



CHAPTER 4

CHARGE OF GST

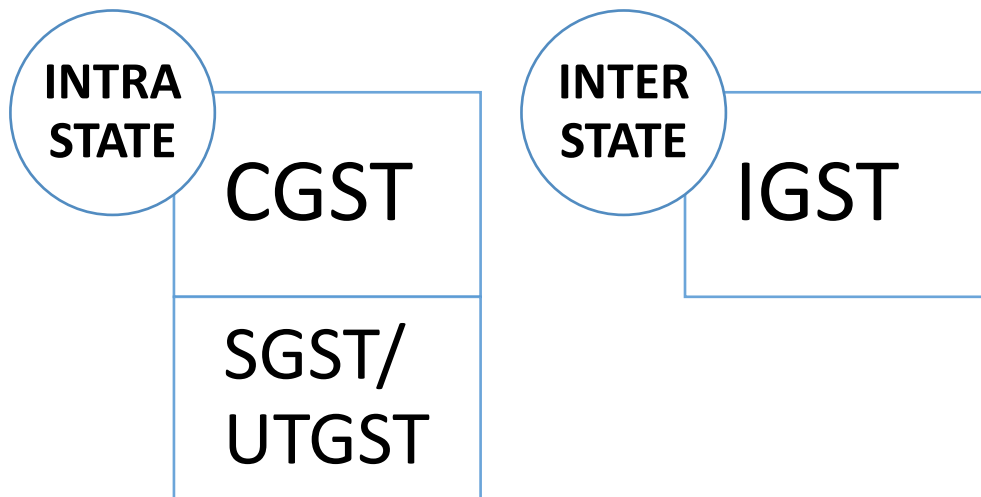
**CHAPTER OVERVIEW**

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1	CHARGE OF GST
2	TYPES OF SUPPLY AND KIND OF TAXES LEVIED
3	LEVY AND COLLECTION OF CGST, SGST & IGST
4	REVERSE CHARGE ON SERVICES
5	TAX PAYABLE BY E-COMMERCE OPERATOR



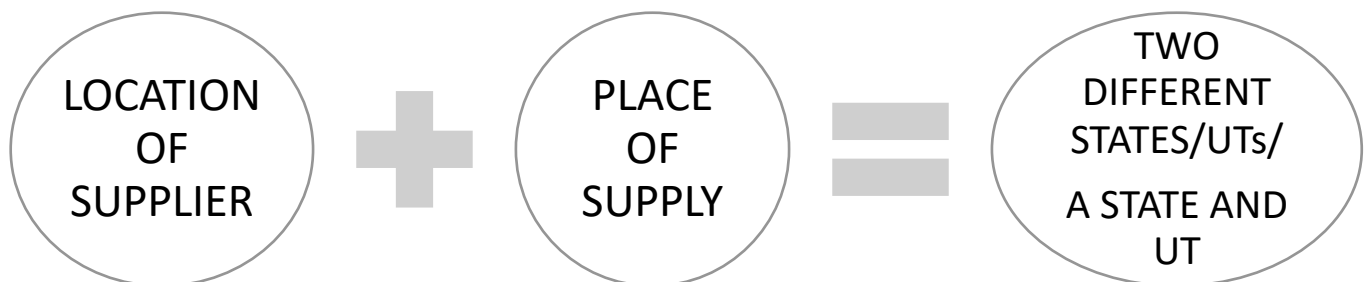
CHARGE OF GST

The taxable event under GST is **SUPPLY**. Types of supply is enumerated below:



CGST and **SGST/UTGST** are levied on all **INTRA-STATE SUPPLIES** of goods and/or services while **IGST** is levied on all **INTER-STATE SUPPLIES** of goods and/ or services.

INTER STATE SUPPLY [SECTION 7 OF IGST ACT 2017]



Where the **LOCATION OF THE SUPPLIER** and **PLACE OF SUPPLY** of goods or services are in

- (i) two different States or
- (ii) two different Union Territories or
- (iii) a State and a Union territory,

it is treated as **INTER-STATE SUPPLY** of goods or services respectively.

