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AMENDMENTS

APPLICABLE FOR MAY 24

CA Vishal Bhattad

Amendment Covered:

- ⇒ Finance Act 2023
- ⇒ CGST/IGST Amendment Act 2023
- ⇒ Notification & Circular till 31st October 2023

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CONCEPT OF SUPPLY

New Definitions Inserted

CGST (Amendment) Act, 2023 (effective from 01/10/2023):-

Sec 2(105):- Supplier	<p>"Supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.</p> <p>Proviso inserted:- Provided that</p> <ul style="list-style-type: none">- a person who organises or arranges, directly or indirectly, supply of specified actionable claims,- including a person who owns, operates or manages digital or electronic platform for such supply, <p>shall be deemed to be a supplier of such actionable claims,</p> <ul style="list-style-type: none">- whether such actionable claims are supplied by him or through him and- whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and <p>all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.</p>
Newly inserted Sec 2(80A):- Online gaming	<p>"Online gaming" means offering of a game on the internet or an electronic network and includes online money gaming.</p>
Newly inserted Sec 2(80B):- Online money gaming	<p>"Online money gaming" means online gaming in which</p> <ul style="list-style-type: none">➤ players pay or deposit money or money's worth, including virtual digital assets,➤ in the expectation of winning money or money's worth, including virtual digital assets,➤ in any event including game, scheme, competition or any other activity or process,➤ whether or not its outcome or performance is based on skill, chance or both and➤ whether the same is permissible or otherwise under any other law for the time being in force.
Newly inserted Sec 2(102A):- Specified actionable claim	<p>"Specified actionable claim" means the actionable claim involved in or by way of—</p> <p>(i) betting, (ii) casinos (iii) gambling (iv) horse racing (v) lottery or online money gaming.</p>
Newly inserted Sec 2(117A):- Virtual digital asset	<p>"Virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961.</p>

Schedule III - Activities not to be treated as supply :-

<p>Paragraph 6 [Substituted by CGST (Amendment) Act, 2023 (w.e.f. 01/10/2023)]:-</p>	<p>Actionable claims, other than lottery, betting and gambling specified actionable claims</p> <div style="border: 1px solid black; padding: 5px;"> <p>Analysis:-</p> <ul style="list-style-type: none"> ➤ Earlier, actionable claims involved in only lottery, betting & gambling were treated as supply & taxable. Now, online money gaming, casinos, & horse racing are also taxable. All actionable claims other than these 6 are outside the ambit of supply. ➤ The rate applicable on them is 28% & the value has been prescribed in the Valuation Rules [Refer Chapter - Value of Supply]. </div>
<p>Retrospective effect (by F.A. 2023):- Paragraphs 7 and 8 and Explanation 2 thereof shall be deemed to have been inserted therein with effect from the 01/07/2017</p>	<p>Para 7:- Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.</p> <p>Para 8:-</p> <p>(a) Supply of warehoused goods to any person before clearance for home consumption.</p> <p>(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.</p> <p>Explanation 2:- For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.</p> <div style="border: 1px solid black; padding: 5px;"> <p>Clarification by Finance Act, 2023:- No refund shall be made of all the tax which has been collected, but which would not have been so collected, had the retrospective been in force at all material times.</p> </div>

Important CBIC Clarification

Clarification on taxability of shares held in a subsidiary company by holding company (Circular No. 196/08/2023 Dt. 17/07/2023):-

<p>Issue:</p>	<p>Whether holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not?</p>
<p>Legal Provision:</p>	<p>There is a SAC (Services Accounting Codes) entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.</p>
<p>Explanation:</p>	<ul style="list-style-type: none"> ➤ Securities (which includes shares) are considered neither as goods nor services under definition of goods & services u/s 2(52) & u/s 2(102) of CGST Act, 2017. ➤ This implies that the securities held by the holding company in the subsidiary company are neither goods nor services & thus, purchase or sale of shares or

	<p>securities, in itself is neither a supply of goods nor a supply of services.</p> <p>⇒ For a transaction/activity to be treated as supply of services, there must be a supply as per under section 7 of CGST Act.</p>
Clarification:	<p>The activity of holding of shares of subsidiary company by holding company cannot be treated as a supply of services by a holding company to said subsidiary company & cannot be taxed under GST.</p>

Clarification on whether supply of food and beverages at cinema halls is taxable as restaurant service (Circular No. 201/13/2023 dt. 01/08/2023):-

Explanation:-	<p>⇒ Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema.</p> <p>⇒ The cinema operator</p> <ol style="list-style-type: none"> i) may run these refreshments or eating stalls/ kiosks/ counters or restaurant themselves or ii) they may give it on contract to a third party. <p>⇒ The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services.</p> <p>Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may or may not avail.</p>
Clarification:-	<p>1) It is clarified that supply of food/beverages in cinema hall is taxable as 'restaurant service', if:</p> <ol style="list-style-type: none"> a) the food or beverages are supplied by way of or as part of a service, and b) supplied independent of the cinema exhibition service. <p>2) Also, where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.</p>



