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*He has been awarded the following prize(s)*

1. The Vandana Suryanarayanan Prize for the Best Paper on Indirect Taxes (Paper-8).
2. Shri M.D. Rajamachikar Prize for the Best Paper on Indirect Taxes (Paper-8).

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**SCANNER for CA-FINAL**

**for May, 2018 Attempt**

(Comprehensive Compilation of Questions)



**Prof. Dippak**



**CA Suneta**

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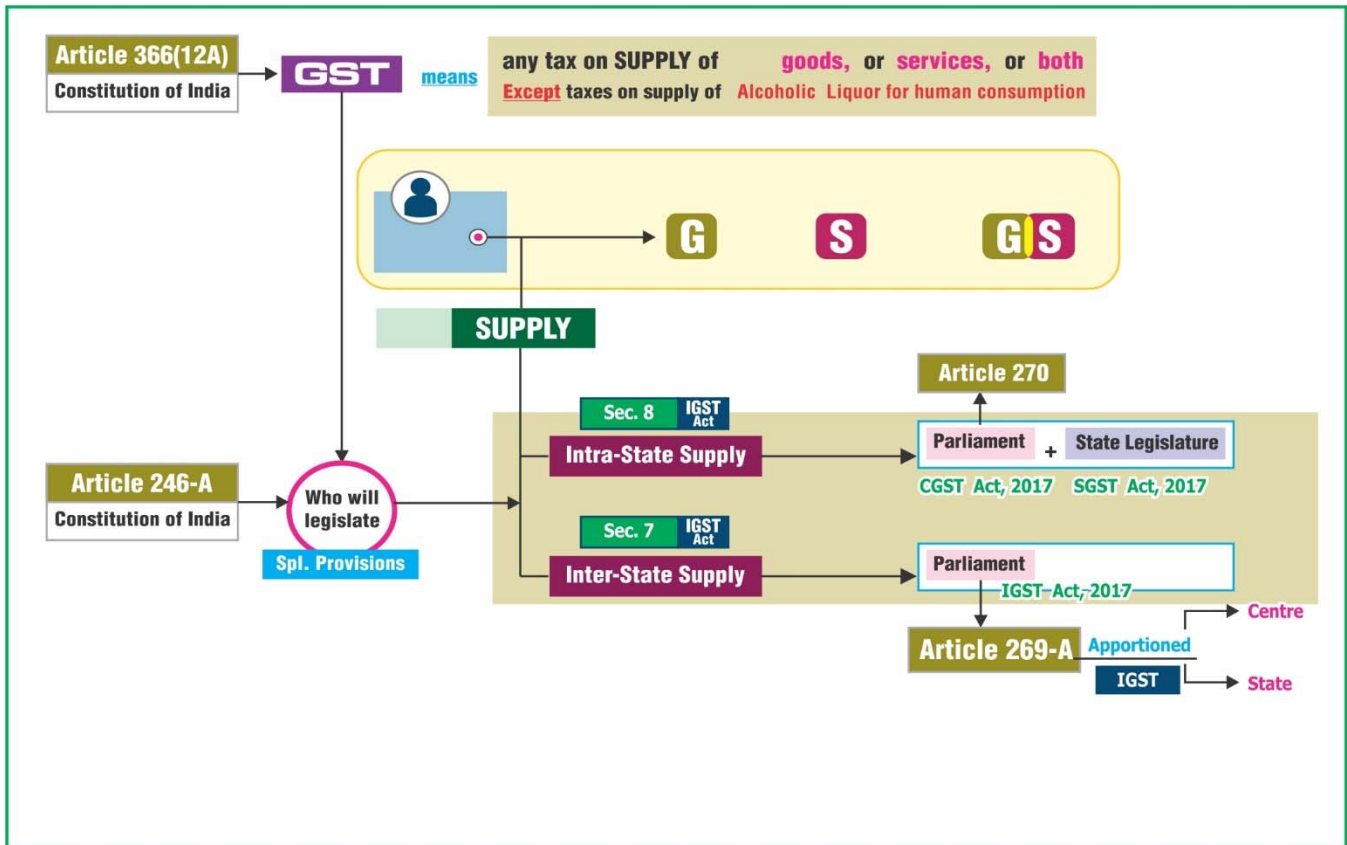
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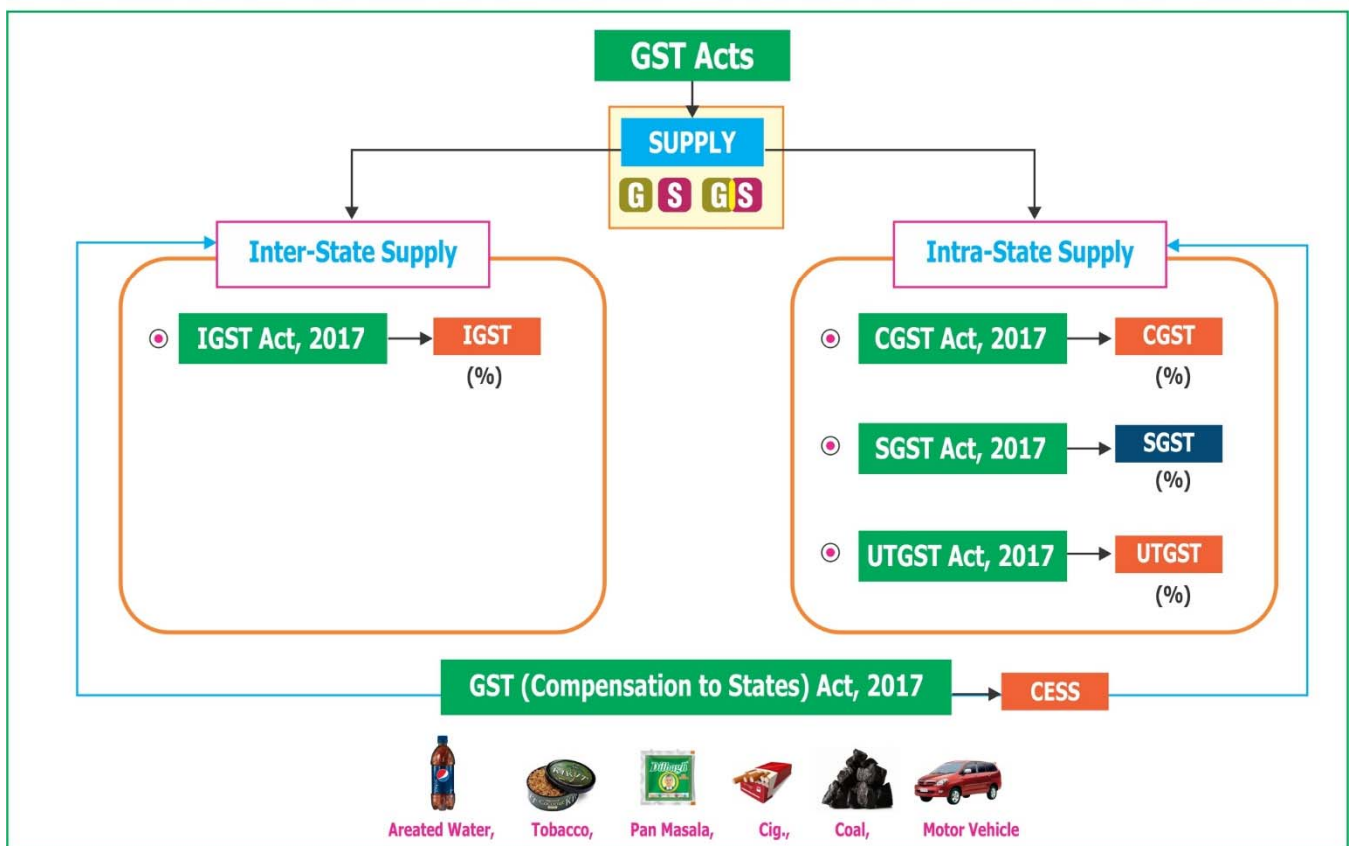
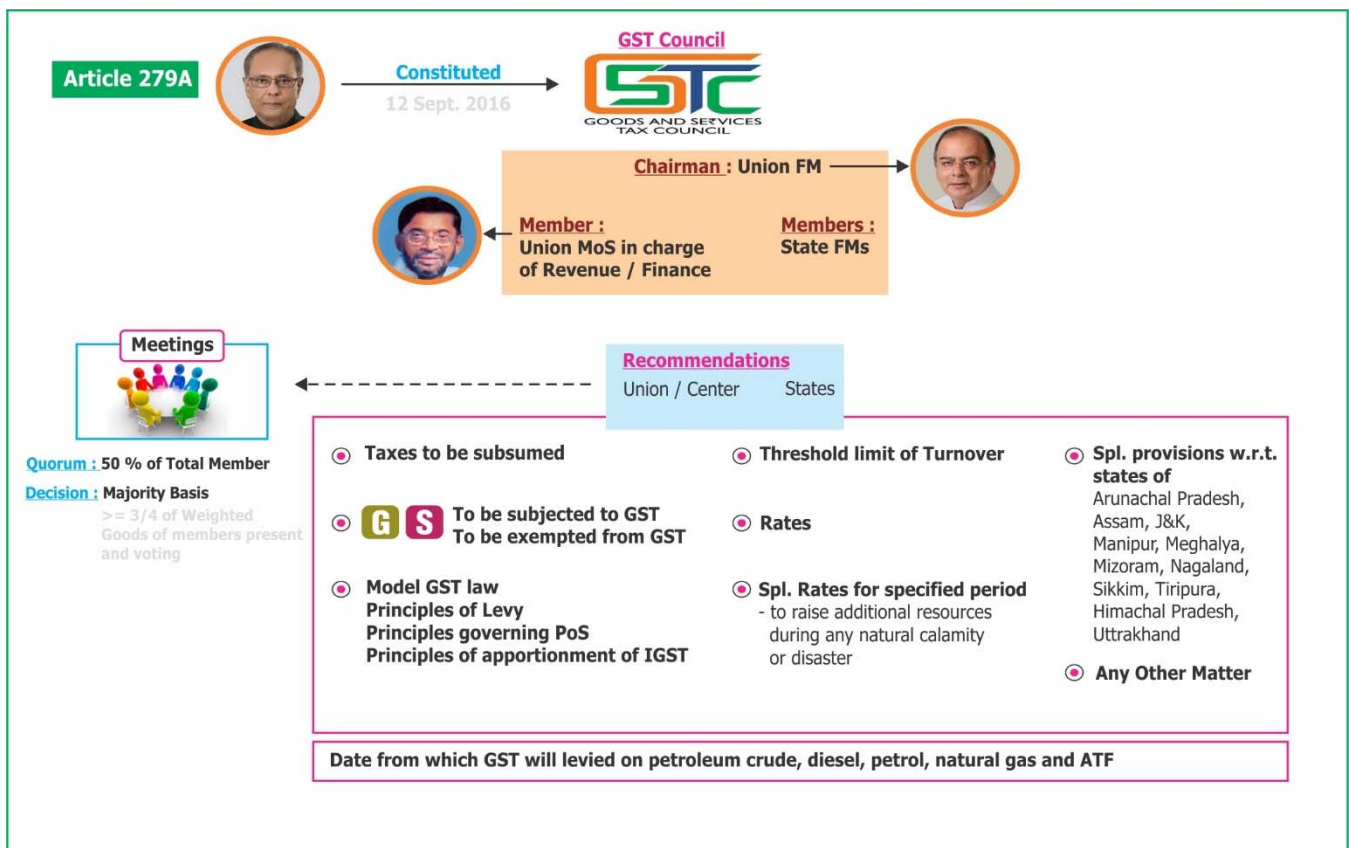


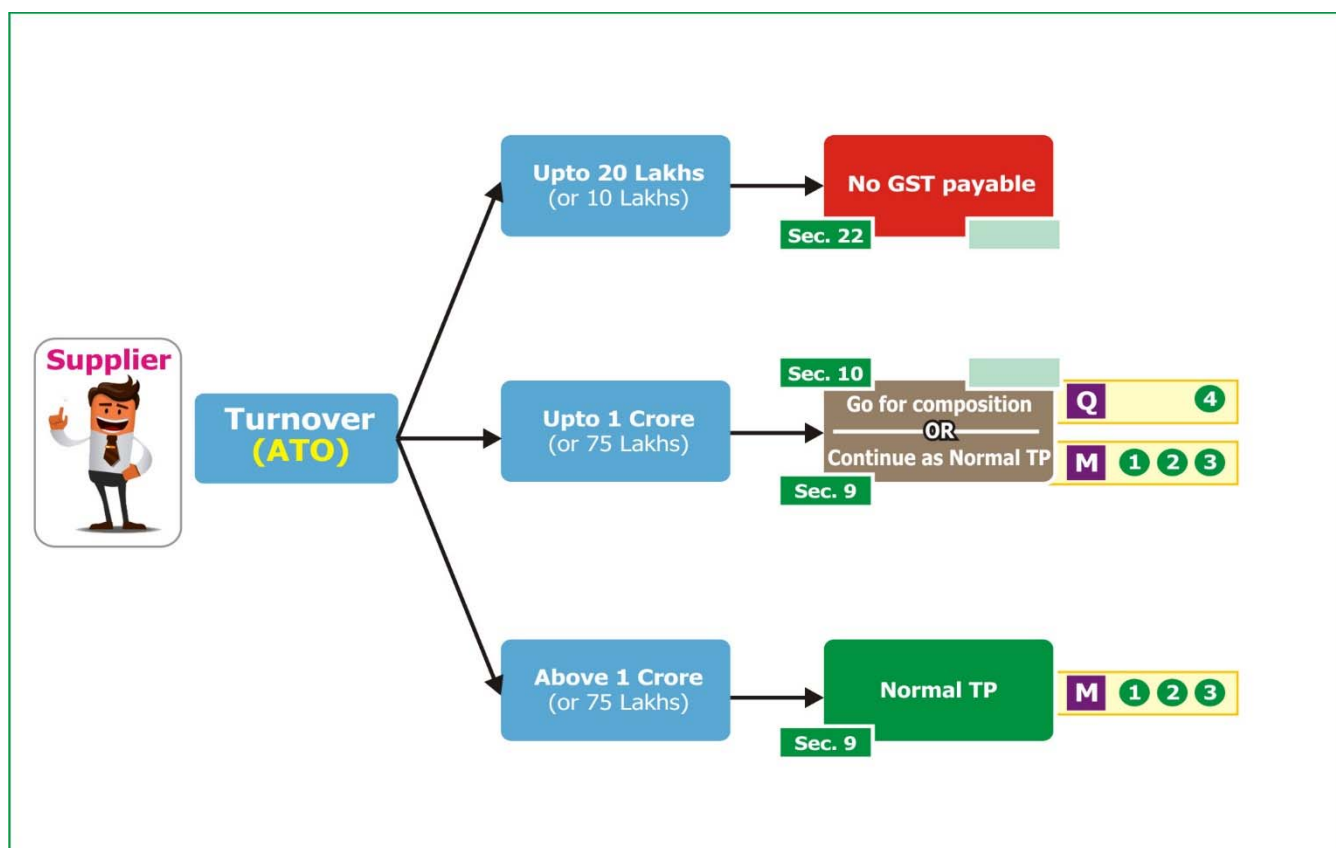
## Introduction of GST



STATE TAX		CENTRAL TAX		INTEGRATED TAX	
<b>COLLECTION</b>	XXX	<b>COLLECTION</b>	XXX	<b>COLLECTION</b>	XXX
<b>Less</b> ITC (SGST) used for payment of IGST	(XX)	<b>Less</b> ITC (CGST) used for payment of IGST	(XX)	<b>Add</b> ITC (SGST) used for payment of IGST	XX
<b>Add</b> ITC (IGST) used for payment of SGST	XX	<b>Add</b> ITC (IGST) used for payment of CGST	XX	<b>Add</b> ITC (CGST) used for payment of IGST	XX
<b>Add</b> Appportioned (IGST)	XX	<b>Add</b> Appportioned (IGST)	XX	<b>Less</b> ITC (IGST) used for payment of SGST	(XX)
				<b>Less</b> ITC (IGST) used for payment of CGST	(XX)
				<b>Article 269-A</b>	
				<b>Less</b> Appportionment	
				- Appportioned to CG	(XX)
				- Appportioned to SG	(XX)
	XXX		XXX		XXX
		<b>Article 270</b>			
		Centre (58%) States (42%)			





**AGGREGATE TURNOVER (ATO)****Sec. 2(6) of CGST****Sec. 2(108)****TAXABLE Supplies****EXEMPT Supplies [Sec. 2(47)]**

**Nil Rated** [HSN (Goods) / SAC (Services)]

**Wholly Exempted** [Sec 11 of CGST Act]  
[Sec 6 of IGST Act]

**Sec. 2(78)****NON-TAXABLE Supplies****EXPORTS****INTER-STATE Supplies****CGST****IGST****VALUE**

XXXX



XXXX



XXXX



XXXX

Supplies of all persons having same PAN shall be aggregated.

ATO shall be computed on all India basis.



## Basics of GST

### 1. What is Goods and Services Tax (GST)?

(CBEC FAQ)

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

### 2. What exactly is the concept of destination based tax on consumption?

(CBEC FAQ)

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

## GST: Taxes subsumed & principles governing thereof

### 3. Which of the existing taxes are proposed to be subsumed under GST?

(CBEC FAQ)

**Ans.** The GST would replace the following taxes:

(i) taxes currently levied and collected by the Centre:

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

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

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

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

### 4. What principles were adopted for subsuming the above taxes under GST?

(CBEC FAQ)

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

- (i) Taxes or levies to be subsumed should be primarily in the nature of indirect taxes, either on the supply of goods or on the supply of services.
- (ii) Taxes or levies to be subsumed should be part of the transaction chain which commences with import/ manufacture/ production of goods or provision of services at one end and the consumption of goods and services at the other.





- (iii) The subsumation should result in free flow of tax credit in intra and inter-State levels. The taxes, levies and fees that are not specifically related to supply of goods & services should not be subsumed under GST.
- (iv) Revenue fairness for both the Union and the States individually would need to be attempted.

## GST: Commodities / Transactions kept outside purview of GST

### 5. Which are the commodities proposed to be kept outside the purview of GST?

(CBEC FAQ)

**Ans.** Article 366(12A) of the Constitution as amended by 101st Constitutional Amendment Act, 2016 defines the Goods and Services tax (GST) as a tax on supply of goods or services or both, except supply of alcoholic liquor for human consumption. So, **alcohol for human consumption** is kept out of GST by way of definition of GST in constitution.

**Five petroleum products** viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel have temporarily been kept out and GST Council shall decide the date from which they shall be included in GST.

#### Author's Note:

Furthermore, certain supplies have been kept outside the purview of GST by treating transactions in them as 'out of scope of supply' like sale/purchase of actionable claims (other than lottery, betting or gambling), sale/purchase of land and building (except sale/purchase of under-construction building).

Supply of	Exclusion from GST	GST	ED	VAT/GST
<b>Alcoholic Liquor</b>	<b>Constitution of India</b> <b>Article 366(12-A):</b> Definition of GST excludes it	<b>No</b>	<b>State ED</b>	<b>VAT/ CST</b>
<b>Five Petroleum products</b>	<b>Constitution of India</b> <b>Article 246-A:</b> Power to levy GST suspended on these for the time being	<b>No</b>	<b>Central ED</b>	<b>VAT/ CST</b>
<b>Schedule III Activities</b> <ul style="list-style-type: none"> <li>sale/purchase of actionable claims (other than lottery, betting or gambling)</li> <li>sale/purchase of land and building (except sale/purchase of under-construction building).</li> </ul>	<b>Act</b> <b>Sec 7 of CGST Act:</b> Exclusions from scope of supply	<b>No</b>	.....	.....

### 6. What will be status of Tobacco and Tobacco products under the GST regime?

(CBEC FAQ)

**Ans.** Tobacco and tobacco products would be subject to GST. In addition, the Centre would have the power to levy Central Excise duty on these products.

#### Author's Note:

Supply of	GST	ED	VAT/GST
<b>Tobacco and Tobacco products</b>	<b>Yes</b>	<b>State ED</b>	.....

❖ GST is levied on [Sale Price (transaction value) + Central ED]

❖ Recipient of supply can take ITC only of GST. (ED paid shall form part of cost – leading to cascading effect)]

## Indian GST: Dual Model

### 7. What type of GST is proposed to be implemented?

(CBEC FAQ)

**Ans.** It would be a **dual GST** with the Centre and States simultaneously levying it on a common tax base.

The GST to be levied by the Centre on intra-State supply of goods and / or services would be called the Central GST (CGST) and that to be levied by the States/ Union territory would be called the State GST (SGST)/ UTGST.

**Author's Note:**

- ❖ Inter-state supply will attract IGST.
- ❖ IGST will be levied and collected by CG.
- ❖ In B2B transaction, IGST is mere a pass-through tax as ITC will be allowed to the recipient.
- ❖ In B2C transaction, IGST will be shared with state. (the destination state will get share in IGST)

**8. Why is Dual GST required?****(CBEC FAQ)**

**Ans.** India is a federal country where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which they need to raise resources. A dual GST will, therefore, be in keeping with the Constitutional requirement of fiscal federalism.

**9. Which authority will levy and administer GST?****(CBEC FAQ)**

**Ans.** Centre will levy and administer CGST & IGST while respective states /UTs will levy and administer SGST/ UTGST.

**10. Why was the Constitution of India amended recently in the context of GST?****(CBEC FAQ)**

**Ans.** Currently, the fiscal powers between the Centre and the States are clearly demarcated in the Constitution with **almost** no overlap between the respective domains.

- The Centre has the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States have the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre has the power to levy a tax (the Central Sales Tax) but, the tax is collected and retained entirely by the States.
- As for services, it is the Centre alone that is empowered to levy service tax.

Introduction of the GST required amendments in the Constitution so as to simultaneously empower the Centre and the States to levy and collect this tax. The Constitution of India has been amended by the Constitution (one hundred and first amendment) Act, 2016 for this purpose. **Article 246A of the Constitution empowers the Centre and the States to levy and collect the GST.**

**Taxation post GST****11. How a particular transaction of goods and services would be taxed simultaneously under Central GST (CGST) and State GST (SGST)?****(CBEC FAQ)**

**Ans.** The Central GST and the State GST would be levied simultaneously on every transaction of supply of goods and services made by registered persons except the exempted goods and services, goods and services which are outside the purview of GST. Further, both would be levied on the same price or value unlike State VAT which is levied on the value of the goods inclusive of CENVAT. While the location of the supplier and the recipient within the country is immaterial for the purpose of CGST, SGST would be chargeable only when the supplier and the recipient are both located within the State.

