

SUPPLY UNDER GST



The section numbers referred to in the Chapter pertain to the CGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 31.10.2024.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- ❑ comprehend the taxable event under GST
- ❑ analyse the taxable event – Supply – its meaning and scope.
- ❑ identify the transactions that will amount to supply even without any consideration.
- ❑ identify the transactions which will be neither the supply of goods nor the supply of services.
- ❑ classify the specified transactions either as supply of goods or as supply of services.
- ❑ explain the meaning of composite and mixed supplies and their taxability under GST.

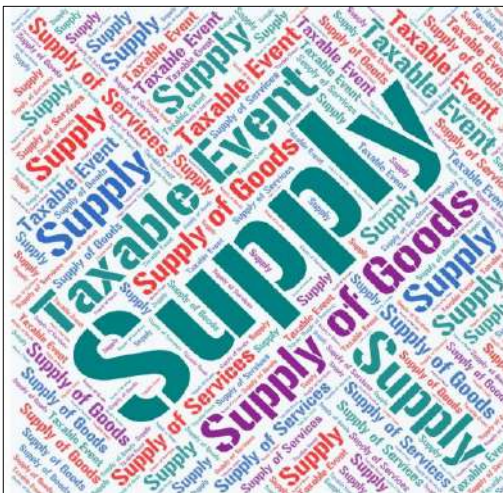
This chapter explains in detail the concept of taxable event under GST. However, it is advisable to first go through the basic concepts of GST as introduced in India. The same is given at the end of the chapter as **Annexure -1. The same is only for the understanding of the students and is not relevant from the examination point of view.**

1. TAXABLE EVENT UNDER GST - SUPPLY

A **taxable event** is any transaction or occurrence that results in a tax consequence. Before levying any tax, taxable event needs to be ascertained. It is the foundation stone of any taxation system; it determines the point at which tax would be levied.



Under the earlier indirect tax regime, the framework of taxable event in various statutes was prone to catena of interpretations resulting in litigation since decades. The controversies largely related to issues like whether a particular process amounted to manufacture or not, whether the sale was pre-determined sale, whether a particular transaction was a sale of goods or rendering of services etc.



The GST laws resolve these issues by laying down one comprehensive taxable event i.e.



“Supply” - Supply of goods or services or both. Various taxable events namely manufacture, sale, rendering of service, purchase, entry into a territory of State etc. that existed prior to introduction of GST have been done away with in favour of just one event i.e. **Supply**.

The GST Law, by levying tax on the ‘supply’ of goods and/or services, departs from the historically understood concepts of

'taxable event' under the State VAT Laws, Excise Laws and Service Tax Law i.e. sale, manufacture and provision of services respectively.

In the GST regime, the entire value of supply of goods and/or services is taxed in an integrated manner, unlike the earlier indirect taxes, which were charged independently either on the manufacture or sale of goods, or on the provision of services.

2. RELEVANT DEFINITIONS

❖ **Goods:** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Section 2(52)].

❖ **Services:** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation: For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities [Section 2(102)].

❖ **Principal:** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both [Section 2(88)].

❖ **Competent authority:** means such authority as may be notified by the Government [Section 2(29)].

❖ **Family:** means, —

- (i) the spouse and children of the person, and
- (ii) the parents, grand-parents, brothers and sisters of the person **if they are wholly or mainly dependent on the said person** [Section 2(49)].

❖ **Government:** means the Central Government [Section 2(53)].

❖ **Local authority:** means —

- (a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution.
- (b) a “Municipality” as defined in clause (e) of article 243P of the Constitution.
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund.
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006.
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution.
- (f) a Development Board constituted under article 371 and article 371J of the Constitution.
- (g) a Regional Council constituted under article 371A of the Constitution [Section 2(69)].



❖ **Consideration:** in relation to the supply of goods or services or both includes:

- ❑ any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government,
- ❑ the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

However, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply [Section 2(31)].

❖ **Business:** includes –

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
(b) any activity or transaction in connection with or incidental or ancillary to (a) above;
(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
(d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;
(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;
(f) admission, for a consideration, of persons to any premises; and
(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club
(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

[Section 2(17)].

❖ **Actionable claim:** means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts

recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent [Section 2(1) of CGST Act read with section 3 of the Transfer of Property Act, 1882].

- ❖ **Manufacture:** means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term “manufacturer” shall be construed accordingly [Section 2(72)].



- ❖ **Money:** means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75)].



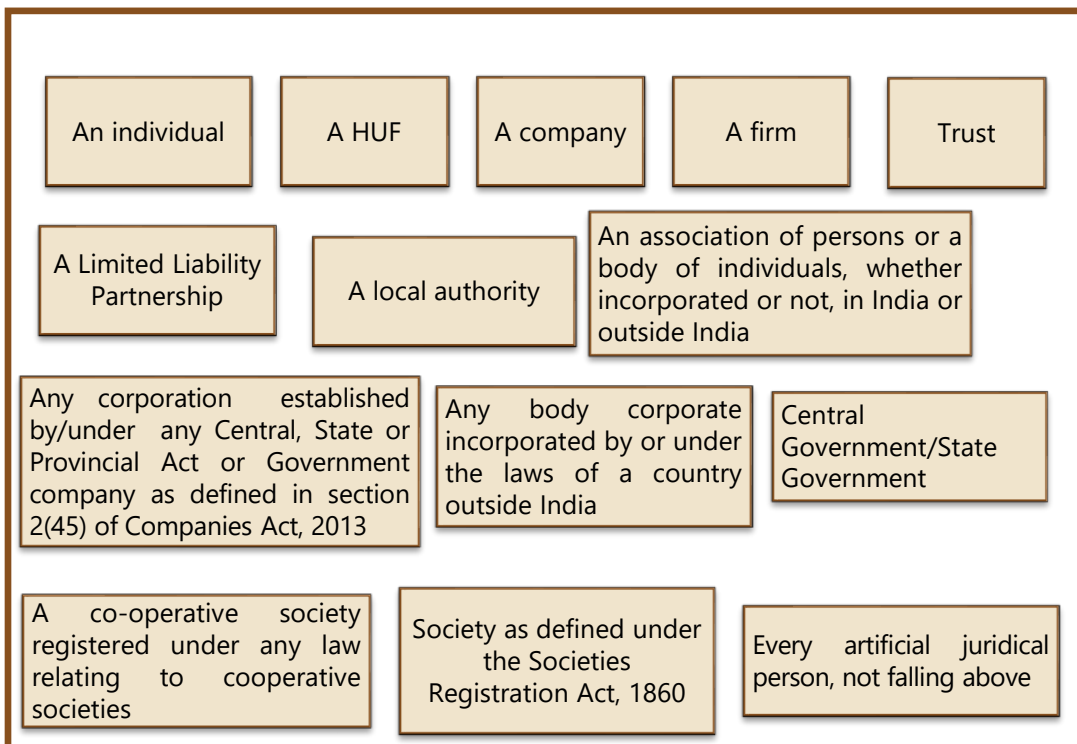
- ❖ **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].
- ❖ **Taxable territory:** means the territory to which the provisions of this Act apply [Section 2(109)].
- ❖ **Non-taxable territory:** means the territory which is outside the taxable territory [Section 2(79)].
- ❖ **India:** means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters. [Section 2(56)].

- ❖ **Supplier:** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].

However, a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims [Section 2(105)].

- ❖ **Recipient:** of supply of goods and/or services means-
 - (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration,
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
 - (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply
and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

❖ **Person:** includes [Section 2(84)]-



⊛ **Definitions in which the expression "means" has been used are exhaustive definitions. Consequently, the scope of these definitions cannot be expanded.**

⊛ **Definitions in which the expression "includes" has been used are inclusive and are not exhaustive definitions. Resultantly, the scope of these definitions is wide.**

Our discussion in this Study Material will principally be confined to the provisions of CGST and IGST laws as the specific State GST laws¹ are outside the scope of syllabus.

¹ It may be noted that GST laws of all the States and Union Territories are largely based on the CGST Act, 2017.




3. CONCEPT OF SUPPLY [SECTION 7 OF THE CGST ACT]

The concept of '**supply**' is the key stone of the GST architecture. The provisions relating to the meaning and scope of supply are contained in Chapter III of the CGST Act read with various Schedules given under the said Act.

Following sections and schedules shall be discussed in this chapter to understand the concept of supply:

Section 7	Meaning and scope of supply
Section 8	Taxability of composite and mixed supplies
Schedule I	Activities to be treated as supply even if made without consideration
Schedule II	Activities or transactions to be treated as supply of goods or as supply of services
Schedule III	Activities or transactions which shall be treated neither as supply of goods nor as supply of services.

Provisions of section 7 containing the meaning and scope of supply are as follows:

 <h4 style="text-align: center;">STATUTORY PROVISIONS</h4>		
Section 7	<i>Meaning and Scope of Supply</i>	
Sub-section	Clause	<i>Particulars</i>
(1)	<i>Supply includes -</i>	
	(a)	<i>all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental,</i>

		<i>lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business</i>
	(aa)	<i>the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment/other valuable consideration.</i> <i>Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.</i>
	(b)	<i>importation of services, for a consideration whether or not in the course or furtherance of business, and</i>
	(c)	<i>the activities specified in Schedule I, made or agreed to be made without a consideration.</i>
(1A)		<i>where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.</i>
(2)		<i>Notwithstanding anything contained in sub-section (1),</i>
	(a)	<i>activities or transactions specified in Schedule III; or</i>
	(b)	<i>such activities or transactions undertaken by the Central Government, a State Government or any local</i>

		<i>authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council</i>
		<i>shall be treated neither as a supply of goods nor a supply of services.</i>
(3)		<i>Subject to the provisions of sub-sections (1), (1A) & (2), Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as —</i>
	<i>(a)</i>	<i>a supply of goods and not as a supply of services; or</i>
	<i>(b)</i>	<i>a supply of services and not as a supply of goods.</i>



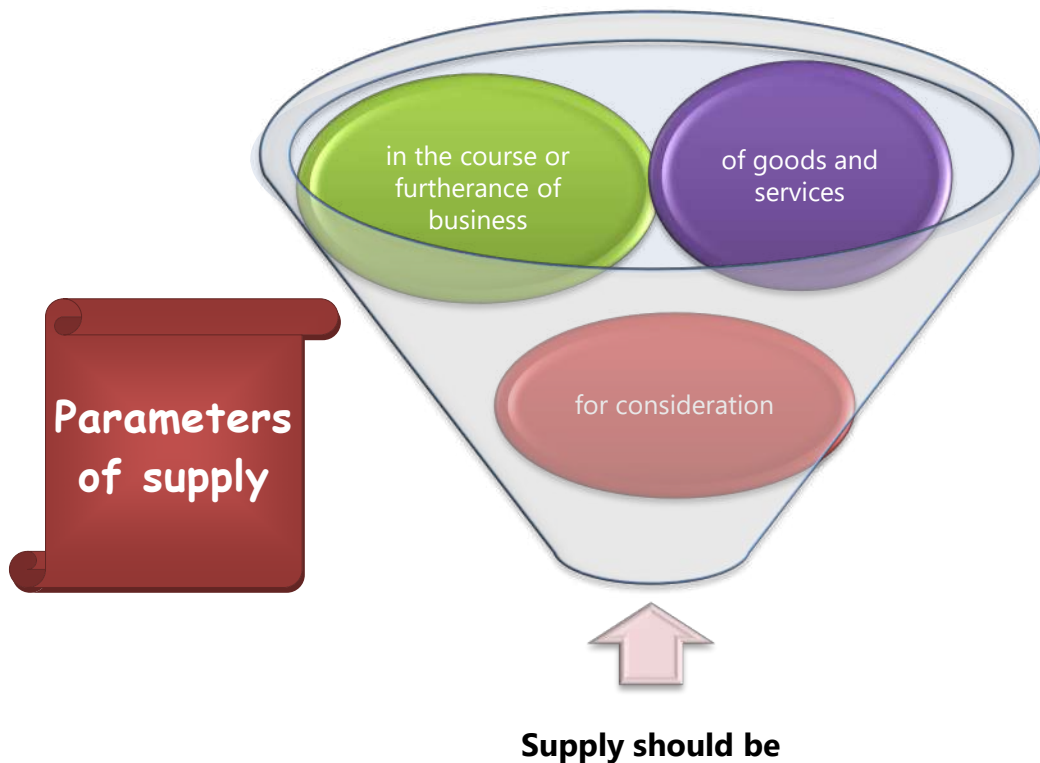
ANALYSIS

The definition of 'supply' as contained in section 7 is an inclusive definition and does not define the term exhaustively. It defines the scope of supply in an inclusive manner. Clause (a) of sub-section (1) illustrates the forms of supply, but the list is not exhaustive. This is further substantiated by the use of words '**such as**' in the definition.

Provisions of scope of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

The meaning and scope of supply in terms of section 7 can be understood in terms of following **parameters**:

1. Supply should be of goods or services.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.



Aforesaid parameters describe the concept of supply. However, there are a few exceptions to 2nd and 3rd parameters [*the requirement of supply being made for a consideration and in the course or furtherance of business*] in the GST law.

Few exceptions have been carved out where a transaction is deemed to be a supply even without consideration [*contained in Schedule I – discussed later in this Chapter*].

**Without Consideration
Schedule -I -Deemed Supply**

Import of Services for consideration
Supply even if not in the course or furtherance of business

Similarly, the condition of supply to be made in the course or furtherance of business has been relaxed in case of import of services [*Import of services for a consideration, whether or not in the course or furtherance of business, is treated as supply*].

Further, there are also cases where a

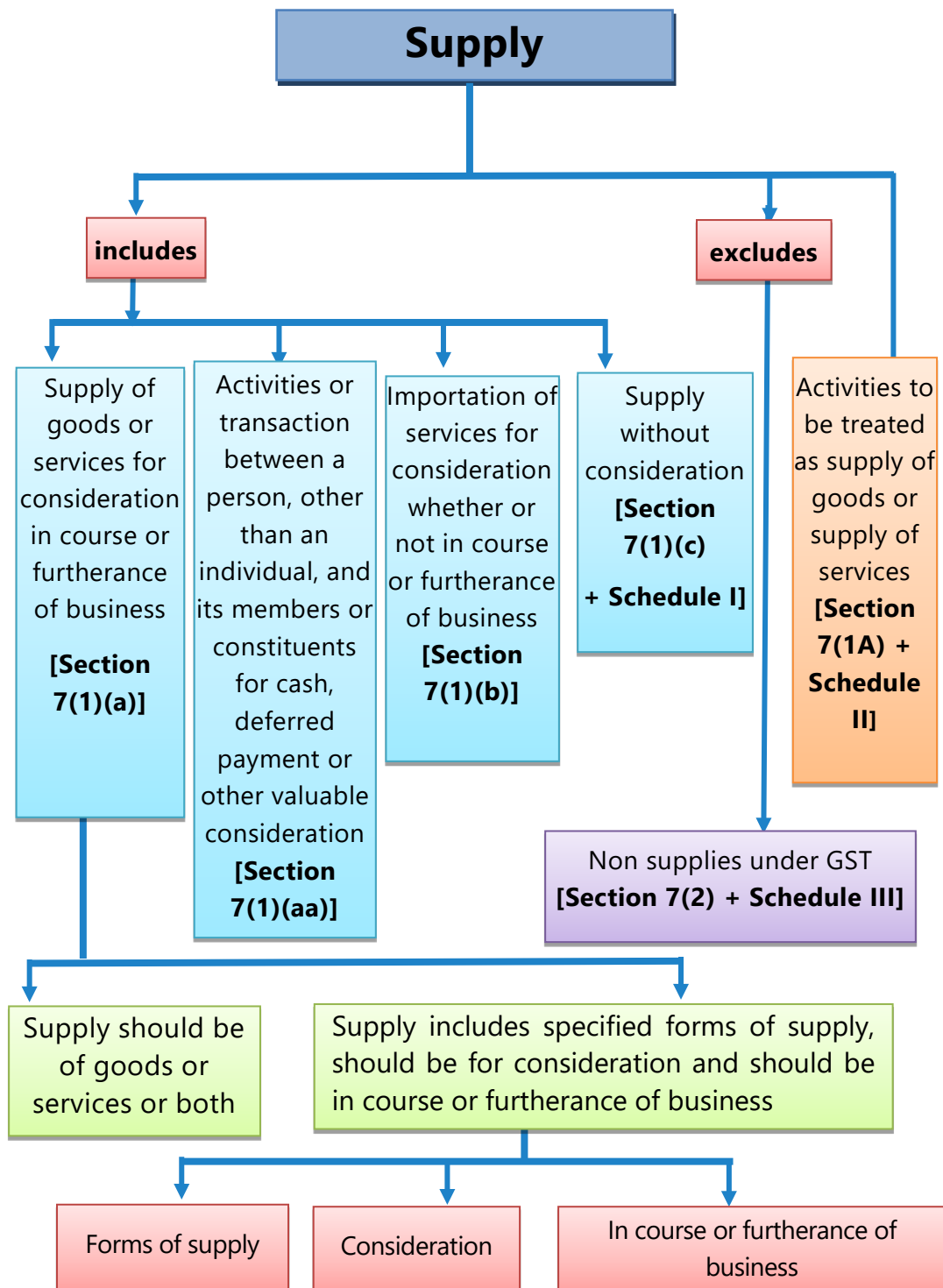
transaction is kept out of scope of supply despite the existence of the above parameters, i.e. there is a list of activities which are treated neither as a supply of goods nor as a supply of services [*contained in Schedule III – discussed later in this Chapter*].

Neither Supply of goods nor Supply of services
Schedule - III

Classified either as Supply of goods or as Supply of services
Schedule - II

In other words, they are outside the scope of GST. Besides, GST law has classified certain activities/transactions either as supply of goods or as supply of services in Schedule II [*Discussed later in this Chapter*].

Government is also empowered to notify transactions that are to be treated as a supply of goods and not as a supply of services, or as a supply of services and not as a supply of goods. In the subsequent paras, the above aspects of supply have been extensively discussed. The discussion has been broadly categorised into following:

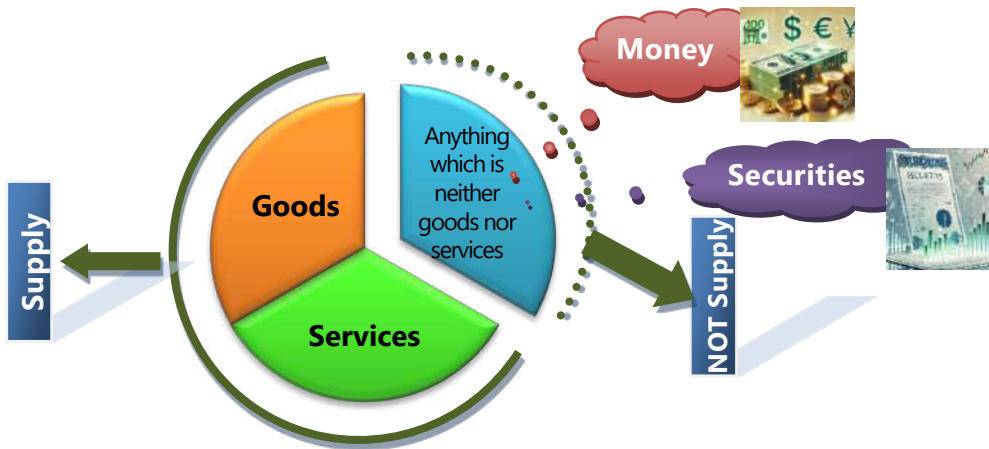
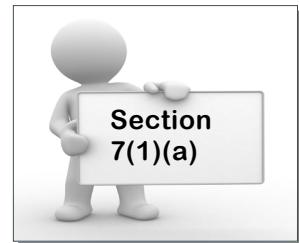


SUPPLY OF GOODS OR SERVICES FOR CONSIDERATION IN COURSE OR FURTHERANCE OF BUSINESS

SUPPLY SHOULD BE OF GOODS OR SERVICES OR BOTH

The definition of supply begins with the term '**Supply includes**', thus making it clear that CGST Act intends to give an extensive meaning to the term 'supply'.

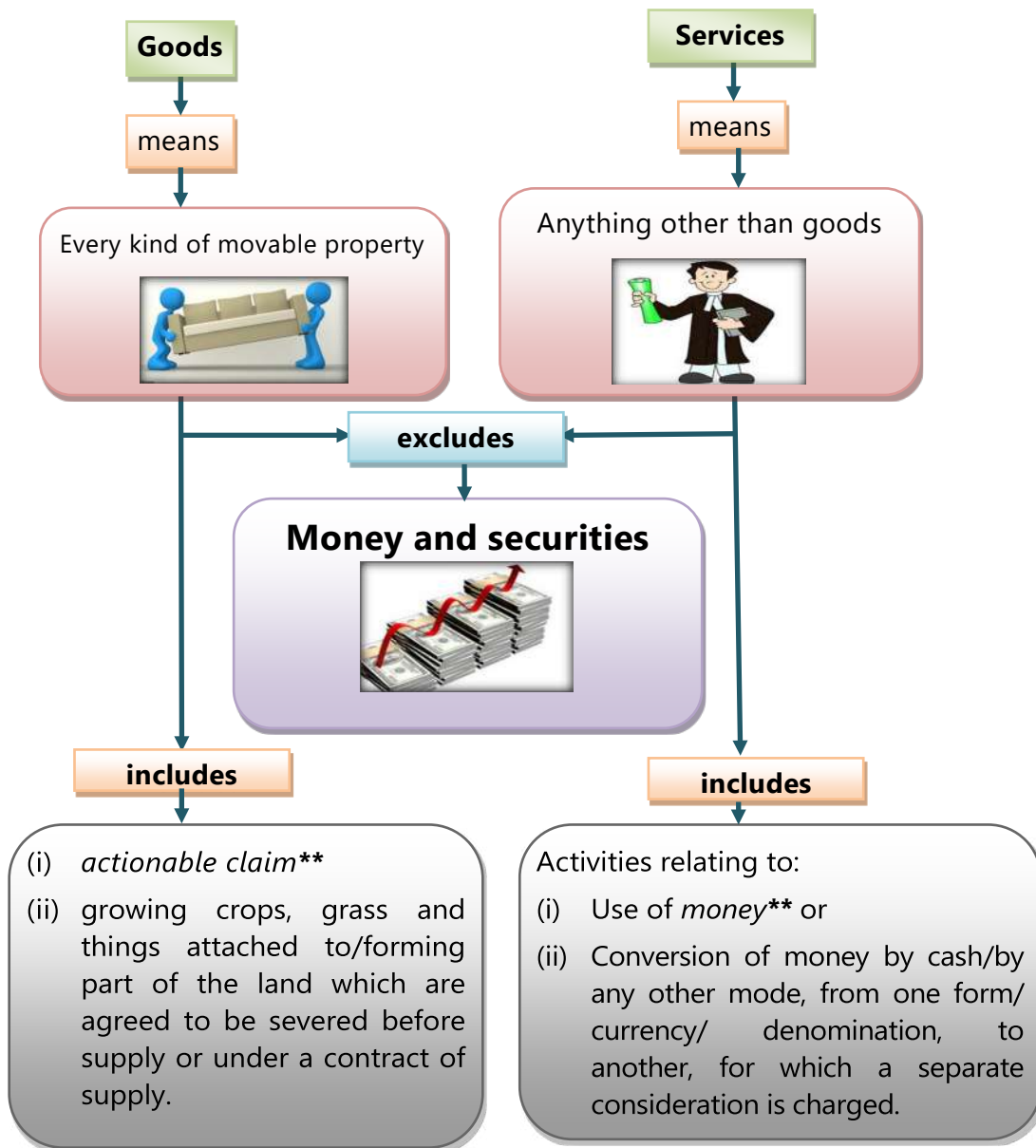
Supply **includes** all forms of supply of goods or services or both. Supply of **anything other than goods or services** like money, securities etc. does not attract GST.



