

IDT CA FINAL CRASH COURSE

CA CMA SHIVA TEJA

GST - BASIC CONCEPTS

CHAPTER 1

OVERVIEW OF GOODS AND SERVICES TAX [GST]

France was the first country to introduce GST in 1954. Later it was implemented across 160 countries across the globe because this tax is transparent and more viable and neutral.

GST is extended to the whole of India including State of J&K.

What is GST - GST is a destination based tax on consumption of goods and services. It is a levy at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as setoff. In a nutshell, only value addition will be taxed and burden of tax is to be borne by the final consumer.

❑ **Destination based tax:** The tax would accrue to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply.

❑ The GST would replace the following taxes:

(i) Taxes currently levied and collected by the Centre

- a) Central Excise duty
- b) Duties of Excise (Medicinal and Toilet Preparations)
- c) Additional Duties of Excise (Goods of Special Importance)
- d) Additional Duties of Excise (Textiles and Textile Products)
- e) Additional Duties of Customs (commonly known as CVD)
- f) Special Additional Duty of Customs (SAD)
- g) Service Tax
- h) Central Surcharges and Cesses as far as they relate to supply of goods and services

(ii) State taxes that would be subsumed under the GST are:

- a) State VAT
- b) Central Sales Tax
- c) Luxury Tax
- d) Entry Tax (all forms)
- e) Entertainment and Amusement Tax (except when levied by the local bodies)
- f) Taxes on advertisements
- g) Purchase Tax
- h) Taxes on lotteries, betting and gambling
- i) State Surcharges and Cesses so far as they relate to supply of goods and services

❑ The GST Council shall make recommendations to the Union and States on the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed in the GST.

❑ Commodities outside GST –

- i. supply of alcoholic liquor for human consumption.
- ii. Electricity.
- iii. Temporarily kept out goods:
 - a. petroleum crude.
 - b. motor spirit (petrol).
 - c. high speed diesel.
 - d. natural gas.
 - e. aviation turbine fuel.

(NOTE: The existing taxation system (VAT & Central Excise) will continue in respect of the above commodities.)

❑ In case of manufacture of tobacco, both excise duty and GST is levied

❑ Dual GST -

- a) The GST to be levied by the Centre on intra-State supply of goods and / or services would be called the Central GST (CGST) and that to be levied by the States/ Union territory would be called the State GST (SGST)/ UTGST.
- b) Similarly, Integrated GST (IGST) will be levied and administered by Centre on every inter-state supply of goods and services. IGST will be sum total of CGST + SGST/UTGST



The GST to be levied by the Centre on intra-State supply of goods and / or services would be called the Central GST (CGST)

The GST to be levied by the States/ Union territory would be called the State GST (SGST)/ UTGST.

Integrated GST (IGST) will be levied and administered by Centre on every inter-state supply of goods and services.

$$\text{IGST} = \text{CGST} + \text{SGST/UTGST}$$

Illustration:

Suppose hypothetically that the rate of CGST is 10% and that of SGST is 10%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company which is also located within the same State for, say Rs. 100, —



Solution:

- He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government.
- Of course, he need not actually pay Rs. 20 (Rs. 10 + Rs. 10) in cash as he would be entitled to set-off this liability against the CGST or SGST paid on his purchases (say, inputs).
- But for paying CGST he would be allowed to use only the credit of CGST paid on his purchases while for SGST he can utilize the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

Benefits of GST:

It would mitigate the ill effects of cascading and pave the way for a common national market.

Reduction in the overall tax burden on goods, which is currently estimated at 25%-30%

Make our products competitive in the domestic and international markets

This would instantly spur economic growth

There may also be revenue gain for the Centre and the States due to widening of the tax base, increase in trade volumes and improved tax compliance

This tax, because of its transparent character, would be easier to administer.

Concept of IGST –

- Under the GST regime, an Integrated GST (IGST) would be levied and collected by the Centre on inter-State supply of goods and services.
- Under Article 269A of the Constitution, the GST on supplies in the course of inter- State trade or commerce shall be levied and collected by the Government of India.
- Such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Rates of GST –

- The CGST and SGST would be levied at rates to be jointly decided by the Centre and States. The rates would be notified on the recommendations of the GST Council. Maximum rate of CGST is 20 Percent.
- Rates of IGST would be sum of rates of CGST & SGST.

Goods and Services Tax Council (GSTC) - Article 279A –

A new article 279A is inserted to constitute GSTC. The relevant features would be:

1. Due date: The President shall constitute GSTC within 60 days from the date of commencement of the 101st Amendment Act. This Article came into force on 12-9-2016 & the GSTC was constituted on 15-9-2016.

2. Members: GSTC will have following members:

- ♦ The Union Finance MinisterChairperson;
- ♦ The Union Minister of State in charge of Revenue or Finance..... Member;
- ♦ The State Finance Minister of each State (Finance or Taxation or any other nominated Minister)



3. Vice-Chairperson: The State Members of GSTC shall choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide. Thus, Vice-chairperson would be out of State Finance Ministers and Centre will have no role to play in his selection, appointment and tenure.

4. Role of GSTC:

The GSTC shall make recommendations to the Union and the States on —

- a. Various taxes/surcharges to be subsumed into GST would be recommended by GSTC from time to time
- b. Exemptions including threshold exemptions would be recommended by GSTC;
- c. Model law and principles for levy and place of supply would be recommended by GSTC;
- d. The rates of GST would have a floor rate with band of rates;
- e. Special provisions may be made for North-eastern States and State of J&K.

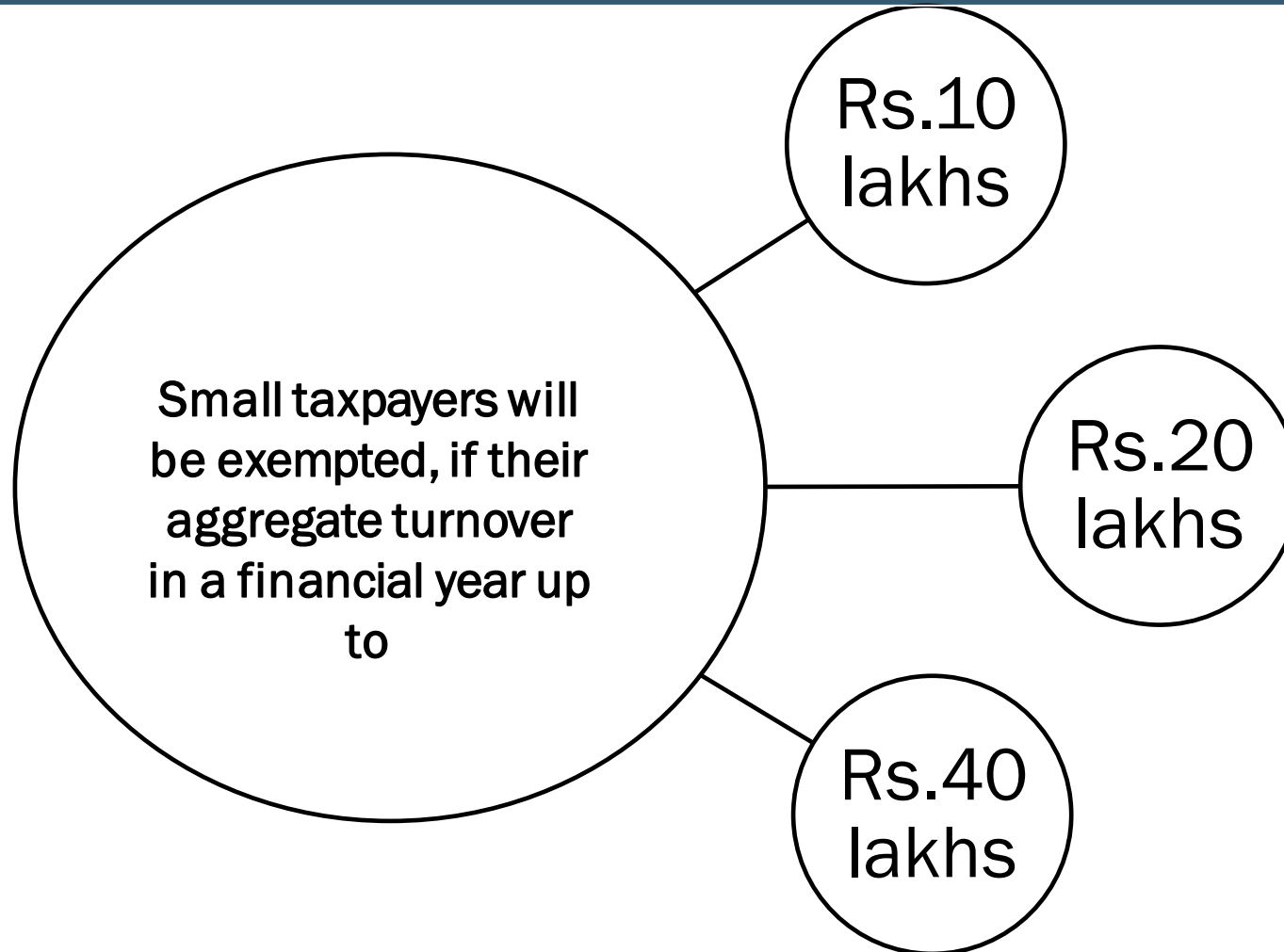
5. Quorum and Meetings:

- a. One half of the total number of Members of the GSTC shall constitute the quorum at its meetings.
- b. Every decision of the GSTC shall be taken at a meeting.
- c. The decision shall be taken by a majority of not less than 3/4th of the weighted votes of the members present

- d. The vote of the Central Government shall have a weightage of $1/3$ rd of the total votes cast, and the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.
- e. Thus, all states alone can make majority of $2/3$ rd, which is insufficient to take a decision at GSTC.



EXEMPTION FOR SMALL TAXPAYERS:



HSN (Harmonized System of Nomenclature) code shall be used for classifying the goods under the GST regime —

- Taxpayers whose turnover is below Rs. 1.5 crores, are not required to mention HSN Code in their invoices.
- Taxpayers whose turnover is above Rs. 1.5 crores but below Rs. 5 crores, shall use 2-digit code and
- Taxpayers whose turnover is Rs. 5 crores and above, shall use 4-digit code.

Goods

Services

- Services will be classified as per the Services Accounting Code (SAC)

Imports

- will be treated as inter-state supplies and
- IGST will be levied thereon.

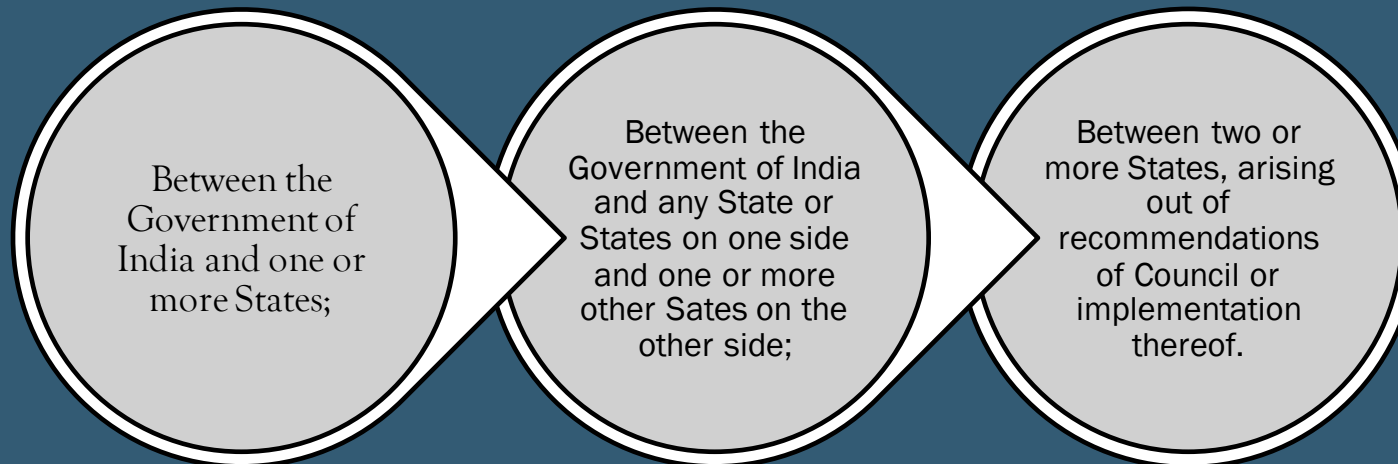
Exports

- will be treated as zero rated supplies
- The Exporter will have an option
 - to either pay tax on the output and claim refund of IGST or.
 - export under Bond/ LUT without payment of IGST or claim refund of Input Tax Credit (ITC)

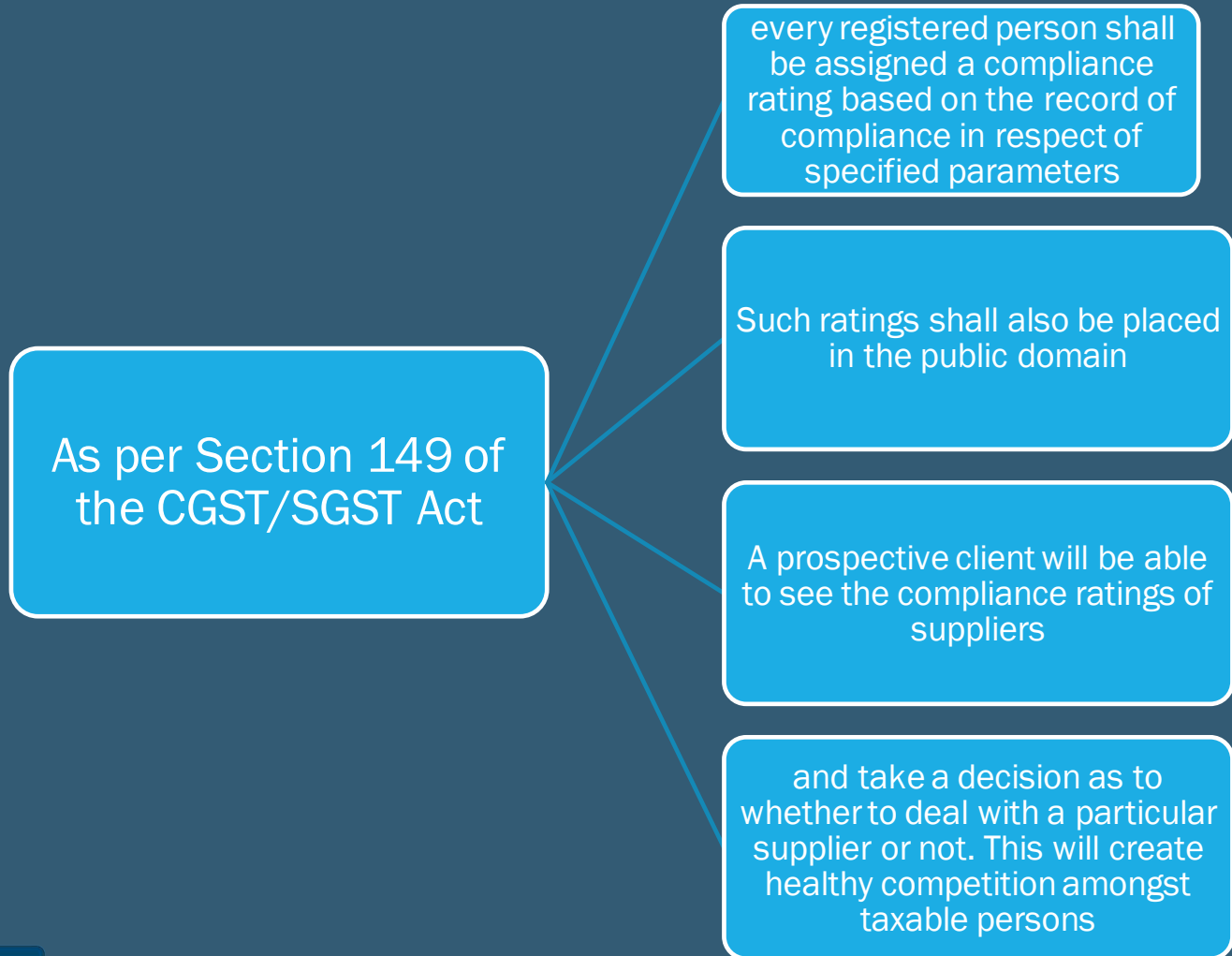
Classification of goods & services

Dispute resolution between States/Centre –

The Constitution (one hundred and first amendment) Act, 2016 provides that the Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute –



Compliance rating mechanism



Anti-Profiteering measure – Benefit of lowering tax effect to be passed over

A. As per section 171 of the CGST/SGST Act, —

- Any reduction in rate of tax on any supply of goods or services or
- The benefit of input tax credit

Shall be passed on to the recipient by way of commensurate reduction in prices.

B. An authority may be constituted by the government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Manner of utilisation of ITC: {Section 49 + 49A + R. 88A}

Transaction within the States (Intra-state transactions)		Inter-state transactions
CGST	SGST	IGST
Credit of CGST to be utilised sequentially – 1. CGST 2. IGST	Credit of SGST to be utilised sequentially – 1. SGST 2. IGST	Credit of IGST to be utilised sequentially – 1. IGST 2. CGST/ SGST in any order or any manner
Cross utilization of CGST and SGST is not permissible.		

1. Credit of CGST and SGST to be utilized only after IGST credit is fully exhausted.
2. Credit of SGST to be utilized for output IGST only after credit of CGST is exhausted

New Article 366

- 1. GST:** As per new article 366(12A), "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. (Thus, alcoholic liquor would always remain outside scope of GST.)
- 2. Services:** As per new article 366(26A) "Services" means anything other than goods. The new definition would put at rest all controversies as regards definition of services.
- 3. State:** As per new article 366(26B) "State" with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature. Thus, article 366(29A) defining deemed sale continues.

TIME OF SUPPLY

CHAPTER 2

TIME OF SUPPLY OF GOODS – SEC 12(2)

Time of Supply
shall be
Date of invoice

DOI means Actual date or last date when invoice is ought have been issued under Section 31 whichever is earlier

Due date for issue of invoice by the supplier [Section 31(1)]:

- **Non-Continuous Supply involves movement:** Time of removal of goods for supply [31(1)(a)]
- **Non-Continuous Supply - Other cases:** Delivery of goods/ making available to the recipient or [31(1)(b)]
- **Continuous Supply:** Date of issue of statement of account/receipt of payment [31(4)]
- **Sale on approval basis:** Earlier of time at which it becomes known that the supply has taken place OR 6 months from date of removal [31(7)]

Prior to 15.11.2017, TOS was DOI or DOP whichever is earlier. Hence, w.e.f 15.11.2017, no GST is required to be paid on advances received for supply of goods.

TIME OF SUPPLY OF GOODS – SEC 12(2)

ILLUSTRATIONS

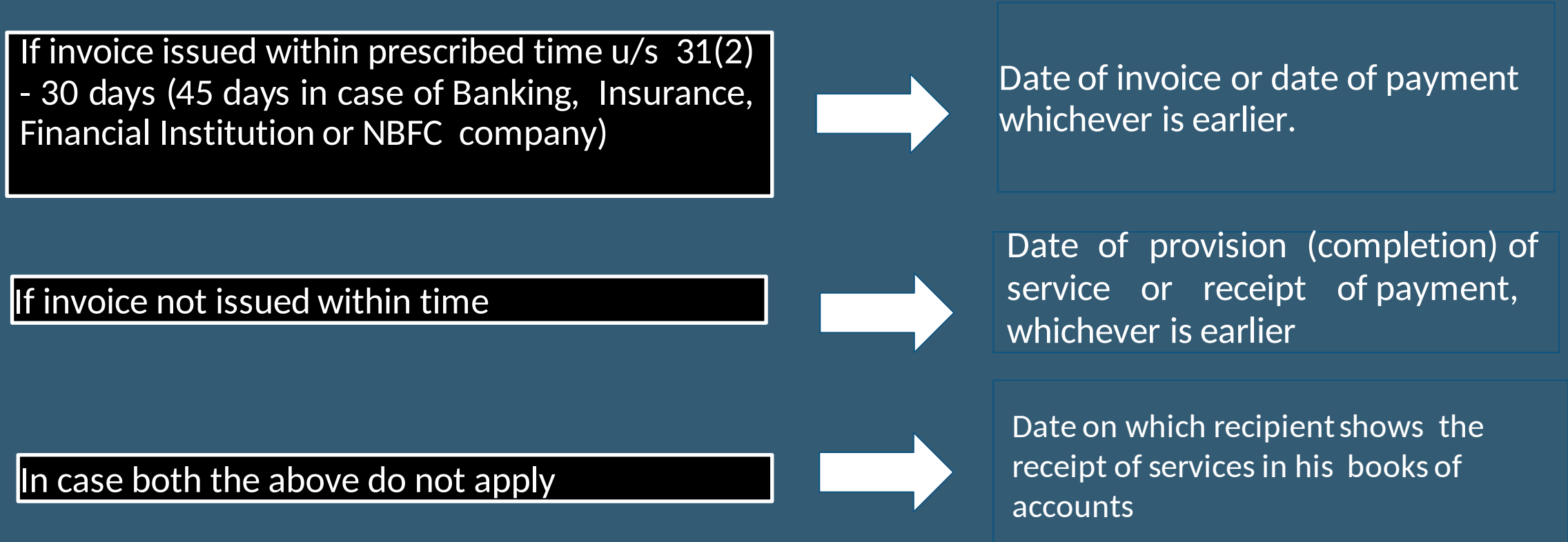
	Non continuous supply of goods Section 12(2) r/w Section 31(1)	Invoice date	Due date of invoice	Payment supplier's	Credit in account	Time of
1	Invoice raised before removal	10-March-18	20-March-18	26-March-18	30-March-18	10-March-18
2	Advance received	30-March-18	20-March-18	10-Feb-18	25-Feb-18	20-March-18

TIME OF SUPPLY OF GOODS – SEC 12(2)

ILLUSTRATIONS

Continuous supply of goods Section 12(2) r/w Section 31(4)	Invoice date	SoA/ payments due date	Receipt of payment	Time of supply
	01-Mar-18	05-Mar-18	03-Mar-18	01-Mar-18
Contract provides for successive statements of account/ successive payments	11-April-18	05-April-18	13-April-18	05-April-18
	08-April-18	05-April-18	01-April-18	01-April-18

TIME OF SUPPLY OF SERVICES – SEC 13(2)



**Where payment is received in advance, the Supplier shall issue a receipt voucher, and NOT a tax invoice but shall be required to pay GST.*

**Where payment of upto 1000/- is received in excess of invoice amount, then time of supply for such excess amount shall at the option of supplier be date of issue of invoice*

- Prescribed time for issuance of invoice in certain special cases:
- 1. In case where supply of service ceases before completion – Invoice to be issued at the cessation to be extent of supply made before such cessation.
- 2. Continuous supply of services {For period exceeding 3 months}:
 - ❖ If due date of payment is ascertainable from the contract – On or before due date of payment
 - ❖ If due date of payment is not ascertainable from contract – On or before date of payment
 - ❖ If it is linked to an event/ milestone – On or before completion of such event/ milestone.