**Illustration I:** Suppose hypothetically that the rate of CGST is 10% and that of SGST is 10%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company which is also located within the same State for, say Rs. 100, the dealer would charge CGST of Rs. 10 and SGST of Rs. 10 in addition to the basic price of the goods. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not actually pay Rs. 20 (Rs. 10 + Rs. 10) in cash as he would be entitled to set-off this liability against the CGST or SGST paid on his purchases (say, inputs). But for paying CGST he would be allowed to use only the credit of CGST paid on his purchases while for SGST he can utilize the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

**Illustration II:** Suppose, again hypothetically, that the rate of CGST is 10% and that of SGST is 10%. When an advertising company located in Mumbai supplies advertising services to a company manufacturing soap also located within the State of Maharashtra for, let us say Rs. 100, the ad company would charge CGST of Rs. 10 as well as SGST of Rs. 10 to the basic value of the service. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not again actually pay Rs. 20 (Rs. 10+Rs. 10) in cash as it would be entitled to set-off this liability against the CGST or SGST paid on his purchase (say, of inputs such as stationery,



office equipment, services of an artist etc.). But for paying CGST he would be allowed to use only the credit of CGST paid on its purchase while for SGST he can utilise the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.

## GST: Benefits thereof

### 12. What are the benefits which the Country will accrue from GST?

(CBEC FAQ)

#### Ans. Benefits to Central/ State Government

- **Unified Common national market:** GST aims to make India a common market with **common tax rates and procedures and remove the economic barriers** thus paving the way for an integrated economy at the national level.
- **Boost to export/ make in India:** GST will give a major boost to the 'Make in India' initiative of the Government of India by making goods and services produced in India competitive in the national as well as international market
- **Increase in revenue:** GST is expected to bring buoyancy to the Government Revenue by **widening the tax base and improving the taxpayer compliance.**

#### Benefits to Trade

- **Reduction in multiplicity of taxes:** GST will **subsume majority of existing indirect tax** levies both at Central and State level into one tax i.e., GST which will be leviable uniformly on goods and services.
- **Mitigation of cascading effect:** By **subsuming most of the Central and State taxes into a single tax** and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it would mitigate the ill effects of cascading, improve competitiveness and improve liquidity of the businesses.
- **Mitigation of double taxation:** GST law **makes provisions for treatment of composite/mixed supply** either as treatment of goods and/or services, thereby mitigating the situation of double taxation.
- **Simpler tax regime:**
  - o Fewer rates
  - o Fewer exemptions

#### Benefits to Consumer

- **Simplex tax system**
- **Reduction in prices of goods due to elimination of cascading effect:**
- **Uniform prices throughout the country:**

*Delivering success, not lectures*

## IGST: Levy and special principles

### 13. What is IGST?

(CBEC FAQ)

**Ans.** Under the GST regime, an Integrated GST (IGST) would be levied and collected by the Centre on inter-State supply of goods and services. Under Article 269A of the Constitution, the GST on supplies in the course of inter- State trade or commerce shall be levied and collected by the Government of India 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 GST Council.

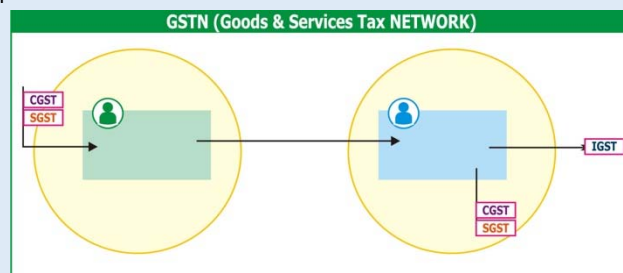
#### Author's Note:

- ❖ Inter-state supply will attract IGST.
- ❖ IGST will be levied and collected by CG.
  - ❖ In B2B transaction, IGST is mere a pass-through tax as ITC will be allowed to the recipient.
  - ❖ In B2C transaction, IGST will be shared with state. (the destination state will get share in IGST)



Centre would levy IGST which would be CGST plus SGST on all inter-State transactions of taxable goods and services.

- The inter-State seller/supplier will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases.



Nature of ITC	Sequence of Utilization of ITC for Payment of		
	First	Second	Next
IGST	IGST	CGST	SGST / UTGST
CGST	CGST	IGST	-
SGST	SGST	IGST	-
UTGST	UTGST	IGST	-

Supplier in Exporting State		Recipient Supplier in Importing State	
Supplier will do following	Central Agency will do following	Supplier will do following	Central Agency will do following
<u>IGST (ITC)</u> set-off against <u>IGST (output liability)</u>	Nothing to be done	<u>IGST (ITC)</u> set-off against <u>IGST (output liability)</u>	Nothing to be done
<u>CGST (ITC)</u> set-off against <u>IGST (output liability)</u>	CGST (ITC) so set off shall be transferred <b>from</b> Central tax account <b>to</b> Integrated Tax Account maintained by it	<u>IGST (ITC)</u> set-off against <u>CGST (output liability)</u>	IGST (ITC) so set off shall be transferred <b>from</b> Integrated tax account <b>to</b> Central Tax Account maintained by it.
<u>SGST (ITC)</u> set-off against <u>IGST (output liability)</u>	SGST (ITC) so set off shall be transferred <b>from</b> State tax account <b>to</b> Integrated Tax Account maintained by it.	<u>IGST (ITC)</u> set-off against <u>SGST (output liability)</u>	IGST (ITC) so set off shall be transferred <b>from</b> Integrated tax account <b>to</b> State Tax Account maintained by it.

## GST: Treatment of import and export

### 14. How will imports be taxed under GST?

(CBEC FAQ)

**Ans.** Imports of Goods and Services will be treated as inter-state supplies and IGST will be levied on import of goods and services into the country. The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available on the GST paid on import on goods and services.

### 15. How will Exports be treated under GST?

(CBEC FAQ)

**Ans.** Exports will be treated as zero rated supplies. No tax will be payable on exports of goods or services, however credit of input tax credit will be available and same will be available as refund to the exporters.

The Exporter will have following 2 options with him:

Option 1: Pay tax on the output and claim refund of IGST;

Option-2: Export under Bond without payment of IGST and claim refund of Input Tax Credit (ITC).

## GST Compensation Cess

### 16. What is the rationale behind levy of GST Cess?

(CBEC FAQ)

**Ans.** Some states are particularly producing states like Maharashtra, Gujarat, Tamilnadu, Punjab, Karnatka will lose substantial tax revenue due to abolition of Central Sales Tax. **Such states will be paid compensation by CG for 5 years** (or such period as may be prescribed on the recommendation of GST Council). GST compensation Cess is intended to enable CG to pay the compensation.

**Author Note****1. Charge of Cess:**

Charging Section = <b>Sec. 8 of GST (Compensation to States) Act, 2017</b>	
<b>Coverage of goods</b>	<ul style="list-style-type: none"> <li>Cess is leviable only on designated items [Specified in Schedule to the Act]</li> <li><b>DEMERITS GOODS / SIN GOODS</b> <ul style="list-style-type: none"> <li>Aerated water,</li> <li>Tobacco &amp; Tobacco Products, Cigarettes, other tobacco products</li> <li>Coal, Lignite, Peat</li> <li>Motor Vehicle</li> </ul> </li> </ul>
<b>Rates</b>	Applicable rates may be <ol style="list-style-type: none"> <li>Specific Rates;</li> <li>Ad-valorem rates (% - value shall be computed as per Sec. 15 of CGST Act);</li> <li>Combination of above two</li> </ol>
<b>Nature of supply</b>	Cess shall be leviable on <ol style="list-style-type: none"> <li>Intra-state supply;</li> <li>Inter-state supply;</li> </ol>
<b>Exception from levy</b>	<b>Composition Scheme:</b> <i>No cess shall be leviable on supplies made by a taxable person who has opted for composition levy (u/Sec 10 of the CGST Act, 2017)</i>
<b>Admissibility as ITC</b>	<b>ITC of cess will be available</b> , but the input tax credit in respect of GST Compensation Cess can be utilized only towards GST Compensation Cess [Sec 11 of GST (State Compensation Act), 2017]

**2. Collection and usage of cess:**

- Proceeds of cess shall be credited to a non lapsable fund known as GST Compensation Fund.
- Compensation payable to states shall be paid out of this fund.

<b>Compensation Mechanism for States</b>	
<b>ANNUAL COMPENSATION</b> <b>Projected Revenue for any year = (State's Revenue for FY 2015-16) * (1 + 14/ 100) ^</b> <b>Illustration:</b> if the base year revenue for 2015-16 for a concerned State is Rs 100, then projected revenue for 2018-19 shall be as [100 (1+ 14/100) ^ 3 ]	
<b>Less: Actual Revenue Collected by state in that year</b> (as certified by Comptroller and Auditor General of India)	
<ul style="list-style-type: none"> <li>Revenue of all taxes subsumed in GST by the State for 2015 – 16 as the base year</li> <li>Assumption of 14% Annual Growth Rate</li> </ul>	
<ul style="list-style-type: none"> <li>Accounts relating to Fund shall be audited by C&amp;AG.</li> <li>Accounts of the fund (as certified by C&amp;AG) with audit report thereon shall be laid before each house of Parliament.</li> <li>Unutilized amount in Fund at end of transition period of 5 years:           <ul style="list-style-type: none"> <li>50% will be transferred to Consolidated Fund of India as the share of centre;</li> <li>Balance 50% will be distributed among states (in the ratio of their total revenues from the from SGST/ UTGST in the last year of transition period)</li> </ul> </li> </ul>	

**Role of GST Council****17. Who will decide rates for levy of GST?****(CBEC FAQ)**

**Ans.** The CGST and SGST would be levied at rates to be jointly decided by the Centre and States. The rates would be notified on the recommendations of the GST Council.

**18. What would be the role of GST Council?**





## (CBEC FAQ)

**Ans.** A GST Council would be constituted comprising the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers to make recommendations to the Union and the States on

- (i) the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed under GST;
- (ii) the goods and services that may be subjected to or exempted from the GST;
- (iii) the date on which the GST shall be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel;
- (iv) model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;
- (v) the threshold limit of turnover below which the goods and services may be exempted from GST;
- (vi) the rates including floor rates with bands of GST;
- (vii) any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster;
- (viii) special provision with respect to the North-East States, J&K, Himachal Pradesh and Uttarakhand; and
- (ix) any other matter relating to the GST, as the Council may decide.

### 19. What is the guiding principle of GST Council?

## (CBEC FAQ)

**Ans.** The mechanism of GST Council would **ensure harmonization on different aspects of GST** between the Centre and the States as well as among States. It has been provided in the Constitution (101 amendment) Act, 2016 that the GST Council, in its discharge of various functions, shall be guided by the need for a harmonized structure of GST and for the development of a harmonized national market for goods and services.

### 20. How will decisions be taken by GST Council?

## (CBEC FAQ)

**Ans.** The Constitution (101 amendment) Act, 2016 provides that every decision of the GST Council shall be taken at a meeting by **a majority of not less than 3/4th of the weighted votes of the Members present and voting.**

- The vote of the Central Government shall have a weightage of 1/3rd of the votes cast and the votes of all the State Governments taken together shall have a weightage of 2/3rd of the total votes cast in that meeting.
- One half of the total number of members of the GST Council shall constitute the quorum at its meetings.

## Centre / State Disputes: Resolution Mechanism

### 21. How are the disputes going to be resolved under the GST regime?

## (CBEC FAQ)

**Ans.** The Constitution (101 amendment) Act, 2016 provides that the GST Council shall establish a mechanism to adjudicate any dispute-

- (a) between the Government of India and one or more States; or
- (b) between the Government of India and any State or States on one side and one or more other States on the other side; or
- (c) between two or more States, arising out of the recommendations of the Council or implementation thereof.

## GSTN (GST Network)

### 22. What is GSTN and its role in the GST regime?

## (CBEC FAQ)

**Ans.** **GSTN stands for Goods and Service Tax Network (GSTN).** A Special Purpose Vehicle called the GSTN has been set up to cater to the needs of GST.

The GSTN shall provide a shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders for implementation of GST.

The functions of the GSTN would, inter alia, include:





- (i) facilitating registration;
- (ii) forwarding the returns to Central and State authorities;
- (iii) computation and settlement of IGST;
- (iv) matching of tax payment details with banking network;
- (v) providing various MIS reports to the Central and the State Governments based on the tax payer return information;
- (vi) providing analysis of tax payers' profile; and (vii) running the matching engine for matching, reversal and reclaim of input tax credit.

**The GSTN is developing a common GST portal and applications for registration, payment, return and MIS/ reports.**

The GSTN would also be integrating the common GST portal with the existing tax administration IT systems and would be building interfaces for tax payers.

#### **Author's Note**

##### **Ushering in a common market**

The GST Common Portal will be the single interface for all taxpayers from any part of the country. **Only in cases where a taxpayer is picked up for scrutiny or audit, will the taxpayer be required to interface with the respective tax authority.** For all other cases (which is expected to be around 95-97%), the GST Common Portal will be the only interface for the taxpayer. The way it has been conceived and devised, the GST Common Portal truly promises to make India a single, large market that promises to bring a multitude of benefits for the economy.

## **GST: Person liable to pay and benefits to small suppliers**

### **23. Who is liable to pay GST under the proposed GST regime?**

(CBEC FAQ)

**Ans.** Under the GST regime, **tax is payable by the registered taxable person** on the supply of goods and/or services.

- **Liability to pay tax arises when the taxable person crosses the turnover threshold** of Rs.20 lakhs (Rs. 10 lakhs for NE & Special Category States) **except in certain specified cases where the taxable person is liable to pay GST even though he has not crossed the threshold limit.**
- The CGST / SGST is payable on all intra-State supply of goods and/or services and IGST is payable on all inter- State supply of goods and/or services. The CGST /SGST and IGST are payable at the rates specified in the Schedules to the respective Acts.

### **24. What are the benefits available to small tax payers under the GST regime?**

(CBEC FAQ)

**Ans.** **Tax payers with an aggregate turnover in a financial year up to [Rs.20 lakhs & Rs.10 Lakhs for NE and special category states] would be exempt from taking registration under GST.**

Further, **a person whose aggregate turnover in the preceding financial year is less than Rs.1 Crore** (75 lakhs for 9 special category states viz 1. Arunachal Pradesh, 2. Assam, 3. Manipur, 4. Meghalaya, 5. Mizoram, 6. Nagaland, 7. Sikkim, 8. Tripura, and 9. Himachal Pradesh) **can opt for a simplified composition scheme** where tax will payable at a concessional rate on the turnover in a state.

#### **Author's Note:**

##### **1. Threshold limit and composition limit**

States/ UT	threshold exemption (Limit of ATO) [Sec 22 of CGST Act]	composition scheme (Limit of ATO) [Sec 10 of CGST Act] [N/N 8/2017- CT]
<b>North-Eastern States</b>	<b>10 Lakhs</b>	<b>75 Lakhs</b>
(1) Sikkim		
(2) Assam		
(3) Manipur,		
(4) Meghalaya		
(5) Mizoram		
(6) Arunachal Pradesh		



(7) Nagaland			
(8) Tripura			
<b>Hilly Area States</b>			
(9) Himachal Pradesh	10 Lakhs	75 Lakhs	
(10) Uttarakhand	10 Lakhs	1 Crore	
(11) Jammu & Kashmir	20 Lakhs	1 Crore	
All Other States All UT	20 Lakhs	1 Crore	

## 2. ATO – meaning thereof

Statement showing computation of AGGREGATE TURNOVER		
1. Aggregate following supplies of goods / services / both		XXXX
<ul style="list-style-type: none"> <li>All taxable supplies</li> <li>All exempt supplies [defined in Sec 2(47) - nil rated + wholly exempt + <u>non-taxable supplies</u>]</li> <li>All export supplies [Export is inter-state supply, but zero-rated under GST law]</li> <li>All inter-state supplies [Inter-state supplies (other than export)]</li> </ul>		
2. <b>Exclude:</b>		(XXX)
<ul style="list-style-type: none"> <li>GST (CGST, SGST, UTGST, IGST) + State Compensation Cess</li> </ul>		
		XXXX
** Turnover of all the persons having the same PAN operating anywhere in India will be considered.		

### What shall be the treatment of supplies under RCM while computing ATO for any person?

- Outward supplies under RCM** (i.e., person whose ATO is being computing, his supplies to other person is under RCM)
  - These are taxable supplies and shall be included in ATO.
- Inward supplies under RCM** (i.e., person whose ATO is being computing, his procurement from other person is under RCM)
  - These are taxable supplies. But being inward supplies shall not be included in ATO (definition specifically provides for exclusion of these)

### Use / application of concept of Aggregate Turnover:

Section	Title	Comment
Sec 22	Person liable to take registration	Threshold limit of <b>upto 20/ 10 Lakhs</b>
Sec 10	Composition Levy	<u>Eligibility Limit</u> of <b>upto 1 crore / 75 Lakhs</b>
Sec 35 + Rule 80	(Audit of Accounts) Every registered person whose <b>aggregate turnover</b> during a financial year <b>exceeds two crore rupees</b> shall <b>get his accounts audited</b> and he shall furnish a copy of audited annual accounts electronically through the common portal.	<u>Compulsorily audit limit</u> <b>&gt; 2 Crores</b>



☛ (Expected)

**25. How will the goods and services be classified under GST regime?**

(CBEC FAQ)

**Ans. Classification of Goods:**

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

It is 8-digit coding system. It is already prevalent under Indian Customs.

In general, **mention of HSN in invoice is a mandatory requirement**. However, **taxpayers whose turnover is below Rs. 1.5 crores are not required to mention HSN Code in their invoices**.

**Classification of Services:**

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

**Mention of SAC in invoice is mandatory in all the cases.**

**Author:**

	HSN for Goods	SAC for Services
<b>Full form</b>	Harmonized System of Nomenclature	Service Accounting Code
<b>Meaning</b>	HSN is a product naming and coding system. It was developed by the World Customs Organization (WCO) with the objective of maintaining uniformity in classification of goods in international trade. It is accepted worldwide.	Similar to the International HSN Codes, India has adopted a Service Accounting Code (SAC) for all its services.
<b>Digits used</b>	<b>8-digits coding system</b> has been used)	<b>6-digits coding system</b> has been used.
<b>Mention on invoice</b>	In general, <b>mention of HSN in invoice is a mandatory requirement</b> . However, taxpayers whose turnover is below Rs. 1.5 crores are not required to mention HSN Code in their invoices.	<b>Mention of SAC in invoice is mandatory in all the cases.</b>

**HSN Code for goods: Notification No. 12/2017-CT**

ATO in the PY	HSN requirement in <b>TAX INVOICE*</b>
Upto 1.5 crores	HSN not mandatory
More than 1.5 crores but upto 5 crores	HSN upto 2 digits is mandatory
More than 5 crores	HSN upto 4 digits is mandatory

**Note: Importers / Exporters (doing import/export which are inter-state supply under GST law):** HSN of 8 digits is compulsory (as it has to be compatible with global standards)

- **Suppliers under composition levy:** They are not required to mention HSN codes.

## Miscellaneous

**26. Is there any provision for cross empowerment of officers of State and Central Government under GST?**

(CBEC FAQ)

**Ans.** Yes.

As per Section 6 (1) of CGST Act, 2017, the officers appointed under the SGST / UTGST Act are authorised to be the proper officers for the purposes of CGST/IGST Act\*, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

Similar provisions in the SGST/UTGST Act empower the central government officials to be the proper officers under the SGST/UTGST Act.

**An Illustration:**

N/N 39/2017-CT and N/N 11/2017 –IT have been issued in order to cross-empower State Tax officers for processing and grant of refund.