REVERSE CHARGE & ECO

RCM in case of supply of goods [Substituted by N/No. 19/2023- CT (Rate) Dt. 19/10/2023 (w.e.f. 20/10/2023):-

Sl.No.	Description of supply of goods	Supplier of goods	Recipient of goods
6	Used vehicles, seized & confiscated goods, old & used goods, waste & scrap	Central Government [excluding Ministry of Railways (Indian Railways)], State Government, Union territory or a local Authority	Any registered person

Note:- RCM in case of supply of goods is not relevant for exam.

GTA Services

Conditions for GST rate to be applied [N/No. 06/2023]:-

Once GTA exercises the option to itself pay GST on the services supplied by it under forward charge during a Financial Year will be continued unless the GTA files a declaration for RCM in the 4th Qtr. of P.F.Y.

Note:- This amendment is just for information & not relevant for exam.

Government Services

Sl. No. 5:- Services by Govt. [Inserted by N/No. 14/2023 (w.e.f. 20/10/2023)]

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of service
5	Any services by Govt.	Central Government, State Government, Union territory or local Authority	Any business entity located in the taxable territory.

Exceptions:- Services excluded from RCM (i.e. normal charge is applicable for following services):-

- 1) Renting of immovable property, and
- 2) Services specified below-
 - (i) Services by the Department of Posts **and the Ministry of Railways (Indian Railways);**
 - (ii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- 3) Transport of goods or passengers.

Sl. No. 5A:- Services by way of Renting of Immovable Property by Govt. [Inserted by N/No. 14/2023 (w.e.f. 20/10/2023)]

Sl.No.	Category of Supply of Services	Supplier of service	Recipient of service
5A	Services by way of Renting of Immovable Property	Central Government [excluding the Ministry of Railways (Indian Railways)], State Government, Union territory or local Authority	Any person Registered under the CGST Act, 2017

Services notified u/s 9(5) - tax on supplies of which shall be paid by ECO, if they are supplied through Electronic Commerce Operator (ECO) [N/No. 16/2023 (w.e.f. 20/10/2023):-

Clause	
(i) (words substituted)	Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motorcycle, omnibus or any other motor vehicle or any other motor vehicle except omnibus.
(ia) (newly inserted)	Services by way of transportation of passengers by an omnibus except where the person supplying such service through ECO is a company.
	Comment:- Tax on transportation of passengers by an omnibus provided by a company through ECO is not payable by ECO.

Sl. No. 10 Omitted (N/No. 13/2023- w.e.f. 01/10/2023):-

Category of Supply of Services	Supplier of service	Recipient of service
Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory	Importer, located in the taxable territory

Clarification on whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to RCM or not (Circular No. 201/13/2023):-

Legal Provision	As per section 9(3), for services supplied by director of a company or body corporate to the said company or body corporate, GST shall be paid by company or body corporate under RCM.
Clarification	<ul style="list-style-type: none">➔ It is clarified that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property are not taxable under RCM.➔ Only the services supplied by director as or in the capacity of director of that company or body corporate shall be taxable under RCM.

Liability under RCM for Supply of Goods (N/N 4/2017 Central Tax(Rate))

S. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply (Liable to Pay Tax)
(1)	(2)	(3)	(4)	(5)
1.	0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	1404 90 10	Bidi Wrapper leaves (tendu)	Agriculturist	Any registered person
3.	2401	Tobacco leaves	Agriculturist	Any registered person
3A.	3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	Following essential oils other than those of citrus fruit namely: - (a) Of peppermint (Mentha piperita); (b) Of other mints: Spearmint oil (ex-mentha spicata), Water mint oil (e x m e n t h a aquatic), Horsemint oil (e x - m e n t h a sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis	Any unregistered person	Any registered person
4.	5004 to 5006	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
4A.	5201	Raw cotton	Agriculturist	Any registered person
5.	-	Supply of lottery.	State Government, Union Territory or any local authority	Lottery distributor or selling agent. Explanation.— For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of section 11(1) of the Lotteries (Regulation) Act, 1998.
6.	Any Chapter	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government excluding Ministry of Railways (Indian Railways), State Government, Union territory or a local authority	Any registered person
7.	Any Chapter	PSLC (Private Sector Lending certificate)	Any registered person	Any registered person

Note – Tax payable on the goods under reverse charge is applicable for the May, 2024 examination. Therefore, students are advised to refer the abovelist for the examination purposes.



