

# Chapter 2 Supply

Some Important Definition's	
<p><b>Goods Section 2(52)</b></p>	<p>Means every kind of movable property –</p> <p>... other than –</p> <ul style="list-style-type: none"> <li>- money, and</li> <li>- securities</li> </ul> <p>... but includes –</p> <ul style="list-style-type: none"> <li>- actionable claim,</li> <li>- 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.</li> </ul>
<p><b>Person Section 2(84)</b></p>	<p><b>Includes –</b></p> <ul style="list-style-type: none"> <li>... an individual;</li> <li>... a Hindu undivided family;</li> <li>... a company;</li> <li>... a firm;</li> <li>... a Limited Liability Partnership;</li> <li>... an association of persons or a body of individuals, whether incorporated or not, in India or outside India;</li> <li>... any corporation established by or under any Central, State or Provincial Act or a Government company as defined in <b>Section 2(45) of the Companies Act, 2013</b>;</li> <li>... anybody corporate incorporated by or under the laws of a country outside India;</li> <li>... a co-operative society registered under any law relating to cooperative societies;</li> <li>... a local authority;</li> <li>... Central or State Government</li> <li>... society as defined under the <b>Societies Registration Act, 1860</b>;</li> <li>... trust; and</li> <li>... every artificial juridical person, not falling within any of the above.</li> </ul>
<p><b>Taxable event Section 2(108)</b></p>	<p><b>Means –</b></p> <p>... a supply of goods or</p> <p>... services or</p> <p>... both</p> <p>which is leviable to tax under this Act.</p>
<p><b>Taxable Territory Section (109)</b></p>	<p>... Means the territory to which the provisions of this Act apply.</p> <p>... CGST Act, 2017 extends to the whole of India including the State of Jammu and Kashmir.</p>
<p><b>Money Section 2(75)</b></p>	<p><b>Means</b></p> <p>... the <b>Indian legal tender</b> or any</p> <ul style="list-style-type: none"> <li>⇒ foreign currency,</li> <li>⇒ cheque,</li> <li>⇒ promissory note,</li> <li>⇒ bill of exchange,</li> <li>⇒ letter of credit, draft,</li> <li>⇒ pay order,</li> <li>⇒ traveller cheque,</li> <li>⇒ money order,</li> <li>⇒ postal or</li> <li>⇒ electronic remittance or</li> <li>⇒ any other instrument <i>recognised by the Reserve Bank of India</i></li> </ul> <p>... when used as a <b>consideration</b> to settle an obligation or</p> <p>... <b>exchange with Indian legal tender</b> of another denomination</p> <p>... but shall not include</p> <p>... any currency that is held for its <b>numismatic value</b>.</p>

<p><b>Actionable claim</b></p>	<ul style="list-style-type: none"> <li>▪ Shall have the meaning assigned to it in <b>Section 3</b> of the <b>Transfer of Property Act, 1882</b>.</li> <li>▪ According to Section 3 of Transfer of Property Act, 1882, <b>'Actionable claim' means a claim to –</b> <ul style="list-style-type: none"> <li>... any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property; or</li> <li>... any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.</li> </ul> </li> </ul> <p><u>Examples of actionable claims are –</u></p> <p>(a) <i>Unsecured debts;</i></p> <p>(b) <i>Right to participate in the draw to be held in a lottery.</i></p> <p><i>It must be noted that 'Actionable Claim' is specifically included in the definition of Goods. Transactions of Actionable claims, other than lottery, betting and gambling shall be treated neither as a supply of goods nor a supply of services as per Para 6 of Schedule III of CGST Act, 2017.</i></p>	<p><b>Taxable supply Section 2(108)</b></p>	<p><b>Means -</b></p> <p>... a supply of</p> <ul style="list-style-type: none"> <li>- goods or</li> <li>- services or</li> <li>- both</li> </ul> <p>... which is leviable to tax under this Act</p>
<p><b>Services Section 2(102)</b></p>	<p><b>Means anything –</b></p> <p>... <b>excludes –</b></p> <ul style="list-style-type: none"> <li>▪ goods, money, and - securities</li> </ul> <p>... <b>but includes activities relating to –</b></p> <ul style="list-style-type: none"> <li>▪ the use of money, or</li> <li>▪ 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.</li> </ul> <p><u>Explanation [W.E.F. 1-2-2019] –</u></p> <p><i>For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities</i></p> <p><i>Example - Some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged in relation to transactions in securities.</i></p>	<p><b>Business Section 2(17)</b></p>	<p>a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;</p> <p>b) any activity or transaction in connection with or incidental or ancillary to (a) above;</p> <p>c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;</p> <p>d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;</p> <p>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;</p> <p>f) admission, for a consideration, of persons to any premises; and</p> <p>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;</p> <p>h) <del>services provided by a race club by way of totalisator or a licence to book maker in such club</del>  <i>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></p> <p><i>[The words in italics &amp; bold substituted vide CGST (Amendment) Act, 2018.]</i></p> <p><u>Author notes-</u>  <i>w.e.f 01.02.2019 scope of this sub-clause has been increased because all activities (including goods and services) of a race club shall be covered including activists of licensed book maker</i></p>

