

Charge of GST & Concept of Supply



Section 9 :- Charging Section

Levy

Charge

9(1) - Intra-State Supply of Goods or services or Both

5(1) [IGST Act]- Inter-State Supply of Goods or Services or Both

As per Sec 15 of CGST Act, 2017

Intra-State Supply - Sec 8 of IGST Act, 2017
Supply of goods/services shall be treated as intra-state supply Where the location of the supplier and the place of supply are in
(a) same State
(b) same Union territory

Inter State Supply - Sec 7 of IGST Act, 2017
Supply of goods/services shall be treated as inter-state supply 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

Goods not Subject to Levy of GST - alcoholic liquor for human consumption

Sec 9(2):- Levy on Petroleum Products from Notified date :- Supply of petroleum crude, high speed diesel, petrol, natural gas and ATF shall be levied from the notified date on recommendation of GST Council.

Note : Still levy of GST on such products is not notified

Analysis: The type of levy existing or to be continued after GST

	(Supply)		(Production)		(Sale)	
	GST	ED	VAT	CST		
1. Alcoholic Liquor for Human Consumption	X	✓	✓	✓		
2. Petroleum crude, High speed Diesel, Motor spirit (Petrol), Natural gas, Aviation Turbine fuel	X	✓	✓	✓		
3. Tobacco & Tobacco products	✓	✓	X	X		
4. Opium, Indian Hemp and other Narcotic Drugs	✓	✓	X	X		
5. All other Products	✓	X	X	X		

SEC 2 (56) "INDIA"

Means

- a) Territory of India (state and the UTs.)
- b) Its territorial water, seabed and sub-soil underlying such waters, continental shelf, EEZ or any other maritime zone as defined in the Territorial Waters, Continental Shelf, EEZ and Other Maritime Zones Act, 1976
- c) Air space above its territory & territorial waters

SEC 2(114) "UNION TERRITORY"

Means the territory of -

- (a) the Andaman and Nicobar Islands
- (b) Lakshadweep
- (c) Daman and Diu and Dadra and Nagar haveli
- (d) Ladakh
- (e) Chandigarh
- (f) and Other territory

Sec 2(80A):- Online Gaming

Means offering of a game on internet or electronic network & includes online money gaming

Sec 2(102A):- Specified actionable claim

Means actionable claim involved in/by betting, casinos, gambling, horse racing, lottery or online money gaming.

Value

Rate

CGST Rate	0%	0.125%	1.5%	2.5%	6%	9%	14%
SGST Rate	0%	0.125%	1.5%	2.5%	6%	9%	14%
Total	0%	0.25%	3%	5%	12%	18%	28%

Sec 2(84) "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 Govt. company as defined in clause (45) of section 2 of the Companies Act, 2013
- (h) any body corporate incorporated by or under the laws of a country
- (i) A co-operative society registered under any law relating to co-operative societies
- (j) A local authority
- (k) Central Government or a State Government
- (l) Society as defined under the Societies Registration Act, 1860
- (m) Trust
- (n) Every artificial juridical person, not falling within any of the above

Type of Supply

Sec 2(108): Taxable Supply

means a supply of goods or services or both which is leviable to tax under this Act

Chargeable to GST at specified rate as applicable under this act

Sec 2(78): Non-Taxable Supply

means a supply of goods or services or both which is not leviable to tax under this Act (i.e. CGST Act) or under the Integrated Goods and Services Tax Act

Sec 2(47): Exempt Supply

means a 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

Collection

in such manner as may be prescribed (Detail discussion in subsequent chapter)

Person Liable to Pay Tax

Sec 2(107) "Taxable person" - includes

"Taxable person" means a person who is registered or liable to be registered u/s 22 or section 24

Forward Charge Sec 9(1)	Taxable Person making Intra State- Supply
Reverse Charge Sec 9(3)/9(4)	Recipient of Supply
E-Commerce Sec 9(5)	E-Commerce Operator

Deemed Distinct Persons : Sec 25 CGST Act

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 UT shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

Sec 2(94) "Registered person" - includes

"Registered person" means a person -

- ⇒ who is registered under section 25
- ⇒ but does not include a person having a Unique Identity Number

Sec 2 (105) "Supplier"

means person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier

Proviso:- Supplier includes person arranging supply of specified actionable claims & also who owns/operates/manages e-platform for supply.