All **IMPORTS** of goods in India shall be deemed to be **inter-State supplies** and accordingly **IGST** shall be levied on the imported goods in addition to the applicable custom duties.

**EXAMPLES:**

LOCATION OF SUPPLIER	PLACE OF SUPPLY	INTRA /INTER
Punjab	Haryana	Inter
Punjab	Daman & Diu	Inter
Daman & Diu	Chandigarh	Inter

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

MEANING OF IMPORT:

- A. **Goods:** Import of goods, means bringing goods into India from a place outside India.
- B. **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

CERTAIN SUPPLIES TO BE TREATED AS INTER-STATE SUPPLIES

A. Supply of goods or services or both when

- (I) **Supplier is located in India and**
- (II) **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.

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

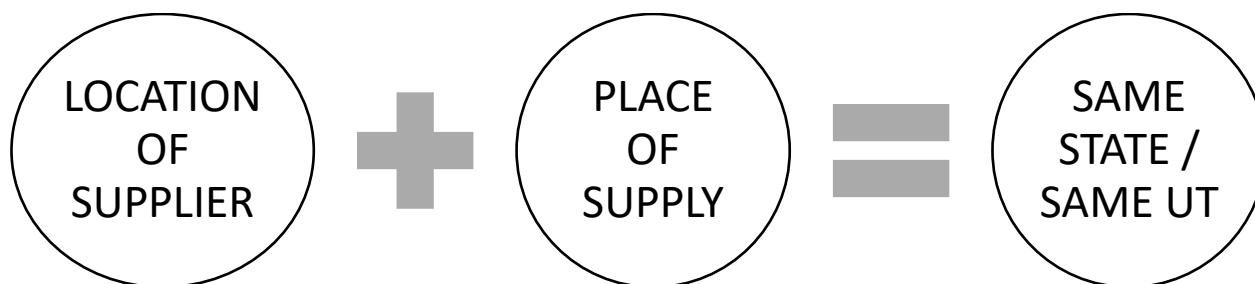
SEZ is a geographically bound zone within India where the economic laws relating to export and import are more liberal as compared to other parts of the country. For all tax purposes, SEZ is considered to be a place outside India.

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	

C. **Supply of goods or services or both in the “taxable territory”, not being an intra-State supply and not covered elsewhere in this section**

**INTRA STATE SUPPLY [SECTION 8 OF IGST ACT 2017]**

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
Daman & Diu	Lakshadweep	Inter

CERTAIN SUPPLIES 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. Goods imported into the territory of India till they cross the customs frontiers of India

**Notes:**

- 1) Any supply between following establishments shall be treated as establishments of distinct persons. Where a person has:
- an establishment in India and any other establishment outside India;
 - an establishment in a State / UT and any other establishment outside that State/ UT; or
 - an establishment in a State / UT and any other establishment being a business vertical registered within that State / UT.
- 2) 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.

Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/SEZ unit – whether to be treated as an inter-State supply or an intra-State supply?

Place of Supply provisions: Section 12(3)(c) of the IGST Act provides that the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Hence, if the location of supplier and place of supply is in same state, it shall be considered as intra state supply.

Deeming fiction of Section 7 of IGST Act: Section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.

It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.

It is clarified that such services provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply [Circular No. 48/22/2018 GST dated 14.06.2018].

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.



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Example:

Sonu Traders, registered person in Maharashtra. In the month of September, it supplied taxable goods worth ₹ 50 lakh to Rose Oil Corporation Ltd. in the territorial waters. The said territorial waters are located at a distance of 8 nautical miles from the baseline of the State of Maharashtra and 9 nautical miles from the base line of the state of Gujarat. You are required to determine the amount of net CGST and SGST and / or IGST payable in the month of September. Applicable rate of CGST 9% and SGST 9% or IGST 18%.

Solution:

Place of Supply = Maharashtra (inter-State Supply). CGST @9% is ₹ 4,50,000; and SGST @9% is ₹ 4,50,000

LEVY & COLLECTION OF CGST [SECTION 9 OF CGST ACT]

1. A tax called the Central Goods and Services Tax (CGST) shall be levied on **all intra-State supplies** of goods or services or both.
2. The tax shall be collected and paid by the **TAXABLE PERSON**. However, intra-State supply of **alcoholic liquor for human consumption** is outside the purview of CGST.