*in such club. It is also pertinent to add here that use of the term service in the sub-clause during the period 01.07.2017 to 31.01.2019 leading to ambiguity because the term actionable claim has been defined as goods indirectly in term of section 2(1) of the CGST Act. Thus, the coverage of the actionable claim in relation to race horse race clubs with in the definition of term business as creating confusion. Thus, amendment has been made to include activities related to race clubs within the ambit of term business. Activities of a licensed book maker have been specifically included.*

**Note - Totalisator**

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

- 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

- ... Under earlier system of taxation, there was a lot of litigation relating to taxable event like
  - *whether a particular process amounted to manufacture or not,*
  - *whether the sale was pre-determined sale,*
  - *whether a particular transaction was a sale of goods or rendering of services etc.*
- ... The GST laws resolve these issues by laying down one comprehensive taxable event i.e. "**Supply**" - *Supply of goods or services or both.*

**Section 7 - Meaning and scope of supply**

1	<b>Supply include -</b>
a)	All forms of <b>supply of goods or services or both</b> such as ⇒ sale, transfer, barter, exchange, licence, rental, lease or disposal ⇒ made or agreed to be made ⇒ for a <b>consideration</b> by <b>a person</b> ⇒ in the <b>course or furtherance of business</b>
b)	<b>Importation of services</b> , for a consideration whether or not in the course or furtherance of business, <b>and</b>
c)	The <b>activities</b> specified in <b>schedule-I</b> , made or agreed to be made <b>without a consideration</b> ,
d)	The activities to be treated as supply of goods or supply of services as referred to in Schedule II. [Strike of part deleted in CGST (Amendment) Act, 2018]

**1A** **New insertion Within scope of supply – section 7(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.**  
*[Bold and Italic part inserted in CGST (Amendment) Act, 2018]*  
**Author note -**  
*The objective to amend Section 7 of the Act is to clarify the scope of supply; It Inserts a new sub-section (1A) in section 7 and omit clause (d) of sub-section (1). Now, first an activity has to be "supply" as per Schedule (1) only then it will be tested as per Schedule II. The recent AAR whereby supply of canteen services by employer to employee is a supply and hence taxable as per Sch II, clause No 6 (b), will be tested now.*

<b>Supplier Section 2(105)</b>	... In relation to any goods or services or both, <b>shall mean</b> - the person supplying the said goods or services or both and ... <b>shall include</b> - an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied
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**Taxable Event**

- ... Taxable Event is that event, which on **its occurrence, creates or attracts the liability to tax.**
- ... **It is that event, which on its occurrence creates or attracts the liability to tax.**
- ... Such liability does not accrue at any earlier or later point of time. Even though taxable event happens to be at a particular point of time, the levy and collection of such tax may be postponed for administrative convenience, to a later date

<b>MA Co. v. Asstt Commissioner (1964) 15 STC 487 (All HC)</b>	Tax becomes payable when liability to pay tax arises and liability to pay tax arises by the happening of the taxable event
<b>Godfrey Philips India v. State of UP AIR 2005 SC</b>	Tax can be imposed only on 'taxable event'. However, all taxable events are not covered in legislative entries in Seventh Schedule to Constitution

**Section 7(1)(a)**



**Sale**  
Sale involves transfer of property in goods from one person to another person for consideration.  
**Note:** mortgage, hypothecation, charge or pledge is not supply and hence GST will not be levied.