25 (5) Where a person who 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 establishment shall be treated as establishment of distinct persons for the purposes of this Act.

Sec 2(93) "Recipient"

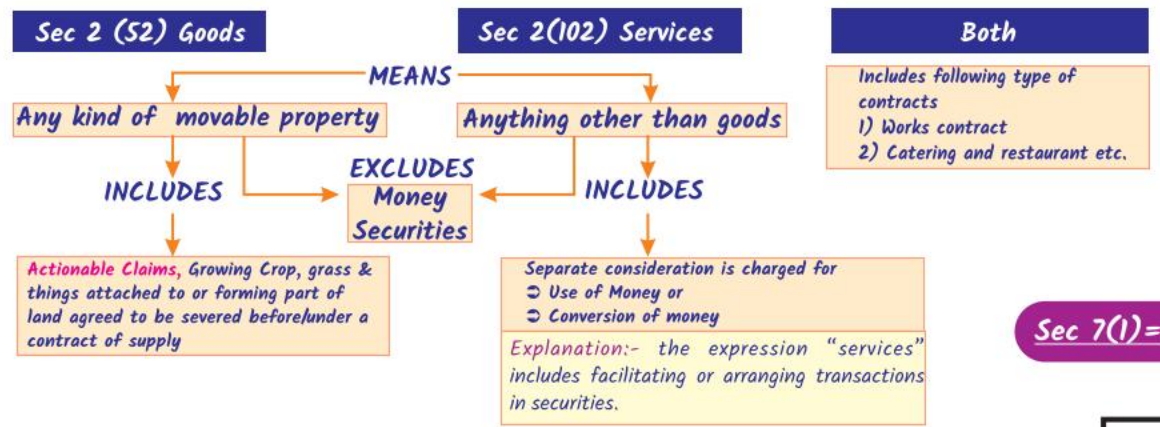
Situation	Recipient
Where a consideration is payable	Person liable to pay that consideration
Where no consideration is payable for the supply of goods	Person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available
Where no consideration is payable for the supply of a service	Person including his agent to whom the service is rendered

Business includes [Sec 2(17)]

a Any trade, commerce, manufacture Whether or not for pecuniary benefit.	b Any activity or transaction in connection with or incidental or ancillary to Sub - Clause (a)
c Any activity or transaction in nature of Sub Clause (a) Whether or Not There is a volume, frequency, continuity or regularity of such transaction.	d Supply or acquisition of goods including capital goods & service in connection with Commencement or Closure of business
e Provision by a Club or Association or Society or Any Such body of facilities or benefits to it's members.	f Admission for a consideration of person to any premises
g Services supplied by a person as a holder of an office which has been accepted by him In course or furtherance of his trade Profession Vocation	h Activity of a race club including by way of totalisator or a licence to book maker or activities or licenced book marker in such club and
	i Any activity or transaction under taken by CG/SG/ local authority in which they are engaged as public authorities.



