

## Charge of GST [S. 5, 7, 8, 9 of IGST Act; S. 9 of CGST Act] (1/4)

**Backdrop of Charge of GST:** Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. The charging section is a must in any taxing statute for levy and collection of tax. In this chapter we are learning which tax shall be charged viz. CGST SGST or IGST. Further, who is the person liable to pay tax to government whether it is supplier or recipient.

### 1. ANALYSIS OF SECTION 7 OF IGST ACT [INTER-STATE SUPPLY]

| Section 7 | Description  |
|-----------|--|
| (1)       | <b>Inter-State supply of Goods in India.</b><br>If LOS & Place of supply (POS) of goods is in different states/Union Territory then it is interstate supply (Movement should be in India)  |
| (2)       | <b>Import of Goods, till they cross the custom frontiers of India, shall be treated to be inter-state supply</b>   |
| (3)       | <b>Inter-State supply of services</b><br>If LOS & POS is in different states/Union Territory it is interstate supply (LOS & LOR shall be in India)   |
| (4)       | <b>Import of Services is an Interstate Supply</b><br>(In case of Import of service, supplier is Outside India, recipient is in India & POS is India)   |
| (5)       | <b>Other Supplies</b>  |
| (a)       | Supplier in India, POS Outside India, would be Inter-state supply (generally export transactions)  |
| (b)       | Supplies "to" or "from" a Special Economic Zone developer or a Special Economic Zone unit – Interstate Supply<br>❖ Supplies to SEZ is zero rated supply, however supplies made by SEZ are treated as import of goods into domestic tariff area (DTA)<br>❖ Import of goods by SEZ from outside India are exempt |
| (c)       | Residual Provision - Supply in the taxable territory not being intra-State supply is an Inter State  |

UT are Andaman Nicobar Island, Lakshadweep, Dadra & Nagar Haveli, Ladakh, Chandigarh Delhi, Puducherry, Daman and Diu. Intra-State sale in Delhi, Puducherry & Jammu Kashmir will have levy of CGST & SGST even if they are union territory as they have their own state legislature. (Intra-state in J&K to attract CGST, SGST)

### Section 8 of IGST Act: Intra-state Supply

|     |  |
|-----|--|
| (1) | <b>Intra-State supply of Goods in India.</b><br><b>If LOS &amp; POS of goods is same state or same UT then it is intra-state supply (Movement should be in India). Exceptions are as below:</b><br>(i) <b>Supply to &amp; from SEZ and DTA in same state would be Inter-state supply.</b><br>(ii) <b>Imports:</b> Goods imported into the territory of India till they cross the customs frontiers of India<br>(iii) <b>Supply to foreign tourist</b>  |
| (2) | <b>Intra-State supply of services in India.</b><br><b>If LOS &amp; POS of services is same state or same UT then it is intra state supply (LOR &amp; LOS shall be in India). Exceptions (Proviso):</b><br>(i) Supply to / by SEZ<br><b>Meaning of distinct persons for IGST Act (Explanation 1):</b><br>(i) An establishment in India & outside India/ an establishment in a State or Union territory and any other establishment outside that State or Union territory would be distinct person.<br>(ii) 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<br><b>Circular:</b> Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/SEZ unit to be treated as an inter- State supply |

### 3. CHARGING SECTION FOR INTRA-STATE SUPPLIES

**In GST, the charging section is section 9 of CGST Act for intra-state and section 5 of IGST Act, 2017 for inter-state supplies**