The terms goods and services as defined under the CGST Act have been analysed by way of a diagram on next page.

Anything supplied other than goods or services is outside the scope of supply.

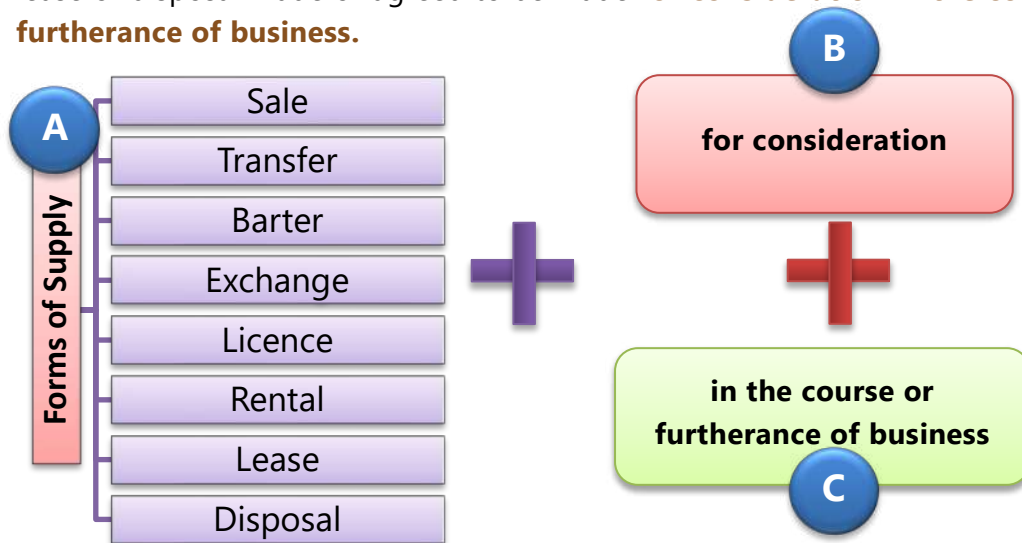




***Please refer the definitions of 'actionable claims' and 'money' as provided in heading 2. – Relevant Definitions.*

SUPPLY INCLUDES SPECIFIED FORMS OF SUPPLY, SHOULD BE FOR CONSIDERATION AND SHOULD BE IN COURSE OR FURTHERANCE OF BUSINESS

The first part of section 7 [Clause (a) of sub-section (1)] includes **all forms of supply** of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made **for consideration in the course or furtherance of business.**



It is important to note that supply includes ALL forms of supply within its purview, though **eight illustrative forms of supply** have been enlisted in the definition. Further, supply as contemplated in this first part has two pre-requisites:

- ✓ the supply should be for a consideration; and
- ✓ the supply should be in the course or furtherance of business.

We shall first discuss the various forms of supply as illustrated in section 7(1)(a) in detail:

A. FORMS OF SUPPLY

Various forms of supply contemplated in section 7(1)(a) are sale, transfer, barter, exchange, licence, rental, lease or disposal. These forms of supply are only illustrative and not exhaustive. However, none of these terms have been defined under the Act. In order to understand their meaning, we have taken recourse to their dictionary meaning or otherwise and have explained them as follows:

- I. **Sale and Transfer:** The dictionary meaning of term 'sale' is the act of selling; specifically: the transfer of ownership of and title to property from one person to another for a price². As per the Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.



Further, the term 'transfer' has been defined in the Black's Law dictionary as to convey or remove from one place, person, etc., to another; pass or hand over from one to another; specifically, to make over the possession or control of.



(1) A shopkeeper sells a pen for ₹ 100 to the buyer. After the sale, the pen belongs to the buyer and shopkeeper does not have any right on the pen. This is a transaction of sale.



(2) A company transfers goods from its factory to the depot for sale purposes. This is 'transfer' of goods where the sale has not yet taken place.

- II. **Barter and Exchange:** The dictionary meaning of term 'barter' is to exchange goods or services for other goods or services instead of using money³. Black's Law dictionary defines the term 'exchange' as an act of giving or taking one thing for another.



While barter deals with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are paid for partly in goods and partly in money. When there is a barter of goods or services, same activity constitutes supply as well as consideration.



(3) When a new car worth ₹ 5,00,000 is purchased in **exchange** of an old car alongwith the monetary consideration of ₹ 4,00,000 paid for the said purchase. – **Exchange transaction**

² www.merriam-webster.com

³ www.macmillandictionary.com



(4) A doctor got his hair cut from a barber and provides him medical consultancy in return. In this transaction, the doctor provided the medical consultancy services to the barber for which consideration was in the form of hair cutting services provided by the barber. Similarly, the barber provided hair cutting services to the doctor for which consideration was in the form of medical consultancy services provided by the doctor. – **Barter transaction.**

III. Licence, lease, rental and disposal: The dictionary meaning of the term 'licence' is a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful⁴.

The dictionary meaning of 'rental' is an arrangement to rent something, or the amount of money that you pay to rent something⁵ and that of 'lease' is to make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time⁶.



Black's law dictionary defines disposal as the sale, pledge, giving away, use, consumption or any other disposition of a thing.

Under GST, such licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule II of CGST Act [*Schedule-II has been discussed in detail in the subsequent paras*].

As discussed earlier, one of the parameters to qualify as a supply of goods and/or services is that a supply is made for a consideration. This parameter has been explicated in the following paras:

⁴ www.merriam-webster.com

⁵ www.dictionary.cambridge.org

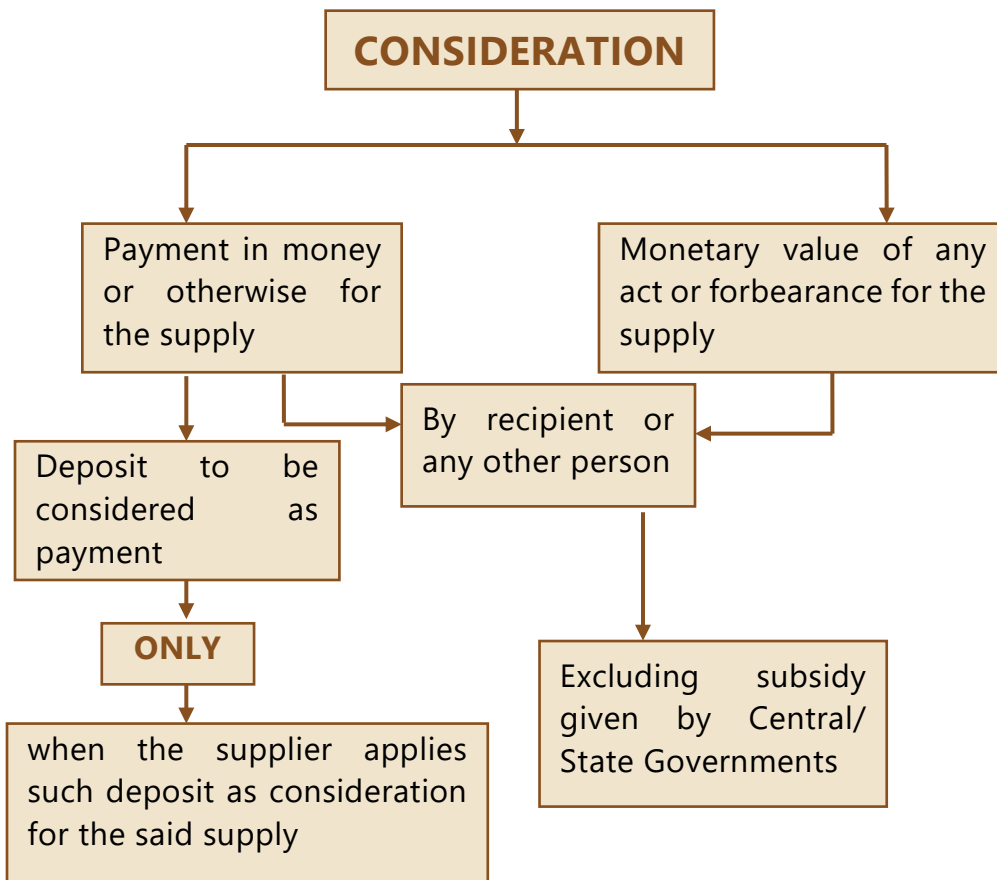
⁶ www.dictionary.cambridge.org

B. CONSIDERATION

The dictionary meaning of word 'consideration' is payment. Consideration need not always be in the form of money. It can be in money or in kind. It covers anything which might be possibly done, given or made in exchange for something else. Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person. However, any subsidy given by the Central Government or a State Government is not considered as consideration.

A deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. The term consideration is defined under section 2(31) [*Refer heading 'Relevant Definitions'*].

The said definition has been depicted in the form of a diagram as follows:



Let us examine the existence of consideration in the following three scenarios:

1.	Donations received by charitable institutions from individual donors, without quid pro quo (something for something)
2.	Art works sent by artists to galleries for exhibition
3.	'No Claim Bonus' offered by an insurance company to the insured

1. Donations received by charitable institutions from individual donors, without quid pro quo⁷

An important feature of consideration is *quid pro quo* [something for something]. Donations received by the charitable organisations are treated as consideration only if there exists, *quid pro quo*, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).

Generally, institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. receive financial help or any other support in the form of donation or gift from the individual donors. In order to express the gratitude towards such help/support, the recipient institutions place a name plate or similar such acknowledgement in their premises.

When the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and **is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business**, then it can be said that there is **no supply** of service for the payment in the form of donation. In other words, there is no obligation (*quid pro quo*) on part of recipient of the donation or gift to do anything (i.e. supply a service). Therefore, there is no GST liability on such payment made.

Some examples of cases where there would be no taxable supply are as follows:-



(5) Bhushan donated a blackboard to Yoganisht Sansthan - a charitable yoga institution. Yoganisht Sansthan printed underneath the blackboard so donated - "Good wishes from Mr. Bhushan".

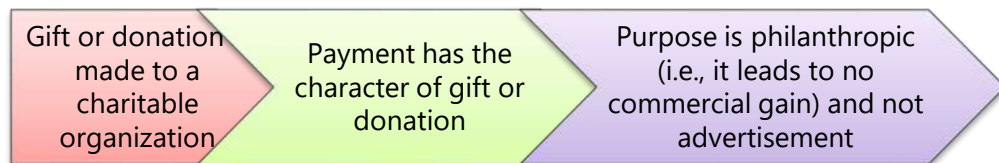
⁷ any obligation to do anything in return of the donation



(6) Smt. Durga Devi donated some money to a temple in the memory of her late father. The Temple Trust constructed a room in the temple complex from such donation and wrote "Donated by Smt. Durga Devi in the memory of her father" on the door floor of the room.

In above examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised.

Thus, GST is not leviable where the following three cumulative conditions are satisfied namely:



[Circular No. 116/35/2019 GST dated 11.10.2019]

2. **Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists**

Artists give their work of art to galleries where it is exhibited for supply. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.



It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply *[Circular No. 22/22/2017 GST dated 21.12.2017]*.

3. **No supply of service by the insured to the insurance company in lieu of 'No Claim Bonus' offered by said insurance company to him**

The issue which arose for consideration was whether the deduction on account of 'No Claim Bonus' (NCB) allowed by the insurance company from the insurance premium payable by the insured, can be considered as

consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s).

As per practice prevailing in the insurance sector, the insurance companies deduct 'No Claim Bonus' from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.

It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.

[Circular No. 186/18/2022 GST dated 27.12.2022]

4. Salvage/wreck value earmarked in claim assessment of damage caused to motor vehicle

In case of motor vehicle insurance provided by the insurance companies engaged in providing general insurance services, such companies insure the cost of repairs/damages of motor vehicles incurred by the policyholders.

In case a claim is made by an insurer for damage of the motor vehicle, while settling said insurance claim, where the general insurance companies, as per the pre-decided terms of the insurance contract:



(i) **deduct the value of salvage/wreckage of the motor vehicle as deductibles from the claim amount paid to the insured, the salvage remains the property of insured and insurance companies are not liable to discharge GST liability on the same.**



(ii) **do not deduct the value of salvage/wreckage of the motor vehicle and pay the full amount of insurance claim, the salvage becomes the property of the insurance company and the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyer⁸.**



Any transaction involving supply of goods and/or services without consideration is not a supply unless it is deemed to be a supply under law [in Schedule I of the CGST Act**].

***Provisions of Schedule I have been discussed in detail later in this chapter.*

Another parameter to qualify as supply of goods and/or services is that a supply is made in course or furtherance of business. This parameter has been explained in the following paras:

C. COURSE OR FURTHERANCE OF BUSINESS

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST.

⁸ Circular No. 215/9/2024 GST dated 26.06.2024

Resultantly, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of 'business'.

Meaning of supply made in the course or furtherance of business: Any activity

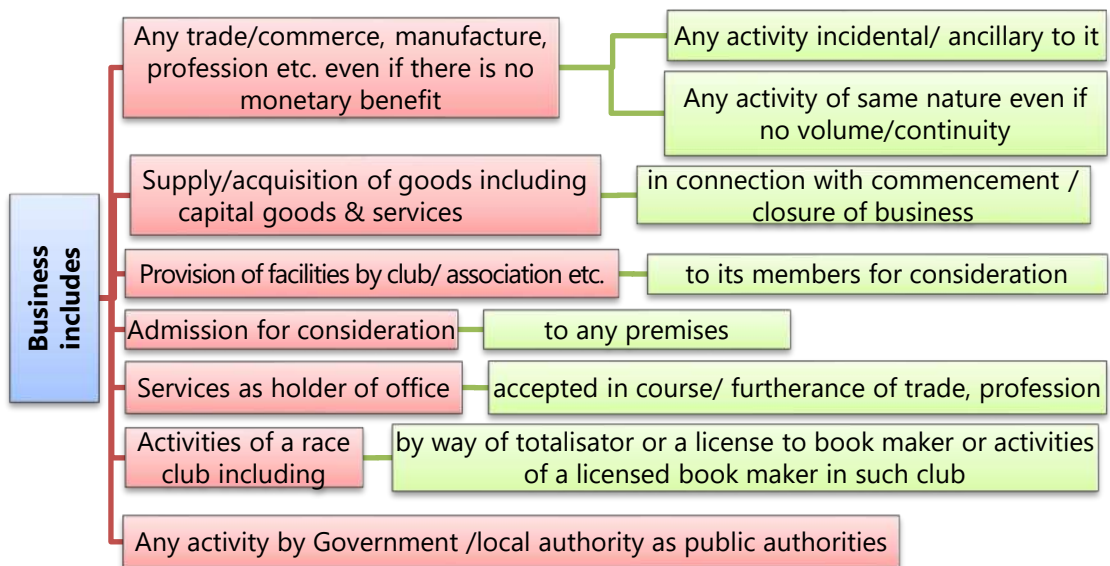


undertaken in course/ for furtherance of business would constitute a supply. In order to



understand the term 'in the course or furtherance of business', we need to first understand the term 'business'. Business as defined under section 2(17), *inter alia*, includes any trade, commerce, manufacture, profession, vocation etc. whether or not undertaken for a monetary benefit.

The definition of business has been summarised in the diagram below:



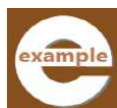
Thus, business includes any activity/transaction which is incidental or ancillary to any trade, commerce, manufacture, profession, vocation, adventure, wager [bet] or any other similar activity. In addition, any activity undertaken by the Central Government or a State Government or any local authority in which they are engaged as public authority shall also be construed as business. For any trade,

commerce, or any other similar activity to qualify as business, **frequency, volume, continuity or regularity of such transaction is not a pre-requisite.**

Some of the examples of supply made/not made 'in the course or furtherance of business' are as follows:



(7) Rishabh buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Rishabh to car dealer is not a supply under CGST Act because said supply is not made by Rishabh in the course or furtherance of business⁹.



(8) Manikarnika sold her old gold bangles and earrings to 'Aabhusan Jewellers'. Sale of old gold jewellery by an individual to a jeweller will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual^{10 11}.

Since 'business' includes vocation, therefore supply of goods or service **as a vocation** is also a supply under GST.



(9) Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust – 'Kind Human'. The sale of paintings by the actor qualifies as supply as it is made in course or furtherance of business.

Facilities provided by the club/association to its members for consideration are provided in course or furtherance of business.

⁹ Clarified vide GST FAQs issued by CBIC

¹⁰ Clarified by CBIC vide press release dated 13.07.2017 and GST Flyer - 'The meaning and scope of supply'

¹¹ The view taken in Examples 7 & 8 above is based on the view taken in the Departmental FAQs/press release. There is another school of thought according to which since the definition of business includes trade, commerce, or any other similar activity, **whether or not there is frequency, volume, continuity or regularity** of such transaction, on literal interpretation, the transactions in the above examples can be considered to be made in the course or furtherance of business and thus, will constitute supply. The taxability of such transactions, however, will have to be examined under the provisions of section 9 [Discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material]. However, since this view may not always lead to logical conclusions, it is more prudent to take a purposive approach as followed in Departmental FAQs/press release given above.



(10) A Resident Welfare Association provides the service of depositing the electricity bills of the residents in lieu of some nominal charges. Provision of service by a club or association or society to its members is included in the definition of 'business'.

Admission of persons to any premises for a consideration is also included in business.



(11) Services by way of admission to circus, cinema halls, amusement parks including theme parks, water parks, etc. are considered as supply as these are services by way of admission of persons to any premises for a consideration.

Business includes activities of a race club including by way of totalisator or a license to book maker¹² or activities of a licensed book maker in such club.



(12) Royal Turf Race Club is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator¹³. For providing the service of facilitating wagering transactions, Royal Turf Race Club gets commission which is deducted and retained by the club from the total bet value. Said services amount to supply as the activities of a race club are included in business.



There is one exception to this 'course or furtherance of business' rule i.e., import of services for a consideration.



From the above discussion, it can be inferred that if an activity or transaction satisfies all the above parameters, as discussed in points A, B and C above, said activity or transaction qualifies as 'Supply under GST'.

¹² Book maker is a person that accepts and pays off bets on sporting and other events at agreed-upon odds.

¹³ Totalisator is a device showing the number and amount of bets staked on a race, to facilitate the division of the total among those backing the winner.

After understanding the basic concept of supply, let us now examine taxability of few transactions:

Taxability of Cost Petroleum

When an oil exploration & production contractor gets a license/lease to explore/mine the petroleum crude and/or natural gas from the Government, it enters into a **Production Sharing Contract (PSC)** with the Government. The relationship of the contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee. As per these PSCs, when a contractor discovers oil/gas, he is at first entitled to recover the contract cost *[expenses incurred in exploration, development, production and payment of royalty]* involved in the extraction of oil/gas from the total sale proceeds and thereafter, he is expected to share with the Government the profit from his venture [known as profit petroleum], as per the PSC.



The value of petroleum which the contractor is entitled to take in a year for recovery of the contract costs is called the **cost petroleum**. Further, the total value of petroleum produced and saved from the contract area in a particular period, as reduced by cost petroleum, is called the **profit petroleum**. The **Government's share of profit petroleum** which is the consideration paid by the contractor to the Central Government for the services of grant of license/lease to explore/mine petroleum crude and/natural gas **is exempt from GST**¹⁴.

The **cost petroleum** is not a consideration received by the contractor for the services provided to Government and thus not taxable *per se*. The reason for the same is that the **contractors carry exploration and production of petroleum for themselves and not as a service to Government**. They had acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum *[Circular No. 32/06/2018 GST dated 12.02.2018]*.



¹⁴ Refer Chapter 4 – Exemptions from GST in this Module of the Study Material for detailed discussion.

Financial Transactions



Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or



investments in money and other related services. For such services, invariably a variety of instruments are used in the financial markets.

In the following paras, we have examined whether transactions in such instruments qualify as supply? As seen earlier, the **definitions of 'goods' and 'services' specifically exclude both money and securities.**



The definition of '**money**' includes instruments like cheques, drafts, pay orders, promissory notes, letters of credit, etc. Therefore, activities that are only transactions in such



instruments would be outside the definition of service.

Commercial Paper

Money would also include transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD')¹⁵ (as they are in the nature of promissory notes), issuance of drafts or letters of credit, etc. While these transactions are outside the ambit of supply, the related activity for which a separate consideration is charged, is chargeable to GST if other elements of taxability are present.

Certificate of Deposit

¹⁵ Commercial Paper ('CP') and Certificate of Deposit ('CD') are understood as unsecured money market instruments which may be issued in the form of a promissory note or in a dematerialized form through any of the depositories approved by and registered with SEBI. CPs are normally issued by highly rated companies, primary dealers and financial institutions at a discount to the face value. CDs can be issued by Scheduled Commercial Banks (excluding RRBs and Local Area Banks) and All – India Financial Institutions (FIs) permitted by RBI.

The term '**securities**' shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (SCRA) ¹⁶ [Section 2(101)].

In this regard, there may arise a doubt as to whether a 'derivative' is included within the meaning of 'securities' above and whether derivatives are liable to GST? Before

Derivatives

that, let us understand what a derivative means in simple terms. Derivatives are financial contracts/instruments that derive their value from something else, like an underlying asset. They are kind of bets or agreements based on the price/performance of the underlying asset, rather than owning that asset directly. 'Derivatives'¹⁷ are included in the definition of 'securities' under SCRA. As **'derivatives' fall in the definition of securities, they are neither goods nor services and hence, are not liable to GST.**

Two most common types of derivatives are futures contracts and forward contracts. In simple terms, forward and futures contracts are similar to making a promise to buy or sell something, like a commodity (e.g., oil, wheat), financial asset (e.g., stocks, bonds), or even a market index (e.g., S&P 500) at a specific price on a future date. It's an agreement/contract between two parties to buy or sell that something at a specific price on a specific date in the future. On the specified date in future, the

¹⁶ In terms of section 2(h) of SCRA, "securities" includes—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities.

¹⁷ In terms of section 2(ac) of SCRA, "derivative" includes— (A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security; (B) a contract which derives its value from the prices, or index of prices, of underlying securities. The definition of 'derivatives' in SCRA is an inclusive definition.

contract needs to be settled. These contracts can either be settled by way of actual physical delivery of the underlying asset or by way of net settlement of differential rate with no actual delivery. The primary difference between the futures and forward contract is that futures contracts are standardised derivative contracts, traded on organised exchanges and marked-to-market daily whereas forward contracts are customisable, over-the-counter derivative contracts, not traded on organised exchanges but negotiated between two parties, without any daily mark-to-market requirements.

