



# CHAPTER 28

# *IGST ACT, 2017*

**CHAPTER OVERVIEW**

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## RELEVANT DEFINITIONS [SECTION 2]

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

“**stopover**” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time.

- (2) Export of goods** with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India

- (3) Export of services** means the supply of any service when:

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in **convertible foreign exchange or in Indian Rupees wherever permitted by the Reserve Bank of India**; and
- (v) **the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;**

**Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017 [CBIC Circular No. 161/17/2021-GST dated 20<sup>th</sup> September 2021]**

**Issue:** Whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India, will hit by condition section 2(6) of IGST Act.

**Export of services** means the supply of any service when:

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian Rupees wherever permitted by the Reserve Bank of India; and
- (v) **the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;**



**Analysis of the issue:**

- (1) Clause (v) of sub-section (6) of section 2 of IGST Act, which defines “export of services”, places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.
- (2) Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country

**CBIC Clarification:**

- (1) It is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as “merely establishments of a distinct person in accordance with Explanation 1 in section 8”.
- (2) Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a ‘company’ in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017 . Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as ‘export of services’, subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

**(4) Fixed establishment means**

- (a) a place (**other than the registered place of business**) which is
- (b) characterised by a sufficient **degree of permanence** and
- (c) suitable structure in terms of **human and technical resources**
- (d) to supply services or to receive and use services for its **own needs**;

- (5) **Import of goods** with its grammatical variations and cognate expressions, **means bringing goods into India from a place outside India.**



(6) **Import of services 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;

(7) **Intermediary means**

- (i) a broker, an agent or any other person, by whatever name called,
- (ii) who **arranges or facilitates** the supply of goods or services or both, or securities,
- (iii) **between two or more persons**, but
- (iv) **does not include** a person who supplies such goods or services or both or securities **on his own account**;

(8) **Location of recipient of services means:**

Supply is received at a place of business for which the <b><u>registration has been obtained</u></b>	Location of such place of business
Supply is received at a place " <b><u>other than the place of business for which registration has been obtained</u></b> " (a fixed establishment elsewhere)	Location of such fixed establishment
Supply is received at more than one establishment, (whether the place of business or fixed establishment)	Location of the establishment <b>most directly concerned</b> with the receipt of the supply
in absence of such places	location of the usual place of residence of the recipient;

(9) **Location of supplier of services means:**

Supply is made from a place of business for which the <b><u>registration has been obtained</u></b>	Location of such place of business
Supply is made from a place " <b><u>other than the place of business for which registration has been obtained</u></b> " (a fixed establishment elsewhere)	Location of such fixed establishment
Supply is made from more than one establishment, (whether the place of business or fixed establishment)	Location of the establishment <b>most directly concerned</b> with the provision of the supply
in absence of such places	location of the usual place of residence of the supplier;



**(10) "Non-taxable online recipient"** means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation: For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the CGST Act, 2017;'

**Note: Section 24(vi) requires persons who are required to deduct tax u/s 51, whether or not separately registered, to take compulsory registration u/s 24.**

**(11) Online information and database access or retrieval services** means services

- (a) whose delivery is mediated by information technology over the internet / electronic network and
- (b) the nature of which renders their supply
- (c) impossible to ensure in the absence of information technology and includes electronic services such as:
  - (i) advertising on the internet;
  - (ii) providing cloud services;
  - (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
  - (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
  - (v) online supplies of digital content (movies, television shows, music and the like);
  - (vi) digital data storage; and
  - (vii) online gaming

**(12) Zero rated supply**

- (1) Zero rated supply means any of the following supplies of goods or services or both namely:
  - (a) export of goods or services or both; or
  - (b) supply of goods or services or both for authorized operations to a Special Economic Zone developer or a Special Economic Zone unit.
- (2) Subject to the provisions of section 17(5) of the CGST Act, 2017, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply
- (3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non-realization of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest u/s 50 of the CGST Act, 2017 within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.



- (4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—
- (i) a class of persons who may make zero rated supply on payment of IGST and claim refund of the tax so paid;
  - (ii) a class of goods or services which may be exported on payment of IGST and the supplier of such goods or services may claim the refund of tax so paid.”.

