



CHAPTER 17

PLACE OF SUPPLY



PLACE OF SUPPLY

Place of supply is important to determine the nature of sale (inter-state, intra-state, import or export) and the State where State component of GST will accrue.

IMPORTANT DEFINITIONS

1) Place of business includes

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called

2) Location of the recipient of services means: [Section 2(17)]

- (a) where a supply is received at a place of business for which **registration has been obtained**, the **location of such place of business**;
- (b) where a supply is received at a place **other than the place of business for which registration has been obtained**, that is to say, a fixed establishment elsewhere, **the location of such fixed establishment**;
- (c) where a supply is **received at more than one establishment**, whether the place of business or fixed establishment, the **location of the establishment most directly concerned with the receipt of the supply**; and
- (d) in absence of such places, the **location of the usual place of residence of the recipient**.

3) Location of the supplier of services means: [Section 2(18)]

- (a) where a supply is made from a **place of business for which registration has been obtained**, the **location of such place of business**;
- (b) where a supply is made from a **place other than the place of business for which registration has been obtained**, that is to say, a fixed establishment elsewhere, the **location of such fixed establishment**;
- (c) where a supply is **made from more than one establishment**, whether the place of business or fixed establishment, the **location of the establishment most directly concerned with the provision of the supply**; and
- (d) in absence of such places, the **location of the usual place of residence of the supplier**.



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- 4) **“Continuous journey”** means a journey for which 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 which involves no stopover between any of the legs of the journey** for which **one or more separate tickets or invoices are issued**.

Explanation: For the purposes of this clause, the term **“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 [Section 2(3)].

The term conveyance has been defined in section 2(34) of the CGST Act to include a vessel, an aircraft and a vehicle.

- 5) **Export of services** means the supply of any service when **[Section 2(6)]**

- (a) the supplier of service is located in India,
- (b) the recipient of service is located outside India,
- (c) the place of supply of service is outside India,
- (d) the payment for such service has been received by the supplier of service in convertible foreign exchange **or in INR wherever permitted by the RBI**; and
- (e) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8.

As per Explanation 1 to Section 8, the following are ***treated as establishments of distinct persons***:

- an establishment in India and any other establishment outside India;
- an establishment in a State or UT and any other establishment outside that State or UT; or
- an establishment in a State or UT and any other establishment being a business vertical registered within that State or UT

- 6) **Fixed establishment** means a place other than the place of business which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs [Section 2(7)].

- 7) **Import of services** means the supply of any service, where

- a) the supplier of service is located outside India,
- b) the recipient of service is located in India, and
- c) the place of supply of service is in India [Section 2(11)].



PLACE OF SUPPLY OF GOODS	
Place of Supply of Goods <u>other than supply of goods imported into, or exported from India [SECTION 10]</u>	
Supply involving <u>movement of goods</u> (whether by the supplier or the recipient or by any other person) [Section 10(1)(a)]	Location of the goods at the time at which the <u>movement of goods terminates (ends)</u> for delivery to the recipient
<p>Illustrations: Determine place of supply</p> <ol style="list-style-type: none"> 1. A situated in Kolkata supplies goods to B situated in Delhi – 2. Daulat situated in Delhi sells goods to Karan situated in Kolkata on FOR (Free on Railways i.e. freight shall be paid by buyer) basis where point of delivery is factory premises of Karan - 	
Supply involving movement of goods delivered to recipient on the <u>instructions of third person (buyer)</u> “BILL TO SHIP TO SALE” [Section 10(1)(b)]	It shall be deemed that the third person has received such goods and <u>principal place of business of such person (and not the actual recipient) shall be the place of supply</u>
<p>Illustrations: Determine place of supply</p> <ol style="list-style-type: none"> 1. Mr. C of Chennai received purchase order from Mr. H of Hyderabad for want of commercial goods. Now supply involves movement of goods by supplier from Chennai to Hyderabad by road in a truck. Upon the direction of Mr. H of Hyderabad these goods are redirect to Branch office of Mr. H located in Vijayawada by way of transfer of documents of title to the goods (i.e. Lorry Receipt or LR copy). 2. Mr. X (a supplier registered in Uttar Pradesh having principal place of business at Noida) asks Mr. Y of Ahmedabad, Gujarat to deliver 50 washing machines to his buyer Mr. Z at Jaipur, Rajasthan. In this case, two supplies are involved, one between Mr. X and Mr. Z and other between Mr. Y and Mr. X. While the former supply is covered under Section 10(1)(a), the latter one i.e., between Mr. Y and Mr. X is covered under Section 10(1)(b). Accordingly, in this case, the place of supply of goods is not the location of delivery of such goods (Jaipur) but the principal place of business of third person i.e., principal place of business of Mr. X located at Noida. 	
Supply <u>not involving movement of goods</u> (whether by the supplier or the recipient) [Section 10(1)(c)]	Location of such goods <u>at the time of the delivery</u> to the recipient



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Illustrations: Determine place of supply

Mr. A (New Delhi) has leased his machine (cost Rs 8,00,000) to Mr. B (Noida, Uttar Pradesh) for production of goods on a monthly rent of ₹ 40,000. After 14 months Mr. B requested Mr. A to sell the machine to him for ₹ 4,00,000, which is agreed to by Mr. A.

Goods purchased Over the Counter in one State and transported to another State by the buyer [Section 10(1)(ca)]	Location as per the address – Address is recorded in the invoice Location of supplier - Address is not recorded in the invoice
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Where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

Explanation— For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person;

Installation/Assembling of goods [Section 10(1)(d)]	Place of such installation or assembly
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Illustrations: Determine place of supply

1. Impure Refineries (Mumbai, Maharashtra) gives a contract to PQ Ltd. (Ranchi, Jharkhand) to assemble a power plant in its Kutch, Gujarat refinery.
2. Mr. A (New Delhi) purchases a machine from Mr. B (New Delhi) for being installed in his factory at Noida, Uttar Pradesh.

Goods supplied on board a conveyance [Section 10(1)(e)]	Location at which such goods are taken on board
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Illustrations: Determine place of supply

Mr. X (New Delhi) boards the New Delhi-Kota train at New Delhi. He sells the goods taken on board by him (at New Delhi), at Jaipur during the journey.

Place of Supply of Goods imported into, or exported from India [SECTION 11]

(i) Imported into India	Location of the importer
(ii) Exported from India	Location outside India

Illustrations: Determine place of supply

1. Ms. M imports electric kettles from China for her Kitchen Store in Noida, Uttar Pradesh. Ms. M is registered in Uttar Pradesh.
2. Ms. Reshmi (New Delhi) exports spices from New Delhi to London, UK.