Sec 7 - Supply

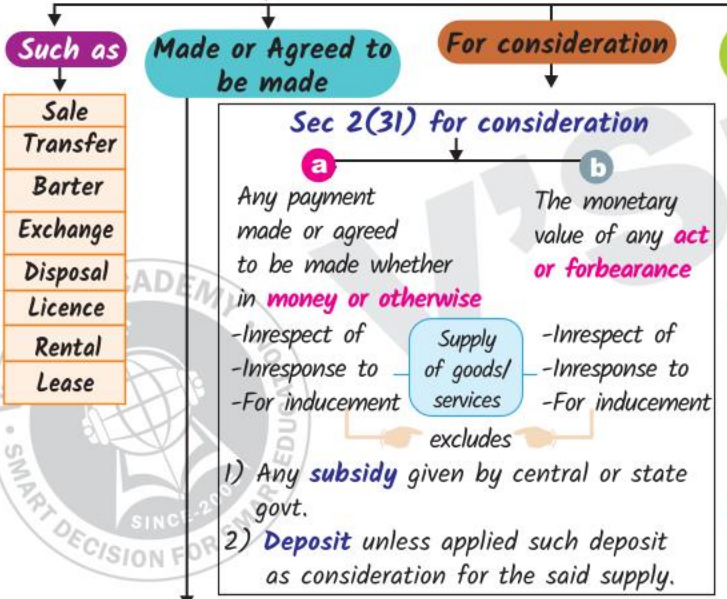


Sec 7(1)=Supply Includes

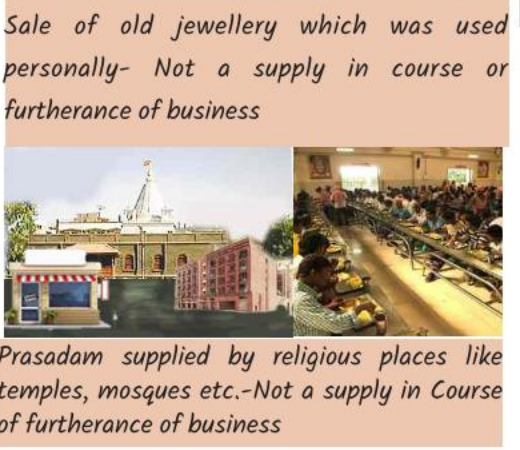
Sec 7(2)(a)=Supply Excludes

Supply of goods / Services with consideration Supply of goods / service without consideration [Deemed supply]

Sec 7(1) (a) All forms of supply of goods / services/both



Sec 7(1) (b) Import of Services



Analysis

Import of Services for Business	Taxable
Import of Services other than to business	Exemption (detail discussion under Exemption)
Import by Individual, Govt., Charitable, Trust	Exemption
Import by others	Taxable

Schedule I

- Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- Supply of goods or services or both
 - between related persons or
 - between distinct person as specified in section 25, Provided that gift upto ₹50,000 in value in a financial year by an employer to an employee shall not be treated as supply

Related Person (as per explanation to Sec 15) of CGST Act

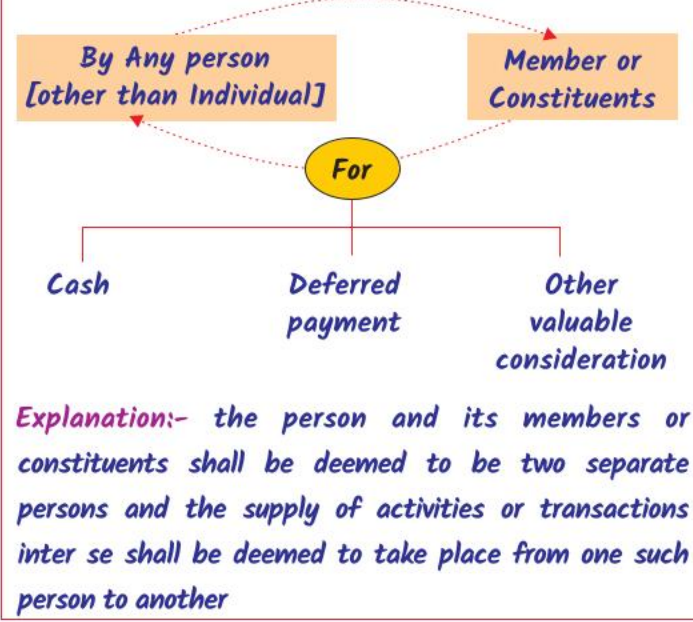
 - such persons are officers or directors of one another's business
 - such persons are legally recognized partners in business
 - such person are employer and employee
 - any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them
 - one of them directly or indirectly controls the other
 - both of them are directly or indirectly controlled by a third person
 - together they directly or indirectly control a third person
 - they are members of the same family