**Transfer**  
The term transfer means, where the ownership may not be transferred but the right in the goods is transferred.

**Barter**  
It means the exchange of goods and productive services for other goods and productive services, without the use of money

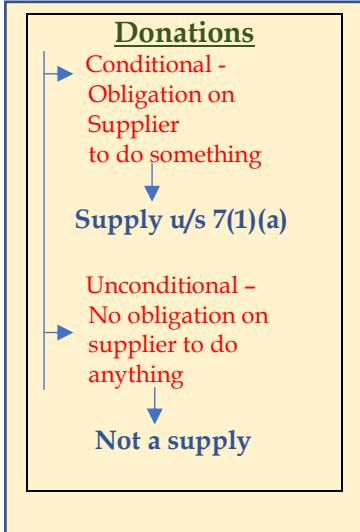
**Exchange**  
When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an exchange. Exchange offers on products such as televisions, mobile phones and refrigerators are leviable under GST.

**Licence**  
Where one person grants to another, or to a definite number of other persons, a right to do or continue to do in or upon the immovable property of the granter, the right is called a licence.

**Rentals**  
Periodical payment for use of another's property. Rent is to pay on monthly.

**Lease**  
A lease is an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time. A lease may be financial lease or operating lease.

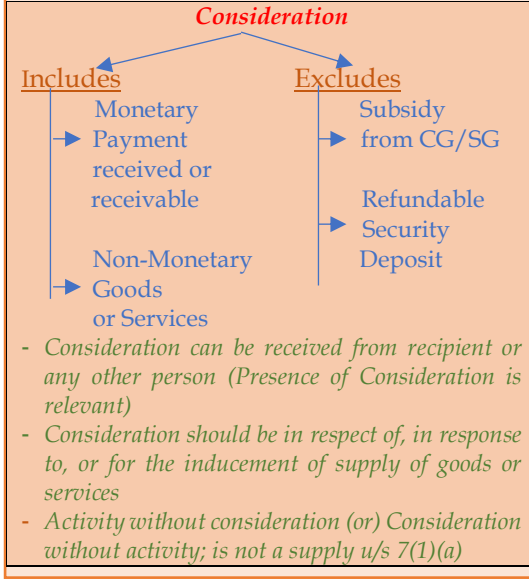
<b>Made</b>	Good are already delivered or service already provided to recipient
<b>Agreed to be made</b>	<ul style="list-style-type: none"> <li>There is an agreement for supply of good or provision of services.</li> <li>An advance has been received for supply of goods or provision of services</li> </ul>



**Consideration [Section 2(31)]**  
"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 CG or SG;

(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 CG or SG;



... For a transaction to qualify as 'supply', it is essential that the same is 'in the course or furtherance of business'. This implies that any supply of goods and / or services by a business entity would be liable to tax, so long as it is in the course or furtherance of business.

... Any activity undertaken included in the definition of business for furtherance or promoting of a business could constitute a supply under GST law.

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

... 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'.

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

**Example**  
When an individual who buys a car for personal use and after a year sells it to a car dealer, the transaction will not be supply, because supply is not made by the individual in the course or furtherance of business. Further, no input tax credit was admissible on such car at the time of its acquisition as it was meant for non-business use.

**Import of services [Sec. 7(1)(b)]**

**Import of services for a consideration whether or not in the course or furtherance of business**

**Analysis:**

The transaction should confirm to the definition of 'import of service' as per **Section 2(11) of the IGST Act, 2017** which provides that

**Import of service means** the supply of any service, **where –**

- (i) the **supplier** of service is **located outside India**;
- (ii) the **recipient** of service is **located in India**; and
- (iii) the **place of supply** of service is in **India**;

Among other conditions, Place of Supply should be in India, which can be ascertained by referring to **Section 13 of the IGST Act**.