| Section 9 | Description  |
|-----------|--|
| (1)       | <b>CGST on Intra-state Supply except Petroleum Products &amp; Alcoholic Liquor for Human Consumption</b><br><b>Charging Sec:</b> Subject to S. 9(2) (Petroleum products), CGST shall be levied on all <b>Intra-State</b> supplies, <b>except</b> on the supply of alcoholic <b>liquor</b> for human consumption, <b>extra neutral alcohol and rectified spirit</b> on the <b>value</b> determined under <b>section 15</b> and at such rates, <b>not exceeding 20%</b> CGST (CGST + SGST together or IGST shall not exceed 40%), shall be <b>payable by Taxable person</b><br><b>Taxable person [S. 2(107) of CGST Act]:</b><br>❖ Registered person or,<br>❖ Person liable for registration ( <i>person becomes liable for registration on crossing of specific turnover limit</i> )  |
| (2)       | <b>Intra - state supply Petroleum Products - Out of Ambit of GST</b><br>GST shall be levied from notified date on supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. (Currently out of ambit of GST)  |
| (3)       | <b>Notified intra-state supply of goods or services - Reverse Charge Mechanism</b><br>GST shall be paid under reverse charge basis on notified goods or services<br><b>Analysis &amp; Inter-linking Concepts:</b><br>1. Compulsory Registration for RCM Recipient. [S. 24 of CGST Act]<br>2. RCM liability to be paid in Cash, then ITC can be availed in same month [S. 2(82) of CGST Act r/w S. 49B]<br>3. ITC of RCM can be used to pay FCM liability [S. 2(82) of CGST Act r/w S. 49B]   |
| (4)       | <b>Reverse charge on purchase from unregistered persons (Not in syllabus)</b>  |
| (5)       | <b>Specified Services provided by ECO, tax shall be paid by ECO as if he is supplier</b><br><b>1. Passenger Transport Services:</b><br>(i) <b>ANY MOTOR VEHICLE EXCEPT OMNIBUS</b> (radio-taxi, motorcab, maxicab and motor cycle) – <b>ALWAYS ECO will be liable to pay Tax.</b><br><b>(ia) TRANSPORTATION OF PASSENGER THROUGH OMNIBUS:</b><br>Supplier – Body Corporate – Supplier will pay tax<br>Supplier – Other than Body Corporate – ECO will pay tax<br><b>2. Hotel Accommodation:</b> If Service provider is <b>registered</b> , he will be liable to pay tax, <b>otherwise ECO.</b> (E.g. MMT, Go Ibibo)<br><b>3. Services by way of house-keeping,</b> such as plumbing, carpentering etc - If Service provided is registered, he will be liable to pay tax, otherwise ECO (Added by NN 23/2017- CTR) (E.g. Urban clap)<br><b>4. Supply of restaurant service (E.g. Zomato, Swiggy):</b><br>- Restaurant, eating joints etc. located at premises having hotel accommodation charges declared tariff <b>&gt;= Rs. 7,500 per day – Restaurant will pay GST</b> (Inserted vide Notification No. 17/2021-CTR & ITR)<br>- Charges less than <b>Rs. 7,500 per day or No Accommodation: ECO</b> shall be liable to pay tax.<br>If ECO does not have a physical presence, then his representative shall pay tax.<br>If ECO does not have a representative in the taxable territory, he shall appoint a person to pay tax |

#### Departmental Clarification: Taxability of Passenger Service Fees (PSF) & User Development Fee (UDF) charged by Airline Companies to Passenger

Airport licensee (Airport Operator) is liable to collect PSF & UDF from embarking passengers. This fee is utilised for infrastructure and facilitation of passengers. Airline company is providing "Collection Services" to Airport Operator.

The amount of PSF and UDF Collected and remitted to Airport Licensee shall not be leviable to GST. However, collection services provided by Airline company to Airport Licensee shall be liable to GST.

## Charge of GST [S. 5, 7, 8, 9 of IGST Act; S. 9 of CGST Act] (2/4)

### Clarifications on 9(5) Supplies

| Query   | Clarification                             | Query                  | Clarification   |
|---|---|------------------------|---|
| Do ECO have to collect TCS on 9(5) supplies           | No TCS as it is notified under S. 9(5)    | ITC Eligibility to ECO | GST on 9(5) services has to be paid in cash only. No ITC to be used to pay liability u/s 9(5) |
| Reqmt of Separate registration for providing services | No, separate registration is not required | Invoice                | Invoice shall be issued by ECO to customers in such cases                                     |
| Addition in whose turnover                            | Suppliers                                 | Reporting              | Suppliers shall report in exempt supplies, ECO shall report in taxable supplies.              |

### 4. ANALYSIS OF SECTION 9 OF IGST ACT [TERRITORIAL WATERS]

Where the location of the supplier is in the **territorial waters**, **location of such supplier shall be deemed to be in coastal State or Union Territory where the nearest point of the appropriate baseline is located.**