GST implications on futures contracts:

Since futures contracts are in the nature of derivatives, these qualify as 'securities' and thus, are **not subject**

to GST. However, where the futures contracts have a **delivery option** and the settlement of contract takes place by way of actual delivery of underlying commodity/currency, then such **futures contracts would be treated as normal supply of goods and liable to GST**.

Futures contracts**GST implications on forward contracts:**

Where the settlement takes place by way of **actual delivery of underlying**

commodity/currency, then such forward contracts would be treated as **normal supply of goods and liable to GST**. Where the settlement takes place by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date, the same would be falling within the purview of 'securities' and thus, are not chargeable to GST.

Forward contracts**GST implications on secured debt:**

Sale, purchase, acquisition or assignment of a secured debt does not constitute a transaction in money; it is in the nature of a derivative and hence a security.

SECURED DEBT**GST implications on transactions in instruments:**

Transactions in instruments like interest rate swaps, and foreign exchange swaps would be excluded from the definition of 'supply' since such instruments are derivatives, being securities, based on contracts of difference.

GST implications on services by way of extending deposits, loans or

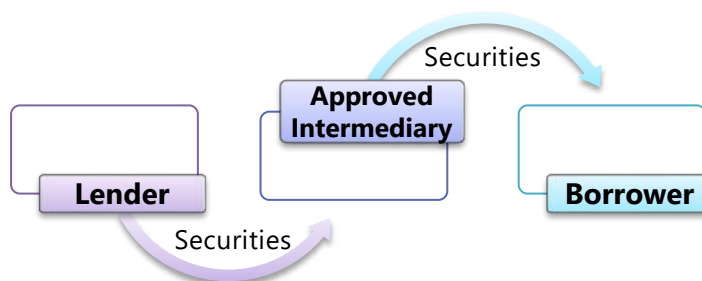
advances: Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount is exempt from the levy of GST. *The same has been discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material.*



It is important to note that GST would be levied on service charges normally charged for various transactions in money including charges for making drafts, issuance charges for letter of credit, etc or service charges or service fees or documentation fees or broking charges or such like fees or charges charged on the derivatives/futures contracts/forward contracts, since the same would be a consideration for provision of service.

Lending of securities - Securities Lending Scheme

Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 (hereafter referred to as SLS) for the purpose of facilitating lending and borrowing of securities. The security lending mechanism is depicted in the diagram below: -



In the above diagram:

- (i) **Lender** is 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.

- (ii) **Borrower** is a person who borrows the securities under the scheme through an approved intermediary.
- (iii) **Approved intermediary** is a person duly registered by the SEBI under the SLS through whom the lender will deposit the securities for lending and the borrower will borrow the securities.

Under this scheme, **lender of securities** lends securities through an approved intermediary to a borrower, under an agreement, temporarily for a specified period. The lenders earn **lending fee** for lending their securities to the borrowers.

Securities are lent with a 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 benefits¹⁸ accruing on the securities borrowed. The borrower of securities can **further sell or buy these securities**.

In order to lend securities under SLS, **lender enters into an agreement with the approved intermediary** and for the purpose of borrowing of securities, the **borrower enters into an agreement with the approved intermediary**. Thus, there is no direct agreement between the lender and borrower for the lending or borrowing of securities and there is anonymity between them.

The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India.

As seen earlier in this chapter, securities are neither covered in the definition of goods nor covered in the definition of services. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

The **SLS doesn't treat lending of securities as disposal of securities** and therefore is not excluded from the definition of services. The **lending fee** charged from the borrowers of securities **has the character of consideration and is taxable under GST**. Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for **commission or fee** are also **taxable separately** [Circular No. 119/38/2019 GST dated 11.10.2019].

¹⁸ Corporate benefits include dividends (gross), rights, bonus, redemption benefits, interest, or any other right or benefit accruing on the securities lent.

Securities of subsidiary company in holding company



Since securities (including shares)¹⁹ are considered neither as goods nor as services [discussed in detail earlier], securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services.

Merely because there is an entry in the scheme of classification of services to that effect²⁰, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company, unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7²¹.

¹⁹ As per the definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956, securities include 'shares' as per definition of securities.

²⁰ There is a specific SAC (Service Accounting Code entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest".

²¹ Circular No. 196/08/2023 GST dated 17.07.2023

Cash Calls in Joint Venture (JV)

JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame. Whether a cash call is merely a transaction in money or in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case.

'Cash calls' are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget. Let us understand the taxability of cash calls with the help of following examples:



(13) There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member purchases machinery for ₹ 400 for the JV to be used in oil production.

In above case, cash calls will not be subject to GST since the operating member is not carrying out an activity for another for consideration. Here, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.



(14) There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member thereafter uses its own machinery and performs exploration and production activities on behalf of the JV.

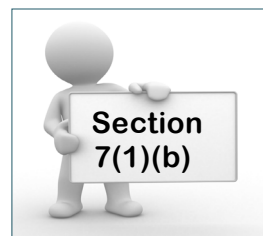
In above case, the operating member uses its own machinery and is therefore providing 'service' within the scope of 'supply' because here operating member is recovering the cost appropriated towards machinery & services from other JV members in their participating interest ratio²².

²² Circular No. 35/9/2018 GST dated 05.03.2018

In the subsequent paras, we have discussed the exceptions to the two parameters of supply, *namely*, (i) supply made for consideration, but not in course or furtherance of business and (ii) supply made without consideration.

IMPORTATION OF SERVICES FOR CONSIDERATION WHETHER OR NOT IN COURSE OR FURTHERANCE OF BUSINESS

The connotation of 'supply' gets expanded significantly through the second part of section 7 i.e. 7(1)(b) which brings within the ambit of 'supply', the importation of services for a consideration **whether or not in the course or furtherance of business**. This is the only exception to the condition of supply being made in course or furtherance of business.



(15) Ramaiyaa, a proprietor, has received the architect services for his personal residence from an architect located in New York at an agreed consideration of \$ 5,000. The import of services by Ramaiyaa is supply under section 7(1)(b) though it is not in course or furtherance of business.

ACTIVITIES WITHOUT CONSIDERATION - DEEMED SUPPLY



STATUTORY PROVISIONS

<i>Schedule-I</i>	<i>Activities to be treated as supply even if made without consideration</i>
<i>Para No.</i>	<i>Particulars</i>
(1)	<i>Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.</i>

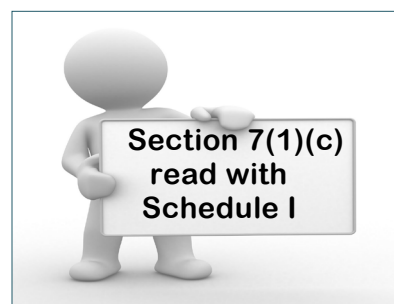
(2)	<p><i>Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business.</i></p> <p><i>Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.</i></p>
(3)	<p><i>Supply of goods —</i></p> <p><i>(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or</i></p> <p><i>(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.</i></p>
(4)	<p><i>Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.</i></p>



ANALYSIS

As seen earlier, section 7(1)(c) provides that supply includes the activities specified in Schedule I, made or agreed to be made without a consideration. Thus, there are activities or transactions which are treated as supply, **even if they are made without consideration**. These are specifically mentioned in Schedule I appended to the CGST Act. The same has been discussed in the subsequent paras:

As per Schedule I, in the following four cases, activities made without consideration will be treated as supply under section 7:



I. Permanent Transfer/Disposal of Business Assets [Para 1 of

Schedule I]: Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply. However, this provision shall apply only if input tax credit has been availed on such assets.



Therefore, in order to qualify as supply under this para, following conditions need to be satisfied cumulatively:

- There must be a disposal or transfer of business assets**.
- Transfer/disposal must be permanent, and
- ITC must have been availed on such business assets.



In view of the last condition stipulated above, permanent transfer/disposal of following business assets, without consideration, will not be covered within this para and thus will not be deemed as supply:

- (i) Business assets on which ITC is blocked/not available under GST²³.
- (ii) Business assets though eligible for ITC, ITC has not been availed by the registered person.

It's important to note that under GST legislation, there is no specific definition for the term "business asset." Nevertheless, business assets are generally recognized as property or equipment acquired primarily for business purposes. These assets can be grouped into various categories, including current and non-current, short-term and long-term, operating and capitalized, as well as tangible and intangible assets.



(16) Dhruv gives old laptops being used in his business to his friend free of cost. This will qualify as supply provided input tax credit has been availed by Dhruv on such laptops.

²³ List of the goods and services in respect of which ITC is blocked has been elaborated in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.



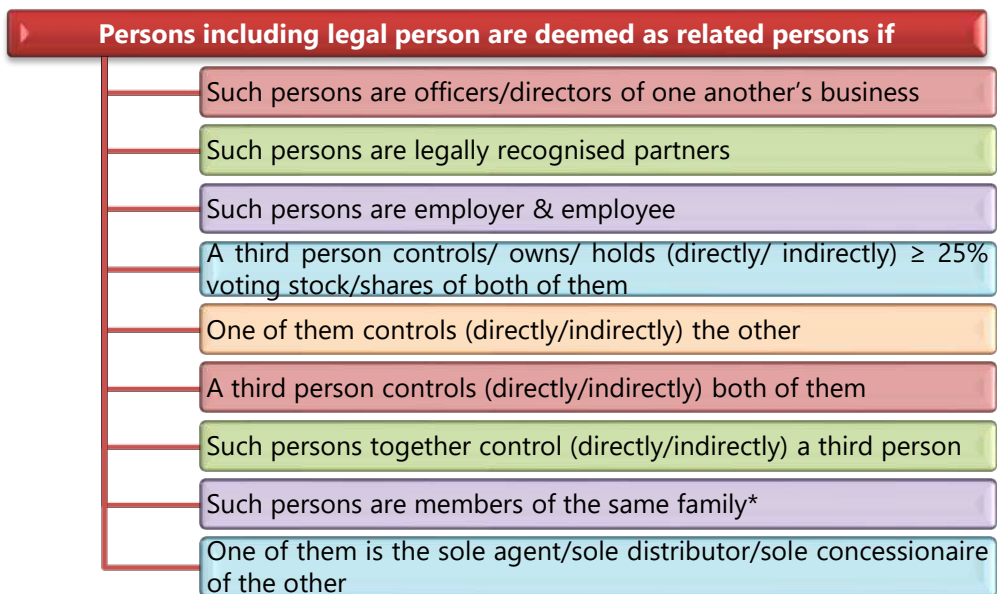
(17) A dealer of air-conditioners permanently transfers the motor vehicle free of cost. ITC on said motor vehicle is blocked. The transaction will not constitute a supply as the condition of availment of ITC on the business asset transferred is not fulfilled.

This para is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.

II. Supply between related persons or distinct persons [Para 2 of Schedule I]: Supply of goods or services or both between 'related persons' or between 'distinct persons' as specified in section 25, will qualify as supply even if made without consideration **provided the same is made in the course or furtherance of business.**

Let us understand the terms '**related persons**' and '**distinct persons**'.

- (i) **Related persons:** A person who is under influence of another person is called a related person like members of the same family or subsidiaries of a group company etc. Under GST law various categories of related persons have been specified. The term 'related person' has been defined in explanation to section 15. The said definition has been depicted by way of a diagram as follows:



**See the definition of 'family' as provided in heading 2. – Relevant Definitions.*



(18) Ms. Priya holds 30% shares of ABC Ltd. and 35% shares of XYZ Ltd. ABC Ltd. and XYZ Ltd. are related.

(19) Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. It can be said that Q Ltd. controls R Ltd. Thus, Q Ltd. and R Ltd. are related.

- (ii) Distinct Persons specified under section 25:** Before we go through the statutory provisions of 'distinct persons', let us first have an **overview of the registration provisions** for better understanding of the concept of distinct persons. *Detailed and in-depth analysis of the registration provisions is contained in Chapter 8 – Registration in Module 2 of this Study Material.*

Under GST law, a supplier is required to obtain State-wise registration. He has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit. Thus, he is not required to obtain registration from a State/UT from where he makes a non-taxable/exempt supply.

Since registration under GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates [and makes a taxable supply] under the same PAN. Further, he is normally required to obtain single registration in a State/UT. However, where he has multiple places of business in a State/UT, he can get a single registration for said State/UT. He may also get separate registration for any place(s) of business in such State/UT.

Now, let us understand the concept of distinct persons in simple terms:

The establishments of a person with separate registrations whether within the same State/UT or in different States/UTs are considered as **distinct**

persons. Where a person having one registered establishment in a State/UT has another establishment in a different State/UT [not

Distinct Persons

necessarily registered], these establishments are considered as **establishments of distinct persons**.

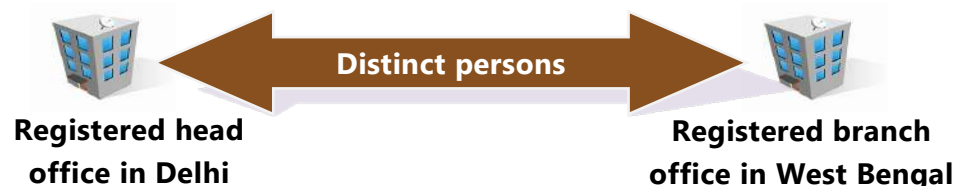
Statutory provisions relating to 'distinct persons' are contained in sub-sections (4) and (5) of section 25. They have been explained with examples as follows:

A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as **distinct persons** [Section 25(4)].



(19) Mohan, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of West Bengal in respect of his newly opened branch office.

Mohan's registrations under GST under same PAN in West Bengal and Delhi shall be treated as distinct persons.



Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as **establishments of distinct persons** [Section 25(5)]. Further, Explanation 1 to section 8 of the IGST Act stipulates that **establishments of same entity shall be considered as establishments of distinct persons** where a person has:

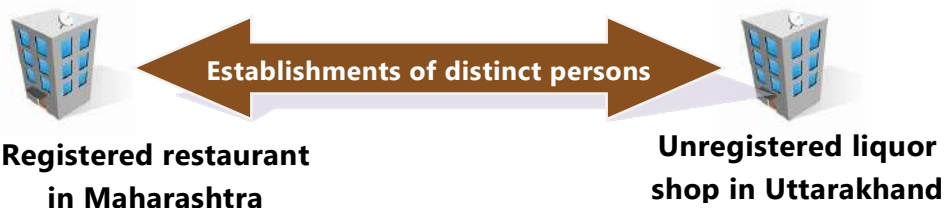
- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment within that State or Union territory.



(20) Rishabh Enterprises, a registered supplier, owns a restaurant in Virar, Maharashtra. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption.

Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Rishabh Enterprises is not required to obtain registration with respect to the same in Uttarakhand.

In this case, restaurant in Maharashtra and liquor shop [though unregistered] in Uttarakhand shall be treated as establishments of distinct persons. Supply by Maharashtra restaurant to Uttarakhand shop, in course or furtherance of business even without consideration will qualify as supply.



(iii) Stock transfers or branch transfers qualify as supply: It is a common practice in business to transfer goods transferred amongst different units of same entity, for instance, distribution of samples manufactured in a factory to different branches or transfer of goods from factory to depot/showroom for sale therefrom, from one warehouse to another warehouse, from one branch to another branch where the demand of the goods is higher. Since the transfer is within the same business, the transferor unit would not charge any amount to the transferee unit. Similarly, it is also possible that one branch supplies services to another branch of the same entity without consideration. These transactions are termed as self-supplies. Under GST, these transactions though undertaken without consideration, will also qualify as supply, provided the transfer of goods or services is between:

- (i) different locations (with separate GST registrations) of same legal entity as these are transactions between distinct persons, or
- (ii) establishments of distinct persons.



(21) Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir Fabrics are registered in the States where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.



Registered Lucknow factory



Registered Delhi showroom

However, transfer between two units of a legal entity under single registration (apparently within same State) will not be considered as supply. This can be understood with the help of the following example:



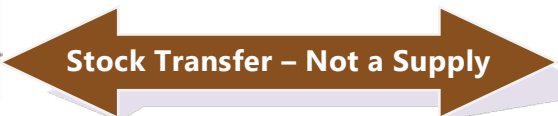
(22) Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Kanpur so that the same can be sold from there.

It has taken one registration in the State of Uttar Pradesh declaring Lucknow factory as its principal place of business and Kanpur showroom as its additional place of business.

Since no consideration is charged, supply of goods from factory to retail showroom in same State under single registration does not constitute supply.



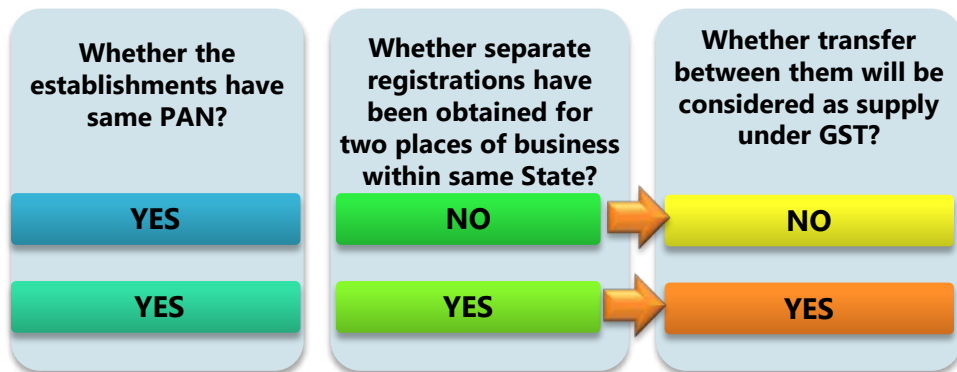
Lucknow factory



Kanpur showroom



However, in the above example, if Raghubir Fabrics obtains separate registrations for Lucknow factory and Kanpur showroom, stock transfer between the Lucknow factory and Kanpur showroom will constitute supply. The concept arising from the above discussion is summarised in below diagram (assuming a case where there are two places of business in a State):



Moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer, in course or



furtherance of business, do not constitute supply since they are not related persons or distinct persons and there is no consideration involved [Circular No. 47/21/2018 GST dated 08.06.2018].

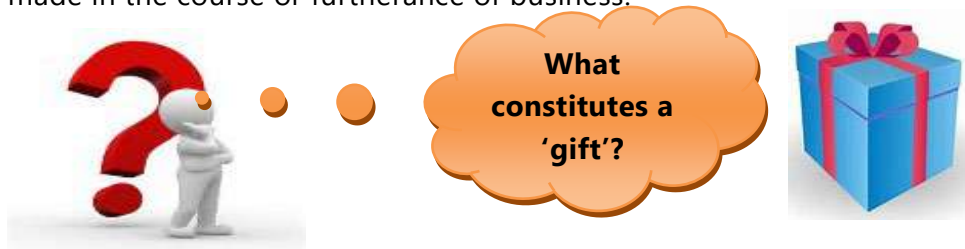
(iv) Supply of goods or services or both between an employer and employee: In terms of the definition of related person given above, employer and employee are related persons.

However, services provided by an employee to the employer in the course of or in relation to his employment are outside the scope of GST (treated as neither supply of goods nor as supply of services) as per Schedule III of the CGST Act (discussed subsequently in this chapter)].

Gifts by employer to employee

Further, proviso to Para 2 of Schedule I provides that gifts upto ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated

as supply of goods or services or both. However, gifts of value more than ₹ 50,000 made without consideration are supply and are subject to GST, when made in the course or furtherance of business.



The term 'gift' has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift.

Perquisites by employer to employee

Since services by an employee to the employer in the course of or in relation to his employment are outside the scope of GST, supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee will not be subjected to GST.

Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment.



It follows therefrom that **perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee will not be subjected to GST²⁴.**

²⁴ Circular No. 172/04/2022 GST dated 06.07.2022

Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre²⁵. Consequently, if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST.

The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to company (C2C)²⁷

III. Principal – Agent [Para 3 of Schedule I]: Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.



Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

Points which merit consideration, in this regard, are as follows:

- Only **supply of goods and not supply of services** is covered here.
- Supply of goods between principal and agent **without consideration** is also supply.

²⁵ Complete list of the goods and services in respect of which ITC is blocked has been elaborated in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.

²⁶ Circular No. 172/04/2022 GST dated 06.07.2022 read with Ministry of Finance's Press Release on 10.07.2017

²⁷ It is possible to take an alternative view in this regard. This scenario, i.e. the employer providing services (free of charge) to the employee in lieu of the services provided by the employee to the employer in the course of employment, is an exchange transaction. In an exchange transaction, both the parties independently assess their transaction status. Thus, while service provided by employee to the employer being covered under Schedule III is not a supply, service provided by employer to employee may constitute a supply in terms of section 7(1)(c) read with para 2 of Schedule I since employer and employee are related persons as per explanation to section 15. Provisions of section 15 have been discussed in detail in Chapter 6 – Value of Supply in this Module of the Study Material.

Thus, the **supply of services** between the principal and the agent and vice versa would require “consideration” to be present so as to be considered as supply and thus, making it liable to GST.

Let us first go through the **meaning of terms ‘principal’ and ‘agent’**. Section 2(5) defines **agent** as a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

As we can deduce from this definition of agent that (a) the term ‘agent’ is defined in terms of the various activities being carried out by the person concerned in the principal-agent relationship and (b) the supply/receipt of goods/services has to be undertaken by the agent on behalf of the principal.

Further, the term **principal** has been defined under section 2(88) as a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

In order to determine whether a particular principal-agent relationship falls within the ambit of the Para 3 of Schedule I as discussed above or not, the **DECIDING FACTOR** is **whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not?**



In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

- ❑ Where the **invoice for further supply is being issued by the agent in his name** then, any provision of goods from the principal to the agent would fall within the fold of Para 3 above.

Invoice for further supply to customer be issued in the agent's name.

- ❑ However, where the **invoice is issued by the agent to the customer in the name of the principal**, such agent shall not fall within the ambit of Para 3 above.

- Similarly, where the goods being procured by the agent on behalf of the principal are **invoiced in the name of the agent** then further provision of the said goods by the agent to the principal would be covered by Para 3 above **[Circular No. 57/31/2018 GST dated 04.09.2018]**.

Goods procured on behalf of principal are invoiced in the agent's name.

Where the invoice is issued by the agent to customer in the name of:	Whether he will be an agent in terms of Para 3 of Schedule I?
Principal	No
Agent	Yes

The above clarification can be understood with the help of following scenario based examples:



(23) Anmol appoints Bholu to procure certain goods from the market. Bholu identifies various suppliers who can provide the goods as desired by Anmol and asks the supplier (Golu) to send the goods and issue the invoice directly to Anmol.

In this scenario, Bholu is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Bholu is not an agent of Anmol for supply of goods in terms of Para 3 of Schedule I.



(24) Manimani Bank, a banking company, appoints Mandaar (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders.

The highest bid is accepted and the goods are sold to the highest bidder by Manimani Bank. The invoice for the supply of the goods is issued by Manimani Bank to the successful bidder.

In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mandaar is not an agent of Manimani Bank for the supply of goods in terms of Para 3 of Schedule I.



(25) Gautam, an artist, appoints Gambhir (auctioneer) to auction his painting. Gambhir arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder.

The invoice for the supply of the painting is issued by Gambhir on the behalf of Gautam but in his own name and the painting is delivered to the successful bidder.