PLACE OF SUPPLY OF SERVICES		
Place of Supply of Services <u>where location of supplier and location of recipient is in India [SECTION 12]</u>		
Applicability	Type	Place of Supply of Service
General Provision [Section 12(2)]	Made to a registered person	Location of such person
	Made to unregistered person	1. Location of recipient where address on records exist 2. Location of the supplier of services in other cases
Illustrations: Determine place of supply		
1. Mr. A (a Chartered Accountant registered in New Delhi) makes a supply of service to his client Mr. B of Noida, Uttar Pradesh (registered in Uttar Pradesh).		
2. Mr. A, a barber in Gurugram, Haryana, (registered in Haryana) provides hair cutting services to his client Mr. C who is a resident of New Delhi but is not registered under GST.		
Immovable property, boat or vessel [Section 12(3)]	Services provided by architects, interior decorators, surveyor, engineer and other related experts, estate agent	Location of immovable property
	Lodging accommodation, including a houseboat or vessel	
	Accommodation for organising marriage, Official, social, cultural, religious or business function including services provided in <i>relation to such function at such property;</i>	
	Any ancillary services to the above services	Location of recipient of service
	If immovable property or boat or vessel is located or intended to be located <u>outside India</u>	
	located in more than 1 State	Proportionate allocation amongst states as per the <u>value of service received or as per the contract or as may be prescribed</u>



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Illustrations: Determine place of supply

1. Mr. X, a consulting engineer based in Mumbai, Maharashtra renders professional services in respect of an immovable property of Mr. Y (Bangalore) located in Australia.
2. KTS Builders (Mumbai) is constructing a factory building for PLM Pvt. Ltd. (Kolkata), in New Delhi.
3. Mr. Ramesh, a Chartered Accountant, (New Delhi) travels to Mumbai for business and stays in a hotel there.

Specific services [Section 12(4)]	Services like beauty parlour, fitness, restaurant and catering services etc. (cosmetic and plastic surgery)	Location where the services are <u>actually performed</u>
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Illustrations: Determine place of supply

1. Mr. Timmy Ferreira, a makeup artist at Kolkata, goes to Jaipur, Rajasthan for doing the makeup of Ms. Simran Kapoor, a Bollywood actress based in Mumbai.
2. Mr. A, a business man from Pune dines in a restaurant at Mumbai while on a business trip.

Training and performance appraisal [Section 12(5)]	Made to a registered person	Location of such person
	Made to unregistered person	Location where the services are <u>actually performed</u>

Illustrations: Determine place of supply

1. Mr. Suresh (unregistered person based in Noida) signs up with Excellent Linguistics (New Delhi) for training on English speaking at their New Delhi Centre.
2. DEO Consultants (Kolkata) impart GST training to accounts and finance personnel of Sun Cements Ltd. (Guwahati, Assam) at the company's Kolkata office.



Transportation of goods, including by mail or courier [Section 12(8)]	Made to registered person	Location of such person
	Made to unregistered person	Location at which such goods are handed over for transportation

Illustrations: Determine place of supply

- (i) M/s XYZ Pvt. Ltd. is a registered company in New Delhi. It sends its courier to Pune through M/s Brue Air Courier Service.
- (ii) Mr. Y, an unregistered person, of New Delhi sends a courier to his brother in Amritsar, Punjab.
- (iii) PR Pvt. Ltd., a Goods Transportation Agency based in Kanpur, Uttar Pradesh, is hired by Hajela Enterprises (registered supplier in Kanpur) to transport its consignment of goods to a buyer in New Delhi.
- (iv) ST Pvt. Ltd., a Goods Transportation Agency based in Noida, Uttar Pradesh, is hired by Chhaya Trade Links (registered supplier in New Delhi) to transport its consignment of goods to a buyer in Kanpur, Uttar Pradesh.
- (v) Mr. Srikant, a manager in a Bank, is transferred from Bareilly, Uttar Pradesh to Bhopal, Madhya Pradesh. Mr. Srikant’s family is stationed in Kanpur, Uttar Pradesh. He hires Goel Carriers of Lucknow, Uttar Pradesh (registered in Uttar Pradesh), to transport his household goods from Kanpur to Bhopal.

Passenger transportation service [Section 12(9)]	Made to registered person	Location of such person
	Made to unregistered person	Place where the passenger embarks on the conveyance for a “continuous journey”
<p>Right to passage is given for future use and the point of embarkation is <u>not known at the time of issue</u> of right to passage.</p> <p>Example: (a) An airline may issue seasonal tickets, containing say 10 leaves which could be used for travel between any two locations in the country; (b) Metro cards issued by Metro railways</p>		<ol style="list-style-type: none"> 1. Location of recipient where address on records exist 2. Location of the supplier of services in other cases

**The return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time*



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Illustrations: Determine place of supply

- (i) Mr. Amar (registered person in New Delhi) travels from Mumbai to Bangalore in Airjet flight. Mr. Amar has bought the tickets for the journey from Airjet's office registered in New Delhi.
- (ii) Mr. C (unregistered person in Chennai) has come to Delhi on a vacation. He buys pre-paid Delhi Metro Card from Delhi Metro (New Delhi) for hassle free commute in the National Capital Region. Recipient being unregistered person, the place of supply is _____. If address of Mr. C is not available with the Delhi Metro, the place of supply will be _____.
- (iii) Mr. Shyam, an unregistered person, based in Gurugram, Haryana books a two-way air journey ticket from New Delhi to Mumbai on 5th December. He leaves New Delhi on 10th December in a late-night flight and lands in Mumbai the next day. He leaves Mumbai on 14th December in a morning flight and lands in New Delhi the same day. The return journey is treated as a separate journey, even if the tickets for onward and return journey are issued at the same time. Thus, being an unregistered person, the place of supply for the outward and return journeys are the locations where the unregistered person embarks on the conveyance for the continuous journey i.e., _____ and _____ respectively.

<p>Admission to cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto [Section 12(6)]</p>	<p>Location where the <i>event is actually held</i> ; or where the park or such other place is located.</p>
<p>Illustrations: Determine place of supply</p> <p>1. Mr. A, a resident of Ghaziabad, Uttar Pradesh, buys a ticket for a circus organized at Gurugram, Haryana by a circus company based in New Delhi.</p> <p>2. Mr. B of New Delhi buys a ticket for an amusement park located in Noida, Uttar Pradesh.</p>	
<p>On board a conveyance including a vessel, an aircraft, a train or a motor vehicle. [Section 12(10)]</p>	<p>Location of "<i>first scheduled point of departure of that conveyance</i>" for the journey</p>
<p>Illustrations: Determine place of supply</p> <p>Mr. X is travelling from Delhi to Mumbai in an Airjet flight. He desires to watch an English movie during the journey by making the necessary payment.</p>	



Banking and other financial services including stock broking services to any person [Section 12(12)]	<u>Location of the recipient of service</u> on records of supplier or if location of recipient is <u>not available</u> , location of the supplier of services
Illustrations: Determine place of supply (i) Mr. A (Chennai) buys shares from a broker in BSE (Mumbai). (ii) Mr. B (New Delhi) withdraws money from Best Bank's ATM in Amritsar. Mr. B has crossed his limit of free ATM withdrawals. (iii) Mr. C, an unregistered person from Varanasi, Uttar Pradesh, visits a bank registered in New Delhi for getting a demand draft made.	