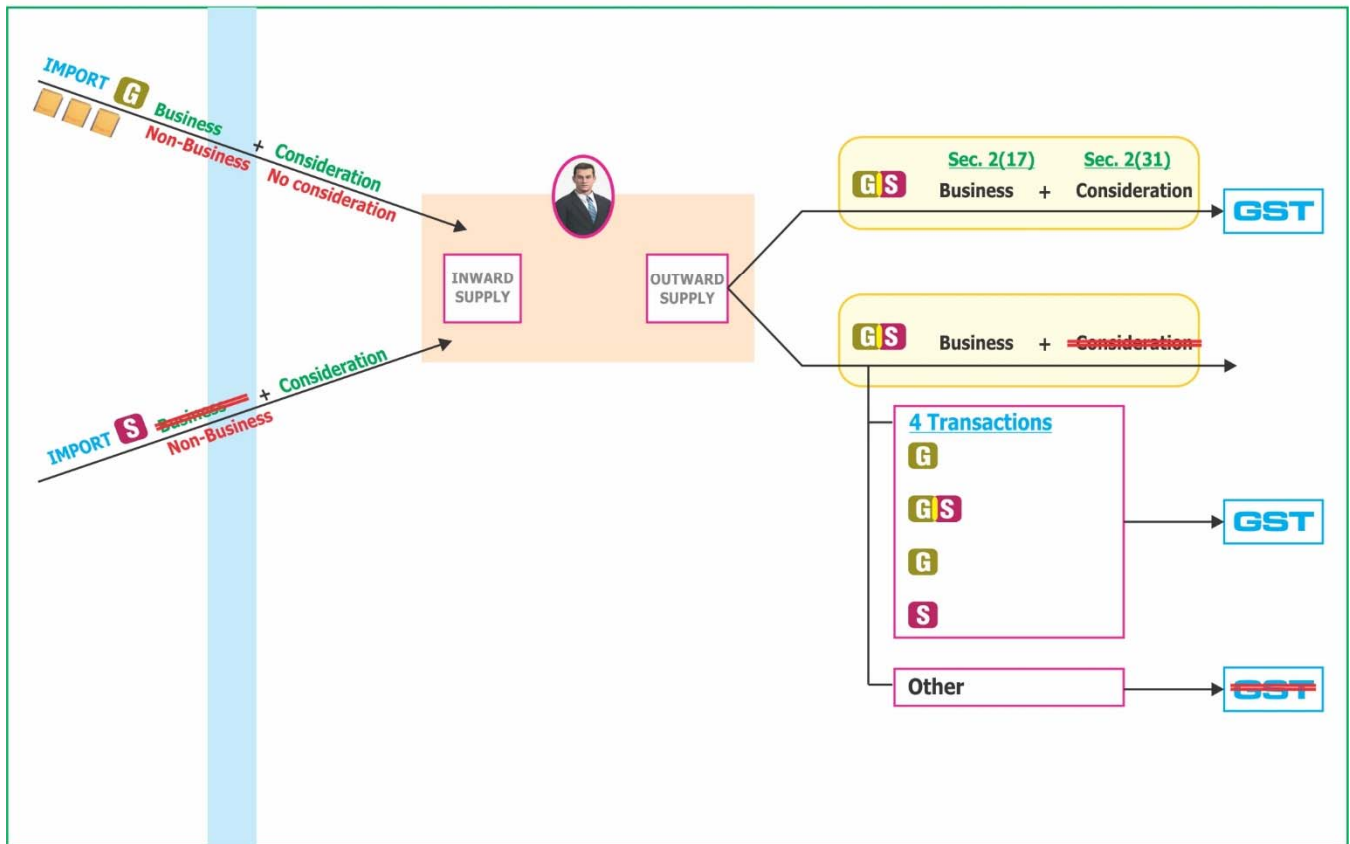
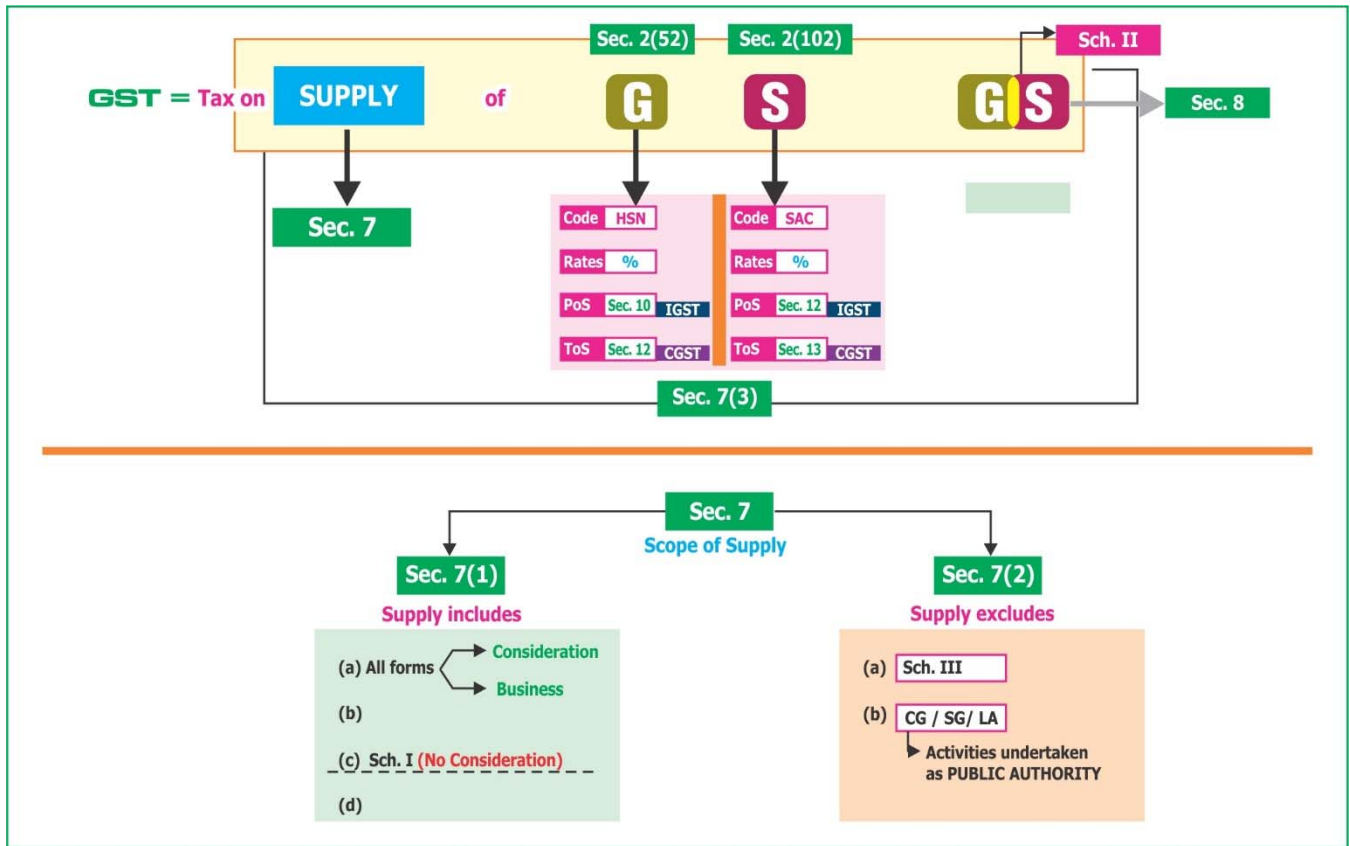
## SUPPLY UNDER GST

### Relevant Legal Provisions

	Section		Rules	
	Section	Subject Matter	Rules	Subject Matter
CGST	Sec. 7	Scope of Supply		
	<u>Schedule I</u>	Activity without consideration = Supply		
	<u>Schedule II</u>	Supply of Goods or Supply of Service		
	<u>Schedule III</u>	Activities not considered as supply		
	Sec. 8	Tax liability on composite and mixed supplies		
IGST	Sec 20	Application of provisions of CGST Act, 2017		
		- Sec 7 & 8 has been made applicable		

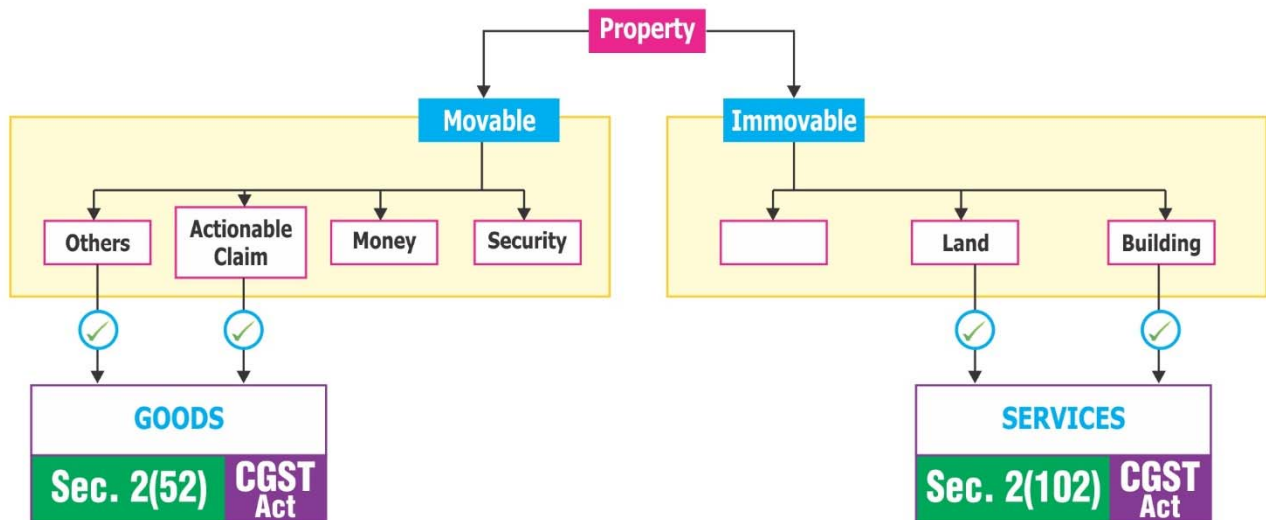
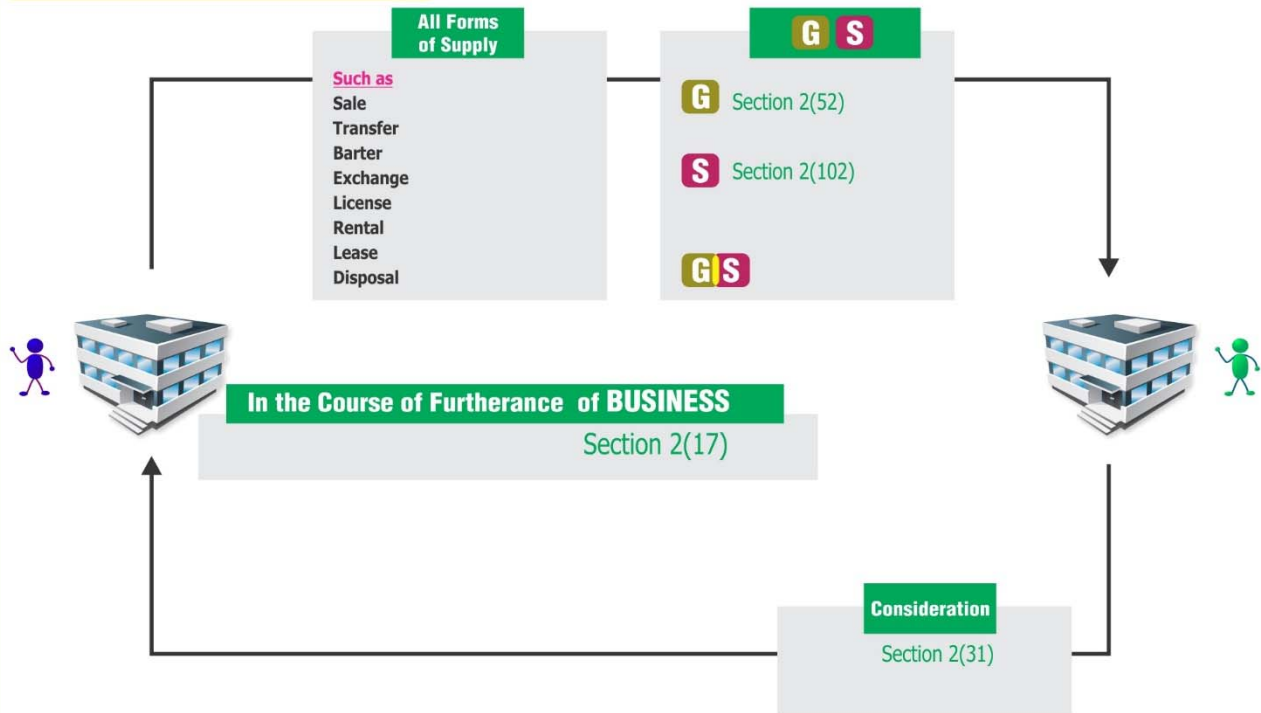
### Relevant Definitions

CGST	2 (1)	Actionable claim	2 (75)	Money
	2 (5)	Agent	2 (84)	Person
	2 (17)	Business	2 (88)	Principal
	2 (30)	Composite supply	2 (90)	Principal supply
	2 (31)	Consideration	2 (93)	Recipient
	2 (49)	Family	2 (102)	Services
	2 (52)	Goods	2 (105)	Supplier
	2 (72)	Manufacture	2 (108)	Taxable supply
	2 (74)	Mixed supply	2 (109)	Taxable territory
	(Definitions elsewhere)			
	<b>15(3):</b>	Related Person		
	<b>Expl to Rules</b>	Open Market Value (OMV)		

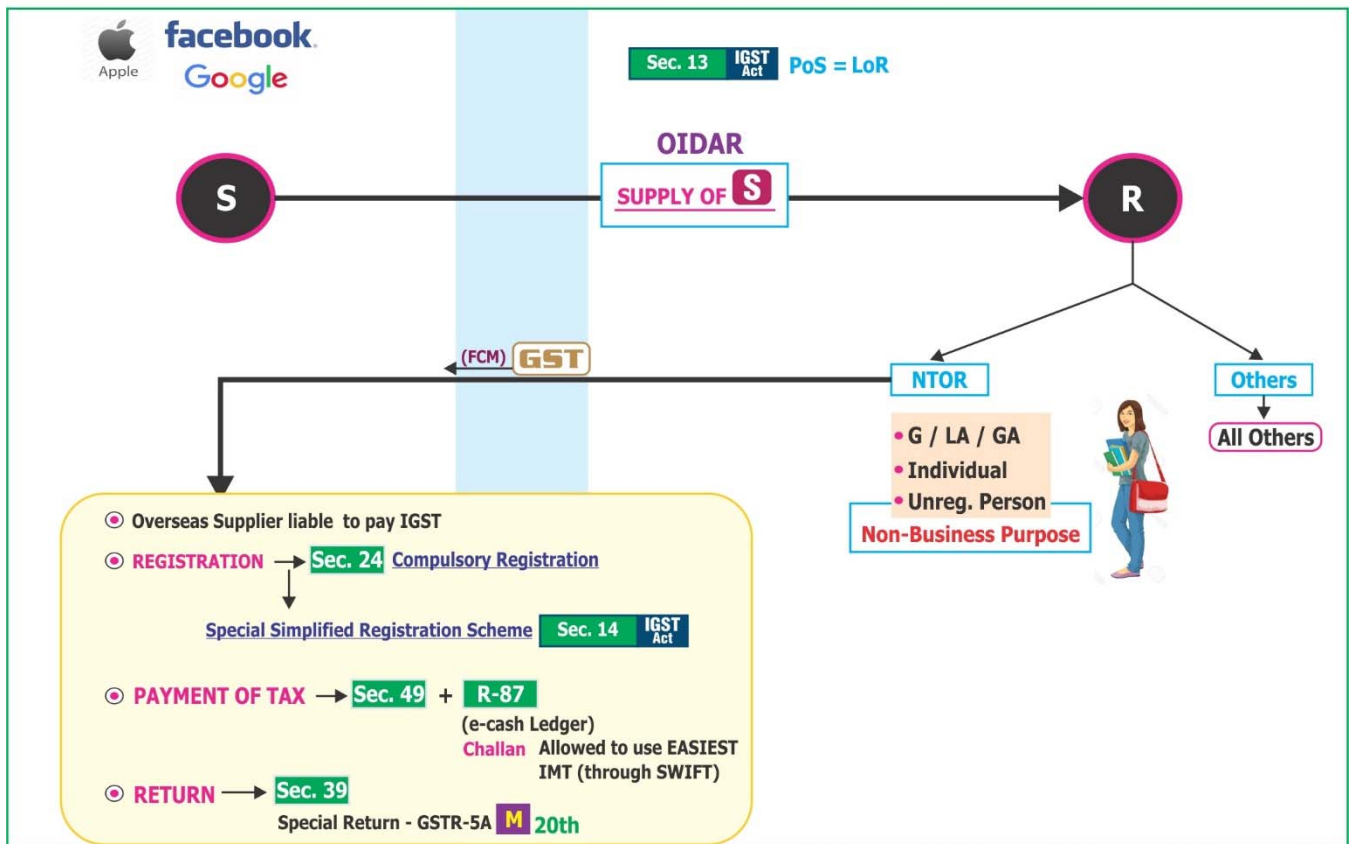
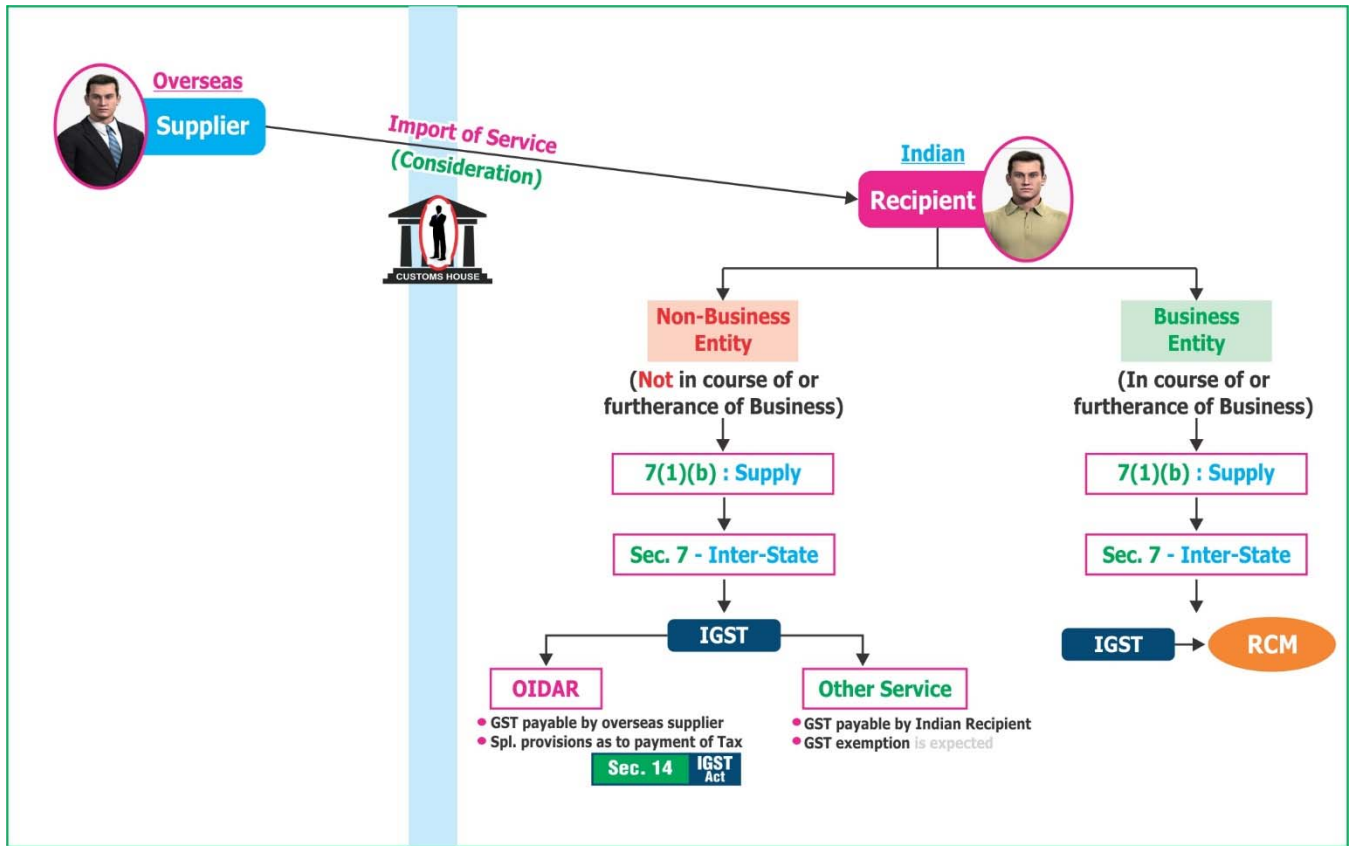


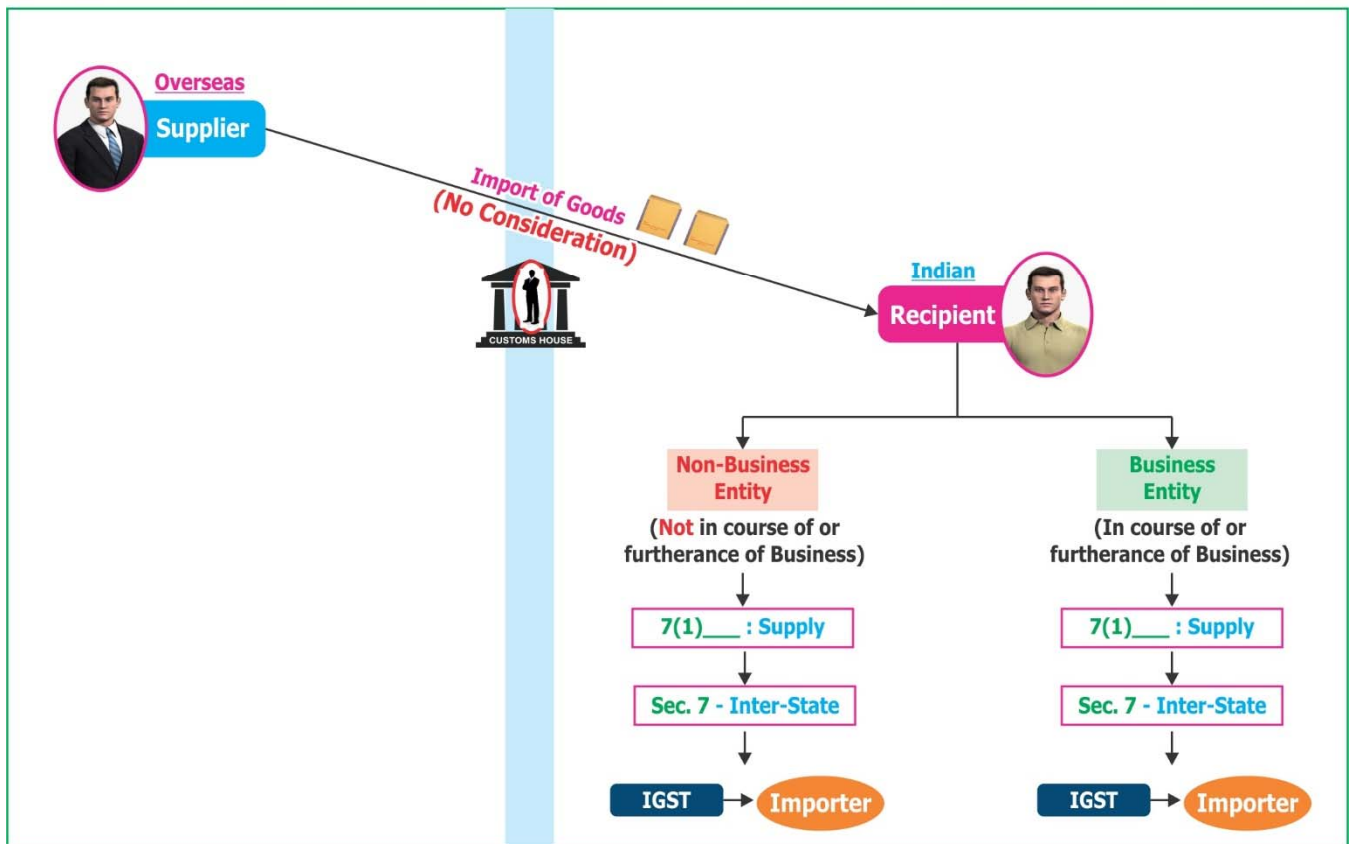
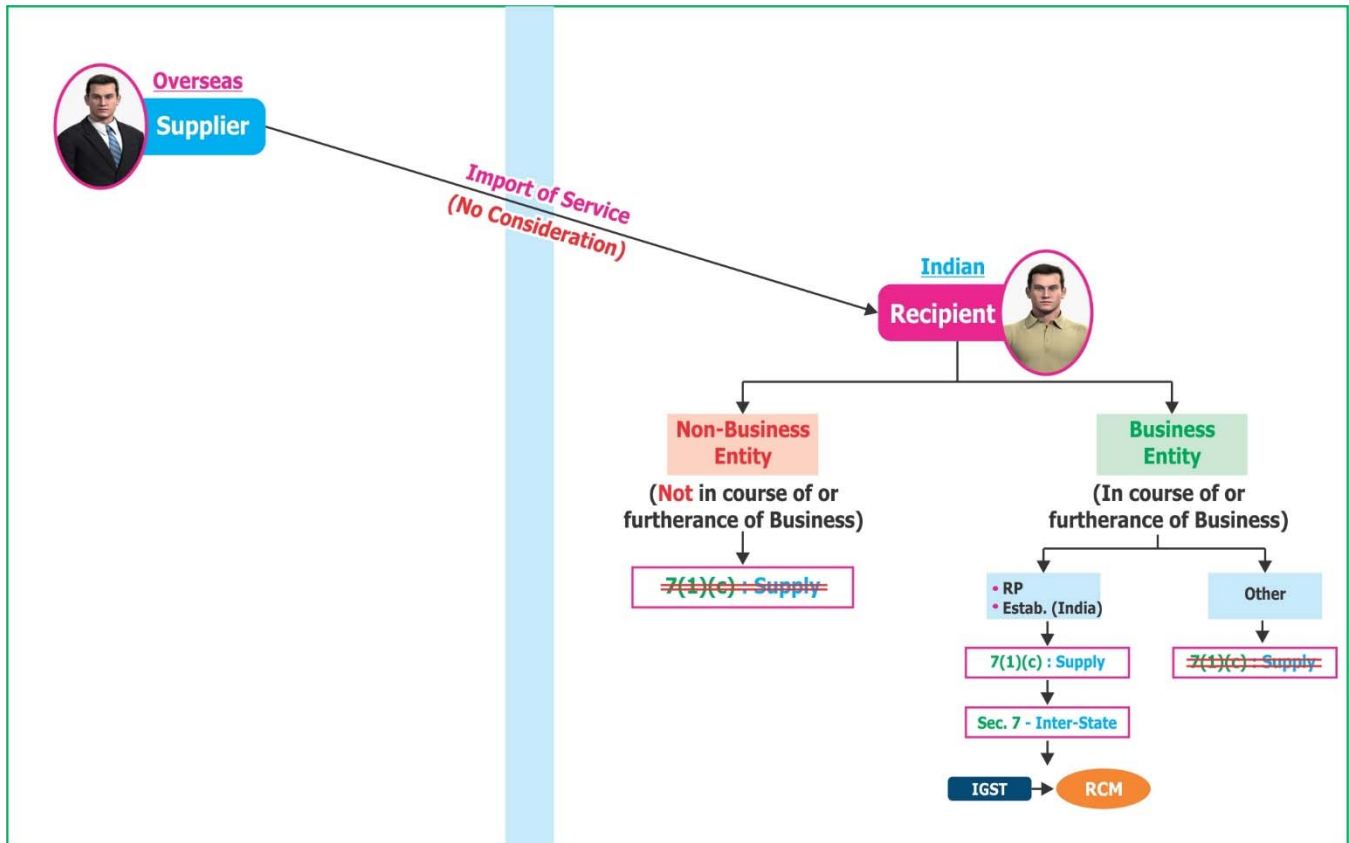