In this scenario, Gambhir is not merely providing auctioneering services, but is also supplying the painting on behalf of Gautam to the bidder, and has the authority to transfer the title of the painting on behalf of Gautam. This scenario is covered under Para 3 of Schedule I.



(26) A C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F commission agent is an agent of the principal for the supply of goods in terms of Para 3 of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.



(27) Ravi sells agricultural produce by utilizing the services of Kavi who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Kavi identifies the buyers and sells the agricultural produce on behalf of Ravi for which he charges a commission from Ravi.

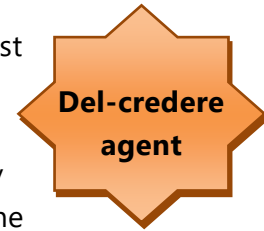
As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

In cases where the invoice is issued by Kavi to the buyer, then he is an agent covered under Para 3 of Schedule I²⁸. However, in cases where the invoice is issued directly by Ravi to the buyer, the commission agent (Kavi) doesn't fall under the category of agent covered under Para 3

Clarification of issues pertaining to Del-credere agent (DCA)

A question was posed by the industry - whether supply between a principal and a Del-credere agent would also get covered under Schedule I. The Government clarified the doubt of the industry by way of following clarification:

Before going through the clarification, let us first understand what is meant by a DCA? In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the **DCA guarantees the payment to the supplier.**



In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent.

In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer.

Circular No. 73/47/2018 GST dated 05.11.2018 has clarified the following issues in this regard:

²⁸ It is important to note that services provided by the commission agent for sale or purchase of agricultural produce are exempt supply under GST. Said exemption has been discussed in detail in Chapter 4 Exemptions from GST in this Module of the Study Material.

Sl. No.	Issue	Clarification
1.	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I?	<p>As already clarified vide <i>Circular No. 57/31/2018 GST</i> (discussed above), whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I depends on the following possible scenarios:</p> <ul style="list-style-type: none"> <input type="checkbox"/> In case where the <u>invoice</u> for supply of goods is issued <u>by the supplier to the customer</u>, either himself or through DCA, the DCA <u>does not fall</u> under the ambit of agent. <input type="checkbox"/> In case where the <u>invoice</u> for supply of goods is issued <u>by the DCA in his own name</u>, the DCA <u>would fall</u> under the ambit of agent.
2.	Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I?	<p>In such a scenario, following activities are taking place:</p> <ol style="list-style-type: none"> 1. Supply of goods from supplier (principal) to recipient; 2. Supply of agency services from DCA to the supplier or the recipient or both; 3. Supply of extension of loan services by the DCA to the recipient. <p>It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I, the temporary short-term</p>

		<p>transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply²⁹.</p> <p>Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.</p>
3.	<p>Where DCA is an agent under Para 3 of Schedule I and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?</p>	<p>In such a scenario following activities are taking place:</p> <ol style="list-style-type: none"> 1. Supply of goods by the supplier (principal) to the DCA; 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient. <p>It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by</p>

²⁹ Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempt supply vide Entry 27 of Notification No. 12/2017 CT(R) dated 28.06.2017 [Discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material].

		<p>the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.</p> <p>It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per section 15(2)(d)³⁰.</p>
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IV. Importation of services [Para 4 of Schedule I]: Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as “supply”.



(28) Jhumroo Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such consultancy services free of cost to its branch office.

Since Jhumroo Associates and the head office are related persons, services received by Jhumroo Associates will qualify as supply even though the head office has not charged anything from it.

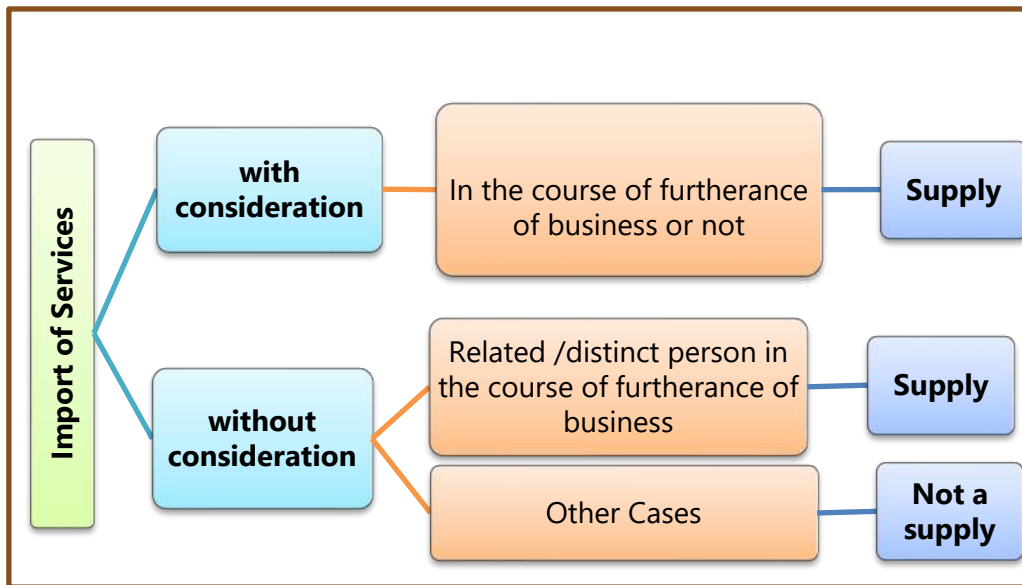


(29) Chakmak, a proprietor registered in Delhi, has sought architect services from his son located in US, with respect to his newly constructed house in Delhi.

Although services have been received by Chakmak without consideration from his son - a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.

However, if in the above case, Chakmak receives architect services without consideration from his son with respect to his office in Delhi, the same shall be treated as supply because the same have been received in the course of business.

³⁰ Section 15 has been discussed in detail in Chapter 6 – Value of Supply in this Module of the Study Material.



In the preceding paras, we have discussed the provisions of Schedule-I which enumerates the cases where an activity is treated as supply even though it is undertaken free of cost. In this backdrop, let us now examine whether the items given free of cost in case of some of the sales promotion schemes qualify as supply or not.


Clarification on Sales promotion schemes




A number of sales promotion schemes are commonly employed by the businesses to increase sales volume or to encourage the use or trial of a product or service so that new customers get attracted towards their products. For instance, certain sections of trade and industry, such as, pharmaceutical companies often provide drug samples to their stockists, dealers, medical practitioners, etc., or sometimes, companies announce offers like 'Buy One, Get One free' - i.e. buy one soap and get one soap free or get one tooth brush free along with the purchase of tooth paste.



As we have already seen that as per section 7(1)(a), the goods or services which are supplied free of cost (without any consideration) shall not be treated as “supply” except in case of activities mentioned in Schedule I of the CGST Act. In view of the same, few sales promotion schemes have been examined as under:

 **Free samples and gifts:** Samples which are supplied free of cost, without any consideration, do not qualify as “supply” under GST³¹, except where the activity falls within the ambit of Schedule I.



 **Buy one get one free offer:** It may appear at first glance that in case of offers like “Buy One, Get One Free”, one item is being “supplied free of cost” without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.




Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly – *Concept of composite and mixed supply has been discussed subsequently in this chapter.*

[Circular 92/11/2019 GST dated 07.03.2019]

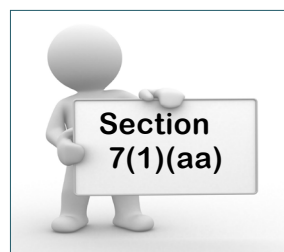
There has always been an ambiguity as to whether activities/ transactions involving supply of goods/ services, by any person, other than an individual, to its members or vice-versa fall within the purview of supply or not. Clause (aa) to section 7(1) brings in the certainty that said activities/ transactions are covered within the scope

³¹ ITC on inputs, input services and capital goods to the extent they are used in relation to the gifts/free samples shall be available to the supplier only where the activity of distribution of gifts/free samples falls within the scope of supply supply. The same has been discussed in detail in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.

of supply under GST and ensures the levy of GST on such activities/transactions. This has been discussed as under:

 **ACTIVITIES/TRANSACTIONS BETWEEN A PERSON, OTHER THAN AN INDIVIDUAL, AND ITS MEMBERS/ CONSTITUENTS FOR CONSIDERATION**

The activities or transactions (involving supply of goods or services) between a person, other than an individual, (i.e. association, club, etc.) and its members or constituents, for cash, deferred payment or other valuable consideration are covered within the ambit of 'supply' as per section 7(1)(aa).



Further, explanation to clause (aa) to section 7(1) clarifies that for the purpose of this clause, such person (association, club, etc.) and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions between them shall be deemed to take place from one such person to another. The **explanation starts with a non-obstante clause and shall therefore, shall have an overriding effect** over anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority.

The aforesaid explanation prevents the application of doctrine of mutuality by such person(s)³².



(30) Resident Welfare Association (RWA) of Sanskriti Society supplies air-conditioners to its members at a concessional price.

(31) A Resident Welfare Association collects maintenance charges from its members for services provided.

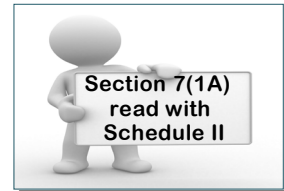
Here, in both the aforesaid examples, it shall be deemed that the Resident Welfare Association (RWA) and its members are two separate persons and it shall be

³² Section 7(1)(aa), in effect, overrules the judgment of the Hon'ble Supreme Court in *State of West Bengal v. Calcutta Club Limited* wherein it was held that the transactions between a Club and its members cannot be taxed owing to the doctrine of mutuality, i.e., a person cannot make a profit from himself.

deemed that the supply has taken place from Resident Welfare Association (RWA) to its members.

ACTIVITIES/TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

Section 7(1A) classifies certain activities/ transactions constituting supply, either as supply of goods or supply of services. Schedule II of the CGST Act contains the list of activities or transactions which have been classified either as supply of goods or supply of service.






This helps in mitigating the ambiguities which existed in earlier laws.







(32) Under earlier tax regime, the restaurants used to charge both service tax and VAT on the value of food served. This is so because both sale of goods and provision of service were involved and therefore taxable event under both the Statutes i.e. respective VAT law and service tax law got triggered.



Under GST, the supply by a restaurant is treated as composite supply [*concept of composite supply is discussed subsequently in this chapter*] since supply of food and service is naturally bundled in ordinary course of business. Further, para 6(b) of Schedule II [*refer table below*] specifically provides that such composite supply shall be treated as supply of service. Hence, the entire value of invoice shall be treated as value of service and leviable to GST accordingly.

The matters listed out in Schedule II are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation. These are as follows:-




Para No.	Activity/ Transaction	Type	Nature of Supply
1.	Transfer	Any transfer of title in goods.  (33) Shivaji sells ready-made garments to its customers.	Supply of Goods
		Any transfer of right in goods/ undivided share in goods without transfer of title thereof.  (34) Genius Equipments Ltd. gives a machinery on rent to Suhaasi Manufacturers.	Supply of Services
		 Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed. (35) Dhruva Capitals supplied goods on hire purchase basis to customers. (36) Optima Manufacturers supplies toys to retailers on 'sale or return basis'.	Supply of Goods


2.	Land and Building	Any lease, tenancy, easement, licence to occupy land ³³ .  (37) Lease agreement for land.	Supply of Services
		Any lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly.  (38) A shop let out in a busy market area.	Supply of Services
3.	Treatment or Process	Any treatment or process which is applied to another person's goods  (39) Damani Dying House dyes the clothes given by Shubham Textiles Ltd. on job work basis.	Supply of Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business so as no longer to form part of those assets.	Supply of Goods
		Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/ under directions of person carrying on the business.  (40) A person manufacturing and selling	Supply of Services

³³ Also refer Circular No.44/18/2018 CGST dated 02.05.2018 discussed subsequently.

		<p>wooden furniture takes one chair manufactured by him for use at his house.</p> <p>Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person.</p> <p> (41) Arun, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Business is transferred as a going concern to another person³⁴. <input type="checkbox"/> Business is carried on by a personal representative who is deemed to be a taxable person. 	<p>Supply of Goods</p>
5.	(a) Renting of immovable property	<p> (42) Renting of a commercial complex.</p> <p>(43) Renting of precincts of a religious place.</p>	

³⁴ Services by way of transfer of a going concern, as a whole or an independent part thereof are exempt supply under GST [Discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material].

	<p>(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or</p> <p>(ii) a chartered engineer registered with the Institution of Engineers (India); or</p> <p>(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.</p> <p>(c) Temporary transfer or permitting use or enjoyment of any intellectual property right</p> <p> (47) Temporary transfer of patent.</p> <p>(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software</p> <p> (48) Suvidha Solutions develops an accounting software for a business firm.</p> <p>(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.</p> <p> (49) Cable operator - Sakharam has entered into an agreement with Cable operator - Aatmaram that Sakharam will not provide cable connections in the specified areas where Aatmaram is providing the connections. Non-compete agreements constitute supply of service.</p> <p><i>Please refer the detailed discussion on this para of Schedule-II given at the end of the Table.</i></p>	<p>Supply of Services</p>
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	<p>(f) Transfer of right to use any goods for any purpose (whether or not for specified period) for cash, deferred payment or other valuable consideration.</p> <p> (50) Machinery given on hire.</p>	
<p>6.</p>	<p>Following composite supplies :-</p> <ul style="list-style-type: none"> <input type="checkbox"/> Works contract Works contract: means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of <u>any immovable property</u> wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(119)]. <input type="checkbox"/> Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration. 	<p>Supply of Services</p>

CBIC has clarified the taxability of tenancy rights, Joint Venture (JV) and Priority Sector Lending Certificates (PSLCs) as under:

1. Taxability of ‘tenancy rights’ under GST

CBIC has clarified the taxability of ‘tenancy rights’ under GST as under:

Pagadi system, i.e. transfer of tenancy rights against tenancy premium, is prevalent in some States. In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceeds with owner of land, as laid down in their tenancy agreement. **Alternatively**, the landlord pays to tenant the prevailing tenancy premium to get the property vacated.



It has been clarified that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST.

It is a form of lease or renting of property and such activity is specifically declared to be a service in Para 2 of Schedule II as discussed in table above i.e. any lease, tenancy, easement, licence to occupy land is a supply of services. Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.

The transfer of tenancy rights cannot be treated as sale of land/ building in para 5 of Schedule III. Thus, it is not a negative list activity [*this concept is discussed under next heading*] and consequently, a consideration for the said activity shall attract levy of GST.

To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable *per-se*. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.



However, renting of residential dwelling for use as a residence to an unregistered person or to a registered sole proprietor taking the residential dwelling on rent on his own account in his personal capacity for use as his residence is exempt [*Entry 12 of Notification No. 12/2017 CT (R) dated*

28.06.2017 – Discussed in Chapter 4 – Exemptions from GST in this Module of the Study Material]. Hence, grant of tenancy rights in a residential dwelling for use as residential dwelling against tenancy premium or periodic rent or both (to above mentioned persons) is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST³⁶.

2. Priority Sector Lending Certificates (PSLCs)³⁷

PSLCs are in the nature of goods³⁸. PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which earlier attracted VAT.

In GST, there is no exemption available to trading in PSLCs. Thus, PSLCs are taxable as goods. GST payable on the certificates would be available as ITC to the bank buying the certificates [Circular No. 34/08/2018 GST dated 01.03.2018].

Further, nature of supply of PSLC between banks is supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI [Circular No. 93/12/2019 GST dated 08.03.2019].

3. Applicability of GST on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

CBIC has clarified issues with respect to GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law.

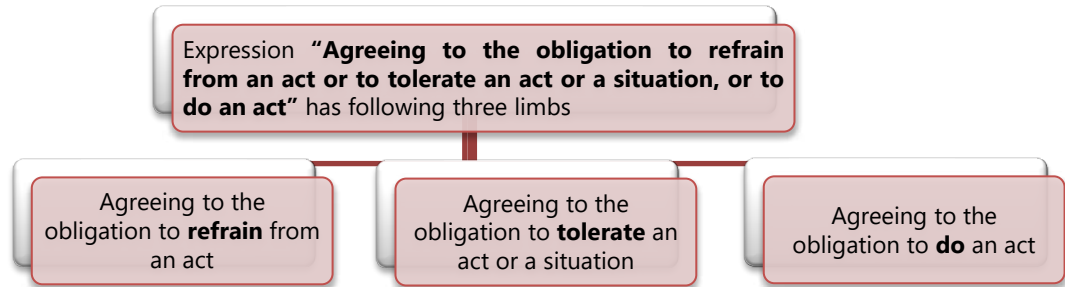
Clarification: “Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5(e) of Schedule II if the same constitutes a

³⁶ Circular No. 44/2018 CT dated 02.05.2018

³⁷ Lending by a commercial bank for specified sectors which have been identified as “priority sector” by RBI is called as Priority Sector Lending. Priority Sector Lending Certificates (PSLCs) are a mechanism to enable banks to achieve the priority sector lending target and sub-targets by purchase of these instruments in the event of shortfall. This also incentivizes surplus banks as it allows them to sell their excess achievement over targets thereby enhancing lending to the categories under priority sector. Under the PSLC mechanism, the seller sells fulfilment of priority sector obligation and the buyer buys the obligation with no transfer of risk or loan assets.

³⁸ RBI's FAQ on PSLCs

“supply” within the meaning of the CGST Act.



a. Agreeing to the obligation to REFRAIN from an act



(51) Non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.



(52) A builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight.

(54) An industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

b. Agreeing to the obligation to tolerate an act or a situation

This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

c. Agreeing to the obligation to do an act

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

Above three activities must comply with the following conditions:

(1) There must be an expressed or implied agreement or a contract must exist

Above three activities must be under an **“agreement” or a “contract”** (whether express or implied) to fall within the ambit of para 5(e) of Schedule II. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain or (b) tolerate or (c) do.

Such contractual arrangement must be an **independent arrangement** in its own right. Such arrangement/agreement can take the form of an **independent stand-alone contract or may form part of another contract.**

Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

Such a contract cannot be imagined or presumed to exist just because there is a flow of money from one party to another. There must be an expressed or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him.

(2) Consideration must flow in return to this contract/agreement

Some **“consideration”** must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing.

Taxability of some of the transactions has been discussed in detail as under:

(A) Liquidated Damages

It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Black's Law Dictionary defines 'Liquidated Damages' as cash compensation agreed to



by a signed, written contract for breach of contract, payable to the aggrieved party.

The taxability or otherwise of liquidated damages is clarified as under:

It is argued that performance is the essence of a contract. **Liquidated damages** cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.

Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not reconstitute the aggrieved person.

A contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are merely a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments

do not constitute consideration for a supply and are not taxable.



Examples of such cases are:

- (53)** Damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,
- (54)** Penalty stipulated in a contract for delayed construction of houses,
- (55)** Forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer.
- (56)** Forfeiture of earnest money by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.

The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' irrespective of by what name it is called, otherwise it is not a "supply".

If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'.



On the contrary, consider the following examples:

- (57)** A contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty.
- (58)** A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up.
- (59)** A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer.
- (60)** A contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain

period and if he does so he will have to pay certain amount as early termination fee or penalty.

(61) Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period.

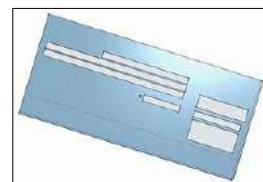
In the above examples, amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of prepayment of loan and of making arrangements for the intended supply by the tour operator respectively.

Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable.

Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt.

(B) Cheque dishonor fine/ penalty

The supplier wants payment to be received on time and does not want cheque to be dishonoured. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty.



The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, **cheque dishonor fine or penalty is not a consideration for any service and not taxable.**

(C) Penalty imposed for violation of laws

Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also **not consideration for any supply received and are not taxable.**



Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit.

Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration.

In short, **finances and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to tax.**

(D) Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment.

The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation.

Further, the employee does not get anything in return from the employer against payment of such amounts.

Therefore, such amounts recovered by the employer are **not taxable as consideration** for the service of agreeing to tolerate an act or a situation.

(E) Late payment surcharge or fee

The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc.



Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty.

Even if this service is described as a service of tolerating the act of late payment, it is an **ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply.**

Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.

However, the same cannot be said of cheque dishonor fine or penalty as discussed earlier.

(F) Fixed charges for power

The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMS from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge.



The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.

(G) Cancellation charges

It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee.

Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till the exit of the passenger from the destination terminal.



All services such as making available an online portal or



convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel,



giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.

The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business. Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply.



(62) Cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

However, as discussed earlier, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money.

Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable³⁹.

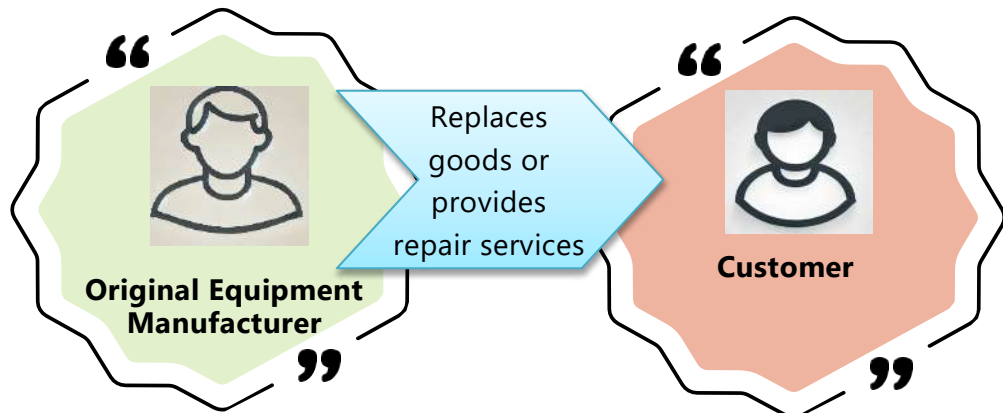
4. Applicability of GST in respect of warranty replacement of goods or its parts and/ repair services during warranty period

As a commercial practice, the original equipment manufacturers/ suppliers offer warranty for the goods / services supplied by them to the customers. During the warranty period, goods /services are replaced to the customers (either by manufacturer itself or by the distributor on behalf of the manufacturer) and generally, no separate consideration is charged and received at the time of replacement from the customer.

Following issues have been clarified in respect of warranty replacement of goods or its parts and/ repair services provided during the warranty period:

SCENARIO 1

ORIGINAL EQUIPMENT MANUFACTURER OFFERING REPLACEMENT OF GOODS OR ITS PARTS/ REPAIR SERVICES UNDER WARRANTY TO THE CUSTOMER



³⁹ Circular No. 178/10/2022 GST dated 03.08.2022

Issue: Where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of goods or its parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, whether GST would be payable on such replacement of goods or its parts or supply of repair services, **without any consideration from the customer, as part of warranty?**



Clarification: The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of goods or its parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods.

Value of original supply includes likely cost of replacement of goods/its parts/ repair services to be incurred during the warranty period.

