# PAPER – 19

# INDIRECT TAX LAWS & PRACTICE

## [GST – VOLUME 1]

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I really liked your classes, especially the practical linkages explained with amazing graphics. The full subject test serieshelped a lot in improving my writing speed and presentation skills.

**Sundar Sri Renganathan B (AIR 33)**

I took Accounting from IndigoLearn and the classes were really good. They emphasized on conceptual clarity over getting things done quickly, which is really vital to score good marks in practical papers. Other resources like Notes, Quizzes and Forum was beneficial too.

**Dwarakesh**

Thank you IndigoLearn team for the guidance and support throughout the past few months. I had great conceptual clarity in all the subjects and the revision classes by Suraj Sir were very helpful. Study planner and Free resources were very useful. Thank you Team IndigoLearn.

**Yug Manoj Kumar Bhattad**

I have cleared my CA Foundation examination with the total of 286. And this was not possible without the efforts and support of IndigoLearn. The way of teaching with utmost conceptual clarity is the best thing at Indigolearn.

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Good experience, unlimited views helped a lot in last one month preparation. Looking forward for

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Indigolearn has been fantastic and brilliant. Helped me alot in my preparations. I cleared both the groups in first attempt with your brilliant classes and notes. Thanks to all the faculties, coordinators, forum admins and everyone at Indigolearn. Really grateful. Will go for CA Finals at Indigolearn For sure. Thank you so much Indigolearn.

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### Abishek M

I'd like to thank IndigoLearn for all the support they've provided me with. Modules were great. They were time saving and straight to the point. I extensively used the materials provided before exams, they were so helpful. Also I'd appreciate them for providing unlimited views as I kept looking into the maths modules till the end.

### Munnur Nandini Sree

Accounting classes I have taken from IndigoLearn. Now I feel that it's a great choice that I have made (after seeing my result ) because only in Accounting I got exemption. Thank you IndigoLearn.

### Harshita G

Thank u so much IndigoLearn for your guidance. This is only possible because of u people.... For my finals also my journey will continue with IndigoLearn.

### Bharathsha PS

I purchased Economics, IT, FM, EIS and Audit from Indigolearn. All your classes are superb and anyone can easily crack the CA exams. What makes u special is your classes help us to understand the concepts very well.Special thanks to the FM faculty, I studied only 2 chapters in economics,and still managed to score excemption in the 8th paper.

### Nayi Mihir kumar

This platform is very helpful in all activity like mcq practise, notes, teaching activities, revisions and the forum interaction with all students which I like the most. If anybody want to clear their exams in first attempt then IndigoLearn is the best platform for them. My all regards to IndigoLearn. Thank you so much.

### Rajalaxmi
### CA Inter

Can't believe I cleared.Sathya Sir, Suraj Sir, Yogita Mam ... thanks to all my faculties. Basically an Eng student with zero accounts knowledge. Thanks IndigoLearn for making me clear in first attempt.

### Priyanka Udeshi

All the faculties have excellent knowledge of the subject and deliver it in very crisp & effective manner. Also, quick response at Forums never let any of my doubts go unresolved no matter how small they were. Thank you once again to all the teachers & staff at IndigoLearn!

### Naveen Kumar T

It been a great journey with indigo learn team. Thanks to all the facilities and forum friends who support me a lot.

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This book is designed for students pursuing CMA Final course, who are appearing for the **Indirect Tax Laws & Practice** exam in **JUNE-24 or afterwards**. The content in the book is not in the order provided by ICAI to ensure logical and comprehensive learning.

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*VOLUME - 1*

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# 1. GST IN INDIA – AN INTRODUCTION

Contents

- Direct and Indirect Taxes
- Genesis of GST in India
- Framework of GST
- GST Council
- Deficiencies of ersytwhile Acts
- Features of GST

Although this Chapter has been deleted by ICAI from May 24 attempt onwards. However, a part of the chapter has been included under the chapter of supply as an Annexure, it is recommended that students must study this chapter since it will help them having a strong base in understanding the GST related concepts.

## 1. INTRODUCTION

- **Direct Taxes**: A direct tax is a kind of charge, which is imposed directly on the taxpayer and paid directly to the Government by the persons (juristic or natural) on whom it is imposed. A direct tax is one that cannot be shifted by the taxpayer to someone else. A significant direct tax imposed in India is income tax.

- **Indirect Taxes**: If the taxpayer is just a conduit and at every stage the tax- incidence is passed on till it finally reaches the consumer, who really bears the brunt of it, such tax is indirect tax. An indirect tax is one that can be shifted by the taxpayer to someone else.

- Also called consumption taxes, they are regressive in nature because they are not based on the principle of ability to pay.

- Indirect taxation in India witnessed a paradigm shift on **1st of July, 2017** with usherance into a unified indirect tax regime wherein a large number of Central and State indirect taxes were amalgamated into a single tax – Goods and Services Tax (GST).

- The introduction of GST has been a very significant step in the field of indirect tax reforms in India. There are several Central and State taxes which got subsumed in GST.

- GST extends to whole of India ***including the State of Jammu and Kashmir***.

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***India – covers***

- Its Territory,
- Territorial waters (Up to 12 nautical miles)
- Continental shelf (Up to 200 nautical miles)
- Exclusive Economic Zone
- Soil under the water
- And air space above territory and territorial waters.

## 2. GENESIS OF GST IN INDIA

In the year 2000, the then Prime Minister mooted the concept of GST and set up a committee to design a Goods and Services Tax (GST) model for the country

↓

In 2003, the Central Government formed a task force under Vijay Kelkar, known as Kelkar committee which strongly recommended fully integrated GST on national basis. But GST missed several deadlines.

↓

The Union Finance Minister, Shri P. Chidambaram, while presenting the Union Budget (2006-2007), announced that GST would be introduced from April 1, 2010.

↓

***In 2014***, the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST by the then Finance minister, Mr. Arun Jaitley.

↓

on 27th March, 2017, the GST bill was introduced in Lok Sabha and Rajya Sabha

↓

on 29th March, 2017, GST Act was passed by Parliament

↓

on ***12th April, 2017***, President's assent was received

↓

With effect from ***1st July, 2017***,

the historic indirect tax reform – ***GST was introduced***

- France was the first country to implement GST in 1954.
- Presently, more than 160 countries have implemented GST in some form or the other because this tax has the capacity to raise revenue in the most transparent and neutral manner.

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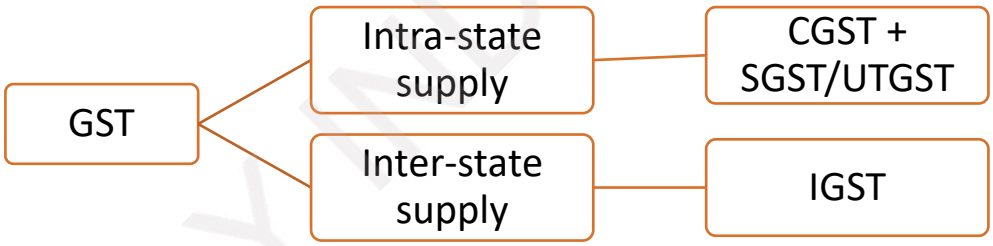
## 3. FRAMEWORK OF GST

### 3.1 Dual GST

- India has adopted a Dual GST model in view of the federal structure of the country.
- Consequently, Centre and States simultaneously levy GST on taxable supply of goods or services or both, which takes place within a State or Union Territory.
- Now, the Centre also has the power to tax intra-State sales & States are also empowered to tax services.
- GST is a destination-based tax applicable on all transactions involving supply of goods and services for a consideration subject to exceptions thereof.
- GST in India comprises of
  - Central Goods and Services Tax ***(CGST)*** - levied and collected by Central Government,
  - State Goods and Services Tax ***(SGST)*** - levied and collected by State Governments/Union Territories with Legislatures and
  - Union Territory Goods and Services Tax ***(UTGST)*** - levied and collected by Union Territories without Legislatures, on **intra-State supplies** of taxable goods and/or services.
  - Integrated Goods and Services Tax ***(IGST)*** – levied by Centre on all inter-State supplies which is the sum total of CGST and SGST/UTGST.




- There is ***single legislation – CGST Act, 2017*** - for levying CGST.
- Similarly, Union Territories without Legislatures are governed by UTGST Act, 2017 for levying UTGST.
- States and Union territories with their own legislatures have their own GST legislation for levying SGST.
- Union Territories **without Legislatures** –

| | |
|---|---|
| • Andaman and Nicobar Islands | • Lakshadweep |
| • Dadra and Nagar Haveli | • Daman and Diu |
| • Chandigarh | • Ladakh |

- Union territories **with their own legislatures**

| | |
|---|---|
| • Delhi | • Puducherry |

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

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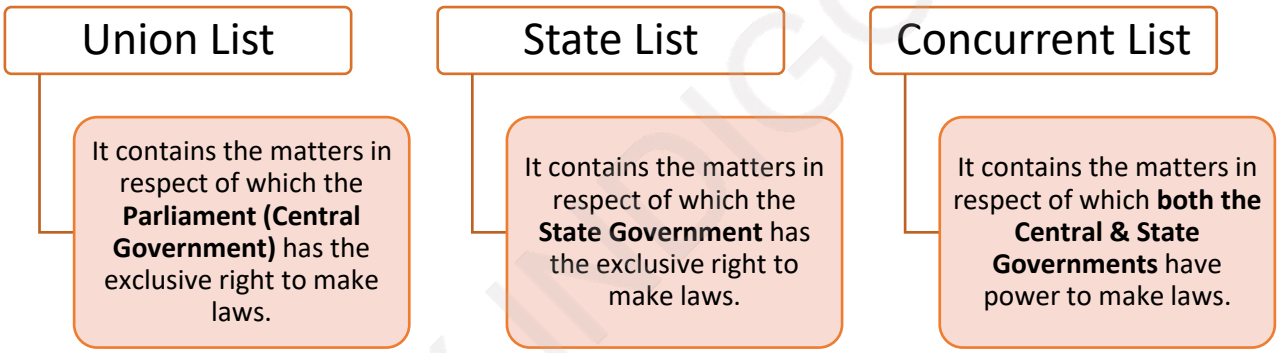
valuation of goods and services, procedure for collection and levy of tax and the like are uniform in all the SGST legislations, as far as feasible. This is necessary to preserve the essence of dual GST.

## 3.2 Constitution (101 Amendment) Act, 2016

- **Article 265:** Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that "no tax shall be levied or collected except by authority of law". The term "authority of law" means that tax proposed to be levied must be withinthe legislative competence of the Legislature imposing the tax.
- **Article 245:** Part XI of the Constitution deals with relationship between the Union and States. The power for enacting the laws is conferred on the Parliament and on the Legislature of a State by Article 245 of the Constitution.
- **Article 246:** It gives the respective authority to Union and State Governments for levying tax. Whereas Parliament may make laws for the whole of India or any partof the territory of India, the State Legislature may make laws for whole or part ofthe State.
- **Seventh Schedule to Article 246:** It contains three lists which enumerate the matters under which the Union and the State Governments have the authority to make laws.




- Entries 82 to 91 of List I enumerate the subjects where the Central Government has power to levy taxes. Entries 45 to 63 of List II enumerate the subjects where the State Governments have the power to levy taxes. Parliament has a further power to make any law for any part of India not comprised in a State even if suchmatter is included in the State List.
  - **Income tax is levied by virtue of Entry 82** - Taxes on income other than agricultural income and
  - **Customs Duty vide Entry 83** - Duties of customs including export duties ofthe Union List.
  - Power to levy Goods and Services Tax (GST) has been conferred by Article 246A of the Constitution which was introduced by the Constitution (101st Amendment) Act, 2016.
- **Need for Need for Constitutional Amendment** –
  - The Constitutional provisions hitherto had delineated separate powers for the Centre and the States to impose various taxes.
    - Whereas the Centre levied excise duty on all goods produced or manufactured in India

- The States levied Value Added Tax once the goods entered the stream of trade upon completion of manufacture.
- In the case of inter-State sales, the Centre had the power to levy a tax (the Central Sales Tax), but the tax was collected and retained entirely bythe States.
- Services were exclusively taxed by the Centre together with applicable cesses, if any.
- Besides, there were State specific levies like entry tax, Octroi, luxury tax, entertainment tax, lottery and betting tax, local taxes levied by Panchayats etc.

- Introduction of the GST required amendment in the Constitution so as to enable integration of the central excise duty, additional duties of customs, State VAT and certain State specific taxes and service tax into a comprehensive Goods and Services Tax and to empower both Centre and the States to levy and collect it.
- Consequently, Constitution (101st Amendment Act), 2016 (hereinafter referred to as Constitution Amendment Act) was passed. It has 20 sections.Newly inserted Article 279A empowering President to constitute GST Council.

## 3.3 Taxes subsumed by GST

| Central Taxes | State Taxes |
|---|---|
| • Central excise duty & additional excise duties<br>• Service tax<br>• Excise Duty under Medicinal & Toilet Preparation Act<br>• Additional duties of Customs (CVD)<br>• Special additional duties of customs (SAD)<br>• Central Sales Tax<br>• Central Surcharges and cess | • Sales tax / VAT<br>• Luxury tax<br>• Entry Tax & Purchase tax<br>• Entertainment and amusement tax (except those levied by local bodies)<br>• Taxes on advertisements<br>• Tax on lottery, betting and gambling<br>• State Surcharges and cess |

## 3.4 Significant provisions of Constitution (101st Amendment) Act, 2016

- **Article 246A**: This article grants power to Centre and State Governments to make laws with respect to GST imposed by Centre or such State.
- Centre has the exclusive power to make laws with respect to GST in case of inter-State supply of goods and/or services.
- However, in respect to the following goods, the aforesaid provisions shall apply from the date recommended by the GST Council:
  - Petroleum Crude
  - High Speed Diesel
  - Motor spirit (commonly known as Petrol)
  - Natural Gas
  - Aviation Turbine Fuel (ATF)

  } **Not yet under GST**

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- Article 269A: This article stipulates that GST on supplies in the course of inter- State trade or commerce shall be levied and collected by the Government of India and 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.
    - **Import of goods or services** or both into India will also be deemed to be supply of goods and/ or services in the course of Inter-State trade or Commerce. Central Government has power to levy IGST on the import transactions which were earlier subject to Countervailing duty under the Customs Tariff Act, 1975.
    - Where an amount collected as IGST has been used for payment of SGST or vice versa, such amount shall not form part of the Consolidated Fund of India. This is to facilitate transfer of funds between the Centre and the States.
    - Parliament is empowered to formulate the principles regarding place of supply and when supply of goods, or of services, or both occurs in inter- State trade or commerce

## 4. GST COUNCIL

- Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
- President constituted the GST Council on 15th September, 2016.

| | | |
|---|---|---|
| Chairman | Central Govt. Representative | Union Finance Minister |
| Member | Central Govt. Representative | Union Minister of State (Revenue / Finance) |
| Members | State Govt. Representatives (For each state & UT with legislature) | Ministers in charge of Finance/Taxation or Nominated Minister |

- Function of the Council – Make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc.
- Council recommendations - the special provisions with respect to the Special Category States. There are **11 Special Category States**, namely, States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.
- Decision of the GST Council - taken by a majority of not less than three-fourths of the weighted votes of the members present and voting.
    - Vote of the Centre has a weightage of one-third of total votes cast and
    - votes of all the State Governments taken together - has a weightage of two-thirds of the total votes cast, in that meeting.

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## 5. IMPORTANT DEFINITIONS

***Goods and Service Tax (GST) – Article 366 (12A)*** *– means any tax*

- On supply of goods, or services or both
- Except taxes on the supply of the alcoholic liquor for human consumption
  - **Note:** The power to levy tax on alcoholic liquor for human consumption is with the state government.

***Goods - Sec. 2(52) of CGST Act*** *– means every kind of movable property*

- other than money and securities
- but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

***Securities - Sec. 2(101) of CGST Act*** *– Shall have the same meaning as assigned to it in section 2(h) of securities contract (Regulation) Act,1956.*

***Securities include*** - shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of like nature in or of any incorporated company or other body corporate. It also includes derivatives, units of mutual fund or security receipts.

***Money – Sec. 2(75) of CGST Act*** *– means the Indian legal tender or*

- any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument,
- recognised by the Reserve Bank of India,
- when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination,

***Actionable claim- Section 2(1) of CGST Act read with section 3 of the Transfer of Property Act, 1882*** *– means a claim to any debt,*

- other than a debt secured by
  - mortgage of immovable property or
  - hypothecation or pledge of movable property, or
- to any beneficial interest in movable property not in the possession,either actual or constructive, of the claimant,
- which the civil courts recognise as affording grounds for relief, whethersuch debt or beneficial interest be existent, accruing, conditional or contingent.

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***Services- Sec. 2(102) of CGST Act** – means anything other than goods, money and securities*

- but includes activities relating to the use of money or its conversion by cashor by any other mode, from one form, currency or denomination to anotherform, currency or denomination for which a separate consideration is charged.

## 6. DEFICIENCIES IN ERSTWHILE ACTS

- **Double taxation of a transaction as both goods and services** as the distinction between goods and services was often blurred, e.g. software was liable to both VAT and service tax.
- CENVAT did not include chain of value addition in the distributive trade below the stage of production. Similarly, in the State-level VAT, CENVAT load on the goods was not removed leading to the **cascading of taxes**. To illustrate, when the goods were manufactured and sold, both central excise duty (CENVAT) and State-Level VAT were levied.
- Though CENVAT and State-Level VAT were essentially value added taxes, set off of one against the credit of another was not possible as CENVAT was a central levy and State-Level VAT was a state levy
- **VAT on goods was not integrated with tax on services**, at the State level, to remove the cascading effect of service tax. With service sector being the fastest growing sector in the economy, the exclusion of services from the tax base of the States potentially eroded their tax- buoyancy.
- **CST** was another source of distortion in terms of its **cascading nature** since it was non-VATABLE. Being an origin-based tax, CST was also against one of the basic principles of consumption taxes that tax should accrue to the jurisdiction where consumption takes place.
- There were **several taxes in the States**, such as, Luxury Tax, Entertainment Tax, etc. which were not subsumed in the VAT.

## 7. FEATURES OF GST

- Comprehensive tax structure – GST is a comprehensive tax structure covering both goods and services. This addresses all the above-mentioned deficiencies.
- Value added tax - GST is a value added tax levied on manufacture, sale and consumption of goods and services. In the GST regime, the major indirect taxes have been subsumed in the ambit of GST.
- Continuous chain of tax credits - GST offers comprehensive and continuous chain of tax credits from the producer's point/ service provider's point up to the retailer's level/consumer's level thereby taxing only the value added at each stage of supply chain.
- Tax borne by final consumer - The supplier at each stage is permitted to avail credit of GST paid on the purchase of goods and/or services and can set off this credit against the GST payable on the supply of goods and services to be made by him. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages

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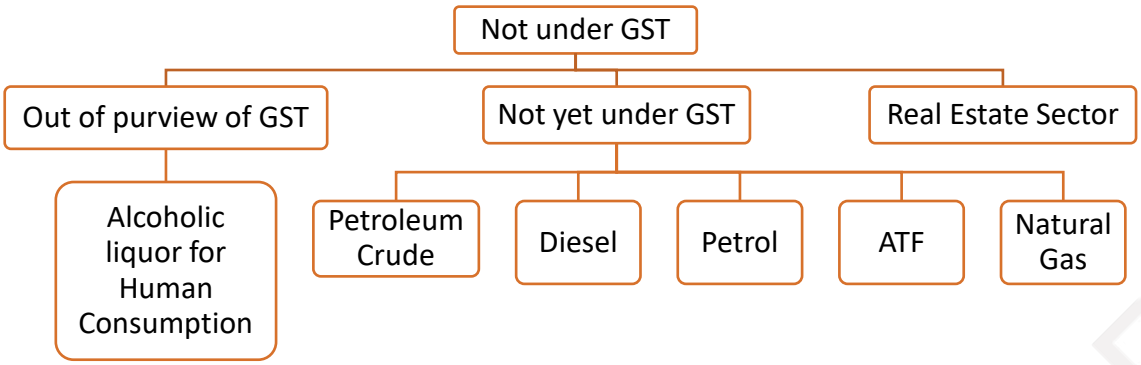
- No cascading effect of taxes - Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system. GST does not differentiate between goods and services and thus, the two are taxed at a single rate.
- Goods and Services outside GST purview –




- Alcoholic liquor for human consumption: is outside the realm of GST. The manufacture/production of alcoholic liquor continues to be subjected to State excise duty and inter-State/intra-State sale of the same is subject to CST/VAT respectively.
- Petroleum crude, diesel, petrol, ATF and natural gas: As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are
- not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council. Till such date, central excise duty continues to be levied on manufacture/ production of petroleum crude, diesel, petrol, ATF and natural gas and inter- State/intra-State sale of the same is subject to CST/ VAT respectively.
- Tobacco: Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in India. Resultantly, tobacco is subject to GST as well as central excise duty.
- Real estate sector: Real estate sector has been kept out of ambit of GST, i.e. GST will not be levied on sale/purchase of immovable property.

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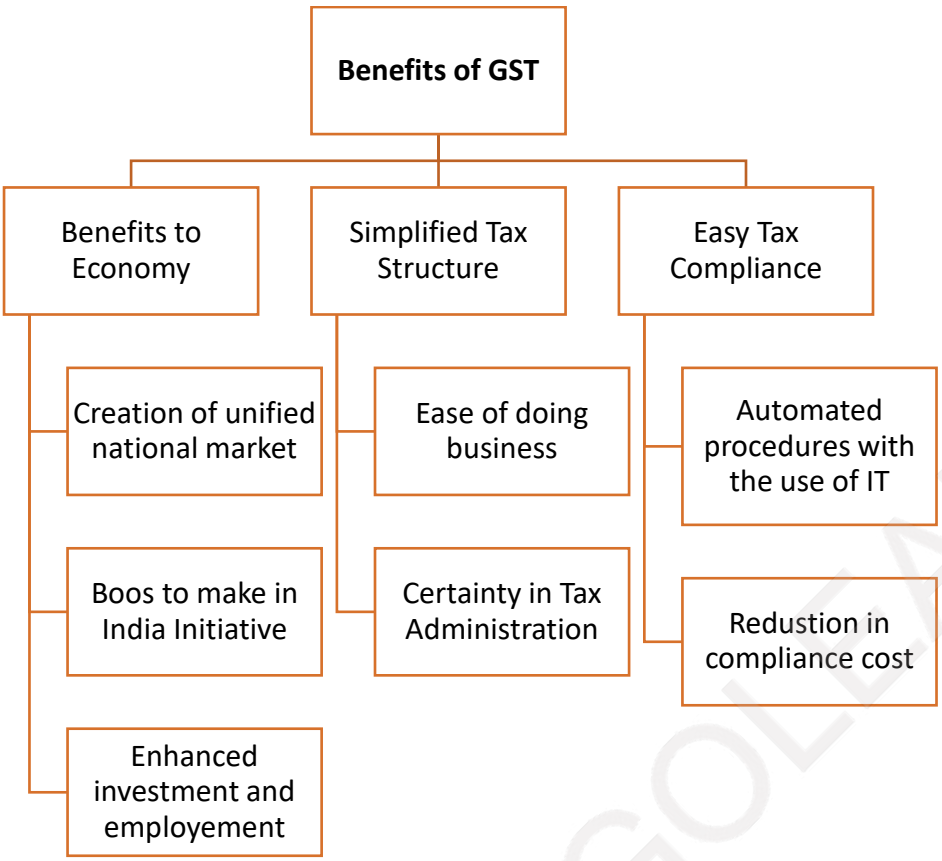
## 8. BENEFITS OF GST

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# 2. SUPPLY UNDER GST

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- Meaning and scope of supply (sec 7)
- Supply with consideration in course/ furtherance of business [Sec 7(1)(a)]
- Import of services for consideration [Sec 7(1)(b)]
- Supply without consideration- Deemed supply [Sec 7(1)(c) - Schedule I]
- Activities treated as Supply of goods or Supply of services [Sec 7(1A) - Schedule II]
- Activities neither the supply of goods nor the supply of services [Sec 7(2)(a) - Schedule III]
- Composite Supplies [sec 8(a)]
- Mixed Supplies [Sec 8(b)]


## 1. INTRODUCTION

- Before levying any tax, taxable event needs to be ascertained. It determines the point at which tax would be levied.

- The GST laws lays down one comprehensive taxable event i.e. "Supply" - Supply of goods or services or both. Various taxable events namely manufacture, sale, rendering of service, purchase, entry into a territory of State etc. have been done away with in favour of just one event i.e. Supply.

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

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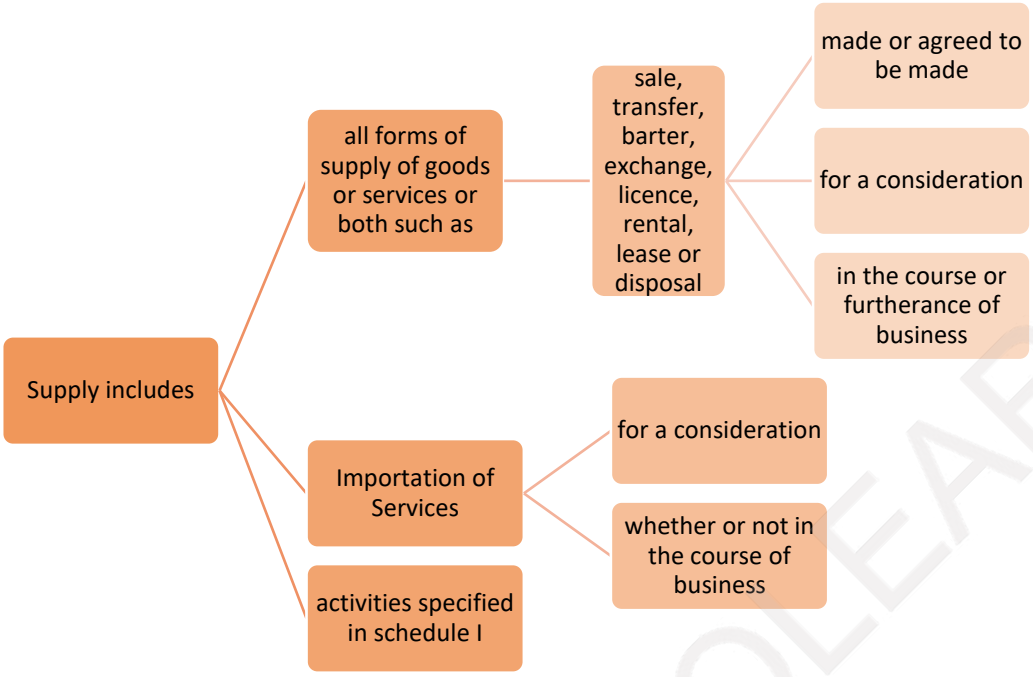
## 2. MEANING AND SCOPE OF SUPPLY

- The definition of 'supply' as contained in section 7 of the CGST Act is aninclusive definition and does not define the term exhaustively.




- The terms used in the above definition are explained below: -
  - Sale - Sale involves transfer of ownership in goods or title to property from one person to another person for consideration.
  - Transfer - where the ownership may not be transferred but the right in the goods is transferred.
  - Barter - It means, the exchange of goods and productive services for other goods and productive services, without the use of money.
  - Exchange - when two persons mutually transfer the ownership of one thing for the ownership of another, along with money being paid as part of consideration, the transaction is called an exchange.
  - Licence - where one person grants to another, or to a definite number of other persons, a right to do or continue to do in or upon the immovable property of the granter, the right is called a licence.
  - Rentals - Periodical payment for use of another's property. Rent is to pay on monthly.
  - Lease - A lease is an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time. A lease may be financial lease or operating lease.
  - Disposal- Disposal normally considered as selling of assets as scrap.
- In the course of business - Whatever activities a person carries out regularly for running business, trade or commerce are called as in the course of business.
- Furtherance of business - Such new activities which are undertaken to develop or expand the business are called as furtherance of business.
- Anything supplied other than goods and services is outside the scope of supply.

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***Consideration [Sec 2(31)]*** *– In relation to the supply of goods or services or both includes—*

(a) Any payment made or to be made, whether in money or otherwise,

(b) The monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, —

- Whether by the recipient or by any other person
- But shall not include any subsidy given by the Central Government or a State Government.
- However, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply

- From the above definition, the following are importation:
  - **Consideration** not only includes money but covers anything which might be possibly done, **given or made in exchange for something else.**
  - Consideration need not always flow from the recipient of the supply. It can also be **made by a third person.**
  - An important feature of consideration is **quid pro quo (something for something).** Donations received by charitable organisations are treatedas considerations only if there exists an obligation on the part of the recipient of the donation or gift to do anything in return for the donor.
  - GST is not leviable on gifts/ donations
    - if it is made to a charitable organisation
    - if it is payment has the character of the gift / donation and
    - if the purpose is philanthropic (i.e. no commercial gain) and not in the nature of advertisement.
  - When the name of the donor is displayed in the recipient's premises as an expression of gratitude and is not aimed at giving publicity to the donor in such a manner that it amounts to advertising of his business, then there isno supply of service for consideration. [Circular No. 116/35/2019 GST dated 11.10.2019]
  - Art works sent by artists to galleries as exhibition - Not a Supply as no consideration flows from the galleries to the artist.
    *[Circular No. 22/22/2017 GST dated 21.12.2017]*
  - No supply of service by the insured to the insurance company in lieu of 'No Claim Bonus' offered by said insurance company to him - there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.
    *[Circular No. 186/18/2022 GST dated 27.12.2022]*
  - Any subsidy given by the Central Government or a State Government is NOT considered.
  - A deposit shall not be considered as payment made for such supply unless the supplier applies / appropriates such deposit as consideration for the said supply.
  - Any transaction involving supply of goods and/or services without consideration is not

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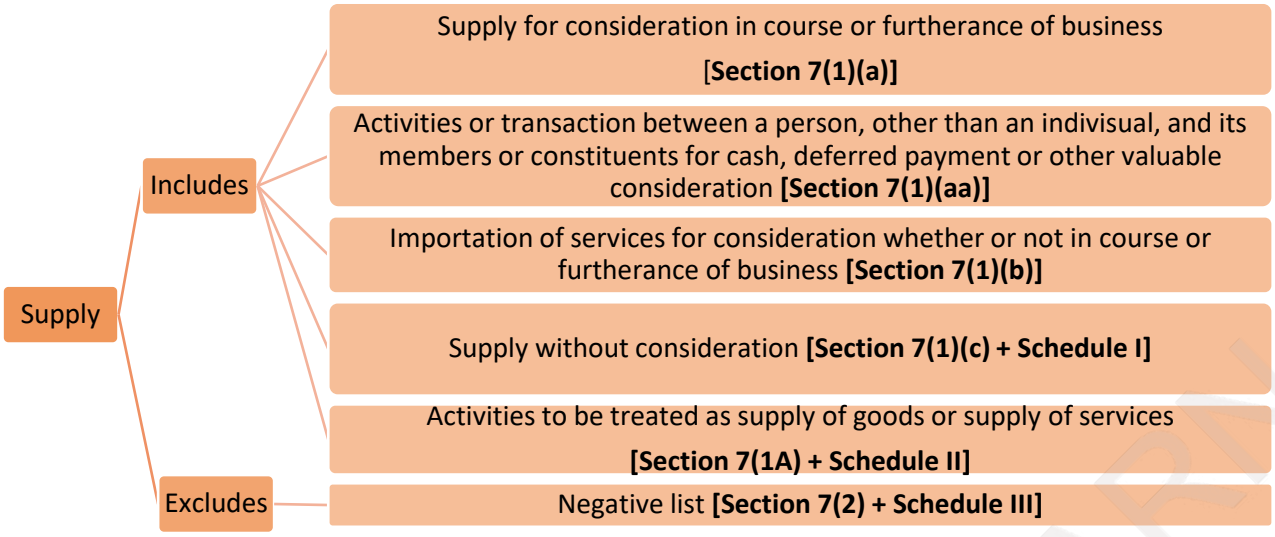
a supply unless it is deemed to be a supply under Schedule I of the CGST Act.




## 3. IMPORTATION OF SERVICE FOR A CONSIDERATION WHETHER OR NOT IN COURSE OR FURTHERANCE OF BUSINESS – [SECTION 7(1)(B)]

1. It is applicable only for services and not for goods
2. It should be import of service, where
   i. The supplier of service is located outside India;
   ii. The recipient of service is located in India; and
   iii. The place of supply of service is in India.
3. Services shall be provided with consideration
4. Services may be in the course or furtherance of business or not in the course or furtherance of business.

## 4. SUPPLY WITHOUT CONSIDERATION - DEEMED SUPPLY [SECTION 7(1)(C)] READ WITH SCHEDULE I

- There are instances where an activity or transaction is treated as supply, ***even if the same is made without consideration.***
- These are specifically mentioned in Schedule I appended to the CGST Act. The same has been discussed below:

### 4.1 - Permanent Transfer/Disposal of Business Assets where input tax credit has been availed on such assets.

- In order to qualify as supply under this para, following conditions need to be satisfied:
  - There must be a disposal or transfer of business assets
  - Transfer/disposal must be permanent
  - ITC must have been availed on such business assets.

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- However permanent transfer/disposal of following business assets, without consideration, will not be deemed as supply:
    - Business assets on which ITC is blocked/not available under GST
    - Business assets though eligible for ITC, ITC has not been availed by the registered person.
- It is important to note that the term business assets have not been defined under the GST law.
- This clause is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.

### 4.2 – Supply between Related Person or Distinct Person

- Supply of goods or services or both between 'related persons' or between 'distinct persons' as specified in section 25, will qualify as supply ***provided it is made in the course or furtherance of business.***

#### 4.2.1 – Distinct Persons

- Under GST law, a supplier is required to obtain **State-wise registration**.
- He has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit.
- Further, where he has multiple places of business in a State/UT, he has the option either to get a single registration for said State/UT or to get separate registrations for each place of business in such State/UT.

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

***Establishments of Distinct persons*** - 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 suchestablishments shall be treated as establishments of distinct persons. [sec 25(5)]

- Transactions between different locations (with separate GST registrations) of same legal entity (e.g., ***stock transfers or branch transfers) will qualify as 'supply'*** under GST as these are transactions between distinct persons.
- However, transfer between two units of a legal entity under single registration (apparently within same State) will not be considered as supply. For e.g.: supply of goods from factory (In Lucknow) to retail showroom (In Kanpur) in same State (Uttar Pradesh) under single registration does not constitute supply.

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Schedule I

- Permanent transfer/disposal of business assets where Input tax credit has been availed on such assets
- Supply of goods or services or both **between related persons or between distinct persons**, when made in the course or furtherance of business
- Supply of goods by a **principal to his agent or by an agent to his principal.**
- **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.

### 4.2.2 – Related Persons

As per Explanation to Section 15,

a) 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**;

b) the term "person" also includes **legal persons**;

c) persons who are **associated in the business** of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

- Difference between Agent and Distributor

**Agent**

Procures from the company and supplies to customers on behalf of the company for ***commission***

**Distributor**

Purchases from the company and sells to customers in his own capacity for ***profits***

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***Family [Section 2(49)]*** – 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.

***Person [Section 2(84)]*** – includes,

a) an individual;
b) a Hindu Undivided Family;
c) a company;
d) a firm;
e) a Limited Liability Partnership;
f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined Sec 2 (45) of the Companies Act, 2013.
h) any body corporate incorporated by or under the laws of a country outside India;
i) a co-operative society registered under any law relating to co-operative societies;
j) a local authority;
k) Central Government or a State Government;
l) society as defined under the Societies Registration Act, 1860;
m) trust; and
n) every artificial juridical person, not falling within any of the above

### 4.2.3 – Supply of goods or services or both between an employer and employee:

- Services provided by an employee to the employer in the course of or in relation to his employment are not treated as supply [Schedule III of CGST Act]
- If services such as membership of a club, health and fitness centre etc. are provided free of charge to all the employees by the employer, the same will not be subjected to GST.
- The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to company (CTC)
- *Gifts up to 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.*
- The term 'gift' has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be enforced in a court of law.

### 4.3 Principal – Agent

- Supply of goods—

- by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
- by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal

is considered as supply.

- ***Only supply of goods and not supply of services*** is covered here. the supply of services between the principal and the agent and vice versa would therefore require "consideration" to be considered as supply.
- The key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Thus, the indicator is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.
- Where the ***invoice for further supply is being issued by the agent in his name*** then, any provision of goods from the principal to the agent would fall within the fold of this para. I.e., It would be ***considered as supply***.
  The disclosure or non- disclosure of the name of the principal is immaterial in such situations.
- In cases where the ***invoice is issued*** by the agent to the customer ***in the name of the principal***, such agent shall ***not fall within the ambit of Schedule-I*** of the CGST Act, 2017.
- Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by this para.

### 4.3.1 – Examples for the above provisions:

1. Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Anmol, and asks the supplier, Mr. C to send the goods and issue the invoice directly to Mr. A.

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

2. M/s Tintin, a banking company, appoints Mandaar (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s Tintin. The invoice for the supply of the goods is issued by M/s Tintin to the successful bidder.

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

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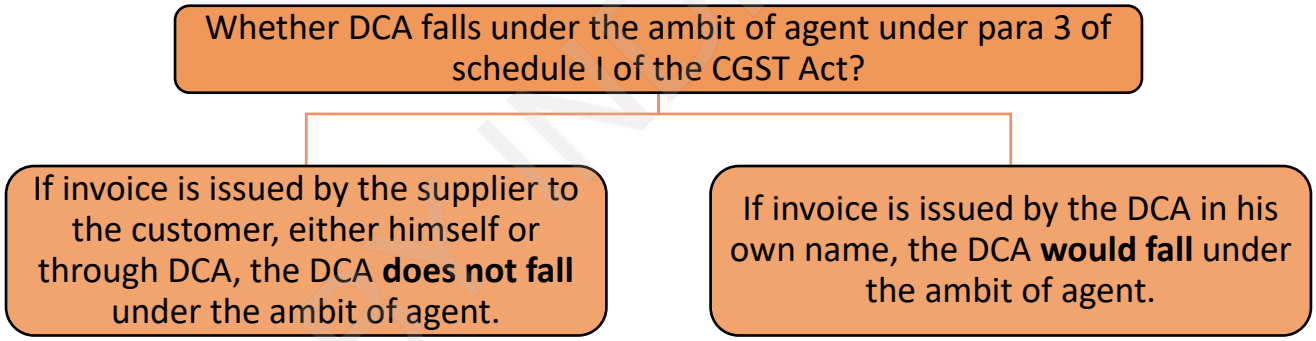
3. Gautam, an artist, appoints Gambhir (auctioneer) to auction his painting. Gambhir arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder.

The invoice for the supply of the painting is issued by Gambhir on the behalf of Gautam but in his own name and the painting is delivered to the successful bidder. In this scenario, Gambhir is not merely providing auctioneering services, but is also supplying the painting on behalf of Gautam to the bidder and has the authority to transfer the title of the painting on behalf of Gautam. This scenario is covered under Para 3. of Schedule I.

### 4.3.2 – Del-Credere Agent (DCA)

- A DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. DCA guarantees the payment to the supplier. where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer.
- The commission paid to the DCA is relatively higher than that paid to a normal agent as he is effectively providing an insurance against default by the buyer.
- In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer.

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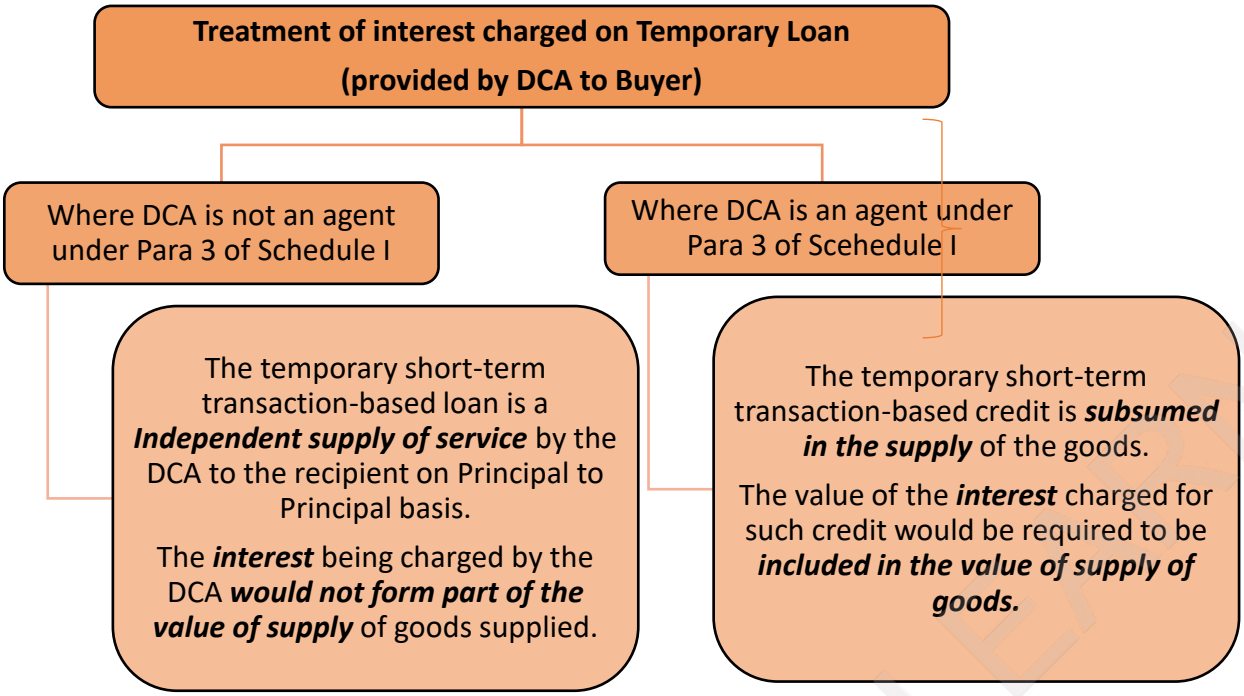
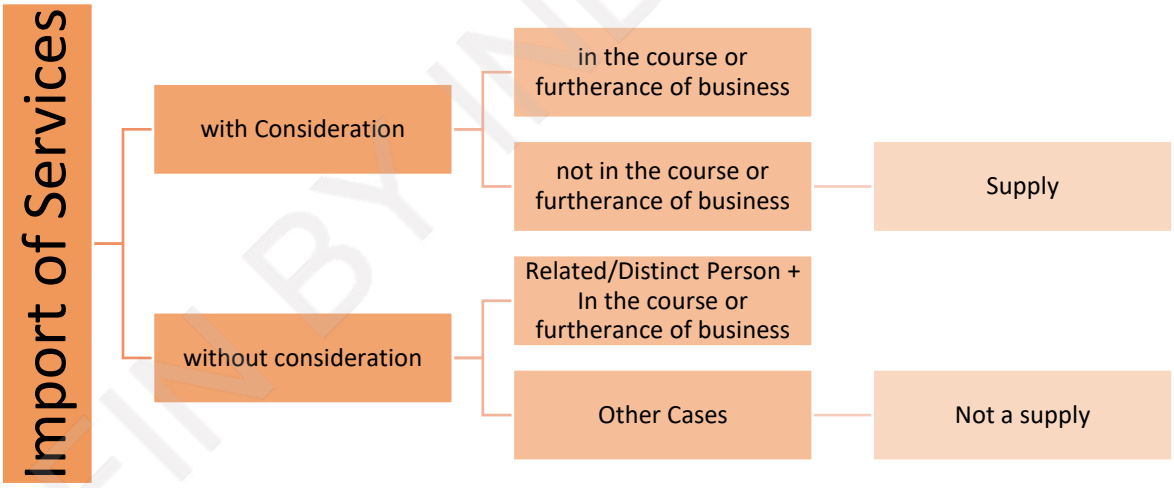
### 4.3.3 – Clarifications with Del-credere Agent (DCA)




### 4.4 – Importation of Services

- Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as "supply".




## 5. ACTIVITIES/TRANSACTIONS BETWEEN A PERSON OTHER THAN AN INDIVIDUAL AND ITS MEMBERS/CONSTITUENTS FOR CONSIDERATION [SECTION 7(1)(AA)]

- The activities or transactions (involving supply of goods or services) between a person, other than an individual, (i.e. association, club, etc.) and its members or constituents, for cash, deferred payment or other valuable consideration are covered within the ambit of 'supply' as per section 7(1) (aa).
- Further, explanation to clause (aa) to section 7(1) clarifies that for the purpose of this clause, such person (association, club, etc.) and its members or constituents shall be **deemed to be**

**two separate persons** and the supply of activities or transactions between them shall be deemed to take place from one such person to another.

- The explanation starts with a non-obstante clause and shall therefore, shall have an overriding effect over anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority.
- The aforesaid explanation prevents the application of doctrine of mutuality by such person or persons.
- For example:
    - Resident Welfare Association (RWA) of Sanskriti Society supplies air-conditioners to its members at a concessional price.
    - A Resident Welfare Association collects maintenance charges from its members for services provided.
    - Here, in both the aforesaid examples, it shall be deemed that the Resident Welfare Association (RWA) and its members are two separate persons and it shall be deemed that the supply has taken place from Resident Welfare Association (RWA) to its members.

## 6. ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES [SECTION 7(1A) + SCHEDULE II]

- Section 7(1A) (read with Schedule II) of the CGST Act classifies certain activities/ transactions constituting supply, either as supply of goods or supply of services.
- This helps in mitigating the ambiguities which existed in earlier laws.
- This also helps in identifying the correct tax rate as there are different rates for different goods and different services.

| **Schedule II** | | |
|---|---|---|
| **Sr. No.** | **Transactions** | **Supply** |
| 1 | **Transfer** | |
| | (a) Transfer of the title in goods. | Supply of goods |
| | (b) Transfer of right in goods or undivided share in goods without the transfer of title. | Supply of service |
| | (c) 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. (Examples – i) Installment, ii) Hire purchase sale and iii) Goods sent on approval | Supply of goods |
| 2 | **Land and Building** | |
| | (a) Lease, tenancy, easement, license to occupy land | Supply of service |

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| | (b) Lease or letting of any building including for business or commerce. (Building might be a commercial, industrial or residential complex rent out wholly or partly) | Supply of service |
| 3 | **Treatment or process** | |
| | Any treatment or process which is applied to another person's goods (example – Catering, job work etc.) | Supply of service |
| 4 | **Transfer of business assets** | |
| | (a) Goods forming part of business are transferred or disposed off by the owner | Supply of goods |
| | (b) The owner (person carrying on business) uses or allows to use business assets for personal use. | Supply of service |
| | (c) If the owner ceases to be a taxable person then business assets will be assumed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person. This is not applicable when:-<br>(i) the business is transferred as a going concern to another person; or<br>(ii) the business is carried on by a personal representative who is deemed to be a taxable person. | Supply of goods |
| 5 | (a) **Renting** of immovable property.<br>(b) Construction of complex, building, civil structure, etc. where consideration is received before issue of completion certificate*<br>(c) Temporary transfer or permitting use or enjoyment of any intellectual property right<br>(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software<br>(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.<br>Note: Activity of Transfer of tenancy right against consideration (i.e. tenancy premium) is squarely covered under supply of service liable to GST. Transfer of tenancy rights cannot be treated as sale of land / building given in Schedule 5. | Supply of service |
| 6 | **Composite supply**<br>**(a) Works contract services**<br>Works contract: means a contract for building construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. | Supply of service |
| | **(b)** Supply by way of or as part of any other service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption). | Supply of service |

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**Note:** Construction of a complex, building, civil structure or a part thereof, including a complex or building ***intended for sale*** were,

(a) Full / part of consideration received, before issue of completion certificate by competent authority – Subject to GST. GST is chargeable on the entireconsideration amount.

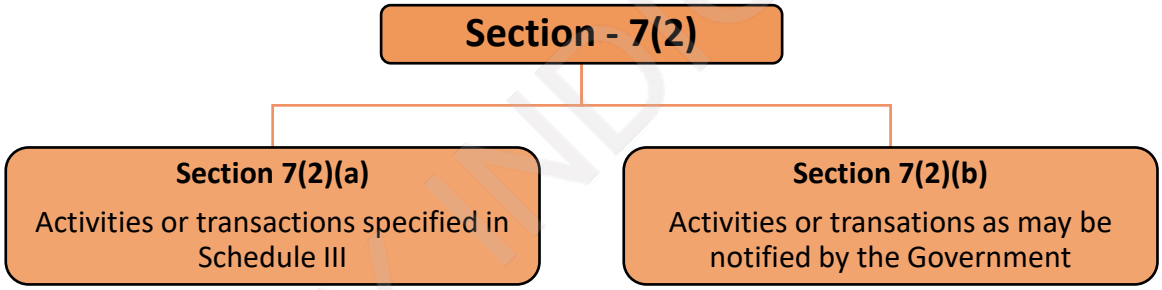
(b) Full consideration is received after issue of completion certificate by competent authority or after its first occupation, whichever is earlier – Not Subject to GST.

- The term construction includes additions, alterations, replacements, or remodelling of any existing civil structure.
- ***competent authority*** means the ***Government or any authority authorised*** to issue completion certificate under any law for the time being in force and in caseof non-requirement of such certificate from such authority from any of the following, namely: —
  - an architect
  - a chartered engineer
  - a licensed surveyor of the respective local body of the city

## 6. NEGATIVE LIST UNDER GST [SECTION 7(2) + SCHEDULE III]

### 6.1 - Negative List

- Activities/transactions specified under Schedule III are termed "Negative list" under the GST regime. This schedule specifies transactions/ activities which shall be neither treated as supply of goods nor a supply of services.

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| Schedule III |
| --- |
| 1. Services by an **employee to the employer** in the course of or in relation to his employment.<br>• Amounts received by an employee from the employer on premature termination of contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment.<br>• Services provided by casual worker to employer who gives wages on daily basis to the worker are services provided by the worker in the course of employment.<br>• Services provided outside the ambit of employment for a consideration would qualify as supply.<br>• Any amount paid by employer to employee for not joining a competing business is paid for providing the service of forbearance to act and cannot be considered for providing services in the course of employment.<br>• Gifts up to 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. However, gifts of value more than Rs. 50,000 made without consideration are supply and are subject to GST, when made in the course or furtherance of business.<br>• Employer shall be liable to pay GST on such gifts. |
| 2. Services by **any Court or Tribunal** established under any law for the time being in force.<br>• The term "Court" includes District Court, High Court and Supreme Court. |
| **3.** Functions performed by **Members of Parliament, Members of state legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.**<br>• Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity like President, Vice President, Prime Minister, Chief Justice, Speaker of the Lok Sabha etc.<br>• 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. |
| 4. Services of **funeral, burial, crematorium or mortuary** including transportation of the deceased. |
| 5. **Sale of land** and, subject to paragraph 5(b) of Schedule II (construction service), sale of building. |
| **Sale of building** - if consideration is paid after receipt of completion certificate – No GST. |
| 6. **Actionable claims**, other than lottery, betting and gambling.<br>Only lottery, betting and gambling are treated as supply. All other actionable claims are outside the ambit of definition of supply.<br>CGST Amendment Act, 2023 has amended the above entry and changed the same to **"Actionable claims, other than specified actionable claims". Specified actionable claims covers betting, gambling, lottery, casinos, horse racing and online money gaming.**<br>Above amendment has been made to cover casinos, horse racing and online gaming under GST net. |

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| 7. | **Out and Out Supplies:** Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. It seeks to exclude from the tax net such transactions which involve movement of goods, caused by a registered person, from one non-taxable territory to another non- taxable territory. |
| 8. | Supply of warehoused goods to any person before clearance for home consumption. Warehoused goods means goods deposited in a warehouse. |
| 9. | Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption |

**Examples:**

1. Mr. A purchased goods from China and sold it to Mr. John in Canada without bringing the goods in India. This transaction is neither supply of goods nor supply of services.
2. Mr. X imported some goods in India, but kept the goods in custom bonded warehouse without clearing it for home consumption. In the meantime, Mr. X sold these goods to Mr. Y while they were in warehouse. This transaction between Mr. X and Mr. Y is neither supply of goods nor supply of services.
3. Mr. P of India imported some goods from Japan. While the goods were in high seas, Mr. P sold the goods to Mr. Q in India by way of endorsement of documents of title of goods. This transaction between Mr. P and Mr. Q is neither supply of goods nor supply of services.

### 6.2 – Section 7(2)(b) – Activities/Transactions (Non-Supplies) notified by the Government

- Government is empowered to notify the activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as the activities/transactions which shall be treated neither as a supply of goods nor a supply of services.
- In this regard, the Government has notified the services by way of any activity in relation to a function entrusted
    - to a ***Panchayat*** under article 243G of the Constitution or
    - to a ***Municipality*** under article 243W of the Constitution.

### 6.3 – CBIC Clarifications

- CBIC has clarified that following activities/transactions are neither supply of goods nor supply of services.

1. ***Inter-State movement of various modes of conveyance***,
    - Inter-State movement of various modes of conveyance,
    - ***between distinct persons*** including – Trains, Buses, Tankers, Trucks, Trailers, Vessels, Containers, Aircrafts,
    - carrying goods or passengers or both or
    - for repairs and maintenance

- such inter-State movement shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to GST.
- GST is applicable on the value of the goods being carried in that conveyance.
- If conveyance is being sent for further supply (selling / leasing etc) then GST is leviable on such supply.
- Applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.

2. ***Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes]***

- Inter-State movement of rigs, tools and spares, and all goods on wheels [likecranes]
- between distinct persons
- for repairs and maintenance
- such inter-State movement shall be treated 'neither as a supply of goods orsupply of service' and therefore not be leviable to GST.
- If such movement is for further supply (selling / leasing etc) then GST isleviable on such supply.
- Applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairsand maintenance done on such goods.

3. ***Grant of license for alcoholic liquor***

- Services by state government by way of granting license for alcoholic liquor for human consumption, shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to GST.
- Alcoholic liquor for human consumption is kept outside the purview of GST. And thus even granting license for a consideration of license fee is outside GST.
- State government license for any other goods or service will attract GST.

## 7. SUPPLY – ADDITIONAL CONDITIONS

- **Supply by taxable person** – the person supplying should be a taxable person,the recipient need not be a taxable person. A taxable person is a person who isregistered or liable to be registered under section 22 or section 24. A person going for voluntary registration can also be taxable person.
- **Supply should be taxable** – Supply of goods or services or both which, is leviable to tax under the GST Act.

## 8. POWERS OF CENTRAL GOVERNMENT

As per Section 7(3) of the CGST Act, 2017 Subject to the provisions of sub- sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- a supply of goods and not as a supply of services; or
- a supply of services and not as a supply of goods

## 9. COMPOSITE SUPPLY AND MIXED SUPPLY

### 9.1 – Composite Supply

***Composite Supply [Section 2(30)]*** – means a supply made by a taxable person to a recipient and

- Comprises two or more taxable supplies of goods or services or both, or any combination thereof
- 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)]*** – means a supply of goods or services, -

- Which constitutes the predominant element of a composite supply and
- To which any other supply forming part of that composite supply is ancillary.

- A composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.
- Thus will be taxed at the rate applicable for principal supply.
- Whether the services are bundled in the ordinary course of business, would depend upon the normal or frequent practices followed in the area of business to which services relate.
- Some indicators of such practices are:
    - If large number of service recipient of such bundle of services reasonably expect such services to be provided as a package. (E.g., Supply of foods during long flight journey.)
    - Majority of service providers in a particular area of business provide similar bundle of services. (E.g.: Watching a movie on overnight bus journey)
    - If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. (e.g., service of stay in a hotel is often combined with provision of breakfast)
    - The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected.

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## 9.2 – Mixed Supply

***Mixed Supply [Section 2(74)]*** *– 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.*

- The individual supplies are independent of each other and are not naturally bundled.
- A mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that **attracts highest rate of tax.**

| ***Composite Supply – Section 8 (a)*** | ***Mixed Supply – Section 8 (b)*** |
|---|---|
| • Consists of two or more supplies<br>• Naturally bundles<br>• in conjunction with each other<br>• one of which is principal supply<br>• Tax liability shall be the rate is principal supply<br>• Example: Charger supplied along with mobile phones. | • Consists of two or more supplies for single price<br>• Artificially bundled<br>• Though can be supplied independently, still supplied together<br>• Tax liability shall be the rate applicable to the supply that attracts highest rate of tax<br>• Example: A Gift pack of chocolates, candies and balloons. |

## 10. SPECIAL CASES (CLARIFICATIONS THROUGH CIRCULARS/NOTIFICATIONS)

- **Sending artwork to galleries for exhibition** - If any artist sends his art work to galleries for exhibition, this interstate movement of art work will ***not be considered as supply*** as there is no consideration flowing from the galleries or Organisers of exhibition to the artist. Consideration will be paid only in case the artwork is sold to any interested buyer.
- **Retreading of tyres** - pre-dominant element is process of retreading which is a ***supply of service***. Rubber used for retreading is an ancillary supply.

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

- **Printing on letter heads, etc.** - In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the printer using its physical inputs including paper to print the design, logo etc. supplied by the recipient of goods, predominant supply is supply of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute ***supply of goods.***
- **Printing of pamphlets, brochures etc.** - In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including

paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute ***supply of service.***

- **Servicing of cars** - In case of servicing of cars involving supply of both goods (spare parts) and services (labor) where the value of goods and services are shown separately, CBIC has clarified that the goods and services would be liable to ***tax at the rates as applicable to such goods and services separately.***

- **Gift/donation for charitable purpose –** where any gift or donation is paid to any charitable institution for charitable/philanthropic purpose, such payment is not subject to GST. If there is any commercial gain, to the payer and there is an obligation on the recipient to display the payer's name then it will fall under advertising services.

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

- **Buy one get one free offer:** It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly.

- **Supply of food and beverages at cinema halls shall be taxable as restaurant service –** Further, it has been clarified that if sale of ticket and supply of food and beverages are clubbed together and such bundled supply satisfies the test of composite supply, then entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

- **Activity of holding of shares of subsidiary company by the holding company per se cannot be treated as supply of services and cannot be taxed under GST**

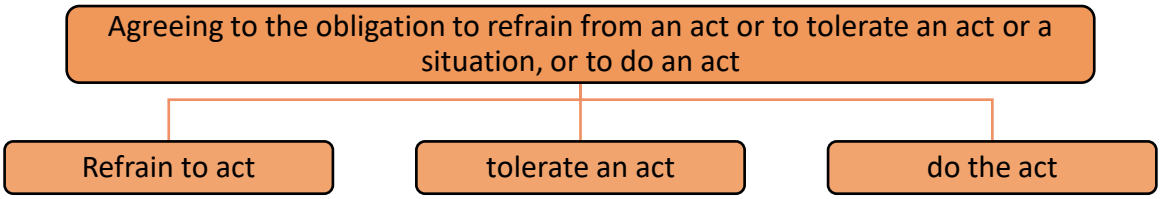
- **Taxability of 'tenancy rights' under GST** - Pagadi system, i.e., transfer of tenancy rights against tenancy premium, is prevalent in some States. In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property.

- The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement.

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

- **Applicability on Liquidated Damages, Compensation and penalty arising out of breach of contract or other provisions of law** – Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply

of service in para 5(e) of Schedule II if the same constitutes a "supply" within the meaning of the CGST Act.




- The three of the above expressions namely Refraining, Tolerating and Doing an act must comply the following conditions
  - There must be an expressed or implied agreement or a contract (independent contract/agreement) must exist
  - Consideration must flow in return to this contract/agreement
- Taxability of some of the transactions are as below

- Liquidated Damages – not a supply as the contracts are entered for its performance but not its breach, liquidated damages are just mere flow or money as they do not restitute the aggrieved party and such damages does not qualify as the mere consideration for having permitted or tolerated the deviation or non-fulfillment of the promise by the other party.
- In such cases, determine if the questioned payments are consideration for an independent contract involving tolerating, refraining from, or performing an act. If yes, it qualifies as a 'supply,' regardless of its designation; otherwise, it is not considered a "supply."
- Fines and penalties – is a supply as they are charged to facilitate the acceptance of late payment, it qualifies as consideration for supply, and are subject to GST.
- Cheque Dishonor fine/Penalty – not a supply as they are imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation which disqualifies such payments as consideration for any service and not taxable
- Penalty imposed for violation of laws – not a supply as laws are not framed for tolerating, penalizing and thereby deterring and discouraging such an act or situation. However, there is no such agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty, as there cannot be such an agreement of violation of law is never a lawful object for consideration for any service and are not leviable to Tax.
- Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period – not a supply as the said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation.
- Late payment surcharge or fee – is a supply as the said payments are paid for provision of facility of accepting the late payments with interest or late payment fee granted by the supplier is naturally bundled with the main supply. It is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply, it should be assessed at the same rate as the principal Supply

- Fixed Charges for Power – is exempt as the said minimum fixed charges paid for an electricity connection will be the same as per contract entered at the time of obtaining the connection from SEB or DISCOMs but all the components paid for the supply of electricity are not taxable as electricity is exempt from GST.
- Cancellation Charges – is a Supply as the said charges are collected by the service provider can be considered as the charges of the costs involved in making arrangements for the intended supply and the costs in volved in the cancellation of such supply, these charges are for the facilitation of the arrangements that were incurred from the inception of contract of supply till the event of cancellation. These cancellation charges are naturally bundled with the principal supply and is taxable with the rate at which the principal supply is charged.

## ILLUSTRATIONS

### Illustration 1

Examine whether the following activities would amount to supply under section 7 of theCGST Act:

a. Damodar Charitable Trust, a trust who gets the eye treatment of needy people done free of cost, donates clothes and toys to children living in slum area.

b. Sulekha Manufacturers have a factory in Delhi and a depot in Mumbai. Both these establishments are registered in respective States. Finished goods are sent from factory in Delhi to the Mumbai depot without consideration so that the same can be sold.

c. Raman is an Electronic Commerce Operator in Chennai. His brother who is settled in London is a well-known lawyer. Raman has taken legal advice from him free of cost with regards to his family dispute.

Would your answer be different if in the above case, Raman has taken advice in respect of his business unit in Chennai?

### Illustration 2

Determine whether the following supplies amount to composite supplies:

a. A hotel provides 4 days-3 nights package wherein the facility of breakfast and dinner is provided along with the room accommodation

b. A toothpaste company has offered the scheme of free toothbrush the toothpaste.

### Illustration 3

Whether goods supplied on hire purchase basis will be treated as supply of goods or supply of services?

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### Illustration 4

Athiratha is a salaried employee and is planning to invest in stocks. He has opened a trading account with Sopana Brokers. During the month, Athiratha undertook future contracts (without a physical delivery option, but are cash settled on the expiry of the contract date), amounting to Rs. 35,00,000. Athiratha needs your advice whether such future contracts undertaken by him amount to supply and are liable to GST.

### Illustration 5

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

b. In the above question, if the Divyaprakash Charitable Trust had written on the door of the room constructed in the school run by it from the money donated by Rudraksh Kapoor "Donated by Rudraksh Publishing House, Ghaziabad, U.P.", would the given transaction/activity qualify as supply.

### Illustration 6

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

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

b. Prithvi Enterprises appoints Champak to procure certain goods from. the market. Champak identifies various suppliers who can provide the goods as desired by Prithvi Enterprises, and asks a supplier - Satya Manufacturers to send the goods and issue invoice directly to Prithvi Enterprises.

   You are required to determine whether Champak can he considered as an agent of Prithvi Enterprises in terms of Schedule I of the CGST Act.

### Illustration 7

Mr. Rajesh Surana has a proprietorship firm in the name of Surana & Sons in Jaipur. The firm, registered under GST in the State of Rajasthan, manufactures taxable products. The firm also provides taxable consultancy services.

Mr. Rajesh Surana has provided the consultancy service to his brother - Mr. Akhilesh Surana (located in USA) without any consideration. The products manufactured by Mr. Akhilesh are similar to the ones manufactured by Mr. Rajesh Surana. Mr. Surana charges Rs. 3,00,000 for providing similar consultancy services to other independent customers located in USA.

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Compute the GST liability, if any, in the given case assuming the rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.

### Illustration 8

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

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

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

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

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

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

Assume the rates of GST to be as under: Hiring out of excavators- 12% Supply of manpower services and soil- testing and seismic evaluation services - 18%.

### Illustration 9

Mrs. Kajal, a registered supplier of Jaipur (Rajasthan), has made the Following supplies in the month of January:

(i) Supply of a laptop along with the laptop bag to a customer of Mumbai for Rs 55,000 (exclusive of GST).

(ii) Supply of 10,000 kits (at Rs 50 each) amounting to Rs 5,00,000 (exclusive of GST) to Ram Fancy Store in Kota (Rajasthan). Each kit consists of 1 hair oil,1 beauty soap and 1 hair comb.

(iii) 100 kits are given as Free gift to Jaipur customers (all unrelated) on the occasion of Mrs. Kajal's birthday. Each kit consists of 1 hair oil and 1 beauty soap. Cost of each kit is Rs 35. Input tax credit has not been taken on the goods contained in the kit.

(iv) Event management services provided Free of cost to her brother (wholly dependent on her) For his son's marriage Function in Indore {Madhya Pradesh). Cost of providing said services is Rs 80,000.

(v) ,400 chairs and 100 coolers hired out to Function Garden, Ajmer (Rajasthan) For

(vi) Rs 3,30,000 (exclusive of GST) including cost of transporting the chairs and coolers From Mrs. Kajal's godown at Jaipur to Function Garden, Ajmer. Since Mrs. Kajal is not a GTA, transportation services provided by her are exempt vide Notification No.12/2017 CT (R) dated 28.06.2017.

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Assume rate of GST as under: -

| Sr. No. | Particular | Rate of GST (%) |
|---|---|---|
| 1 | Laptop | 18 |
| 2 | Laptop Bag | 28 |
| 3 | Hair Oil | 18 |
| 4 | Beauty Soap | 28 |
| 5 | Hair Comb | 12 |
| 6 | Event Management Service | 5 |
| 7 | Service of renting of chairs and coolers | 12 |
| 8 | Transportation service | 5 |

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

**Illustration 10**

ABC Consultancy, registered In Mumbai, supplies technical consultancy services to Its clients. It has been providing technical services to XY Ltd., Mumbai since past two years. Consideration Is settled by XY Ltd. assignment wise. XY Ltd. paid Rs. 45 lakhs to ABC Consultancy on 10th January, 2021 on ABC consultancy agreeing to not provide similar technical services to any other business entity In India or abroad for a period of 8 years. ABC Consultancy is of the view that Rs. 45 lakhs is not chargeable to GST.

You are required to examine whether the view taken by ABC Consultancy is valid in law.

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# 3. CHARGE OF GST

Contents


- Levy and Collection of GST [Sec 9]
- Reverse Charge Mechanism [Sec 9(3) & (4)]
- Tax payable by ECO [Sec 9(5)]
- Composition Levy [Sec 10]
- Tax at COncessional Rate [Notification no. 2/2019]


## 1. INTRODUCTION

- To pave way for the introduction of Goods and Services Tax ("GST"), 101st Constitutional Amendment Act was passed.

- The very basis for the charge of tax in any taxing statute is the taxable event i.e. the occurrence of the event which triggers levy of tax. The taxable event under GST is Supply.

