. western music or dance, modern theatres, performance of actors in films or television serials would be taxable. Similarly, activities of artists in **still art forms** e.g. painting, sculpture making etc. are **taxable**.

However, the exemption shall not apply to service provided by such artist as a brand ambassador.

'Brand ambassador' means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person.

ILLUSTRATION 3

Determine the GST payable, if any, in each of the following independent cases, assuming that the rate of GST is 18% and that the service providers are registered:

- Bollywood dance performance by a film actor in a film and consideration charged is ₹ 1,45,000.
- Carnatic music performance by a classical singer to promote a brand of readymade garments and consideration charged is ₹ 1,30,000.
- Carnatic music performance by a classical singer in a music concert and consideration charged is ₹ 1,55,000.
- Kathak dance performance by a classical dancer in a cultural programme and consideration charged is ₹ 1,45,000.

Answer :

- Bollywood Dance performance by a film actor in a film is not exempt from GST even though the consideration charged is less than threshold limit of ₹ 1,50,000. The reason for the same is that the dance performance by an artist is exempt only if it is a performance in folk or classical art forms of dance.
- Carnatic music performance by a classical singer to promote a brand of readymade garments is not exempt from GST even though, the consideration charged is less than threshold limit of ₹ 1,50,000 and it is a performance in classical art forms of music. The reason for the same is that the said exemption is not applicable to service provided by such artist as a brand ambassador.
- Carnatic music performance by a classical singer in a music concert is not exempt from GST even though it is a performance in classical art forms of music. The reason for the same is the consideration charged for the service exceeds ₹ 1,50,000. Consequently, entire consideration charged is subject to GST as follows:

$$= ₹ 1,55,000 \times 18\% = ₹ 27,900$$
- Kathak dance performance by a classical dancer in a cultural programme is exempt from GST as it is a performance in classical art forms of dance and consideration charged does not exceed ₹ 1,50,000 [i.e. ₹ 1,45,000].

21. Right to admission to various events

Entry No.	Description of services
79	<p>Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo**.</p> <p>**Zoo means an establishment, whether stationary or mobile, where captive animals are kept for exhibition to the public and includes a circus and rescue centres but does not include an establishment of a licensed dealer in captive animals. [Section 2(39) of the Wild Life (Protection) Act, 1972].</p>
79A	<p>Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites & Remains Act 1958 or any of the State Acts, for the time being in force.</p>
81	<p>Services by way of right to admission to-</p> <p>(a) circus, dance, or theatrical performance including drama or ballet;</p> <p>(b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event ;</p> <p>(c) recognised sporting event;</p> <p>(d) planetarium,</p> <p>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.</p> <p>Recognised sporting event means any sporting event,-</p> <p>(i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country;</p> <p>(ii) organized</p> <p>(A) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State or zone;</p> <p>(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;</p> <p>(C) by Central Civil Services Cultural and Sports Board;</p> <p>(D) as part of national games, by Indian Olympic Association; or</p> <p>(E) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.</p> <p>Recognised sports body means –</p> <p>(i) the Indian Olympic Association;</p> <p>(ii) Sports Authority of India;</p> <p>(iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations;</p> <p>(iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government;</p> <p>(v) the International Olympic Association or a federation recognized by the International Olympic Association; or</p> <p>(vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India.</p>

22. Services by an unincorporated body or a non- profit entity

Entry No.	Description of services
77	Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) as a trade union (b) for the provision of carrying out any activity which is exempt from the levy of Goods and Services 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.
77A	Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,- (i) activities relating to the welfare of industrial or agricultural labour or farmers; or (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of ₹ 1000/- per member per year.

ANALYSIS**Co-operative Housing Society**

Co-operative Housing Societies are entities registered under the co-operative laws of the respective States. A Co-operative Housing Society is a collective body of persons, who stay in a residential society and as a collective body, they supply certain services to its members, like collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc.



A Co-operative Housing Society is akin to a club, which is composed of its members. Service provided by a Housing Society [Resident Welfare Association (RWA)] to its members is treated as service provided by one person to another. The activities of the housing society/RWA would attract the levy of GST and the housing society would be required to register if its aggregate turnover exceeds the threshold limit and comply with the GST Law, unless specifically exempted.

GST exemption on services provided by a Co-operative Housing Society

If the aggregate turnover of housing society/RWA providing services to its members is above the applicable threshold limit for registration⁵³, it needs to take registration under GST in terms of section 22 [Refer Chapter-9: Registration in Module 2 of this Study Material for detailed discussion on registration].

However, taking registration does not mean that the housing society has to compulsorily charge GST in the monthly maintenance bills raised on its members.

If the services provided by it are exempt under an exemption notification, then it is not required to charge GST on the said services, even if it is registered under GST.

For instance, in view of entry 77(c) above, supply of service by a RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of ₹ 7500 per month per member for providing services and goods for the common use of its members in a housing society/a residential complex are exempt from GST.

So, there can be case where a society is registered under GST, but the monthly contribution received from all the members is less than ₹ 7,500/- per member (and the amount is for the purpose of sourcing of goods and services from a third person for the common use of its members). In such a case, no GST is to be charged by the housing society on the monthly bill raised by the society.

Example 40 : RWA of Chulbul Housing Society, registered under GST, collected the maintenance charges of ₹ 6,000 per month per member. In this case, no GST is to be charged by the RWA.

However, in above case, if the monthly contribution exceeds ₹ 7,500/- per member, entire contribution is taxable.

Example 41 : If, in above example, other things remaining the same, the RWA of Chulbul Housing Society collected the maintenance charges of ₹ 9,000 per month per member, GST @18% shall be payable on the entire amount of ₹ 9,000 and not on [₹ 9,000 - ₹ 7,500] = ₹ 1,500.

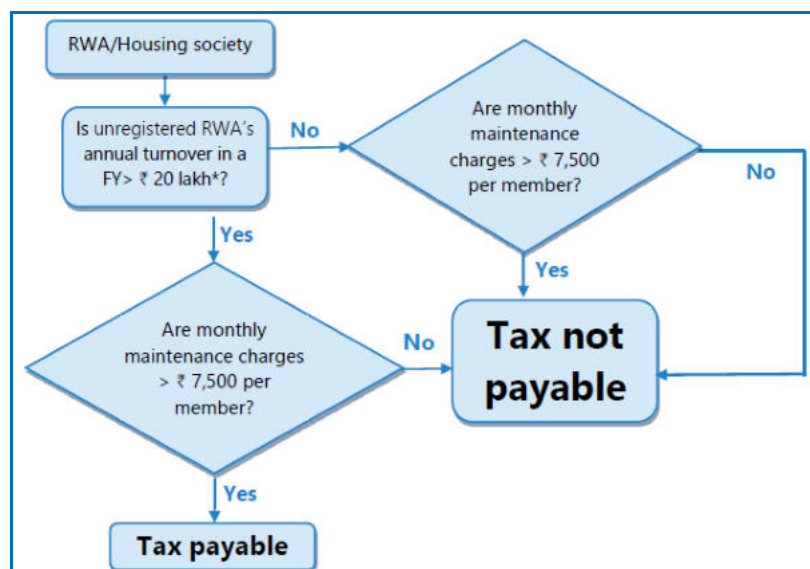
There can also be a case where the aggregate turnover of the society/RWA is less than the applicable threshold limit for registration and the monthly contribution of all the individual members towards maintenance is less than ₹ 7,500/- (such services being exempt). Further, the society is providing no other taxable service to its members or outsiders. In this case, the society (essentially exclusively providing wholly exempt services) need not take registration under GST.

Example 42 : The turnover of RWA of Bulbul Housing Society located in New Delhi in a financial year is ₹ 15 lakh. It has collected the maintenance charges of ₹ 6,000 per month per member. RWA is not providing any other taxable service to its members. In this case, RWA is not required to take registration under GST since its aggregate turnover is less than the applicable threshold limit of ₹ 20 lakh.

However, an RWA is not required to obtain registration even though the amount of maintenance charges exceeds ₹ 7500 per month per member but aggregate turnover of the RWA in a financial year does not exceed the threshold limit for registration.

Example 43 : In the above example, other things remaining the same, if the maintenance charges collected by the RWA are ₹ 8,000 per month per member, RWA is still not required to take registration under GST since its aggregate turnover is less than the applicable threshold limit of ₹ 20 lakh.

The above discussion has been summarized as under:



* ₹ 10 lakh in case of Special Category States of Manipur, Mizoram, Nagaland and Tripura Thus, RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than ₹ 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services or goods or both is also more than ₹ 20 lakh.

In other words,

Annual turnover of RWA	Monthly maintenance charge	Whether exempt?
More than ₹ 20 lakh*	More than ₹ 7500/-	No
	₹ 7500/- or less	Yes
₹ 20 lakh or less	More than ₹ 7500/-	Yes
	₹ 7500/- or less	Yes

* ₹ 10 lakh in case of Special Category States of Manipur, Mizoram, Nagaland and Tripura

There may also be cases where a person owns 2 or more flats in the housing society/residential complex. The question arises whether the ceiling of ₹ 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person.

As per general business sense, a person who owns 2 or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. Consequently, the ceiling of ₹ 7500/- per month per member shall be applied separately for each residential apartment owned by him.

Example 44: Gareeb Chand owns two residential apartments in a residential complex and pays ₹15,000/- per month as maintenance charges towards maintenance of these two apartments to the RWA (₹ 7,500/- per month in respect of each residential apartment). In this case, the exemption from GST shall be available with respect to maintenance charges paid for each apartment.

It is important to note that RWA is entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services, used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than ₹ 7,500 per month per member. [Refer Chapter-8: Input Tax Credit in Module 2 of this Study Material for detailed discussion on ITC provisions]

Example 45 : RWA of Tintin Housing Society, registered under GST, has collected the maintenance charges of ₹ 9,000 per month per member from 1,000 members of the society in the month of May. For paying the GST of ₹ 16,20,000 [payable @ 18% on the amount of ₹ 90,00,000], RWA can utilise the ITC of GST of ₹ 1,00,000 paid by it on purchase of swings for garden, ITC of ₹ 20,000 on electric cables and ITC of ₹ 15,000 on plumbing services, which were made/availed during the month of May.

★ Statutory dues such as property tax, electricity charges etc. forming part of the monthly maintenance bill raised by the society on its members would be excluded while computing the aforesaid monthly limit of ₹ 7,50054.

Questions 9 :

Which of the following services are not exempt from GST?

- (a) Services by way of admission to a museum.
- (b) Right to admission to a circus where the ticket cost is `550 person.
- (c) Classical music performance by a singer where consideration charged is `1,45,000.
- (d) Sponsorship of sporting events organized under Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme

23. Other exempt services

Entry No.	Description of services
2	<p>Services by way of transfer of a going concern, as a whole or an independent part thereof.</p> <p>Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service. Transfer of business for a lump sum consideration commonly referred to as slump sale is covered under this entry.</p> <p>Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted.</p> <div style="border: 1px solid black; padding: 5px;"> <p>Example 46 : Royal Hotel Group is in the business of running a chain of restaurants. It intends to sell its business as a going concern. It would not be required to pay GST on such sale of its business.</p> </div>
12	<p>Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person.</p> <p>Explanation — For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, –</p> <ul style="list-style-type: none"> (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. <p>Thus, renting of residential dwelling either by a registered person or an unregistered person for use as residence to UNREGISTERED PERSON is exempt from GST.</p> <p>Renting of residential dwelling for use as residence to a registered person (other than proprietor covered in explanation above) as well as renting of residential dwelling for commercial use to registered or unregistered person is liable to GST.</p> <p>Further, tax on renting of residential dwelling to a registered person is payable by the registered person under reverse charge whether such residential dwelling is being used for commercial purposes or residential purposes.</p>
19C	Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited.
22	Services by way of giving on hire –

Entry No.	Description of services
	<p>(a) to a State Transport Undertaking (STU), a motor vehicle meant to carry more than 12 passengers^{**}; or</p> <p>State Transport Undertaking: means any undertaking providing road transport service, where such undertaking is carried on by</p> <ol style="list-style-type: none"> 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. <p>Explanation - For the purposes of this clause, road transport service means a service of motor vehicles carrying passengers or goods or both by road for hire or reward [Section 2(42) of the Motor Vehicles Act, 1988].</p> <p>Generally, such STUs/ Corporations are established with a view to providing public transport facility to the commuters. If transport undertakings hire the buses on lease basis from private persons on payment of consideration, the services by way of supply of motor vehicles to such STU are exempt from payment of tax. However, supplies of motor vehicles to Government Departments other than the STUs are taxable.</p> <p>(aa) to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers;</p> <p>EOV means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one/more electrical batteries fitted to such road vehicle.</p> <p>The expression “giving on hire” in this entry includes renting of vehicles. Accordingly, where the said vehicles are rented or given on hire to STUs or Local Authorities, said services are eligible for above exemption irrespective of whether such vehicles are run on routes, timings as decided by the STUs or Local Authorities and under effective control of STUs or Local Authorities which determines the rules of operation or plying of vehicles.</p> <p>(b) to a goods transport agency, a means of transportation of goods.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>Example 47 : Nishant owns a truck which he has rented to Sindhu and Bansal Transport Agency - a GTA. Services by way of giving on hire a means of transportation of goods [truck in the given case] to a GTA [Sindhu and Bansal Transport Agency], are exempt from tax. However, if Nishant had rented a vehicle designed to carry passengers to such GTA, said activity is not exempt under this entry.</p> </div> <p>(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.</p>
23	<p>Service by way of access to a road or a bridge on payment of toll charges.</p> <p>With regard to said entry, following issues have been clarified:</p>

Entry No.	Description of services
	<p>(i) Ministry of Road Transport and Highways (MORTH) permitted the overloaded vehicles to ply on the national highways after payment of higher toll charges. It has been clarified that overloading charges at toll plazas would get the same treatment as given to toll charges.</p> <p>(ii) MORTH has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag.</p> <p>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.</p>
25	<p>Transmission/distribution of electricity by an electricity transmission / distribution utility. However, in this regard CBIC has clarified that the other services provided by DISCOMS (distribution companies) to consumer against charges are liable to GST such as,-</p> <ol style="list-style-type: none"> Application fee for releasing connection of electricity; Rental Charges against metering equipment; Testing fee for meters/transformers, capacitors etc.; Labour charges from customers for shifting of meters or shifting of service lines; charges for duplicate bill.
44	<p>Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a financial year subject to the following conditions, namely:-</p> <ol style="list-style-type: none"> the total turnover had not exceeded ₹ 50 lakh during the preceding financial year; and a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee. <p>Incubatee: means an entrepreneur located within the premises of a Technology Business Incubator (TBI)/ Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India (NSTEDB) and who has entered into an agreement with the TBI/STEP to enable himself to develop and produce hi-tech and innovative products.</p>
48	<p>Taxable services, provided or to be provided, by a TBI/STEP recognized by NSTEDB or bio-incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India (BIRAC).</p>
49	<p>Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India.</p>
50	<p>Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.</p>



Entry No.	Description of services
52	Services by an organiser to any person in respect of a business exhibition held outside India.
57	Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.
58	Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination.
59	Services by a foreign diplomatic mission located in India.
61A	Services by way of granting National Permit to a goods carriage to operate through-out India/contiguous States
65A	Services by way of providing information under the RTI Act (Right to Information Act, 2005).
68	<p>Services provided to a recognised sports body by-</p> <p>(a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body;</p> <p>(b) another recognised sports body.</p> <p>However, services by individuals such as selectors, commentators, curators, technical experts are taxable. The service of a player to a franchisee which is not a recognized sports body is also taxable. The term 'recognised sports body' has been defined earlier in this chapter.</p>
76	Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.

Note: For the purpose of this exemption notification, a "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.

Questions 10 :

Which of the following services are exempt from GST ?

- Services to a foreign diplomatic mission located in India.
- Services by an organiser to any person in respect of a business exhibition held in India.
- Services by way of transfer of a going concern.
- Services provided by RBI.

GST on payment of honorarium to the Guest Anchors

Circular No. 177/09/2022 GST dated 03.08.2022 clarifies the applicability of GST on honorarium paid to Guest Anchors. Sansad TV and other TV channels invite guest anchors to participate in their shows and pay remuneration to them in the form of honorarium.

It is clarified that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. **Services provided by the guest anchors in lieu of honorarium attract GST liability.**

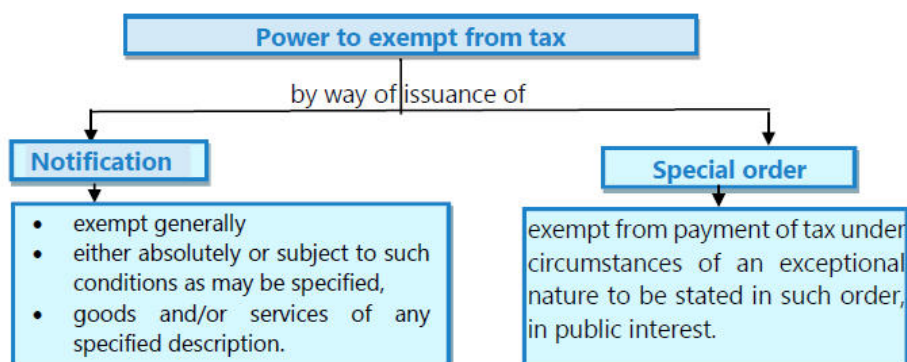
However, guest anchors whose aggregate turnover in a financial year does not exceed ₹ 20 lakh (₹ 10 lakh in case of specified Special Category States) shall not be liable to take registration and pay GST.

Students may note that some of the entries granting exemption from GST are similar to the negative list entry/entry granting exemption under the erstwhile service tax law.

Therefore, clarifications pertaining to said negative list entry/exemption provided under the erstwhile service tax law, wherever it seems relevant under the GST law, have been incorporated at relevant places.

LET US RECAPITULATE

1. Power to exempt from tax [Section 11 of the CGST Act/ section 6 of IGST Act]



2. List of services exempt from GST

Services	Exempt Services
Services related to charitable and religious activities	Charitable activities BY an entity registered under section 12AA or 12AB of Income-tax Act.
	Services by a person by way of- (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned/managed by institutions/entities/trusts, registered under section 12AA/ 12AB /10(23C)(v) of the Income tax Act or body/authority covered under section 10(23BBA) of the said Act, except where- (i) charges for renting of rooms \geq ₹ 1,000 per day; (ii) charges for renting of premises, community halls, kalyanmandapam, open area, etc. are \geq ₹ 10,000 per day; (iii) charges for renting of shops/spaces for business/commerce are \geq ₹ 10,000 per month.
	Services by a specified organisation [KMVN/Haj Committee] in respect of a religious pilgrimage [Haj and Kailash Mansarovar Yatra].

Services	Exempt Services	
	Training/coaching in (a) recreational activities relating to arts/culture, by an individual or (b) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act.	
Agriculture related services	Loading, unloading, packing, storage or warehousing of rice.	
	Warehousing of minor forest produce.	
	Services by way of storage/ warehousing of cereals, pulses, fruits & vegetables.	
	Artificial insemination of livestock (other than horses).	
	Carrying out an intermediate production process as job work in relation to cultivation of plants & rearing of animals [except horses], for food, fibre, fuel, raw material or other similar products or agricultural produce. Services relating to cultivation of plants & rearing of animals [except horses], for food, fibre, fuel, raw material or other similar products or agricultural produce by way of – (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; (b) supply of farm labour ; (c) processes carried out at an agricultural farm including tending, pruning, etc. and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market; (d) renting or leasing of agro machinery or vacant land with/without a structure incidental to its use; (e) loading, unloading, packing, storage or warehousing of agricultural produce; (f) agricultural extension services ; (g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale/purchase of agricultural produce.	
Education services	Services provided BY an educational institution (EI): <ul style="list-style-type: none"> to its students, faculty and staff; by way of conduct of entrance examination against consideration in form of entrance fee 	
	<table border="1" style="width: 100%;"> <tr> <td style="width: 60%; vertical-align: top;"> Services provided TO an EI, by way of, (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government (CG), State Government (SG) or Union Territory (UT); (iii) security/cleaning/ housekeeping services performed in such EI; </td> <td style="width: 40%; vertical-align: middle; text-align: center;"> } These exemptions are only applicable to an institution providing services by way of pre-school education & education up to higher secondary school or equivalent. </td> </tr> </table>	Services provided TO an EI , by way of, (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government (CG), State Government (SG) or Union Territory (UT); (iii) security/cleaning/ housekeeping services performed in such EI;
Services provided TO an EI , by way of, (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government (CG), State Government (SG) or Union Territory (UT); (iii) security/cleaning/ housekeeping services performed in such EI;	} These exemptions are only applicable to an institution providing services by way of pre-school education & education up to higher secondary school or equivalent.	