Insurance services [Section 12(13)]	Made to a registered person	Location of such person
	Made to unregistered person	Location of the recipient of services on the records of the supplier of services.

Illustrations: Determine place of supply

- (i) Mr. A, CEO of XY Ltd., Mumbai (a company registered in Maharashtra) buys insurance cover for the inventory stored in company's factory located at Mumbai, from Excellent Insurers, Chennai (registered in Tamil Nadu).
- (ii) Ms. B (unregistered resident of Kolkata) goes to her native place Patna, Bihar and buys a medical insurance policy for her parents there from Safe Insurers, Patna (registered in Bihar).



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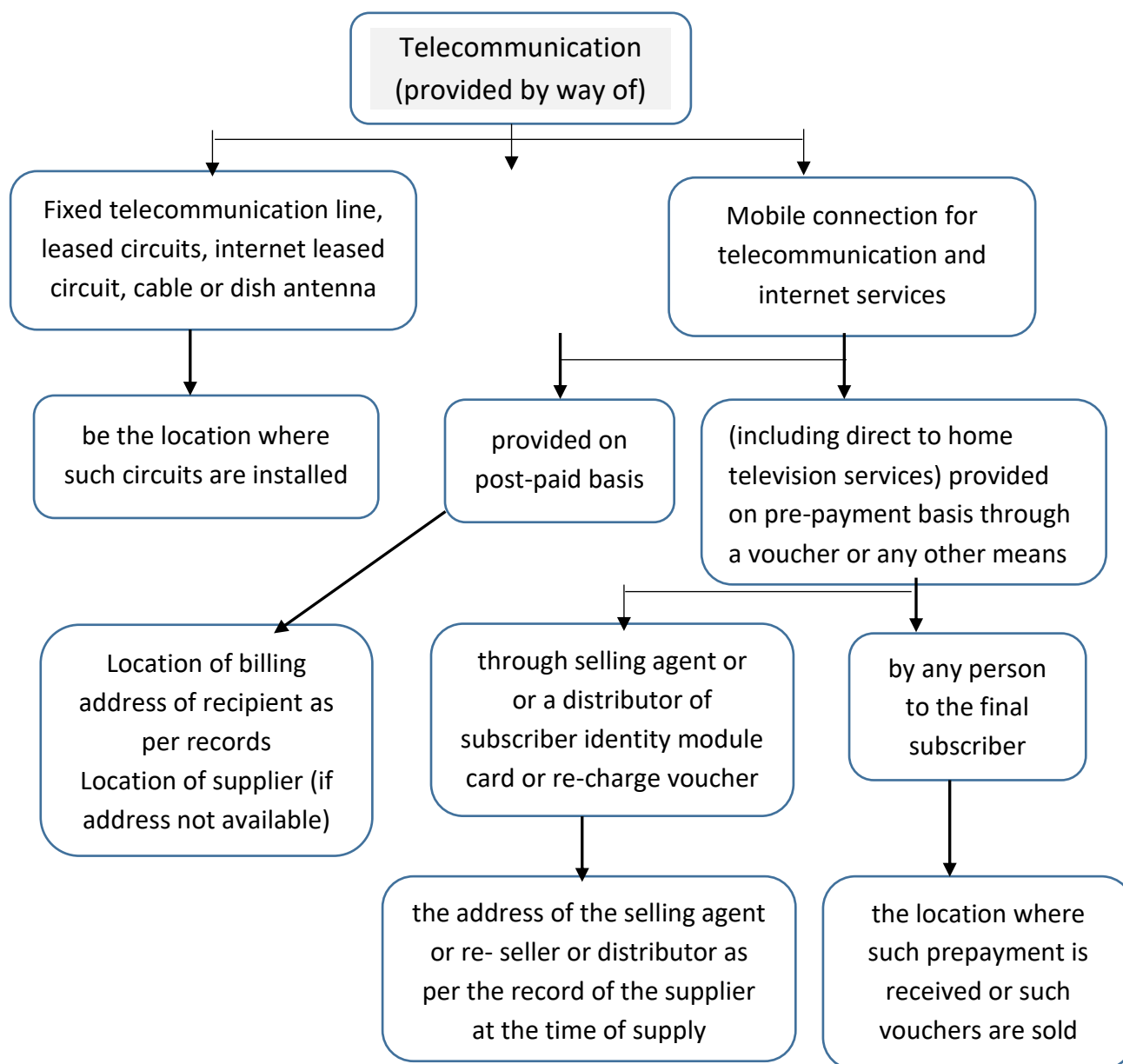
Organization of a cultural, artistic, sporting event etc., and services ancillary to organization of any of the events or assigning of sponsorship of such events [Section 12(7)]	Made to a registered person	Location of such person
	Made to unregistered person	Location of the place where the event is actually held
	Event held outside India	Location of the recipient
	Held in more than one State	Proportionate allocation amongst states as per the <i>value of service received</i> or as per the contract

Illustrations: Determine place of supply

1. Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), at Mumbai.
2. Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), at Mauritius.
3. Grand Wedding Planners (Chennai) is hired by Mr. Ramesh (unregistered person based in Hyderabad) to plan and organise his wedding at New Delhi.
4. Grand Wedding Planners (Chennai) is hired by Mr. Ramesh (unregistered person based in Hyderabad) to plan and organise his wedding at Seychelles.



PLACE OF SUPPLY OF TELECOMMUNICATION SERVICES [Section 12(11)]





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Pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment	Location of recipient of services on the record of the supplier of services
Other Cases	Address of the recipient as per the records of the supplier of services; Location of the supplier of services <u>where such address is not available</u>
Leased circuit is installed in more than one State/Union territory	If a consolidated amount is charged for supply of services, the place of supply is deemed to be in each of the respective States/Union territories in proportion to the value of services

Illustrations: Determine place of supply

- (i) Mr. X (Kolkata) gets a landline phone installed at his home from Skybel Ltd.
- (ii) Mr. Y (Mumbai) gets a DTH installed at his home from RT Ltd.
- (iii) Mr. D (Mumbai) takes a post-paid mobile connection in Mumbai from Skybel Ltd.
- (iv) Mr. E (New Delhi) gets his post-paid bill paid online from Goa. The payment being made through electronic mode,
- (v) Mr. C (Pune) purchases a pre-paid card from a selling agent in Mumbai.
- (vi) Mr. F (Puducherry) gets a pre-paid recharged from a grocery shop in Chennai.