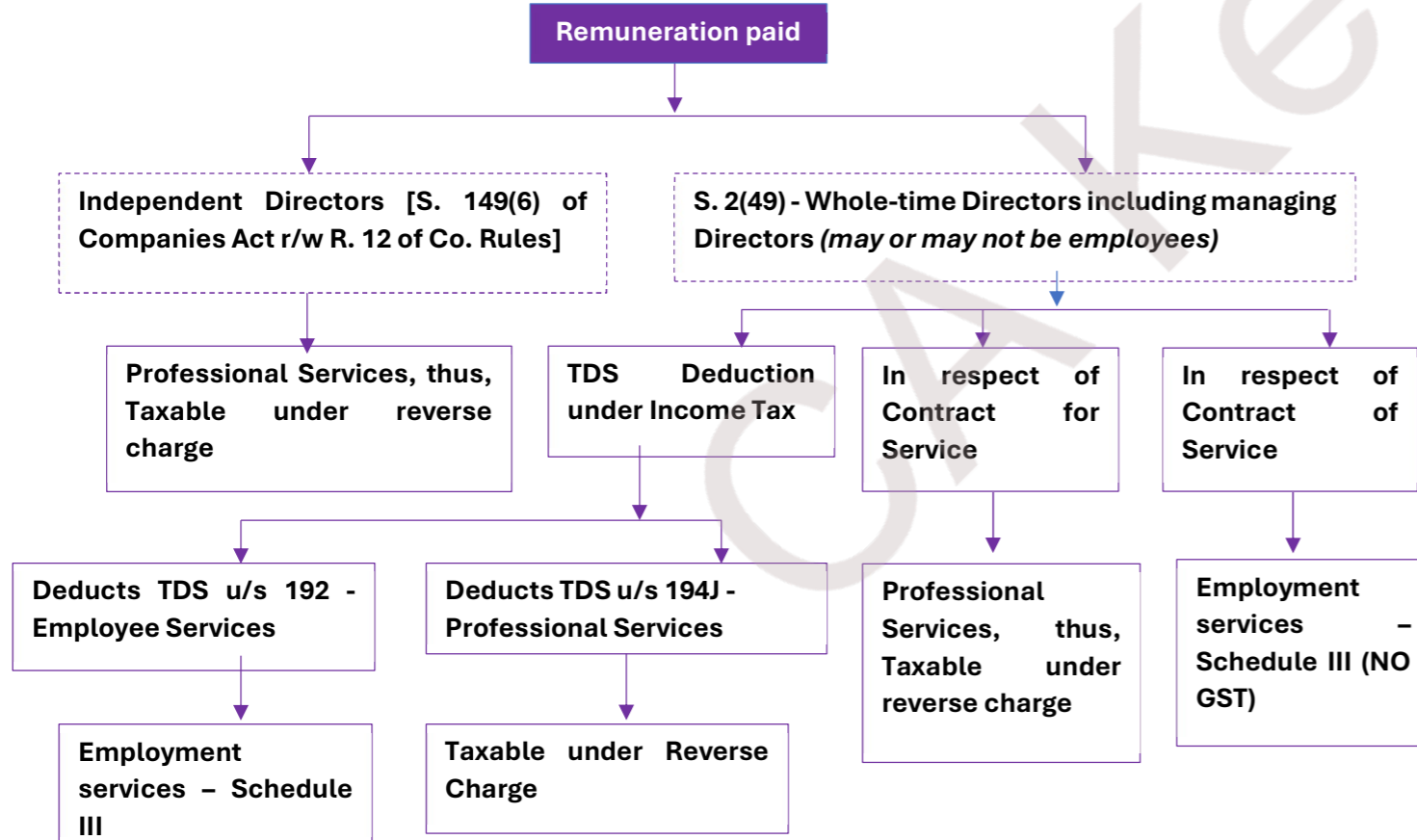
### 5. RCM SERVICES

| Specified Service  | Supplier   | Recipient   |
|--|--|---|
| <b>1) Supply of Services by a goods transport agency</b><br><b>Notes: -</b><br>(i) <b>Not applicable to TDS recipient</b><br>(ii) GTA is person who issues consignment note<br>(iii) Person who is liable to pay freight is recipient)<br>(iv) Specified GTA to other than Specified recipient (including unregistered Casual Taxable person) it is exempt vide NN 32/2017 – CTR.) | Goods Transport Agency other than FCM<br><br><b>Notes: -</b><br>GTA opting for other than FCM Option<br><br><b>(GST shall be payable by recipient at rate of 5%)</b> | a) Factory registered under Factories Act, 1948; or<br>b) Society registered under the Societies Registration Act, 1860 or under any other law or<br>c) Co-operative society established under any law; or<br>d) Person registered under GST<br>e) Body corporate<br>f) Partnership firm (incl. LLP), AOP or<br>g) Casual taxable person; located in the taxable territory. |
| <b>2) Legal Services supplied by an individual advocate, a senior advocate or firm of advocates</b>  | (Covered in Specified service)   | Business entity (having turnover of more than threshold in Preceding financial year)  |
| <b>3) Services supplied by an arbitral tribunal to a business entity</b>   |  | Business entity (having turnover of more than threshold in Preceding financial year)  |
| <b>4) Sponsorship Services (Sponsoror is recipient)</b>  | Any person other than body corporate   | Body Corporate / Partnership firm (including LLP) located in Taxable territory  |