Services	Exempt Services			
	<p>(iv) services relating to admission to, or conduct of examination by, such EI;</p> <p>(v) supply of online educational journals or periodicals. This exemption is only applicable to an institution providing services by way of education as part of a curriculum for obtaining qualification recognised by any law for time being in force.</p>			
Health care services	<ul style="list-style-type: none"> • Health care services BY a clinical establishment/ authorized medical practitioner/ para-medics. However, nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day to a person receiving health care services. • Transportation of a patient in an ambulance BY any person other than specified above. <p>Service BY a veterinary clinic in relation to Health care of animals/birds</p>			
Services provided by Government	<p>Services by Governmental Authority (GA) by way of any activity in relation to any function entrusted to a Municipality /Panchayat under article 243W/ 243G of Constitution.</p> <p>Services by the CG/SG/UT/Local Authority (LA) excluding following services—</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top;"> <p>(a) services by Department of Posts;</p> <p>(b) services in relation to an aircraft/a vessel, inside/outside precincts of a port/airport;</p> <p>(c) transport of goods/passengers; or</p> <p>(d) any service, other than 'specified services' above, provided to business entities.</p> </td> <td style="vertical-align: middle; font-size: 3em; padding: 0 10px;">}</td> <td style="vertical-align: middle;">(a) to (c) hereinafter referred as 'specified services'</td> </tr> </table> <p>Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams).</p> <p>Services provided by CG/SG/UT/LA to a business entity (BE) with an aggregate turnover of up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017. This exemption is not applicable to specified services, and renting of immovable property service.</p> <p>Services provided by CG/SG/UT/LA to another CG/SG/UT/LA. This exemption is not applicable to specified services.</p> <p>Services provided by CG/SG/UT/LA** where consideration for such services does not exceed ₹ 5,000. This exemption is not applicable to specified services.</p> <p>**In case of continuous supply of service*, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a FY.</p> <p>Supply of service by a Government Entity (GE) to CG/SG/UT/LA/any person specified by CG/SG/UT/LA against consideration received from CG/SG/UT/LA, in the form of grants.</p>	<p>(a) services by Department of Posts;</p> <p>(b) services in relation to an aircraft/a vessel, inside/outside precincts of a port/airport;</p> <p>(c) transport of goods/passengers; or</p> <p>(d) any service, other than 'specified services' above, provided to business entities.</p>	}	(a) to (c) hereinafter referred as 'specified services'
<p>(a) services by Department of Posts;</p> <p>(b) services in relation to an aircraft/a vessel, inside/outside precincts of a port/airport;</p> <p>(c) transport of goods/passengers; or</p> <p>(d) any service, other than 'specified services' above, provided to business entities.</p>	}	(a) to (c) hereinafter referred as 'specified services'		

Services	Exempt Services
	<p>Services by an old age home run by CG/SG/an entity registered under section 12AA or 12AB of Income-tax Act to its residents (aged ≥ 60 years) against consideration upto ₹25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.</p> <p>Services supplied by CG/SG/UT to their undertakings or PSUs by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.</p> <p>Services provided by CG/SG/UT/LA by way of-</p> <p>(a) registration required under any law for the time being in force;</p> <p>(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.</p> <p>Services provided by CG/SG/UT/LA by way of issuance of passport, visa, driving license, birth certificate or death certificate.</p> <p>Services provided by CG/SG/UT/LA by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to CG/SG/UT/LA under such contract.</p> <p>Services provided by CG/SG/UT/LA by way of assignment of right to use natural resources to an individual farmer for cultivation of plants & rearing of all life forms of animals [except horses], for food, fibre, fuel, raw material or other similar products.</p> <p>Services provided by CG/SG/UT by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.</p> <p>Services supplied by a SG to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of SG on the mineral dispatched by the mining lease holders subject to specified conditions.</p> <p>Services provided by rehabilitation professionals recognized under the RCI Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by CG/SG/UT/an entity registered under section 12AA or 12AB of the Income-tax Act, 1961.</p>
Construction services	<p>Pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana.</p> <p>Services supplied by Electricity Distribution Utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer/agriculturalist for agricultural use.</p>

Services	Exempt Services
	<p>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.</p>
<p>Services of transport of passengers (with/without accompanied belongings)</p>	<p>Such services provided by –</p> <p>(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;</p> <p>(b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or</p> <p>(c) stage carriage other than air- conditioned stage carriage.</p> <p>However, nothing contained in items (b) and (c) above shall apply to services supplied through an ECO, and notified under section 9(5) of the CGST Act.</p> <p>Such services provided to CG by air, embarking from or terminating at a Regional Connectivity Scheme (RCS) airport, against consideration in the form of viability gap funding. This exemption shall apply only till expiry of a period of 3 years from date of commencement of operations of the RCS airport as notified by the Ministry of Civil Aviation.</p> <p>Such services provided by—</p> <p>(a) railways in a class other than first class/an airconditioned coach;</p> <p>(b) metro, monorail or tramway;</p> <p>(c) inland waterways;</p> <p>(d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and</p> <p>(e) metered cabs or auto rickshaws (including e-rickshaws).</p> <p>However, nothing contained in item (e) above shall apply to services supplied through an ECO, and notified under section 9(5) of the CGST Act.</p>
<p>Goods transportation services</p>	<p>Services by way of transportation of goods-</p> <p>(a) by road except the services of—</p> <p>(i) a goods transportation agency (GTA);</p> <p>(ii) a courier agency;</p> <p>(b) by inland waterways.</p> <p>Exempt transportation of goods by rail/ vessel/ by GTA in a goods carriage</p> <ul style="list-style-type: none"> • Agricultural produce • milk, salt and food grain including flours, pulses and rice • organic manure • newspaper or magazines registered with the Registrar of Newspapers • Defence/ military equipments • relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap

Services	Exempt Services
	<p>Services provided by a GTA to an unregistered person, including an unregistered casual taxable person, except following recipients, namely: -</p> <ul style="list-style-type: none"> (a) a factory registered under Factories Act, (b) society registered under Societies Act, (c) Co-operative society, (d) body corporate and (e) partnership firm including AOP; (f) registered casual taxable person. <p>Services provided by a GTA, by way of transport of goods in a goods carriage, to, -</p> <ul style="list-style-type: none"> (a) a Department or Establishment of the CG/SG/UT; or (b) local authority; or (c) Governmental agencies, which has taken registration only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.
Banking and financial	<p>Services by way of—</p> <ul style="list-style-type: none"> (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers. <p>Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).</p> <p>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.</p> <p>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.</p>
Services of Life insurance business	<p>Such services by way of annuity under the National Pension System by Pension Fund Regulatory and Development Authority of India (PFRDAI) under PFRDA Act, 2013.</p> <p>Such services by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of CG.</p> <p>Services of life insurance provided/agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.</p> <p>Such services by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of CG.</p>

Services	Exempt Services
	<p>Such services under following schemes-</p> <p>(a) Janashree Bima Yojana;</p> <p>(b) Aam Aadmi Bima Yojana;</p> <p>(c) Life micro-insurance product** as approved by the Insurance Regulatory and Development Authority (IRDA), having maximum amount of cover of ₹2,00,000;</p> <p>(d) Varishtha Pension BimaYojana;</p> <p>(e) Pradhan Mantri Jeevan Jyoti BimaYojana;</p> <p>(f) Pradhan Mantri Jan DhanYogana;</p> <p>(g) Pradhan Mantri Vaya Vandan Yojana.</p>
General insurance business	<p>Such services under following schemes –</p> <p>(a) Hut Insurance Scheme;</p> <p>(b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna;</p> <p>(c) Scheme for Insurance of Tribals;</p> <p>(d) Janata Personal Accident Policy and Gramin Accident Policy;</p> <p>(e) Group Personal Accident Policy for Self-Employed Women;</p> <p>(f) Agricultural Pumpset and Failed Well Insurance;</p> <p>(g) premia collected on export credit insurance;</p> <p>(h) Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture;</p> <p>(i) Jan Arogya Bima Policy;</p> <p>(j) Pradhan Mantri Fasal Bima Yojana (PMFBY);</p> <p>(k) Pilot Scheme on Seed Crop Insurance;</p> <p>(l) Central Sector Scheme on Cattle Insurance;</p> <p>(m) Universal Health Insurance Scheme;</p> <p>(n) Rashtriya Swasthya Bima Yojana;</p> <p>(o) Coconut Palm Insurance Scheme;</p> <p>(p) Pradhan Mantri Suraksha BimaYojna;</p> <p>(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;</p> <p>(r) Bangla Shasya Bima.</p> <p>Services provided to CG/SG/UT under any insurance scheme for which total premium is paid by CG/SG/UT.</p> <p>Services by way of reinsurance of the insurance schemes specified in (A) or (B) or (c) above.</p>
Services provided by specified bodies	<p>Services by the Employees' State Insurance (ESI) Corporation to persons governed under the ESI Act, 1948.</p> <p>Services provided by the EPFO to the persons governed under the Employees Provident Funds (EPF) & Miscellaneous Provisions Act, 1952.</p>

Services	Exempt Services	
	Services by CMPFO to persons governed by Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.	
	Services by NPS Trust to its members against consideration in the form of administrative fee.	
Pension schemes	Services by way of collection of contribution under: <ul style="list-style-type: none"> Atal Pension Yojana any pension scheme of SG 	
Business facilitator / correspondent	Services by the following persons in respective capacities – <ol style="list-style-type: none"> business facilitator/business correspondent to a Banking Co. with respect to accounts in its rural area branch; any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or business facilitator/business correspondent to an insurance company in rural area. 	
Services provided to Government	<p>Following services provided to the CG/SG/UT/LA by way of any activity in relation to any function entrusted to a Panchayat/Municipality under articles 243G/243W of the Constitution:</p> <ul style="list-style-type: none"> Pure services Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply. <p>Service provided by Fair Price Shops to CG/SG/UT by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System (PDS) against commission/margin.</p> <p>Services provided to CG/SG/UT under any insurance scheme for which total premium is paid by CG/SG/UT.</p> <p>Services provided to CG/SG/UT administration under any training programme for which 75% or more of the total expenditure is borne by CG/SG/UT administration.</p>	
Leasing services	Upfront amount payable in respect of service by way of granting of long term lease of 30 years, or more of industrial plots/plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20% or more ownership of CGS/SG/UT to the industrial units/developers in any industrial/financial business area, subject to specified conditions.	
Legal services	Service provided by	To
	<ul style="list-style-type: none"> Arbitral tribunal 	any person other than BE
	<ul style="list-style-type: none"> Partnership firm of advocates or an individual as an advocate other than a senior advocate by way of legal services 	BE with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act
	<ul style="list-style-type: none"> Senior advocate by way of legal services 	CG/SG/UT/LA/GA/GE

Services	Exempt Services
	Legal services provided by a partnership firm of advocates/ individual as an advocate other than a senior advocate to another advocate/ partnership firm of advocates providing legal services
Sponsorship of sports events	<p>Sponsorship of sporting events organised -</p> <p>(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;</p> <p>(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;</p> <p>(c) by the Central Civil Services Cultural and Sports Board;</p> <p>(d) as part of national games, by the Indian Olympic Association; or</p> <p>(e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.</p>
Skill Development services	<p>Services provided by, -</p> <p>(a) National Skill Development Corporation (NSDC) set up by GoI;</p> <p>(b) Sector Skill Council (SSC) approved by NSDC;</p> <p>(c) assessment agency approved by SSC/NSDC</p> <p>(d) a training partner approved by SSC/NSDC in relation to-</p> <p>(i) the National Skill Development Programme implemented by NSDC; or</p> <p>(ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or</p> <p>(iii) any other Scheme implemented by NSDC.</p> <p>Services of assessing bodies empanelled centrally by DGT, Ministry of Skill Development and Entrepreneurship by way of assessments under the SDI Scheme.</p> <p>Services provided by training providers (Project implementation agencies) under DDUGKY implemented by Ministry of Rural Development, GoI by way of offering skill or vocational training courses certified by the National Council for Vocational Training (NCVT).</p>
Performance by an artist	Services by an artist by way of a performance in folk or classical art forms of music/ dance/ theatre, if the consideration charged for such performance is not more than ₹ 1,50,000 . This exemption shall not apply to service provided by such artists as a brand ambassador.
Right to admission to various events	<p>Services by way of admission to:</p> <p>(i) museum, national park, wildlife sanctuary, tiger reserve or zoo</p> <p>(ii) protected monument declared under the Ancient Monuments and Archaeological Sites & Remains Act 1958/any of the State Acts, for the time being in force.</p> <p>(iii) following events/places where the consideration for right to admission is not more than ₹ 500 per person:</p> <p>(a) circus, dance, or theatrical performance including drama or ballet;</p>

Services	Exempt Services
	(b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event; (c) recognised sporting event; (d) planetarium.
Services by an unincorporated body or a nonprofit entity registered under any law for the time being in force	Services by unincorporated body/ non-profit entity to its own members as reimbursement/share of contribution: (i) As a trade union (ii) for providing exempt activity (iii) up to an amount of ₹ 7,500 per month per member for sourcing of goods/services from a third person for the common use of its members in a housing society/residential complex Services provided by such entity/body engaged in- (i) activities relating to the welfare of industrial/agricultural labour or farmers; or (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against membership fee upto ₹ 1000/- per member per year.
Other exempt services	Transfer of a going concern, as a whole or an independent part thereof. Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person. Explanation — For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, – (i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and (ii) such renting is on his own account and not that of the proprietorship concern. Services by way of giving on hire – (a) to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers; (aa) to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers; or (b) to a GTA, a means of transportation of goods. (c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent. Service by way of access to a road or a bridge on payment of toll charges . Transmission/distribution of electricity by an electricity transmission/ distribution utility. Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a FY provided:- (a) total turnover had not exceeded ₹ 50 lakh during the preceding FY; and

Services	Exempt Services
	<p>(b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubate.</p> <p>Taxable services, provided or to be provided, by a Technology Business Incubator/ Science and Technology Entrepreneurship Par (TBI/STEP) recognised by NSTEDB or bio-incubators recognised by BIRAC.</p> <p>Services by way of collecting or providing news by an independent journalist, PTI or United News of India.</p> <p>Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.</p> <p>Services by an organiser to any person in respect of a business exhibition held outside India.</p>
	<p>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.</p> <p>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.</p> <p>Services by a foreign diplomatic mission located in India.</p> <p>Services by way of granting National Permit to a goods carriage to operate through-out India/ contiguous States</p> <p>Services by way of providing information under the RTI Act.</p> <p>Services provided to a recognised sports body (RSB) by-</p> <p>(a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a RSB;</p> <p>(b) another RSB.</p> <p>Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.</p>

TEST YOUR KNOWLEDGE

- Q.1** Exempt supply means supply of any goods or services or both which attracts nil rate of tax and which may be wholly exempt from tax, but excludes non-taxable supply. Discuss the validity of the statement.
- Q.2** Services provided by an entity registered under section 12AB of the Income-tax Act, 1961 are exempt from GST if such services are provided by way of charitable activities. Elaborate the term 'charitable activities'.
- Q.3** Examine which of the following independent services are exempt from GST:
- Food supplied by the canteen run by a hospital to the in-patients as advised by the doctors.
 - An RWA in a housing society, registered under GST, collects the maintenance charges of ₹ 6,500 per month per member.

- Q.4** 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 any GST is payable on the activities undertaken by him.
- Q.5** RXL Pvt. Ltd. manufactures a beauty soap with the brand name 'Forever Young'. RXL Pvt. Ltd. has organized a concert to promote its brand. Ms. Ahana Kapoor, its brand ambassador, who is a leading film actress, has given a classical dance performance in the said concert as a part of her services as a brand ambassador of the company. The proceeds of the concert worth ₹ 1,20,000 will be donated to a charitable organization by Ms. Ahana.
Examine whether Ms. Ahana Kapoor will be required to pay any GST for classical dance performance given in the said concert.
- Q.6** Examine whether GST is exempted on the following independent supplies of services:
- Service provided by a private transport operator to Scholar Boys Higher Secondary School by way of transportation of students to and from the school.
 - Services provided by way of vehicle parking to general public in a shopping mall.
- Q.7** A State Transport Undertaking has hired motor vehicles meant to carry 8 – 10 passengers from Fast Cab Renting, a motor vehicle renting company. Give your comments as to whether any GST is payable in this case.
- Q.8** Indiana Engineering College, an educational institution, has conducted an entrance test examination for various courses run by it (for obtaining qualification(s) recognised by law for the time being in force) and charged entrance fees from the applicants. Determine whether Indiana Engineering College is liable to pay GST on the same.
- Q.9** Babloo Transporters, a Goods Transport Agency, transported relief materials in a goods carriage meant for victims of Kerala floods, a natural disaster, by road from Delhi to Ernakulam, for a company. Babloo Transporters is of the view that it is not liable to pay GST on the said services provided as said services are exempt. You are required to advise it on the said issue.
- Q.10** Keyan Enterprises, an event organizer, provided services to Breathing Wall Ltd. by way of organizing business exhibition in New Delhi as part of Make in India initiative. Keyan Enterprises claims that it is not required to pay GST as the services provided by way of organizing business exhibition are exempt from GST. Examine the technical veracity of the claim of Keyan Enterprises, in the given case.
- Q.11** ST Ltd. has given on hire 5 trucks to Titu Transporters of Delhi (a goods transport agency) for transporting goods in Central and West Delhi. The hiring charges for the trucks are ₹ 7,500 per truck per day. Examine whether GST is payable in the given case.

ANSWERS/HINTS

- The statement is not fully valid in law. Exempt supply has been defined as supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply [Section 2(47)].
- The term 'charitable activities' mean activities relating to-
 - public health by way of-
 - care or counseling of
 - terminally ill persons or persons with severe physical or mental disability;

- (II) persons afflicted with HIV or AIDS;
- (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(B) public awareness of preventive health, family planning or prevention of HIV infection;

- (ii) advancement of religion, spirituality or yoga;
- (iii) advancement of educational programmes/skill development relating to,-
 - (A) abandoned, orphaned or homeless children;
 - (B) physically or mentally abused and traumatized persons;
 - (C) prisoners; or
 - (D) persons over the age of 65 years residing in a rural area;
- (iv) preservation of environment including watershed, forests & wildlife.

3. (a) Services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST.

Food supplied to the in-patients by a canteen run by the hospital, as advised by the doctor/nutritionists, is a part of composite supply of healthcare and not separately taxable. Thus, said services are exempt from GST.

- (b) Supply of service by a RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of ₹ 7500 per month per member for providing services and goods for the common use of its members in a housing society/a residential complex are exempt from GST. Hence, in the given case, services provided by the RWA are exempt from GST since the maintenance charges collected per month per member do not exceed ₹ 7500.

4. 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.

5. Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, are exempt from GST, if the consideration charged for such performance is not more than ₹1,50,000.

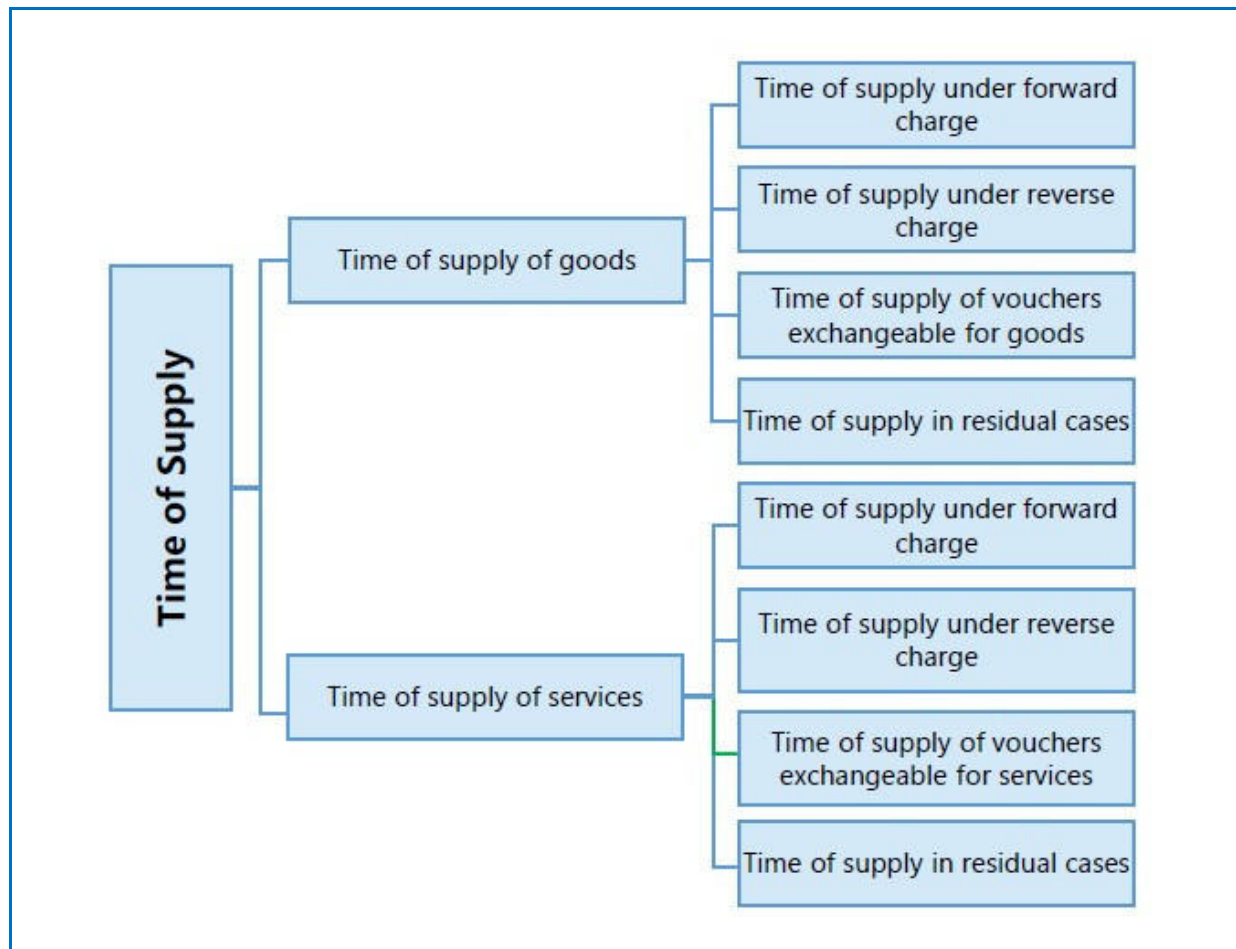
However, such exemption is not available in respect of service provided by such artist as a brand ambassador.

Since Ms. Ahana Kapoor is the brand ambassador of 'Forever Young' soap manufactured by RXL Pvt. Ltd., the services rendered by her by way of a classical dance performance in the concert organized by RXL Pvt. Ltd. to promote its brand will not be eligible for the above-mentioned exemption and thus, be liable to GST. The fact that the proceeds of the concert will be donated to a charitable organization by Ms. Ahana will not have any bearing on the eligibility or otherwise to the above-mentioned exemption.

6. (i) Yes. Services provided TO an educational institution by way of transportation of students are exempted from GST.

- (ii) No. Services provided by way of vehicle parking to general public are not exempted from GST. Therefore, GST is payable on the same.
7. Services by way of giving on hire, inter alia, to a State Transport Undertaking, a motor vehicle meant to carry more than 12 passengers is exempt from GST.
Since the motor vehicles given on hire by Fast Cab Renting to the State Transport Undertaking are meant to carry 8-10 passengers, the same would not be eligible for exemption and would thus, be liable to GST.
8. Services provided by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee are exempt from GST.
Since in the given case, services provided by Indiana Engineering College –an educational institution - are by way of conduct of entrance examination against entrance fee, the same is exempt and thus, GST is not payable in this case.
9. Services provided by a goods transport agency, by way of transport in a goods carriage of relief materials meant for victims of, inter alia, natural or man-made disasters, calamities, are exempt from GST. Therefore, services provided by Babloo Transporters will be exempt from GST.
10. No, the claim made by Keyan Enterprises that it is not required to pay GST is not correct. Services provided by an organiser to any person in respect of a business exhibition are exempt from GST only when such business exhibition is held outside India. However, since in the given case, the exhibition is being organized in India, the services of organization of event by Keyan Enterprises will not be exempt from GST.
11. GST is not payable in case of hiring of trucks to Titu Transporters since services by way of giving on hire, inter alia, to a goods transport agency, a means of transportation of goods are exempt.



CHAPTER - 6**TIME OF SUPPLY****CHAPTER OVERVIEW****6.1 INTRODUCTION**

GST is payable on supply of goods or services. A supply consists of elements that can be separated in time, like purchase order / agreement, dispatch (of goods), delivery (of goods) or provision or performance of service, entry in the records, payment, and entry of the payment in the records or deposit in the bank.

So, the question that arises is - at what point of time in the aforesaid transaction, the GST becomes payable? Does it become payable when an agreement to supply goods or services is made, or when the goods are shipped or the services are provided, or when the invoice is issued or when payment is made?