The business test is not relevant as the import of service may or may not be in the course or furtherance of business. Thus, even the import of services by individuals for personal use is chargeable to tax in India.

Tax in such cases is payable under reverse charge by the recipient located in the taxable territory with no threshold.

*However, **section 14 of the IGST Act, 2017** provides that in respect of import of service by way online information and database access or retrieval services by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.*

**Example 1:** Deepika Padukone received beauty tips from a US based beauty consultant during an in-person meeting at her residence in Mumbai. It was for a consideration. Service is chargeable to tax in the hands of Deepika Padukone under reverse charge as the service provider is located in the non-taxable territory and the place of supply is in India.

**Supply without consideration [Sec. 7(1)(c)]**

The activities specified in **Schedule I**, made or agreed to be made **without a consideration**;  
*The activities listed in Schedule I shall be treated as supply even if made without consideration.*

**Schedule I****1. Permanent transfer/disposal of business assets:**

All kind of disposal or transfer of business assets made by an entity on permanent basis even without consideration will be treated as supply **provided input tax credit has been availed on such assets.**

**Analysis**

- ⇒ Donation of business assets or scrapping or disposal in any other manner (other than as a sale – i.e., for a consideration) would qualify as 'supply' under this clause, where input tax credit has been claimed on the same.
- ⇒ Goods sent on job work or goods sent for testing or goods sent for certification would not qualify as 'supply' under this clause since there is no permanence in transfer.

**Example: 1**

*M/s Z Ltd., upgrades the computer system. The existing computers and laptops, which do not support the upgraded version, donated to a Trust. This amounts to permanent transfer of business assets. The same will be treated as supply of goods and liable to GST in the hands of Z Ltd., provided if company availed input tax credit on such computers and laptops.*

**Example: 2**

*M/s Sankar Pvt. Ltd., being a trader in clothes permanently transfers 50% of its stock to a Society free of cost. In this case, transfer of business stock would amount to supply if the company had availed input tax credit on purchase of clothes.*

**Example: 3**

*Mr. Das purchased a car for personal use and after a year sold it to a car dealer for Rs. 2 lac. Will the transaction be a supply in terms of GST Act?*

**Answer:**

*This transaction is not a supply. Moreover, supply is made by the individual is not in the course or furtherance of business. Further, no input tax credit was admissible on such car at the time of its acquisition as it was meant for non-business use.*

**2. Goods transfer to related or distinct person**

- ⇒ 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.**

**Gifts not exceeding Rs. 50,000/- in value in a financial year by an employer to an employee**

- ... Services by employee to an employer in the course of or in relation to his employment shall not be treated as supply of services (Schedule III).
- ... However, Gift not exceeding Rs. 50,000 in value in a financial year by an employer to employee shall not constitute supply of goods or services or both.
- ... *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.*

**Schedule I**

**Example**

Services by employee to an employer in the course of or in relation to his employment shall not be treated as supply of services (Schedule III). However, Gift not exceeding Rs. 50,000 in value in a financial year by an employer to employee shall not constitute supply of goods or services or both.

**Supply between related persons**

As per Explanation to Section 15,

- a) persons shall be deemed to be “related persons” if--
- b) such persons are officers or directors of one another’s businesses;
  - (i) such persons are legally recognized partners in business;
  - (ii) such persons are employer and employee;
  - (iii) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
  - (iv) one of them directly or indirectly controls the other;
  - (v) both of them are directly or indirectly controlled by a third person;
  - (vi) together they directly or indirectly control a third person; or
  - (vii) they are members of the same family;
- c) the term “person” also includes legal persons;
- d) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

**Family [Section 2(49)]: "Family" means, –**

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

**Distinct persons specified under section 25 of CGST Act, 2017**

- ... Every place of business of a person where separate registration is obtained for output supply will be considered as distinct person.
- ... **Section 25(4)**. A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.
- ... **Section 25(5)**. Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union Territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

**Example: 1**

Mr. C of Chennai makes taxable supply from Tamil Nadu exceeds Rs. 20 lakhs. Therefore, Mr. C will be required to obtain registration in Tamil Nadu. Such person may have establishment in the State of Telangana where nro taxable supplies are made but only the establishment in Telangana helps in handling of materials like procuring and storing. Hence, establishment in Tamil Nadu and establishment in Telangana will be considered as distinct person even when establishment in Telangana is not registered (Sec. 25(5) of CGST Act, 2017).