Family [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.
- Supply of goods
- Import of Service without consideration

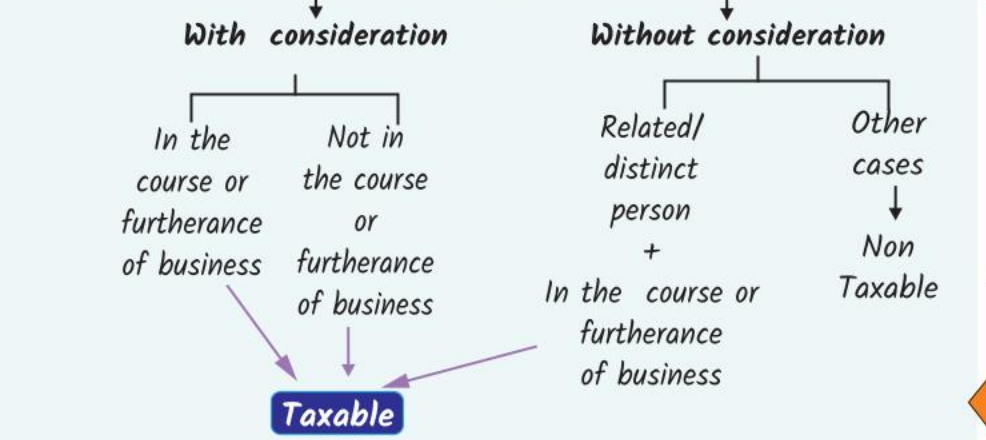
Schedule III (Transaction not be treated as supply)

- Services by an employee to the employer in the course of or in relation to his employment.
 - Compensation for premature termination - Non Taxable as it is in relation to employment.
 - Non compete fees received by an employee from employer -Taxable as it is not in the course of or in relation to employment.
 - Casual labour appointed on daily basis for wages - Non Taxable as it is in relation to employment contract
 - Directors Remuneration a) If TDS under IT Act is deducted u/s 192 - Not a Supply
b) If TDS under IT Act is deducted u/s other sec - Supply
 - perquisites provided by the employer to the employee in terms of employment contractual not a supply.
 - Services by any court or Tribunal established under any law for the time being in force.
 - The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities
 - The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity
 - 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
 - Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
 - Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building
- Analysis**
- | | |
|---|---|
| Sale of land and Building | Not treated as supply as per sch III, No GST |
| Rental, Leasing licensing of Land & Building | Treated as Supply GST Payable |
| Sale of Building before completion certificate or 1st occupancy whichever earlier | Treated as supply para 5(b), Sch II GST payable |
- Clarification 177/09/2022 GST**: Sale of land either as it or after development like levelling, laying down of drainage, water & electricity lines is also sale of land and not attract GST
- Actionable claims, other than specified actionable claims.
 - Supply of goods from a place a non-taxable territory to another place in the non-taxable territory without such goods entering in India
 - Supply of warehoused goods to any person before clearance for home consumption
 - Supply of goods by the consignee to any other person, by endorsement of document 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
- Clarification by FA 23**:- Refund shall not be made of already collected tax which was not to be collected due to retrospective effect under para 7 & 8

Sec 7(1) (aa) :- Activities or Transactions



Import of Service (Analysis)



As per N/N 14/2017 - Sec 7(2)(b)= Notified activities by Government

Services under Article 243G & 243W of Panchayats & Municipality and Services of granting liquor license against consideration in the form of license fee by SG are **neither** supply of goods nor supply of services. This notification is **retrospectively** applicable from 1st July 2017