**LEVY & COLLECTION OF IGST [SECTION 5]****Charge of IGST [Section 5(1)]**

- (i) A tax called the Integrated Goods and Services Tax (IGST) shall be levied on **all inter-State supplies** of goods or services or both, except on supply of **alcoholic liquor for human consumption**
- (ii) on **TRANSACTION VALUE** determined u/s 15 of the CGST Act
- (iii) at notified rates of IGST as recommended by GST Council being **0%, 0.25%, 3%, 5%, 12%, 18% and 28%, not exceeding 40%**, and
- (iv) collected in such manner as may be prescribed and
- (v) shall be paid by the “**taxable person**”

**Levy of IGST on Imports of goods in India [Proviso to Section 5(1)]**

- (i) IGST on goods **other than the goods as may be notified by the Government on the recommendations of the Council** imported into India shall be levied and collected
- (ii) in accordance with Section 3 of the Customs Tariff Act, 1975
- (iii) on the **value as determined under the said Act [Not CGST Act]**
- (iv) **at the point when duties of customs are levied** on the said goods u/s 12 of the Customs Act, 1962.

**Supply of online money gaming** has been notified for the said purpose vide N/N 03/2023 IT dated 29/09/2023. This implies that import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.

**Levy of IGST on supply of following goods to be levied with effect from date as notified by Government on recommendations of GST Council [Section 5(2)]**

Petroleum  
crude

High speed  
diesel

Motor Spirit  
(Petrol)

Natural Gas

Aviation  
Turbine Fuel

**IGST rate= CGST rate + SGST rate (more or less)**



**Reverse charge on notified supplies under IGST Act, 2017 [Section 5(3)]**

- (i) The Government may, on the recommendations of the Council, by notification,
- (ii) specify categories of supply of goods or services or both,
- (iii) the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and
- (iv) all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

All the supplies of goods and services as notified u/s 9(3) of CGST Act, 2017 are also notified u/s 5(3) of IGST Act, 2017. Following **2 services** are additionally included for IGST purposes.

Category of Supply of Services	Supplier of Service	Recipient of Service
Any service supplied <b><u>by any person who is located in a non-taxable territory</u></b>	Any person located in a non-taxable territory	<b><u>Any person</u></b> located in the taxable territory <b><u>other than non-taxable online recipient</u></b>

**Meaning of Non-taxable online recipient:**

**Non-taxable online recipient**" means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation: For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the CGST Act, 2017;'

**Note: Section 24(vi) requires persons who are required to deduct tax u/s 51, whether or not separately registered, to take compulsory registration u/s 24.**

**Reverse charge on all supplies from unregistered supplier to registered recipient under IGST Act, 2017 [Section 5(4)]**

- (i) The Government may, on the recommendations of the Council, **by notification,**
- (ii) **specify a class of registered persons** who shall, in respect of supply of **specified categories of goods or services** or both
- (iii) **received from an unregistered supplier,**
- (iv) **pay the tax on reverse charge basis as the recipient** of such supply of goods or services or both, and
- (v) all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both."

**IGST payable by e-commerce operator on inter-state supply of services made through it [Section 5(5)]**

All the supplies of services as notified u/s 9(5) of CGST Act, 2017 are notified u/s 5(3) of IGST Act also.

**POWER TO GRANT EXEMPTION FROM IGST [SECTION 6]**

Section 6 CGST Act, 2017 is exactly similar to Section 11 of CGST Act, 2017. Following are the relevant notifications on IGST.

- **Notification No. 2/2017 – Integrated Tax (Rate) dated 28 June 2017 for supply of goods and**
- **Notification No. 9/2017 – Integrated Tax (Rate) dated 28 June 2017 for supply of services and**

Reference shall be made to **Exemption Chapter** in detail.

**DETERMINATION OF NATURE OF SUPPLY [SECTION 7 & 8]****INTER-STATE SUPPLY [SECTION 7]****A. Supply of goods or services based on location of supplier and place of supply in India [Section 7(1) and 7(3)]**

Where the **location of the supplier** and **place of supply** of goods or services are in

- two different States or
- two different Union Territories or
- a State and a Union territory,

it is treated as supply of goods or services respectively ***in the course of inter-State trade or commerce.***

**EXAMPLES**

LOCATION OF SUPPLIER	PLACE OF SUPPLY	INTRA /INTER
Punjab	Haryana	Inter
Punjab	Lakshwadeep	Inter
Lakshwadeep	Chandigarh	Inter

**B. Import of goods and services in India [Section 7(2) and 7(4)]**

- Supply of goods imported into the territory of India, till they cross the customs frontiers of India,
- Supply of services imported into the territory of India

shall be deemed as inter-State supplies and accordingly **IGST** shall be levied on such imports.