**Sec. 7(1)(a)** Supply includes



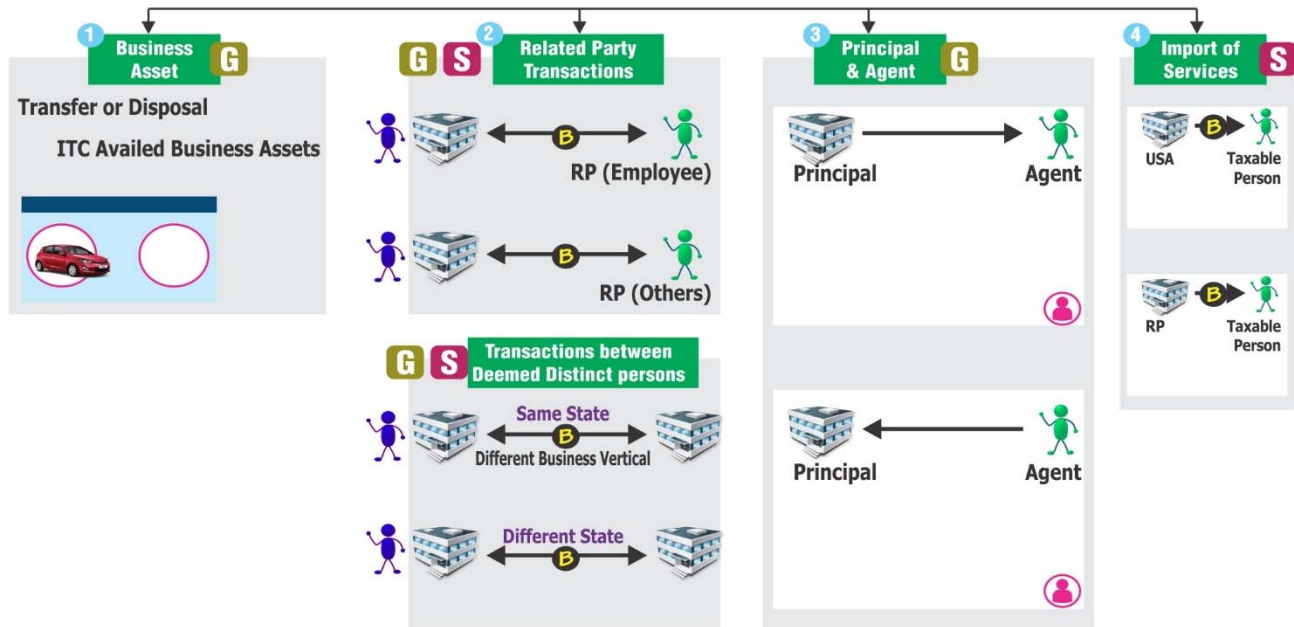




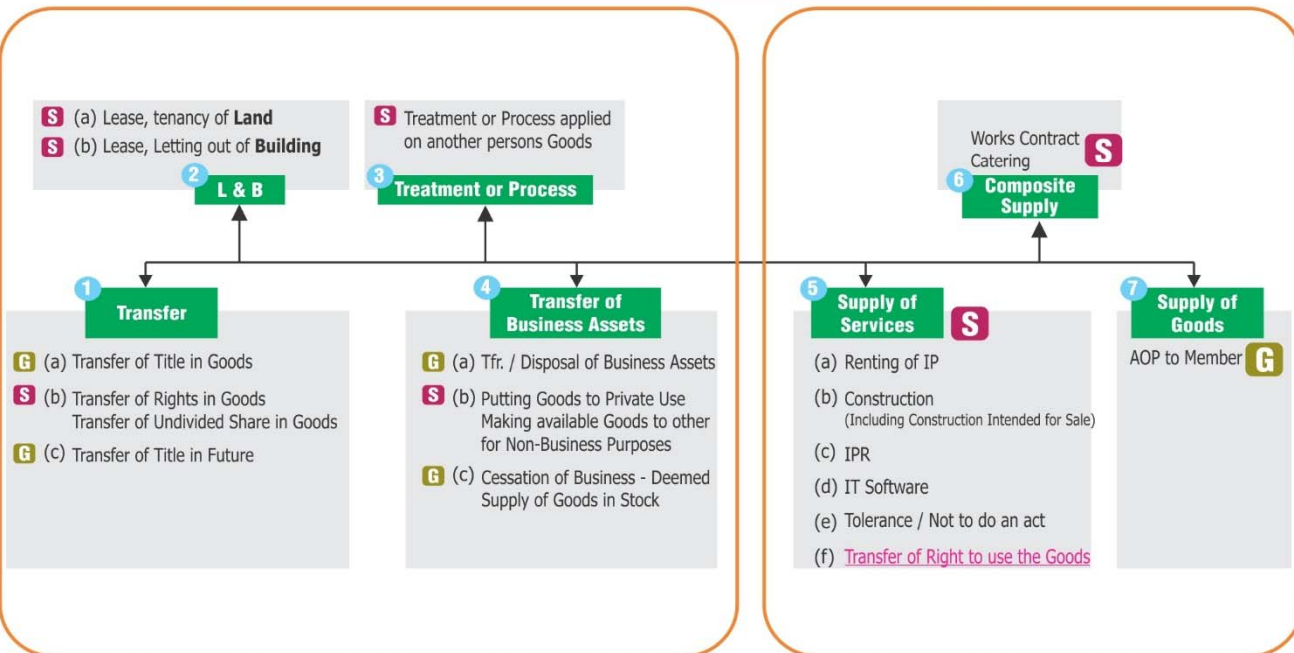


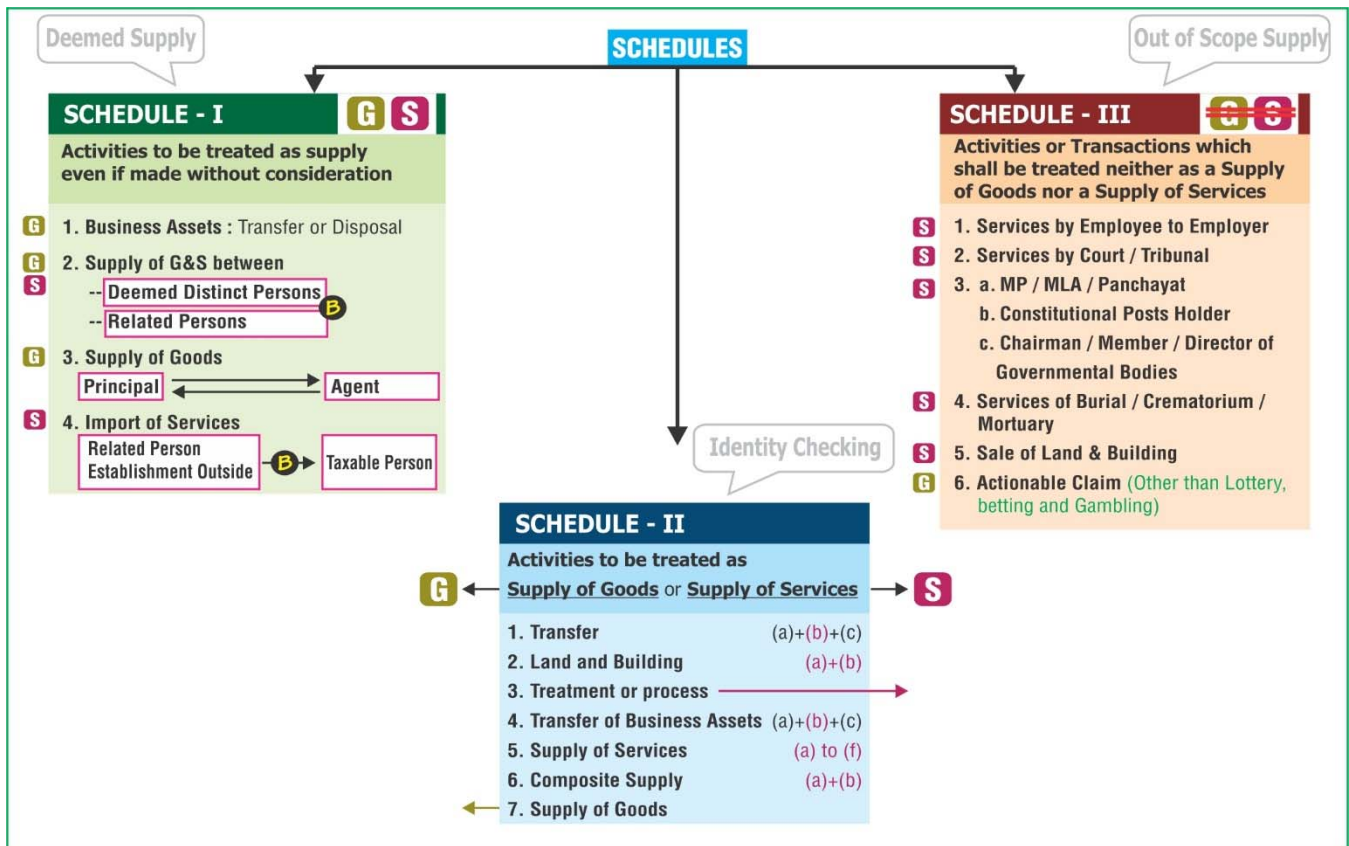


**Sec. 7(1)(c)** Supply includes  
Activities made or agreed to be made without consideration **Schedule I** **4**



**Sec. 7(1)(d)** Activities to be treated as **SUPPLY OF GOODS** or **SUPPLY OF SERVICES** **Schedule II** **7**







**CA-INTER TAXATION**



**PROF. DIPPAK**





**CA SUNETA**



(Main Material)



(Question Bank)



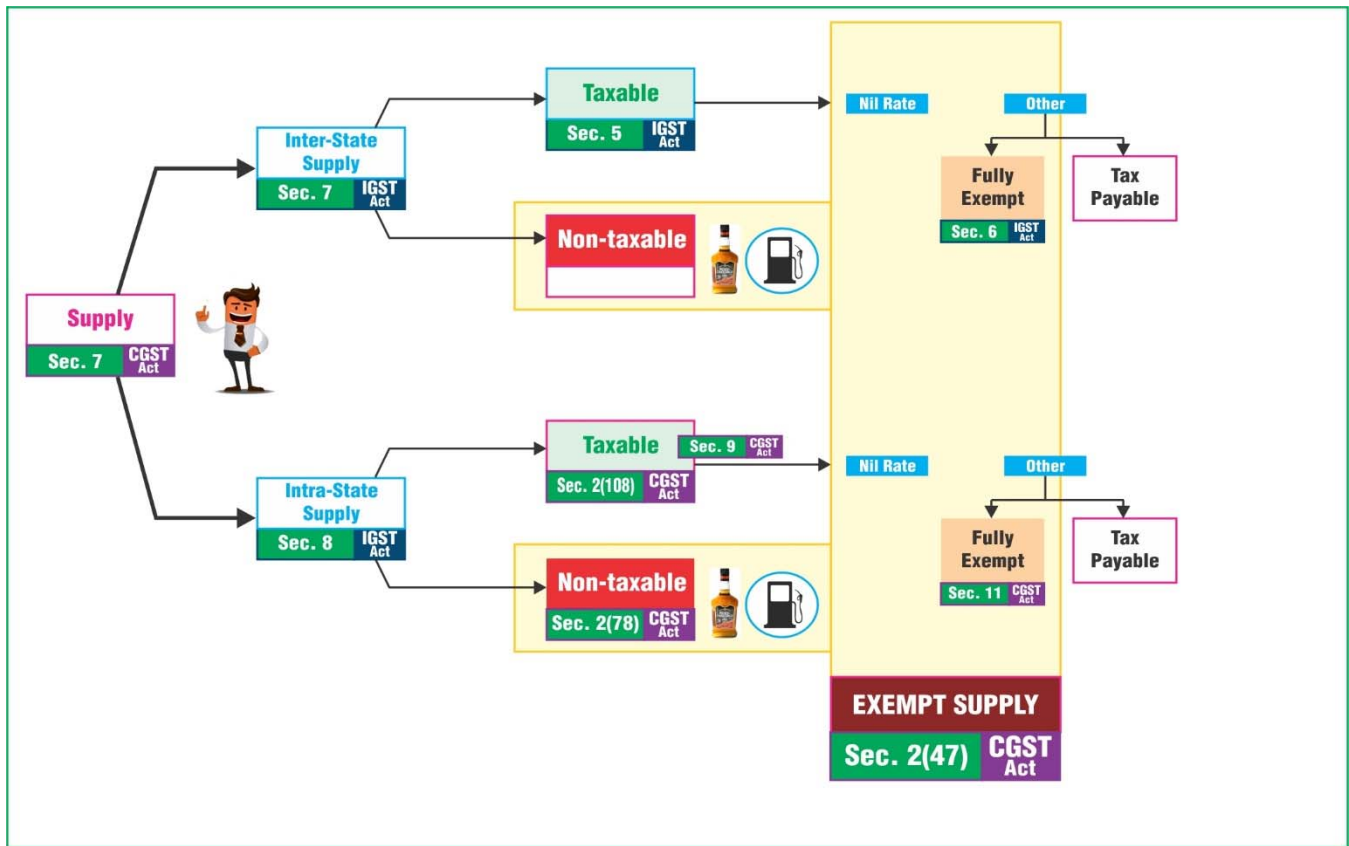
(Main Material)



(Question Bank)

Releasing soon....





PROF. DIPPAK



CA SUNETA

# CA-INTER TAXATION



(Main Material)



(Question Bank)



(Question Bank)



(Main Material)



## Supply: Taxable Event & scope thereof

### 1. What is the taxable event under GST?

(ICAI Study Material)

**Ans.** A taxable event is any event or occurrence that results in a tax liability. Unlike the present indirect tax regime, **taxable event under GST is supply of goods or services or both**. While CGST and SGST/ UTGST levied on intra-State supplies, IGST levied on inter- State supplies.

**Author's Note:**

1. Supply- meaning thereof: Sec 7 of CGST Act defines scope of supply (what is included into it and what is excluded out of it)

### 2. What is the scope of the term supply as defined in CGST Act, 2017?

(IDTC FAQ)

**Ans.** The scope of term supply is given under Section 7(1) of CGST Act which provides the inclusive definition of term supply. As per the provision of supply, supply includes:

1. all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
2. import of services for a consideration whether or not in the course or furtherance of business;
3. the activities specified in Schedule I, made or agreed to be made without a consideration; and
4. the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

**Author's Note:**

	Supply of	Existence consideration	of	In course or furtherance of business
7(1)(a)	<b>Goods or Services or both</b>	Yes		Yes
7(1)(b)	<b>Import of Services</b>	Yes		May or may not be
7(1)(c)	<b>Schedule I Activities</b>	May or may not be		----
7(1)(d)	<b>Schedule II Activities</b>	----		----

## Sec 7(1)(a): Supply for consideration and in course of or furtherance of BUSINESS

### 3. What do you mean by "supply made in the course or furtherance of business"?

(Press release)

**Ans.** Section 7(1)(a) describes scope of supply to include supply made or agreed to be made for a consideration by a person in the course or furtherance of business.

"Business" has been defined under Section 2(17) in an inclusive manner. It has defined to include any trade, commerce, manufacture, profession, vocation, adventure or wager etc. whether or not undertaken for a pecuniary benefit. Business also includes any activity or transaction which is incidental or ancillary to the aforementioned listed activities. In addition, any activity undertaken by the Central Govt. or a State Govt. or any local authority in which they are engaged as public authority shall also be construed as business.

**Illustrations:**

- 1) **CA Aman** is practicing CA. He is into business as profession is included in definition of business. Activity of accounting, auditing, certification, returns filing etc. are activities carried out by him in the course of business. Thus, all these activities will constitute supply under GST.
- 2) **ABC Ltd. is trader of detergent**. It intends to explore market of southern India. It distributes samples of detergent in that area. Supply by way of free sampling is supply in furtherance of business.

### 4. An individual buys a car for personal use and after a year sells it to a car dealer. Will the transaction be a supply in terms of CGST/SGST Act? Give reasons for the answer?





(Press release)

**Ans. No**, because the sale of old and used car by an individual is not in the course or furtherance of business and hence does not constitute supply.

**Other similar examples:**

1. Sale of Old TV / Fridge etc. by household entity;
2. Sale of gold/silver jeweler by a household entity to jeweller;

**If transaction is not supply, GST is not attracted: No question of RCM**

- Sale by household lady of person jewellery (unregistered entity)
- Sale to Jeweller (GST registered entity)
- This transaction does not constitute supply – thus, GST law is not applicable to it.
- No question of applicability of RCM [\[Sec 9\(4\) of CGST Act / Sec 5\(4\) of IGST Act does not come into picture\]](#)

**5. Whether provision of service or goods by a club or association or society to its members will be treated as supply or not?**

(Press release)

**Ans. Yes.**

- **Provision of service by Club/ association to member** has been included in definition of 'business' as per **Sec 2(17) of CGST Act**. Thus, such transaction shall fall within the scope of supply and will attract GST.
- **Supply of goods by Club / association to member** has been categorized as 'supply of goods' under **Schedule II of CGST Act**. Thus, such transaction shall fall within the scope of supply and will attract GST.

**6. Whether actionable claims liable to GST?**

(CBEC FAQ)

**Ans.** As per section 2(52) of the CGST/SGST Act actionable claims are to be considered as goods. Schedule III read with Section 7 of the CGST/SGST Act lists the activities or transactions which shall be treated neither as supply of goods nor supply of services. The Schedule lists actionable claims other than lottery, betting and gambling as one of such transactions. Thus only lottery, betting and gambling shall be treated as supplies under the GST regime. All the other actionable claims shall not be supplies.

**7. Whether transaction in securities be taxable in GST?**

(CBEC FAQ)

**Ans.** Securities have been specifically excluded from the definition of goods as well as services. Thus, the transaction in securities shall not be liable to GST.

**8. Discuss whether GST is applicable in the following transaction –**

1. **M transfers 1,000 debentures of A Ltd. to N for a consideration of Rs. 4,50,000.**
2. **T transfers a plot of land situated in Madurai to B for a consideration of Rs. 40 lakh. Consideration is, however, payable in instalments.**
3. **X, a registered person in GST, is a flower dealer in Pune, He sells roses for decoration purposes for Rs. 1,50,000 to an interior decorator.**

**Ans.**

1. **Sale of debentures** – GST is applicable on supply of goods and / or services. Debentures are securities. Under GST law, securities are neither 'goods' (as defined u/Sec 2(52)) nor 'services' (as defined u/Sec 2(102)). Thus, transfer of debentures (securities) is not subject to GST.
2. **Sale of plot of land** – Plot of land, being immovable property, is not 'goods' as defined u/Sec 2(52) of CGST Act. However, it is covered by definition of 'service' as given u/Sec 2(102) of CGST Act. However, transaction of sale of land are out of scope of supply under GST law (Sec 7(2) of CGST Act read with Schedule III of CGST Act). Thus, sale consideration is not subject to GST.
3. **Sale of flowers** – "Flowers" are goods. GST is applicable.