TIME OF SUPPLY OF SERVICES – SEC 13(2)

ILLUSTRATIONS

	Section 13(2)	Invoice date	Invoice due	Payment supplier's	Credit in account	Time of
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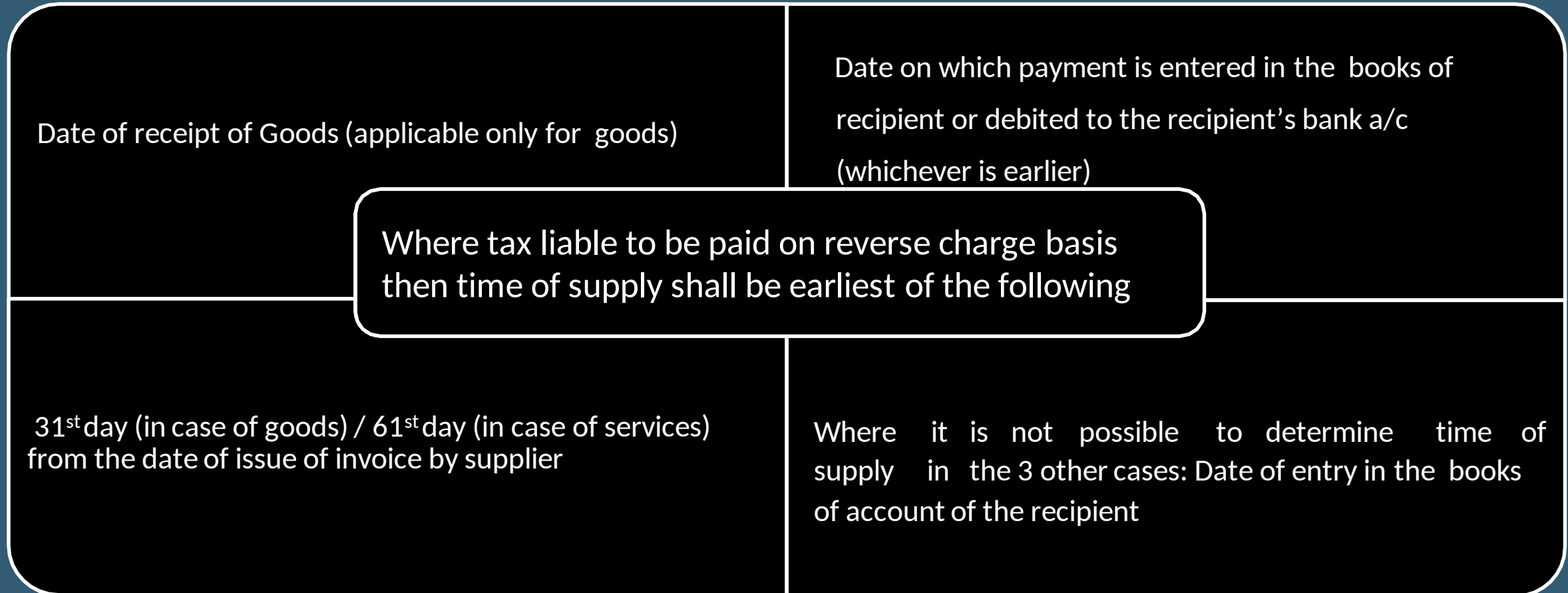
TIME OF SUPPLY OF SERVICES – SEC 13(2)

ILLUSTRATIONS

Continuous supply of services Section 13(2) r/w Section 31(5)		Invoice date	Date as per contract	Receipt of payment	Time of supply
5	Section 31(5)(a) Contract provides for payments monthly on the 10 th of succeeding month	02-Feb-18	10-Feb-18	15-Feb-18	02-Feb-18
		17-Feb-18	10-Feb-18	15-Feb-18	10-Feb-18
		10-Jan-18	10-Jan-18	06-Jan-18	06-Jan-18
		12-Feb-18	10-Feb-18	25-Feb-18	10-Feb-18

TIME OF SUPPLY OF GOODS / SERVICES - REVERSE CHARGE

- SEC 12(3) / 13(3)



In case of import of services from an associated enterprises the time of supply is the date of entry in the books of account of recipient of supply OR date of payment, whichever is earlier. (2nd proviso to Section 13(3) of CGST Act).

TIME OF SUPPLY OF VOUCHERS – SEC 12(4)/13(4)

Time of supply in case of **supply of voucher**–



If Supply is identifiable then time of supply shall be date of issue of voucher

If Supply is not identifiable then time of supply shall be date of redemption of voucher

RESIDUAL PROVISION – SEC 12(5) / 13(5)

Where it is not possible to determine the time of supply under any of the circumstances discussed, it shall be determined as:

Due date for filing of such return – *If periodical return has to be filed*

Date on which the Tax is paid – *Other cases*

TIME OF SUPPLY OF GOODS / SERVICES - VALUE ADDITION – SEC 12(6) / 13(6)

Time of supply
for addition in
value by way of

Interest,
Late Fees,
Penalty

For Delayed
payment of
Consideration
shall be

Date on which
the supplier
receives such
addition in value

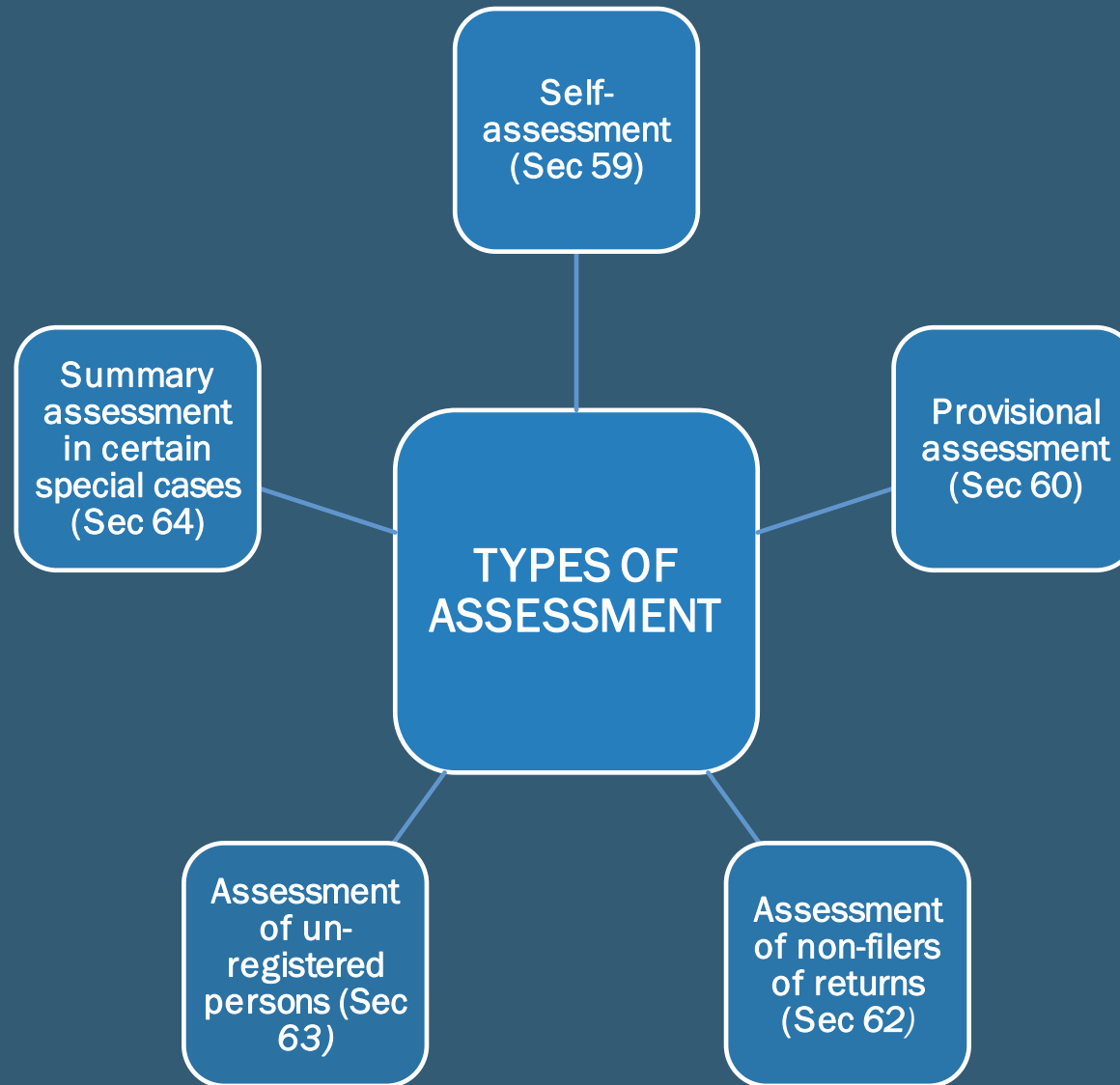
As per Section 15(2)(d) of CGST Act the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply.

TIME OF SUPPLY IN CASE OF CHANGE IN RATE OF TAX - SEC 14

Date of supply	Date of invoice	Date of receipt of payment	Time of supply	Rate of tax
(1)	(2)	(3)	(4)	(5)
Before	After	After	Earlier of (2) and (3)	New
Before	Before	After	(2)	Old
Before	After	Before	(3)	Old
After	Before	After	(3)	New
After	Before	Before	Earlier of (2) and (3)	Old
After	After	Before	(2)	New

ASSESSMENT AND AUDIT

CHAPTER 3



SELF-ASSESSMENT (Section 59):

Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

PROVISIONAL ASSESSMENT (Sec 60) :

**(1) Assessee unable to determine value/tax—
Request for provisional
— Department must allow it within 90 days**

- Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, —
- He may request the proper officer in writing giving reasons for payment of tax on a provisional basis and
- The proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

2) Bond for differential amount, with surety/security

- The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

(3) Finalization within 6 months + 6 months + 4 years

- The proper officer shall, within a period not exceeding 6 months from the date of the communication of the order issued under sub-section (3), pass the final assessment order after taking into account such information as may be required for finalizing the assessment. Extension of time-limit : However, said period may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding 6 months and by the Commissioner for such further period not exceeding 4 years.

(4) Interest from due date till date of payment

The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-section [1) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

ASSESSMENT OF NON-FILERS OF RETURNS (Section 62) –

(1) Best judgment, if return not filed even after service of notice

- Where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgment
- An assessment order is issued within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Return filed within 30 days of receipt of Rest Judgment Assessment order – Order deemed as withdrawn – Interest & Late fee to continue

- Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section [1], the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under section 50 or for payment of late fee under section 47 shall continue.

ASSESSMENT OF UN-REGISTERED PERSONS (Section 63) –

Notwithstanding anything to the contrary contained in section 73 or 74, where –

♦A taxable person fails to obtain registration even though liable to do so, or

♦Whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of 5 years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

NOTE: However, no such assessment order shall be passed without giving the person an opportunity of being heard

SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES (Section 64)

Protection of Revenue — Avoiding delay:

- With the previous permission of Additional Commissioner or Joint Commissioner, summary assessment is done

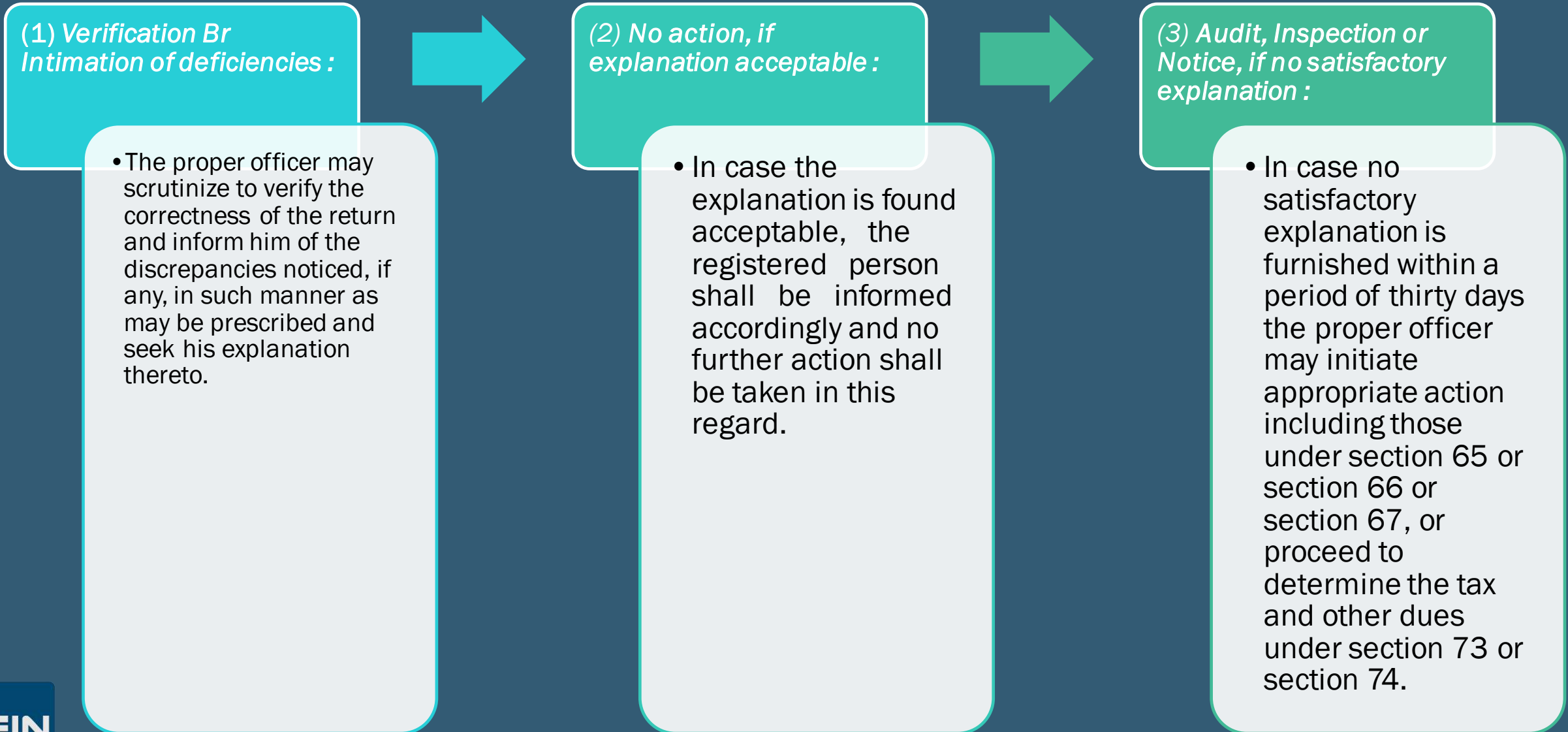
Taxable person not known — Assessment on Person-in- charge of goods:

Order may be withdrawn:

On an application made by the taxable person within 30 days from the date of receipt of order

If the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

SCRUTINY OF RETURNS (Section- 61) --



Audit by tax authorities (Sec 65) -

(1) Audit by department, of any registered person

- Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

(2) Audit at assessee's place or in department's office

- The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.

(3) Minimum notice of 15 working days

- Registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

(4) Audit to be completed within 3 months + 6 months

- The audit shall be completed within a period of 3 months from date of commencement of audit. However, if Commissioner is satisfied that audit in respect of such registered person cannot be completed within 3 months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding 6 months.
- *“Commencement of audit” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.*

(6) Findings of audit to be shared with reasons, within 30 days of conclusion of audit

- On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

(7) Demand in case of short-payment, etc.

- Where the audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Special audit by CA/CMA (Sec 66) -

(1) Valuation or Credit correctness doubted – Special Audit by CA/CMA

- If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner may, with the prior approval of the Commissioner, direct such audit by a
 - Chartered Accountant or a Cost Accountant as may be nominated by the Commissioner.

(2) Audit report within 90 days + 90 days

- The chartered accountant or cost accountant so nominated shall, within the period of 90 days, submit a report.
- However, the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of 90 days.

(3) Special audit to be conducted, even if accounts already audited

- Provisions of this section shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.

(4) Opportunity of being heard, before using material against assessee

- Registered person shall be given an opportunity of being heard in respect of any material gathered on basis of special audit which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

(5) Expenses borne by the department

- The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.

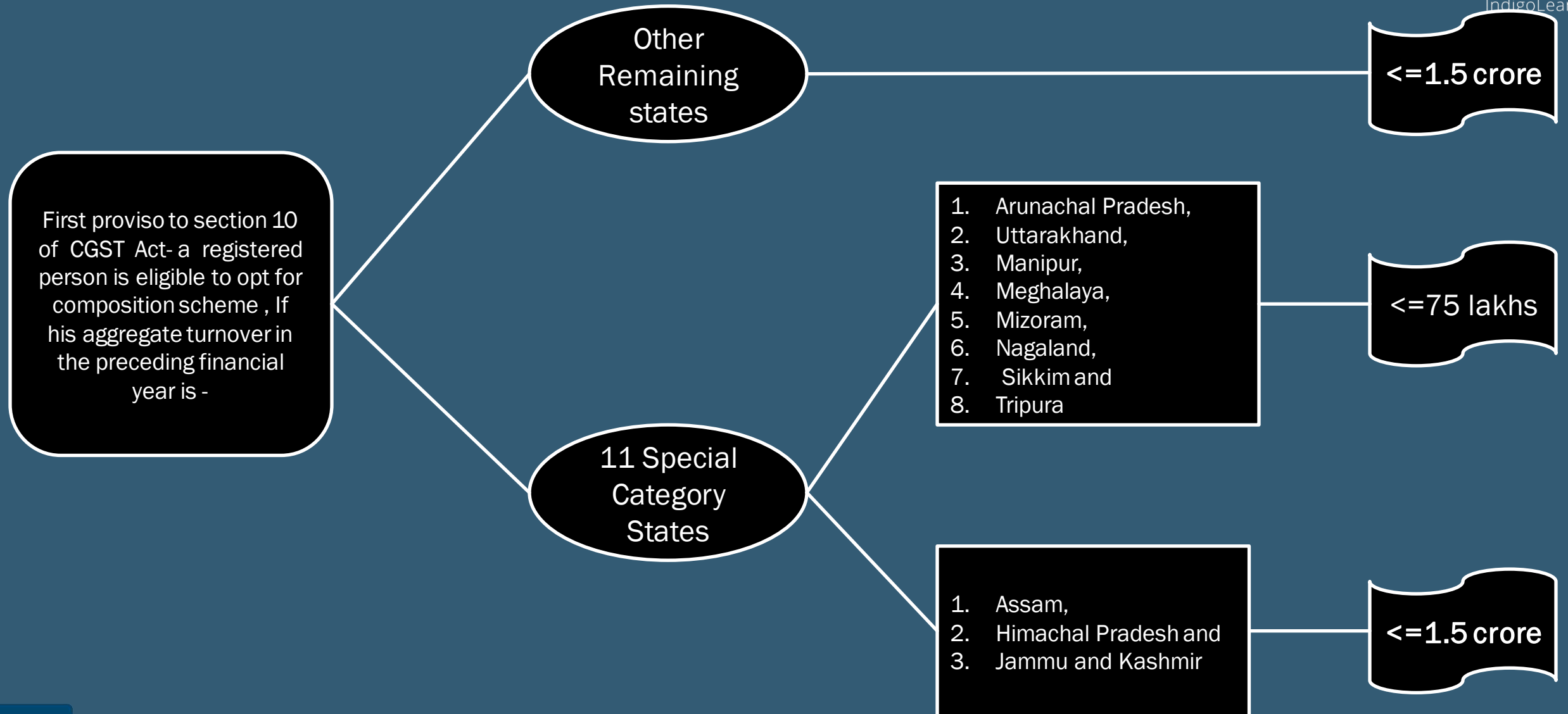
(6) Demand notice if short-payment etc. is detected

- Where the special audit conducted under sub-section [1] results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

COMPOSITION SCHEME

CHAPTER 4

Turnover limit for determining the eligibility for composition scheme

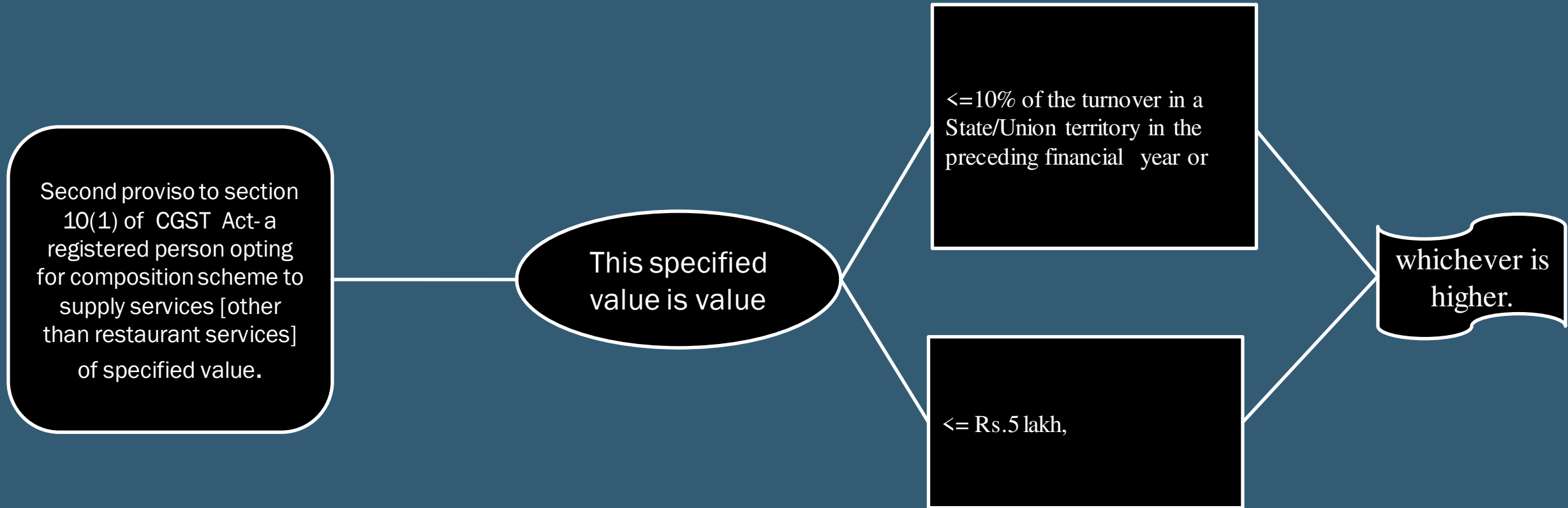


Rates of Tax under Composition levy:

- ❑ The composite tax may (i.e., optional) be paid in lieu of the tax payable by him.
- ❑ It is calculated at such rate as may be prescribed, but not exceeding,—
 - (a) in case of a manufacturer - 1% of the turnover in State/Union territory
 - (b) in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II [i.e., restaurant and caterers] - 5% of the turnover in State/Union territory
 - (c) In case of other suppliers - 1% of turnover in State/Union territory {Turnover shall be taxable turnover}

No Service provider can opt for composition scheme

Composition scheme taxpayers permitted to render services other than restaurant services upto a specified limit [Second proviso to section 10 of the CGST Act]



Statutory conditions:

The registered person shall be eligible to opt under sub-section (1), if:—

- (a) He is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II; [therefore, except restaurant and caterers, other service providers are ineligible for composition schemes]
- (b) He is not engaged in making any supply of goods which are not leviable to tax under this Act;
- (c) He is not engaged in making any inter-State outward supplies of goods;
- (d) He is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source u/s 52; and
- (e) He is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council.

Scheme applies to all regd. persons with same PAN -

If more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme unless all such registered persons opt to pay tax under that sub-section.

Option lapses, if turnover crosses limit -

The option availed of by a registered person under this section shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under this section.

Composite tax, not be collected -

A taxable person to whom the provisions of this section apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

No input credit -

A taxable person to whom the provisions of this section apply shall not be entitled to any credit of input tax.

Penalty for wrong use of scheme -

If the proper officer has reasons to believe that a taxable person has paid tax under this section despite not being eligible, such person shall, —

- in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and
- The provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.

Other points:

- Suppliers who opted for composition scheme cannot issue any tax invoice, but simply need to issue a bill of supply.
- Payment of tax shall be on quarterly basis.

Option to pay concessional tax @ 3%:

With effect from 01.04.2019, Notification No. 2/2019 CT (R) dated 07.03.2019 has provided an option to a registered person whose aggregate turnover in the preceding financial year is upto 50 lakh and who is not eligible to pay tax under composition scheme, to pay tax @ 3% on first supplies of goods and/or services upto an aggregate turnover of 50 lakh made on/after 1st April in any FY, subject to specified conditions.

ADVANCE RULING

CHAPTER 5

CERTAIN DEFINITIONS [Section 95]

Advance ruling

- A decision provided by the Authority or the Appellate Authority
- To an applicant
- On matters or on questions specified in section 97 or 100,
- In relation to the supply of goods or services or both
- Being undertaken or proposed to be undertaken by applicant;

Applicant

- any person registered or desirous of obtaining registration under this Act;

APPLICATION FOR ADVANCE RULING [Section 97]

Application:

- An applicant desirous of obtaining an advance ruling under this Chapter may make an application
- Form GST ARA 01 – Fee of 5000

Questions on which ruling can be sought:

- Classification of any goods or services or both;
- Applicability of a notification issued under the provisions of this Act;
- Determination of time and value of supply of goods or services or both;
- Admissibility of input tax credit of tax paid or deemed to have been paid;
- Determination of the liability to pay tax on any goods or services or both;
- Whether applicant is required to be registered;
- Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

- 1) AAR to forward copy to dept: to the said concerned officer.
 - On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records.
- 2) Admission/Rejection:
 - The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application.
- 3) Application rejected, if issue pending or decided in applicant's case:
- 4) Rejection only after hearing and recording reasons:
 - No application shall be rejected under this section unless an opportunity of hearing has been given to the applicant:
 - Further, where the application is rejected, the reasons for such rejection shall be specified in the order.

Difference in opinion — Reference to Appellate Authority for Advance Ruling:

➤ Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

Pronouncement within 90 days of receipt:

➤ The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

Order to be sent to assessee/dept:

➤ A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

APPEAL TO APPELLATE AUTHORITY [Section 100]

1. Appeal to appellate authority:

The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced, may appeal to the Appellate Authority.