**Example: 2**

M/s C Ltd. has 3 branches A, B & Z in different states. A in Telangana has run out of stock and B from Andhra Pradesh transfers its excess stock. Is it supply of goods? GST will be levied?

**Analysis**

- ⇒ A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.
- ⇒ Definition of related person is given in section 15 and employee is covered in the definition.
- ⇒ The amount paid by employer to employee in lieu of services rendered by the employee and which is mentioned in the offer letter or agreement is exempted from the levy of tax.
- ⇒ Moreover, certain supplies are not agreed upon formally; say Diwali gifts, gift on organization achieving targets or gifts given casually will be taxable provided value of gifts exceeds Rs. 50,000.
- ⇒ Gifts up to Rs. 50,000 to employees may be exempted. However, reversal of input tax credit will be required. Stock transfer between the related person or distinct person in same organization would be subject to GST

**3. Supply of goods by a principal to his agent or vice versa**

**Supply of goods –**

- (a) by a **principal to his agent** where the **agent undertakes** to supply such goods **on behalf of the principal**; or
- (b) by an **agent to his principal** where the **agent undertakes** to receive such goods **on behalf of the principal**.

**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 therefore require –consideration to be considered as supply and thus, to be liable to GST.**

- In order to determine whether a particular principal- agent relationship falls within the ambit of the Para 3. of Schedule I as discussed above or not, the deciding factor is whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not?

## Schedule I

- 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].

Circular No.73/47/2018-GST dated November 5, 2018 (in the context of del-credere agent) states as:

DCA is a selling agent who is engaged by a principal

- ⇒ to assist in supply of goods or services by contacting potential buyers **on behalf of the principal**
- ⇒ and **guarantees the payment** to the supplier
- ⇒ in return for **higher commission** than that paid to a normal agent.

- In case 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).
- 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.

Issue 1: Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?

**Clarification:**

Whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios:

- ⇒ In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent.
- ⇒ In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.

Issue 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 of the CGST Act?

**Clarification:**

In such a scenario, following activities are taking place:

- Supply of goods from supplier (principal) to recipient;
  - Supply of agency services from DCA to the supplier or both;
  - Supply of extension of loan services by the DCA to the recipient.
- ⇒ It is clarified that in cases where the DCA is not an agent under **Para 3 of Schedule I** of the CGST Act, the **temporary 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, **interest being charged** by the DCA would **not form part of the value of supply of goods supplied** (to the buyer) by the supplier. **Such interest will also be exempted** vide Notification No 12/2017 CT (R) dated 28.06.2017.

Issue 3: 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 an agent under Para 3 of Schedule I of the CGST Act?

**Clarification:**

In such a scenario following activities are taking place:

- Supply of goods by the supplier (principal) to the DCA;
  - Further supply of goods by the DCA to the recipient;
  - Extension of credit by the DCA to the recipient;
  - Supply of agency services by the DCA to the supplier or the recipient or both.
- ⇒ It is clarified that in cases where the DCA is an agent under **Para 3 of Schedule I** of the CGST Act, the **temporary short-term transaction based credit being provided by DCA to the buyer** no longer retains its character of an **independent supply** and is **subsumed in the supply of the goods by the DCA to the recipient**.
  - ⇒ It is emphasised that the **activity of extension of credit by the DCA to the recipient would not be considered as a separate supply** as it is in the context of the supply of goods made by the DCA to the recipient.
  - ⇒ It is further clarified that the **value of the interest charged** for such credit would be required to be **included in the value of supply of goods** by DCA to the recipient as per section 15(2)(d) of the CGST Act.