- CGST and SGST/UTGST are levied on all intra-State supplies of goods and/or services while IGST is levied on all inter- State supplies of goods and/ or services.

## 2. LEVY AND COLLECTION OF GST – SECTION 9

- The provisions relating to levy and collection of CGST and IGST are contained in section 9 of the CGST Act, 2017 and section 5 of the IGST Act, 2017, respectively.

***Taxable Supply [Sec 2(108)]*** *– means a supply of goods and/or services which is/are chargeable to tax under GST*

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# Section 9 - Levy and Sollection of CGST

**Sec 9 (1)** - CGST shall be levied on all intra-state supplies of goods ir services or both, except on the supply of alcoholic liquor for human consumption

**Sec 9 (2)** - Tax on supply of 5 Petroleum products shall be levied with effect from such date as may be notified by the Government

**Sec 9 (3)** - The government, may specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient.

**Sec 9 (4) -** The Government may specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis.

**Sec 9 (5) -** The Government may specify categories of services the tax on which shall be paid by the electronic commerce operator if such services are supplied through it.

- Section 9 (1)
  - CGST shall be levied on all intra-state supplies of goods or services or both.
  - The tax shall be collected in such a manner as may be prescribed and shall be paid by the taxable person.

***Taxable Person [Sec 2(107)]*** *– means a person who is registered or liable to be registered under Section 22 or Section 24.*

  - Supply of alcoholic liquor for human consumption is outside the purview of GST law.
  - The value on which tax shall be computed shall be determined as per Section 15.
  - Rates for CGST are rates as may be notified by the Government on the recommendations of the GST Council [Rates presently notified are 0%, 0.125%, 1.5%, 2.5%, 6%, 9% and 14%].
  - Maximum rate of CGST can be 20%.
  - On inter-State supplies of goods and/or services, (IGST) is levied on the transaction value under section 15 of the CGST Act.
  - IGST is the sum total of CGST and SGST/UTGST.
  - Maximum rate of IGST can be 40%.
- Section 9 (2)
  - CGST/IGST on supply of the following items has not yet been levied.
  - It shall be levied with effect from such date as may be notified by the Government
  - on the recommendations of the Council
    - Petroleum crude
    - High speed diesel
    - Motor spirit (commonly known as petrol)
    - Natural gas and
    - Aviation turbine fuel

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## 3. TAX PAYABLE BY ECO - SECTION 9(5)

***Electronic Commerce Operator [Sec 2(45)]*** *– means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.*

- Sometimes, ECO itself supplies the goods or services through its electronic portal. (E.g., Amazon)
- However, many a times, the products/services displayed on the electronic portal are actually supplied by some other person to the consumer. (E.g., OLX, Swiggy. Book my show)
- The Government may notify specific categories of services the tax [CGST/SGST/IGST] on supplies of which shall be paid by the electronic commerce operator (ECO) if such services are supplied through it.
- Such notification shall be made on the recommendations of the GST Council.
- In this regard, the notified services are:
  - Services by way of transportation of passengers by a radio-taxi, motor cab, maxi cab, omnibus and motorcycle; (E.g., OLA, Uber)
    ***In case of Omnibus, ECO is liable to pay GST only if person supplying service through ECO is other than Company.***
  - services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, ***except where the person supplying such service through electronic commerce operator is liable for registration***. (E.g., OYO)
  - services by way of housekeeping, such as plumbing, carpentering etc., ***except where the person supplying such service through electronic commerce operator is liable for registration***. (E.g., UrbanClap)

In case of ***Transportation of passengers*** *– ECO is liable to pay GST, whether or not the driver is registered*

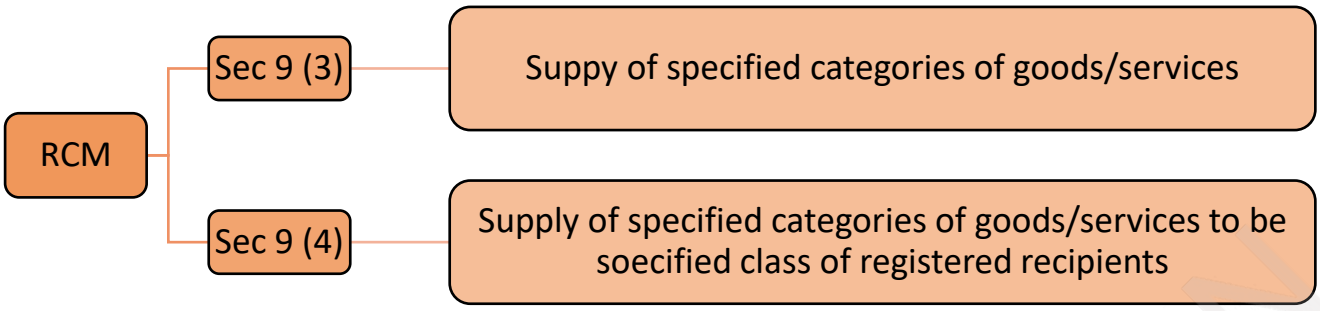
In case of ***Accommodation Services & House Keeping Services*** *– ECO is liable only if such service provider is not registered*

- If ECO does not have a ***physical presence in the taxable territory***, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.
- Where an ECO does not have a representative in the taxable territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.
- Tax on supplies on Restaurant services supplied through an ECO shall be paid by the ECO provided it is supplied other than through specified premises. Specified premises means those Hotels where room tariff is more than 7500 per day.

## 4. TAX PAYABLE UNDER REVERSE CHARGE MECHANISM (RCM)

- CGST/IGST shall be ***paid by the recipient*** of goods or services or both, on reverse charge basis, in the following cases:

- Supply of goods or services or both, ***notified by the Government*** on the recommendations of the GST Council. **[Sec 9(3)]**
- Supply of specified categories of goods or services or both by an ***unregistered supplier*** to specified class of registered persons. **[Sec 9(4)]**




- All the provisions of the CGST/IGST Act shall apply to the recipient in the aforesaid cases as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- Under indirect tax the burden of such tax has to be ultimately passed on to the recipient. Under reverse charge mechanism, only the compliance requirements, [i.e. to obtain registration under GST, deposit the tax with the Government, filing returns, etc.] have been shifted from supplier to recipient. The burden to pay GST ultimately lies on the recipient only.

## 4.1 – Goods and Services notified under Reverse Charge Mechanism (RCM)

### 4.1.1 – Supplies of Goods taxable under Reverse Charge

- List of goods covered under RCM:

| Sl No. | Supply of Goods | Supplier of Goods | Recipient of Supply |
|---|---|---|---|
| 1. | Cashew nuts, not shelled or peeled | Agriculturist | Any registered person |
| 2. | Bidi wrapper leaves(tendu) | Agriculturist | Any registered person |
| 3. | Tobacco leaves | Agriculturist | Any registered person |
| 3A | Following essential oils other than those of citrus fruit namely:<br>Of peppermint (Mentha Piperita)<br>Of other mints: spearmint oil (ex-mentha spicata), water mint – oil (ex-mentha aquatic), Horsemint Oil (ex- mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis. | Any unregistered person | Any registered person |
| 4. | Silk yarn | ***Any person who*** manufactures silk yarn from raw silk or | Any registered person |

| | | | |
|---|---|---|---|
| | | silk worm cocoons for supply of silk yarn | |
| 4A | Raw cotton | Agriculturist | Any registered person |
| 5. | Supply of lottery | State Government, Union Territory or any local authority | Lottery distributor or selling agent. |
| 6. | Used vehicles seized and confiscated goods, old and used goods, waste and scrap | Central Government ***excluding Ministry of Railways (Indian Railways),*** State Government, Union territory or a Local authority. | Any registered person. |
| 7. | Priority Sector Lending Certificate | Any registered person | Any registered person. |

Note: Import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.

### 4.1.2 – Supply of services taxable under Reverse Charge

- ***Notification No. 13/2017*** *CT (R) dated 28.06.2017* as amended has notified the following categories of supply of services wherein whole of the tax shall be paid on reverse charge basis.

1. Supply of services by a GOODS TRANSPORT AGENCY (GTA) in respect of transportation of goods by road
    - GTA can opt to pay tax
        - Either under Forward charge @ 12% (i.e., with Input Tax Credit) or @ 5% (i.e., without Input Tax Credit) or reverse charge @5% in the following cases.
    - In case of GTA provided services to specified persons, the recipient is required to pay GST under reverse charge at 5%.
    - The following businesses (recipient of services) are covered under specified persons:
        1. Factory registered under the Factories Act,1948;
        2. A society registered under the Societies Registration Act, 1860 or under any other law
        3. A co-operative society established under any law;
        4. A GST registered person
        5. A body corporate established by or under any law; or
        6. A partnership firm whether registered or not (including AOP)
        7. Casual taxable person

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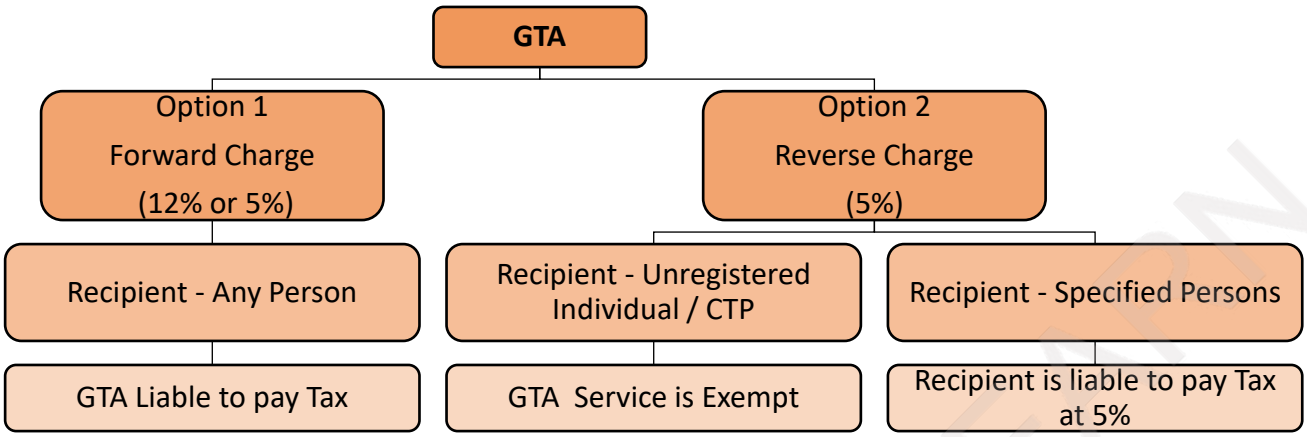
- In case the recipient is an unregistered person including an unregistered casual taxable person, then he is exempted from GST.
- The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.




**2.** LEGAL SERVICES

- Supplied by an individual advocate including a senior advocate or firm of advocates, directly or indirectly.
- To any business entity located in the taxable territory.

***Legal Service*** *- means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority*

**3.** ARBITRARY SERVICES

- Services supplied by an arbitral Tribunal
- Any Business entity located in taxable territory

***Business Entity*** *- means any entity (individual or organisation), incorporated or not, carrying on business or profession.*

***Arbitral/Arbitrary Tribunal*** *– means*

- *Legally recognized panel of one or more adjudicators;*
- *Which is convened and sits to resolve a dispute*
- *By way of arbitration in a less formal environment than a court trial.*
- *Adjudicators are usually professional, experts in law and mediation.*

**4.** SPONSORSHIP SERVICE

- Services supplied by any person,
- To any body corporate or partnership firm located in a taxable territory.

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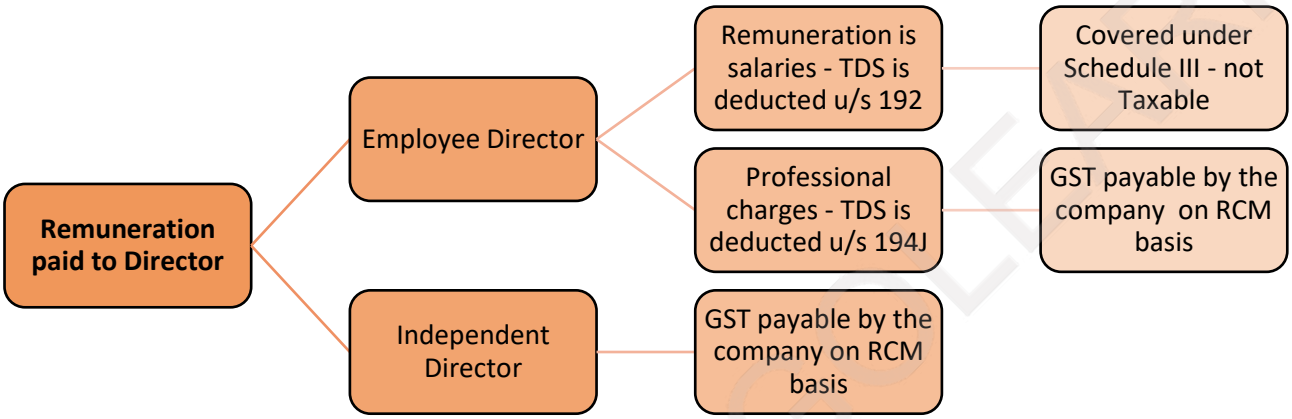
- Limited Liability Partnership formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.
- Sponsorship services received by any person other than body corporate or firm, RCM will not apply.

**5.** Services supplied by a director of a company/body corporate to the said company/body corporate. However, if service is provided by the director in personal capacity, then it is not taxable under RCM. Ex: Renting of immovable property.

- The company or a body corporate located in the taxable territory is liable to pay GST.
- Provided the director in not serving in the capacity of an employee.
- GST is payable on the sitting fees paid to the director.




**6.** Services supplied by an Insurance Agent to any person carrying on insurance business.

**7.** Services supplied by a Recovery Agent to a banking company or a financial institution or a non-banking financial company.

**8.** Supply of services by any music composer, photographer, artist or the like.

- by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works.
- to a publisher, music company, producer or the like.
- Such publisher, music company, producer is liable to pay GST.

**9.** Supplier of services by an Author

- by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a)of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.
- Publisher located in the taxable territory is liable to pay GST.
- However, the author can take registration under the CGST and ***choose to exercises the option to pay central tax*** on the services specified (i.e. copyright by author) under forward charge in accordance with Sec 9(1) of CGST Act, 2017 and to comply with all the provisions of CGST Act, 2017 as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and

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- He shall ***not withdraw the said option*** within a period of ***1 year*** from the date of exercising such option;
- The author has to file a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdictional CGST or SGST commissioner, as the case may be, that he chooses to exercise his option.
- The author makes a declaration, as prescribed in Annexure II on the invoice issued by him to the publisher.

**10.** Supply of services by the members of Overseeing Committee to Reserve Bank of India (RBI).

- Overseeing committee is a committee set up by RBI for advising on various functions of RBI. RBI is liable to pay GST for the services of such member.

**11.** Services supplied by individual Direct Selling Agents (DSAs).

- The recipient is a banking company or a non-banking financial company, located in the taxable territory.
- RCM is applicable only in case services are provided by Individual DSA. Thus, in case of services being provided by any body corporate or partnership firm/ LLP, GST is payable under forward charge mechanism.

**12.** Services provided by business facilitator to a banking company.

**13.** Services provided by an agent of business correspondent to business correspondent.

**14.** Security services

- Services provided by way of supply of security personnel.
- RCM is applicable only in case 3 conditions are satisfied:
- The service provider is any person other than a company.
- The recipient is a registered person, located in the taxable territory and
- The recipient is not paying tax under composition scheme.

**15.** Services supplied by any person by way of transfer of development rights (TDR) or Floor Space Index (FSI) (including additional FSI) for construction of a project.

- The supply is done by the land owner.
- To a developer/ promoter who undertakes the construction project
- The liability to pay tax on such transfer is of the developer/promoter.
- The agreement between the two parties is called the Joint Development agreement.

**16.** Long term lease of land (30 years or more) by any person for construction of a project.

- The supply is done by the land owner.
- To a developer/ promoter who undertakes the construction project
- Such transfer happens against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent.
- The liability to pay tax on such transfer is of the developer/promoter.
- The agreement between the two parties is called the Joint Development agreement.

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***Supply of TDR, FSI, long term lease (premium) of land*** *by a landowner to a developer are exempt subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.*
*Exemption of TDR, FSI, long term lease (premium) is withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. In such cases, the liability to pay tax on TDR, FSI, long term lease (premium) has been shifted from land owner to builder under the reverse charge mechanism (RCM).*

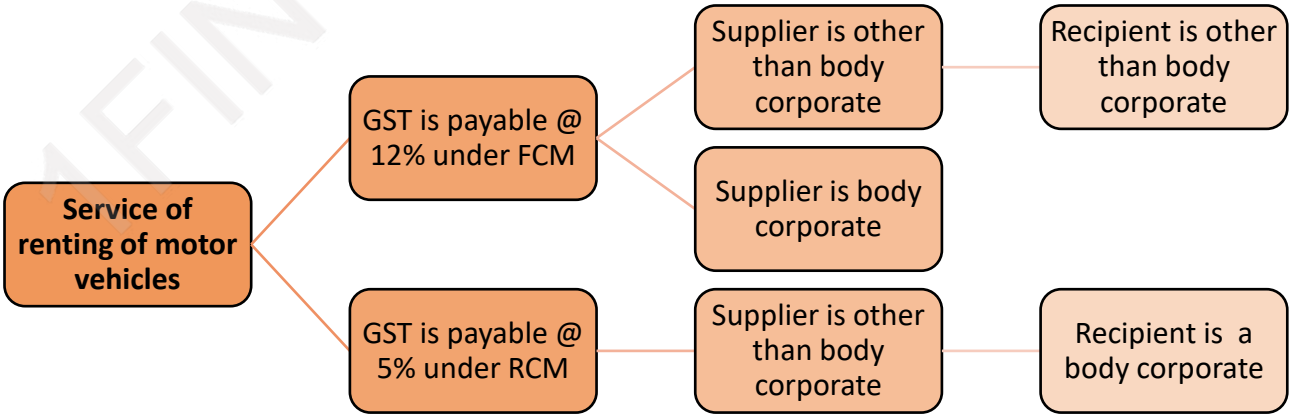
**17.** Services supplied by the Central Government excluding Ministry of Railways (Indian Railways), State Government, Union territory or local authority to a business entity.

- Any business entity located in the taxable territory is liable to pay GST
- The following services are **excluded** from RCM provision:

1. Renting of immovable property, (provided the recipient is an unregistered person under CGST Act),
2. Services by the Department of Posts and Ministry of Railways (Indian Railways)
3. services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
4. Transport of goods or passengers.
5. All services supplied by the Ministry of Railways (Indian Railways) shall be liable for Forward charge mechanism.

**18.** Services provide by way of renting of a motor vehicle

- Services provide by way of renting of a motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the recipient.
- Service is provided by any person other than a body corporate, who does not issue an invoice charging CGST @ 6%
- The recipient is any body corporate located in the taxable territory
- The recipient is liable to pay GST @ 5%




- 5% GST means 2.5% CGST + 2.5% SGST/UTGST or 5% IGST
- 12% GST means 6% CGST + 6% SGST/UTGST or 12% IGST

**19.** Services of Lending of securities under Securities Lending Scheme 1997 of Securities and Exchange Board of India (SEBI).

- The service provider is a Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme of SEBI.
- The service recipient is a Borrower i.e. a person who borrows the securities under the scheme through an approved intermediary of SEBI.
- The lender gets consideration in the form of lending fees.
- The borrower is liable to pay GST.

### 4.1.3 – Special points regarding GTA and security services

- RCM shall not apply to
  - services provided by a GTA, by way of transport of goods in a goods carriage by road to and
  - services provided by way of supply of security personnel by any person other than a body corporate
- In case the recipient is
  - A Department/ establishment of the Central Government/ State Government/ Union territory; or
  - local authority; or
  - Governmental agencies,
- which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

## 4.2 – Goods and Services notified under RCM – Section 9(4)

### 4.2.1 – GST rates in Real estate sector

- The effective rate of GST on real estate sector for the new projects by promoters are as follows:
  - 1% without ITC on construction of affordable houses (area 60 sqm in metros/ 90 sqm in non-metros and value up to Rs.45 lakh).
  - 5% without ITC is applicable on construction of:
    - all houses other than affordable houses, and
    - commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.
- Conditions: - Above tax rates shall be available subject to following conditions:
  - ITC shall not be available.
  - 80% of inputs and input services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be purchased from registered persons.

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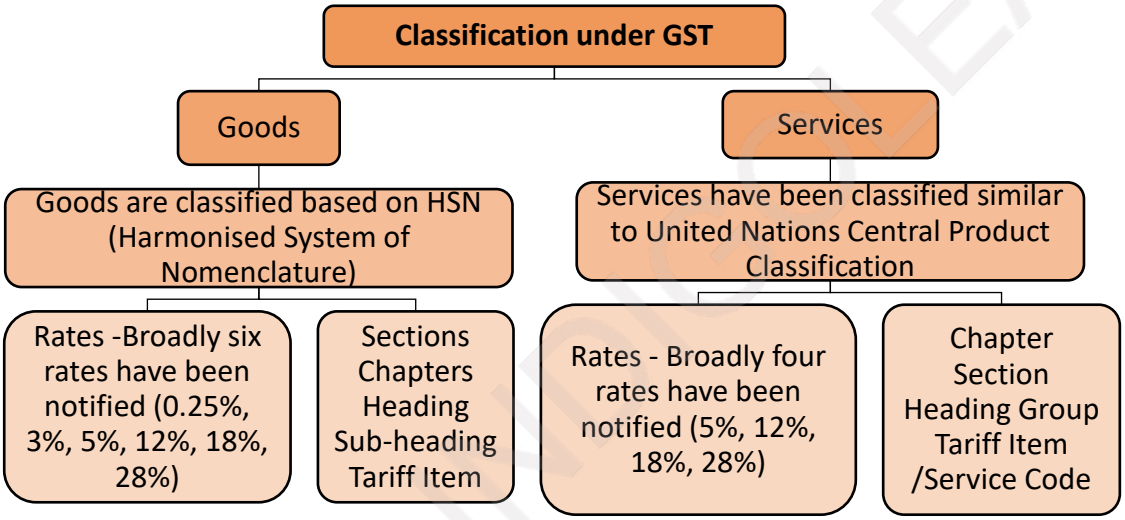
### 4.2.2 – Section 9 (4)

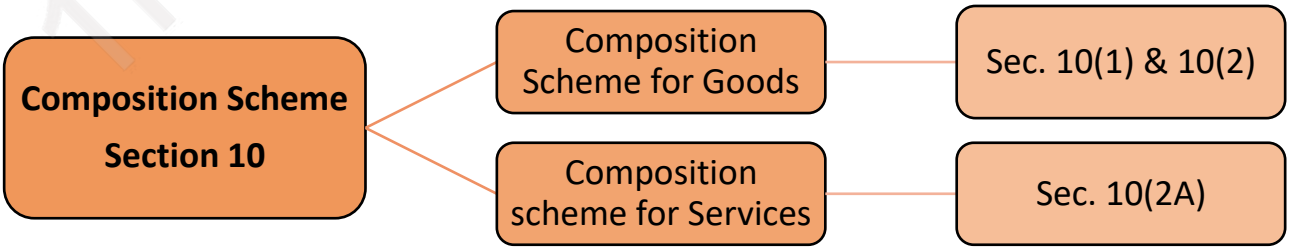
- Goods and Services notified under reverse charge mechanism (RCM) are related to the real estate sector as mentioned above:
  1. If value of inputs and input services purchased from registered supplier is less than 80%, promoter has to pay GST on reverse charge basis, at the rate of 18% on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).
  2. Where cement is received from an unregistered person, the promoter shall paytax on supply of such cement on reverse charge basis, at the applicable rate whichis 28% (CGST 14% + SGST 14%) at present
  3. GST on capital goods shall be paid by the promoter on reverse charge basis, at the applicable rates.

## 5. CLASSIFICATION OF GOODS AND SERVICES




## 6. COMPOSITION LEVY – SECTION 10

- The composition levy is an alternative method of levy of tax ***designed for small taxpayers*** whose turnover is up to prescribed limit.
- The objective of composition scheme is to bring simplicity and to ***reduce the compliance*** cost for the small taxpayers. No elaborate accounts and records are to be maintained
- The scheme is ***voluntary and optional***. A registered person may opt to pay tax under sec 10 in lieu of tax payable by him u/s 9(1).



## 6.1 – Eligibility to opt Composition Scheme

### 6.1.1 – Turnover limit in case of composition levy for goods

- Any registered person with an aggregate turnover in a preceding financial year up to Rs. 1.5 crore shall be eligible for composition levy.
- The turnover limit for composition levy shall be Rs. 75 lakhs in respect of 8 of the Special Category States namely:

| | |
|---|---|
| • Manipur | • Meghalaya |
| • Mizoram | • Nagaland |
| • Sikkim | • Tripura |
| • Arunachal Pradesh | • Uttarakhand |

- In case of Assam, Himachal Pradesh and Jammu and Kashmir, (which are also considered as special category states) the turnover limit will be Rs. 1.5 crore.

### 6.1.2 – Turnover limit in case of Composition levy for Services

- A registered person opting for composition scheme for services should have an aggregate turnover up to Rs.50 lakh in the preceding FY and he can avail the benefit of said scheme in the current FY till the time his aggregate turnover in the current FY does not exceed Rs. 50 Lakhs.

## 6.2 – Aggregate Turnover

**Aggregate Turnover [Sec 2(6)]**

| **Includes** | **Excludes** |
|---|---|
| value of all outward supplies | CGST/SGST/UTGST/IGST/Cess |
| Taxable Supplies | Value of inward supplies on which tax is payable under RCM |
| Exempt Supplies | Value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by the way of **interest or discount** |
| Exports | |
| Inter-state supplies | |
| **of persons having the same pan be computed on all india basis** | |

- Exempted supplies includes Exempted goods/services or both which attracts nil rate of tax or wholly exempt from tax and includes non-taxable supply.
- Aggregate turnover includes supply on own account and on behalf of principal.
- Further, explanation 1 to section 10 clarifies that that for the purposes of computing aggregate turnover of a registered person for determining his eligibility to pay tax under section 10(1) and 10(2A) , aggregate turnover
    - ***includes*** value of supplies from the 1st April of a FY up to the date of his becoming liable for registration and
    - ***excludes*** value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

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- The value of exports and inter-State supplies might be relevant only while determining the aggregate turnover of the preceding FY. These values are not relevant for determining the aggregate turnover of the current FY in which the composition supplier has opted for composition levy as he is not permitted to make inter-State supplies and exports in the said FY.

## 6.3 – Rate of Tax

### 6.3.1 – Rates of Tax in case of composition levy for goods

- A registered person, whose aggregate turnover in the preceding FY does not exceed Rs. 1.5 crore, may opt to pay tax calculated at the prescribed rates during the current FY, in lieu of the tax payable by him under regular scheme.
- The effective tax rate is

| Supplier | Effective Tax Rate | Supply |
|---|---|---|
| Manufacturers | 1% i.e. CGST 0.5% + SGST 0.5% | Taxable + Exempted |
| Traders | 1% i.e. CGST 0.5% + SGST 0.5% | Only Taxable |
| Restaurant and catering services | 5% i.e. CGST 2.5% + SGST 2.5% | Taxable + Exempted |
| Service providers | 6% i.e. CGST 3% + SGST 3% | |

- Suppliers opting for composition levy need not worry about the classification of their goods or services or both, the rate of GST applicable on their goods and/ or services, etc. Since the rates are already fixed.
- Supplier of inter-State outward supplies of goods is not eligible for composition scheme. Thus, there is no question of IGST.
- There is no restriction on composition supplier to receive inter-State inward supplies of goods.
- There may also be cases where a manufacturer, trader or restaurant service provider is also engaged in supplying a small percentage of other services. To enable such taxpayers to avail of the benefit of composition scheme, section 10(1) permits marginal supply of such other services for a specified value. This specified value is value not exceeding
    - 10 % of the turnover in a State/Union territory in the preceding financial year

      Or
    - Rs. 5 lakh,

  whichever is higher.

### 6.3.2 – Rates of tax in case of composition levy for services

- A registered person opting for composition levy for services shall pay tax @ 3% [Effective rate 6% (CGST+ SGST/UTGST)] of the turnover of supplies of goods and services in the State or Union territory.
- Turnover in State/ turnover in Union territory means the aggregate value of all taxable supplies and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory but excludes central tax, State tax, Union territory

tax, integrated tax and cess and value of inward supplies on which tax is payable by a person on reverse charge basis.

### 6.4 – Other compliances by the supplier opting for Composition scheme for goods as well as services

- The registered person ***shall not collect any tax from the recipient*** nor shall he be entitled to any credit of input tax [Sec 10(4)]
- They are not required to raise any tax invoice, but ***simply need to issue a Bill of Supply*** wherein no tax will be charged from the recipient.
- Thus, it is Mandatory to ***display on bill of supply*** of the ***words "composition taxable person, not eligible to collect tax on supplies"***.
- It is also mandatory to display of the words "Composition Taxable Person" on every ***notice and signboard displayed*** at a prominent place at his principal place of business and at every additional place or places of business.
- An eligible person opting to pay tax under the composition scheme shall ***pay tax quarterly and file statements on annual basis.***
- ***Registration*** under GST law ***is compulsory*** for opting for the composition scheme
- He shall ***pay tax under section 9(3)/9(4)*** (reverse charge) on inward supply of goods or services or both.
- If a taxable person has paid tax under the composition scheme though he was not eligible for the scheme, the person would be liable to penalty and the provisions of ***section 73 or 74 of the CGST Act shall be applicable*** for determination of tax and penalty [Sec 10(5)].
- All registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme.
- There is no restriction on composition supplier to receive inter-State inward supplies of goods or services.
- ***Proviso to Section 10(1)*** clarifies that the value of supply of ***exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount***, shall not be taken into account in
    - Computing aggregate turnover in order to determine eligibility for composition scheme u/s 10(1) or u/s 10(2A)
    - the limits of value of other services u/s 10(2) [i.e., 10% of the turnover in a State/Union territory in the preceding financial year or Rs.5 lacs whichever is higher]
    - Determining the value of turnover in a State or Union territory.

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## 6.5 – Who are not eligible for Composition Scheme

### 6.5.1 – Who are not eligible for Composition Scheme

1. Supplier of goods which are not leviable to tax. [i.e., alcohol liquor for human consumption and 5 petroleum products]
2. Supplier of inter-State outward supplies of goods.
3. Person supplying goods through an electronic commerce operator who is required to collect tax at source under section 52 ***{This point has been amended stating that person supplying goods through ECO can opt for composition scheme provided they are engaged only in Intra state supplies w.e.f 1st October 2023}***
4. Casual taxable person nor a non-resident taxable person.
5. Manufacturer of notified goods as
    a. Ice cream and other edible ice,
    b. Pan masala,
    c. Tobacco and manufactured tobacco substitutes and
    d. Aerated water
    e. Fly ash (bricks, aggregate, blocks)
    f. Bricks of fossil meals or similar siliceous earths
    g. Building bricks
    h. Earthen or roofing tiles

    If the registered person is a trader of any of the above goods, then he can opt for composition scheme.

## 6.6 – Opting for Composition Scheme

### 6.6.1 – First Time Registration

- Any person who is not registered and applies for registration may opt to pay tax under composition levy at the time of registration.
- He has to fill in Part B of the registration form, viz., FORM GST REG-01. The same shall be considered as an intimation to pay tax under composition levy.
- Such intimation shall be considered only after the grant of registration to the applicant and
- His option to pay tax under composition levy shall be effective from the date from which registration is effective.
- Thus, a person applying for registration can opt for composition at any time of the financial year.

### 6.6.2 – Already registered under GST

- A registered person who opts to pay tax under composition levy scheme shall electronically file an intimation in prescribed form on the GST Common Portal prior to the commencement of the FY for which said option is exercised.
- He shall also furnish the statement in prescribed form within 60 days from the commencement of the relevant FY.

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- Any intimation in respect of any place of business in a State/UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.
- The option to pay tax under composition levy shall be effective from the beginning of the FY.

### 6.6.3 – Treatment of ITC

- Where any registered person who has availed of ITC opts to pay tax under Composition scheme u/s 10(1) or u/s 10(2A)
    - He shall pay an amount equivalent to the ITC
    - in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods
    - by way of debit in the electronic credit ledger or electronic cash ledger.
    - as if the supply made attracts the provisions of section 18(4) of the CGST Act and the rules made thereunder.

| Person | Can opt for Composition Levy | It shall be effective from |
|---|---|---|
| Person applying for registration | At any time during the year while applying for registration | The date from which registration is effective |
| Registered person | From the beginning of any FY. So has to apply prior to the FY. | The beginning of said FY |

## 6.7 – Validity of Composition Levy

### 6.7.1 – Withdrawal from the composition scheme by a taxpayer who ceases to satisfy any of the prescribed conditions

- The option to pay tax under composition scheme lapses from the day the registered person ceases to satisfy any of the prescribed conditions. Such as from the day on which aggregate turnover exceeds the specified limit (Rs.1.5 crore/ Rs. 75 lakh) during the FY. [Sec 10(3)]
- Such person is required to pay tax under regular scheme under section 9(1) from that day.
- He shall issue tax invoice for every taxable supply made thereafter.
- He is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event.
- The effective date from which such withdrawal shall take effect shall be the date indicated by him in his intimation.
- But such date may not be prior to the commencement of the financial year in which such intimation is being filed.

### 6.7.2 – Withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme

- The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in prescribed form.
- The effective date from which withdrawal from the composition scheme shall take effect shall be the date indicated by him in his application.

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- But such date may not be prior to the commencement of the financial year in which such application for withdrawal is being filed.

### 6.7.3 - Denial of option to pay tax under the composition scheme by tax authorities

- Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under composition scheme or has contravened the provisions of the CGST Act or provisions of this Chapter, he may issue a show cause notice (SCN) to such person.
- Upon receipt of reply to SCN, he shall pass an order either accepting the reply, or denying the option to pay tax under composition scheme from the date of the option or from the date of the event concerning such contravention, as the case may be.
- In case of denial of option to pay tax under composition levy by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities.
- However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/ CGST Rules.
- In each of the above cases, such person may
    - furnish a statement
    - in prescribed form
    - containing details of the stock of
    - inputs and inputs contained in semi-finished or finished goods held in stock by him
    - on the date on which the option is withdrawn/denied,
    - within a period of 30 days
    - from the date from which the option is withdrawn/ or from the date of the order denying composition scheme.

| Convert | Normal scheme [Sec 9(1)to Composition scheme [Sec 10] | Composition scheme [Sec 10] to Normal scheme [Sec 9(1)] |
|---|---|---|
| When can the registered person convert | Before the start of the financial year | Any time during the Financial year |
| ITC on the inputs (stock) held in hand on the date of conversion | Pay the credit already utilised | Avail credit |
| Form to be filed | ITC - 03 | ITC – 01 |

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ILLUSTRATIONS

### Illustration 1

M/S Sai Trading Company, an eligible registered dealer in goods making intra state supplies within the state of Andhra Pradesh, reported an aggregate turnover of Rs. 78 Lakhs in the preceding financial year

(i) Determine whether Sai Trading Company will be eligible for composition levy, ason 31-10-17

(ii) Will your answer be different, if in the above scenario, M/s Sai Trading Company is making intra state supply within the state of Jammu and Kashmir?

### Illustration 2

Decide which person is liable to pay GST in the following independent cases, where recipient is located in the taxable territory. Ignore the aggregate turnover and exemption available.

a. Mr Raghu provided sponsorship services to WE-WIIN Cricket academy an LLP
b. "Safe Trans", a Goods Transport Agency, transported goods of Kapil & Co., a partnership firm which is not registered under GST

### Illustration 3

State person liable to pay GST in the following independent cases provided recipient islocated in the taxable territory:

(a) Services provided by an arbitral tribunal to any business entity.
(b) Sponsorship services provided by a company to an individual.
(c) Renting of immovable property service provided by the Central Government to a registered business entity.

### Illustration 4

A person availing composition scheme in Haryana during a financial year crosses theturnover of Rs. 1.5 crore during the course of the year i.e. he crosses the turnover of Rs. 1.5 crore in December?

Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e. till 31st March?

### Illustration 5

Mohan Enterprises has two registered business verticals in Delhi. Its aggregate turnover for the preceding year for both the business verticals was Rs. 90 lakh. It wishes to paytax under composition levy for one of the vertical in the current year while under normallevy for other vertical.

You are required to advice Mohan Enterprises, whether he can do so?

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### Illustration 6

Determine whether the supplier in the following cases are eligible for composition levyprovided their turnover in preceding year does not exceed Rs. 1.5 crores:

(i) Mohan is engaged in providing only legal services in Rajasthan and is registeredin the same State.

(ii) Sugam Manufacturers has registered offices in Punjab and Haryana and suppliesgoods in neighboring States.

### Illustration 7

P Private Limited agrees to sponsor a sports event organized by Pink City Club in Jaipur. P Private Limited has paid an amount of Rs. 50,00,000 for such sponsorship of the sports event Consequently, said event was named after the brand name of P Private Limited. Examine who is the person liable to pay tax in the given case.

### Illustration 8

rpan Singhania is a director in Narayan Limited. The company paid him the sitting fee amounting to Rs. 25,000, for the month of January. Further, salary was paid to Arpan Singhania amounting to Rs. 1.5 lakh for the month of January on which TDS was also deducted as per applicable provisions under Income-tax law. Tapasya & Associates, in which Arpan Singhania is a partner, supplied certain professional services to Narayan Limited in the month of January for an amount of Rs. 2 lakhs. Discuss the person liable to pay tax in each of the supplies involved in the given case.

### Illustration 9

M/s All-in-One, a partnership concern and a registered supplier under GST, is engaged in providing various services under one roof. The concern provides the following information pertaining to supply made/input services availed by it during the month of March 20XX:

| | Particulars | Rs. |
|---|---|---|
| i | Provided Direct Selling Agent Service to Y bank Ltd. | 4,00,000 |
| ii | Provided Security services to ABC Pvt. Ltd, a registered person under GST | 60,000 |
| iii | Provided security services to PSR Trust, an unregistered person under GST | 1,00,000 |
| iv | Provided renting of motor vehicle to Amaze Tours Ltd. and supply value included cost of fuel | 75,000 |
| v | rovided renting of motor vehicle to Priti & Co., CA firm and supply value included cost of fuel | 40,000 |
| vi | Availed representational service from PB and Co., a law firm towards a Consumer Court case | 70,000 |

Determine the GST liability of M/s All-in-One for the month of March, 20XX by giving necessary explanations for treatment of various items.

Rate of tax for both inward and outward supply is CGST /SGST@ 9% each except renting a vehicle, for which CGST /SGST@ 2.5% each is applicable.

M/s All-in-One commenced its business from February, 20XX. All the supplies are intra-State only.

### Illustration 10

Mr. Sanjay of New Delhi made a request for a Motor cab to "Super ride" for travelling from New Delhi to Gurgaon (Haryana). After Mr. San jay pays the cab charges using his debit card, he gets details of the driver Mr. Jorawar Singh and the cab's registration number.

"Super ride" is a mobile application owned and managed by D.T. Ltd. located in India. The application "Super ride" facilitates a potential customer to connect with the persons providing cab service under the brand name of "Super ride".

D.T. Ltd. claims that cab service is provided by Mr. Jorawar Singh and hence, he is liable to pay GST. With reference to the provisions of IGST Act, 2017, determine who is liable to pay GST in this case? Would your answer be different, if D.T. Ltd. is located in New York (USA)? Also briefly state the statutory provisions involved.

### Illustration 11

Examine whether the suppliers are eligible for composition levy under section 10 in the following independent cases in the beginning of the current financial year.

a) Technology Enterprises, registered in Jalandhar, Punjab, is engaged in manufacturing computer systems. Its aggregate turnover in the preceding financial year is Rs. 125 Lakhs. Technology Enterprises supplies the computer systems manufactured by it within the State of Punjab only. With a view to expand its business operations, it will also start providing the repairing services of computer systems in the current financial year.

b) M/s. Siddharth & Sons, registered in Delhi, owns a restaurant 'Tasty Foods' with a turnover of Rs. 112 Lakhs in the preceding financial year. In view of the growing customer demand, it will also start intra-State trading of juices in Delhi.

c) Sitaram Associates, registered in Sikkim, is engaged in running a food chain 'Veg. Kitchen' in the State. It has a turnover of Rs.73 lakhs in the preceding financial year. In the current financial year, it decides to shut down the food chain owing to huge losses being incurred in the said business. Instead, it will start providing intra-State architect services.

d) Deepti Services Ltd., registered in Uttarakhand, is exclusively providing hair styling services. It has turnover of Rs. 34 lakhs in the preceding financial year.

ill your answer be different, if Deepti Services Ltd. also start supplying beauty products along with providing hair styling services in the current financial year?

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### Illustration 19

M/s Heeralal and Sons, registered in Karnataka, has opted to avail the benefit of composition scheme under sub-sections (1) and (2) of section 10. It has furnished the following details for the quarter ended on 30th June

| S. No. | Items | Rs. |
|---|---|---|
| (i) | Taxable turnover of goods within the State | 15,00,000 |
| (ii) | Exempted turnover of goods within the State | 17,00,000 |
| **Total Turnover** | | **32,00,000** |

Using the above information, calculate tax to be paid by the firm for quarter ended on 30th June in following independent situations:

i. M/s Heeralal and Sons is a manufacturer
ii. M/s Heeralal and Sons is a trader

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# 4. EXEMPTIONS

Contents

- Power of Government to grant exemption
- Services exempt from tax

## 1. INTRODUCTION

- For determining the liability to pay the tax, one needs to further check whether such supply of goods and/or services are exempt from tax.
- Under GST, a supply not leviable to tax is also included within the purview of 'exempt supply'.

***Exempt Supply [Sec 2(47)]*** *– Supply of any goods or services or both*

- which attracts nil rate of tax or
- which may be wholly exempt from tax and
- includes non-taxable supply Whether as principal, agent or in any other capacity,

***Non- Taxable Supply [Sec 2(78)]*** *– means a Supply of any goods or services or both Which is not leviable to tax under CGST Act or under the IGST Act.*

- Exemption under GST may be provided in any of the following manner:
  - Exemption in respect of specified activities or transactions - Consequently, the status of the supplier or recipient becomes immaterial.
  - Exemption is given to specified suppliers only – Here, the status of recipient becomes immaterial.
  - Exemption is given to specified recipient only – Here, the status of supplier becomes immaterial.
  - Exemption is given only when activities or transactions are carried out by specified suppliers for specified recipients only.
- Under GST, essential goods/services, i.e., public consumption products/services, have been exempted - Items such as unbranded atta/ maida/ besan, unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST. (Not in syllabus. Only for information)
- Further, essential services like health care services, education services, etc. have also been exempted.

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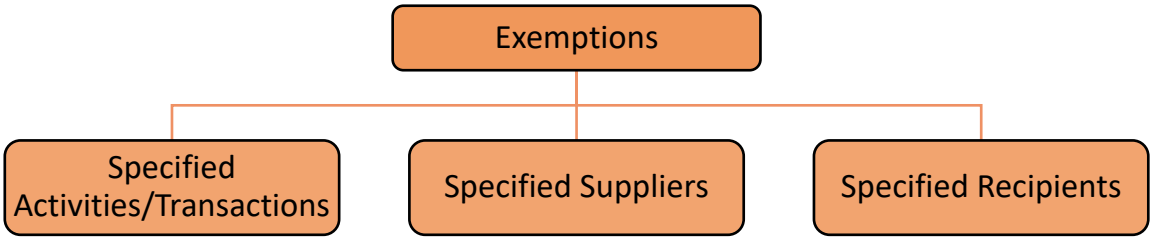


## 2. POWER TO GRANT EXEMPTION FROM GST – SECTION 11

### 2.1 – Exemption notification

- GST law empowers the ***Central Government or State Government*** as the case may be to grant exemption from tax.
- The exemption is granted on ***recommendation of the GST Council***.
- Exemption can be from ***whole of the tax or part of the tax***.
- It is granted in ***public interest***.
- Exemption can be granted to ***goods or services or both*** of any specified description.
- It is either granted by way of issuance of ***notification or by a special order*** in case of the circumstances of an exceptional nature.
- It is either granted ***absolutely*** [i.e. unconditional exemption; exemption is not subject to any conditions] ***or conditionally*** [i.e. exemption is subject to specified conditions].
- The ***absolute/ unconditional*** exemption is ***mandatory*** in nature.
- However, where the exemption is ***conditional***, it is at the ***option*** of the registered person whether to avail the same or not.
- The exemption granted by way of notification is ***effective*** from such date as may be ***specified in such notification***.
- The special order is issued under ***circumstances of an exceptional nature*** to be stated in such order.
- Similar provisions granting power to exempt IGST have been provided under section 6 of the IGST Act.
- where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the ***registered person*** supplying such goods or services or both ***shall not collect the tax, in excess of the effective rate***, on such supply of goods or services or both.

### 2.2 - Explanation to notification

- Wherever the Government feels that there is a need to
  - clarify the scope or
  - applicability of any notification/order issued under this section,
- It can issue an ***explanation within 1 year of issue of said notification/ order***.
- Such explanation shall have effect as if it was there when first such notification/ order was issued, i.e. explanation so inserted would be ***effective retrospectively***.
- It is hereby clarified that the ***explanation so inserted*** for a particular entry in the notification, ***is effective from the inception of the entry in notification*** and not from the date from which the notification (that inserted said explanation) becomes effective.

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- ***Example*** – Principal Notification No. 11/2017 CT (R) dated 28.06.2017 came into force with effect from 01.07.2017. Thereafter, a new entry – Entry no. 3(vi) was inserted w.e.f. 21.09.2017. Subsequently, an explanation was also inserted with respect to entry no. 3(vi) by issue of a notification on 26.07.2018 [i.e., within 1 year of the insertion of entry 3(vi)]. Although the effective date mentioned in the notification which inserted said explanation was 27.07.2018, said explanation will be effective from the inception of entry 3(vi) in notification i.e., 21.09.2017 and not 27.07.2018.

## 3. SERVICES EXEMPT FROM TAX

- ***Notification No. 12/2017 dated 28.06.2017*** has exempted the various services wholly from CGST. Each of the entries of the exemption notification have been discussed below.

### 3.1 – Services related to charitable and religious activities

### 3.1.1 – Services by charitable institutions

- Services by an entity
  - registered under section 12AA of the Income-tax Act, 1961
  - by way of charitable activities.

  are exempt from whole of GST.
- 'Charitable activities' is defined under Income tax act 1961.

***Charitable activities*** *– The term 'charitable activities' means activities relating to-*

*(i)* ***Public Health*** *by way of -*

*a. Care or counselling of*

*i. terminally ill persons or persons with severe physical or mental disability;*

*ii. persons afflicted with HIV or AIDS;*

*iii. persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or*

*b. Public awareness of preventive health, family planning or prevention of HIV infection;*

*(ii)* ***Advancement of religion****, spirituality or yoga*

*(iii)* ***Advancement of educational programmes****/skill development relating to, -*

*a. abandoned, orphaned or homeless children;*

*b. physically or mentally abused and traumatized persons;*

*c. prisoners; or*

*d. persons over the age of 65 years residing in a rural area;*

*(iv)* ***Preservation of environment*** *including watershed, forests & wildlife.*

*Services provided to charitable or religious trusts are not outside the ambit of GST. Unless specifically exempted, all goods and services supplied to charitable or religious trusts are leviable to GST.*

- There could be many other services provided by such charitable and religious trusts which are not covered by the definition of charitable activities and hence, such services would attract GST.

- For instance, grant of advertising rights to a person on the premises of the charitable/religious trust or
- on publications of the trust, or granting admission to events, functions, celebrations, shows against admission tickets or fee etc. would attract GST.
- ***Arranging yoga and meditation camp by charitable trusts*** - Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the ***primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga.***
- However, if it merely or primarily provides accommodation or serves food and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable.

### 3.1.2 - Services by a person by way of Conduct of any religious ceremony

- Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage, and death involve elaborate religious ceremonies.

### 3.1.3 - Services by a person by way of renting of precincts of a religious place

- Services by a person by way of renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 or a trust or an institution registered under Income-tax Act.

- However, the ***following are subject to GST***:

    1. Renting of ***rooms*** where charges ***are Rs.1,000 or more per day;***
    2. Renting of ***premises***, community halls, kalyanmandapam or open area, and the like where charges are ***Rs.10,000 or more per day;***
    3. Renting of ***shops*** or other spaces for business or commerce where charges are ***Rs. 10,000 or more per month.***
- Renting of premises, community halls, kalyana mandapam or open area can be for any purpose and not merely for religious ceremonies. The rent is exempt as long as it is less than Rs.10,000 per day.

***Religious place*** *– means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality.*

***Precincts*** *– The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place and extended the benefit of above exemption.*

- Activities other than - conduct of religious ceremony and renting of precincts of religious place - will be taxable irrespective of the manner or the name in which the consideration is received.

- ***For example***, if donation is received with specific instructions/mutual understanding between the donor and the receiver that religious place will host an advertisement promoting business of the donor, such donation will be subject to GST. However, if donation is received without such instructions or without a quid pro quo in the form of supply of any goods or services or both by the receiver to the donor, it shall not be subject to GST.

### 3.1.4 - Services by a specified organisation in respect of a religious pilgrimage facilitated by the Government of India, under bilateral arrangement.

- Religious Yatras/pilgrimage organised by any charitable or religious trust are not exempt. Only such services of religious pilgrimage as are provided by ***specified organization*** in respect of a religious pilgrimage facilitated by the Government of India (GoI), under bilateral arrangement are exempt from GST.

- ***specified organization*** as referred herein means:

    - Kumaon Mandal Vikas Nigam Limited (KMVN), a Government of Uttarakhand Undertaking.
    - Haj Committee of India' or 'State Haj Committee including Joint State Committee'.
- KMVN organises religious pilgrimage to Kailash Mansarovar and Haj committee organised religious pilgrimage to Haj.

### 3.1.5 - Services by way of training or coaching in recreational activities relating to – Arts or Culture, or Sports by charitable entities registered under section 12AA of the Income-tax Act.

- Training or coaching relating to all forms of arts, culture or sports is covered under this entry, namely, dance, music, painting, sculpture making, literary activities, theatre, sports etc. of any school, tradition or language or any of the sports.

- Training or coaching in recreational activities in the areas other than arts, culture or sports is outside the purview of this entry.

## 3.2 - Services related Agriculture activities

### 3.2.1 - Services by way of loading, unloading, packing, storage and warehousing of rice.

- The services provided by way of loading, unloading, packing, storing and warehousing of rice by one person to another is exempt from GST.

- The said services provided ***only with respect to rice*** is covered.

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### 3.2.2 - Services by way of warehousing of minor forest produce.

***Minor forest produce*** *– means non-timber forest produce of plant origin and will include bamboo, canes, fodder, leaves, gums, waxes, dyes, resins and many forms of food including nuts, wild fruits, honey, lac, tusser etc.*

### 3.2.3 - Services by way of fumigation in a warehouse of agricultural produce.

***Agricultural produce*** *– means any produce out of*

- *cultivation of plants and*
- *rearing of all life forms of animals, except the rearing of horses,*

- *for food, fibre, fuel, raw material or other similar products,*
- *on which either*
  - *no further processing is done or*
  - *such processing is done as is usually done by a cultivator or producer*
- *which does not alter its essential characteristics but makes it marketable for primary market.*

### 3.2.4 - Services relating to cultivation of plants and rearing of all life forms

- Services relating to cultivation of plants and rearing of all life forms of animals, ***except the rearing of horses,*** for food, fibre, fuel, raw material or other similar products or agricultural produce by way of—

  (a) agricultural operations ***directly related to production*** of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
  (b) supply of ***farm labour***;
  (c) ***processes carried out at an agricultural farm*** including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
  (d) ***renting or leasing of agro machinery or vacant land*** with or without a structure incidental to its use;
  (e) ***Loading, unloading, packing, storage or warehousing*** of agricultural produce;
  ***(f) Agricultural extension services;***
  (g) services by any ***Agricultural Produce Marketing Committee*** or Board or services provided by a commission agent for sale or purchase of agricultural produce.
- The above entry ***includes*** activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry, etc.

- processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market are also exempt.

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- The processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, would NOT be covered in this entry.
- ***Agricultural Extension Services (AES)*** have been defined to mean the application of scientific research and knowledge to agricultural practices through farmer education or training.
- The main objective of AES is to transmit latest technical know-how to farmers. It also focuses on enhancing farmers' knowledge about crop techniques and help them to increase productivity. This is done through training courses, kisan call centres, farm visits, on farm trials, kisan melas, kisan clubs, advisory bulletins and the like.
- ***Agricultural Produce Marketing Committee or Board*** *means any committee or board set up under a State Law for the time being in force for purpose of regulating the marketing of agricultural produce. They are set up in most of the States.*
- Any service provided by such bodies which is ***not directly related to cultivation of plants*** and rearing of all life forms of animals, except the rearing of horses, ***will be liable to tax*** e.g. renting of shops or other property for commercial purposes.
- With regard to agriculture produce the following should be noted:
    - Green tea leaves and not tea is the "agricultural produce" eligible for exemption.
    - Similarly Coffee beans and not Coffee is the agriculture produce.
    - Jaggery is also not an agricultural produce.
    - Pulses (dehusked or split) are also not agricultural produce. However, whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce.

### 3.2.5 - Services by way of storage/ warehousing of specified products

- Services by way of storage/ warehousing of cereals, pulses, fruits and vegetables.

### 3.2.6 - Carrying out an intermediate production process

- Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.
- Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested.

### 3.2.7 - Services by way of artificial insemination of livestock (other than horses).

- Services by way of artificial insemination of livestock (other than horses) is exempt.

### 3.3 - Medical services / Health care services

- Services by a veterinary clinic in relation to health care of animals and Birds is exempt.

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- ~~Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation is exempt.~~ [exemption removed, now taxable]
- Services by way of health care services by a
  - Clinical establishment
  - An authorised medical practitioner or
  - Para-medics.

    However, nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ***Rs. 5000 per day to a person*** receiving health care services.
- Services provided by way of ***transportation of a patient in an ambulance*** - Transportation of a patient in an ambulance by any person other than clinical establishment/ authorized medical practitioner/ para-medics is exempt.

### Health care services means

- Any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and
- Includes services by way of transportation of the patient to and from a clinical establishment,
- But does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.
- Recognised systems of medicine in India:
  - Allopathy
  - Homeopathy
  - Yoga
  - Siddha
  - Naturopathy
  - Unani
  - Ayurveda
  - Any other system of medicine that may be recognized by Central Government
- ***Diagnostic or investigative services*** of diseases provided by pathological labs are not liable to GST.
- Paramedics are trained health care professionals, for example, nursing staff, physiotherapists, technicians, lab assistants etc.
- ***Rent of rooms provided to in-patients*** in hospitals is exempt.
- ***Hospitals hire senior doctors/ consultants/ technicians independently***. Such persons do not have any contract with the patient. Hospitals pay them consultancy charges and there is no employer-employee relationship between them. Services provided by such senior doctors/ consultants/ technicians, whether employees or not, are healthcare services which are exempt from GST.

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- Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the hospitals from outdoor caterers.
- When outsourced, there is no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC.
- Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable.
- Other supplies of food by a hospital to outpatients (not admitted) or their attendants or visitors are taxable.
- Supply of services other than healthcare services such as renting of shops, auditoriums in the premises of the clinical establishment, display of advertisements etc. will be subject to GST.
- This exemption is available even when the said services are provided by religious or charitable trust.
- It is clarified that the abnormality/disease/ailment of infertility which is treated using ***Assisted Reproductive Technology (ART)*** procedure such as ***In vitro fertilization (IVF)***, it is clarified that services by way of IVF are also covered under the definition of health care services, hence Exempt

## 3.4 - Construction services

### 3.4.1 - Services provided by way of pure labour contracts

- Services provided by way of ***pure labour contracts*** of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.
- Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana (hereinafter referred to as PMAY) is a programme launched by the Ministry of Housing and Urban Poverty Alleviation (MoHUPA) which envisions provision of Housing for All by 2022 when the nation completes 75 years of its independence.
- The mission seeks to address the housing requirement of urban poor including slum dwellers through following, inter alia, programme verticals:
    - Slum rehabilitation of Slum Dwellers with participation of private developers using land as a resource.
    - Promotion of Affordable Housing for weaker section through credit linked subsidy.
    - Affordable Housing in Partnership with Public & Private sectors.
    - Subsidy for beneficiary-led individual house construction/enhancement.
- The term 'original works' means-
    - all new constructions;

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- all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- erection, commissioning or installation of plant, machinery or equipment or structures, whether prefabricated or otherwise.

### 3.4.2 - Services supplied by Electricity Distribution Utilities

- Services supplied by ***Electricity Distribution Utilities*** by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network ***upto the tube well of the farmer or agriculturalist for agricultural use***.

### 3.4.3 - Services by way of pure labour contracts of construction, erection,

- Services by way of ***pure labour contracts*** of construction, erection, commissioning, or installation of original works pertaining to a ***single residential unit otherwise than as a part of a residential complex***.
- The term 'residential complex' means any complex comprising of a building or buildings, having more than one single residential unit.
- Further, 'single residential unit' means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

### 3.4.4 - Supply of TDR, FSI, long term lease (premium) of land

- Supply of TDR (Transfer of development rights), FSI (Floor space index), long term lease (premium) of land by a landowner to a developer are exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.
- Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses

## 3.5 - Service of transportation of passengers

- It is important to note that in case where service of transport of passengers by metered cabs or auto rickshaws (including e-rickshaws) are supplied through ECO, such services are not exempt from GST. Further, tax on such services shall be paid by ECO

### 3.5.1 - Service of transportation of passengers through rail, inland waterways etc.

- Service of transportation of passengers, with or without accompanied belongings, by—
  - railways in a class other than—
    - first class; or
    - an air-conditioned coach;
    - metro, monorail or tramway;
    - inland waterways;
    - public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

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        - metered cabs or auto rickshaws (including e-rickshaws). If the services enlisted above availed through an Electronic Commerce Operator, the exemption shall not apply
- To qualify for exemption under this entry, the public transport by a vessel between places located in India should not be predominantly for tourism purposes.
    - Normal public ships or other vessels that sail between places located in India would be covered in this entry even if some of the passengers on board are using the service for tourism because predominantly, such service is not for tourism purpose.
    - However, services provided by leisure/charter vessels/a cruise ship, predominant purpose of which is tourism, would not be covered in here even if some of the passengers in such vessels are not tourists.
- ***E-rickshaw:*** means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for carrying goods or passengers as the case may be.
- ***Metered cab:*** means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment. But does not include radio taxi.

### 3.5.2 - Services provided to the Central Government, by way of transport of passengers at an RCS airport.

- Services provided to the Central Government,
    - by way of transport of passengers with or without accompanied belongings,
    - by air, embarking from or terminating at an ***RCS (Regional Connectivity Scheme) airport***, against consideration in the form of ***viability gap funding***.
- However, nothing contained in this entry shall apply on or after the expiry of a ***period of 3 years*** from the date of commencement of operations of the RCS airport as notified by the Ministry of Civil Aviation.

### 3.5.3 - Transport of passengers, by air, from or to specified airports, contract carriage or stage carriage.

- Transport of passengers, with/ without accompanied belongings, by –
    a. air, ***in economy class,*** embarking from or terminating in an airport located in the State of ***Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;***
    b. Non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or
    c. Stage carriage other than air- conditioner stage carriage.
- If the services enlisted in point b and c availed through an Electronic Commerce Operator, the exemption shall not apply

- ***Radio taxi:*** means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using the Global Positioning System or General Packet Radio Service.
- ***Stage carriage:*** means a motor vehicle constructed or adapted to carry more than 6 passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.
- Contract carriage includes maxi cab and motor cab
- Exemption under this clause would apply to passenger transportation services by ***non-air-conditioned contract carriages where transportation takes place over pre-determined route on a pre-determined schedule***.
- The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.

## 3.6 - Services by way of transportation of goods

### 3.6.1 - Services by way of transportation of goods by road

- Services by way of transportation of goods by road ***except the services of***
    - A goods transportation agency (GTA);
    - A courier agency;
- The nature of service provided by 'Express Cargo Service' falls within the scope and definition of the courier agency.
- Courier agency means door-to-door transportation of time-sensitive documents, goods or articles.
- Goods transport agency (GTA) has been defined in the Notification to mean any person who:
    - provides service in relation to ***transport of goods by road*** and
    - ***issues consignments note***, by whatever name called.
- Issuance of a consignment note is the sine-qua- non for a supplier of service to be considered as a GTA. If a consignment note is issued, it indicates that the lien on the goods has been transferred (to the transporter) and the transporter becomes responsible for the goods till its safe delivery to the consignee.
- Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA. As a result, the services provided by such individual transporters are exempt from GST.
- ***Consignment notes*** - means a document, issued by a GTA against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is ***serially numbered***, and contains:

    1. the name of the consignor and consignee,
    2. registration number of the goods carriage in which the goods are transported,
    3. details of the goods transported,

4. details of the place of origin and destination,
5. gross weight of the consignment;
6. GSTIN of the person liable for paying tax whether consignor, consignee or GTA
7. other particulars as prescribed for a tax invoice

### 3.6.2 - When is GTA service exempt

- GTA services provided to an ***unregistered person [including unregistered casual taxable person]*** are ***exempt*** from GST.
- GTA services provided to ***registered casual taxable*** person and following persons, even if unregistered under GST law, are ***liable to tax***:

    1. A factory registered under Factories Act,
    2. Society registered under Societies Act,
    3. Co-operative society,
    4. Body corporate and
    5. Partnership firm including AOP

- Services provided by a GTA, by way of transport of goods in a goods carriage, is ***exempt when provided to,*** -

    1. A Department or Establishment of the Central Government or State Government or Union territory; or
    2. Local authority; or
    3. Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

- If any intermediary and ancillary service such as, loading/ unloading, packing/unpacking, transhipment and temporary warehousing, which are provided in the course of or in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply.
- However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.

### 3.6.3 - GTA services exempt for specified goods and in specified cases

- Transportation of the following goods by a GTA in a goods carriage is exempt

    1. Agricultural produce
    2. Milk, salt and food grain including flours, pulses and rice
    3. Organic manure
    4. Newspaper or magazines registered with the Registrar of Newspapers
    5. Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap
    6. Defence or military equipments.

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- The issue which arose for consideration was whether transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time would be covered under Entry 18 which exempts transport of goods by road except by a GTA.
- Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.
- Such services are nothing but "rental services of transport vehicles with operator". The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations.
- The person who gives the vehicles on rent with operator cannot be said to be supplying the service by way of transport of goods.
- It is clarified that such renting of trucks and other freight vehicles with driver for a period of time of a service of renting of transport vehicles with operator and not service of transportation of goods by road, this is not eligible for Exemption.

### 3.6.4 - Services by way of transportation by rail or a vessel

- Services by way of transportation by rail or a vessel from one place in India to another of the following goods:
    1. Agricultural produce
    2. Milk, salt and food grain including flours, pulses and rice
    3. Organic manure
    4. Newspaper or magazines registered with the Registrar of Newspapers
    5. Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap
    6. Defence or military equipments.

## 3.7 - Banking and financial services

### 3.7.1 - Services by way of extending deposits, loans or advances

- Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempt from GST.
- Interest charged on outstanding credit card balances has been specifically excluded. Hence, the same is liable to GST.
- This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.
- ***Interest:*** means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but ***does not include***

***any service fee or other charge*** in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

- ***Examples*** – Interest on Fixed deposit, savings deposit, overdraft facility, mortgages or loans with collateral security, corporate deposits etc.
- ***Service charges/ fees, documentation fees, broking charges, administrative charges, entry charges*** or such like fees or charges collected over and above interest on loan, advance or a deposit are not exempt and thus, represent taxable consideration.
- ***Invoice discounting/ cheque discounting*** or any other similar form of discounting is ***covered*** only to the extent consideration is represented by way of discount as such discounting is a manner of extending a credit facility or a loan.
- ***Any interest/ delayed payment*** charges charged to clients for delay in payment of brokerage amount/ settlement obligations/ margin trading facility, is ***exempt from GST*** since settlement obligations/ margin trading facilities are transactions which are in the nature of extending loans or advances.
- ***Additional/ penal interest on the overdue loan*** - In cases where the Equated Monthly Instalment (EMI) is not paid at the scheduled time, there is a levy of additional/ penal interest on account of delay in payment of EMI.
    - If the purchase is in the nature of instalment purchase and the buyers pays the interest to the seller on delayed payment of instalment, such interest would be included in the value of supply.
    - However, If the purchase is made out of loan taken from any party where loan repayment is made in instalments and interest is payable by the buyer on delayed payment of such instalment, it is covered under the exemption entry. As long as the levy of additional/ penal interest satisfies the definition of "interest" as mentioned above, the same cannot be treated as consideration for liquidated damages. Consequently, transaction of levy of additional/ penal interest does not fall within the ambit of Schedule II of the CGST Act, 2017 i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. Instead it is exempt from GST.

### 3.7.2 - Services by way of inter se sale or purchase of foreign currency

- Services by way of inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers is exempt from GST.
- Such services provided to general public will not be covered in this entry as this entry only covers sale and purchase of foreign exchange between banks and authorized dealers of foreign exchange or between banks and such dealers.

### 3.7.4 - Services provided to Basic Saving Bank Deposit (BSBD) account holders

- Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY) is exempt.

### 3.7.5 - Services by an acquiring bank

- Services by an acquiring bank, to any person in relation to settlement of an amount upto Rs. 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.
- Acquiring bank: - means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

### 3.7.6 - Services by an intermediary of financial services

- Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR).
- The intermediary of financial services in IFSC is a person, -
  - who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or
  - who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or
  - who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.

## 3.8 - Education Services

### 3.8.1 - Services provided by an educational institution

- Services provided by an educational institution
  - to its students, faculty and staff; and
  - by way of conduct of entrance examination against consideration in the form of entrance fee; ***are exempt***.

***Educational Institution –*** *means an institution providing services by way of, -*

*i) pre-school education and education up to higher secondary school or equivalent;*

*ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*

- In order to be covered under the above-mentioned exemption, the education service should be delivered as part of curriculum for obtaining a qualification recognised by any law for the time being in force.
- ***Examples:***
  - Conduct of degree courses by colleges, universities or institutions – ***Eligible for exemption***

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- Training given by private coaching institutes – ***Not eligible for exemption*** – as such training does not lead to grant of a recognized qualification

- Education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country – ***Not eligible for exemption*** – as only a course recognized by an Indian law is covered herein.

- An ***approved vocational education course means***
  - A course run by an ITI/ ITC11 affiliated to the National Council for Vocational Training (NCVT) or State Council for Vocational Training (SCVT) offering courses in designated trades notified under the Apprentices Act, 1961.
  - A Modular Employable Skill Course, approved by NCVT, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.
  - The Modular Employable Skills is the minimum skill set which is sufficient for gainful employment or self- employment in the world of work.
- ***Private ITIs qualify as an educational institution*** if the education provided by these ITIs is approved as vocational educational course as defined above. services provided by a private ITI only in respect of ***designated trades notified under Apprentices Act, 1961 are exempt from GST.***

- Exemption in relation to services provided by Government ITI would cover both vocational training and examinations conducted by these Government ITIs.