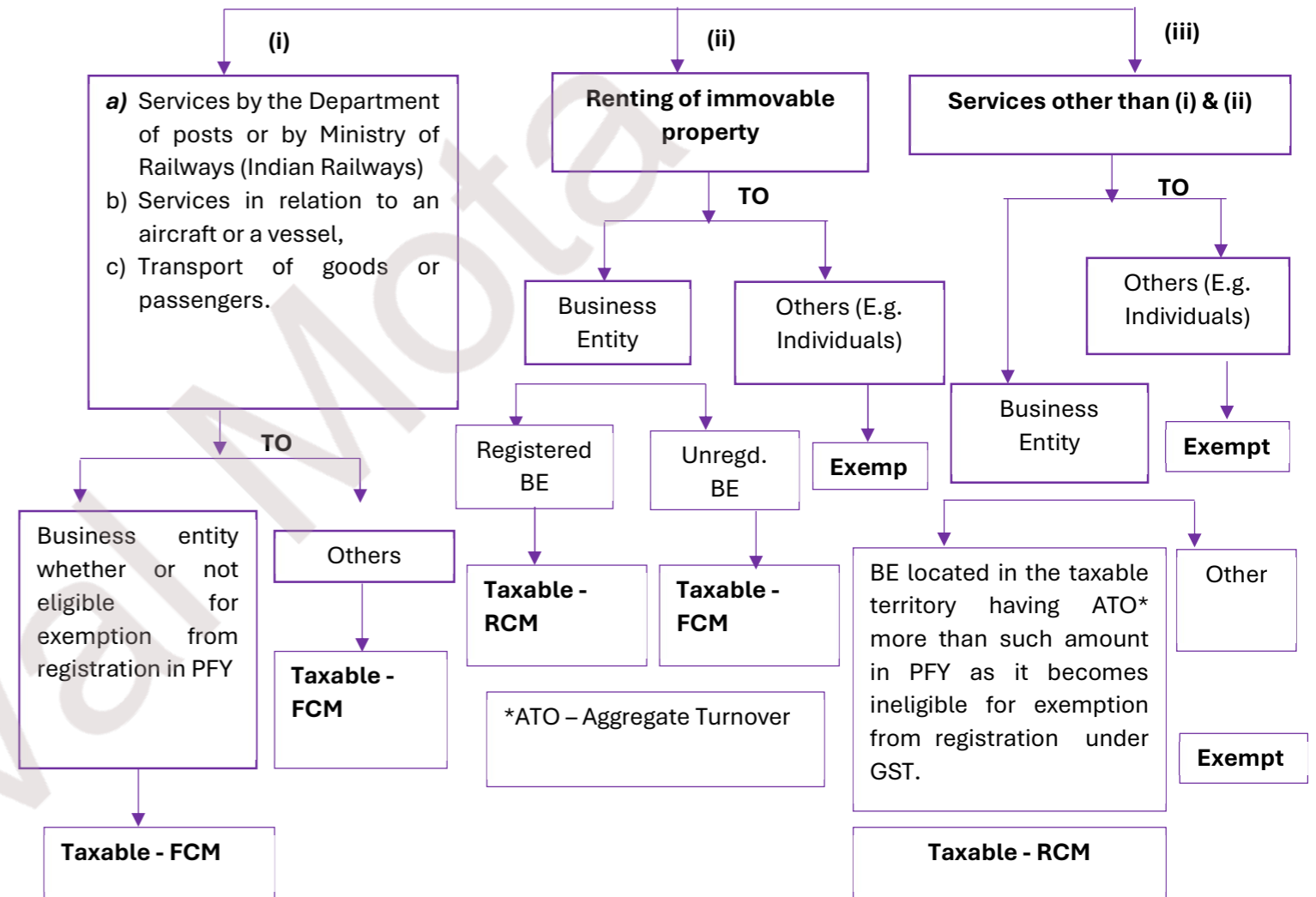
| Specified Service   | Supplier  | Recipient  |
|---|---|--|
| <b>5. Services supplied by the CG / SG/ UT/ LA/COURT OR TRIBUNAL to a business entity excluding: -</b><br>❖ Renting of immovable property,<br>❖ Services by the Department of posts or Ministry of Railways (Indian Railways),<br>❖ Services in relation to an aircraft or a vessel,<br>❖ Transport of goods or passengers. | CG / SG / UT / LA                                 | Any business entity located in the taxable territory having aggregate turnover more than such amount in PFY as it becomes ineligible for exemption from registration under GST. (E 7 of NN 12/2017 r/w NN 21/2019 – CTR) <b>(See Flow Chart 1)</b>   |
| <b>5A. Renting of immovable property by CG/SG/UT/LA/COURT OR TRIBUNAL</b>   | CG/SG/UT/LA                                       | Person registered under GST. [Supply to URP is taxable under FCM]  |
| <b>5AA. Service by way of renting of residential dwelling to a registered person.</b>   | Any person  | Any registered person.<br>(a) If residential property is used by prop. for his personal purposes it would be exempt)<br>(b) Residential dwelling provided by Hostel or PG is exempt where consideration p.m. is upto 20,000 and stay period is > 90 days   |
| <b>5AB. Renting of commercial property</b>  | Unregd.   | Regd. other than composition scheme  |
| <b>5B. Transfer of Development rights or FSI for Construction of Project</b>  | Any Person  | Promoter   |
| <b>5C. Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project</b>   | Any Person  | Promoter   |
| <b>6. Director of a company or a body corporate</b><br>❖ Private Capacity – No RCM<br>❖ Director capacity – RCM<br>❖ Sitting fees – RCM (any director)  | A director of a company or a body corporate       | The company or a body corporate located in the taxable territory. [If TDS is deducted under 194J – then only RCM Applies]  |
| <b>7. Insurance agency services</b>   | An insurance agent                                | Insurance Company in the taxable territory.  |
| <b>8. Recovery agent Services</b>   | A recovery agent                                  | Bank, NBFC, or a financial Institution in taxable territory  |