COMPOSITION LEVY

Conditions for Composition Scheme [F. A. 2023]

Finance Act, 2023

Omitted in Sec 10(2)(d)	The registered person shall be eligible to opt under sub-section (1), if:- (d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;
Omitted in Sec 10(2A)(c)	if he is not- (c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;



EXEMPTION UNDER GST

Amendments in Existing entries

Sr.No.	Government Sector	
19C	Service Provided by Satellite services [N/No. 07/2023 w.e.f. 27/07/2023]	
	Old Provision	Satellite launch services supplied by Indian space research organisation, Antrix Corporation Limited or New Space India Limited.
	Substituted with	Satellite launch services.

Sr.No.	List of Services Exempt under IGST	
10	Exemption for services wherein location of service provider is in a non-taxable territory [N/No. 07/2023 w.e.f. 27/07/2023]:-	
	Sl. No. 10 under IGST Act	Exempt:- Services received from a provider of service located in a non-taxable territory by – (a) CG/SG/UT/LA/ governmental authority/ an individual in relation to any purpose other than commerce, industry or any other business or profession; (b) an entity registered u/s 12AA/12AB of the Income-tax Act, 1961 for the purposes of providing charitable activities; or (ba) way of supply of online educational journals or periodicals to an educational institution other than an institution providing services by way of- (i) pre-school education and education up to higher secondary school or equivalent; or (ii) education as a part of an approved vocational education course; (c) a person located in a non-taxable territory.
	Old Proviso:-	Provided that the exemption shall not apply to— (i) —OIDAR services received by persons specified in entry (a) or entry (b); or services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.
	Newly Inserted Proviso	Provided that the exemption shall not apply to OIDAR services received by persons specified in items (a) or item (b).

Sr.No.

Services by Government & Local Authority

6 Services by CG, SG, UT & LA [words Inserted by N/No. 13/2023- (w.e.f. 20/10/2023)]

Exempt:- All services by the Central Government, State Government, Union territory or local authority excluding the following services—

- (a) services by the Department of Posts **and the Ministry of Railways (Indian Railways);**
- (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (c) transport of goods or passengers; or
- (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.

7 Services provided to a business entity by CG, SG, UT or LA [words Inserted by N/No. 13/2023- (w.e.f. 20/10/2023)]

Exempt:- Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017.

Explanation:- This entry shall not be applicable to-

- (a) services, -
 - (i) by the Department of Posts **and the Ministry of Railways (Indian Railways);**
 - (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) of transport of goods or passengers; and
- (b) services by way of renting of immovable property.

8 Services provided by Govt. to Govt [words Inserted by N/No. 13/2023- (w.e.f. 20/10/2023)]

Exempt:- Services provided by Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority.

Proviso:- Provided that nothing contained in this entry shall apply to services-

- (i) by the Department of Posts **and the Ministry of Railways (Indian Railways);**
- (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) of transport of goods or passengers.

9 Services provided by Govt. where consideration is upto ₹ 5000 [words Inserted by N/No. 13/2023- (w.e.f. 20/10/2023)]

Exempt:- Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services **does not exceed ₹5,000.**

Proviso 1:- Provided that nothing contained in this entry shall apply to-

- (i) services by the Department of Posts **and the Ministry of Railways (Indian Railways);**
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) transport of goods or passengers.

Newly Inserted

Services to Government

Public services to Government [Newly Inserted N/No. 13/2023- (w.e.f. 20/10/2023)]

- 3B** **Exempt:-** Services provided to a Governmental Authority by way of-
- (a) water supply;
 - (b) public health;
 - (c) sanitation conservancy;
 - (d) solid waste management; and
 - (e) slum improvement and upgradation.

CBIC Clarifications

Circular No. 206/18/2023 Dt. 31/10/2023:-

Issue:- Whether District Mineral Foundations Trusts (DMFTs) set up by State Governments are Governmental Authorities & thus eligible for same exemptions available to other Governmental Authority?

Clarification:-

➔ It is clarified that **DMFT set up by State Governments are Governmental Authorities** and thus **eligible for the same exemptions** from GST as available to any other Governmental Authority.

Clarification relating to Sl. No. 3 & 3A (Circular No. 206/18/2023)

Issue:- Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A?

Clarification:- It is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where value of goods constitutes not more than 25% of total value of supply) made to CPWD **are eligible for exemption from GST under Sr. No. 3 and 3A** of Exemption Notification.



