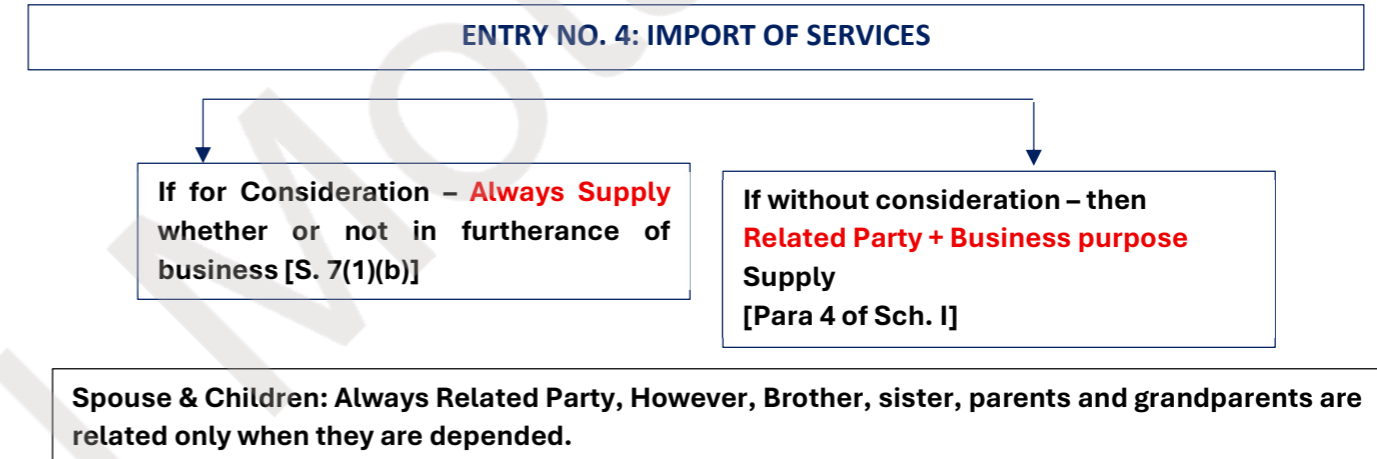


Supply under GST [Section 7, 8 of CGST Act] (1/3)

Backdrop of Supply under GST: Taxable event is very important matter in every tax law. Its determination is most crucial for the proper implementation of any tax law. Taxable event is that event on the happening of which its liability to pay tax is triggered. The taxable event under GST shall be the “supply” of goods or services

Section 7	Clause	Provision & Analysis [Provisions of Supply are contained for Inter-state supply in Section 20 of IGST Act]
(1)		SCOPE OF SUPPLY: FOR THIS ACT THE SUPPLY IS AS BELOW
	(a)	<p>In order to be supply, an activity:</p> <ul style="list-style-type: none"> - Should be goods or services - It may be Sale, transfer, barter, exchange, licence, rental, lease or disposal for - CONSIDERATION by a person in course or furtherance of BUSINESS. <p>❖ Department Clarification: Securities held by the holding company in the subsidiary company are neither goods nor services. Thus, no GST will be levied. (Circular No. 196/08/2023-GST)</p>
	(aa)	<p>Transaction between members:</p> <p>The activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa for consideration, would be treated as supply</p>
	(b)	<p>Import of Services for Consideration:</p> <ul style="list-style-type: none"> ❖ Import of services for a consideration is always supply whether or not for business. ❖ Import of service for personal purpose is exempt [Exemption Chp] ❖ Import of services are taxable under reverse charge [Chg of GST]
	(c)	SCHEDULE I ACTIVITIES - ACTIVITIES WHICH ARE SUPPLY EVEN IF WITHOUT CONSIDERATION
	ENTRY 1	Permanent transfer or disposal of business assets where input tax credit has been availed on such assets:
	ENTRY 2	<p>Supply between “related persons” or between “distinct persons”.</p> <p>Proviso:</p> <ul style="list-style-type: none"> ❖ Gifts upto Rs. 50,000/- value in a financial year by an E^f to E^e – Not a Supply (ITC not allowed on purchase of gift) ❖ > 50,000/- value in a FY – Entire amount will be supply (ITC allowed on purchase of gift) <p>Distinct person means same PAN but different GST number. Estb. Of distinct person means regd. Entity and unregd. entity having same PAN.</p> <ul style="list-style-type: none"> ➤ Two different states: 2 different regn. ➤ Same state: Min Single regn, max – No. of place of business ➤ Same state (SEZ) – Min 2 regn. <p>Related Circulars:</p> <p>(i) Inter-state movement of modes of conveyance between distinct persons is “not a supply” (unless for further supply). However, if given for repairs or maintenance or for carrying passengers then value of repairs or value for carrying passengers would be treated as supply.</p> <p>(ii) Inter-state movement of rigs, tools & spares between distinct persons – not a supply (unless for further supply). However, usage charges would be treated as supply.</p> <p>(iii) Stock transfer to additional place of business location in a single registration would not be treated as supply. However, stock transferred to distinct person in same state, then it would be treated as supply.</p>