**Meaning of Import:**

- (1) **Goods:** Import of goods, means bringing goods into India from a place outside India.
- (2) **Services – “Import of services”** as defined in Section 2(11) of the IGST Act is a supply of any service
  - (i) where the supplier is located outside India,
  - (ii) the recipient is located in India, and
  - (iii) the place of supply of service is in India

**C. Supply of goods or services based on location of supplier is in India and place of supply is outside India [Section 7(5)(a)]**

Supply of goods or services or both when

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

“Location of recipient” is not material to qualify as supply in the course of inter-State trade or commerce.

**D. Supply of goods or services or both TO / BY a Special Economic Zone developer/ Special Economic Zone unit [Section 7(5)(b)]**

SEZ is a geographically bound zone within India where the economic laws relating to export and import are more liberal as compared to other parts of the country. For all tax purposes, SEZ is considered to be a place outside India.

Any supplies made to SEZ unit/developer or vice versa are inter-State supplies. It is noteworthy that place of supply is not relevant in case of supplies to/from an SEZ unit or developer.

**EXAMPLES**

SUPPLY BY	SUPPLY TO	INTRA /INTER
SEZ IN UP	PERSONS OUTSIDE SEZ	Inter
PERSONS OUTSIDE SEZ	SEZ IN UP	

**E. Supply of goods or services or both “in the taxable territory”, “not being an intra-State supply” and “not covered elsewhere” in this section [Section 7(5)(c)]**

**INTRA-STATE SUPPLY [SECTION 8]**

**A. Supply of goods or services based on location of supplier and place of supply in India [Section 8(1) and 8(2)]**

Where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as INTRA-STATE SUPPLY of goods or services respectively.

**EXAMPLES**

LOCATION OF SUPPLIER	PLACE OF SUPPLY	INTRA /INTER
Punjab	Punjab	Intra
London	Delhi	Inter
Delhi	Gujarat	Inter
Puducherry	Puducherry	Intra
Andaman & Nicobar Islands	Lakshwadeep	Inter

**CERTAIN SUPPLY OF GOODS NOT TO BE TREATED AS INTRA-STATE SUPPLIES**

Certain supplies of goods/services shall not be treated as intra-State supplies even when the location of supplier and place of supply fall within the same State/ Union Territory.

**A. Supply of goods or services or both TO / BY a Special Economic Zone developer/ Special Economic Zone unit**

Supply of goods/services by a SEZ developer/unit or supply to a SEZ developer/unit **shall not be treated as intra-State supply.**

**B. Supply of goods made to a tourist [referred to in section 15 of the IGST Act]:**

Tourist as a person **not normally resident in India**, who enters India for a stay of **not more than 6 months** for legitimate nonimmigrant purposes

**Example:** A tourist from USA visits India and purchases a shawl in Delhi. In this case, even though the place of supply and location of supplier are in the same State, **it will be treated as inter-State transaction and will be eligible to IGST.**

**C. Imports of goods in India****Establishment of distinct persons [Explanation 1 to Section 8]**

Where a person has:

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State / UT and any other establishment outside that State/UT; or
- (iii) an establishment in a State/UT and any other establishment registered within that State/UT, then such establishments shall be treated as establishments of distinct persons.

**When can it be considered that a person has an establishment in any territory?**

A person carrying on a business through a branch or an agency or a representational office in any territory **shall be treated as having an establishment in that territory.**



## SUPPLIES IN TERRITORIAL WATERS [SECTION 9 OF IGST ACT 2017]

- A.** Where the location of the supplier is in the territorial waters, it shall be deemed that location of such supplier is in the coastal State or Union Territory **where the nearest point of the appropriate baseline is located.**
- B.** Similarly, in case where the place of supply is in territorial waters, the place of supply shall be deemed to be in the coastal State or Union Territory **where the nearest point of the appropriate baseline is located.**

“Territorial Waters” is defined as a belt of coastal waters extending atmost 12 nautical miles from the baseline of a coastal state.