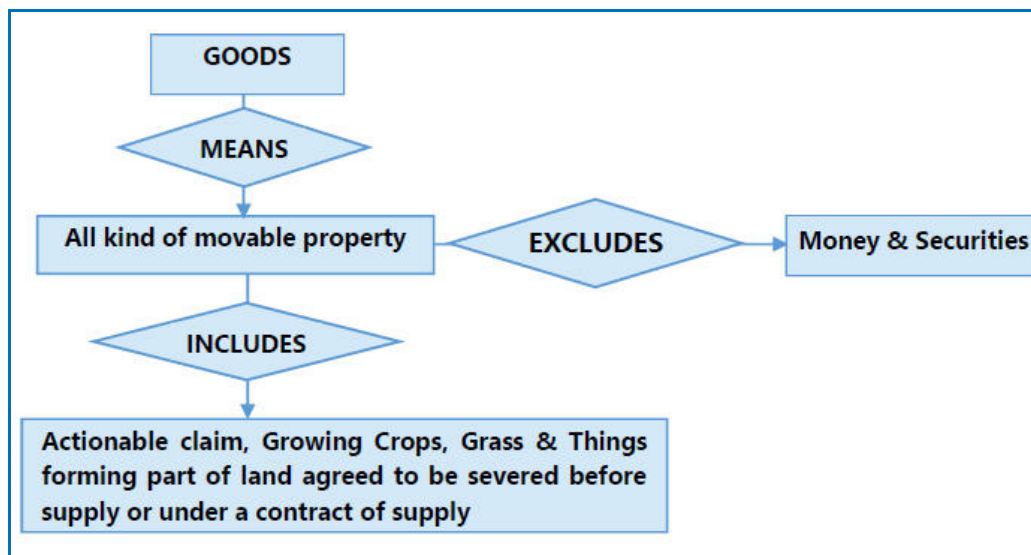
**Point in time
when the
liability
to pay tax arises**

- What if the goods are shipped over a period of time? What if the service is provided over a period of time? Provisions relating to 'time of supply' provide answers to all such and other questions that arise with respect to the time when the liability to pay CGST and SGST/UTGST (intra-State supply) or IGST (inter-State supply) arises. In other words, time of supply indicates the point in time when the liability to pay tax arises. It is important to note here that though the liability to pay tax arises at the time of supply, the same can be paid to the Government by the due dates prescribed with reference to the said 'time of supply'. For instance, if time of supply of a given supply is 25th May, the tax leviable thereon would be payable latest by 20th June, which is the due date prescribed in the CGST Act for suppliers filing GST return on monthly basis.
- The CGST Act provides separate provisions for time of supply for goods and services vide sections 12 and 13 respectively. Section 14 provides for the method of determining the time of supply in case there is a change in the rate of tax on supply of goods or services. Sections 12 and 13 employ the provisions of section 31 relating to issue of tax invoice as a reference point. Therefore, it will be useful to read this Chapter in conjunction with the provisions relating to tax invoice discussed in detail in Chapter 10: Tax Invoice, Credit and Debit Notes in Module 2 of this Study Material.
- Events like issue of invoices, receipt of payment, provision of service, receipt of services as recorded in books of account need to be analysed to determine the time of supply when the tax on supply is payable under forward charge. When the tax on supply is payable under reverse charge, events like date of receipt of goods or services, date of making payment, date of issue of invoice etc. need to be analysed to determine the time of supply. The provisions relating to time of supply essentially fix the tax collection event to the earliest possible time.
- In the subsequent pages of this Chapter, sections 12 and 13 are extracted, followed by their analysis, to understand how to determine the time of supply of goods and services respectively. When studying the statutory provisions, the definitions (extracted first) must also be referred to simultaneously, so as to understand the precise meaning of the terms used.

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

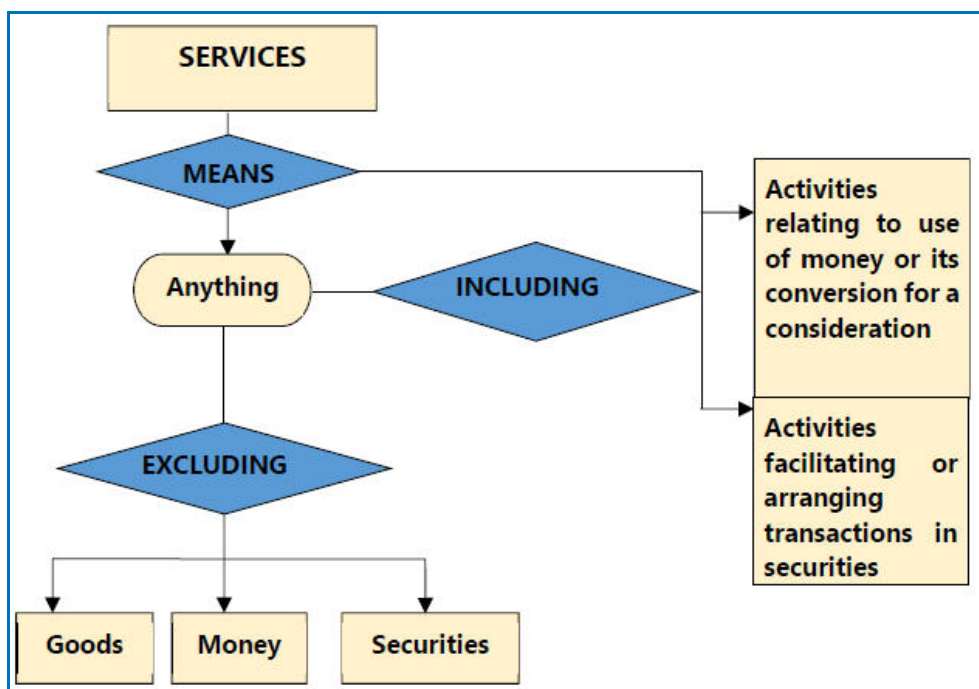
6.2 RELEVANT DEFINITIONS

- **Associated enterprises** shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961 [Section 2(12)].
Broadly, an associated enterprise in relation to another enterprise, means an enterprise which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.
- **Document** includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000 [Section 2(41)].
- **Invoice or tax invoice** means the tax invoice referred to in section 31 [Section 2(66)].
- **Goods** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply [Section 2(52)].
- **Prescribed** means prescribed by rules made under this Act on the recommendations of the Council [Section 2(87)].



- **Reverse charge** means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under subsection (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act [Section 2(98)].
- **Services** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

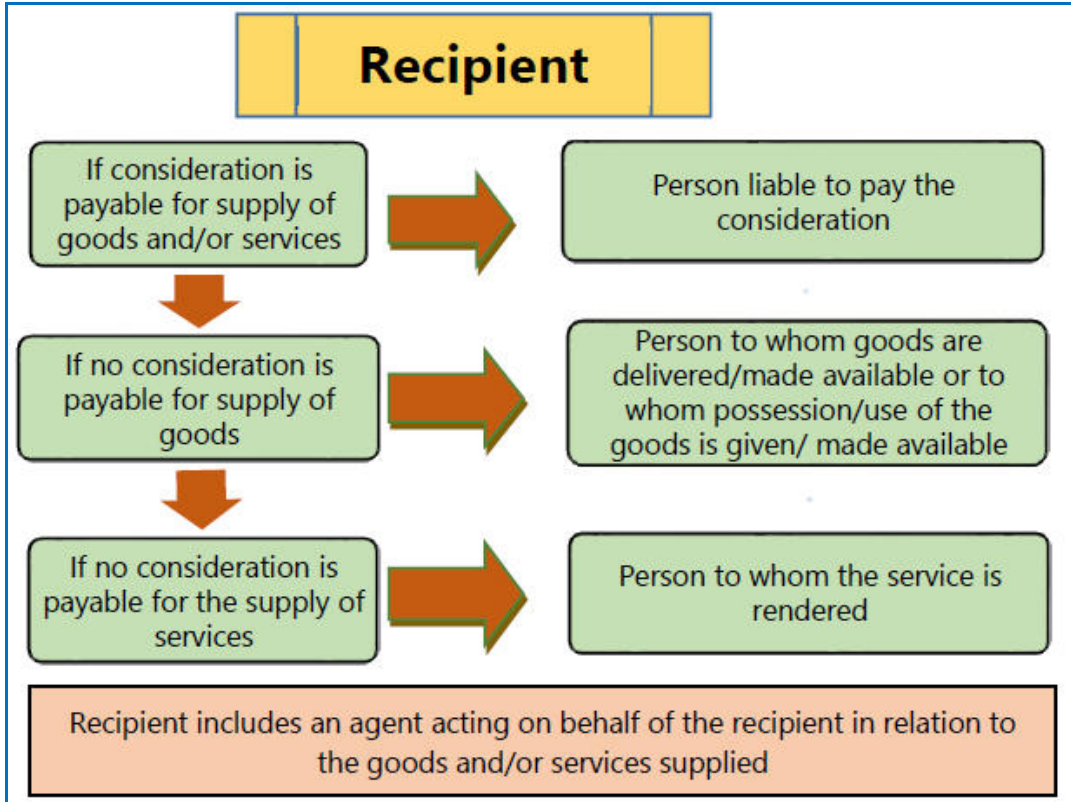
Explanation.--For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities [Section 2(102)].



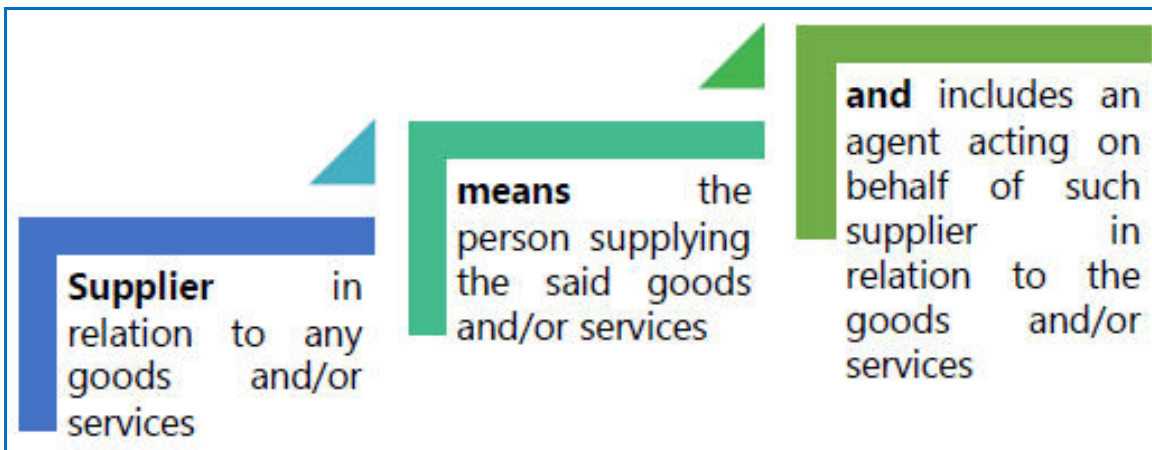
- **Recipient** of supply of goods or services or both, means—
 - (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered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

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

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



- **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].



- **Voucher** means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument [Section 2(118)].

6.3 TIME OF SUPPLY OF GOODS [SECTION 12]

STATUTORY PROVISIONS

Section 12	Time of supply of goods	
Sub-section	Clause	Particulars
(1)		The liability to pay tax on goods shall arise at the time of supply as determined in terms of the provisions of this section.
(2)		The time of supply of goods shall be the earlier of the following dates, namely:-
	(a)	the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or
	(b)	the date on which the supplier receives the payment with respect to the supply ³ :
		Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.
		Explanation 1. For the purposes of clauses (a) and (b), the “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.
		Explanation 2. For the purpose of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.
(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 following dates, namely:
	(a)	the date of the receipt of the goods, or
	(b)	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
	(c)	the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:
		Provided that where it is not possible to determine the time of supply under clause (a), (b), or (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.
(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.
(5)		Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall--

Section 12	Time of supply of goods	
Sub-section	Clause	Particulars
	(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.
(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.	
Section 31 (Relevant Extract)	Tax invoice (to the extent relevant to the time of supply of goods)	
(1)	A registered person supplying taxable goods shall, 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,
	issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:	
	Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.	
(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.	
(7)	Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.	

Section 12 must be read with section 31, which prescribes in detail the date on which tax invoice for a supply of goods must be issued in various situations.

ANALYSIS

Section 12 provides for the determination of time of supply in the following situations:

- Supply of goods under forward charge;
- Supply of goods under reverse charge;
- Supply of vouchers that can be used to pay for goods;
- Residual cases;
- Addition to value of supply of goods by way of interest or late fee or penalty for delayed payment.

We consider below how the time of supply is determined in each of these situations.

(i) Time of supply of goods under forward charge [Section 12(2) read with section 31]

As per section 12(2), the time of supply of goods that are taxable under forward charge, is the earlier of the following two dates:

- Date of issue of invoice by the supplier or the last date on which the invoice ought to have been issued in terms of section 31, to the extent the invoice covers the supply of goods; or
- Date of receipt of payment by the supplier, to the extent the payment covers the supply of goods.

Tax not payable at the time of receipt of advance for supply of goods –

Special procedure for payment of tax in case of supply of goods

Notification No. 66/2017 CT dated 15.11.2017 specifies that a registered person (excluding composition supplier) should pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

In simple words, all taxpayers under forward charge (except composition suppliers) are not required to pay GST at the time of receipt of advance in relation to supply of goods. The entire GST shall become payable only when the invoice for the supply of such goods is issued or ought to have been issued. **Thus, time of supply of goods for the purpose of payment of tax is the date of issue of invoice or the last date when the invoice ought to have been issued under section 31.**

Example 1 : A Ltd. enters into an agreement with B Ltd. to supply 100 kg of raw material. However, A Ltd. supplies only 80 kg of raw material and issues the invoice for the same. Here, the supply would be deemed to have been made in respect of 80 kg of raw material, i.e. to the extent covered by the invoice. Therefore, the provisions relating to time of supply will only be applicable to supply of 80 kg of raw material and not for entire 100 kg of raw material.

★ The relief of not paying GST at the time of receipt of advance is available only in case of supply of goods and not for supply of services.

Meaning of “Date of receipt of payment”

“Date of receipt of payment” in the above situation refers to the date on which the payment is recorded in the books of account of the entity (supplier of goods) that receives the payment, or the date on which the payment is credited to the entity’s bank account, whichever is earlier.

Significance of “to the extent the invoice or payment covers the supply of goods”

Suppose a part of the consideration is paid in advance or invoice is issued for part payment, in such cases the time of supply will not cover the full supply. The supply shall be deemed to have been made only to the extent it is covered by the invoice or the part advance payment.

However, it may be noted that in case of goods (except for composition supplier), tax is payable only on the basis of issuance of invoice/last date for the purpose of issuance of invoice even if any advance or part payment has been received before the issuance of invoice/last date for the purpose of issuance of invoice.

Time limit for issuance of invoice for supply of goods under section 31

Section 12(2) refers to the last date on which a supplier is required to issue the invoice under section 31. Following are the relevant provisions of section 31 in this regard.

- As per section 31(1), the invoice needs to be issued either **before** or **at the time** of removal of goods (where supply involves movement of goods) or delivery of goods/ making goods available to recipient (in any other case).
- In case of continuous supply of goods, the invoice should be issued **before** or **at the time** of issuance of periodical statement/receipt of periodical payment [Section 31(4)].

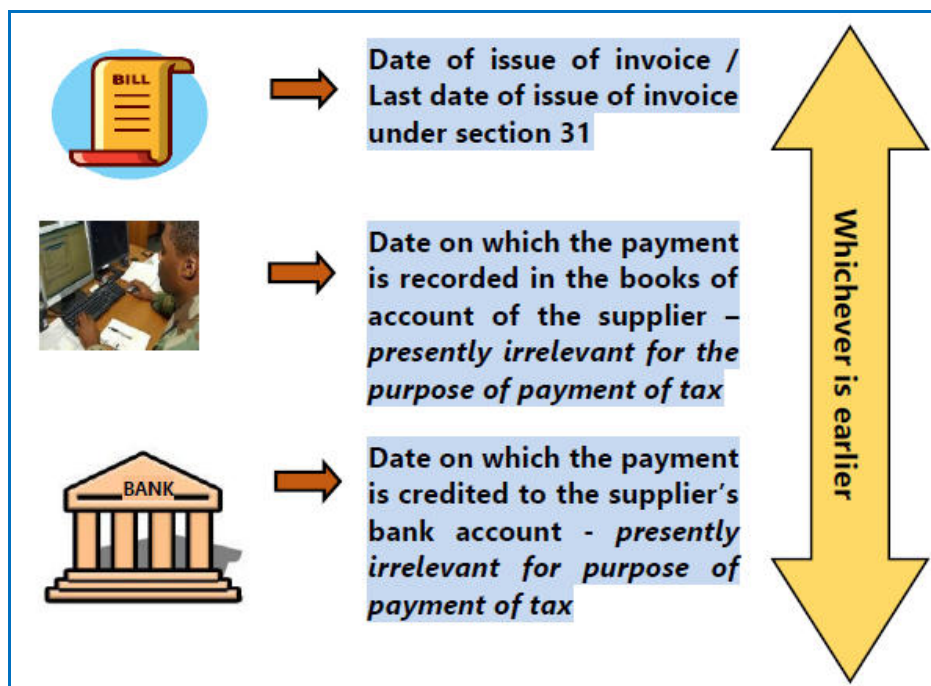
Continuous supply of goods is a supply of goods provided or agreed to be provided continuously or on recurring basis, under a contract, and for which the supplier issues an invoices to the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify [Section 2(32)]. The said term has been discussed in Chapter 10: Tax Invoice; Credit and Debit Notes in Module 2 of this Study Material.

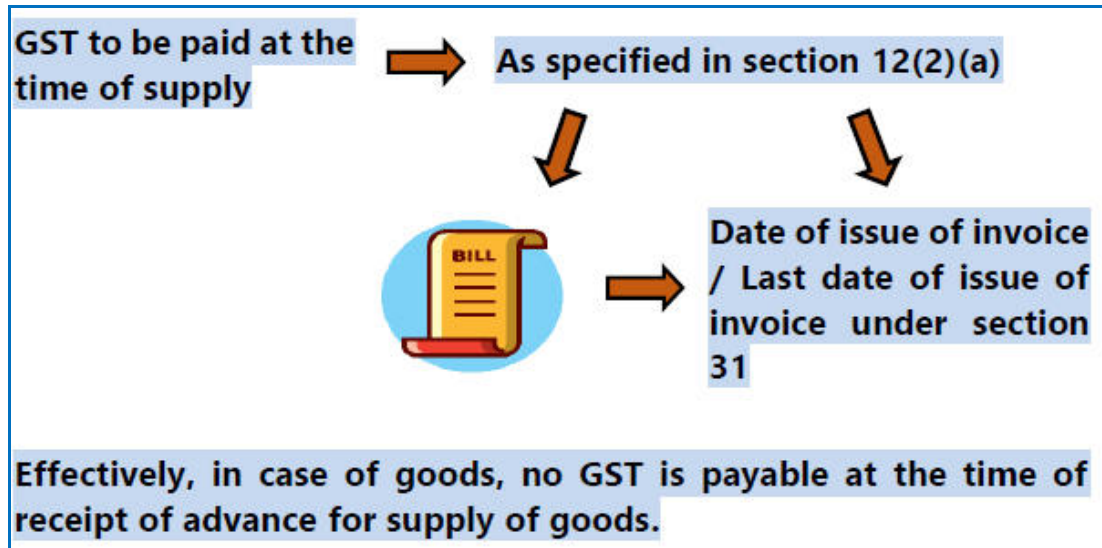
- In case of goods sent or taken on approval for sale or return, invoice should be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier [Section 31(7)].

Example 2 : Sphinx Pvt. Ltd. enters into a contract for supply of 100 office chairs @ ₹ 15,000 with Joy Sales on 21st August. Chairs are removed from the warehouse of Sphinx Pvt. Ltd. on 5th September along with the invoice issued on same date. Joy Sales has paid 30% of the total contract value on 21st August; balance 70% is paid after delivery of chairs on 10th September. Since the invoice is issued on the date of removal of goods, it is issued within the prescribed time limit and hence, time of supply for payment of tax on entire contract value of ₹ 15,00,000 is the date of issue of invoice, i.e. 5th September. No GST will be payable at the time of receipt of advance of ₹ 4,50,000 received on 21st August.

The provisions relating to time of supply of goods as contained in section 12 in case of forward charge read with Notification No. 66/2017 CT dated 15.11.2017, have been depicted by way of a diagram given below:

TIME OF SUPPLY OF GOODS UNDER FORWARD CHARGE AS PER SECTION 12



SPECIAL PROCEDURE FOR PAYMENT OF TAX IN CASE OF GOODS**ILLUSTRATION 1**

A machine has to be supplied at site. It is done by sourcing various components from vendors and assembling the machine at site. The details of the various events are:

17 th September	Purchase order with advance of ₹ 50,000 is received for machine worth ₹ 12 lakh and entry duly made in the seller's books of account
20 th October	The machine is assembled, tested at site, and accepted by buyer
23 rd October	Invoice raised
4 th November	Balance payment of ₹ 11,50,000 received

Determine the time of supply(ies) in the above scenario for the purpose of payment of tax.

ANSWER

As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a) i.e., date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

Therefore, the time of supply for the purpose of payment of tax for the entire amount of ₹ 12,00,000 is 20th October which is the date on which the goods were made available to the recipient as per section 31(1)(b), and the invoice should have been issued by this date [Section 12(2)(a)].

ILLUSTRATION 2

Gas is supplied by a pipeline to the recipient. The supply is to be made for a period of one year. Monthly payments are to be made by the recipient as per the contract. The details of the payment made are:

July 5, August 5, September 5	Payments of ₹ 2 lakh made in each month
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Determine the time of supply for the purpose of payment of tax.

ANSWER

As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31. As per section 31(4), in case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice is issued before or at the time of each such statement is issued or, as the case may be, each such payment is received. Therefore, invoices should be issued for ₹ 2 lakh each on or before July 5, August 5 and September 5, when monthly payments of ₹ 2 lakh are received.

Thus, assuming that the invoice is issued on July 5, August 5 and September 5, the time of supply for the purpose of payment of tax will be July 5, August 5 and September 5 respectively for goods valued at ₹ 2 lakh each.

Questions 1 :

Bajrang Pvt. Ltd. agreed to supply goods to Bhagirathi Pvt. Ltd. for ₹ 1,50,000 on 23rd June. Next day, it removed the goods from its factory and issued the invoice on 25th June. Payment for the goods is made by Bhagirathi Pvt. Ltd. on 15th July. The time of supply of goods is ____.

- (a) 23rd June (b) 24th June
(c) 25th June (d) 15th July

Questions 2 :

Hanuman Pvt. Ltd. agreed to supply toys to Ganga Pvt. Ltd. for ₹ 1,50,000 on 23rd June and received an advance of ₹ 1,00,000 on the same day. Next day, it removed the toys from its factory and issued the invoice on 25th June. Balance payment of ₹ 50,000 was made by Ganga Pvt. Ltd. on 15th July. The time of supply of the advance of ₹ 1,00,000 and balance payment of ₹ 50,000 shall be _____ and _____.

- (a) 23rd June; 15th July (b) 24th June ; 24th June
(c) 25th June; 25th June (d) 15th July; (d) 15th July

Excess payment upto ₹ 1000: Option of taking invoice date as time of supply

In terms of the proviso to sub-section (2) of section 12, for a payment of up to ₹ 1,000 received in excess of the value of the goods invoiced, the supplier can choose to take the date of invoice issued with respect to such excess amount as the time of supply of goods for such excess value.

Since, GST on supply of goods is payable only on the basis of issuance of invoice, this provision is practically irrelevant for supply of goods.

If neither the date of invoice nor the date of payment is available, the time of supply is determined in terms of the residual provisions under subsection (5) of section 12 [discussed under point (iv)].

(ii) Time of supply of goods under reverse charge [Section 12(3)]

The time of supply of goods on which GST is payable on reverse charge basis under sub-sections (3) and (4) of section 9 of CGST Act is determined in terms of section 12(3)(a), (b) and (c), as follows:

The time of supply for such goods will be the earliest of the following dates:

- Date on which the goods are received, or
- Date on which payment is recorded in the books of account of the recipient, or the date on which the same is debited in his bank account, whichever is earlier, or
- Date immediately following 30 days from the date of issue of invoice (or document by some other name in lieu of invoice) by the supplier.