ENTRY 3	<p>SUPPLY OF GOODS (NOT SERVICES) BY: - PRINCIPAL TO AGENT (SELLING AGENT) / AGENT TO PRINCIPAL (PURCHASING AGENT) (Concept of Del-credere agent covered in Value of supply chapter)</p> <p>Related Circulars:</p> <ul style="list-style-type: none"> ❖ If Agent Issues invoice in his own name to recipient – Treated as Supply between principal and agent. ❖ If Agent Issues invoice in name of principal – Not be treated as Supply between principal and agent
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2. SECTION 7(1A) OF CGST ACT: CLASSIFICATION OF SUPPLY OF GOODS OR SERVICES [SCHEDULE II]

Classification between Goods and Services is important to understand rate of tax, time of supply, place of supply provisions. It shall be noted that, this schedule cannot treat any activity as supply. It can only decide whether an activity is supply of “goods” or “services”

Transaction	Supply of Goods or services
Transfer of Title in Goods	Supply of goods
Hire Purchase	Supply of goods
Transfer of Right in use (no title)	Supply of services
Lease, Tenancy, letting out & Treatment or Process	Supply of services
Assets of Business transferred	Supply of goods
Goods held for business use put to private use	Supply of services
Ceases to be Taxable person, stock / assets deemed to be supplied (exceptions - where business is transferred as a going concern or business is carried on by a personal representative who is deemed to be a taxable person)	Supply of goods
Renting of Immovable property, under construction building (building where part or entire consideration has been before CC or OC whichever is earlier)	Supply of services
Works contract services, restaurant & outdoor catering	Supply of services
Temporary transfer or permitting the use or enjoyment of any intellectual property right	Supply of services
Development of software	Supply of services
Tolerance of non-performance or agreeing to refrain from act	Supply of services

BY CA KEVAL MOTTA

Supply under GST [Section 7, 8 of CGST Act] (2/3)

3. CLASSIFICATION OF GOODS OR SERVICES THROUGH CIRCULARS

1	Printing of Books: [Circular No. 11/11/2017 GST] ❖ Content is supplied by the publisher or the person who owns the usage rights - Printing contract is Service. ❖ Where focus is on Tangible paper (rather than content) – Printing contract is goods (printed envelopes, letter cards, printed box, tissues printed with design supplied by recipient of goods)
2	Transfer of Tenancy Rights (Also Known as “Pagadi” System) (Circular No. 47/21/2018-GST) ❖ Transfer of tenancy rights is not a schedule III item, and consequently it is “Supply of service.” Thus, although stamp duty is applicable on tenancy right transfer, GST shall be applicable as below: ❖ Transfer of tenancy rights by owner of property to incoming tenant – Commercial Property – Taxable, Residential Property – Exempt ❖ Transfer of tenancy rights by existing / incoming tenant to new tenant – For Both types of property – Taxable ❖ Services provided by outgoing tenant by way of surrendering the tenancy rights. Owner of property pays lumpsum amount as tenancy premium to outgoing tenant – For Both types of property – Taxable
3	Priority Sector Lending Certificate – Supply of Goods
4	Re-treading of tyres – Process of re-treading which is a supply of service. However, Supply of re-treaded tyres is supply of goods.

4. Schedule III to CGST Act [Section 7(2) of CGST Act]: Activities treated as neither supply of goods nor supply of services

Schedule III items shall not be added in turnover. However, only Entry 5 & Entry 8(a) shall be considered as exempt turnover only for limited purpose for reversal of ITC u/s 17(3) read with rule 42 & 43 (for CA CMA Finals).