## PLACE OF SUPPLY OF GOODS AND SERVICES [SECTION 10 - 13 OF IGST ACT 2017]

### Already covered in Volume 1

Section	Activity Done	Place of Supply
10(1)(a)	Supply involves movement of goods	Location of the goods at the time at which the movement of goods terminates for delivery to the recipient
10(1)(b)	Goods are delivered by the supplier on instructions of the third person	Location of principal place of business of third person
10(1)(c)	Supply does not involve movement of goods	Location of such goods at the time of the delivery to the recipient
10(1)(d)	goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle	Location at which such goods are taken on board
11(a)	Goods Imported into India	Location of Importer
11(b)	Goods Exported from India	Location outside India
12(2)(a)	Services made to a registered person	Location of such person
12(2)(b)	Services to any person other than a registered person	Location of the recipient where the address on record exists and the location of the supplier of services in other cases
12(3)	Services, directly in relation to an immovable property	Location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located <b>Where the location of the immovable property or boat or vessel is located or intended to be located outside India - location of the recipient</b>



		<b>Immovable property or boat or vessel is located in more than one State or Union territory</b> - the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services
<b>12(4)</b>	Restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery	<b>Location where the services are actually performed</b>
<b>12(5)</b>	Services in relation to training and performance appraisal to, (a) a registered person (b) a person other than a registered person	(a) the location of such person (b) location where the services are actually performed
<b>12(6)</b>	Supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park	Place where the event is actually held or where the park or such other place is located.
<b>12(7)</b>	Organizing an event to (a) a registered person (b) to a person other than a registered person	(a) location of such person (b) place where the event is actually held and  Event is held outside India, the place of supply shall be the location of the recipient
<b>12(8)</b>	Transportation of goods, including by mail or courier to (a) a registered person (b) a person other than a registered person	(a) location of such person (b) location at which such goods are handed over for their transportation
<b>12(9)</b>	passenger transportation service to (a) a registered person (b) a person other than a registered person	(a) Location of such person (b) the place where the passenger embarks on the conveyance for a continuous journey
<b>12(10)</b>	Services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle,	Location of the first scheduled point of departure of that conveyance for the journey
<b>12(11)</b>	Telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person (a) in case of fixed line (b) in case of mobile connection	(a) Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services; (b) Location of billing address of the recipient of service (c) (i) be the address of the selling agent



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	(c) mobile connection for telecommunication, internet service and direct to home television services are provided on prepayment basis (i) through a selling agent (ii) any person to the final subscriber	(ii) location where such pre- payment is received or such vouchers are sold
<b>12(12)</b>	Banking and other financial service	Location of the recipient of services on the records of the supplier of services
<b>12(13)</b>	Insurance services (a) to a registered person, (b) to a person other than a registered person	(a) location of such person; (b) location of the recipient of services on the records of the supplier of services
<b>12(14)</b>	Advertisement services to Govt/Local Bodies	Shall be taken as being in each of such States or Union territories

### SPECIAL PROVISION FOR PAYMENT OF TAX BY SUPPLIER OF OIDAR SERVICES [SECTION 14]

#### (1) Supplier is liable to pay tax

On supply of OIDAR services

- ✓ by any person located in a **non-taxable territory** and
- ✓ received by a **non-taxable online recipient**,
- ✓ the **supplier** of services located in a non-taxable territory
- ✓ shall be the person liable for paying IGST on such supply of services.

#### (2) OIDAR services through intermediary – Intermediary is liable to pay tax

On supply of OIDAR services

- ✓ by any person located in a non-taxable territory and
- ✓ received by a non-taxable online recipient,
- ✓ **an intermediary** located in the non-taxable territory,
- ✓ who arranges or facilitates the supply of such services,
- ✓ **shall be deemed to be the recipient** of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient
- ✓ **except** when such intermediary satisfies the following conditions, namely
  - a) The invoice / customer's bill or receipt issued by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory.
  - b) The intermediary involved in the supply does not authorise delivery.
  - c) The intermediary involved in the supply does not authorise the charge to the customer or take part in its charge.



- d) The intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services.
- e) The general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

**Meaning of Non-taxable online recipient:**

Non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation: For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the CGST Act, 2017;';

**Note: Section 24(vi) requires persons who are required to deduct tax u/s 51, whether or not separately registered, to take compulsory registration u/s 24.**

**WHETHER FOLLOWING SERVICES ARE OIDAR SERVICES OR NOT**

Nature of service	Delivery mediated by IT over internet	Impossible without IT	Whether OIDAR or not?
PDF document manually emailed by provider	Yes	No	No
PDF document automatically emailed by provider's system	Yes	Yes	Yes
PDF document automatically downloaded from site	Yes	Yes	Yes
Stock photographs available for automatic download	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable PDFs	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable PDFs plus support from a live tutor	Yes	No	No
Individually commissioned content sent in digital form e.g., photographs, reports, medical results	Yes	No	No