\* However, the notified GST rate for supply of natural flower is nil. Therefore, GST liability is nil.:

**9. Discuss whether GST is applicable in the following transactions —**

1. A deposits Rs 1 lakh in cash in his savings account with State Bank of India, Delhi.
2. Sale of derivatives by Y for a consideration of Rs. 5,00,000. Y is a dealer in shares and security.
3. Z takes a housing loan from Kotak Mahindra Bank. Rate of interest is 9%. Loan is repayable after 5 years. Rs. 10,000, being documentation charges is payable by Z at the time of taking loan. Interest would be part of EMI which will be payable on 10<sup>th</sup> day of every month.

**Ans.**

1. **Cash deposit in bank** – It is a transaction in money. GST is not applicable on making a bank deposit.
2. **Transfer of derivatives** – Derivatives are securities. Securities are neither goods nor services. thus, GST is not applicable on transfer of securities.
3. **Housing loan** – Supply of money by bank does not constitute supply of goods or services. thus, GST is not applicable. However, document charges of Rs. 10,000 is subject to GST. Interest payable being for use of money constitutes 'supply of services'. However, GST on interest element is exempt.

**10. Will activities of charitable institutions be taxable under GST?****(CBEC FAQ)**

**Ans.** Yes. However, supply in nature of specified charitable activities carried out by an entity registered under Section 12AA of the Income Tax Act, 1961 is exempt vide N/N.12/2017-CT (Rate), e.g., **Yoga activity is exempt.**

**Sec 7(1)(b): Import of Service (with or without consideration)****11. Whether import of services will be liable to tax under GST regime?****(IDTC FAQ)****(or) Will import of services without consideration be taxable under GST?****(Press release)**

**Ans.** The following import of service will qualify as supply under CGST Act, 2017:

1. **Import of service for a consideration:** Such import will constitute 'supply' whether or not it is in the course or furtherance of business is a supply (Section 7(1)(b) of CGST Act, 2017)
2. **Import of service without consideration:** Such import will constitute 'supply' only if import of service has been made by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business (Section 7(1)(c) read with Schedule I of CGST Act, 2017)

**Author's Note:****1. Tabular Analysis**

	Nature of service	Consideration	Business Test
(a)	Import of service by a taxable person from a related person or from any of his other establishments outside India	Not required	Necessarily required
(b)	Import of service other than (a)	Necessarily required	Not required

**2. Import of service – meaning thereof as defined by Sec 2(11) of IGST Act**

- Transaction will be considered as import of service if following conditions are satisfied:
  1. **Supplier** of service is located outside India.
  2. **Recipient** of service is located in India.
  3. **Place of supply** of service is India (POS is determined as per Sec 13 of IGST Act).

**3. Import of service – treatment under GST**

- Import of Service = Supply [Sec 7(1)(b) or Sec 7(1)(c) read with Schedule I (Entry 4)]
- Import of Service = Supply = Inter-State Supply (Sec 7(4) of IGST Act)
- Import of Service = Supply = Inter-State Supply = Attracts charge of IGST (Sec 5 of IGST Act)
- Import of Service = Supply = Inter-State Supply = IGST payable = RCM applicable (Sec 5(3) of IGST Act – RCM on notified supplies)



- **Computation of IGST payable**

- **Rate:** As notified by GST Council
- **Value:** generally, Transaction Value
- **Applicable ex-rate** = Ex-rate as per GAAP- as prevailing on date of ToS determined as per Sec 13 [Rule 2 of IGST Rules, 2017 read with Rule 34(2) of CGST Rules, 2017]

**12. Examine whether the following activities would amount to supply under section 7 of the CGST Act:**

1. Jatin, a proprietor, has received the architect services for his house in Punjab from an architect located in New York at an agreed consideration of \$ 5,000.
2. ABC Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office.
3. Raman is an Electronic Commerce Operator in Chennai. His son\* who is settled in London is a well-known lawyer. Raman has taken legal advice from him free of cost with regard to his family dispute.
4. Would your answer be different if in the case-3, Raman has taken advice in respect of his business unit in Chennai?

(ICAI Study Material)

- Ans.** 1. Supply of service by foreign architect to Jatin, Indian service recipient constitutes 'import of service' as place of supply of such service is in India\*. Though such import is not in course of or furtherance of business of Jatin\*, this transaction of import of service will fall within the scope of supply as defined u/Sec 7(1)(b) of CGST Act.

**Note**

- \*1 Architect Service = Service directly relating to immovable property  
thus, PoS shall be determined in terms of Sec 13(4) of IGST Act = Place where immovable property is located or intended to be located = in our case, it is India
- \*2. Presumed that Jatin is not carrying on business from his house/home. If he is carrying his business from home, then such import of service shall be in the course of or furtherance of business.

**Transaction is supply (inter-state), but GST is exempt**

- Jatin, Indian recipient, being a household entity, cannot be made liable to pay GST under RCM.
- Thus, Govt. has exempted such GST. [N/N 9/2017-IT (Rate) – Entry No. 10]

2. Foreign Head Office has provided legal consultancy service to its Indian branch office. Under GST law, foreign head office (establishment of a person outside India) and Indian branch office (establishment of same person in India) shall be treated as 'deemed distinct persons (establishment of distinct persons)' [Explanation to Sec 8 of IGST Act]

Presuming that ABC Associates is a taxable person (either registered under GST or liable to be registered), the import of service\* by ABC Associate from his other establishment outside India (which is deemed distinct entity) will constitute supply, even if no consideration has been charged for such supply [Sec 7(1)(c) read with Schedule I (Entry No. 4)]

**Note**

- \*1 Legal consultancy Service (presuming it is not directly relating to immovable property)  
thus, PoS shall be determined in terms of Sec 13(2) of IGST Act = Location of recipient of service = in our case, it is India

**Transaction is supply (inter-state), IGST payable under RCM**

- ABC Associates, Indian recipient, being a business entity, will be liable to pay GST under RCM.
- Post payment of GST paid under RCM, ITC can be taken of that GST (if all conditions relating to eligibility of ITC are satisfied)

3. Section 7(1)(c) of CGST Act read with Schedule I of CGST Act, inter alia, stipulates that import of services by a taxable person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. In the given case, Raman being ECO is a taxable person (registered or liable to be registered under GST). It has received legal services from his son (the related person) free of cost. Such receipt (import of service) being in a personal matter and not in course or furtherance of business, will not fall within the scope of supply under section 7 of the CGST Act.



4. In the above case, if Raman (taxable person under GST) has taken advice with regard to his business unit, services provided by Raman's son to him would be treated as supply under section 7 of the CGST Act as the same are provided in course or furtherance of business though without consideration.

**Author's Note:**

Son = Falls in definition of family = Related person

**Sec 2(49) "Family" means,—**

- (i) the spouse and children of the person, and
- (ii) the parents, grand-parents, brothers and sisters of the person *if they are wholly or mainly dependent on the said person;*

**Crux :** Family = [Spouse + Children] + [Dependent parents, grand-parents, brothers and sisters]

### Sec 7(1)(c): Transactions/ activities without consideration

#### 13. Examine whether the following activities would amount to supply under section 7 of the CGST Act:

1. A cloth retailer gives clothes from his business stock to his friend free of cost.
2. A dealer of air-conditioners permanently transfers an air conditioner from his stock in trade, for personal use at his residence.
3. ABC Academy purchases some laptops for business purpose. ITC on these laptops have been availed. After 3 years it have been donated to the trust.

(ICAI Study Material)

Ans.

1. In this case, cloth retailer (trader) has gifted cloth to his friend (unrelated person). Since the goods supplied (cloth) is his business stock, he must have availed ITC thereon. In terms of Sec 7(1)(c) of CGST Act read with Entry No. 1 of Schedule I of CGST Act, such transfer of business stock would amount to 'supply'.

**Author's Note:**

1. Such gift (transfer without consideration) = Supply = GST payable

2. **Computation of GST liability**

- **Rate:** As notified by GST Council
- **Value:** Sec 15(4) read with Rule 30 of CGST Rules, 2017 = 110% of Cost of Acquisition/ Purchase of **such goods\*** (by the trader)

2. In this case, dealer of air-conditioners (sole proprietor) has transfer one unit of his trading stock to himself for his personal use at his residence. Since the goods transferred (AC) is his business asset, he must have availed ITC thereon. In terms of Sec 7(1)(c) of CGST Act read with Entry No. 1 of Schedule I of CGST Act, such transfer of business asset would amount to 'supply'.

**Author's Note:**

1. Such gift to self (transfer without consideration) = Supply = GST payable

2. **Computation of GST liability**

- **Rate:** As notified by GST Council
- **Value:** Sec 15(4) read with Rule 30 of CGST Rules, 2017 = 110% of Cost of Acquisition/ Purchase of **such goods\*** (by the trader)

3. In this case, ABC Academy has transferred/donated his ITC availed laptop (business asset) to a trust. Since the goods transferred (laptop) is his business asset, he must have availed ITC thereon. In terms of Sec 7(1)(c) of CGST Act read with Entry No. 1 of Schedule I of CGST Act, such transfer of business asset would amount to 'supply'.

**Author's Note:**

1. Such gift to trust (transfer without consideration) = Supply = GST payable

2. **Computation of GST liability**

- **Rate:** As notified by GST Council
- **Value:** Sec 15(4) read with Rule 31 of CGST Rules, 2017 = (best judgment valuation)

**Rule 30 of CGST Rules, 2017**– inapplicability for valuation of second hand goods

- Rule 30 provides for valuation @110% of cost of acquisition of such goods
- Laptop (capital goods) supplied are in second hand condition. Those were purchased first hand and thus, supplying entity does not have any cost of acquisition of such goods.
- Thus, rule 30 is not applicable.
- Valuation shall be in terms of Rule 31, i.e. best judged value shall be determined (depreciated value shall ideally be taken as 'best judged value').

Also to be noted that, such transaction of supply of CG is also covered by [Sec 18\(6\) of CGST Act. \(which provides for payment of amount = Reduced ITC \(pro-rata ITC taking useful life of CG as 60 months\)](#)

In personal opinion of Author, Sec 18(6) shall be used to determine liability arising on account of supply of used CG (reason being that Section 18(6) is specific provision and also because, it obviates the necessity of making best judgment)

**14. Examine whether the following activities would amount to supply under section 7 of the CGST 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.**

**(ICAI Study Material)**

**Ans.** Damodar Charitable Trust is providing eye treatment services free of cost to the needy people (unrelated persons). Its activity does not fall within the scope of supply (as supply made for without consideration\* and not getting covered by Sec 7(1)(c) read with Schedule I of CGST Act).

**In view of above,** it is not GST registered entity\*. Being an unregistered entity, it must not have availed any ITC of the tax paid clothes and toys purchased by it. Thus, free supply of such goods is not getting covered by Sec 7(1)(c) read with Schedule I of CGST Act. Thus, even such supply will not attract any GST in hands of Damodar Charitable trust.

**Author's Note:**

\*1. It has been presumed that Damodar Charitable Trust is not engaged in carrying out any other activity.

**15. Rohan, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of West Bengal in respect of his newly opened branch office. Whether head office or branch will be treated as deemed distinct person?**

**(ICAI Study Material)**

**Ans.** As per section 25(5) of CGST Act, 2017, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act. Thus, Rohan shall be treated as distinct persons in respect of registrations in West Bengal and Delhi.

**Author's Note:**

1. **Distinct persons:** Transactions between these deemed distinct persons qualify as 'supply' even if no consideration exchanged. Thus, if HO sends some printing material or stationary to the branch office, then such transaction will qualify as supply and Head office shall be liable to pay GST on such supply.
2. **Requirement of GST Audit for an entity:** GST Audit is mandatory for entity having ATO (aggregate turnover) in excess of Rs 2 crores. ATO is determined on aggregate basis (i.e., by clubbing TO of all units registered with same PAN).

**16. Examine whether the following activities would amount to supply under section 7 of the CGST Act:**

**(a) 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.**

**(b) P (the principal) has transferred some goods to the premise of A (Agent) to sell goods on behalf of him.**

**Ans.**

- (a) Schedule I of CGST Act, inter alia, stipulates that supply of goods or services or both between related persons or between distinct persons as specified in section 25, is supply even without consideration provided it is made in the course or furtherance of business. Further, where a person who has obtained or is required to obtain registration in a State in respect of an establishment, has an establishment in another State, then such establishments shall be treated as establishments of distinct persons [Section 25 of the CGST Act]. In view of the same, factory and depot of Sulekha





Manufacturers are establishments of two distinct persons. Therefore, supply of goods from Delhi factory of Sulekha Manufacturers to Mumbai Depot without consideration, but in course/furtherance of business, is supply under section 7 of the CGST Act.

- (b) Schedule I (entry 3) of CGST Act, inter alia, stipulates that supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal.

In the given goods have been transferred to A for selling it on behalf of P and thus would be treated as supply under section 7 of CGST Act.

**Author's Note:**

1. Agent in such case is liable for '**compulsory registration u/Sec 24 of CGST Act** (as he being a person making supply on behalf of another person).' Thus, no benefit of threshold is available to him.
2. Though agent is registered independently, but so far as liability to pay GST is concerned, **Section 86 of CGST Act** provides that both principal and agent shall be jointly and severally liable to pay GST payable on supply effected by agent on behalf of principal.

**17. Whether gifts given by employer to employee will also qualify as supply?**

(IDTC FAQ)

**Ans.** Sec 7(1)(c) of CGST Act defines scope of supply to include transactions specified in Schedule I of CGST Act which are made without consideration. One type of such transaction is supply of goods or services or both between related persons.

Explanation to Section 15 of CGST Act defines 'related person'. The said definition covers employer and employee as related persons. **Thus**, gift by an employer to employee will be a supply and will attract levy of GST.

However, any gifts for a value not exceeding Rs. 50,000 in a financial year will not qualify as supply and as such will not be liable to tax.

**Author's Note:**

1. **Gifts of value exceeding Rs 50,000** in a FY (say, gifts of Rs 60,000): Full value is taxable (i.e., Rs 60,000 is subject to GST)

**18. Sundar is HRD head of Infosys. For the year ending March 31, 2018, CTC of Sundar (as per employment agreement) is as follows —**

	Rs.
Salary (Rs. 2,00,000 per month)	24,00,000
Residential accommodation (cost to company : Rs. 6,00,000)	6,00,000
Conveyance facility (reimbursement up to Rs. 25,000 per month)	3,00,000
Cost to company (CTC)	33,00,000

On January 1, 2018, Infosys gifts a new car to Sundar (price tag : Rs. 12,65,000 before GST). Gift of car is not covered by CTC as well employment agreement.

Sundar owns a commercial flat. It is given on rent to Infosys (monthly rent being Rs. 3,00,000).

Discuss whether GST is applicable. Determine the amount of GST liability for the month of January 2018 (assume that GST rate is 28 per cent for car and 18 per cent for others) —

1. Rent received on account of renting of commercial flat by Sundar to Infosys
2. Salary received
3. Residential accommodation, conveyance facility provided by Infosys to Sundar
4. Gift of car by Infosys to Sundar

**Ans. Taxability in hands of Sundar**

- **Taxability of Salary received:** Supply of employment services by Sundar to Infosys is out of scope of supply (Sec 7(2) of CGST Act read with Schedule III of CGST Act). Thus, it will not attract any GST liability.
- **Taxability of rent received:** Transaction of renting services by Sundar to Infosys falls within the scope of supply, renting being a commercial activity undertaken by Sundar (Sec 7(1)(a) of CGST Act). Thus, it will attract any GST liability.





GST@18% is payable.

**\* Presumed that Sundar is not opting for benefit of threshold benefit as available u/Sec 22 of CGST Act.**

### **Taxability in hands of Infosys**

- **Taxability of supply of residential accommodation:** Provisioning of residential accommodation to employee as a part of employment contract shall not be treated as 'gift' by employer to employee. Rather it is payment of remuneration for employment services provided by Sundar. Thus, it will not attract any GST liability.
- **Taxability of supply of conveyance facility:** Provisioning of conveyance facility to employee as a part of employment contract shall not be treated as 'gift' by employer to employee. Rather it is payment of remuneration for employment services provided by Sundar. Thus, it will not attract any GST liability.
- **Taxability of gift of car:** Gift of car is not covered by employment contract. Though Infosys has not charged anything from Sundar, but still transaction will fall within the scope of supply as it being related party transaction (Sec 7(1)(c) read with Schedule I (Entry No. 2)). Further, the value of car being in excess of Rs 50,000, such gift will attract GST @28% on full value of car (GST Cess payable additionally)

## **Sec 7(1)(d): Supply of Goods vs Supply of Services**

**19. Is it required to distinguish whether a particular supply involves supply of goods or services or both? How to distinguish whether a particular supply involves supply of goods or services or both?**

**(IDTC FAQ)**

**Ans.** Yes, it is required to distinguish whether a particular supply involves supply of goods or services or both

The CGST Act, 2017 specifies certain provisions separately for supply of goods and supply of services viz., Section 12 and Section 13 provides for ascertaining time of supply of goods and time of supply of services respectively; similarly separate provisions have been specified for ascertaining place of supply of goods and place of supply of services. Further, the rate of tax applicable to supply of goods and supply of services may be different. Accordingly, it is important to distinguish whether a particular transaction involves supply of goods or supply of services.

Supply of goods and supply of service are distinguished by following ways under GST law:

- **Reference to Schedule II:** The Schedule II appended to CGST Act, 2017 enlists the activities which are to be treated as supply of goods or supply of services. One may refer Schedule II with reference to Section 7 to classify whether the transaction involves supply of goods or supply of services.

\*\*\*

- **Reference to Sec 8 in case of composite and mixed supplies (not covered by Schedule II):** In case composite supply, it shall be treated as principal supply of goods or service. While in case of mixed supply, it shall be treated as that particular supply of goods or service which attracts highest rate of tax.

### **Author's Note:**

1. Sec 7(3) of CGST Act also empowers Government to specify, by notification, any transaction that has to be treated as supply of goods (and not supply of service) or supply of service (and not supply of goods)
  - Presently, no such notification has been issued.

**20. Who can notify a transaction to be supply of goods or services?**

**(CBEC FAQ)**

**Ans.** Government (CG or SG), on the recommendations of the GST Council, can notify an activity to be the supply of goods and not supply of services or supply of services and not supply of goods or neither a supply of goods nor a supply of services.

### **Note:**

1. Presently, no such notification has been issued.

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

**(Press release)**

**Ans.** Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a future date. This is



provided in schedule II of CGST Act.

**Author's Note:**

1. Sale/purchase of goods (cash / credit sale) = Supply of goods
2. Financial leasing of goods (lease rentals fixed and payable in installment) = Supply of goods
3. Hire sale/purchase of goods (delivery now, hire charges payment with option to buy at later date) = Supply of goods

**22. Whether transfer of right to use goods will be treated as supply of goods or supply of service? Why?**

(Press release)

**Ans.** Transfer of right to use goods shall be treated as supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule-II of CGST Act.

**23. Is the transfer of title and/or possession necessary for a transaction to constitute supply of goods?**

(ICAI Study Material)

**Ans.** Title as well as possession both must be transferred in a transaction to be considered a supply of goods.

**If the title is not transferred**, the transaction will be treated as a supply of services as per Schedule II (1) (b).

**If possession is transferred immediately but the title is to be transferred at a future date**, as in the case of a hire-purchase arrangement, it would be a supply of goods.

**24. State whether the following supplies would be treated as supply of goods or supply of services as per Schedule II of the CGST Act:**

- (a) Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.
- (b) Transfer of right in goods without transfer of title in goods
- (b) Renting of immovable property
- (b) Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business, whether or not for consideration.

(ICAI Study Material)

**Ans.** Section 7(1)(d) of CGST Act read with Schedule II specifies which item will be considered as goods and which item will be considered as service.

Accordingly the answer to the above situations are:

- (a) Supply of goods
- (b) Supply of services
- (c) Supply of services
- (d) Supply of goods

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**25. State whether the following supplies would be treated as supply of goods or supply of services as per Schedule II of the CGST Act:**

- (a) Leasing of land
- (b) Repairing of goods belonging to other person
- (c) Motor cab of business brought to personal use
- (d) Construction of civil structure
- (e) Renovation of building (on labour-cum material basis)
- (f) Supply of burger by Mc Donalds.
- (g) Supply of goods by any unincorporated association or body of persons to a member thereof
- (h) Tolerate an act

**Ans.** Section 7(1)(d) of CGST Act read with Schedule II specifies which item will be considered as goods and which item will be considered as service.

- (a) Supply of service
- (b) Supply of service
- (c) Supply of service
- (d) Supply of service
- (e) Renovation of building falls under the definition of works contract (Section 2(119) of CGST Act) and thus it is a supply of



service

- (f) Supply of service
- (g) Supply of goods
- (h) Supply of service

**26. Whether Works contracts and Catering services will be treated as supply of goods or supply of services? Why?**

(Press release)

**Ans.** Works contracts and catering services shall be treated as supply of services as both are specified under Para 6 of Schedule-II of the CGST Act.

**Author's Note:**

1. Works Contract = Works contract relating to immovable property – Sec 2(119) of CGST Act

**27. Whether software is regarded as goods or services in GST?**

(Press release)

**Ans.** In terms of Schedule II of the CGST Act 2017 (para 5), development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software and temporary transfer or permitting the use or enjoyment of any intellectual property right are treated as services.

But, if a pre-developed or pre-designed software is supplied in any medium/storage (commonly bought off-the-shelf), the same is treated as a supply of goods classifiable under heading 8523.

**28. What are the implications of recognizing the development, design, programming, customisation, adaptation, upgradation, enhancement, and implementation of information technology software as a service?**

(Press release)

**Ans.** The primary implication is that **the place of supply rules applicable to services would apply** in determining taxability of the supply of software services. The same would be applicable in situations of supply of services involving a temporary transfer or permitting the use or enjoyment of any intellectual property right. The other implication is that **the supplier of software services would not be eligible for the composition scheme.**

**29. Discuss whether GST is applicable in the following transactions —**

1. X owns a house in a residential colony. It is given on rent to A Ltd. for Rs. 4,00,000 per month. As per the written agreement, A Ltd. can use the property for commercial purposes.
2. Ram gives his vacant plot of land situated in a residential colony in Delhi to New Car Ltd. New Car Ltd. is a car distributor and plot of land is used by it for parking unsold cars.
3. Satya owns an agricultural land. It is given rent to Rishab uses the land for agricultural activities..
4. Sunshine Hotels owns a hotel in Chennai. Hotel has 200 rooms (club category rooms and suit category room). Declared tariff (published rate) of club category room is Rs. 2,500 per day. Actual rate charged is generally lower depending upon demand and supply. Club category rooms are given to B. Tariff charged after discount is Rs. 900 per unit per day.