N/N 20/2019 & CBIC Clarification	As per N/N 14/2017
1) License fees or application fees etc. for alcoholic liquor license by S.G.	Neither treated as SOG/SOG
2) License fees or application fees for other	SOS & Liable to GST

Schedule II : Activities or transactions to be treated as supply of goods or services

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

Para 1 : Transfer of goods

Supply of goods 1) Transfer of title in goods
2) Transfer of Title in Goods on future date (Ex. Hire Purchase)

Hire Purchase Sale

Supply of Service Transfer of right in goods or undivided share in goods without transfer of title in goods

Bike Rental Service

Para 2 : Land & Building

Supply of Service Any lease, tenancy, easement, license to occupy land

Supply of Service Any lease, letting of building including commercial, industrial complex for business / commerce either wholly or partly

Note : Sale of land & building not treated as supply as per schedule 3 other than construction intended for sale [of para 5(b)]

Residential House Rented for Residential Use

Is covered under the ambit of supply but given an exemption benefit

Hotel

Supply liable to GST as renting of immovable property

Para 3 : Treatment or process

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

Process of Job worker

Para 4 : Transfer of business asset

Supply of goods Permanent transfer of Business Asset:- If goods as a part of the asset are permanently transferred or disposed off

Supply of Service Temporary transfer of business assets:- If goods as a part of business asset are put to any private use or are used for any purpose other than business

Note : If any person ceases to be a taxable person then goods forming part of business asset shall be deemed to be supplied (In the course or furtherance of business) unless :-

- (i) Business is transferred as going concern to another person.
- (ii) Business is carried on by personal representative who is deemed to be a taxable person.

Para 5 : Following activities always treated as supply of service under GST

- a Renting of immovable property
- b Construction of complex, building, civil structure including a complex, building intended for sale to buyer. But in following case it shall not be treated as supply. When entire consideration has been received - after completion certificate / - It's 1st occupation **whichever is earlier**
Note :- Construction - it includes addition, alteration, replacement, remodeling of any existing civil structure

Construction of Service intended for sale before completion

Flat Value 80,00,000/-

1) before Completion	After Completion	Taxable value for GST = ₹80 Lacs
40,00,000	20,00,000	
2) ₹1	79,99,999	Taxable Value = ₹80 Lacs
3) After Completion	80,00,000	Not taxable As per Sch - III

- c Temporary transfer of IPR
- d Development, design, programming, customisation etc. of info. Tech. Software

Customized Software	Supply of Service
Sale of Pre-packed Software	Supply of Goods
License to use prepacked Software	Supply of Service

- e Agreeing to the obligation to refrain from an act or to tolerate an act.
- f Transfer of right to use any goods for any purpose for cash, deferred payment or other consideration.

Para 6 : Composite supply treated as supply of service

Supply of Service a Works contract

Labour + Material = Works Contract (construction)

Supply of Service Restaurant, catering or any supply of service where food/drink is supplied for consideration.

Catering Restaurant

Sec 2(119) : Works contract

Building, Construction, Fabrication, Completion, Erection,	Installation, Fitting Out, Improvement, Modification, Repair,	Maintenance, Renovation, Alteration or Commissioning
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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

Think GST Think Vishal Sir

CA Vishal Bhattad

Sec 8 : Composite Supply & Mixed Supply

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 two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Definition - Composite Supply

Composite Supply as per Sec 2 (30) : means a supply made by a taxable person to a recipient consisting of

- two or more taxable supplies of goods or services or both or any combination thereof
- which are naturally bundled and
- supplied in conjunction with each other in ordinary course of business one of which is a principal supply

Illustration.— (Goods + Service) Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

Definition - Mixed Supply

Mixed Supply as per Sec 2 (74) : 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

Illustration.— A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks 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

Circular No.:- 1/1/2017

Issue:- Whether Inter-state movement of various modes of conveyance, carrying goods/ passenger/ both, or for Repair and maintenance, between distinct persons (Reg Br.1 to Reg Br.2), is leviable to IGST? (Conveyance = Trains, buses, trucks, tankers, trailers, vessels, containers, aircrafts.)