2. Appeal within 30 days + 30 days:

Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated. However, the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

3. Form & Fee:

Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed. – Form GST ARA – 02 along with fee of 10,000

ORDERS OF APPELLATE AUTHORITY [Section 101]

- Appellate order:
 - The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

- Order within 90 days:
 - The order shall be passed within a period of ninety days from the date of filing of the appeal or a reference.

- Difference in opinion
 - No advance ruling can be issued:
 - Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

RECTIFICATION OF ADVANCE RULING [Section 102]

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, —

- So as to rectify any error apparent on the face of the record,
- If such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order.

Enhancement only after hearing assessee: No rectification which has the effect of—

- Enhancing the tax liability or
- Reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

APPLICABILITY OF ADVANCE RULING [Section 103]

Binding
only on
same
person:

The advance ruling pronounced by the Authority or Appellate Authority under this Chapter shall be binding only—

- On the applicant who had sought it in respect of any matter;
- On the concerned officer or the jurisdictional officer in respect of the applicant

Binding
on same
facts/law:

The advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

Advance ruling obtained by fraud, etc.:

- Where the Authority or the Appellate Authority finds that advance ruling has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made.

Prior hearing mandatory:

- No order shall be passed under this section unless an opportunity of being heard has been given to the applicant or the appellant.

Exclusion of period:

- The period beginning with the date of such advance ruling and ending with the date of order under this section shall be excluded while computing the period for issuing notice and passing adjudication order under Section 73 or 74.

Copy of order to be sent:

- A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

POWERS OF AUTHORITY AND APPELLATE AUTHORITY [Section 105]

- 1) Powers of a civil court: The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—
 - a. Discovery and inspection;
 - b. Enforcing the attendance of any person and examining him on oath;
 - c. Issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.

PROCEDURE OF AUTHORITY AND APPELLATE AUTHORITY [Section 106]

The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

LIABILITY TO PAY IN CERTAIN CASES

CHAPTER 6

LIABILITY IN CASE OF TRANSFER OF BUSINESS [Section 85]

(1) Transferor & Transferee both liable jointly & severally:

Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, then,

The taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer,

Whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

(2) Transferee liable to tax and has to apply for registration or amendment in registration:

Where the transferee of a business carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and Shall,

If he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

LIABILITY OF AGENT AND PRINCIPAL – GOODS ONLY [Section 86]

❖ Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

LIABILITY IN CASE OF AMALGAMATION OR MERGER OF COMPANIES [Section 87]

Merger effective from retrospective date – Transactions during ‘effective date of merger’ to ‘date of order’ to be taxable:

➤ When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

LIABILITY IN CASE OF COMPANY IN LIQUIDATION [Section 88]

Liquidator to intimate Department within 30 days:

When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company, shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

Department to inform tax dues to liquidator within 3 months

The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator

Director of 'private company in liquidation' liable if non-recovery because of his fault:

When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then –

- Every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty,
- Unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company

LIABILITY OF DIRECTORS OF PRIVATE COMPANY [Section 89]

Director of 'private company' liable if non-recovery because of his fault:

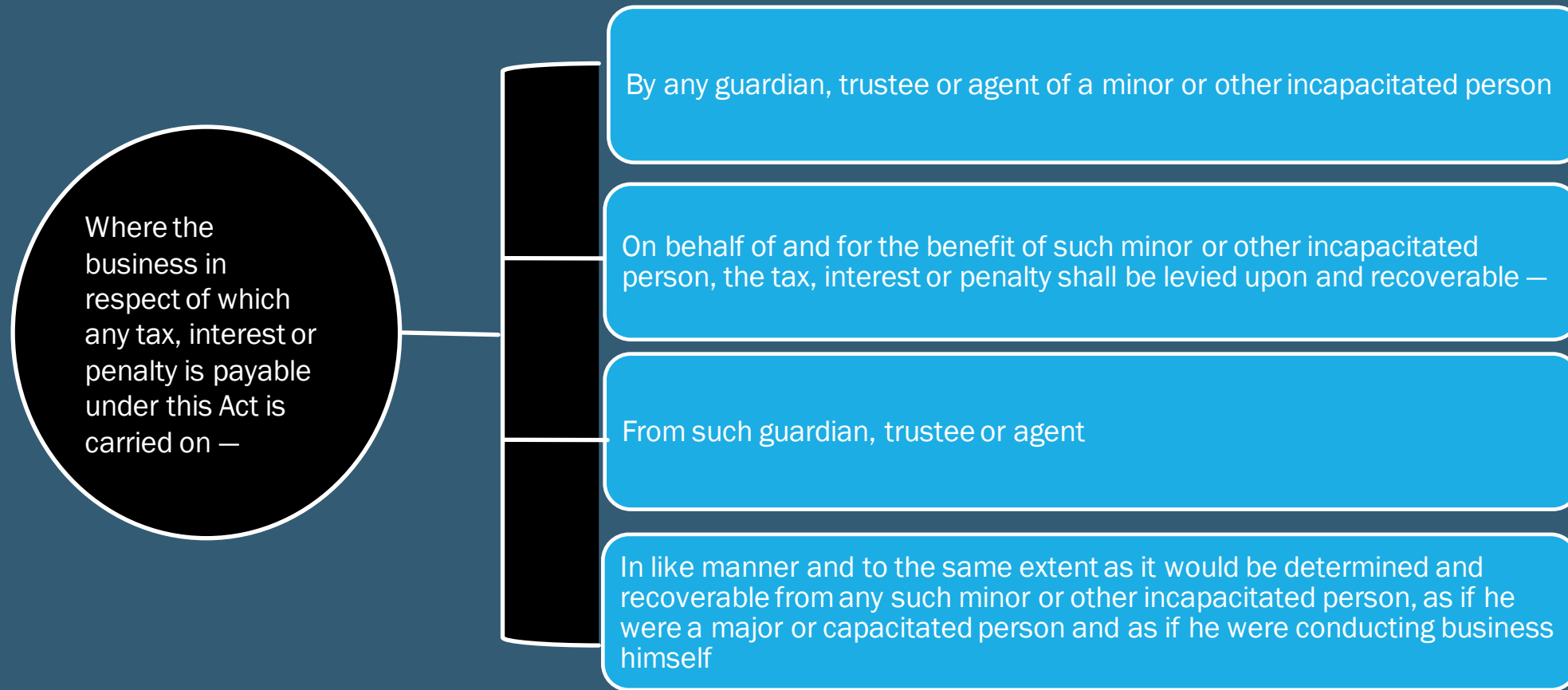
This provision will not apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company.

However, any personal penalty imposed on such director will not be affected and can continue.

LIABILITY OF PARTNERS OF FIRM TO PAY TAX [Section 90]

1. Firm & Partners liable jointly & severally:
2. Retiring partner to inform department — Liable for dues for period pertaining upto date of his retirement:
Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.
3. No intimation by retiring partner within 1 month from retirement — Liability of such partner would continue upto date of receipt of intimation by department

LIABILITY OF GUARDIANS, TRUSTEES, ETC. [Section 91]



LIABILITY OF COURT OF WARDS, ETC. [Section 92]

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, then such person is liable

SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX, INTEREST OR PENALTY IN CERTAIN CASES [Section 93]

(1) In case of death, legal representatives liable:

(a) If a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

(b) If the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge.

(2) Partition of HUF/AOP — Members liable jointly & severally for dues upto date of partition

(3) Dissolution of firm — Erstwhile partners liable for dues upto date of dissolution

(4) Termination of trust/guardianship — Ward or Beneficiary liable

LIABILITY IN OTHER CASES [Section 94]

- (1) Discontinuance of business by firm/AOP/HUF — Erstwhile members/, partners liable
- (2) Change in constitution — Old & New both partners liable subject to provisions of Section 90

PLACE OF SUPPLY

CHAPTER 7

PLACE OF SUPPLY OF GOODS – SEC 10 IGST (OTHER THAN GOODS IMPORTED / EXPORTED)

Section 10(1)(a)

Supply involves movement of Goods

Location of goods at the time at which movement terminates for delivery to recipient

Section 10(1)(b)

Goods supplied on direction of the third person

Principal Place of Business of the third person (i.e., address in Registration Certificate)

Section 10(1)(c)

Supply does not involve movement of goods

Location of goods at the time of delivery to the recipient

Section 10(1)(d)

Goods are assembled or installed at site

Place of installation or assembly

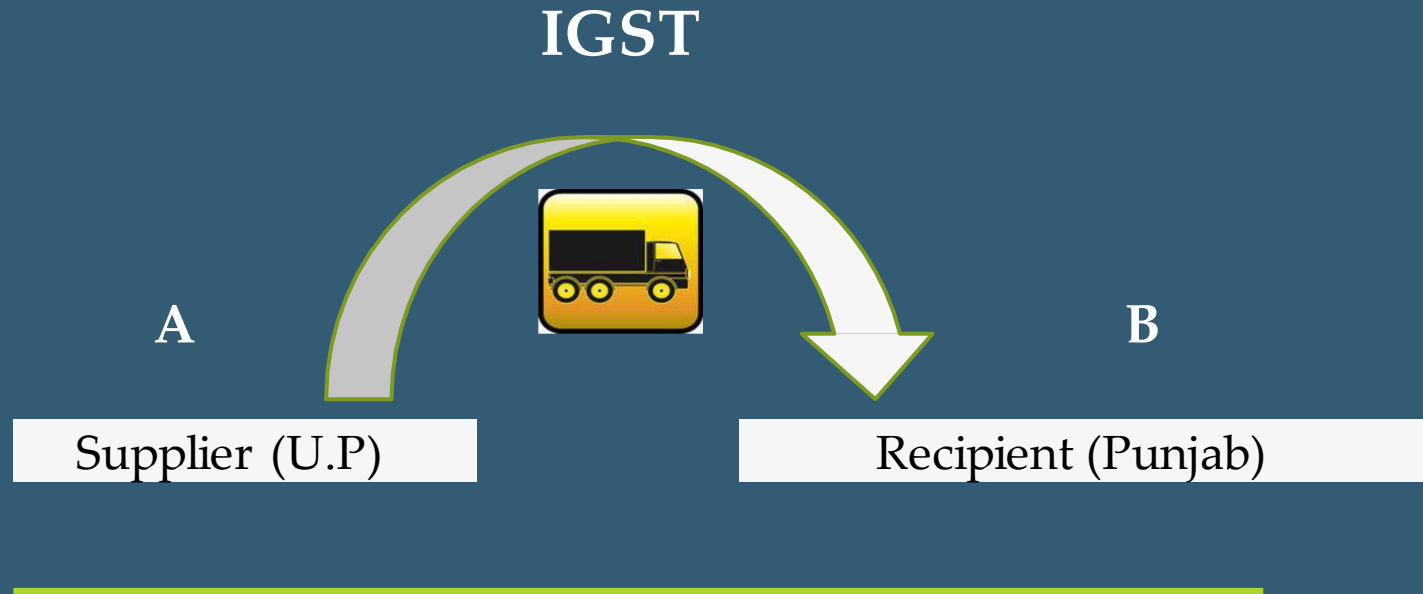
Section 10(1)(e)

Goods supplied on board a conveyance

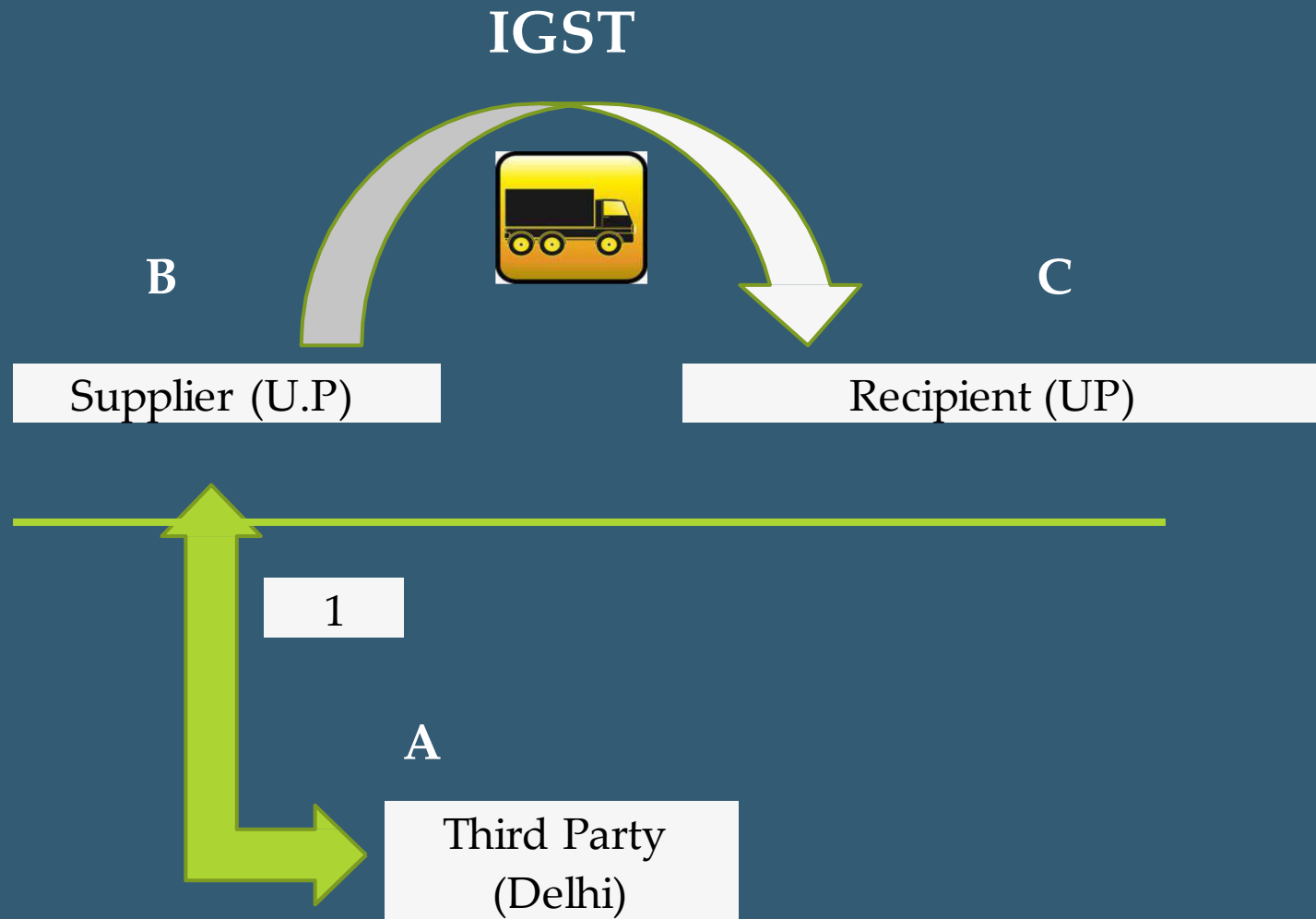
Location at which such goods are taken on board

Sec 10(2) - Where none of the above rules apply, place of supply would be determined in the manner to be prescribed

PLACE OF SUPPLY OF 'GOODS' S. 10(1)(A)



PLACE OF SUPPLY OF 'GOODS' S. 10(1)(B)



PLACE OF SUPPLY OF GOODS – SEC 10 IGST ILLUSTRATIONS

Section 10(1)(a): Supply involves movement of goods

Particulars	Supplier's factory from where goods are removed	Termination of movement for delivery	Place of supply	Tax Payable
Movement of goods by the supplier (goods dispatched by supplier)	Orissa	Assam	Assam	IGST payable at Orissa
[Section 10(1)(a) read with 2(96)(a) of CGST Act]	Orissa	Orissa	Orissa	CGST/ SGST payable at Orissa
Movement of goods by the recipient (goods collected by recipient)	Kerala	Goa	Goa	IGST Payable at Kerala
[Section 10(1)(a) read with 2(96)(b) of CGST Act]	Kerala	Kerala	Kerala	CGST/ SGST payable at Kerala

PLACE OF SUPPLY OF GOODS – SEC 10 IGST

ILLUSTRATIONS

Section 10(1)(b): Supply involves movement of goods, and delivered to a person on the instruction of a third person

Case	Location of Supplier - Seeta	Place of delivery of goods - Office of Ram	Principal place of Lakshman who instructed delivery to Ram	Place of supply for Seeta	<u>Type of tax payable by Seeta</u>
1	Ahmedabad	Ahmedabad	Amritsar	Amritsar	IGST at Ahmedabad
2	Ahmedabad	Amritsar	Amritsar	Amritsar	IGST at Ahmedabad
3	Ahmedabad	Bangalore	Bangalore	Bangalore	IGST at Ahmedabad
4	Ahmedabad	Chandigarh	Udaipur	Udaipur	IGST at Ahmedabad

Case	Location of Supplier - Seeta	Place of delivery of goods - Office of Ram	Principal place of Lakshman who instructed delivery to Ram	Place of supply for Lakshman	<u>Type of tax payable by Lakshman</u>
1	Ahmedabad	Ahmedabad	Amritsar	Ahmedabad	IGST at Punjab
2	Ahmedabad	Amritsar	Amritsar	Amritsar	CGST + Punjab GST
3	Ahmedabad	Bangalore	Bangalore	Bangalore	CGST + Kar GST at Karnataka
4	Ahmedabad	Chandigarh	Udaipur	Chandigarh	IGST at Rajasthan

PLACE OF SUPPLY OF GOODS – SEC 11 IGST (GOODS IMPORTED INTO / EXPORTED FROM INDIA)

- **Export of goods:** Means taking goods out of India to a place outside India;
- **Import of goods:** Means bringing goods into India from a place outside India;

Section	Situation	Place of supply
11(a)	Goods imported into India	Location of importer
11(b)	Goods exported from India	Location outside India

Note: Section 5 provides that IGST shall be levied on goods imported into India as per Section 3 of Customs Tariff Act

- *Point of taxation - When duties of customs are levied on the said goods*
- *Value - As determined as per Customs Act*

Section 11(a): Import of goods

PLACE OF SUPPLY OF GOODS – SEC 11 IGST (ILLUSTRATIONS)

Case	Location of supplier	Location of goods before supply	Goods supplied to*	Location of recipient	Place of supply
1	Thailand	Thailand	Assam	Assam	Assam
2	China	China	Kashmir	Haryana	Kashmir
3	Sri Lanka	Sri Lanka	Kerala	Kerala	Kerala
4	Karnataka	Iran	Dubai	Karnataka	Not an import

Section 11(b): Export of goods

Case	Location of supplier	Location of goods	Goods supplied to	Location of recipient	Place of supply
1	Assam	Assam	Thailand	Assam	Thailand
2	Tamil Nadu	Kashmir	China	Texas	China
3	Sri Lanka	Kerala	Sri Lanka	Sri Lanka	Sri Lanka
4	Maharashtra	Dubai	Iran	Iran	Not an export

* address of delivery of goods as per bill of entry

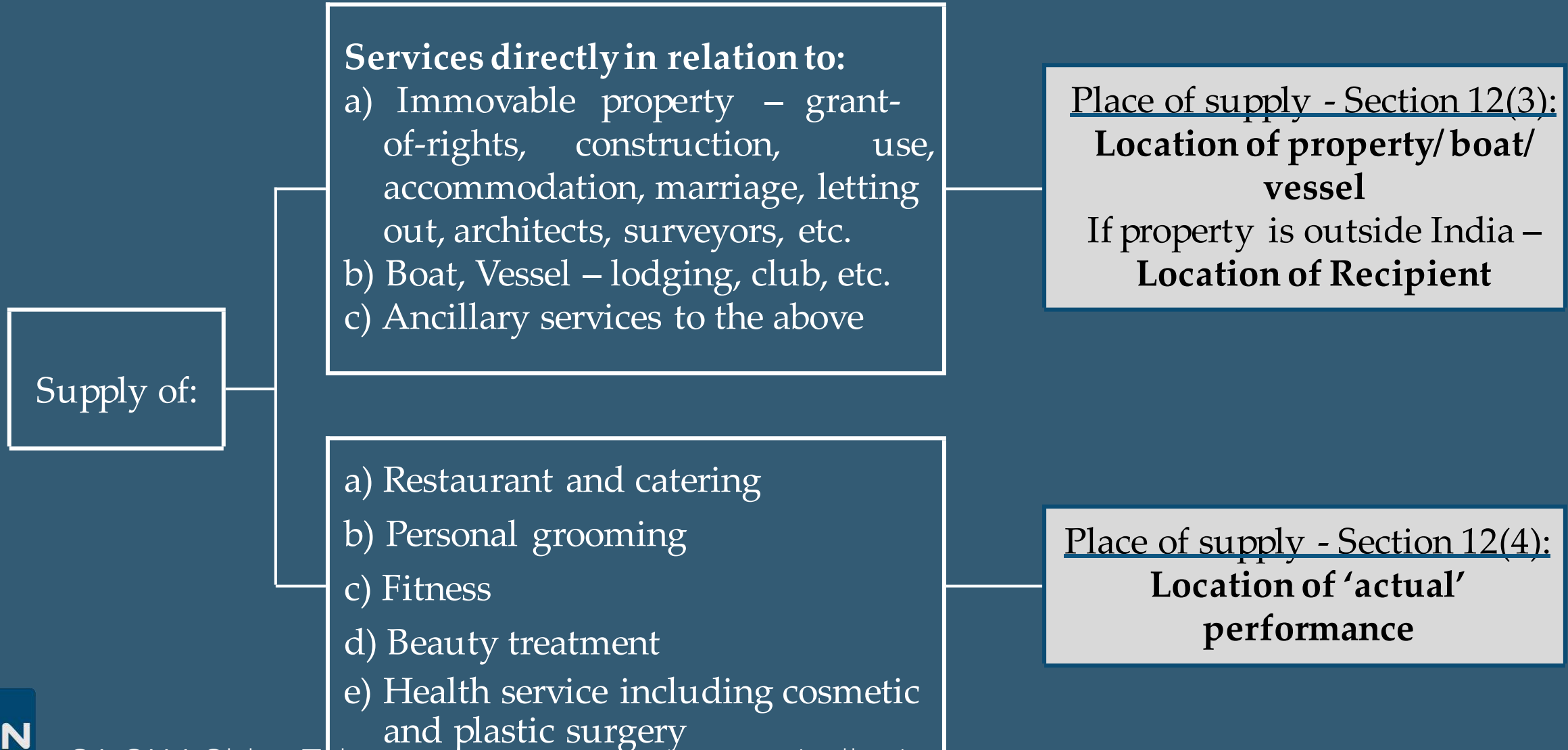
PLACE OF SUPPLY OF SERVICES – SEC 12 IGST (WHERE SUPPLIER AND RECIPIENT ARE IN INDIA)

For Supply of any other
Service,
Place of supply is:
(General Rule)