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of goods in the books of account of the recipient of supply.

★ The relief of not paying GST at the time of receipt of advance in case of supply of goods, is available only when the tax 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).

The provisions relating to time of supply of goods in case of reverse charge are depicted by way of a diagram given at next page.

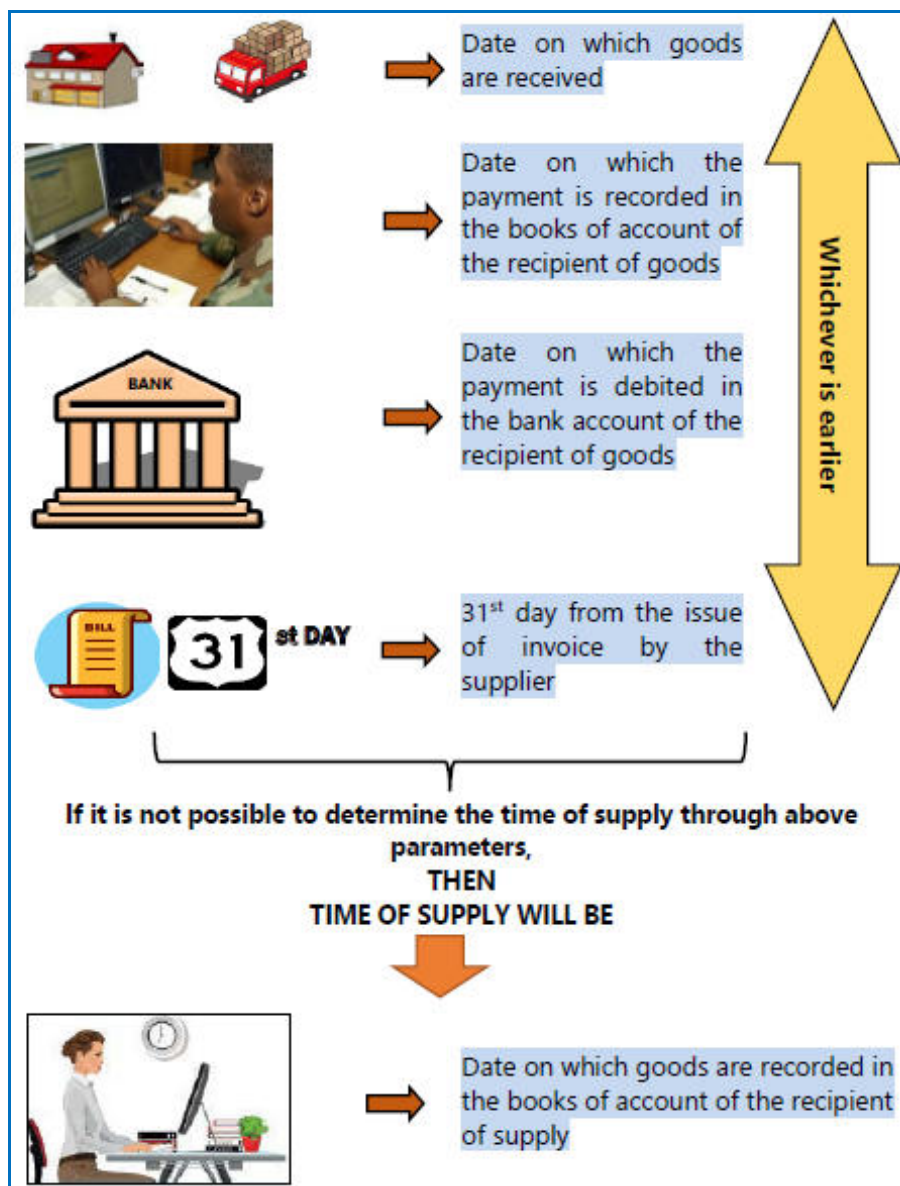


ILLUSTRATION 3

Determine the time of supply from the given information.

May 4	Supplier invoices goods taxable on reverse charge basis to Bridge & Co. (30 days from the date of issuance of invoice elapse on June 3)
May 12	Bridge & Co receives the goods
May 30	Bridge & Co makes the payment

ANSWER

Here, May 12 will be the time of supply, being the earliest of the three stipulated dates namely, receipt of goods, date of payment and date immediately following 30 days of issuance of invoice [Section 12(3)]. (Here, date of invoice is relevant only for calculating thirty days from that date.)

ILLUSTRATION 4

Determine the time of supply from the given information.

May 4	Supplier invoices goods taxable on reverse charge basis to Pillar & Co. (30 days from the date of issuance of invoice elapse on June 3)
June 12	Pillar & Co receives the goods, which were held up in transit
July 3	Payment made for the goods

ANSWER :

Here, June 4, 31st day from the date of supplier's invoice, will be the time of supply, being the earliest of the three stipulated dates namely, receipt of goods, date of payment and date immediately following 30 days of issuance of invoice [Section 12(3)].

Questions 3 :

Determine the time of supply of goods with the help of the information provided below: May 11 Supplier – Dhriti Enterprises – issues invoice for the goods taxable on reverse charge basis to Parminder Constructions Ltd.

May 12 Parminder Constructions Ltd. receives the goods

May 30 Parminder Constructions Ltd. issues a cheque and records payment in its books of accounts

May 31 Payment is debited from the bank account of Parminder Constructions Ltd.

June 1 Payment is credited in bank account of Dhriti Enterprises

June 2 Payment is recorded in the books of Dhriti Enterprises

(a) May 12 (b) May 30

(c) June 11 (d) June 1

(iii) Time of supply of vouchers exchangeable for goods [Section 12(4)]

As commonly understood, vouchers are instruments that can be exchanged as payment for goods or services of the designated value. As per the definition, vouchers are instruments, that certain persons (potential suppliers) are obliged to accept as consideration, part or full, against supply of goods and/or services. The instrument or its related documentation sets out the terms and conditions of use, the goods and/or services covered, and the identity of the potential suppliers of such goods and/or services.

As per section 12(4), the time of supply of vouchers exchangeable for goods is-

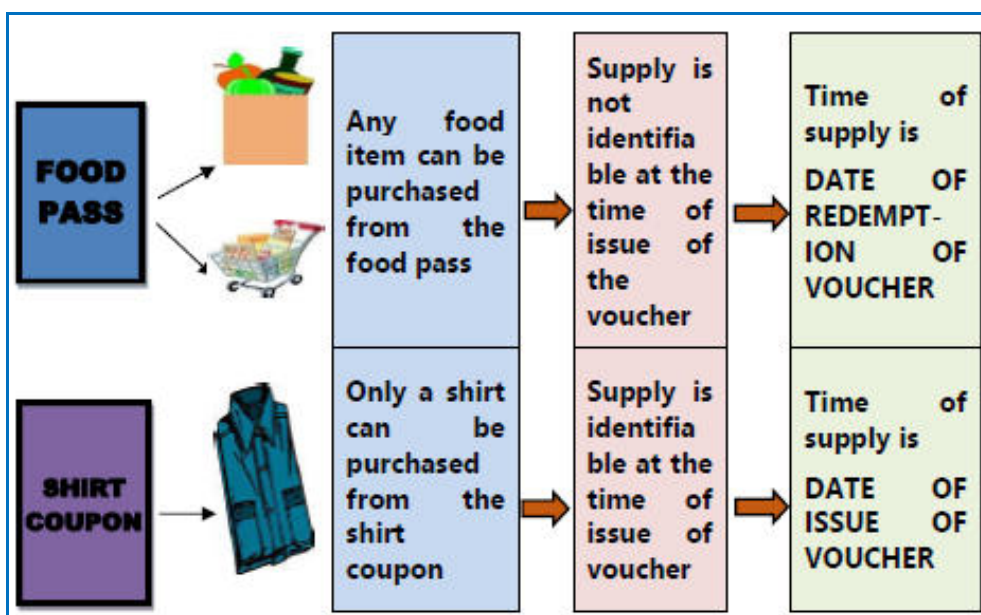
- Date of issue of the voucher, if the supply that it covers is identifiable at that point, or
- Date of redemption of the voucher in other cases.

The provisions relating to time of supply of vouchers exchangeable for goods are depicted by way of diagram given below :

Example 3 : Acme sales Limited sells food coupons to a company. The company gives these coupons to its employees as part of the agreed perquisites. The coupons can be redeemed for purchase of any item of food /provisions in the outlets that are part of the program.

As the supply against which the coupon will be redeemed is not known on the date of the sale of the coupon, the time of supply of the coupon will be the date on which the employee redeems it against food / provision items of his choice.

Example 4 : With each purchase of a large pizza during the Christmas week from Perfect Pizza, one can buy a voucher for ₹ 20 which will be redeemable till 5th Jan for a small pizza. As the supply against which the voucher will be redeemed is known on the date of issue of the vouchers, the time of supply is the date of issue of the voucher.

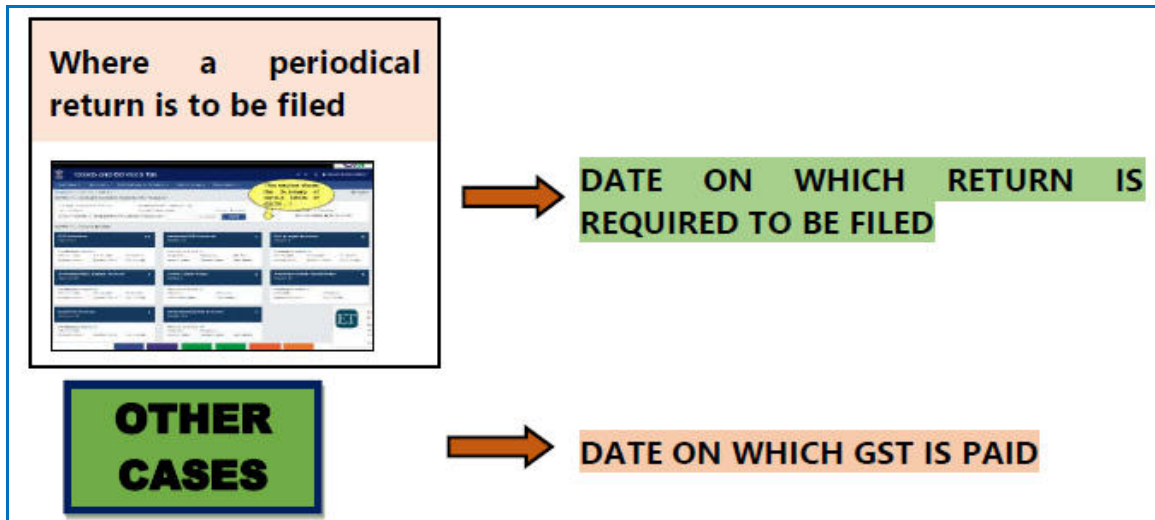
TIME OF SUPPLY OF VOUCHERS EXCHANGEABLE FOR GOODS

(iv) Time of supply of goods in residual cases [Section 12(5)]

If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 12, in the following manner:

- Due date for filing of the periodical return, or
- In any other case, date on which GST is paid.

The provisions relating to time of supply of goods in residual cases are depicted by way of diagram given at next page.

TIME OF SUPPLY OF GOODS IN RESIDUAL CASES**(v) Time of supply in case of enhancement in value on account of interest/late fee etc. for delayed payment of consideration [Section 12(6)]**

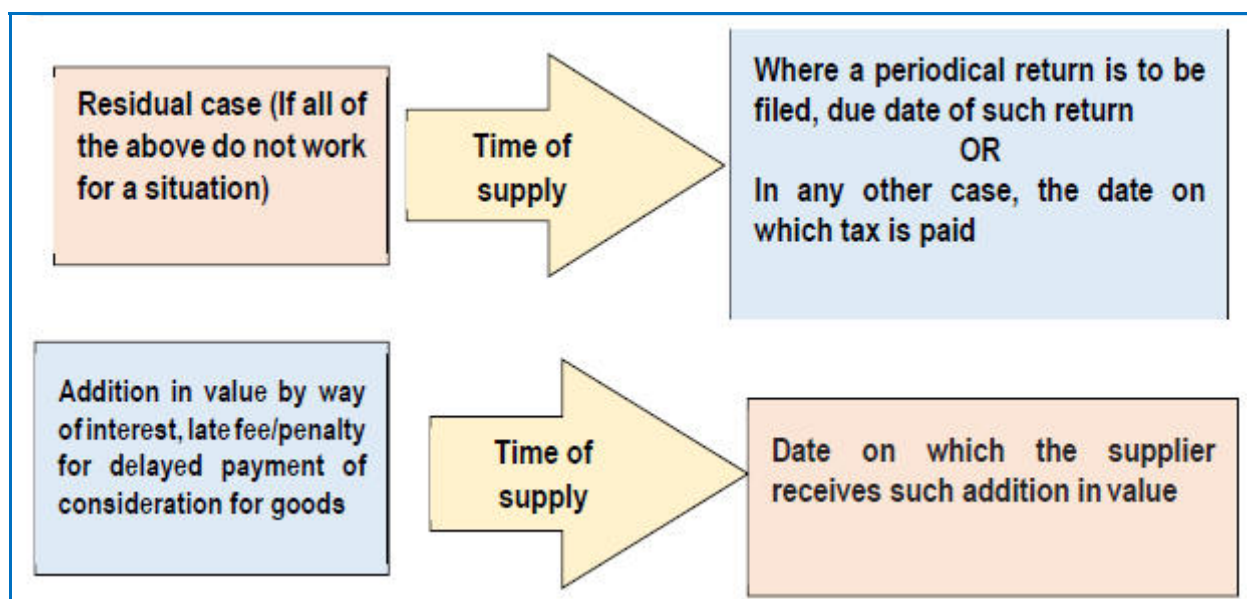
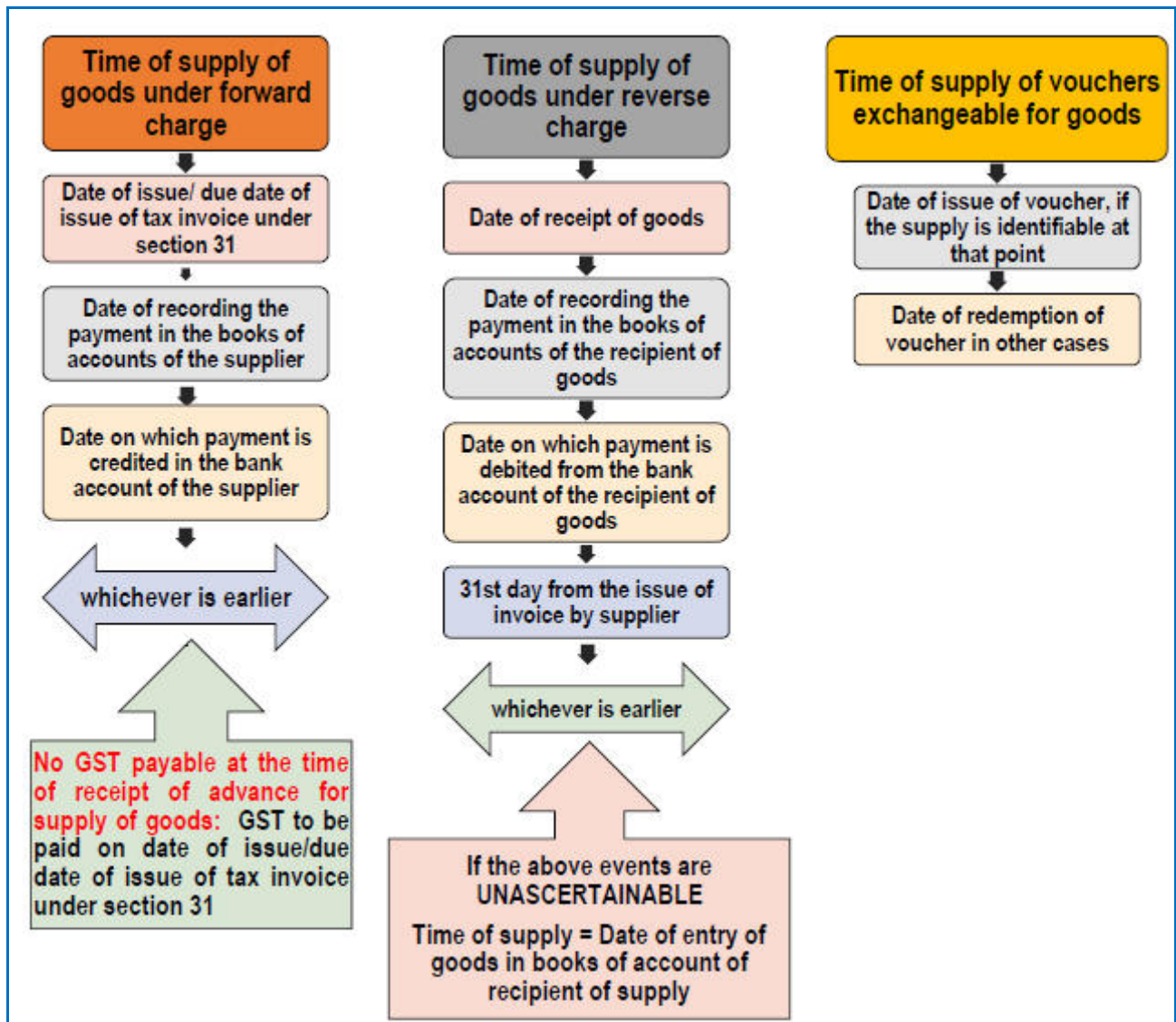
Commercially, most of the contracts of supplies stipulate payment of interest/late fee/penalty etc. in case of payment of consideration beyond the agreed time period. Such interest/late fee/penalty etc. is includible in value of taxable supply [This concept has been discussed in detail in Chapter 7 - Value of Supply in this Module of the Study Material]. So, the point to consider here is that when the liability to pay GST would arise in such cases of addition in value.

Section 12(6) prescribes that time of supply in case of addition in value on account of interest/late fee/penalty for delayed payment of consideration for goods is the date on which the supplier receives such addition in value.

Example 5 : Radha Traders sold goods to Shyam Sales on 6th June with a condition that interest @ 2% per month will be charged if Shyam Sales failed to make payment within 15 days of the delivery of the goods. Goods were delivered alongwith the invoice, on 6th June. Shyam Sales paid the consideration for the goods on 6th July along with applicable interest.

Time of supply for the goods sold is the date of issue of invoice i.e., 6th June and the time of supply for addition in value by way of interest is the date when such addition in value is received by Radha Traders i.e., 6th July.

The provisions relating to time of supply of goods as contained in section 12 are summarised in the diagram given below:



6.4 TIME OF SUPPLY OF SERVICES [SECTION 13]**STATUTORY PROVISIONS**

Section 13	Time of supply of services	
Sub-section	Clause	Particulars
(1)		The liability to pay tax on services shall arise at the time of supply, as determined in terms of the provisions of this section.
(2)		The time of supply of services shall be the earliest of the following dates, namely:-
	(a)	the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
	(b)	the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
	(c)	the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:
		Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.
		Explanation - For the purposes of clauses (a) and (b) -
	(i)	the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.
	(ii)	“the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.
(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 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 sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:
		Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:
		Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.
(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;

Section 13		Time of supply of services
Sub-section	Clause	Particulars
(5)		Where it is not possible to determine the time of supply of services under the provisions of sub-section (2) or sub-section (3) or subsection (4), 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.
(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.
Section 31	Tax invoice (to the extent relevant to time of supply of services)	
(2)		A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:
		Provided that the Government may, on the recommendations of the Council, by notification,—
	(a)	specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;
	(b)	subject to the condition mentioned therein, specify the categories of services in respect of which—
	(i)	any other document issued in relation to the supply shall be deemed to be a tax invoice; or
	(ii)	tax invoice may not be issued.
(5)		Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—
	(a)	where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
	(b)	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;
	(c)	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.
(6)		In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.
Chapter VI: Tax Invoice, Credit and Debit Notes of CGST Rules		
Rule 47	Time limit for issuing tax invoice	
	The invoice referred to in rule 46, in case of taxable supply of services, shall be issued within a period of thirty days from the date of supply of service:	

Section 13	Time of supply of services	
Sub-section	Clause	Particulars
		Provided that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty five days from the date of supply of service:
		Provided further that an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

Section 13 must be read with section 31 and rule 47 of CGST Rules, which prescribe in detail the date on which tax invoice for a supply of service must be issued in various situations.

ANALYSIS :

Section 13 provides for the determination of the time of supply in the following situations:

- Supply of service taxable under forward charge,
- Supply of service taxable under reverse charge,
- Supply of vouchers that can be used to pay for services,
- Residual cases,
- Addition to value of supply of services by way of interest or late fee or penalty for delayed payment.

Below, we shall consider these in detail:

(i) Time of supply of service under forward charge [Section 13(2) read with section 31 and rule 47 of CGST Rules]

For supply of service on which the supplier is liable to pay tax, the time of supply will be the earlier of the dates arrived at by methods (A) and (B), as follows:

- (A) Date of issue of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services), whichever is earlier, if the invoice is issued within the time prescribed under section 31;
- (B) Date of provision of service or date of receipt of payment (to the extent the payment covers the supply of services), whichever is earlier, if the invoice is not issued within the time prescribed under section 31,

If the above two methods [(A) and (B)] are not applicable, the time of supply will be the date on which the recipient of service shows receipt of the service in his books of account.

Meaning of “date of receipt of payment”

“Date of receipt of payment” in the above situation refers to the date on which the payment is recorded in the books of account of the supplier that receives the payment, or the date on which the payment is credited to the supplier’s bank account, whichever is earlier.

Significance of “to the extent the invoice or payment covers the supply of services”

Suppose a part of the consideration is paid in advance or invoice is issued for part payment, the time of supply will not cover the full supply. The supply shall be deemed to have been made to the extent it is covered by the invoice or the part payment and time of supply shall be determined accordingly.

The provisions relating to time of supply of services in case of forward charge can be depicted by way of a diagram given earlier in this chapter.

Time limit for issuance of invoice for supply of services under section 31

The criteria to determine the time of supply of services depend upon whether the invoice is issued within the time prescribed under section 31. Following are the relevant provisions in this regard:

- As per section 31(2) read with rule 47 of CGST Rules, the tax invoice needs to be issued either before the provision of service or within 30 days (45 days in case of insurance companies/ banking companies/ financial institutions including NBFCs) from the date of supply of service.
- In case of insurance companies/ banking companies/ financial institutions including NBFCs/ telecom companies/ notified supplier of services making taxable supplies between distinct persons as specified in section 257, invoice may be issued before or at the time of recording such supply in the books of account or before the expiry of the quarter during which the supply was made [Second proviso to rule 47].
- In case of continuous supply of services, the invoice should be issued either:
 - (i) on/ before the due date of payment - where the due date of payment is ascertainable from the contract or
 - (ii) before/ at the time when the supplier of service receives the payment - where the due date of payment is not known
 - (iii) on/ before the date of completion of the milestone event – where the payment is linked to completion of an event [Section 31(5)].

Continuous supply of services are provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding 3 months with periodic payment obligations and includes supply of such services as the Government may notify [Section 2(33)].

The said term has been discussed in Chapter 10: Tax Invoice; Credit and Debit Notes in Module 2 of this Study Material.

- In case of cessation of supply of services before completion of supply, the invoice should be issued at the time when the supply ceases to the extent of the supply made before such cessation. [Section 31(6)].