As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, **no further GST is chargeable on such replacement of goods or its parts and/ or repair service during warranty period.**

No separate charges for such replacement/ repair services



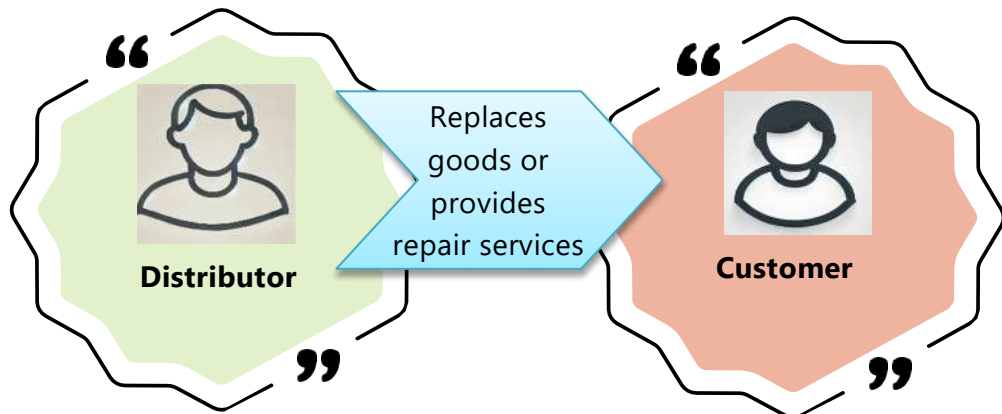
No further GST payable

However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of goods or its parts or for any service, then GST will be payable on such supply with respect to such additional consideration.



SCENARIO 2

DISTRIBUTOR PROVIDES WARRANTY RELACEMENT AND/OR REPAIR SERVICES TO THE CUSTOMER ON BEHALF OF THE MANUFACTURER



Taxability of the transaction/activity undertaken between Distributor and Customer

Issue 1: Whether GST would be payable on replacement of goods or its parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?

Clarification: There may be instances where a distributor of a company provides replacement of goods or its parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer.

In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of goods or its parts and/ or repair services to the customer.



No separate charges for such replacement/ repair services



No further GST payable

However, if any additional consideration is charged by the distributor from the customer, either for replacement of goods or its parts or for any service, then GST will be payable on such supply with respect to such additional consideration. Additional consideration charged for such replacement/ repair services.

Taxability of the transaction/activity undertaken between Distributor and Manufacturer

Issue 2: Whether any supply is involved between the distributor and the manufacturer in case of replacement of GOODS OR ITS PARTS by distributor?

Clarification: There can be 4 instances as discussed below:-



<i>In case where</i>	<i>In such a case</i>
<p><i>Distributor replaces the goods or its part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer.</i></p>	<p><i>GST would be payable by the distributor on the said supply by him to the manufacturer.</i></p>
<p><i>Distributor raises a requisition to the manufacturer for the goods or its part(s) to be replaced by him under warranty and the manufacturer then provides the said goods or its part(s) to the distributor for the purpose of such replacement to the customer as part of warranty without separately charging any consideration at the time of such replacement.</i></p>	<p><i>No GST is payable on such replacement of goods or its part(s) by the manufacturer.</i></p>
<p><i>Distributor replaces the goods or its part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the goods or its part(s) so replaced subject to provisions of section 34(2)⁴⁰.</i></p>	<p><i>Accordingly, the tax liability may be adjusted by the manufacturer subject to the condition that such distributor has reversed the ITC availed⁴¹ against such goods/parts.</i></p>

⁴⁰ Provisions of section 34(2) have been discussed in detail in Chapter 10: Tax invoice; Credit and Debit Notes in Module 2 of this Study Material.

⁴¹ Provisions of ITC (Input Tax Credit) have been discussed in detail in Chapter 8: Input Tax Credit in Module 2 of this Study Material.

Distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods or the parts. The manufacturer then provides the said goods or the parts to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment.

No GST is payable on such replenishment of goods or the parts.

Issue 3: *Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such REPAIR SERVICES either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?*



Clarification: *In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of section 2(93)(a) of the CGST Act, 2017.*

Distributor provides repair service, in addition to replacement of parts to customer without any consideration, as part of warranty and charges the manufacturer for such repair services.

Hence, GST would be payable on such provision of service by the distributor to the manufacturer.

SCENARIO 3**EXTENDED WARRANTY**

Sometimes companies provide offers of **Extended warranty** to the customers which can be availed (i) at the time of original supply or (ii) just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?

**Clarification:**

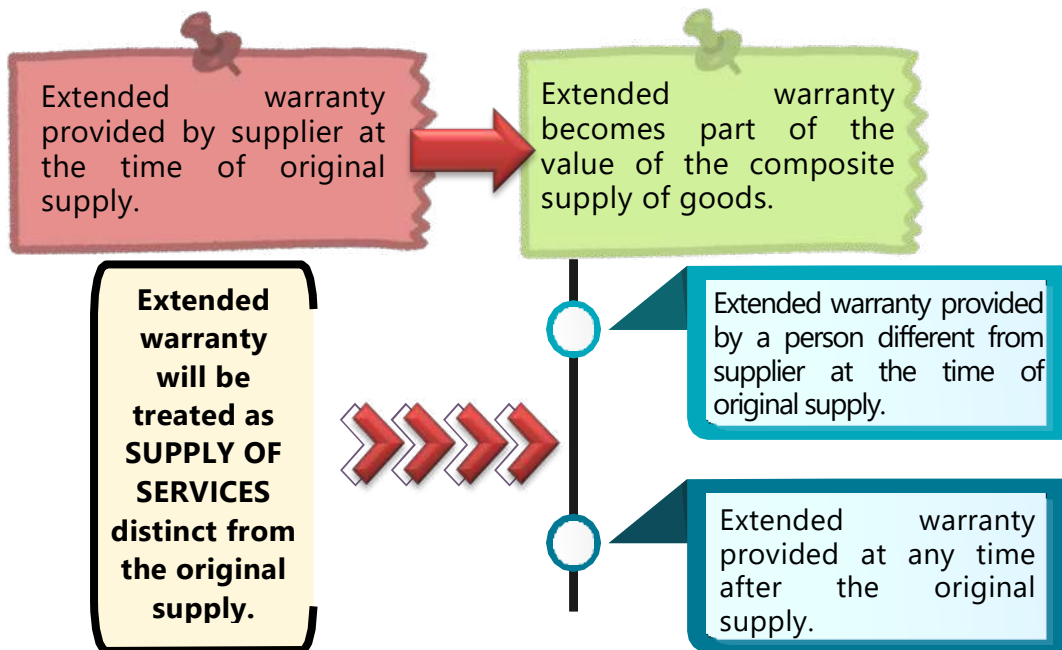
- (a) **If a customer enters into an agreement of extended warranty with the supplier of the goods at the time of original supply, then the consideration for such extended warranty becomes part of the value of the **composite supply**, the principal supply being the supply of goods, and GST would be payable accordingly.**

However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services.

- (b) **In case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same shall be treated as a supply of **services distinct from the original supply** of goods and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services^{42 43}.**

⁴² Circular No. 195/07/2023 GST dated 17.07.2023 read with Circular No. 216/10/2024 GST dated 26.06.2024

⁴³ The provisions pertaining to availability of input tax credit have been discussed in Chapter-8: Input Tax Credit of Module 2 of this Study Material.



5. Applicability of GST on Location Charges or Preferential Location Charges (PLC) collected along with consideration for sale/transfer of residential/commercial properties

Allowing choice of location of the apartment is integral part of supply of construction services. Therefore, PLC is part of consideration charged for supply of construction services before issuance of completion certificate.



Therefore, PLC paid along with the consideration for the construction services of residential/commercial/industrial complex forms part of composite supply where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply of construction service⁴⁴.

⁴⁴ Circular No. 234/28/2024 GST dated 11.10.2024



NON-SUPPLIES UNDER GST


- I. Activities/transactions specified under Schedule III:** Section 7(2)(a) provides activities or transactions specified in **Schedule III** shall be treated neither as a supply of goods nor a supply of services. Schedule III specifies transactions/ activities which shall be neither treated as supply of goods nor as supply of services. Thus, the activities/transactions specified under this schedule can be termed as Non-Supplies under the GST regime. In a way, it is a “Negative list” for the purposes of taxation in GST.

It is important to note that apart from the activities specified in Schedule III, some activities have been notified by the Government vide different notifications, which are also to be considered as non-supplies. Further, some circulars have been issued clarifying that certain transactions are to be considered as non-supplies.

Hence, our discussion under this heading will revolve around the following:

- A. Non-supplies listed in Schedule III
- B. Non-supplies notified vide notification
- C. Non-supplies clarified by way of circular

A. NON-SUPPLIES LISTED IN SCHEDULE III

Para No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	<p>Services by an employee to the employer in the course of or in relation to his employment.</p> <p> (63) Services provided by casual worker to employer who gives wages on daily basis to the worker are services provided by the worker in the course of employment.</p>

(64) Casual workers employed by a construction contractor for execution of a building contract for him are services in the course of employment. Similarly, casual workers employed by a security services agency for provision of security services to a client are also services in the course of employment.



Only services that are provided by the employee to the employer in the course of employment are outside the realm of supply. However, services provided outside the ambit of employment for a consideration would qualify as supply⁴⁵.

(65) Annapurna is a director in Nilgiri Ltd. receiving remuneration which is declared as salaries in the books of the company and subject to TDS under section 192 of the Income-tax Act, 1961. In this case, services provided by Annapurna to Nilgiri Ltd. are in course of her employment with the company.



(66) Services provided on contract basis by a person to another i.e. principal-to-principal basis are not services provided in the course of employment⁴⁶.

(67) Any amount paid by employer to employee for not joining a competing business is paid for providing the service of forbearance to act and cannot be considered for providing services in the course of employment.

(68) Annapurna, an independent director in Nilgiri Ltd., receives a sitting fee of ₹ 12,000. Since as per the Companies Act, 2013, independent director should not have been an employee of the company, services provided by Annapurna to Nilgiri Ltd. are not in course of employment.

⁴⁵ Also, refer Circular No. 213/07/2024 GST dated 26.06.2024 discussed at the end of the Table.

⁴⁶ Discussion based on Service Tax Education Guide issued under erstwhile under service tax law.

2. Services by any court or Tribunal established under any law for the time being in force.

Explanation – The term "**Court**" includes District Court, High Court and Supreme Court⁴⁷.



Leviability of GST on amounts/fees charged by Consumer Disputes Redressal Commission

In order to provide inexpensive, speedy and summary redressal of consumer disputes, quasi-judicial bodies are set up in each District and State and at the National level, called the District Forums, the State Consumer Disputes Redressal Commissions and the National Consumer Disputes Redressal Commission respectively.

Consumer Disputes Redressal Commissions (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a Tribunal⁴⁷.

⁴⁷ Consumer Disputes Redressal Commissions are clothed with the characteristics of a Tribunal on account of the following: -

- (1) Statement of objects and reasons as mentioned in the Consumer Protection Bill state that one of its objects is to provide speedy and simple redressal to consumer disputes, for which a quasi-judicial machinery is sought to be set up at District, State and Central levels.
- (2) The President of the District/State/National Disputes Redressal Commissions is a person who has been or is qualified to be a District Judge, High Court Judge and Supreme Court Judge respectively.
- (3) These Commissions have been vested with the powers of a civil court under CPC for issuing summons, enforcing attendance of defendants/witnesses, reception of evidence, discovery/production of documents, examination of witnesses, etc.
- (4) Every proceeding in these Commissions is deemed to be judicial proceedings as per sections 193/228 of IPC. The Commissions have been deemed to be a Civil Court under CrPC.
- (5) Appeals against District Commissions lie to State Commission while appeals against the State Commissions lie to the National Commission. Appeals against National Commission lie to the Supreme Court.

Consequently, fee paid by litigants while registering complaints to said Commissions are not leviable to GST. Any penalty in cash imposed by or amount paid to these Commissions will also not attract GST [Circular No. 32/06/2018 GST dated 12.02.2018].

3.

(a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.



(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity.



(69) Duties performed by President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner, C & AG, Chairman of Union Public Service Commission, Attorney General of India, in that capacity.

(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4.

Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

5.

Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building, (i.e. in case, where entire consideration for sale of building received after issuance of



completion certificate or after its first occupation, whichever is earlier).

Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered under this para and accordingly, does not attract GST.

However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services⁴⁸.

6.

Actionable claims, other than **specified actionable claims**. **'Actionable claims'** are specifically included in the definition of goods under section 2(52) [Refer the definitions of 'actionable claims' and 'goods' given under heading 'Relevant Definitions']. However, this para of Schedule III specifically excludes actionable claims, other than **specified actionable claims** from the ambit of definition of supply.

Co-joint reading of said provisions implies that **only specified actionable claims are treated as supply. All other actionable claims are outside the ambit of definition of supply.**

Now the question arises, what are the specified actionable claims?

Specified actionable claim means the actionable

Specified actionable claims

claim involved in or by way of—

- (i) betting;**
- (ii) casinos;**
- (iii) gambling;**
- (iv) horse racing;**
- (v) lottery; or**



⁴⁸ Circular No. 177/09/2022 GST dated 03.08.2022

(vi) **online money gaming** [Section 2(102A)].

Online money gaming means **online gaming**** in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets⁴⁹, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.

Online money gaming



****Online gaming** means offering of a game on the internet or an electronic network and includes online money gaming [Section 2(80A)].

Online gaming



(70) Some of the other

examples of actionable claims are: Right to recover insurance money, claim for arrears of rent, claims for future rents (if these can be assigned), unsecured loans, unsecured debentures, bills of exchange, promissory notes, bank guarantee, Fixed Deposit

⁴⁹ Virtual digital asset shall have the same meaning as assigned to it in section 2(47A) of the Income-tax Act, 1961 [Section 2(117A)].

Receipt, right to the benefit of a contract, etc. These are not considered as supply of goods or services.

7. **'Merchant trading'**: Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.



(71) Vivekanand purchased goods from USA and sold it to George in Canada without bringing the goods in India. This transaction is neither supply of goods nor supply of services.

8. (a) **'In-bond sales'**: Supply of warehoused goods to any person before clearance for home consumption.



(72) Radheyshyam imported some goods in India but kept the goods in **custom bonded warehouse** without clearing it for home consumption. In the meantime, Radheyshyam sold these goods to Sitaram while they were in warehouse. This transaction between Radheyshyam and Sitaram is neither supply of goods nor supply of services.

- (b) **High Sea Sales**: Supply of goods by the consignee to any other person, **by endorsement of documents of title to the goods**, after the goods have been



dispatched from the port of origin located outside India but before clearance for home consumption.



(73) Prasoon of India imported some goods from Japan. While the goods were in **high seas**,

Prasoon sold the goods to Jinesh in India by way of endorsement of documents of title of goods. This transaction between Prasoon and Jinesh is neither supply of goods nor supply of services.

ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company

Some of the Indian companies provide the option to their employees for allotment of securities/shares of their foreign holding company as part of the compensation package as per terms of contract of employment. In such cases, on exercising the option by the employees of Indian subsidiary company, the securities/shares of foreign holding company are allotted directly by the holding company to the concerned employees of Indian subsidiary company and the cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company.



In case where securities/shares of the foreign holding company are transferred to the employees of domestic subsidiary company as Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU)⁵⁰, GST is not leviable on the compensation paid to the employee by the employer as per the terms of employment contract since as seen earlier, the purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services. Moreover, the ESOP/ESPP/RSU is a part of remuneration of the employee by the employer as per terms of employment and is covered under Para 1 of Schedule III of the CGST Act.

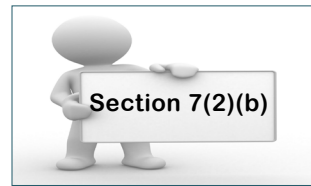
⁵⁰ ESPPs and ESOPs are typically presented as 'options' granted to employees, whereas RSUs take the form of awards or rewards contingent upon the employee meeting specific performance standards.

When reimbursement for transfer of securities/shares (which is neither in the nature of goods nor services) is done by domestic subsidiary company to foreign holding company on cost-to-cost basis, the same cannot be treated as import of services by the domestic subsidiary company from the foreign holding company and hence, is not liable to GST.



If the foreign holding company charges any additional fee, markup, or commission from the domestic subsidiary company for issuing ESOP/ESPP/RSU to the employees of the domestic subsidiary company, then the same shall be considered to be in nature of consideration for the supply of services of facilitating/arranging the transaction in securities/shares by the foreign holding company to the domestic subsidiary company. The GST shall be payable by the domestic holding company on reverse charge basis on such import of services from the foreign holding company⁵¹.

B. NON-SUPPLIES NOTIFIED VIDE NOTIFICATION

Government is empowered to notify the activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as the activities/transactions which shall be treated neither as supply of goods nor as supply of services. Till now, following two activities/transactions have been notified under said clause:



(i) Activity in relation to Panchayat/Municipality functions: Services

 <p>Panchayat Functions</p>	<p>by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a</p>	 <p>Municipality Functions</p>
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⁵¹ Circular No. 213/07/2024 GST dated 26.06.2024

Municipality under article 243W of the Constitution are treated neither as a supply of goods nor as a supply of service ⁵².

(ii) Grant of alcoholic liquor licence: Services by way of **grant of alcoholic liquor licence by the State Governments** are treated neither as a supply of goods nor as a supply of service ⁵³.

Such licence is granted against consideration in the form of licence fee or application fee or by whatever name it is called.



This special dispensation is applicable only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States.

**Grant of licence
for alcoholic
liquor**

Hence, this is not applicable/has no precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

It may be noted that services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Tax is required to be paid by the business entities on such services under reverse charge ⁵⁴.

C. NON-SUPPLIES CLARIFIED BY WAY OF CIRCULAR

CBIC has clarified that following activities/transactions are non-supplies:

⁵² notified vide Notification No. 14/2017 CT (R) dated 28.06.2017/ Notification No. 11/2017 IT (R) dated 28.06.2017, as amended

⁵³ notified vide Notification No. 25/2019 CT (R) dated 30.09.2019/ Notification No. 24/2019 IT (R) dated 30.09.2019

⁵⁴ Circular No. 121/40/2019 GST dated 11.10.2019

(i) Inter-State movement of various modes of conveyance

Inter-State movement of various modes of conveyance, between distinct persons including-

- Trains,
- Buses,
- Trucks,
- Tankers,
- Trailers,
- Vessels,
- Containers,
- Aircrafts,

(a) carrying goods or passengers or both; or

(b) for repairs and maintenance,

[except in cases where such movement is for further supply of the same conveyance] shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST.

However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017**].

(ii) Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes]

Above circular shall *mutatis mutandis* apply to **inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes], [except in cases where movement of such goods is for further supply of the same goods], such **inter-State movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements.**



In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods [*Circular No. 21/21/2017-GST dated 22.11.2017*].

In the preceding paras, we have discussed, how to determine whether a given activity or transaction constitutes a supply. Once an activity or transaction qualifies as supply, one needs to determine whether the same is leviable to GST or not.

Though the provisions relating to levy and collection of GST have been *discussed at length in Chapter 2 – Charge of GST in this Module of the Study Material*, a brief idea of the same is provided hereunder.

Supply Leviable to GST

For a supply to attract GST, primarily two additional conditions need to be satisfied. These are – (i) supply must be made by a taxable person and (ii) supply must be a taxable supply. These two additional conditions have been discussed hereunder:

(i) Supply by a taxable person

A supply to attract GST should be made by a taxable person.



A supply attracting GST can be made **TO** a non-taxable person also.

The restriction of being a taxable person is only on the supplier whereas the recipient can be either taxable or non-taxable.

Meaning of taxable person: A “taxable person” is a person who is registered or liable to be registered under section 22 or section 24 [*The said sections and the concept of taxable person thereto have been discussed in detail in Chapter 8 – Registration in Module 2 of the Study Material*].

Hence, a person who is liable to be registered but does not take a registration and remains an unregistered person shall be construed as a taxable person.

Similarly, a person not liable to be registered, but has taken got himself registered by taking a voluntary registration and got himself registered is also a taxable person.


(ii) Taxable supply

For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the GST Law [Section 2(108)] [Refer Chapter-2: Charge of GST in this Module of the Study Material for detailed discussion on leviability of GST].

On the other hand, exempt supply means supply of any goods or services or both which attract **nil rate of tax** or which may be **wholly exempt from tax*** under section 11 of the CGST Act, or under section 6 of the IGST Act, and includes **non-taxable supply** [Section 2(47)]

**Exemptions may be provided to the specified goods or services or to a specified category of persons/ entities making supply [Refer Chapter-4: Exemptions from GST in this Module of the Study Material for detailed discussion].*

 **4. COMPOSITE AND MIXED SUPPLIES [SECTION 8]**

 STATUTORY PROVISIONS	
Section 8	<i>Tax liability on composite and mixed supplies</i>
Clauses	<i>Particulars</i>
	<i>The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-</i>
(a)	<i>a composite supply</i> comprising two or more supplies, one of which is a principal supply, shall be treated as a <i>supply of such principal supply</i> ; and

(b)

*a mixed supply comprising of two or more supplies shall be treated as supply of that particular **supply that attracts highest rate of tax.***



ANALYSIS

GST is payable on goods or services or both at the notified rates. Classification of any supply (whether as goods or services, the category of goods or services) is essential to determine the applicable rate of GST on the particular supply. The application of rates poses no problem if the supply is of individual goods or individual services, which is clearly identifiable and such goods or services are subject to a particular rate of tax.

However, in certain cases, supplies are not so simple and clearly identifiable. Sometimes supplies are a combination of goods or combination of services or combination of both goods and services and each individual component of such supplies may attract a different rate of tax.

In such cases, the rate of tax to be levied on such supplies may be a challenge. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.

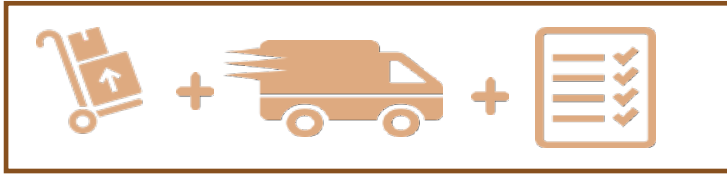
In order to determine whether the supplies are 'composite supply' or 'mixed supply', one needs to determine **whether the supplies are naturally bundled or not naturally bundled in ordinary course of business.** The concept of 'naturally bundled' supplies is emanating from the definition of 'composite supply'.

COMPOSITE SUPPLIES

Composite supply means a supply made by a taxable person to a recipient and:

- comprises two or more taxable supplies of goods or services or both, or any combination thereof.
- which are naturally bundled and supplied in conjunction with each other, in the ordinary course of business
- one of which is a principal supply [Section 2(30)].

This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'.



Principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. [Section 2(90)]

Works contract and restaurant services are classic examples of composite supply, but the GST law identifies both as supply of services *[as you would have seen in the discussion on Schedule II of the CGST Act earlier in this Chapter]* and chargeable to specific rate of tax mentioned against each of such services (works contract or restaurant).

However, in respect of other composite supplies (i.e. other than the two categories mentioned above), the need to determine the supply as a composite one, will arise, so as to determine the appropriate classification of such supply as supply of goods or supply of services as also the appropriate rate of tax.

It will be necessary to determine as to whether a particular supply is naturally bundled in the ordinary course of business and what constitutes principal supply in such composite supplies.

How to determine whether the services are bundled in the ordinary course of business?

Whether the services are bundled in the ordinary course of business or not, would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:

- ❑ **The perception of the consumer or the service recipient** - If large number of service recipient of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.