| <b>9. Supply of services by permitting use of IP / copyright by Music composer, photographer, artist</b>  | Music composer, photographer, artist, or the like | Music company, producer or the like, located in the taxable territory.   |
| <b>9A. Supply of services by an author by way of transfer or permitting the use of copyright</b><br>Note: - The said option cannot be withdrawn within a period of 1 year from the date of exercising such option   | Author  | Publisher located in the taxable territory provided: -<br>Author can pay under Forward Charge Mechanism if below are satisfied: -<br>(i) The author has taken registration under the GST and filed a declaration,<br>(ii) The author makes a declaration, as prescribed in Annexure II of said Notification on the invoice issued by him in Form GST Inv-I to the publisher. |

| Specified service  | Specified Supplier  | Specified Recipient  |
|--|---|--|
| 10. Overseeing Committee to Reserve Bank of India  | Overseeing Committee members                                      | RBI  |
| 11. Services by Direct Selling Agents (DSAs)   | individual DSA other than body corporate, partnership or LLP firm | A banking company or a non-banking financial company, located in the taxable territory. (FI not covered)   |
| 12. Services by Business facilitator   | Business facilitator (BF)   | A banking company, located in the taxable territory (FI & NBFC not covered) (in respect of rural area – Exempt)                                    |
| 13. Services by agent of business correspondent  | An agent  | A business correspondent, located in the taxable territory. (in respect of rural area – Exempt)  |
| 14. Security services<br>This entry is not applicable when recipient is: -<br>(i) Tax Deductors u/s 51<br>(ii) <b>Composition person (S. 10)</b> | Any person other than a body corporate                            | A registered person, located in the taxable territory. [OBC to Composition person – FCM or Not liable]   |
| 15. Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged                    | Other than Body corporate opting for 6% option                    | Any Body corporate located in the taxable territory. <b>[Renting involves periodic billing, whereas hiring involves specific kms wise billing]</b> |
| 16. Lending of securities under Securities Lending Scheme, 1997  | Lender  | Borrower (w.e.f. 1 <sup>st</sup> October, 2019)  |