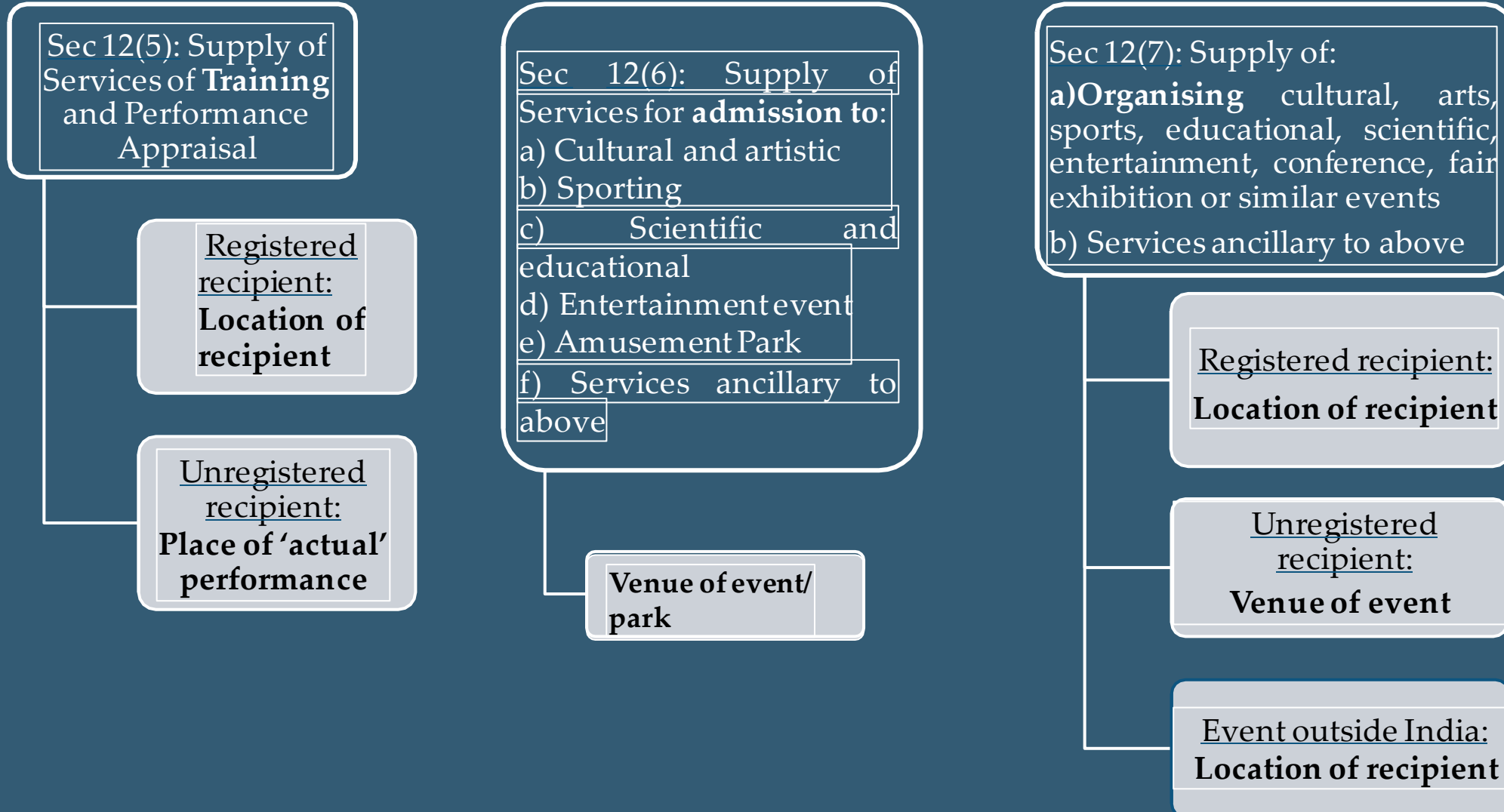
Section 12(2)(a): Registered recipient:
Location of recipient

❖ **Section 12(2)(b): Unregistered recipient:**
❖ Location of **recipient** if address in supplier's records
Location of **supplier** if address not available

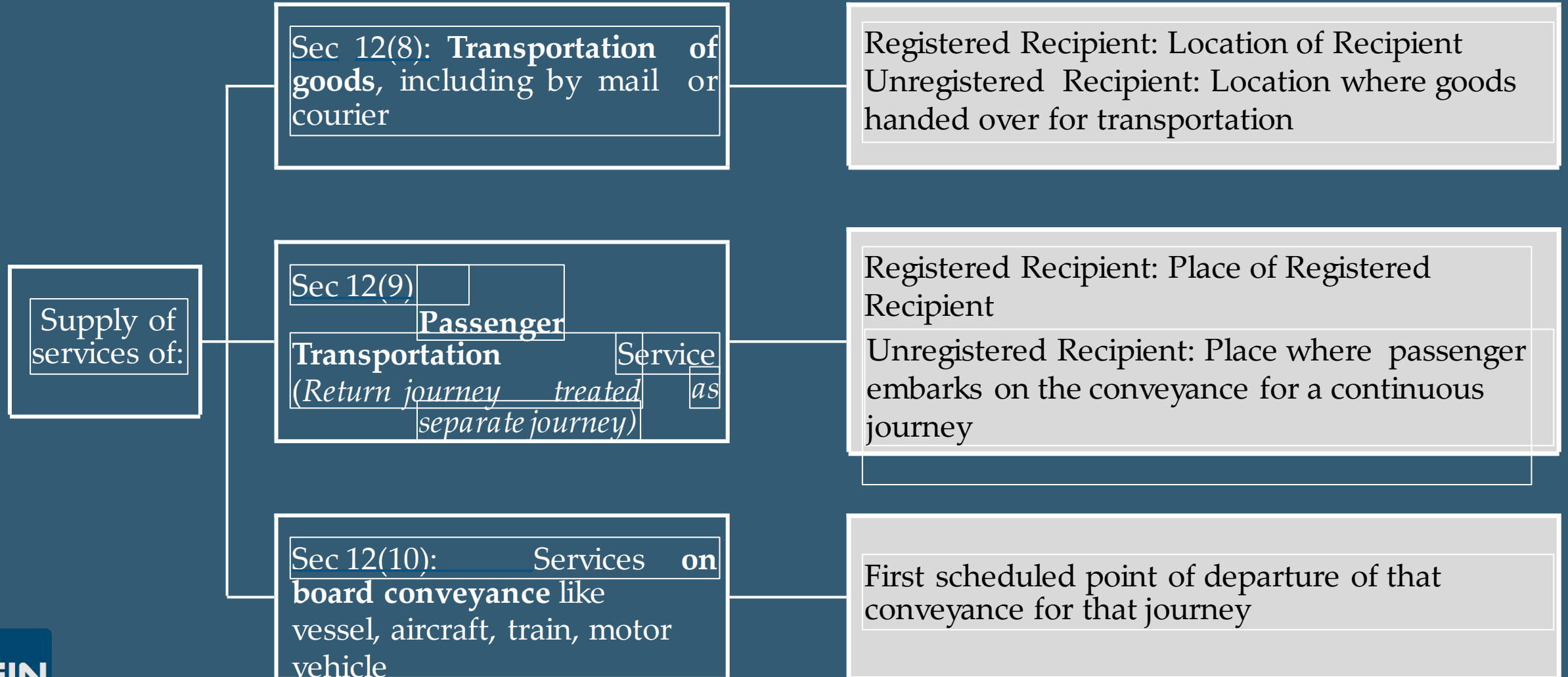
PLACE OF SUPPLY OF SERVICES – SEC 12 IGST (WHERE SUPPLIER AND RECIPIENT ARE IN INDIA)



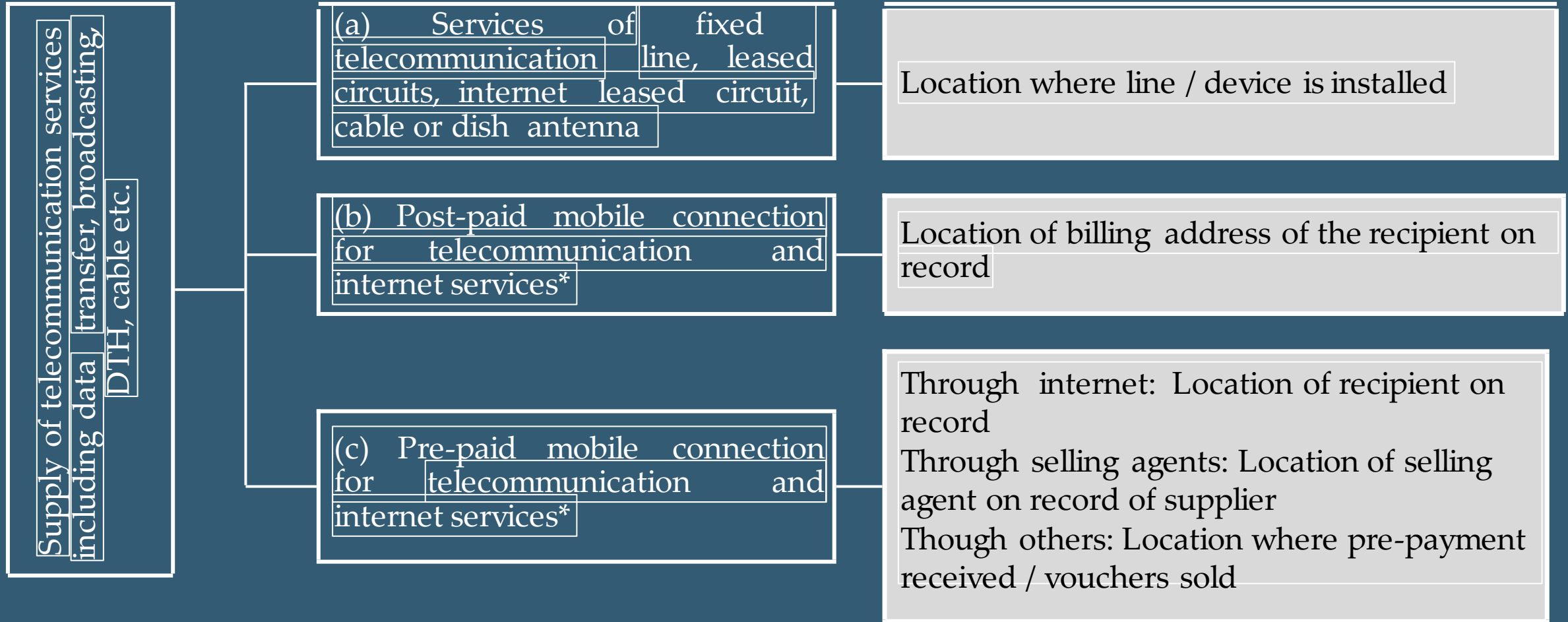
PLACE OF SUPPLY OF SERVICES – SEC 12 IGST (WHERE SUPPLIER AND RECIPIENT ARE IN INDIA)



PLACE OF SUPPLY OF SERVICES – SEC 12 IGST (WHERE SUPPLIER AND RECIPIENT ARE IN INDIA)

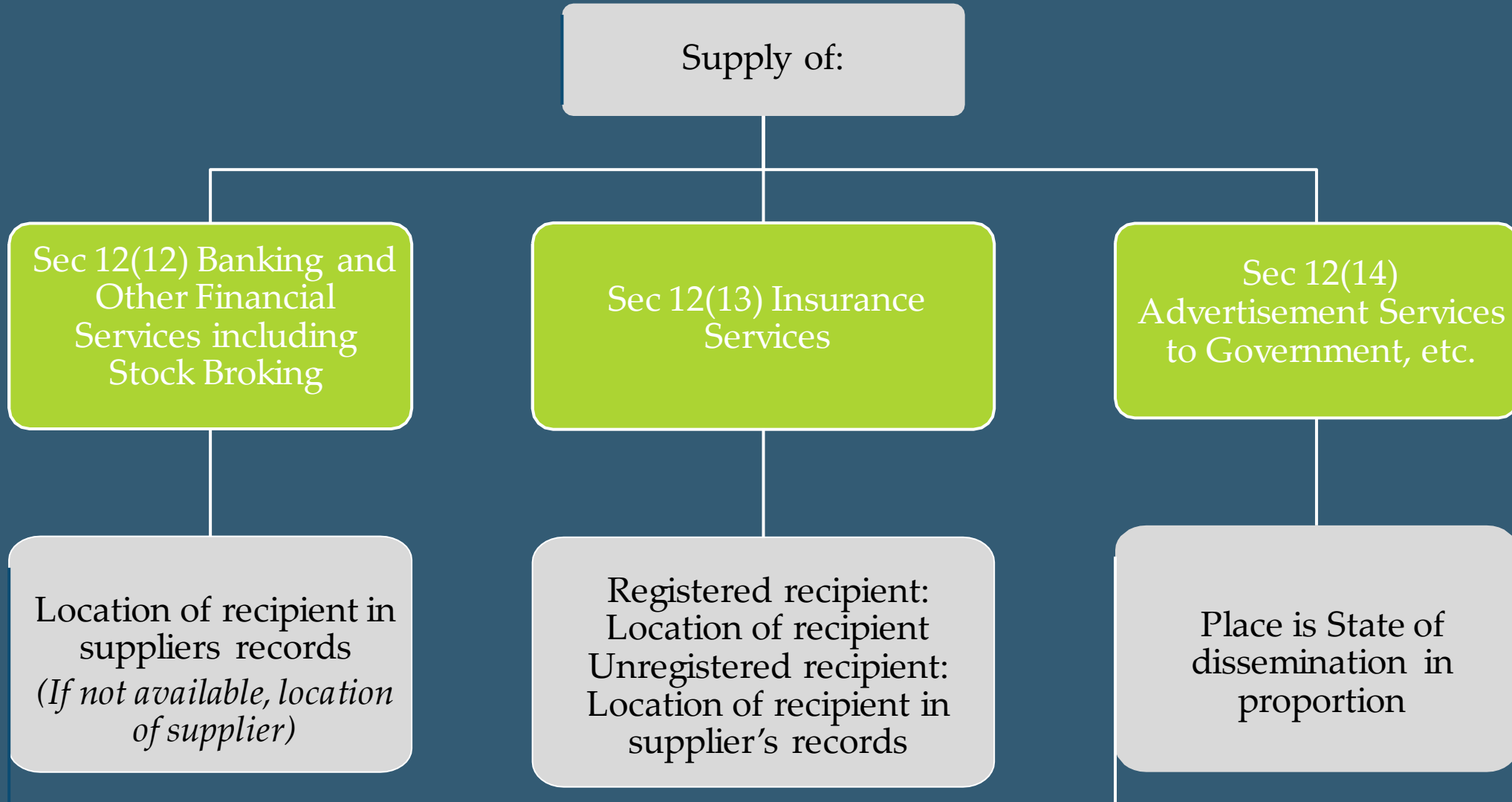


PLACE OF SUPPLY OF SERVICES – SEC 12(11) IGST (WHERE SUPPLIER AND RECIPIENT ARE IN INDIA)



- In cases not covered, address of recipient on records shall be the place of supply;
Where no address of the recipient available in records, location of the supplier shall be the place of supply

PLACE OF SUPPLY OF SERVICES – SEC 12 IGST (WHERE SUPPLIER AND RECIPIENT ARE IN INDIA)



SUPPLY OF ADVERTISEMENT SERVICE TO GOVERNMENT/LOCAL AUTHORITY: NOTIFICATION NO. 12/2017-IGST DATED 15.11.2017

Type of Transaction	Manner of determination of value
Newspapers & Publications	The value attributable to dissemination of advertisement in a State shall be the amount payable for publishing the advertisement in such state.
Printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc.	The value attributable to dissemination of advertisement in a state shall be the amount payable for distribution of a specific number of such material in a State or UT.
Hoardings other than those on trains	The value attributable to dissemination of advertisement in a State is to be based on the amount payable for hoardings located in each State or UT.
Advertisement placed on trains	The value attributable to dissemination of advertisement in a State is to be based on the ratio of the length of railway track in each state for that train.
Advertisement on back of Utility Bills of Oil & Gas Companies, etc.	The value attributable to dissemination of advertisement in a State or UT is to be based on bills pertaining to consumers having billing addresses in each State or UT.

SUPPLY OF ADVERTISEMENT SERVICE TO GOVERNMENT/LOCAL AUTHORITY:

Type of Transaction	Manner of determination of value
Advertisement on back of Railway Tickets	The value attributable to dissemination of advertisement in a State is to be based on the basis of ratio of the number of Railway Stations in each State or UT.
Advertisement over Radio Stations	The value attributable to dissemination of advertisement in a State is to be calculated based on the amount payable to such radio stations.
Advertisement on Television Channels	The value attributable to dissemination of advertisement in a State is to be calculated on the basis of the viewership of such channel in the State/UT.
Advertisement at Cinema Halls	The value attributable to dissemination of advertisement in a State is to be based on the amount payable to a cinema hall/screens in a multiplex in such State or UT.
Advertisement Over Internet	The value attributable to dissemination of advertisement in a State is to be based on the basis of the internet subscribers in such state or UT.

SUPPLY OF ADVERTISEMENT SERVICE TO GOVERNMENT/LOCAL AUTHORITY:

Type of Transaction	Manner of determination of value
Advertisement through Short Messaging Service	The value attributable to dissemination of advertisement in a State shall be calculated on the basis of the telecommunication subscribers in such state or UT.

PLACE OF SUPPLY OF SERVICES – SEC 13 IGST (WHERE SUPPLIER OR RECIPIENT IS OUTSIDE INDIA)

<p>Services when goods required to be made physically available by recipient or requiring physical presence of receiver / person acting on his behalf</p> <p>Location where services actually performed</p>	<p>Services supplied directly in relation to immovable property</p> <p>Location of such immovable property (or where it is intended to be located)</p>	<p>Service by way of admission to / organising an event, etc. and ancillary services</p> <p>Place where the event is actually held</p>	<p>Banking services to account holders, intermediary services, hiring of means of transport (other than aircraft and vessels) upto 1 month</p> <p>Location of supplier</p>	<p>Transportation of goods (other than by way of mail / courier)</p> <p>Destination of the goods</p>
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1 to 3 *When supplied at >1 location (including India) Deemed location in India.*
When supplied from >1 state / UT In proportion to the value of services

PLACE OF SUPPLY OF SERVICES – SEC 13 IGST

**Passenger
transportation
service**

Place where
passenger embarks
on the conveyance
for a continuous
journey

**Service provided
on board a
conveyance**

First scheduled
point of
departure of that
conveyance for
that journey

**Online information
and database access or
retrieval services**

Location of
recipient

Residuary

Location of the
recipient;
*If not available
in the ordinary
course of
business,
location of
supplier*

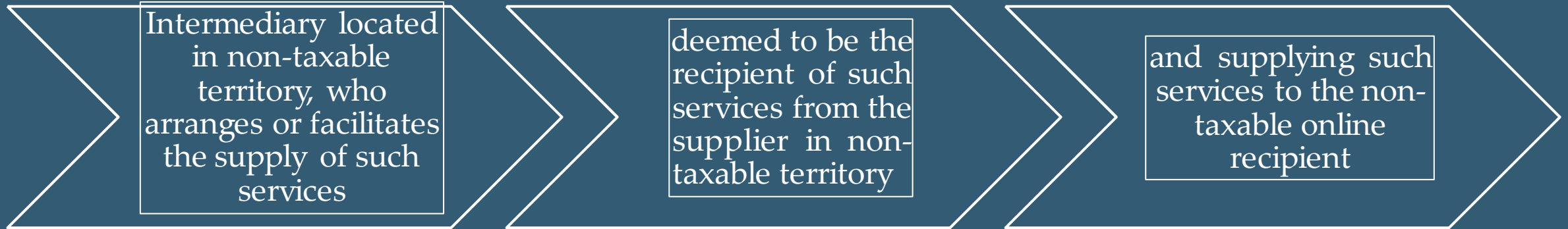
**To prevent double
taxation/ non-taxation, or
for the uniform
application of rules, CG
has power to notify
services/ circumstances
and enjoyment of a
service**

Place of
effective use

PLACE OF SUPPLY FOR SUPPLY OF ONLINE INFORMATION DATABASE ACCESS RETRIEVAL (OIDAR) SERVICES – SEC 14



PLACE OF SUPPLY FOR SUPPLY OF ONLINE INFORMATION DATABASE ACCESS RETRIEVAL (OIDAR) SERVICES – SEC 14



EXCEPT when such intermediary satisfies the following conditions:

- (a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;*
- (b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;*
- (c) the intermediary involved in the supply does not authorise delivery; and*
- (d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services*


REGISTRATION

CHAPTER 8

INTRODUCTION


- ❑ Under GST, registrations need to be taken State-wise, i.e. there are no centralized registrations under GST.
- ❑ A business entity having its branches in multiple states will have to take separate state wise registration for the branches in different states.
- ❑ Further, within a state, an entity with different branches would have single registration wherein it can declare one place as principal place and other branches as additional place of business. It may also obtain separate registration

KEYWORDS AND DEFINITIONS ---



Fixed establishment: means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs [Section 2(50)]

Registered person: means a person who is registered under section 25, but does not include a person having a Unique Identity Number [Section 2(94)]



Proper officer: in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board [Section 2(91)]

Principal place of business: means the place of business specified as the principal place of business in the certificate of registration [Section 2(89)]

PARTICULARS		THRESHOLD LIMIT FOR PERSONS ENGAGED		
		Exclusively in supply of goods	In supply of services/ both goods and services	
States other than Special		Puducherry	20 lakh	20 Lakh
Category States		Telangana	20 lakh	20 Lakh
		Others	40 lakh	20 Lakh
Special Category States as per Constitution	Special Category States as per section 22	Manipur	10 lakh	10 Lakh
		Mizoram	10 lakh	10 Lakh
		Nagaland	10 lakh	10 Lakh
		Tripura	10 lakh	10 Lakh
	Others	Jammu and Kashmir	40 lakh	20 Lakh
		Assam	40 lakh	20 Lakh
		Himachal Pradesh	40 lakh	20 Lakh
		Arunachal Pradesh	20 Lakh	20 Lakh
		Meghalaya	20 Lakh	20 Lakh
		Sikkim	20 Lakh	20 Lakh
	Uttarakhand	20 Lakh	20 Lakh	

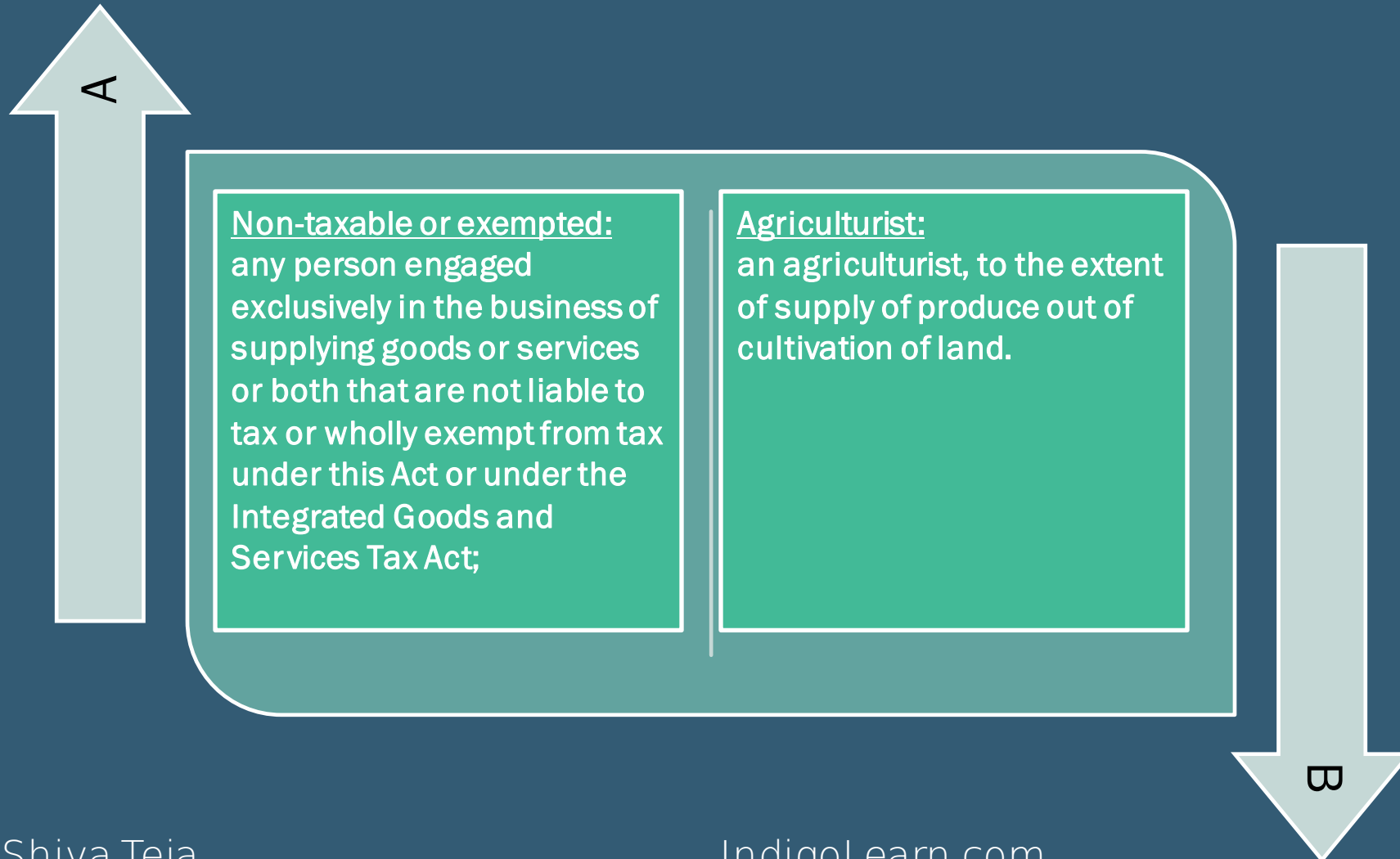
NOTE :

"Aggregate turnover" to include job-work:

The aggregate turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. However, supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

PERSONS NOT LIABLE FOR REGISTRATION [Sec 23] -

The following persons shall not be liable to registration, namely:—



POWER TO EXEMPT :