TIME OF SUPPLY

Tax to be paid on specified actionable claims at the time of receipt of payment for such supplies by suppliers (N/ No. 50/2023 w.e.f. 01/10/2023):-

<p>Old Provision of N/N 66/2017</p>	<p>It notifies the registered person who did not opt for the composition levy under section 10 of the said Act, as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.</p>				
<p>Exception inserted in N/No. 66/2017</p>	<p>It notifies the registered person who did not opt for the composition levy under section 10 of the said Act, other than the registered person making supply of specified actionable claims as defined in clause (102A) of section 2 of the said Act, as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.</p>				
<p>Analysis</p>	<p>N/ N. 66/2017: No tax payable at the time of receipt of advance for SOG</p> <table border="1" data-bbox="337 1464 1552 2160"> <tr> <td data-bbox="337 1464 592 1797"> <p>Provisions of Notification</p> </td> <td data-bbox="592 1464 1552 1797"> <p>All Registered Person (RP) under forward charge are not required to pay GST at the time of receipt in relation to SOG.</p> <p>Note:-</p> <p>1) <u>Thus, entire GST shall become payable only when the invoice for the supply of such goods is issued or ought to have been issued & no GST is payable on advance payment received.</u></p> <p>2) This notification is also applicable to situations of Sec 14</p> </td> </tr> <tr> <td data-bbox="337 1797 592 2160"> <p>Non-Applicability</p> </td> <td data-bbox="592 1797 1552 2160"> <p>1) Composite supplier he has to pay, in lieu of tax payable by him, and amount calculated at the prescribed rate applied on his turnover in the State/UT for quarter.</p> <p>2) For supply of services i.e. in case of SOS, GST is payable on advance receipt or invoice, whichever is earlier.</p> <p>3) RP making supply of specified actionable claims. (e.g. betting, casinos, gambling, horse racing, lottery or online money gaming)</p> </td> </tr> </table> <p>Newly Inserted by N/N.50/2023 CT dt. 29/09/2023</p>	<p>Provisions of Notification</p>	<p>All Registered Person (RP) under forward charge are not required to pay GST at the time of receipt in relation to SOG.</p> <p>Note:-</p> <p>1) <u>Thus, entire GST shall become payable only when the invoice for the supply of such goods is issued or ought to have been issued & no GST is payable on advance payment received.</u></p> <p>2) This notification is also applicable to situations of Sec 14</p>	<p>Non-Applicability</p>	<p>1) Composite supplier he has to pay, in lieu of tax payable by him, and amount calculated at the prescribed rate applied on his turnover in the State/UT for quarter.</p> <p>2) For supply of services i.e. in case of SOS, GST is payable on advance receipt or invoice, whichever is earlier.</p> <p>3) RP making supply of specified actionable claims. (e.g. betting, casinos, gambling, horse racing, lottery or online money gaming)</p>
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TOS of specified actionable claims

N/N 66/2017 is not applicable to specified actionable, the TOS for specified actionable claims such as online money gaming etc. would be determine as per normal provision of sec 12(2) i.e. earlier of:-

- the date of issue of invoice or
- the last date to issue invoice or
- the date on which supplier receives the payment.

Que:- Mr. A is registered under regular scheme under GST in Gujarat who trades in biscuits. On the other hand, he is also a partner in 2 partnership firms (registered under GST) in Gujarat, named Mehmaan Nawaazi Hotel and Lakhpati Casino. The hotel is running restaurant and serving food which had aggregate turnover of 120 lakhs in preceding financial year. Lakhpati Casino is a dealer in specified actionable claim who did not opt for composition scheme. Mr. B has availed service from all three of them (i.e. Mr. A, Mehmaan Nawaazi Hotel and Lakhpati Casino) in the month of May, the details of which are as under:-

Particulars	Mr. A	Mehmaan Nawazi Hotel	Lakhpati Casino
Date of supply	2nd May	10th May	12th May
Date of issue of invoice for Rs. 10000 in each case	4th May	11th June	10th May
Date of receipt of payment by supplier	1st May	6th May	5000 on 9th May & 5000 on 18th May

Would notification 66/2017 apply to Mehmaan Nawaazi Hotel, if it was providing goods under composition scheme instead of restaurant service? Also, Determine the time of supply in each case for Mr. A, Mehmaan Nawaazi Hotel and Lakhpati Casino.

Answer:-

Legal Provision:-

- As per **section 12(2)** of CGST Act, 2017, the time of supply of goods shall be the earlier of the following:-
 - Date of issue of invoice or
 - Last date to issue invoice or
 - Date of receipt of payment.
- As per Notification 66/2017 under CGST Act, the registered person other than following person:-
 - A composition supplier and
 - **registered person making supply of specified actionable claims as defined in clause (102A) of section 2 of the said Act,**
 shall pay CGST on the outward supply of goods at the time of supply as specified section 12(2)(a) i.e. date of issue of invoice or last date of issue of invoice.
- As per **section 13(2)(b)** of CGST Act, 2017, if **invoice is not issued within 30 days** of supply of services, then **the time of supply** of such services shall be **earlier** of:-
 - the date of provision of service or
 - the date of receipt of payment.