Meaning of **Taxable Person**: [Section 2(107) of CGST Act]

It means a person who is registered or liable to be registered under Section 22 or Section 24.

It is important to note that even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person.

3. CGST would be levied on **TRANSACTION VALUE** under section 15 of the CGST Act.
4. Notified rates of CGST are **0%, 0.125%, 1.5%, 2.5%, 6%, 9% and 14%**. Maximum rate of CGST will be **20%**.
5. CGST on supply of the following items has not been levied immediately. It shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council:

Petroleum
crude

High speed
diesel

Motor Spirit
(Petrol)

Natural Gas

Aviation
Turbine Fuel

**LEVY & COLLECTION OF IGST [SECTION 5 OF IGST ACT]**

1. A tax called the Integrated Goods and Services Tax (IGST) shall be levied on **all inter-State supplies** of goods or services or both.
2. The tax shall be collected and paid by the **TAXABLE PERSON**. However, inter-State supply of **alcoholic liquor for human consumption** is outside the purview of IGST.
3. IGST would be levied on **TRANSACTION VALUE** under section 15 of the CGST Act.
4. Notified rates of IGST are **0%, 0.25%, 3%, 5%, 12%, 18% and 28%**. Maximum rate of IGST will be **40%**.
5. IGST on supply of the following items has not been levied immediately. It shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council:

Petroleum
crude

High speed
diesel

Motor Spirit
(Petrol)

Natural Gas

Aviation
Turbine Fuel

IGST rate= CGST rate + SGST rate

Goods other than the goods as may be notified by the Government on the recommendations of the Council [Proviso to Section 5(1) of IGST Act 2017]

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 in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 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 u/s 5(1) only as import of goods without applicability of customs duty.**

While IGST on import of services is leviable under the IGST Act, the levy of the IGST on import of goods is levied under the Customs Act, 1962 read with Customs Tariff Act, 1975.



REVERSE CHARGE UNDER CGST – SECTION 9(3) & 9(4)

Normally, the concept of indirect tax prevails over the fact that it is charged and collected by one person from another person. **REVERSE CHARGE IS AN EXCEPTION.**

Under Reverse charge, CGST shall be paid by the **RECIPIENT** of goods or services or both in the following cases. The supplier would have **no liability to pay.**

Note: GST being an indirect tax, burden of the tax has to be passed on to the recipient. Under reverse charge also, the burden to pay GST is on the recipient, but the compliance requirements, i.e. to obtain registration under GST, deposit tax, filing returns with the Government, etc. has been shifted from supplier to recipient.

SECTION 9(3)

- Supply of goods or services or both, **notified by Government** on recommendations of GST Council

SECTION 9(4)

- Supply of **specified categories of goods or services** or both by an **unregistered supplier to specified registered persons** on recommendations of GST Council

Tutorial Note on Section 9(4) – Amended vide CGST (Amendment) Act 2018

Under the amended provision, tax under reverse charge is payable by the **NOTIFIED class of registered persons** on **NOTIFIED categories of intra-State supplies** of goods and/or services received by such registered persons from any unregistered supplier.

**LIST OF SPECIFIED GOODS UNDER REVERSE CHARGE – SECTION 9(3)**

Description of Goods	Supplier of Goods	Recipient of Goods
Cashew nuts (unshelled) or peeled	Agriculturist	Any registered person
Bidi wrapper leaves (tendu) and Tobacco	Agriculturist	Any registered person
Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent. Distributor or selling agent is liable to pay GST
Silk yarn	Any person who manufactures silk yarn from raw silk or silkworm cocoons for supply of silk yarn.	Any registered person
Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union territory or a local authority.	Any registered person
Priority Sector Lending Certificates	Registered Person	Registered Person
Raw cotton	Agriculturist	Registered Person
Following essential oils other than those of citrus fruit namely: (a) Of peppermint (Mentha piperita); (b) Of other mints: Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis	Any Unregistered Person	Registered Person



LIST OF SPECIFIED SERVICES UNDER REVERSE CHARGE – SECTION 9(3)