Flow Chart 2: Director Services



Flow Chart 1: Government Services/BY Court or Tribunals



Classification of Goods or Services

|                                      |  |
|--------------------------------------|--|
| <b>Meaning of Classification</b>     | In order to understand what rate of GST shall be applicable on any goods or services, it is important to check GST Tariff.   |
| <b>HSN Based Classification</b>      | Indian Customs Tariff is based on HSN. HSN stands for Harmonized System of Nomenclature. India has developed an 8-digit code of HSN.   |
| <b>Classification basis</b>          | Tariff Item, Heading, Sub-heading reference is taken from first schedule to Customs Tariff Act: Tariff item, sub-heading, heading, and chapters referred in the Schedules of rate notification for goods under GST are the Tariff item, sub-heading, heading and chapters of the First Schedule to the Customs Tariff Act, 1975. |
| <b>Service Accounting Code (SAC)</b> | For classification of services – SAC is used (it is 6 digit maximum)   |
| <b>Composition of SAC / HSN</b>      | Chapter No. (2 digit)   Heading (2 digit)   Sub-heading (2 digit)   Tariff Item (2 digit)  |

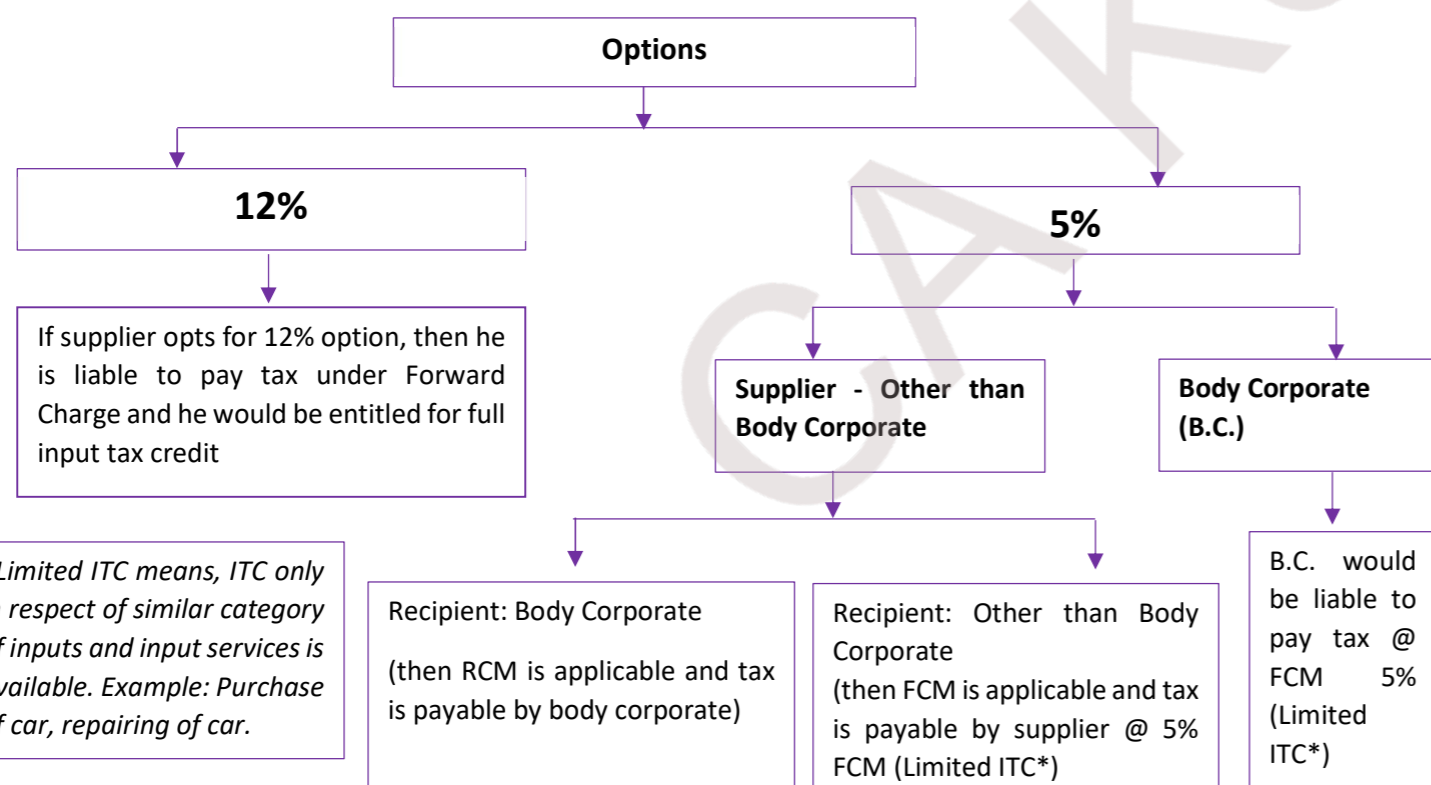
**6. Analysis of Section 5 of IGST Act [Charging Section Inter-State Supply]**