**Illustrative List of OIDAR services**

- (a) Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events
- (b) Supply of images, text and information and making available of databases
- (c) Supply of software and updating thereof
- (d) Website supply, web-hosting, distance maintenance of programmes and equipment

**NEED FOR SEPARATE TREATMENT OF OIDAR SERVICES**

- (i) Service provided by an Indian Service Provider within the taxable territory, to recipients in India are taxable.
- (ii) OIDAR services can be provided online from a remote location outside the taxable territory. The overseas suppliers of such services would have an unfair tax advantage if the services provided by them had been left out of the tax net.
- (iii) Such services received by a registered entity in India from a location outside the taxable territory are also **taxable under reverse charge**.

**Linkage with Registration**

**Compulsory registration required for supplier of OIDAR services supplying services to unregistered persons in India [Section 24 of CGST Act, 2017]**

**TAXABILITY OF OIDAR SERVICES UNDER GST**

Place of supply should be in India for any supply in order to be taxable in India.

Supplier and recipient is in India	Place of Supply is <b>location of recipient of service</b>
Supplier is outside India and recipient is in India	Place of Supply is India

**ANALYSIS OF IMPACT OF SECTION 14 ON SERVICES**

<b>Recipient</b>	<b>Service</b>	<b>Taxable/Exempt</b>	<b>Mechanism</b>	<b>Person liable to pay tax</b>
Non-taxable online recipient	OIDAR	Taxable	Forward Charge	Supplier of service in non-taxable territory
Non-taxable online recipient	Other than OIDAR	Exempt	Exempt	Exempt



Other than Non-taxable online recipient	All including OIDAR	Taxable	Reverse Charge	Recipient of service in taxable territory
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## REGISTRATION AND PAYMENT

- a) Supplier (or intermediary) of OIDAR services shall take a **single registration** under the **Simplified Registration Scheme** in prescribed form.
- b) Liability to pay GST on such services as mentioned below:

Presence in India	Person liable to pay tax
Supplier of OIDAR services does not have physical presence in the taxable territory	Person representing the supplier
Supplier of OIDAR services has neither the physical presence nor any representative in the taxable territory	Person appointed by the supplier for purpose of paying tax

c) **Payment**

Supplier of OIDAR services can make payment through EASIEST (old payment system) **[Rule 87]**. Further, suppliers supplying to NTOR as referred in Section 14 of IGST Act, 2017 may also do so from the Boards payment system namely, Electronic Accounting System in Excise and Service Tax from date to be notified by the Board.

Supplier of OIDAR services can make payment through International Money Transfer through Society for Worldwide Interbank Financial Telecommunication payment network **(N/N 22/2017)**

Further, suppliers supplying to NTOR as referred in Section 14 of IGST Act, 2017 may also do so from date to be notified.



**Special provision for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India [Section 14A]**

There was a need for special provisions to be introduced for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India, *inter-alia*, providing for:

- (i) liability on the said supplier for payment of IGST on such supply.
- (ii) single registration of the said supplier through the Simplified Registration Scheme [as referred in section 14 of the IGST Act].
- (iii) power of the Government for blocking of access by the public to any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier, in case of failure to comply with the above provisions.

A supplier of online money gaming, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay IGST on such supply.

For the purposes of complying with the above provisions, the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in section 14(2) of this Act. [Corresponding amendment has been made in rule 8(1) and rule 14 of the CGST Rules, 2017.]

However, any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the supplier.

Further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

In case of failure to comply with the above provisions by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the IGST Act.

**REFUND OF IGST TO INTERNATIONAL TOURIST [SECTION 15]**

The IGST paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

**Explanation:** For the purposes of this section, the term “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

**ZERO RATED SUPPLY [SECTION 16]****(1) Meaning of Zero Rated Supply**

“Zero rated supply” means any of the following supplies of goods or services or both, namely:

- a) **export** of goods or services or both; or
- b) supply of goods or services or both **for authorized operations to** a SEZ developer or a SEZ unit.