ADVERTISEMENT SERVICE TO THE GOVERNMENT [SECTION 12(14)]

Advertisement service to the Central Government/ State Government/ Statutory body/ Local authority meant for the State or Union Territory identified in contract or agreement	Place of supply is each of such States or Union territories where the advertisement is broadcasted/ run /played.
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Note: *The value of such supplies is in proportion to the services provided by way of dissemination in the respective States or Union territories determined in terms of the contract or agreement entered into in this regard.*

Examples

- (i) Gujarat Government gives an advertisement contract to an advertising agency (registered in Ahmedabad) to promote Gujarat tourism throughout the country. The place of supply is in all the States and Union Territories of India.
- (ii) Delhi Government gives an advertisement contract to an advertising agency registered in Delhi to promote its 'Every Child Can Read' campaign in Delhi. The place of supply is Delhi.

**FACTORS TO DETERMINE VALUE OF SUPPLY [RULE 3 OF IGST RULES 2017]**

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of advertisement services attributable to different States/Union territories will be computed in accordance with rule 3 of IGST Rules, 2017.

1. Advertisements in newspapers and publications

Amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in each State/UT

Example: ABC is a government agency which deals with the all the advertisement and publicity of the Government. It has various wings dealing with various types of publicity. In furtherance thereof, it issues release orders to various agencies and entities. These agencies and entities thereafter provide the service and then issue invoices to ABC indicating the amount to be paid by them. ABC issues a release order to a newspaper for an advertisement on 'Beti bachao beti padhao', to be published in the newspaper DEF (whose head office is in Delhi) for the editions of Delhi, Pune, Mumbai, Lucknow and Jaipur. The release order will have details of the newspaper like the periodicity, language, size of the advertisement and the amount to be paid to such a newspaper.

Answer: The place of supply of this service shall be in the Union territory of Delhi, and the States of Maharashtra, Uttar Pradesh and Rajasthan. The amounts payable to the Pune and Mumbai editions would constitute the proportion of value for the State of Maharashtra which is attributable to the dissemination in Maharashtra. Likewise, the amount payable to the Delhi, Lucknow and Jaipur editions would constitute the proportion of value attributable to the dissemination in the Union territory of Delhi and States of Uttar Pradesh and Rajasthan respectively. DEF should issue separate State-wise and Union territory-wise invoices based on the editions.

2. Advertisements through printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc

Amount payable for the distribution of a specific number of such material in each State/UT.

Example: As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of 1,00,000 pamphlets (at a total cost of ₹ 1,00,000) to be distributed in the States of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States i.e., Haryana, Uttar Pradesh and Rajasthan, from the Ministry or department concerned at the time of giving the print order. Let us assume that this breakup is 20,000, 50,000 and 30,000 respectively. This breakup should be indicated in the print order.

Answer: The place of supply of this service is in Haryana, Uttar Pradesh and Rajasthan. The ratio of this breakup i.e., 2:5:3 will form the basis of value attributable to the dissemination in each of the three States. Separate invoices will have to be issued State-wise by GH to ABC indicating the value pertaining to that State, i.e., ₹ 20,000 - Haryana, ₹ 50,000 - Uttar Pradesh and ₹ 30,000 - Rajasthan



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3. Advertisements in hoardings (other than those on trains)

Amount payable for the hoardings located in each State/UT

Example: ABC as part of the campaign 'Saakshar Bharat' has engaged a firm IJ for putting up hoardings near the Airports in the 4 metros, i.e., Delhi, Mumbai, Chennai and Kolkata. The release order issued by ABC to IJ will have the city-wise, location-wise breakup of the amount payable for such hoardings.

Answer: The place of supply of this service is in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal. In such a case, the amount actually paid to IJ for the hoardings in each of the 4 metros will constitute the value attributable to the dissemination in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal respectively. Separate invoices will have to be issued State-wise and Union territory-wise by IJ to ABC indicating the value pertaining to that State or Union territory.

4. Advertisements on trains

Length of the railway track in each State/UT, for that train.

Example: ABC places an order on KL for advertisements to be placed on a train with regard to the 'Janani Suraksha Yojana'. The length of a track in a State will vary from train to train. Thus, for advertisements to be placed on the Hazrat Nizamuddin Vasco Da Gama Goa Express which runs through Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa, KL may ascertain the total length of the track from Hazrat Nizamuddin to Vasco Da Gama as well as the length of the track in each of these States and Union territory from the website www.indianrail.gov.in.

Answer: The place of supply of this service is in the Union territory of Delhi and States of Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra Karnataka and Goa. The value of the supply in each of these States and Union territory attributable to the dissemination in these States will be in the ratio of the length of the track in each of these States and Union territory.

If this ratio works out to say 0.5:0.5:2:2:3:3:1, and the amount to be paid to KL is ₹ 1,20,000, then KL will have to calculate the State-wise and Union territory-wise breakup of the value of the service, which will be in the ratio of the length of the track in each State and Union territory.

In the given example, the State-wise and Union territory-wise breakup works out to Delhi (₹ 5,000), Haryana (₹ 5,000), Uttar Pradesh (₹ 20,000), Madhya Pradesh (₹ 20,000), Maharashtra (₹ 30,000), Karnataka (₹ 30,000) and Goa (₹ 10,000). Separate invoices will have to be issued State-wise and Union territory-wise by KL to ABC indicating the value pertaining to that State or Union territory.



5. Advertisements on the back of utility bills of oil and gas companies, etc.

Amount payable for the advertisements on bills pertaining to consumers having billing addresses in each State/ UT.

6. Advertisements on railway tickets

Number of Railway Stations in each State/UT.

Example: ABC has issued a release order to MN for display of advertisements relating to the 'Ujjwala' scheme on the railway tickets that are sold from all the Stations in the States of Madhya Pradesh and Chattisgarh.

Answer: The place of supply of this service is in Madhya Pradesh and Chattisgarh. The value of advertisement service attributable to these two States will be in the ratio of the number of railway stations in each State as ascertained from the Railways or from the website www.indianrail.gov.in.

Let us assume that this ratio is 713:251 and the total bill is ₹ 9,640. The breakup of the amount between Madhya Pradesh and Chattisgarh in this ratio of 713:251 works out to ₹ 7,130 and ₹ 2,510 respectively. Separate invoices will have to be issued State-wise by MN to ABC indicating the value pertaining to that State.

7. Advertisements on radio stations

Amount payable to such radio station, which by virtue of its name is part of each State/UT.

Example: For an advertisement on 'Pradhan Mantri Ujjwala Yojana', to be broadcast on a FM radio station OP, for the radio stations of OP Kolkata, OP Bhubaneswar, OP Patna, OP Ranchi and OP Delhi, the release order issued by ABC will show the breakup of the amount which is to be paid to each of these radio stations.