| Section 5  | Description  |
|--|--|
| <b>Technically Section 9 of CGST Act &amp; Section 5 of IGST Act are same barring the difference that Section 9 is for Intra state supplies and section 5 is for Inter-state supplies. In Section 9 Central Tax shall be collected and in Section 5, IGST shall be collected</b> |  |
| (1)  | IGST on Inter-state Supply except Petroleum Products & Alcoholic Liquor for Human Consumption, extra neutral alcohol and rectified spirit [Same as 9(1) except the extra proviso here]   |
|  | <b>Proviso 1 [IGST on Import of Goods]:</b> IGST as custom duty would be levied u/s 3(7) of Customs Act on Import of goods<br>By Virtue of NN 03/2023 IT the supply of online money gaming shall be treated as the goods however, on import of which GST shall be collected as per section 5(1) of IGST Act (not as per customs). Supply of online money gaming is goods as it is defined in the definition of specific actionable claims [S. 2(102A) of CGST Act] |
| (2)  | Inter - state supply Petroleum Products - Out of Ambit of GST [Same as 9(2)]   |
| (3)  | Notified inter-state supply of goods or services - Reverse Charge Mechanism [Same as 9(3) +Extra Service is notified by Ntn 10/2017 - ITR]   |
| (4)  | Reverse charge mechanism in case of purchases from unregistered persons [Same as 9(4)]   |
| (5)  | Services provided through ECO [Same as 9(5)]   |

**7. Following additional category of supply of services is listed under Notification No. 10/2017- Integrated Tax (Rate) vide Section 5(3) of IGST Act on which GST shall be paid by the recipient on RCM basis.**