The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

1. Persons making only reverse charge supplies

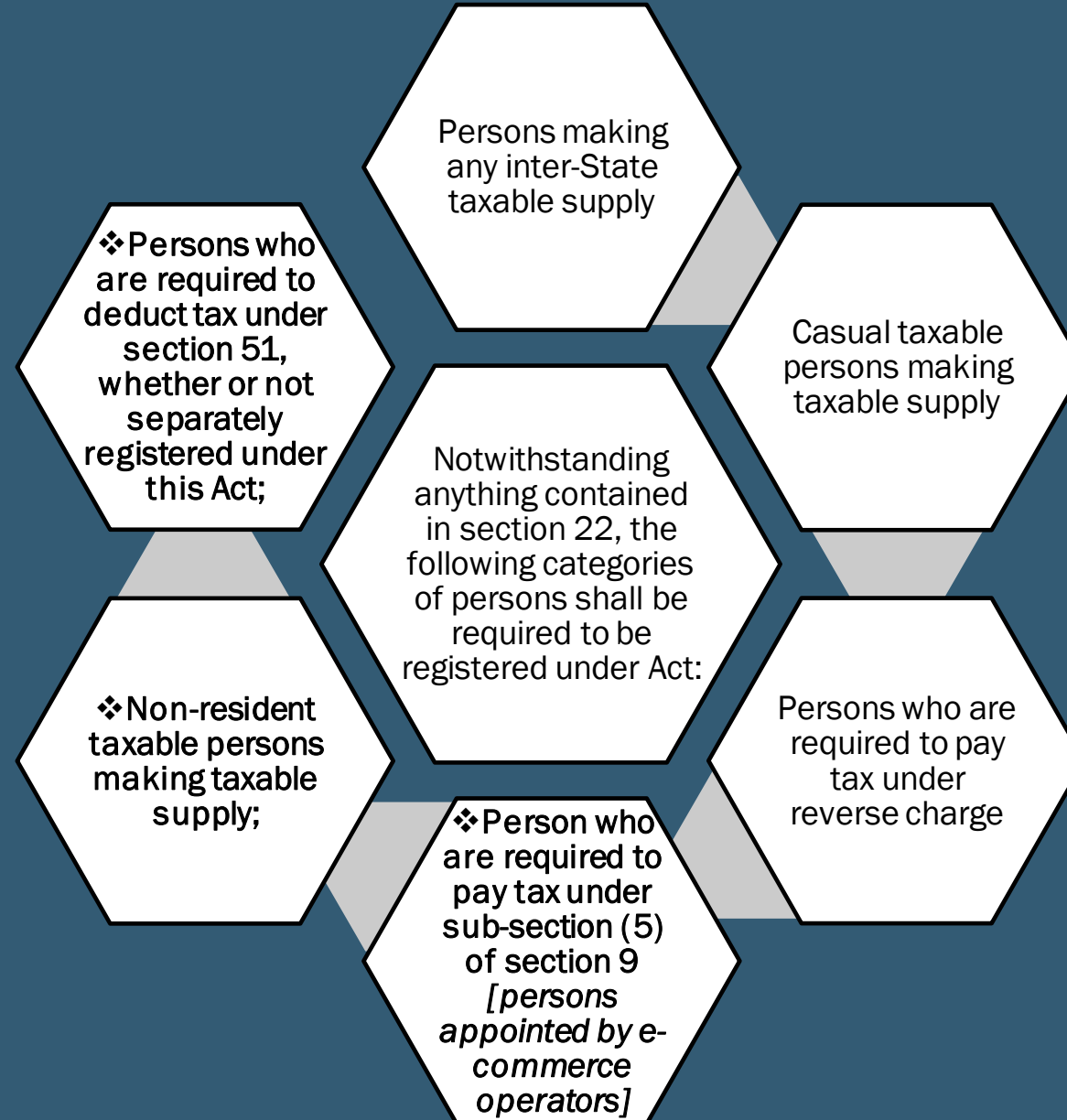
2. Job workers making inter-State supply of services to a registered person

- i. Job workers engaged in making inter-State supply of services to a registered person have been exempted from obtaining registration.
- ii. However, nothing contained in this notification shall apply to a job-worker:
 - a) who is liable to be registered under sub-section (1) of section 22 or who opts to take registration voluntarily under sub-section (3) of section 25 of the CGST Act; or
 - b) who is involved in making supply of services in relation to jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71 of the Tariff).

3. Casual Taxable Persons making taxable supplies of handicraft goods

- ❑ As per section 24, a casual taxable person or a person making inter-State supplies are liable to be registered compulsorily under GST irrespective of the threshold limit.
- ❑ However, Casual Taxable Persons making taxable supplies of handicraft goods or persons making inter-State supplies of handicraft goods, have been exempted from obtaining registration.
- ❑ Conditions to be fulfilled for claiming exemption:
The above exemption is available provided:
 - a. the aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of 20 lakh or 10 lakh in case of Special Category States, other than the State of Jammu and Kashmir in a FY.
 - b. the Casual Taxable Persons making taxable supplies of handicraft goods or persons making inter-State supplies of handicraft goods shall be required to **obtain a PAN and generate an e-way bill**

COMPULSORY REGISTRATION IN CERTAIN CASES [Sec 24] -





PROCEDURE FOR REGISTRATION

Application within 30 days -

- Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within 30 days
- However, a casual taxable person or a non-resident taxable person shall apply for registration at least 5 days prior to commencement of business.

Supplies from TWI — Registration at nearest coastal State/UT:

Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

Single registration in each state -

A person seeking registration under this Act shall be granted a single registration in a State or Union territory. However, a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.

Voluntary registration -

A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

Separate registration = separate person -

A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

**Premises in separate
states — Separate person -**

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 for the purposes of this Act.

PAN or TAN mandatory

Every person shall have a Permanent Account Number issued under the Income tax Act, 1961 in order to be eligible for grant of registration.

However, a person required to deduct tax u/s 51 may have, in lieu of a PAN, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

Unique Identifier –

(a) Any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and
(b) Any other person or class of persons, as may be notified by the Commissioner, shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

Casual taxable person and nonresident taxable person [Sec 27] –

- The certificate of registration issued to a casual taxable person or a nonresident taxable person shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier.
- However, proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of 90 days by a further period not exceeding 90 days.
- As per Section 25, they must apply for registration atleast 5 days prior to commencement of business.

Casual taxable person and nonresident taxable person [Sec 27] –

- A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration, make an advance deposit of tax
- Further, if any extension of time is sought, such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability.

Amendment of registration [Sec 28]

- ❖ If there is any change in the details submitted at the time of registration then application needs to be filed for amendment.
- ❖ Amendment may be related to core fields or non core fields

Cancellation of registration [Sec 29] ----

(1) Circumstances leading to cancellation :

The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration.

❑ Period and manner of suspension of registration

Further, with effect from 01.02.2019, new rule 21A of the CGST Rules has been inserted vide **Notification No. 03/2019 CT dated 29.01.2019** which lays down the period and manner of suspension of registration as follows:

A. Where registered person has applied for cancellation of registration:

Where a registered person has applied for cancellation of registration, the registration shall be deemed to be suspended from:

- i. *the date of submission of the application or*
- ii. *the date from which the cancellation is sought,*
whichever is later, pending the completion of proceedings for cancellation of registration.

B. Where cancellation of the registration has been initiated by the Department on their own motion:

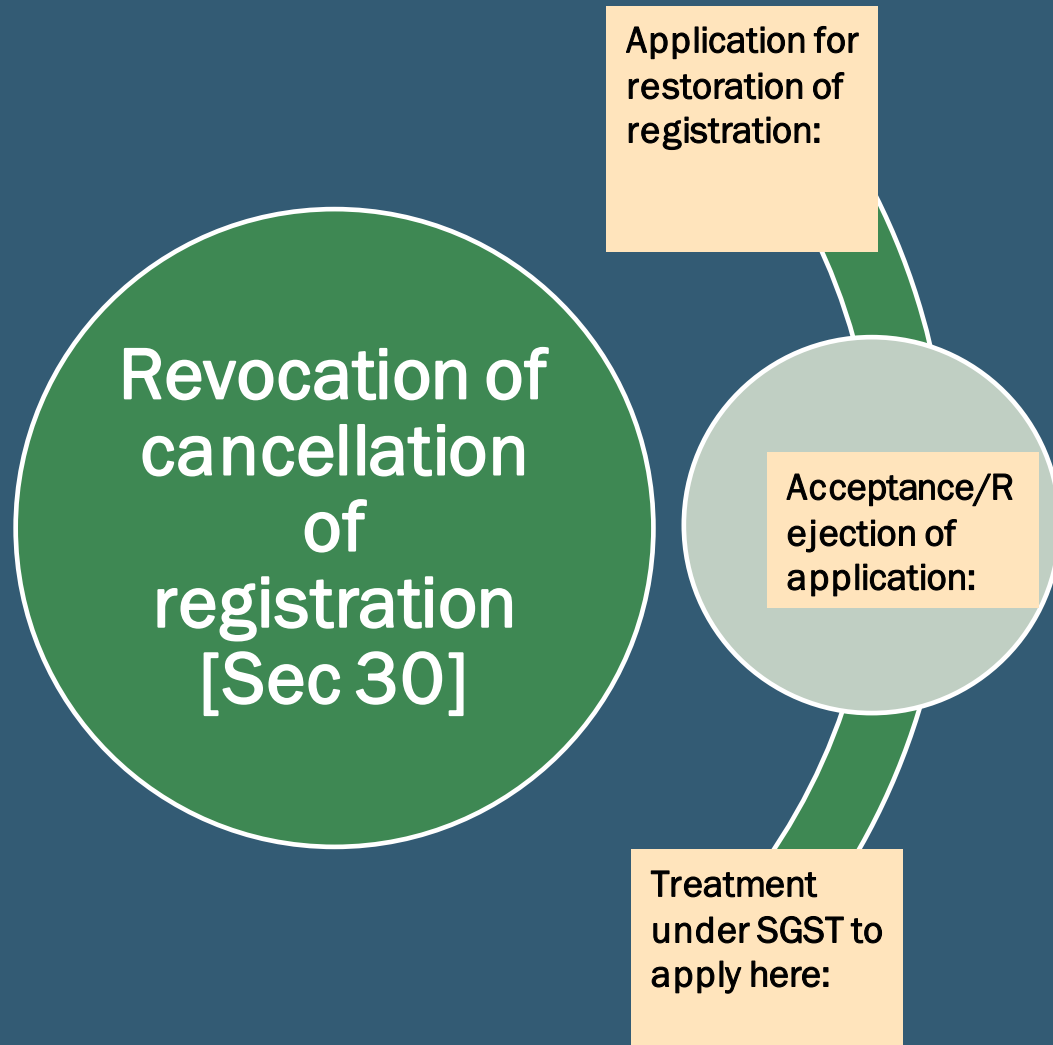
- Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he may, after affording the said person a reasonable opportunity of being heard, suspend the registration of such person **with effect from a date to be determined by him**, pending the completion of the proceedings for cancellation of registration.
- A registered person, whose registration has been suspended as above:
 - shall not make any taxable supply during the period of suspension and
 - shall not be required to furnish any return under section 39.
- The suspension of registration shall be deemed to be revoked upon completion of the cancellation proceedings by the proper officer. Such revocation shall be effective from the date on which the suspension had come into effect.

(2) Registration may be cancelled from retrospective date in some cases:

- ❖ A registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed
- ❖ A person paying composite tax under section 10 has not furnished returns for three consecutive tax periods; or
- ❖ Any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
- ❖ Any person who has taken voluntary registration has not commenced business within six months from the date of registration; or
- ❖ Registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

(3) Liability not affected:

(4) On cancellation, pay = credit reversal or output tax (higher) :



Any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within 30 days from the date of service of the cancellation order.

where the registration has been
cancelled *with effect from the date
of order of cancellation of
registration*

- all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed and
- all returns required to be furnished in respect of the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of 30 days from the date of the order of revocation.

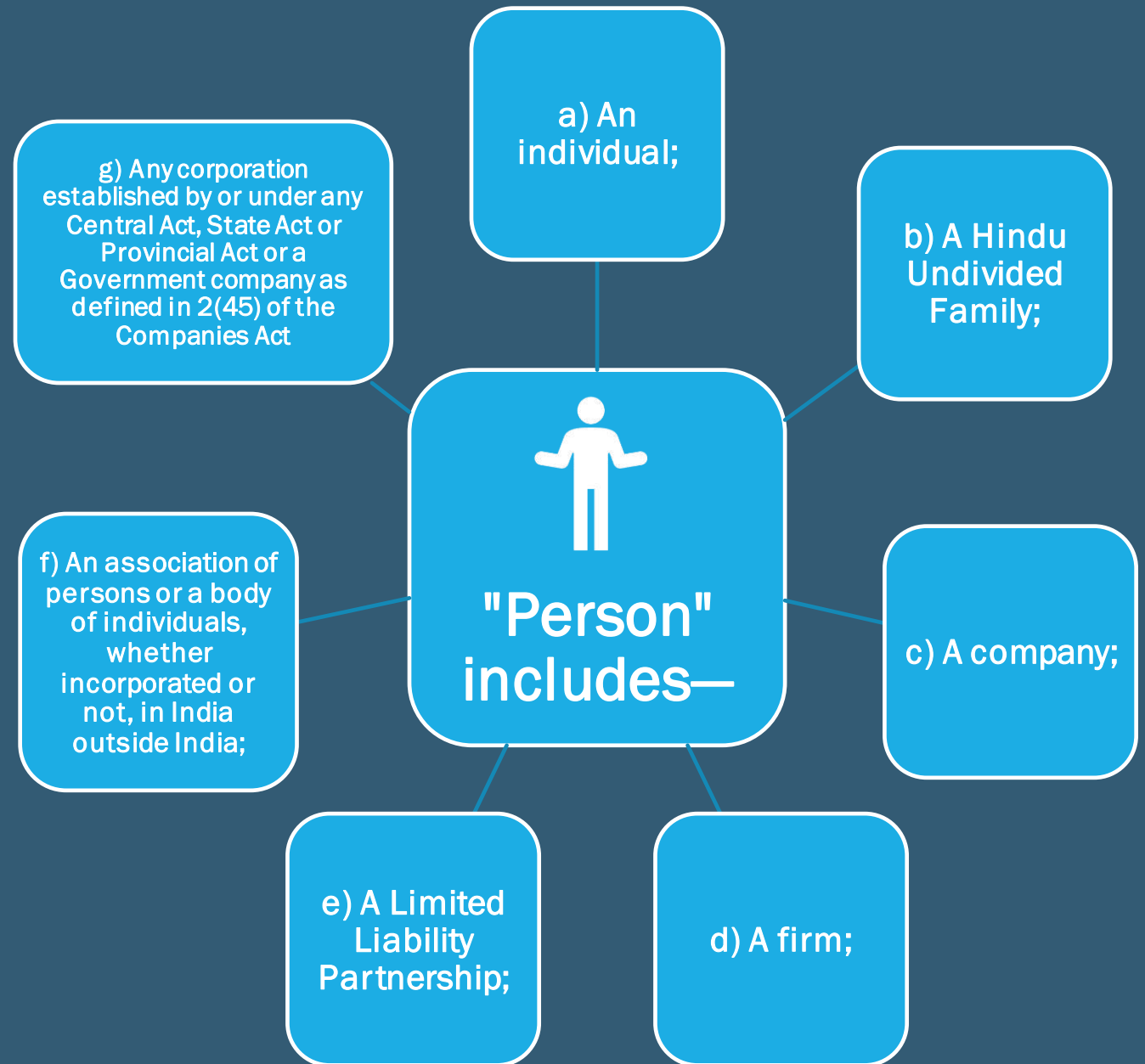
where *the registration has been
cancelled with retrospective effect*

- The application for revocation of cancellation of registration can be filed, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of **30 days** from the date of order of such revocation of cancellation of registration.

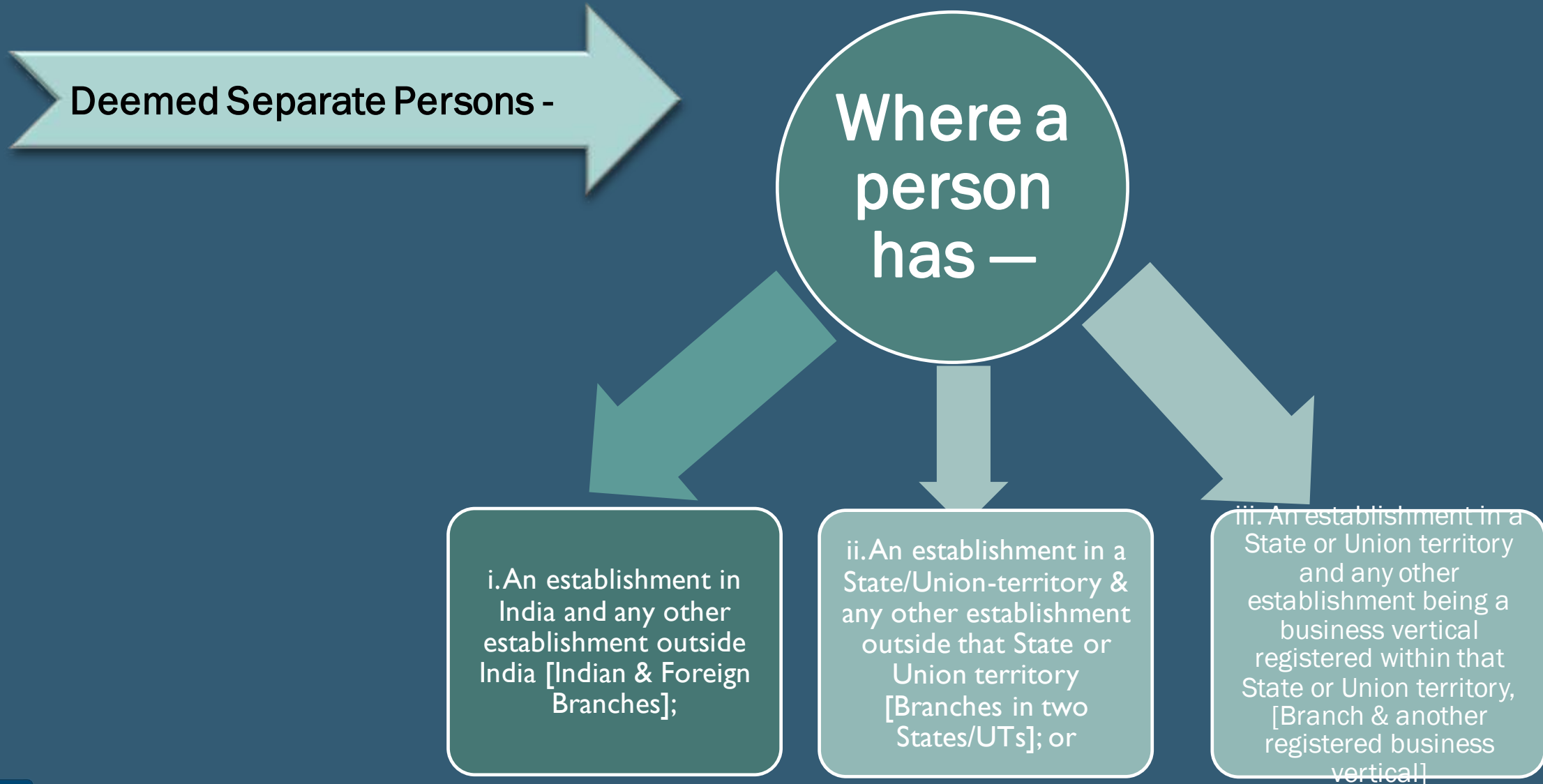
SUPPLY UNDER GST

CHAPTER 9

PERSON [Section- 2(84)]---







then such establishments are treated as establishments of distinct persons.
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Branch or representational office amounts to 'establishment' [Expl. 2 to section 8]:

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

Expl. To Sec. 15 Related persons –

For the purposes of this Act, persons shall be deemed to be "related persons" if—

I. such persons are officers or directors of one another's businesses;

II. Such persons are legally recognized partners in business;

III. Such persons are employer and employee;

IV. any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;

V. one of them directly or indirectly controls the other;

VI. Both of them are directly or indirectly controlled by a third person;

VII. Together they directly or indirectly control a third person; or

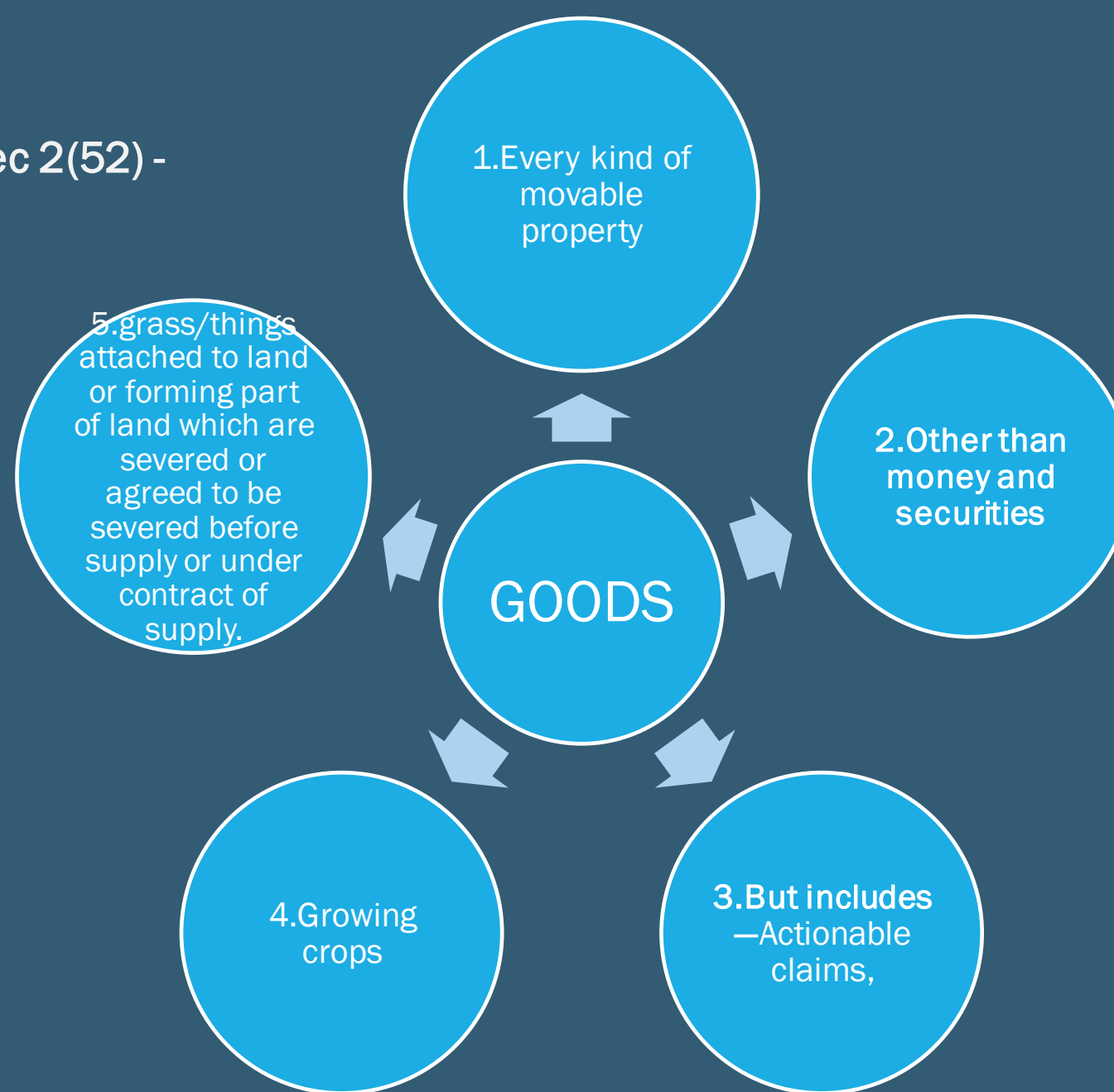
VIII. They are members of the same family;

Note 1: The term "person" also includes legal persons.

Note 2 — Sole distributors are deemed to be related : Persons who are associated in the business of one another in such a way that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

Note 3 — Family [Section 2(49)]: "Family" means,—
the spouse and children of the person, and
the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;

Definition of Goods as per Sec 2(52) -



1 Securities — Not goods [Section 2(101)]:

“Securities” shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

Securities include -

- ♦ shares, scripts, stocks, bonds, debentures, debenture stock or other marketable securities of a company;
- ♦ derivative, options, futures, swaps, forward agreements, etc.