Example 6 : Mohit Khanna & Sons is a firm of management consultants. The firm enters into a contract with Spark Pvt. Ltd. on 1st September for providing consultancy services. Provision of service gets completed on 15th September. Invoice for the service is issued on 20th September and payment is received on 10th October. Since invoice is issued within 30 days from the date of supply of service, time of supply is the date of issue of invoice, i.e. 20th September being earlier than the date of receipt of payment.

Example 7 : If in the above example, invoice is issued on 25th October, the time of supply will be the date of provision of service, i.e. 15th September being earlier than the date of receipt of payment. This would be so as the invoice is not issued within 30 days from the date of supply of service.

ILLUSTRATION 5

Determine the time of supply from the following particulars:

6 th May	Booking of convention hall, sum agreed ₹ 15000, advance of ₹ 3000 received
15 th September	Function held in convention hall
27 th October	Tax invoice issued for ₹ 15000, indicating balance of ₹ 12000 payable
3 rd November	Balance payment of ₹ 12000 received

ANSWER

As per section 31(2) read with rule 47 of CGST Rules, the tax invoice is to be issued within 30 days of supply of service. In the given case, the invoice is not issued within the prescribed time limit. As per section 13(2)(b), in a case where the invoice is not issued within the prescribed time, the time of supply of service is the date of provision of service or receipt of payment, whichever is earlier.

Therefore, the time of supply of service to the extent of ₹ 3,000 is 6th May as the date of payment of ₹3000 is earlier than the date of provision of service. The time of supply of service to the extent of the balance ₹12,000 is 15th September which is the date of provision of service.

ILLUSTRATION 6

Investigation shows that ABC & Co carried out service of cleaning and repairs of tanks in an apartment complex, for which the Apartment Owners' Association showed a payment in cash on 4th April to them against work of this description. The dates of the work are not clear from the records of ABC & Co. ABC & Co have not issued invoice or entered the payment in its books of account.

ANSWER :

The time of supply cannot be determined vide the provisions of clauses (a) and (b) of section 13(2) as neither the invoice has been issued nor the date of provision of service is available as also the date of receipt of payment in the books of the supplier is also not available.

Therefore, the time of supply will be determined vide clause (c) of section 13(2) i.e., the date on which the recipient of service shows receipt of the service in his books of account.

Thus, time of supply will be 4th April, the date on which the Apartment Owners' Association records the receipt of service in its books of account.

Questions 4:

Determine time of supply of services and date of receipt of payment with the help of the information provided below :

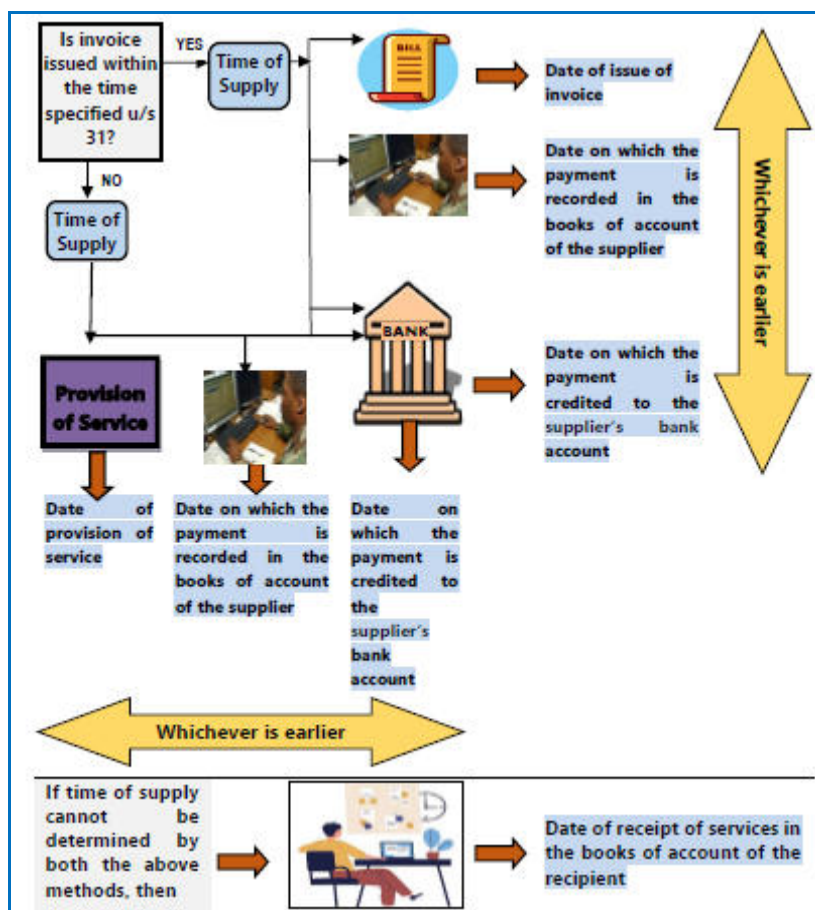
May 4	Supplier – Dhriti Enterprises – provides services taxable under forward charge to Parminder Constructions Ltd.
May 12	Parminder Constructions Ltd. issues invoice for the service
May 30	Parminder Constructions Ltd. issues a cheque and records payment in its books of accounts
May 31	Payment is debited from bank account of Parminder Constructions Ltd.
June 1	Payment is credited in the bank account of Dhriti Enterprises
June 2	Payment is recorded in the books of Dhriti Enterprises

(a) May 12; June 1

(b) May 30; May 30

(c) May 4; June 2

(d) May 31; June 2

TIME OF SUPPLY OF SERVICES UNDER FORWARD CHARGE :**Excess payment upto ₹ 1000: Option of taking invoice date as time of supply**

In terms of the proviso to sub-section (2) of section 13, for a payment of up to ₹ 1,000 received in excess of the invoice value, the supplier can choose to take the date of invoice issued with respect to such excess amount as the time of supply of services in relation to this excess value.

This provision facilitates the supplier to defer payment of tax on small amounts typically received by him in excess of the invoice amount.

Example 8 : A telephone company receives ₹ 5000 against an invoice of ₹ 4800. The excess amount of ₹ 200 can be adjusted against next invoice. The company has the option to take date of next invoice as the time of supply of service in relation to the amount of ₹ 200 received in excess against earlier invoice of ₹ 4800.

(ii) Time of supply of services under reverse charge [Section 13(3)]

The time of supply of service on which GST is payable on reverse charge basis (except on services received from associated enterprises located outside India) under sub-sections (3) and (4) of section 9 is determined in terms of section 13(3)(a) and (b) as follows:

The time of supply for such service will be the earlier of the following:

- Date of payment, or
- Date immediately following 60 days from date of issue of invoice (or any other document in lieu of invoice) by the supplier.

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of the service in the books of account of the recipient of supply.

Meaning of “Date of payment”

“Date of payment” in the above situation refers to the date on which the payment is recorded in the books of account of the recipient of service, or the date on which the payment is debited from the recipient’s bank account, whichever is earlier.

Import of services between associated enterprises

In the case of service received from an associated enterprise located outside India, the time of supply will be the date of payment for the service, or the date of entry of the service in the books of account of the recipient, whichever is earlier.

The provisions relating to time of supply of services in case of reverse charge can be depicted by way of a diagram given on next page:

TIME OF SUPPLY OF SERVICES UNDER REVERSE CHARGE

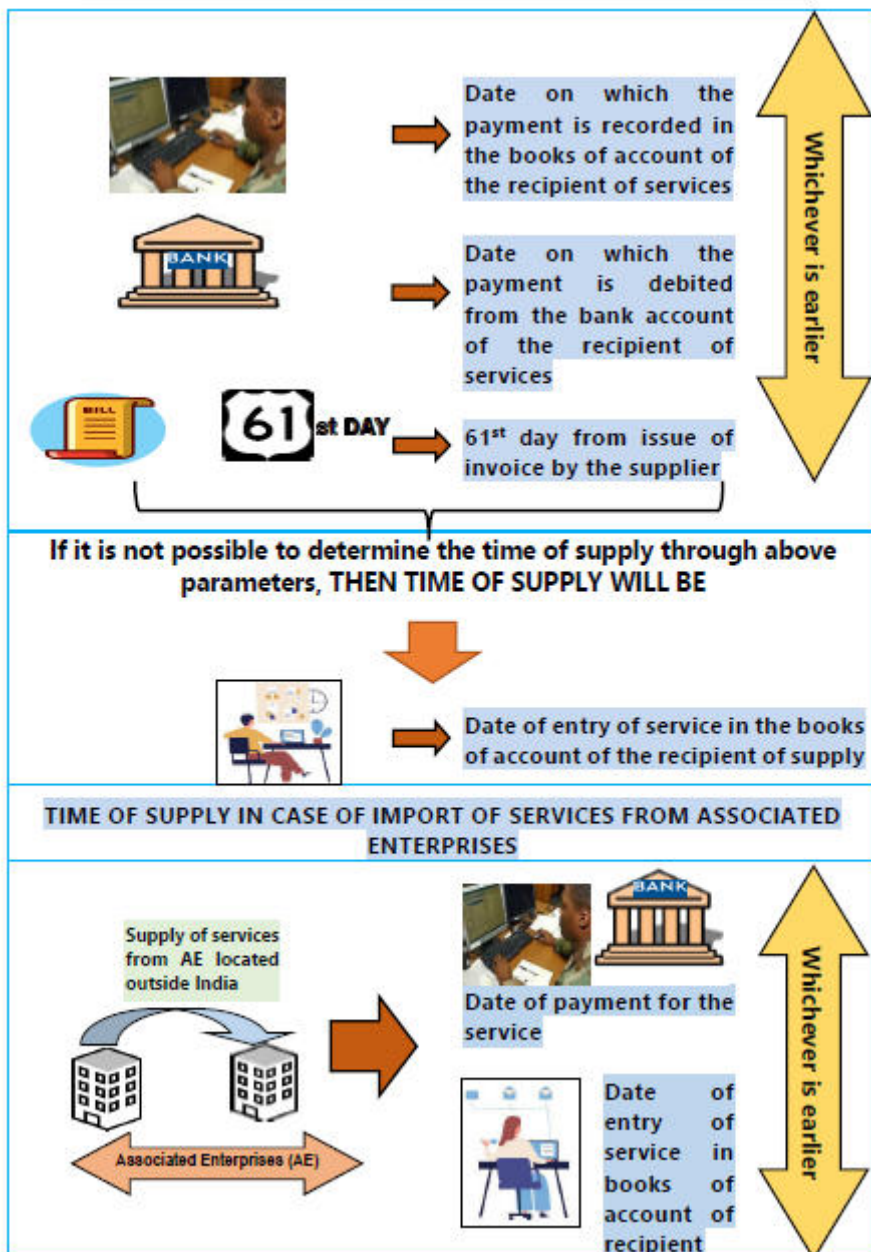


ILLUSTRATION 7

Determine the time of supply from the given information. (Assume that service being supplied is taxable under reverse charge)

May 4	The supplier of service issues invoice for service provided. There is a dispute about amount payable, and payment is delayed.
August 21	Payment made to the supplier of service

ANSWER

Here, July 4 will be the time of supply, being the earlier of the two stipulated dates namely, date of payment and the date immediately following 60 days from the date of issue of invoice.

ILLUSTRATION 8

Determine the time of supply from the given information.

May 4	A German company issues email informing its associated enterprise, ABC Ltd. of the cost of technical services provided to it, which was recorded in ABC Ltd.'s books on May 1
July 2	ABC Ltd transfers the amount to the account of the German company

ANSWER

Here, May 1 will be the time of supply, being the earlier of the two stipulated dates namely, date of entry in the books of account of the recipient of supply or the date of payment, in terms of second proviso to section 13(3).

(iii) Time of supply of vouchers exchangeable for services [Section 13(4)]

The term voucher has already been explained under the Heading "Time of Supply of Goods". The time of supply of vouchers that are exchangeable for services is stipulated as:-

- the date of issue of the voucher - if the supply is identifiable at that point, or
- the date of redemption of the voucher - in other cases.

Example 9 : Best Hospitality Services enters into agreement with Drive Marketing Ltd by which Drive Marketing Ltd. markets Best Hospitality Services' hotel rooms and sells coupons / vouchers redeemable for a discount against stay in the hotel. As the supply against which the voucher will be redeemed is identifiable, the time of supply of the voucher will be its date of issue.

Questions 5 :

Style Saloon Ltd. provides vouchers worth ` 1,000 valid for a period of 6 months to the customers who availed the services exceeding ` 10,000 in any month. The customers can redeem such vouchers for the hair styling services taken from Style Saloon Ltd. Mr. Dwarka availed services worth ` 12,000 on 3rd June from the saloon and is issued a voucher of ` 1,000 on 5th June. He redeems the voucher on 4th September for hair styling services from Style Saloon Ltd. The time of supply of voucher issued to Mr. Dwarka is _____.

- (a) 3rd June (b) 5th June
(c) 4th September (d) 5th December

(iv) Residual case [Section 13(5)]

If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 13, in the following manner:

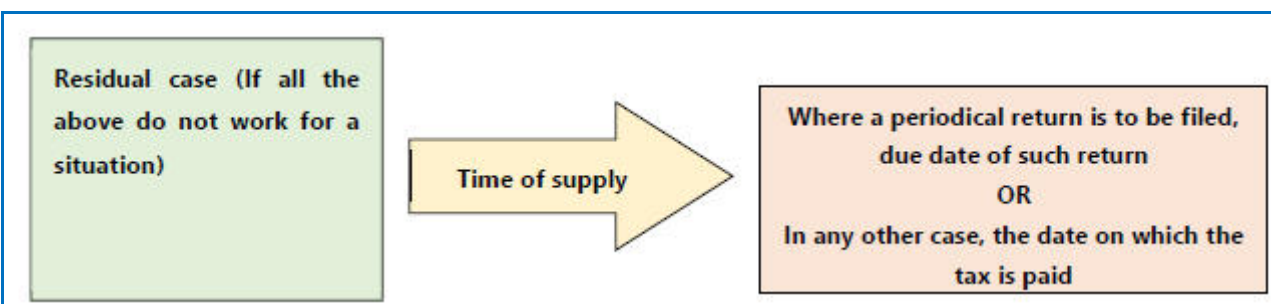
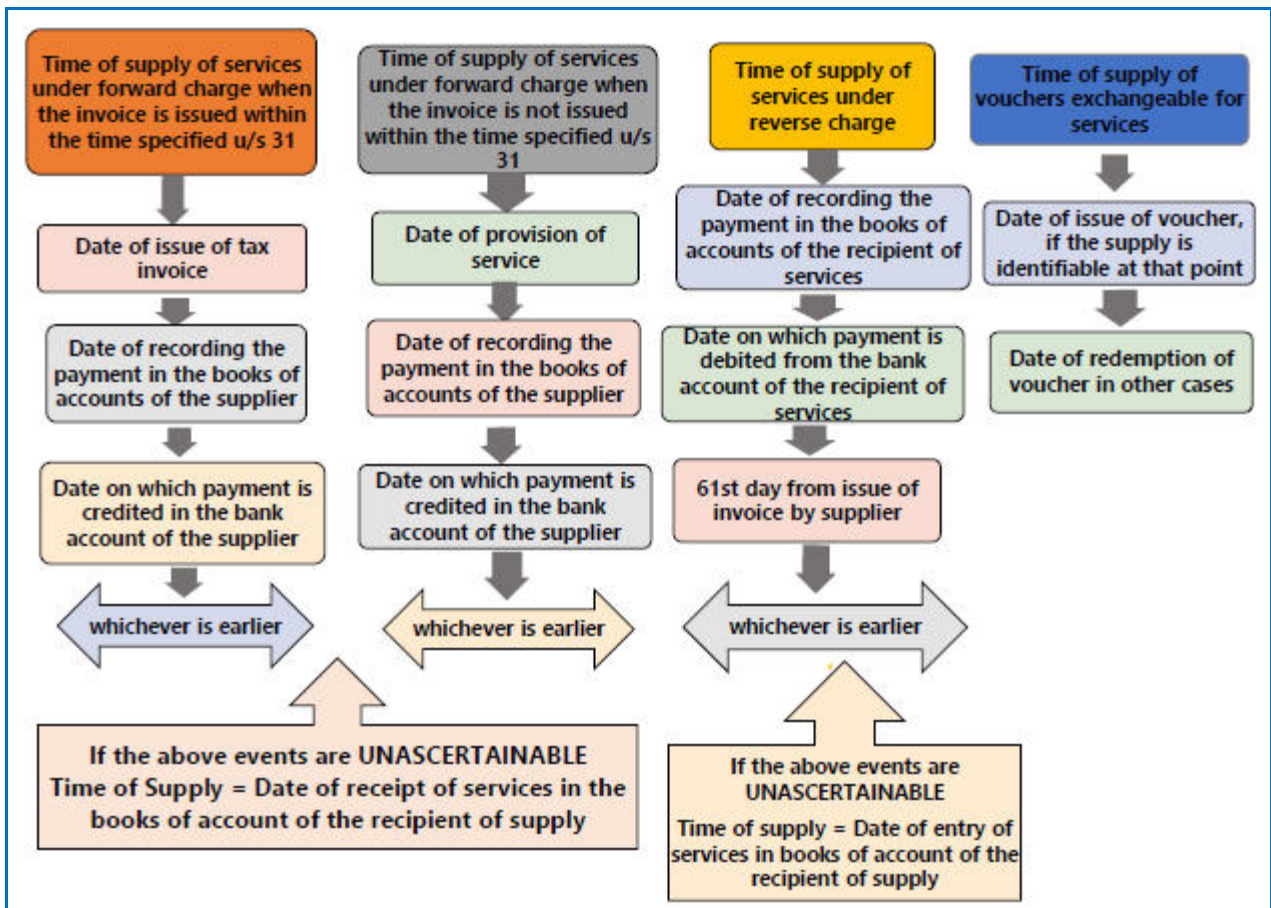
- Date on which periodical return for the period is required to be filed, or
- In any other case, date on which GST is paid.

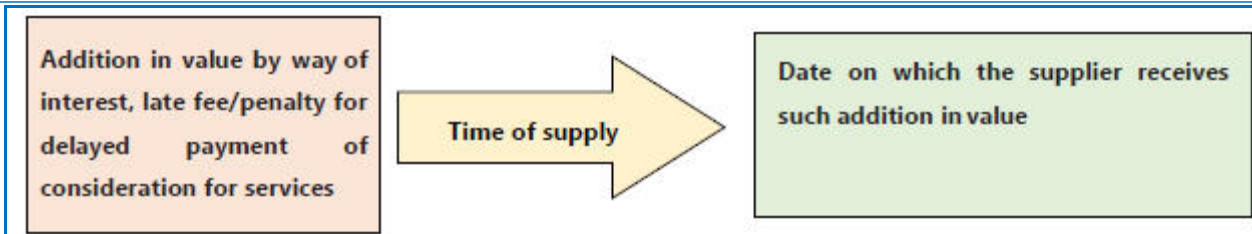
(v) Enhancement of value on account of interest/late fee etc. for delayed payment of consideration [Section 13(6)]

The provisions for time of supply in case of addition in value by way of interest, late fee/penalty for delayed payment of consideration are the same for goods and services.

Section 13(6) prescribes that time of supply in case of addition in value by way of interest/ late fee/penalty for delayed payment of consideration for a service is the date on which the supplier receives such addition in value.

The provisions relating to time of supply of services as contained in section 13 are summarised in the diagram given on the next page





LET US RECAPITULATE

The provisions relating to time of supply of goods and services can be better understood if the same are studied simultaneously appreciating the similarities and differences between the two. Therefore, such provisions have been summarised by way of a comparison table to help students remember and retain the provisions in a better and effective manner:

TIME OF SUPPLY WHERE TAX IS PAYABLE UNDER FORWARD CHARGE

Time of supply of goods [Section 12(2)]	Time of supply of services [Section 13(2)]
<p>Earliest of the following:</p> <p>(a) Date of issue of invoice by the supplier or the last date on which he is required under section 31, to issue the invoice with respect to the supply</p> <p>(b) Date on which the supplier receives the payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier) with respect to the supply</p> <p>No GST at the time of receipt of advance for supply of goods: In case of supply of goods by a registered person under forward charge (excluding composition supplier), GST is to be paid on the outward supply of goods on the date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31 [Notification No. 66/2017 CT dated 15.11.2017].</p>	<p>(a) Invoice issued within the time period prescribed under section 31</p> <p>Earliest of the following:</p> <ul style="list-style-type: none"> • Date of issue of invoice by the supplier • Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier) <p>(b) Invoice not issued within the time period prescribed under section 31</p> <p>Earliest of the following:</p> <ul style="list-style-type: none"> • Date of provision of service • Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier) <p>(c) When the above events are unascertainable</p> <ul style="list-style-type: none"> • Date on which the recipient shows the receipt of services in his books of account

TIME LIMIT FOR RAISING INVOICES

Supply of goods [Section 31(1)]	Supply of services [Section 31(2)]
<p>Before or at the time of,-</p> <p>(a) removal of goods for supply to the recipient, where the supply involves movement of goods, or</p> <p>(b) delivery of goods or making available thereof to the recipient, in any other case.</p>	<p>Before or after the provision of service but within 30 days [45 days in case of insurance companies/banking and financial institutions including NBFCs] from the date of supply of services</p>

TIME OF SUPPLY WHERE TAX IS PAYABLE UNDER REVERSE CHARGE

Time of supply of goods [Section 12(3)]	Time of supply of services [Section 13(3)]
Earliest of the following: (a) Date of receipt of goods , or (b) Date of payment as entered in the books of account of the recipient or the date on which the payment is debited from his bank account, whichever is earlier, or (c) 31st day from the date of issue of invoice by the supplier	Earliest of the following: (a) Date of payment as entered in the books of account of the recipient or the date on which the payment is debited from his bank account, whichever is earlier, or (b) 61st day from the date of issue of invoice by the supplier
Where the above events are not ascertainable, the time of supply shall be the date of entry in the books of account of the recipient of supply	
	Import of service from associated enterprise Date of entry in the books of account of the recipient or the date of payment, whichever is earlier

TIME OF SUPPLY OF VOUCHERS EXCHANGEABLE FOR GOODS AND SERVICES**Supply of vouchers exchangeable for goods and services [Sections 12(4) and 13(4)]**

- (a) Supply of goods or services is identifiable at the time of issue of voucher
→ Date of issue of the voucher
- (b) Other cases
→ Date of redemption of the voucher

TIME OF SUPPLY OF GOODS AND SERVICES IN RESIDUAL CASES

Supply of goods and services in residual cases [Sections 12(5) and 13(5)] i.e where it is not possible to determine the time of supply under the other provisions

- (a) Where a periodical return is required to be filed
→ Due date of filing such return
- (b) Other cases
→ Date of payment of tax

TIME OF SUPPLY FOR ADDITION IN VALUE BY WAY OF INTEREST / LATE FEE/PENALTY FOR DELAYED PAYMENT OF CONSIDERATION

Addition in value by way of interest, late fee/penalty for delayed payment of consideration
Time of Supply → Date on which the supplier receives such addition in value

The provisions relating to time of supply of vouchers that are exchangeable for goods are same as that of the vouchers that are exchangeable for services. Similarly, the provisions relating to time of supply of goods falling in the residual category are same as that of the time of supply of services falling in the residual category. Also, the provisions relating to time of supply for addition in value by way of interest, late fee/penalty for delayed payment of consideration are same for goods and services.