Answer: The place of supply of this service is in West Bengal, Odisha, Bihar, Jharkhand and Delhi. The place of supply of OP Delhi is in Delhi even though the studio may be physically located in another State. Separate invoices will have to be issued State-wise and Union territory-wise by MN to ABC based on the value pertaining to each State or Union territory.

8. Advertisement on television channels

Number of viewers of such channel in each State/UT.

How can the number of viewers be ascertained?

Viewership can be ascertained from the channel viewership figures published by the **Broadcast Audience Research Council**. Figures for the **last week** of a given quarter will be used for calculating viewership for the **succeeding quarter**.



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The viewership figures for a State/UT of the region will be calculated in **ratio of the populations of that State/ UT, as determined in the latest Census**. [When channel viewership figures relate to a region comprising of more than one State/UT].

Example: ABC issues a release order with QR channel for telecasting an advertisement relating to the 'Pradhan Mantri Kaushal Vikas Yojana' in the month of November, 2017. In the first phase, this will be telecast in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand.

Answer: The place of supply of this service is in Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. In order to calculate the value of supply attributable to Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand, QR has to proceed as under —

- (i) QR will ascertain the viewership figures for their channel in the last week of September 2017 from the Broadcast Audience Research Council. Let us assume it is 1,00,000 for Delhi and 2,00,000 for the region comprising of Uttar Pradesh and Uttarakhand and 1,00,000 for the region comprising of Bihar and Jharkhand.
- (ii) Since the Broadcast Audience Research Council clubs Uttar Pradesh and Uttarakhand into one region and Bihar and Jharkhand into another region, QR will ascertain the population figures for Uttar Pradesh, Uttarakhand, Bihar and Jharkhand from the latest census.
- (iii) By applying the ratio of the populations of Uttar Pradesh and Uttarakhand, as so ascertained, to the Broadcast Audience Research Council viewership figures for their channel for this region, the viewership figures for Uttar Pradesh and Uttarakhand can be calculated. Let us assume that the ratio of the populations of Uttar Pradesh and Uttarakhand works out to 9:1. When this ratio is applied to the viewership figures of 2,00,000 for this region, the viewership figures for Uttar Pradesh and Uttarakhand work out to 1,80,000 and 20,000 respectively.
- (iv) In a similar manner, the breakup of the viewership figures for Bihar and Jharkhand can be calculated. Let us assume that the ratio of populations is 4:1 and when this is applied to the viewership figure of 1,00,000 for this region, the viewership figure for Bihar and Jharkhand works out to 80,000 and 20,000 respectively.
- (v) The viewership figure for each State works out to Delhi (1,00,000), Uttar Pradesh (1,80,000), Uttarakhand (20,000), Bihar (80,000) and Jharkhand (20,000). The ratio is thus 10:18:2:8:2 or 5:9:1:4:1 (simplification).
- (vi) This ratio has to be applied when indicating the breakup of the amount pertaining to each State. Thus, if the total amount payable to QR by ABC is ₹ 20,00,000, the State-wise breakup is ₹ 5,00,000 (Delhi), ₹ 9,00,000 (Uttar Pradesh) ₹ 1,00,000 (Uttarakhand), ₹ 4,00,000 (Bihar) and ₹ 1,00,000 (Jharkhand). Separate invoices will have to be issued State-wise and Union territory-wise by QR to ABC indicating the value pertaining to that State or Union territory.



9. Advertisements in cinema halls

Amount payable to a cinema hall or screens in a multiplex in each State/ UT.

Example: ABC commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana' to be displayed in the cinema halls in Chennai and Hyderabad.

Answer: The place of supply of this service is in the States of Tamil Nadu and Telangana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State-wise and Union territory-wise by ST to ABC indicating the value pertaining to that State.

10. Advertisements on internet

Rule 3 has been amended to provide that in case of advertisements over internet, **the advertisement service shall be deemed to have been provided all over India . Thus, the value of such service will be apportioned amongst ALL States and UTs, of India in the manner prescribed therein.**

Number of internet subscribers in each State/UT.

How can the internet subscribers be ascertained?

Internet subscribers can be ascertained from the internet subscriber figures published by the Telecom Regulatory Authority of India (TRAI). Figures for the last **quarter** of a given financial year will be used for calculating the number of internet subscribers for the **succeeding financial year**.

The subscriber figures for a State/Union territory of the region shall be calculated in the **ratio of the populations of that State/UT, as determined in the latest census**. [*Where the internet subscriber figures relate to a region comprising of more than one State/UT*]

Example: ABC issues a release order to WX for a campaign over internet regarding linking Aadhaar with one's bank account and mobile number. WX runs this campaign over certain websites. In order to ascertain the State-wise breakup of the value of this service which is to be reflected in the invoice issued by WX to ABC, WX has to first refer to the Telecom Regulatory Authority of India figures for quarter ending March, 2017, as indicated on their website www.traai.gov.in. These figures show the service area wise internet subscribers. There are 22 service areas. Some relate to individual States some to two or more States and some to part of one State and another complete State. Some of these areas are metropolitan areas.



PLACE OF SUPPLY

In order to calculate the State-wise breakup, first the State-wise breakup of the number of internet subscribers is arrived at. (In case figures of internet subscribers of one or more States are clubbed, the subscribers in each State is to be arrived at by applying the ratio of the respective populations of these States as per the latest census.). Once the actual number of subscribers for each State has been determined, the second step for WX involves calculating the State-wise ratio of internet subscribers. Let us assume that this works out to 8:1:2..... and so on for Andhra Pradesh, Arunachal Pradesh, Assam... and so on. The third step for WX will be to apply these ratios to the total amount payable to WX so as to arrive at the value attributable to each State.

Separate invoices will have to be issued State-wise and Union territory-wise by WX to ABC indicating the value pertaining to that State or Union territory.

11. Advertisements through SMS

Number of telecom subscribers in each State/UT

How can the telecom subscribers be ascertained?

Telecom subscribers in a telecom circle can be ascertained from the telecom subscribers figures published by the TRAI. Figures for a given **quarter** will be used for calculating the subscribers for the **succeeding quarter**.

Where such figures relate to a telecom circle comprising of more than one State/Union territory, the subscriber figures for that State/Union territory shall be calculated in **the ratio of the populations of that State/UT, as determined in the latest census**

Example 1: In the case of the telecom circle of Assam, the amount attributed to the telecom circle of Assam is the value of advertisement service in Assam.

Example 2: The telecom circle of North East covers the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Manipur and Tripura. The ratio of populations of each of these States in the latest census will have to be determined and this ratio applied to the total number of subscribers for this telecom circle so as to arrive at the State-wise figures of telecom subscribers. Separate invoices will have to be issued State-wise by the service provider to ABC indicating the value pertaining to that State.