- 1. Services by an employee to the employer in relation to his employment (example: Salary)**
❖ Perquisites – under employment contract – not liable to GST
- 2. Services by any Court or Tribunal.** (Court includes, District Court, High Court and Supreme Court.)
❖ **Department clarification:** GST not to be levied on fees/ penalty levied by consumer Disputes Redressal Commission [Circular 32/06/2018 GST dated 12-02-2018]
- 3. Functions performed by MP, MLA, person who holds any post in pursuance of provision of Constitution, duties performed by any person as a chairperson or Member or Director in a body established by CG, SG or LA**
- Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G/243W
- 4. Funeral, burial, crematorium or mortuary including transportation of the deceased.**
- 5. Sale of land and completed building** (Entire consideration received after CC or OC whichever is earlier)
Related Circular: Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc.
- 6. Actionable claim** other than **specified actionable claims** i.e., **betting, casino, gambling, horse racing, lottery, online money gaming**
- 7. 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.** (w.r.e.f. 1st July, 2017)
- 8. (a) Supply of warehoused goods** to any person before clearance for home consumption (w.r.e.f. 1st July, 2017);
(b) High Sea Sales (w.r.e.f. 1st July, 2017) (Refer last page)
As per Notifications, service by way of **grant of alcoholic liquor licence**, against consideration in the form of licence fee or application fee is not a supply
- 9. Activity of apportionment of co-insurance premium** by the lead insurer to the co-insurer for the insurance services jointly supplied subject to the condition that the lead insurer pays tax
- 10. Services by insurer to the reinsurer for which ceding commission or the reinsurance commission** is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that tax is paid by the reinsurer on the gross reinsurance premium payable.

5. COMPOSITE SUPPLIES [S. 2(30) of CGST Act r/w S. 8(a)]

Definition	“Composite supply” means two or more taxable supplies which are NATURALLY BUNDLED and supplied in conjunction with each other ONE OF WHICH IS A PRINCIPAL SUPPLY.
If a supply is a composite supply, rate of tax applicable to the supply shall all be as per principal supply. [S. 8(a)]	
ANALYSIS WITH EXAMPLES	
Accommodation with breakfast; laptop & laptop Bag; Supply of equipment and installation of the same	
HOW TO DETERMINE BUNDELLING	
❖ Normal and frequent practices ❖ Majority of service providers providing similar bundle ❖ Ancillary services help in better enjoyment of main services	
MIXED SUPPLIES (S. 2(74) of CGST Act)	
Definition	“Mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person FOR A SINGLE PRICE where such supply DOES NOT CONSTITUTE A COMPOSITE SUPPLY.
If a supply is a mixed supply, then the rate of tax shall be as per product having highest rate of tax. [S. 8(b)]	
EXAMPLES	
Diwali Basket with Sweet, Cookies & Candies	

6. CLARIFICATIONS ISSUED BY VARIOUS CIRCULARS

- 1. Artwork Galleries:** Artist **sending art work** to the gallery for exhibition is **not a supply**. When the **buyer selects a particular art** work displayed at the gallery it will be **supply**.
- 2. Joint Ventures: Cash Calls** by Joint Ventures to Purchase Asset is **not a Supply**; however, if paid as **charges to member** who owns such asset will be a **supply of service**.
- 3. Mounting of Bus Bodies (i.e., Bus Body Building):** Activity of **fabrication** and fitting and mounting of bus bodies on chassis supplied **along with bus bodies** – **Supply of Goods** (Composite supply of Goods).
- 4. Servicing of Cars involving Supply of Goods (Spare Parts): Lumpsum Charged** – Then Rate of tax of **service. Line item wise** charged – Then Respective **Goods rate** & on **service charges 18%**.
- 5. Guest Anchor Services:** - Services provided by the **guest anchors** in lieu of honorarium **attract GST liability** if T/O >10L, 20L.
- 6. Supply of Food in Cinema Hall:**
 - Price of ticket (incl. Food): **Cinema Rate on entire price.**
 - Price of ticket (excl. Food) – **Cinema rate of ticket price**, Restaurant rate on food bought separately.
- 7. Taxability of Derivatives** – Securities – Not liable to GST.
 - Forward contracts - when settlement takes place by way of actual **physical delivery** – **Supply of Goods.**
 - When net **settlement of in Profit and Loss** – **Not liable under GST**

Supply under GST [Section 7, 8 of CGST Act] (3/3)

8. GST implication on secured debt - Sale, purchase, acquisition or assignment of a secured debt does not constitute a transaction in money, it is in the nature of derivative and hence a security. Thus, not liable to GST

9. GST Implication on transaction in instruments - these transactions are like interest swaps and thus, excluded from the definition of supply since such instruments are classified as derivatives. Thus, not liable to GST

10. Taxability of ESOP – Foreign company providing ESOP to Indian company employee and charging to Indian company is **not import of service as ESOP is Securities**, which is neither goods nor services. However, additional charges taken if any shall be liable to GST.