Discussion & Conclusion:-

1. In given case, notification 66/2017 applies to Mr. A and he shall be liable to pay tax on invoice basis only and not on advance received. Accordingly, the time of supply shall be **2nd May** i.e. the last date to issue invoice as per section 12(2) read with notification 66/2017.
2. In case of Mehmaan Nawaazi Hotel, notification 66/2017 is not applicable as this notification applies only to supply of goods and not services. Even if this firm was dealing in goods, this notification would still not apply as it is covered under the exception to notification 66/2017 (being a composition supplier) & hence, it is liable to pay tax on advance receipt also. The time of supply in this is **6th May** because invoice is issued after 30 days of supply of service & also the consideration is received in advance.
3. Lakhpati Casino is also covered under the exception to notification 66/2017 as it is dealing in specified actionable claim i.e. casino. Hence, it is liable to pay tax on advance receipt also. The time of supply in this is **9th May for 5000 & 10th May for balance 5000** as per section 12(2) read with notification 66/2017



VALUE OF SUPPLY

28	Value of supply of goods or services or both between distinct or related persons, other than through an agent
Applicability of rule 28(1)	<ul style="list-style-type: none"> ➔ Intra-State/Inter State stock transfer of goods between distinct person ➔ Import of services by a company from a holding/subsidiary company in course or furtherance of business ➔ Supplies of goods or services to related person or distinct person <u>when the same are made for consideration as well as made without consideration</u>
Method of Valuation	<p>It lays down the following methods to value a supply when supply is made between distinct persons as per sec 25(4) & 25(5) or when supplier and recipient are related, other than where supply is made through agent:</p> <p>(a) OMV:- The Open Market Value (OMV) of such supply</p> <p>(b) Value of Supply of LKQ:- If open market value is not available, the value of supply of goods and/or services of like kind and quality</p> <p>(c) Finally, if the value is not ascertainable by using the above methods, apply</p> <p>Rule 30-Cost based valuation:- based on cost of the supply plus 10% mark-up or</p> <p>Rule 31-Best Judgement method:- by other reasonable means in that sequence.</p>
Proviso 1	<p>If the goods are intended to be supplied AS SUCH by the recipient</p> <p>Value = 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer</p>
Proviso 2	<p>Value declared is accepted when recipient is eligible for full input tax credit</p> <p>where the recipient is eligible for full input tax credit,</p> <p>OMV = Value declared in the invoice for SOG or SOS.</p>

VOS for corporate guarantee (Rule 28(2))

Newly Inserted by N/N 53/2023

Notwithstanding anything contained in sub-rule (1), the **value of supply** of services by a supplier to a recipient who is a related person, by way of providing **corporate guarantee** to any banking company or FI on behalf of the said recipient, **shall be deemed to be**

- ➔ **1%** of the amount of such guarantee offered, or
- ➔ the actual consideration, **whichever is higher.”**

CBIC Clarification:

Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST-reg. [Circular No. 204/16/2023]

S. No.	Situations	Liability of GST	Remark
1	Director providing personal guarantee to the bank for company's borrowing credit limits.	No Tax	As per RBI's mandate, no consideration (including commission, brokerage fees, etc.) can be paid to the director by the company for this guarantee, making its taxable value zero (as no OMV is available).
2	Corporate guarantee provided by a company to the bank/financial institutions for another related company.	Taxable	This is considered a supply of service between related parties as per Schedule I of CGST Act, and is taxable even when made without any consideration (VOS = Rule 28(2)).
3	Corporate guarantee provided by a holding company for its subsidiary company.	Taxable	The holding company and subsidiary company are 'related persons'. The provision of a corporate guarantee is thus a taxable supply of service as per Schedule I of CGST Act, even when made without any consideration (VOS = Rule 28(2)).

Supply of online money gaming, online gaming other than online money gaming and actionable claims in casinos notified u/s 15(5) (N/No. 49/2023-CT w.e.f. 01/10/2023):-

U/s 15(5) of CGST Act, Government notifies the following supplies for which the value shall be determined as per prescribed rules:—

- (i) supply of online money gaming;
- (ii) supply of online gaming, other than online money gaming; and
- (iii) supply of actionable claims in casinos.

Rule

Valuation of Specified Actionable Claim

U/s 15(5) of CGST Act, Government notifies the following supplies for which the value shall be determined as per prescribed rules [N/No. 49/2023-CT Dt. 29/09/2023 w.e.f. 01/10/2023]:—

- (i) supply of online money gaming;
- (ii) supply of online gaming, other than online money gaming; and
- (iii) supply of actionable claims in casinos.

31A Valuation of supply of lottery and actionable claim in the form of betting, gambling or horse racing in a race club.