**Ans.**

1. **Renting of immovable property constitutes 'supply of service'.** It attracts levy of GST. Though, renting of residential dwelling units for use as residence is exempt, that **exemption is not applicable to case in hand**. Renting of house (residential dwelling) for commercial purposes is not exempt and is chargeable to GST.
2. **Renting of immovable property constitutes 'supply of service'.** It attracts levy of GST. Though, renting of residential dwelling units for use as residence is exempt, that **exemption is not applicable to case in hand**. Renting of vacant residential plot (not residential dwelling) for use as car parking (not for use as residence) is not exempt and is chargeable to GST.
3. **Renting of immovable property constitutes 'supply of service'.** It attracts levy of GST. However, renting of agriculture land for agricultural activities has been exempted from GST.
4. **Renting of immovable property constitutes 'supply of service'.** It attracts levy of GST. Renting of hotel room is exempt if declared tariff per unit of accommodation is less than Rs 1,000/- per day. In this case, declared tariff of club



category room is Rs. 2,500 per day and therefore, **exemption is not applicable to case in hand**. Consequently, GST is applicable (even if actual tariff charged by the hotel is only Rs. 900 per unit per day).

**30. Anil (GST registered trader) is in the business of selling electronic goods. He closes down his business on March 31, 2018. Value of unsold stock of electronic goods on that date is Rs. 18 lakh. Discuss the applicability of GST on this unsold stock.**

**Ans.**

**In terms of Schedule II of CGST Act (para 4(c)),** a person ceasing to be a taxable person (i.e., getting de-registered) is deemed to have made supply of goods lying with him as closing stock.

Anil is registered under GST. He closes his business on March 31, 2018. At the time of transfer, he has closing stock Rs. 18 lakh. Anil shall be deemed to have supplied such unsold stock immediately before he ceases to be a taxable person.

**Author's Note:**

1. Person ceasing to be taxable person: applying for de-registration
  - o **Registration is cancelled** subject to condition of payment by the applicant as per Sec 29(5) of CGST Act.

**Such unsold stock = Deemed Supply**

- Under GST law, payment obligation shall be determined as per **Sec 29(5) of CGST Act**.
- It provides for payment of higher of following:
  - o Output tax payable on such goods\*;
  - o ITC availed (on inputs)

**How to determine 'output tax payable on such goods'?**

Computation of Output tax

- **Rate:** As notified by GST Council
- **Value:** **Sec 15(4) read with Rule 30 of CGST Rules, 2017** = 110% of Cost of Acquisition/ Purchase of **such goods\*** (by the trader)

**Sec 7(2): Transactions out of scope of supply**

**31. What is outside the scope of the term supply as defined in CGST Act, 2017?**

(IDTC FAQ)

**Ans.** Section 7(2) of CGST Act, 2017 provides exclusion of following from the scope of supply:

- 1) The activities specified under Schedule III of CGST Act;
- 2) Any activity undertaken by the Central Govt. or a State Govt. or any local authority in which they are engaged as public authority and which have been notified by Government (on recommendation of council). Presently, any activity in relation to function entrusted to a Panchayat under Constitution of India has been notified and thus, such activity is excluded from scope of supply.

**32. List out the transactions which are neither treated as supply of goods nor supply of services.**

**Ans.** There transactions are generally referred as negative list in GST which are provided in Schedule III of CGST ACT:

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
- (b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (c) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased\*.



5. [Sale of land](#) and, [subject to clause \(b\) of paragraph 5 of Schedule II, sale of building](#).
6. [Actionable claims, other than lottery, betting and gambling](#).

**Author's Note:**

1. **Living person:** **Medical Treatment (including transportation to/from hospital)** = Health care service – GST leviable, but exempt
2. **Deceased person:** **Post-mortem services** (examination of dead body to determine cause of death) = Not covered by Schedule III – GST leviable (no exemption)

**33. During Jan, 2018, M Ltd. (an entity authorized by the Punjab Government to issue Punjab Government lottery tickets) issues following lottery tickets to the distributors —**

1. **Maha lottery** (Face value : Rs. 500, price as notified in the Official Gazette : Rs. 490).
2. **Jackpot** (Face value : Rs. 1,000, price as notified in the Official Gazette : Rs. 940).

**Maha lottery can be sold only in Punjab. Jackpot can be sold even in other States.**

**On December 5, 2017, M Ltd. sells 2,000 Maha lottery to A Ltd. of Punjab and 1,800 Jackpot to B Ltd. Of Tamil Nadu. Determine the amount of GST in this transaction.**

**Ans.** Maha lottery cannot be sold outside Punjab. Applicable GST rate is 12%.

Jackpot can be sold even outside Punjab. Applicable GST rate in the case of Jackpot is 28%.

GST liability will be calculated as follows —

Recipient of supply	Nature of supply	Taxable Value (Rs.)	IGST @28% (Rs.)	CGST @6% (Rs.)	SGST @6% (Rs.)
A Ltd.	Intra-State supply	8,92,857 [(Rs. 500 × 2,000) × 100 ÷ 112]	—	53,571	53,571
B Ltd.	Inter-State supply	14,06,250 [(Rs. 1,000 × 1,800) × 100 ÷ 128]	3,93,750	—	—

**34. Buildwell Ltd., a real estate developer company, is registered in Mumbai. The following data is noted from the records of the company pertaining to sale of properties by it during January 2018 —**

Date	Purchaser	Location of unit	Agreed consideration (before GST) in Rs.			Expected completion date
			For super-structure	Undivided share of land	Total	
January 4, 2018	A Ltd.	Bengaluru	3.8 crore	0.4 crore	4.2 crore	March 2019
January 4, 2018	B	Jaipur	2 crore	1.6 crore	3.6 crore	June 2019
January 20, 2018	C Ltd.	Patna	Separate figure not available		3 crore	July 2019
January 25, 2018	E Ltd.	Mumbai	Separate figure not available		6 crore	December 2019

Applicable GST rate in these cases is 18 per cent.

In all cases, 50 per cent of the agreed consideration (+ GST) is received at the time of signing the agreement during January 2018.

Calculate the GST liability of Buildwell Ltd. for January 2018.

Assume that aforesaid agreements involve transfer of super-structure as well as undivided share of land.

**GST law provides for following:** In case of construction of a complex (involving transfer of property in land or undivided share of land), value of taxable supply for the purpose of GST will be equal to total amount charged for such supply minus value of land (or undivided share of land). For this purpose, the value of land (or undivided share of land) shall always be deemed to be 1/3<sup>rd</sup> of total amount charged.

**Ans.** All the above transactions involve construction of building for which 50% consideration has been received before grant of completion certificate by the competent authority (or before its first occupation). All these transactions will constitute supply





of service and shall attract charge of GST.

From the given facts and details, GST liability will be calculated as follows —

Recipient of supply	Nature of supply	Taxable value pertaining to advance received during January 2018			IGST @18%	CGST @9%	SGST @9%
		Advance received	Less : 1/3 <sup>rd</sup> (i.e., undivided share of land)	Taxable value			
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
A Ltd.	Inter-State	2.1 cr	0.7 cr	1.4 cr	25,20,000	—	—
B	Inter-State	1.8 cr	0.6 cr	1.2 cr	21,60,000	—	—
C Ltd.	Inter-State	1.5 cr	0.5 cr	1 cr	18,00,000	—	—
E Ltd.	Intra-State	3 cr	1 cr	2 cr	—	18,00,000	18,00,000
Total					64,80,000	18,00,000	18,00,000

## Miscellaneous

### Sales return is not supply

**35. Whether sales return by dealer to the manufacturer are treated as supply and liable to GST?**

(CBEC FAQ)

**Ans.** No, sales return shall not constitute supply under GST law. Sales return does not create an independent supply, rather it negates earlier supply transaction.

For sales return, supplier shall issue **credit note** to the recipient in terms of provisions of **Sec 34 of CGST Act, 2017**. Supplier shall be eligible to reduce his GST liability for the tax period in which he issues credit note. Such reduction shall be subject to reversals of credit by the recipient (dealer in our case)

#### Author's Note:

#### Treatment of Sales return under GST

##### (1) Issuance of Credit note: Section 34 of CGST Act, 2017.

- ❖ Where the goods supplied are returned by the recipient, the registered person (supplier of goods) may issue to the recipient a credit note containing the prescribed particulars. The details of the credit note shall be declared by the supplier in the return for the month during which such credit note was issued but not later than September following the end of the year in which such supply was made or the date of filing of the relevant annual return, whichever is earlier.

##### (2) Matching of claim in credit note with corresponding reversals of ITC by recipient: Section 43 of CGST Act, 2017.

- ❖ The details of the credit note shall be matched with the corresponding reduction in claim for input tax credit by the recipient in his valid return for the same tax period or any subsequent tax period and the claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in claim for ITC by the recipient shall be finally accepted and communicated to both parties.

### Goods sent on approval: taxability deferred till approval or 6 months of removal (whichever is earlier)

**36. Whether goods sent on approval by the manufacturer / trader are treated as supply and liable to GST?**

(CBEC FAQ)

**Ans.** Goods sent on approval are not treated as supply at the time of dispatch of goods by the supplier. However, in terms of **Sec 31(7) of CGST Act, 2017** such dispatch is treated as 'supply' at the earliest of following two:

- Acceptance of goods (i.e., approving goods) leading to materialization of sale;
- 6 months from date of removal of goods



**Author's Note:**

1. **Sending goods for approval:**- Goods shall be send under cover of delivery challan (as invoicing is to be raised at later stage)

**Removal of jewellery by a Jeweller for showing it to prospective customers for his approval**

(CBEC Clarification)

- ⇒ **Removal may be under delivery challan, invoicing not required**
- ⇒ **GST is not payable at time of removal of goods**

*Goods sent for job-work: if goods are not brought back within specified time, it will become DEEMED SUPPLY*

**37. Whether goods sent by a taxable person to a job worker will be treated as supply and liable to GST? Why?**

(CBEC FAQ)

**Ans.** Sec 143 of CGST Act, 2017 provides that the registered taxable person (the principal), under intimation and subject to such conditions as may be prescribed send any inputs and/or capital goods, without payment of tax, to a job worker for job work and from there subsequently to another job worker(s) and shall either bring back such inputs/capital goods after completion of job work or otherwise within 1 year/3 years of their being sent out or supply such inputs/capital goods after completion of job work or otherwise within 1 year / 3 years of their being sent out, from the place of business of a job worker on payment of tax within India or with or without payment of tax for export.

Where goods are not so received back by the principal or not supplied directly from job-workers premises in the prescribed manner, then it shall be deemed that such inputs / capital goods had been supplied by the principal to the job-worker on the day the said inputs or capital goods were sent out.

**Author's Note:**

1. **Sending goods for job-work:**- Goods shall be send under cover of delivery challan.
2. If goods are not received back or cleared in prescribed manner within the stipulated period: Such removal is deemed as supply from the date of initial removal – thus, GST becomes payable with interest@18% p.a.
  - ⇒ Tax invoice shall be raised for such supply now.
  - ⇒ Such supply shall now be reported in GSTR-1 (Statement of Outward Supplies)

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## Sec 8: Treatment of COMPOSITE SUPPLY & MIXED SUPPLY

### 38. What is composite supply? Illustrate with an example.

(IDTC FAQ)

**Ans.** In terms of **Section 2(30) of CGST Act, 2017** composite supply means supply consisting of **two or more taxable supplies\*** of goods or services or both, or any combination thereof, which are **naturally bundled** and **supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.**

The example of composite supply is:

Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

#### Author's Note:

1. **Composite Supply = two or more taxable supplies**

2. **Combination of (taxable supply + non-taxable supply)** (e.g., supply of chilly paneer with Beer/Wine) = Not composite supply
- o Supplier is advised to show the charges of each of supply separately so that these cannot be even treated as 'mixed supply'.
  - o Both the supplies shall be treated independently. Non-taxable supply shall not attract GST.

### 39. How would the tax liability be determined in case of Composite supply?

(IDTC FAQ)

**Ans.** In terms of Section 8 of the CGST Act, 2017 tax liability in case of composite supply should be determined with reference to the principal supply forming part of such composite supply.

#### Author's Note:

1. Supply of (Online coaching and books) = Supply of coaching services (principal supply being supply of service)

### 40. How do we determine whether services are bundled in the ordinary course of business?

**Ans.** Whether services are bundled in the ordinary course of business, it would depend on normal practices followed in the area of business. Such practices can be ascertained from some of the following indicator:

- 1) The perception of the consumer or the service receiver of reasonably expecting that such service will be provided as a package.
- 2) Majority of service providers in a particular area of business provide similar bundle of services.
- 3) The nature of various services in the bundle of service where one is main service and other are incidental service.
- 4) There is single price of the package.
- 5) The elements are normally advertised as package.

### 41. What is Mixed Supply? Illustrate with an example.

(IDTC FAQ)

**Ans.** In terms of **Section 2(74) of CGST Act**, mixed supply means **two or more individual supplies** of goods or services or any combination thereof, **made in conjunction with each other** by a taxable person **for a single price** where such supply does not constitute a composite supply.

**The example of mixed supply is:**

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

#### Author's Note:

1. Supply of (laptop with printer) for single price = Mixed supply

### 42. How would the tax liability be determined in case of Mixed supply?

(IDTC FAQ)



**Ans.** In terms of Section 8, the tax liability in case of a mixed supply shall be ascertained with reference to that particular supply which attracts highest rate of tax.

☛ **Certain clarifications on composite and mixed supply given by CBEC**

The printing industry in India in particular faces a dilemma in determining

- ⇒ whether the nature of supply provided is that of goods or services and
- ⇒ whether in case certain contracts involve both supply of goods and services, whether the same would constitute a supply of goods or services or
- ⇒ if it would be a composite supply and in case it is, then what would constitute the principal supply.

It is to be noted that in case of composite supplies, taxability is determined by the principal supply.

To address concerns of the printing industry, CBEC has come out with [Circular no.11/11/2017-GST](#) dated 20.10.2017, where in it is clarified as under:

"It is clarified that **supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies** and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

❖ In the case of **printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer**, supply of printing [of the content supplied by the recipient of supply] is the **principal supply** and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.

❖ In case of **supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer**, predominant supply is that 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 falling under respective headings of Chapter 48 or 49.

## Miscellaneous

**43. What are the different types of supplies under the GST law?**

(Press release)

**Ans.** (i) Taxable and exempt supplies.  
(ii) Inter-State and Intra-State supplies,  
(iii) Composite and mixed supplies and  
(iv) Zero rated supplies.

**44. Differentiate between 'out of scope supply' and 'non-taxable supply'?**

	Out of Scope Supply / Disregarded Supply	Non-Taxable Supply
<b>Meaning</b>	Transactions not regarded as supply at all (neither supply of goods nor supply of services)	Transactions which don't not attract levy under GST Law. e.g. Supply of Alcoholic Liquor, Supply of 5 specified petro products
<b>Definitions</b>	<b>Not Defined as such</b>	<b>Defined in Section 2(78) of CGST Act</b>
<b>Legal Provisions</b>	Sec 7(2) of CGST Act <ul style="list-style-type: none"> <li>Schedule III activities</li> <li>Notified Activities of CG/SG/ LA</li> </ul>	(definition)
<b>GST Liability</b>	<b>No GST Levy attracted</b>	<b>No GST Levy attracted</b>



ITC Admissibility	No	No
Computation of		
ATO [Sec 2(6)]	No	Yes
TO in a state/UT [Sec 2(112)]	No	Yes

45. Differentiate between 'taxable supply' and 'non-taxable supply'?

	Taxable Supply	Non-Taxable Supply						
Meaning	Transactions which attract levy under GST law (whether under CGST law or IGST law) e.g., Supply of Tobacco Products – GST@28% Supply of Salt – GST@Nil	Transactions which don't not attract levy under GST Law. e.g. Supply of Alcoholic Liquor, Supply of 5 specified petro products						
Definitions	Section 2(108) of CGST Act	Defined in Section 2(78) of CGST Act						
Legal Provisions	(definition)	(definition)						
GST Liability	<b>GST levy attracted</b> <table><tr><td>Nil Rated Supply *</td><td>No GST payable</td></tr><tr><td>Exempted Supply *</td><td>No GST payable</td></tr><tr><td>Other supply *</td><td>GST payable</td></tr></table> <p>* <b>If goods are exported</b>, then no GST payable on outward supply, but ITC admissible on inward supply and refundable also. [Such Supplies = ZERO-RATED SUPPLY]</p>	Nil Rated Supply *	No GST payable	Exempted Supply *	No GST payable	Other supply *	GST payable	<b>No GST Levy attracted</b>
Nil Rated Supply *	No GST payable							
Exempted Supply *	No GST payable							
Other supply *	GST payable							
ITC Admissibility	<b>Yes</b> (if GST is payable on supply + Zero-rated supply)	<b>No</b>						
Delivering success, not lectures								
Computation of								
ATO [Sec 2(6)]	Yes	Yes						
TO in a state/UT [Sec 2(112)]	Yes	Yes						

46. Highlight the differences between 'goods' and 'services' under GST law?

	Goods	Services
<b>Definition</b>	<b>Sec 2(52) of CGST Act</b>	<b>Sec 2(52) of CGST Act</b>
<b>General rule</b>	Goods = Movable Property	Services = Anything other than goods
<b>Nature of supply</b>		
<b>POS determination</b>	Sec 10 and 11 of IGST Act	Sec 12 and 13 of IGST Act
<b>Import transactions</b>	Governed by IGST Act and Customs Act, 1962	Governed by IGST Act only





Threshold	Yes	Yes
Composition	Yes	No (Except: Services of Restaurant and catering)
Reverse charge [Sec 9(3)/ 9(4)]	Yes	Yes
Liability of ECO [Sec 9(5)]	No	Yes ( <u>Presently only on 3 Services</u> : Transportation of passengers + Hotel Services + House-keeping services)
Time of supply		
ToS	Sec 12 of CGST Act, 2017	Sec 13 of CGST Act, 2017
Others		
Sales Return	Yes [Tax invoice followed by Credit Note]	N.A.
Stock-Transfer	Yes [Stock transfer = Deemed Supply (though no consideration)]	N.A.



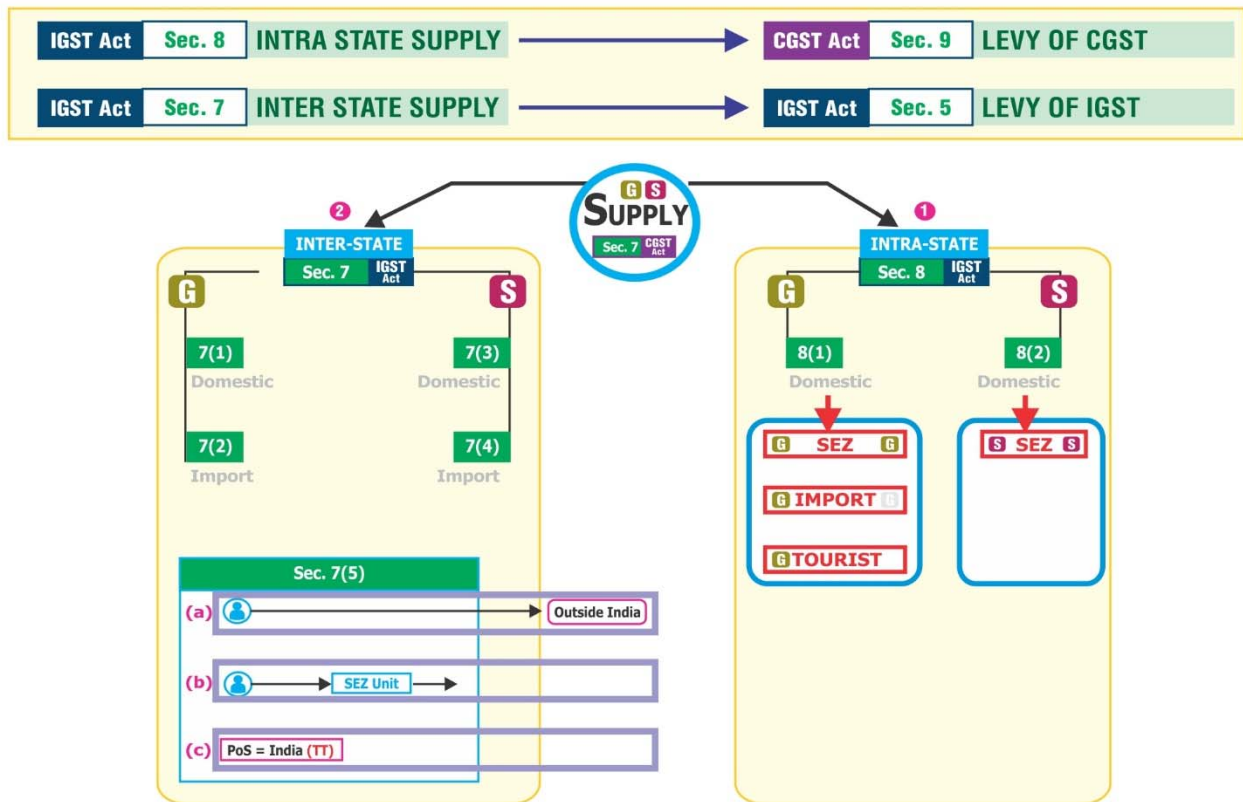
Delivering success, *not lectures*



## CHARGE UNDER GST

Relevant Legal Provisions				
	Section		Rules	
	Section	Subject Matter	Rules	Subject Matter
CGST	Sec. 9	Levy and collection		
IGST	Sec 5	Levy and collection		
UTGST	Sec 7	Levy and collection		
Relevant Definitions				
CGST	2 (6)	Aggregate turnover	2 (78)	Non-taxable supply
	2 (44)	Electronic commerce	2 (98)	Reverse charge
	2 (45)	Electronic commerce operator	2 (105)	Supplier
	2 (47)	Exempt supply	2 (108)	Taxable supply
	2 (56)	India	2 (112)	"Turnover in State" or "turnover in Union territory"
	(Definitions elsewhere)			
IGST	2 (4)	Customs frontiers of India	2 (10)	Import of goods
	2 (5)	Export of goods		
	2 (6)	Export of services		