Example 3: ABC commissions UV to send short messaging service to voters asking them to exercise their franchise in elections to be held in Maharashtra and Goa. The place of supply of this service is in Maharashtra and Goa. The telecom circle of Maharashtra consists of the area of the State of Maharashtra (excluding the areas covered by Mumbai which forms another circle) and the State of Goa. When calculating the number of subscribers pertaining to Maharashtra and Goa, UV has to -



- (i) obtain the subscriber figures for Maharashtra circle and Mumbai circle and add them to obtain a combined figure of subscribers;
- (ii) obtain the figures of the population of Maharashtra and Goa from the latest census and derive the ratio of these two populations;
- (iii) this ratio will then have to be applied to the combined figure of subscribers so as to arrive at the separate figures of subscribers pertaining to Maharashtra and Goa;
- (iv) the ratio of these subscribers when applied to the amount payable for the short messaging service in Maharashtra circle and Mumbai circle, will give breakup of the amount pertaining to Maharashtra and Goa. Separate invoices will have to be issued State-wise by UV to ABC indicating the value pertaining to that State.

Example 4: The telecom circle of Andhra Pradesh consists of the areas of the States of Andhra Pradesh, Telangana and Yanam, an area of the Union territory of Puducherry. The subscribers attributable to Telangana and Yanam will have to be excluded when calculating the subscribers pertaining to Andhra Pradesh

Computation of value of services where immovable property is located in more than one State and where the location of supplier and recipient is in India [New Rule 4 of the IGST Rules]

Section 12(3) of the IGST Act provides that the place of supply of services, in relation to immovable property or a boat or a vessel, shall be the location at which immovable property or boat or vessel is located or intended to be located. However, in case where the immovable property or boat or vessel is located in more than one State/ UT, the service is deemed to have been supplied in each of the respective States/ UT, proportionately in terms of value of services determined as per rule 4



PLACE OF SUPPLY

Clarification regarding place of supply in case of supply of services in respect of advertising sector [Circular No. 203/15/2023-GST dated 27/10/2023]

Advertising companies are often involved in procuring space on hoardings/ bill-boards erected and mounted on buildings/land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:

Issue	Clarification
There is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?	The place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located [Section 12(3)(a) shall apply]
Where the advertising company wants to display its advertisement on hoardings/ billboards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ billboards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertising company at the said location During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?	The place of supply of the same shall not be covered u/s 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the vendor to advertising company are purely in the nature of advertisement services in respect of which place of supply shall be determined in terms of section 12(2) of IGST Act.



PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA [SECTION 13]

The provisions of Section 13 discussed below are all in relation to **cross border supply of services**.

GENERAL PROVISIONS [Section 13(2)]

Nature of Supply	PLACE OF SUPPLY	
	Location of recipient is available	Location of recipient is NOT available
Supply of services other than specified in Section 13(3) to 13(13)	Location of recipient of services	Location of supplier of services

PERFORMANCE BASED SERVICES [Section 13(3)]

Nature of Supply	Place of Supply
(i) Services requiring physical presence of goods (ii) Services supplied to an individual, which require the physical presence of the recipient	Location where services are actually performed
(iii) Services at (i) and (ii) above supplied at <u>more than one location including a location in the taxable territory</u>	Location in the taxable territory
(iv) Services at (i) and (ii) supplied in <u>more than one State/Union Territory</u>	Each of state/UT
<u>Exceptions:</u> Services supplied in respect of goods, that are temporarily imported into India for repairs <i>or for any other treatment or process</i> and are exported after repairs or treatment or process, without being put to any other use in India, <i>other than which is required for such repairs or treatment or process.</i>	Location of the recipient (if available) Location of the supplier (if location of recipient not available)
Services supplied in respect of goods, that are provided from a remote location by electronic means	Location where goods are situated at the time of supply of services



PLACE OF SUPPLY

Thus, place of supply of services in respect of goods imported into India for any job work or any other process etc. and exported after such job work or process etc. without being put to any other use, will be determined in accordance with the general rule, i.e. Section 13(2) of the IGST Act.

Illustrations: Determine place of supply

- (i) Mr. X (New Delhi) imports a machine from Germany for being installed in his factory at New Delhi. To install such machine, Mr. X takes the service of an engineer who comes to India from Germany for this specific installation.

- (ii) A software company located in United States of America (USA) takes services of a software company located in Bangalore to service its software in USA. The Indian software company provides its services through electronic means from its office in India.

- (iii) ABC Ltd., Hyderabad has exported a machine to a company in Indonesia. The machine stops functioning and is thus, imported by ABC Ltd. for free repairs in terms of the sale contract. The machine is exported after repairs.

- (iv) Mr. X, a hair stylist registered in New Delhi, travels to Singapore to provide his services to Ms. Y, a resident of Singapore.

- (v) PQR Consultants, New Delhi, bags a contract for doing a market research for a vehicle manufacturing company based in South Korea, in respect of its upcoming model of a car. The research is to be carried out in five countries including New Delhi.

**Services in relation to immovable property [Section 13(4)]**

Nature of Supply	Place of Supply
Services supplied directly in relation to an immovable property like (i) Services of experts and estate agents (ii) Accommodation by a hotel, inn, guest house, club or campsite (iii) Grant of rights to use immovable property (iv) Construction and related services (v) Services of architects or interior decorators	Location of immovable property
Above services supplied at more than one location, including a location in the taxable territory	Location in the taxable territory
Above services supplied in more than one State/Union Territory	Each of state/UT

Illustrations: Determine place of supply

- (i) Mr. C, an architect (New Delhi), provides professional services to Mr. Z of New York in relation to his immovable property located in Pune.
- (ii) Mr. C, an architect (New Delhi), enters into a contract with Mr. Z of New York to provide professional services in respect of immovable properties of Mr. Z located in Pune and New York.



PLACE OF SUPPLY

Services by way of admission to/organization of events or celebrations etc. [Section 13(5)]

Nature of Supply	Place of Supply
Services supplied by way of admission to or organization of following (i) Cultural, artistic, sporting, scientific, educational, entertainment events (ii) Celebration, conference, fair, exhibition (iii) Similar events Ancillary services to such admission or organization	Place where event is actually held
Above services supplied at more than one location, including a location in the taxable territory	Location in the taxable territory
Above services supplied in more than one State/Union Territory	Each of state/UT

Illustrations: Determine place of supply

- (i) A circus team from Russia organizes a circus in New Delhi.
- (ii) An event management company registered in New Delhi organises an art exhibition displaying works of an international painter based in Dubai. The exhibition is organised in 3 countries including New Delhi.