- Private coaching centres or other unrecognized institutions, though self- styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution.

- The following services provided by an educational institution which are providing pre-school education and education up to higher secondary school or equivalent or education leading to a qualification recognised by law, are fully exempt:
  - Lodging/boarding in hostels
  - Catering services / Mess facilities
  - Incidental auxiliary courses provided by way of hobby classes or extra- curricular activities in furtherance of overall well-being.
- If extra billing is being done for Incidental auxiliary courses provided by way of hobby classes or extra-curricular activities, it may be a case of artificial bundling of two different supplies, not supplied together in the ordinary course of business, and therefore will be treated as a mixed supply, attracting the rate of the higher taxed component for the entire consideration.

- where ***a course in a college leads to dual qualification only one of which is recognized by law,*** Service in respect of each qualification would be assessed separately.
  - Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately.
  - If an artificial bundle of service is created by clubbing two courses together, when only single fee is charged for both, only one of which leads to a qualification recognized

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by law it shall be treated as a mixed supply as per sec 8. The taxability will be determined by the supply which attracts highest rate of GST.

- ***IIMs*** **-** All the IIMs fall under purview of "educational institutions" as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.

| Courses offered by IIMs | Applicability of GST |
|---|---|
| Long duration programs (1 year or more) for which they award diploma/ degree certificate duly recommended by Board of Governors. | All services provided in such case is exempt from levy of GST |
| short duration/ short term programs (less than 1 year) for which they award participation certificate to the executives/ professionals. These participation certificates are not any qualification recognized by law. | GST is payable on the servicesprovided in such case. |

- Fees charged from prospective employers - educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/MNCs, who come to the institutes for recruiting candidates through campus interviews in relation to campus recruitments. Such services shall also be liable to tax.

- Maritime courses approved by DG Shipping - Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958. Thus, the courses conducted by them are exempt.

### 3.8.2 - Services provided to an educational institution, by way of-

- Where output services are exempted, the educational institutions cannot avail credit of tax paid on the input services.

- Services provided to an educational institution which is engaged in providing services by way of pre-school education and education up to higher secondary school or equivalent, by way of -
    - transportation of students, faculty and staff;
    - catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
    - security or cleaning or house-keeping services performed in such educational institution; is ***exempt***.
- Services provided to an educational institution by way of
    - services relating to admission to, or conduct of examination by, such institution is exempt when it is provided to Educational Institution.
    - supply of online educational journals or periodicals, is ***exempt***, Provided such educational institution is not providing services by way of

- pre-school education and education up to higher secondary school or equivalent; or
- education as a part of an approved vocational education course

- Regarding services provided to private ITIs, only services relating to admission to or conduct of examination received by a private ITI in respect of such designated trades are exempt. All other services provided to such institutions is liable to GST.

| Exempt input services | |
|---|---|
| Educational institution Providing pre-schooleducation and education up to higher secondary school or equivalent | 1. Transportation of students, faculty and staff. |
| | 2. Catering, including any mid-day meals scheme sponsored by Government |
| | 3. Security or cleaning house-keeping services performed in such educational institution; |
| | 4. services relating to admission to, or conduct of examination by, such institution |
| Educational institutionproviding education as a part of curriculum for obtaining recognized qualification | 1. Services relating to admission to or conductof examination by, such institution. |
| | 2. Supply of online educational journals orperiodical |
| Educational institution providing education as a part of approved vocationaleducation course | 1. Services relating to admission to, or conduct of examination by, such institution |

### 3.8.3 – Services provided by conduct of Entrance Examinations

- Any authority, board or body set up by the Central Government or State Government (including National Testing Agency) for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions.

### 3.8.4 – Clarification w.r.t Central and State Boards

- It is important to note that the Central and State Educational Boards shall be treated as 'Educational Institution' for the limited purpose of providing services by way of conduct of examination to the students.
- It is clarified that:
  - GST is exempt on services provided by Central or State Boards by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution under Entry 66(aa). Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations.
  - GST is also exempt on input services relating to admission to, or conduct of examination, such as ***online testing service, result publication, printing of***

***notification for examination, admit card and questions papers etc***, when provided to such Boards under Entry 66(b)(iv).

- GST is applicable to other services provided by such Boards, namely of providing accreditation to an institution or to a professional [accreditation fee or registration fee such as fee for ***FMGE (Foreign Medical Graduate Examination) screening test]*** so as to authorise them to provide their respective services

### 3.8.5 – Supply of food in a mess or a canteen in educational institutions

- Educational institutions generally have mess facility for providing food to their students and staff. Such facility is
  - either run by the institution/ students themselves or
  - is outsourced to a third person.
- If the catering services is one of the services ***provided by an educational institution to its students, faculty and staff*** and the said educational institution is covered by the definition of 'educational institution' as given above, then the same is exempt.
- If the catering services, ***outsourced by the educational institution*** from an outside contractor, then it is a supply of service to the concerned educational institution by such outside caterer and attracts GST. However, said services when provided to an educational institution providing ***pre-school education or education up to higher secondary school or equivalent*** are exempt from tax.

### 3.8.6 – Supply of food in anganwadis and schools

- An anganwadi, inter alia, provides pre-school non-formal education. Hence, anganwadi is covered by the definition of educational institution.
- Any catering service provided to an educational institution (pre-school and schools) is exempt from GST and it includes mid- day meal service also.
- Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates

### 3.8.7 – GST on Entrance exam/Admission/migration certificate issuance fees, etc.

- It can be seen that all services supplied by an 'educational institution' to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt.
- Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption. Accordingly, such activities of educational institutions are also exempt

## 3.9 - Services provided by Government

### 3.9.1 - Function entrusted to a municipality and Panchayat.

- Services by governmental authority by way of ***any activity in relation to any function entrusted to a***

- ***municipality*** under article 243 W of the Constitution
- ***Panchayat*** under article 243G of the Constitution.
- is exempt.

- ***Governmental authority***: means an authority or a board or any other body
  - set up by an Act of Parliament or a state Legislature; or
  - established by any Government

with 90%, or more participation by way of equity or control, to carry out any function entrusted to a

  - Municipality under article 243W of the Constitution or
  - Panchayat under article 243G of the Constitution.

- Government entity includes a society, trust or corporation.
- ***Regulatory bodies/agencies***, for instance, Competition Commission of India, Press Council of India, Directorate General of Civil Aviation, Forward Market Commission, Inland Water Supply Authority of India, Central Pollution Control Board, Securities and Exchange Board of India, ***do not fall under the definition of Government***.

### 3.9.2 - Services by Government which are taxable

- Services by the Central Government, State Government, Union territory or local authority are exempt except the following services—

1. Services by the Department of Posts and the Ministry of Railways (Indian Railways) by way of
   i) speed post,
   ii) express parcel post,
   iii) life insurance, and
   iv) agency services provided to a person
   - other than the Central Government, State Government, Union territory;
2. Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
3. Transport of goods or passengers; or
4. Any service, other than services covered under entries (1) to (3) above, provided to business entities [with aggregate turnover exceeding ***such amount in the preceding financial year as makes it eligible for exemption from registration under CGST Act]***.

- ***Business entity***: means any person carrying out business or profession.
- ***Agency services***, like distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills on commission basis, by the Department of Posts is liable to pay tax without the application of reverse charge.
- **The following services provided by the Department of Posts and the Ministry of Railways (Indian Railways) are *not liable to tax***
  - **Basic mail services such as post card, inland letter, book post, registered post etc. (envelopes weighing less than 10 grams)**

- **Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services**.

- Services provided by Police/security agencies of Government to PSU/private business entities ***are not exempt*** from GST.
  - Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government.

### 3.9.3 - Services by Government to Business entity

- Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017 is exempt.
- However, the following services ***are not included in the above entry***:
  1) Services by the Department of Posts and the Ministry of Railways (Indian Railways) by way of speed post, express parcel post, life insurance, and agency services
  2) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  3) Transport of goods or passengers; or
  4) Services by way of renting of immovable property. Thus the above services are taxable.
- Renting in relation to immovable property means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.
- GST on services supplied by the Central Government, State Government, Union territory or local authority to a business entity [***whose turnover exceeds such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act***] is ***payable under reverse charge*** by such business entity.
- However, reverse charge provisions are not applicable to the above mentioned 4 services when provided to unregistered persons.

### 3.9.4 - Services by Government to Government

- Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority is exempt.
- However, the following services are not included in the above entry:
  1. Services by the Department of Posts and the Ministry of Railways (Indian Railways) by way of speed post, express parcel post, life insurance, and agency services
  2. Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  3. Transport of goods or passengers; or thus the above services are taxable.

### 3.9.5 - Where the consideration does not exceed Rs.5,000.

- Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed 5,000 is exempt.
- However, the following services are not included in the above entry:
  1. Services by the Department of Posts and the Ministry of Railways (Indian Railways) by way of speed post, express parcel post, life insurance, and agency services
  2. Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  3. Transport of goods or passengers; or

Thus, the above services are taxable irrespective of value.

- Further, in case where continuous supply of service is provided the exemption shall apply only where the consideration charged for such service does not exceed Rs. 5,000 in a Financial Year.

### 3.9.6 - Supply of service for consideration in the form of grants

- Supply of service by a Government Entity
  - to Central Government, State Government, Union territory, local authority or
  - any person specified by Central Government, State Government, Union territory or local authority.
  - against consideration received from Central Government, State Government, Union territory or local authority,
  - in the form of grants is exempt.

### 3.9.7 - Services by an old age home

- Services by an old age home run by:
  - Central Government, State Government or
  - an entity registered under section 12AA of the Income-tax Act, 1961
- to its residents (aged 60 years or more)
- against consideration upto Rs.25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance is exempt.

### 3.9.8 - Services to Public Sector Undertakings (PSUs)

- Services supplied by Central Government, State Government, Union territory
  - to their undertakings or
  - Public Sector Undertakings(PSUs)
  - by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions is exempt.

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### 3.9.9 - Services provided by way of registration etc.

- Services provided by the Central Government, State Government, Union territory or local authority by way of-
    - registration required under any law for the time being in force;
    - testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force is exempt.

### 3.9.10 - Issuance of passport, visa, driving license, & certificates

- Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of
    - passport,
    - visa,
    - driving license,
    - birth certificate or death certificate is exempt.

### 3.9.11 - Services by way of tolerating non- performance of a contract

- Services provided by the Central Government, State Government, Union territory or local authority by way of
    - tolerating non- performance of a contract
    - for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract is exempt.
- Tolerating non- performance of a contract is an activity or transaction which is treated as a supply of service as per Schedule II of CGST Act and the person is deemed to have received the consideration in the form of fines or penalty and is, accordingly, required to pay tax on such amount.
- However, in case of supplies made to Government, services [provided by Government] by way of tolerating the non-performance of contract by the supplier of service is covered under the exemption.

### 3.9.12 - Services by way of assignment of right to use natural resources

- Services provided by the Central Government, State Government, Union territory or local authority by way of
    - assignment of right to use natural resources
    - to an individual farmer for
        - cultivation of plants and
        - rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products is exempt.

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### 3.9.13 - Services by way of deputing officers

- Services provided by the Central Government, State Government, Union territory by way of
    - deputing officers after office hours or on holidays
    - for inspection or container stuffing or such other duties
    - in relation to import export cargo
    - on payment of Merchant Overtime charges is exempt.

### 3.9.14 - Services supplied by a State Government

- Services supplied by a State Government
    - to Excess Royalty Collection Contractor (ERCC)
    - by way of assigning the right to collect royalty
    - on behalf of the State Government on the mineral dispatched by the mining lease holders is exempt.
- Mining lease holder means a person who has been granted mining lease, quarry lease or license or other mineral concession.
- At the end of the contract period, ERCC shall submit an account to the State Government and certify that the amount of GST deposited by mining lease holders on royalty is more than the GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty.
- And where such amount of GST paid by mining lease holders is less than the amount of GST exempted, the exemption shall be restricted to such amount as is equal to the amount of GST paid by the mining lease holders and the ERCC shall pay the difference between GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and GST paid by the mining lease holders on royalty.

### 3.10 - Services by way of sponsorship of sporting events

- Services by way of sponsorship of sporting events is exempt when organised -

    (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;
    (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
    (c) by the Central Civil Services Cultural and Sports Board;
    (d) as part of national games, by the Indian Olympic Association; or
    (e) under the Panchayat Yuva Kreeda Aur Khel Abhiyaan Scheme.

### 3.11 - Skill Development services

### 3.11.1 - National Skill Development Corporation

- Any services provided by, _

    a) the National Skill Development Corporation set up by the Government of India;
    b) a Sector Skill Council approved by the National Skill Development Corporation;

c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;
d) a training partner approved by the National Skill Development Corporation or the Sector Skill Council,

in relation to-

(i) the National Skill Development Programme implemented by the National Skill Development Corporation; or
(ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
(iii) any other Scheme implemented by the National Skill Development Corporation is exempt.

### 3.11.2 - Skill Development Initiative Scheme.

- Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme is exempt.

### 3.11.3 - Deen Dayal Upadhyaya Grameen Kaushalya Yojana

- Services provided by training providers (Project implementation agencies)
    - under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDUGKY)
    - implemented by the Ministry of Rural Development, Government of India
    - by way of offering skill or vocational training courses
    - certified by the National Council for Vocational Training is exempt.

### 3.12 - Service by way of right to admission to various events

### 3.12.1 - Exempt irrespective of admissions charges

- Services by way of admission to
    1) A museum, national park, wildlife sanctuary, tiger reserve or zoo.
    2) Protected monument so declared under the Ancient Monuments and Archaeological Sites & Remains Act 1958 or any of the State Acts, for the time being in force.

### 3.12.2 - Exempt when admission charges are not more than Rs. 500

- Services by way of admission to
    3) Circus, dance, or theatrical performance including drama or ballet;
    4) Award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;
    5) Recognised sporting event;
    6) Planetarium, Is exempt.
- ***With regard to the events or places as referred above, exemption is applicable only when the consideration for right to admission is not more than Rs.500 per person.***
- Recognised sporting event means any sporting event organised by a recognised sports body where the participating team or individual represent any district, state, zone or country.
- ***Recognised sports body includes means:***

- National sports federation, or its affiliated federations.
- Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat
- Central Civil Services Cultural and Sports Board
- Indian Olympic Association
- Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme.
- Sports Authority of India
- International Olympic Association or a federation recognised by the International Olympic Association.
- A federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India.

### 3.13 - Services by an unincorporated body or a non- profit entity

#### 3.13.1 - Services to its own members

- Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –
  - as a trade union
  - for the provision of carrying out any activity which is exempt from the levy of Goods and Services Tax; or
  - up to an amount of Rs.7,500 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex is exempt.
- A Co-operative Housing Society is a collective body of persons, who stay in a residential society and as a collective body, they supply certain services to its members, like collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc.
- Service provided by a Housing Society [Resident Welfare Association (RWA)] to its members is treated as service provided by one person to another. Thus, it would attract the levy of GST and the housing society would be required to register (if its aggregate turnover is above the applicable threshold limit for registration) and comply with the GST Law, unless specifically exempted.
- An RWA is not required to obtain registration even though the amount of maintenance charges exceeds Rs.7500/- per month per member but the aggregate turnover of the RWA in a financial year does not exceed the threshold limit for registration.

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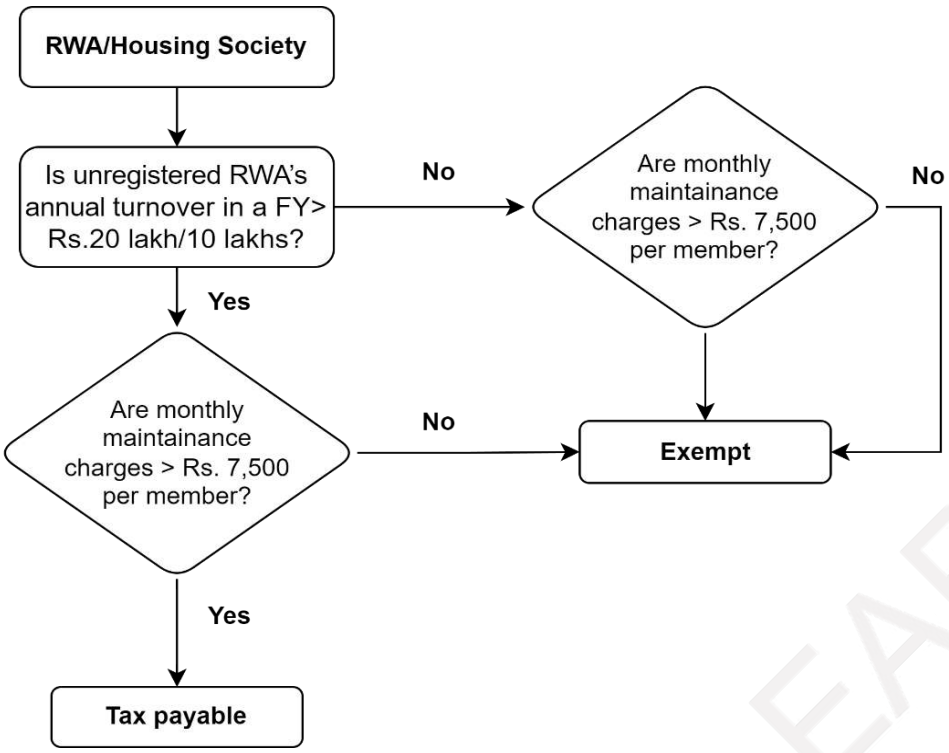


- It is important to note that RWA is entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services, used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs.7,500 per month per member.
- A person who owns 2 or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. Consequently, the ceiling of Rs.7500/- per month per member shall be applied separately for each residential apartment owned by him.

### 3.13.2 - Services related to specified activities

- Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,-
    - activities relating to the welfare of industrial or agricultural labour or farmers; or
    - promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment,
    - to its own members against consideration in the form of membership fee upto an amount of Rs.1000/- per member per year.

## 3.14 - Leasing services

### 3.14.1 - Services by way of granting of long-term lease of 30 years, or more

- Upfront amount (called as premium, salami, cost, price, development charges or by any other name)

- payable in respect of service by way of granting ***of long-term lease of 30 years, or more***)
- of industrial plots or plots for development of infrastructure for financial business,
- provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20% or more ownership of Central Government, State Government, Union territory
- to the industrial units or the developers
- in any industrial or financial business area is exempt.

- Aforesaid exemption is admissible irrespective of whether such upfront amount is payable/paid in one/more instalments, provided the amount is determined upfront.

- ***Location charges or preferential location charges (PLC)*** collected in addition to the lease premium for long term lease, is exempt from GST. Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing, but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.

- Accordingly, it is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Entry 41

- ***Conditions for exemption***
  - The leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area.
  - State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard.
  - In case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee/ buyer/ owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long-term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty.
  - The lease agreement entered into by the respective parties for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long-term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same

## 3.15 - Legal services

| Services provided by | Legal services is exempt if provided to |
|---|---|
| An arbitral tribunal | **1.** Any person other than a business entity; or |
| A partnership firm of advocates or an individual as an advocate other than a senior advocate, | |

| | |
|---|---|
| A senior advocate by way of legal services | **2.** Business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;<br>**3.** The Central Government, State Government, Union territory, local authority, Governmental Authorityor Government Entity. |
| A partnership firm of advocates or an individual as an advocate other than a senior advocate, | An advocate or partnership firm of advocates providing legal services |

- ***Legal service***: means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.
- ***Senior advocate***: An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction. Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.
- Thus, legal services provided to a business entity with an aggregate turnover exceeding ***such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017*** are liable to GST. Further, tax is payable by the business entity on such services under reverse charge.

### 3.16 - Life insurance business services

- Services of life insurance business provided by way of annuity under the ***National Pension System*** regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 is exempt.
- Services of life insurance business provided or agreed to be provided by the ***Army, Naval and Air Force Group Insurance Funds*** to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government is exempt.
- Services of life insurance provided or agreed to be provided by the ***Naval Group Insurance Fund*** to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government is exempt.
- Services of life insurance provided/agreed to be provided by the ***Central Armed Police Forces*** (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.
- Services of life insurance business provided under following schemes are exempt-

    1) Janashree Bima Yojana;

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2) Aam Aadmi Bima Yojana;
3) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of Rs.2,00,000;
4) Varishtha Pension BimaYojana;
5) Pradhan Mantri Jeevan Jyoti BimaYojana;
6) Pradhan Mantri Jan DhanYogana;
7) Pradhan Mantri Vaya Vandan Yojana.

### 3.17 - General insurance business services

- Services of general insurance business provided under following schemes –

1) Hut Insurance Scheme;
2) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna28;
3) Scheme for Insurance of Tribals;
4) Janata Personal Accident Policy and Gramin Accident Policy;
5) Group Personal Accident Policy for Self-Employed Women;
6) Agricultural Pumpset and Failed Well Insurance;
7) Premia collected on export credit insurance;
8) Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture;
9) Jan Arogya Bima Policy;
10) Pradhan Mantri Fasal Bima Yojana (PMFBY);
11) Pilot Scheme on Seed Crop Insurance;
12) Central Sector Scheme on Cattle Insurance;
13) Universal Health Insurance Scheme;
14) Rashtriya Swasthya Bima Yojana;
15) Coconut Palm Insurance Scheme;
16) Pradhan Mantri Suraksha BimaYojna;
17) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.
18) Bangla Shasya Bima – Insurance to protect the interest of farmers (West Bengal government)

### 3.18 - Services by way of reinsurance

- Services by way of reinsurance of the insurance schemes specified under both life insurances and general insurance mentioned above are exempt.

### 3.19 - Services provided by specified bodies

- Services by the ***Employees' State Insurance Corporation*** to persons governed under the Employees' State Insurance Act, 1948 are exempt.
- Services provided by the ***Employees Provident Fund Organisation*** to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952 are exempt.

- Services by ***Coal Mines Provident Fund Organisation*** to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 are exempt.
- Services by ***National Pension System (NPS)*** Trust to its members against consideration in the form of administrative fee are exempt.

### 3.20 - Pension schemes

- Services by way of collection of contribution under the Atal Pension Yojana is exempt.
- Services by way of collection of contribution under any pension scheme of the State Governments is exempt.

### 3.21 - Performance by an artist

- Services by an artist by way of a performance in folk or classical art forms of-
    - music, or
    - dance, or
    - theatre,

  if the ***consideration*** charged for such performance is ***not more than Rs.1,50,000*** are ***exempt*** from GST.
- Thus, if consideration from such activities exceeds Rs.1,50,000, entire consideration is subject to GST.
- Further, all other activities by an artist in other art forms e.g. western music or dance, modern theatres, performance of actors in films or television serials would be taxable.
- Similarly, activities of artists in still art forms e.g. painting, sculpture making etc. are taxable.
- However, the exemption shall not apply to service provided by such artist as a brand ambassador.
- ***Brand ambassador***: means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person.

### 3.22 - Business facilitator/correspondent

- Services by the following persons in respective capacities are exempt–
  1) Business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
  2) Any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (1); or
  3) Business facilitator or a business correspondent to an insurance company in a rural area.
- BCs/BFs help villagers to open bank accounts and provide other banking services to them. They act as an intermediary between the bank and its customers. Banks, in turn, pay commission/ fee to the BCs/BFs.
- All agreements/contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the BF/BC.

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- Hence, banking company is the service provider to the ultimate customer in the BF model/BC model. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via BF/BC.
- It is important to note that for the purpose of availing exemption from GST under this Entry, services provided by a BF/BC to a banking company in their respective individual capacities should be with respect to accounts in a branch located in the ***rural area*** of the banking company.
- The banking company is the person liable to pay GST under reverse charge in respect of commission/fees charged for the taxable services provided by BF to a banking company in respect of services other than those mentioned above. Similarly, GST on taxable services provided by an agent of BC to BC is payable under reverse charge by the BC other than those covered under exemption.

### 3.23 - Services provided to Government

- Services provided to a Government Authority by way of –
    - Water Supply
    - Public Health
    - Sanitation conservancy
    - Solid Waste Management
    - Slum Improvement and Upgradation
- Pure services (excluding works contract service or other composite supplies involving supply of any goods) or
- Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply
    - provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity
    - by way of any activity:
        - in relation to any function entrusted to a Panchayat under article 243G of the Constitution or
        - in relation to any function entrusted to a Municipality under article 243W of the Constitution.
- Supply of '***pure services***' means supply of services without involving any supply of goods. Further, '***composite supply of goods and services***' to Government is exempted in which value of supply of goods constitutes not more than 25% of value of such composite supply.
- Service provided by ***fair price shops*** to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin.
- Services provided to the Central Government, State Government, Union territory under ***any insurance scheme*** for which total premium is paid by the Central Government, State Government, Union territory is exempt.

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- Services provided to the Central Government, State Government, Union territory administration under ***any training programme for which 75% or more of the total expenditure*** is borne by the Central Government, State Government, Union territory administration is exempt.
- ***Free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where 75% or more of the expenditure is borne by the Government to coaching institutions by way of grant in aid is covered under this entry and hence is exempt from GST***
- ***Milling of wheat into flour/paddy into rice for distribution by State Governments under PDS exempt from GST***

### 3.24 - Other exempt services

- Services by way of ***granting National Permit to a goods carriage*** to operate through-out India/ contiguous States.
- Services by way of ***transfer of a going concern***, as a whole or an independent part thereof is exempt.
    - Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service.
- Supply of services associated with ***transit cargo to Nepal and Bhutan*** (landlocked countries) is exempt.
- Services by way of ***renting of residential dwelling*** for use as residence is exempt. However, if a residential dwelling is given on rent to a registered person for business purposes then it is taxable under RCM.
    - Residential dwelling is one which is classified as such by the municipality at the time of construction.

| Services by way of renting of | Purpose of renting | Taxability |
|---|---|---|
| Residential dwelling | Residential purpose | Exempt |
| | Commercial purpose | Taxable |
| Commercial building | Residential purpose | Taxable |
| | Commercial purpose | Taxable |

- Service by way of access to a road or a bridge on payment of toll charges(including for overloaded vehicles toll charges and additional FasTag fees)is exempt.
- Service by way of access to a road or a bridge on payment of annuity is exempt.
- Transmission/distribution of electricity by an electricity transmission / distribution utility is exempt.
    - However, in this regard CBIC has clarified that the other services provided by DISCOMS (distribution companies) to consumer against charges are liable to GST such as,-

1. Application fee for releasing connection of electricity;
2. Rental Charges against metering equipment;
3. Testing fee for meters/transformers, capacitors etc.;
4. Labour charges from customers for shifting of meters or shifting of service lines;
5. charges for duplicate bill

- Services provided by an incubatee up to a total turnover of Rs.50 lakh in a financial year is exempt subject to the following conditions, namely:-
    - The total turnover had not exceeded Rs.50 lakh during the preceding financial year; and
    - A period of 3 years has not elapsed from the date of entering into an agreement as an incubatee.
- ***Incubatee***: *means an entrepreneur located within the premises of a Technology Business Incubator (TBI)/ Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India (NSTEDB) and who has entered into an agreement with the TBI/STEP to enable himself to develop and produce hi-tech and innovative products.*
- Taxable services, provided or to be provided, by a TBI/STEP recognised by NSTEDB or ***bio-incubators recognised by the Biotechnology Industry Research Assistance Council***, under the Department of Biotechnology, Government of India (BIRAC) is exempt.
- Services by way of licensing, registration and analysis or testing of food samples supplied by the ***Food Safety and Standards Authority of India (FSSAI)*** to Food Business Operators is exempt.
- Services by way of ***collecting or providing news*** by
    - an independent journalist,
    - Press Trust of India or
    - United News of India is exempt.
- Services of ***public libraries*** by way of lending of books, publications or any other knowledge-enhancing content or material is exempt.
- Services by an organiser to any person in respect of a ***business exhibition held outside India*** is exempt.
- Services by way of ***pre-conditioning, pre- cooling, ripening, waxing, retail packing, labelling*** of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables is exempt.
- Services provided by the ***National Centre for Cold Chain Development*** under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination is exempt.
- Services by a ***foreign diplomatic mission*** located in India is exempt.
- Services by way of ***providing information under the RTI Act*** (Right to Information Act, 2005) is exempt.

- Services provided to a ***recognised sports body*** is exempt when provided by-
    1. An individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body;
    2. Another recognised sports body.
    - However, services by individuals such as selectors, commentators, curators, technical experts are taxable. The service of a player to a franchisee which is not a recognized sports body is also taxable.
- Services by way of ***public conveniences*** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets is exempt.
- Services provided by a ***banking company to Basic Saving Bank Deposit (BSBD) account holders*** under Pradhan Mantri Jan Dhan Yojana (PMJDY) is exempt.
- Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of ***rehabilitation, therapy or counselling*** and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centres established by Central Government, State Government or Union territory or an entity registered under section 12AA of the Income-tax Act, 1961 is exempt.
- Services by way of giving on ***hire motor vehicle*** is exempt if provided to –
    1. A state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers.
       This exemption is applicable to services provided to State Transport Undertaking and not to other departments of Government or local authority.
       Generally, such State Transport Undertakings/ Corporations are established with a view to providing public transport facility to the commuters. If transport undertakings hire the buses on lease basis from private persons on payment of consideration, the services by payment of tax. However, supplies of motor vehicles to Government Departments other than the STUs are taxable.
    2. A local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers;
       EOV means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one/more electrical batteries fitted to such road vehicle.
    3. A goods transport agency, a means of transportation of goods
    4. A person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.
- Services by way of ***right to admission to the events organised under FIFA U- 17*** Women's World Cup 2020 is exempt.
- Services provided by and to ***Fédération Internationale de Football Association (FIFA)*** and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India is exempt.
- ***Condition to be fulfilled:***

- Director (Sports), Ministry of Youth Affairs and Sports have to certify that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020.

- Intra-state supply of services by way of
  - grant of license or lease to explore or mine petroleum crude or natural gas or both
  - for so much of the central tax as is leviable on the consideration
  - paid to central government in the form of central government's share of profit

as defined in the contract entered into by the central government in this behalf is exempt.

- Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India.
  - However, value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less
  - Further, in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.
  - ***Foreign Tourist*** *- means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.*
- Services provided by the guest anchors in lieu of honorarium attract GST liability.

## 4. GOODS EXEMPT FROM TAX

- Under GST, everyday items used by the common man have been included in the list of exempted items.

- Items such as unbranded atta/maida/besan, unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST.

- Some of the examples of the goods exempted from tax have been provided herein:
  - Live Fish
  - Fresh Milk
  - Potatoes
  - Grapes
  - Indian National Flag
  - Plastic Bangles

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ILLUSTRATIONS

### Illustration 1

Determine the taxable value of supply under GST law with respect to each of thefollowing independent services provided by registered persons:

| Particulars | Gross Amount (Rs.) |
|---|---|
| Fees charged for Yoga camp conducted by a charitable trust registered under Section 12AA of the Income-tax Act, 1961 | 50,000 |
| Amount charged by business correspondence from banking company for the services provided to the rural branch of a bank with respect to Savings Bank Account | 1,00,000 |
| Amount charged by cord blood bank for preservation of stem cells | 5,00,000 |
| Amount charged for service provided by commentator to a recognized sports body | 5,20,000 |

### Illustration 2

Examine whether GST is exempted on the following independent supplies of services:

(i) Service provided by a private transport operator to Scholar Boys Higher Secondary School in relation to transportation of students to and from theschool.

(ii) Services provided by way of vehicle parking to general public in a shopping mall.

### Illustration 3

Discuss whether GST is payable in respect of transportation services provided by RaghavGoods Transport Agency in each of the following independent cases:

| Customer | Nature of service provided | Amount charged (Rs.) |
|---|---|---|
| A | Transportation of Milk | 20,000 |
| B | Transportation of books on a consignment transported in a single goods carriage | 3,000 |
| C | Transportation of chairs for a single consignee in the goods carriage | 600 |

### Illustration 4

Examine whether GST is payable in the following independent supply of services:

i. Indiana engineering college, a recognised educational institution, has conducted an entrance text examination for various courses run by it and charged entrance fee from the applicants.

ii. Ramfal Lalaji, an agriculturist, has stored sugarcane in a warehouse. He has taken fumigation services in the said warehouse from Gupta Pest Control Co. for which, he paid consideration of Rs. 6,000.

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### Illustration 5

Examine whether supply of food and drink in the following independent cases is exemptfrom GST:

(i) "Smart kids" is a play school located in Delhi. It has outsourced the catering services for supply of food and drink in the canteen of play school to BTV Caterers, Delhi for a consideration of Rs. 8 lakhs per annum.

(ii) Wellness Hospital, a clinical establishment located in Tirupati, is specialized in diabetic treatment. The hospital has its own canteen-Tasty foods. The canteen serves thefood and drink to the in-patients as advised by the doctors/ nutritionists of the hospital.

Apart from this, others (who are not admitted) or attendants or visitors of the in- patients also take food and drink from the canteen.

### Illustration 6

Examine whether GST is payable in the following independent supply of services:

i. Teja & Co, a tour operator, provides services to a foreign tourist for tour conducted in Jammu & Kashmir and received a sum of Rs. 3,00,000

ii. Ms. Poorva acts as a Team Manager for Indian Sports League (ISL), a recognised sports body, for a Tennis tournament organised by Multi brand retail company and received a remuneration of Rs. 2,00,000.

### Illustration 7

Decide with reason whether the following independent services are exempt under CGST act, 2017:

i. M/s Fast Trans, a goods transport agency, transported relief materials meant for victims of Kerala flood being a natural disaster, by road from Delhi to Ernakulam for a Limited Co.

ii. Kenya enterprise, an event organizer, provided services to Breathing Wall Ltd. by way of organizing a business exhibition at Pragati Maidan in New Delhi as part of Make in India Initiative.

### Illustration 8

Decide with reason whether the following independent services are exempt under CGST act, 2017:

i. Gokul Residence Welfare Association received Rs. 9,000 per month as contribution from each member for sourcing of goods and services from third person for common use of its members.

ii. Mr. Vikalp, a performing artist, has received Rs.1,58,000 from performance of classical dance and Rs. 90,000 from acting in TV serial during the month of June,2018.

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## Illustration 9

JP Charitable institution, an entity registered under Section 12AA of Income tax Act, 1961 and registered in GS, has furnished you the following details with respect to activities undertaken by it during the month of January,

You are required to compute its taxable value of GST from the information given below, assuming that the rate of GST is 18%.

Brief reason should be part of your answer.

| Particulars | Amount excl. GST (Rs.) |
|---|---|
| Membership fee received from members | 1,00,000 |
| Amount received from advancement of educational programs relating to abandoned or orphaned or homeless children | 4,00,000 |
| Amount received for renting of commercial property owned by Trust | 5,00,000 |
| Amount received for counselling of thermally ill people | 3,50,000 |
| Fees charged for Yoga camp conducted by trust | 2,00,000 |
| Amount received relating to preservation of forest & wildlife | 6,00,000 |

## Illustration 10

Decide with reason whether the following independent supplies are exempt under CGSTact, 2017:

(i) Amith, runs a fair price shop, and earns Rs.30,000 as consideration fromgovernment for sale of food grains.

(ii) Determine taxability:

a. Mr. X, a resident has given a part of his residence by way of renting to Mr. Y for residential purpose.

b. What would be your answer if house is given for commercial purpose?

(iii) Mr. A, a priest charged, Rs. 51,000 for services provided to B for conduct of his marriage ceremony.

(iv) Determine taxability:

a. Tirupati temple provides accommodation service wherein the room rent is Rs.900 per day.

b. What would be your answer if the room rent is Rs. 1,100 per day?

(v) Mr. Akash, travel by air from Hyderabad to Sikkim and Airlines Co. charged Rs. 10,000. Will GST apply on Rs. 10,000?

(vi) Service by way of goods being transported through rail or vessel

| |
|---|
| Relief materials to flood affected areas. |
| Newspapers or magazines registered with the registrar of Newspapers. |
| Milk |
| Defence or Military equipment |
| Chemical fertilizers |

| Cotton ginned or bailed |
|---|

(vii) Mr. Mohan, an independent journalist, working for Press Trust of India. Andprovide services by way of collecting or providing News.

(viii) A News reporter attends a press conference of Ministers or a visit to Police station or a Crime scene for collection of News to be delivered to various Newspapers or TV Channels.

(ix) Mr. Lal applied for a passport and paid a fee of Rs 1,500 at the passport office. WillGST apply on Rs. 1,500?

(x) PVR Cinema's charges Rs. 200 as application charges for exhibition of a film.

### Illustration 11

Sarva Sugam Charitable Trust, a trust registered under section 12AB of the Income – Tax Act, 1961, provides the following information relating to supply of its services for the month of August:

| Particulars | Amount |
|---|---|
| Renting of residential dwelling for use as a residence to an unregistered person | 18,00,000 |
| Renting of rooms for devotees (Charges per day Rs. 750) | 6,00,000 |
| Renting of Kalyan mandapam (Charges per day Rs. 15,000) | 12,00,000 |
| Renting of halls and open space (Charges per day Rs. 7,500) | 10,75,000 |
| Renting of shops for business (Charges per month Rs. 9,500) | 4,75,000 |
| Renting of shops for business (Charges per month Rs. 12,000) | 7,50,000 |

Compute the GST liability of Sarva Sugam Charitable Trust for the month of August assuming that the above amounts are exclusive of GST and rate of GST, wherever applicable, is 18%.

Note: The rooms/Kalyana mandapam/halls/open space/shops owned by the trust are located within the precincts of a religious place, meant for general public, owned by the trust.

### Illustration 12

Brahmi Foundation, Noida is registered as a trust under section 12AB of the Income-tax Act, 1961. With effect from 01.08.2017, it intends to offer its guest houses to the pilgrims visiting the Noida shrine at Rs. 900 per day and their marriage hall at Rs. 12,000 per day. They want to know whether these will attract GST liability. Advise them suitably.

### Illustration 13

Sri Durga Charitable Trust registered under section 12AB of the Income Tax Act and also registered person under GST Law. Provided the following services in the month of October.

1. Services by way of training or coaching in recreational activities relating to sports 4,00,000/-
2. Fee from organizing yoga camps for Rs. 5,00,500/-
3. Organizes fitness camps in reiki, aerobics, etc., and receive donation from participants Rs. 2,25,000/-
4. Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material for Rs. 20,000

Assume applicable rate of GST for taxable supplies @18%.

### Illustration 14

JP Charitable institution, an entity registered under Section 12AA or 12AB of Income Tax Act, 1961 and registered in GST, has furnished you the following details with respect to the activities undertaken by it during the month of January, 20XX. You are required to compute its Taxable Value of GST from the information given below; assuming the rate of GST is 18%.

Brief reasoning should be part of your answer.

| Particulars | Amount in Rs. (Excluding GST) |
|---|---|
| Membership fees received from members | 10,00,000 |
| Amount received for advancement of educational programs relating to abandoned or orphaned or homeless children | 4,00,000 |
| Amount received for renting of commercial property owned by Trust | 5,00,000 |
| Amount received for counselling of terminally ill person/ mentally disabled persons | 3,50,000 |
| Fees charged for Yoga Camp conducted by Trust | 2,00,000 |
| Amount received relating to preservation of Forest and Wildlife | 6,00,000 |
| Payment made for the services received from a service provider located in US for the purpose of providing Charitable activities | 5,50,000 |

### Illustration 15

Mr. Nagarjun, a registered supplier of Chennai, has received the Following amounts in respect of the activities undertaken by him during the month of September:

| S. No. | Particulars | Amount {Rs) |
|---|---|---|
| (i) | Amount charged for service provided to recognized sports body as selector of national team. | 50,000 |
| (ii) | Commission received as an insurance agent from insurance company | 65,000 |
| (iii) | Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts. | 15,000 |
| (iv) | Service to Foreign diplomatic mission located in India. | 28,000 |
| (v) | Funeral services. | 30,000 |

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received the services from unregistered goods transport agency for his business activities and paid freight of Rs. 45,000 (his aggregate turnover of previous year was Rs. 9, 90,000).

Note: All the transactions stated above are intra-State transactions and also are exclusive of GST.

You are required to calculate gross GST liability (ignoring ITC provisions) of Mr. Nagarjun for the month of September assuming that the rate of GST, wherever applicable, is 18% except the GTA services where the rate of GST is 5% (GTA not opted for FCM). Working notes should Form part of your answer.

### Illustration 16

Swasthya Nursing Home, a clinical establishment, offers the following services:

i. Rooms provided to the in-patients where the room charges per day are Rs. 6,500.

ii. Plastic surgery conducted to repair left lip of a new born baby.

iii. Air ambulance· services to transport critically ill patients from distant locations to Swasthya Nursing Home.

iv. Supply of food to the in-patients as per the advice of the doctor/nutritionist from its restaurant Annapurna Bhawan - located in the basement of Swasthya Nursing Home. The food is prepared by its employees and nothing is outsourced to any third-party vendors.

v. Homeopathic medical treatment.

vi. Swasthya Nursing Home. also operates a cord blood bank which provides services in relation to preservation of stem cells.

Determine whether GST is payable in respect of each of the above services provided by Swasthya Nursing Home.

### Illustration 17

Shiva Medical Centre, a Multi-speciality hospital, is a registered supplier in Mumbai. It hires senior doctors and consultants independently, without entering into any employer-employee agreement with them. These doctors and consultants provide consultancy to the in-patients - patients who are admitted to the hospital for treatment - without there being any contract with such patients. In return, they are paid the consultancy charges by Shiva Medical Centre.

However, money actually charged by Shiva Medical Centre from in-patients is higher than consultancy charges paid to the hired doctors and consultants. The difference amount retained by the hospital, i.e. retention money, includes charges for providing ancillary services like nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc.

The Department took a stand that senior doctors and consultants are providing services· to Shiva Medical Centre and not to patients. Hence, their services are not health care services and must be subject to GST.

Further, GST is applicable on the retention money kept by Shiva Medical Centre.

You are required to examine whether the stand taken by the Department is correct.

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### Illustration 18

A2X Services Limited, registered under GST, is engaged in providing various services to various educational institutions. The company provides the following information in respect of services provided during the month of April 20XX:

| S.No. | Description of services provided |
|---|---|
| (i) | Transportation of students & staff of 'Love All', a deemed University |
| (ii) | Catering services provided to 'Rank CBSE School' |
| (iii) | Security services provided to 'Win CBSE School', for its annual sports day held at SAI Sports Complex owned by Government of India |
| (iv) | Supply of online periodical science journal to 'Merit CBSE School' for its higher secondary students |
| (v) | Services, in relation to placement of students, to 'SKILL', a government recognized vocational training college |

Comment on the taxability or otherwise of the above transactions under GST law. Also state the correct legal provisions for the same.

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# 5. TIME OF SUPPLY

Contents


- Time of supply of goods [12(1)] and Services [13(1)]
- Time of supply under forward charge [12(2)] & [13(2)]
- Time of supply under reverse charge [12(3)] & [13(3)]
- Time of supply of vouchers exchangeable for goods [12(4)] & [13(4)]
- Time of supply in residual cases [12(5)] & [13(5)]
- Addition in value by interest, late fees etc. [12(6)] & [13(6)]
- Time of Supply in case of change in rate of tax [Section 14]


## 1. INTRODUCTION

- Provisions relating to 'time of supply' provide answers to questions that arise with respect to the time when the liability to pay CGST and SGST/UTGST (intra- State supply) and IGST (inter-State supply) arises.

- Though the liability to pay tax arises at the time of supply, the same can be paid to the Government by the due date prescribed with reference to the said 'time of supply'. For instance, if time of supply of a given supply is 25th May, the tax leviable thereon would be payable latest by 20th June, which is the due date prescribed in the CGST Act.

- The CGST Act provides separate provisions for time of supply for goods and services vide sections 12 and 13.

### 1.1. Definitions

- Invoice or tax invoice
  Invoice means the tax invoice referred to in section 31 [Section 2(66)].
- Recipient of supply of goods or services or both, means—
  - where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
  - where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
  - where no consideration is payable for the supply of a service, the person to whom the service is rendered,
- Supplier
  Person supplying the said goods or services or both and shall include an agent acting

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as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].

- Voucher

  An instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument [Section 2(118)].

## 2. TIME OF SUPPLY OF GOODS

- Section 12(1) – Liability to pay tax on goods shall arise at the time of supply as determined in terms of the provisions of this section.

### 2.1 – Time of Supply under Forward Charge – Section 12(2)

- Sec 12(2)(a) – The time of supply of goods that are taxable under forward charge, is the earlier of the following two dates:
  - Date of issue of invoice by the supplier or
  - Last date on which the invoice ought to have been issued in terms of section 31
- Section 148 - In exercise of the powers conferred by section 148, the Central Government, on the recommendation of the GST Council, has issued Notification No. 66/2017 CT dated 15.11.2017 to specify that a registered person ***(excluding composition supplier)*** should ***pay GST*** on the outward supply of goods at the time of supply ***as specified in section 12(2)(a).***
- The relief of not paying GST at the time of receipt of advance is available only in case of supply of goods and not for supply of services.
- All taxpayers under forward charge (except composition suppliers) are ***not required to pay GST at the time of receipt of advance in relation to supply of goods***.
- The entire GST shall be payable only when the invoice for the supply of such goods is issued or ought to have been issued.
- "Date of receipt of payment" in the above situation refers to
  - the date on which the payment is recorded in the books of account of the entity (supplier of goods) that receives the payment, or
  - the date on which the payment is credited to the entity's bank account, whichever is earlier.
- <u>Time limit for issuance of invoice for supply of goods under section 31 -</u>
  - As per section 31(1), the invoice needs to be issued either ***<u>before</u>*** or ***<u>at the time of removal of goods</u>*** (where supply involves movement of goods) or delivery of goods/ making goods available to recipient (in any other case).

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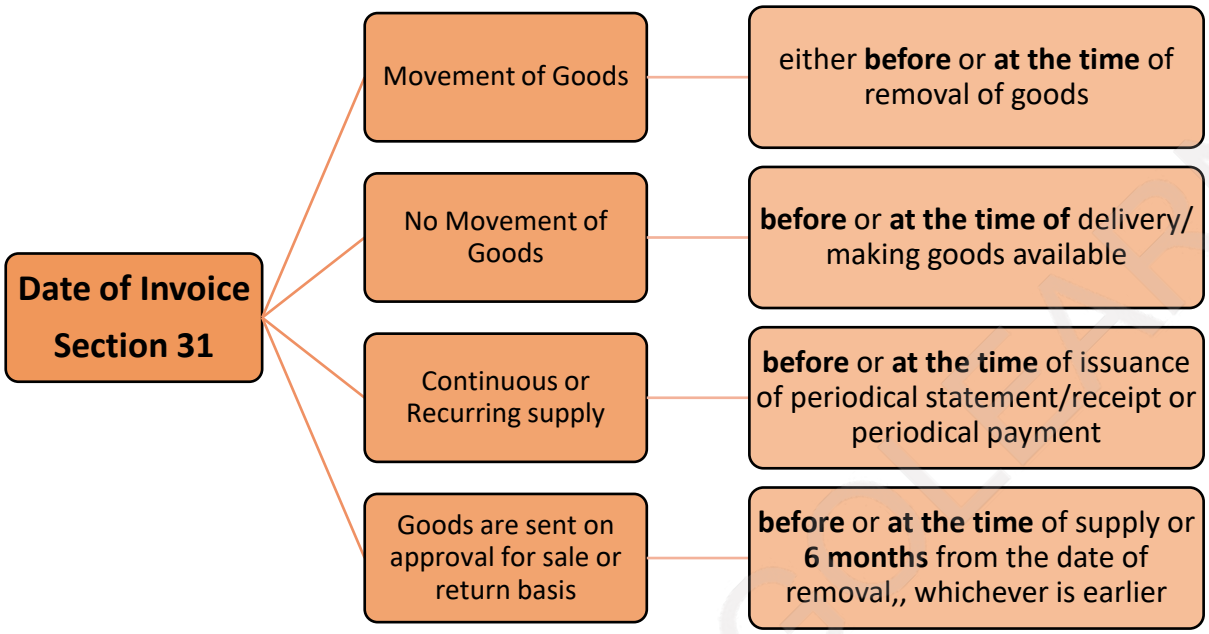
- In case of continuous supply of goods, the invoice should be issued ***before or at the time of issuance of periodical statement/receipt of periodical payment*** [Section 31(4)]
- In case of goods sent or taken on approval for sale or return, invoice should be issued ***before or at the time of supply*** or ***6 months from the date of removal***, whichever is earlier [Section 31(7)]



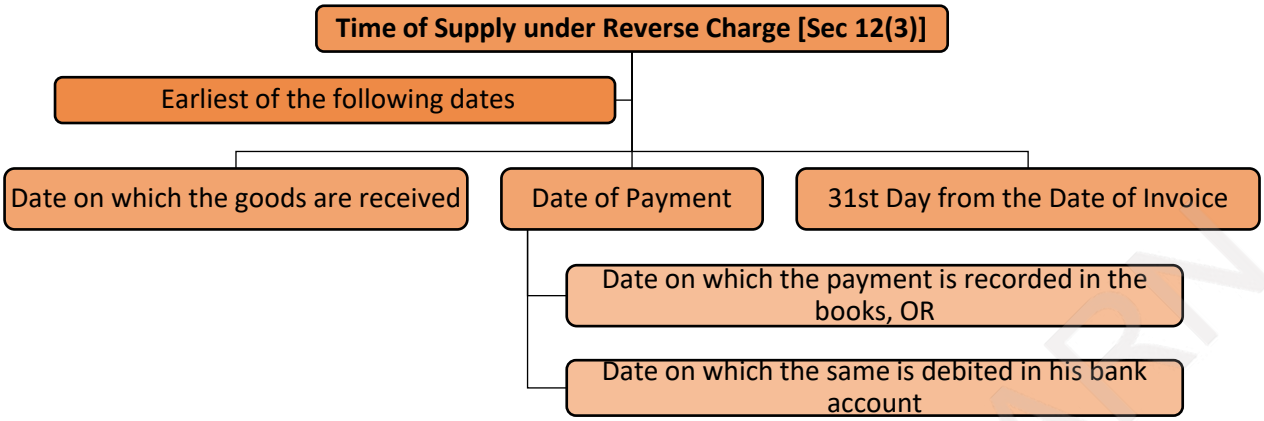

***Continuous supply of Goods [Section 2(32)*** – *means*

- a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis
- under a contract
- whether or not by means of a wire, cable, pipeline or other conduit, and
- for which the supplier invoices the recipient on a regular or periodic basis and
- includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify

## 2.2 – Time of supply under Reverse Charge – Section 12(3)

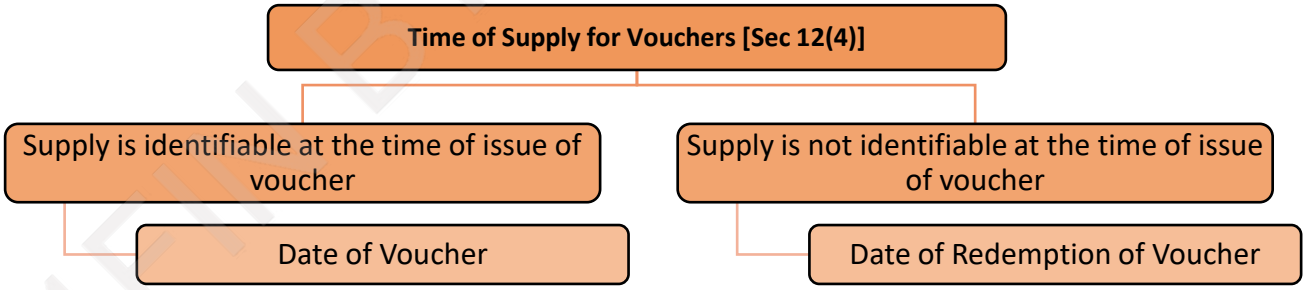
- The time of supply of goods on which GST is payable on reverse charge basis under sub-sections (3) and (4) of section 9 of CGST Act will be the earliest of the following dates:
  - Date on which the goods are received, or
  - Date on which payment is recorded in the books of account of the recipient, or the date on which the same is debited in his bank account, whichever is earlier, or
  - Date immediately following 30 days from the date of issue of invoice (or document by some other name in lieu of invoice) by the supplier.
- If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of goods in the books of account of the recipient of supply.

- ***The relief of not paying GST at the time of receipt of advance is available only in case of supply of goods, the tax on which is payable under forward charge. In case of reverse charge, GST is payable at the time of payment, if payment is recorded/made before receipt of goods (advance payment).***



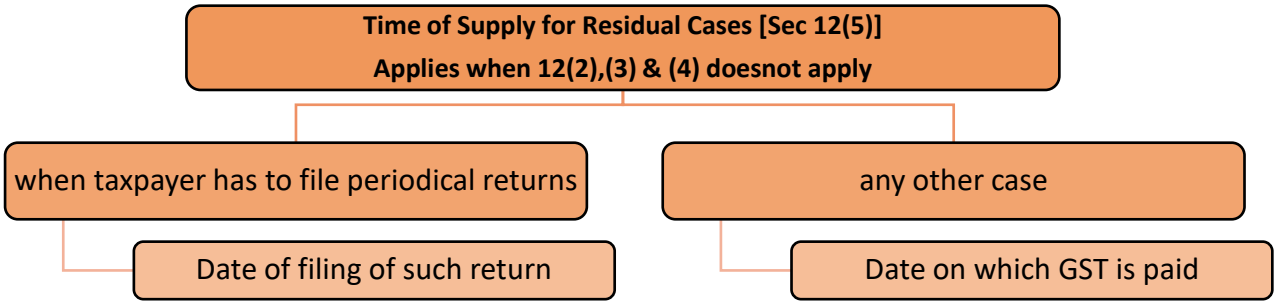

## 2.3 – Time of Supply of Vouchers exchangeable for Goods – Section 12(4)

- Vouchers are instruments that can be exchanged as payment for goods or services of the designated value.
- As per the definition, they are instruments, that certain persons (potential suppliers) are obliged to accept as consideration, part or full, for goods and/or services. The instrument or its related documentation sets out the terms and conditions of use, the goods and/or services covered, and the identity of the potential suppliers of such goods and/or services.
- As per section 12(4), the time of supply of vouchers exchangeable for goods is-
    - Date of issue of the voucher, if the supply that it covers is identifiable at that point, or
    - Date of redemption of the voucher in other cases




## 2.4 – Time of Supply of Goods in Residual cases - Section 12(5)

- If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 12, in the following manner:
    - Due date for filing of the periodical return, or
    - In any other case, date on which GST is paid.




### 2.5 – Time of Supply in case of enhancement in value on account of interest/late fee, etc. for delayed payment of consideration – Section 12(6)

- Commercially, most of the contract of supplies stipulate payment of interest/late fee/penalty etc. in case of payment of consideration beyond the agreed time period. Such interest/late fee/penalty etc. is includible in value of taxable supply.
- Section 12(6) prescribes that time of supply in case of addition in value on account of interest/ late fee/penalty for delayed payment of consideration for goods is the ***date on which the supplier receives such addition in value.***

## 3. TIME OF SUPPLY FOR SERVICES – SECTION 13

- Section 13(1) - The liability to pay tax on services shall arise at the time of supply, as determined in terms of the provisions of this section.
- Section 13 must be read with section 31 and rule 47 of CGST Rules, which prescribe in detail the date on which tax invoice for a supply of service must be issued in various situations.

### 3.1 - Time of supply of services under reverse charge - Section 13(3)

- The time of supply of service on which GST is payable on reverse charge basis ***(except on services received from associated enterprises located outside India)*** under sub-sections (3) and (4) of section 9 is determined in terms of section 13(3)(a) and (b).
- The time of supply for such service will be the earlier of the following:
  - Date of payment, or
  - Date immediately following 60 days since issue of invoice (or any other document in lieu of invoice) by the supplier.
- If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of the service in the books of account of the recipient of supply.
- "Date of payment" in the above situation refers to the date on which the payment is recorded in the books of account of the entity that receives the service (recipient of service), or the date on which the payment is debited from the entity's bank account, whichever is earlier.
- ***Import of services between associated enterprises*** - In the case of service received from an associated enterprise located outside India, the time of supply will be

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- Date of payment for the service, or
- Date of entry of the service in the books of account of the recipient, whichever is earlier.

### 3.2 - Time of supply of service under forward charge - Section 13(2)

- For supply of service on which the supplier is liable to pay tax, the time of supply will be the earlier of the dates given below:
  - if the invoice is issued within the time prescribed under section 31;
    - Date of invoice or
    - Date of receipt of payment (to the extent the invoice or payment covers the supply of services),
  - if the invoice is not issued within the time prescribed under section 31,
    - Date of provision of service or
    - Date of receipt of payment (to the extent the payment covers the supply of services)
    - If the above two conditions are not applicable, the time of supply will be
      - Date on which the recipient of service shows receipt of the service in his books of account.
- "Date of receipt of payment" in the above situation refers to
  - Date on which the payment is recorded in the books of account of the entity (supplier of service) that receives the payment, or
  - Date on which the payment is credited to the entity's bank account, whichever is earlier.
- Where a part of the consideration is paid in advance or invoice is issued for part payment, the time of supply will not cover the full supply. The supply shall be deemed to have been made to the extent it is covered by the invoice or the part payment.

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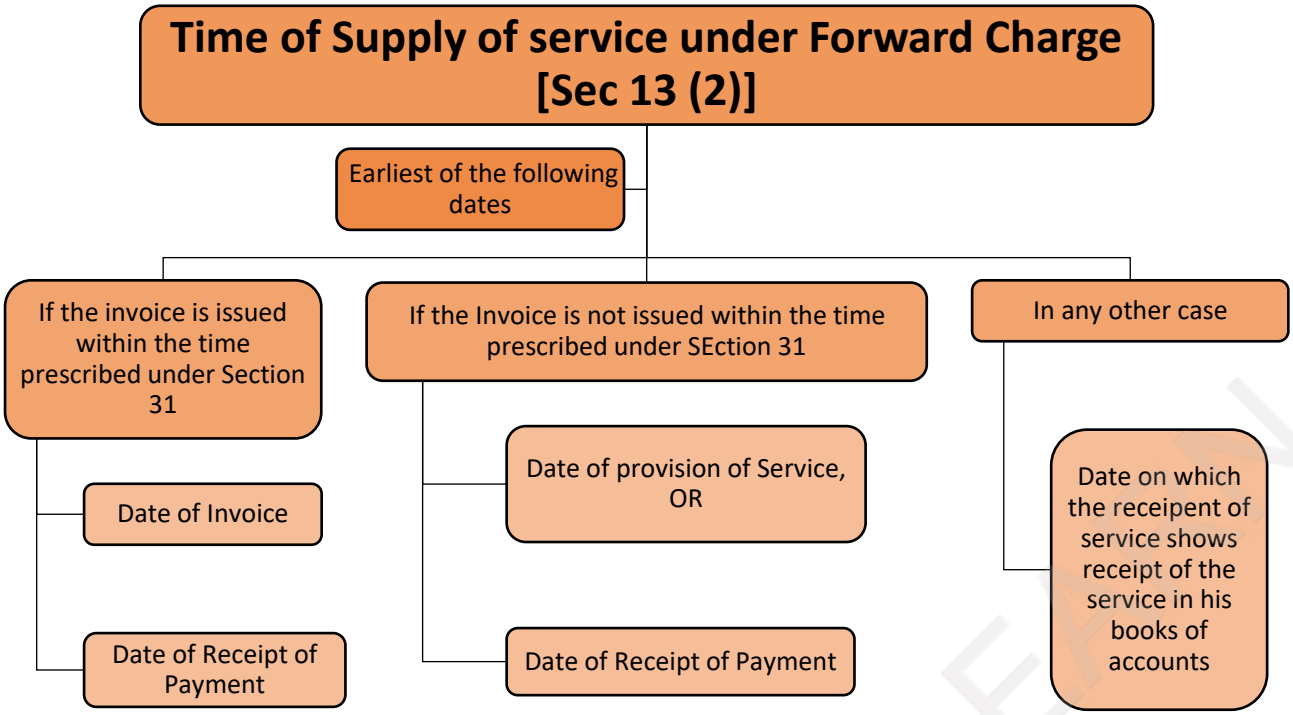


### 3.3 – Time limit for issuance of Invoice for Supply of Services – Services 31

- As per section 31(2) read with rule 47 of CGST Rules, the tax invoice needs to be issued ***either before the provision of service or within 30 days*** (45 days in case of insurance companies/ banking companies/ financial institutions including NBFCs) ***from the date of supply of service.***
- In case of insurance companies/ banking companies/ financial institutions including NBFCs/ telecom companies/ notified supplier of services making taxable supplies between distinct persons as specified in section 25, invoice may be issued ***before or at the time of recording such supply in the books of account or before the expiry of the quarter during which the supply was made*** [Second proviso to rule 47]
- In case of continuous supply of services, the invoice should be issued either
  i. **on/ before the due date of payment or**
  ii. **before/ at the time when the supplier of service receives the payment, if the due date of payment is not known**
  iii. **on/ before the date of completion of the milestone event when the payment is linked to completion of an event [Section 31(5)].**

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***Continuous supply of Services [Section 2(33)*** *– means*

- *a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis*
- *under a contract*
- *for a period exceeding 3 months with periodic payment obligations and*
- *includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.*

- In case of cessation of supply of services before completion of supply, the invoice (to the extent of the supply made before such cessation) should be issued ***at the time when the supply ceases*** [Section 31(6)]

### 3.4 – Time of supply of Vouchers exchangeable for Services – Section 13(4)

- The term voucher has already been explained under the Heading "Time of Supply of Goods".
- The time of supply of vouchers that are exchangeable for services is stipulated as the
  - Date of issue of the voucher if the supply is identifiable at that point, or
  - Date of redemption of the voucher in other cases.

### 3.5 - Residual case - Section 13(5)

- If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 13, in the following manner:
  - Date on which periodical return for the period is required to be filed, or
  - In any other case, date on which GST is paid.

### 3.6 - Enhancement of value on account of interest/late fee etc. for delayed payment of consideration - Section 13(6)

- The provisions for time of supply in case of addition in value by way of interest, late fee/penalty for delayed payment of consideration are the same for goods and services.
- Section 13(6) prescribes that time of supply in case of addition in value by way of interest/ late fee/penalty for delayed payment of consideration for a service is the
  - Date on which the supplier receives such addition in value.

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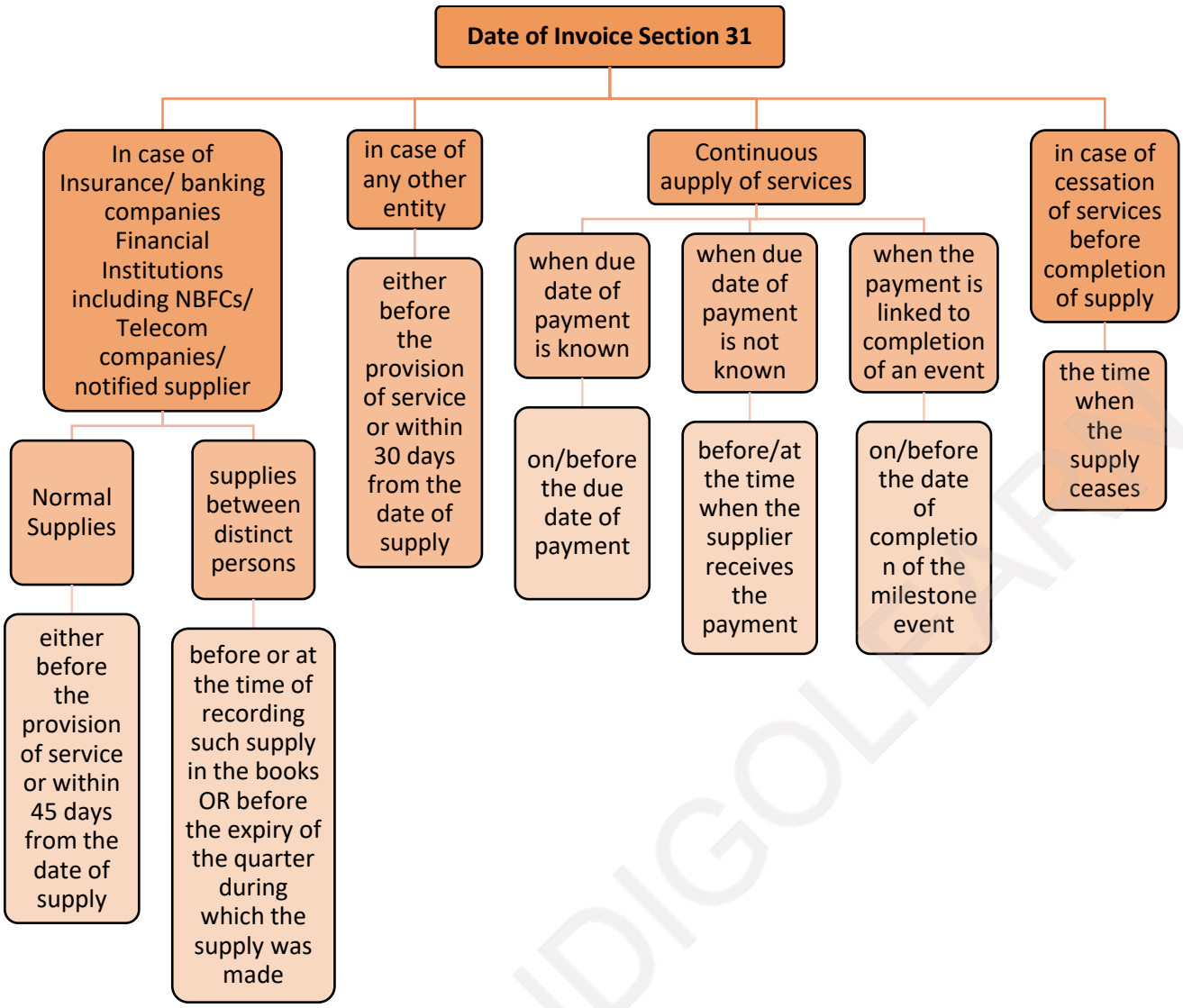


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## 4. TIME OF SUPPLY FOR CHANGE IN RATE OF TAX – SECTION 14

| Sec. | Point | Provision |
|---|---|---|
| 14 | Applicability | This section applies where there is a change in the rate of tax in respect of goods or services or both. |
| 14 | Overriding effect | This section applies notwithstanding anything contained in section 12 or section 13 |
| 14 | Certain acronyms | (a) DOI = Date of Issue of invoice by the supplier.<br>(b) DOS = Date of supply of goods or services or both<br>(c) DOC = Date of change in the rate of tax<br><br>(d) DOP = Date of receipt of payment i.e., date on which supplier receives payment with respect to supply, being earlier of —<br>♦ DOPE = Date on which the Payment is Entered in his books of account<br>♦ DOPB = Date on which the payment is credited to his bank account.<br>DOP = DOPB, if 'DOPB' > 'DOC + 4 working days' : The date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax. |

| Determination of Time of Supply (TOS) | | | | |
|---|---|---|---|---|
| 14 | DOS is - | DOI is - | DOP is - | Then, TOS is - |
| (a)(i) | Before DOC | After DOC | After DOC | TOS = DOP or DOI, whichever is earlier |
| (a)(ii) | Before DOC | Before DOC | After DOC | TOS = DOI |
| (a)(iii) | Before DOC | After DOC | Before DOC | TOS = DOP |
| (b)(i) | After DOC | Before DOC | After DOC | TOS = DOP |
| (b)(ii) | After DOC | Before DOC | Before DOC | TOS = DOP or DOI, whichever is earlier |
| (b)(iii) | After DOC | After DOC | Before DOC | TOS = DOI |
| | Section 14 propounds majority rule [Analysis] : Section 14 is based on majority rule, as follows —<br>If two of three dates (DOS, DOI and DOP) fall on one side, ToS would lie on that side.<br>Further, ToS would be DOI or DOP only.<br>If DOI and DOP both fall on same side, then, TOS = Earlier of DOL and DOP. | | | |

**Note:**

- Above concept of Section 14 does not apply to goods since time of supply in case of goods is date of invoice i.e., actual date of invoice or last date when invoice is ought to have been issued whichever is earlier.