Furthermore, concepts like option of taking invoice date as time of supply in case of receipt of excess payment upto ₹ 1000, meaning of "Date of receipt of payment", significance of words "to the extent the invoice or payment covers the supply" are also same for goods and services.

Students may make a note of the above points as it will help them in understanding and remembering the provisions in a better manner.

TEST YOUR KNOWLEDGE

- Q.1** Explain the significance of time of supply under GST law.
- Q.2** GST is payable on advance received for supply of goods and services taxable under forward charge. Do you agree with the statement? Support your answer with legal provisions.
- Q.3** Determine the time of supply in the following cases assuming that GST is payable under reverse charge:

S. No.	Date of receipt of goods	Date of payment by the recipient of goods*	Date of issue of invoice by the supplier of goods
(i)	July 1	August 10	June 29
(ii)	July 1	June 25	June 29
(iii)	July 1	Part payment made on June 30 and balance amount paid on July 20	June 29
(iv)	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1
(v)	July 1	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29
(vi)	August 1	August 10	June 29

- Q.4** Determine the time of supply in the following cases assuming that GST is payable under reverse charge:

S. No.	Date of payment by the recipient for supply of services	Date of issue of invoice by the supplier of services
(i)	August 10	June 29
(ii)	August 10	June 1
(iii)	Part payment made on June 30 and balance amount paid on September 1	June 29
(iv)	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1
(v)	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29

- Q.5** Kabira Industries Ltd engaged the services of a transporter for road transport of a consignment on 17th June and made advance payment for the transport on the same date, i.e. 17th June. However, the consignment could not be sent immediately on account of a strike in the factory, and instead was sent on 20th July. Invoice was received from the transporter on 22nd July. What is the time of supply of the transporter's service?
- Q.6** Raju Pvt Ltd. receives the order and advance payment on 5th January for carrying out an architectural design job. It delivers the designs on 23rd April. By oversight, no invoice is issued at that time, and it is issued much later, after the expiry of prescribed period for issue of invoice. When is the time of supply of service?
- Q.7** Investigation shows that 150 cartons of ceramic capacitors were dispatched on 2nd August but no invoice was raised and the transaction (dispatch of cartons) were not entered in the accounts. There was no evidence of receipt of payment. What is the time of supply of 150 cartons for the purpose of payment of tax?
- Q.8** An order is placed on Ram & Co. on 18th August for supply of a consignment of customized shoes. Ram & Co. gets the consignment ready and informs the customer and issues the invoice on 2nd December. The customer collects the consignment from the premises of Ram & Co. on 7th December and electronically transfers the payment on the same date, which is entered in the accounts on the next day, 8th December. What is the time of supply of the shoes for the purpose of payment of tax?
- Q.9** Meal coupons are sold to a company on 9th August for being distributed to the employees of the said company. The coupons are valid for six months and can be used against purchase of food items. The employees use them in various stores for purchases of various edible items on different dates throughout the six months. What is the date of supply of the coupons?
- Q.10** A firm of advocates issues invoice for services to ABC Ltd. on 17th Feb. The payment is contested by ABC Ltd. on the ground that on account of negligence of the firm, the company's case was dismissed by the Court for non-appearance, which necessitated further appearance for which the firm is billing the company. The dispute drags on and finally payment is made on 3rd November. Identify the time of supply of the legal services.
- Q.11** Modern Security Co. provides service of testing of electronic devices. In one case, it tested a batch of devices on 4th and 5th September but could not raise invoice till 19th November because of some dispute about the condition of the devices on return. The payment was made in December. What is the method to fix the time of supply of the service?
- Q.12** XYZ & Co., a firm of Chartered Accountants, issued invoice for services rendered to Mr. A on 7th September. Determine the time of supply in the following independent cases:
- (1) The provision of service was completed on 1st August and payment was received on 28th September.
 - (2) The provision of service was completed on 14th August and payment was received on 28th September.
 - (3) Mr. A made the payment on 3rd August. However, provision of service was remaining to be completed at that time.
 - (4) Mr. A made the payment on 15th September. However, provision of service was remaining to be completed at that time.

Q.13 M/s Pranav Associates, a partnership firm, provided recovery agent services to Newtron Credits Ltd., a non-banking financial company and a registered supplier, on 15th January. Invoice for the same was issued on 7th February and the payment was made on 18th April by Newtron Credits Ltd. Bank account of the company was debited on 20th April.

Determine the following:

- (i) Person liable to pay GST
- (ii) Time of supply of service

Q.14 Mr. X supplied goods for ₹ 50,000 to its customer Miss Diyana on 1st January on the condition that payment for the same will be made within a week. However, Miss Diyana made payment for the said goods on 2nd February and thus, paid interest amounting to ₹ 2,000.

What is the time of supply with regard to addition in the value by way of interest in lieu of delayed payment of consideration?

Q.15 Mansh & Vansh Trading Company, a registered supplier, is liable to pay GST under forward charge. It has furnished the following information:

- (i) Goods were supplied on 3rd October
- (ii) Invoice was issued on 5th October
- (iii) Payment received on 9th October

Determine the time of supply of goods for the purpose of payment of tax.

ANSWERS/HINTS

1. GST is payable on supply of goods or services. Time of supply indicates the point in time when the liability to pay tax arises. However, it is important to note that though the liability to pay tax arises at the time of supply, the same has to be paid to the Government by the due date prescribed with reference to the said 'time of supply'. The CGST Act provides separate provisions for time of supply for goods and services vide sections 12 and 13.
2. The statement is not correct. While GST is payable on advance received for supply of services taxable under forward charge, the same is not payable in case of advance received for supply of goods taxable under forward charge.

As per section 13, the time of supply of services taxable under forward charge is –

- Date of issue of invoice or date of receipt of payment, whichever is earlier, if the same is issued within 30 days from the date of supply of service;

OR

- Date of provision of service or date of receipt of payment, whichever is earlier, if the invoice is not issued within 30 days from the date of supply of service.

Thus, in case of services, if the supplier receives any payment before the provision of service or before the issuance of invoice for such service, the time of supply gets fixed at that point in time and the liability to pay tax on such payment arises. However, the tax can be paid by the due date prescribed with reference to such time of supply.

As regards time of supply of goods taxable under forward charge is concerned, Notification No. 66/2017 CT dated 15.11.2017 provides that a registered person (excluding composition supplier) should pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31. Therefore, in case of goods, tax is not payable on receipt of advance payment.

3.

S. No.	Date of receipt of goods	Date of payment by the recipient of goods	Date of issue of invoice by the supplier of goods	Date immediately following 30 days from the date of invoice	Time of supply of goods [Earlier of (1), (2) & (4)]
	(1)	(2)	(3)	(4)	(5)
(i)	July 1	August 10	June 29	July 30	July 1
(ii)	July 1	June 25	June 29	July 30	June 25
(iii)	July 1	Part payment made on June 30 and balance amount paid on July 20	June 29	July 30	June 30 for part payment made and July 1 for balance amount
(iv)	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1	July 2	June 28 (i.e., when payment is entered in the books of account of the recipient)
(v)	July 1	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29	July 30	June 26 (i.e., when payment is debited in the recipient's bank account)
(vi)	August 1	August 10	June 29	July 30	July 30 (i.e., 31 st day from issuance of invoice)

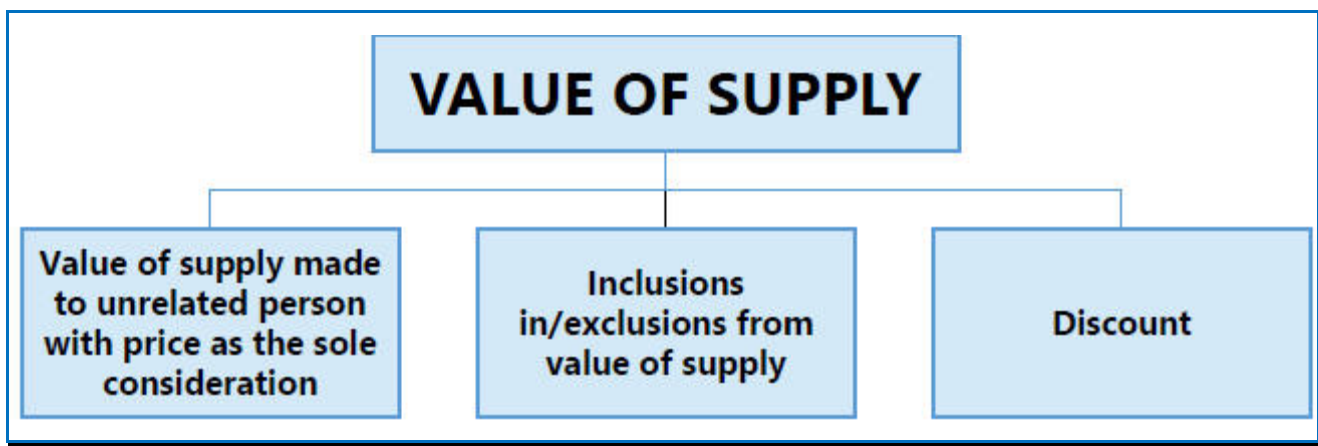
4.

S. No.	Date of payment by the recipient for supply of services	Date of issue of invoice by the supplier of services	Date immediately following 60 days from invoice	Time of supply of goods [Earlier of (1) & (3)]
	(1)	(2)	(3)	
(i)	August 10	June 29	August 29	August 10
(ii)	August 10	June 1	August 1	August 1
(iii)	Part payment made on June 30 and balance amount paid on September 1	June 29	August 29	June 30 for part payment and August 29 for balance amount
(iv)	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1	August 1	June 28 (i.e. when payment is entered in the books of account of the recipient)
(v)	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29	August 29	June 26 (i.e. When payment is debited in the recipient's bank account)

5. Time of supply of service taxable under reverse charge is the earlier of the following two dates in terms of section 13(3):
- Date of payment
 - 61st day from the date of issue of invoice
- In this case, the date of payment precedes 61st day from the date of issue of invoice by the supplier of service. Hence, the date of payment, i.e. 17th June, will be treated as the time of supply of service [Section 13(3)(a)].
6. Since the invoice has not been issued within the prescribed time period, time of supply of service will be the earlier of the following two dates in terms of section 13(2)(b):
- Date of provision of service
 - Date of receipt of payment
- The payment was received on 5th January and the service was provided on 23rd April. Therefore, the date of payment, i.e. 5th January is the time of supply of the service in this case.
7. As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.
- In this case since the invoice has not been issued, the time of supply for the purpose of payment of tax will be the last date on which the invoice is required to be issued.
- The invoice for supply of goods in the present case must be issued on or before the dispatch of goods, i.e. on 2nd August. Therefore, the time of supply for the purpose of payment of tax for the goods will be 2nd August, the date when the invoice should have been issued.
8. As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.
- In this case, the invoice is issued before the removal of the goods and is thus, within the time limit prescribed under section 31(1). Therefore, the time of supply for the purpose of payment of tax is the date of issue of invoice, which is 2nd December.
9. As the coupons can be used for a variety of food items, which are taxed at different rates, the supply cannot be identified at the time of purchase of the coupons. Therefore, the time of supply of the coupons is the date of their redemption in terms of section 12(4).
10. Tax on services supply by a firm of advocates by way of legal services to any business entity is payable under reverse charge by such firm of advocates. Time of supply of services that are taxable under reverse charge is earliest of the following two dates in terms of section 13(3):
- Date of payment [3rd November]
 - 61st day from the date of issue of invoice [19th April]
- The date of payment comes subsequent to the 61st day from the issue of invoice by the supplier of service. Therefore, the 61st day from the date of supplier's invoice has to be taken as the time of supply. This fixes 19th April as the time of supply.

11. The time of supply of services, if the invoice is not issued in time, is the date of payment or the date of provision of service, whichever is earlier [Section 13(2)(b)]. In this case, the service is provided on 5th September but not invoiced within the prescribed time limit. Therefore, 5th September, the date of provision of service, being earlier than the date of payment, will be the time of supply.
12. The time of supply of services is the date of issue of invoice if the same is issued within 30 days from the date of supply of service OR the date of receipt of payment, whichever is earlier [Section 13(2)(a)].
In case the invoice is not issued within 30 days from the date of supply of service, time of supply is the date of provision of service OR the date of receipt of payment, whichever is earlier [Section 13(2)(b)].
In accordance with the aforesaid provisions, the time of supply in the four independent cases will be:
- (1) 1st August since the invoice is not issued within 30 days of supply of service.
 - (2) 7th September since the invoice is issued within 30 days of supply of service and the payment is received after the issuance of invoice.
 - (3) 3rd August viz., earlier of date of issuance of invoice (7th September) or date of receipt of payment (3rd August)
 - (4) 7th September viz., earlier of date of issuance of invoice (7th September) or date of receipt of payment (15th September)
13. (i) Tax on services supplied by a recovery agent to, inter alia, a nonbanking financial company (NBFC) is payable under reverse charge by such non-banking financial company.
Therefore, in the given case, person liable to pay GST is the NBFC - Newton Credits Ltd.
- (ii) As per section 13(3), the time of supply of service on which GST is payable under reverse charge is earlier of the following:-
- Date of payment as entered in the books of account of the recipient (18th April) or the date on which the payment is debited in his bank account (20th April), whichever is earlier;
 - Date immediately following 60 days since issue of invoice by the supplier, i.e. 9th April.
- Thus, time of supply of service is 9th April.
14. As per section 12(6), the time of supply with regard to an addition in value on account of interest, late fee or penalty or delayed payment of consideration is the date on which the supplier received such additional consideration.
Thus, time of supply in respect of interest would be the date on which the supplier has received such additional consideration, i.e. 2nd February.
15. As per Notification No. 66/2017 CT dated 15.11.2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.
Further, a registered person is required to issue a tax invoice before or at the time of removal of goods for supply to the recipient. Thus, in the given case, the invoice for supply of goods should have been issued on or before the removal of goods i.e., on 3rd October.
However, since the invoice has not been issued within the prescribed time, the time of supply for the purpose of payment of tax will be the last date on which the invoice is required to be issued i.e., 3rd October.



CHAPTER - 7**VALUE OF SUPPLY****CHAPTER OVERVIEW****7.1 INTRODUCTION**

GST is payable (i) on supply of goods or services or both for a consideration in the course of or furtherance of business; (ii) on certain supplies made without a consideration as specified in Schedule I to the CGST Act.

As GST is an ad valorem levy, i.e. it is levied as a percentage of the value of supply of goods or services or both, it becomes important to know how to arrive at the value on which tax is to be paid. Provisions relating to 'value of supply' set out the mechanism to compute such value basis on which CGST and SGST/UTGST (intra-State supply), or IGST (inter-State supply) should be paid.



Section 15 of the CGST Act supplemented with CGST rules given under Chapter IV of the CGST Rules: Determination of Value¹ prescribes the provisions for determining the value of supply of goods and services. There are common provisions for determining the value of the supply of goods and services.

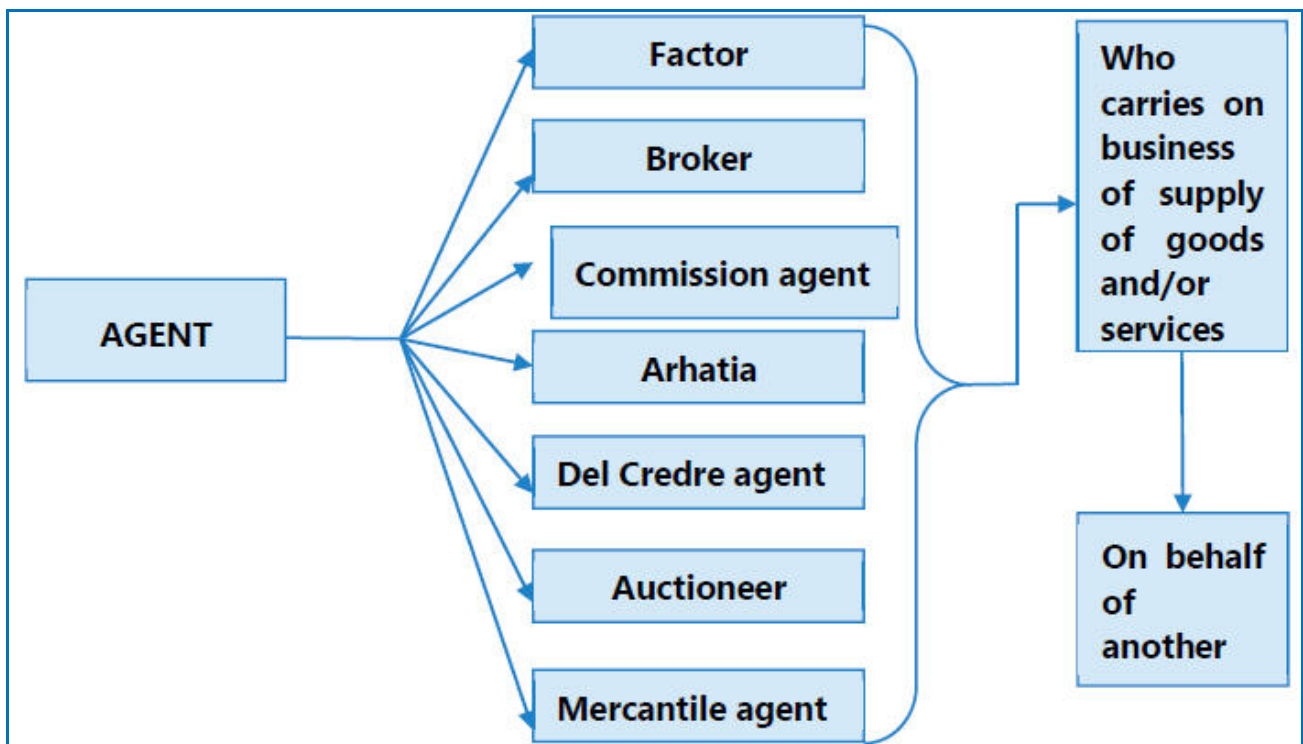
Sub-section (1) of section 15 provides the mechanism for determining the value of a supply which is made between unrelated persons and when price and only the price is the sole consideration for the supply. When value cannot be determined under section 15(1) as also in certain specific cases, the same is determined using Chapter IV:

Determination of Value of Supply of CGST Rules.

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

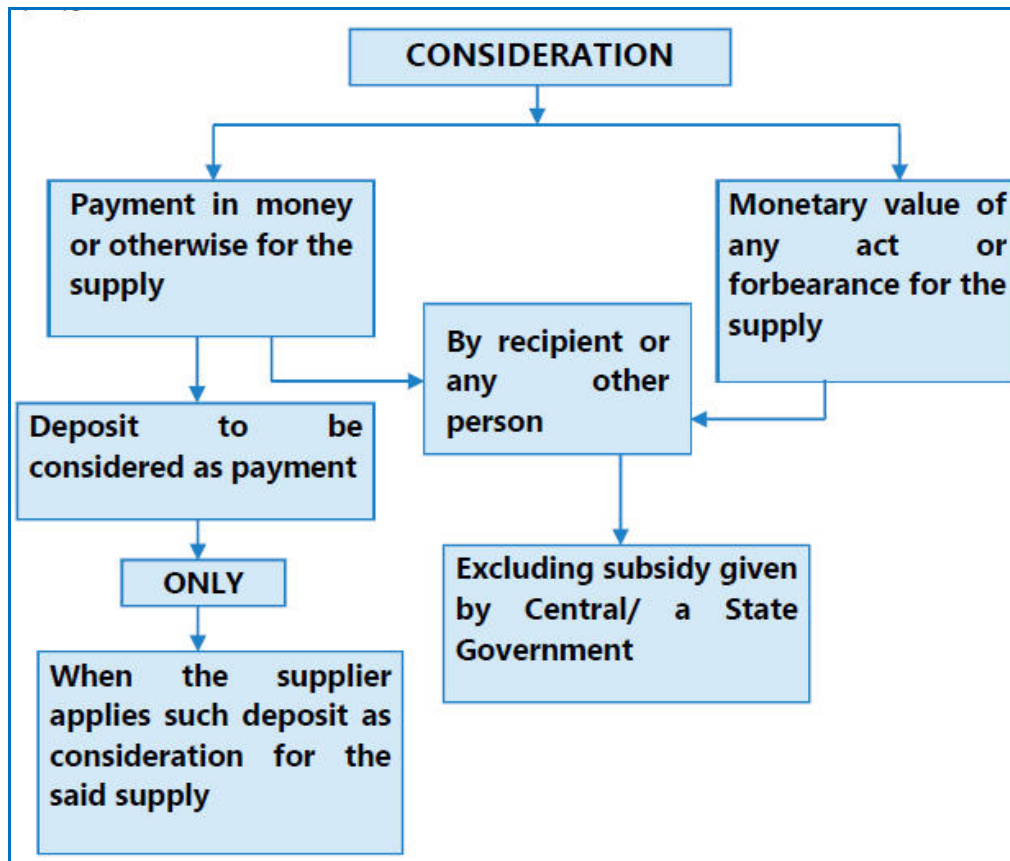
7.2 RELEVANT DEFINITIONS

Agent: means a person, **including** a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].



- **Cess:** shall have the same meaning as assigned to it in the Goods and Services Tax (Compensation to States) Act [Section 2(22)].
- **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;

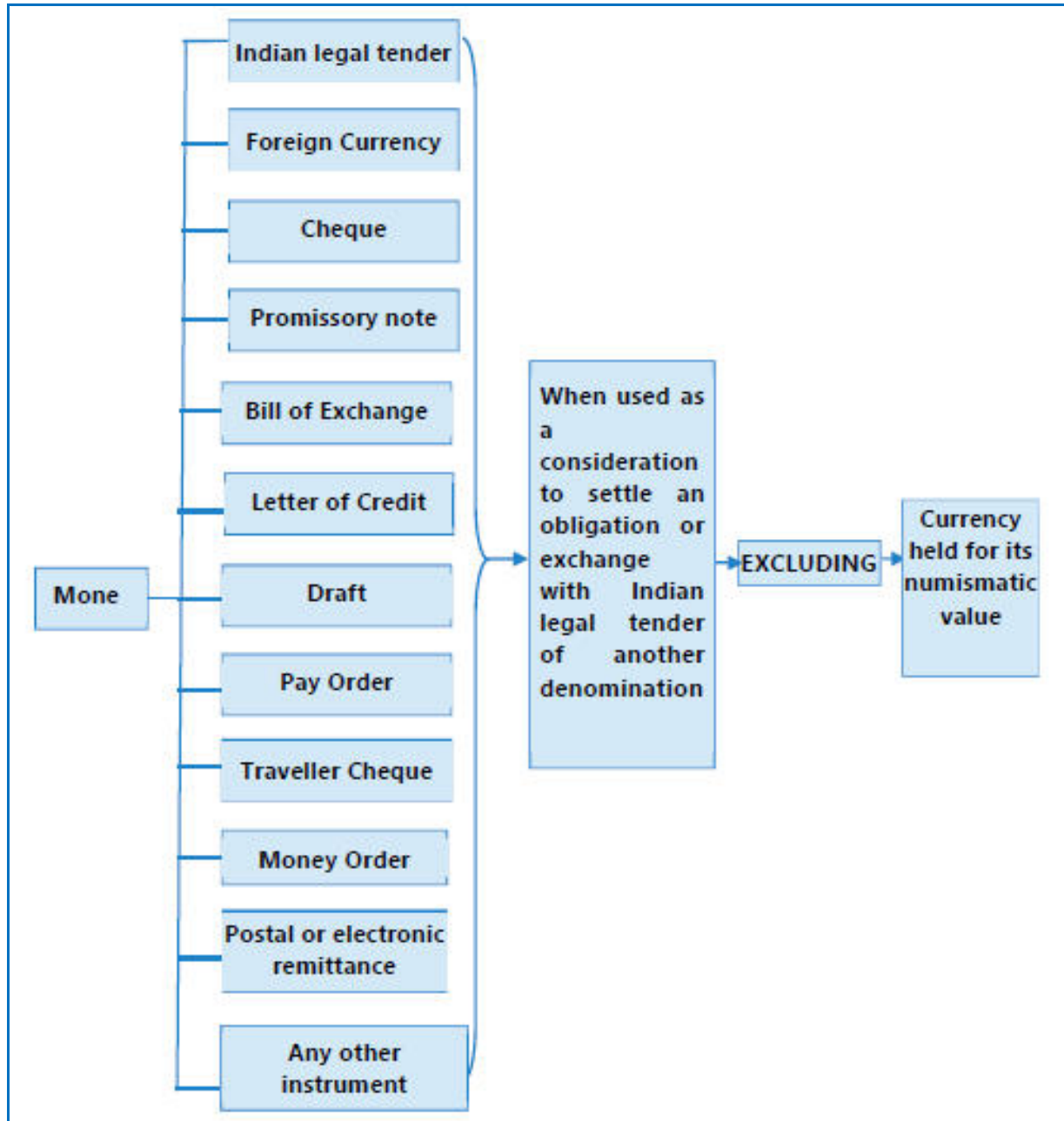
Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply [Section 2(31)].