Banking and financial services, Intermediary services and Hiring of means of transport [Section 13(8)]

Nature of Supply	Place of Supply
Services supplied by a banking company, or a financial institution, or a NBFC, to account holders	Location of the supplier of services
Intermediary Services	
Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, <u>up to a period of 1 Month</u>	



Illustrations: Determine place of supply

- (i) Mr. C, a foreign tourist, on a visit to Varanasi (Uttar Pradesh) uses his international debit card to withdraw money from an ATM of a local Bank registered in Uttar Pradesh.
- (ii) A travel agent registered in New Delhi books a tour of famous Indian cities for a Dubai resident.
- (iii) Mr. D, an unregistered person based in New Delhi, leaves for a European holiday. He hires a car from London, UK for 20 days.

Clarification on doubts related to scope of “Intermediary” [CBIC Circular No. 159/15/2021-GST dated 20th September 2021]

Scope of Intermediary services

‘Intermediary’ has been defined in section 2(13) of the IGST Act, 2017 as under–

“Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.”

Primary Requirements for Intermediary services

The concept of intermediary services, as defined above, requires some basic prerequisites, which are discussed below:

(A) Minimum of Three Parties: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.

(B) Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services;

(1) Main supply, between the two principals, which can be a supply of goods or services or securities;

(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal-to-principal basis to another person cannot be considered as supplier of intermediary service.



(C) Intermediary service provider to have the character of an agent, broker or any other similar person:

The definition of “intermediary” itself provides that intermediary service provider means a broker, an agent or any other person, by whatever name called....”.

This part of the definition is not inclusive but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

(D) Does not include a person who supplies such goods or services or both or securities on his own account:

The definition of intermediary services specifically mentions that intermediary “does not include a person who supplies such goods or services or both or securities on his own account”. Use of word “such” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal-to-principal basis, the said supply cannot be covered under the scope of “intermediary”

(E) Sub-contracting for a service is not an intermediary service:

An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors.

Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, ‘A’ and ‘B’ have entered into a contract as per which ‘A’ needs to provide a service of, say, Annual Maintenance of tools and machinery to ‘B’. ‘A’ subcontracts a part or whole of it to ‘C’. Accordingly, ‘C’ provides the service of annual maintenance to ‘A’ as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of ‘A’, i.e. to ‘B’ on behalf of ‘A’. Though ‘C’ is dealing with the customer of ‘A’, but ‘C’ is providing main supply of Annual Maintenance Service to ‘A’ on his own account, i.e. on principal to principal basis. In this case, ‘A’ is providing supply of Annual Maintenance Service to ‘B’, whereas ‘C’ is supplying the same service to ‘A’. Thus, supply of service by ‘C’ in this case will not be considered as an intermediary

**(F) General Illustrations to understand the scope of Intermediary Services****Illustration 1:**

'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

Illustration 2:

'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which 'C' may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

Illustration 3:

An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act

Illustration 4:

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, 'B' is not an intermediary.



PLACE OF SUPPLY

The illustrations given above are only indicative and not exhaustive. The illustrations are also generic in nature and should not be interpreted to mean that the service categories mentioned therein are inherently either intermediary services or otherwise

Transportation services [Section 13(10) / 13(11)]

Nature of Supply	Place of Supply
Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey
Services provided on board a conveyance during passenger transportation including services intended to be wholly or substantially consumed while on board	First scheduled point of departure of that conveyance for the journey

Illustrations: Determine place of supply

- (i) A shipping line, Mumbai, Maharashtra transports a shipment of flowers from Mumbai to Paris, for an event management company based in Paris.
- (ii) Mr. A, a foreign tourist, has booked a ticket for New Delhi-Sri Lanka flight from an airline registered in New Delhi for a continuous journey without any stopover

CBIC Clarification regarding place of supply in case of supply of service of transportation of goods, including through email or courier post amendment [Circular No. 203/15/2023-GST dated 27/10/2023]

Issue: Doubts have been raised as to whether the place of supply in case of service of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined u/s 13(2) of IGST Act or 13(3) of IGST Act.

Clarification: It is hereby clarified that after the said amendment comes into effect, the place of supply of services of **transportation of goods, other than through mail and courier**, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule u/s 13(2) of IGST Act and not as performance based services u/s 13(3) of IGST Act.

The place of supply in case of service of **transportation of goods by mail or courier** was not covered u/s 13(9) before the said sub-section was amended/omitted. Therefore, on the same principles as mentioned above, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule u/s 13(2) of IGST Act, 2017.



Online information and database access or retrieval services (OIDAR) [Section 13(12)]

The place of supply of OIDAR is the **location of the recipient of services**.

It is difficult to determine the location of the recipient in case of OIDAR as such recipients normally access the services online and are not required to disclose their location.

The service recipient is deemed to be located in the taxable territory i.e., India **on satisfying any 2 non-contradictory conditions** out of following 7 conditions:

- a) the recipient gives an Indian address through internet;
- b) the payment is settled by an Indian credit card/debit card/other card;
- c) the recipient has an Indian billing address;
- d) the computer used by the recipient has an Indian IP address;
- e) the recipient uses an Indian bank account for payment
- f) the country code of the subscriber identity module card used by the recipient of services is of India;
- g) the recipient receives the service through an Indian fixed land line.

Meaning of OIDAR services

“Online information and database access or retrieval services” means services

- (a) whose delivery is **mediated by information technology** over the **internet** or an electronic network and
- (b) the nature of which renders their supply
- (c) **impossible to ensure in the absence of information technology and**
- (d) **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;



PLACE OF SUPPLY

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 <i>manually emailed</i> by provider	Yes	No	No
PDF document <i>automatically emailed</i> by provider's system	Yes	Yes	Yes
PDF document <i>automatically downloaded</i> from site	Yes	Yes	Yes
Stock photographs available for <i>automatic download</i>	Yes	Yes	Yes
<i>Online course</i> consisting of pre-recorded videos and downloadable PDFs	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable PDFs <i>plus support from a live tutor</i>	Yes	No	No
Individually commissioned content <i>sent in digital form</i> e.g., photographs, reports, medical results	Yes	No	No

Illustrative List of OIDAR services

- 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
- Supply of images, text and information and making available of databases
- Supply of software and updating thereof
- Website supply, web-hosting, distance maintenance of programmes and equipment



Double taxation of supply of a service [Section 13(13)]

In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Notification No. 4/2019 – IGST dated 30/09/2019 specifies in order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, on the recommendations of the Council, the Central Government notifies following description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service

Description of service	Place of supply
Supply of research and development services related to pharmaceutical sector by a person located in taxable territory to a person located in the non-taxable territory a) Integrated discovery and development b) Integrated development c) Evaluation of efficacy of new chemical/ biological entities in animal models of disease d) Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays e) Drug metabolism and pharmacokinetics of new chemical entities f) Safety Assessment/ Toxicology g) Stability Studies h) Bio-equivalence and Bioavailability Studies i) Clinical trials j) Bio analytical studies	The place of supply of services shall be the location of the recipient of services subject to fulfillment of the following conditions: (i) Supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory. (ii) Such supply of services fulfills all other conditions in the definition of export of services, except the fact that place of supply is outside India [Section 2(6)(iii) of IGST Act, 2017]

Place of supply of B2B MRO services in case of shipping industry shall be the location of the recipient

Section 13 of the IGST Act determines the place of supply of services where location of supplier or location of recipient is outside India. In order to prevent double taxation or non-taxation of supply of any service, sub-section (13) of said section empowers the Government to notify any service for which the place of supply shall be the place of effective use and enjoyment of service. **Few services had already been notified in this regard vide Notification No. 4/2019 IT dated 30.09.2019.**

Said notification has been amended to notify the place of supply of maintenance, repair or overhaul service in respect of ships and other vessels, or parts thereof as follows



PLACE OF SUPPLY

The place of supply in respect of B2B supply of maintenance, repair or overhaul service (hereinafter referred to as MRO service) in respect of ships and other vessels, their engines and other components or parts supplied to a person for use in the course or furtherance of business shall be the **location of the recipient of service**.