(74) Mobile phone is always sold with battery.

- ❑ **Majority of service providers in a particular area of business provide similar bundle of services.**



(75) Bundle of services of catering on board and services of transport by air is a bundle offered by a majority of airlines.

- ❑ The **nature of the various services in a bundle of services** will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service, then it would be treated as services bundled in the ordinary course of business.



(76) Service of stay in a hotel is often combined with provision of breakfast and dinner provided free of cost during the stay. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- ❑ **Other illustrative indicators**, not determinative but indicative of bundling of services in the ordinary course of business are:
 - ✓ There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
 - ✓ The elements are normally advertised as a package.
 - ✓ The different elements are not available separately.
 - ✓ The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected.



No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

The above principles explained in the light of what constitutes a naturally bundled service can be gainfully adopted to determine whether a particular supply constitutes a composite supply under GST and if so what constitutes the principal supply so as to determine the right classification and rate of tax of such composite supply.

Some of the examples of composite supplies have been given below:



(77) A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:

- Accommodation for the delegates
- Breakfast for the delegates,
- Tea and coffee during conference
- Access to fitness room for the delegates
- Availability of conference room
- Business centre

As is evident a bouquet of services is being provided, many of them are chargeable to different effective rates of tax. If the principal service is described as convention service it is able to capture the entire essence of the package. Thus, the principal service may be judged as convention service and charged to tax accordingly.

However, it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.



(78) Poshak Manufacturers entered into a contract with Cheeku Ltd. for supply of readymade shirts packed in designer boxes at Cheeku Ltd.'s outlet. Further, Poshak Manufacturers would also get them insured during transit. In this case, supply of goods, packing materials, transport & insurance is a composite supply wherein supply of goods is principal supply.



(79) When a consumer buys a television set and he also gets mandatory warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance services are ancillary.



(80) A travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, and the use of airport lounge. In this case, the transportation of passenger, constitutes the pre-dominant

element of the composite supply, and is treated as the principal supply and all other supplies are ancillary.

How to determine the tax liability on composite supply?: A **composite supply** comprising of two or more supplies, one of which is a principal supply, shall be treated as a **supply of such principal supply**. Accordingly, the entire value of composite supply [i.e. main supply + ancillary supply(ies)] shall be classified under the category of main supply and shall be taxed at the GST rate applicable to the main supply. This can be better understood with the help of following example:



(81) Rati Computers supplies laptop (worth ₹ 52,000) alongwith laptop bag (worth ₹ 3,000) to a customer for ₹ 55,000. Being naturally bundled, supply of laptop bag along with the laptop is composite supply which is treated as the supply of the principal supply [viz. laptop]. Assuming that the rate of tax applicable on laptop is 18% and on laptop bag is 28%, in the given case, rate of principal supply, i.e. laptop @ 18% will be charged on the entire value of ₹ 55,000.

CBIC, in the following cases, has clarified issues as to whether the given supplies are composite supply and if yes, what constitutes the principal supply in the given composite supply:

1. Printing industry issues

The printing industry in India in particular faced a dilemma in determining whether the nature of supply provided was that of goods or services. Another doubt was whether in case where certain contracts involved both supply of goods and services, whether the same would constitute a supply of goods or services or if it would be a composite supply and in case it is, then what would constitute the principal supply.



Thus, it is clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods,

are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only **content is supplied by the publisher** or the person who owns the usage rights to the intangible inputs while the **physical inputs including paper used for printing belong to the printer, supply of printing** [of the content supplied by the recipient of supply] is the **principal supply** and therefore such supplies would constitute **supply of service**.

In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the **printer using its physical inputs** including paper to print the **design, logo etc. supplied by the recipient** of goods, predominant supply is **supply of goods** and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods⁵⁵.

2. Food supplied to the patients

Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of health care and not separately taxable. However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable⁵⁶.

3. Activity of bus body building

In the case of bus body building, there is supply of goods and services. Thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case⁵⁷.

⁵⁵ Circular No. 11/11/2017 GST dated 20.10.2017

⁵⁶ Circular No. 32/6/2018 GST dated 12.02.2018

⁵⁷ Circular No. 34/8/2018-GST dated 01.03.2018

4. Retreading of tyres

In retreading of tyres, which is a composite supply, the pre-dominant element is process of retreading which is a **supply of service**. Rubber used for retreading is an ancillary supply.

Supply of retreaded tyres⁵⁸, where the old tyres belong to the supplier of retreaded tyres, is a **supply of goods**⁵⁹.

5. Supply of food and beverages at cinema halls taxable as restaurant service

Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema also.

The cinema operator:

(i) may run these refreshment/eating stalls/ kiosks/ counters/ restaurant themselves

or

(ii) they may give it on contract to a third party.

The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services. Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may or may not avail.

It is hereby clarified that:

⁵⁸ Retread tyres are revamped tyres on which the worn out tread (the part of the tire that makes contact with the surface of the road) is replaced using new tread.

⁵⁹ Circular No. 34/8/2018-GST dated 01.03.2018

- (i) **supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:**
- (a) **the food or beverages are supplied by way of or as part of a service, and**
 - (b) **supplied independent of the cinema exhibition service.**
- (ii) **where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply⁶⁰.**



MIXED SUPPLIES

Mixed supply means:

- ❑ two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person
- ❑ for a single price where such supply does not constitute a composite supply [Section 2(74)].

The individual supplies are independent of each other and are not naturally bundled.



How to determine if a particular supply is a mixed supply?: In order to identify if the particular supply is a mixed supply, the first requisite is to rule out that the supply is a composite supply. A supply can be a mixed supply only if it is not a composite supply. As a corollary, it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business, then the possibility of it being a mixed supply needs to be checked.

⁶⁰ Circular No. 201/13/2023 GST dated 01.08.2023

Once the amenability of the transaction as a composite supply is ruled out, and a single consideration is charged for the entire supply of different components, it would be treated as a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.



(82) A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately or separate prices are charged.



(83) A shopkeeper selling storage water bottles along with refrigerator for a single price. Bottles and the refrigerator can easily be priced and sold independently and are not naturally bundled. So, such supplies are mixed supplies.



(84) A house is given on rent through a single rent deed - one floor of which is to be used as residence and the other for housing a printing press, at a lump sum rent amount. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Said supplies are mixed supply.

How to determine the tax liability on mixed supply?: A mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax.



(85) Sringaar Enterprises supplies 10,000 kits (at ₹ 50 each) amounting to ₹ 5,00,000 to Raghav General Store. Each kit consists of 1 face cream, 1 face tissue packet and 1 nail paint. It is a mixed supply and is treated as supply of that particular supply which attracts highest tax rate. Assuming that the rate of tax applicable on face cream is 18%, on face tissue packet is 28% and on nail paint is 12%, in the given case, highest tax rate [viz. face tissue packet] @ 28% will be charged on the entire value of ₹ 5,00,000.

More than one supply made together and taxed at the individual rates

There can also be a case where an activity/transaction involves more than one supply of goods or services or both, but neither they are composite supplies nor can be categorised as mixed supplies, that is, all supplies carry independent significance. In such a case, if separate consideration is indicated against each

supply, each such supply shall be charged at the respective rate applicable to that particular supply.



(86) In case of servicing of cars involving supply of both goods (spare parts) and services (labour) where the value of goods and services are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately⁶¹.



LET US RECAPITULATE

- ❑ The taxable event under GST is supply. The scope of supply under GST can be understood in terms of following parameters:

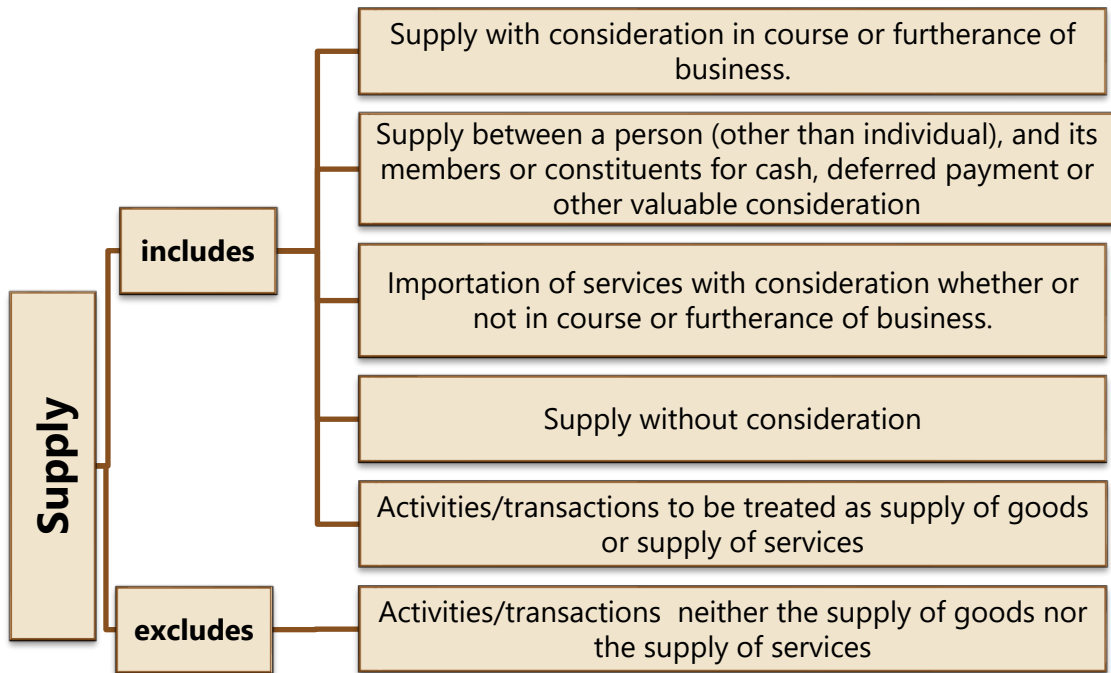
Supply should be of goods or services

Supply should be made for a consideration

Supply should be made in the course or furtherance of business

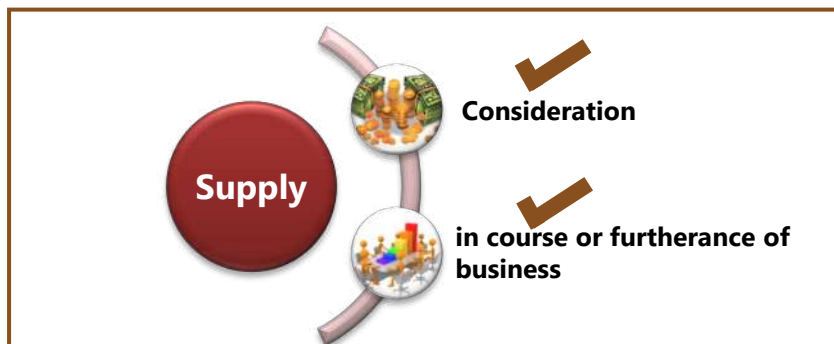
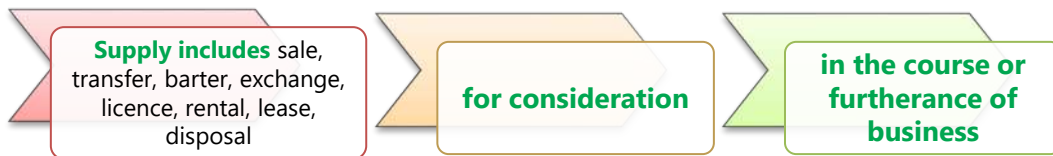
- ❑ While these parameters describe the concept of supply, under certain circumstances, transactions have been deemed as supply even when the supply is made without consideration or not in the course or furtherance of business. Activities specified in Schedule I are deemed to be a supply even without consideration. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.
- ❑ Besides, some specified transactions/ activities are neither treated as supply of goods nor a supply of services. Furthermore, certain activities have been categorised as supply of goods or as supply of services.
- ❑ The discussion with respect to supply is broadly categorised into following:

⁶¹ Circular No. 47/21/2018 GST dated 08.06.2018

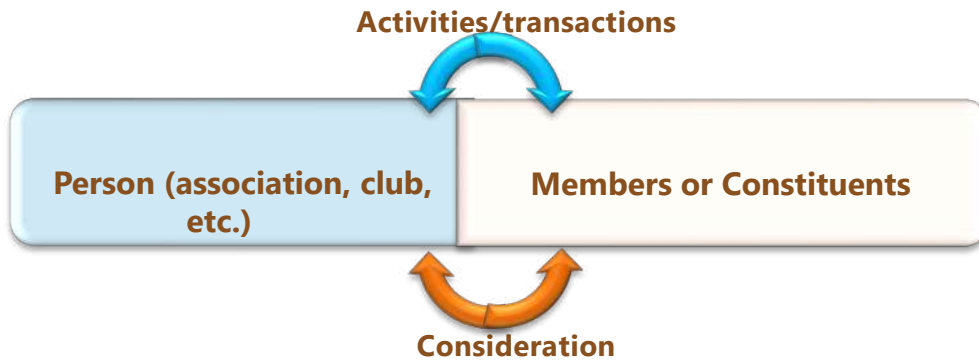


Sub-sections of section 7 alongwith related Schedules have been summarised as follows:

1. Supply for consideration in course or furtherance of business [Section 7(1)(a)]

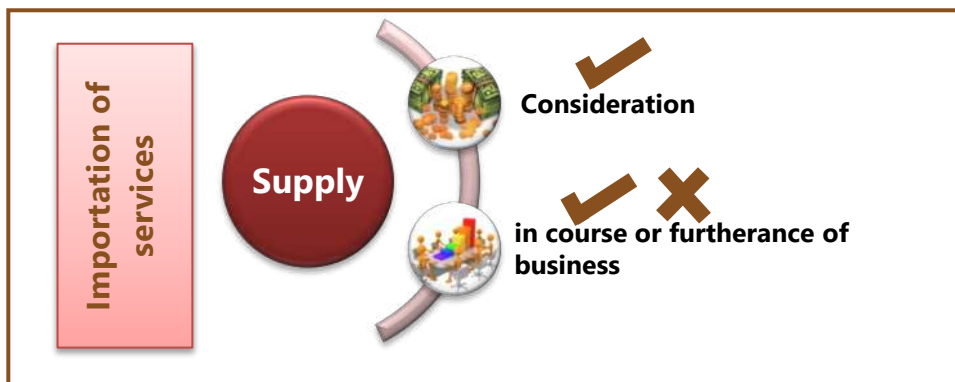


2. **Activities/transactions between a person, other than an individual, and its members or constituents for valuable consideration [Section 7(1)(aa)]**



3. **Importation of services for consideration whether or not in course or furtherance of business [Section 7(1)(b)]**

Supply should be in course or furtherance of business. The exception to said rule is import of services is deemed as supply even if the same has been imported not in course/furtherance of business.

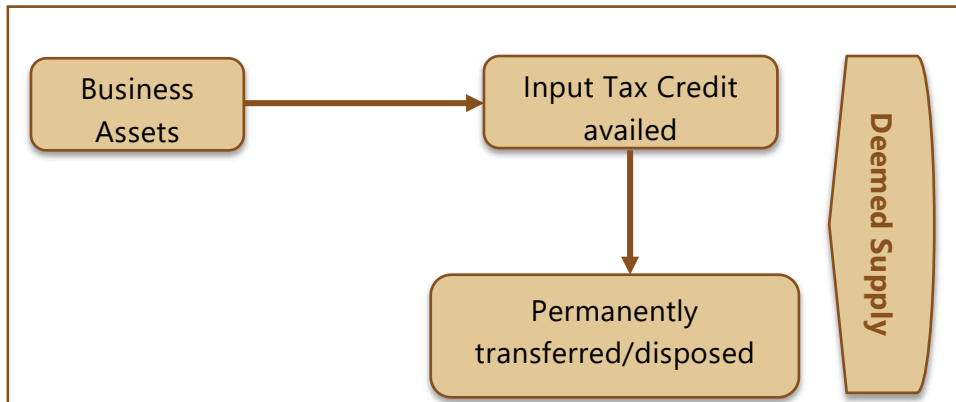


4. **Supply without consideration – Deemed Supply [Section 7(1)(c) read with Schedule I]**

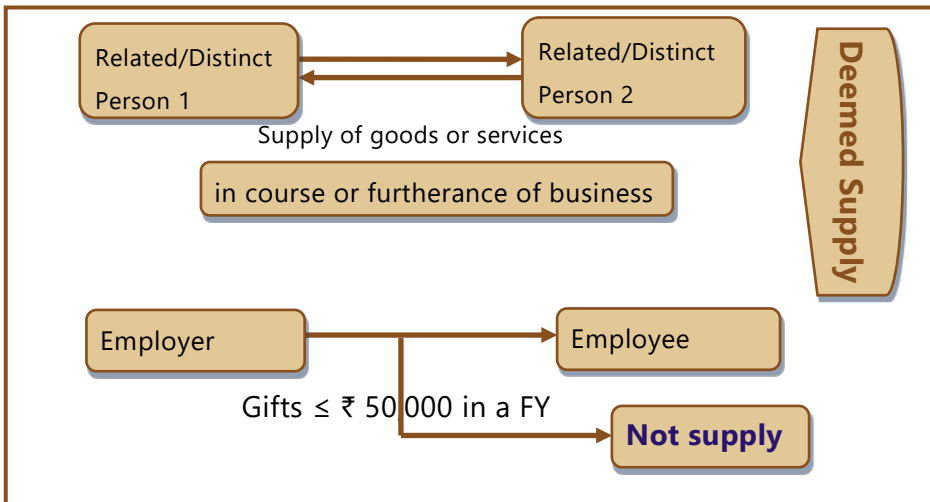
This includes all supplies made to a taxable or non-taxable person, even if the same is without consideration. These are specifically mentioned in Schedule I appended to the CGST Act.

As per Schedule I, in the following four cases, **supplies made without consideration** will be treated as supply under section 7:

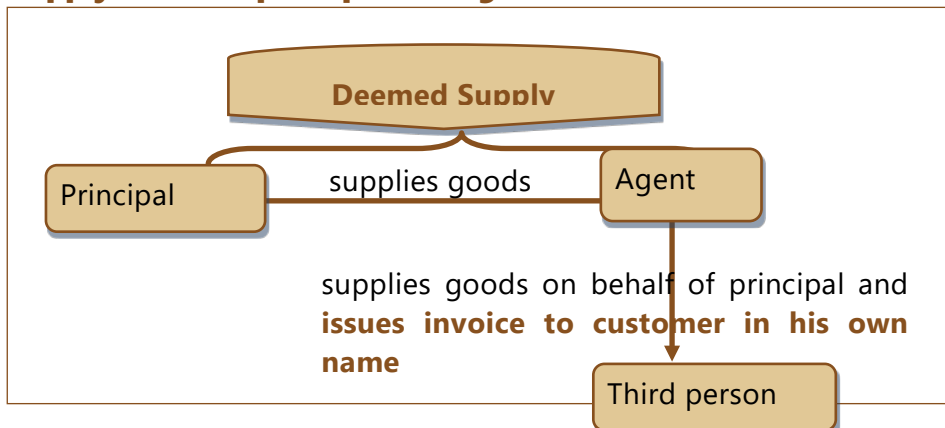
I. Permanent transfer/disposal of business assets

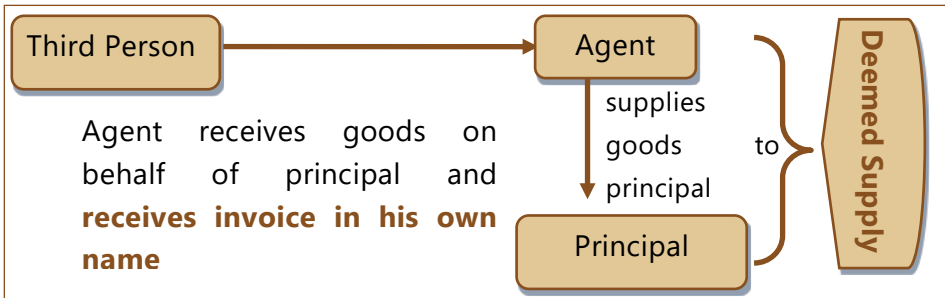


II. Supply between related persons or distinct persons

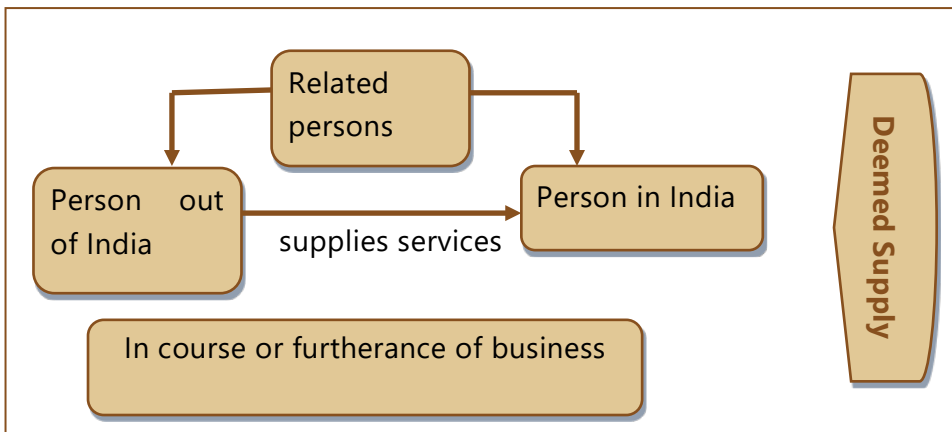


III. Supply between principal and agent



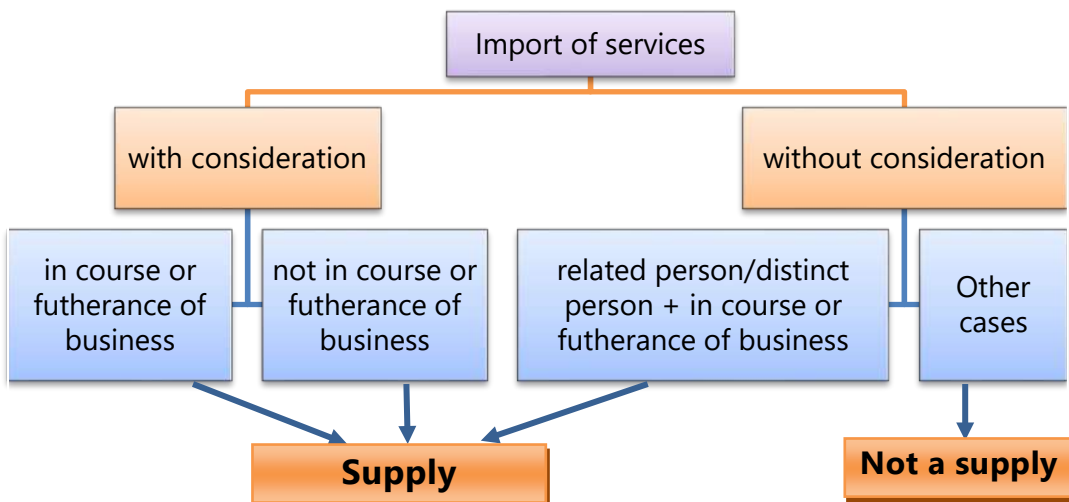


IV. Importation of services



The combined provisions of relating to import of services [as stipulated under section 7(1)(b) and section 7(1)(c) read with Schedule I] have been depicted in the below mentioned diagram:

Import of services



4. Activities or transactions to be treated as supply of goods or supply of services [Section 7(1A) read with Schedule II]

Para No.	Activity/ Transaction	Type	Supply of goods/ services
1.	Transfer	(i) Title in goods (ii) Title in goods under an agreement that property shall pass at a future date.	Goods
		Right/undivided share in goods without transfer of title in them	Services
2.	Land and Building	Lease, tenancy, easement, licence to occupy land	Services
		Lease/letting out of building including a commercial/ industrial/ residential complex for business/ commerce, wholly/ partly.	Services
3.	Treatment or Process	Applied to another person's goods	Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred/disposed of by/under directions of person carrying on business so as no longer to form part of those assets	Goods
		Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business	Services

	<p>Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Business transferred as a going concern. <input type="checkbox"/> Business carried on by a personal representative who is deemed to be a taxable person. 	Goods
5.	Renting of immovable property	Services
	<p>Construction of complex, building, civil structure, etc.</p> <p>Exception: Entire consideration received after issuance of completion certificate or after its first occupation, whichever is earlier.</p>	
	Temporary transfer or permitting use or enjoyment of any intellectual property right	Services
	Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software	
	Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.	
	Transfer of right to use any goods for any purpose	
6.	<p>Following composite supplies:-</p> <ul style="list-style-type: none"> <input type="checkbox"/> Works contract 	Services

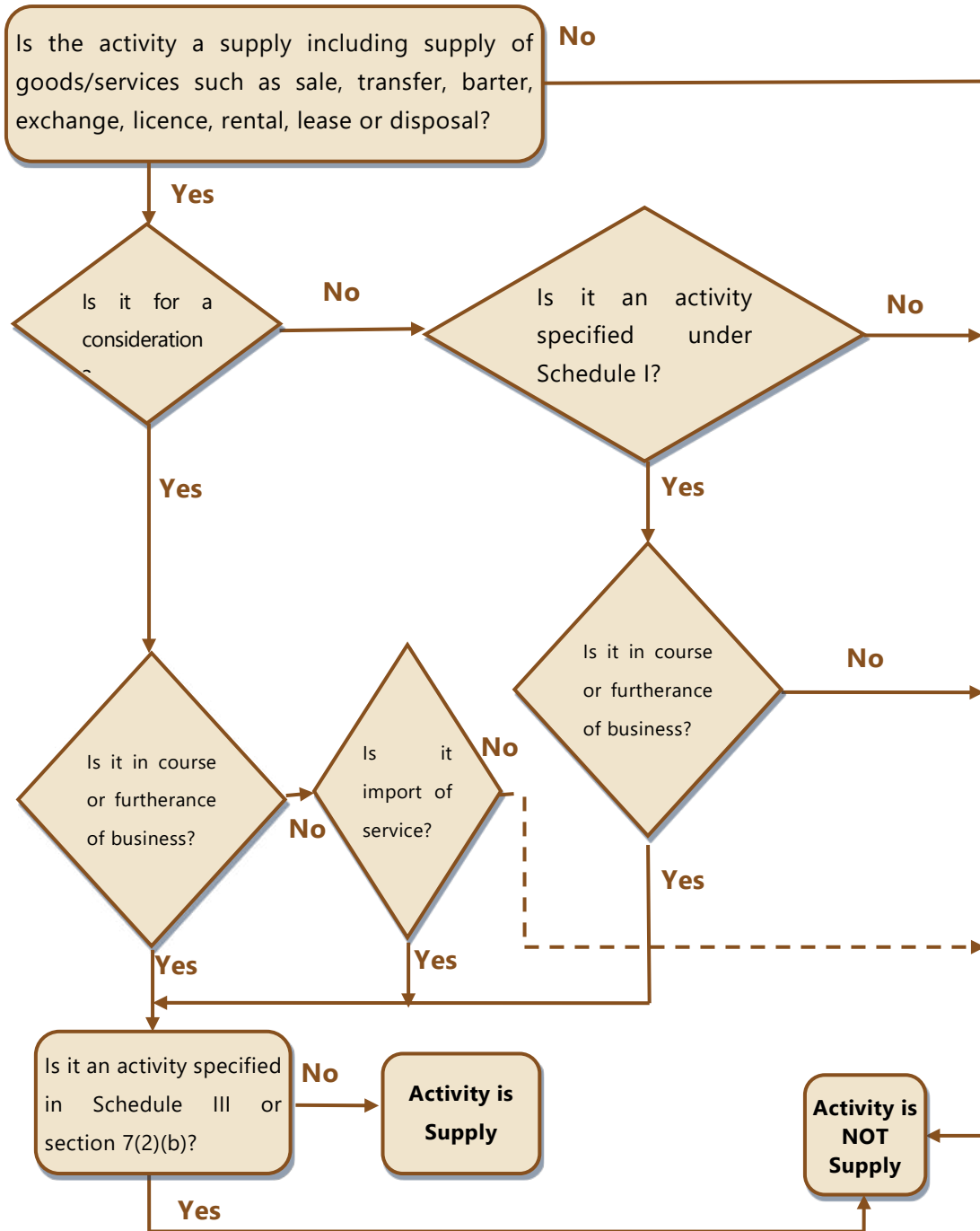
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| | <input type="checkbox"/> Supply of goods, being food or any other article for human consumption or any drink. | |
|--|---|--|

5. Non-supplies under GST [Section 7(2)(a) read with Schedule III]

Para No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	Services by an employee to the employer in the course of or in relation to his employment.
2.	Services by any court or Tribunal established under any law for the time being in force.
3.	<p>(a) Functions performed by Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities & Members of other local authorities;</p> <p>(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or</p> <p>(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.</p>
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.

6.	Actionable claims, other than specified actionable claims .
7.	Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8.	<p>(a) Supply of warehoused goods to any person before clearance for home consumption.</p> <p>(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.</p>

The diagram on next page summarises the steps to determine whether an activity undertaken is supply or not.



6. Composite and mixed supplies



Composite Supply

- Consist of two or more supplies
- Naturally bundled
- In conjunction with each other
- One of which is principal supply
- Tax liability shall be rate of principal supply
- **Example:** Charger supplied alongwith mobile phones.



Mixed Supply

- Consist of two or more supply
- Not naturally bundled
- Though can be supplied independently, still supplied together
- Tax liability shall be the rate applicable to the supply that attracts highest rate of tax
- **Example:** A gift pack comprising of chocolates, candies, sweets and balloons.



TEST YOUR KNOWLEDGE

1. *Satyamev Printers is a printing house registered under GST. It receives an order for printing 5000 copies of a book on yoga and meditation authored by a well-known yoga guru. The content of the book is to be provided by the yoga guru to Satyamev Printers. It is agreed that Satyamev Printers will use its own paper to print the said books.*

You are required to determine the rate of GST applicable on supply of printed books by Satyamev Printers assuming that rate of GST applicable on services is 18% whereas the rate of GST applicable on supply of goods is 12%.

2. *Sudama Associates, a registered supplier, disposes the computers owned by the business without consideration and it has not claimed input tax credit on such computers.*

Examine whether the disposal of computers by Sudama Associates qualifies as deemed supply under Schedule I of the CGST Act, 2017.

3. *Shivaji Pvt. Ltd., a registered supplier, supplies the following goods and services for construction of buildings and complexes -*

- *excavators for required period at a per hour rate*
- *manpower for operation of the excavators at a per day rate*
- *soil-testing and seismic evaluation at a per sample rate.*

The excavators are invariably hired out along with operators. Similarly, excavator operators are supplied only when the excavator is hired out.

For a given month, the receipts (exclusive of GST) of Shivaji Pvt. Ltd. are as follows:

- *Hire charges for excavators - ₹ 18,00,000*
- *Service charges for supply of manpower for operation of the excavator - ₹ 20,000*
- *Service charges for soil testing and seismic evaluation at three sites - ₹ 2,50,000*

Compute the GST payable by Shivaji Pvt. Ltd. for the given month.

Assume the rates of GST to be as under:

Hiring out of excavators – 12%

Supply of manpower services and soil-testing and seismic evaluation services – 18%

4. *Mr. Kanjilal Adani is an oil exploration & production contractor and is registered under GST in the State of Gujarat. He entered into a Production Sharing Contract (PSC) with Government of Gujarat wherein he gets a license to explore, exploit and sell the petroleum crude and/or natural gas from the Government in Aliabet Oilfield in lieu of royalty and a share in profit petroleum.*

In the month of June, Mr. Kanjilal Adani explored the petroleum reserves at Aliabet Oilfield. He got a portion of the petroleum silt (non-taxable under GST) worth ₹ 3,00,000 as part of compensation. This petroleum silt is part of cost petroleum as per the contract entered with the Government.

Examine the taxability of the petroleum silt received by Mr. Kanjilal Adani under the GST law.

5. *Angad Private Ltd. is engaged in the business of distribution of construction material. As an incentive, Angad Private Ltd. pays an amount of ₹ 75,000 to its employees upon achieving a specified sales target. The incentive is part of the salary of the employees and applicable tax is deducted at source as per relevant income tax provisions. Angad Private Ltd. is of the view that GST is not leviable on such incentive paid to the employees. Whether the view taken by Angad Private Ltd. is correct?*
6. *XYZ Consultancy, registered in Bangalore, supplies technical consultancy services to its clients. It has been providing technical services to BA Ltd., Mumbai since past 2 years. Consideration is settled by BA Ltd. assignment-wise. BA Ltd. paid ₹ 37 lakh to XYZ Consultancy on 10th January for XYZ Consultancy agreeing not to provide similar technical services to any other business entity in India or abroad for a period of next 8 years. XYZ Consultancy is of the view that ₹ 37 lakh is not chargeable to tax under GST law.*

You are required to examine whether the view taken by XYZ Consultancy is valid in law. It may be noted that BA Ltd. is not ready to pay any further amount to XYZ Consultancy in addition to the amount already agreed.

7. *Mokshabhumi Industries has its manufacturing unit in the State of Maharashtra. It stores the finished goods manufactured by it at a depot located in the State of Gujarat. The depot is owned by Punyabhumi Ltd. – a related person of Mokshabhumi Industries. Punyabhumi Ltd. has not charged any consideration from Mokshabhumi Industries for usage of depot for storage purpose. Whether the storage of goods permitted by Punyabhumi Ltd. to Mokshabhumi Industries qualifies as supply under GST?*
8. *Rob Shareholding Ltd., an approved intermediary, has entered into a agreement wherein certain securities were to be lent to Dhandhan Bank, under Securities Lending Scheme, 1997. Dhandhan Bank shall pay specified lending fee against*

such lending of securities to it. Explain the taxability of transactions involved in the Securities Lending Scheme, 1997.

9. *Krishnadev is a trader based in India. Ramakrishna, brother of Krishnadev, is located in China and is also engaged in business of trading of goods. Krishnadev places an order with Ramakrishna for procurement of certain goods from local market in China. Before the shipment of goods from China to India, Krishnadev sold such goods to Christiano, a trader located in Brazil. The goods were subsequently shipped from China to Brazil. Comment on the taxability of transaction between Krishnadev and Christiano under GST in India.*
10. *Mohandas International entered into a transaction for import of goods from a vendor located in Italy. Due to financial issues, Mohandas International was not in a situation to clear the goods upon payment of import duty. Mohandas International sold the goods to Radhakrishnan Export House by endorsement of title to the goods, while the goods were in high seas. The agreement further provided that Mohandas International shall purchase back the goods in future from Radhakrishnan Export House. Discuss the taxability of transaction(s) involved, under the GST law.*
11. *Mr. Happy has a huge residential property located at a prime location in Mumbai, Maharashtra. He has let out the 1st and 2nd floor to Mr. Peace for residential purposes in April. Mr. Peace surrenders his tenancy rights to Mr. Serene for a tenancy premium of ₹ 10,00,000 on 1st June. Mr. Serene has also paid the applicable stamp duty and registration charges on transfer of tenancy rights. Moreover, Mr. Serene has agreed to pay a monthly rent of ₹ 1,00,000 to Mr. Happy (unregistered under GST) from June.*

Determine the taxability of the transaction(s) involved in the given case, for the month of June.

12. (a) *Rudraksh Kapoor, owner of Rudraksh Publishing House, Ghaziabad, U.P., donated some money to Divyaprakash Charitable Trust in the memory of his late father. The Divyaprakash Charitable Trust constructed a room in the school run by it from such donation and wrote "Donated by Rudraksh Kapoor in the memory of his father" on the door of the room so constructed. Examine whether the money donated by Rudraksh Kapoor is leviable to GST.*

- (b) In the above question, if Divyaprakash Charitable Trust had written on the door of the room constructed from the money donated by Rudraksh Kapoor in the school run by it - "Donated by Rudraksh Publishing House, Ghaziabad, U.P.", would the given transaction/activity qualify as supply?
13. Mrs. Kajal, a registered supplier of Jaipur (Rajasthan), has made the following supplies in the month of January:
- (i) Supply of a laptop along with the laptop bag to a customer of Mumbai for ₹55,000 (exclusive of GST).
 - (ii) Supply of 10,000 kits (at ₹50 each) amounting to ₹5,00,000 (exclusive of GST) to Ram Fancy Store in Kota (Rajasthan). Each kit consists of 1 hair oil, 1 beauty soap and 1 hair comb.
 - (iii) 100 kits are given as free gift to Jaipur customers (all unrelated) on the occasion of Mrs. Kajal's birthday. Each kit consists of 1 hair oil and 1 beauty soap. Cost of each kit is ₹35. Input tax credit has not been taken on the goods contained in the kit.
 - (iv) Event management services provided free of cost to her brother (wholly dependent on her) for his son's marriage function in Indore (Madhya Pradesh). Cost of providing said services is ₹80,000.
 - (v) 1,400 chairs and 100 coolers hired out to Function Garden, Ajmer (Rajasthan) for ₹3,30,000 (exclusive of GST) including cost of transporting the chairs and coolers from Mrs. Kajal's godown at Jaipur to Function Garden, Ajmer. Since Mrs. Kajal is not a GTA, transportation services provided by her are exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017⁶².

Assume rates of GST to be as under:-

S. No.	Particulars	Rate of GST
1.	Laptop	18%
2.	Laptop bag	28%

⁶² Notification No. 12/2017 CT(R) dated 28.06.2017 (containing the list of services exempt from GST) has been discussed in Chapter 4 – Exemptions from GST in this Module of the Study Material.

3.	Hair oil	18%
4.	Beauty soap	28%
5.	Hair comb	12%
6.	Event management service	5
7.	Service of renting of chairs and coolers	12%
8.	Transportation service	5%

From the above information, examine each of the above supplies made by Mrs. Kajal for the month of January and determine the rate of GST applicable on the same.

14. Chandragupta Maurya is an artist who makes contemporary paintings. He is registered in the State of Kolkata. Chandragupta Maurya appoints Dhruv Kumar to auction his painting in Maharashtra. Dhruv Kumar arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by Dhruv Kumar on the behalf of Chandragupta Maurya but in his own name and the painting is delivered to the successful bidder.

Examine whether Dhruv Kumar can be considered as an agent of Chandragupta Maurya under Para 3 of Schedule I of the CGST Act, 2017.



ANSWERS

- Section 2(30) provides that a composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Circular No. 11/11/2017 GST dated 20.10.2017 has clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies.

Further, section 8(a) stipulates that a composite supply comprising two or more supplies, one of which is a principal supply, is treated as a supply of such principal supply. Hence, one needs to ascertain what constitutes the principal supply in this supply. As per section 2(90), principal supply is the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

The above circular further clarifies that in the composite supply of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.

Accordingly, in the given case, the supply of printed books by Satyamev Printers is a composite supply wherein the principal supply is supply of printing services. Thus, the rate of GST applicable thereon is the rate applicable on supply of printing services, i.e. 18%.

2. As per section 7(1)(c) read with Schedule I of the CGST Act, 2017, permanent transfer or disposal of business assets is treated as supply even though the same is made without consideration. However, this provision would apply only if input tax credit has been availed on such assets. Therefore, the disposal of computers by Sudama Associates is not a supply as the input tax credit has not been availed on the same.

3. **Computation of GST payable by Shivaji Pvt. Ltd.**

Particulars	Value of supply (₹)	Rate of GST	GST payable (₹)
Hiring charges for excavators	18,00,000	12%	2,16,000
Service charges for supply of manpower for operation of excavators [Refer Note 1]	20,000	12%	2,400

Service charges for soil testing and seismic evaluation [Refer Note 2]	2,50,000	18%	45,000
GST liability			2,63,400

Notes:

1. Since the excavators are invariably hired out along with operators and excavator operators are supplied only when the excavator is hired out, it is a case of composite supply under section 2(30) wherein the principal supply is the hiring out of the excavator.

As per section 8(a), the composite supply is treated as the supply of the principal supply. Therefore, the supply of manpower for operation of the excavators will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.

2. Soil testing and seismic evaluation services being independent of the hiring out of excavator will be taxed at the rate applicable to them, which is 18%.
4. Compensation is received by Mr. Kanjilal Adani in the form of petroleum silt which, as per the contract with the Government of Gujarat, is part of cost petroleum.

As per *Circular No. 32/06/2018 GST dated 12.02.2018*, the **cost petroleum is not a consideration received** by the oil exploration & production contractors for the services provided to Government under a Production Sharing Contract (PSC) and thus not taxable *per se*. The reason for the same is that the contractors carry exploration and **production of petroleum for themselves and not as a service to Government**. They had acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum.

Consequently, the cost petroleum received by Mr. Kanjilal Adani is not taxable under GST.

5. Yes, Angad Private Ltd.'s view is correct. In terms of section 7(2) read with Schedule III of the CGST Act, 2017, services by an employee to employer in the course of or in relation to his employment shall not be treated as supply

under GST. Further, the amount paid as incentive by Angad Private Ltd. is not in the nature of gift, and thus, is not covered under Schedule I. Infact, in the given case, the incentive is part of the salary and is directly linked to the sales target. Therefore, the services provided in course or in relation to employment by the employees for which incentives are given to them shall not be treated as a "supply".

In the light of above discussion, GST is not leviable on the incentive paid by Angad Private Ltd. to its employees.

6. In the given case, XYZ Consultancy is providing the service of agreeing to the obligation to refrain from an act to BA Ltd. against a consideration of ₹ 37 lakh [Schedule II read with *Circular No. 178/10/2022 GST dated 03.08.2022*]. Therefore, the same is liable to tax under GST law. Thus, view taken by XYZ Consultancy is incorrect.
7. As per section 7(1)(c) read with Schedule I, supply of goods or services or both between related persons without consideration when made in the course or furtherance of business qualifies as supply. Thus, the storage services provided by Punyabhumi Ltd. to Mokshabhumi Industries in course or furtherance of business qualify as supply under GST even though no consideration has been charged for the same.
8. Securities Lending Scheme, 1997 (hereafter referred to as SLS) facilitates the lending and borrowing of securities. Securities are neither covered in the definition of goods nor covered in the definition of services. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

However, SLS doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services. The lending fee charged from the borrowers of securities has the character of consideration and is taxable under GST. Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately [*Circular No. 119/38/2019 GST dated 11.10.2019*].

9. The transaction between Krishnadev and Christiano is in the nature of merchant trading. As per Schedule III, transactions involving sale of goods

from a place in non-taxable territory to another place in non-taxable territory, without such goods entering into India, shall be treated neither as supply of goods nor as supply of services under GST. Therefore, the transaction between Krishnadev and Christiano shall not be treated as supply and is thus not leviable to GST.

- 10.** As per Schedule III, high seas sale transactions i.e. supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall be treated neither as supply of goods nor as supply of services under GST. Thus, the sale of goods by Mohandas International to Radhakrishnan Export House in high seas shall not be liable to GST.

Further, the import duty including IGST shall be payable by Radhakrishnan Export House at the time of clearance of goods at port of import. In case the goods are sold back by Radhakrishnan Export House to Mohandas International at a subsequent point of time, the same shall be treated as normal domestic sale transaction and GST shall be applicable on the same subject to other conditions prescribed under GST Law.

- 11.** *Circular No. 44/2018 CT dated 02.05.2018* clarifies that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.

The transfer of tenancy rights cannot be treated as sale of land/ building in Schedule III. Thus, it is not a non-supply under GST and consequently, a consideration for the said activity shall attract levy of GST. Services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

Hence, in the given case, the tenancy premium of ₹ 10,00,000 received by Mr. Peace for surrendering his tenancy rights to Mr. Serene is liable to GST.

The circular further clarifies that since renting of residential dwelling for use as a residence to an unregistered person is exempt [Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017⁶³], grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both to an unregistered person is exempt. Consequently, monthly rent ₹ 1,00,000 received by Mr. Happy from Mr. Serene is exempt.

12. Circular No. 116/35/2019 GST dated 11.10.2019 has clarified that in case of donations received by a charitable institution, when the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). Donations received by the charitable organisations are treated as consideration only if there exists, *quid pro quo*, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).

Thus, GST is not leviable where all the following three conditions are satisfied namely:

- ❑ Gift or donation is made to a charitable organization
 - ❑ Payment has the character of gift or donation
 - ❑ Purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement.
- (a) In the backdrop of the above discussion, in the given case, the way the name of Rudraksh Kapoor is displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it is only an expression of gratitude and public recognition of Rudraksh's act of philanthropy and is not aimed at advertising or promoting his business.

⁶³ Notification No. 12/2017 CT (R) dated 28.06.2017 (containing the list of services exempt from CGST) has been discussed in Chapter 4 – Exemptions from GST in this Module of the Study Material.

There is no reference/mention of his publishing house which otherwise would have got advertised.

Thus, the money donated by Rudraksh Kapoor is not a leviable to GST.

- (b) In the given case, since the name of Rudraksh Publishing House has been displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it might be aimed at advertising or promoting his business. There is a direct mention of his publishing house which is being advertised. In such a case, it is a supply of service by Divyaprakash Charitable Trust for a consideration received in the form of donation.

13.

S. No.	Particulars	Rate of GST
(i)	Supply of laptop bag along with laptop to Mumbai customer [Being naturally bundled, supply of laptop bag along with the laptop is a composite supply which is treated as the supply of the principal supply [viz. laptop] in terms of section 8(a). Accordingly, rate of principal supply, i.e. laptop will be charged.]	18%
(ii)	Supply of kits to Ram Fancy Store [It is a mixed supply and is treated as supply of that particular supply which attracts highest tax rate [viz. beauty soap] in terms of section 8(b).]	28%
(iii)	Free gifts to customers [Cannot be considered as supply under section 7 read with Schedule I as the gifts are given to unrelated customers without consideration.]	Nil
(iv)	Event management services provided free of cost to her brother [who is a related person] for his son's	5%

	marriage. Thus, said services shall fall within the purview of Schedule I and shall be treated as supply even if made without consideration. Since it is an individual supply, it will be taxed at the rate applicable on said service.	
(v)	Chairs and coolers hired out to Function Garden [Transportation services provided by Mrs. Kajal are exempt. However, since chairs and coolers are hired out along with their transportation, it is a case of composite supply wherein the principal supply is hiring out of chairs and coolers. Accordingly, transportation service will also be taxed at the rate applicable for renting of chairs and coolers*]	12%

**Note: As per section 2(30), composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies. Since in point (v), service of hiring out of chairs & coolers is taxable while transportation service is exempt, it is possible to take a view that this is not a case of composite supply.*

In that case, the two services will be treated as independent services and taxed accordingly.