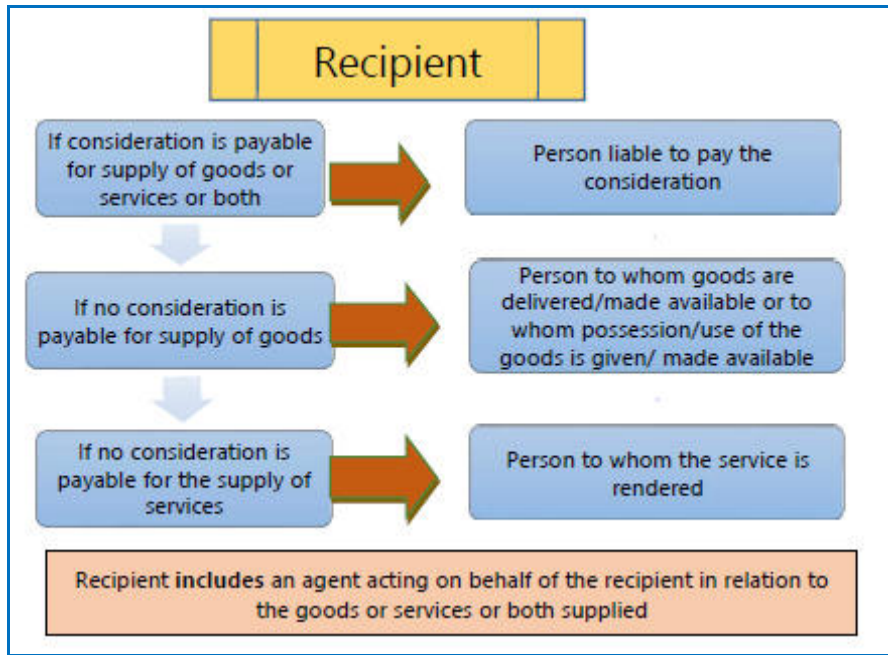
- **Person includes-**

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;
- (d) a firm;
- (e) a Limited Liability Partnership;
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013;
- (h) any body corporate incorporated by or under the laws of a country outside India;
- (i) a co-operative society registered under any law relating to cooperative societies;
- (j) a local authority;
- (k) Central Government or a State Government;
- (l) society as defined under the Societies Registration Act, 1860;
- (m) trust; and
- (n) every artificial juridical person, not falling within any of the above [Section 2(84)].

- **Money: means** the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler 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)].



- **Recipient** of supply of goods or services or both, means—
 - (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
 - (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,
 and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].
- **Supplier** in relation to any goods or services or both, shall **mean** the person supplying the said goods or services or both and shall **include** an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].



3. VALUE OF SUPPLY [SECTION 15]

STATUTORY PROVISIONS

Section 15		Value of taxable supply
Sub-section	Clause	Particulars
(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.
(2)		The value of supply shall include-
	(a)	any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
	(b)	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;
	(c)	incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
	(d)	interest or late fee or penalty for delayed payment of any consideration for any supply; and
	(e)	subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Section 15		Value of taxable supply
Sub-section	Clause	Particulars
		Explanation. --For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.
(3)		The value of the supply shall not include any discount which is given
	(a)	before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
	(b)	after the supply has been effected, if—
		(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
		(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.
(4)		Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.
(5)		Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.
Explanation—For the purposes of this Act,--		
(a)		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 twenty-five per cent 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

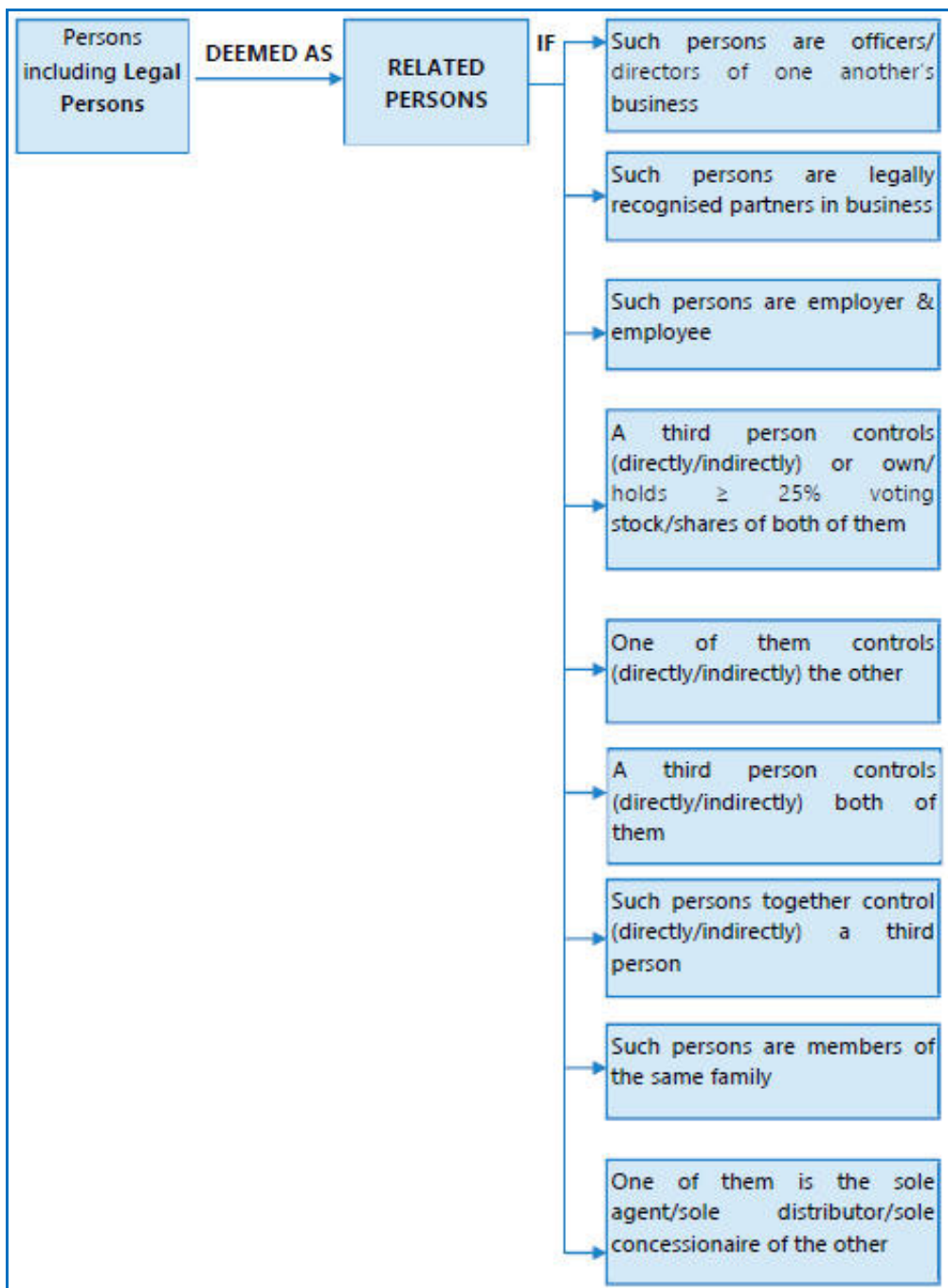
ANALYSIS

The CGST law has different provisions for determining the value of a supply of goods or services or both in the following situations:

- Supplies made solely for a price in money (monetary consideration), to unrelated persons → Sub-section (1) of section 15;
- Supplies made solely for non-monetary consideration, or for part monetary consideration and part non-monetary consideration, or involving additional consideration, or to related persons, or for specific classes of supply → Subsections (4) and (5) of section 15 read with the Chapter IV: Determination of Value of Supply of CGST Rules.

The definition of '**related person**' under the explanation to section 15 covers various situations of control, including sole agent, sole distributor and sole concessionaire. The concept of related person has been presented in a diagram given on next page.

Related persons [Explanation to section 15]

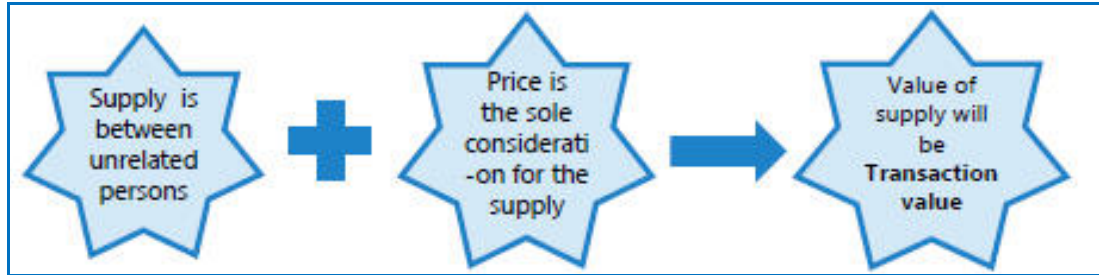


A. Supplies to unrelated persons where price is the sole consideration**(i) Transaction value [Section 15(1)]**

When a transaction of supply of goods or services or both is made

- between two persons (see definition of “person”) who are not related to each other (see definition of “related person” in ‘Explanation’ to section 15), and
- price is the sole consideration (see definition of consideration) for the supply,

the value of supply is the “**transaction value**”.



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.

Example 1 : Wholesale price for 1 MT of cement sold by X Ltd. in the ordinary course of business: ₹ 7,000. Price of 1 MT of cement sold by X Ltd. to unrelated customer Y: ₹ 6,700. Value of supply made by X Ltd. to Y is ₹ 6,700 which is the **price actually paid or payable and not the wholesale price.**

★ The value of taxable supply of goods and services shall ordinarily be the ‘transaction value’ which is the price paid or payable, when the parties are not related and price is the sole consideration. Section 15 further elaborates various inclusions and exclusions from the ambit of transaction value. For example, the transaction value shall not include discount allowed subject to certain conditions.

(ii) Inclusions in value [Section 15(2)]

The value of supply includes certain elements which are enumerated and discussed below.

- Taxes, duties, cesses, fees and charges other than CGST, SGST, UTGST, GST Compensation Cess, if charged separately
- Payments to third parties → Any amount that the supplier is liable to pay in relation to supply but which has been incurred by the recipient of the supply and not already included in the price.
- Incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply
- Any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of goods /supply of services.
- Interest or late fee or penalty for delayed payment of consideration
- Subsidies, directly linked to the price, other than subsidies given by the Central Government or State Governments

The above elements are discussed below.

Taxes other than GST & GST Compensation Cess [Section 15(2)(a)]

Any taxes, duties, cesses, fees and charges levied under any law for the time being in force except the CGST Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier, are includible in the value of supply. In the case of inter-State supply liable to IGST, the value of supply will include taxes other than IGST and the GST Compensation Cess in terms of **third proviso to section 20 of IGST Act. In effect, all the taxes, duties etc. which are not subsumed in GST form part of the taxable value for the purpose of levying GST.**

For instance, if a supplier of goods pays municipal tax in relation to the goods being supplied and charges the same separately, such tax will form part of the value of supply.

TCS under Income-Tax Act, 1961 not includible in the taxable value for the purpose of GST: The CBIC vide Circular No. 76/50/2018 GST dated 31.12.2018 (amended vide corrigendum dated 7.03.2019) has clarified that for the purpose of determination of value of supply under GST, **tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.**

Payments made to third parties by the recipient on behalf of the supplier in relation to the supply [Section 15(2)(b)]

A supplier may need to incur various expenses to make a particular supply of goods/services. In the normal course, he would pay these amounts and they would form part of the price that he charges from the customer (recipient of supply). However, even if the customer makes direct payment of some of such liabilities (of the supplier) to the third parties, and the supplier does not include this amount in his bill, it will still form part of the value of the supply.

A point to note here is that amount paid by the recipient to third parties will be added to the value under this clause only when the supplier is under contractual liability to make payment to such third parties and the said payment is in relation to such supply.

Example 2 : Grand Biz contracts with ABC Co. to conduct a dealers' meet. In furtherance of this, Grand Biz contracts with vendors to deliver goods / services, like water, soft drinks, audio system, projector, catering, flowers etc. at the venue on the stipulated dates at the stipulated prices. Grand Biz is liable to make these payments as contracted. The soft drinks supplier wants payment upon delivery; ABC Co. agrees to pay the bill raised by the soft drinks vendor on Grand Biz, on receiving the crates of soft drinks. This amount is not billed by Grand Biz to ABC Co. However, it would be added to the value of supply provided by Grand Biz to ABC Co. for payment of GST.

Questions 1 :

Yogrishi rents out a commercial building owned by him in Sanskriti Society, Noida, U.P. to Bhaarat for a monthly rent of ` 1,00,000. He pays municipal tax of ` 20,000 which he has not recovered from Bhaarat. Yogrishi also pays the maintenance charges of ` 5,000 (reimbursed to him by Bhaarat) for the month as charged by the Society. The value of supply for the month of January is _____. All the amounts given hereunder are exclusive of GST.

- | | |
|----------------|----------------|
| (a) ` 1,00,000 | (b) ` 1,20,000 |
| (c) ` 1,25,000 | (d) ` 1,05,000 |

Incidental expenses [Section 15(2)(c)]

Incidental expenses, such as commission and packing charged by the supplier or anything else done by the supplier in relation to the supply **at the time of or before delivery of goods or supply of services** must be added to value.

Example 3 : 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.

Example 4 : Packing, if charged by the supplier to the recipient, is similarly part of the value of the supply.

Example 5 : Inspection or certification charges is another element that will be added to the value, if incurred before/at the time of supply and billed to the recipient of supply.

Example 6 : 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.

Example 7 : Weighment charges, loading charges, designing charges etc. incurred before/at the time of supply will be added to the value, if billed to the recipient of supply.

Questions 2 :

Sapiant Ltd., registered under GST, supplies machinery used for making bottle caps to Chandra Ltd. at a price of ₹ 42,00,000 (excluding all taxes and other expenses). Apart from the price of the machinery, Sapiant Ltd. charges from the customer the associated handling and loading charges of ₹ 10,000 and installation and commissioning charges of ₹ 1,00,000. The value of supply of machinery is _____.

- | | |
|-----------------|-----------------|
| (a) ₹ 42,00,000 | (b) ₹ 43,10,000 |
| (c) ₹ 43,00,000 | (d) ₹ 42,10,000 |

Outward freight, transit insurance

Where the supplier agrees to deliver the goods at the buyer's premises and arranges for transport and insurance, the contract of supply becomes a **composite supply; the principal supply being the supply of goods**. Therefore, outward freight and transit insurance become part of the value of the composite supply and GST is payable thereon at the same rate as applicable for the relevant goods. However, if the contract for supply is on ex-factory basis where buyer pays the outward freight and insurance, the same will not be included in the value of supply of goods.

Interest, late fee or penalty for delayed payment [Section 15(2)(d)]

The value for a supply will include not only the base price but also the charges for delay in payment.

Example 8 : A supply priced at ₹ 2,000 is made, with a credit period of 1 month for payment. Thereafter, interest @ 12% p.a. is chargeable. The payment is received after the lapse of two months from the date of supply. The amount of interest @ 12% p.a. (i.e. 1% per month) on ₹ 2,000 for one month after the free credit period of one month, is ₹ 20. Such interest will be added to the value and thus, the value of supply will work out to be ₹ 2,020, assuming the interest to be exclusive of GST.

★ Time of supply for such interest/ late fee/ penalty is the date when such amount is received by the supplier. Further, since such charges are an addition in the value of supply, same rate of tax as applicable on the main supply of goods / service are applicable on such charges as well.

Discounts that are allowed as deduction from the value are as follows:

- (a) **Discounts given before or at the time of supply and shown in the tax invoice**– Example for such discount can be discounts that are offered for making the payment at the time of supply itself. Such discounts are thus, recorded in the invoice and thus, GST is charged on the gross value less discount duly recorded in the invoice.
- (b) **Post supply discounts**- It is not always commercially feasible to determine all discounts before or at the time of supply or record them in the invoice. For instance, cash discount given for making the payment within a stipulated time. Even though the discount is established before/at the time of supply, the supplier cannot record such discount in the invoice as he does not know if the buyer will make the payment within the stipulated time.

Likewise, in case of quantity/volume/performance discount also, the supplier is not aware before/at the time of supply as to whether the buyer would purchase the requisite quantity within the stipulated time. Therefore, in this case also, the discount cannot be recorded in the invoice.

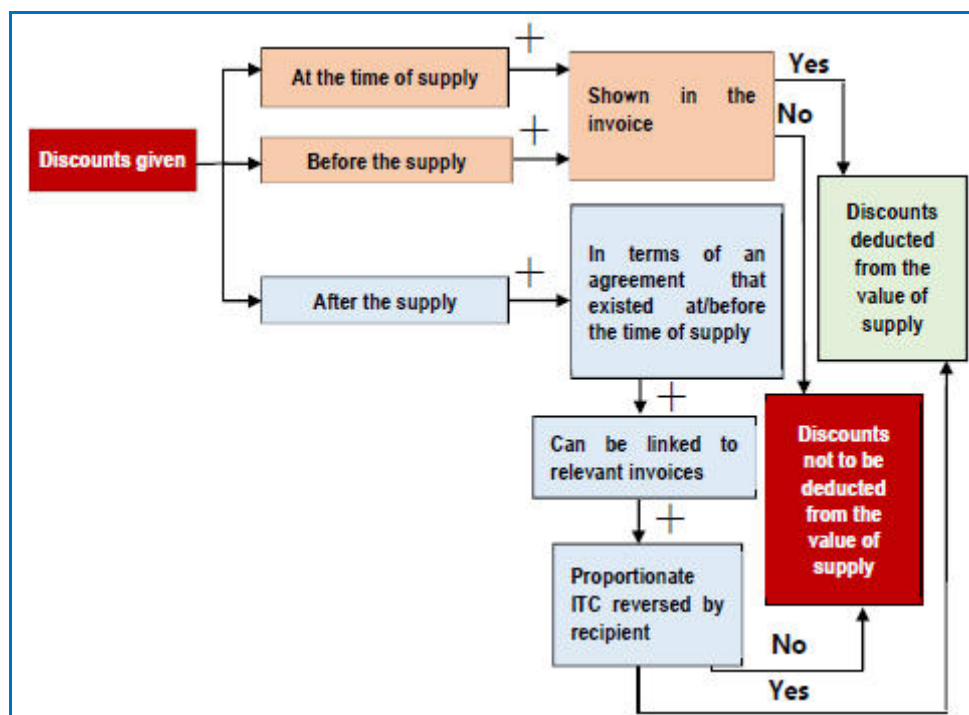
In such cases, initially the GST is paid on the gross value indicated in the invoice without considering the discount. The supplier, however, passes the discount to the buyers subsequently by issuing credit notes.

Post supply discounts, i.e. the discounts that are given after supply is made, are allowed as a deduction from the value of supply if the following two conditions are satisfied:

- Discount is in terms of an agreement that existed at the time of supply and can be worked out invoice-wise; and
- Proportionate input tax credit is reversed by the recipient – The buyer would have availed input tax credit (ITC) of GST payable on the gross value specified in the invoice. Thus, when a credit note is issued to him by the supplier for the discount, the buyer will reverse the proportionate credit; consequent to which, the supplier's output tax liability will be reduced by the same amount.

If any of the above conditions are not satisfied, the GST liability of supplier cannot be reduced. The supplier, however, can issue a commercial credit note for the value of discount. In such a scenario, the buyer will not be required to reverse any input tax credit.

The provisions relating to allowability of discount as a deduction from the value have been depicted by way of a diagram given below.



Allowability of certain specific types of discounts offered by the suppliers as clarified vide Circular No. 92/11/2019 GST dated 07.03.2019

(i) Staggered discounts ('Buy more, Save more' offers): In case of staggered discounts, rate of discount increases with increase in purchase volume. For example – One may get 10 % discount for purchases above ₹ 5,000/-, 20% discount for purchases above ₹ 10,000/- and 30% discount for purchases above ₹ 20,000/-. Such discounts are shown on the invoice itself.

Such discounts are excluded to determine the value of supply.

(ii) Periodic/year ending discounts/volume discounts: These discounts are offered by the suppliers to their stockists, etc. For example- Get additional discount of 1% if you purchase 10,000 pieces in a year, get additional discount of 2% if you purchase 15,000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as “volume discounts”. Such discounts are passed on by the supplier through credit notes.

Such discounts are excluded to determine the value of supply provided they satisfy the parameters laid down in section 15(3), including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document(s) issued by the supplier.

(iii) Secondary discounts: These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10,000 packets of biscuits to M/s B at ₹ 10/- per packet. Afterwards, M/s A re-values it at ₹ 9/- per packet. Subsequently, M/s A issues credit note to M/s B for ₹ 1/- per packet.

Such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in section 15(3)(b) are not satisfied.

It may be noted that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in section 15(3)(b) are not satisfied. Such credit notes do not include GST, and do not have any impact on value of supply for the purposes of GST.

Examples of discount deductible from value of supply

Example 10 : Royal Biscuit Co. gives a discount of 30% on the list price to its distributors. Thus, for a carton of Spice biscuit, in the tax invoice the list price is mentioned as ₹ 200, on which a discount of 30% is given to arrive at the final price of ₹ 140. The value is ₹ 140, as the discount is allowed at the time of supply and shown in the invoice.

Post supply discounts

Example 11 : The agreement of Raju Electrical Appliances with its dealers is that purchase of rice cookers over 1000 pieces in the Diwali month will entitle them to discount of 5% per cooker. Therefore, the quantum of discount can be determined only at the end of Diwali month. However, since the agreement relating to discount was in existence at the time of supply, and the discount can be worked out for each invoice, such post supply discount shall be allowed as a deduction from the value of supply of rice cookers. Raju Electrical Appliances can issue credit note for discount of 5% of the value of goods along with GST and claim adjustment of excess tax paid. The dealer must reverse the proportionate input tax credit on the relevant stock to bring it in line with the reduced tax.