**Schedule I**

**4. Importation of Services (Amendment applicable w.e.f 1st Feb, 2019)**

Pre - Amendment	Post - Amendment
As per schedule I Import of services by a taxable person <ul style="list-style-type: none"> <li>from a related person or from his establishments located outside India,</li> <li>without consideration,</li> <li>in the course or furtherance of business shall be treated as "supply"</li> </ul>	As per schedule I Import of services by a <b>taxable</b> person <ul style="list-style-type: none"> <li>from a related person or from his establishments located outside India,</li> <li>without consideration,</li> <li>in the course or furtherance of business shall be treated as "supply"</li> </ul>

- ⇒ Taxable person under GST is anyone who is registered under GST or required to be registered under GST.
- ⇒ Thus, Business entity who are providing only exempted supplies of goods or services are not taxable person.
- ⇒ The word 'taxable person' has been substituted by 'person'.

**Impact of amendment -**

- Import of services by entities which are not registered under GST (say, they are only making exempted supplies) but are otherwise engaged in business activities is taxed when received from a related person or from any of their establishments outside India.
- Thus, if person importing services is exempted from tax in India, then, import of service from related / deemed distinct person is taxable w.e.f 1st Feb, 2019.

**Example - 1**  
 Interior design service received by a branch from its Head office, located in Singapore. The interior service is taxable and liable for GST on reverse charge.

**Example - 2**  
 Interior design service from its head office, located in Singapore for personal residence without any consideration. Since the service is free and for personal use, it is not subject to GST.

Activities Or Transactions Treated As Supply Of Goods Or Supply Of Services

Activities or transactions to be treated as supply of goods or supply of services as referred to in Schedule II  
 [Section 7(1A)] [inserted by the CGST (Amendment) Act, 2018, w.r.e.f. 1-7-2017]:

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

**Schedule II**

S. No.	Provision	Whether goods or service	Analysis
1(a)	Any transfer of the <b>title</b> in goods	Supply of goods	<b>Example:</b> When the goods are stolen, title of goods shall pass to insurance company. It would be treated as supply.
1(b)	Any transfer of right in goods or of <b>undivided share</b> in goods without the transfer of title thereof	Supply of Service	Transfer of right to use goods without transfer of title is <b>supply of service</b> .
1(c)	<b>Any transfer of title in goods</b> under an agreement which stipulates that property in goods shall pass <b>at a future date</b> upon payment of full consideration	Supply of goods	<b>Example:</b> Financial lease/Hire purchase transaction would amount to supply of goods under the GST.

Schedule II			
S. No.	Provision	Whether goods or service	Analysis
2(a)	Any lease, tenancy, easement, license to <b>occupy land</b>	Supply of Service	<b>Example:</b> Land used for circus, entertainment and parking purposes;
2(b)	Any lease or letting out of the <b>building</b> including a commercial, industrial or residential complex for business or commerce, either wholly or partly	Supply of Service	Leasing of building for commercial purpose shall amount to supply of service.
3	Any treatment or process which is applied to <b>another person's goods</b>	Supply of Service	<b>Example:</b> Job work shall be treated as supply of service.
4(a)	<b>Transfer or</b> Disposed of <b>business assets</b> whether or <b>not for a consideration.</b>	Supply of goods	
4(b)	Change of <b>use</b> of goods: From business to <b>personal use</b> , whether or not for a consideration.	Supply of Service	<b>Example:</b> A computer, company car, when put to non-business use would be covered.
4(c)	Where any <b>person ceases</b> to be a taxable person, any goods forming part of the assets of any business <b>unless -</b> (a) the business is transferred as a going concern to another person; or (b) the business is carried on by a personal representative who is deemed to be a <b>taxable person.</b>	Supply of goods	In other words, when running business is transfer to representative, it shall not amount to supply of goods.
5(a)	Renting of <b>immovable property</b>	Supply of Service	
5(b)	Construction of a complex, building, civil structure or a part thereof, including a complex or building <b>intended for sale to a buyer</b> , wholly or partly, except where the entire consideration has been received after issuance of completion certificate,	Supply of Service	No refund of unutilized input tax credit shall be allowed under <b>sub-section (3) of section 54</b> of the said Central Goods and Services Tax Act, in case of supply of services specified in <b>sub-item (b)</b>