### Special procedure for determining the time of supply of services in certain cases:

With effect from 01.04.2019, supply of services by a landowner to a developer by way of

i. transfer of transferable development rights (TDR) or floor space index (FSI);

ii. granting of long-term lease,

for construction of residential apartments have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate or first occupation of the project, whichever is earlier, and tax is paid on them.

Such exemption for TDR, FSI, long term lease (premium) shall not be available in case of flats which remain un-booked on the date of issuance of completion certificate or first occupation of the project, whichever is earlier. The promoter (developer) shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of (i) value of development rights and/or FSI, or (ii) upfront amount paid for long term lease, as is attributable to such un-booked residential apartments.

For such persons, the liability to pay tax on, -

a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);

b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;

c) the upfront amount paid by him for long term lease of land relatable to construction of residential apartments in the project; and

d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI),

shall arise on the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

***[Notification No. 6/2019 CT (R) dated 29.03.2019/ Notification No. 6/2019 IT (R) dated 29.03.2019]***

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ILLUSTRATIONS

### Illustration 1

Royal Sweet Co., Delhi, a registered supplier, has furnished the details of the following few transactions which took place in November, 20XX:

| S.No. | Date | Particulars | Date of Invoice | Amount (Rs.) |
|---|---|---|---|---|
| I. | 11.11.20XX | Payment made to an advocate in Delhi | 07.07.20XX | 1,25,000 |
| II. | 20.11.20XX | Paid sitting fees to Director from Haryana for meeting in Delhi on 15.10.20XX [Inter-State supply] | 15.10.20XX | 75,000 |

Assume the rates of taxes to be as under: -

| Particulars | Rate |
|---|---|
| CGST | 9% |
| SGST | 9% |
| IGST | 18% |

You are required to compute GST [CGST, SGST/IGST, as the case maybe] payable for themonth of November, 20XX along with time of supply of the afore mentioned activities.

### Illustration 2.1

Explain the meaning of the term "date of receipt of payment" as per section 13 of theCGST Act,2017.

### Illustration 2.2

M/s. Ramchandra Associates has received some taxable services from Mohan Dalal (P)Ltd. on 12.01.20XX by making a cash payment of Rs. 5,00,000 on same day.

Payment was entered in the books of accounts of

- M/s. Ramchandra Associates on 16.01.20XX
- Mohan Dalal (P) Ltd. on 20.01.20XX.

Invoice was issued by Mohan Dalal (P) Ltd. on 18.01.20XX. Determine the time of supplyin the given case.

### Illustration 3

Determine the time of supply in the following cases assuming that GST is payable under reverse charge:

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| S. No | Date of receipt of goods | Date of payment by recipient of goods | Date of issue of invoice by supplier of goods |
|---|---|---|---|
| (i) | July 1 | August 10 | June 29 |
| (ii) | July 1 | June 25 | June 29 |
| (iii) | July 1 | Part payment made on June 30 and balance amount paid on July 20 | June 29 |
| (iv) | July 5 | Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30 | June 1 |
| (v) | July 1 | Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26 | June 29 |
| (vi) | August 1 | August 10 | June 29 |

### Illustration 4

Determine the time of supply in the following cases assuming that GST is payable underreverse charge:

| S. No | Date of payment by recipient of services | Date of issue of invoice by supplier of services |
|---|---|---|
| (i) | August 10 | June 29 |
| (ii) | August 10 | June 1 |
| (iii) | Part payment made on June 30 and balance amount paid on September 1 | June 29 |
| (iv) | Payment is entered in the books of account on June 28 and debited in recipient's bank accounton June 30 | June 1 |
| (v) | Payment is entered in the books of account on June 30 and debited in recipient's bank accounton June 26 | June 29 |

### Illustration 5

Kabira Industries Ltd engaged the services of a transporter for road transport of a consignment on 17th June

- and made advance payment for the transport on the same date, i.e., 17th June.
- However, the consignment could not be sent immediately on account of a strike inthe factory, and instead was sent on 20th July.
- Invoice was received from the transporter on 22nd July.What

is the time of supply of the transporter's service? Note:

Transporter's service is taxed on reverse charge basis

### Illustration 6

Raju Pvt Ltd. receives the order and

- advance payment on 5th January for carrying out an architectural design job.
- It delivers the designs on 23rd April. By oversight, no invoice is issued at that time,and it is issued much later, after the expiry of prescribed period for issue of invoice.

When is the time of supply of service?

### Illustration 7

Investigation shows that 150 cartons of ceramic capacitors were dispatched on 2ndAugust, but no invoice was made, and the cartons were not entered in the accounts.

There was no evidence of receipt of payment.

What is the time of supply of 150 cartons for the purpose of payment of tax?

### Illustration 8

An order is placed on Ram & Co. on 18th August for supply of a consignment ofcustomised shoes.

- Ram & Co. gets the consignment ready and informs the customer and issues theinvoice on 2nd December.
- The customer collects the consignment from the premises of Ram & Co. on 7thDecember and electronically transfers the payment on the same date,
- which is entered in the accounts on the next day, 8th December

What is the time of supply of the shoes for the purpose of payment of tax?

### Illustration 9

Sodexo **meal coupons** are sold to a company on 9th August for being distributed to theemployees of the said company.

The coupons are valid for six months and can be used against purchase of food items. The employees use them in various stores for purchases of various edible items on different dates throughout the six months.

What is the date of supply of the coupons?

### Illustration 10

A firm of advocates

- issues invoice for services to ABC Ltd. on 17th Feb.
- The payment is contested by ABC Ltd. on the ground that on account of negligence of the firm, the company's case was dismissed by the Court for non-appearance, which necessitated further appearance for which the firm is billing the company.
- The dispute drags on and finally payment is made on 3rd November.Identify

the time of supply of the legal services.

Note: Legal services are taxable on reverse charge basis.

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### Illustration 11

Modern Security Co. provides service of testing of electronic devices. In one case, it tested a batch of devices on 4th and 5th September but could not raise invoice till 19th November because of some dispute about the condition of the devices on return.

The payment was made in December.

What is the method to fix the time of supply of the service?

### Illustration 12 (May 2018)

M/s Mansh and Vansh Trading Company, a registered supplier, is liable to pay GSTunder forward charge.

Determine time of supply from the following information furnished by it:

| | |
|---|---|
| Goods supplied on | 3rd Oct |
| Invoice issued on | 5th Oct |
| Payment received on | 9th Oct |

### Illustration 13 (Past Exam)

Mr. Lakhan provides Continuous Supply of Services (CSS) to M/s TNB Limited. Hefurnishes the following further information:

| | | |
|---|---|---|
| (i) | Date of commencement of providing CSS | 01-10-2017 |
| (ii) | Date of completion of providing CSS | 31-01-2018 |
| (iii) | Date of receipt of payment by Mr.Lakhan | 30-03-2018 |

Determine the time of supply of issue of invoice as per provisions of CGST Act, 2017, inthe following circumstances:

1. If no due date of payment is agreed upon by both under the contract of CSS
2. If payment is linked to the completion of service
3. If M/s TNB Limited has to make payment on 25-03-2018 as per the contract between them.

### Illustration 14 (Past Exam)

On 4th September 2017, V.R. Mehman, a famous music composer received Rs.3 crore of consideration from M/s Zilmil Music Co. Ltd. for sale of copyright of his original music album.

He finished his work and make available the CD to the music company on 20th July and raised invoice on 24th July.

What will be the time of supply as per CGST Act, 2017? Note: Above

services is taxable under Reverse Charge basis.

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### Illustration 15

XYZ & Co., a firm of chartered accountants issued invoice rendered to Mr.A on 7th September 2017.

Determine time of supply in the following independent cases:

1. Provision of service completed on 1st August 2017
2. Provision of service completed on 14th August 2017
3. Mr. A made payment on 3rd August 2017 where provision of service wasremaining to be completed
4. Mr. A made payment on 15th September 2017 provision of service was remainingto be completed

### Illustration 16.1

M/s. Wanderlust Travels (P) Ltd. purchased a bus chassis from M/s. Krishi Motors Ltd. fora consideration of Rs. 90 Lakhs on 01.10.20XX.

- M/s. Wanderlust Travels (P) Ltd. sent the bus chassis for body building to M/s. Bhagwant Fabricators and paid in advance the total consideration of Rs. 25.00 lakhon 15.10.20XX.
- M/s. Bhagwant Fabricators, after completing the bus body, informed M/s. Wanderlust Travels (P) Ltd for carrying out the inspection of work done on 05.11.20XX
- Wanderlust Travels (P) Ltd visited the workshop of M/s. Bhagwant Fabricators on 08.11.20XX and confirmed that the bus body was in accordance with the terms of contract.

The last date of issuing by M/s. Bhagwant Fabricators invoice is:

a. 15.10.20XX
b. 08.11 20XX
c. 08.12.20XX
d. 05.12.20XX

### Illustration 16.2

Banke Bihari (Pedewala), is a famous sweets maufacturer, located and registered inMathura, Uttar Pradesh.

- He received an order for 200 Kg. of sweets on 2nd May,2019 from M/s. Ghoomghoom Travels (P) Ltd., located and registered in same locality of Mathura for a total consideration of Rs. 1,00,000/-.
- All 200 Kg. sweets were delivered to M/s. Ghoomghoom Travels (P) Ltd. on 5th May,2019, but without invoice, as accountant of Mr. Banke Bihari was on leave on that day.
- However, the invoice was raised for the same on 6th May, 2019, when the accountant joined the office after leave. Payment in full was made on 7th May, 2019.

Determine the time of supply of goods in this case.

(a) 2nd May, 2019
(b) 5th May, 2019

(c) 6th May, 2019

(d) 7th May, 2019

### Illustration 16.3

Chiku Traders is a registered supplier of plastic goods. On 10th April, 2018, Chiku Traders received an order from Neelu Traders for supply of a consignment of plasticgoods.

- Chiku Traders gets the consignment ready by 15th April, 2018.
- The invoice for the consignment was issued the next day, 16th April, 2018.
- Neelu Traders collects the consignment from the godown of Chiku Traders on 25th April, 2018 and hands over the cheque towards payment on the same date.
- The said payment is entered in the books of accounts of Chiku Traders on 26th April,2018 and amount is credited in their bank account on 27th April, 2018.

Determine the time of supply of the plastic goods supplied by Chiku Traders to NeeluTraders as per the provisions of CGST Act, 2017

### Illustration 17

Mr. Mahendra Sharma, an interior decorator registered at Ahmedabad (Gujarat),provided service to one of his clients XYZ Company Ltd., registered at Pune (Maharashtra).

- The provision of service was completed on 10-08-2018 and payment received wasentered in the books of Mr. Mahendra Sharma on 11-08-20XX.
- With effect from 16/08/20XX, applicable GST rate was increased from 5% to 12%.
- However, payment for the service received was credited in his bank account on 17/08/20XX and invoice for the same was raised on 23-08-20XX.
- Mr. Mahendra Sharma claimed that he is liable to pay IGST @ 5%. But the department took the view that he is liable to pay IGST @12%.
- Examine the correctness of Mr. Mahendra Sharma's contention and determine thetime of supply and applicable rate of tax as per the statutory provisions.

Would your answer undergo any change in the above case if the payment was creditedto the bank account on 14-08-20XX instead of 17-08-20XX?

Note: You may assume that all days are working days

### Illustration 18

Determine Time of Supply from following particulars:

1. On 8-9-20XX community hall booked for a marriage. Sum agreed is Rs.1,20,000.Advance of Rs.20,000 recorded in books of accounts. On 10-9-20XX advance is credited in Bank account.
2. On 2-11-20XX marriage held in community hall. On 18-12-20XX invoice is Issued for Rs.1,20,000 indicating balance Rs.1,00,000 payable on 22-12-20XX balance Rs.1,00,000 is recorded in books of account. On 24-12-20XX payment of Rs.1,00,000is credited in bank account

# 6. PLACE OF SUPPLY

Contents

- Understanding inter state and intra state supply.
- Understanding the importance of place of supply.
- Understanding place of supply when supplier and recipient are located in India.
- Understanding place of supply when supplier or recipient are located outside India.

In this chapter, we will discuss various sections of IGST Act which helps in determining the place of supply.

## 1. INTER-STATE SUPPLY - SECTION 7 OF IGST ACT

### 1.1 - Supply of goods

- In case of supply of goods, the two important determining factors are –
    - ***Location of the supplier*** and
    - ***Place of supply***
- Where the location of the supplier and the place of supply are in ***two different states or union territories***, the supply shall be treated as inter-state supply.
- Supply of goods ***imported*** into the territory of India, till they ***cross the customs frontiers*** of India shall be treated to be a supply of goods in the course of inter-State trade or commerce.

### 1.2 - Supply of services

- In case of supply of services, the two important determining factors are –
    - ***Location of the supplier*** and
    - ***Place of supply***
- Where the location of the supplier and the place of supply are in ***two different states or union territories***, the supply shall be treated as inter-state supply.
- Supply of services ***imported*** into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

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### 1.3 - Deemed inter-state supply

The supply of ***goods or services*** shall be treated as inter-state supply when –

- the ***supplier*** is located ***in India*** and the ***place of supply is outside India***;
- supply is made ***to or by*** a ***Special Economic Zone*** developer or a Special Economic Zone unit; or
- supply is ***made in the taxable territory***, not being an intra-State supply and ***not covered elsewhere*** in this section.

## 2. INTRA-STATE SUPPLY - SECTION 8 OF IGST ACT

### 2.1 Supply of goods

- In case of supply of goods, the two important determining factors are –
  - ***Location of the supplier*** and
  - ***Place of supply***
- Where the location of the supplier and the place of supply are in ***same state or union territory***, the supply shall be treated as intra-state supply.

### 2.2 Exceptions

There are certain cases where the supply shall not be treated as intra-state irrespective of the fact that the location of the supplier and place of supply are in same state.

These exceptions are –

- supply of goods ***to or by*** a ***Special Economic Zone*** developer or a Special Economic Zone unit;
- goods ***imported*** into the territory of India till they cross the customs frontiers of India; or
- supplies ***made to a tourist*** referred to in section 15.

### 2.3 Supply of services

- In case of supply of services, the two important determining factors are –
  - ***Location of the supplier*** and
  - ***Place of supply***
- Where the location of the supplier and the place of supply are in ***same state or union territory***, the supply shall be treated as intra-state supply.
- However, intra-State supply of services shall ***not include*** supply of services ***to or by*** a ***Special Economic Zone*** developer or a Special Economic Zone unit.

### 2.4 Distinct establishments

- ***Establishment*** shall mean a ***branch, an agency or a representative office***, through which a person is ***carrying on his business***.

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- Where a person has –
    - an establishment ***in India*** and any other establishment ***outside India***;
    - an establishment ***in a State or Union territory*** and any other establishment ***outside that State or Union territory***; or
    - an establishment in ***a State or Union territory*** and any ***other establishment registered within that State or Union territory***, then

such establishments shall be treated as ***establishments of distinct persons***.

## 3. SUPPLIES IN TERRITORIAL WATERS - SECTION 9 OF IGST ACT

Where the ***location of the supplier or the place of supply is in the territorial waters***, then such location of such supplier or the place of supply shall be ***deemed*** to be in the ***coastal State or Union territory where the nearest point of the appropriate baseline is located.***

Note – Territorial waters extend ***upto 12 nautical miles*** from the closest baseline.

## 4. PLACE OF SUPPLY OF GOODS OTHER THAN SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA - SECTION 10 OF IGST ACT

Section 10 deals with determination of place of supply in various cases of supply of goods except imports or exports. The provisions contained in the Section are elaborated hereunder –

### 4.1 Supply involves movement of goods - Section 10(1)(a)

Where the supply involves movement of goods the place of supply of such goods shall be the ***location of the goods*** at the time at which the ***movement of goods terminates for delivery to the recipient***.

Such movement may be caused by the supplier or the recipient or by any other person.

***Example*** –
What will be the place of supply if Mr. Raj of Delhi visits a mall in Madhya Pradesh and buys a shirt at the mall?

In this case, there is movement of goods to Mr. Raj and it is to be noted that the movement of goods ***for delivery to the recipient*** ends at the mall itself where it is handed over to Mr. Raj. Thus, in this case the place of supply will be Madhya Pradesh.

However, if Mr. Raj had given his address and told the supplier to send the goods to Delhi, the place of supply would have been Delhi as the delivery to the recipient i.e. Mr. Raj would have end there.

Thus, it is very important to check that what is the location where the delivery to the recipient terminates.

Note: In case of goods purchased over the counter in one state and then transported to another state by buyer then the place of supply would be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of supplier where the address of the said person is not recorded in the invoice.

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### 4.2 Supply involving 'Bill to ship to' model - Section 10(1)(b)

When the ***billing address and shipping address of the goods are not same***, it comes under 'Bill to ship to' model.

***Example –***

Mr. Anil of Madhya Pradesh got an order from Mr. Ajay of Gujarat to supply him 10000 shirts. Mr. Anil gives the order to Mr. Ashok of Gujarat and tells him to supply the shirts to Mr. Ajay.

In this case, the invoice raised by Mr. Ashok will be billed to Mr. Anil but the goods will be shipped to Mr. Ajay.

In such cases, where the goods are delivered to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, it shall be ***deemed that the said third person has received the goods*** and the ***place of supply*** of such goods ***shall be the principal place of business of such person***.

Thus, in our example, it shall be deemed that the goods are received by Mr. Anil and the place of supply will be Madhya Pradesh.

It is important to note that the above transaction can be carried out ***before or during movement of goods*** i.e. if the goods are already in transit but the supplier is directed to deliver the goods to some other location, Section 10(1)(b) will be attracted.

### 4.3 - Supply does not involve movement of goods - Section 10(1)(c)

Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the ***location of such goods at the time of the delivery to the recipient.***

***Example –***

Mr. Bhawani of Maharashtra opens a new branch office at Haryana. He purchases a building for office from a builder based in Haryana. He also enters into a separate contract with the builder for purchase of pre-installed office furniture and fixtures in the building.

Though there will be no GST liability on purchase of building (Schedule III) but the office furniture and fixtures will be liable to GST.

Since there is no movement of office furniture and fixtures, the place of supply of such goods is their location at the time of delivery to the recipient i.e. Haryana.

### 4.4 – Supply involving purchasing goods Over the Counter in one state and transported to another state by the buyer – Section 10(1)(ce)

Where the ***supply of goods*** is made to a person ***other than a registered person***, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c) of section 10, be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.
POS in case of OTC sales to unregistered persons is as follows:

| | |
|---|---|
| Where the address of the unregistered person is recorded in the invoice. | • POS is location as per address of unregistered person recorded in the invoice |
| Where the address of the unregistered person is not recorded in the invoice. | • POS is location of the supplier |

### 4.4 - Supply involving installation or assembly of goods - Section 10(1)(d)

Where the goods are assembled or installed at site, the place of supply shall be the ***place of such installation or assembly.***

***Example*** –
Mr. Krunal of Goa purchases a machine from Mr. Kapil of Goa for being installed in its factory at Gujarat. Since, the machine is installed at Gujarat, the place of supply will be Gujarat.

### 4.5 - Supply of goods on board or conveyance - Section 10(1)(e)

Where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the ***location at which such goods are taken on board.***

***Example*** –
Mr. Chandra has 200 shirts with him for the purpose of sale and he boards the Mumbai-Jaipur train at Surat. He sells 10 shirts to Mr. Mohan at Kota (Rajasthan) in the train journey.
Since, the goods were taken on board by him at Surat, the place of supply will be Surat (Gujarat).

### 4.6 - Situation where place of supply cannot be determined - Section 10(2)

Where the place of supply of goods cannot be determined, the place of supply shall be determined in ***such manner as may be prescribed***.
Note: In case of supplier of online money gaming, not located in taxable territory shall be liable to pay IGST. Supplier is required to obtain a single registration. Person who is located in taxable territory and representing him shall be liable to pay tax. If there is no such, they must appoint such person and make him liable.

## 5. PLACE OF SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA - SECTION 11 OF IGST ACT

- In case of ***imports***, the place of supply shall be the ***location of the importer***.
- In case of ***exports***, the place of supply shall be the ***location outside India***.

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## 6. SUMMARY – PLACE OF SUPPLY OF GOODS

| | |
|---|---|
| Involves movement of goods | Location of the goods when goods are delivered to the recipient |
| Bill to Ship to | Principal place of business of the person who caused the delivery of goods |
| Does not involve movement of goods | Location of the goods at the time of delivery |
| Involves assembly or installation of the goods | Place of such installation or delivery |
| Goods supplied on board of a convevance | Location where goods were taken on board |
| Place of supply cannot be determined | In the prescribed manner |

## 7. PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OF SERVICE AND THE LOCATION OF THE RECIPIENT OF SERVICE IS IN INDIA - SECTION 12 OF IGST ACT

Section 12 lists different types of services and place of supply in each of those cases. However, it contains only those services where the location of supplier and recipient are in India.

### 7.1 - General rule - Section 12(2)

The general rule for determination of place of supply is applicable only for the services which are not covered under sub-section 12(3) to 12(14).

The place of supply shall be –

- In case of registered recipient - Location of the recipient
- In case of unregistered recipient –
    - If the address of the recipient is available on records, then such location,
    - If the address of the recipient is not available on records, then location of the supplier of services.

***Example –***

1. Mr. Tej, a Chartered Accountant registered in Telangana is providing services to a Domo Ltd. registered in Mumbai. What will be the place of supply?

The place of supply will be the location of the registered recipient. Since, the company is registered in Maharashtra, the place of supply will be Maharashtra.

2. Mr. Shreyansh, a registered person in Gujarat was travelling to Mumbai by car. His car broke down during the journey and he stopped at the local repairing shop at Mumbai. What will be the place of supply?

In this case, since the repair shop would not have address of Mr. Shreyansh, the place of supply will be the location of the supplier of service i.e. Mumbai.

### 7.2 - Services related to immovable property - Section 12(3)

Section 12(3) covers supply of services related to immovable property like –

- services provided by –
    - architects,
    - interior decorators,
    - surveyors,
    - engineers,
    - other related experts,
    - estate agents,
- service provided by way of grant of rights to –
    - use immovable property or
    - carrying out or co-ordination of construction work
- services by way of lodging accommodation by a –
    - hotel,
    - inn,
    - guest house,
    - home stay,
    - club,
    - campsite,
    - house boat or
    - any other vessel
- services by way of accommodation in any immovable property for organising any –
    - marriage or reception,
    - matters related to official, social, cultural, religious or business function
- any service ancillary to the service referred above.

**<u>Place of supply in the above cases –</u>**

***1. General rule –***

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Place of supply of service shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.

***2. Location of immovable property is outside India –***

If the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

***3. Immovable property is located in more than one state or union territory –***

Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as –

- made in each of the respective States or Union territories,
- in proportion to the value for services separately collected or determined
- in terms of the contract or agreement entered into in this regard.

However, in the absence of such contract or agreement, the place of supply shall be determined as per the provisions of Rule 4 which is enumerated below –

1. In case of services provided by way of lodging accommodation by hotel, inn, guest house etc. and its ancillary services – Number of nights stayed in such property.
2. Services provided by way of accommodation in any immovable property for organising any marriage or reception etc. and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, where such property is a single property located in 2 or more contiguous States or Union territories or any other ancillary service – Area of the immovable property lying in each State or Union territory.
3. Services by way of lodging accommodation by a house boat or vessel and its ancillary services – Time spent by the boat or vessel in each such State or Union territories as declared by the service provider.

***Example –***

1. Mr. Ambani, registered in Mumbai, contacted an architect Mr. Aman, registered in Meghalaya to build a villa in Paris. What will be the place of supply?

   In this case, since the location of the immovable property is outside India, the place of supply shall be the location of the recipient i.e. Mumbai.

2. Mr. Ambani was impressed with the work of Mr. Aman and he gave him another contract to build 3 farm houses in Goa, Kerala and Darjeeling. What will be the place of supply in such case?

   In this case, since the location of the property is more than one state, the place of supply shall be all the 3 states or union territory i.e. Goa, Kerala and Darjeeling in proportion to the value of supply.

3. Mr. Arun, registered in Goa, went on a trip to Kerala through a trip organiser named Nature cuddle, registered in Surat. The lodging arrangements were made on a boat which travelled through the cities of Kerala and Karnataka. What will be the place of supply?

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In this case, the place of supply will be both Kerala and Karnataka on the basis of the time spent in each of these states.

**Summary**

| | | |
|---|---|---|
| Place of supply - General rule | → | Location of immovable |
| Property is located outside | → | Location of the recipient |
| Property in more than one state | → | Proportion of value of service as per contract |

**In case of no contract or agreement**

| | | |
|---|---|---|
| Stay at hotel, inn, etc. | → | Number of nights stayed |
| Hotel or inn located in more than one state | → | Area of the property |
| Marriage or reception | → | Area of the property |
| Stay at a house boat | → | Time spent |

## 7.3 - Restaurant and personal grooming services - Section 12(4)

The services covered in Section 12(4) are –

- restaurant and catering services,
- personal grooming,
- fitness,
- beauty treatment,
- health service including cosmetic and plastic surgery

The place of supply for the above-mentioned services shall be the ***location where the services are actually performed***.

***Example –***

Mr. Rohan, registered in Ahmedabad, went on a trip to Indore and had lunch at a restaurant. What will be the place of supply?

Since, the location of the service is Indore, the place of supply shall be Indore.

## 7.4 - Training and performance appraisal services - Section 12(5)

The services covered under Section 12(5) are –

- Training and
- Performance appraisal

The place of supply shall be –

- If the recipient is registered – location of the recipient.
- If the recipient is not registered – location where the services are actually performed.

***Example –***

Mr. Akbar, a Chartered Accountant registered in Delhi is called at Mahabaleshwar by Wipro Ltd. (registered in Kerala) to train the employees on topic of GST. What will be the place of supply?

Since, Wipro Ltd. is a registered person, place of supply will be the location of the recipient i.e. Kerala.

## 7.5 - Admission to an event or amusement park - Section 12(6)

The services covered under Section 12(6) are **admission** to a –

- Cultural event,
- Artistic event,
- Sporting event,
- Scientific event,
- Educational event,
- entertainment event,
- amusement park or
- any other place and services ancillary thereto.

The place of supply shall be the place where the ***event is actually held*** or where the park or such other place is located.

***Example*** –

Mrs. Shreya, registered in Bhopal, went to a cultural event at Mussoorie organised by Jeelo Zindagi (registered in Karnataka). What will be place of supply?

Since, the event is taking place in Mussoorie, the place of supply shall be Mussoorie.

## 7.6 - Organising an event - Section 12(7)

The services covered under Section 12(7) are –

- ***organisation*** of –
    - cultural event,
    - artistic event,
    - sporting event,
    - scientific event,
    - educational event,
    - entertainment event or
- supply of services in relation to a –
    - conference,
    - fair,
    - exhibition,
    - celebration or
    - similar events or
- services ***ancillary*** to organisation of any of the events or services referred above, or
- assigning of ***sponsorship*** to such events.

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The place of supply for such service shall be –

- In case of a ***registered recipient*** – the location of such recipient.
- In case of ***unregistered recipient*** –
  - the location where the ***event is actually held***,
  - but if the location of the ***event is outside India***, then the place of supply shall be ***location of the recipient***.
- In case the ***event is held in more than one state*** and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in ***each of the respective States in proportion to the value for services*** separately collected or determined in ***terms of the contract or agreement*** entered into in this regard.
- In the ***absence of contract or agreement***, the value in apportioned on the basis of ***generally accepted accounting principles [Rule 5]***.

***Example –***

1. Mr. Alpesh, registered in Silvassa, hired WedMeGood, registered in Gurgaon for organising his destination wedding in Dubai. What will be the place of supply in this case?

   Since, Mr. Alpesh is a registered person, the place of supply in this case will be the location of the recipient i.e. Silvassa.

2. Rohit Shetty productions, registered in Mumbai has hired PQP Ltd, registered in Noida, for organising promotional events in different cities of Maharashtra, Gujarat and Rajasthan for their upcoming film Singham 5. What will be the place of supply in this case?

   Since, Rohit shetty productions is registered in Mumbai, the place of supply shall be the location of the recipient i.e. Mumbai.

   It is important to note that the provision related to apportionment of service in multiple states will not apply in this case as the recipient is registered and the place of event is taken as the place of supply only in case of an unregistered recipient.

## 7.7 - Service of transportation of goods - Section 12(8)

The services covered in Section 12(8) is transportation of goods by any means including mail or courier.

***The place of supply will be as follows –***

1. **General rule –**
   - If the ***recipient is registered*** – the ***location of recipient***.
   - If the ***recipient is unregistered*** – the ***location*** at which such ***goods are handed over for their transportation.***

***Example –***

1. Mr. Rohan, registered in Uttar Pradesh hires a transportation company, registered at Delhi for transportation of goods to Gujarat. What will be the place of supply?

   In this case, since the recipient of service i.e. Mr. Rohan is a registered person, the place of supply will be location of the recipient i.e. Uttar Pradesh.

2. Deepali, a CA student from Surat (unregistered) has sent some books via Bluedart courier service, registered at Mumbai to her friend Shilpa staying at Delhi (unregistered). What will be the place of supply?

   In this case, since the recipient of service i.e. Deepali is an unregistered person, the place of supply will be the place where goods are handed over for transportation i.e. Surat.

## 7.8 - Service of transportation of passengers - Section 12(9)

Section 12(9) covers the service of transportation of passengers by any means.

The place of supply will be determined as follows –

- In case the ***recipient is registered*** – the ***location of recipient***.
- In case the ***recipient is unregistered*** –
  - the ***place where the passenger embarks on the conveyance*** for a continuous journey.
  - Where the ***right to passage is given for future use*** and the ***point of embarkation is not known*** at the time of issue of right to passage, the place of supply shall be determined in accordance with the ***provisions of 12(2)***.

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

***Example*** –

1. Mr. Raman, registered in Hyderabad boards the Mumbai – Delhi flight from Mumbai. What will be the place of supply?

   Since Mr. Raman is a registered person, the place of supply shall be the location where he is registered i.e. Hyderabad.

2. What will be the place of supply in the above case if Mr. Raman is an unregistered person and he books a round trip from Mumbai – Delhi – Mumbai?

   Since, Mr. Raman is an unregistered person, the place of supply shall be the place from where he embarks the journey. For Mumbai to Delhi trip, the place of supply shall be Mumbai and for the return trip, the place of supply shall be Delhi.

3. Mr. Raj, a person registered in Jaipur, wins a voucher of Rs. 5,000/- from Hindustan Airlines which can be used within a period of 1 year for booking of tickets. What will be the place of supply?

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Since, Mr. Raj is a registered person, the place of supply shall be his location i.e. Jaipur. If he would have been an unregistered person, we would had to apply the provision of Section 12(2).

### 7.9 - Services on board a conveyance - Section 12(10)

Section 12(10) consist of services on board a conveyance including a vessel, an aircraft, a train or a motor vehicle.

The place of supply in such cases shall be the ***location of the first scheduled point of departure of that conveyance for the journey.***

***Example –***

Mr. Sohan, a registered person in Surat, embarks Mumbai-Jaipur flight from Surat (Gujarat). He took a service of watching a movie at the flight by paying Rs. 500/-. What will be the place of supply?

In this case, the place of supply will be the first scheduled point of departure of the conveyance i.e. Mumbai.

### 7.10 - Telecommunication services - Section 12(11)

The services covered in Section 12(11) includes –

- Telecommunication services,
- Data transfer service,
- Broadcasting,
- Cable,
- Direct to home.

The place of supply in these services will be as follows –

1. Services by way of ***fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna*** –
    - The ***location*** where the telecommunication line, leased circuit or cable connection or dish antenna is ***installed***.
    - However, where the ***leased circuit*** is ***installed in more than one State and a consolidated amount is charged*** for supply of services, the place of supply shall be taken as ***being in each of the respective States or Union territories in proportion to the value for services*** separately collected or determined in ***terms of the contract or agreement*** entered into in this regard.
    - If there is ***no contract or agreement***, the place of supply shall be determined as per ***Rule 6*** i.e., it will be in ***proportion to the number of points*** lying in each such State. The number of points shall be determined as follows –
        - In the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points.

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- Any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point.

***Example –***

A company TQR Ltd. installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company CPL Ltd. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence, one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.

2. ***Post-paid mobile connection and internet services –***

   The location of ***billing address of the recipient*** of services on the record of the supplier of services.

   However, if the ***address of the recipient is not available***, the place of supply shall be ***location of the supplier of services***.

3. ***Prepaid mobile connection and internet services and DTH service –***

   - If the service is taken ***through a selling agent or a re-seller or a distributor*** of subscriber identity module card or re-charge voucher – the place of supply will be ***address of the selling agent or re- seller or distributor*** as per the record of the supplier at the time of supply.
   - If the service is ***received from any other person*** – the place of supply will be the ***location where such pre-payment is received*** or such ***vouchers are sold***.
   - If recharge is done through ***internet banking or other electronic mode of payment*** – the place of supply shall be the ***location of the recipient of services*** on the record of the supplier of services.

4. ***In any other case –***

   - ***Address of the recipient*** as per the records of the supplier of services.
   - If the ***address*** of the recipient is ***not available***, ***location of the supplier*** of services.

***Example –***

1. Mr. Rahul contacted Airtel to install a dish antenna at his home in Bangalore. Airtel is registered in Maharashtra. What will be the place of supply?

   Since, the dish antenna is installed in Bangalore, the place of supply will be Bangalore.

2. Mr. Rajesh went on a trip to Sikkim and purchases a prepaid voucher of Rs. 500/- for his mobile from a distributor. Mr. Rajesh lives in Gujarat. What will be the place of supply?

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Since, the service of prepaid voucher is taken from a distributor, the place of supply shall be the address of the distributor i.e. Sikkim.

3. Mr. Mahesh, located in Mumbai went on a trip to Darjeeling and he made an online recharge of Rs. 500/- from his hotel room in Darjeeling. What will be the place of supply?

   In this case, since the recharge is done through online mode, the place of supply shall the location of recipient on the record of supplier i.e. Mumbai.

## 7.11 - Financial and stock broking services - Section 12(12)

- The place of supply of banking and other financial services, including stock broking services to any person shall be the ***location of the recipient of services on the records of the supplier*** of services.
- If the ***location of recipient of services is not on the records*** of the supplier, the place of supply shall be the ***location of the supplier*** of services.

***Example –***

1. Mr. Mahesh has a bank account in ICICI bank in Karnataka. He visits Delhi for some business work where he want to get a Demand Draft. He went to the branch of ICICI bank in Delhi and got the DD from there. The bank deducted the charges directly from his account with ICICI bank. What will be the place of supply?

   In this case, since Mr. Mahesh already has a account with ICICI bank, the supplier of service i.e. bank has the location of the recipient i.e. Mr. Mahesh on his records. Thus, the place of supply will be location of the recipient of services on the records of the supplier of services i.e. Karnataka.

2. In the above example, what will be the place of supply if Mr. Mahesh gets the DD from Bank of Baroda instead of ICICI.

   Since, Mr. Mahesh doesn't have any account with BOB, the supplier of service i.e. bank does not have the details of the location of the recipient i.e. Mr. Mahesh. Thus, the place of supply will be the location of the supplier i.e. Delhi.

## 7.12 - Insurance services - Section 12(13)

- If the ***recipient is a registered person – location of the recipient***.
- If the ***recipient is an unregistered person – location of the recipient of services on the records of the supplier*** of services.

***Example –***

Tata ltd., registered in Mumbai takes insurance from All India life insurance, registered at New Delhi for the goods stored in the warehouse located in Gujarat. What will be the place of supply? What will be the place of supply if Tata Ltd. was unregistered?

Since, the recipient of service i.e. Tata Ltd. is a registered person, the place of supply will be the location of the recipient i.e. Mumbai.

However, if Tata Ltd. was unregistered, the place of supply would have been the location of the recipient of services on the records of the supplier of services i.e. Gujarat.

## 7.13 - Advertisement services to the Government - Section 12(14)

Section 12(14) covers advertisement services ***provided to*** –

- the Central Government,
- State Government,
- a statutory body or
- a local authority

***The place of supply in the above cases will be*** –

***If a contract or agreement is there*** –

In ***each of such States or Union territories*** and the value of such supplies specific to each State or Union territory shall be in ***proportion to the amount attributable*** to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard.

If there is ***no contract or agreement*** in this regard, the place of supply shall depend upon the ***mode of advertisement***. The method to compute place of supply in such cases is elaborated below ***[Rule 3]***–

1. ***Advertisement in newspapers and publications*** –

   ***Amount payable for publishing*** an advertisement in ***all the editions of a newspaper or publication***, which are published in each State or Union territory.

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

   ***Amount payable for the distribution*** of a specific number of such material in each State or Union territory.

3. ***Advertisements in hoardings*** –

   ***Amount payable*** for the hoardings located in each State or Union territory, place of supply is the place of hoarding.

4. ***Advertisement on trains*** –

   Amount attributable to each State or Union territory calculated in the ***ratio of length of the railway track*** in each of such State or Union territory ***for that train.***

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

   ***Amount payable*** to each State or Union territory for the advertisements on bills pertaining to consumers having billing addresses in each of such State or Union territory.

6. ***Advertisements on railway tickets*** –

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Amount attributable to each State or Union territory calculated in the ***ratio of number of Railway Stations*** in each of such State/Union territory.

7. ***Advertisements on radio stations –***

   ***Amount payable*** to such radio station, which by virtue of its name is part of each State or Union territory.

8. ***Advertisement on television channels –***

   Amount attributable to each State or Union territory calculated ***on the basis of the viewership of such channel*** in each of such State or Union territory. The viewership is derived from –

   - ***Channel viewership figures*** published by the Broadcast Audience Research Council.
   - Figures for the ***last week of a given quarter is used*** for calculating ***viewership for the succeeding quarter***.
   - Where the channel viewership figures relate to a ***region comprising of more than one State or Union territory,*** the viewership figures is calculated in ***ratio of the populations*** of that State or Union territory, as ***determined in the latest Census***.

   The ratio of the viewership figures for each State or Union territory so calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

9. ***Advertisements in cinema halls –***

   ***Amount payable*** to a cinema hall or screens in a multiplex in each State or Union territory.

10. ***Advertisements on internet –***

    Amount attributable to each State/Union territory calculated basis of the ***internet subscribers*** in each of such State or Union territory. The subscribers shall be determined as follows –

    - ***Internet subscriber figures*** published by the Telecom Regulatory Authority of India (TRAI).
    - ***Figures for the last quarter of a given financial year*** will be used for calculating the number of internet subscribers ***for the succeeding financial year.***
    - Where the internet subscriber figures relate to a region comprising of ***more than one State or Union territory,*** the ***subscriber figures*** for a State/Union territory of that region shall be ***calculated in the ratio of the populations*** of that State or Union territory, as **determined in the latest census**.

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The ratio of the subscriber figures for each State or Union territory so calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

***11. Advertisements through SMS –***

Amount attributable to each State or Union territory calculated on the basis of the ***telecom subscribers*** in each of such State or Union territory. The telecom subscribers are calculated as follows –

- Telecom subscribers' figures ***published by the TRAI***.
- Figures ***for a given quarter*** will be used for calculating the subscribers for the ***succeeding quarter***.
- Where such figures relate to a telecom circle comprising of ***more than one State or Union territory***, the subscriber figures for that State or Union territory shall be calculated in the ***ratio of the populations*** of that State or Union territory, ***as determined in the latest census.***

***Example –***

ZL, a statutory body deals with all the advertisement and publicity of the government. It has issued a release order to 'Zee Tv' channel, registered in Mumbai, for telecasting an advertisement relating to one of the schemes of the Government in the month of September 2022. The advertisement will be telecasted in States – Maharashtra, Gujarat, Rajasthan, Madhya Pradesh and Goa. The total value of service is Rs. 15,00,000/- (exclusive of GST).

The viewership figures in last week of June 2022 is as follows –

| | | |
|---|---|---|
| Madhya Pradesh | – | 1,00,000 |
| Gujarat + Rajasthan | – | 3,00,000 |
| Maharashtra + Goa | – | 2,00,000 |

The population figures (in crores) are given below –

| | | |
|---|---|---|
| Madhya Pradesh | – | 80 |
| Gujarat | – | 100 |
| Rajasthan | – | 150 |
| Maharashtra | – | 140 |
| Goa | – | 60 |

Determine the place of supply of service and value of supply attributable to each state.

In case of broadcasting on TV, the apportionment will be done on the basis of viewership figures of the last week of the preceding quarter. Since, we need to find the viewership for the month of September 2022, we will use the figures of the last week of the preceding quarter i.e. April – June. Thus, the viewership figures of last week of June 22 will be used.

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Since, the figures of viewership are combined, we need to apportion them on the basis of population.

Viewership in Gujarat and Rajasthan is 3,00,000. The population of Gujarat is 100 crores and Rajasthan is 150 crores. Thus, the apportioned viewership =

| | | |
|---|---|---|
| Gujarat viewership | = 3,00,000 X 100/250 | = 1,20,000. |
| Rajasthan viewership | = 3,00,000 X 150/250 | = 1,80,000. |

Viewership in Maharashtra and Goa is 2,00,000. The population of Maharashtra is 140 crores and Goa is 60 crores. Thus, the apportioned viewership =

| | | |
|---|---|---|
| Maharashtra viewership | = 2,00,000 X 140/200 | = 1,40,000. |
| Goa viewership | = 2,00,000 X 60/200 | = 60,000. |

Thus, the viewership of each state is as follows –

| | | |
|---|---|---|
| Madhya Pradesh | - | 1,00,000 |
| Gujarat | - | 1,20,000 |
| Rajasthan | - | 1,80,000 |
| Maharashtra | - | 1,40,000 |
| Goa | - | 60,000 |

Thus, the ratio of apportionment between MP:GJ:RJ:MH:GOA = 5:6:9:7:3.

The place of supply for advertising will be all the five states i.e. Madhya Pradesh, Gujarat, Rajasthan, Maharashtra, Goa and the value of supply will be apportioned in the ratio of 5:6:9:7:3.

Thus, value of service –

| | | | |
|---|---|---|---|
| Madhya Pradesh | - | 15,00,000 X 5/30 | = 2,50,000 |
| Gujarat | - | 15,00,000 X 6/30 | = 3,00,000 |
| Rajasthan | - | 15,00,000 X 9/30 | = 4,50,000 |
| Maharashtra | - | 15,00,000 X 7/30 | = 3,50,000 |
| Goa | - | 15,00,000 X 3/30 | = 1,50,000. |

## 8. PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA - SECTION 13 OF IGST ACT

Section 13 contains various provisions to determine the place of supply where either the location of the supplier or the location of the recipient is outside India.

### 8.1 - General rule - Section 13(2)

The general rule for determination of place of supply is ***applicable only for the services*** which are ***not covered under sub-section 13(3) to 13(13)***.

The place of supply shall be –

- the location of the recipient of the service.
- If the location of the recipient is not available, the place of supply shall be the location of the supplier.

It is to be noted that Section 13 is not concerned whether the recipient is registered under GST or not. Hence, whenever the words 'location of the recipient' is written, we have to check the physical location of the recipient and not the location as per registration under GST.

***Example –***

Mr. Tej, a Chartered Accountant registered in Telangana is providing services to a company PQR Ltd. based in UK. What will be the place of supply?

If Mr. Tej has the location of the recipient of the service, the place of supply will be UK. But if Mr. Tej do not have the location of the recipient, the place of supply shall be Telangana.

## 8.2 - Performance based services - Section 13(3)

The place of supply in performance-based services are as follows –

1. ***Goods physically made available by the recipient –***

   If the goods are required to be made physically available by the recipient in order to enable the supplier of service to provide the service, the place of supply shall be the location where the ***services are actually performed.***

   ***Example –***

   M/s ABC Ltd., registered at Gujarat, imported a machinery and the installation services are provided by Mr. Sheldon of USA. Mr. Sheldon visits the location of ABC Ltd. in order to install the machinery. In this case, the place of supply will be the location of where the service is actually performed i.e. Gujarat.

2. ***Service is provided on the goods through a remote location –***

   When the services are provided from a remote location by way of electronic means, the place of supply shall be the ***location where goods are situated at the time of supply of services.***

   ***Example –***

   Microsoft, located in USA, is facing some issues in the server. They contacted Mr. Abhishek of Chennai in order to solve the issues. Mr. Abhishek checked the server online and resolved the issue. In this case, there is no physical movement and the service is provided online. Thus, the place of supply shall be the location where goods are situated i.e. USA.

3. ***Goods imported into India for the purpose of providing service –***

   When the service is provided by temporarily importing the goods in India for repairs or for any other treatment or process and are exported after such repairs or

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treatment or process without being put to any use in India, the ***place of supply shall be determined as per the provisions of Section 13(2).***

***Example –***

In the above example, if the service is imported into India for the purpose of repairs, the place of supply shall be computed as per the provisions of section 13(2) i.e. place of supply shall be the location of the recipient i.e. USA.

4. ***Physical presence of recipient is mandatory –***

In cases where the physical presence of the recipient is mandatory for the supply of service (eg. Salon treatments, haircut, etc.), the place of supply shall be location ***where the service is actually performed.***

***Example –***

Shah rukh called Any Christano, a famous makeup artist of USA, to Film City, Mumbai, to provide him beauty services. In this case, the place of supply would be the location where service is actually performed i.e. Mumbai.

5. ***Services supplied in more than one state or Union territory –***

The place of supply of services supplied in more than one state or union territory shall be ***each of those states or Union territories*** and the value shall be determined in ***proportion to the value for services determined*** in terms of the ***contract or agreement*** entered into in this regard.

If there is no contract or agreement, the value shall be apportioned as per the provisions of Rule 7 which is enumerated below –

- When service is supplied to an individual –

  By applying generally accepted accounting principles.

- When service is supplied on same goods –

  Equally dividing the value of service in each of the States or Union territory where the service is performed.

- When service is supplied on different goods –

  Considering the ratio of the invoice value of goods in each States or Union territory, on which service is performed, as the ratio of the value of the service performed in each State or Union territory.

## 8.3 - Services related to immovable property - Section 13(4)

Section 13(4) covers the services related to immovable property –

- services supplied by experts and estate agents,
- accommodation service by a hotel, inn, guest house, club or campsite,
- grant of rights to use immovable property,

- services for carrying out or co-ordination of construction work, including that of architects or interior decorators.

***Place of supply in the above cases –***

1. ***General rule –***

   Place of supply of service shall be the ***location at which the immovable property is located or intended to be located.***

2. ***Immovable property is located in more than one state or union territory –***

   Where the immovable property is located in more than one State or Union territory, the supply of services shall be treated as –

   - made in ***each of the respective States or Union territories,***
   - in ***proportion to the value*** for services separately collected or determined
   - in ***terms of the contract or agreement*** entered into in this regard.

However, ***in the absence of such contract or agreement,*** the place of supply shall be determined as per provisions of ***Rule 8.***

Rule 8 prescribes that the place of supply shall be determined in the ***same manner as determined in Rule 4*** (discussed in Section 12(3)) –

a. In case of services provided by way of ***lodging accommodation*** by hotel, inn, guest house etc. and its ancillary services –

   ***Number of nights stayed*** in such property.

b. Services provided by way of accommodation in any immovable property for ***organising any marriage or reception*** etc. and in cases of ***supply of accommodation*** by a hotel, inn, guest house, club or campsite, where such ***property is a single property located in 2 or more contiguous States or Union territories*** or any other ancilliary service –

   ***Area of the immovable property*** lying in each State or Union territory.

c. Services by way of ***lodging accommodation by a house boat or vessel*** and its ancillary services –

   ***Time spent*** by the boat or vessel in each such State or Union territories as declared by the service provider.

## 8.4 - Services related to admission or organisation of an event - Section 13(5)

Section 13(5) covers ***admission*** to or ***organisation*** of a –

- Cultural event,
- Artistic event,
- Sporting event,
- Scientific event,
- educational event or
- entertainment event, or
- celebration,
- conference,

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- fair,
- exhibition or
- similar events, and
- services ancillary to such admission or organisation

In the above cases, ***place of supply shall be the place where the event is actually held***.

In case the ***event is held in more than one state*** and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in ***each of the respective States in proportion to the value for services*** separately collected or determined in ***terms of the contract or agreement*** entered into in this regard.

In the ***absence of contract or agreement***, the value in determined as per ***Rule 9***. Rule 9 says that the value shall be determined as per Rule 5 (discussed in Section 12(7)) i.e., apportioned on the basis of ***Generally Accepted Accounting Principles (GAAPs)***.

## 8.5 - Services in taxable territory - Section 13(6)

Where any services referred to in sub-section (3), (4) or (5) is supplied at ***more than one location including a location in the taxable territory i.e. India***, its ***place of supply*** shall be the ***location in the taxable territory***.

***Example*** –

Mr. Chandler of USA is contacted to design a guesthouse in Dubai and in India, what shall be the place of supply in such case?

In this case, the service is supplied in more than one location and one of them is in taxable territory. Thus, the place of supply for the entire service shall be India.

## 8.6 - Services in more than one state or union territory - Section 13(7)

Where the services referred to in sub-section (3), (4) or (5) are supplied in ***more than one State or Union territory***, the place of supply of such services shall be taken as being in ***each of the respective States or Union territories*** and the value of such supplies specific to each State or Union territory shall be in ***proportion*** to the value for services separately collected or determined in ***terms of the contract or agreement*** entered into in this regard.

In the absence of such contract or agreement, the value shall be determined as per the rules prescribed in those sub-sections i.e., Rule 7, 8 or 9.

## 8.7 - Services by banking or financial company and intermediaries - Section 13(8)

The services covered in Section 13(8) are –

- services supplied by a ***banking company***, or a ***financial institution*** or a ***non-banking financial company, to account holders***,
- services by ***intermediaries***,
- services of ***hiring of means of transport*** including yachts but ***excluding aircrafts and vessels*** up to a ***period of 1 month***.

In the above cases, the place of supply shall be the ***location of the supplier of services***.

***Note*** – As per Section 2(13), '***Intermediary***' means –

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

### 8.8 - Service of transportation of goods - Section 13(9)

***With effect from 1.10.2023, Section 13(9) has been omitted. Accordingly, place of supply in above case shall be determined as per Section 13(2).***

### 8.9 - Service of transportation of passengers - Section 13(10)

The place of supply in respect of **passenger transportation services** shall be the place where the ***passenger embarks on the conveyance*** for a continuous journey.

### 8.10 - Service provided on board a conveyance - Section 13(11)

The place of supply of services provided on board a conveyance during the course of a passenger transport operation including services intended to be wholly or substantially consumed while on board, shall be ***the first scheduled point of departure of that conveyance*** for the journey.

### 8.11 - OIDAR services - Section 13(12)

The place of supply of online information and database access or retrieval (OIDAR) services shall be the ***location of the recipient of services***.

It shall be noted that the ***person receiving such services*** shall be ***deemed to be located in the taxable territory*** i.e. India, if ***any two*** of the following non-contradictory ***conditions are satisfied*** –

- the ***location of address*** presented by the recipient of services through internet ***is in the taxable territory,***
- the ***credit card or debit card or store value card or charge card or smart card*** or any other card by which the recipient of services settles payment has been ***issued in the taxable territory,***
- the ***billing address*** of the recipient of services is in the taxable territory,
- the ***internet protocol (IP) address of the device used*** by the recipient of services is in the taxable territory,
- the ***bank of the recipient*** of services in which the ***account used for payment*** is maintained is in the taxable territory,
- the ***country code of the subscriber identity module (SIM) card*** used by the recipient of services is of taxable territory,
- the ***location of the fixed land line*** through which the service is received by the recipient is in the taxable territory.

***Note*** – As per Section 2(17), ***Online information and database access or retrieval (OIDAR)*** services means services whose –

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- ***delivery is mediated by information technology*** over the internet or an electronic network and
- the nature of which renders their supply essentially automated and
- ***involving minimal human intervention*** and
- ***impossible*** to ensure ***in the absence of information technology*** and
- includes electronic services such as –
    - advertising on the internet,
    - providing cloud services,
    - provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet,
    - providing data or information, retrievable or otherwise, to any person in electronic form through a computer network,
    - online supplies of digital content (movies, television shows, music and etc.),
    - digital data storage; and
    - online gaming.

A detailed note on OIDAR is given in the chapter – imports and exports under GST.

## 8.12 - Notified services - Section 13(13)

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

The services notified under Section 13(13) are as follows –

1. ***Research and development services related to pharmaceutical sector –***

    a. ***Integrated discovery and development –***

    This process involves discovery and development of molecules by pharmaceutical sector for medicinal use. The steps include designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.

    b. ***Evaluation of the efficacy of new chemical or biological entities in animal models of disease –***

    This is in vivo research (i.e. within the animal) and involves development of customized animal model diseases and administration of novel chemical in doses to animals to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the service recipient located in non- taxable territory.

    c. ***Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays –***

    This is in vitro research (i.e. outside the animal). An assay is first developed and then the novel chemical is supplied by the service recipient located in non-taxable territory and is evaluated in the assay under optimized conditions.

d. ***Drug metabolism and pharmacokinetics of new chemical entities –***

This process involves investigation whether a new compound synthesized by supplier can be developed as new drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal experiments using rat and mice.

e. ***Safety Assessment/ Toxicology –***

Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development.

f. ***Stability studies –***

Stability studies are conducted to support formulation, development, safety and efficacy of a new drug. It is also done to ascertain the quality and shelf life of the drug in their intended packaging configuration.

g. ***Bio-equivalence and Bioavailability Studies –***

Bio-equivalence is a term in pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bioavailability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action.

h. ***Clinical trials –***

The drugs that are developed for human consumption would undergo human testing to confirm its utility and safety before being registered for marketing. The clinical trials help in collection of information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of safe dosage.

i. ***Bio analytical studies –***

Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measurement of drugs and their metabolites, and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs and metabolites in biological systems.

***Place of supply –***

In the above cases, when the services are ***supplied by a person located in taxable territory to a person located in the non- taxable territory***, the place of supply shall be the ***location of the recipient*** of services subject to fulfilment of the following conditions –

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- supply of services from the taxable territory is provided as per a contract between the service provider located in taxable territory and a service recipient located in non-taxable territory.
- Such supply of services fulfils all other condition in the definition of export of services except the condition that the place of supply is outside India.

2. ***B2B maintenance, repair and overhaul services of aircrafts or aircraft engines/components/parts –***

   Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.

   The ***place of supply*** of services shall be the location of the recipient of service.

## 9. SPECIAL PROVISION FOR TAXABILITY OF SUPPLY OF ONLINE MONEY GAMING BY A PERSON LOCATED OUTSIDE THE TAXABLE TERRITORY TO A PERSON IN INDIA - SECTION 14A

Consequent to the online money gaming becoming taxable by virtue of the amendment in Schedule III of the CGST Act by the CGST Amendment Act, 2023, there was a need for special provisions to be introduced for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India, inter-alia, providing for:

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

Resultantly, with effect from 01.10.2023, ***new section 14A has been introduced*** by the IGST Amendment Act, 2023 which provides as follows:

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

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

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

In case of ***failure to comply*** with the above provisions by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted

in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the IGST Act.

## ILLUSTRATIONS

### Illustration 1.1

Mr. Z, a supplier registered in Hyderabad (Telangana), procures goods from China and directly supplies the same to a customer in US.

With reference to the provisions of GST law, examine whether the said activity of supplyof goods by Mr. Z to customer in US is taxable under GST.

If yes, determine the place of supply of the same.

### Illustration 1.2

Priyank of Pune, Maharashtra enters into an agreement to sell goods to Bisht of Bareilly,Uttar Pradesh.

- While the goods were being packed in Pune godown of Priyank, Bisht got an orderfrom Sahil of Shimoga, Karnataka for the said goods.
- Bisht agreed to supply the said goods to Sahil and asked Priyank to deliver thegoods to Sahil at Shimoga.

You are required to determine the place of supply(ies) in the above situation.

### Illustration 1.3

The place of supply in relation to immovable property is the location of immovable property. Suppose a road is constructed from Delhi to Mumbai covering multiple states.

What will be the place of supply of construction services?

### Illustration 1.4

Quickdeal Enterprises (Ahmednagar, Gujarat) opens a new branch office at Hissar,Haryana.

It purchases a building for office from Ruhani Builders (Hissar) along with pre-installedoffice furniture and fixtures.

Determine place of supply of the pre-installed office furniture and fixtures.

### Illustration 2

Musicera Pvt. Ltd., owned by Nitish Daani - a famous classical singer - wishes toorganise a 'Nitish Daani Music Concert' in Gurugram (Haryana).

- Musicera Pvt. Ltd. (registered in Ludhiana, Punjab) enters into a contract with an event management company, Supriya (P) Ltd. (registered in Delhi) for organising thesaid music concert at an agreed consideration of Rs.10,00,000.
- Supriya (P) Ltd. books the lawns of Hotel Dumdum, Gurugram (registered inHaryana) for holding the music concert, for a lump sum consideration of Rs.4,00,000.

- Musicera Pvt. Ltd. fixes the entry fee to the music concert at Rs.5,000.
- 400 tickets for 'Nitish Daani Music Concert' are sold.
- You are required to determine the CGST and SGST or IGST liability, as the case maybe, in respect of the supplie(s) involved in the given scenario.
- Will your answer be different if the price per ticket is fixed at Rs.450?Note: Rate of CGST and SGST is 9% each and IGST is 18%.

All the amounts given above are exclusive of taxes, wherever applicable

**Illustration 3**

Damani Industries has recruited Super Events Pvt. Ltd., an event management company of Gujarat, for organising the grand party for the launch of its new product at Bangalore.Damani Industries is registered in Mumbai.
Determine the place of supply of the services provided by Super Events Pvt. Ltd. to Damani Industries.
Will your answer be different if the product launch party is organised at Dubai?

**Illustration 4**

Supra Events, an event management company at New Delhi, organizes an award function for Chirag Diamond Merchants of Varanasi (registered in U.P.), at Mumbai.

Determine place of supply of the service supplied by Supra Events.

Will your answer be different, if the award function is organised at Mauritius instead of Mumbai?

**Illustration 5**

Mr. Murthy, an unregistered person and a resident of Pune, hires the services of M/s SunLtd. an event management company registered in Delhi, for organising of the new product launch in Bengaluru.

(i) Determine the place of supply of services provided by M/s Sun Ltd.
(ii) What would your answer be in case the product launch takes place in Bangkok?

What would your answer be in case Mr. Murthy is a registered person and productlaunches take place in Bengaluru and Bangkok?

**Illustration 6**

Determine the place of supply for the following independent cases under the IGST Act,2017:

- Mega Events, an event management company at Kolkata, organises two award functions for Shagun Jewellers of Chennai (Registered in Chennai) at New Delhi andat Singapore.
- Crown Planners (Bengaluru) is hired by Dr. Banta (unregistered person based inKochi) to plan and organise his son's wedding at Mumbai.

Will your answer be different if the wedding is to take place at Malaysia?

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### Illustration 7

PQ', a statutory body, deals with the all the advertisement and publicity of the Government. It has issued a release order to 'Moon Plus' channel (registered in State A') for telecasting an advertisement relating to one of the schemes of the Government in themonth of September 20XX.

- The advertisement will be telecasted in the States of 'A', 'B', 'C', 'D' and 'E'. The totalvalue of the service contract entered into between Moon Plus' and "PQ' is 10,00,000(exclusive of GST).
- You are required to determine the place of supply of the services in the instant caseas also the value of supply attributable to the States of 'A', 'B, C, D' and 'E'.
- Further, compute the GST liability (CGST & SGST or IGST, as the case may be) of 'Moon Plus' as also advise it as to whether it should issue one invoice for the entirecontract value or separate State-wise invoices.

The other relevant information is given hereunder:

| States | Viewership figures of 'Moon Plus' channel in the last week of June 20XX as provided by the Broadcast Audience Research Council | |
|---|---|---|
| A | 50,000 | |
| B + C | 1,00,000 | |
| D + E | 50,000 | |
| **States** | **Population as per census (in crores)** | |
| A | 50 | |
| B | 180 | |
| C | 20 | |
| D | 100 | |
| E | 25 | |
| **CGST** | **SGST** | **IGST** |
| 9% | 9% | 18% |

### Illustration 8

Mr. Mahendra Goyal, an interior decorator provides professional services to Mr. Harish Jain in relation to two of his immovable properties
Determine the Place of supply in the transaction below as per the provisions of GST law in the following independent situations

| Case | Location of Mr. Mahendra Goyal | Location of Mr. Harish Jain | Property situated at |
|---|---|---|---|
| 1 | Delhi | Maharashtra | New York (USA) |
| 2 | Delhi | New York | Paris (France) |

Explain the relevant provisions of law to support your conclusions

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### Illustration – MCQ1

Aflatoon Spares (P) Ltd., located and registered in Haryana, supplied spare parts (FOBbasis) to Mr. Laxmi Khurana, an unregistered person, located in Rajasthan.

- Mr. Laxmi Khurana booked the courier himself with Black Dart Courier (P) Ltd.,registered in Delhi for delivery in Rajasthan.
- Black Dart Courier (P) Ltd. picked up the goods from Haryana and delivered thecourier in Rajasthan while passing through the State of Uttar Pradesh.

Determine the place of supply of service provided by Black Dart Courier (P) Ltd. to Mr.Laxmi Khurana:

a) Haryana
b) Delhi
c) Rajasthan
d) Uttar Pradesh

### Illustration – MCQ 2

M/s. Build well Engineering Consultants, located and registered in Gurugram, Haryana provided consultancy services to M/s. Taj India Ltd., (located and registered in Mumbai,Maharashtra) for its hotel to be constructed on land situated in Dubai.

Determine the place of supply of consultancy services provided by M/s. Build wellEngineering Consultants to M/s. Taj India Ltd.:

a) Gurugram, Haryana
b) Mumbai, Maharashtra
c) Dubai
d) None of the above

### Illustration – MCQ 3

Mr. Salman Khan, a resident of Mumbai, has booked a Videocon D2H connection at hisother home in Delhi.

- His friend Shah Rukh Khan, is resident of Kerala, paid the charges for Salman's D2H connection in Delhi at the time of actual installation. Mr. Shah Rukh Khan went to Kolkata after making the payment.
- Both Salman Khan and Shah Rukh Khan are not registered in GST.

Determine the place of supply of D2H service provided by Videocon to Mr. SalmanKhan:

a) Mumbai
b) Kerala
c) Delhi
d) Kolkata

### Illustration 9

ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation toprocuring goods from India.

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- The company identifies the prospective vendor, reviews product quality andpricing and then shares the vendor details with the foreign customer.
- The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods.
- ABC Pvt. Ltd. charges its foreign customer cost **plus** 10% mark up for servicesprovided by it.
- For the month of December, company has charged US $ 1,00,000 (exclusive ofGST) to its foreign customer for the services provided by it.

With reference to the provisions of GST law, examine whether the company is liable topay IGST or CGST and SGST?

Note:

1. GST@ 18% is applicable on the supply of support service provided by ABC Pvt.Ltd.
2. Rate of exchange = Rs. 65 per US $

### Illustration 10.1

What is the place of supply where the goods or services are supplied on board aconveyance, such as a vessel, an aircraft, a train, or a motor vehicle?

### Illustration 10.2

The provider of AMC service outside India has entered into an agreement for an Aircraftcompany PQR Ltd. located in India.

Service provider provides, repair service to the aircraft when it was in India.

- The place of supply of service in this case is:
  a. Outside India b. In India

### Illustration 10.3

If XYZ Ltd., a company based out of a Bangalore awards online maintenance contract of its server located in Mumbai office to Y Inc., a company based out of USA and as per theterms of the online maintenance, X Inc. shall be required to perform regular maintenance from USA using internet.

Place of Supply is……

a. Bangalore
b. Mumbai
c. USA

### Illustration 10.4

Mr. Y residing in Ahmedabad, appoints an architect in Los Angles, USA to provide Indiantraditional home design for his proposed construction at Los Angles.

What is the place of supply?

a. Los Angles
b. Ahmedabad
c. Delhi

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# 7. VALUE OF SUPPLY

Contents

- Value of supply made to unrelated person with price as sole consideration
- Inclusions to value of supply
- Exclusions to value of supply
- Treatment of discount
- Valuation Rules

## 1. INTRODUCTION

- GST is payable
    - on supply of goods and / or services for a consideration in the course of or furtherance of business;
    - on certain supplies made without a consideration as specified in Schedule I to the CGST Act.
- GST is an ***ad valorem levy***, i.e., it is levied as a ***percentage of the value of supply*** of goods and/or services,
- ***Section 15*** of the CGST Act provides ***common provisions for determining the value of supply*** of goods and services.
- It provides the mechanism for determining the value of a supply which is made between unrelated persons and when price and only the price is the sole consideration for the supply.
- ***When value cannot be determined under section 15*** as also in certain specific cases, the same is determined using ***Chapter IV: Determination of Value of Supply of CGST Rules***.
- Supplies made solely for non-monetary consideration, or for part monetary consideration and part non-monetary consideration, or involving additional consideration, or to related persons, or for specific classes of supply are dealt section 15(4) & (5) read with the Chapter IV: Determination of Value of Supply of CGST Rules.

## 2. SUPPLIES TO UNRELATED PERSONS WHERE PRICE ID THE SOLE CONSIDERATION – SECTION 15(1)

- When a transaction of supply of goods / services is made
    - between two persons who are not related to each other and

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- price is the sole consideration for the supply

the value of supply is the ***Transaction value***.