Decision:- It shall not be treated as SOG/SOS, so no IGST. (Except further supply)(Schedule 1, Para 2)

Clarification :- 1-Conveyance carrying goods/ passenger/ both:- Treated neither as SOG or SOS, No IGST.

2-Conveyance for repair & maintenance:- Treated neither as SOG or SOS, No IGST.

(On such Repair and maintenance charges:- GST payable)

3-Conveyance moved for further supply:- Treated as SOG/SOS, IGST shall be levied.



Circular No.:- 21/21/2017

Issue :- Whether Inter-state movement of Rigs, tools, spare parts, and all goods on wheels (like cranes) between distinct persons (Reg Br.1 to Reg Br.2), is leviable to IGST?

Decision:- It shall not be treated as SOG/SOS, so no IGST (As per Schedule 1, Para 2)

Clarification:-

- 1) It shall not be treated as supply of goods nor supply of services, hence no IGST is levied,
- 2) However, applicable CGST/SGST/IGST shall be leviable on further supply of these goods.



Circular No.:- 57/31/2018

Issue:- What is the scope of Principal-Agent-Relationship, under Para 3 of schedule 1 of CGST Act, in context of Agents?

Clarification:- (1) Supply by Principal to Agent, where Agent shall issue, for further supply, Invoice

Invoice in his name:- Agent shall be covered under Para 3, Schedule 1

Invoice in the name of Principal:- Agent shall not be covered under Para 3, Schedule 1

(2) Supply by Agent to Principal, where goods being procured by Agent on behalf of Principal, Invoice :-

Invoice in his name:- Agent shall be covered under Para 3, Schedule 1

Invoice in the name of Principal:- Agent shall not be covered under Para 3, Schedule 1

Circular No.:- 73/47/2018

Issue:- 1- What is the scope of Principal-Agent-Relationship, under Para 3 of sch. 1 of CGST Act, in context of "Del-Credere Agent"(DCA)?

2- Whether temporary loan and interest thereon, extended by DCA to recipient, is to be included in value of goods being supplied by principal? (Where DCA is not issuing own invoice)

3- Where DCA makes payment to principal and charges interest to buyer for delay payment along with value of goods, whether interest will form part of value of goods or not? (Where DCA is issuing own invoice)

Decision:- For 1- If invoice issued by agent in his own name, shall fall under Para 3 sch 1 only. For 2- It is an independent supply, So not included in Value of goods. For 3- It is not to be treated as separate supply, So included in Value of goods (As per Para 3, Schedule 1)

Circular No.:- 116/35/2019

Issue:- Whether GST is leviable on the service of display of name/ placing of name plates of donor in the premises of charitable organisations receiving donation/gifts from individual donors?

Clarification :- 1- Individual Donors= provide financial help, etc in form of donation/gift, to charitable institutions, etc

2- Recipient institution= place a Name plate, etc in their premises to express the gratitude

3- Purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement.

5- No obligation on part of recipient to do anything

6-Hence, No GST on such activity

Circular No.:- 44/2018

Issue:- (1) Whether Tenancy premium for transfer of tenancy rights to an incoming tenant, attract GST, when stamp duty and registration charges is levied on the said premium?

(2) Whether supply, in case of transfer of tenancy rights, a part of the consideration for which, accrues to the outgoing tenant, attracts GST?