**(2) Input tax credit eligible on inputs used for making zero rated supplies**

Subject to Section 17(5) of the CGST Act, 2017, **input tax credit may be availed** for making zero-rated supplies, **notwithstanding that such supply may be an exempt supply.**

**(3) Options to claim refund**

A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:

<b>Supply goods or services or both under bond or Letter of Undertaking <u>without</u> payment of IGST</b>	<b>Supply goods or services or both on <u>payment of IGST</u></b>
(a) he may supply goods or services or both under bond or Letter of Undertaking, <b>subject to such conditions, safeguards and procedure</b> as may be prescribed, <b>without payment of IGST</b> and claim refund of unutilised input tax credit; or	(b) he may supply goods or services or both, <b>subject to such conditions, safeguards and procedure</b> as may be prescribed, <b>on payment of IGST</b> and claim refund of such tax paid on goods or services or both supplied

in accordance with Section 54 of the CGST Act or the rules made thereunder.

Provided that the registered person making zero rated supply of goods shall, in case of non-realization of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest u/s 50 of the CGST Act, 2017 within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—

- (i) a class of persons who may make zero rated supply on payment of IGST and claim refund of the tax so paid;
- (ii) a class of goods or services which may be exported on payment of IGST and the supplier of such goods or services may claim the refund of tax so paid.”.



### Other Important Notes

- (a) It is important to note that suppliers of **exempted** goods or services or both are **not eligible to claim input tax credit** on the inward supplies. However, in case of zero rated supplies, suppliers are eligible to avail credit of the input tax on eligible inward supplies.
- (b) Shipping bill is the only document required to be filed with the customs for making exports. Requirement of filing the ARE 1/ARE 2 has been done away with.
- (c) The shipping bill filed with the customs is treated as an application for refund of IGST and shall be deemed to have been filed after submission of export general manifest and furnishing of a valid return in Form GSTR-3 by the applicant.
- (d) The Duty credit scrips under the export incentive schemes of FTP (for example, MEIS and SEIS) can be utilised only for **payment of customs duties or additional duties of customs, on items not covered by GST, at the time of import.**
- (e) **The scrips cannot be utilized for payment of CGST, SGST or IGST and cess for domestic procurements.**
- (f) Benefit of exemption under Advance Authorization scheme, EPCG scheme and duty credit scrips such as MEIS and SEIS shall be restricted only to Basic Customs Duty, Safeguard Duty, Transitional Product Specific Safeguard Duty and Anti-dumping Duty in respect of goods leviable to IGST.

#### **CBIC Clarification via Circular 48/22/2018-GST dated 14/06/2018**

**Issue: Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc.?**

**Answer:**

#### **Legal Provision:**

As per section 16(1) of the IGST Act, “zero rated supplies” means supplies of goods or services or both to a SEZ developer or a SEZ unit. Whereas, section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/LUT or on payment of IGST, subject to such conditions, safeguards and procedure as may be prescribed.

Further, as per the second proviso to rule 89(1) of the Central Goods and Services Tax Rules, 2017 (CGST Rules in short), in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the:

- (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidences regarding receipt of services for authorized operations as endorsed by the specified officer of the Zone

**Clarification: (i)** A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or IGST paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for



authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.

(ii) Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.

## **Apportionment of Tax and Settlement of Funds [Section 17]**

Already discussed in Volume 1.

## **Tax wrongfully collected and paid to CG/SG [Section 19]**

- (1) A registered person who has paid IGST on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of IGST so paid in such manner and subject to such conditions as may be prescribed.
- (2) A registered person who has paid CGST and SGST or UTGST, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of IGST payable.

## **MISCELLANEOUS [Section 20]**

Subject to the provisions of this Act and the rules made thereunder, the provisions of CGST Act relating to:

- (i) scope of supply;
- (ii) composite supply and mixed supply;
- (iii) time and value of supply;
- (iv) input tax credit;
- (v) registration;
- (vi) tax invoice, credit and debit notes;
- (vii) accounts and records;
- (viii) returns, other than late fee;
- (ix) payment of tax;
- (x) tax deduction at source;
- (xi) collection of tax at source;
- (xii) assessment;
- (xiii) refunds;
- (xiv) audit;
- (xv) inspection, search, seizure and arrest;
- (xvi) demands and recovery;
- (xvii) liability to pay in certain cases;
- (xviii) advance ruling;
- (xix) appeals and revision;
- (xx) presumption as to documents;
- (xxi) offences and penalties;
- (xxii) job work;



(xxiii) electronic commerce;  
(xxiv) transitional provisions; and  
(xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall, *mutatis mutandis*, apply, so far as may be, in relation to IGST as they apply in relation to CGST as if they are enacted under this Act:

**Provided** that in the case of **tax deducted at source**, the deductor shall deduct tax at the rate of 2% from the payment made or credited to the supplier:

**Provided further** that in the case of **tax collected at source**, the operator shall collect tax at such rate not exceeding 2%, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

**Provided** also that for the purposes of this Act, the **value of a supply** shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

**Provided** also that in cases where the penalty is leviable under the CGST Act and the SGST Act / UTGST Act, the penalty leviable under this Act shall be the sum total of the said penalties.