2 Money — Not goods [Section 2(75)]:

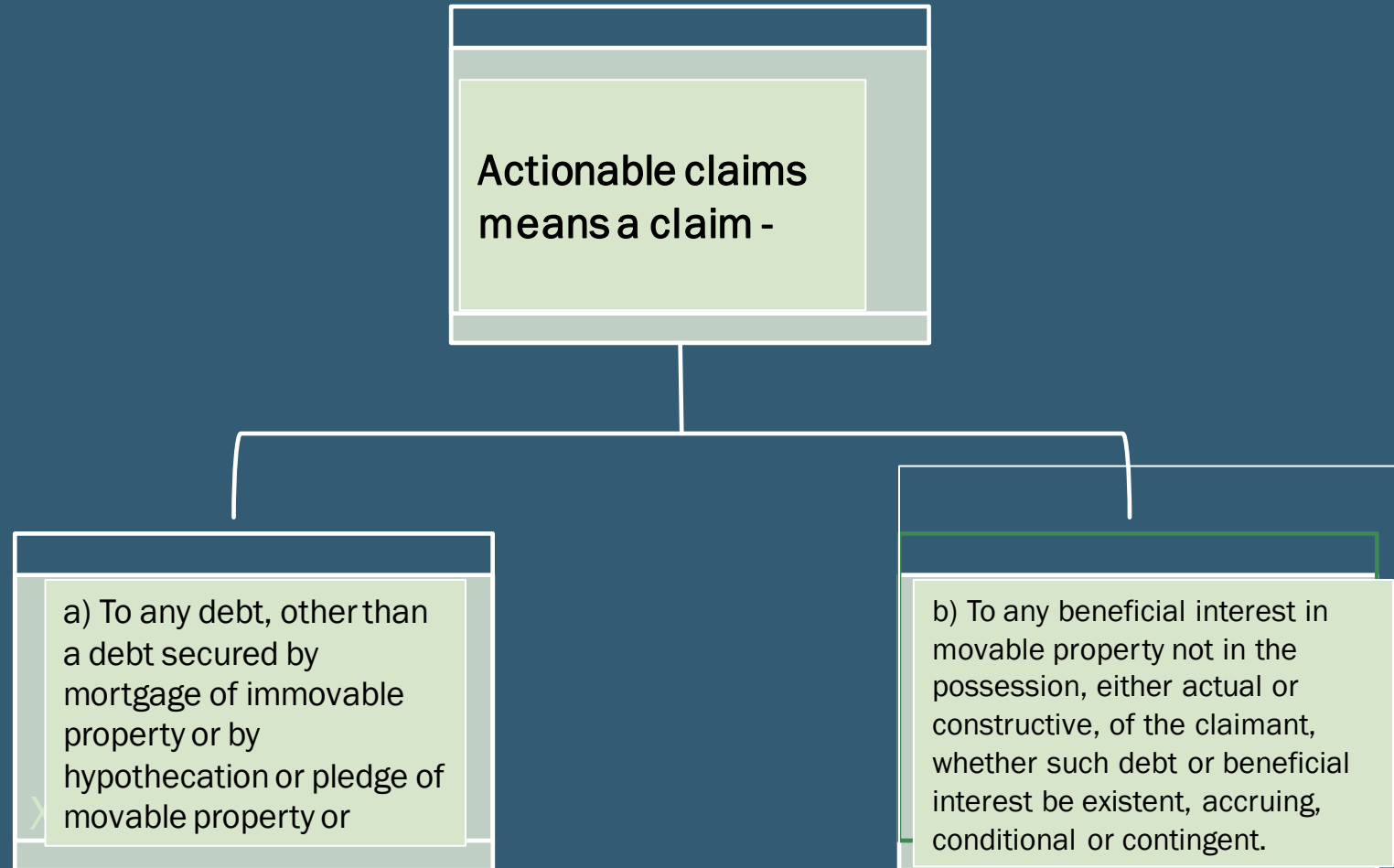
“Money” means —

- ⑩ The Indian legal tender or any foreign currency,
- ⑩ Cheque,
- ⑩ Promissory note,
- ⑩ Bill of Exchange,
- ⑩ Letter of credit,
- ⑩ Draft,
- ⑩ Pay order,
- ⑩ Traveller cheque,
- ⑩ Money order,
- ⑩ Postal or electronic remittance or
- ⑩ any other instrument recognized by the RBI when used as a consideration to settle an obligation/exchange with Indian legal tender of another denomination.
- ⑩ But shall not include any currency that is held for its **numismatic value**.

[**Numismatic means “collection and study of money (and coins in particular)”. For example, a coin in force in ancient times and having denomination of a rupee shall not be regarded as ‘money’, as it is not held as a rupee, but, for its numismatic value.]

Actionable Claim — Goods [Section 2(1)]:

“Actionable claim” shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882.





Illustrations of actionable claims are -

- (i) Unsecured debts**
- (ii) Right to participate in the draw to be held in a lottery.**

Analysis: Actionable claims are goods. However, they are excluded from charge of GST as per section 7 read with Schedule III of the CGST Act. But, actionable claim being lottery, betting and gambling is liable to GST as supply of goods.

DEFINITION OF SERVICES AS PER Sec 2 (102) –

♦ 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.

Analysis: Thus, while money is not service, however, transaction of exchange/ conversion of money are 'service'. Secondly, securities are neither goods and= nor services; hence, outside scope of GST.

An Explanation has been inserted to the definition of 'service' under section 2(102) of the CGST Act to clarify that the expression "services" includes facilitating or arranging transactions in securities.

Since securities are excluded from the definition of both 'goods' and 'services' in the CGST Act, they are neither goods nor services. However, facilitating or arranging transactions in securities is liable to GST. In order to clarify the same, this explanation has been inserted.

SUPPLY — MEANING OF [Section 7]

As per section 7(1), for the purposes of this Act, the expression “supply” includes-

(a) Supplies for consideration in course of business [Sec. 7(1)(a)] - 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 a consideration
- ♦ By a person
- ♦ In the course or furtherance of business.

(b) Import for consideration [Sec. 7(1)(b)] - Import of services—

- ♦ For a consideration
- ♦ Whether or not in the course or furtherance of business

(c) Certain supplies without consideration [Sec. 7(l)(c)] - The following activities specified in Schedule I, made or agreed to be made without a consideration —

- 1. Sale of business assets on which ITC has been availed: Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- 2. Supplies between related persons, except gift upto Rs. 50,000 to employees: 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.
- 3. Agent to principal or vice-versa, if agent supplies/receives on behalf of principal: Supply of goods—
 - (a) By a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) By an agent to his principal where the agent undertakes- to receive such goods on behalf of the principal.
- 4. Import from related parties: 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.

Gifts upto Rs. 50,000 to employee — not taxable: However, gifts upto Rs. 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. It may be noted that employer-employee are deemed to be related.

Activity deemed to be supply of goods [Sec. 7(1A)] –

Activities to be treated as supply of goods as referred to in Schedule II –

1. Transfer of title

- (a) Any transfer of the title in goods;
- (b) 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.

2. Permanent Transfer of business assets:

- (a) If goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, then, such transfer or disposal is a supply of goods by the person;
- (b) Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him 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, unless—
 - I. The business is transferred as a going concern to another person; or
 - II. The business is carried on by a personal representative who is deemed to be a taxable person.

3. Supply of Goods by 'unincorporated association' or 'body of persons' for consideration:

- The following shall be treated as supply of goods, namely: —
 - Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration. This transaction is a deemed sale under Article 366(29A) of Constitution.

Activity deemed to be supply of services [Sec. 7(1A)] –

Activities to be treated as supply of service as referred to in Schedule II —

1. Transfer of right without transfer of title:

- Any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services. Thus, transfer of right to use, which is a deemed sale under Article 366(29A), is a 'service' now.

2. Land and Building

- (a) Any lease, tenancy, easement, license to occupy land is a supply of services;
- (b) Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process [Job-work, repair, maintenance, etc.]:

- Any treatment or process which is applied to another person's goods is a supply of services.

4. Personal/Non-business use of business assets is 'service':

- Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business
 - a) Are put to any private use or
 - b) Are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

5. Supply of services [Declared Services]:

- The following shall be treated as supply of services, namely:—
 - a) Renting of immovable property;
 - b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received
 - ♦ after issuance of completion certificate, where required, by the competent authority or
 - ♦ After its first occupation, Whichever is earlier.

6. Composite supply:

- The following composite supplies shall be treated as a supply of services, namely:—
 - (a) works contract in relation to immovable property
 - (b) Restaurant or catering transactions

The following shall be treated neither as a supply of goods nor a supply of services —

[a] Activities/transactions specified in Schedule-III

- 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.(a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
- (b) The duties performed by any person who holds any post in pursuance of provisions of the Constitution in that capacity; or
- (c) the 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.

Neither goods nor service [Section 7(2)] –

The following shall be treated neither as a supply of goods nor a supply of services

[a] Activities/transactions specified in Schedule-III

- 4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- 5 a. Sale of land/ Sale of building, but, subject to clause (b) of paragraph 5 of Schedule II [i.e., construction services are taxable]
- 6. Actionable claims, other than lottery, betting and gambling.
- 7. Out and out supplies
- 8. High sea sales
- 9. Supply of warehoused goods before clearance for home consumption.

[b] Notified statutory activities: such activities or transactions undertaken by —

- Import
 - ■ The Central Government,
 - ■ A State Government or
 - ■ Any local authority
- In which they are engaged as public authorities, as may be notified by the Central Government on the recommendations of the Council. {Panchayat/ Municipality}

Other transactions — Notification as ‘goods’ or ‘services’ [Section 7(3)] -

Subject to the provisions of sections 7(1) and 7(2), the Central Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- a) A supply of goods and not as a supply of services; or
- b) A supply of services and not as a supply of goods

TAX LIABILITY ON COMPOSITE AND MIXED SUPPLIES [Section 8] ---

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

1. Composite Supply [Sec. 2(30)]:

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;

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

- Composite supply to be taxed as 'principal supply' [Sec. 8(a)]:
 - A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.
 - Illustration. — Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply. In this case, entire transaction would be taxed as 'supply of goods'.

2. Mixed Supply [Section 2(74)]:

"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.

Mixed Supply to be taxed as 'highest rated supply' [Sec. 8(b)]:

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

Special issues in the concept of supply:

- ❖ Art works sent by Artists to Art Gallery for exhibition is not a supply since no consideration flows from Art Gallery to Artist. However, supply takes place when a buyer selects a particular art work displayed at the gallery.
- ❖ In case of goods sent by principal to agent, it is regarded as supply even though there is no consideration provided invoice for further supply is issued by agent in his own name. Agent is a person who supplies goods on behalf of the principal.
- ❖ Above provision will apply even in relation to del credere agent i.e., person who undertakes the responsibility to recover the outstanding dues. Interest charged for extension of credit period would be included in value of supply if the agent is covered under Section 7 i.e., invoice is issued by agent in his own name.
- ❖ In case of “buy one get one free offer”, it appears that one is given free but the fact is that price of two is charged in one product and be treated as composite/ mixed supply based on nature of supply.
- ❖ Sale of land/ building is not subject to GST but GST would apply on renting or leasing of immovable property. In this regard, it is to be noted that GST would apply on transfer of tenancy rights against consideration in the form of tenancy premium. Transfer of tenancy rights concept is very popular in the state of Maharashtra and is known as Pagadi system.
- ❖ Service provided by employee to employer outside the course of employment is taxable.

Special issues in the concept of supply:

- ❖ Inter-state movement of various modes of conveyance between distinct persons carrying goods or passengers or both (or) for repairs or maintenance shall neither be treated as supply of goods nor supply of service. However, GST would apply on repairs and maintenance done for such conveyance.
- ❖ In case of servicing of cars where the value of goods and services are shown separately, GST would apply at the rates applicable to them separately.
- ❖ In case of printing of books, pamphlets, brochures, annual reports etc where the content is supplied by publisher and paper used for printing belongs to the printer, supply of printing is the principal supply and would be regarded as supply of service.
- ❖ In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wallpapers etc by the printer using its physical inputs including paper, the predominant supply is supply of goods and printing is only ancillary.
- ❖ In general, principal supply would depend upon the facts and circumstances of each case.
- ❖ In case of retreading activity, predominant element is supply of service and rubber used for retreading is only ancillary. However, supply of retreaded tyres where old tyre belong to the supplier would be regarded as supply of goods.

VALUE OF SUPPLY SECTION 15 & RULE 27 TO 35

CHAPTER 10

Section 15 (1)

“The value of a supply of goods or services or both shall be the **transaction value**, which is the price actually paid or payable for the said supply of goods or services or both **where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.**”

- Section is applicable to both goods or services with following conditions :
 1. The supplier and the recipient are not related party.
 2. Price is the sole consideration for the supply.

INCLUSION TO VALUE OF SUPPLY – TRANSACTION VALUE

SECTION – 15 (2)

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

TCS shall not be included

INCLUSION TO VALUE OF SUPPLY – TRANSACTION VALUE SECTION – 15 (2)

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

- Example - if as per the purchase order supplier has to incurred transportation cost, but instead of supplier recipient of the goods paid the transportation cost then the same should be included in transaction value.

INCLUSION TO VALUE OF SUPPLY – TRANSACTION VALUE SECTION – 15 (2)

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services

INCLUSION TO VALUE OF SUPPLY – TRANSACTION VALUE SECTION – 15 (2)

(d) interest or late fee or penalty for delayed payment of any consideration for any supply;

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

- Example - if as per the payment term of purchase order payment should be made within 45 days and above that 18% interest is payable. If the recipient made delay payment and had paid any interest then the same is part of transaction value

EXCLUSION TO VALUE OF SUPPLY – TRANSACTION VALUE SECTION – 15 (3)

The value of the supply shall not include any ***discount*** which is given

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply;

(b) after the supply has been effected, if—

such discount is established in *terms of an agreement* entered into at or before the time of such supply and specifically linked to relevant invoices; and

input tax credit as is attributable to the discount on the basis of document issued by the supplier has been *reversed by the recipient* of the supply.

VALUATION IN CERTAIN CASES SECTION 15(4) & 15 (5)

- Section 15 (4)

Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

- Section 15 (5)

Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

VALUATION RULES RULE NO. 27 TO 35

Rule No	Particulars
27	Where the consideration is not wholly in money
28	Supply is between distinct/related persons, other than through an agent
29	Supply made or received through an agent
30	Supply based on cost
31	Residual method
31A	Valuation in case of betting, gambling and lottery
32	Determination of value in respect of certain supplies
33	Value of supply of services in case of pure agent
34	Rate of exchange of currency, other than Indian rupees, for determination of value
35	Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

RULE 27. VALUE OF SUPPLY OF GOODS OR SERVICES WHERE THE CONSIDERATION IS NOT WHOLLY IN MONEY

- Value of supply :
 - (a) be the *open market value* of such supply;
 - (b) if the open market value is not available then consideration in money + Market value of consideration in kind.
 - (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of *goods or services or both of like kind and quality*;
 - (d) Rule 30
 - (e) Rule 31

open market value

be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money

RULE 28. VALUE OF SUPPLY OF GOODS OR SERVICES OR BOTH BETWEEN DISTINCT OR RELATED PERSONS, OTHER THAN THROUGH AN AGENT.

- Determination of Transaction Value :
 - a) be the *open market value* of such supply;
 - b) if the open market value is not available under clause (a), *be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;*
 - c) if the value is not determinable under clause (a) or (b), *be value as determined by the application of rule 30 or rule 31 in that order*

RULE 28. VALUE OF SUPPLY OF GOODS OR SERVICES OR BOTH BETWEEN DISTINCT OR RELATED PERSONS, OTHER THAN THROUGH AN AGENT.

Special points :

- Provided that where the goods are *intended for further supply* as such by the recipient, the value shall, at the option of the supplier, be an *amount equivalent to ninety percent of the price charged for the supply* of goods of like kind and quality by the recipient to his customer not being a related person
- Provided further that where *the recipient is eligible for full input tax credit*, the *value declared in the invoice shall be deemed to be the open market value of the goods or services.*

RULE 29.VALUE OF SUPPLY OF GOODS MADE OR RECEIVED THROUGH AN AGENT.

- Determination of Transaction Value :
be the *open market value* of such supply; or
at the option of the supplier, be *ninety per cent of the price charged for the supply of goods* of like kind and quality by the recipient to his customer *not being a related person*, where the goods are intended for further supply by the said recipient.

Where the value of supply is not determinable, the same shall be *determined by the application of rule 30 or rule 31 in that order*

RULE 30. VALUE OF SUPPLY OF GOODS OR SERVICES OR BOTH BASED ON COST.

The value shall be 110% of the cost of Production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

RULE 31. RESIDUAL METHOD FOR DETERMINATION OF VALUE OF SUPPLY OF GOODS OR SERVICES OR BOTH

The value shall be determined using *reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter.*

In case of supply of services, the supplier may opt for this rule, ignoring rule 30.

RULE 31A : VALUE OF SUPPLY IN CASE OF LOTTERY, BETTING, GAMBLING AND HORSE RACING

Value of supply of lottery run by State Governments shall be deemed to be higher of :-

100/112 of the face value of ticket or of the price as notified in the Official Gazette by the organising State

Value of supply of lottery authorised by State Governments shall be deemed to be higher of :-

100/128 of the face value of ticket or of the price as notified in the Official Gazette by the organising State

RULE 31A : VALUE OF SUPPLY IN CASE OF LOTTERY, BETTING, GAMBLING AND HORSE RACING

Value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be:
100% of the face value of the bet or the amount paid into the totalisator

RULE 32. DETERMINATION OF VALUE IN RESPECT OF CERTAIN SUPPLIES

- Rule 32(2)(a):
- The value of supply of services in relation to the purchase or sale of foreign currency, including money changing :
 - If exchanged from, or to, Indian Rupees then Transaction Value = Total Unit of currency * (Buying/ Selling Rate – RBI Reference Rate)
 - If RBI Reference Rate not available – Transaction Value = 1 % of the gross amount of Indian Rupees provided or received by the person changing the money.

RULE 32. DETERMINATION OF VALUE IN RESPECT OF CERTAIN SUPPLIES

- ❖ Optional scheme given by Rule 32(2)(b) – Once opted cannot be withdrawn during the Financial year.

Value of Currency Exchanged	Value of supply
Up to ₹ 1,00,000/-	1% subject to minimum ₹ 250
₹ 1,00,001/- to ₹ 10,00,000/-	₹ 1000+ 0.5% of amount exceeding 1L
Above ₹ 10,00,000/-	₹ 5,500+ 0.1% on amount exceeding 10L subject to maximum ₹60,000/-

RULE 32. DETERMINATION OF VALUE IN RESPECT OF CERTAIN SUPPLIES

Rule 32(3):

The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent :

- ❖ Domestic Booking : *5% of Basic Fare*
- ❖ International Booking : *10% of Basic Fare*

Basic fare : Part of the air fare on which commission is normally paid to the air travel agent by the airlines.

RULE 32. DETERMINATION OF VALUE IN RESPECT OF CERTAIN SUPPLIES

Rule 32(4):

The value of supply of services in relation to life insurance business :

- ❖ the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service
- ❖ Single premium annuity policies other than above – 10% of *single premium charged*.
- ❖ In other case – (i) 25% of *premium for first year and*
(ii) 12.5% of *premium from next year*.
- ❖ Premium of policy exclusively risk cover life insurance : *Nil*

RULE 32. DETERMINATION OF VALUE IN RESPECT OF CERTAIN SUPPLIES

Rule 32(5):

Taxable supply is provided by a person dealing in buying and selling of second hand goods :

- ❖ Transaction Value = *Selling price - Buying price*. In case. If there is no margin then GST would apply.

Rule. 32(6)

The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable :

Transaction Value = *the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.*

RULE 32. DETERMINATION OF VALUE IN RESPECT OF CERTAIN SUPPLIES

Rule 32(7):

The value of taxable services provided by such class of service providers as may be notified by the Government between distinct persons, other than those where ITC is not available under S.17(5); shall be deemed to be NIL.

RULE 33. VALUE OF SUPPLY OF SERVICES IN CASE OF PURE AGENT

- Application of Rule :
 - ❖ Supplier is pure agent of the recipient
 - ❖ Payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice
 - ❖ Supplies procured by the pure agent from third party in addition to the service supplies on his own account.

Determination of Transaction Value : *Value of supply less expenditure incurred by recipient as pure agent.*

RULE 34. RATE OF EXCHANGE FOR DETERMINATION OF VALUE

- The rate of exchange for the determination of the value of taxable goods shall be rate notified by CBEC under Customs Act on the date of time of supply of goods.
- The rate of exchange for the determination of the value of taxable services shall be rate as per GAAP on the date of time of supply of services.

RULE 35. VALUE OF SUPPLY INCLUSIVE OF INTEGRATED TAX, CENTRAL TAX, STATE TAX, UNION TERRITORY TAX

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,-

Tax amount = *(Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST)*
÷ (100+ sum of tax rates, as applicable, in %)

INPUT TAX CREDIT

CHAPTER 11

CONCEPT OF ITC

“Input tax” means IGST (including that on import of goods), CGST, SGST and UTGST;
Charged on any supply of goods or services and;
Includes the tax payable under sub-section (3) and (4) of section 9,
Includes the tax payable under sub-section (3) and (4) of section 5 of IGST Act,
Includes the tax payable under sub-section (3) and (4) of section 9 of SGST Act,
Includes the tax payable under sub-section (3) and (4) of section 7 of UTGST Act,
excludes the tax paid under section 10 (composition levy)

CONDITIONS FOR AVAILMENT OF ITC BY A REGISTERED TAXABLE PERSON – SEC 16

In order to claim ITC, there are 4 conditions to be satisfied:

- ❖ Recipient must have a tax paying document (Invoice/ debit note)
- ❖ Recipient must receive the goods/ services or both
- ❖ Supplier must pay tax to the Government.
- ❖ Recipient must file return under Section 39.