11. Taxability of Processing Fees: Loan given by Holding co. (foreign) to subsidiary co. (India) without charging processing fees – Not to be taxed under entry 4 of Sch. I – Not a supply as no processing is done. Loan given by Holding co. (Indian) to subsidiary co. (Foreign) without charging processing fees – Not a supply (E2 – NA)

12. COST PETROLEUM AND TAXABILITY WITH EXAMPLES

Cost petroleum incurred by mining lease holder is not a consideration for service to GOI and thus not taxable. However, cost petroleum incurred by member of joint venture on behalf of joint venture and then recovering from operating members would be a supply of services to joint venture and thus liable to GST. Further, joint venture incurring cost petroleum would not be taxable.

13. CLARIFICATION ON DONATION TO CHARITABLE INSTITUTIONS: If all the three conditions are satisfied then GST will not be levied on (donation) consideration received by charitable entity 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.

When a person donates to charitable trust which is not philanthropic in nature, charitable trusts being supplier of services shall be liable to pay GST on the same

14. TAXABILITY OF NO CLAIM BONUS:

Where insurance claims are not claimed by insured, the insurance company provides “No claim bonus” to the insured and reduces the gross premium receivable from client.

- ❖ The receipt of No claim bonus is not supply provided by insured to the insurance company
- ❖ The insurer procures insurance policy to indemnify himself from any loss as per terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB

Thus, it cannot be treated as supply.

15. Taxability of additional / penal interest on late payment of EMI

Case	Taxability
Purchase of goods/ service on EMI Basis & delaying EMI payment	The amount of additional / penal interest is to be included in the value of supply. If the transaction is of Taxable goods/services such penal / additional interest would be added in Value of supply.
Purchase of goods in cash by taking loan & delaying such EMI	Penal interest charged on a transaction would not be subject to GST , as the same would be covered under exemption notification.

16. Taxability of Liquidated Damages as per Circular No. 178/10/2022-GST

Transaction	Taxability
Liquidated damages	<p>Liquidated damages are “not a Supply” due to below mentioned reasons:</p> <ul style="list-style-type: none"> ❖ Performance is the essence of a contract ❖ Liquidated damages are stipulated to ensure performance and to deter non-performance ❖ Liquidated damages or penalty are not the desired outcome of the contract. ❖ Merely flow of money are not a consideration for any supply <p>Example: Penalty stipulated in a contract for delayed construction of houses,</p> <p>Liquidated damages will be a “Supply” when:</p> <ul style="list-style-type: none"> ❖ Liquidated damages are levied to achieve the object of supply. <p>Example: Railway forfeiting amount if ticket is cancelled, Bank charging pre-payment penalty for foreclosing the loan.</p> <ul style="list-style-type: none"> ❖ These charges are to ensure supply is to happen.
Cheque dishonour	<p>Charges for cheque dishonour is “Not a supply,” due to below:</p> <ul style="list-style-type: none"> ❖ Supplier’s intention was to get cheque clear. ❖ It is not willingness on part of the supplier to earn from cheque dishonour charges as goods have already been sold, his main income lies in sale of goods not in penal charges. ❖ However, Late payment charges - It is an ancillary supply naturally bundled & supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply.
Penalty imposed for violation of laws	<p>“Not a Supply”</p> <ul style="list-style-type: none"> ❖ Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation.
Notice pay recovery i.e., Forfeiture of salary for pre-termination	<p>“Not a Supply”</p> <ul style="list-style-type: none"> ❖ Such amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation
Cancellation charges	<p>“Supply”</p> <ul style="list-style-type: none"> ❖ Cancellation charges are for the costs involved in making arrangements for the intended supply. The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle.
Fixed Charges of Power	Fixed charges of power - both, minimum fixed charges and variable charges are charged for sale of electricity & are thus not taxable as electricity is exempt from GST
Penalty for breach of Contract	Leviable to GST

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