***Transaction Value*** *– means the price actually paid or payable for the said supply of goods or services or both.*

- It includes the amount already paid at the time the supply is being valued for tax, as well as the amount payable and not yet paid at that time.
- The word 'payable' refers to price that is agreed to be paid for the goods / services.
- Persons including legal persons deemed as related persons if.
  - Such persons are officers or directors of one another's business
  - Such persons are legally recognised partners in business
  - Such persons are employer & employee
  - A third person controls (directly/indirectly) or own/ holds ≥ 25% voting stock/ shares of both of them
  - One of them controls (directly/indirectly) the other
  - A third person control (directly / indirectly) both of them
  - Such persons together control (directly/indirectly) a third person
  - Such persons are members of the same family
  - One of them is the sole agent/sole distributor/sole concessionaire of the other.
- ***Consideration [Sec 2(31)*** - in relation to the supply of goods or services or both includes –
  - any ***payment*** made or to be made, whether in ***money or otherwise***,
  - the ***monetary value of any act*** or forbearance,
  - in respect of, in response to, or for the inducement of, ***the supply*** of goods or services or both,
  - whether by the ***recipient or by any other person***
  - but shall ***not include any subsidy*** given by the Central Government or a State Government
  - A ***deposit*** given ***shall not be considered as payment*** made for such supply
  - ***unless the supplier applies*** such deposit as consideration for the said supply.

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## 3. INCLUSIONS IN VALUE - SECTION 15(2)

### 3.1 - Taxes other than GST & GST Compensation Cess - Section 15(2)(a)

- Any taxes, duties, cesses, fees and charges levied under any law for the time being in force ***except the CGST Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier***, are includible in the value of supply.
- In case of inter-State sale liable to IGST, the value of supply will include taxes other than IGST and the GST Compensation Cess in terms of third proviso to section 20 of IGST Act.
- In effect, ***all the taxes, duties etc. which are not subsumed in GST form part of the taxable value*** for the purpose of levying GST.
- For instance, if a supplier of goods pays municipal tax in relation to the goods being supplied and charges the same separately, such tax will form part of the value of supply.
- For the purpose of determination of value of supply under GST, tax collected at source ***(TCS) under the provisions of the Income Tax Act, 1961 would not be includible*** as it is an interim levy not having the character of tax. [vide Circular No. 76/50/2018 GST dated 31.12.2018 (amended vide corrigendum dated 7.03.2019)]

### 3.2 - Payments made to third parties - Section 15(2)(b)

- Payments made to third parties by the recipient on behalf of the supplier in relation to the supply is included in the value of supply.
- If the customer makes direct payment of some of the supplier's liabilities to the third parties, and the supplier does not include this amount in his bill, it will still form part of the value of the supply.
- Amount paid by the recipient to third parties will be added to the value under this clause only when the supplier is under ***contractual liability*** to make payment to such third parties and the said payment is in relation to such supply.

### 3.3 - Incidental expenses - Section 15(2)(c)

- Incidental expenses, such as, commission and packing charged by the supplier or anything else done by the supplier in relation to the supply at the time of or before delivery of goods or supply of services must be added to value.
- Examples of Incidental expenses which are added to the value of supply if billed to the recipient of supply -
    - Commission
    - Inspection or certification charges
    - Installation and testing charges at the recipient's site
    - Weighment charges, loading charges, designing charges etc. incurred before/at the time of supply
    - Outward freight, transit insurance - Where the supplier agrees to deliver the goods at the buyer's premises and arranges for transport and insurance, the contract of

supply becomes a composite supply; and GST is payable thereon at the same rate as applicable for the relevant goods. However, if the contract for supply is on ex-factory basis where buyer pays the outward freight and insurance, the same will not be included in the value of supply of goods.

### 3.4 - Interest, late fee or penalty for delayed payment - Section 15(2)(d)

- Any interest, late fee, penalty or any other charges charged for delay in payment by supplier from the recipient shall form part of the value of supply.
- ***Time of supply for such interest/ late fee/ penalty is the date when such amount is received by the supplier.***

### 3.5 - Subsidies - Section 15(2)(e)

- Subsidy is a sum of money given to keep the price of a service or commodity low.
- only subsidies directly linked to the price of goods/services are added to the value. ***Except*** those given by the
  - State Government or
  - Central Government
- If the subsidy is given by a person or entity other than the State or Central Government, it does not lower the value.

## 4. EXCLUSION OF DISCOUNTS FROM VALUE - SECTION 15(3)

- Numerous kinds of discounts are given by the suppliers to their customers namely, trade discounts, cash discounts, quantity/volume/performance discounts etc.
- Not all discounts offered by the supplier to their customers are allowed as a deduction from the value. Only such discounts which satisfy the conditions prescribed in section 15(3), are allowed as deduction from the value.
- The essence of the conditions prescribed in section 15(3) is that the price as established at the time of supply should form the basis of value.

### 4.1 - Discounts given before or at the time of supply and shown in the invoice. - Sec 15(3)(a)

- Example for such discount can be discounts that are offered for making the payment at the time of supply itself. Such discounts are thus, recoded in the invoice and thus, GST is charged on the gross value less discount recorded in the invoice.
- No Claim Bonus is excluded i.e., GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of NCB mentioned on the invoice.

### 4.2 - Post supply discounts - Sec 15(3)(b)

- In case of quantity/volume/performance/cash discount, the supplier is not aware before/at the time of supply as to whether the buyer would purchase the requisite quantity within the

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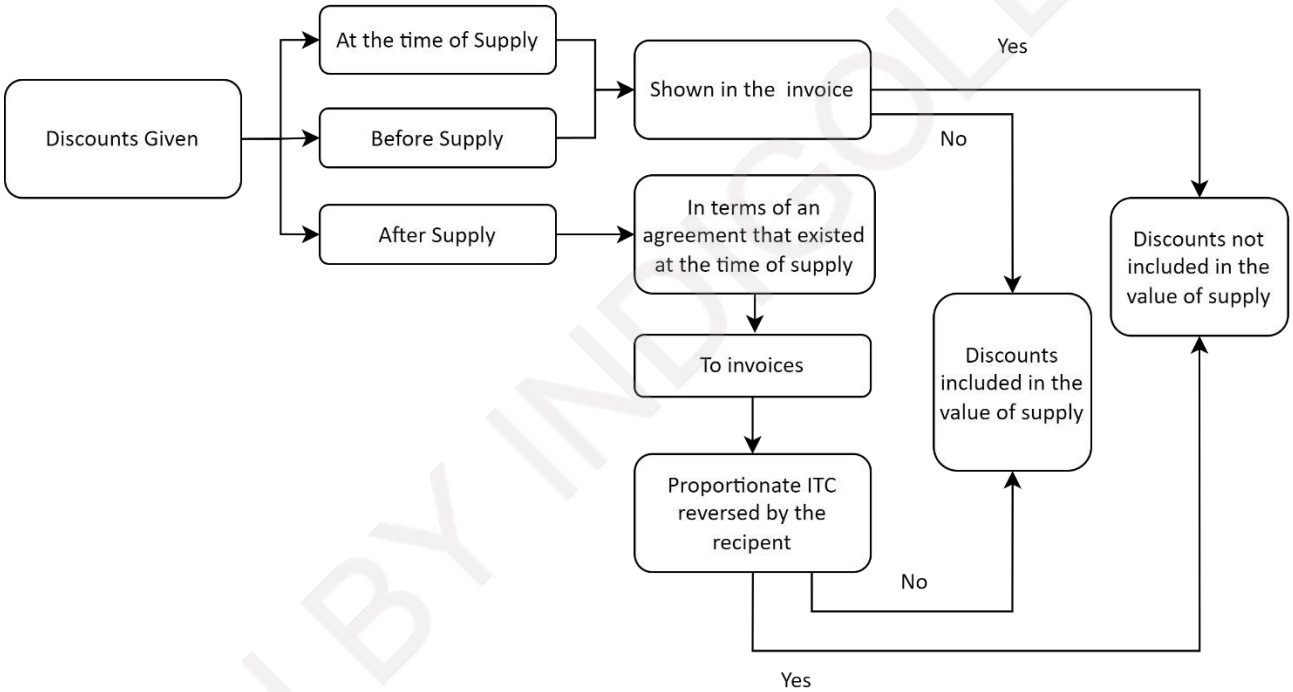
stipulated time or would make the payment within the stipulated time. Therefore, in such cases, the discount cannot be recorded in the invoice.

- In such cases, initially the GST is paid on the gross value indicated in the invoice without considering the discount.
- The supplier, however, passes the discount to the buyers subsequently by issuing credit notes.
- Post supply discounts, i.e., ***the discounts that are given after supply is made***, are ***allowed as a deduction from the value of supply*** if the following two conditions are satisfied:
    - ***Discount is in terms of an agreement*** that existed at the time of supply and can be worked out invoice-wise; ***and***
    - ***Proportionate input tax credit is reversed by the recipient*** - The buyer would have availed input tax credit (ITC) of GST payable on the gross value specified in the invoice. Thus, when a credit note is issued to him by the supplier for the discount, the buyer will reverse the proportionate credit; consequent to which, the supplier's output tax liability will be reduced by the same amount.




## 4.3 - Other discounts

- ***<u>Staggered discounts (Buy more, Save more offers):</u>***
    - In case of staggered discounts, rate of discount increases with increase in purchase volume.
    - Such discounts are shown on the invoice itself.
    - Such discounts are excluded to determine the value of supply.
- ***<u>Periodic/year ending discounts/volume discounts:</u>***

- These discounts are offered by the suppliers to their stockists, etc. Such discounts are established in terms of an agreement entered into at or before the time of supply
- though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been affected and generally at the year end.
- Such discounts are passed on by the supplier through credit notes.
- Such discounts are excluded to determine the value of supply provided they satisfy the parameters laid down in section 15(3), including the reversal of ITC by the recipient of the supply as is attributable to the discount.

- ***Secondary discounts:***
  - These are the discounts which are not known at the time of supply or are offered after the supply is already over.
  - Such discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in section 15(3)(b) are not satisfied.

*It may be noted that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in section 15(3)(b) are not satisfied.*

## 5. WHEN TRANSACTION VALUE CANNOT BE APPLIED

- Section 15(4) lays down that where sub-section (1) is not applicable, that is,
  - if the transaction is with a related party, and/or
  - price is not the sole consideration for the supply of goods / services,
  - then the value will be determined in the manner as stipulated in the rules for valuation
- Further, section 15(5) lays down that in respect of certain notified supplies also, the value will be determined in the manner as stipulated in the rules for valuation.

## 6. SUPPLY OF ONLINE MONEY GAMING, ONLINE GAMING OTHER THAN ONLINE MONEY GAMING AND ACTIONABLE CLAIMS IN CASINOS - SECTION 15(5)

***With effect from 01.10.2023***, supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos have been notified under section 15(5) for prescribing the manner of determination of the value of these supplies under the CGST Rules. ***[Notification No. 49/2023 CT dated 29.09.2023]***

## 7. DETERMINATION OF VALUE OF SUPPLY OF CGST RULES

### 1. Value, if consideration is not wholly in money – Rule 27

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall:

(a) ***General Value*** = Open market value of such supply;

(b) If open market value is not available Value = Consideration in money + Any such further amount in money as is equivalent to consideration not in money if such amount is known at time of supply;

(c) If value of supply is not determinable under (a) or (b) Value = Value of supply of goods or services or both of like kind and quality;

(d) If value is not determinable under (a) to (c)

Value = Consideration in money + Such further amount in money that is equivalent to consideration not in money as determined, sequentially, by rule 30 or 31.

Illustration:

1. Where a new phone is supplied for ₹ 20,000 along with the exchange of an old phone and if the price of the new phone without exchange is ₹ 24,000, the open market value of the new phone is ₹ 24,000.

   Where a laptop is supplied for ₹ 40,000 along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is ₹ 4,000 but the open market value of the laptop is not known, the value of the supply of laptop is ₹ 44,000.

### Meaning of open market value & like kind/quality supplies:

(a) "Open market value" of a supply of goods or services or both means —

- the full value in money to obtain such supply at the same time when the supply being valued is made,
- Excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction,
- Where the supplier and the recipient of the supply are not related and price is the sole consideration.

(b) "Supply of goods or services or both of like kind and quality" means —

- Any other supply of goods or services or both
- Made under similar circumstances
- That —

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- In respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, Is the same as, or closely or substantially resembles, that supply of goods or services or both.

## 2. Value of supply between distinct or related persons, other than through an agent {Rule 28}

The value of the supply of goods or services or both —

- Between distinct persons as specified in sec. 25(4)/(5) (already discussed under 'person') or
- Where the supplier and recipient are related,
- Other than where the supply is made through an agent, shall be,

(a) General Value = Open market value of such supply;

(b) If open market value is not available Value = Value of supply of goods or services of like kind and quality;

(c) If value of supply is not determinable under (a) or (b) Value = Value as determined, sequentially, by rule 30 or 31.

***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:***

***Invoice value acceptable, if recipient eligible for full credit: 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 goods or services.***

## 3. Value of supply of goods made or received through an agent {Rule 29}

The value of supply of goods between the principal and his agent shall be:

| Case | Value |
|---|---|
| **(a) General** | Value =<br>i. Open market value of goods being supplied, or<br>ii. At option of supplier, 90% of price charged for —<br>○ Supply of goods of like kind and quality<br>○ By recipient<br>○ To his customer not being a related person,<br>○ Where the goods are intended for further supply by the said recipient.<br>***Illustration***:<br>If a principal supplies Pista to his agent and agent is supplying Pista of like kind and quality in subsequent supplies at ₹5,000 per quintal on day of supply. Another independent supplier supplies Pista of like kind and quality to said agent at the price |
| **(b) if value is not determinable in (a)** | Value = Determined by application of rule 30 or rule 31 in that order. |

**4. Value based on cost {Rule 30} -** Where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be 110% of the Cost of production or manufacture or cost of acquisition of such goods or Cost of provision of such services.

**5. Residual method (Best judgment – Rule 31) -** Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and general provisions of section 15 and these rules.

**6. On Lottery, Betting, Gambling and Horse Racing (Rule 31A)**

| Supply | Value |
|---|---|
| Supply of Lottery by the Organising State (State Government supplying lottery tickets within its own territory or any other state) | **Higher of the two amounts to be deemed as the value**<br>100/128 of the face value of ticket<br>OR<br>100/128 of the price as notified in the Official Gazette by the organising State |
| Supply of Actionable Claim<br>(In the form of chance to win in Betting, Gambling or Horse Racing in a Race Club) | 100% of the face value of the bet or the amount paid into the totalisator |

**Services — Rule 30 may be disregarded:** In case of supply of services, the supplier may opt for this rule, disregarding rule 30.

**7. Value of supply in case of online gaming including online money gaming (Rule 31B)**

The value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be ***the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player***:

However, ***any amount returned or refunded by the supplier*** to the player for any reasons whatsoever, ***including player not using the amount paid or deposited with the supplier*** for participating in any event, ***shall not be deductible*** from the value of supply of online money gaming.

**8. Value of supply of actionable claims in case of casino (Rule 31C)**

The value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

i. ***purchase*** of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or

ii. ***participating*** in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required:

However, any ***amount returned/refunded by the casino to the player*** on return of token, coins, chips, or tickets, as the case may be, or otherwise, ***shall not be deductible*** from the value of the supply of actionable claims in casino.

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***Explanation***. - For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

***[Effective from 01.10.2023]***

***[Notification No. 45/2023 CT dated 06.09.2023 and Notification No. 51/2023 CT dated 29.09.2023]***

**9. Deemed value in certain supplies {Rule 32} -** Notwithstanding anything contained in the Act or in these rules, the value in respect of supplies specified below shall be determined in the manner provided hereinafter

**Supply of services in relation to purchase or sale of foreign currency, including money changing -**

**Option 1 – Actual Value:**

| | |
|---|---|
| **For a currency, when exchanged from, or to, Indian Rupees (₹)** | Value = (Difference in buying/selling rate and RBI reference rate for that currency at that time) x Total units of currency |
| **If RBI reference rate for a currency is not available** | Value = 1% of gross amount of Indian Rupees provided or received by person changing money |
| **If neither of the currencies exchanged is Indian Rupee** | Value = 1% of lesser of two amounts, person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI. |

**Option 2 - Deemed Value:**

A person supplying services may exercise option to ascertain value in terms of this option for a financial year and such option shall not be withdrawn during the remaining part of that financial year. At the option of supplier of services, the value in relation to supply of foreign currency, including money changing, shall be deemed to be:

| Gross amount of Currency exchanged per transaction | Value |
|---|---|
| **Up to ₹ 1,00,000** | 1% of currency exchanged or ₹ 250, whichever is higher |
| **Exceeds ₹ 1,00,000 but up to ₹ 10,00,000** | ₹ 1,000 + 0.5% of currency exchanged for exceeding ₹ 1,00,000 and up to ₹10,00,000 |
| **Exceeds ₹ 10,00,000** | ₹ 5,500 + 0.1% of currency exchanged exceeding ₹ 10,00,000; subject to maximum of ₹ 60,000 |

### Services of booking of air tickets by an air travel agent –

5% of basic fare in case of domestic bookings, + 10% of the basic fare in the case of international bookings of passage for travel by air.

"Basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

### Services in relation to life insurance business:

| Case | Value |
|---|---|
| Entire premium paid by the policy holder is only towards the risk cover in life insurance | Full premium |
| If amount invested in savings is intimated to policy holder at time of supply | Gross premium charged from a policy holder less Amount allocated for investment, or savings on behalf of the policy holder |
| Single premium annuity policies (other than above) | 10% of single premium charged from policy holder |
| In all other cases | 25% of premium charged from policy holder in first year and 12.5% of premium charged from policy holder in subsequent years |

Dealing in buying and selling of second-hand goods (as such or after minor processing without changing nature of goods) & no ITC availed on such purchases -

- Value of supply =
    - The difference between the selling price and purchase price and
    - Where the value of such supply is negative it shall be ignored i.e., Actual Margin or NIL

  whichever is higher.

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

### Token, or voucher, or coupon, or stamp (other than postage stamp) redeemable against a supply of goods or services or both –

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

### Services by notified class of service provider –

Value of taxable services provided by such class of service providers as may be notified by the Central Government on the recommendations of the Council between distinct persons as referred to in section 25, other than those where input tax credit is not available u/s 17(5), shall be NIL.

### 10. Exclusion of value of supply of services in case of pure agent {Rule 33} –

Notwithstanding anything contained in these rules, expenditure or costs incurred by the supplier as a pure agent of the recipient of supply of services shall be excluded from the value of supply, if all the following conditions are satisfied, namely:

i. The supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party for the services procured as the contract for supply made by third party is between third party and the recipient of supply;

ii. The recipient of supply uses the services so procured by the supplier service provider in his capacity as pure agent of the recipient of supply;

iii. Recipient of supply is liable to make payment to third party;

iv. The recipient of supply authorises the supplier to make payment on his behalf;

v. The recipient of supply knows that the services for which payment has been made by the supplier shall be provided by the third party;

vi. The payment made by the supplier on behalf of the recipient of supply has been separately indicated in the invoice issued by the supplier to the recipient of service;

vii. The supplier recover from the recipient of supply only such amount as has been paid by him to the third party; and

viii. The services procured by the supplier from the third party as a pure agent of the recipient of supply are in addition to the supply he provides on his own account.

Pure agent: For the purposes of this rule, "pure agent" means a person who —

a. Enter into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
b. Neither intends to hold nor holds any title to the goods or services or both so procured or provided as pure agent of the recipient of supply;
c. Does not use for his own interest such goods or services so procured; and
d. Receives only the actual amount incurred to procure such goods or services.

***Illustration:***

Corporate services firm X is engaged to handle the legal work pertaining to the incorporation of Company Y. Other than its service fees, X also recover from Y, registration fee and approval fee for the name of the company paid to Registrar of the Companies. The fees charged by the Registrar of the companies registration and approval of the name are compulsorily levied on Y. X is merely acting as a pure agent in the payment of those fees. Therefore, X's recovery of such expenses is a disbursement and not part of the value of supply made by X to Y.

### 11. Currency exchange rate {Rule 34} –

The rate of exchange for determination of value of taxable goods or services or both shall be —

- The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.
- The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.

### 12. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax. {Rule 35}

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 = Total amount * Rate of tax / 100 + rate of tax

## 8. CLARIFICATIONS

### 8.1 – Tax to be paid on specified actionable claims at the time of receipt of payment for such supplies by the suppliers

***Notification No. 66/2017 CT dated 15.11.2017*** was earlier issued to exempt all registered persons from the requirement of payment of tax at the time of receipt of advances in case of supply of goods and provides for payment of tax in such cases at the time of supply as specified in section 12(2)(a).

***With effect from 01.10.2023***, said notification has been amended to ***exclude registered persons making supply of specified actionable claims*** [as discussed in Chapter 2 - Supply under GST] from the said exemption, so that in case of specified actionable claims, the tax can be paid at the time of receipt of payment for such supplies by the suppliers. ***[Notification No. 50/2023 CT dated 29.09.2023]***

### 8.2 – Clarification on Taxability and valuation of personal guarantee by Directors and corporate guarantee by related person, for the company.

***Issue***: Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not?

***Clarification:*** Since director and company are related persons, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration [in terms of section 7(1)(c) read with para 2 of Schedule I]. Value will be open market value (OMV) of such supply [in terms of rule 28].

However, as per the mandate provided by the RBI Guidelines in this regard, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits, except in exceptional cases.

Consequently, there is no question of such supply/ transaction having any OMV. Accordingly, it is clarified that OMV of the said transaction/ supply may be treated as zero and therefore, no tax is payable on such supply of service by the director to the company. However, in exceptional cases, where remuneration is payable to the director, the taxable value of such supply of service shall be the remuneration/ consideration provided to such guarantor by the company, directly or indirectly.

***Exceptional cases:*** Instances where consideration is payable to the director may include cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, are paid remuneration/ consideration in any manner, directly or indirectly.

***No tax is payable on supply of service i.e. of providing personal guarantee by the Director without any consideration, to the bank/ financial institutions for sanctioning of credit facilities.***

***Issue:*** Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services?

***Clarification***: In that case the activity is to be treated as a supply of service between related parties even when made without any consideration [in terms of section 7(1)(c) read with para 2 of Schedule I]. ***In such cases***, the taxable value will be determined as per the newly inserted sub-rule (2) to rule 28 irrespective of whether full ITC is available to the recipient of services or not.

***Value of supply of service of providing corporate guarantee by a person on behalf of another related person, or by the holding company for its subsidiary company shall be: Higher of: 1% of the amount of such guarantee offered, or actual consideration.***

### 8.3 - Clarification regarding internally generated services - where HO is providing certain services to the BOs for which full ITC is available to the concerned BOs.

***Issue:*** In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full ITC is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full ITC is available to the concerned BOs?

***Clarification***: The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 read with section 15(4). As per rule 28(a), the value of supply between distinct persons shall be the open market value (OMV) of such supply. The second proviso to rule 28 provides that where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the OMV of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be OMV of such services, if the recipient BO is eligible for full ITC. Accordingly, in cases where full ITC is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the OMV of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such cases where full ITC is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as OMV in terms of second proviso to rule 28

***In respect of internally generated services, Where full ITC is available to a BO, the value declared on the invoice by HO shall be deemed to be the OMV, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services. If HO has not issued a tax invoice to the BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as OMV.***

***Issue***: In respect of internally generated services provided by the HO to BOs, in cases where full ITC is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs?

In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full ITC is not available to the concerned BO.

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ILLUSTRATIONS

### Illustration 1

AKJ Foods Pvt. Ltd. gets an order for supply of processed food from a customer.

The customer wants the consignment tested for gluten or specified chemical residues.AKJ Foods Pvt. Ltd. does the testing fee for the same from the customer.

AKJ Foods Pvt. Ltd. argues that such testing fees should not form part of theconsideration for the sale is a separate activity.

Is his argument correct in the light of section 15?

### Illustration 2

A philanthropic association makes a substantial donation each year to a reputed private management institution to substitute the education of law income group students who have gained admission there.

The fee for these individuals is reduced thereby, coming to Rs.3 lakh a year compared toRs.5 lakh a year for other students.

What would be the value of the service of coaching and instruction provided by the institution to the low-income group students?

### Illustration 3

Mezda Banners, an advertising firm, gives an interest-free credit period of 30 days forpayment by the customer.

Its customer ABC paid for the supply, 32 days after the supply of service. Mezda Bannerswaived the interest payable for delay of two days.

The Department wants to add interest for two days as per contract. Should notionalinterest be added to the value?

### Illustration 4

Crunch Bakery Products Ltd sells biscuits and cakes through its dealers, to whom it charges the list price minus standard discount and pays GST accordingly.

When goods remain unsold with the dealers, it offers additional discounts on the stock as an incentive to push the sales.

Can this additional discount be reduced from the price at which the goods were sold and concomitant tax adjustments made?

### Illustration 5

Raman Ltd., a registered supplier in Mumbai (Maharashtra), has supplied goods to Sahil Traders and Jaggi Motors Ltd. located in Ahmedabad (Gujarat) and Pune (Maharashtra) respectively. Raman Ltd. has furnished the following details for the current month:

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| S.No. | Particulars | Sahil Traders (Rs.) | Jaggi Motors (Rs.) |
|---|---|---|---|
| (i) | Price of the goods (including GST) | 20,000 | 15,000 |
| (ii) | Packing Charges | 600 | |
| (iii) | Commission | 400 | |
| (iv) | Weighment Charges | | 1,000 |
| (v) | Discount forprompt payment (recorded in the invoice) | | 500 |

Items given in points (ii) to (v) have not been considered while arriving at the priceof the goods given in point (i) above.

Compute the GST liability (CGST & SGST or IGST as the case may be) of Raman Ltd. for the given month. Assume the rates of taxes to be as under:

| Particulars | Rate of Tax |
|---|---|
| Central Tax (CGST) | 9% |
| State Tax (SGST) | 9% |
| Integrated Tax (IGST) | 18% |

### Illustration 6

Red Pepper Ltd., Delhi, a registered supplier, is manufacturing taxable goods. It provides the following details of taxable Inter-State supply made by it for the month of March, 20XX.

| Particulars | Amount (Rs.) |
|---|---|
| List price of goods supplied inter-state (exclusive of taxes) | 15,00,000 |
| Subsidy received by Central Govt. for supply of taxable goods to Govt. School | 2,10,000 |
| Subsidy received by an NGO for supply of taxable goods to an old age home | 50,000 |
| Tax levied by Municipal Authority | 20,000 |
| Packing charges | 15,000 |
| Late fee paid by the recipient of supply for delayed payment of invoice | 6,000 |

- The list price of the goods takes into account the two subsidies received.
- However, the other charges / taxes/ fees are charged to the customers over andabove the list price.

Calculate the value of taxable supply made by M/s Red Pepper Ltd. for the month ofMarch 20XX. Rate of IGST is 18%.

### Illustration 7

Kamal Book Depot, a wholesaler of stationery items, registered in Mumbai, has received order for supply of stationery items worth Rs. 2,00,000 on 12th November 20XX from another local registered dealer, Mr. Mehta, Mumbai.

Kamal Book Depot charged the following additional expenses from Mr. Mehta:

| | Particulars | Amount (Rs.) |
|---|---|---|
| (i) | Packing charges | 5,000 |
| (ii) | Freight & Cartage | 2,000 |
| (iii) | Transit Insurance | 1,500 |
| (iv) | Extra designing charges | 6,000 |
| (v) | Taxes by Municipal Authority | 500 |

- The goods were delivered to Mr. Mehta on 14th November 20XX.
- Since Mr. Mehta was satisfied with the quality of the goods, he made the payment for goods the same day and simultaneously placed another order on Kamal Book Depot for stationery items amounting to Rs.10,00,000 to be delivered in the month of December 20XX**.
- On receipt of second order, Kamal Book Depot allowed a discount of Rs.20,000 on the first order placed by Mr. Mehta
- Compute the GST liability of Kamal Book Depot for the month of November 20XX assuming the rates of GST on the goods supplied as under: (I)CGST 9% & (ii) SGST 9%

Would your answer be different if expenses (i) to (v) given in the table are alreadyincluded in the price of Rs.2,00,000?

Note:

1. All the amounts given above are exclusive of GST
2. Kamal Book Depot and Mr. Mehta are not related persons and price is the sole consideration of the supply.

** Payment and invoice for the second order will also be made in the month ofDecember only.

### Illustration 8

Mr. X, a money changer, has exchanged US $ 10,000 to Indian rupees @ Rs. 64 per US $.Mr. X wants to value the supply in accordance with rule 32(2)(b) of CGST Rules.

Determine the value of supply made by Mr. X.

### Illustration 9

Prada Forex Pvt Ltd. registered in Delhi, is a money changer.

| Particulars | Rate of Exchange | RBI reference rate |
|---|---|---|
| US $ 1,000 are purchased from Nandhi Enterprises | Rs. 68 per $ | Rs. 68.60 |
| US $ 2,000 are sold to Meenavathi | Rs. 67.50 per $ | Not available |

Determine the value of Supply in each of the above case in term of Rule 32(2)(a) andRule 32(2)(b).

### Illustration Air Travel Agent

Mr. U is an air travel agent.

Compute the value of supply of service made by him during a month with the help offollowing particulars furnished by him:

| Particulars | Basic fare (₹) | Other charges (₹) | Taxes (₹) | Total value of tickets (₹) |
|---|---|---|---|---|
| Domestic Bookings | 1,00,900 | 9,510 | 4,990 | 1,15,400 |
| International Bookings | 3,16,880 | 20,930 | 15,670 | 3,53,480 |

### Illustration 10

Arihant Life Insurance Company Ltd. (ALICL) has charged gross premium of ₹ 180 lakh from policy holders with respect to life insurance policies in the 2017-18; out of which ₹100 lakh have been allocated for investment on behalf of the policy holders.

Compute the value of supply of life insurance services provided by ALICL:

1. if the amount allocated for investment has been intimated by ALICL to policyholders at the time of supply of service.
2. if the amount allocated for investment has not been intimated by ALICL to policyholders at the time of providing of service.

Note:

- ALICL has started its operations in the year 2017-18.
- Thus, the entire gross premium of ₹ 180 lakh is the premium for the first year of all the policies.
- ALICL has not issued any single premium annuity policy.

### Illustration 11

Dushyant rents out a commercial building owned by him to Bharath for the month of December, for which he charges a rent of ₹ 19,50,000.

- Dushyant pays the maintenance charges of ₹ 1,00,000 (for December) as charged bythe local society. These charges have been reimbursed to him by Bharath.
- Further, Bharath had given ₹ 2,50,000 to Dushyant as interest free refundable
- security deposit.
- Further, Dushyant has paid the municipal taxes of Rs. 2,85,000 which he has notcharged from Bharath.
- You are required to determine the value of supply and the GST liability of Dushyantfor the month of December assuming CGST and SGST rates to be 9% each.

Note: All the amounts given are exclusive of GST.

### Illustration 12

Sacrosant Manufacturers Ltd., a manufacturer of bottle caps, is registered in Dhanbad(Jharkhand). It imports a bottle caps making machine from Japan.

- Sacrosant Manufacturers Ltd. avails the services of Jhumroo Logistics, a licensedcustoms broker in Kolkata (West Bengal), in meeting all the legal formalities for getting the said machine cleared from the customs station.
- Sacrosant Manufacturers Ltd. also authorises Jhumroo Logistics to incur, on its behalf, the

expenses in relation to clearance of the imported machine fromthe customs station and bringing the same to its warehouse at Dhanbad.

- These expenses would be reimbursed by Sacrosant Manufacturers Ltd. to JhumrooLogistics on actual basis.
- In addition, Sacrosant Manufacturers Ltd. will also pay the agency chargesto Jhumroo Logistics for the services rendered by it.
- Jhumroo Logistics raised an invoice in July as follows:

| S.No. | Particulars | Amount* (Rs. ) |
|---|---|---|
| (i) | Agency charges | 5,00,000 |
| (ii) | Customs duty on machine | 3,80,000 |
| (iii) | Port charges | 33,000 |
| (iv) | Dock dues | 56,000 |
| (v) | Charges for transport of machine from Kolkata port, WestBengal to Jhumroo Logistics' godown in Asansol, West Bengal | 48,000 |
| (vi) | Charges for transport of machine from Jhumroo Logistics' Asansol godown tothe warehouse of Sacrosant Manufacturers Ltd. in Dhanbad, Jharkhand | 67,000 |
| (vii) | Unloading of machine at Kolkata port, West Bengal | 83,000 |
| (viii) | Hotel expenses | 45,000 |
| (ix) | Travelling expenses | 50,000 |
| (x) | Telephone expenses | 2,000 |

Would your answer be different if Jhumroo Logistics charges ₹ 13,00,000 as a lump sum consideration for clearing the imported machine from the customs station and bringingthe same to the warehouse of Sacrosant Manufacturers Ltd.?

### Illustration 13

Dumdum Engineering Private Limited (DEPL), Surat (Gujarat), a supplier of heavy machinery, supplied a machine to Gulati Manufacturers from its godown located in Mumbai, Maharashtra, on 1st January at a price of ₹ 64,00,000 (excluding all taxes).

- Gulati Manufacturers has its corporate office in New Delhi.
- However, the machinery was installed at its manufacturing unit located in Gurugram(Haryana) for which installation and commissioning charges of ₹ 4,80,000 and handling and loading charges of ₹ 1,60,000, were charged by DEPL.
- For every machinery supplied, DEPL receives a grant of ₹ 3,20,000 from its holdingcompany Dharam Ltd.
- Transportation of machinery to the customer's premises is arranged by DEPLthrough a third-party service provider [Goods Transport Agency (GTA)].
- Gulati Manufacturers entered into a separate service contract with the GTA and paid
- the freight of ₹ 50,000 directly to it.
- DEPL offered a cash discount of 2% on the price of the machinery at the time of supply since Gulati Manufacturers agreed to make the payment within 15 days ofthe receipt of the machinery at its premises.
- However, it was agreed that in case Gulati Manufacturers failed to make thepayment within the stipulated time, DEPL would-

- recover the discount given; and
- charge interest @ 1% per month or part of the month on the total amount due (including discount recovered) from Gulati Manufacturers (towards the machinerysupplied) from the date of making the supply till the date of payment.
- Gulati Manufacturers paid the consideration for the machine on 31st March.
- Since the payment was made after the stipulated period of 15 days of the receipt of the machinery, discount given was recovered from it and interest was accordingly charged.
- However, Gulati Manufacturers refused to pay tax on interest and discountrecovered.
- Assume the rates of taxes to be as under:

| Supply | CGST rate | SGST rate | IGST rate |
|---|---|---|---|
| Machinery supplied | 6% | 6% | 12% |
| Service of transportation ofgoods | 2.5% | 2.5% | 5% |
| Other services involved in theabove supply | 9% | 9% | 18% |

1. The place of supply of the machinery supplied by DEPL is_____and the nature of supply is_____.
   a. Gujarat, intra-State supply
   b. Haryana, inter-State supply
   c. New Delhi, inter-State supply
   d. Maharashtra, inter-State supply

2. The GST liability of DEPL for the month of January is_____(approx.).

   a. 9,46,660
   b. 8,67,840
   c. 9,06,153
   d. 8,29,440

3. The GST liability of DEPL for the month of March is_____(approx.).

   a. 36,343
   b. 36,504
   c. 35,314
   d. Nil

4. Supply of machinery and supply of installation and commissioning services is__ supply. Time of supply of interest received by DEPL and cashdiscount recovered on account of delayed payment of consideration is _.
   a. composite, 31st March
   b. composite, 1st January
   c. mixed, 1st January
   d. mixed, 31st March

5. If the grant of ₹ 3,20,000 received by DEPL had been received from Central Government instead of its holding company Dharam Ltd., with other facts remainingthe same, the GST liability of DEPL for the month of January would have been _____(approx.).

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a. 9,46,660
b. 8,67,840
c. 9,06,153
d. 8,29,440

### Illustration 14

Mr. Kala is a proprietor of M/s. Kala & Associates (registered under GST) which deals insale/ purchase of second-hand cars. During the current financial year, he effected following intra-State transactions:

| Particulars | Purchase price (₹ ) | Sale price (₹ ) |
|---|---|---|
| Car 1 | 5,00,000 | 7,50,000 |
| Car 2 | 3,00,000 | 2,75,000 |
| Car 3 | 6,00,000 | 6,50,000 |
| Car 4 | 8,00,000 | 9,50,000 |

- Mr. Kala purchased Car 4 from another registered person who charged GST of ₹ 1,30,000 and accordingly, Mr. Kala has availed the input credit of the same.Determine the GST liability of Mr. Kala assuming the applicable rate of tax as 18%.
  a. ₹ 95,000
  b. ₹ 1,08,000
  c. ₹ 1,30,500
  d. Exempt Supply, No GST

### Illustration 15

Zindagi Life Insurance Private Limited (ZLICL) has collected a premium from subscribersand it intimates the amount allocated for investment to subscribers at the time of collection of premium.

- During the month of September 2018, it has collected the following receipts:

| S.No. | Particulars | Amount (₹) |
|---|---|---|
| 1 | Premium for only Risk cover | 25,00,000 |
| 2 | Premium for new subscribers | 40,00,000 |
| 3 | Renewal Premium | 80,00,000 |
| 4 | Single Premium on annuity policy | 1,00,00,000 |

- All amounts are exclusive of tax.

You are required to compute the value of supply by ZLICL in accordance with GST laws

### Illustration 16

Allfit Laboratories Ltd. is a registered supplier of bulk drugs in Delhi paying taxunder regular scheme.

- It manufactures bulk drugs and supplies the same in the domestic and overseasmarket.
- The bulk drugs are supplied within Delhi and in the overseas market directly fromthe company's warehouse located in South Delhi.
- For supplies in other States of India, the company has appointed consignmentagents in each such State.

- However, supplies in Gurgaon (Haryana) and Noida (U.P.) are affected directly fromSouth Delhi warehouse.
- The drugs are supplied to the consignment agents from the South Delhiwarehouse.
- Allfit Laboratories Ltd. also provides drug development services to drug manufacturers located in India, including testing of their new drugs in its laboratorylocated in Delhi.
- The company has furnished the following information for the month of January,20XX:

| Particulars | Amount (Rs. ) |
|---|---|
| Advance received towards drug developmentservices to be provided to Orochem Ltd., a drug manufacturer,located in Delhi [Drug development services have been provided in February, 20XX and invoice is issued on 28.02.20XX] | 5,00,000 |
| Advance received for bulk drugs to be supplied to Novick Pharmaceuticals, a wholesale dealer of drugs in Gurgaon, Haryana [Invoice for the goods is issued at the time of delivery of the drugs in March, 20XX] | 6,00,000 |
| Supply of bulk drugs to wholesale dealers of drugs in Delhi | 60,00,000 |
| Bulk drugs supplied to Anchor Pharmaceuticals Inc., USA under bond [Consideration received in convertible foreign exchange] | 90,00,000 |
| Drug development services provided to Unipharma Ltd., a drugmanufacturer, located in Delhi | 6,00,000 |

- You are required to determine the GST liability [CGST & SGST or IGST, as the casemay be] of Allfit Laboratories Ltd. fo the month of **January**, 20XX with the help of the following additional information furnished by it for the said period:

  1. Consignments of bulk drugs were sent to Cardinal Pharma Pvt. Ltd. and Rochester Medicos – agents of Allfit Laboratories Ltd. in Punjab and Haryana, respectively. Cardinal Pharma Pvt. Ltd. and Rochester Medicos supplied these drugs under their invoices to the Medical Stores located in their respective Statesfor ₹ 60,00,000 and ₹ 50,00,000 respectively.
  2. Bulk drugs have been supplied to Ronn Medicos - a wholesale dealer of bulk drugs in Gurgaon, Haryana for consideration of ₹ 15,00,000. Allfit Laboratories Ltd. owns 72% shares of Ronn Medicos Pvt. Ltd. Open market value of the bulkdrugs supplied to Ronn Medicos Pvt. Ltd. is ₹ 30,00,000. Further, Ronn MedicosPvt. Ltd. is not eligible for full input tax credit.

Note:

1. All the given amounts are exclusive of GST, wherever applicable.
2. Assume the rates of GST to be as under:

| Goods/services supplied | CGST | SGST | IGST |
|---|---|---|---|
| Bulk drugs | 2.5% | 2.5% | 5% |
| Drug development services | 9% | 9% | 18% |

**Illustration 17 – PART 1**

M/s. Aircool Ltd., a supplier of air-conditioners, is registered in the State ofMaharashtra.

- It has a policy to gift an air conditioner to its employees [residing in Gujarat] at theend of financial year in terms of the employment contract.
- The company installs such air conditioners at the residence of the employees.
- During the month of March, 20XX, the company installed air conditioners at theresidence of these employees.
- The total open market value of such air conditioners is ₹ 52.50 lakh (excludingGST).
- The tax rate on such air conditioners is 28% (14% CGST, 14% SGST and 28% IGST).Compute

the GST liability of M/s. Aircool Ltd., if any.

a) ₹ 7,35,000 - CGST, ₹ 7,35,000- SGST
b) ₹ 14,70,000 – IGST
c) Nil
d) None of the above

### Illustration 17 – PART 2

Mr. James Bond is a registered person under GST in the State of Maharashtra who sellsfootwear to his customers locally within the same State.

1. He has been appointed as an agent by M/s. Toto Shoes Ltd., a company registeredunder GST in the State of Karnataka.
2. During a financial year, M/s. Toto Shoes Ltd., sends taxable goods worth ₹ 5.00 crorefrom its Bengaluru store to Mr. James Bond who sells such goods for ₹ 5.00 crore byraising invoices using the GSTIN of M/s. Toto Shoes Ltd.
   Mr. James Bond receives a commission of ₹ 60.00 lakh from M/s. Toto Shoes (P) Ltd.,during the said financial year.

Compute the value of supply of Toto Shoes (P) Ltd. and Mr. James Bond for the financialyear.

a) M/s. Toto Shoes (P) Ltd.: Nil and James Bond: ₹ 5.6 crore
b) M/s. Toto Shoes (P) Ltd.: ₹ 5 crore and James Bond: ₹ 5.6 crore
c) M/s. Toto Shoes (P) Ltd.: ₹ 5 crore and James Bond: ₹ 60 lakh
d) None of the above

### Illustration 18

Jaskaran, a registered supplier of Delhi, has made the following supplies in the month ofJanuary, 20XX:

| S. No. | Particulars | Amount* (Rs. ) |
|---|---|---|
| (i) | Supply of 20,000 packages at Rs. 30 each to Sukhija Gift Shop inPunjab. [Each package consists of 2 chocolates, 2 fruit juice bottles and apacket of toy balloons] | 6,00,000 |
| (ii) | 10 generators hired out to Morarji Banquet Halls, Chandigarh. [including cost of transporting the generators (Rs. 1,000 for eachgenerator) from Jaskaran's warehouse to the Morarji Banquet Halls] | 2,50,000 |

| | | |
|---|---|---|
| (iii) | 500 packages each consisting of 1 chocolate and 1 fruit juice bottle given as free gift to Delhi customers on the occasion of Diwali.<br>[Cost of each package is Rs. 12, but the open market value of such package of goods and of goods of like kind and quality is not available. Input tax credit has not been taken on the items contained in the package] | |
| (iv) | Catering services provided free of cost for elder brother's business inaugural function in Delhi.<br>[Cost of providing said services is Rs. 55,000, but the openmarket value of such services and of services of like kind and quality is not available.] | |

You are required to determine the GST liability [CGST & SGST and/or IGST, as the casemay be] of Jaskaran for the month of January, 20XX with the help of the following additional information furnished by him for the said period:

1. Penalty of ₹ 10,000 was collected from Sukhija Gift Shop for the payment receivedwith a delay of 10 days.
2. The transportation of the generators from Jaskaran's warehouse to the customer'spremises is arranged by Jaskaran through a Goods Transport Agency (GTA) who pays tax @ 12%.
3. Assume the rates of GST to be as under:

| Goods/services supplied | CGST | SGST | IGST |
|---|---|---|---|
| Chocolates | 9% | 9% | 18% |
| Fruit juice bottles | 6% | 6% | 12% |
| Toy balloons | 2.5% | 2.5% | 5% |
| Service of renting of generators | 9% | 9% | 18% |
| Catering service | 9% | 9% | 18% |

## Illustration 19

Royal Manufacturers, a registered supplier of machinery, supplied a special purposemachine to Dharam Furnishers for which it charges a price of Rs. 9,00,000.

Further, it charged the following additional amounts in relation to said supply:

| S.No | Particulars | Amount (₹) |
|---|---|---|
| 1. | Transit insurance | 16,500 |
| 2. | Packing charges | 13,500 |
| 3. | Extra charges for designing the machine | 30,000 |
| 4. | Freight | 18,000 |

Following additional information is also available -

1. Cash discount @ 2% on price of machinery has been allowed to Dharam Furnishersat the time of supply and also, recorded in invoice.
2. GST rate – 18%.

Calculate value of supply of the special purpose machine.

## Illustration 20

M/s Jonty India Ltd. a manufacturer of heavy machines registered at Jaipur (Rajasthan) supplied one machine to M/s. Dhanuka Ltd. of Udaipur (Rajasthan) on 05-02-2018 underan invoice of the same date.

- Using the information given below, compute the value of the machine and the GSTpayable (CGST & SGST or IGST as the case may be) in cash for the month of February 2018 by M/s Jonty India Ltd. with appropriate working notes.
- Assume Rate of CGST, SGST and IGST on the machine to be 9%, 9% and 18%respectively.

| Sl. No. | Particulars | Amount in Rs. |
|---|---|---|
| (i) | The Basic price of the machine (exclusive of taxes and discount). | 28,50,000 |
| (ii) | Trade discount is allowed at 3% on the basic price and is shown in the invoice. | 85,500 |
| (iii) | Secondary packing (in iron sheets) charges for safe transportation of the machine on the request of buyer. | 30,000 |
| (iv) | Design and engineering charges of the machine | 90,000 |
| (v) | Tax levied by Municipal Authority on the sale of the machine. | 25,000 |
| (vi) | Subsidy received by the supplier from the State Government to encourage manufacture of the machine. | 80,000 |
| (vii) | Pre-delivery inspection charges paid to an independent agency in terms of the agreement for supply. The amount was paid by M/s. Dhanuka Ltd. | 22,000 |
| (viii) | Interest amount paid by M/s. Dhanuka Ltd. for delay in payment for the machine. | 12,000 |
| | **Inward Supplies** | |
| (i) | IGST paid on food items for consumption by employees working in the factory. | 8,000 |
| (ii) | SGST and CGST (Rs. 15,000 each) paid on Electrical transformer used in the manufacturing process. | 30,000 |

Note:

1. M/s Jonty India Ltd. has no input tax credit balance at the beginning of February, 2018. All the other conditions necessary for availing theeligible input tax credit have been fulfilled.
2. There are no other transactions of supplies during the month of February, 2018.
3. M/s Jonty India Ltd. and M/s. Dhanuka Ltd. are not related persons.

## Illustration 21

Laxmi Ltd. of Bhopal (Madhya Pradesh) is a supplier of machinery.

1. Laxmi Ltd. has supplied machinery to PQR Enterprises in Indore (Madhya Pradesh)on 1st October 2017.

2. The invoice for supply has been issued on 1st October 2017. Thus, the time ofsupply of machinery is 1st October 2017.
3. Laxmi Ltd. and PQR Enterprise are not related.Following information is provided:

- Basic price of machinery excluding all taxes but including design and engineeringcharges of ₹ 10,000 and loading charges of ₹ 20,000, total ₹ 20,00,000.
- Laxmi Ltd. provides 2 years free warranty for the machinery. Laxmi Ltd. also providesan extended one-year warranty on payment of additional charges of ₹ 1,00,000.
- PQR Enterprises opted for one-year warranty.
- Laxmi Ltd. has collected consultancy charges in relation to pre-installation planningof ₹ 10,000 and freight and insurance charges from place of removal to buyer's premises of ₹ 20,000.
- Laxmi Ltd. received subsidy of ₹ 50,000 from Central Government for supplying themachinery to backward region since receiver was located in a backward region.
- Laxmi Ltd. also received ₹ 50,000 from the joint venture partner of PQR Enterprisesfor making timely supply of machinery to the recipient.
- A cash discount of 1% on the basic price of the machinery is offered at the time of supply, if PQR Enterprises agrees to make the payment within 30 days of the receiptof the machinery at his premises.
- Discount @ 1% was given to PQR Enterprises as it agreed to make the paymentwithin 30 days.
- The machinery attracts CGST and SGST @ 18% (9% + 9%) and IGST @18%.

Compute the CGST and SGST or IGST payable, as the case may be, on the machinery

### Illustration 22

BW Ltd. manufactures tobacco products. It has provided the following particulars relating to goods sold by it to CF Ltd.

| Particulars | Amount (Rs) |
|---|---|
| Price of the goods (exclusive of all taxes/duties and discounts) | 60,000 |
| Excise duty | 6,000 |
| Packing charges | 2,000 |
| Freight (arranged by BW Ltd.) | 1,600 |
| Total amount billed to CF Ltd. before any discount | 69,600 |
| Discount @ 2% of the price of goods recorded in the invoice | |

The final amount charged from CF Ltd. Is Rs. 69,600 less discount@2%.

Determine the value of taxable supply made by BW Ltd.

### Illustration 23

SA Ltd. is a manufacturer of biscuits. The price of a 200 grams pack of biscuit sold by SA Ltd. is Rs. 30. It has received subsidy of Rs. 5 per pack of biscuit sold from NM Ltd. as part of NM Ltd.'s CSR activity. SA Ltd. supplied 1000 packs of biscuits @ Rs. 25 per pack to one of its wholesalers namely, MA Pvt Ltd. during a tax period. Loading charges of Rs. 1200 have also been charged separately from MA Pvt Ltd. MA Pvt Ltd. delayed the payment of consideration and thus, paid Rs.

5,000 as interest (no separate amount of GST is paid on the interest by MA Ltd.) in the next tax period. Assume the rate of GST to be 18%.

Determine the value of taxable supply made by SA Ltd.

### Illustration 24

Income tax collected at source should be added in value of the supply in terms of section 15(2)(a). Examine the correctness of the statement.

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# 8. INPUT TAX CREDIT

Contents

- Eligibility and conditions for taking ITC [Sec 16]
- Apportionment of credit and blocked credits [Sec 17]
- Availability of credit in special circumstances [Sec 18]
- Utilisation of ITC [Sec 49]

## 1. INTRODUCTION

- The GST regime promises ***seamless credit on goods and services across the entire supply chain.***
- However, there are few exceptions like supplies charged to tax under composition scheme and supply of exempted goods and/or services.
- ITC is considered to be the lifeline of the GST regime.
- It is the provisions of ITC, which essentially make GST a value added tax i.e., collection of tax at all points of supply chain after allowing credit of tax paid at earlier points.

### 1.1 – Salient Features of ITC

1) ITC is used for payment of tax on taxable output supply to avoid cascading effect of taxes.
2) Thus, it is concluded ITC is not available when tax is not payable on output supply, i.e., on exempt supply.
3) Broadly, ITC is available on all inputs, input services and capital goods used for purposes of business of a taxable person. The exception is 'blocked credit', where ITC is not available even when these goods or services are used for purposes of business.
4) The exception to the above principle is 'zero rated supply', i.e., exports or supplies to a special economic zone (SEZ) developer/unit, where ITC is available even if no tax is payable on output supply. Such ITC can be used either for payment of tax on supplies made with tax or refund of the same can be obtained. This simple mechanism is used to make exports and supplies to SEZ completely tax free.
5) If a taxable person is making both taxable and exempt supply, he is entitled to full credit of ITC in respect of inputs, input services and capital goods exclusively used for taxable supply and no credit at all for inputs, input services and capital goods exclusively used for exempt supply.
6) If common inputs, input services and capital goods are used for taxable as well as exempt supply, only proportionate ITC attributable to the taxable supply is available.

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## 2. ELIGIBILITY AND CONDITIONS FOR TAKING INPUT TAX CREDIT - SECTION 16

### 2.1 - Eligibility for taking ITC - Section 16(1)

**1) Registration under GST –**

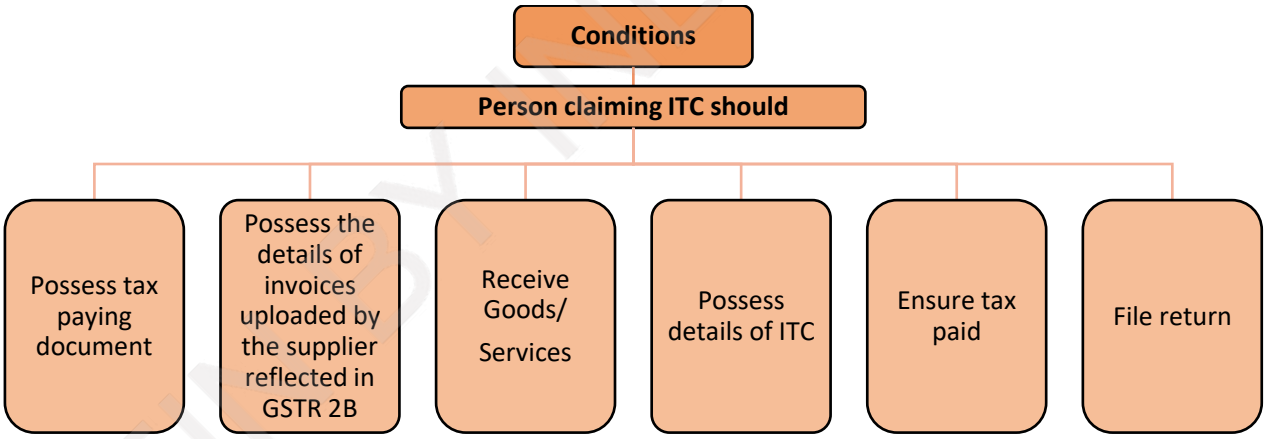
- Every registered person shall be entitled to ITC of GST charged on inward supply of goods and / or services.
- This is subject to the provisions relating to use of ITC under section 49 and the conditions and restrictions in the rules.

**2) Goods/services to be used for business purposes-**

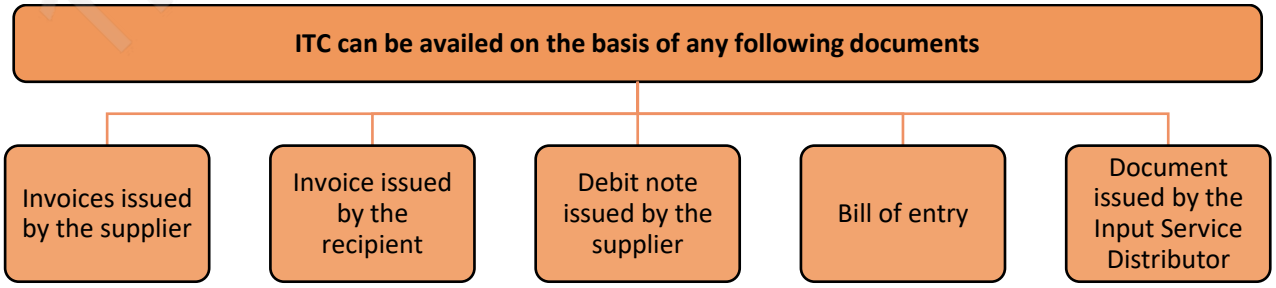
- ITC of GST will be available on goods and/or services which are used in the course or furtherance of the business.
- The "intention to use" the goods and/or services in the course or furtherance of business would also suffice for availing ITC on such goods and/or services.
- Thus, tax paid on goods and or/services which are used or intended to be used for non-business purposes cannot be availed as credit.
- ITC will be credited in electronic credit ledger.

### 2.2 - Conditions for taking ITC - Section 16(2)

- The registered person will be entitled to ITC on a supply only if all the following four conditions are fulfilled:




a) Possession of tax paying document [Section 16(2)(a) read with rule 36]




Those documents shall contain –

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- Amount of Tax charged
- Description of goods or services
- Total value of supply of goods and/or services
- GSTIN of Supplier and Recipient
- Place of Supply in case of Inter-State Supply

**Note**: No ITC of the Tax paid towards demands involving Fraud – Rule 36(3)

b) Details of invoices/debit notes uploaded by the supplier in his GSTR-1 or using IFF and details communicated in Form GSTR-2B [Section 16(2)(aa) read with rule 36(4)]

| | |
|---|---|
| ITC on invoices/debit notes which have been ***furnished*** by the suppliers in their GSTR-1s/using IFF ***and reflected*** in GSTR-2B of recipient | ***FULL ITC*** can be claimed on such invoices/debit notes, if all other conditions of availing ITC are fulfilled |
| ITC on invoice/debit note which have ***not been furnished*** by suppliers in their GSTR-1s/using IFF and thus, ***not reflected*** in GSTR-2B of recipient | ***NO ITC*** can be claimed in respect of such invoices/debit notes. |

- On the other hand, full ITC can be availed in respect of IGST paid on imports, documents issued under reverse charge, credit received from ISD etc., which are outside the ambit of section 37(1).

c) Receipt of the goods and / or services [Section 16(2)(b)]
   - The registered person taking the ITC must have received the goods and / or services.

d) Details of ITC in respect of the said supply communicated to the registered person under section 38 not restricted [Section 16(2) (ba)]

   - Section 38 stipulates that the details of outward supplies furnished by the registered suppliers in GSTR-1/using IFF and an autogenerated statement - GSTR-2B - containing the details of ITC is made available to the recipients of such supplies every month.

   - GSTR-2B contains the details of inward supplies (i) on which ITC is available to the recipient as well as (ii) on which ITC cannot be availed, whether wholly or partly, by the recipient. Accordingly, ITC will not be available in respect of inward supplies details of which have been furnished by a registered supplier:

     - who is a new registrant (Specified period from taking registration will be prescribed for this purpose.)
     - who has defaulted in payment of tax for a prescribed period.
     - whose output tax payable as per GSTR-1/IFF exceeds the output tax paid in GSTR-3B for a particular tax period by prescribed limit (Rule 88C).
     - who has availed ITC of an amount that exceeds the credit that can be availed by him as per GSTR-2B during prescribed period and by prescribed limit.

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- who has defaulted in discharging his tax liability in accordance with the provisions of section 49(12) read with rule 86B, i.e. who has discharged more tax liability from electronic credit ledger than prescribed under rule 86B
- other specified classes of persons.

e) Tax leviable on supply actually paid to Government [Section 16(2)(c)]

- The supplier should have actually paid the tax charged on the goods and/or services, for which ITC is being taken, either in cash or by utilizing ITC, subject to the provisions of ***section 41***.

***Availment of Self-assessed ITC [Sec 41]***

- A registered person can avail the credit of eligible ITC as self-assessed in his return. Such amount shall be credited to his electronic credit ledger.
- ***Reversal of ITC*** in the case of non-payment of tax by the supplier and ***re-availment*** thereof [Section 41 read with rule 37A]

***Re-availment of reversed ITC***

- Where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him.
- Thus, where the said supplier subsequently furnishes the return in GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in GSTR-3B for a tax period thereafter.

***Reversal of ITC***

- If the tax payable corresponding to such ITC availed is not paid by the supplier to the Government, ITC so availed shall be reversed by the said person along with applicable interest.
- A registered person (recipient) can avail ITC in GSTR-3B for a tax period in respect of such invoice/debit note, the details of which have been furnished by its supplier in the statement of outward supplies (in GSTR-1/using IFF).
- However, if supplier does not furnish return in Form GSTR-3B for the tax period corresponding to the said statement of outward supplies till 30th September following the end of FY in which the ITC in respect of such invoice/ debit note has been availed; the said amount of ITC shall be reversed by the said recipient, while furnishing a return in GSTR-3B on or before 30th November following the end of such FY during which such ITC has been availed.
- However, where the said amount of ITC is not so reversed by recipient, such amount shall be payable by the said person along with interest thereon under section 50

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f) Filing of return [Section 16(2)(d)]

- The registered person taking the ITC must have filed his return in GSTR-3B under section 39. Thus, a taxpayer should file GSTR-3B to avail ITC on eligible inward supplies.

### 2.3 - Goods received in lots - First proviso to section 16(2)

- ITC available only on receipt of last lot

### 2.4 - Payment for the invoice to be made within 180 days - Second proviso to section 16(2) read with rule 37

- The registered person must pay to the supplier, the value of the goods and/or services along with the tax ***within 180 days from the date of issue of invoice.***
- In the ***event of failure*** to do so, the corresponding credits availed by the registered person would be added to his output tax liability, with interest.
- ***Interest will be paid @ 18%*** from the date of availing credit till the date when the amount added to the output tax liability is paid.
- However, ***once the recipient makes the payment*** of value of goods and/or services along with tax, he will be ***entitled to avail the credit again*** without any time limit.
- In case ***part-payment*** has been made, ***proportionate credit*** would be allowed.
- ***Exceptions*** - This condition of payment of value of supply plus tax within 180 days does not apply in the following situations:
  a) Supplies on which tax is payable under reverse charge
  b) Deemed supplies without consideration
  c) Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply.

### 2.5 - Depreciation claimed on tax component - Sec 16(3)

- If the person taking the ITC on capital goods and plant and machinery has claimed depreciation on the tax component of the cost of the said items under the Income-tax Act 1961, the ITC on the said tax component shall not be allowed.
- Thus, in respect of the tax paid on such items, either depreciation on the tax component can be claimed under Income Tax Act or ITC of such tax paid can be availed under GST laws. Dual benefit cannot be claimed.

### 2.6 - Time limit for availing ITC - Sec 16(4)

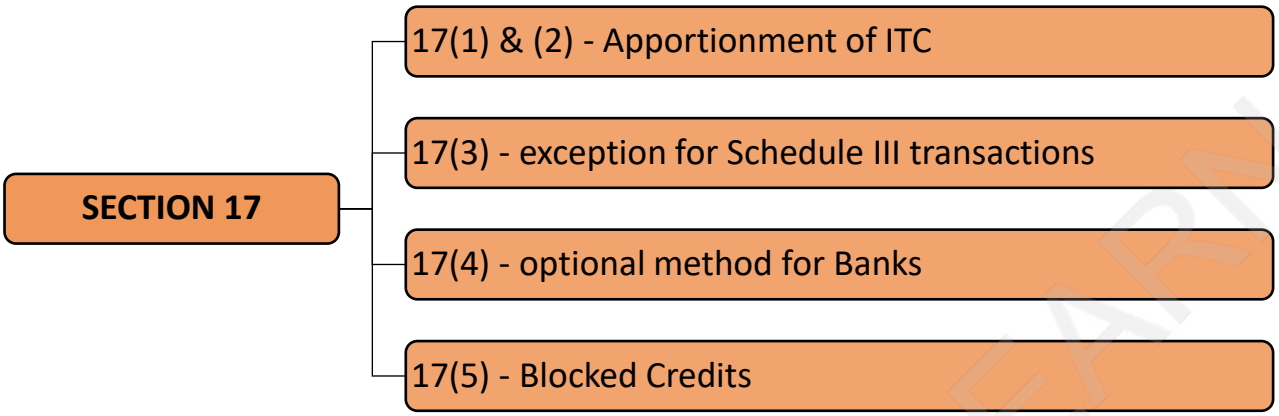
- ITC on invoices pertaining to a financial year or debit notes relating to invoices pertaining to a financial year can be availed any time till the
  - 30th November following the end of FY (OR)
  - The date of filing of the relevant annual return,

- whichever is earlier.

- ***Exception*** - The time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.

- ***Note*** - The time limit is only for availment and not for utilisation of credit.

## 3. APPORTIONMENT OF CREDIT & BLOCKED CREDIT – SECTION 17




- The fundamental principle of credit scheme under value added tax is that ***tax paid*** on inputs, input services and capital goods ***can be availed as credit only when the output is taxable***. Thus, ***when tax is not payable on output, credit cannot be availed***.

- Accordingly, ***ITC under GST can be availed and utilised for payment of tax on output supply***. Consequently, ***ITC cannot be availed when tax is not payable on output supply***, i.e. on exempt supply.

- ***Exception:*** The only exception to the above principle is 'zero rated supply, where ITC is available even if no tax is payable on output supply as zero-rated supply is not an exempted supply.

- If a taxable person is making both taxable and exempt supply, ***he is entitled to full credit of ITC in respect of inputs, input services and capital goods exclusively used for taxable supply*** and ***no credit at all for inputs, input services and capital goods exclusively used for exempt supply.***

- If common inputs, input services and capital goods are used for taxable as well as exempt supply, ***only proportionate ITC attributable to the taxable supply is available***.

- The common ITC is apportioned in the ratio of value of taxable supply and exempt supply.

- Also, in case goods and/or services are used by the taxable person ***partly for the business purposes and partly for non-business purposes*** - he is entitled to full credit of ITC in respect of inputs, input services and capital goods exclusively used for business purposes and no credit at all can be availed for goods and/or services exclusively used for non-business purposes.

- If common inputs, input services and capital goods are used partly for business and partly for non-business purposes, only proportionate ITC attributable to the business purpose is available.

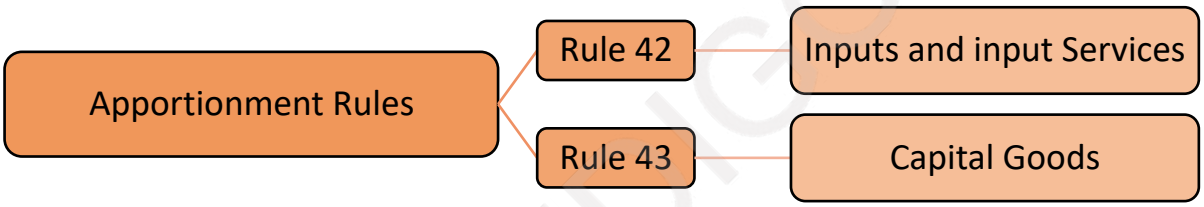
- The situations requiring apportionment are as follows:

- when the goods and / or services are used by the registered person partly for the purpose of business and partly for other purposes ***[Section 17(1)]***; and
- when the goods and / or services are used by the registered person partly for making taxable supplies including zero-rated supplies and partly for making exempt supplies ***[Section 17(2)]***.

- In both the above situations, full ITC on inward supplies cannot be taken; ***only proportionate ITC is allowed in such scenarios***.
- Where goods and/or services are used partly for non-business purposes and partly for business purposes - ***ITC attributable only to business purposes can be taken by the registered person.***
- Similarly, where goods and/or services are partly used for making exempt supplies including zero rated supplies and partly for taxable supplies - ***ITC attributable to taxable supplies and zero-rated supplies can be taken by the registered person***.

## 4. APPORTIONMENT OF CREDIT – SECTION 17 (1) & (2)

### Apportionment of Credit - Rules 42 & 43




### Rule 42 - Methodology for apportionment of ITC on inputs and input services and reversal of ineligible credit:

- ***Step 1 – Compute common credit***

| **Total input tax involved on inputs & input services in a tax period** | **T** |
|---|---|
| **Less:** Input tax that used exclusively for non-business purposes | **(T1)** |
| **Less:** Input tax used exclusively for exempt supplies | **(T2)** |
| **Less:** Input tax on blocked credits u/s 17(5) | **(T3)** |
| ITC credited to Electronic Credit Ledger [C1 = T – (T1+T2+T3)] | **C1** |
| **Less:** ITC used exclusively for taxable supplies including zero rated supplies | **(T4)** |
| Common ITC available for apportionment | **C2** |

- T1, T2, T3 and T4 will be determined and declared by the registered person at the invoice level in GSTR 2 and summary level in GSTR- 3B.
- Where ITC on inputs and input services used partly for non- business purposesand exempt supplies can be segregated at invoice level, the same will be added to T1 and T2 respectively and the balance credit will be added in T4.
- The portion identified as pertaining to taxable supplies in C2 will be allowed as ITC.