Method of Valuation	Supply	Value
	Supply of lottery	Higher of the two amounts to be deemed as the value 100/128 of the face value of ticket OR 100/128 of the price as notified in the Official Gazette by the organizing State
	Betting, gambling or horse racing in a race club	100% of the face value of the bet or the amount paid into the totalisator
	<p>Example 1: The Government of a State runs a lottery where face value of a lottery ticket is ₹ 250 and the price notified by the State Government in the Official Gazette is ₹ 240. Here, the value of lottery is ₹ 195.313, i.e. higher of ₹ 195.313 (250 x 100/128) or ₹ 187.50 (240 x 100/128).</p> <p>Example 2:- The Government of a State runs a lottery where face value of a lottery ticket is ₹ 250 and the price notified by the State Government in the Official Gazette is ₹ 260. Here, the value of lottery is ₹ 203.13, i.e. higher of ₹ 195.313 (250 x 100/128) or ₹ 203.13 (260 x 100/128).</p>	

31B Value of supply of online gaming including online money gaming

Newly Inserted

Method of Valuation	Value = Total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player.	
Proviso	any amount returned or refunded by the supplier for any reasons, including player not using the amount deposited with the supplier for participating in any event	shall not be deductible from the value of supply of online money gaming.

31C Value of supply of actionable claims in case of casino

<p>Method of Valuation</p>	<p>Value = total amount paid or payable by or on behalf of the player for (i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or (ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.</p>	
<p>Proviso</p>	<p>Any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets,</p>	<p>Shall not be deductible from the value of the supply of actionable claims in casino.</p>
<p>Explanation</p>	<p>For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, <u>shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.</u></p>	

Que:- Mr. Gadbad has placed a bet of Rs. 10,000 for online gaming & also bought a chip of Rs. 10,000 in casino. He paid the respective amounts in both. He wins Rs. 3,000 under both respectively. The applicable rate of GST is 28%.

Answer the following questions:-

- i) Compute the GST payable in each case.
- ii) What shall be the treatment of winnings of 3000 in both cases.
- iii) What will be your answer, if he loses Rs. 10,000 in casino and places another Rs. 10,000 in casino?

Answer:- Legal Provision:-

- As per **Rule 31B** of CGST Rules, 2017, the value of supply of online gaming including supply of actionable claims involved in online money gaming shall be **the total amount paid or payable to or deposited** with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player.
- As per **Rule 31C** of CGST Rules, 2017, the value of supply of actionable claims in casino shall be the **total amount paid or payable** by or on behalf of the player for **purchase** of chips for use in casino.
- However, **for rule 31B and rule 31C**, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, **shall not be considered as the amount paid to or deposited** with the supplier by or on behalf of the said player.

Discussion & Conclusion:-

- i) In the given case, the amount paid by Mr. Gadbad is 10000 in a bet for online gaming & 10000 for a chip in casino & thus, the value of supply is 10000 for such bet and 10000 for such chip as per rule 31B and 31C. The GST payable is **₹2800 in each case** (10000 * 28%).
- ii) The total amount in the next bet or chip becomes Rs. 13,000. Now, he will not be required to pay GST on the redeployed winnings amount of Rs. 3,000.
- iii) If Mr. Gadbad loses Rs. 10,000 in casino and places another Rs. 10,000 in casino, that will be considered a fresh chip. The value of supply of such chip will be 10000 as per Rule 31C and GST payable shall be 2800 (10000 * 28%).



INPUT TAX CREDIT

Amendments by Finance Act, 2023:-

Sec	Provision	
<u>16(2)</u>	Conditions for taking ITC	
	2nd Proviso (Words substituted)	Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon paid by him along with interest payable u/s 50 , in such manner as may be prescribed.
	3rd Proviso (Words inserted)	Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Sec	Provision	
<u>17(5)</u>	Blocked Credit	
	(fa) (new clause inserted)	goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013
<u>17(3)</u>	Apportionment of ITC	
	Explanation to sec 17(3)	For the purposes of sec 17(3), the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule except,— a) the value of activities or transactions specified in paragraph 5 of the said Schedule; and b) the value of such activities or transactions as may be prescribed for paragraph 8(a) of the said Schedule Comment:- ➔ Para 8(a) of Schedule III - supply of warehoused goods to any person before clearance for home consumption. ➔ It implies that activities in clauses (a) & (b) above are included in value of exempt supply. ➔ Value for clause (b) above is prescribed by inserting a new explanation 3 to rule 43 (discussed below).