Notification No. 13/2017 CT (R) dated 28.06.2017 as amended prescribes following services:

Category of Supply of Services	Supplier of Service	Recipient of Service
<p>Goods Transport Agency (GTA) in respect of transportation of goods by road to-</p> <ul style="list-style-type: none"> (i) Registered factory (ii) Registered society (iii) Co-operative society (iv) Registered person under GST (v) Body corporate (vi) Any partnership firm (registered or not) (vii) Casual taxable person 	<p>Goods Transport Agency</p> <p>(who has paid CGST @ 2.5% without ITC or 6% with ITC)</p> <p>(Refer Note 1)</p>	<ul style="list-style-type: none"> (i) Registered factory (ii) Registered society (iii) Co-operative society (iv) Registered person under GST (v) Body corporate (vi) Any partnership firm (registered or not) (vii) Casual taxable person located in taxable territory
<p>Legal services, directly or indirectly. It means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.</p>	<p>An individual advocate including a senior advocate or firm of advocates</p>	<p>Any business entity located in taxable territory</p>
<p>Services supplied by an arbitral tribunal to business entity</p>	<p>An Arbitral Tribunal</p>	<p>Any business entity located in taxable territory</p>
<p>Sponsorship services provided to any body corporate or partnership firm</p>	<p>Any person</p>	<p>Any body corporate / partnership firm in taxable territory</p>
<p>Services supplied by Central, State Government, Union Territory, local authority to business entity [excluding specified services]*</p>	<p>Central, State Government, Union Territory, local authority</p>	<p>Any business entity located in taxable territory</p>
<p>Services supplied by Central Government excluding the Ministry of Railways (Indian Railways), State Government, Union territory/ local authority by</p>	<p>Central, State Government, Union Territory, local authority</p>	<p>Registered person</p>



way of renting of immovable property to a person registered under CGST Act, 2017		
Service by way of renting of residential dwelling to a registered person	Any person	Registered person
Services supplied by Director of company/body corporate	Director of company/ body corporate	Company or body corporate located in taxable territory
Services supplied by an insurance agent to any person carrying on insurance business	Insurance agent	Any person carrying on insurance business located in the taxable territory
Services supplied by a recovery agent to a banking company or a financial institution or NBFC	Recovery agent	Banking company or NBFC located in taxable territory
Supply of services by way of transfer or permitting the use or enjoyment of a copyright covered u/s 13(1)(a) of the Copyright Act, 1957 relating to original dramatic, musical or artistic works	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory
Supply of services by way of transfer or permitting the use or enjoyment of a copyright covered u/s 13(1)(a) of the Copyright Act, 1957 relating to original literary works	Author	Publisher located in the taxable territory
<p>Reverse charge provisions will not apply if the author</p> <ol style="list-style-type: none"> has taken registration under the CGST Act, 2017, and filed a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdictional CGST / SGST commissioner, as the case may be, that he exercises the option to pay CGST on the service specified above, under forward charge as per Section 9 (1) of the CGST Act, 2017, and to comply with all the provisions of CGST Act, 2017 as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option; makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST Inv-I to the publisher 		



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Supply of services	Overseeing Committee members of RBI	Reserve Bank of India
Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership (LLP) firm to bank or non-banking financial company (NBFCs).	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership (LLP) firm	Banking company or non-banking financial company (NBFCs) located in taxable territory
Services provided by Business facilitator to a banking company	Business facilitator	A banking company located in the taxable territory
Services provided by an agent of business correspondent to business correspondent	An agent of business correspondent	A business correspondent, located in the taxable territory
Security services (services provided by way of supply of security personnel) provided to a registered person: [This is not applicable on a registered person paying tax u/s 10 of the Act [Composition scheme] (Refer Note 2)]	Any person <u>other than a body corporate</u>	A registered person, located in the taxable territory.
Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter	Any person	Promoter
Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter	Any person	Promoter
Services provided by way of renting of a motor vehicle provided to a body corporate	Any person other than a body corporate , who supplies service to a body	Any body corporate located in the taxable territory



	corporate & doesn't issue an invoice charging CGST @6% to service recipient	
Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of SEBI, as amended	Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI.