Clarification:- 1- Any lease/tenancy/leasehold/license, to occupy land=SOS (Para-2 Schedule 11)

2- Transfer of tenancy rights=Not treated as Sale of Land/Building

3- Renting of residential dwelling for use as a residence= Exempt

4- (Transfer of tenancy rights, against consideration of Tenancy premium):-

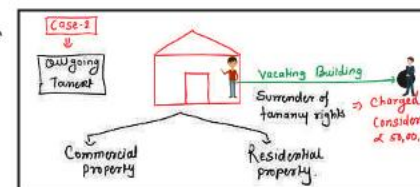
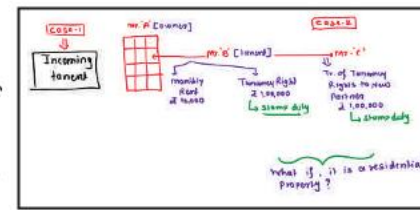
➔ To an Incoming tenant= Taxable

➔ To a New tenant= Taxable

➔ To a New tenant(for Residential Property)= Exempt

5- Service provided by Outgoing tenant as surrendering the tenancy rights, against consideration in the form of a portion of tenancy premium= Taxable

6-Merely because a transaction/ supply involves execution of Docs. (require registration, pay fees, and stamp duty), wouldn't preclude them from scope of supply.



Circular No.:- 11/11/2017

Issue:- Whether such supplies constitutes SOG/SOS:-

(1) Printing of books, pamphlets, brochures, annual reports, and the like

(2) Supply of Printed envelopes, letter cards, printed box, napkin, wall papers etc, printed with design, logo, etc

Decision:- For (1):- SOS For (2):- SOG (Sec 8, composite and mixed supply)

Clarification

1- Classification of such supplies as SOG/SOS,= on the basis of what constitutes the Principal Supply.

2- Printing of books, pamphlets, brochures, annual reports, etc= SOS (Supply of printing, on the content supplied by the recipient of supply is the Principal supply.

3- Supply of Printed envelopes, letter cards, etc, printed with design, logo, etc.= SOG

(Predominant supply is goods, and supply of printing of the content, supplied by recipient, is Ancillary to the Principal supply of goods.

Circular no. 172/04/2022

Any perquisites provided by employer to its employees:

➔ If terms of contract = Not supply under Schedule III.

➔ If not in terms of contract = If value exceeds ₹50,000, it is taxable under Para 2 of Schedule I

Circular no. 178/10/2022

Parameters for taxability under GST:

- Contractual relationship between supplier & recipient
- Express or implied promise from supplier for services under para 5(e) of sch 11 ie payment cannot be assumed
- Independent arrangement or activity
- If payment not represent object, it cannot be consideration

a) **Liquidated damages:** Normally no express or implied agreement, thus not taxable, but are taxable in certain cases.

b) **Compensation for cancellation of coal blocks:** not given under contract between govt & allottee, hence not taxable

c) **Cheque dishonour fine/ penalty:** Never implied or express offer, hence not taxable

d) **Penalty imposed for violation of Law:** No agreement between Govt and violater, hence not taxable

e) **Forfeiture of salary or payment of bond amount:** These amounts are not consideration for tolerating the act, hence not taxable

f) **Compensation for not collecting toll charges:** compensation received are treated as supply

g) **Late payment surcharge or fee:** Late payment with interest, fee, fine, penalty are naturally bundled hence assessed as principle supply

h) **Fixed Capacity charges for Power:** These are charged as sale of electricity which is exempt

i) **Cancellation charges:** Assessed as principal supply & same rate is applicable to service contract

Circular no. 190/02/2023

Incentives paid by Ministry of electronic & Information Technology (Meity) to acquiring bank under incentives schemes for promotion of digital payments are treated as Subsidy hence not taxable

Circular No. 196/08/2023

Activity of holding of shares of subsidiary company by holding company **cannot be treated as a supply of services** by a holding Co. & **cannot be taxed** since shares are neither goods nor services.

Circular No. 201/13/2023

➔ Supply of food/beverages in cinema hall is **taxable as 'restaurant service'**, if:

- a) food or beverages are supplied as part of a service, &
- b) supplied independent of the cinema exhibition service.

➔ If sale of cinema ticket & food & beverages **are bundled together as composite supply**, entire supply **will attract GST rate of exhibition of cinema.**