Omission of redundant clause (c) of explanation 1 to rule 43 & value of transactions prescribed in respect of para 8(a) of Schedule III prescribed (N/No. 38/2023-CT):-

<p><u>Explanation 1 to Rule 43</u></p>	<p>For the purposes of rule 42 and 43, the aggregate value of exempt supplies shall exclude: -</p> <p>(a) Omitted</p> <p>(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and</p> <p>(c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India. (Omitted)</p> <p>(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13th October, 2017.</p> <p>Reason for Amendment:-</p> <p>This service was exempt from GST upto 30.09.2022. Thereafter, exemption was withdrawn and GST became payable on such services & thus, this clause became redundant.</p>
<p><u>Explanation 3 to rule 43 (inserted w.e.f. 01/10/2023)</u></p>	<p>For the purpose of rule 42 & 43, the value of activities or transactions mentioned in paragraph 8(a) of Schedule III of CGST Act which is required to be included in the value of exempt supplies under clause (b) of Explanation to section 17(3) shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.</p>

**Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons.
[Circular No. 199/11/2023]**

Here is a table summarizing the various cases, situations, and clarifications regarding input tax credit and the determination of taxable value for services provided by the Head Office (HO) to Branch Offices (Bos):

Case	Issues	Clarification
1)	Can HO avail ITC for common services from a third party for HO and BOs, and issue tax invoices to BOs, or must it use ISD mechanism?	<ul style="list-style-type: none"> ➔ Flexible ITC Distribution: HO can distribute ITC either by ISD mechanism (Sec 20 of CGST Act and Rule 39 of CGST Rules) or directly issue tax invoices to BOs (Sec 31 of CGST Act). ISD mechanism is not mandatory. ➔ Mandatory ISD Registration: If HO opts for ISD mechanism, it must register as ISD as per Sec 24(viii) of the CGST Act. ➔ Specific Attributability/Provision: Distribution or invoice issuance only if services are specifically for or actually provided to BOs.
2)	Is it mandatory for HO to issue invoices for internally generated services provided to BOs, especially when full ITC is available to Bos?	<ul style="list-style-type: none"> ➔ Valuation as per Rule 28: The value in the invoice from HO to BOs is considered as open market value (i.e. value declared in invoice as per proviso 2 of rule 28) if BOs are eligible for full ITC. This applies regardless of whether specific costs, like employee salaries, are included or not. ➔ Uninvoiced Services Deemed as Nil Value: When full ITC is available and HO doesn't issue an invoice, the value of such services is deemed Nil and treated as open market value.
3)	Must HO include employee salary costs when computing taxable value for services to BOs, if full ITC isn't available?	No Mandatory Inclusion of Salary Costs: It's not required to include HO employee salary costs in the taxable value, even when BOs can't avail full ITC.



IGST ACT 2017

INCLUDES PLACE OF SUPPLY

Government empowered to notify goods for whom proviso to section 5(1) is not applicable for levy and collection of IGST and in whose case, IGST shall be levied and collected as per section 5(1) only [Proviso to section 5(1) amended]

<p><u>Sec 5(1)</u></p>	<p><u>Levy & collection of IGST</u></p>	<p>Subject to the provisions of sub-section (2), there shall be levied a tax called the IGST</p> <ul style="list-style-type: none">➤ on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption,➤ on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding 40%., as may be notified by the Government on the recommendations of the Council and➤ collected in such manner as may be prescribed and shall be paid by the taxable person <p>Proviso (Inserted by IGST Amendment Act, 2017):- Provided that integrated tax on goods other than the goods as may be notified by the Government on the recommendations of the Council imported into India shall be levied and collected in accordance with provisions of section 3 of Customs Tariff Act, 1975 on value as determined under the said Act at the point when duties of customs are levied on the said goods u/s 12 of Customs Act, 1962</p> <p>N/No. 03/2023 w.e.f. 01/10/2023:- It notifies supply of online money gaming as the goods on import of which the proviso to section 5(1) of said Act shall not apply, but on which integrated tax shall be levied and collected u/s 5(1) of the said Act.</p> <p>Analysis:-</p> <ul style="list-style-type: none">➤ For intangible goods, it may not be possible to levy & collect IGST on imports as per said proviso, as the goods may not be physically crossing customs frontiers.➤ Resultantly, this amendment implies that import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.
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Place of supply of goods purchased Over the Counter in one State & transported to another State by buyer [Amendment by IGST (Amendment Act), 2023 (w.e.f. 01/10/2023)]

Sec 10 (1)(ca)	Supply made to URP (Newly inserted)	Notwithstanding anything contrary contained u/s 10(1)(a)/(c), if supply of goods is made to a person other than a registered person , the place of supply shall be the - location as per address of said person recorded in invoice issued for said supply & - location of supplier where the address of said person is not recorded in invoice. Explanation:- Recording of the name of the State of said person in the invoice shall be deemed to be the recording of the address of said person.	
	Summary	POS in case of OTC sales to unregistered persons is as follows:-	
		If address of URP is recorded in invoice:-	POS is location as per address of URP recorded in invoice. <div style="border: 1px solid red; padding: 2px; margin-top: 5px;">Note:- Simply mentioning the State of URP instead of complete address would be sufficient.</div>
		If address of URP is not recorded in invoice:-	POS is the location of supplier
	Reason for Amendment	<ul style="list-style-type: none"> ➤ There are cases where an unregistered person purchases goods over the counter (OTC) in one State & transports the goods to another State (generally, the State where he resides), for instance, migrant workers, tourists, etc. ➤ In automobile sector, the residents of a State may travel to another State to purchase vehicle from that State to take advantage of lower registration charges and road tax, which vary from State to State and thereafter, take the vehicle to their State. ➤ So, this new clause will determine POS in such cases. 	