***Specified services mentioned below:**

- (i) *Renting of immovable property*
- (ii) *Services by Department of Posts & the Ministry of Railways (Indian Railways)*
- (iii) *Services in relation to aircraft or vessel inside or outside the precincts of port/airport;*
- (iv) *Transport of goods or passengers.*

Note 1:

- (i) GTA has been provided with an option to choose either to charge GST @ 5% without ITC or @ 12% GST with ITC Under Forward charge (Earlier only 12% forward Charge was Available)
- (ii) If Such option has not been exercised, and GTA wants to issue invoice @ 5% such service will be covered under RCM U/s 9(3) of CGST Act.
- (iii) Such Option for a Financial Year need to apply by 15th of March of Preceding FY.
- (iv) The GTA wants to opt for charging GST @5% or 12% under Forward charge for FY 2022-23 should apply the option on or before 16th August 2022.

Invoice for supply of the service charging CGST @ 2.5%/6% as applicable may be issued during the period from the 18th July, 2022 to 16th August 2022 before exercising the option for the FY 2022-2023 but in such a case the supplier shall exercise the option to pay GST on its supplies on or before the 16th August,2022

- (v) The GTA Issuing Tax Invoice under Forward charge need to furnish a declaration in the Tax invoice as follows

"I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us during the Financial Year _____ under forward charge."



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(vi) The Recipient of Service while making payment need to ensure that, if Tax invoice has been issued by the GTA does not charge GST under Forward charge and no declaration has been furnished for opting of tax under Forward charge, GST under RCM need to be discharged by the recipient.

(vii) If GTA's Turnover in any preceding FY from 2017-18 onwards exceeds Rs 20 cr. Then GTA needs to furnish the following declaration in Tax Invoice

"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule"

Note 2: ** Reverse charge on GTA services and security services shall not apply to, -

- (a) a Department or Establishment of the Central Government or State Government or Union territory; or
- (b) local authority; or
- (c) Governmental agencies;

which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax u/s 51 of the said Act and not for making a taxable supply of goods or services.

It may be noted that the GTA services in above case have been simultaneously **exempted** from payment of tax.

Other points to be remembered

1. The person who pays or is liable to pay freight for transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service.
2. Body corporate includes a company incorporated outside India, but does not include co-operative societies, any other body corporate prescribed by Central Government.
3. Business entity located in taxable territory who is litigant, applicant or petitioner shall be treated as the person who receives the legal services.
4. Limited Liability Partnership formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as **a partnership firm or a firm.**
5. Renting of immovable property means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.
6. Insurance agent means an insurance agent licensed under section 42 of the Insurance Act, 1938 who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business.



GTA paying tax @ 5%	Received by specified recipient – Person liable to pay is recipient
	Received by persons other than specified recipient (unregistered individual end consumer) – Exempt from GST
GTA paying tax @ 5% (without ITC) / 12% (with ITC)	Taxable under Forward charge. No restriction on availing input tax credit on goods and services used in supplying GTA service by GTA

7. The provisions of this notification, in so far as they apply to the Central Government, State Government, shall also apply to the Parliament and State Legislature, **Courts and Tribunals.**

It has been decided to extend the dispensation available to Central Government, State Governments, Parliament and State Legislatures with regard to payment of GST under reverse charge mechanism (RCM) to the Courts and Tribunals also in respect of taxable services supplied by them such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers etc.

CIRCULARS ISSUED ON REVERSE CHARGE

Clarification regarding RCM on renting of motor vehicles service [Circular No. 130/49/2019 GST dated 31.12.2019]

Service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient are taxable at the following two rates:

- (i) **@ 5%** provided supplier of services has taken only the limited ITC (of input services in the same line of business) [Reverse charge is applicable and hence recipient is liable to pay GST] or
- (ii) **@ 12%** where supplier of services opts to pay GST at said rate. In this case, there is no restriction on availing ITC on goods and services used in supplying renting of motor vehicles service by the supplier of service. [Forward charge is applicable and hence supplier is liable to pay GST]

Summary of Renting of Motor vehicle service

GST is payable @ 5%		GST is payable @ 12%	
Supplier is other than Body Corporate		Supplier is Body Corporate	Supplier issues invoice to recipient charging GST @ 12%
Recipient is Body Corporate	Recipient is other than Body Corporate	Any recipient	
Reverse Charge	Forward charge		



Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers under reverse charge mechanism [Circular No. 177/09/2022 GST dated 03.08.2022]

In case of services provided by a non-body corporate to a body corporate by way of **renting of any motor vehicle for transport of passengers**, tax is required to be paid by the body corporate under reverse charge mechanism (RCM).