- ***Step 2 – Compute credit attributable to exempt supplies (ineligible credit) by apportionment of common credit***

| | |
|---|---|
| Common ITC available for apportionment | ***C2*** |
| Aggregate value of exempt supplies during the tax period | ***E*** |
| Total turnover in the State during the tax period | ***F*** |
| Apportion C2 into credit attributable to exempt supplies $$D1 = C2 \ x \ \frac{E}{F}$$ | ***D1*** |

  - If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.

- ***Step 3 – Compute credit attributable to non-business purposes***

| | |
|---|---|
| Compute credit attributable to non-business purposes<br>***D2 = 5% of C2*** | ***D2*** |

- ***Step 4 – Compute eligible Credits***

| | |
|---|---|
| Compute C3 attributable to business purposes and taxable supplies including zero rated supplies as under<br>***C3 = C2 – (D1+D2)*** | ***C3*** |

- ***Step 5 - Restrict ineligible credits***

| | |
|---|---|
| Reverse **D1 + D2**.<br>The sum of D1 and D2 will be added to theoutput tax liability. | |

- ***Key points with regard to Exempt supplies***
  - Exempt supplies **<u>include</u>**
    - ✓ Reverse charge supplies,
    - ✓ Transactions in securities,
    - ✓ Sale of land and sale of building when entire consideration is received either after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier and supply of warehoused goods before clearance for Home Consumption.
    - ✓ Thus, ***ITC attributable to such supplies will need to be reversed***.
  - Exempt supplies **<u>exclude</u>**
    - ✓ Supply of services by way of accepting deposits, extending loans or advances where the consideration is either interest or discount. However, value of such services is included in the exempt supply when the same are provided by a banking company or a financial institution including a NBFC.

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- ✓ Value of supply of Duty Credit Scrips
- ✓ Thus, ***ITC attributable to such supplies need not be reversed.***

- Aggregate value of exempt supplies and total turnover ***excludes the central excise duty, State excise duty, central sales tax and VAT.***

- Non-taxable supply includes supply of
  - ✓ Alcoholic liquor for human consumption
  - ✓ Petroleum products like petroleum crude, diesel, petrol, ATF, natural gas.
- Presently, (i) central excise duty is leviable on manufacture/production of tobacco, petroleum crude, diesel, petrol, ATF and natural gas (ii) State excise duty is leviable on manufacture/production of alcoholic liquor, opium, Indian hemp and narcotics, and (iii) VAT/CST is leviable on intra- State/inter-State sale of petroleum crude, diesel, petrol, ATF, natural gas and alcoholic liquor.

- The value of exempt supply in respect of

  - ✓ Land and building are the value adopted for paying stamp duty and
  - ✓ for security is 1% of the sale value of such security.

- ***Final amount***

  - Compute C3 separately for ITC of CGST, SGST/ UTGST and IGST.
  - Compute ∑ (D1 + D2) for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year, before the due date for filing the return for September in the following financial year.
  - If ∑ (D1 + D2) > the amount already reversed every month, the differential amount has to be reversed in any month till September in the following financial year and interest @ rate 18% should be paid on such differential amount from 1st April of succeeding year till the date of payment.
  - If the amount reversed every month > ∑ (D1 + D2), the additional amount paid has to be claimed back as credit in the return of the month not later than September in the next financial year.

## Rule 43 - Methodology for apportionment of ITC on Capital Goods and reversal thereof:

- ***Step 1 – Determine the credit based on exclusive use.***

  - Identify input tax on capital goods used/ intended to be used ***exclusively for non-business purposes or making exempt supplies*** and declare the same in GSTR 2 and Form GSTR 3B. Such amount will ***not be credited to electronic credit ledger***.

  - Identify input tax on capital goods used/ intended to be used ***exclusively for making taxable supplies other than exempted supplies but including zero rated supplies*** and declare the same in GSTR 2 and GSTR-3B. Such amount will be ***credited to electronic credit ledger***.

- ***Step 2 - Determine common credit on capital goods for a tax period***

  - Identify input tax on capital goods (as reflected on the invoice) which are used/intended to be used commonly for making taxable and/or zero rated supplies as well as exempt supplies and/or non-business purposes and denote the same as '**Tc**'.

- Such amount (as reflected on the invoice) will be credited to electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a), denoted as 'Tie', .
- **Tie** shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed
- 'Tie' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR 3B.
- The ***useful life*** of such capital goods will be taken as ***5 years*** from the date of invoice.
- The input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value 'Tc';
- Determine common credit during the useful life of capital goods for a tax period as under and denote the same as 'Tm'

$$Tm = \frac{Tc}{60}$$

- ***Step 3 - Apportion common credit attributable to exempt supplies as under and denote it by $T_e$***

$$T_e = T_r \times (E/F)$$

- Where, E = Aggregate value of exempt supplies made during the tax period F = Total turnover in the State during the tax period
- All the points with regard to Aggregate value and exempt supplies are same as mentioned above under Rule 42.
- ***Step 4 – Add $T_e$ to the output tax liability along with applicable interest during every tax period of the useful life of the capital goods concerned.***

### Exception for Schedule III transactions – Section 17(3)

The value of exempt supply under sub-section (2) shall be such as may be prescribed, and

- shall include supplies on which the recipient is liable to pay tax on RCM,
- transactions in securities,
- Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building and supply of warehoused goods before clearance for Home Consumption.

Explanation - The expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except -

i. the value of activities or transactions specified in paragraph 5 of the said Schedule; and

ii. the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.";

Thus, it implies that the activities/transactions mentioned in clauses (i) and (ii) above are included in the value of exempt supply.

Further Explanation 3 inserted to Rule 43 prescribing value for the purpose of clause (ii) above as: the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.

### Optional Method for Banks – Section 17 (4) + Rule 38

- As an alternative to the above method, a banking company or a financial institution including a NBFC, which accepts deposits, or extends loans or advances, has the option to limit its availment of ITC to 50% of the eligible ITC on inputs, capital goods and input services each month and ***the balance amount of input tax credit shall be reversed in Form GSTR-3B.***
- Credit of tax paid on inputs and input services that are used for non-business purposes and items mentioned u/s section 17(5) [blocked credits] cannot be availed.
- The restriction of availing 50% ITC shall not apply to the tax paid on supplies procured from another registration within the same entity, i.e. 100% credit of such tax can be availed.
- The option once exercised cannot be changed during the remaining part of the financial year.
- Interest is the main income of banks and NBFCs and the same is exempt from GST. Thus, if rule 42 and 43 are applied strictly, significant portion of ITC of banks and NBFCs will have to be reversed/added to output tax liability. Therefore, banks and NBFCs have been given the said option of availing 50% of eligible ITC to possibly encourage them as they are required to finance priority sectors, MSME, agriculture etc.

## 5. BLOCKED CREDITS – SECTION 17 (5)

- ITC of tax paid on almost every input and input services used for supply of taxable goods and/or services is allowed under GST except a small list of items provided u/s 17(5).
- Thus, ITC on such items is not allowed even though the same may qualify as inputs, input services or capital goods and are used in the course or furtherance of business.

### 5.1 - Motor vehicles and other conveyances and related services - Section 17(5)(a)

- ITC is blocked on purchase of motor vehicles used for passenger transportation with certain exceptions.
- Motor vehicles for this purpose means any motor vehicle used for transportation of persons with seating capacity ≤ 13 persons (including the driver)
- ***Exceptions to the above rule***: Motor vehicles when used for any of the following purposes, ITC on them is allowable:

    1) making further taxable supply of such motor vehicles;
    2) making taxable supply of transportation of passengers;
    3) making taxable supply of imparting training on driving such motor vehicles
    4) motor vehicle used for transportation of goods, dumpers, tippers etc

5) motor vehicles for transportation of persons with seating capacity > 13 persons (including the driver) used for any purpose.

### 5.2 - Vessels and aircrafts - Section 17(5)(aa)

- ITC is blocked on purchase of vessels and aircrafts used for business purposes with certain exceptions.
- ***Exceptions to the above rule:*** Credit is allowed in the following cases
  1) making further taxable supply of such vessels or aircraft
  2) making taxable supply of transportation of passengers
  3) making taxable supply of imparting training on navigating and flying such vessels
  4) vessels and aircrafts used in transportation of goods

### 5.3 - General insurance, servicing, repairs and maintenance - Sec 17(5)(ab)

- ***ITC is not allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is not allowed.***
- ITC is allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is allowed.
- ITC is allowed on such services when received by Manufacturer of such motor vehicle, vessels or aircrafts.
- ITC is allowed on such services when receiver is engaged in general insurance business.

### 5.4 - Leasing, renting and hiring of motor vehicles, vessels, or aircraft - Section 17(5)(b)

- ITC is not allowed on Leasing, renting and hiring of motor vehicles, vessels, or aircraft on which ITC is blocked.
- ITC on such services is allowed
  - when used for making an outward taxable supply of the same category of services or as an element of a taxable composite or mixed supply.
  - when provided by an employer to its employees under a statutory obligation
- ITC on leasing, renting or hiring of motor vehicles, vessels or aircraft on which ITC is allowed, is also allowed.

### 5.5 - Food & beverages, outdoor catering, health services and other services - Section 17(5)(b)

- ITC is blocked in the case of
  - Food and beverages
  - Outdoor catering
  - Beauty treatment
  - Health Services

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- Cosmetic and plastic surgery
- Life insurance and health insurance

- However, ITC is allowed if
  - Such goods and/or services when used by a registered person for making an outward taxable supply of the same category of goods and/or services or as an element of a taxable composite or mixed supply.
  - Such goods and/or services when provided by an employer to its employees under a statutory obligation.

### 5.6 - Membership of a club, health and fitness center - Section 17(5)(b)

- ITC on Membership of a club, health and fitness center taken for either personal use or business use (i.e. By the employer for its employees) is not allowed.
- However, ITC is allowed on such services when provided by an employer to its employees under a statutory obligation.

### 5.7 - Travel benefits extended to employees on vacation such as leave or home travel concession - Section 17(5)(b)

- ITC on Travel benefits extended to employees on vacation such as leave or home travel concession is blocked.
- ITC is allowed on such services when provided by an employer to its employees under a statutory obligation.

### 5.8 - Works contract services for construction of immovable property - Section 17(5)(c)

- ITC on works contract services for construction of an immovable property is blocked.
- "Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.
- If re-construction, renovation, additions or alterations or repairs are not capitalized, it would not tantamount to construction under GST law. Thus, ***when the value of works contract service is not capitalized, ITC is allowed to all recipients irrespective of their line of business***.
- Capitalisation of an expense does not depend on whether the taxpayer intends to avail ITC, but on the basis of Accounting Standards and GAAP.

***Works Contract – [Sec 2(108)]*** – means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning ofany ***immovable property*** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

- Essentially works contract is a composite supply involving both goods and services. Under GST law, the ambit of works contract has been ***confined only to immovable property***.

- ***Exceptions to the above rule***: ITC on works contract services for construction of immovable property is available only in the following 2 situations:
    - When the works contract service is availed by a works contractor for being used in providing the works contract service.
    - For construction of plant and machinery (ITC is allowed to all the recipients irrespective of their line of business)

> ***"Plant and machinery"*** *- means apparatus, equipment, and machinery fixed to earth by foundation or structural supports that are used for making outward supply of goods and/or services and includes such foundation or structural support but excludes*
> 1) *Land, building or other civil structures,*
> 2) *Telecommunication towers, and*

### 5.9 - Self-construction of immovable property - Section 17(5)(d)

- ITC is not allowed on goods and/or services received by a taxable person for construction of an immovable property (other than plant and machinery) ***on his own account*** even though such goods and/or services are used in the course or furtherance of business.
- ITC on goods and/or services used in the construction of an immovable property is blocked only in those cases where the taxable person constructs the immovable property for his own use even if the immovable property being constructed is used in the course or furtherance of his business.
- 'construction' and 'plant and machinery' for works contract services as defined above, applies to construction on own account also.
- Thus, ITC on goods and/or services used in construction of immovable property is available only in the following three situations:
    1) For construction of plant and machinery
    2) When the value of goods and/or services is not capitalized
    3) When the construction is not on own account

### 5.10 - Inward supplies charged to tax under composition levy - Section 17(5)(e)

- Tax paid on goods and/or services under composition scheme is not available as ITC.
- Since a composition supplier cannot collect any tax on its supplies, from the recipient of its supplies, it is obvious that no ITC can be availed in respect of such supplies by the recipients.
- A supplier registered under composition scheme issues bill of supply and not a tax invoice.

### 5.11 - Inward supplies received by a non-resident taxable person - Section 17(5)(f)

- A non- resident taxable person has no fixed place of business in India but he sporadically supplies goods or services in India.

- Tax paid on goods and/or services received by such non-resident taxable person, is not available as ITC. However, tax paid by him on ***imported goods*** is allowed as ITC.
- ***ITC on goods imported by a non-resident taxable person is allowed, ITC on services imported by him is blocked.***

### 5.12 – Inward supplies used for CSR relates activities – Section 17(5)(fa)

- ITC is blocked on goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013

### 5.13 - Inward supplies used for personal consumption - Section 17(5)(g)

- Section 17(5)(g) specifically blocks the ITC on goods and/or service used for personal consumption.
- The term 'personal consumption' may be understood in the general sense which would mean non-business use.
- One of the foremost conditions laid down in section 16 for availing ITC on goods and/or services is that such goods and/or services should be used in the course or furtherance of business.
- Further, where goods and/or services are used partly for the purpose of any business and partly for other purposes, section 17(1) restricts the credit to so much of the ITC as is attributable to business purposes.

### 5.14 - Free samples, gifts, goods lost/stolen etc. - Sec 17(5)(h)

- Section 17(5)(h) blocks credit on
    - Goods that are disposed of by way of gift
    - Goods that are disposed of by way of free samples
    - Lost goods
    - Stolen goods
    - Destroyed goods
    - Goods that are written off
- This is because principally, ITC is available only for payment of tax on output supply. If no tax is payable on output supply, ITC on inputs/input services/capital goods relating to such output supply is not eligible.
- Gift means transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. It cannot be demanded as a matter of right.
- samples are given to prospective customers to enable them to test the quality of the item before making a decision to buy the same.
- ***Buy one get one free offer*** - It can be treated as supplying two goods for the price of one. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of

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section 8. ITC shall be available to the supplier for the inputs, input services and capital goods.

- ***Discounts including 'Buy more, save more' offers*** - Discounts offered by the suppliers to customers shall be excluded to determine the value of supply.
- However, the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.
- ***Return of time expired medicines/drugs are treated as fresh supply*** - The retailer/ wholesaler can return the time expired goods, either by treating the same as fresh supply or by issuing credit notes.
- Where the goods returned by the retailer/wholesaler as a fresh supply, are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of section 17(5)(h).

### 5.15 - Tax paid in fraud cases, detention, confiscation etc. - Section 17(5)(i)

- Tax paid under sections 74, 129 and 130 is not available as ITC.
- These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances.

## 6. CREDIT IN CASE OF SPECIAL CIRCUMSTANCES – SECTION 18

### 6.1 - Person liable for registration – Section 18(1)(a)

- A person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration
- shall be entitled to take credit of input tax in respect of
    - inputs held in stock and
    - inputs contained in semi-finished or
    - inputs contained in finished goods
- held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;
- The above benefit of ITC is not available to any person who applies for registration after 30 days from the date he is liable to registration.

### 6.2 - Voluntary registration – Section 18(1)(b)

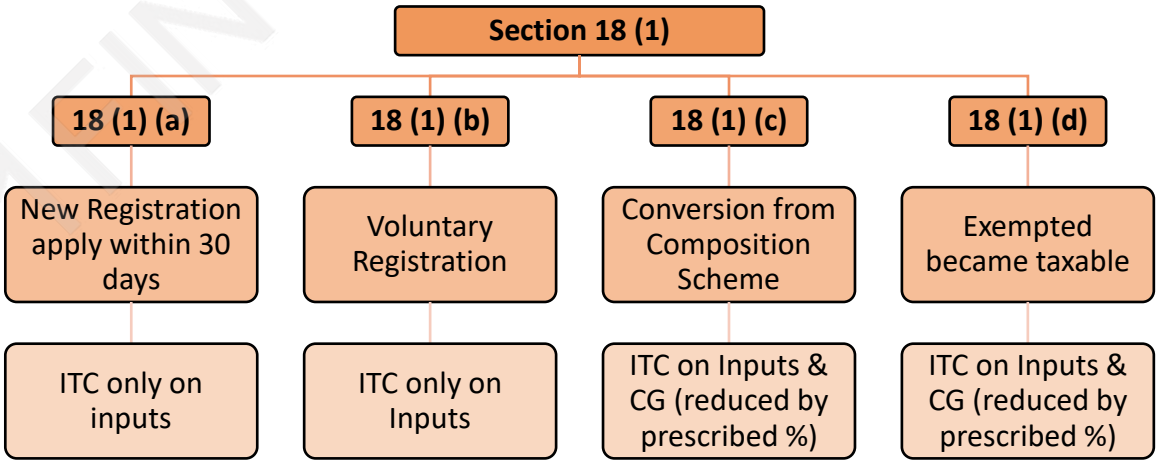
- A person who takes registration under voluntary registration scheme
- shall be entitled to take credit of input tax in respect of
    - inputs held in stock and
    - inputs contained in semi-finished or
    - inputs contained in finished goods
- held in stock on the day immediately preceding the date of grant of registration.

### 6.3 - Exiting composition levy – Section 18(1)(c)

- Registered person who ceases to pay composition tax and switches to regular scheme
- shall be entitled to take credit of input tax in respect of
    - inputs held in stock and
    - inputs contained in semi-finished or
    - inputs contained in finished goods and
    - Capital goods
- Held in stock on the day immediately preceding the date from which he becomes liable to pay tax under regular scheme.
- ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from the date of invoice.
- ITC claimed shall be verified with the corresponding details furnished by the corresponding supplier.

### 6.4 - Exempt supply becoming taxable supply – Section 18(1)(d)

- Registered person whose exempt supplies become taxable supplies
- shall be entitled to take credit of input tax in respect of
    - Inputs held in stock and
    - Inputs contained in semi-finished or
    - Inputs contained in finished goods held in stock relatable to such exempt supply and
    - capital goods exclusively used for such exempt supply
- held in stock on the day immediately preceding the date from which such supply becomes taxable.
- ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from the date of invoice.
- ITC claimed shall be verified with the corresponding details furnished by the corresponding supplier.

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### 6.5 - Common points for the above 4 cases -

- ***Prescribed form*** - The registered person has to make an electronic declaration in form ***ITC-01*** on the common portal,
- clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in sec 18(1)(a)/(b)/(c)/(d).
- ***Time limit*** - The declaration is to be filed ***within 30 days*** (extendable by commissioner /Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC.
- ***Declaration*** - If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together ***exceeds Rs. 2,00,000***, the declaration needs to be certified by a ***practicing Chartered Accountant/Cost Accountant.***
- ***Restrictions on ITC***- A registered person shall not be entitled to take ITC in respect of any supply of goods or services or both to him after the ***expiry of one year*** from the date of issue of tax invoice relating to such supply. ***[Sec 18(2)]***

### 6.6 - Change in the constitution of a registered person - Section 18(3)

- Where there is a change in the constitution of a registered person
- on account of sale, merger, demerger, amalgamation, lease or transfer of the business
- with the specific provisions for transfer of liabilities,
- the said registered person shall be allowed to transfer the ITC which remains unutilised in his electronic credit ledger to such transferee.
- A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de- merger, amalgamation, lease or transfer of business, in ***Form GST ITC-02***, along with a request for transfer of unutilized ITC lying in his electronic credit ledger to the transferee [Rule 41]
- Transfer or change in the ownership of business includes transfer or change in the ownership due to death of the sole proprietor.
- In the ***case of demerger***, the ITC shall be ***apportioned in the ratio of the value of assets*** of the new units as specified in the demerger scheme. Here, "value of assets" means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.
- The transferor shall also submit a copy of a certificate issued by a practicing Chartered Accountant or cost accountant certifying that the sale, merger, de- merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.
- The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

## 6.7 - Switching from normal levy to composition levy or from taxable to exempt supply - Section 18(4)

- Section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.
- The registered person shall be required to reverse ITC taken on
    - Inputs held in stock and
    - Inputs contained in semi-finished or
    - Inputs contained in finished goods and
    - capital goods
- held in stock on the day immediately preceding the date from which such supply becomes exempt or he switches to composition scheme.
- ***ITC on inputs*** should be ***reversed proportionately*** on the basis of corresponding invoices on which credit had been availed on such inputs.
- If ***invoices are not available***, ITC can be reversed on the basis of the ***prevailing market price*** of such goods on the date of switch over/exemption.
- The details furnished on the basis of prevailing ***market value*** need to be duly ***certified by a practicing Chartered Accountant/ Cost Accountant***.
- ITC involved in the remaining useful life (in months) of the capital goods should be reversed on pro-rata basis, taking the useful life as 5 years.
- The registered person has to debit the electronic credit or cash ledger by the reversal amount in respect of inputs and capital goods.
- ***Balance of ITC***, if any, lying in the electronic credit ledger ***lapses***.
- ITC to be reversed on inputs and capital goods is calculated separately for ITC of CGST, SGST/UTGST and IGST.
- The reversal amount is added to the output tax liability of the registered person.

## 6.8 - Supply of capital goods or plant and machinery on which ITC has been taken - Section 18(6)

- If capital goods or plant and machinery on which ITC has been taken are supplied outward by the registered person, he must pay an amount that is the ***higher of the following***:
    - ITC taken on such goods reduced by ***5% per quarter of a year or part thereof*** from the date of issue of invoice for such goods (i.e., ITC pertaining to remaining useful life of the capital goods), or
    - ***tax on transaction value***
- ITC pertaining to remaining useful life of the capital goods should be computed separately for ITC of CGST, SGST/UTGST and IGST.

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- Where the amount so determined exceeds the tax payable on the transaction value of the capital goods, such amount need to be paid and thus, should be added to the output tax liability.
- If ***refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap***, the taxable person may pay ***tax on the transaction value***.

### 6.9 - Cancellation of registration

- Cancellation of registration also requires reversal of ITC on
    - inputs held in stock/
    - contained in semi-finished goods or
    - Contained in finished goods held in stock,
    - capital goods or plant and machinery
- on the day immediately preceding the cancellation date.
- The amount to be reversed on inputs and capital goods is computed in the manner as applicable for sub- sections (4) and (6) of section 18 (discussed above).
- Such amount is then compared with the output tax payable on such goods, and the higher of the two amounts is finally paid by the registered person.

***Quarter [Sec 2(92)]*** - *means* a period comprising three consecutivecalendar months, ending on the last day of March, June, September andDecember of a calendar year.

## 7. MANNER OF DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR — RECOVERY IN CASE OF WRONG DISTRIBUTION - SECTION 20 & 21

***Input Service Distributor [Sec. 2(61)*** - "Input Service Distributor" [ISD] means an office of the supplier of goods or services or both which

Receives tax invoices issued under section 31 towards the receipt of input services and

Issues a prescribed document for the purposes of distributing the credit of Central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having same Permanent Account Number as that of said office;

***Relevant period*** - "Relevant period" shall be—

If the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

If some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

***Recipient of credit*** - The expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the ISD

***Turnover*** - The term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

***General*** - The Input Service Distributor shall distribute —

The credit of central tax as central tax or integrated tax and

The credit of integrated tax as integrated tax or central tax,

By way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

***Conditions*** - The Input Service Distributor may distribute the credit subject to the following conditions, namely:—

***Valid document***: the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

***Distribution cannot exceed credit***: the amount of the credit distributed shall not exceed the amount of credit available for distribution;

Specific to specific distribution: the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

Credit of more than one unit to be apportioned to them in turnover ratio of last year, if operational in current year : the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period.

Credit of all units to be apportioned to all in turnover ratio of last year, if

***operational in current year***: the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

### 7.1 - Manner of recovery of credit distributed in excess - Section 21 Where the Input Service Distributor distributes —

The credit in contravention of the provisions contained in section 20

Resulting in excess distribution of credit to one or more recipients of credit,

The excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

Procedure for distribution of input tax credit by Input Service Distributor {Rule 39}

1) An Input Service Distributor shall distribute input tax credit in the manner and subject to the conditions specified below:—

   a) The input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6 in accordance with the provisions of Chapter

   b) The Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount ineligible as input tax credit under provisions of sub-section (5) of section 17 and the amount eligible as input tax credit;

   c) The input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause d.

   d) The input tax credit that is required to be distributed in accordance with the provisions of clause(d) and (e) of sub- section (2) of section 20 to one of the recipients 'Rl', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "$C_1$", to be calculated by applying the following formula: —

$$C_1 = (t_1 / T) \times C$$

were, —

"$C$" is the amount of credit to be distributed,

"$t_1$" is the turnover, as referred to in section 20, of person Rl during the relevant period, and

"T" is the aggregate of the turnover of all recipients during the relevant period;

   e) Input tax credit on account of integrated tax is distributed as input tax credit of integrated tax to every recipient;

   f) Input tax credit on account of central tax and State tax shall,—

      I. In respect of a recipient located in the same State in which the Input Service Distributor is located, be distributed as input tax credit of Central tax and State tax respectively;

      II. In respect of a recipient located in a State other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax that qualifies for distribution to such recipient in accordance with clause (d);

   g) The Input Service Distributor shall issue an ISD invoice, as prescribed in invoice rules, clearly indicating in such invoice that it is issued only for distribution of input tax credit.

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h) The Input Service Distributor shall issue an ISD credit note, as prescribed in invoice rules, for reduction of credit in case the input tax credit already distributed gets reduced for any reason.

i) Any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (g) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) above and such credit shall be distributed in the month in which the debit note has been included in the return in ***FORM GSTR-6***.

## 8. HOW ITC IS UTILISED? – SECTION 49

### 8.1 - Rules of Utilisation

- ITC is credited to a registered person's electronic credit ledger. A taxable person is entitled for ITC of CGST, SGST/UTGST and IGST depending upon the nature of supplies received by him.
- The amount of ITC available in the electronic credit ledger of the registered person on account of--

  1) IGST shall first be utilised towards payment of IGST and the amount remaining, if any, may be utilised towards the payment of CGST and SGST, or as the case may be, UTGST, in any order and any proportion,

  2) CGST shall first be utilised towards payment of CGST and the amount remaining, if any, may be utilised towards the payment of IGST;

  3) SGST shall first be utilised towards payment of SGST and the amount remaining, if any, may be utilised towards payment of IGST;

  4) UTGST shall first be utilised towards payment of UTGST and the amount remaining, if any, may be utilised towards payment of IGST;

  5) ITC on account of SGST / UTGST shall be utilised towards payment of IGST only where the balance of the ITC on account of CGST is not available for payment of IGST

  6) CGST shall not be utilised towards payment of SGST or UTGST; and

  7) SGST or UTGST shall not be utilised towards payment of CGST.

  8) ITC on account of CGST, SGST /UTGST shall be utilised towards payment of any output tax, only after the ITC available on account of IGST has first been utilised fully.

- GST is a dual GST wherein two taxes viz, CGST and SGST/UTGST are levied concurrently on a supply transaction. While the CGST revenue accrues to Central Government, SGST and UTGST revenue accrue to respective State Government and Union Territory respectively. Hence, ITC of CGST and SGST/UTGST is not inter- changeable.
- IGST is a transitory tax. IGST paid by taxpayer initially goes to the Central Clearing Authority.

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## 8.2 - Cross Utilisation of ITC

- Cross utilization of IGST and CGST, SGST/UTGST is permissible.
- Cross-utilization of credit is available only between CGST - IGST and SGST/UTGST - IGST.
- Cross utilization of CGST and SGST/UTGST is not permissible.
- ITC of IGST need to be exhausted fully before proceeding to utilize the ITC of CGST and SGST in that order.

| ITC available | Can be set off against output of | Order of set off |
|---|---|---|
| IGST | IGST<br>, CGST<br>SGST<br>UTGS<br>T | 1. IGST first for IGST<br>2. Balance IGST for CGST or SGST/UTGSTwhichever order i.e., ITC of IGST can be utilized either against CGST or SGST. |
| CGST | CGST<br>IGST | 1. CGST<br>2. IGST |
| SGST/ UTGST | SGST<br>IGST | 1. SGST<br>2. IGST |
| UTGST | UTGS<br>T<br>IGST | 1. UTGST<br>2. IGST |

## 8.3 – Restrictions on utilization of ITC – Rule 86A

- The ***Commissioner***/ an officer (not below the rank of an Assistant Commissioner) authorised by him is ***empowered to impose restrictions*** on utilization of ITC available if he has ***reasons to believe that such ITC has been fraudulently availed or is ineligible.***
- The restrictions can be imposed in the following circumstances:
  1) ITC has been availed on the basis of tax invoices/valid documents -
     - issued by a non-existent supplier or by a person not conducting anybusiness from the registered place of business; or
     - without receipt of goods or services or both; or
     - the tax in relation to which has not been paid to the Government
  2) The registered person availing ITC has been found non-existent or not to be conducting any business from the registered place of business; or
  3) The registered person availing ITC is not in possession of tax invoice/valid document.
- If the ITC is so availed, the restrictions can be imposed
  - by ***not allowing such ITC to be used*** for discharging any liability undersection 49 or
  - ***not allowing refund*** of any unutilised amount of such ITC.
- Such restrictions can be ***imposed for a period up to 1 year*** from the date of imposing such restrictions.

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- However, the Commissioner/officer authorised by him, can withdraw such restriction if he is satisfied those conditions for imposing the restrictions no longer exist.

### 8.3 – Restrictions on use of amount available in Electric Cash Ledger – Rule 86B

- Rule 86B restricts the use of ITC available in the electronic credit ledger for discharging output tax liability. The aforesaid rule starts with a non-obstante clause and thus, has an over-riding effect on any other provisions of the CGST Rules.
- ***Applicability of Rule 86B:***
    - Rule 86B is applicable to the registered person having value of taxable supply (other than exempt supply and zero-rated supply) in a month exceeding Rs. 50 lakhs.
    - Therefore, in cases wherein value of taxable supply in a month is up to Rs. 50 lakhs, then this restriction would not be applicable.
- ***Exceptions:***

This restriction shall not apply in following cases: -

- Where the said person/proprietor/karta/managing director/any of its two partners, whole-time directors, members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than INR 1 lakh as Income Tax in each of the last 2 financial years

Where the registered person has received a refund of more than 1 lakh in the preceding FY on account of unutilised ITC in case of (i) zero rated supplies made without payment of tax or (ii) inverted duty structure **Exceptions:**

This restriction shall not apply in following cases:-

- Where the said person/proprietor/karta/managing director/any of its two partners, whole-time directors, members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than INR 1 lakh as Income Tax in each of the last 2 financial years
- Where the registered person has received a refund of more than 1 lakh in the preceding FY on account of unutilised ITC in case of (i) zero rated supplies made without payment of tax or (ii) inverted duty structure
- Where the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year.
- Where the registered person is:-
    - Government Department
    - Public Sector Undertaking
    - Local authority
    - Statutory body

**Note:**

Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit

- Where the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, up to the said month in the current financial year.
- Where the registered person is: -
  - Government Department
  - Public Sector Undertaking
  - Local authority
  - Statutory body

- ***Note:***

Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit

## 9. CLARIFICATIONS

### 9.1 - Clarification regarding availment of ITC in respect of common input services procured from a third party but attributable to both HO and BO's or exclusively to one or more BO's

***Issue***: Whether HO can avail the ITC in respect of common input services procured from a third party but attributable:

i. to both HO and BOs or

ii. exclusively to one or more BOs,

issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (ISD) mechanism for distribution of ITC in respect of such common input services?

***Clarification***: It is clarified that in such a case, as per the present provisions of the law, it is not mandatory for the HO to distribute such ITC by ISD mechanism. HO has an option to:

i. distribute ITC in respect of such common input services by following ISD mechanism, or

ii. issue tax invoices under section 31 to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of sections 16 and 17.

ISD mechanism can be opted only if the said input services are attributable to the said BO or have actually been provided to the said BO. In case ISD mechanism is opted, HO is required to get itself registered mandatorily as an ISD. Similarly, the HO can issue tax invoices under section 31 to the concerned BOs, only if the common input services have actually been provided to the concerned BOs.

***HO has an option to:***

i. ***distribute ITC in respect of such common input services by following ISD mechanism, or***

ii. ***issue tax invoices u/s 31 to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of sections 16 and 17***

ILLUSTRATIONS

**Illustration 1**

Mr. A, a registered person was paying tax under Composition Scheme up to 30th July. However, w.e.f. 31st July, Mr. A becomes liable to pay tax under regular scheme. Is he eligible for ITC?

**Illustration 2**

What is the tax implication of supply of capital goods by a registered person who had taken ITC on such capital goods?

**Illustration 3**

XYZ Ltd., is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October, 2018 from the following particulars: -

| S. No. | Inward supplies | GST (Rs.) | Remarks |
|---|---|---|---|
| 1. | Inputs 'A' | 1,00,000 | One invoice on which GST payable was Rs. 10,000,is missing. |
| 2. | Inputs 'B' | 50,000 | Inputs are to be received in two instalments. First instalment has been received in October,2018. |
| 3. | CapitalGoods | 1,20,000 | XYZ Ltd. Has capitalised the capital goods at full invoice value inclusive of GST as it will avail depreciation on the full invoice value. |
| 4. | Input Services | 2,25,000 | One invoice dated 20.01.2018 on which GST payable was Rs. 50,000 has been received in October, 2018. |

**Note:**

1. All the conditions necessary for availing the ITC have been fulfilled.
2. XYZ Ltd. is not eligible for any threshold exemption.
3. The annual return for the financial year 2017-18 was filed on 15th September,2018.

**Illustration 4**

Granites Textiles Ltd. purchased a needle detecting machine on 8th July,2017 from Makhija Engineering Works Ltd. for Rs. 10,00,000 (excluding GST) paying GST @ 18% on the same.

- It availed the ITC of the GST paid on the machine and started using it formanufacture

of goods.

- The machine was sold on 22nd October,2018 for Rs. 7,50,000 (excluding GST), as second hand machine to LT. Pvt. Ltd.
- The GST rate on supply of machine is 18%.

State the action which Granites Textiles Ltd. is required to take, if any, in accordance withthe statutory GST provisions on the sale of the second-hand machine.

### Example

AB & Co., a caterer of Amritsar, has been awarded a contract for catering in a marriage to be held at Ludhiana. The firm has given the contract for supply of snacks, to be served in the marriage, to CD & Sons, a local caterer of Ludhiana. Can AB & Co. avail credit on GST charged by CD & Co.?

### Example

Outdoor catering services availed by a company, for a team development eventorganized for its employees. Is ITC allowed?

### Example

Outdoor catering service availed by a company to run a canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. Is ITC Allowed?

### Illustration 5

ABC Co. Ltd. is engaged in the manufacture of heavy machinery. It procured the following items during the month of July.

| S.No | Items | GST paid (Rs.) |
|---|---|---|
| i) | Electrical transformers to be used in the manufacturing process | 5,20,000 |
| (ii) | Trucks used for the transport of raw material | 1,00,000 |
| (iii) | Raw material | 2,00,000 |
| (iv) | Confectionery items for consumption of employees working in the factory. These items were supplied free of cost to the employees in lieu of services rendered by them to the manufacturer in the course of employment. | 25,000 |

Determine the amount of ITC available with ABC Co. Ltd., for the month of July by giving necessary explanations for treatment of various items.

Note:

1. All the conditions necessary for availing the ITC have been fulfilled.
2. ABC Co. Ltd. is not eligible for any threshold exemption.

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### Illustration 6

Fun Pharma Private Limited, a registered supplier is engaged in the manufacture of Taxable goods.

The company provides the following information of GST paid on the purchases made /input services availed by it during the month of September 2017 :

| S,No | Particulars | GST Paid (Rs.) |
|---|---|---|
| (i) | Purchase of cabs used for the transportation of its employees | 3,30,000 |
| (ii) | Inputs consisting of three lots, out of which first lot was received during the month | 1,25,000 |
| (iii) | Capital Goods (Out of three items, invoice for one item was missing and GST paid on that item was Rs. 25,000) | 2,50,000 |
| (iv) | Outdoor catering service availed on Women's Day | 72,000 |

Determine the amount of Input Tax Credit available with M/s Fun Pharma PrivateLimited for the month of September 2017 by giving necessary explanations for treatment of various items.

All the conditions necessary for availing the Input Tax Credit have been fulfilled.

### Illustration 7

CANWIN Ltd., a registered supplier, is engaged in the manufacture of tanks. The company provides the following information pertaining to GST paid on thepurchases made/ input services availed by it during the month of January 2018:

| S.No. | Particulars | GST Paid (Rs.) |
|---|---|---|
| (I) | Purchase of machinery where debit note is issued | 1,15,000 |
| (ii) | Input purchased was directly delivered to Mr. Joe, a job worker andregistered supplier | 80,000 |
| (iii) | Computers purchased (Depreciation was claimed on the GST Portion under the Income Tax Act, 1961) | 50,000 |
| (iv) | Works Contract services availed for Construction of Staff quarterswithin the company premises | 4,25,000 |

Determine the amount of ITC available to M/s CANWIN Ltd. for the month of January2018 by giving brief explanations for treatment of various items.

Subject to the information given above, all the conditions necessary for availing the ITC have been fulfilled.

### Illustration 8

Cloud Seven Private Limited, a registered supplier, is engaged in the manufacture oftaxable goods. The company provides the following information pertaining to GST paid on thepurchases made/input services availed by it during the month of February, 20XX:

| S.No. | Particulars | GST Paid (Rs.) |
|---|---|---|
| (i) | Trucks used for transport of raw material | 1,20,000 |
| (ii) | Foods and beverages for consumption of employees working in the factory | 40,000 |
| (iii) | Inputs are to be received in five lots, out of which third lot wasreceived during the month | 80,000 |
| (iv) | Membership of a club availed for employees working in the factory | 1,50,000 |
| (v) | Capital Goods (out of five items, invoice for one item was missingand GST paid on that item was Rs.50,000) | 4,00,000 |
| (vi) | Raw material (to be received in March, 20XX) | 1,50,000 |

Determine the amount of input tax credit available with Cloud Seven Private Limited for the month of February, 20XX by giving necessary explanations for treatment of various items.

All the conditions necessary for availing the input tax credit have been fulfilled.

### Illustration 9

Le Mark Ltd. of Nashik, Maharashtra, a registered supplier, is engaged in manufacturing taxable goods. It provides the following details of items purchased and services availed by it from Gujarat, for the month of March, 20XX:

| S.No. | Particulars | GST Paid (Rs.) |
|---|---|---|
| (i) | Motor vehicle purchased for employees to be used for personal aswell as business purposes | 1,50,000 |
| (ii) | Motor vehicle purchased for transportation of goods within the factory | 2,00,000 |
| (iii) | Food items for consumption of employees. These items are supplied free of cost to the employees in lieu of services rendered by them to the manufacturer in the course of employment | 2,000 |
| (iv) | Rent a cab facility availed for employees to fulfil a statutory obligation in this regard. The Government has notified such service under Sec 17(5)(b)(iii)(A) of the CGST Act, 2017 | 36,000 |

Calculate the amount of eligible input tax credit for the month of March, 20XX.

### Illustration 10(a)

A technical testing agency tests and certifies each batch of machine tools before dispatch by BMT Ltd. Some of these tools are dispatched to a unit in SEZ withoutpayment of GST as the supplies are not taxable.

The finance personnel of BMT Ltd want to know whether they need to carry out reversalof ITC on the testing agency's services to the extent attributable to the SEZ supplies.
Give your comments.

### Illustration 10(b)

A flying school imports an aircraft for use in its training activity and takes ITS of the IGSTpaid on the imports.

The departmental audit raises an objection that aircraft fall within the definition of "conveyance" in section 2(34) of the Act and that ITC is not allowed on conveyance.Offer your comments.

### Illustration 10(c)

A taxable person is in the business of information technology. He buys a motor vehiclefor use of his Executive Directors. Can he avail the ITC in respect of GST paid on purchase of such motor vehicle?

### Illustration 11

XYZ Pvt. Ltd. is a manufacturing company registered under GST in the State of UttarPradesh.

- It manufactures two taxable products 'Alpha' and 'Beta' and one exempt product 'Gama'.
- On 1st October, while product 'Beta' got exempted through an exemption notification, exemption available on 'Gama' got withdrawn on the same date.
- The turnover (exclusive of taxes) of 'Alpha', 'Beta' and 'Gama' in the month ofOctober was Rs. 9,00,000, Rs. 10,00,000 and Rs. 6,00,000.
- XYZ Pvt. Ltd. has furnished the following details:

| S. No. | Particulars | Price (Rs. ) | GST (Rs. ) |
|---|---|---|---|
| (a) | Machinery 'U' purchased on 1st October for being used in manufacturing all the three products | 2,00,000 | 36,000 |
| (b) | Machinery 'V' purchased on 1st October for being used in manufacturing product 'Alpha' and 'Gama' | 1,00,000 | 18,000 |
| (c) | Machinery 'W' purchased on 1st October for being exclusively used in manufacturing product 'Beta' | 3,00,000 | 54,000 |
| (d) | Machinery 'Y' purchased on 1st October four yearsago for being exclusively used in manufacturing product 'Beta'. From 1st October, such machinery will also be used for manufacturing product 'Gama'. | 4,00,000 | 72,000 |
| (e) | Machinery 'Z' purchased on 1st October two yearsago for being used in manufacturing all the three products | 3,00,000 | 54,000 |

| | | | |
|---|---|---|---|
| (f) | Raw Material used for manufacturing 'Alpha' purchased on 5th October | 1,50,000 | 27,000 |
| (g) | Raw Material used for manufacturing 'Beta' purchased on 10th October | 2,00,000 | 36,000 |
| (h) | Raw Material used for manufacturing 'Gama' purchased on 15th October | 1,00,000 | 18,000 |

Compute the following:

1. Amount of ITC credited to Electronic Credit Ledger, for the month of October.
2. Amount of aggregate value of common credit (Tc)
3. Common credit attributable to exempt supplies, for the month of October.
4. GST liability of the company payable through Electronic Cash Ledger, for the month of October.

Note:

- Assume that all the procurements made by the company are from States otherthan Uttar Pradesh. (IGST transactions)
- Similarly, the company sells all its products in States other than Uttar Pradesh. (Output = IGST)
- Rate of IGST is 18%. All the other conditions necessary for availing ITC have been fulfilled.

Ignore interest, if any and make suitable assumptions wherever required.

### Illustration 12

With the help of information given below in respect of manufacturer for the month of September 2017. Calculate eligible input tax credit for the month?

Also calculate amount of ITC to be reversed in September 2017 and October 2017, there is no carry forward credit or reversal requirements only current month information is to be considered for calculation purpose

***Outward supply***

| | |
|---|---|
| Outward Supply of Taxable goods | Rs. 70,000 |
| Outward supply of Exempted goods | Rs. 40,000 |
| Total turnover | Rs.1,10,000 |

***Inward supply***

| | |
|---|---|
| Capital goods exclusively used for taxable outward supply GST paid is | Rs.2,000 |
| Capital goods purchased exclusively for exempted outward supply is | Rs.1,800 |
| Capital goods purchased which are used for both taxable and exempted outward supply is | Rs.4,200 |

### Illustration 13

Sarani Weavers, at Pune, Maharashtra is a registered input service distributor and intends to distribute ITC under Section 20 of CGST Act, 2017 for the month of March.

- The following are the details available for such distribution:

| Branch | Turnover of the last quarter (Rs. ) | ITC specifically applicable to the branch (Rs. ) |
|---|---|---|
| Ganganagar Branch (Rajasthan) | 10,00,000 | IGST – 12,000<br>CGST – 3,000<br>SGST – 3,000 |
| Madhugiri Branch (Karnataka) | 5,00,000 | Nil |
| Kosala Branch (UP) | 15,00,000 | Nil |
| Mumbai Branch (Maharashtra) | 20,00,000 | IGST – 1,50,000<br>CGST– 15,000<br>SGST– 15,000 |

ITC available on input services used commonly by all branches is as under:

- CGST – Rs. 60,000, SGST – Rs. 60,000, IGST – Rs. 1,20,000
- ITC (IGST) of Rs. 10,000 pertaining to March (last year) was inadvertently not distributed.
- Whether the same can be considered for distribution in March this year?
- Madhugiri, Karnataka branch uses input services to manufacture exempted products.
- Turnover excludes duties & taxes payable to Central and State Government.

Determine the manner of input tax distribution.

### Illustration 14

Xenon Pvt. Ltd., Agra, is a registered supplier engaged in the manufacture of taxablegoods.

- Goods valued at Rs. 10,50,000 were supplied by the company to Freshbite Pvt. Ltd.,a registered supplier located at Ferozabad, without the cover of an invoice with a fraudulent intent.
- Since the company evaded tax by not issuing the invoice for the supply, a show-cause notice was issued by the proper officer under section 74 requiring the company to pay tax @ 12% [Rs. 1,26,000] and applicable interest and penalty.
- The company paid the tax, interest and penalty after the order was passed by theproper officer.

Examine the ITC entitlement of Freshbite Pvt. Ltd. in respect of tax of Rs. 1,26,000 paidby Xenon Pvt. Ltd.

### Illustration 15

Flamingo Ltd. is an airlines providing passenger transportation services by air.

- The company offers meals of premium quality to passengers on board the aircraft.
- The value of such meals is compulsorily included in the price of the air ticket.
- The company avails outdoor catering services of Dhaniaram Pvt. Ltd. for providingsuch meals to its customers.

Examine whether Flamingo Ltd. can avail ITC on such outdoor catering service availed byit.

### Illustration 16

Jumbo Sales Pvt. Ltd., a supplier of readymade garments, announced 'Buy One get Twofree' offer on Men's T-Shirts on Diwali to boost its sales.

You are required to advise the company on the availability of ITC in respect of inwardsupplies used in relation to such supply.

### Illustration 17

A garment factory receives a Government order for making uniforms for a commandounit.

- This supply is exempt from tax under a notification issued under section 11 of the CGST Act.
- The fabric is separately procured for the supply, but thread and lining material forthe collars are the ones which are used for other taxable products of the factory.
- The turnover (exclusive of taxes) of the other products of the factory and exempteduniforms in July is Rs. 4 crore and Rs. 1 crore, respectively.
- The ITC on thread and lining material procured in July is Rs. 5,000 and Rs. 15,000,respectively.

Calculate the eligible ITC on thread and lining material.

### Illustration 18

Ceramity Ltd. has following units:

A. Factory in Tumkur, Karnataka; turnover of Rs. 27 crores in 2019-20;
B. Service centre in Hyderabad, Telangana; turnover of Rs. 1 crore in 2019-20;
C. Service centre in Chennai, Tamil Nadu; turnover of Rs. 2 crores in 2019-20;

- Ceramity Ltd.'s corporate office functions as ISD.
- It has to distribute ITC of Rs. 9 lakhs for May 2020.
- Of this, an invoice involving tax of Rs. 3 lakh pertains to technical consultancy forTumkur unit.

Explain in brief how should the ITC be distributed?

### Illustration 19

- A registered supplier of taxable goods supplied goods valued at Rs. 2,24,000 (inclusive of CGST Rs. 12,000 and SGST Rs. 12,000) to Mohan Ltd. under forwardcharge on 15th August for which tax invoice was also issued on the same date.
- The inputs were received by Mohan Ltd. on 15th August.
- Mohan Ltd. availed credit of Rs. 24,000 on 20th September by filing Form GSTR-3Bfor August month.
- However, Mohan Ltd. did not make any payment towards such supply along withtax thereon to the supplier.

Is Mohan Ltd. eligible to avail ITC on such supply?

Discuss ITC provisions, if Mohan Ltd. makes the payment of Rs. 2,24,000 to the supplieron 18th March of next calendar year.

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### Illustration 20

State the conditions that need to be followed by an input service distributor fordistribution of credit.

### Illustration 21

With reference to the provisions of section 17, examine the availability of ITC in thefollowing independent cases:

(i) MBF Ltd., an automobile company, has availed works contract service for construction of a foundation on which a machinery (to be used in the productionprocess) is to be mounted permanently.

(ii) Shah & Constructions procured cement, paint, iron rods and services of architectsand interior designers for construction of a commercial complex for one of its clients.

(iii) ABC Ltd. availed maintenance & repair services from "Jaggi Motors" for a truckused for transporting its finished goods.

### Illustration 22

- On 25th August, M/s Agarwal & Agarwal, a registered supplier of taxable goods located in Bengaluru (Karnataka), purchased one machine for Rs. 12,39,000 (including IGST) from one supplier of Maharashtra who issued the invoice on thesame date.
- M/s Agarwal & Agarwal put the machinery to use on the same day and availed ITCfor the eligible amount.
- M/s Agarwal & Agarwal used the machine in the process of manufacture of taxablegoods.
- However, M/s Agarwal & Agarwal sold this machine to Mr. Suresh Kumar of AndhraPradesh on 20th August of next year for Rs. 7,50,000 (excluding IGST).

With reference to section 18(6), determine the amount payable, if any, by M/s Agarwal& Agarwal at the time of sale of the machine.

Note: The applicable rate of IGST is 18%.

### Illustration 23

- Krishna Motors is a car dealer selling cars of an international car company.
- It also provides maintenance and repair services of the cars sold by it as also ofother cars.
- It seeks your advice on availability of ITC in respect of the following expensesincurred by it during the course of its business operations:
  - i) Cars purchased from the manufacturer for making further supply of such cars.Two of such cars are destroyed in accidents while being used for test drive bypotential customers.
  - ii) Works contract services availed for constructing a car parking shed in its premises

### Illustration 24

Vansh Shoppe is a registered supplier of both taxable and exempted goods, registeredunder GST in the State of Rajasthan.

Vansh Shoppe has furnished the following details for a month:

| S. No. | Particulars | Amount (Rs. ) |
|---|---|---|
| 1. | **Details of sales:** | |
| | Supply of taxable goods | 50,00,000 |
| | Supply of goods not leviable to GST | 10,00,000 |
| 2. | **Details of goods purchased for being sold in the shop:** | |
| | Taxable goods | 45,00,000 |
| | Goods not leviable to GST | 4,00,000 |
| 3. | **Details of expenses:** | |
| | Monthly rent payable for the shop | 3,50,000 |
| | Telephone expenses paid (Rs. 30,000 for land line phone installed at the shop and Rs. 20,000 towards mobile phone bills of the employees – Mobile phones are given to employees for official use) | 50,000 |
| | Audit fees paid to a Chartered Accountant (Rs. 35,000 for filing of income tax return & the statutory audit of preceding financial year and Rs. 25,000 for filingof GST return) | 60,000 |
| | Premium paid on health insurance policies taken for specified employees of the shop as per company policy. | 10,000 |
| | Freight paid to goods transport agency (GTA) for inward transportation of goods not leviable to GST | 50,000 |
| | Freight paid to goods transport agency (GTA) for inward transportation of taxable goods | 1,50,000 |
| | Goods given as free samples (Not included in Taxablegoods value of Rs. 45,00,000) | 5,000 |

- All the above amounts are exclusive of all kinds of taxes, wherever applicable.
- All the purchases and sales made by Vansh Shoppe are within Rajasthan.
- All the purchases are made from registered suppliers.
- All the other expenses incurred are also within Rajasthan.
- Assume, wherever applicable, for purpose of reverse charge payable by VanshShoppe, the CGST, SGST and IGST rates as 2.5%, 2.5% and 5% respectively.
- CGST, SGST and IGST rates to be 6%, 6% and 12% respectively in all other cases.
- There is no opening balance in the electronic cash ledger or electronic credit ledger.
- Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

You are required to compute the following:

1. Input Tax Credit (ITC) credited to Electronic Credit Ledger
2. Common credit available for apportionment
3. ITC attributable towards exempt supplies out of common credit
4. Net GST payable from Electronic Cash Ledger for the month

## Illustration 25

- M/s XYZ, a registered supplier, supplies the following goods and services for

construction of buildings and complexes:

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

- The excavators are invariably hired out along with operators.
- Similarly, excavator operators are supplied only when the excavator is hired out.
- M/s XYZ receives the following services:
  - Maintenance services for excavators;
  - Health insurance for operators of the excavators;
  - Scientific and technical consultancy for soil testing and seismic evaluation.
- For a given month, the receipts (exclusive of GST) of M/s XYZ are as follows:
  - Hire charges for excavators = Rs. 18,00,000
  - Service charges for supply of manpower for operation of the excavator = Rs.20,000
  - Service charges for soil testing and seismic evaluation at three sites = Rs. 2,50,000
- The GST paid during the said month on services received by M/s XYZ is as follows:
  - Maintenance for excavators = Rs. 1,00,000
  - Health insurance for excavator operators = Rs. 11,000
  - Scientific and technical consultancy for soil testing and seismic evaluation = Rs. 1,00,000

Compute the net GST payable by M/s XYZ from Electronic Cash Ledger for the givenmonth. Assume the rates of GST to be as under:

- Hiring out of excavators – 12%
- Supply of manpower services and soil-testing and seismic evaluation services – 18% (Ignore CGST, SGST or IGST for the sake of simplicity).

<u>Note</u>: - Opening balance of ITC of GST is nil.

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# 9. REGISTRATION

Contents


- Persons liable for registration [Sec 22]
- Persons not liable for registration [Sec 23]
- Compulsory registration in certain cases [Sec 24]
- Procedure for registration [Sec 25]
- Deemed registration [Sec 26]
- Casual taxable person (CTP) & Non-resident taxable person (NRTP) [Sec 27]
- Amendment of registration [Sec 28]
- Cancellation of registration [Sec 29]
- Revocation of cancellation [Sec 30]


## 1. INTRODUCTION

### 1.1 – Need for Registration

- Under indirect tax regime, without registration, a person can neither collect tax from his customers nor claim any credit of tax paid by him.
- Registration ensures the ***seamless flow of input tax credit*** from suppliers to recipients at the national level.

### 1.2 – Pattern of Registration

- Registration in GST is ***PAN based***.
- Under GST, registrations need to be taken ***State-wise***, i.e. there are no centralized registrations.
- A supplier has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified ***threshold limit***.
- There is ***single registration*** for all the taxes i.e. CGST, SGST/UTGST, IGST and GST compensation cess.

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## 2. PERSONS LIABLE FOR REGISTRATION - SECTION 22

### 2.1 – Threshold Limits - Section 22

- Every supplier of goods or services or both is required to obtain registration in the State or the Union territory from where he makes the taxable supply if his aggregate turnover exceeds specified threshold limit in a FY.
- Every supplier, whose aggregate turnover ***in a financial year exceeds 20 lakhs***, is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods and services or only service.
- However, the limit will be reduced to ***10 lakhs if the person is carrying out business in Mizoram, Tripura, Manipur, and Nagaland***.
- This limit is for Supply of goods and / or services.
- Further, the limit is ***40 lakhs*** where the supplier is engaged in exclusive supply of goods from ***states other than Mizoram, Tripura, Manipur, Nagaland, Arunachal Pradesh, Meghalaya, Sikkim, Tripura, Puducherry, Telangana and Uttarakhand.***
- For the purposes of section 22(1), a person shall be considered to be engaged exclusively in the supply of goods ***even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.***

***Notification No. 10/2019 CT dated 07.03.2019*** *– exempts any person who is engaged exclusively in supply of goods and whose aggregate turnover in the financial year does not exceed Rs. 40 lakhs, from the requirement to obtain a registration.*

***Exceptions to this exemption are as follows:***

(a) Persons required to take compulsory registration under section 24.

(b) Persons engaged in making supplies of

1. ice cream and other edible ice, whether or not containing cocoa,
2. pan masala,
3. all goods of Chapter 24, i.e. Tobacco and manufactured tobacco substitutes,
4. ***fly ash bricks; fly ash aggregates; fly ash blocks,***
5. ***bricks of fossil meals or similar siliceous earths,***
6. ***building bricks,***
7. ***earthen or roofing tiles.***

(c) Persons engaged in ***making intra-State supplies*** in the States of ***Arunachal Pradesh, Uttarakhand, Meghalaya, Sikkim, Telangana, Puducherry and Special Category States as per section 22 [Nagaland, Mizoram, Manipur, Tripura]***.

(d) Inter-State supplies of goods are nevertheless liable to compulsory registration under Section 24 and are already covered in exception (a) above.

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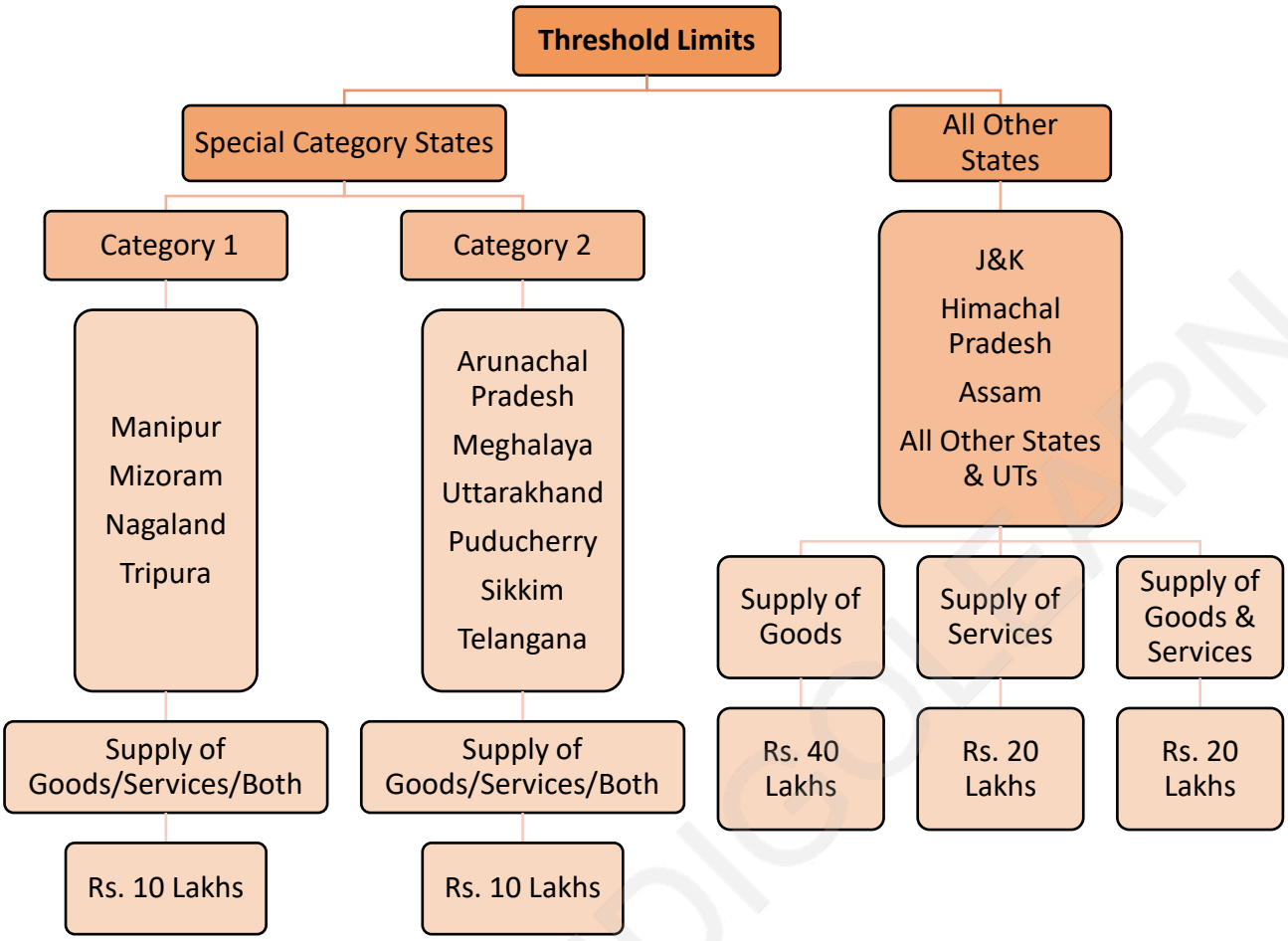
(e) Person who has opted for voluntary registration or such registered persons who intend to continue with their registration under the CGST Act.




## 2.2 – Aggregate Turnover

| Aggregate Turnover [Sec 2(6)] | |
|---|---|
| **Includes** | **Excludes** |
| value of all outward supplies | CGST/SGST/UTGST/IGST/Cess |
| Taxable Supplies | Value of inward supplies on which tax is payable under RCM |
| Exempt Supplies | Value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by the way of **interest or discount** |
| Exports | |
| Inter-state supplies | |
| **of persons having the same pan be computed on all india basis** | |

- Outward Supplies taxable under reverse charge would continue to be part of the 'aggregate turnover' of the supplier of such supplies
- Aggregate turnover to include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.

## 2.3 - Special cases

- A person is required to obtain registration with respect to each place of business in India from where a taxable supply has taken place. However, a supplier is not liable to obtain registration in a State/UT from where he makes an exempt/non-taxable supply.
- The threshold limit of a person having places of business in more than one State/UT in India gets reduced to Rs.10 lakh only when such person makes taxable supplies of goods or services or both from any of the Special Category States as per section 22. However, in case he makes exempt/non-taxable supply from a Special Category State and taxable supplies from a State other than Special Category State, the threshold limit shall not be so reduced.
- Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an existing law, shall be liable to be registered under this Act with effect from the appointed day. ***[Sec 22(2)]***
- Where a business is transferred, whether on account of succession/any other reason [***including transfer/change in the ownership of business due to death of the sole proprietor***] to another person as a going concern, the transferee/successor, is to be registered with effect from the date of such transfer/succession. ***[Sec 22(3)]***
- Where the business is transferred, pursuant to sanction of a scheme/ arrangement for amalgamation/ de- merger of two or more companies, pursuant to an order of a High Court/Tribunal, the transferee is to be registered with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order. ***[Sec 22(4)]***

## 2.4 - Special cases with regard to place of registration

- He is normally required to obtain single registration in a State/UT. However, where he has ***multiple places of business*** in a State/UT, he has the option either to get a single registration for said State/UT [wherein it can declare one place as principal place of business (PPoB) and other branches as additional place(s) of business (APoB)] or to get separate registrations for each place of business in such State/UT.
- A business entity having ***separate business verticals*** in a state may obtain separate registration for each of its business verticals.

| Scenario | Registration required |
|---|---|
| Same Business in Different States | Mandatory Registration in all States |
| Taxable supply in one state and Exempt supply in other State | Registration not required in the state of exempt supply |
| Separate Business verticals in two different States | Mandatory Registration in both the states |
| Separate Business verticals in Same States | Separate Registration is Optional |
| Same business in two different places in same time | Separate Registration is Optional |

## 3. CASUAL TAXABLE PERSON (CTP) & NON-RESIDENT TAXABLE PERSON (NRTP) - SECTION 27

### 3.1 – Definitions

***Casual taxable person [Sec 2(20)]*** *- A person who occasionally undertakes transactions*

- *Involving supply of goods or services or both,*
- *In the course or furtherance of business,*
- *Whether as principal, agent or in any other capacity,*
- *In a State or a Union territory where he has no fixed place of business.*

***Non-resident taxable person [Sec 2(77)]*** *- A person who occasionally undertakes transactions*

- *Involving supply of goods or services or both,*
- *In the course or furtherance of business,*
- *Whether as principal, agent or in any other capacity,*

| CTP | NRTP |
|---|---|
| Does not have a fixed place of business in the State/UT where he undertakes supply though he might be registered with regard to his fixed place of business in some other State/UT | Does not have fixed place of business/residence in India at all |
| Has to undertake transactions in the course or furtherance of business | The business test is absent in the definition so no such condition |
| He will be considered as distinct person | No such condition |

### 3.2 – Period of validity of registration

- Registration Certificate granted to CTP/NRTP will be valid for:
  - Period specified in the registration application, or
  - 90 days from the effective date of registration

  whichever is earlier.
- The 90 days period ***can be extended further by a period not exceeding 90 days*** by making an application before the end of the validity of registration granted to him(CTP/NRTP)
- CTP and NRTP will make taxable supplies only after the issuance of the certificate of registration.
- Provisions relating to verification of application and grant of registration [under rules 9 and 10] will apply mutatis mutandis, to an application for registration filed by NRTP.

### 3.3 - Advance deposit of tax

- At the time of submitting the registration application, CTP/NRTP are required to make an ***advance deposit of tax*** in an ***amount equivalent to the estimated tax liability*** of such person for the period for which the registration is sought.

- Such person will get a TRN for making an advance deposit of tax which shall be ***credited to his electronic cash ledger***. An acknowledgement of receipt of application for registration is issued only after said deposit.
- Where ***extension of time is sought***, such registered taxable person will deposit an ***additional amount of tax*** equivalent to the estimated tax liability of such person for the period for which the extension is sought

### 3.4 - Special registration procedure the special registration procedure pertaining to CTP and NRTP are as follows:

- Both CTP and NRTP have to ***compulsorily get registered*** under GST irrespective of the threshold limit, ***at least 5 days prior to commencement of business***.
- Registration is granted to them or period of operation is extended, only after they make advance deposit of the estimated tax liability.
- As per section 25(6), every person must have a ***PAN*** to be eligible for registration. Since NRTP will generally not have a PAN of India, he may be granted registration on the basis of other prescribed documents
    - He has to submit a ***self-attested copy of his valid passport*** along with the application signed by his authorized signatory who is an Indian Resident having valid PAN.
    - However, in case of a ***business entity incorporated*** or established outside India, the application for registration shall be submitted along with its ***tax identification number or unique number*** on the basis of which the entity is identified by the Government of that country or its PAN, if available.
    - Application will be submitted by NRTP in a different prescribed form whereas CTP will submit the application for registration in the normal form for application for registration i.e. Form GST REG 01 and his registration of CTP will be a PAN based registration.

## 4. PERSONS NOT LIABLE FOR REGISTRATION - SECTION 23

### 4.1 - List of persons not liable for registration

- Any person engaged exclusively in the business of supplying goods or services or both that are wholly exempt from tax under CGST Act/IGST Act.
- Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or are outside the purview of GST like alcoholic liquor for human consumption and petroleum products.
- An agriculturist to the extent of supply of produce out of cultivation of land is also not liable to registration.

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***Agriculturist [Sec 2(7)]*** *– means an individual/HUF who undertakes cultivation of land*

- *by own labour, or*
- *by the labour of family, or*
- *by servants on wages payable in cash or kind or*
- *by hired labour under personal supervision or the personal supervisionof any member of the family.*

- By improving the performance, accuracy and efficiency of the key business processes, the entity is made more efficient and responsive to Customer and Employee needs.
- ***Specified category*** of persons notified by the Government exempted from obtaining registration

1) The benefit of not being liable to registration is only restricted to the agriculturists who are individuals or HUFs.
2) Further, if an agriculturist is also engaged in making any supply other than supply of produce out of cultivation of land, he shall be liable to registration based on applicable threshold limit

### 4.1.1 – Specified category of persons notified by Government

1. Persons making only reverse charge supplies.
   - Persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under section 9(3)
2. Persons making inter-State supplies of taxable services up to Rs.20 lakh. The persons making inter-State supplies of taxable services and having an aggregate turnover, to be computed on all India basis, ***not exceeding an amount of Rs.20 lakh in a financial year*** have been exempted from obtaining compulsory registration. However, the aggregate value of such supplies, to be computed on all India basis, should not exceed an amount of ***Rs. 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland***
3. Persons making inter-State supplies of taxable services up to Rs.20 lakh through ECO.
   - Any person supplying services through ECO (other than supply specified u/s 9(5) of CGST Act) with aggregate turnover up to 20 lacs is exempted from obtaining compulsory registration. The threshold limit is reduced to 10 lakhs in case of Mizoram, Tripura, Manipur and Nagaland.
4. ***Persons making inter-State taxable supplies of notified handicraft goods up to Rs. 20,00,000 (Rs.10,00,000 as the case may be).***
   - This includes:
     - Persons making inter-State taxable supplies of ***Notified handicraft goods***.