**Provided** also that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be ₹ 50 crs. and ₹ 100 crs. respectively.

**Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion [Circular No. 108/27/2019-GST dated 18 July 2019]**

**Issue:** Procedure to be followed in respect of goods sent / taken out of India for exhibition or on consignment basis for export promotion. Such goods sent / taken out of India crystallise into exports, wholly or partly, only after a gap of certain period from the date they were physically sent / taken out of India.

**Clarification:**

The activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act (“**specified goods**”), do not constitute supply as the said activity does not fall within the scope of Section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as “Zero rated supply” as per the provisions contained in section 16 of the IGST Act.

Since the activity of sending / taking specified goods out of India is not a supply, doubts have been raised by the trade and industry on issues relating to maintenance of records, issuance of delivery challan / tax invoice etc.

Whether any records are required to be maintained by registered person for sending / taking specified goods out of India?	The registered person dealing in specified goods shall maintain a record of such goods as per the format at <b>Annexure</b> to the Circular.
What is the documentation required for sending / taking the specified goods out of India?	<p>a) The activity of sending / taking specified goods out of India is not a supply.</p> <p>b) The said activity is in the nature of “sale on approval basis” wherein the goods are sent / taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place. The activity of sending / taking specified goods is covered u/s 31(7) of the CGST Act read with rule 55 of CGST Rules.</p> <p>c) The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.</p> <p>d) As clarified above, the activity of sending / taking specified goods out of India is <b>not a zero-rated supply</b>. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.</p>
When is the supply of specified goods sent / taken out of India said to take place?	a) The specified goods sent / taken out of India are required to be either sold or brought back within <b>6 months</b> from the date of removal as per section 31(7) of the CGST Act.



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	<p>b) The supply would be deemed to have taken place, on the expiry of 6 months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.</p> <p>c) If the specified goods are sold abroad, fully or partially, within <b>6 months</b>, the supply is effected, in respect of quantity so sold, on the date of such sale.</p>
<p>Whether invoice is required to be issued when the specified goods sent / taken out of India are not brought back, either fully or partially, within the stipulated period?</p>	<p><b>a)</b> When the specified goods sent / taken out of India have been sold fully or partially, within <b>6 months</b>, as laid down in Section 31(7) of the CGST Act, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.</p> <p><b>b)</b> When the specified goods sent / taken out of India have neither been sold nor brought back, either fully or partially, within the stipulated period of six months, as laid down in sub-section (7) of section 31 of the CGST Act, the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.</p>
<p>Whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back?</p>	<p><b>a)</b> As clarified above, the activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, the sender of goods cannot prefer any refund claim when the specified goods are sent / taken out of India.</p> <p><b>b)</b> It has further been clarified in answer above that the supply would be deemed to have taken place:</p> <p>(i) on the date of expiry of 6 months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or</p> <p>(ii) on the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of 6 months.</p> <p><b>c)</b> It is clarified accordingly that the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in Section 54(3) the CGST Act read with Rule 89(4) of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice on the dates as has been clarified above. It is further clarified that refund claim cannot be preferred under rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent / taken out of India earlier.</p>

**Illustrations to understand the above circular**

(i) M/s ABC sends 100 units of specified goods out of India. The activity of merely sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. In case the entire quantity of specified goods is brought back within **6 months** from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case. In case, however, the entire quantity of specified goods is neither sold nor brought back within **6 months** from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules within the time period stipulated under Section 31(7) of the CGST Act.

(ii) M/s ABC sends 100 units of specified goods out of India. The activity of sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. If 10 units of specified goods are sold abroad say after one month of sending / taking out and another 50 units are sold say after two months of sending / taking out, a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. Further, M/s ABC may claim refund of accumulated input tax credit in accordance with the provisions contained in Section 54(3) of the CGST Act read with rule 89(4) of the CGST Rules in respect of zero-rated supply of 60 units.