The question which arose for consideration is whether RCM is applicable on:

- (i) service of renting of motor vehicle designed to carry passengers, or
- (ii) service of transportation of passengers

It is **clarified** that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under '**services of renting of motor vehicles designed to carry passengers**', and the body corporate shall be liable to pay GST on the same under RCM. Thus, reverse charge would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under '**passenger transport services**' and the body corporate shall not be liable to pay GST on the same under RCM.

Taxability of remuneration paid to director [Circular No: 140/10/2020 GST dated 10.06.2020]

In order to determine the levability of tax on the remuneration paid to the directors, we first need to ascertain whether the director is an employee of the company or not. Following two situations are possible:

Particulars	Taxability
Services provided by the independent directors who are not employees of the said company to such company, in lieu of remuneration as the consideration for the said services	Such services are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable in hands of the company, on reverse charge basis
Services provided by a director, irrespective of name and designation, is an employee , next step would be to examine whether all the activities performed by the director are in the course of employer - employee relation (i.e. a "contract of service") or is there any element of "contract for service".	The part of director's remuneration which are declared as Salaries in the books of a company and subjected to TDS u/s 192 of the Income-tax Act Not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III. The part of employee director's remuneration which is declared separately other than salaries in the company's accounts and subjected to TDS



	<p>u/s 194J of the IT Act as fees for professional or technical services</p> <p>It is treated as consideration for providing services which are outside the scope of Schedule III and is therefore, taxable on reverse charge basis. i.e. the company, is liable to discharge GST</p>
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Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997

SEBI has prescribed the Scheme for the purpose of facilitating lending and borrowing of securities. Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed

The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. Clause 4 of para 4 relating to the Scheme under the Scheme doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.

The lenders earn lending fee for lending their securities to the borrowers

Clarification:

- The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lended securities after stipulated period of time.
- The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01/07/2017. Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.
- The supply of lending of securities under the scheme is leviable to GST@18%. The borrower of securities shall be liable to discharge GST under RCM. The nature of GST to be paid shall be IGST under RCM. **[Circular No. 119/38/2019-GST dated 11 October 2019]**

For the past period i.e. from 01/07/2017 to 30/09/2019	GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. The nature of tax payable shall be IGST. However, if the service provider has already paid CGST / SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.
With effect from 01/10/2019	The borrower of securities shall be liable to discharge GST under RCM. The nature of GST to be paid shall be IGST under RCM.



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Tax on services supplied by director of a company in his personal capacity such as renting of immovable property to the company/body corporate not payable under RCM [Circular No. 201/13/2023 GST dated 01.08.2023]

Tax on services supplied by director of a company/body corporate to the said company or the body corporate is payable by the company/body corporate under reverse charge mechanism (RCM).

It is hereby clarified that services supplied by a director of a company/body corporate to the company/body corporate in his private/personal capacity such as services supplied by way of renting of immovable property **are not taxable under RCM.**

Only those services supplied by director of company/body corporate, which are **supplied by him as or in the capacity of director of that company** or body corporate shall be **taxable under RCM** in the hands of the company or body corporate under *Notification No. 13/2017 CT(R) (Sl. No. 6) dated 28.06.2017.*

REVERSE CHARGE U/S 9(4)

If value of inputs and input services purchased from registered supplier is **less than 80%, promoter has to pay GST on reverse charge basis, u/s 9(4) of the CGST Act**, @ 18% on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).