Schedule II			
S. No.	Provision	Whether goods or service	Analysis
	where required, by the competent authority or after its first occupation, whichever is earlier.		<b>of item 5 of Schedule II of the CGST Act. [Notification No. 15/2017-Cenrtal Tax (Rate)]</b>
5(c)	Temporary transfer or <b>permitting the use</b> or enjoyment of any intellectual property right	Supply of Service	<b>Example:</b> Permitting the use of patent, copyright, trademark shall amount to service.
5(d)	Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of <b>information technology software</b>	Supply of Service	<b>Example:</b> Mr. Ram request to Mr. Shyam not to teach a particular subject in particular area for 5 years. Shyam agree with the terms and condition against a consideration of Rs. 5,00,000. The same would amount to supply of service by Shyam and would attract GST.
5(f)	Transfer of the <b>right to use any goods</b> for any purpose	Supply of Service	Renting of goods i.e. movable property shall amount to supply of service. <b>Example:</b> Renting of coffee machine, generator etc.
6	The following <b>composite supplies</b> shall be treated as a supply of services, namely: - (a) works contract as defined in clause (119) of section 2; and (b) supply, by way of or as part of, 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 Service	<b>Example:</b> Both, pure labour contracts and works contracts involving transfer of property are service under the GST law.  <b>Example:</b> Restaurant and outdoor catering are service under GST law.

Schedule II			
S. No.	Provision	Whether goods or service	Analysis
7	Supply of goods by any unincorporated association or body of persons to a member thereof	Supply of goods	

*Note - The activities listed in Schedule II shall be treated either as supply of goods or supply of services provided the basic conditions for an activity to be construed as supply as laid down in Section 7(1) are fulfilled.*

Out the scope of supply - section 7(2) - schedule -III & notified activities of Govt. + local authorities as public authorities  
 Notwithstanding anything contained in **sub-section (1) of section 7 -**  
 (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**,

Section - 7(1)(a) - Schedule - III		
S.No.	Provision	Analysis with examples
1	<b>Services</b> by an <b>employee to the employer</b> in the course of or in <b>relation to his employment</b> .	Gift exceeding Rs. 50,000 given by employer to employee, not mention in employment term, shall be taxable as per Schedule I
2	Services by any <b>court or Tribunal</b> established under any law for the time being in force.	
3	(a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;  (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or  (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.	<b>Example:</b>  Judge of Supreme Court of India is a constitutional post, remuneration received by them shall not subject to GST.  <b>Example:</b>  CBDT is body established by CG. Chairman / Member / Director (who are not employees) of these body shall be out of GST,

Schedule III			
S.No.	Provision	Analysis	
4	Services of <b>funeral, burial, crematorium or mortuary</b> including transportation of the deceased.	Not liable for tax.	
5	<b>Sale of land</b> and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	<b>Sale of land and Building</b>	Not treated as supply as per sch III, No GST
		<b>Rental, Leasing licensing of Land &amp; Building</b>	Treated as Supply GST Payable
		<b>Sale of Building before completion certificate or 1st occupancy whichever earlier</b>	related as supply para 5(b), Sch II GST payable
6	Actionable claims, <b>other than</b> lottery, betting and gambling. <b>Actionable claim</b> [Sec. 2(1)] shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882.	<b>Lottery, Betting, Gambling</b>	Taxable supply liable to GST
		<b>Other Actionable Claims</b>	Not treated as supply
7 w.e.f. 1.2.2019.	<i>Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.</i>	<i>Commonly called as 'third country exports', this category of transaction has been specially included in Schedule III w.e.f. 1.2.2019.</i>  <i>The effect is that the supply of goods consigned directly from a place in the non-taxable territory to a place in the non-taxable territory without such goods touching the Indian shores shall not be treated as 'supply', thus not leviable to tax.</i>	
8(a) w.e.f. 1.2.2018.	<i>Supply of warehoused goods to any person before clearance for home consumption;</i>	<i>Supply of goods lying in a customs bonded warehouse has been treated as neither supply of goods nor supply of service. This entry has been inserted in Schedule III w.e.f.1.2.2018.</i>  <i>However, IGST shall continue to be leviable at the time of clearance of goods from the warehouse for home consumption.</i>	

Schedule III		
S.No.	Provision	Analysis
8(b) w.e.f. 1.2.2018.	Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.	This entry has been inserted in Schedule III w.e.f 1.2.2018 to take High Sea Sale transaction out of the purview of 'supply' as per Section 7 CGST Act.