- Persons making inter-State taxable supplies of ***notified products*** when made by craftsmen predominantly by hand even though some machinery may also be used in the process.
- Condition to be fulfilled - ***Such persons has obtained a PAN and have generated an e- way bill.***

5. ***Casual Taxable Persons making inter-State taxable supplies of notified handicraft goods up to Rs. 20 lakhs ((Rs.10,00,000 as the case may be.***

- This includes:
  - CTPs making inter-State taxable supplies of ***Notified handicraft goods***.
  - CTPs making inter-State taxable supplies of ***notified products*** when made by craftsmen predominantly by hand even though some machinery may also be used in the process.
  - Condition to be fulfilled - ***Such persons has obtained a PAN and have generated an e- way bill.***

6. ***With effect from 01.10.2023, Notification No. 34/2023 CT dated 31.07.2023*** provided that the persons making supplies of goods through an ***ECO*** who is required to collect TCS under section 52 and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the threshold limit in accordance with the provisions of section 22(1), are ***exempted from obtaining registration***, subject to the following conditions, namely:

- such persons shall ***not make any inter-State supply*** of goods;
- such persons shall ***not make supply*** of goods through ECO ***in more than one State/Union territory;***
- such persons shall be required to have a ***PAN issued*** under the Income-tax Act, 1961;
- such persons shall, before making any supply of goods through ECO, ***declare on the common portal***:
  1. their ***PAN***
  2. ***address*** of their place of business and
  3. ***State/UT in which such persons seek to make such supply***,

  which shall be subjected to validation on the common portal;
- such persons have been ***granted an enrolment number*** on the common portal on successful validation of the PAN declared above;
- such persons shall ***not be granted more than one enrolment*** number in a State/UT;
- no supply of goods shall be made by such persons through ECO unless such persons have been granted an enrolment number on the common portal; and
- where such persons are subsequently granted registration under section 25, the enrolment number shall cease to be valid from the effective date of registration.

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## 5. COMPULSORY REGISTRATION IN CERTAIN CASES - SECTION 24

- There are some cases wherein a supplier is compulsorily required to obtain registration even though his aggregate turnover does not exceed the applicable threshold limit
- However, certain exemptions from registration have already been discussed under section 23. Thus section 24 has to be understood considering sec 23.

### 5.1 - List of cases where registration is mandatory

1. Persons making any ***inter-State taxable supply***.
   - However, threshold limit of Rs. 20 lakh (and 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) is available in case of inter-State supply of taxable services and of notified handicraft goods.
2. ***Casual taxable persons (CTP)*** making taxable supply.
   - However, threshold limit of Rs. 20 lakh(Rs.10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) is available in case of CTP who is making inter-State taxable supplies of notified handicraft goods and availing the benefit of exemption from registration as mentioned in point (i) above
3. Persons who are required to ***pay tax*** under ***reverse charge***.
   - However, persons engaged exclusively in making supplies, tax on which is liable to be paid on reverse charge basis are exempt from registration.
4. ***Non-resident taxable persons (NRTP)*** making taxable supply.
5. ***E-commerce***: (i) Every ECO (Electronic Commerce Operator) who is required to collect tax at source under section 52,
6. Persons who are required to ***deduct tax under section 51***, whether or not separately registered under this Act.
7. Persons who make taxable supply of goods or services or both ***on behalf of other taxable persons*** whether as an ***agent*** or otherwise.
   - A ***commission agen***t will be liable to get mandatorily registered under this provision only when both the following conditions are satisfied:
     - the principal should be a taxable person; and
     - the supplies made by the commission agent should be taxable. However, generally, a commission agent under APMC Act makes supplies on behalf of an agriculturist who is not a taxable person if he supplies produce out of cultivation of land
8. ***Input Service Distributor***, whether or not separately registered under this Act.
9. Every person supplying online information and data base access or retrieval ***(OIDAR) services*** from a place outside India to a person in India, other than a registered person.
10. Such other person or class of persons as may be ***notified by the Government*** on the recommendations of the Council.

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11. Mandatory registration for every person supplying ***online money gaming*** from a place outside India to a person in India - Since online money gaming has been made taxable by amending Schedule III by the CGST Amendment Act, 2023, with effect from 01.10.2023, every person supplying online money gaming from a place outside India to a person in India are required to obtain registration compulsorily.

## 6. PROCEDURE FOR REGISTRATION – SECTION 25 & 26

### 6.1 – Time limit – When to apply for registration – Section 25(1)

| Persons | When to apply |
|---|---|
| Person who is liable to be registered U/s 24 | Within 30 days from the date on which he becomes liable to registration |
| A CTP or NRTP | At least 5 days prior to commencement of business |

### 6.2 – Where to take Registration – Section 25(2)

- Registration needs to be taken State-wise. A business entity having its branches in multiple States will have to take separate State-wise registration for the branches in different States.
- Within a State, an entity with different branches shall be granted single registration wherein it can declare one place as principal place of business (PPoB) and other branches as additional place of business (APoB).
- Within a State, an entity with different places of business ***may opt*** for separate registration for each such place of business.
- When different registrations are granted to a single entity, each shall be treated as a ***distinct person*** and shall be liable to tax for supply goods/services/both made to one another through issue a tax invoice/bill of supply.

### 6.3 - Application for registration by Special Economic Zone (SEZ) [Second proviso to section 25(1)]

- SEZ is a geographically bound zone where the economic laws relating to export and import are more liberal as compared to other parts of the country. SEZ is considered to be a place outside India for all tax purposes.
- A person having unit in SEZ/an SEZ developer will have to make a separate application for registration as distinct from his place of business located outside SEZ in the same State/UT.
- Where two units of a tax payer are located in same State/UT - one in SEZ and another outside SEZ. In that case, ***separate registrations have to be obtained for each of the two units as separate places of business***.

### 6.4 - Voluntary registration - Section 25(3)

- A person who is not liable to be registered under section 22 or section 24 may get himself registered voluntarily.

- In case of voluntary registration, all provisions of this Act, as are applicable to a registered person, shall apply to voluntarily registered person.
- Once a person obtains voluntary registration, he has to pay tax even though his aggregate turnover does not exceed Rs. 40 lakhs/Rs.20 lakh/Rs. 10 lakh as the case may be.
- Voluntary registration is usually obtained by the business for ensuring seamless flow of credit to their customers.

### 6.5 - Unique Identity Number (UIN) [Section 25(9) & (10) read with rule 17]

- Upon registration, the following persons are granted UIN instead of GSTIN:
    - Any specialized agency of the United Nations Organization or
    - Any Multilateral Financial institution and organization as notified under the United Nations (Privileges and Immunities) Act, 1947,
    - Any consulate or
    - Any embassy of foreign countries and
    - Any other person notified by the Commissioner
- The proper officer may, upon submission of an application in prescribed form or after filling up the said form or after receiving a recommendation from the Ministry of External Affairs, Government of India, assign a UIN to the said person
- UIN is assigned and registration certificate issued ***within 3 working days*** from the date of submission of application.
- UIN granted is a centralized UIN i.e. it shall be applicable to the territory of India. A person having UIN is not registered person and thus, is not a taxable person
- This UIN is needed for claiming refund of taxes paid on notified supplies of goods and/or services received by them, and for such other purpose as may be notified.
- Any person making supplies to such UN bodies, must treat the transactions as B2B and mention their UIN in the invoice. Only then such entities can claim their refund.

### 6.6 - Suo-motu registration by proper officer [Section 25(8) read with rule 16]

- Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act has failed to apply for such registration, such officer ***may register the said person on a temporary basis and issue an order in prescribed form.***

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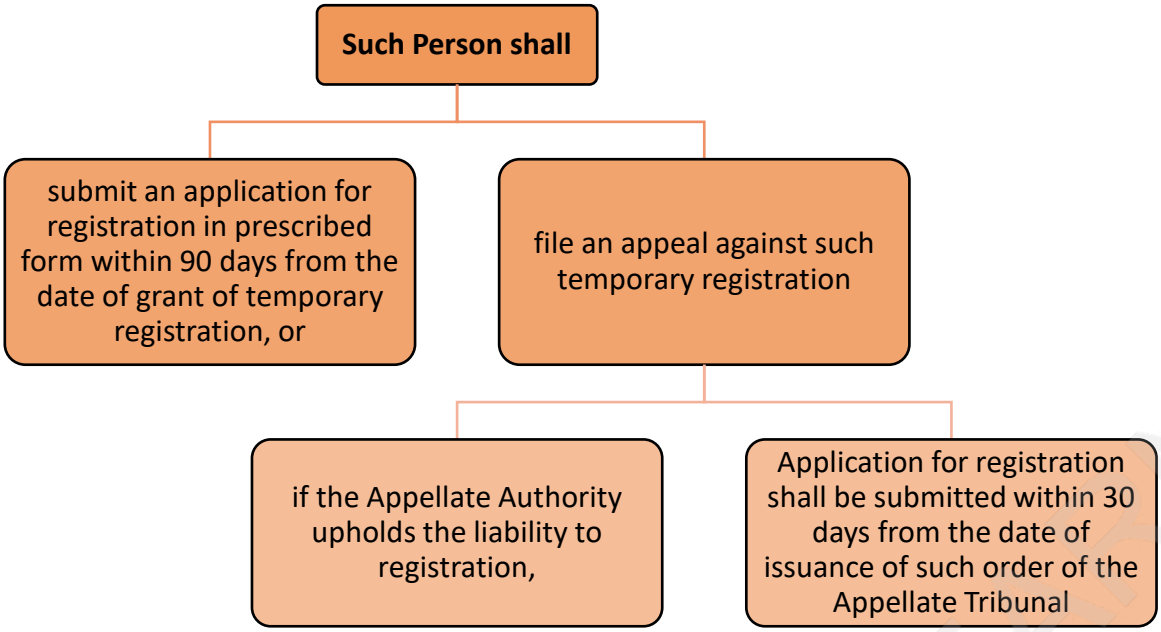


- GSTIN thereafter granted shall be effective from the date of order of proper officer granting temporary registration.

## 6.7 - Procedure for registration

***Step 1 - Apply for registration in Form GST REG 01***

- The application for registration has to be submitted electronically at the GST Common Portal – www.gst.gov.in. Its common portal for all matters related to GST and a common platform for everyone.
- The application should be duly signed or verified through Electronic Verification Code (EVC) [Aadhar OTP].
- A registered person opting to obtain separate registration for a place of business shall submit a separate application in Form GST REG 01 in respect of such place of business.
- The application for registration in GST Form REG 01 is divided into two parts - Part A and Part B.

***Step 2 – Verification of Part A details***

- Permanent Account Number validated online by Common Portal from CBDT database (PAN is mandatory to be eligible for grant of registration. However A Non-Resident Taxable Person (NRTP) may be granted registration on the basis of other prescribed documents)
- Mobile number and email verified through one time password sent to it.
- Details of state where registration is required is mentioned.

### Step 3 – Generation of TRN

- On verification of PAN, mobile number and email id Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address.

- Using TRN, applicant shall electronically submit application in Part B of application form, along with specified documents at the Common Portal.
- Details to be mentioned in Part B –
    - Legal name
    - Trade name
    - Address of Principal place of business
    - Address of Additional place of business
    - Details of Partners or Directors
    - HSN / HSC code
    - Bank account details
- A Causal Taxable Person (CTP) applying for registration gets a TRN for making an advance deposit of tax in his electronic cash ledger.
- Part B is e-verified through mobile OTP. In case of a company Digital signature is mandatory.

### Step 4 – Generation of acknowledgement

- On receipt of such application, an acknowledgement in the prescribed form (GST REG 02) shall be issued to the applicant electronically.
- To A Causal Taxable Person (CTP) an acknowledgement is issued only after said deposit.

### Step 5 – Application forwarded to proper officer

- Proper Officer examines the application and accompanying documents.

### Step 6 A – Registration granted

- If the application and accompanying documents are found in order, Proper officer will grant registration certificate in GST REG 06.
- It is granted within 7 working days from the date of submission of application.

### Step 6 B – Issuing notice for further information

- If the application and accompanying documents are not found in order, Proper officer will issues notice electronically (in form GST REG 03), within 7 working days from application date thereby seeking clarification/ information or documents from the applicant.
- The applicant is required to furnish the necessary information or documents within 7 working days from receipt of such notice in the prescribed form (GST REG 04)
- If proper officer is satisfied with it within 7 working days from the date of receipt of information/ clarification/ documents, he will grant the registration certificate. (in GST REG 06)
- If he is not satisfied, he will reject the application for reasons to be recorded in writing in form GST REG 05.

### Step 7 - Deemed Approval of Application

- If the proper officer fails to take any action -

- within 7working days from the date of submission of application, or
- within 7 working days from the date of receipt of clarification, information. or documents furnished by the applicant,

  the application for grant of registration shall be deemed to have been approved.

### Step 8 – Issuance of registration certificate and Grant of GSTIN

- Where the application for grant of registration has been approved, the registration certificate showing the principal place of business (PPoB) and additional place(s) of business (APoB) is made available to the applicant on the Common Portal.
- It is duly signed or verified through EVC by the proper officer.
- A Goods and Services Tax Identification Number (referred as "GSTIN") i.e., the GST registration no. is communicated to applicant, within 3 days after the grant of registration.

### Summary of Form Numbers

| GST Form No. | Purpose |
|---|---|
| **REG-01** | Application for registration |
| **REG-02** | Acknowledgement |
| **REG-03** | Notice by PO for additional documents |
| **REG-04** | Reply to the notice given in REG-03 |
| **REG-05** | Order of rejection |
| **REG-06** | Grant of registration |

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## 6.8 - Procedure for Registration

**Procedure for registration**

**Part I**

Every person liable to get registered and person seeking voluntary registration shall, before applying for registration, declare his Permanent Account Number (PAN) and State/UT in **Part A of FORM GST REG-01** on GST Common Portal.

PAN is validated online by Common Portal from CBDT database and ***is also be verified through separate OTPs sent to the PAN linked mobile number and e-mail address.***

Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address.

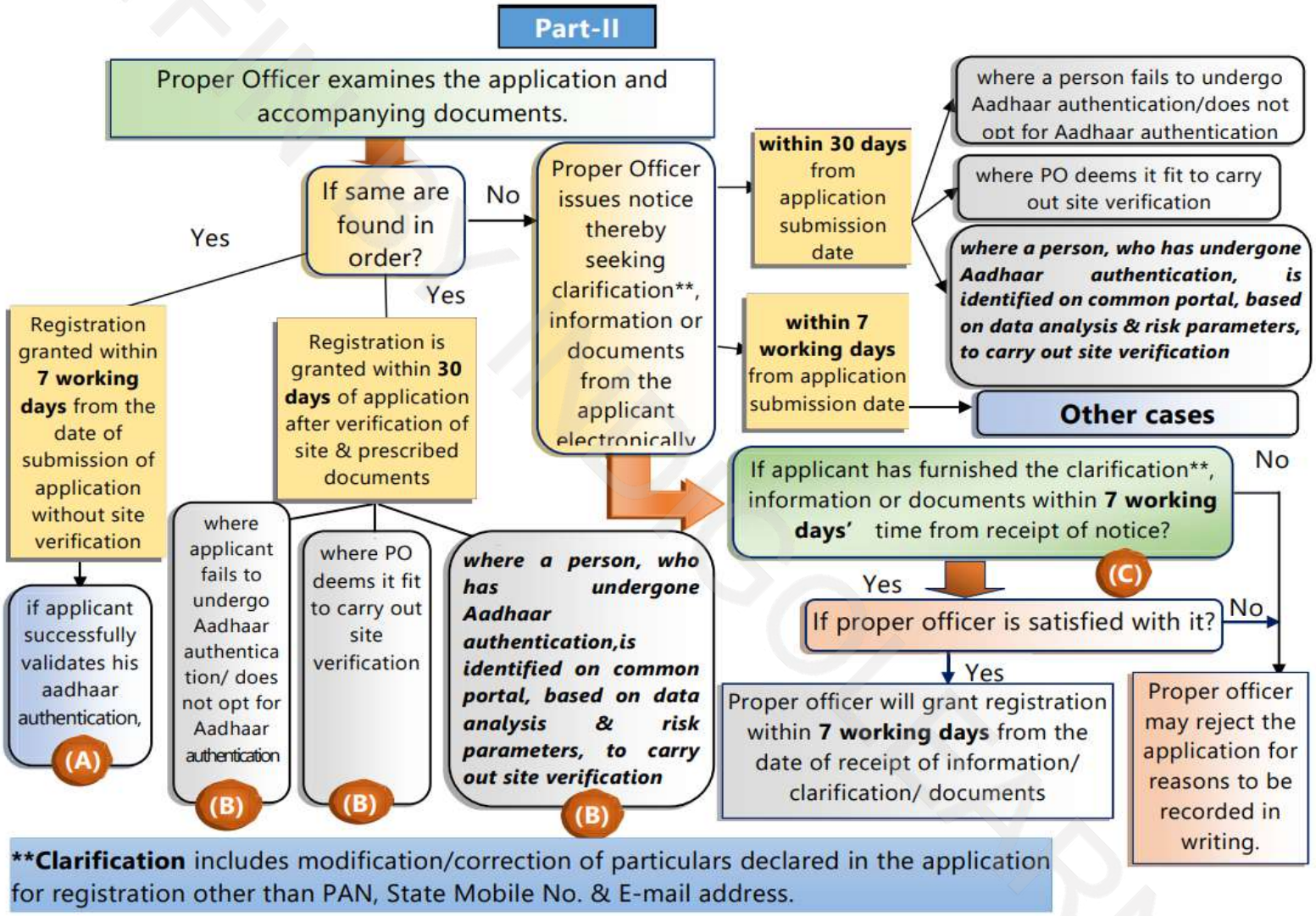
Using TRN, applicant shall electronically submit application in Part B of application form, along with specified documents at the Common Portal.

**Part B** of application contains the details, such as, constitution of business, jurisdiction, option for composition, date of commencement of business, reason to obtain registration, address of PPoB and nature of activity carried out therein, details of APoB, details of bank account(s), details of authorized signatory, aadhaar authentication, etc.

On receipt of such application, an acknowledgement in the prescribed form shall be issued to the applicant electronically. A **Casual Taxable Person (CTP)** applying for registration gets a TRN for making an advance deposit of tax in his electronic cash ledger and an acknowledgement is issued only after said deposit.*

Application shall be forwarded to the Proper Officer.

**The procedure after receipt of application by the Proper Officer is depicted in Part II.**


Part-II
Proper Officer examines the application and accompanying documents.
If same are found in order?
Yes
No
Registration granted within 7 working days from the date of submission of application without site verification
if applicant successfully validates his aadhaar authentication,
(A)
Yes
Registration is granted within 30 days of application after verification of site & prescribed documents
where applicant fails to undergo Aadhaar authentication/ does not opt for Aadhaar authentication
(B)
where PO deems it fit to carry out site verification
(B)
where a person, who has undergone Aadhaar authentication,is identified on common portal, based on data analysis & risk parameters, to carry out site verification
(B)
Proper Officer issues notice thereby seeking clarification**, information or documents from the applicant electronically
within 30 days from application submission date
within 7 working days from application submission date
where a person fails to undergo Aadhaar authentication/does not opt for Aadhaar authentication
where PO deems it fit to carry out site verification
where a person, who has undergone Aadhaar authentication, is identified on common portal, based on data analysis & risk parameters, to carry out site verification
Other cases
If applicant has furnished the clarification**, information or documents within 7 working days' time from receipt of notice?
(C)
No
Yes
If proper officer is satisfied with it?
No
Yes
Proper officer will grant registration within 7 working days from the date of receipt of information/ clarification/ documents
Proper officer may reject the application for reasons to be recorded in writing.
**Clarification includes modification/correction of particulars declared in the application for registration other than PAN, State Mobile No. & E-mail address.

## 7. OTHER KEY POINTS RELATED TO REGISTRATION

### 7.1 – Physical Verification of business Premises

- Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required after grant of registration, he may get such verification done.
- The verification report along with other documents, including photographs, shall be uploaded in the prescribed form on the GST Common Portal, within 15 working days following the date of such verification.
- Requirement of the presence of the applicant for physical verification of business premises done away with –
  - a person, fails to undergo Aadhaar authentication or does not opt for Aadhaar authentication; or
  - a person, who has undergone Aadhaar authentication, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or
  - the proper officer deems it fit to carry out physical verification of places of business,

  the registration shall be granted within 30 days of submission of application, after physical verification of the place of business, in the presence of the said person in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit. Thus, now, ***presence of the applicant is not required for physical verification.***

  Corresponding amendment has been made in rule 25. Substituted rule 25 provides as follows:

  *i.* ***Where the proper officer is satisfied that the physical verification of the place of business of a person is required AFTER the grant of registration***: he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal ***within a period of 15 working days following the date of such verification.***

  *ii.* ***Where the physical verification of the place of business of a person is required BEFORE the grant of registration*** in the circumstances specified in the proviso to rule 9(1) [as given above]: the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common ***portal at least 5 working days prior to the completion of the time period specified*** in the said proviso.

  ***[Effective from 04.08.2023]***

  ***[Notification No. 38/2023 CT dated 04.08.2023]***

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## 7.2 - Display of registration certificate and GSTIN on the name board

- Every registered person shall display his registration certificate in a prominent location at his PPoB and at every APoB.
- The GSTIN also has to be displayed on the name board exhibited at the entry of his PPoB and at every APoB.

## 7.3 – Delay in submission of bank account details

- The requirement to furnish bank details at the time of application for registration, has been relaxed by inserting a new rule 10A to CGST rules.
- The registered person is allowed to furnish the information regarding bank details after obtaining registration certificate and GSTIN
    - Within 30 days from the grant of registration or
    - Before furnishing statement of outward supplies in GSTR 1/ IFF u/s 37 Whichever is earlier.
- This relaxation is not available for those
    - Who have been granted registration as TDS deductor or
    - Who have been granted registration as TCS collector or
    - Who has obtained suo motto registration (voluntary registration)
- If a person violates the provisions of ***Rule 10A***, his GST registration is liable to be cancelled.
- Further, third proviso to rule 21A(4) has been inserted to provide for ***automatic revocation of suspension*** in such cases upon compliance with provisions of rule 10A.
- Said person ***shall be intimated*** by ***sending a communication to his e-mail*** address provided at the time of registration or as amended from time to time. In this intimation for suspension and notice for cancellation of registration, the said differences and anomalies are highlighted and said person is asked to explain, within a period of ***30 days***, as to why his registration shall not be cancelled.
- It is further provided that where the registration has been suspended as above for contravention of provisions of rule 10A and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be ***revoked upon compliance with the provisions of rule 10A.***
- ***[Effective from 04.08.2023] [Notification No. 38/2023 CT dated 04.08.2023]***

## 7.4 - Deemed Approval of Application

- If the proper officer fails to take any action in the following cases within the stipulated time, the application for grant of registration shall be deemed to have been approved-

| | |
|---|---|
| in cases where a person successfully undergoes authentication of Aadhaar number or is exempt from Aadhaar authentication | • within a period of 7 working days from the date of submission of application |
| in cases where a person fails to undergo Aadhaar authentication or does not opt for Aadhaar authentication | • within a period of 30 days from the date of submission of application |
| in cases where Proper Officer issues notice seeking clarification, information or documents from the applicant | • within 7 working days from the date of receipt of clarification, information or documents furnished by the applicant |

### 7.5 – Effective Date of Registration

| Application for Registration submitted | Effective date of registration is |
|---|---|
| Within 30 days from the date the Person who is liable to be registered | Date on which he becomes liable to registration |
| After 30 days from the date the Person who is liable to be registered | Date of grant of Registration |

### Benefits of applying for registration within 30 days

***1. Collection of GST from Customers***

- The registered person can issue ***revised invoice u/s 31*** to his customers for the supplies made between the effective date of registration and date of grant of registration and ***collect GST from his customers***.
- Such revised invoice needs to be issued within 1 month from the date of grant of registration. The customers can claim input credit on such invoice (unless he is unregistered dealer).

***2. Claiming of input tax credit***

- Such registered person can ***claim input tax credit u/s 18(1)(a)*** available at the time of registration on
  - Inputs held in stock
  - Inputs contained in work in progress
  - Inputs contained in Finished goods held in stock
- Thus, the person who applies for registration after 30 days of becoming liable to registration will have to pay tax on the supplies made from the date of becoming so liable to the effective date of registration but however, he cannot claim it from his customers. Nor can he claim the ITC.

## 8. AADHAAR AUTHENTICATION - SECTION 25(6A), (6B), (6C) & (6D) READ WITH RULES 8, 9 AND 25

- With effect from 21.08.2020, Aadhaar authentication is mandatory for the new applicants in order to be eligible for grant of registration.

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- Aadhaar Authentication process has been introduced for the persons applying for GST registration as normal taxpayer/ composition/ casual taxable person/ Input Service Distributor (ISD)/ SEZ Developer/ SEZ Unit etc, in Form GST REG 01.
- Subsequently, existing registrants will also be required to undergo Aadhaar authentication otherwise their registration shall be deemed to be invalid.

### 8.1 - Persons required to undergo Aadhaar authentication

- ***New applicant*** - Every (i) individual applicant or (ii) an applicant, other than an individual, shall undergo authentication/furnish proof of possession of Aadhaar number, in the manner prescribed in rule 8.
- Date of submission of the application in such cases shall be earlier of:
    - the date of authentication of the Aadhaar number, or
    - 15 days from the submission of the application in Part B of Form GST REG-01
- In case applicant is an individual, he shall undergo authentication of his own aadhaar number.
- In case applicant is other than individual, the authentication will be of aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other notified class of persons [authorised signatory of all types, Managing and Authorised partners of a partnership firm and Karta of a Hindu Undivided Family, have been so notified.
- ***Persons already registered*** - Every registered person shall undergo authentication/furnish proof of possession of Aadhaar number, in prescribed form and manner and within the prescribed time

### 8.2 - Where Aadhaar number is not assigned

- If an Aadhaar number is not assigned to a ***new applicant*** – such individual/person/class of persons shall be offered alternate and viable means of identification in the manner specified in rule 9.
- Where a person fails to undergo authentication of aadhaar number or does not opt for authentication of Aadhaar number, the registration shall be granted only after physical verification of the principal place of business in the prescribed manner.
- However, in lieu of the physical verification of the place of business, the proper officer may carry out the verification of such documents as he may deem fit. For this, he needs to record the reasons in writing and needs to take the approval of an officer not below the rank of Joint Commissioner.
- Further, in such case, a notice (in prescribed form) seeking clarifications/ information/ documents from the applicant may be issued by the proper officer not later than 30 days from the submission of the application for registration. Further, registration would be granted only after physical verification of premises and the verification report along with the other

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documents, including photographs, shall be uploaded in FORM GST REG 30 on the common portal within a period of fifteen working days following the date of such verification.

- In case where registration is to be granted after physical verification of the premises of a person then the application for grant of registration shall be deemed to have been approved if the proper officer fails to take any action within a period of 30 days from the date of submission of the application
- In case of failure to undergo aadhaar authentication/furnish proof of possession of Aadhaar number/furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

### 8.3 - Persons/class of persons exempt from aadhaar authentication

- Section 25(6D) stipulates that above provisions shall not apply to such person or class of persons or any State or Union territory or part thereof, as may be notified.
- Following have been notified in this regard:
    - A person who is not a citizen of India
    - Department or establishment of State Government or Central Government
    - Local authority
    - Statutory body
    - Public Sector Undertaking
    - A person applying for Unique Identity Number

### 8.4 - How aadhaar authentication is done?

- Once registration application is submitted, GST system sends "link" to the concerned persons at their GST registered mobile numbers and email ids mentioned in the GST application, for the aadhaar authentication.
- On clicking the verification link, a window for Aadhaar Authentication will open where they have to enter Aadhaar Number and the OTP received by them on the mobile number linked with Aadhaar.
- Taxpayers need to complete Aadhaar authentication of all Promoters/ Partners/ Authorized Signatories/ Karta etc. as mentioned in the application to avail this option.
- On successful authentication, demographic data of the persons is fetched from Aadhaar to GST System.

## 9. DEEMED REGISTRATION - SECTION 26

- Registration under GST is single registration for all the taxes i.e. CGST, SGST/ UTGST, IGST and cesses.
- Grant of registration/UIN under any SGST Act/ UTGST Act is deemed to be registration/UIN granted under CGST Act provided application for registration has not been rejected under CGST Act.

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- Further, rejection of application for registration/UIN under SGST Act/UTGST Act is deemed to be rejection of application for registration under CGST Act.

## 10. AMENDMENT OF REGISTRATION – SECTION 28

- A registered person may need to make some changes/amendments in the registration application. In this regard, there are two categories of details in registration application – core and non-core fields.
- The procedure of change depends on this category of fields.
- ***Core fields*** are
    - Legal name of the business, (if there is no change in pan)
    - Addition / deletion of stakeholders (Details of directors/ partners/Karta/ Executive officer
    - PPOB (other than change in State) or APOB (other than change in State).
- All other fields are ***non-core fields*** like name of day-to-day functionaries, e- mail Ids, mobile numbers, bank account details etc.

### 10.1 - Procedure for change in core field

- ***Application within 15 days*** - Where there is any change in the particulars furnished in registration application/UIN application, registered person shall submit an application in prescribed manner, either at the time of obtaining registration or Unique Identity Number or as amended from time to time, within 15 days of such change, along with documents relating to such change at the Common Portal.
- ***Additional information by PO*** - The proper officer may, within 15 days, send a notice seeking additional documents substantiating the change.
- ***Response to notice*** - The registered person has to respond within 7 days from the receipt of such notice.
- ***Approve / reject within 7 days*** - On the basis of information furnished or as ascertained by him, the PO may approve or reject amendments in the registration particulars in the prescribed manner.
- ***Opportunity of being heard*** - The proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.
- ***Deemed approval*** – if the proper officer fails to take any action,-
    a) within a period of 15 working days from the date of submission of the application, or
    b) within a period of 7 working days from the date of the receipt of the reply to the show cause notice,
- The certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

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- Any rejection or approval of amendments under the SGST/UTGST Act shall be deemed to be a rejection or approval under this Act.
- ***PAN based application of amendment*** - Change of

  a) Legal name of business

  b) Addition/Deletion of stakeholders

  these two particulars shall be applicable for all registrations of a registered person obtained under provisions of this Chapter on same PAN.
- Effective date of amendment - Such amendment shall take effect from the date of occurrence of event warranting such amendment.

## 10.2 - Procedure for change in non-core field

- ***Application within 15 days*** - Where there is any change in the particulars furnished in registration application/UIN application, registered person shall submit an application in prescribed manner, either at the time of obtaining registration or Unique Identity Number or as amended from time to time, within 15 days of such change, along with documents relating to such change at the Common Portal.
- ***Amendment made*** - Registration certificate shall stand amended upon submission of the application for amendment on the Common Portal

## 10.3 - Other Key points related to amendment

- ***Amendment with retrospective effect*** - Any particular of the application for registration shall not stand amended with effect from a date ***earlier than date of submission of application*** for amendment on common portal except with ***order of Commissioner*** for reasons to be recorded in writing and subject to ***conditions specified by Commissioner*** in the said order.
- ***Change in PAN*** - Application for amendment of registration cannot be filed for change in PAN because GST registration is PAN-based. One needs to make fresh application for registration in case there is change in PAN. Thus. where a ***change in the constitution of any business*** results in change of PAN of a registered person, the said person shall ***apply for fresh registration.***
- ***Change in State*** - Application for amendment of registration form cannot be filled if there is change in place of business from one State to the other because GST registrations are State-specific. If one wishes to relocate his business to another State, he must voluntarily cancel his current registration and ***apply for a fresh registration*** in the State he is relocating his business.

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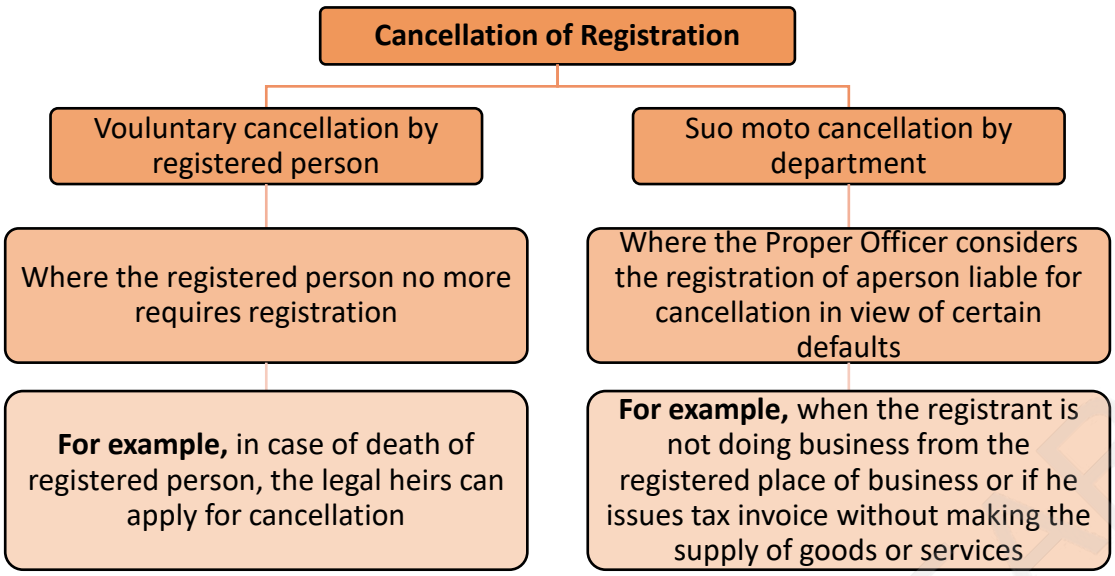
## 11. CANCELLATION OF REGISTRATION – SECTION 29




### 11.1 - Circumstances when the registration can be cancelled either suo motu by proper officer or on an application of the registered person or his legal heirs (in case death of such person)

1. Business discontinued
2. Transferred fully for any reason (like amalgamation, demerger or death of the proprietor)
3. Change in the constitution of the business
4. Taxable person (other than voluntarily registered person) who is no longer liable to be registered under section 22 or section 24

### 11.2 - Circumstances when the proper officer can cancel registration on his own

1. A registered person has contravened the prescribed provisions -
    - He does not conduct any business from the declared place of business, or
    - He issues invoice/bill without supply of goods/services in violation of the provisions of this Act, or the rules made thereunder.
    - He violates the provisions of section 171 of the CGST Act. (Section 171 of the CGST Act, 2017 contains provisions relating to anti-profiteering measure)
    - Violates rule 10A provisions
    - Avails ITC on violation of Section 16
    - furnishes the details of outward supplies in Form GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods
    - violates the provision of rule 86B
2. A registered person has not filed returns for continuous 6 months.
3. A person who opted for composition levy has not filed return for 2 consecutive tax periods.

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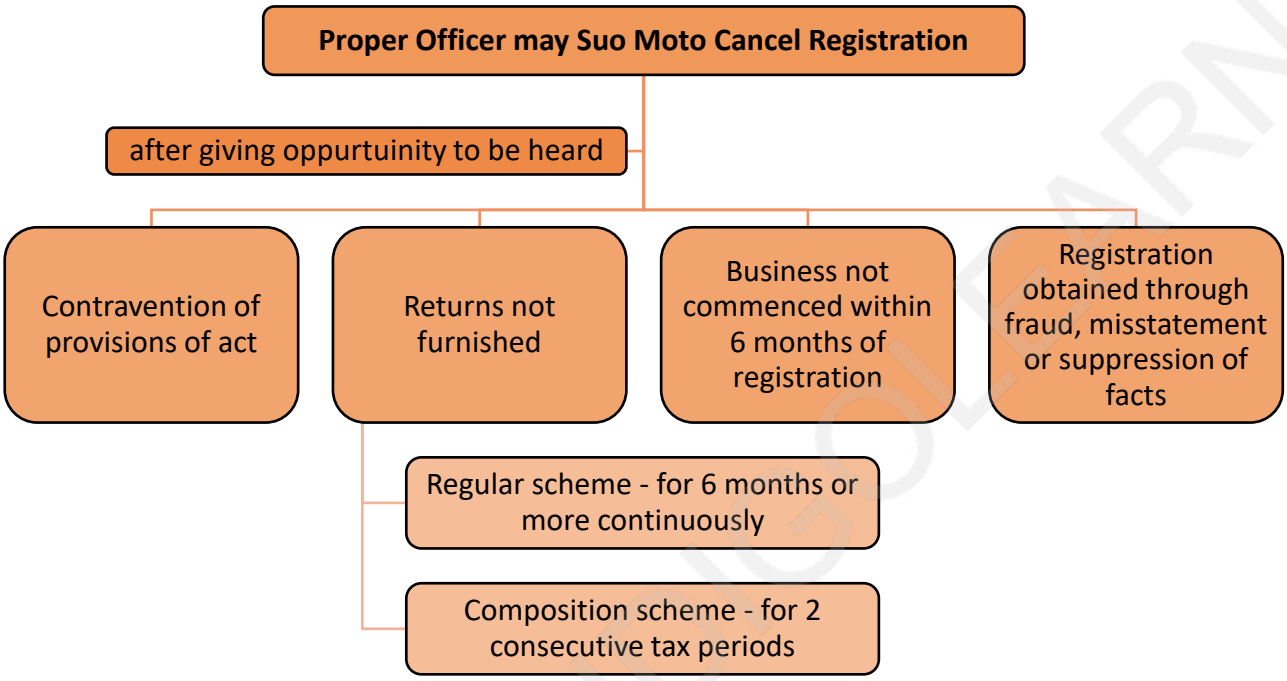
4. Registration was obtained by means of fraud, willful misstatement or suppression of facts
5. Voluntarily registered person has not commenced the business within 6 months from the date of registration

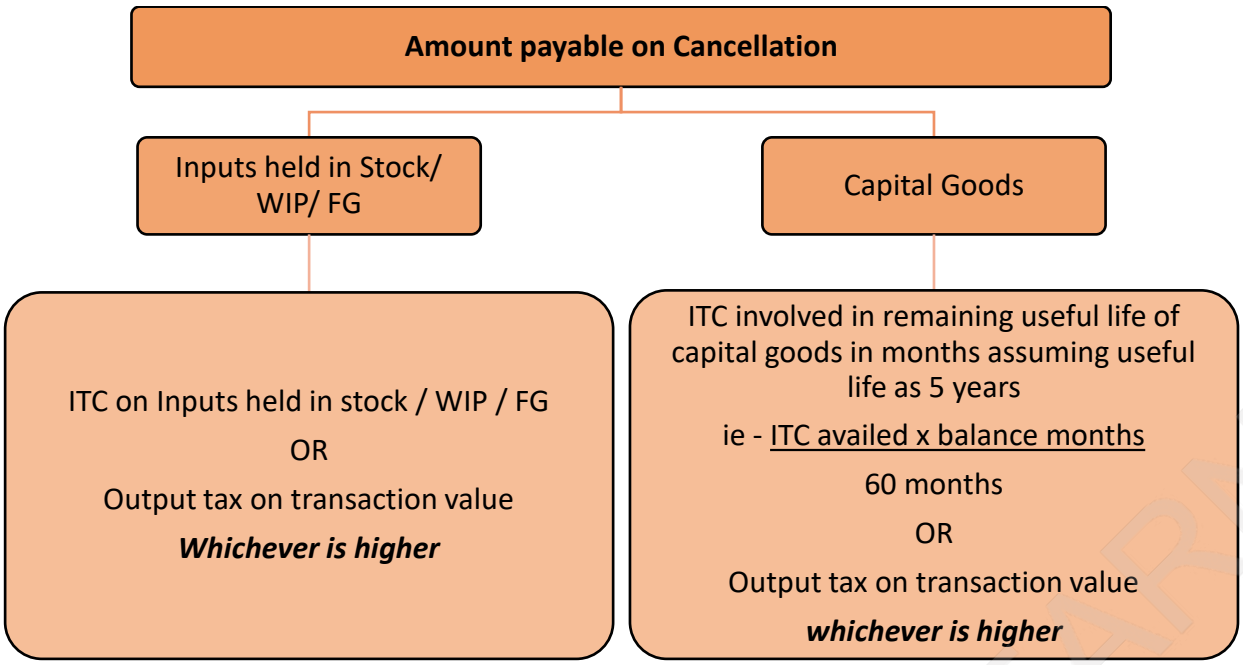
- Registration can be cancelled by the proper officer from such date, including any retrospective date, as he may deem fit.
- However, PO shall not cancel the registration without giving the person an opportunity of being heard.




- If any registered person furnishes the details of outward supplies in Form GSTR-1 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods then such registered person registration shall be liable for cancellation.

## 11.3 - Procedure for cancellation of registration

- ***Application within 30 days*** - A registered person seeking cancellation of registration shall electronically submit the application for cancellation of registration in prescribed form ***within 30 days of occurrence of the event warranting cancellation***.
- ***Furnish details of stock*** - He is required to furnish in the application the ***details of inputs*** held in stock or inputs contained in semi-finished/finished goods held in stock ***and of capital goods held in stock on the date from which cancellation of registration is sought***, liability thereon, details of the payment, if any, made against such liability and may furnish relevant documents thereof.
- ***Amount payable on inputs and capital goods*** - A registered person whose registration is cancelled will have to debit the electronic credit or cash ledger by an amount as computed below:




- ***Cancellation order within 30 days*** -Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered, proper officer shall issue the order of cancellation of registration within 30 days from the date of submission of application for cancellation.
- ***show cause notice in case of Suo-motu cancellation*** - Where the proper officer cancels the registration suo-moto, he shall not cancel the same without giving a show cause notice and without giving a reasonable opportunity of being heard, to the registered person.
- Response within 7 days - The reply to such show cause notice (SCN) has to be submitted within 7 days of service of notice.
- ***Order passed*** – In the following cases, the proper officer shall ***drop the proceedings and pass an order***: -
    - If reply to SCN is satisfactory. (The order shall be passed ***within 30 days from the date of reply to SCN***)
    - If the person instead of replying to the SCN served for failure to furnish returns for a continuous period of 6 months (3 months in case of composition scheme supplier), furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee.
- ***Effective date of cancellation*** - The cancellation of registration shall be effective from a date to be determined by the proper officer and mentioned in the cancellation order.
- ***Liability to pay*** – The cancellation of registration will not affect liability of registered person to pay tax and other dues under the Act for any period prior to the date of cancellation. The PO shall direct the taxable person to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5).
- ***Intimation through Email and SMS*** - Order for cancellation of registration will be issued and intimated to the primary authorized signatory by email and SMS.

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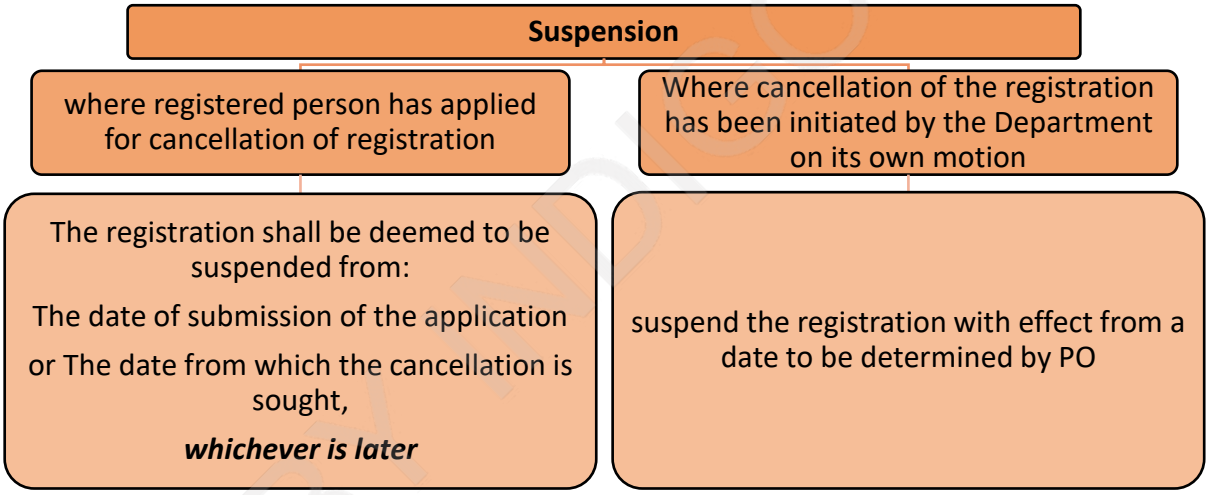
## 11.4 - Other key points on cancellation

- A person to whom a UIN has been granted under rule 17 cannot apply for cancellation of registration
- The cancellation of registration under either SGST Act/UTGST Act shall be deemed to be a cancellation of registration under CGST Act
- Taxpayer would not be allowed to file return for the period after date of cancellation mentioned in the cancellation order. However, he can submit returns of the earlier period (i.e., for the period before date of cancellation mentioned in the cancellation order for which registration was active).

## 11.5 - Suspension of registration

- Once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, the proper officer may suspend his registration ***during pendency of the proceedings relating to cancellation of registration.***
- 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.




- A registered person, whose registration has been suspended as above:
  - shall not make any taxable supply during the period of suspension (i.e., he cannot issue taxable invoice and collect tax) 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.
- In case the cancellation proceedings have been dropped, suppliers have to issue revised invoice for the suspension period.
- Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he can now suspend the registration of such person, pending the

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cancellation proceedings, without affording the said person a reasonable opportunity of being heard.

- Mismatch between GSTR 1 and GSTR 3B may also attract suspension.
- In a case where the cancellation is initiated by the Department on its own and registration of a person has been suspended, such person shall not be granted any refund during the period of suspension
- The suspension of registration may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.
- The suspension of registration shall be deemed to be revoked upon furnishing of pending GST returns, where GST registration was suspended due to non-filing of GST return for a financial year beyond 3 months from the due date of furnishing the said return by a composition taxpayer or returns for such continuous tax period as may be prescribed by registered persons other than composition taxpayers, subject to the condition that the registration has not been cancelled by the proper officer under rule 22.

## 12. REVOCATION OF CANCELLATION OF REGISTRATION – SECTION 30

### 12.1 - Procedure for revocation of cancellation - Where the registration of a person is cancelled suo-moto by the proper officer for violation of any rule.

- ***Application within 30 days*** - such registered person may apply for revocation of the cancellation to such proper officer, ***within 30 days*** from the date of service of the ***order of cancellation*** of registration.
- ***Order of revocation*** - If the proper officer is satisfied that there are sufficient grounds for revocation of cancellation, he may revoke the cancellation of registration, by an order ***within 30 days of receipt of application*** and communicate the same to applicant.
- ***Show cause notice*** - If the proper officer is not satisfied he has to first issue SCN to the applicant who shall furnish the ***clarification within 7 working days*** of service of SCN.
- ***Disposal of application*** - The proper officer shall dispose the application (accept/reject the same) within ***30 days of receipt of clarification***.

### 12.2 - Procedure for revocation of cancellation - Where the registration of a person is cancelled for failure of registered person to furnish returns.

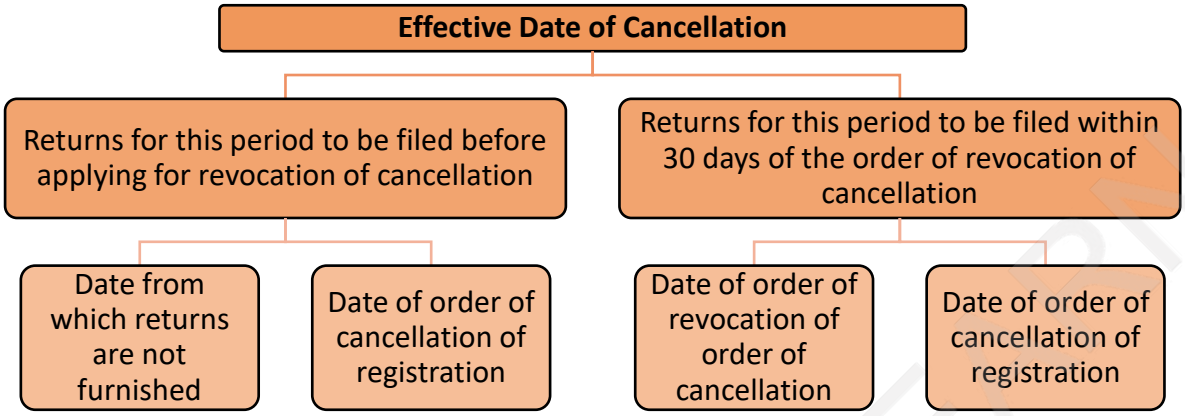
- ***File returns before applying for revocation*** - Where registration was cancelled for failure of registered person to furnish returns, before applying for revocation, the person has to make good the defaults, i.e. the person needs to file such returns and also make payment of all dues.
- ***Time limit for filing returns***

1. ***Where cancellation is effective from the date of order of cancellation:***

    a. In such a case, person applying for revocation of cancellation has to furnish all returns due till the date of such cancellation before the application for revocation can be filed

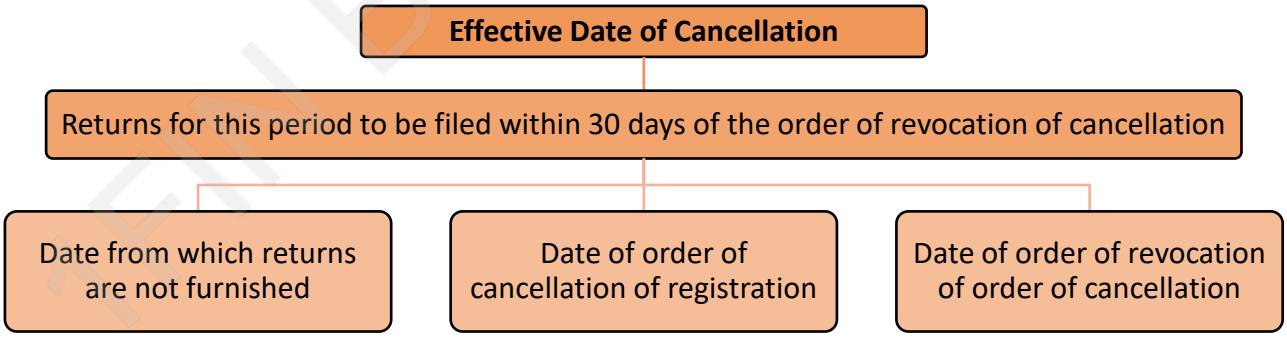
and has to pay any amount due as tax, in terms of such returns along with any amount payable towards interest, penalties or late fee payable in respect of the said returns.

b. All returns due for 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.




2. ***Where cancellation is effective from retrospective date***:

- In that case, the application for revocation of cancellation of registration is allowed to 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.
- The time period of filing of application for revocation of ***90 days from the date of service of the order of cancellation of registration***, may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended, by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding 180 days.
- [***Effective from 01.10.2023] [Notification No. 38/2023 CT dated 04.08.2023]***




## 12.3 - Key points on revocation

- The following cannot apply for revocation of cancelled registration
  - UIN Holders (i.e. UN Bodies, Embassies and Other Notified Persons),
  - GST Practitioner

- The taxpayer or his legal heir who had applied of cancellation of registration
- The revocation of cancellation of registration under the SGST Act/ UTGST Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under CGST Act.

## ILLUSTRATIONS

### Illustration 1 (Examples - Threshold limit)

Determine whether registration is required in each of the following cases:

i. Mr. Prithvi Raj from Assam exclusively engaged in supply of shoes. Turnover is Rs.22 lakhs. Is registration required u/s 22(1)?

ii. Prithvi Raj from Assam exclusively engaged in supply of Pan Masala. Turnover is Rs.22 lakhs. Is registration required u/s 22(1)?

iii. Prithvi Raj of Assam exclusively engaged in supply of services. Aggregate turnover is Rs.22 lakhs. Is registration required u/s 22(1)?

iv. Prithvi Raj of Assam is engaged in supply of both taxable goods and services. What is the threshold limit for registration?

v. Shivaji of Telangana, exclusively engaged in supply of toys. Aggregate turnover is Rs.22 lakhs. Is registration required?

vi. Shivaji of Telangana exclusively engaged in the supply of ice-cream. Aggregate Turnover is Rs.22 lakhs. Is registration required u/s 22(1).

vii. Shivaji of Telangana exclusively engaged in the supply of services or in both, services and goods. Aggregate turnover is Rs.22 lakhs. Is registration of required?

viii. Ashoka of Manipur exclusively engaged in supply of paper. Turnover is Rs.12 lakhs. Is registration required u/s 22(1)?

### Illustration 2 (Examples & Question I)

Determine Effective date of registration in the following two cases:

i. The aggregate turnover of Dhampur Industries of Delhi exceeds Rs. 20 Lakhs on 1st September. It submits the application for registration on 20th September. Registration certificate is granted on 25th September

ii. Mehta Teleservices is an internet service provider in Lucknow. Its aggregate turnover exceeds Rs. 20 Lakhs on 25th October. It submits the application for registration on 27th November. Registration certificate is granted on 5th December

### Illustration 3 (Examples & Questions – I)

In order to be eligible for grant of registration, a person must have a Permanent Account Number issued under the Income- tax Act, 1961. State one exception to it.

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**Illustration 4 (Examples & Questions – I)**

State which of the following suppliers are liable to be registered:

i. Agent supplying goods on behalf of some other taxable person and its aggregate turnover does not exceed Rs. 20 lakhs during the financial year.

ii. An agriculturist who is only engaged in supply of produce out of cultivation of land.

**Illustration 5 (Examples & Questions – I)**

If a person is operating in different States, with the same PAN number, can he operate with a single registration?

**Illustration 6 (Examples & Questions – I)**

Can a person having multiple business verticals in a State obtain separate registrations for each business vertical?

**Illustration 7 (Examples & Questions – I)**

Is there a provision for a person to get himself voluntarily registered though he may not be liable to pay GST?

**Illustration 8 (Questions II)**

Can the Department, through the proper officer, Suo-moto proceed to register a person?

**Illustration 9 (Questions II)**

Is it necessary for the UN bodies to get registration under GST?

**Illustration 10 (Questions II)**

What is the responsibility of the taxable person making supplies to UN bodies?

**Illustration 11 (Questions II)**

What is the validity period of the registration certificate issued to a casual taxable person and non-resident taxable person?

**Illustration 12 (Questions II)**

What could be the liabilities (in so far as registration is concerned) on transfer of a business?

**Illustration 13 (Questions II)**

At the time of registration, will the assessee have to declare all his places of business?

**Illustration 14 (Questions II)**

What will be the time limit for the decision on the online registration application?

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### Illustration 15 (Past Exams / RTPs – I)

Luv & Kush pvt. Ltd. of Srinagar, Jammu & Kashmir engaged in the supply of gifts items provides you the following details-

| S. No. | Particulars | Date |
|---|---|---|
| 1 | Commencement of the business of supplying goods | 01.08.20XX |
| 2 | Turnover exceeds Rs.10,00,000 on | 15.08.20XX |
| 3 | Turnover exceeds Rs.20,00,000 | 05.09.20XX |
| 4 | Application for registration made on | 28.09.20XX |
| 5 | Registration certificate granted on | 06.10.20XX |

The company seeks your advice as to how it should raise revised tax invoices for supplies made. Is there any specific provision for issuance of revised tax invoices to unregistered customers? Explain.

### Illustration 16 (Past Exams / RTPs – II)

The aggregate turnover of Priyank Services Ltd. exceeded Rs.20 lakh on 12th August. He applied for registration on 3rd September and was granted the registration certificate on 6th September.

You are required to advice Priyank Services Ltd. as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of Revised Tax Invoices.

### Illustration 17 (Past Exams / RTPs – II)

Determine the effective date of registration in the following instances:

(i) The aggregate turnover of Madhu Ltd, engaged in taxable supply of services in the state of Punjab, exceeded Rs.20 lakhs on 25th August 2017. It applies for registration on 19th September 2017 and is granted registration certificate on 29th September 2017.

(ii) What will be your answer, if in the above scenario, Madhu Ltd. Submits the application for registration on 27th September 2017 and is granted registration on 5th October 2017?

### Illustration 18 (Past Exams / RTPs – II)

State the persons who are not liable for registration as per provisions of Section 23 of CGST Act, 2017.

### Illustration 19 (Past Exams / RTPs – I)

Mr. Allan, a non-resident person, wishes to provide taxable supply of goods. He has no fixed place of business or residence in India. He seeks your advice on the following aspects, relating to CGST Act, 2017:

(i) When shall he apply for registration?
(ii) Is PAN mandatory for registration?
(iii) What is the period of validity of RC granted to him?
(iv) Will he be able to extend the validity of his registration? If yes, what will be the period of extension?

### Illustration 20 (Past Exams / RTPs – III)

State with brief reason, whether following suppliers of taxable goods are required to register under the GST law:

(i) Mr. Raghav is engaged in wholesale cum retail trading of medicines in the state of Assam. His aggregate turnover during the financial year is Rs.9,00,000 which consists of Rs.8,00,000 as Intra-state supply and Rs.1,00,000 as Inter-state supply.

(ii) Mr. S. N. Gupta of Rajasthan is engaged in trading of taxable goods on his own account and also acting as an agent of Mr. Rishi of Delhi. His turnover in the financial year 2017-18 is off Rs.12,00,000 on his own account and Rs.9,00,000 on behalf of principal. Both turnovers are Intra-state supply.

### Illustration 21 (Past Exams / RTPs – III)

Answer the following questions with respect to casual taxable person under the CGST Act, 2017:

(i) Who is a casual taxable person?
(ii) Can a casual taxable person opt for the composition scheme?
(iii) When is the casual taxable person liable to get registered?
(iv) What is the validity period of the registration certificate issued to a casual taxable person?
(v) Can the validity of registration certificate issued to a casual taxable person be extended? If yes, what will be the period of extension?

### Illustration 22 (Past Exam questions)

Does cancellation of registration impose any tax obligations on the person whose registration is so cancelled?

### Illustration 23 (Past Exam questions)

Determine with brief reasons whether the following statement is True or False:

Registration under the CGST Act, can be cancelled by the proper officer, if the voluntarily registered person has not commenced the business within 3 months from the date of Registration.

### Illustration 24

Mahadev Enterprises, a sole proprietorship firm, opened a shopping complex dealing in supply of ready-made garments at multiple locations, i.e., in Himachal Pradesh, Uttarakhand and Tripura in June. It has furnished the following details relating to supply made at such multiple locations for the month of June:

| Particulars | Himachal Pradesh (Rs.) | Uttarakhand (Rs.) | Tripura (Rs.) |
|---|---|---|---|
| Intra-State supply of taxable goods | 22,50,000 | - | 7,00,000 |
| Intra-State supply of exempted goods | - | - | 6,00,000 |
| Intra-State supply of non - taxable goods | - | 21,00,000 | 40,000 |

All the above amounts are excluding GST.

With the help of the above-mentioned information, answer the following questions giving reasons:

1. Determine whether Mahadev Enterprises is liable to be registered under GST law and what is the threshold limit of taking registration in this case assuming that it is not required to pay any tax on inward supplies under reverse charge.
2. Explain with reasons whether your answer in (1) will change in the following independent cases:
    a. If Mahadev Enterprises is dealing exclusively in taxable supply of goods only from Himachal Pradesh;
    b. If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh;
    c. If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh and has also affected inter-State supplies of taxable goods (other than notified handicraft goods) amounting to Rs. 4,00,000.

### Illustration 25

With the help of the following information in the case of M/s Jayant Enterprises, Jaipur (Rajasthan) for the financial year, determine the aggregate turnover for the purpose of registration under the CGST Act. Also determine whether M/s Jayant Enterprises is liable to be registered under GST law.

| S. No. | Particulars | Amount (Rs.) |
|---|---|---|
| 1 | Sale of diesel on which Sale Tax (VAT) is levied by Rajasthan Government. | 1,00,000 |
| 2 | Supply of goods, after completion of job work, from the place of Jayant Enterprises directly by principal by declaring the place of M/s Jayant Enterprises as its additional place of business. | 3,00,000 |
| 3 | Export of goods to England (U.K.) | 5,00,000 |
| 4 | Supply to Rajasthan its own additional place of business in Rajasthan | 5,00,000 |
| 5 | Outward supply of services on which GST is to be paid by recipient under reverse charge | 1,00,000 |

All the above amounts are excluding GST.

You are required to provide reasons for treatment of various items given above.

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# 10. ASSESSMENT & AUDIT

Contents

- Complete understanding of different kinds of assessments under GST
- Knowledge of audit by tax authorities
- Knowledge Special Audit

## 1. SELF ASSESSMENT – SECTION 59

- GST is based on trust and the primary obligation of payment of tax lies on assessee himself. 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.

## 2. PROVISIONAL ASSESSMENT - SECTION 60

### 2.1 – Need of Provisional Assessment

- The assessee can opt for provisional assessment when he/she ***is unable*** to –
  - ***determine the value*** of goods or services or both; or
  - determine the ***rate of tax*** applicable
- Thus, provisional assessment is used in situations which makes it difficult for the assessee to determine the taxable value or the rate of tax.

### 2.2 – Aggregate Turnover

- The process to be followed for provisional assessment is stated below –
  - ***File an application*** (in FORM GST ASMT-01) on the common portal, either directly or through a Facilitation Centre. The application is ***filed along with the documents*** in support of his request for payment of tax on a provisional basis.
  - The proper officer may ***issue a notice*** (in FORM GST ASMT-02) requiring the registered person to ***furnish additional information or documents*** in support of his request.
  - The applicant shall file a ***reply to the notice*** (in FORM GST ASMT – 03) and may appear in person before the proper officer.
  - The proper officer shall ***pass an order*** (in FORM GST ASMT-04), within a ***period not later than ninety days*** from the date of receipt of such request allowing –

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a. payment of tax on provisional basis at such rate or on such value as may be specified by him and

b. the amount for which the bond is to be executed and security to be furnished.

### 2.3 – Need of bond and security

- The assessee making the payment on provisional basis needs to –
  - ***execute a bond*** (in FORM GST ASMT-05) for the amount specified by the proper officer, and
  - provide the ***security*** in the form of a bank guarantee, for a value not exceeding 25% of the amount covered under the bond.
- The purpose of the bond is to bind the assessee for payment of the ***difference*** between the ***amount of tax*** as may be ***finally assessed*** and the amount of tax ***provisionally assessed***.

***Note –***

- The '***amount of bond***' shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction.

### 2.4 – Final Assessment Order

- The proper officer shall issue a notice (in FORM GST ASMT-06), calling for information and records required for finalization of assessment.
- The final order shall be issued within a period ***not exceeding 6 months*** from the ***date of the communication*** of the ***order of provisional assessment***.
- The period of 6 months may be ***extended***, on sufficient cause being shown and for ***reasons to be recorded in writing***, by –

  a. the Joint Commissioner or Additional Commissioner for a f***urther period not exceeding 6 months***; and

  b. the Commissioner for such ***further period not exceeding 4 years***.
- Thus, the maximum period available for passing the final assessment order is 5 years (6 months + 6 months + 4 years).
- The proper officer shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any (in FORM GST ASMT-07).

### 2.5 – Release of Scrutiny

- The applicant may file an application (in FORM GST ASMT-08) for the release of the security after issue of the final assessment order.
- The proper officer shall release the security, after ***ensuring that the applicant has paid the amount*** specified in the final order and issue an order (in FORM GST ASMT-09) ***within a period of 7 working days*** from the date of the receipt of the application.

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## 2.6 – Payment of Interest

**Case 1 – When the tax liability as per the final assessment is higher than the provisional assessment**

- When the tax becomes due in final assessment, the registered person in addition to the differential tax shall be liable to ***pay interest on the tax due but not paid***, at the rate specified under section 50(1) i.e. **18%**.
- The time period for such payment shall be calculated from the date the ***tax was due to be paid originally till the date of actual payment.***
- The payment of interest shall be done irrespective of the fact that whether such amount is paid before or after the issuance of order for final assessment.

**Example –**

Mr. Amith is unable to determine the amount of tax for the month of May, 20X5. With the help of the details given below, compute the interest payable by Mr. X.

| | |
|---|---|
| Provisional payment of tax on 20th June, 20X5 | Rs. 50,000/- |
| Final assessment order date | 18th December |
| Tax as per final assessment | Rs. 70,000/- |
| Payment of the different of Rs. 20,000/- | 20th December, 20X5 |

**Solution –**

In the above case, the tax shall be paid on Rs. 20,000/- from 20th June (the actual date of liability) to 20th December.

Amount of interest = 20,000 x 18% x 183/365 = Rs. 1805/-

**Case 2 – When the tax liability as per the final assessment is lower than the provisional assessment**

- When the tax becomes refundable consequent to the order of final assessment, the interest becomes payable if the **amount is not paid within a period of 60 days of the issue of final assessment order**.
- The rate of interest shall be the rate specified under section 56 i.e **6%** from 61st day of the order.

**Example –**

Mr. Amith is unable to determine the amount of tax for the month of May, 20X5. With the help of the details given below, compute the interest payable, if any.

| | |
|---|---|
| Provisional payment of tax on 20th June, 20X5 | Rs. 50,000/- |
| Final assessment order date | 18th December |
| Tax as per final assessment | Rs. 20,000/- |
| Refund of the difference of Rs. 30,000/- | 2nd February, 20X6 |

**Solution –**

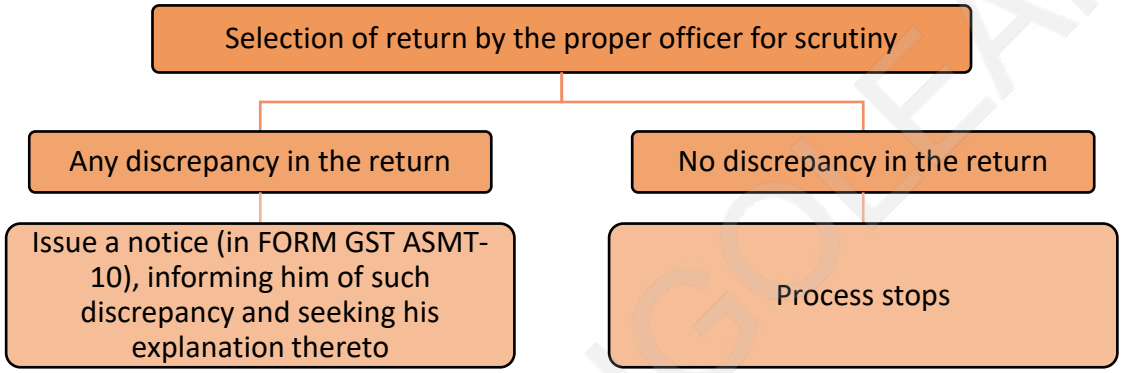
In this case, the tax payment done by Mr. X is more than the liability as per the final assessment, thus leading to refund of Rs. 30,000/-

The date of final assessment order was 18th December and the payment has been done within 60 days of the final order, hence the government is not liable to pay any interest on the refundable amount.