The promoter shall pay tax on supply of such **cement** on reverse charge basis, u/s 9(4) of the CGST Act, @ 28% (CGST 14% + SGST 14%) from an unregistered person

GST on capital goods shall be paid by the promoter on reverse charge basis, u/s 9(4) of the CGST Act at the applicable rates

REVERSE CHARGE UNDER IGST ACT, 2017

Similar to CGST Act, 2017 as mentioned above. Further, following **service** are additionally included for IGST purposes. **Notification No. 10/2017 IT (R) dated 28.06.2017 as amended prescribes the same:**

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

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;'



TAX PAYABLE BY ELECTRONIC COMMERCE OPERATOR ON NOTIFIED SERVICES [SECTION 9(5)]

Meaning of Electronic Commerce Operator

It display products as well as services which are actually supplied by some other person to consumer, on their electronic portal. The consumers buy such goods/ services through these portals. On placing the order for a particular product/ service, the actual supplier supplies the selected product/ service to the consumer. The price/ consideration for the product/ service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of commission by the ECO.

On following services, the tax on **intra-State supplies** shall be paid by electronic commerce operator (ECO) if such services are supplied through it.

- (i) Transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, ~~omnibus~~ **or any other motor vehicle except omnibus;**
- (ii) Services by way of transportation of passengers by an **omnibus** except where the person supplying such service through **ECO is a company.**

Explanation: The term "Company" has the same meaning as assigned to it in section 2(20) of the Companies Act, 2013.

Conclusion: The tax on services by way of transportation of passengers by an omnibus provided by a company through ECO is not payable by ECO. It will be payable by the company itself.

- (iii) Providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, **except where person supplying such service through electronic commerce operator is liable for registration under section 22(1) of the CGST Act**
- (iv) Services by way of **house-keeping**, such as plumbing, carpentering etc, **except where the person supplying such service through electronic commerce operator is liable for registration under subsection 22(1) of the CGST Act.**
- (v) Supply of **restaurant service** other than the services supplied by restaurant, eating joints etc. located at **specified premises.**

"Specified premises" means premises providing hotel accommodation service having declared tariff of any unit of accommodation above ₹ 7,500 per unit per day or equivalent"

Note: Restaurant is supplying services through E-COM only, he is not required to get registered under GST. In case, he is already registered, he may continue with such registration or get them de-registered under GST.



CHARGE OF GST

Relevant Definitions:

Motorcab means any motor vehicle constructed to carry not more than 6 passengers

Maxicab means any motor vehicle constructed carry more than 6 passengers, but not more than 12 passengers

Radio taxi means a taxi including a radio cab, which is in two- way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS). Example: Ola and Uber.

“**Motor cycle, motor vehicle and omnibus** shall have the same meanings as assigned to them respectively in clauses (22), (25), (27), (28) and (29) of section 2 of the Motor Vehicle Act, 1988”

Other points to be remembered

- (i) All the provisions of the CGST Act shall apply to such ECO as if he is the supplier liable for paying the tax in relation to the supply of above services.
- (ii) It is important to note here that the above provision shall apply only in case of supply of “services”
- (iii) Who is liable to pay GST on such services?

Presence of ECO	Liability to pay tax is on
ECO is located in taxable territory	ECO
ECO does not have physical presence in the taxable territory	Person representing the ECO
ECO has neither the physical presence nor any representative in the taxable territory	Person appointed by the ECO for purpose of paying tax

**CBIC Circular No. 167/23/2021 on Restaurant Services through ECO – GST dated 17/12/2021****(1) No requirement of collection of TCS u/s 52**

As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided through ECO. **Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5).** On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.

(2) No requirement of mandatory registration u/s 24

As ECOs are already registered in accordance with rule 8 (in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), **there would be no mandatory requirement of taking separate registration** by ECOs for payment of tax on restaurant service u/s 9(5) of the CGST Act, 2017.

(3) Whether there is any liability on supply of restaurant services by unregistered person through ECO?

Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.

(4) What would be the aggregate turnover of person supplying 'restaurant service' through ECOs

It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.

(5) Other clarifications

- (a) ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge)
- (b) It is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act
- (c) It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)
- (d) Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order
- (e) The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.



CHARGE OF GST

- (f) ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies.

Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.