Delivering success, not lectures



# CA-INTER TAXATION



PROF. DIPPAK



CA SUNETA



(Main Material)



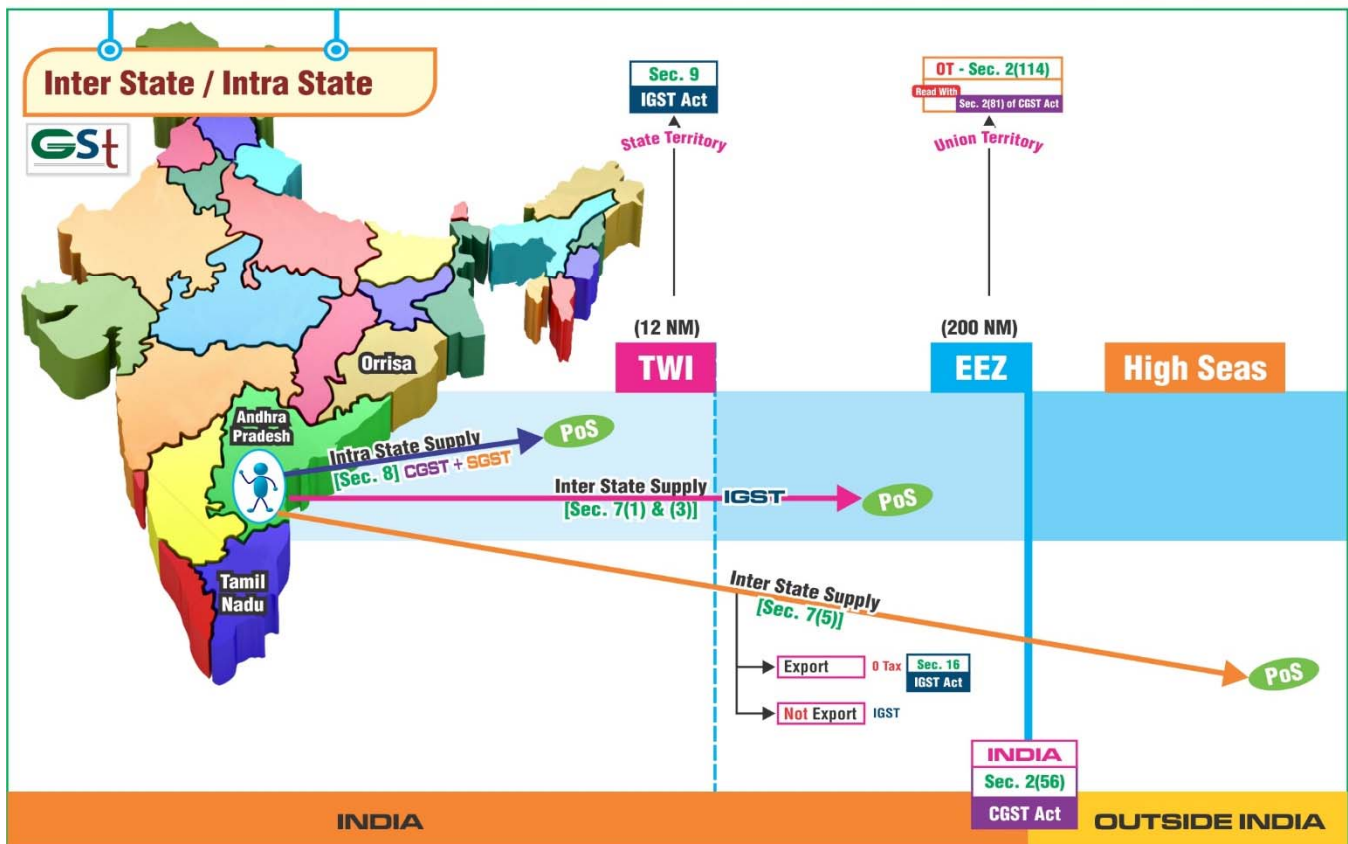
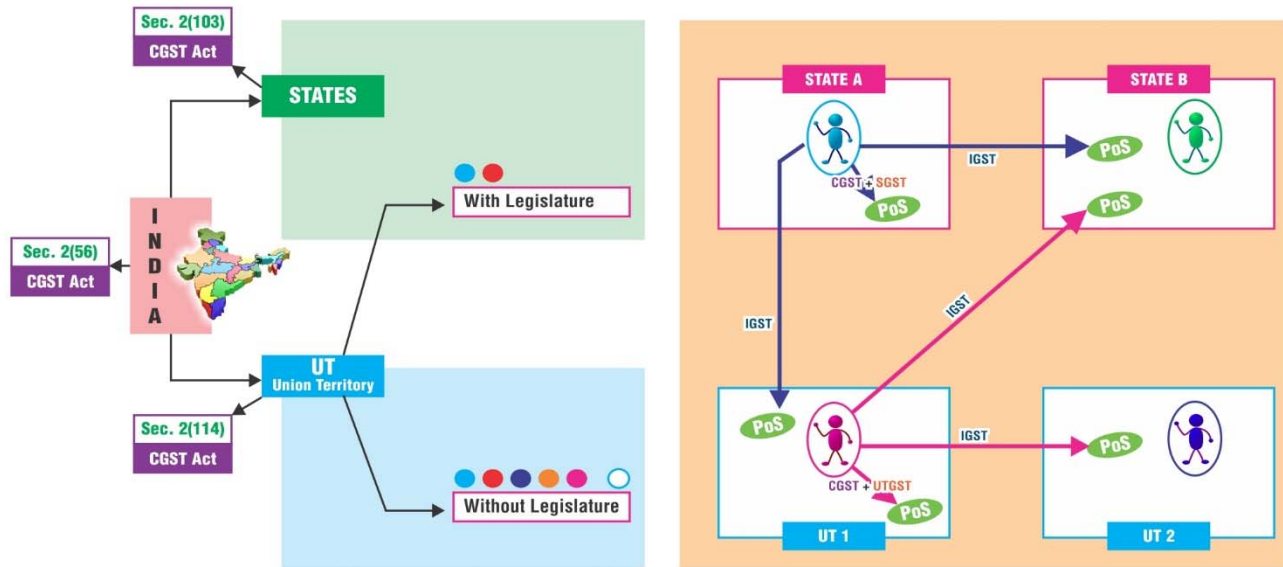
(Question Bank)

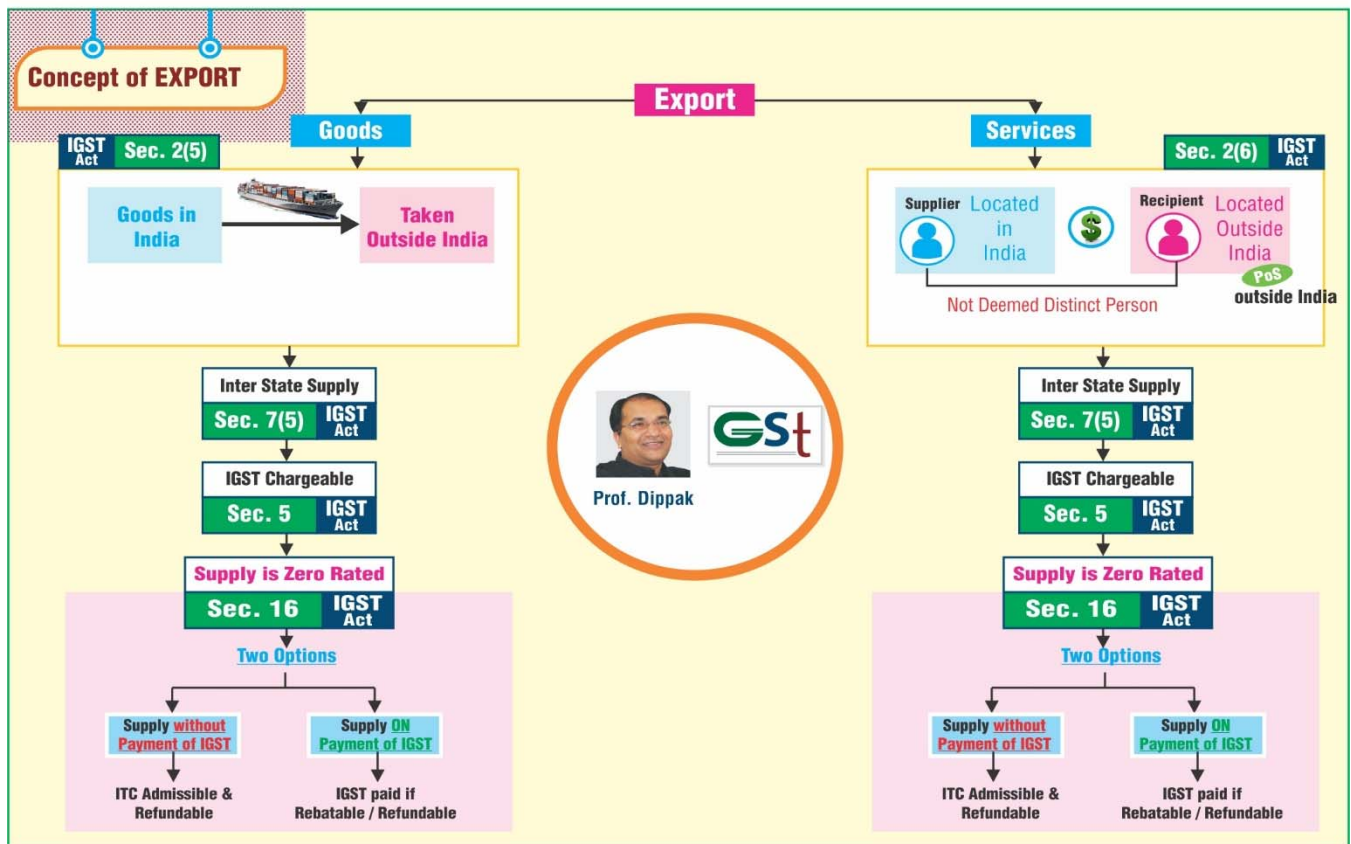
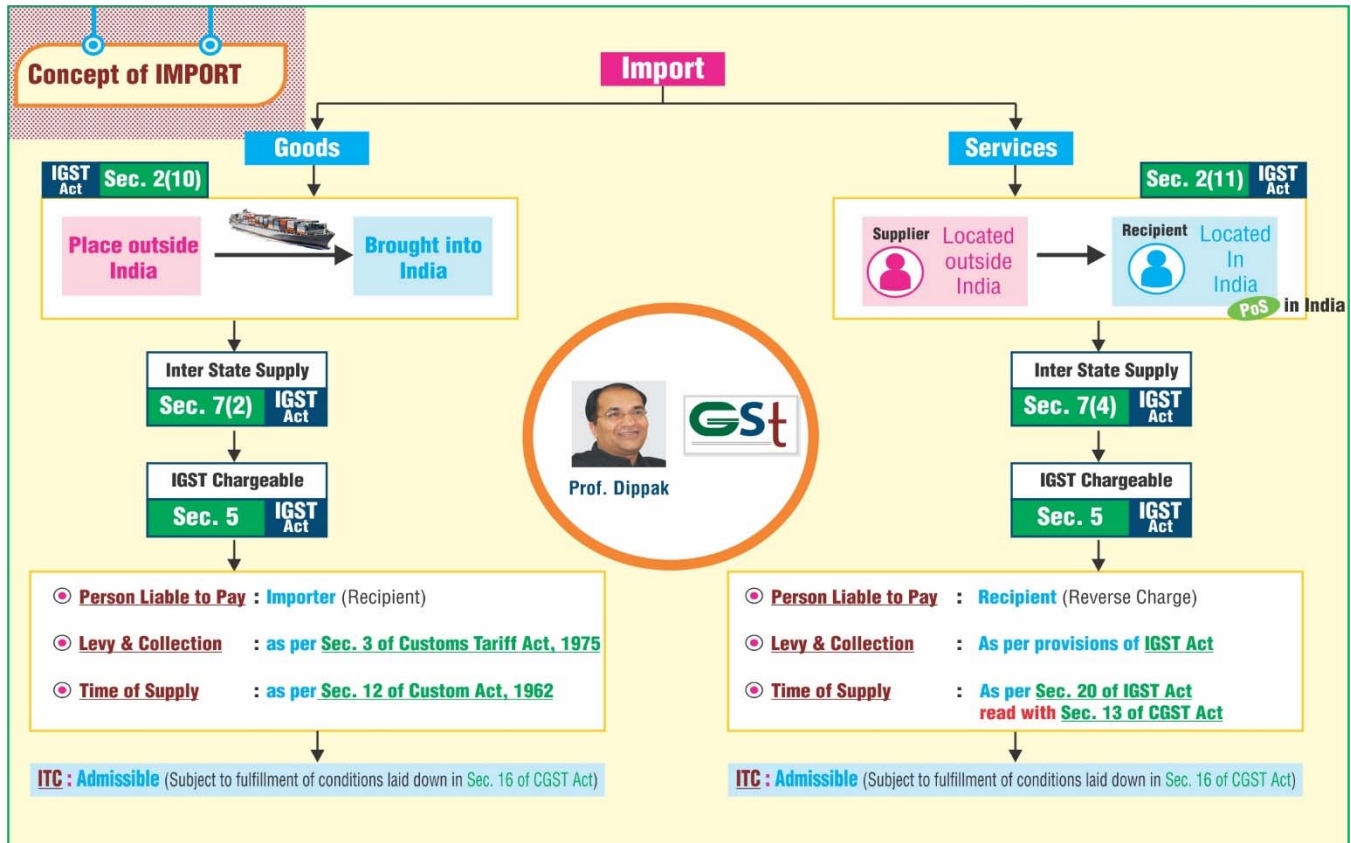


(Question Bank)



(Main Material)









## Power to levy GST

### 1. Where is the power to levy GST derived from?

(CBEC FAQ)

**Ans. Article 246A of the Constitution**, which was introduced by the Constitution (101st Amendment) Act, 2016 confers concurrent powers to both, Parliament and State Legislatures to make laws with respect to GST i. e. central tax (CGST) and state tax (SGST) or union territory tax (UTGST).

However, Article 246A (2) read with Article 269A provides exclusive power to the Parliament to legislate with respect to inter-State trade or commerce i.e. integrated tax (IGST).

#### Note:

1. Intra-state supply = Supply as defined in Sec 8 of IGST Act
2. Inter-State supply = Supply as defined in Se 7 of IGST Act

#### Illustrations

Location of supplier	Place of supply	Applicable tax if GST is levied @18%	
		Intra-State supply	Inter-State supply
Maharashtra	Maharashtra	CGST : 9%, SGST : 9%	—
Maharashtra	Karnataka	—	IGST @ 18%
Maharashtra	Andaman	—	IGST @ 18%
Andaman	Maharashtra	—	IGST @ 18%
Andaman	Andaman	CGST : 9%, UTGST : 9%	—
Andaman	Chandigarh	—	IGST @ 18%
Andaman	Delhi	—	IGST @ 18%
Delhi	Chandigarh	—	IGST @ 18%
Delhi	Noida (UP)	—	IGST @ 18%
SEZ in Andhra Pradesh	Non-SEZ in Andhra Pradesh	—	IGST @ 18%

#### ❖ Supply in nature of import/ export

	Supply of goods	Supply of Services
<b>Import transaction</b>	<b>Inter-state Supply</b> [Sec 7(2) of IGST Act] <ul style="list-style-type: none"> <li>• IGST levied and collected as per provisions of CTA, 1975</li> <li>• Value computed as per Sec 3 of CTA, 1974</li> </ul>	<b>Inter-state Supply</b> [Sec 7(4) of IGST Act] <ul style="list-style-type: none"> <li>• IGST levied and collected as per IGST Act</li> <li>• Value computed as per Sec 20 of IGST Act read with Sec 15 of CGST Act</li> </ul>
<b>Export transaction</b>	<b>Inter-state Supply</b> [Sec 7(5)(a) of IGST Act] <ul style="list-style-type: none"> <li>• IGST leviable</li> <li>• Such supply is zero-rated in terms of Sec 16 of IGST Act.</li> </ul>	<b>Inter-state Supply</b> [Sec 7(5)(a) of IGST Act] <ul style="list-style-type: none"> <li>• IGST leviable</li> <li>• Such supply is zero-rated in terms of Sec 16 of IGST Act.</li> </ul>

#### ❖ Supply in taxable territory which is not in nature of intra-state = Inter-state supply [Sec 7(5)(c) of IGST Act]

## Intra-State Supply / Inter-state supply – tax liability

### 2. What are the taxes that are levied on an intra-State supply?

(IDTC FAQ)

**Ans.** In terms of Section 9 of the CGST Act, 2017 and relevant SGST Act, intra-State supplies are liable to CGST & SGST.

In terms of Section 7 of UTGST Act, 2017, intra-State supplies effected by a taxable person located in Union Territory (within the Union Territory) will be liable to CGST & UTGST.

### 3. What is the rate of tax that is applicable on intra-State supplies?

(IDTC FAQ)



- Ans.** Section 9 of CGST Act/SGST Act specifies that the Central/State Government may specify rate of tax not exceeding 20%. Broadly six rates of **CGST** has been prescribed for goods, viz., 0.125%, 1.5%, 2.5%, 6%, 9% and 14% Broadly four rates of **CGST** has been prescribed for services, viz., 2.5%, 6%, 9% and 14%.

**Note:**

1. Rates of CGST = Rates of SGST = Rates of UTGST
2. Rates of IGST = (Rate of CGST + Rates of SGST/ UTGST)

#### 4. Whether the tax on intra-State supplies is applicable to every supplies?

(IDTC FAQ)

- Ans. No.** Section 9(1) of CGST Act which is the charging provision for levy and collection of tax on intra State supplies **excludes supply of alcoholic liquor for human consumption.**

Further, in terms of Section 9(2), tax on supply of **petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel** is not leviable presently (it shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council).

**Note:**

1. As per Article 366(12-A), GST is tax on supply of goods and/or services excluding supply of alcoholic liquor for human consumption. Thus, GST cannot be made applicable to supply alcoholic liquor for human consumption even in future (unless constitution of India is amended)
2. GST on crude petrol, High Speed Diesel (HSD) etc. will be levied soon in near future.

Presently, supply of above 2 categories of products is outside the purview of GST law and is called **NON-TAXABLE SUPPLY**.

#### 5. Whether CGST & SGST/UTGST is applicable on import of goods or service or both?

(IDTC FAQ)

- Ans.** In terms of Section 7 of the IGST Act, 2017, import of goods or services or both is shall be treated to be a supply in the course of inter-State trade or commerce. Accordingly, tax under the provisions of IGST Act, 2017 (IGST) shall apply on import of goods or services or both.

**Note: Supply in nature of import/ export**

	Supply of goods	Supply of Services
<b>Import transaction</b>	<b>Inter-state Supply</b> [Sec 7(2) of IGST Act] <ul style="list-style-type: none"> <li>• IGST levied and collected as per provisions of CTA, 1975</li> <li>• Value computed as per Sec 3 of CTA, 1974</li> </ul>	<b>Inter-state Supply</b> [Sec 7(4) of IGST Act] <ul style="list-style-type: none"> <li>• IGST levied and collected as per IGST Act</li> <li>• Value computed as per Sec 20 of IGST Act read with Sec 15 of CGST Act</li> </ul>
<b>Export transaction</b>	<b>Inter-state Supply</b> [Sec 7(5)(a) of IGST Act] <ul style="list-style-type: none"> <li>• IGST leviable</li> <li>• Such supply is zero-rated in terms of Sec 16 of IGST Act.</li> </ul>	<b>Inter-state Supply</b> [Sec 7(5)(a) of IGST Act] <ul style="list-style-type: none"> <li>• IGST leviable</li> <li>• Such supply is zero-rated in terms of Sec 16 of IGST Act.</li> </ul>

#### 6. Whether IGST on import of goods would be levied under IGST Act or under Customs Act?

- Ans.** As per Section 7(2) of IGST Act, import of goods is Inter-State Supply. Thus, IGST will be levied on import of goods also. However as per Proviso to section 5:
- IGST on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act
  - Value shall be 'Value determined as per Sec 14 of Customs Act, 1962 + Basic Customs Duty + Other Customs Duties

**Note:**

1. import of goods being in nature of 'inter-state supply', it attracts charge of IGST as per Sec 5 of IGST Act.
2. However, proviso to Sec 5(1) of IGST Act provides that IGST in such case shall be levied and collected as per provisions of CTA, 1975.
  - **Rate of IGST:** as notified by GST council
  - **Value of IGST:** [Value as per Sec 14 of Customs Act + BCD + Other Customs Duties]



- **Time of collection of IGST:** It shall be collected at same point of time at which duties of customs is collected (i.e., if imported goods directly cleared for home consumption, then it shall be payable on the same day on which bill of entry for home consumption is filed – Sec 3(12) of CTA, 1975 read with Sec 47(2) of Customs Act, 1962]

**7. One branch is transferring goods to another branch in different state. Should this be treated as supply without consideration and IGST is leviable?**

**Ans.** As per Explanation I to Sec 8 of IGST Act, establishments in different States/UT are deemed as establishment of different persons.

As per, Sec 7(1)(c) of CGST Act read with Schedule 1 (Entry 2), supply of goods and/or services inter-se is under scope of Supply, even if carried out without consideration.

Thus,

- Transfer of goods by one branch to other branch amounts to supply under GST.
- Branch in one state transferring goods is 'supplier of goods'. The other branch in another state is 'recipient of goods'.
- Location of supplier in one state and place of supply of such goods being in another state, such supply is 'inter-state supply' in terms of Sec 7(1) of IGST Act.
- Supply being in nature of inter-state supply, IGST will be leviable on this transaction.

**Note:**

1. **2 establishments into different states** = Requires separate GST registration under respective states – Sec 25 of IGST Act
2. These are treated as distinct persons, even if defaulted in taking separate registration.

**8. Exploration site is at 150 nautical miles from base line. Some minerals explored (not petroleum etc.) and sent to refinery in Maharashtra, the nearest State. Whether this will attract IGST or CGST and SGST?**

**Ans.** Exploration site is location of supplier. Location of site in 150 NM is beyond territorial waters but still within Indian territory (as for purposes of GST law, definition of India covers area upto exclusive economic zone). Such site shall be treated as located in 'other territory' which is also 'a union territory' as defined under Sec 2(114) of CGST Act.