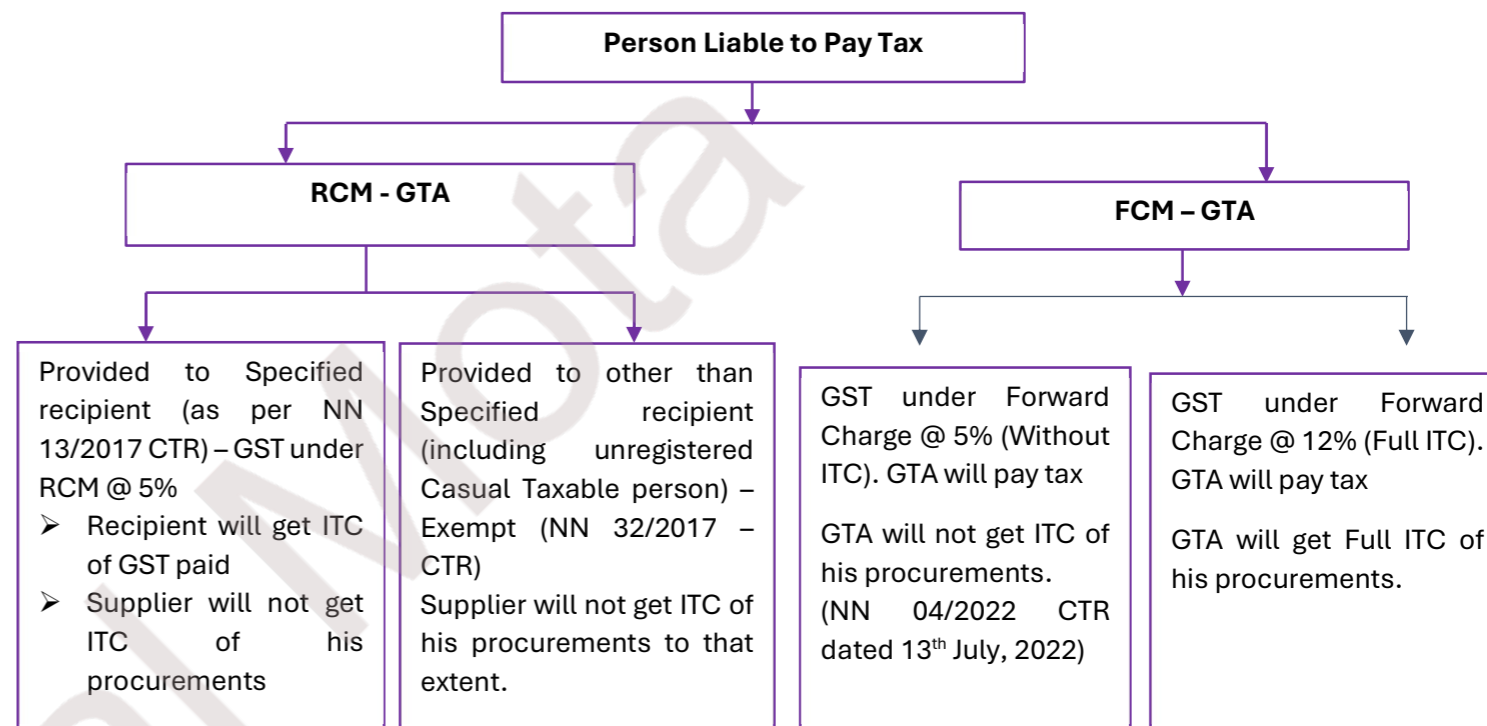
| Specified Service  | Supplier   | Recipient   |
|--|--|---|
| <b>1. Service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient</b> | Any person located in a non-taxable territory. (NTT) | Any person located in the taxable territory other than non-taxable online recipient. (NTOR) |

**Flow chart 4: Renting of Motor Vehicle Chart**



*\*Limited ITC means, ITC only in respect of similar category of inputs and input services is available. Example: Purchase of car, repairing of car.*

**Flow chart 3: Taxability of GTA services**



**8. Reverse Charge Mechanism – In respect of Specified Goods**

| Entry | Description of Goods  | Specified Supplier   | Specified Recipient                  |
|-------|---|--|--------------------------------------|
| 1     | Cashew Nuts, Not shelled or peeled  | Agriculturist  | Any registered persons               |
| 2     | Bidi Wrapper Leaves (tendu)   | Agriculturist  | Any registered persons               |
| 3     | Tobacco Leaves  | Agriculturist  | Any registered persons               |
| 3A    | Following Essential Oils other than those of citrus food namely: -<br>Of Peppermint<br>Of other mints: Spearmint oil (ex-mentha spicata), Water Mint Oil, Horse Mint Oil, Bergamot Oil, Mentha Arvensis | Any Unregistered person  | Any registered persons               |
| 4     | Silk Yarn   | Any person who manufactures silk Yarn from Raw silk or silk worm cocoons for supply of silk yarn | Any registered persons               |
| 4A    | Raw cotton  | Agriculturist  | Any registered persons               |
| 5     | Supply of Lottery   | SG/UT/LA   | Lottery Distributor or selling agent |
| 6     | Used, Seized vehicles and confiscated goods, old and used goods, waste and scrap  | CG (Excluding Ministry of Railways), SG, UT, LA  | Any registered persons               |
| 7     | Priority Sector Lending Certificate   | Any registered persons   | Any registered persons               |
| 8     | Metal Scrap   | Unregd.  | Regd.                                |