- 14.** An activity/transaction qualifies as supply under GST only if it is undertaken for a consideration and is in course/furtherance of business. However, supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal is considered as supply even if made without consideration provided the invoice for further supply is issued by the agent in his own name [Section 7(1)(c) read with Para 3 of Schedule I of the CGST Act, 2017].

Circular No. 57/31/2018 GST dated 04.09.2018 provides that where the invoice for further supply of goods is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of Para 3 of Schedule I

In the given case, Dhruv Kumar is not merely providing auctioneering services to Chandragupta Maurya, but is also supplying the painting on behalf of Chandragupta Maurya to the successful bidder and has the authority to transfer the title of the painting on behalf of Chandragupta Maurya. Dhruv Kumar issued the invoice in his own name for supply of the painting on the behalf of Chandragupta Maurya. Thus, Dhruv Kumar can be considered as an agent of Chandragupta Maurya under Para 3 of Schedule I.

AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2024

The Finance (No. 2) Act, 2024 came into force from 16.08.2024. However, most of the amendments made under the CGST Act and the IGST Act vide the Finance (No. 2) Act, 2024 became effective subsequently from the date notified by the Central Government in the Official Gazette.

In the table given below, the amendment in Schedule III of the CGST Act, 2017 by the Finance (No. 2) Act, 2024 has been elaborated. **Since this amendment has become effective from 01.11.2024, said amendment is not applicable for May 2025 examinations. However, said amendment is applicable for November 2025 examinations.** Therefore, students appearing in November 2025 examinations should read the amended provisions given hereunder in place of the related provisions discussed in the chapter.

Schedule III	Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2024	Remarks
		<p>Para 9 Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer⁶⁴ for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on</p>	Schedule III is amended so as to include these two activities/services in the list.

⁶⁴ Co-insurance is a practice where multiple insurance companies jointly cover a single insurance policy. Instead of a single insurer bearing the entire risk, the risk is shared between two or more insurers (called **co-insurers**). In a co-insurance agreement, each insurer agrees to cover a specific percentage of the risk and in return receives a corresponding percentage of the total premium. One of the co-insurers is designated as lead insurer.

The **lead insurer** is responsible for managing the policy, handling the administration such as claim processing and communicating with the insured. The lead insurer collects the total premium from the insured and then apportions the premium between the co-insurers (known as **co-insurance premium**) based on their respective shares of the risk, along with paying applicable taxes.

		the entire amount of premium paid by the insured.	
		<p>Para 10</p> <p>Services by insurer to the reinsurer⁶⁵ for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.</p>	

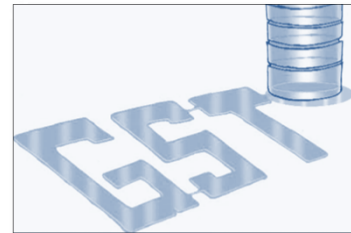
⁶⁵ Reinsurance is a risk management practice where an insurance company (called the **insurer**) transfers part of its risk to another insurance company (called **reinsurer**) in exchange for a portion of the premium that insurer collects from its policyholders, called **reinsurance premium**. This allows the insurer to manage its risk and financial exposure. The reinsurer often pays **ceding commission (also known as the reinsurance commission)** to the insurer to compensate for administrative costs, underwriting, and acquisition expenses related to issuing and servicing the policies. By receiving this commission, the insurer is compensated for expenses and reduces its overall burden, making reinsurance financially viable. Generally, while paying the reinsurance premium, insurer deducts the ceding commission/ reinsurance commission payable by reinsurer

Annexure-1

Goods and Services Tax in India

Goods and Services Tax (GST) is a path breaking indirect tax reform which attempts to create a common national market. GST has subsumed multiple indirect taxes like excise duty, service tax, VAT, CST, luxury tax, entertainment tax, entry tax, etc.

VAT and GST are often used inter-changeably as the latter denotes comprehensiveness of VAT by coverage of goods and services. France was the first country to implement VAT/GST in 1954. Presently, more than 160 countries have implemented VAT/GST in some form or the other because this tax has the capacity to raise revenue in the most transparent and neutral manner. Most of the countries follow unified GST i.e., a single tax applicable throughout the country. However, in federal polities like Brazil and Canada, a dual GST system is prevalent. Under dual system, GST is levied by both the federal and the State Governments.



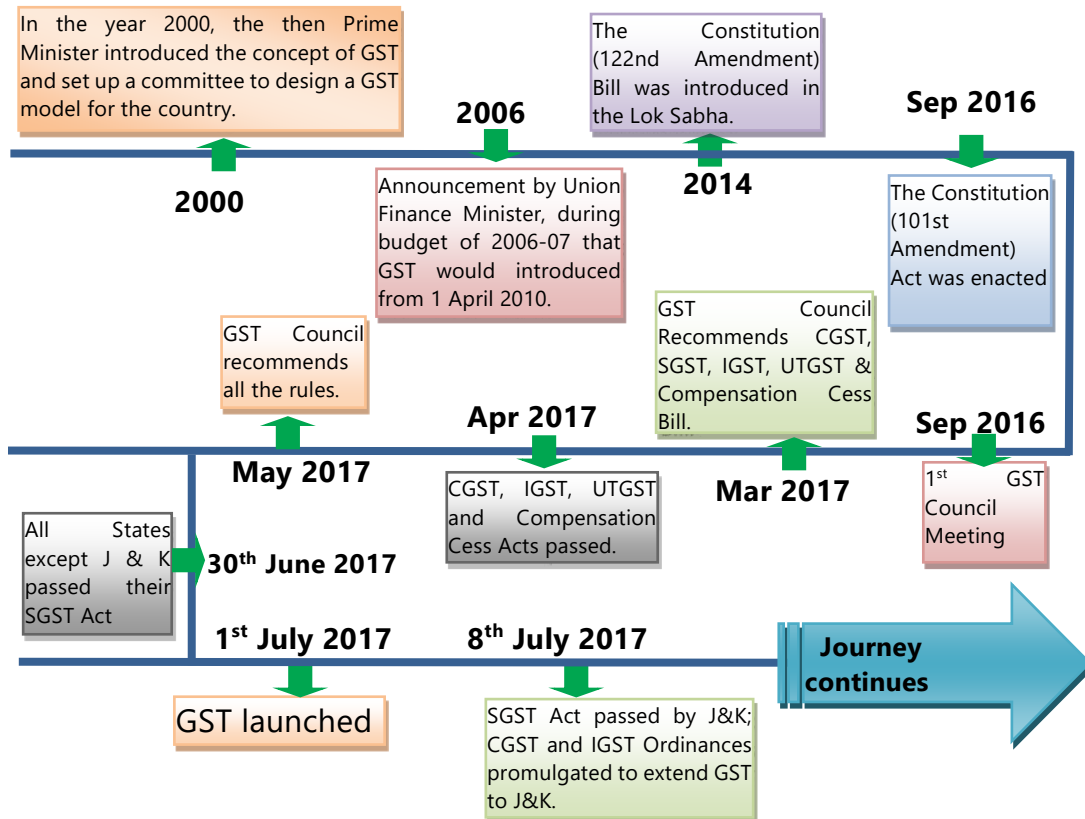
India has adopted dual GST model because of its unique federal nature.

The idea of GST was mooted in the year 2000 when the then Prime Minister set up a committee to design a Goods and Services Tax (GST) model for the country. The talks of ushering in GST, however, gained momentum in the year 2014 when the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST in the Parliament on 19th December, 2014. The Lok Sabha passed the Bill on 6th May, 2015 and Rajya Sabha on 3rd August, 2016. Subsequent to ratification of the Bill by more than 50% of the States, Constitution (122nd Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became the **Constitution (101st Amendment) Act, 2016**, which paved the way for introduction of GST in India.



In the following year, on 27th March, 2017, the Central GST legislations - Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were introduced in Lok Sabha. Lok Sabha passed these bills on 29th March, 2017 and with the receipt of the President's assent on 12th April, 2017, the Bills were enacted.

The enactment of the Central Acts was followed by the enactment of the State GST laws by various State Legislatures. Telangana, Rajasthan, Chhattisgarh, Punjab, Goa and Bihar were among the first ones to pass their respective State GST laws. By 30th June, 2017, all States and Union Territories had passed their respective SGST and UTGST Acts except Jammu and Kashmir. With effect from 1st July, 2017, the historic indirect tax reform - GST was introduced. GST law was extended to Jammu and Kashmir on 8th July, 2017.



Before we proceed with the finer nuances of Indian GST, let us first understand the basic concept of GST.



- ❑ GST is a value added tax levied on supply i.e., manufacture or sale of goods and provision of services.
- ❑ GST offers comprehensive and continuous chain of tax credits from the producer's point/service provider's point upto the retailer's level/consumer's level thereby taxing only the value added at each stage of supply chain.
- ❑ The supplier at each stage is permitted to avail credit of GST paid on the purchase of goods and/or services and can set off this credit against the GST payable on the supply of goods and services to be made by him. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages.
- ❑ Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system.

Framework of GST as introduced in India

I. Dual GST:

India has a unique federal structure. In view of the same, India has adopted a **Dual GST Model**. Under Dual GST Model, the Centre and States simultaneously levy GST on complete supply chain, i.e. starting from production to distribution stage.

Thus, tax is imposed concurrently by the Centre and States, i.e. Centre and States simultaneously tax goods and services.

Now, the Centre also has the power to tax intra-State sales & States are also empowered to tax services. GST extends to whole of India including the Union Territory of Jammu and Kashmir.

DUAL GST



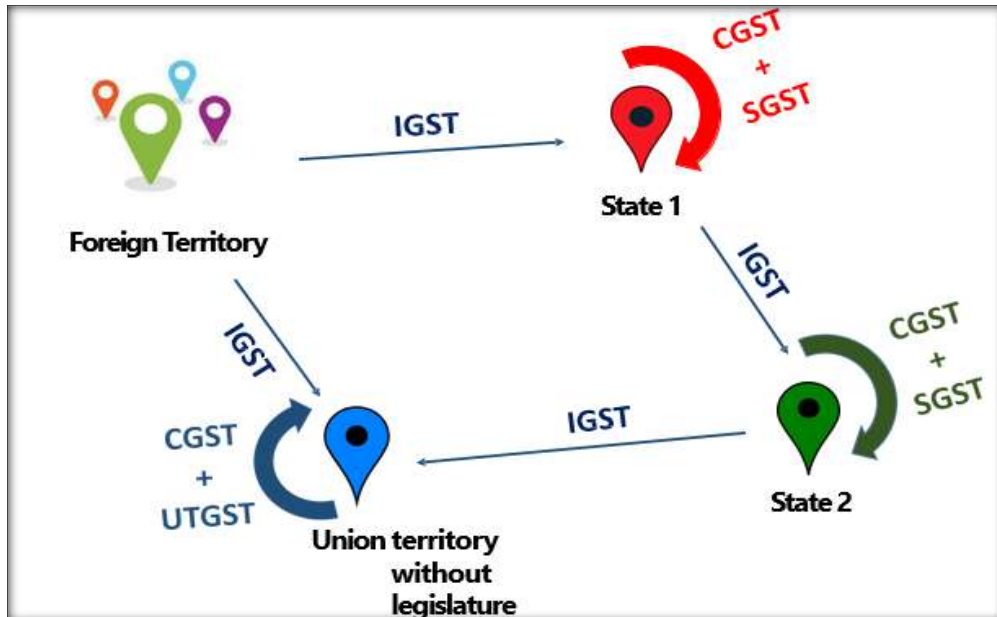
II. CGST/SGST/UTGST/IGST

GST is a destination-based tax applicable on all transactions involving supply of goods or services or both for a consideration subject to exceptions thereof. GST in India comprises of Central Goods and Services Tax (CGST) - levied and collected by Central Government, State Goods and Services Tax (SGST) - levied and collected by State Governments/Union Territories with Legislatures and Union Territory Goods and Services Tax (UTGST) - levied and collected by Union Territories without Legislatures, on intra-State supplies of taxable goods and/or services. As a general rule, 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.

CGST/SGST/UTGST/IGST

Further, where the location of the supplier and the 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. Inter-State supplies of taxable goods and/or services are subject to Integrated Goods and Services Tax (IGST). IGST is the sum total of CGST and SGST/UTGST and is levied by the Centre on all inter-State supplies.



III. Legislative Framework

There is single legislation – CGST Act, 2017 - for levying CGST. Similarly, Union Territories without Legislatures [i.e. Andaman and Nicobar Islands, Lakshadweep, Ladakh, Dadra and Nagar Haveli & Daman and Diu and Chandigarh] are governed by UTGST Act, 2017 for levying UTGST. States and Union territories with their own legislatures [i.e. Delhi, Jammu and Kashmir and Puducherry] have their own GST legislation for levying SGST.



In Ladakh, CGST and UTGST is levied on supply of goods or services or both. In Delhi, CGST and SGST is levied on supply of goods or services or both.

Though there are multiple SGST legislations, the basic features of law, such as chargeability, definition of taxable event and taxable person, classification

and valuation of goods and services, procedure for collection and levy of tax and the like are uniform in all the SGST legislations, as far as feasible. This is necessary to preserve the essence of dual GST.

IV. GST Common Portal

Before GST, since the Centre and State indirect tax administrations worked under different laws, regulations, procedures and formats, their IT infrastructure and systems were also independent of each other. Integrating them for GST implementation was complex since it required integrating the entire indirect tax ecosystem so as to bring all the tax administrations (Centre, State and Union Territories) to the same level of IT maturity with uniform formats and interfaces for taxpayers and other external stakeholders.

Besides, GST being a **destination-based tax**, the inter-State trade of goods and services (IGST) needed a robust settlement mechanism amongst the States and the Centre. A Common Portal was needed which could act as a clearing house and verify the claims and inform the respective Governments to transfer the funds. This was possible only with the help of a strong IT infrastructure.

Resultantly, Common GST Electronic Portal – www.gst.gov.in – a website managed by Goods and Services Network (GSTN) [a wholly owned Government Company] is set by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States.

The GST portal is accessible over Internet (by taxpayers and their CAs/Tax Advocates etc.) and Intranet

The logo for the GST Common Portal, featuring the text "GST COMMON PORTAL" in a bold, brown, sans-serif font, enclosed within a dashed brown rectangular border.

by Tax Officials etc. The portal is one single common portal for all GST related services.

A common GST system provides linkage to all State/ UT Commercial Tax Departments, Central Tax authorities, Taxpayers, Banks and other stakeholders. The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities.



The functions of the GSTN include facilitating registration; forwarding the returns to Central and State authorities; computation and settlement of IGST; matching of tax payment details with banking network; providing various MIS reports to the Central and the State Governments based on the taxpayer return information; providing analysis of taxpayers' profile.

However, it is important to note that the Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in

[managed by the National Informatics Centre, Ministry of Electronics & Information

Technology, Government of India]. E-way bill is an electronic document generated on the GST portal evidencing movement of goods.

Further, Invoice Registration Portal (IRP) is the website for uploading/reporting of e-invoices by the notified persons*. It is managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India.



**All registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹ 5 crore are required to issue e-invoices.*

V. GSPs/ASPs

GSTN has selected certain Information Technology, Information Technology enabled Services and financial technology companies, to be called GST Suvidha Providers (GSPs). GSPs have access to GST System and have the capability to develop applications to be used by taxpayers for interacting with the GSTN.

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GSP develops applications having features like return filing, reconciliation of purchase register data with auto populated data for acceptance/rejection/modification, dashboards for taxpayers for quick monitoring of GST compliance activities. They may also provide role-based access to divide various GST related activities like uploading invoice, filing returns etc., among different set of users inside a company (medium or large companies will need it), applications for tax professional to manage their client's GST compliance activities, integration of existing accounting packages/ERP with GST System, etc.



GSP is an additional channel being made available for facilitating the taxpayers for performing some of the functions and use of their services is optional. GSPs may take the help of Application Service Providers (ASPs) who act as a link between taxpayers and GSPs.

VI. Compensation Cess

A GST Compensation Cess at specified rate is imposed under the Goods and Services Tax (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed

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on value of taxable supply. Compensation cess is leviable on intra-State supplies and inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST. Initially, it was levied for a period of 5 years upto 30th June, 2022. However, its levy and collection is extended till **31st March, 2026**.



Compensation is to be provided to a State for a period of 5 years from the date on which the State brings its SGST Act into force.

VII. GST – A tax on goods and services

GST is levied on all goods and services, except alcoholic liquor for human consumption and petroleum crude, diesel, petrol, ATF and natural gas.

- ❑ **Alcoholic liquor for human consumption:** is outside the realm of GST.

The manufacture/production of alcoholic liquor continues to be subjected to **State excise duty** and inter-State/intra-State sale of the same is subject to **CST/VAT** respectively.



- ❑ **Petroleum crude, diesel, petrol, ATF and natural gas:** As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council.

Till such date, **central excise duty** continues to be levied on manufacture/production of petroleum crude, diesel, petrol, ATF and natural gas and inter-State/intra-State sale of the same is subject to **CST/ VAT** respectively.

- ❑ **Tobacco:** Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in

India. Resultantly, **tobacco is subject to GST as well as central excise duty.**

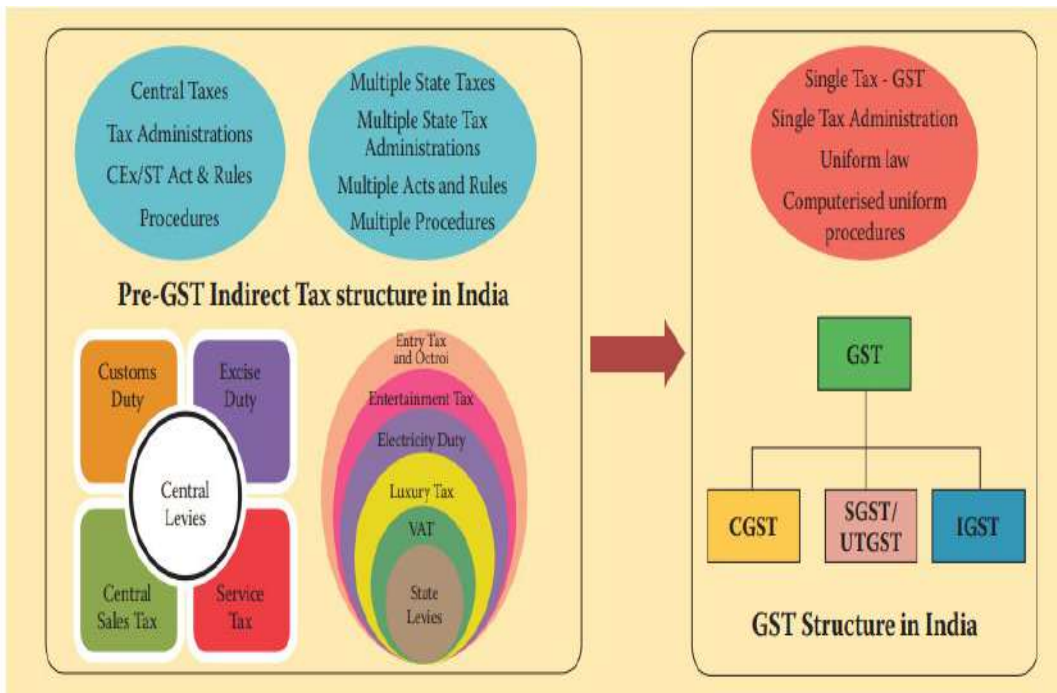
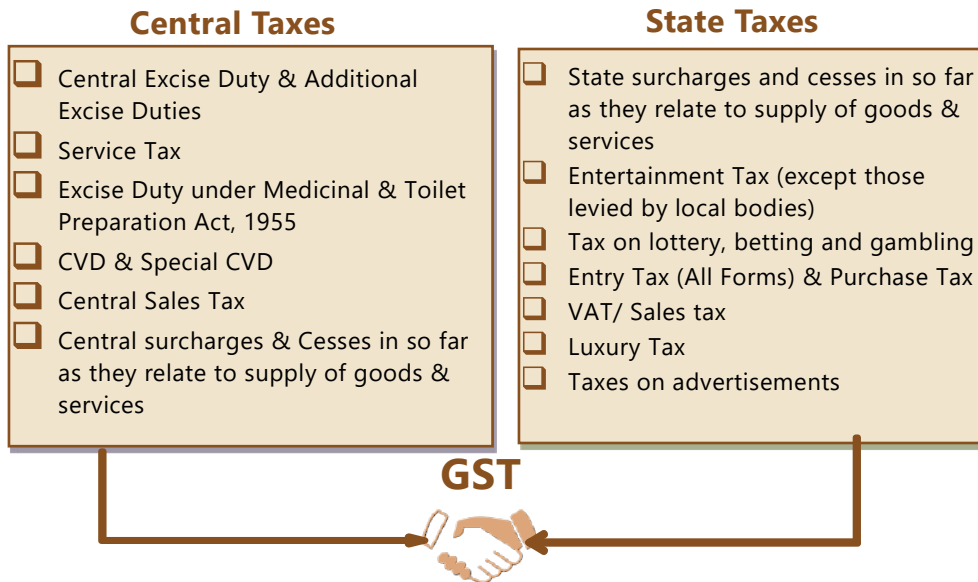
- ❑ **Opium, Indian hemp and other narcotic drugs and narcotics:** Opium, Indian hemp and other narcotic drugs and narcotics are within the purview of GST, i.e. GST is leviable on them. However, State Governments have also retained the power to levy excise duties on such products manufactured in India. Resultantly, Opium, Indian hemp and other narcotic drugs and narcotics are **subject to GST as well as State excise duties.**
- ❑ Further, **real estate sector** has been kept out of ambit of GST, i.e. GST will not be levied on sale/purchase of immovable property.

Taxes Subsumed in GST

The various central, State and local levies were examined to identify their possibility of being subsumed under GST. While identifying, the following principles were kept in mind:

- (i) Taxes or levies to be subsumed should be primarily in the nature of indirect taxes, either on the supply of goods or on the supply of services.
- (ii) Taxes or levies to be subsumed should be part of the transaction chain which commences with import/ manufacture/ production of goods or provision of services at one end and the consumption of goods and services at the other.
- (iii) The subsuming of taxes should result in free flow of tax credit in intra and inter-State levels. The taxes, levies and fees that were not specifically related to supply of goods & services would not be subsumed under GST.
- (iv) Revenue fairness for both the Union and the States individually would need to be attempted.

Taking the above principles into account, following taxes were subsumed in the GST:



Within GST or outside GST



Alcohol for human consumption.

Power to tax remains with the State.



Five petroleum products – crude oil, diesel, petrol, natural gas and ATF.

GST Council to decide the date from which GST will be applicable.



Entertainment tax levied by local bodies.

Power to tax remains with the local bodies.



Tobacco

Within the purview of GST. Power to levy excise duties, also retained.