**Exploration Site is supplying goods to refinery in Maharashtra. Thus, place of supply of goods is falling into Maharashtra State.**

Since location of supplier is union territory and place of supply is Maharashtra, it is inter-state supply in terms of Sec 7(1) of IGST Act. Thus, aforesaid supply shall attract charge of IGST under section 5 of IGST Act.

**Author's Note**

	Discussion	Statutory Provision
•	<b>Coastal State:</b> TWI (territorial waters of India) shall form part of territory of coastal state. Supplier in such area shall be treated as located in such coastal state.	Sec 9 of IGST Act
	However, in ours case, supplier is located beyond TWI, though within EEZ. Since, EEZ also forms part of 'India'. Territory beyond TWI but upto EEZ = Other Territory.	Sec 2(81) of CGST Act
	Thus, <b>location of such supplier = Location in 'Other Territory'</b> = Location in 'Union Territory' (as other territory is included in definition of Union Territory)	Sec 2(114) of CGST Act
•	Location of Supplier: Union Territory <b>Place of Supply:</b> State (coastal state) - Maharashtra <b>Nature of Supply:</b> Inter state Supply	Section 7 of IGST Act
•	IGST is leviable on such supply.	Section 5 of IGST Act

**9. Section 7(2) of IGST Act states that supply of goods imported into India till they reach the customs frontiers is considered as interstate supply.**

- a) Does this imply that high sea sales (HSS) are covered as inter-state supply?
- b) Will GST be applicable on high sea sales then?



**Ans.** Custom Frontier of India means limits of Custom area as per section 2 of Customs Act (basically, customs port, customs airport or land customs station). **Section 7(2) of IGST Act states that supply of goods imported into India till they reach the customs frontiers is considered as interstate supply.** Since high sea sale is done till entering of goods in custom frontiers of India, it will be treated as inter-state supply in terms of section 7(2) of IGST Act.

As per **CIRCULAR NO.33/2017-Customs**, the council has decided that IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

**Note:**

1. High Sea Sales = Inter-state supply as per Sec 7(2) of IGST Act.
2. however, at same point of time, high sea buyer enters into shoes of 'importer' under Customs Act. When such buyer files bill of entry for clearance of home consumption, he becomes liable to pay Customs duties on 'value at which he purchases the goods' (and not on value on which goods were purchased by original importer). Thus, he pays customs duties on total value addition in the chain. Since IGST is also levied and collected at same point of time, he pays IGST leviable on import of goods on total value addition. Considering this, GST Council has decided that IGST shall not be leviable on HSS.

**10. A tourist from USA visits India and purchases a shawl in Delhi. Will this transaction attract IGST?**

**Ans.** Yes, IGST shall be attracted on such supply.

In terms of **proviso to section 8(1)**, supplies made to a tourist\* shall **not be treated as intra-state supply** even when location of the supplier and the place of supply of goods are in the same State or same Union territory.

Also in terms of **sec 7(5)(c) of IGST ACT**, where supply of goods or services or both is in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Thus, In this case, even though the place of supply and location of supplier are in the same State, it will be treated as inter-State transaction and will be liable to IGST.

**Note:**

1. Tourist for purposes of Sec 8 = (a person not normally resident in India), who enters India for a stay of not more than six months for legitimate non-immigrant purposes
2. **IGST paid** on goods so procured by such tourist **can be claimed as refund by Tourist at time of his leaving India. Such refund scheme is referred as 'TRS – Tourist Refund Scheme' and is governed by Sec 15 of IGST Act.** The refund shall be allowed subject to such conditions and safeguards as may be prescribed (presently not prescribed).

**Illustrations**

**As a foreign tourist in India, can I get a refund on services such as accommodation, car hire and entertainment consumed in India?**

**NO**, TRS scheme applies only to goods that are taken out with Tourist when you leave India.

- The TRS does not apply to services (such as car hire, accommodation, tours etc) or goods consumed/partly consumed (such as drinks, chocolates or perfumes).

**Whether IGST refund under TRS can be claimed in respect of goods used in India?**

**Yes**, even if goods (non-consumable) are used into India, IGST refund can be claimed if such used goods are taken out of India by the Tourist.

- However, consumable goods such as drinks, perfumes, chocolates are not eligible for IGST refund if already partly/wholly used or consumed in India.

**Is there a maximum amount of IGST that tourists can claim refund under TRS?**

**NO**, Tourist can claim any amount of IGST refund under TRS.

## Person liable to pay GST – Supplier, Recipient or Third Party (ECO)

**11. Who is responsible to pay taxes?**

(IDTC FAQ)

**Ans.** Generally, the person effecting taxable supplies is liable to pay taxes.



However, following are certain exceptions:

- (a) **Reverse charge:** In respect of **notified categories of supply of goods or services**, the tax on which shall be paid by the recipient under reverse charge (Sec 9(3) of CGST Act and Sec 5(3) of IGST Act) \*; and
- (b) **E-Commerce operator (ECO):** In respect of **notified categories of services** supplied through ECO, ECO shall be liable to pay GST. (Sec 9(5) of CGST Act and Sec 5(5) of IGST Act)

**Note:**

1. Supply of goods and/or services by unregistered supplier to the GST registered recipient:
  - o Recipient was made liable to pay GST (Sec 9(4) of CGST Act and Sec 5(4) of IGST Act)
  - o But, presently, such supply is exempt from payment of GST.
  - o Such exemption is operational till 31<sup>st</sup> March, 2018.

**12. What is meant by reverse charge?**

**Ans.** In terms of Section 2(98), the terms reverse charge is defined to mean **liability to pay tax by the recipient** of supply of goods or services or both instead of the supplier of such goods or services or both.

**13. What are the different types of supplies which are liable to tax under reverse charge mechanism?**

**(Study Material)**

**Ans.** As per Section 9 of the CGST Act, 2017 there are two types of supplies which are liable to tax under reverse charge mechanism which are:-

1. Specified categories of supply of goods or services or both as notified by government on recommendation of the council (Sec 9(3) of CGST Act and Sec 5(3) of IGST Act)
2. Supply of taxable goods or services or both by an unregistered supplier to a registered person (Sec 9(4) of CGST Act and Sec 5(4) of IGST Act)

**Note:**

1. Supply of goods and/or services by unregistered supplier to the GST registered recipient:
  - o Recipient was made liable to pay GST (Sec 9(4) of CGST Act and Sec 5(4) of IGST Act)
  - o But, presently, such supply is exempt from payment of GST.
  - o Such exemption is operational till 31<sup>st</sup> March, 2018.

**14. Is the reverse charge mechanism applicable only to services?**

**(CBEC FAQ)**

**Ans. No**, reverse charge applies to supplies of both goods and services, as notified by the Government on the recommendations of the GST Council. Notification no. 4/2017-CT (Rate) and 13/2017-CT (Rate) have been issued. Similar notifications have been issued under IGST Act also.

Reverse charge also applies to supplies received by a registered person from unregistered persons\*.

**Author's Note**

However, the provision of reverse charge liability on supplies received from unregistered persons, as provided in sections 9 (4) and 5 (4) of the CGST Act and the IGST Act respectively, have been kept in abeyance till 31.03.2018 (since supply in such case has been exempted from payment of GST)

**15. What will be the implications in case of receipt of supply from unregistered persons?**

**(CBEC FAQ)**

**Ans.** In case of receipt of supply from an unregistered person, **the registered person who is receiving goods or services** shall be liable to pay tax under reverse charge mechanism.

However, this provision (of reverse charge on supplies received from unregistered persons) have been kept in abeyance till 31.03.2018 since such supply has been exempted from payment of GST.

**16. The registered person 'B' receives small portions of software code from individuals which he then integrates and supply as a package to clients. These individuals are having small turnover of Rs 5 to 10 lakh, and therefore are not registered in GST. Whether there is any liability on 'B' in respect of services provided by such individuals?**

**(Press release)**

**Ans.** Presuming that supply by the individual suppliers are intra-state supply, supplier of such services are entitled





to benefit of threshold exemption limit of 20 lakhs as specified u/Section 22 of CGST Act. thus, such individual suppliers are not liable to GST registration and thus, are unregistered.

Supply of services by such unregistered supplier to the GST registered recipient shall attract 'reverse charge' as provided by section 9(4) of the CGST Act, 2017. Therefore, in this case 'B', the GST registered recipient is liable to pay GST on services provided by these individuals. However, presently all supplies attracting reverse charge u/Section 9(4) of CGST Act have been exempted from payment of GST\*. Thus, such supply shall be exempt from payment of GST.

**Note:**

1. N/N 8/2017- CT (Rate): CGST has been exempted till 31<sup>st</sup> March, 2018. (as amended on 13<sup>th</sup> Oct, 2017)
2. N/N 13/2017- IT (Rate): IGST has been exempted till 31<sup>st</sup> March, 2018. (as issued on 13<sup>th</sup> Oct, 2017)

Supply of Services	Status of supplier - Registered person or not	Status of recipient	Applicability of Sec 9(4) / 5(4)	Applicability of Exemption
<u>Intra-state supply</u>	Registration provisions- <u>Sec 22</u> - Registration not required if ATO is upto 20 lakhs. Thus, <b>supplier is unregistered supplier.</b>	Registered recipient	Yes	<b>Applicable</b> [N/N 8/2017- CT]
<u>Inter-state supply</u>	Registration provisions- <u>Sec 24</u> - Registration requirement has been exempted if ATO is upto 20 lakhs Thus, <b>supplier is unregistered supplier.</b>	Registered recipient	Yes	<b>Applicable</b> [N/N 13/2017- IT]
<b>Supply of Goods</b>	Status of supplier - Registered person or not	Status of recipient	Applicability of Sec 9(4) / 5(4)	Applicability of Exemption
<u>Intra-state supply</u>	Registration provisions- <u>Sec 22</u> - Registration not required if ATO is upto 20 lakhs. Thus, <b>supplier is unregistered supplier.</b>	Registered recipient	Yes	<b>Applicable</b> [N/N 8/2017- CT]
<u>Inter-state supply</u>	Registration provisions- <u>Sec 24</u>			
	<b>Supplier of handicraft</b> - Registration requirement has been exempted for <b>supplier of handicraft</b> if ATO is upto 20 lakhs Thus, <b>supplier is unregistered supplier.</b>	Registered recipient	Yes	<b>Applicable</b> [N/N 13/2017- IT]
	<b>Supplier of other goods</b> - Registration requirement has not been exempted for <b>other suppliers</b> Thus, <b>supplier is registered supplier.</b>	Registered recipient	No	<b>Not Applicable</b>

**17. Can any person other than the supplier or recipient be liable to pay tax under GST?**

(Study Material)

**Ans. Yes**, the Government can specify categories of services the tax on which shall be paid by the Electronic Commerce Operator, if such services are supplied through it and all the provisions of the GST law shall apply to such electronic commerce operator as if he is the person liable to pay tax in relation to supply of such services.

For this purpose, following services have been notified:

- 1) services by way of **transportation of passengers** by a radio-taxi, motorcab, maxicab and motor cycle;
- 2) 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 u/Sec 22(1) of the CGST Act.
- 3) services by way of **house-keeping**, such as plumbing, carpentering etc, except where the person supplying such service through ECO is liable for registration u/Sec 22(1) of the CGST Act.

**Note:**

	INTRA-STATE		INTER-STATE	
	ATO ≤ 20 L	ATO > 20 L	ATO ≤ 20 L	ATO > 20 L
Transportation	ECO	ECO	ECO	ECO
Accommodation	ECO	Hotel (Actual Supplier)	✗	✗
House-keeping	ECO	..... (Actual Supplier)	ECO	ECO

**18. What is Electronic Commerce?**

(Press release)

**Ans.** Electronic Commerce has been defined in Sec. 2(44) of the CGST Act, 2017 to mean the supply of goods or services or both, including digital products over digital or electronic network.

**19. Who is an e-commerce operator?**

(Press release)

**Ans.** Electronic Commerce Operator has been defined in Sec. 2(45) of the CGST Act, 2017 to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

**Note:**

Situation		Person liable to pay GST
Raymond Ltd., manufacturer of garments, selling garments online (i.e., through website/mobile application)	Raymond Ltd. = Supplier Raymond Ltd. = ECO	Raymond = Supplier = ECO ... <b>Liable to pay GST</b> (mandatory registration u/Sec 24)
Videocon Ltd., manufacturer of electronic items, selling these online -- through FLIPKART, AMAZON	Videocon Ltd. = Supplier Flipkart = ECO	Videocon Ltd. = Supplier ... <b>Liable to pay GST</b> (mandatory registration u/Sec 24)
Taxi operator supplying service to customers -- connected to customers through OLA CAB	Plumber = Supplier OLA CAB = ECO	OLA CAB = <b>Deemed Supplier</b> ... <b>Liable to pay GST</b> (mandatory registration u/Sec 24)

**20. Will an e-commerce operator be liable to pay tax in respect of supply of goods or services made through it, instead of actual supplier?**

(Press release)

**Ans.** Yes, but only in case of services notified under Sec. 9(5) of the CGST Act, 2017.

In such cases tax shall be paid by the electronic commerce operator if such services are supplied through it and all the provisions of the Act shall apply to such electronic commerce operator **as if he is the supplier** liable to pay tax in relation to the supply of such services.

A similar provision for inter-State supply is provided for in Sec. 5(5) of the IGST Act, 2017.

**Note:**

- Notified Services:** - Refer to Notification No. 17/2017-CT (Rate) and 14/2017-IT (Rate)

**21. A hotel owner provided accommodation in Haryana, through an electronic commerce operator – Cool Trips. The hotel owner is not liable to get registered as per the provisions of section 22(1) of the CGST Act.**

- Who is the person liable to pay GST in this case?
- Would your answer be different if the Electronic Commerce Operator Cool Trips does not have a physical presence in India?

**Note:** Hotel owner is running budget hotel with ATO below threshold exemption limit of 20 lakhs\*.

(Study Material)



**Ans.** As per section 9(5) of CGST Act\*, Government may notify [on the recommendations of the GST Council] specific categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it. **Services by way of providing accommodation in hotels through electronic commerce operator is a specified service for said purpose.**

- Thus, person liable to pay GST in this case is the Electronic Commerce Operator Cool Trips. All the provisions of the GST law shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

If Cool Trips does not have a physical presence in India, person liable to pay tax is the person representing the Electronic Commerce Operator -Cool Trips for any purpose in India.

**Note:**

1. Accommodation services provided by Hotel: PoS of such service = Location of immovable property
2. Such supply will be intra-state supply (as location of hotel and PoS falls in same state / Haryana)
3. Such hotel an intra-state supplier may be one whose ATO is within threshold exemption of 20 lakhs or may be one whose ATO is more than threshold exemption limit of 20 lakhs. (for Haryana, threshold exemption is 20 lakhs).
  - ❖ **Hotel with ATO upto 20 lakhs:** Such hotel is not required to take GST registration u/Sec 22(1) of CGST Act. In respect of supply of accommodation services by such hotel through ECO, ECO shall be liable to pay GST.
  - ❖ **Hotel with ATO more than 20 lakhs:** Such hotel is required to take GST registration u/Sec 22(1) of CGST Act. In respect of supply of accommodation services by such hotel through ECO, hotel will remain liable to pay GST.

**22. A hotel owner is providing following services:**

- a) Room renting for lodging purposes;
- b) Banquet renting for holding functions;
- c) Restaurant services;

His ATO from all the above services is 40 lakhs. His ATO being more than threshold exemption of 20 lakhs, he is liable to take registration u/Sec 22(1) of CGST Act.

Such hotel owner has now started providing above services through ohoroom.com (USA based website). Whether in such case in respect of any of service provided through ECO, ECO shall be liable to pay GST in terms of Sec 9(5) of CGST Act?

**Ans.** As per section 9(5) of CGST Act\*, ECO is liable to pay GST only in respect of notified services supplied through ECO.

- ❖ One of the notified service is service 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 u/Sec 22(1) of the CGST Act.**

**Liability of ECO to pay GST:**

- ❖ **Room renting service:** ECO shall not be liable to pay GST. Since ATO of hotel is more than threshold exemption and it is liable to take GST registration u/Sec 22 of CGST Act, such renting service does not fall into notified category of service. Thus, GST shall be payable by hotel under forward charge.
- ❖ **Banquet renting service:** Such renting service has not been notified, thus ECO shall not be liable to pay GST. Thus, GST shall be payable by hotel under forward charge.
- ❖ **Restaurant service:** Restaurant service has not been notified, thus ECO shall not be liable to pay GST. Thus, GST shall be payable by hotel under forward charge.

**Note:**

1. In none of above cases, supply of services through ECO is not making the ECO liable to pay GST.
2. However, **ECO shall be liable to comply with TCS provisions as laid down by Sec 52 of CGST Act** (if consideration for such supply is collected through ECO)
  - ECO shall act as tax collector and shall collect TCS@2% in such supply transaction (1% CGST + 1% SGST)
  - As tax collector, ECO shall be liable to take compulsory registration u/Sec 24 of CGST Act.
  - He shall file return (GSTR-8) on monthly basis – by 10<sup>th</sup>.
  - He shall pay TCS on monthly basis (by 10<sup>th</sup>)
  - TCS element so paid by him and shown in his return shall be auto-populated to GSTR-2A of the supplier and from there, it shall be transferred to e-cash ledger of supplier.
3. Presently, TCS provisions has also been kept in abeyance.



23. Discuss under following situations, who is liable to pay GST and take GST registration:

		ECO	Representative of ECO in India
1	X owns a radio taxi. He provides his service in Mumbai through Taxiwalla, Mumbai.	Taxiwalla, Mumbai	.....
2	X owns a radio taxi. He provides his service in Haryana and Delhi through UNI Taxicab USA.	UNI Taxicab USA.	C & Co., Haryana
2	Y Ltd. is running hotel in Bengaluru and providing boarding and lodging services through Cooltrip.com (a USA based website). ATO of Y Ltd. is not more than threshold limit and thus, it is not liable to take registration u/Sec 22(1).	Cooltrip Inc., USA	B & Co., Mumbai
3	Z is a plumber providing house-keeping service in Delhi. It is providing service through housekeeping.com (Dubai based website). ATO of Z is not more than threshold limit of 20 lakhs.	Housekeeping Ltd., Dubai	C, an individual in Rajasthan
4	D is supplying beauty treatment services within Mumbai through ECO. It is providing service through gloryface.com (Mumbai based website). ATO of D is not more than threshold limit of 20 lakhs.	Glory Ltd., Mumbai	.....

Ans.

		ECO	Representative of ECO in India	Person liable to pay GST
1	X owns a radio taxi. He provides his service in Mumbai through Taxiwalla, Mumbai.	Taxiwalla Ltd., Mumbai	.....	Taxiwalla Ltd., Mumbai
2	X owns a radio taxi. He provides his service in Haryana and Delhi through UNI Taxicab (USA based website).	UNI Taxicab Ltd USA.	C & Co., Haryana	C & Co, the Indian representative of UNI Taxicab Ltd., USA) shall be liable to pay GST.
2	Y Ltd. is running hotel in Bengaluru and providing boarding and lodging services through Cooltrip.com (a USA based website). ATO of Y Ltd. is not more than threshold limit and thus, it is not liable to take registration u/Sec 22(1).	Cooltrip Inc., USA	B & Co., Mumbai	B & Co, the Indian representative of Cooltrip Inc., USA) shall be liable to pay GST.
3	Z is a plumber providing house-keeping service in Delhi. It is providing service through housekeeping.com (Dubai based website). ATO of Z is not more than threshold limit of 20 lakhs.	Housekeeping Ltd., Dubai	C, an individual in Rajasthan	C, the Indian representative of UNI Housekeeping Ltd., Dubai) shall be liable to pay GST.
4	D is supplying beauty treatment services within Mumbai through ECO. It is providing service through gloryface.com (Mumbai based website). ATO of D is not more than threshold limit of 20 lakhs.	Glory Ltd., Mumbai	.....	D, the supplier of beauty treatment services, shall be liable to pay GST.  <i>* Glory Ltd., the ECO, shall be liable to comply with TCS provisions, if consideration of such supply is collected by ECO.</i>



24. Raman Hotels supplying only accommodation services in Chennai. Turnover of Raman Hotels is less than 20 Lakhs.

Raman Hotels listed hotel on online platform namely Makemytrip.

The following categories of rooms get booked by the Makemytrip company who pay to Raman Hotels after deducting their commission.

- (a) Declared Tariff per room (category 1), Non AC Room Rs 950 per Night.
- (b) Declared Tariff per room (category 2), AC Room Rs 1,800 per Night.
- (c) Declared Tariff per room (category 3), AC Room Rs 7,000 per Night, where additional bed Rs. 1,800 per Night.
- (d) Declared Tariff per room (category 4), AC Room Rs 10,000 per Night, but amount charged is Rs. 7000.

You are required to answer: (a) who is liable to pay GST and (b) GST liability

Applicable GST rate is as follows:

- (a) If declared tariff is Rs 1000 per day or more but less than Rs 2500 per day: GST Rate is 12%;
- (b) If declared tariff is Rs 2,500 per day or more but less than Rs 7,500 per day: GST Rate is 18%;
- (c) If declared tariff is Rs 7,500 per day or more: GST Rate is 28%;

(ICMA Study Material)

- Ans.** Raman Hotel is providing service of accommodation through ECO. Since Raman Hotels is not liable to be registered u/Sec 22(1) of CGST Act, supply of service by Raman Hotel through ECO will attract provisions of Sec 9(5) of CGST Act and thus, will make ECO liable to pay GST as if he is the supplier of such services.

GST liability of ECO (makemytrip) shall be as stated below:

Particulars	Value	Rate	GST	Remarks
(a) Declared tariff Rs 950	Nil	----		Since, declared tariff less than Rs 1,000. It is exempted supply of service.
(b) Declared tariff Rs 1,800	1,800	12%	216	Taxable supply.
(c) Declared tariff Rs 7,000	8,800	18%	1,584	Taxable supply. GST will be charged on transaction value.
(d) Declared tariff value Rs 10,000	7,000	28%	1,960	Taxable supply. GST will be charged on transaction value.
<b>Total</b>			<b>3,760</b>	

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# CA-INTER TAXATION



**PROF. DIPPAK**



**CA SUNETA**



**(Main Material)**



**(Question Bank)**



**(Question Bank)**



**(Main Material)**



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