B. Supplies where value cannot be determined u/s 15(1) and notified supplies [Sub-sections (4) and (5) of section 15]

Section 15(4) lays down that where sub-section (1) is not applicable, that is, if the transaction is with a related party, and/or price is not the sole consideration for the supply of goods / services, then the value will be determined in the manner as prescribed, which means as stipulated in the rules for valuation [See the definition of 'prescribed']. Further, section 15(5) lays down that in respect of certain notified supplies also, the value will be determined in the manner as stipulated in the rules for valuation. **As stated earlier, these rules will be discussed at the Final level.**

ILLUSTRATION 1

Black and White Pvt. Ltd. has provided the following particulars relating to goods sold by it to Colourful Pvt. Ltd.

Particulars	₹
List price of the goods (exclusive of taxes and discounts)	50,000
Tax levied by Municipal Authority on the sale of such goods	5,000
Packing charges (not included in price above)	1,000

Black and White Pvt. Ltd. received ₹ 2,000 as a subsidy from a NGO on sale of such goods. The price of ₹ 50,000 of the goods is after considering such subsidy. Black and White Ltd. offers 2% discount on the list price of the goods which is recorded in the invoice for the goods.

Determine the value of taxable supply made by Black and White Pvt. Ltd.

ANSWER

Computation of value of taxable supply

Particulars	₹
List price of the goods (exclusive of taxes and discounts)	50,000
Tax levied by Municipal Authority on the sale of such goods [Includible in the value as per section 15(2)(a)]	5,000
Packing charges [Includible in the value as per section 15(2)(c)]	1,000
Subsidy received from a non-Government body [Since subsidy is received from a non-Government body, the same is included in the value in terms of section 15(2)(e)]	2,000
Total	58,000
Less: Discount @ 2% on ₹ 50,000 [Since discount is known at the time of supply and recorded in invoice, it is deductible from the value in terms of section 15(3)(a)]	1,000
Value of taxable supply	57,000

ILLUSTRATION 2

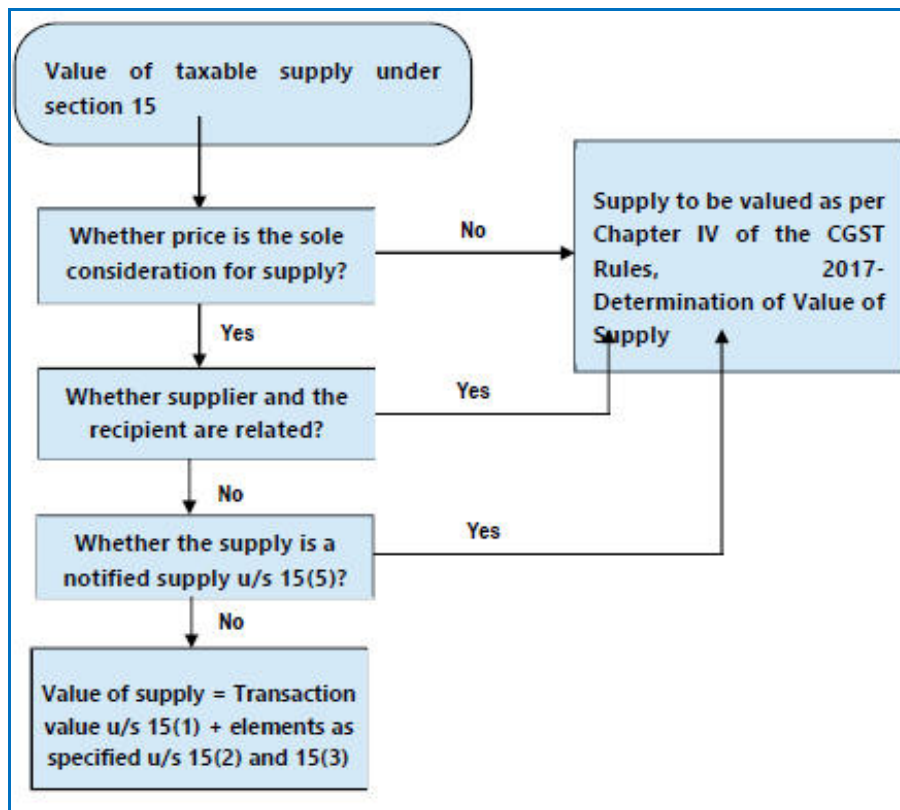
Samriddhi Advertisers conceptualised and designed the advertising campaign for a new product launched by New Moon Pvt Ltd. for a consideration of ₹ 5,00,000. Samriddhi Advertisers owed ₹ 20,000 to one of its vendors in relation to the advertising service provided by it to New Moon Pvt Ltd. Such liability of Samriddhi Advertisers was discharged by New Moon Pvt Ltd. New Moon Pvt Ltd. delayed the payment of consideration and thus, paid ₹15,000 as interest. Assume the rate of GST to be 18%. Determine the value of taxable supply made by Samriddhi Advertisers.

ANSWER**Computation of value of taxable supply**

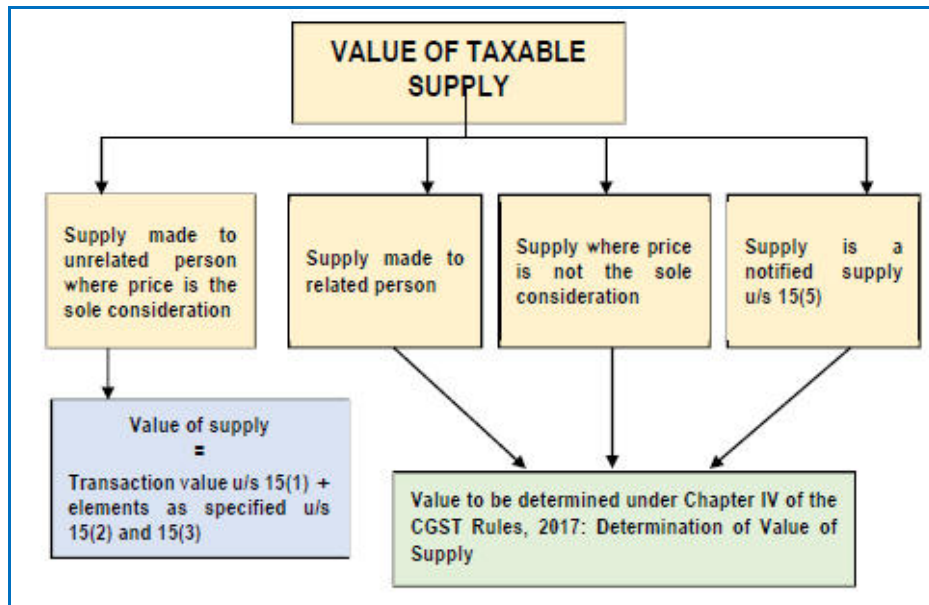
Particulars	₹
Service charges	5,00,000
Payment made by New Moon Pvt. Ltd to vendor of Samriddhi Advertisers [Liability of the supplier being discharged by the recipient, is includible in the value in terms of section 15(2)(b)]	20,000
Interest for delay in payment of consideration [Includible in the value in terms of section 15(2)(d) [Refer note below] [₹15,000 × (100/118)] (rounded off)	12,712
Value of taxable supply	5,32,712

Note : The interest for delay in payment of consideration will be includible in the value of supply but the time of supply of such interest will be the date when such interest is received in terms of section 13(6). Such interest has been assumed to be inclusive of GST and thus, the value has been computed by making back calculations $\left[\frac{\text{Interest}}{100 + \text{tax rate}} \times 100 \right]$. **It is also possible to assume the interest to be exclusive of GST.** In that case, the value of supply will work out to be ₹ 5,35,000.

The scheme of valuation as provided under section 15 is depicted by way of a diagram given below:



LET US RECAPITULATE



Inclusions in value u/s 15(2)

- Taxes other than GST, charged separately
- Third party payments made by recipient in relation to supply, which supplier was liable to pay and were not included in the price
- Incidental expenses including anything done by the supplier in respect of the supply till delivery of goods/ supply of services, if charged to recipient
- Subsidies directly linked to price of supply other than the ones given by Central/State Government
- Interest/late fee/penalty for delay in payment of consideration

Exclusions from value u/s 15(2)

- Discounts given before or at the time of supply and recorded in the invoice
- Post supply discount/incentive, if known till supply & linked to invoices and proportionate ITC reversed by the recipient on basis of document by supplier

TEST YOUR KNOWLEDGE

- Q.1** Are post-supply discounts eligible for deduction from the value of supplies in all situations? Explain.
- Q.2** 'Consideration under GST law includes both monetary and non-monetary considerations.'
Discuss the correctness or otherwise of the statement with reference to the definition of term 'consideration' provided under the CGST Act.

Q.3 Sharp Minds Institute provides coaching for engineering entrance examinations. The monthly fee charged by the Institute from a student is ₹ 10,000. The Institute is known for its commitment to provide education to underprivileged children. It trains 10 students every year for entrance examinations free of cost.

The Institute has received ₹ 3,00,000 as coaching fees during a month. Nav Jeevan, an NGO working in the area of education for underprivileged children, has given a subsidy of ₹ 10,000 (in lumpsum) during the month to the Institute as it is serving the cause of underprivileged children.

Determine the value of supply of education services made by Sharp Minds Institute during the month.

Q.4 Furniture Wala is a chain of retail showrooms selling both modern and classic furniture. In order to build strong customer association, the showroom provides free delivery of the furniture at the premises of the customers if the distance between the showroom and the customer's premises is upto 20 kms. Where the distance is more than 20 kms, the showroom charges a concessional freight of ₹ 10 for every additional km.

Ms. Leena Kapoor purchases a double bed, a dressing table and a centre table for ₹ 2,00,000 from Furniture Wala. Ms. Leena gets free delivery of the furniture as her residence is located at a distance of 18 km from the showroom. The showroom incurs an expenditure of ₹ 1000 for delivering the furniture at Ms. Leena's residence.

Determine the value of taxable supply made by Furniture Wala. Will your answer change if residence of Ms. Leena is 50 km away from the showroom?

Q.5 AKJ Foods Pvt. Ltd. gets an order for supply of processed food from a customer. The customer wants the consignment tested for gluten and specified chemical residues. AKJ Foods Pvt. Ltd. does the testing before the supply and charges a testing fee for the same from the customer. AKJ Foods Pvt. Ltd. argues that such testing fess should not form part of the consideration for the supply as it is a separate activity. Is the company's argument correct in the light of section 15?

Q.6 A philanthropic association makes a substantial donation each year to a reputed private management institution to subsidize the education of lowincome group students who have gained admission there. The fee for these individuals is reduced thereby coming to ₹ 3 lakh a year compared to ₹ 5 lakh a year for other students. What would be the value of the service of coaching and instruction provided by the institution to the low-income group students?

Q.7 Mezda Banners, an advertising firm, gives its customers an interest-free credit period of 30 days for payment. Its customer ABC paid for the supply 32 days after the supply of service. Mezda Banners waived the interest payable for a delay of two days. The Department wants to add interest for two days to the value of supply. Should notional interest be included in the value?

Q.8 Crunch Bakery Products Ltd sells biscuits and cakes through its dealers, to whom it charges the list price minus standard discount and pays GST accordingly. When goods remain unsold with the dealers, it offered additional discounts on the stock as an incentive to push the sales, without any prior agreement between them for offering such additional discount. Can this additional discount be reduced from the price at which the goods were sold, and concomitant tax adjustments made?

Q.9 Red Pepper Ltd., Delhi, a registered supplier, manufactures taxable goods. It provides the following details of taxable inter-State supply made by it during the month of March.

S. No.	Particulars	Amount (₹)
(i)	List price of taxable goods supplied inter-State (exclusive of taxes)	15,00,000
(ii)	Subsidy received from the Central Government for supply of taxable goods to Government School (exclusively related to supply of goods included at S. No. 1)	2,10,000
(iii)	Subsidy received from an NGO for supply of taxable goods to an old age home (exclusively related to supply of goods included at S. No. 1)	50,000
(iv)	Tax levied by Municipal Authority	20,000
(v)	Packing charges	15,000
(vi)	Late fee paid by the recipient of supply for delayed payment of consideration (Recipient has agreed to pay ₹ 6,000 in lump sum and no additional amount is payable by him over and above such amount)	6,000

The list price of the goods is net of the two subsidies received. However, the other charges/taxes/fee are charged to the customers over and above the list price.

Calculate the total value of taxable supplies made by Red Pepper Ltd. During the month of March. Rate of IGST is 18%.

Q.10 M/s. Flow Pro, a registered supplier, sold a machine to BP Ltd. It provides the following information in this regard: -

S. No.	Particulars Amount	(₹)
(i)	Price of the machine [excluding taxes and other charges mentioned at S. Nos. (ii) and (iii)]	25,000
(ii)	Third party inspection charges [Such charges were payable by M/s Flow Pro but the same have been directly paid by BP Ltd. to the inspection agency. These charges were not recorded in the invoice issued by M/s Flo Pro.]	5,000
(iii)	Freight charges for delivery of the machine [M/s Flow Pro has agreed to deliver the goods at BP Ltd.'s premises]	2,000
(iv)	Subsidy received from the State Government on sale of machine under Skill Development Programme [Subsidy is directly linked to the price]	5,000
(v)	Discount of 2% is offered to BP Ltd. on the price mentioned at S. No. (i) above and recorded in the invoice	

Note: Price of the machine is net of the subsidy received.

Determine the value of taxable supply made by M/s Flow Pro to BP Ltd.

Q.11 Shri Krishna Pvt. Ltd., a registered supplier, furnishes the following information relating to goods sold by it to Shri Balram Pvt. Ltd.-

S. No.	Particulars	Amount (₹)
(i)	Price of the goods [excluding taxes and other charges mentioned at S. Nos. (iii), (v) and (vi)]	1,00,000
(ii)	Municipal tax	2,000
(iii)	Inspection charges	15,000
(iv)	Subsidy received from Shri Ram Trust [Subsidy is directly linked to the goods supplied]	50,000
(v)	Late fees for delayed payment inclusive of GST [Shri Balram Pvt. Ltd. paid the late	1,000

S. No.	Particulars	Amount (₹)
	fees. However, these charges were ultimately waived by Shri Krishna Pvt. Ltd. and the amount was refunded to Shri Balram Pvt. Ltd. during the same month]	
(vi)	Weighment charges [Such charges were paid by Shri Balram Pvt. Ltd. To Radhe Pvt. Ltd. on behalf of Shri Krishna Pvt. Ltd.]	2,000

Note: Price of the goods is net of the subsidy received. Determine the value of taxable supply made by Shri Krishna Pvt. Ltd. to Shri Balram Pvt. Ltd.

Q.12 Koli Ltd., a registered supplier, has supplied machinery to Ghisa Ltd. (a supplier registered in the same State). It provides following particulars regarding the same:

S. No.	Particulars	Amount (₹)
(i)	Price of machinery (exclusive of taxes and discounts)	5,50,000
(ii)	Part fitted in the machinery at the premises of Ghisa Ltd. [Amount has been paid by Ghisa Ltd. directly to the supplier. However, it was Koli Ltd.'s liability to pay the said amount. The said amount has not been recorded in the invoice issued by Koli Ltd.]	20,000
(iii)	Installation and testing charges for machinery, not included in price	25,000
(iv)	Discount @ 2% on price of the machinery mentioned at S. No. (i) above (recorded in the invoice)	
(v)	Koli Ltd. provides additional discount @ 1% at year end, based on additional purchase of other machinery for which adjustment is made at the end of the financial year without any change in individual transactions.	

Determine the value of taxable supply made by Koli Ltd. to Ghisa Ltd.

ANSWERS/HINTS

1. No, the post-supply discounts are not eligible for deduction from the value of supplies in all situations. Such discounts are allowed as a deduction from the value of supply only in the situations where the following two conditions are satisfied cumulatively:

- (i) The discount is in terms of an agreement that existed at or before the time of supply and can be worked out invoice-wise; and
- (ii) Proportionate input tax credit (ITC) is reversed by the recipient – The buyer would have availed ITC of GST payable on the gross value specified in the invoice. Thus, when a credit note is issued to him by the supplier for the discount, the buyer will reverse the proportionate credit; consequent to which, the supplier's output tax liability will be reduced by the same amount.

If any of the above conditions are not satisfied, post-supply discount is not allowed as a deduction from the value of supply and consequently, GST liability of the supplier does not get reduced.

2. The statement is correct. As per the definition of the term '**consideration**' provided under the CGST Act, consideration under the GST law includes both payment in money or otherwise made by the recipient or any other person and also takes within its sweep the monetary value of any act or forbearance, by the recipient or any other person for the supply. Further, it includes within its ambit any deposit which is applied as a consideration for the supply but excludes the subsidies provided by the State or Central Government.

The term '**money**' has also been defined under the CGST Act and it not only includes cash (Indian as well as foreign currency) but also cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler's cheque, money order, postal/electronic remittance or any such similar instrument recognized by RBI 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. Nonmonetary consideration essentially means consideration in kind.

3. As per section 15(2)(e), the value of a supply includes subsidies directly linked to the price, excluding subsidies provided by the State Governments and the Central Government.

In the given case, though the subsidy is given by a non-Government body, the same is not includible in the value **as it is given in lumpsum and not directly linked to the price of the supply being valued**. Therefore, the value of supply made by Sharp Minds during the month is ₹ 3,00,000.

4. In the given case, the showroom is not charging any amount towards freight from Ms. Leena but incurring the same out of its own pocket. Therefore, the same should not be added to the value. Hence, the value of supply will be ₹ 2,00,000.

However, the answer will change in the second case when the showroom will charge ₹ 300 for freight [(50km - 20 km) x ₹ 10] from Ms. Leena. In this case, the supply will be a **composite supply** (principal supply being the supply of furniture) and value thereof will be ₹ 2,00,300.

5. Section 15(2) mandates addition of certain elements in the value of supply. Clause (c) of section 15(2) specifies that the amount charged for anything done by the supplier in respect of the supply **at the time of or before delivery of goods or supply of services** shall be included in the value of supply.

Since AKJ Foods Pvt. Ltd. does the testing before the delivery of goods, the charges therefor will be included in the value of the supply. Therefore, AKJ Foods Pvt. Ltd.'s argument is not correct. The testing fee should be included in the price to arrive at value of supply.

6. As per section 15(2)(e), the value of a supply includes subsidies directly linked to the price, excluding State Government and Central Government subsidies. In this case, the subsidy is not received from the Government but from a philanthropic association. Therefore, the subsidy is to be added back to the price to arrive at the value, which comes to ₹ 5 lakh [₹ 3 Lakh + ₹ 2 Lakh] a year.

7. This is a supply that is valued as per transaction value under section 15(1) as price is the sole consideration for the supply and the supply is made to unrelated person. The value of a supply includes interest for delayed payment of any consideration for any supply. However, **the time of supply** to the extent it relates to an addition in the value of supply by way of interest for delayed payment of any consideration is the **date on which the supplier receives such addition in value**. In the given case, the supplier has waived the interest for delayed payment. Consequently, the supplier has not received the interest. Therefore, **notional interest** for 2 days shall not be included in the value of the supply.

8. The discounts were not known or agreed for at the time of supply of goods to the dealers. Therefore, in terms of section 15(3), such discounts cannot be reduced from the price on which tax had been paid.

9. **Computation of total value of taxable supplies made by Red Pepper Ltd. during the month of March**

Particulars	Amount (₹)
List price of the goods	15,00,000
Subsidy amounting to ₹ 2,10,000 received from the Central Government [Since the subsidy is received from the Government, the same is not includible in the value in terms of section 15(2)(e)]	NIL

Subsidy received from NGO [Since the subsidy is received from a non-Government body and directly linked to the supply, the same is includible in the value in terms of section 15(2)(e)]	50,000
Tax levied by the Municipal Authority [Includible in the value as per section 15(2)(a)]	20,000
Packing charges [Being incidental expenses, the same are includible in the value as per section 15(2)(c)]	15,000
Late fees paid by recipient of supply for delayed payment [Includible in the value as per section 15(2)(d) - As the amount of interest received is a lump sum amount, the same has to be taken as inclusive of GST] [₹ 6,000 × 100/118] rounded off	5,085
Total value of taxable supplies	15,90,085

10. Computation of value of taxable supply made by M/s. Flo Pro to BP Ltd.

Particulars	Amount (₹)
Price of the machine [Since the subsidy is received from the State Government, the same is not includible in the value of supply in terms of section 15(2)(e)]	25,000
Third party inspection charges [Any amount that the supplier is liable to pay in relation to the supply but has been incurred by the recipient and not included in the price actually paid or payable for the goods, is includible in the value of supply in terms of section 15(2)(b)]	5,000
Freight charges for delivery of the machine [Since arranging freight is the liability of supplier, it is a case of composite supply and thus, freight charges are added in the value of principal supply.]	2,000
Total	32,000
Less: Discount @ 2% on ₹ 25,000 being price charged to BP Ltd. [Discount given before or at the time of supply if duly recorded in the invoice is deductible from the value of supply in terms of section 15(3)(a)]	500
Value of taxable supply	31,500

11. Computation of value of taxable supply made by Shri Krishna Pvt. Ltd. to Shri Balram Pvt. Ltd.

Particulars	Amount (₹)
Price of the goods	1,00,000
Municipal tax [Includible in the value as per section 15(2)(a)]	2,000
Inspection charges [Any amount charged for anything done by the supplier in respect of the supply of goods at the time of/before delivery of goods is includible in the value as per section 15(2)(c)]	15,000

Subsidy received from Shri Ram Trust [Since the subsidy is received from a non-Government body and directly linked to the supply, the same is includible in the value in terms of section 15(2)(e)]	50,000
Late fees for delayed payment [Not includible since the same is waived off]	Nil
Weighment charges paid to Radhe Pvt. Ltd. on behalf of Shri Krishna Pvt. Ltd. [Any amount that the supplier is liable to pay in relation to the supply but has been incurred by the recipient and not included in the price actually paid or payable for the goods, is includible in the value of supply in terms of section 15(2)(b)]	2,000
Value of taxable supply	1,69,000

12. Computation of value of taxable supply made by Koli Ltd. to Ghisa Ltd.

Particulars	Amount (₹)
Price of machinery (exclusive of taxes and discounts)	5,50,000
Amount paid by Ghisa Ltd. directly to the supplier for the part fitted in the machinery [Any amount that the supplier is liable to pay in relation to a 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 is includible in the value of supply in terms of section 15(2)(b).]	20,000
Installation and testing charges [Any amount charged for anything done by the supplier in respect of the supply of goods at the time of/before delivery of goods is includible in the value of supply in terms of section 15(2)(c).]	25,000
Less: Discount @ 2% on the price of machinery [₹ 5,50,000 × 2%] [Since discount is given at the time of supply of machinery and recorded in the invoice, the same is deductible from the value of the supply in terms of section 15(3)(a).]	11,000
Less: Additional 1% discount at year end [Though the additional discount is established before/at the time of supply, it is not deductible from the value of supply in terms of section 15(3)(b) as the same is not linked to any specific transaction and is adjusted by the parties at the end of the financial year.]	Nil
Value of taxable supply	5,84,000