By virtue of this notification, if an Indian shipping company has received MRO service in respect of a ship/vessel from a foreign supplier, place of supply of such service is in India (location of recipient being in India) and said service would qualify as an 'import of service'. Resultantly, GST is payable under reverse charge on these services.

In the absence of such notification, the place of supply of such MRO service provided by a foreign supplier to an Indian shipping company would have been the location where the services are actually performed, determined in terms of section 13(3)(a) of the IGST Act. Accordingly, the place of supply of such services would have been outside India and thus, they would not have qualified as import of services, thus, not been liable to GST.

Clarification regarding determination of place of supply in certain cases – reg. [Circular No. 103/22/2019-GST dated 28/06/2019]

Issue	Clarification
<p>Port authorities to its clients in relation to cargo handling:</p> <ul style="list-style-type: none">• Arrival of wagons at port,• Haulage of wagons inside port area up-to place of unloading,• Siding of wagons inside the port,• Unloading of wagons,• Movement of unloaded cargo to plot and staking hereof,• Movement of unloaded cargo to berth, shipment/loading on vessel etc. <p>Issues involved in place of supply:</p> <p>Whether the same would be determined in terms of</p> <p>a) Section 12(2) or Section 13(2) of the IGST Act [General Provisions] or;</p> <p>b) Section 12(3) of the IGST Act.</p>	<p>It is hereby clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property.</p> <p>Accordingly, the place of supply of such services will be determined as per the provisions contained in Section 12(2) or Section 13(2) of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.</p>



Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry [Circular No. 118/37/2019-GST dated 11 October 2019]

Facts:

1. Companies forming part of ESDM industry are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas.
2. The client/customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks (“IP blocks”, reusable units of software logic and design layouts that can be combined to form newer designs).
3. Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design.
4. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.
5. In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.

Issue:

Whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of “goods required to be made physically available by the recipient to the provider?”

Applicable provision:

In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation.

Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted

Clarification:

The place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. **Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.**



ANALYSIS OF KEY ADVANCE RULING

Maharashtra Authority for Advance Ruling in case of M/s Amogh Ramesh Bhatavdekar (2020):

The applicant, Amogh Bhatavdekar, located in Thane is a proprietor supplying digital goods, in the subject case ‘online gaming’ and has not obtained GSTIN because he is of the opinion that the services rendered by him is export of e-goods (Digital Goods).

Facts stated by the Applicant:

- (a) Digital goods/e-goods are not necessarily goods as commonly understood & as defined in the GST Acts but they can at best be called as “services”.
- (b) They are supply of services done through internet or mails. There is no delivery of e-goods as such.
- (c) The said e-goods, are stored on CLOUD which are located outside India, & are purchased from vendors outside India who send it to the CLOUD as identified by the buyer / vendor / the applicant.
- (d) The e-goods are not received by the seller in India but are stored on CLOUD hence it cannot be said to be imports in India, hence out of purview of reverse charge mechanism under the IGST Act.
- (e) The buyers are usually from abroad, who pay in dollars directly through PAYPAL, therefore it is supply outside India taking it outside purview of IGST levy. It is export of services i.e. it is out and out services not liable to either IGST or CGST & SGST. It is covered by the Circular NO. 78/52/2018 GST New Delhi dated 31/12/2018.

Observation and Order of AAR:

In case where the supplier of such service is located outside India and the recipient is a business entity (registered person) located in India	The reverse charge mechanism would get triggered and the recipient in India who is a registered entity under GST will be liable to pay GST under reverse charge and undertake necessary compliances.
If the supplier is located outside India and the recipient in India is an individual consumer not registered under GST Laws	In such cases also the place of supply would be India and the transaction is amenable to levy of GST. In such case the individual should obtain registration and pay GST under reverse charge.

Questions Answered by the AAR

Whether “e-goods” as commercially known in the market are “goods” as defined in the GST Acts or are they services as per GST Act	E-goods, in this case – ‘Online Gaming’ will be covered under services under the GST Act
Whether they are exempted from GST	Not exempt
If not exempted what is the rate of GST on supply	18%
In what circumstances IGST under reverse charge will be applicable or whether it is applicable in the situation of procurement from foreign supplier & supply from out of India as discussed above	In the situation of procurement from foreign supplier & supply from out of India the applicant has to discharge IGST liability under reverse charge mechanism.



Universal Services India (P) Ltd., In re 2016 (42) STR 585 (AAR)

Facts of the Case:

WWD – a US based Company is engaged in the business of providing name registration, web hosting, designing and other services to customers across the world. The customers can either directly pay to WWD in US Dollars using an international credit card or in Indian rupees using their Indian credit cards. Collections would be remitted without any markup to WWD.

In order to enable customers to pay for the services, using Indian credit card in Indian rupees, WWD intends to enter into an agreement with the applicant – an Indian company. The applicant submitted that the payment processing service would be the main service of the applicant where it provides this service on its own account

Point of dispute for which Advance Ruling is sought:

- (i) Whether the place of provision of payment processing service proposed to be provided by the applicant, is outside India in terms of Section 13(2) of the IGST Act, 2017?
- (ii) Whether services proposed to be provided by applicant would qualify as 'export of service'?

Ruling of Authority for Advance Ruling:

The definition of "intermediary" as per Section 2(13) of the IGST Act, 2017 does not include a person who provides the main service on his own account. In the present case, applicant provides main service, i.e., "business support services" to WWD on his own account. Therefore, applicant is not an "intermediary" and thus, the service provided by it is not intermediary service.

Thus, AAR ruled that the place of provision of payment processing service to be provided by the applicant, is outside India in terms of Section 13(2) of the IGST Act, 2017.

Further, while deciding the questions as to whether services provided by applicant qualify as export of service, AAR observed that all conditions mentioned as per Section 2(6) of the IGST Act, 2017 are satisfied, and hence the said service will qualify as export of taxable service.