**CBIC has clarified that following activities/transactions are neither supply of goods nor supply of services.**

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

Equipment and instruments sent to manufacturers' factory for repairs and calibration within India

**Question**

Equipment and instruments sent to manufacturers' factory for repairs and calibration within India on a returnable basis. Is it supply?

**Answer**

It is not a supply. Since, no sale has taken place. It is sufficient to issue a challan for movement of goods without supply.

Supply of spare parts freely to replace during warranty period

**Question**

X Ltd. supplied spare parts freely to replace during warranty period. Is it supply and chargeable to GST?

**Answer:**

It is not supply. GST is not chargeable if free replacement is provided by a business to customers without consideration under warranty.

Penalties levied on late or delayed payment

**Question**

Penalties levied on late or delayed payment of loans and advances are taxable supply?

**Issue :**

Whether inter-state movement of various modes of conveyance carrying goods or passengers or both, or for repairs and maintenance, between distinct persons as specified in Section 25(4) of the CGST Act [except in cases where such movement is for further supply of the same conveyance], is leviable to IGST?

**Clarification :**

Inter-state movement of goods like movement of various modes of conveyance including Trains, Buses, Trucks, Tankers, Trailers, Vessels, Containers, Aircraft, between distinct persons as specified in Section 25(4) of the CGST Act, may not be treated as supply and consequently IGST will not be payable on such supply. However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.

**Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes]:**

The CBIC vide Circular No. 21/21/2017-GST dated 22-11-2017 has clarified that Circular No. 1/1/2017-IGST shall mutatis mutandis apply to interstate movement of rigs, tools and spares, and all goods on wheels [like cranes], and except in cases where movement of such goods is for further supply of the same goods, such inter-state movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements.

It is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods.

CBIC has clarified Taxability of 'tenancy rights'/pagadi under GST Circular No. 44/18/2018 CGST dated 02-05-2018

<p><b>Meaning of rights'/pagadi</b></p>	<ul style="list-style-type: none"> <li>▪ In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi).</li> <li>▪ The landlord may be owner of the property, but the possession of the same lies with the tenant.</li> <li>▪ The tenant pays periodic rent to the landlord as long as he occupies the property.</li> <li>▪ The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement.</li> <li>▪ Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated.</li> <li>▪ Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999</li> </ul>
<p><b>Transfer of tenancy right - Supply of service and liable to GST</b></p>	<ul style="list-style-type: none"> <li>▪ The activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST.</li> <li>▪ It is a form of lease or renting of property and such activity is specifically declared to be a service in Para 2. of Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.</li> </ul>
<p><b>GST is attracted even though stamp duty and registration charges is levied on such premium</b></p>	<p>Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST since merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.</p>
<p><b>Transfer of tenancy rights - Cannot be regarded as sale of land or building</b></p>	<ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ To sum up, transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.</li> <li>▪ Further, services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST</li> </ul>
<p><b>Grant of tenancy rights in a residential dwelling against tenancy premium</b></p>	<p>Exempt from tax : As per Entry No. 12 of Notification No. 12/2017-CT (R), any renting of a residential dwelling for use as a residence is exempt. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against premium or periodic rent or both is exempt</p>

Clarification on various doubts related to treatment of sales promotion schemes under GST.

**A. Free samples and gifts:**

- ⇒ It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.
- ⇒ It is clarified that samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.

**B. Buy one get one free offer:**

- ⇒ Sometimes, companies announce offers like 'Buy One, Get One free'. For example, "buy one soap and get one soap free" or "Get one tooth brush free along with the purchase of tooth paste".
- ⇒ 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 as per the provisions of section 8 of the CGST Act.

Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors [Circular No. 116/35/2019 GST dated 11.10.2019]

Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in

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

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

(i) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.

(ii) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus, where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement, GST is not leviable.