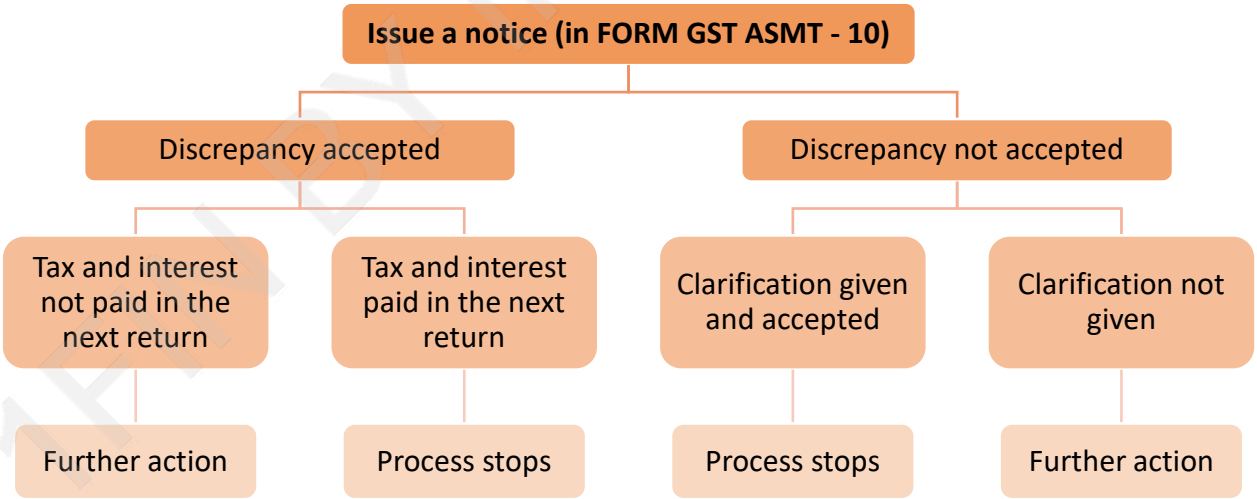
## 3. SCRUTINY OF RETURNS – SECTION 61

### 3.1 - Selection for scrutiny

- The proper officer may select any return filed by the taxable person for the purpose of scrutiny.
- The aim of scrutiny is to check the correctness of the return in respect of the tax paid, ITC claimed and the correct applicability of the law.




### 3.2 – Further procedure to be followed




### 3.3 – Further course of Action

- In the above-mentioned cases, the proper officer can take any of the below mentioned actions –
    - proceed to conduct ***audit*** under ***section 65***; or
    - direct the conduct of a ***special audit*** under ***section 66***; or

- undertake procedures of ***inspection, search and seizure*** under ***section 67***; or
- ***initiate proceeding*** for determination of tax and other dues under ***Section 73 or 74***.

## 4. ASSESSMENT OF NON-FILERS OF RETURNS - SECTION 62

### 4.1 - Applicability of the Section

- Section 62 is attracted in the below situation –
  - Where a registered person ***fails to furnish the return*** under ***section 39 (monthly/ quarterly)*** or ***section 45 (final return)***, and
  - a ***notice under section 46*** has been issued by proper officer (which requires the taxable person to furnish the return within a period of 15 days); and
  - taxable person ***fails to file return*** within the given time.

### 4.2 - Action by the proper officer

- When Section 62 becomes applicable, the proper officer may proceed to ***assess the tax liability*** of the said person to the ***best of his judgement*** by taking into account all the relevant material which is available or which he has gathered.
- The summary of the assessment order shall be uploaded electronically by the proper officer.

### 4.3 - Time limit for issue of order

- He can issue an ***assessment order*** 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.

  ***Example*** –

  If the taxable person fails to furnish the return for the financial year 2021-22, then the assessment order can be issued within a period of 5 years from 31st December 2022 i.e. until 31st December 2027.

### 4.4 - Withdrawal of the order

- The above assessment order shall be stand withdrawn if the registered person furnishes a ***valid return within 60 days*** of the service of the assessment order. If failed, he may furnish the same within ***a further period of 60 days on payment of an additional late fee of Rs.100*** for each day of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under section 50(1) or to pay late fee under section 47 shall continue.
- However, the liability for payment of interest under section 50(1) or for payment of late fee under section 47 shall continue.

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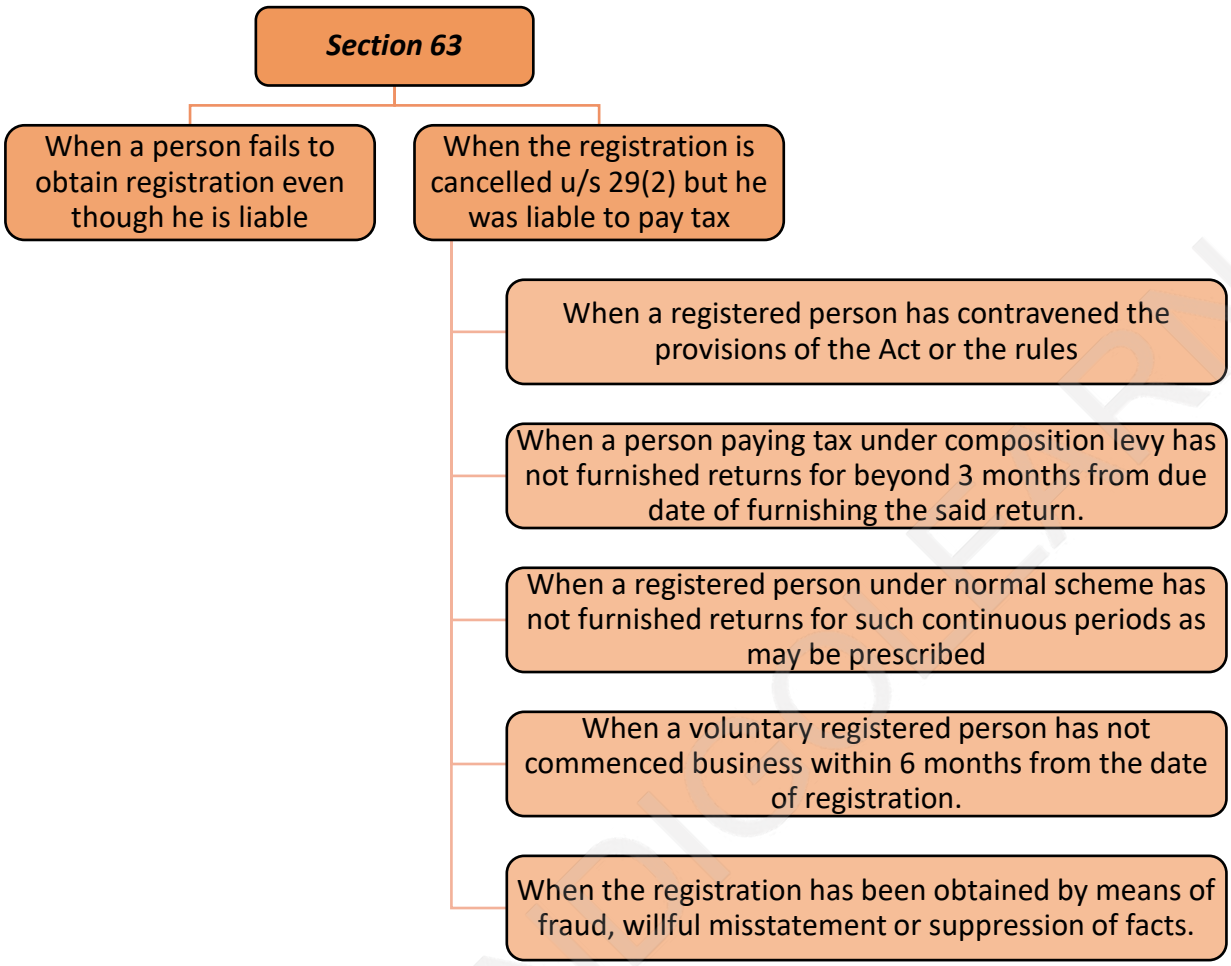
## 5. ASSESSMENT OF UNREGISTERED PERSONS – SECTION 63

### 5.1 – Applicability of the Section




### 5.2 – Best Judgement Assessment

- The proper officer shall ***issue a notice*** to the taxable person ***containing the grounds*** on which the assessment is proposed to be made on best judgment basis.
- He shall also ***serve a summary thereof electronically*** in the prescribed form.
- The taxable person shall ***furnish his reply*** within a period of ***15 days***.
- An ***order shall be passed*** and summary thereof shall be uploaded electronically in the prescribed form.
- No assessment order shall be passed without giving the person an opportunity of being heard.

### 5.3 – Time period

- The proper officer can issue an ***assessment order*** 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.

## 6. SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES - SECTION 64

### 6.1 – Applicability of the Section

- The proper officer can initiate a summary assessment if he has–

- any ***evidence showing a tax liability*** of a person; and
- ***sufficient grounds*** to believe that any delay in doing so may adversely ***affect the interest of revenue.***

- However, the proper officer can begin the summary assessment only after getting ***permission of Additional Commissioner or Joint Commissioner.***

- The summary assessment order and a summary thereof shall be uploaded electronically in the prescribed form.

### 6.2 - Deemed liability in case of goods

- ***When the taxable person liable to pay tax for supply of goods becomes unascertainable –***

the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

***Example –***

Mr. Rohan has kept his goods in the warehouse of Mr. Vamshi. The department has initiated summary assessment under Section 64 in respect of the goods. In this case, if it is difficult to get hold of Mr. Rohan, the liability for tax payment would apply on Mr. Vamshi.

### 6.3 - Withdrawal of assessment order

- The assessment order can be ***withdrawn by Additional Commissioner or Joint Commissioner;***
- if he thinks that such ***order is erroneous***; and
- follow the procedure laid down in section 73 or section 74

Such withdrawal can be done either –

- ***suo moto*** by the Additional Commissioner or Joint Commissioner; or
- by an ***application*** made by the taxable person ***within 30 days*** from the date of receipt of the order.

## 7. AUDIT BY TAX AUTHORITIES - SECTION 65

### 7.1 - Officer eligible to conduct the audit

- Audit under Section 65 can be undertaken by –
  - the ***Commissioner***; or
  - any other ***officer authorised*** by him

### 7.2 - General provisions of audit

- The audit can be conducted by way of a ***general order*** or a ***specific order***.
- Audit can be conducted for ***few months, one financial year*** or ***more than one*** financial year.
- The audit can be conducted by the officer in their ***own office*** or at the ***place of business of the registered person.***
- The ***registered person shall be informed*** about audit by way of a ***notice not less than 15 working days*** prior to the conduct of audit.

### 7.3 - Time period of audit

- The audit under shall be completed within a ***period of 3 months*** from the date of ***commencement of the audit***.
- The time period may be ***extended by the Commissioner*** for a further period ***not exceeding 6 months*** if he is satisfied that the audit cannot be completed within a period of 3 months.

***Note*** –
***'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***.

### 7.4 - Conduct of audit

During the course of audit, the authorised officer may require the registered person —

- to ***afford him the necessary facility*** to verify the books of account or other documents as he may require; or
- to ***furnish such information as he may require*** and render assistance for timely completion of the audit

The proper officer shall verify the –

- ***documents*** on the basis of which the books of account are maintained and the returns and statements furnished,
- correctness of the ***turnover***,
- ***exemptions and deductions*** claimed,
- ***rate of tax*** applied in respect of the supply of goods or services or both,
- ***input tax credit*** availed and utilised,
- ***refund*** claimed, and
- ***other relevant issues*** and record the observations in his audit notes.

### 7.5 - Conclusion of audit

- The proper officer ***shall inform*** the registered person about the ***findings, his rights and obligations*** and the reasons for such findings ***within 30 days***.
- The officer shall ***finalise the findings*** of the audit ***after due consideration*** of the reply furnished.
- If 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***.

## 8. SPECIAL AUDIT - SECTION 66

### 8.1 - Officer eligible to direct a special audit

The special audit can be directed by –

- any officer ***not below the rank of Assistant Commissioner***; but

- with the ***prior approval of the Commissioner***.

### 8.2 - Need for a special audit

The special audit can be done when –

- the case if ***complex***;
- special audit will be in the ***interest of the revenue***;
- the officer is of the opinion that the ***value*** has ***not been correctly declared*** or the ***credit availed*** is ***not within the normal limits***.

In the above cases, the officer can direct such registered person by a ***communication in writing*** to get his records including books of accounts examined and audited.

### 8.3 - Who will conduct special audit?

- The special audit will be conducted by –
    - ***a chartered accountant*** or ***a cost accountant***; and
    - he shall be ***nominated by the Commissioner***.

***Note –***

The special audit can be conducted irrespective of the fact that the books of accounts of already audited under any other Act or not.

### 8.4 - Time period

- The report shall be submitted to the Assistant Commissioner within a ***period of 90 days***.
- Such period may be extended ***by the Assistant Commissioner*** for a ***further period of 90 days*** 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.

### 8.5 - Audit expense

- The expenses of the examination and audit of records including the remuneration of such chartered accountant or cost accountant, shall be ***determined and paid by the Commissioner*** and such determination shall be final.

### 8.6 - Conclusion of audit

- The registered person shall be ***given an opportunity of being heard*** in respect of any material gathered on the basis of special audit which is proposed to be used in any proceedings against him.
- If 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.***

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### Illustration 1

Kulbhushan & Sons has entered into a contract to supply a consignment of certain taxable goods.

However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.

On 12th January, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Kulbhushan & Sons complies with the same and supplies the goods on 25th January thereafter paying the tax on provisional basis in respect of said consignment on 19th February.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21st March, a tax of Rs. 1,80,000 becomes due on the consignment.

Kulbhushan & Sons pays the tax due on 9th April.

Determine the interest payable, if any, by Kulbhushan & Sons in the above case.

Assuming all the other facts remaining the same, if consequent to the final assessment order passed on 21st March, a tax of Rs. 4,20,000 becomes refundable on the consignment, refund of which is applied by Kulbhushan & Sons on 9th April and tax was refunded to it on 05th June, determine the interest receivable, if any, by Kulbhushan & Sons in the given case.

### Illustration (Questions – I)

Is summary assessment order to be necessarily passed against the registered person?

### Illustration (Questions – I)

Whether principal of natural justice is must to be followed before passing assessment order against the unregistered person?

### Illustration (Questions – I)

What recourse may be taken by the officer in case, proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny under Section 61 of CGST Act?

### Illustration (Questions – II)

- Miss. Reena Benerji is engaged in retail business of selling mobile phones in the state of West Bengal.
- She has affected to the supplies to the customers in the states of UP and Haryana.
- Her total turnover during the financial year 31st March is only Rs. 18 Lacs.
- Owing to low profit margin in the business, she decided to shut down the business in April.

- Proper officer has collected evidences of the inter-state sale of mobile phones effected by Miss. Reena Benerji during the financial year ending 31st March.
- Now, the Proper officer wants to make assessment as 'she was liable for registration but did not get herself registered'

You are required to the PO by determining which assessment can be done in this case.

- Self-assessment
- Provisional assessment
- Assessment of unregistered persons
- Special assessment

**Illustration (Questions – II)**

In what cases, assessment order passed by the proper officer may be withdrawn?

**Illustration (Questions – II)**

The time limit for issuance of order of Best judgement assessment under CGST Act is?

**Illustration 2**

- Divya Trader obtained permission for provisional assessment and supplied three consignments of furniture on 28th April, 2018.
- The tax payment on provisional basis was made in respect of all the three consignments on 20th May, 2018.
- Consequent to the final assessment order passed by the Assistant Commissioner on 21st June, 2018, a tax of Rs. 1,20,000 and Rs. 1,50,000 became refundable on 1st and 3rd consignments,
- whereas a tax of Rs. 1,20,000 became due on 2nd consignment.
- Divya Trader applies for the refund of the tax on 1st and 3rd consignments on 12th July, 2018 and pays the tax due on 2nd consignment on the same day.
- Tax was actually refunded to it of 1st consignment on 8th September, 2018,
- whereas of 3rd consignment on 18th September, 2018.
- Customers of Divya Trader who purchased the consignments have not taken Input Tax Credit (ITC).

Determine the interest payable and receivable, if any, under CGST Act, 2017 by Divya Trader.

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# 11. TAX INVOICE, CREDIT NOTE & DEBIT NOTE

Contents


- Time limit for issuance of invoice [Sec 31(1),(2), (4), (5), (6) &(7)]
- Special aspects of tax invoice [Sec 31(3)]
- Bill of Supply [Sec 31(3)(c)]
- Contents of documents
- Delivery challan (Rule 55)
- Credit and Debit notes [Sec 34]
- E-invoicing [Rule 48(4)]


## 1. INTRODUCTION

- An invoice is a commercial instrument issued by a supplier of goods/services to a recipient.
- Invoicing is very crucial aspect for ensuring tax compliance under any indirect taxation system.
- In order to ensure transparency, issuance of invoice for every taxable transaction is a pre-requisite.
- An invoice serves as a demand for payment and becomes a document of title when paid in full.

***Invoice or tax invoice [Sec 2(66)]*** *– means the tax invoice referred to in section 31. This section mandates the issuance of an invoice or a bill of supply for every supply of goods or services.*

- Under GST, a tax invoice is not only evidence of supply of goods or services but is also an essential document for the recipient to avail Input Tax Credit (ITC).
- A registered person cannot avail input tax credit unless he is in possession of a tax invoice or a debit note.
- There is no format prescribed for the Tax Invoice. Only certain fields have been prescribed as mandatory fields.
- ***A tax invoice shall be issued by a registered person supplying taxable goods or taxable services or both.***

## 2. TIME LIMIT FOR ISSUANCE OF INVOICE - SECTION 31(1) & (2)

- The time for issuing an invoice would depend on the nature of supply viz. whether it is a supply of goods or supply of services.
- Section - 31(1) - A registered person supplying ***taxable goods*** shall issue a tax invoice:
  - ***where supply involves movement of goods***

        - before or at the time of removal of goods
    - ***where supply does not involve movement of goods***
        - before or at the time of delivery or making available thereof to the recipient.

- The Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed. (e.g., Movie ticket issued by theatre).

- Government may notify the categories of services in respect of which any other document issued in relation to supply shall be deemed to be a tax invoice or tax invoice may not be issued.

- Section - 31(2) - A registered person supplying ***taxable Services*** shall issue a tax invoice:

- ***Generally***

    - Before or after the provision of service, but within a period of 30 days from the date of supply of service.

- ***where the supplier is an insurer or banking company or financial institution, including a non- banking financial company (NBFC)***

    - Before or after the provision of service, but within a period of 45 days from the date of supply of service.

- ***where the supplier is an insurer or banking company or financial institution, including a non- banking financial company (NBFC) or a telecom operator, or any other class of supplier of services as may be notified by the Government, making taxable supplies of services between distinct persons as specified in section 25***

    - Before or at the time such supplier records the same in his books of accounts or before the expiry of quarter during which the supply was made.

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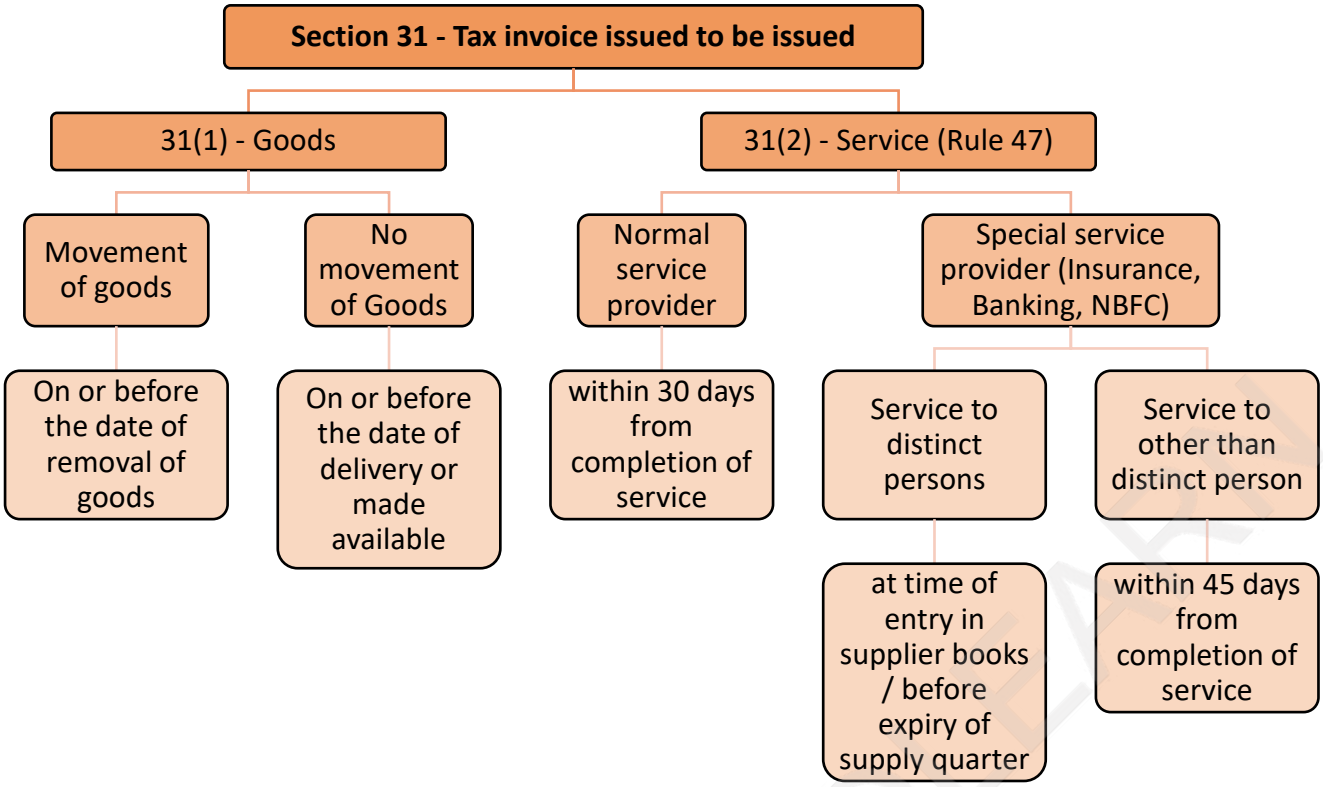


## 3. SCRUTINY OF RETURNS – SECTION 31(3)

### 3.1 – Revised Tax Invoice – Section 31(3)(a) read with Rule 53

- ***Section 25*** - A person who becomes liable for registration has to apply for registration within 30 days of becoming liable for registration. When such an application is made within the stipulated time period and registration is granted, the effective date of registration is the date on which the person became liable for registration.
- Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices.
- Such invoices shall be issued against the invoices already issued during said period. The revised invoices enable the recipient to avail ITC on such supplies.
- ***Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration.***
- The words "Revised Invoice" shall be indicated prominently on such invoices.
- A registered person may issue a ***Consolidated Revised Tax Invoice*** in respect of all taxable supplies made to an ***unregistered recipient*** during such period.
- However, in case of ***inter-State supplies***, a consolidated Revised Tax Invoice c***annot be issued*** in respect of all unregistered recipients if the value of a ***supply exceeds Rs.2,50,000***.

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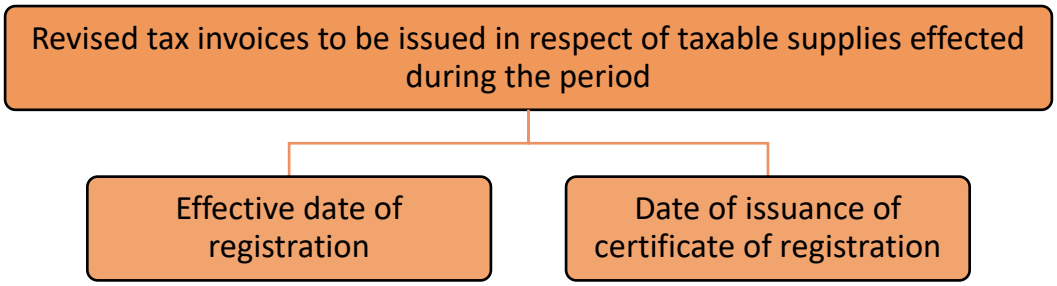


### 3.2 - Consolidated Tax Invoice - Section 31(3)(b) read with 4th proviso to rule. 46

- A registered person may not issue a Tax Invoice if:
  - Value of the goods/services/both supplied < Rs.200,
  - The recipient is unregistered; and
  - The recipient does not require such invoice.
- Instead, such registered person shall issue a ***Consolidated Tax Invoice*** for such supplies at the close of each day in respect of all such supplies.
- Above provision is ***also applicable to Bill of Supply***.
- However, this option is ***not available*** to a supplier engaged in making supply of services by way ***of admission to exhibition of cinematograph films*** in multiplex screens.

### 3.3 - Bill of Supply - Section 31(3)(c) read with rule 49

- Section 31(3)(c) stipulates that a registered person supplying
  - exempted goods or services or both or
  - a registered person paying tax under composition levy,

  shall issue a ***'bill of supply'*** instead of a tax invoice.
- Person opting for composition levy shall mention the words "composition taxable person, not eligible to collect tax on supplies" at the top of the bill of supply issued by him.
- Since no tax is collected from the recipient by a registered person opting for the composition levy and a registered person supplying exempted goods and/or services, Bill of Supply issued by such persons does not contain the details pertaining to rate of tax and amount of tax. Further, value to be mentioned in the Bill of Supply is not also taxable value.
- Any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as bill of supply for the purposes of the Act.
- ***Invoice-cum-bill of supply [Rule 46A]*** - Where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, ***a single "invoice-cum-bill of supply" may be issued*** for all such supplies. Rule 46A is notwithstanding anything contained in rule 46 or rule 49 or rule 54 of CGST Rules.

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- Where a registered person is supplying taxable as well as exempted goods or services or both to a registered person, he has to issue separate Tax invoice for taxable supplies and Bill of supply for exempted supplies.

### 3.4 - Receipt Voucher and Refund Voucher - Section 31(3)(d) and Section 31(3)(e) read with rule 50 and rule 51 respectively

- A registered person shall, on ***receipt of advance payment*** with respect to any supply of goods or services or both, ***issue a Receipt Voucher*** evidencing receipt of such payment.
- Where at the time of receipt of advance, rate of tax and/or nature of supply is not determinable:
  - For rate of tax - tax shall be paid at the rate of ***18%***
  - For nature of supply - same shall be treated as ***inter-State supply*** (i.e., IGST shall be made at 18%)
- **Sec 12** – GST is not payable on advances in case of supply of goods.However, GST is payable on advances in case of supply of services

### 3.5 - Invoice and Payment Voucher - Section 31(3)(f) & (g) read with second. proviso to rule 46 and rule 52

- The recipient is liable to pay tax on reverse charge basis where he receives
- supply of such goods/services/both which are notified for reverse charge purposes under section 9(3). Such supplies can be received from a registered or an unregistered supplier.
- Further, a builder/promoter is required to pay GST on reverse charge basis under section 9(4) in one or more of the following cases:
  i. A builder/promoter must purchase 80% of inputs and input services used in supplying the service from registered persons. In case of shortfall, he's required to pay tax under reverse charge on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).
  ii. Where cement is received from an unregistered person, promoter/builder has to pay tax on supply of such cement on reverse charge basis and
  iii. GST on capital goods is payable by the promoter on reverse charge basis.
- A registered person who is liable to pay tax under reverse charge [under section 9(3)/9(4) of the CGST Act]
  - shall ***issue an Invoice*** in respect of goods or services or both
  - ***received by him from the supplier who is not registered***
  - on the ***date of receipt*** of goods or services or both.
- Besides, a registered person who is liable to pay tax under reverse charge [under section 9(3)/9(4) of the CGST Act] shall
  - issue a ***Payment Voucher***
  - at the time of making payment to the supplier.

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- Thus, a recipient liable to pay tax by virtue of section 9(3) has to issue invoice and payment voucher only when supplies have been received from an unregistered supplier.

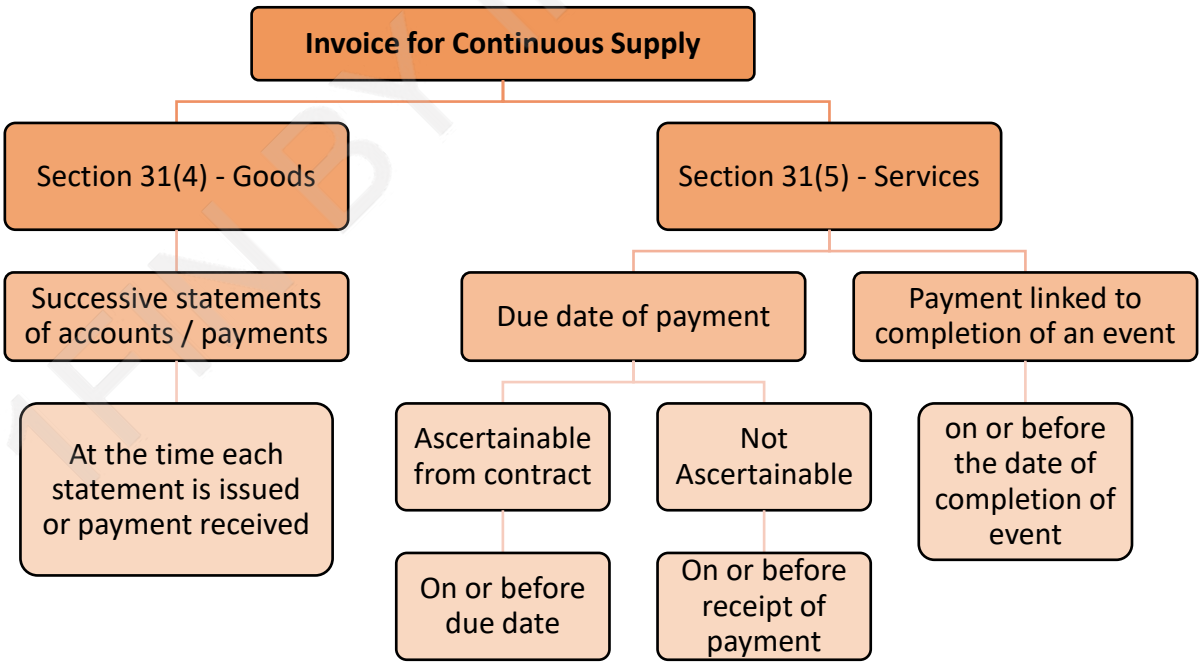
## 4. TIME OF ISSUE OF INVOICE IN CASE OF CONTINUOUS SUPPLY OF GOODS AND SERVICES - SECTION 31(4) & 31(5)

### 4.1 - In case of continuous supply of goods

- Continuous supply of goods means supply continuously or on recurrent basis, under a contract whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis.
- Where successive statements of accounts / successive payments are involved, the invoice shall be issued
    - Before / at the time each such statement is issued or each such payment is received as the case may be.

### 4.2 - In case of continuous supply of services

- Continuous supply of services means supply provided continuously or on recurrent basis under a contract for a period exceeding 3 months with periodic payment obligations.
- The invoice shall be issued
    - Where due date of payment is ascertainable from the contract
- on or before the due date of payment
    - where due date of payment is not ascertainable from the contract
- before or at the time when the supplier of service receives the payment
    - where payment is linked to the completion of an event
- on or before the date of completion of that event.



## 5. TIME OF ISSUE OF INVOICE IN CASE OF CESSATION AND SALE ON APPROVAL BASIS – SECTION 31(6) & 31(7)

### 5.1 - Where supply of services ceases before its completion - Section 31(6)

- In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the ***time when the supply ceases*** and
- Such invoice shall be issued to the extent of the supply made before such cessation.

### 5.2 - Goods sent on sale or return basis - Section 31(7)

- Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued:
    - before/at the time of supply Or
    - 6 months from the date of removal
    - whichever is earlier.

## 6. PARTICULARS OF A TAX INVOICE - SECTION 31(1) & (2) READ WITH RULE 46

- ***Mandatory fields*** - There is no format prescribed for an invoice, but rules make it mandatory for an invoice to have the following fields (only applicable fields are to be filled):
    1. Name, address and GSTIN of the supplier
    2. A consecutive serial number
    3. Date of its issue
    4. Name, address and GSTIN or UIN of recipient (If recipient is registered)
    5. HSN code for goods or services
    6. Description of goods or services
    7. Quantity in case of goods and unit or Unique Quantity Code thereof
    8. Total value of supply of goods or services or both
    9. Taxable value of supply of goods or services or both taking into account discount or abatement, if any
    10. Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess)
    11. Amount of tax charged
    12. Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce
    13. Address of delivery where the same is different from the place of supply
    14. Whether the tax is payable on reverse charge basis
    15. Signature or digital signature of the supplier or his authorized representative (not required in case of issuance of an electronic invoice in accordance with the provisions of the Information Technology (IT) Act, 2000).
    16. Quick Response code, having embedded Invoice Reference Number (IRN) in it, in case e-invoice has been issued.
- ***Specifications of Invoice number*** –
    1. Every invoice must contain aconsecutive serial number
    2. Such number cannot not exceed 16 characters.

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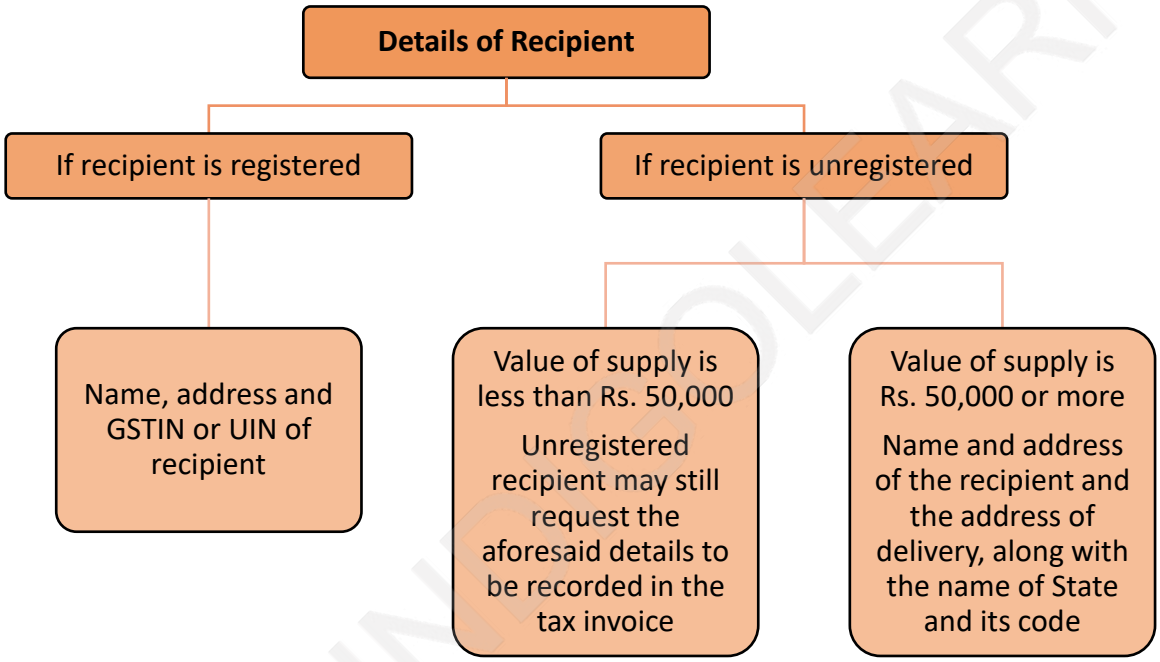
3. It can contain alphabets/ numerals/ special
4. characters hyphen or dash and slash, and any combination thereof.
5. It can be in one or multiple series.

***Note -*** The serial number of invoices issued during a tax period shall be furnished electronically [through the Common Portal – www.gst.gov.in], in Form GSTR-1 [Details of outward supplies of goods of services]

***Note -*** The taxpayers exempted from the mandatory requirement of e-invoicing (discussed subsequently) are required to provide a declaration on the tax invoice stating that though their aggregate turnover exceeds the notified aggregate turnover for e-invoicing, they are not required to prepare an e-invoice.

- ***Details of recipient***




- ***Number of HSN digits required on tax invoice*** and class of registered person not required to mention HSN [Rule 46].
  - HSN - Harmonised System of Nomenclature – 8 Digit code given for supply of goods
  - SAC – Service Accounting code - 6 Digit code given for supply of services
- Board may, on the recommendations of the Council, by notification, specify Number of HSN digits required on tax invoice and class of registered person not required to mention HSN. In view of this powers, following has been notified vide Notification No. 12/2017 CT dated 28.06.2017 as amended:

- Position with effect from 1.4.2021

| S. No. | Annual Turnover in the Preceding FY | Number of digits in HSN Code |
|---|---|---|
| 1. | At =< Rs. 5 Crore | For B2B supply – 4<br>For B2C supply – 4 (Optional) |
| 3. | At > Rs. 5 crores | For B2B & B2C supply - 6 |

- Manner of issuing the invoice - Rule 48

| In case of Taxable Supply of Goods | In case of Taxable Supply of Services |
|---|---|
| Invoice shall be prepared in ***TRIPLICATE*** | Invoice shall be prepared in ***DUPLICATE*** |

| Original copy – For recipient Duplicate copy - For TransporterTriplicate copy – For supplier | ***Original copy*** - For recipient Duplicate copy - For supplier |
|---|---|

## 7. PARTICULARS OF OTHER DOCUMENTS

- ***Particulars of Revised Tax Invoice - Section 31(3) read with rule 53 & 46*** – The law does not specify any format for revised tax invoice but it must contain the following details:

    1. The word 'revised invoice'.
    2. Name, address and GSTIN of the supplier;
    3. A consecutive serial number not exceeding 16 characters.
    4. Date of issue of document
    5. Name, address and GSTIN or UIN of recipient (If recipient is registered)
    6. Name, address of recipient, address of delivery along with name of state and its code, if recipient is unregistered.
    7. Serial number and date of corresponding tax invoice as the case may be, bill of supply
    8. Value of taxable supply, rate of tax, and amount of tax.
    9. Signature or digital signature of the supplier or his authorized representative

- ***In cases involving supply of online money gaming/service provided by/through ECO or by supplier of OIDAR services to unregistered recipient, tax invoice to contain the name of the State irrespective of value of supply - rule 46 (amended)*** – Rule 46 prescribes the particulars that a tax invoice issued by a registered person should contain. It, inter alia, prescribes that:

    - ***Where recipient is registered***, tax invoice shall contain the name, address and GSTIN/UIN of the recipient

    - ***Where the recipient is unregistered***:

        - tax invoice shall contain name and address of the recipient and the address of delivery, along with the name of the State and its code, ***only where the value of taxable supply ≥ Rs. 50,000*** – Clause (e)

        - ***In case where the value of taxable supply < Rs. 50,000***, invoice shall contain the name and address of the recipient and the address of delivery, along with the name of the State and its code ***only when the recipient requests that such details be recorded in the tax invoice*** – Clause (f)

    - **Said proviso has been amended *with effect from 04.08.2023* to provide that the tax invoice may contain the name of the State of the recipient only and the same shall be deemed to be the address on record of the recipient**. The name and address of the recipient along with its PIN code is not mandatory to be declared on the tax invoice.

    - Further, as seen earlier, since online gaming has been made taxable with effect from 01.10.2023, above proviso has been ***made applicable to cases involving supply of online money gaming with effect from 01.10.2023***.

- In ***cases involving supply of online money gaming*** or in cases where any taxable service is supplied by or through an ECO or by a supplier of OIDAR services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the ***name of the State of the recipient and the same shall be deemed to be the address on record of the recipient***.

  ***[Notification No. 38/2023 CT dated 04.08.2023 and 51/2023 CT dated 29.09.2023]***

- ***Particulars of Bill of supply - Section 31(3)(c) read with rule 49 -*** The law does not specify any format but it must contain the following details:

  1. Name, address and GSTIN of the supplier;
  2. A consecutive serial number not exceeding 16 characters.
  3. Date of issue of document
  4. Name, address and GSTIN or UIN of recipient (If recipient is registered)
  5. HSN code of goods and services
  6. Description of goods or services
  7. Value of supply
  8. Signature or digital signature of the supplier or his authorized representative

- ***Particulars of Receipt voucher - Sec 31(3)(d) read with rule 50*** – Following are the details a receipt voucher must contain:

  1. Name, address and GSTIN of the supplier;
  2. A consecutive serial number not exceeding 16 characters.
  3. Date of issue of document
  4. Name, address and GSTIN or UIN of recipient (If recipient is registered)
  5. Description of goods or services
  6. Amount of advance taken
  7. Rate of tax
  8. Amount of tax charged in respect of taxable goods or services
  9. Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce
  10. Whether the tax is payable on reverse charge basis; and
  11. Signature/digital signature of supplier/his authorized representative.

- ***Particulars of Refund voucher - Section 31(3)(e) read with rule 51 –***

  1. Name, address and GSTIN of the supplier;
  2. A consecutive serial number not exceeding 16 characters.
  3. Date of issue of document
  4. Name, address and GSTIN or UIN of recipient (If recipient is registered)
  5. Description of goods or services
  6. Amount of refund made
  7. Rate of tax
  8. Amount of tax paid in respect of taxable goods or services
  9. Whether the tax is payable on reverse charge basis; and
  10. Signature/digital signature of supplier/his authorized representative

- ***Particulars of payment voucher - Section 31(3)(f) & (g) read with rule 52 –***

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1. Name, address and GSTIN of the supplier;
2. A consecutive serial number not exceeding 16 characters.
3. Date of issue of document
4. Name, address and GSTIN or UIN of recipient
5. Description of goods or services
6. Amount paid
7. Rate of tax
8. Amount of tax payable in respect of taxable goods or services
9. Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and
10. Signature/digital signature of supplier/his authorized representative

- However, the signature or digital signature of the supplier/his authorised representative shall not be required in the case of issuance of a consolidated tax invoice or any other document in lieu thereof in accordance with the provisions of the Information Technology Act, 2000.

## 8. SPECIAL CASES WHERE SUPPLIER CAN ISSUE ANY DOCUMENT OTHER THAN TAX INVOICE - SECTION 31(2) READ WITH RULES 52

- Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which--
    - any other document issued in relation to
    - the supply shall be deemed to be a tax invoice; or
    - tax invoice may not be issued.
- Following suppliers may issue a tax invoice, but they are also permitted to issue any other document in lieu of tax invoice, by whatever name called:

| S.No. | Supplier | Information in the document in lieu of Invoice | |
|---|---|---|---|
| | | Optional | Mandatory |
| 1. | Insurer/Banking company/Financial institution, including NBFC | Serial number<br>Address of the recipient | Other information as prescribed for a Tax Invoice, under rule 46.<br>Issue a consolidated tax invoice/ advice or any otherdocument in lieu thereof, by whatever name called may be issued for supply made during a month at the end of the month. |

| | | | |
|---|---|---|---|
| 2. | Goods Transport Agency (GTA) supplying services in relation to transportation of goods by road ina goods carriage | | • Gross weight of theconsignment<br>• Name of the consignor and the consignee<br>• Registration number of goods carriage in which the goods are transported<br>• Details of goods transported<br>• Details of place of origin anddestination<br>• GSTIN of the person liablefor paying tax whether as consignor, consignee or GTA<br>• Other information as prescribed for a tax invoice, under rule 46 |
| 3. | Supplier of passenger transportation service | • Serial number<br>• Address of the recipient | • Tax invoice shall include ticket in any form, by whatever name called.<br>• Other information as prescribed for a tax invoice under Rule 46 |
| 4. | Registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens | • Details of recipient of Service | • Supplier is required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice<br>• Other information as prescribed for a tax invoice, under rule 46 |

## 9. DELIVERY CHALLAN - RULE 55

- Rule 55 specifies the cases where at the time of removal of goods, goods may be removed on delivery challan and ***invoice may be issued after delivery***.
    - Supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,
    - Transportation of goods for job work,
    - Transportation of goods for reasons other than by way of supply, or
    - Such other supplies as may be notified by the board
- Delivery challan to be issued should be serially numbered not exceeding 16 characters.
- ***Particulars of deliver challan:***
    1. Date and number of the delivery challan
    2. Name, address and GSTIN of the consigner, if registered
    3. Name, address and GSTIN or UIN of the consignee, if registered
    4. HSN code and description of goods,
    5. Quantity (provisional, where the exact quantity being supplied is not known)
    6. Taxable value
    7. Tax rate and tax amount where the transportation is for supply to the consignee
    8. Place of supply in case of inter-state movement
    9. Signature
- ***Other aspects of delivery challan***

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- The delivery challan shall be prepared in ***TRIPLICATE***
    - Original copy – For Consignee
    - Duplicate copy - For Transporter
    - Triplicate copy - For Consignor
- ***Declaration in E-way Bill*** - Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared in E-Way Bill.
- ***Where tax invoice could not be issued*** - Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.
- ***Goods transported in SKD/CKD condition or in batches or lots*** - Where the goods are being transported in a semi knocked down (SKD) or completely knocked down (CKD) condition or in batches or lots,
    - the supplier shall issue the complete invoice before dispatch of the first consignment;
    - the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
    - Copies of the corresponding delivery challan shall accompany each consignment along with a duly certified copy of the invoice; and
    - the original copy of the invoice shall be sent along with the last consignment
- ***Goods sent on approval basis or Movement of art work*** –
    - Sometimes there is movement of goods within a state or to other state at the request of buyer but the sale is not finalised.
    - Since the suppliers are not able to ascertain their actual supplies beforehand, they are unable to register as a casual taxable person.
    - In view of relevant provisions of rule 55, it is clarified that the goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods.
    - For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified.
    - The above provisions are applicable in case where artists supply art works in different States other than the State in which they are registered. If the art work is selected by the buyer, then the supplier issues a tax invoice only at the time of supply. The movement of artwork happens on a delivery challan along with the e-way bill.

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## 10. SECTION 32 AND 33

- ***Prohibition of unauthorised collection of tax - Section 32***
  - A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.
  - No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.
- ***Amount of tax to be indicated in tax invoice and other documents - Section 33***
  - where any supply is made for a consideration,
  - every person who is liable to pay tax for such supply
  - shall prominently indicate in all documents relating to assessment, tax invoice and other like documents,
  - the amount of tax which shall form part of the price at which such supply is made

## 11. DEBIT NOTE AND CREDIT NOTE – SECTION 34

***Credit note - Section 2(37)****- means a document issued by a registered person under sub-section (1) of section 34.*
***Debit note - Section 2(38)****- means a document issued by a registered person under sub-section (3) of section 34.*

- ***Issuance of Credit Note*** - In order to regularize any of the below mentioned kinds of situations, the supplier is allowed to issue a document called as ***credit note*** to the recipient:
  - The supplier has erroneously declared a value which is more than the actual value of the goods or services provided.
  - The supplier has erroneously declared a higher tax rate than what is applicable for the kind of the goods or services or both supplied.
  - The quantity received by the recipient is less than what has been declared in the tax invoice.
  - The quality of the goods or services or both supplied is not to the satisfaction of the recipient thereby necessitating a partial or total reimbursement on the invoice value
  - Any other similar reasons
- ***Purpose of issuance***
  - The credit note is a convenient and legal method by which the value of the goods or services in the original tax invoice can be amended or revised.
  - The issuance of the credit note easily allows the supplier to decrease his tax liability in his returns without requiring him to undertake any tedious process of refunds.

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*Credit note(s) are not permitted to be issued in case secondary discounts are allowed by the supplier since the tax liability of the supplier does not get reduced in such case. However, supplier can issue financial/ commercial credit note(s) to reduce the value of supply payable by the recipient to the supplier.*

- ***Time limit for issuing credit note***
- Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than:
    - 30th November following the end of the financial year in which such supply was made, Or
    - the date of furnishing of the relevant annual return,

    Whichever is earlier.
- The tax liability shall be adjusted in such manner as may be prescribed.
- However, no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.
- ***Issuance of Debit Note*** **-** In order to regularize the below mentioned kinds of situations, the supplier is allowed to issue a document called as debit note to the recipient:
    - The supplier has erroneously declared a value which is less than the actual value of the goods or services or both provided.
    - The supplier has erroneously declared a lower tax rate than what is applicable for the kind of the goods or services or both supplied.
    - The quantity received by the recipient is more than what has been declared in the tax invoice.
    - Any other similar reasons.
- ***Purpose of issuance***
    - The debit note/supplementary invoice is a convenient and legal method by which the value of the goods and/or services in the original tax invoice can be enhanced.
    - The issuance of a debit note/supplementary invoice creates additional tax liability.
    - The treatment of a debit note/supplementary invoice is identical to the treatment of a tax invoice as far as returns and payment are concerned.
- ***Time limit for issuing Debit Note***
    - Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued.
    - The tax liability shall be adjusted in such manner as may be prescribed
- ***Particulars of the Debit and Credit Notes - Rule 53(1A)*** **-** There is no prescribed format, but credit and debit note issued by a supplier must contain the following particulars, namely: -

    1. Name, address and GSTIN of the supplier.
    2. Nature of the document.

3. A consecutive serial number not exceeding 16 characters.
4. Date of issue of the document.
5. Name, address and GSTIN or UIN, if registered, of the recipient.
6. Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un- registered.
7. Serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply.
8. Value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient.
9. Signature/digital signature of the supplier/his authorized representative.

## 12. E-INVOICING

### 12.1 - What is E-invoicing

- E-invoicing is not generation of invoice by a government portal.
- Taxpayers will continue to create their GST invoices on their own Accounting/ Billing/ ERP Systems as per e-invoice schema.
- These invoices will then be reported to 'Invoice Registration Portal (IRP)'. On such reporting, IRP will generate a unique 'Invoice Reference Number (IRN)', digitally sign it and return the e-invoice to the supplier.
- A GST e-invoice will be valid only with a valid IRN.
- Presently, invoices, credit notes and debit notes, when issued by notified persons (to registered persons (B2B) or for the purpose of exports) are covered under e-invoice.

### 12.2 - From when to issue E-invoices

- 'e-invoicing' has been introduced for reporting of business to business (B2B) invoices to GST System, beginning from 1st January 2020 on voluntary basis.
- With effect from 1st October, 2020, there is a switch from voluntary to mandatory e-invoicing for certain notified category of taxpayers.
- A relaxation has been provided to these notified categories of taxpayers till 31.10.2020 vide Notification No. 73/2020 dated 01.10.2020. In respect of invoices raised by them between 1.10.2020 and 31.10.2020, they are permitted to upload these invoices on e-invoicing portal within 30 days from the date of invoice.
- In case, e-invoice is issued {according to Rule 48(4)}, the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.

### 12.3 - Class of persons notified to mandatorily issue E-invoice

- ***With effect from 01.08.2023, such limit has been reduced to Rs. 5 crore. Thus, e-invoicing has been made mandatory for all registered businesses with an aggregate turnover in any preceding financial year from 2017-18 onwards greater than Rs. 5 crore.***

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- ***Such persons will be called notified persons.***
- If the invoice issued by a notified person is in respect of supplies made by him tax on which is payable under reverse charge under section 9(3), e-invoicing is applicable.
- On the other hand, where specified category of supplies are received by notified person from unregistered persons [attracting reverse charge under section 9(4)] or through import of services, e-invoicing doesn't arise/ not applicable.
- E-invoicing is also not applicable for import of goods (Bills of Entry).
- ***Every invoice, issued by above persons, in any manner other than the manner specified in the rule 48(4) shall not be treated as an invoice.***
- ***E invoicing is applicable even in case of supply made by registered person to Government department or agencies or local authority or PSU registered solely for the purpose of TDS as per Section 51.***

## 12.4 - Exemption from E-invoicing

- Following entities are exempt from the mandatory requirement of e-invoicing:
    1. Special Economic Zone units
    2. Insurer or banking company or financial institution including NBFC
    3. GTA supplying services in relation to transportation of goods by road in a goods carriage
    4. Supplier of passenger transportation service
    5. Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens
    6. Government Department and Local Authority
- In case of supplies made by notified persons to SEZ units, e-invoices need to be issued.

## 12.5 - Advantages of E-invoicing

- Auto-reporting of invoices into GST return and auto-generation of e-way bill (wherever required).
- GSTR-1 can also be auto- populated with the e-invoice data.
- On receipt of information through GST System, buyer can do reconciliation with his Purchase Order.
- Facilitate standardisation and inter- operability leading to reduction of disputes among transacting parties, improve payment cycles, reduction of processing costs and thereby greatly improving overall business efficiency.
- since a complete trail of B2B invoices is available with the Department, it will enable the system-level matching of input tax credit and output tax thereby reducing the tax evasion.
- Where e-invoicing is applicable, there is no need of issuing invoice copies in triplicate/duplicate.

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## 12.6 - How e-invoice is generated and how GST system uses it

- The taxpayer first prepares and generates his invoice using his own ERP/ accounting/ billing system or manual system.
- The invoice must conform to the e-invoice schema (standard notified format) and must have the mandatory parameters.
- The details of this invoice are uploaded/reported by the taxpayer to the Invoice Registration Portal (IRP). This way taxpayer registers his supply transaction on IRP.
- On uploading, IRP returns the e-invoice with a unique 'Invoice Reference Number (IRN)' after digitally signing the e-invoice and adding a QR Code (Quick Response Code).
- Then, the supplier shares the e-invoice with the receiver (along with QR Code).
- IRP sends the e-invoice data along with IRN to the GST System as well as to E- Way Bill System.
- The GST system will auto-populate them into GSTR-1 of the supplier and GSTR- 2A of respective receivers.
- ***Where needed, the seller can cancel IRN for an e-invoice already reported by reporting it on IRP within specified time. Amendment of e-invoice already uploaded on IRP will be done only on GST portal. Amendment of invoices is not possible through the IRP.***

## 12.7 - Other key points

- E-invoice Schema - Uniform standard format (containing specified fields) applicable for all the businesses across the country is known as 'e-invoice schema'. It is notified as ***Form GST INV-1.***
- E-invoice schema mandates what particulars shall be reported in electronic format to IRP. By this, e-invoices generated by one software can be read by any other software, thereby eliminating the need of fresh/manual data entry.
- ***Invoice Registration Portal (IRP)*** - IRP is the website for uploading/reporting of invoices by the notified persons.
- ***Invoice Reference Number*** - GST invoice will be valid only with a valid IRN IRN is different from invoice number. Invoice no. (e.g., ABC/1/2019-20) is assigned by supplier and is internal to business. Its format can differ from business to business and also governed by relevant GST rules. IRN, on other hand, is a unique reference number (hash) generated and returned by IRP, on successful registration of e-invoice.
- ***ECO*** - The e-invoicing system is also ***available for the E-Commerce Operators (ECO)*** to report the invoices to the Invoice Registration portal, generated by them on behalf of the suppliers.
- ***Bulk uploading*** of invoices to IRP is also possible.

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- ***QR code*** - Upon successful registration of invoice on IRP, it will return a signed e-invoice to the supplier with IRN and QR (Quick response) Code. The QR code enables quick view, validation and access of the invoices from the GST system from hand-held devices.
- ***Dynamic QR code*** - Invoice issued by a registered person (except specified class of persons who have been exempted), whose ***aggregate turnover in a financial year exceeds Rs.500 crores, in respect of B2C supplies*** (supply of goods or services or both to an unregistered person) shall have Dynamic QR code.
- A Dynamic Quick Response (QR) code made available to buyer by such registered person through digital display (with payment cross- reference) shall be deemed to be having QR code. The purpose of this provision is to enable and encourage digital payments where buyer can scan the dynamic QR code and make payment from mobile wallet directly.
- This has no relevance or applicability to the e-invoicing in respect to B2B supplies by notified class of taxpayers. Dynamic QR Code will be generated by the seller himself either on the Point of Sale (PoS) machine or the invoice issued.
- CBIC has clarified that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. Whenever e-invoice has been generated, production of the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

## ILLUSTRATIONS

### Illustration 1

Sultan Industries Ltd., Delhi, entered into a contract with Prakash Entrepreneurs, Delhi, for supply of spare parts of a machine on 7th September.

- The spare parts were to be delivered on 30th September.
- Sultan Industries Ltd. removed the finished spare parts from its factory on 29th September.

Determine the date by which invoice must be issued by Sultan Industries Ltd. under GST law.

### Illustration 2

MBM Caretakers, a registered person, provides the services of repair and maintenance of electrical appliances.

- On April 1, it has entered into an annual maintenance contract with P for its Air Conditioner and Washing Machine.
- As per the terms of contract, maintenance services will be provided on the first day of each quarter of the relevant financial year and payment for the same will also be due on the date on which service is rendered.
- During the year, it provided the services on April 1, July 1, October 1, and January 1 in accordance with the terms of contract.

When should MBM Caretakers issue the invoice for the services rendered?

### Illustration 3

The aggregate turnover of Sangri Services Ltd. exceeded Rs. 20 lakhs on 12th August. He applied for registration on 3rd September and was granted the registration certificate on 6th September.

You are required to advice Sangri Services Ltd. as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of Revised Tax Invoices.

### Illustration 4

Shyam Fabrics has opted for composition levy scheme in the current financial year. It has approached you for advice whether it is mandatory for it to issue a tax invoice.
You are required to advise him regarding same.

### Illustration 5

Determine whether the following statements are true or false:

(i) A registered person shall issue separate invoice for taxable and exempted goods, when supplying both taxable as well as exempted supplies to an unregistered person

(ii) A NBFC can issue a consolidated tax invoice at the end of every month for the supply made during that month.

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# 12. ACCOUNTS & RECORDS

Contents

- Accounts and other records to be maintained under GST.
- Mode of maintenance of accounts and records.
- Audit of accounts.
- Consequence of failure to maintain the records.
- Period of retention of records.

## 1. INTRODUCTION

Every taxpayer is required to self-assess the taxes payable and furnish a return for each tax period. Every registered person shall keep and maintain all records at his principal place of business. It is not mandatory to maintain the accounts in electronic form. Accounts and records may be maintained either electronically or manually. Further, there is no prescribed format for maintaining the accounts.

**Chapter VIII – Accounts and Records [Section 35 and 36] of the CGST Act** and **Chapter VII – Accounts and Records [Rules 56 to 58] of the CGST Rules, 2017** enumerates –

- the accounts and records required to be maintained by a taxpayer, and
- the period for which accounts and records are to be preserved.

## 2. ACCOUNTS AND RECORDS - SECTION 35

### 2.1 - Who is required to maintain his book of accounts and at which place?

***Every registered person*** shall keep and maintain his books of accounts ***at his principal place of business (PPoB)*** and books of accounts relating to additional place of business (APoB).

#### 2.1.1 - In case of more than one place of Business

Where there is more than one PoB specified in the certificate of registration, ***the accounts relating to each PoB shall be kept at such PoB.***

#### 2.1.2 - Supply of accounts through an auction

In case of supply of goods through an auction like tea, rubber, coffee, ***the principal and auctioneer may declare the warehouses where such goods are stored as their APoB.***

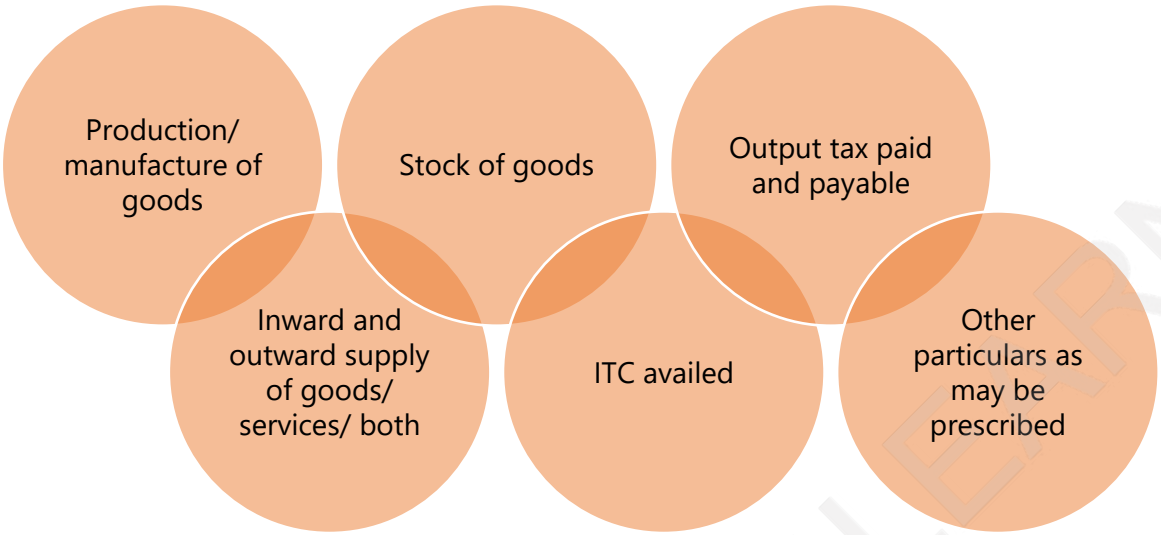
They may maintain the books relating to APoB at their PPoB instead after intimation to the jurisdictional proper officer (P.O.) in writing.

The principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the

principal and the auctioneer for the purpose of supply of tea through a private treaty, shall be eligible to avail ITC

## 2.1 Accounts and records to be maintained

True and correct account of [Section 35(1)] –




### 2.2.1 - Records prescribed by the rules –

In addition to the records as mentioned in section 35(1), the rules provide that the registered person shall also maintain a true and correct account of –

- ***Goods/ services imported or exported,***
- ***Supplies attracting payment of tax on reverse charge basis*** along with relevant documents,
- Separate accounts of ***advances received, paid, adjustments*** made thereto,
- Particulars of –
  - ***Name and complete address of the supplier*** form whom he has received goods/ services chargeable to tax,
  - ***Name and complete address of the person to whom he has supplied*** goods/ services.
- Particulars of ***complete addresses of premises where goods are stored*** by him.
  ***If any taxable goods are found stored at any place(s) other than those declared, without the cover of any valid documents*** – P.O. shall determine the amount of tax payable on such goods as if they have been supplied by the registered person.

### 2.2.2 - Records to be maintained by only by supplier other than a supplier opting for composition levy

a) ***Stock of goods*** containing particulars of –

   a. Opening balance,
   b. Receipt, supply, goods lost, stolen, destroyed,
   c. Written off or disposed off by way of gift/ free sample,
   d. Balance of stock.

b) ***Details of tax*** containing –

a. Tax payable including reverse charge,
b. Tax collected and paid,
c. Input tax and ITC claimed,
d. Register of tax invoice, credit notes, delivery challan.

### 2.2.3 - Records to be maintained by agent

- Authorisation received from principal
- Particulars of goods/ services received on behalf of principal
- Particulars of goods/ services supplied on behalf of principal
- Details of accounts furnished to every individual
- Tax paid on receipts or on supply effected on behalf of every principal

### 2.2.4 - Additional records to be maintained by a manufacturer

Apart from other records, every registered person manufacturing goods, has to maintain ***monthly production accounts*** showing –

- ***quantitative details of raw materials/ services used*** in the manufacture, and
- ***quantitative details of goods so manufactured*** including waste and by-products thereof.

### 2.2.5 - Additional records to be maintained by service provider

Every registered person supplying services has to additionally maintain accounts showing quantitative details of –

- ***goods used*** in the provision of services,
- details of ***input services utilized***, and
- details of the ***services supplied.***

### 2.2.6 - Records to be maintained by a person executing works contract

| | | | | |
|---|---|---|---|---|
| Names and addresses of persons on whose behalf the works contract is executed. | Description, value and quantity of good or services received for execution of the works contract | Description, value and quantity of goods or services utilised | Details of payment received in respect of each works contract | Names and addresses of suppliers from whom he received goods or services. |

### 2.2.7 - Records to be maintained by owner or operator of godown/ warehouse and transporters

Every owner or operator or any other place used for storage of goods and every transporter shall maintain ***records of the consignor, consignee and other relevant details as prescribed***.

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These records shall be maintained ***irrespective of whether*** such owner/ operator of godown/ warehouse and transporter is a ***registered person or not***. If they are already registered, they shall obtain a ***unique enrolment number*** by applying electronically at the GST Common portal.

**Records to be maintained by the transporter**

•Records of goods transported, delivered and goods stored in transit by him along with GSTIN of the registered consignor and consignee for each of his branches.

**Records to be maintained by an owner/ operator of a warehouse/ godown**

•Books of accounts with respect to the period for which the particular goods remain in the warehouse, including particulars relating to dispatch, movement, receipt and disposal of such goods.

### 2.2.8 - Records to be maintained by a custodian/ clearing and forwarding agent

Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain ***true and correct records in respect of goods handled by him on behalf of such registered person*** and shall produce the details thereof as and when required by the P.O.

### 2.3 - Power of the commissioner regarding maintenance of records

- The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.
- Where the Commissioner considers that any class of persons is not in a position to keep and maintain accounts in accordance with the above provisions, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

### 2.4 - How the records will be maintained

- The registered person may keep and maintain such accounts and other particulars in ***electronic form*** in such manner as prescribed –
    - The registered person may keep and maintain the accounts and other particulars ***in electronic form stored on any electronic device.***
    - The record so maintained shall be ***authenticated by means of a digital signature.***
    - ***Proper back-up*** of records shall be maintained and preserved.
    - On demand, the registered person shall produce –
        - the records, duly authenticated by him, in hard copy or in any electronically readable format, and
        - details of such files, passwords of such files and explanation for codes used for access and any other information required for accessing them.
- ***No entry in the registers, accounts and documents shall be erased, effaced or overwritten.***

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- ***Any incorrect entry shall be scored out under attestation***, and thereafter correct entry shall be recorded.
- ***Where the registers are maintained electronically*** – A log of every entry edited or deleted shall be maintained.

- Each volume of books of account maintained manually shall be ***serially numbered***.

### 2.5 - Failure to maintain the accounts

Where the registered person fails to account for the goods/ services/ both in accordance with the provisions of this section, the ***P.O. shall determine the amount of tax payable on the goods/ services/ both, that are not accounted*** for, as if the same had been supplied by such person.

## 3. PERIOD OF RETENTION OF ACCOUNTS

The books of accounts and records shall be maintained by the registered person ***until the expiry of 72 months from the due date of furnishing the annual return for the year*** pertaining to such accounts and records.

***In case the registered person is a party to any appeal/ revision/ other proceedings*** before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, or is under investigation for any offence under Chapter XIX – ***He shall retain the books and records relating to the subject matter of such appeal or revision for –***

a) A period of ***1 year after final disposal*** of such appeal/ revision/ proceedings/ investigation, ***OR***

b) A ***period as specified above*** (i.e., 72 months)

***whichever is later.***

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