Note:

The maximum time limit to avail ITC is due date of filing September return following the end of FY or date of filing Annual return whichever is earlier

CONDITIONS FOR AVAILMENT OF ITC BY A REGISTERED TAXABLE PERSON – SEC 16

Special points:

- Credit only upon receipt of the last lot/ instalment in case of goods received in lots/ instalments.
- Goods/ services deemed to be received by a taxable person when the supplier delivers the goods/ services to the recipient/ any other person, on the direction provided by the taxable person to the supplier.
- If the recipient of services fails to pay (value + tax) within 180 days from date of invoice, (ITC availed+ interest @ 18%) shall be added to his output tax liability. ITC available when amount discharged later

ITC IN CASE OF CAPITAL GOODS

Depreciation claimed on Tax component of the cost of capital goods under IT Act

ITC not Available

Example:

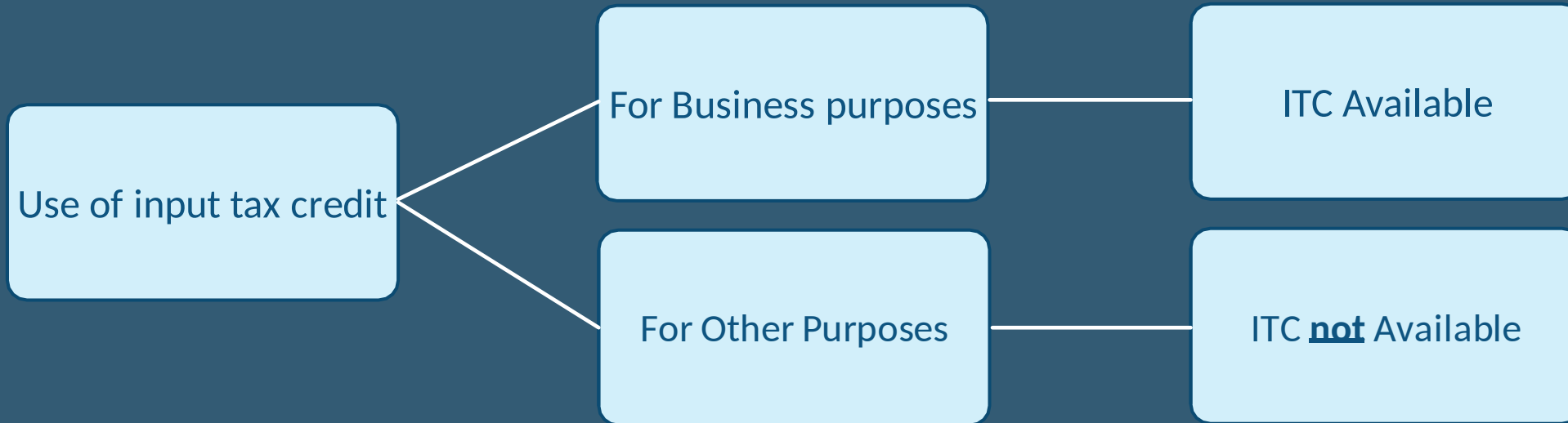
Cost of Asset	= Rs.100
Tax-10% (say)	= <u>Rs.10</u>
Total Cost	= <u>Rs.110</u>

If Depreciation charged on Rs.100
ITC Available

If Depreciation charged on Rs.110
ITC not Available

“capital goods” means the goods, the value of which is capitalized in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of the business

ITC ON THE BASIS OF USE OF INPUTS – SEC 17

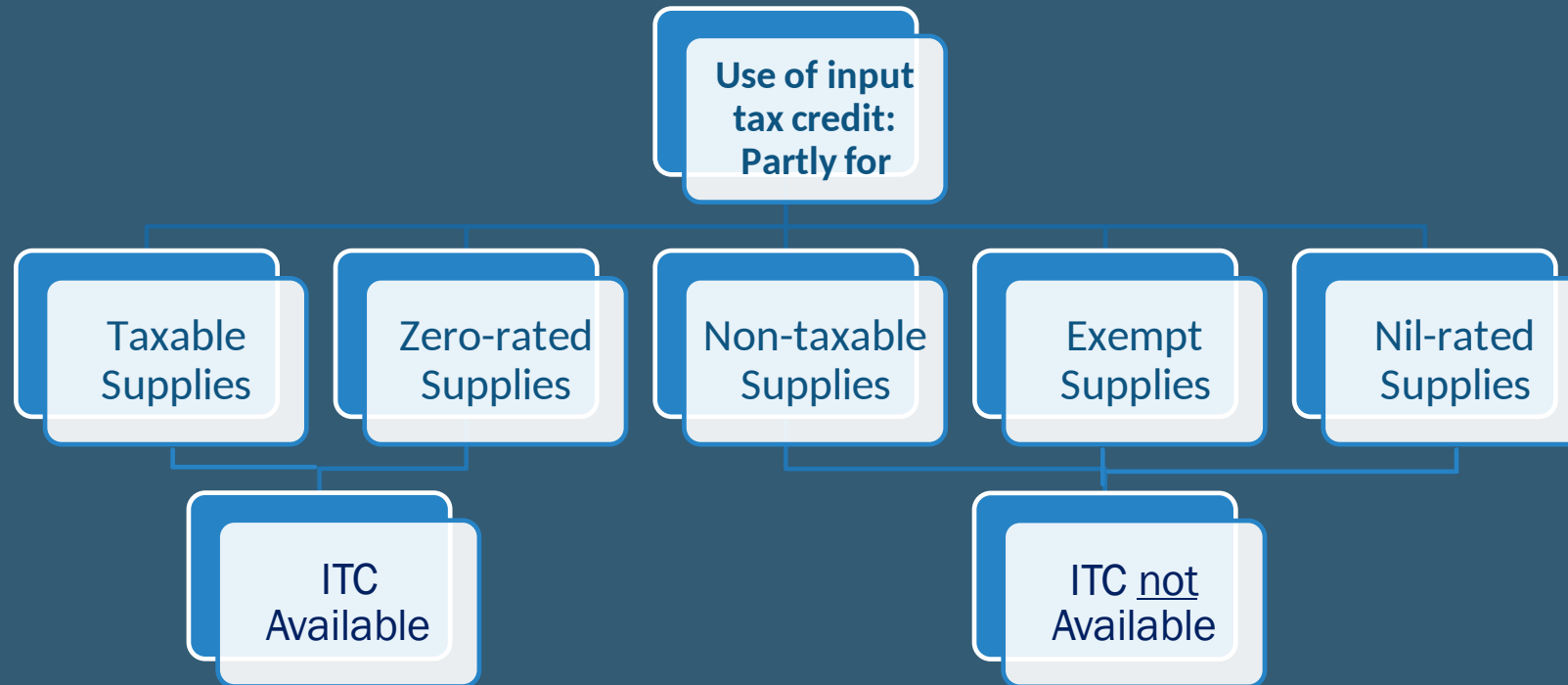


Note: Attribution of ITC to be made as per the manner prescribed in the ITC Rules

“input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business

“input service” means any service used or intended to be used by a supplier in the course or furtherance of business

ITC ON THE BASIS OF USE OF INPUTS – SEC 17



Note: Attribution of ITC to be made as per the manner prescribed in the ITC Rules

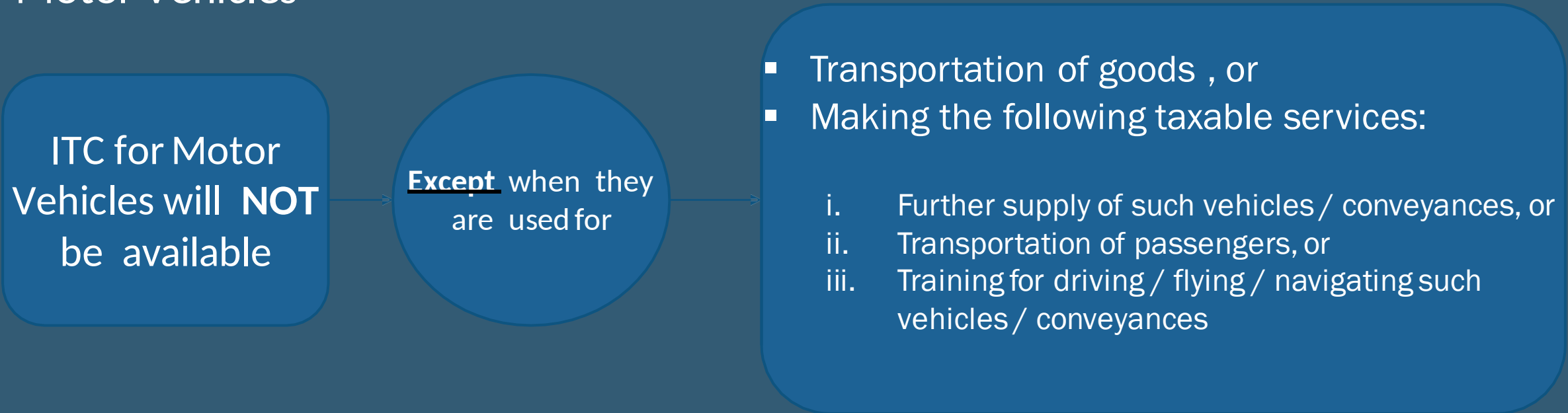
Alternative to apportionment between taxable and exempt supplies in case of banking companies and financial institutions including NBFC:

- Yearly option to avail a standard rate of 50% of eligible ITC on inputs, capital goods and input services on a monthly basis
- 50% shall not be applied on tax paid on supplies made by one registered person to another registered person having same PAN

RESTRICTIONS ON ITC – SEC 17(5)

BLOCKED CREDITS

Motor Vehicles



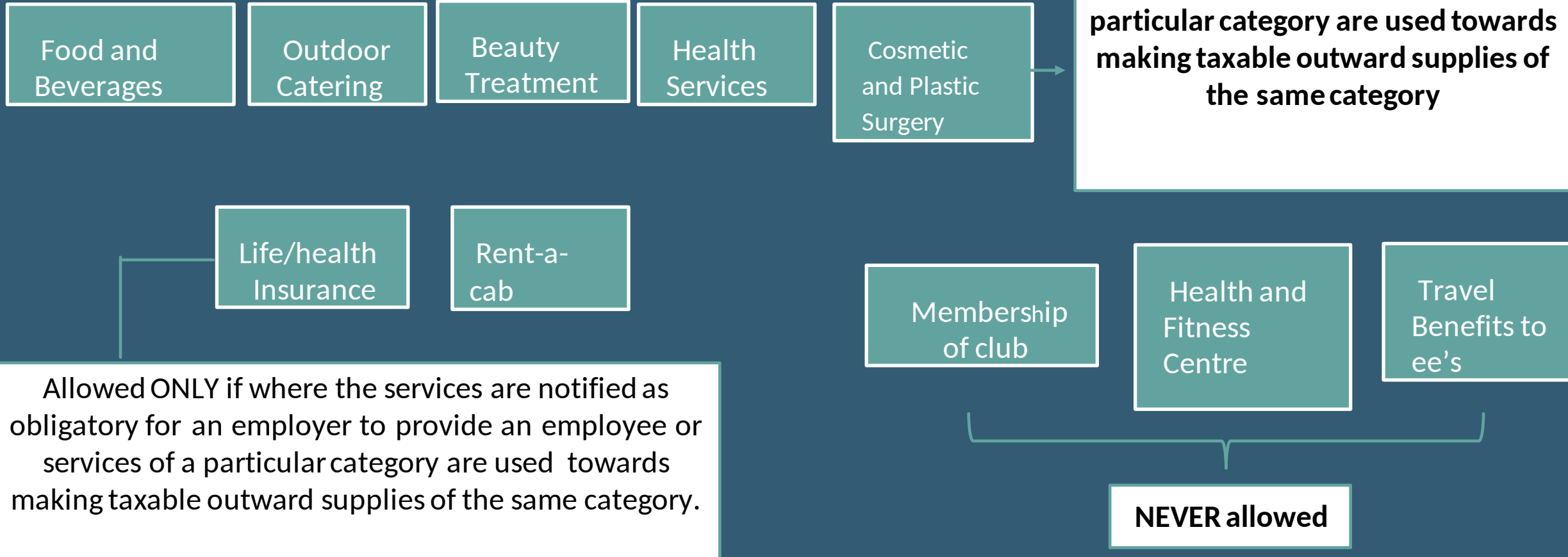
Note: ITC on motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver) is not allowed.

Credit is not allowed even on vessels and aircrafts.

RESTRICTIONS ON ITC – SEC 17(5)

BLOCKED CREDITS

Supply of goods and services being:



RESTRICTIONS ON ITC – SEC 17(5)

BLOCKED CREDITS

Construction of Immovable Property (other than plant and machinery)

Works contract services, except where it is an input service for further supply of works contract service

Goods or services received by a taxable person for construction of an immovable property on his own account even when used in course or furtherance of business:

ITC not Available

Construction includes re-construction, renovation, additions or alterations or repairs to the extent of capitalisation

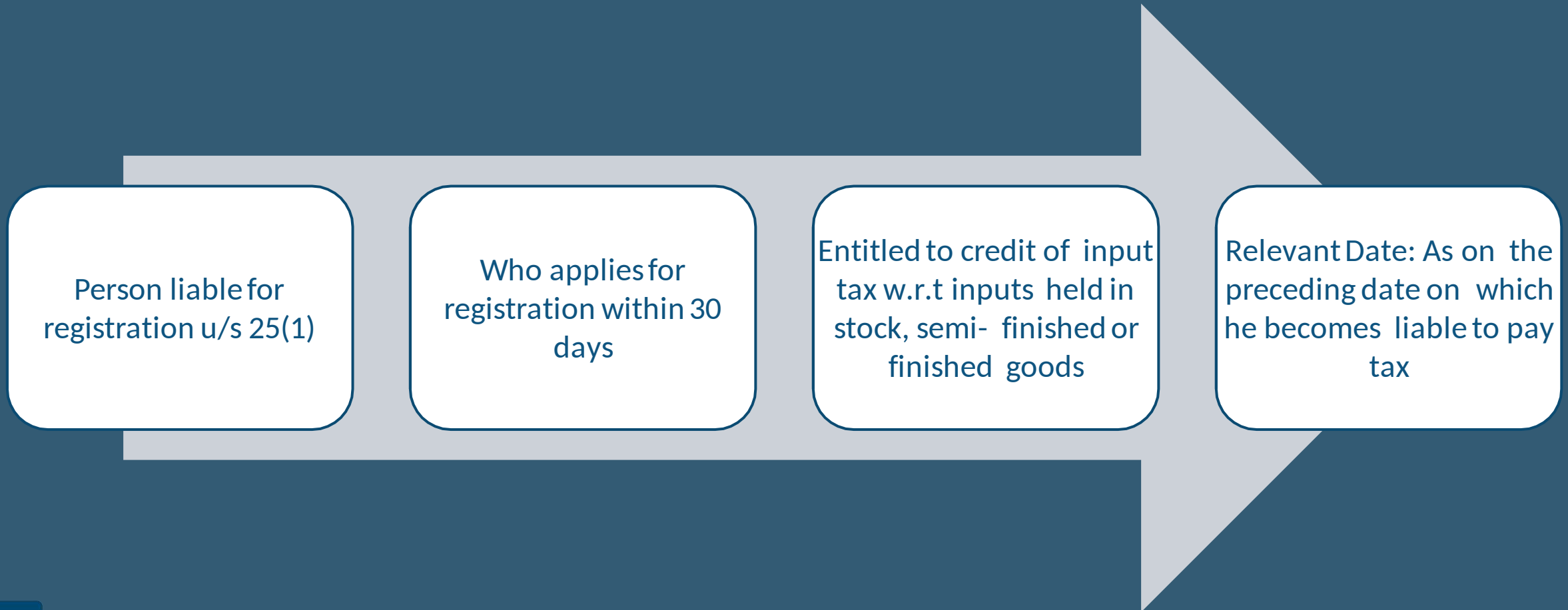
RESTRICTIONS ON ITC – SEC 17(5)

BLOCKED CREDITS

- Taxes on supply of goods or services paid u/s 10
- Goods or services or both received by a non-resident taxable person except on goods imported by him, shall not be allowed
- Goods or services or both used for personal consumption
- Goods lost, stolen, destroyed, written off or disposed of by way of gift or free supplies and
- Any tax paid in accordance with the provisions of sections 74, 129 and 130.

Plant and machinery means means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes— (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.

ELIGIBILITY OF ITC IN CASE OF NEW REGISTRATIONS –SEC 18(1)



ELIGIBILITY OF ITC IN CASE OF NEW REGISTRATIONS (VOLUNTARY REGISTRATION)

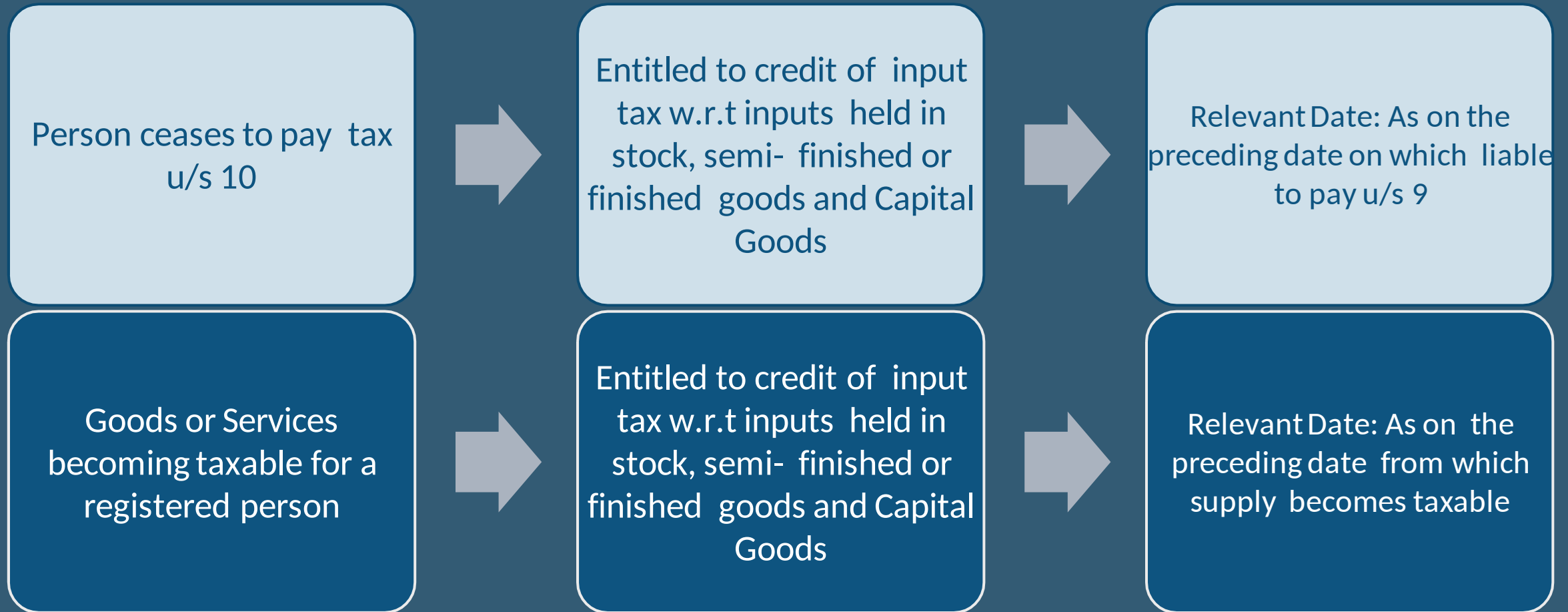
– SEC 18(1)

Person liable for registration u/s 25(3)

Entitled to credit of input tax w.r.t inputs held in stock, semi-finished or finished goods

Relevant Date: As on the preceding date on which registration is granted

SWITCHING FROM COMPOSITION / EXEMPT SUPPLY TO NORMAL TAX / TAXABLE SUPPLY – SEC 18(1)

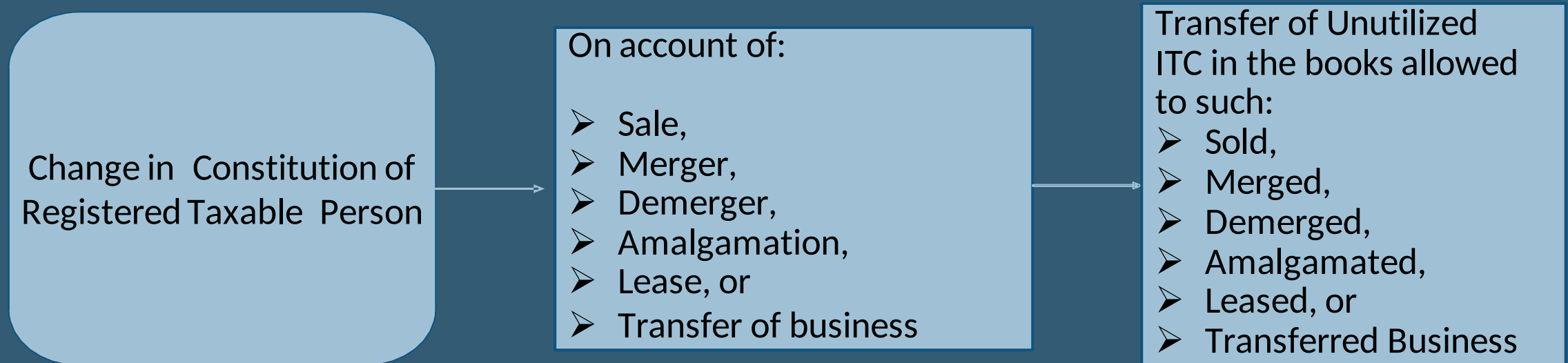


Credit on Capital Goods to be available after reducing 5% per quarter of a year or part from the date of invoice or such other document on which capital goods were received by taxable person

CONDITIONS FOR CLAIMING CREDIT UNDER – SEC 18(1)

- ☐ Purchase invoice should not be earlier than 1 year from the relevant date
- ☐ Declaration in Form GST ITC-01 to be filed within 30 days from the date of him becoming eligible
- ☐ Declaration in Form GST ITC-01 to be certified by a practicing Chartered Accountant or Cost Accountant if the value of credit claimed exceeds 2,00,000

ITC – CHANGE IN CONSTITUTION OF TAXABLE PERSON SEC 18(3)



ITC shall be apportioned in the ratio of value of assets of the new units in case of demerger scheme

Transferor to submit certificate from a practicing Chartered Accountant certifying whether the sale / merger / demerger / amalgamation / lease / transfer has been done with specific provision for transfer of liabilities

Transferee to furnish details of credit available in Form GST ITC-02

SWITCHING FROM REGULAR TO COMPOSITION- PAY AND EXIT – SEC 18(4)

Section 18(4) applies in cases i.e., Conversion from normal to composition/ taxable supply becomes exempt supply.

Amount equivalent to the credit of input tax in respect of input held in stock or input contained in semi-finished goods or finished goods held in stock and capital goods as on appointed day

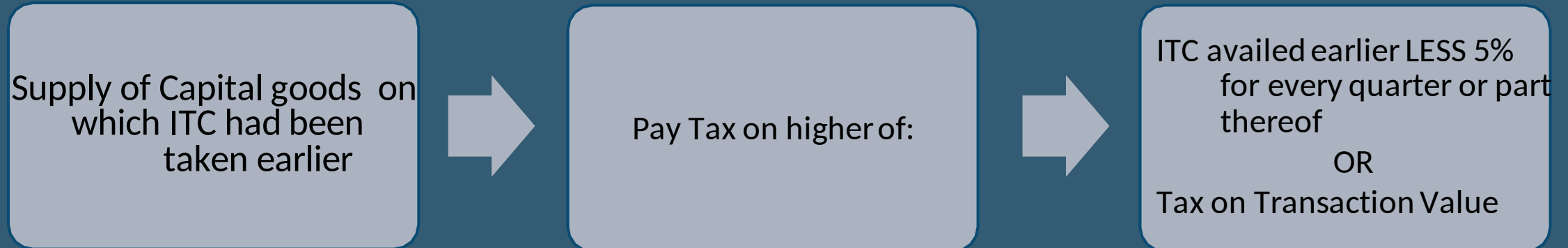
Such amount shall be payable by debiting the electronic credit ledger or cash ledger

Balance in electronic credit ledger shall lapse

Declaration for input tax reversed to be submitted in Form GST ITC-3

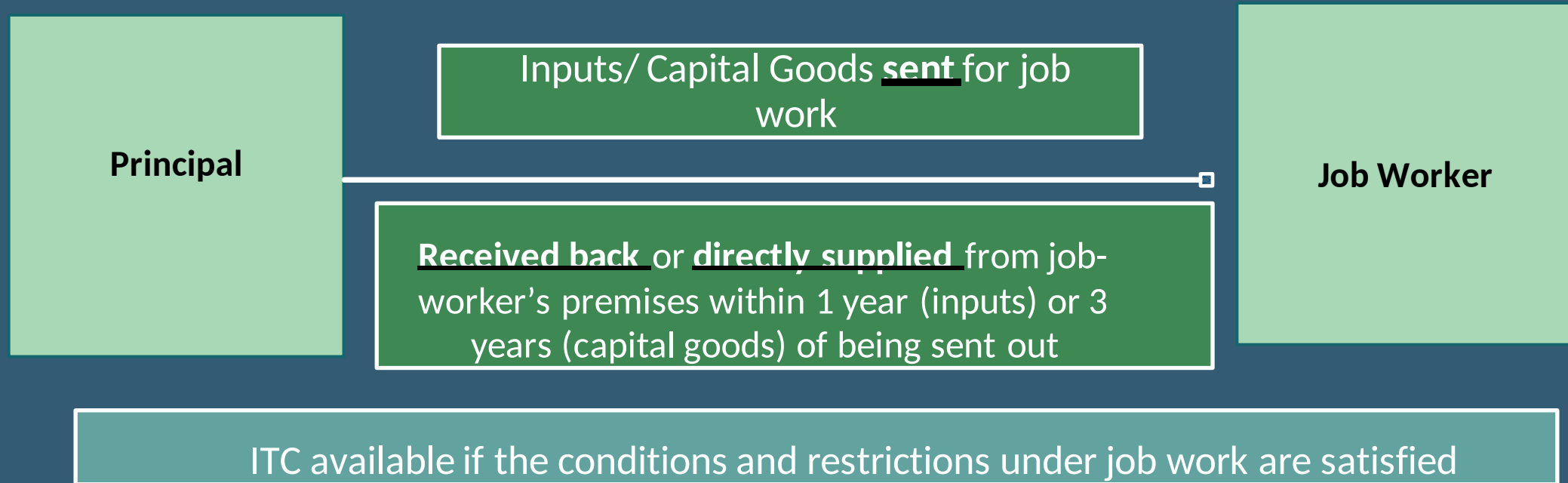
In case of capital goods, ITC proportionate to remaining useful life in months by taking useful life as 5 years is considered.

SUPPLY OF CAPITAL GOODS ON WHICH ITC ALREADY TAKEN – SEC 18(6)



In case of refractory bricks, moulds and dies, jigs and fixtures supplied as scrap the person may pay tax on transaction value

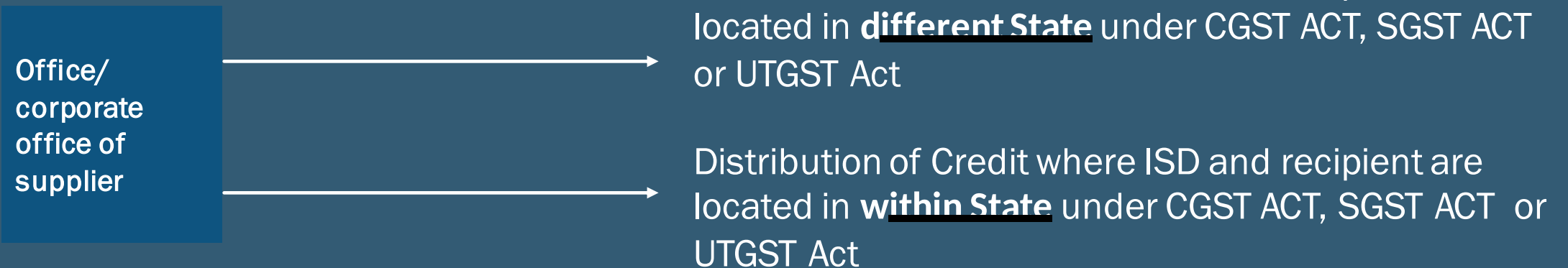
ITC IN RESPECT OF GOODS SENT FOR JOB WORK – SEC 19



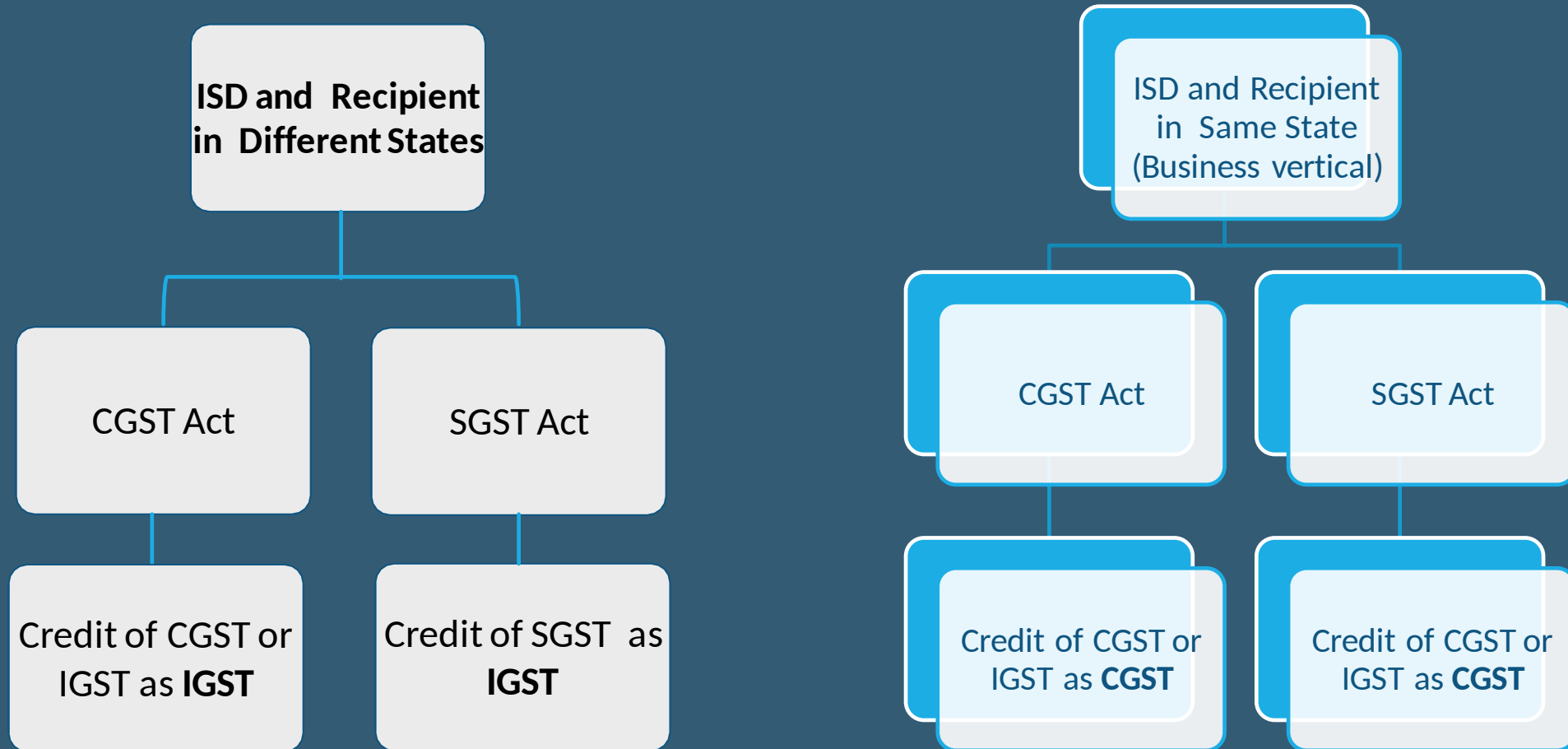
Time limit will not apply for moulds and dies, jigs and fixtures and tools.

INPUT SERVICE DISTRIBUTOR – SEC 20

- ITC is distributed to supplier of goods and / or services of same entity having the same PAN



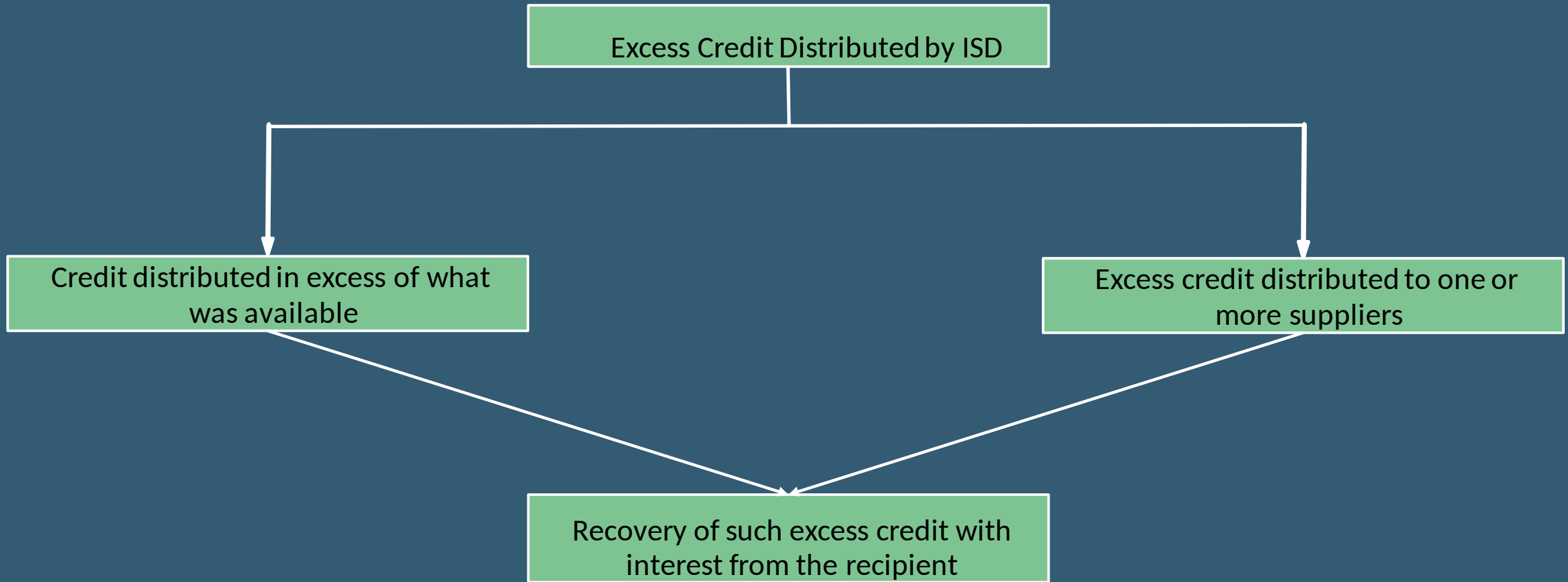
INPUT SERVICE DISTRIBUTOR



CONDITIONS TO DISTRIBUTE CREDIT : INPUT SERVICE DISTRIBUTOR

- Credit distributed to recipient through prescribed documents containing prescribed details. Such document should be issued to each of the recipient of credit.
- Credit distributed should not exceed the credit available for distribution
- Credit of tax paid on input service used by more than one location who are operational is to be distributed to all of them based on the pro rata basis of turnover of each location in a State to aggregate turnover of all such locations who have used such services

EXCESS CREDIT DISTRIBUTED BY INPUT SERVICE DISTRIBUTOR – SEC 21



DEMANDS & RECOVERY

CHAPTER 12

NON-EVASION CASES — DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILABLE OR UTILISED FOR ANY REASON OTHER THAN FRAUD OR ANY WILLFUL MISSTATEMENT OR SUPPRESSION OF FACTS [Section 73]

(1) Notice in non-evasion matters

(2) Time-limit to pass order:

The proper officer shall issue the order within 3 years from the due date for furnishing of annual return for the financial year.

Notice to be issued at least 3 months prior to time-limit of assessment: The proper officer shall issue the notice at least three months prior to the time limit for issuance of order

(4) Suomotu payment with interest — No notice, no penalty

(5) No penalty, if tax with interest paid within 30 days of receipt of notice

(6) Order after considering reply — Order to provide for penalty @ 10% of tax or Rs. 10,000, whichever is higher

(7) **Penalty payable if self-assessed or collected tax not paid within 30 days of due date:**

Notwithstanding anything contained in (4) or (5) above, penalty under (6) above shall be payable where—

- ♦ Any amount of self-assessed tax or
- ♦ Any amount collected as tax

Has not been paid within 30 days from the due date of payment of such tax

EVASION CASES — DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILABLE OR UTILISED BY REASON OF FRAUD OR ANY WILFUL MISSTATEMENT OR SUPPRESSION OF FACTS [Section 74]

Notice in evasion matters - Tax + Interest + 100% Penalty:

- Where it appears to the proper officer that —
 - Any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized
 - By reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice

Time-limit to pass order:

- The proper officer shall issue the order within a period of 5 years from the due date for furnishing of annual return for the financial year
- Notice to be issued at least 6 months prior to time-limit of assessment

Suomotu payment
with interest & 15%
penalty — No notice,
no penalty:

Conclusion of
proceedings, if sum
with interest & 25%
penalty paid within
30 days of notice:

Order after
considering
assessee's reply:

Conclusion of
proceedings, if sum with
interest & 50% penalty
paid within 30 days of
receipt of adjudication
order:

DETERMINATION OF DEMAND UNDER SECTION 73 OR 74 — GENERAL PROVISIONS [Section 75]

The following provisions will apply for purposes of section 73 or 74 —

- (1) Stay period to be excluded
- (2) Charge of evasion dropped — Notice valid for section 73
- (3) Adjudication as per directions of appellate authorities — within 2 years
- (4) Hearing only if requested or adverse order proposed
- (5) Maximum 3 adjournments

Note:

- ❖ Order cannot confirm demand for amount/rounds not raised in notice
- ❖ Interest/Penalty to be modified with modification in demand
- ❖ Interest payable even if no specified in demand order
- ❖ Interest payable even if no specified in demand order

Sums collected in
name of tax to be
paid to Govt, even
if sum collected on
non-taxable supply

Notice seeking
demand of tax with
100% penalty

Adjudication after
hearing

Interest payable
under Section 50
from date of
collection to date
of payment to
Govt

Hearing only
upon request
in writing

Order within
1 year of
issue of
notice

Period of stay
to be
excluded

TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVERNMENT OR STATE GOVERNMENT [Section 77]

A registered person who has paid CGST/SGST as the case maybe, the CGST and the UTGST on the transaction considered by him to be an intra-state supply, but which is subsequently held to be an inter-state supply , shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

INITIATION OF RECOVERY PROCEEDINGS [Section 78]

Recovery only after 3 months of receipt of final demand order:

- Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of 3 months from the date of service of such order failing which recovery proceedings shall be initiated.

Department may ask for payment even before 3 months to protect interest of revenue:

- Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

RECOVERY OF TAX [Section 79]

- ❖ Deduction from refunds
- ❖ Detention & Sale of any goods belonging to such person which are under the control of the proper officer or such other specified officer;
- ❖ Garnishee proceedings:
 - Asking assessee's present/future debtor or banker etc. to pay
 - Garnishee to comply with notice
 - Garnishee deemed to be in default on failure to pay
 - Payment to department discharges garnishee against assessee
 - Garnishee personally liable on failure
 - Garnishee not liable, if he shows he did not owe to assessee

- ❖ Distain & Detain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of 30 days next the he may cause the said property to be sold and recover the money.
- ❖ Proper officer may prepare a certificate signed by him specifying amount due from such person and send it to the Collector of the district or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover as if it were an arrear of land revenue;
- ❖ Proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

PAYMENT OF TAX AND OTHER AMOUNT IN INSTALMENTS [Section 80]

- (1) Extension of time-limit or grant of upto 24 monthly instalments — Not for self-assessed dues ;
On an application filed by a taxable person, the Commissioner may provide the facility
- (2) Default in single instalment renders entire amount payable at once

Note:

This facility shall not apply if the amount is less than 25,000.

TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES [Section 81]

Where a person, —

- After any amount has become due from him,
- Creates a charge on or parts with property belonging to him or in his possession
- Such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

Note:

Such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

TAX TO BE FIRST CHARGE ON PROPERTY [Section 82]

Tax is always the first charge on the property subject to IBC, 2016.

PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES [Section 83]

Provisional
attachment during
pendency of
assessment/adjudic
ation proceedings:

- Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner may attach provisionally any property, including bank account

Attachment valid only for
1 year:

- Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under this section.

CONTINUATION AND VALIDATION OF CERTAIN RECOVERY PROCEEDINGS [Section 84]

- (a) Where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand and start proceedings at the stage at which they were stood.
- (b) Where such Government dues are reduced in such appeal, revision or in other proceedings—
 - i. It shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand
 - ii. The Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

VALUATION UNDER CUSTOMS

CHAPTER 13

- New Section 14(1) of Customs Act (effective from 10-10-2007) states that 'value' of imported goods and export goods shall be the transaction value of such goods, that is to say. the price actually paid or payable, for the goods when sold-

For export to India for delivery at the time and place of importation, or

For export from India for delivery at the time and place of export.

- Where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.
- Accordingly Customs Valuation (Determination of Value of Imported Goods) Rules 2007 and Customs Valuation (Determination of Value of Export Goods) Rules 2007 have been notified with effect from 10-10-2007

- Valuation rules – Rule 3 specifies that the value shall be transaction value.
- Adjustments to the transaction value are specified under Rule 10
- Assessable value for imports is CIF

RULE 10 – ADJUSTMENTS – INCLUSIONS TO TRANSACTION VALUE

The following costs and services to the extent they are incurred by the buyer but have not been included in the price actually paid or payable for the imported goods -

- Commission and brokerage, except buying commission
- Cost of containers imported along with the goods
- Cost of packing whether for labour or materials

RULE 10 – ADJUSTMENTS – INCLUSIONS TO TRANSACTION VALUE

The whole or appropriately apportioned value of the following goods and services, which are supplied by the buyer free of charge or at reduced costs -

- Materials, components, parts and similar items incorporated in the imported goods;
- Tools, dies, moulds and similar items used in the production of the imported goods;
- Materials consumed in the production of the imported goods;
- Engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

RULE 10 – ADJUSTMENTS – INCLUSIONS TO TRANSACTION VALUE

- Royalties and the license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent the same is not included in the price actually paid or payable;
- The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- All other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller

RULE 10 – ADJUSTMENTS – INCLUSIONS TO TRANSACTION VALUE

- Cost of transport up to place of importation
- Expenditure incurred only up to the place of importation is considered but expenditure incurred at the place of importation is not considered.
- Landing charges incurred at the place of importation is not included in the value.

RULE 10 – ADJUSTMENTS – INCLUSIONS TO TRANSACTION VALUE

Actual cost of transport of the imported goods to the place of importation: However, in case the actual cost is unascertainable such cost shall be **20% of the FOB** value of the goods.

In case of importation of goods by air, even if the actual cost of transport is ascertainable, the same shall not exceed 20% of FOB value of the goods.

In case the cost of insurance is unascertainable, such cost shall be 1.125% of the FOB value of the goods

Transportation cost from port of entry to ICD/CFS not includible

RULE 10 – ADJUSTMENTS – INCLUSIONS TO TRANSACTION VALUE

Demurrage charges and lighterage or barge charges are includible:

In some cases, Ship is not brought upto jetty. Goods are discharges at outer anchorage. Charges for bringing the goods from outer anchorage are known as ‘barge / lighterage charges.

Demurrage charges payable for not unloading the ship within specified time is includible in the cost of transport.

However, where for any reason the transaction value cannot be determined, or, the same is not acceptable for any reason, then, the value shall be determined as per the following methods laid down in Rules 4 to 9, which are to be proceeded with sequentially -

- Transaction value of Identical goods (Rule 4);
- Transaction value of Similar goods (Rule 5);
- Deductive value (Rule 7);
- Computed value (Rule 8);
- Residual Method (Rule 9);

RULE 11

The importer or his agent shall furnish

- A declaration disclosing full and accurate details relating to the value of imported goods; and
- Any other statement, information or document as considered necessary by the proper officer for determination of the value of imported goods under these rules. The said statement, information or document includes an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer.

The Customs officer has the power to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

REJECTION OF DECLARED VALUE BY CUSTOMS OFFICER [RULE 12]

- When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence.
- If, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under the provisions of Rule 3(1). ***The provisions of Rule 12 overrides provisions of Rule 3.***

DUTY DRAWBACK

CHAPTER 14

- ❖ Drawback is a benefit given by the Government in order to encourage exports.
- ❖ **In UOI v. Rajendra Dyeing and Printing Mills 2005**, it has been held that export is complete when goods cross territorial waters of India. If ship sinks within territorial waters, export is not complete and hence duty drawback is not payable.
- ❖ Concept of drawback is dealt by Section 74, 75, 75A and 76

SECTION 76

As per Section 76, no drawback is allowed in certain cases:

- ❖ Market price is less than the amount of drawback
- ❖ Amount of drawback is less than fifty rupees.

Note:

- 1) Market price means price prevailing in India
- 2) No drawback is allowed if the goods are likely to be smuggled back to India

SECTION 74

Section 74 deals with the drawback of customs duty paid on articles, which are imported, and subsequently, re-exported.

The goods must be capable of being easily Identified and must and import duty must have been paid thereon.

The proper officer must have made an order permitting clearance of the goods for exportation:

- The goods must have been entered for export u/s 51, or,
- If it is to be exported as baggage a declaration of its contents by its owner u/s 77 must have been made, or,
- The goods must have entered for export by post u/s 82.

SECTION 74

98% of the duty is re-paid as drawback: The goods imported are allowed to be re-exported with drawback claim for 98% of the duty paid on importation subject to the condition that the goods are not put to use.

In order to claim drawback under this section, the goods are to be entered for export within two years from the date of payment of duty on the importation thereof. However, the Board can extend the above period on sufficient cause been shown.

SECTION 74

Section 74(2) empowers the Central Government to fix the rate of drawback in case of those goods, which are exported after having been put to use subsequent to their importation.

Length period between the date of clearance for home consumption and the date when goods are placed under Customs control for export.	% of import duty to be paid as Drawback
Not more than 3 months	95%
More than 3 months but not more than 6 months	85%
More than 6 months but not more than 9 months	75%
More than 9 months but not more than 12 months	70%
More than 12 months but not more than 15 months	65%
More than 15 months but not more than 18 months	60%
More than 18 months	NIL

SECTION 74

No drawback is allowed under Section 74(2) in respect of the following goods if they are exported after use:

- Wearing Apparel
- Tea Chests
- Exposed cinematograph film passed by Board of Film Censors in India
- Unexposed photographic films, paper and plates, and X Ray films.

SECTION 74

In respect of a motor car or goods imported by a person for his personal and private use, drawback of duty shall be calculated by reducing the import duty paid in respect of such motor car or goods by 4%, 3%, 2.5% and 2% for use for each quarter or part thereof during the period of first year, second year, third year, and fourth year respectively.

Where the period aforesaid is more than 2 years, drawback shall be allowed, only if the Board, on sufficient cause being shown, has in that particular case extended the period beyond 2 years. Further, no drawback shall be allowed if such motorcar or goods has or have been used for more than 4 years.

SECTION 75

- Section 75 deals with drawback in case of imported materials used in manufacture of goods which are exported.
- As per the new rules, drawback refers to rebate of duty paid on imported materials.
- Drawback is allowed on export of goods at an amount or rate determined by Central Government.
- No drawback is allowed if the goods have been taken into use after manufacture. However, tea chests can be used as packing material for export of tea
- No drawback is allowed on jute batching oil

SECTION 75

- No drawback shall be determined if export value is less than the value of imported materials (or) is not more than such % of the value of materials used in the manufacture of goods.
- The upper limit of drawback is $\frac{1}{3}$ of market price of exported goods.

SECTION 75A – INTEREST ON DRAWBACK

- Where any drawback is not paid within a period of one month from the date of filing a claim then interest at the rate fixed under section 27A (6%) from the date after the expiry of the said period of 1 month till the date of payment of such drawback.
- Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act, the claimant shall,
 - within a period of 2 months from the date of demand,
 - pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA (15%) and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

TYPES OF DUTY

CHAPTER 15

Protective duties: are intended to give protection to indigenous industries. If resort to protective duties is not made there could be a glut of cheap imported articles in the market.

The protective duties are levied by the Central Government upon it being satisfied that circumstances exist which render it necessary to take immediate action to provide protection to any industry established in India

COUNTERVEILING DUTY ON SUBSIDIZED GOODS/ ANTI SUBSIDY DUTY

If a country or territory pays any subsidy (directly or indirectly) to its exporters for exporting goods to India, Central Government can impose Countervailing duty up to the amount of such subsidy.

The CVD under this section shall, unless revoked earlier, cease to have effect on the expiry of **5 years** from the date of such imposition. The Central Government may extend the period of such imposition for a further period of 5 years.

COUNTERVEILING DUTY ON SUBSIDIZED GOODS/ ANTI SUBSIDY DUTY

Retrospective imposition of countervailing duty

The following conditions should be satisfied for imposition of countervailing duty with retrospective effect.

(a) The injury to domestic industry, which is difficult to repair, is caused by massive imports in a relatively short period, of the articles benefiting from subsidies.

(b) In order to preclude recurrence of such injury, it is necessary to levy countervailing duty retrospectively.

The retrospective date from which the duty is payable shall not be beyond 90 days from date of notification.

ANTI DUMPING DUTY

Large manufacturer from abroad may export goods at low prices compared to prices in his domestic market. This is called 'dumping'. In order to avoid such dumping and to protect domestic industry, Central Government can impose anti-dumping duty under section 9 A of Customs Tariff Act.

Margin of Dumping - 'Margin of dumping' means the difference between normal value and export price (i.e. the price at which these goods are exported).

Quantum of dumping duty - The anti-dumping duty will be dumping margin or injury margin, whichever is lower.

'Injury margin' means difference between fair selling price of domestic industry and landed cost of imported product. {Landed value means $AV + BCD + SWS$ }

ANTI DUMPING DUTY

ADD shall unless revoked earlier, cease to have effect on the expiry of 5 years from the date of such imposition. The Central Government may extend the period of such imposition for a further period of 5 years and such further period shall commence from the date of order of such extension

Further, where a review initiated before the expiry of the aforesaid period of 5 years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding 1 year.

Anti dumping duty may be imposed retrospectively also and the retrospective date from which the duty is payable shall not be beyond 90 days from the date of such notification

SAFEGUARD DUTY

Central Government is empowered to impose 'safeguard duty' on specified imported goods if

- It is satisfied that the goods are being imported in large quantities and
- Under such conditions that they are causing or threatening to cause serious injury to domestic industry.

The duty, once imposed, is valid for 4 years, unless revoked earlier. This can be extended by Central Government, but total period of safeguard duty cannot be more than 10 years.

Central Government can impose provisional safeguard duty, pending final determination up to 200 days.

SAFEGUARD DUTY

Exemptions from safeguard duty:

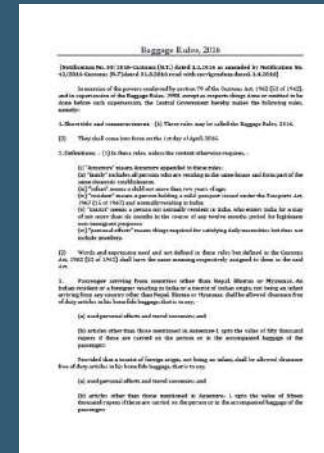
(a) Articles from developing country: Articles originating from developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India.

(b) Articles originating from more than one developing country: Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India.

(c) Imports by 100% EOU or units in a Special Economic Zone: Safeguard duty shall not apply to articles imported by a 100% EOU/unit in a SEZ

CUSTOMS BAGGAGE RULES

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