Determination of Place of Supply

Sec 12(8)	Proviso Omitted	PLACE OF SUPPLY FOR TRANSPORTATION OF GOODS	
	Amended by F.A. 2023	The place of supply of services by way of transportation of goods, including by mail or courier to,- (a) a registered person, shall be the location of such person; (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation. <div style="border: 1px solid gray; padding: 5px; margin-top: 10px;">Proviso (Omitted):- Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.</div>	
Sec 13(9)	Omitted	PLACE OF SUPPLY OF GOODS TRANSPORT SERVICES	
	Amended by F.A. 2023	The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods	

Place of supply of service of transportation of goods, including through mail and courier (Circular No. 203/15/2023)

Issue	<ul style="list-style-type: none"> ⇒ Section 13(9) of IGST Act is omitted vide section 162 of Finance Act, 2023 (w.e.f. 01.10.2023). ⇒ So, whether place of supply of service of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per section 13(2) of IGST Act or section 13(3) of IGST Act.
Clarification	<ul style="list-style-type: none"> ⇒ It is clarified that after amendment, place of supply of such services will be determined by the default rule u/s 13(2) of IGST Act and not as performance-based services u/s 13(3) of IGST Act. ⇒ Accordingly, if location of recipient of services is available, place of supply of such services shall be location of such recipient and in cases where location of recipient of services is not available in ordinary course of business, place of supply shall be location of supplier of services.

OIDAR Services (Sec 14)

Definitions of NTOR- Amended by Finance Act, 2023:-

Sec 2(16)	Old Def. of NTOR	<p>"Non taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.</p> <p>Explanation: For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,</p> <p>(i) set up by an Act of Parliament or a State Legislature; or established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted [to a Panchayat under article 243G or] to a municipality under article 243W of the Constitution;</p>
Sec 2(16)	Def. of NTOR (substituted)	<p>"Non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval (OIDAR) services located in taxable territory.</p> <p>Explanation:— For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of section 24(vi) of CGST Act, 2017;</p> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p>Section 24(vi) of CGST Act:- Persons who are required to deduct tax u/s 51, whether or not separately registered under this Act.</p> </div>

<p>Sec 2(17)</p>	<p>Def. of OIDAR Services (words omitted)</p>	<p>"Online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,-</p> <ul style="list-style-type: none"> (i) advertising on the internet; (ii) providing cloud services; (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet; (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network; (v) online supplies of digital content (movies, television shows, music and the like); (vi) digital data storage; and (vii) online gaming online gaming, excluding the online money gaming as defined in section 2(80B) of CGST Act, 2017. [Substituted by IGST (Amendment) Act, 2023]
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Online Money Gaming (Sec 14A)

Special provision for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India:-

Newly Inserted by IGST Amendment Act 2023

<p>Sec 14A</p>	<p>(1) A supplier of online money gaming, not located in the taxable territory, shall be liable to pay IGST on supply of online money gaming by him to a person in taxable territory.</p> <p>(2) For this, the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in section 14(2) of this Act.</p> <p>Comment:- Corresponding amendment is made in rule 8(1) & rule 14 of CGST Rules.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p>Proviso 1:- Any person located in taxable territory representing such supplier for any purpose in taxable territory shall get registered and pay IGST on behalf of supplier.</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p>Proviso 2:- If such supplier does not have a physical presence or does not have a representative for any purpose in taxable territory, he shall appoint a person in taxable territory for paying IGST and such person shall be liable for payment of such tax.</p> </div> <table border="1" style="width: 100%; margin-top: 5px;"> <tr> <td data-bbox="186 1721 435 1912"> <p>Reason for Amendment</p> </td> <td data-bbox="435 1721 1557 1912"> <p>Consequent to online money gaming becoming taxable by virtue of amendment in Schedule III of CGST Act, there was a need for special provisions for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India.</p> </td> </tr> </table>	<p>Reason for Amendment</p>	<p>Consequent to online money gaming becoming taxable by virtue of amendment in Schedule III of CGST Act, there was a need for special provisions for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India.</p>
<p>Reason for Amendment</p>	<p>Consequent to online money gaming becoming taxable by virtue of amendment in Schedule III of CGST Act, there was a need for special provisions for taxability of supply of online money gaming by a person located outside the taxable territory to a person in India.</p>		

Sub-Sec	Provision	
(1)	Definition of Zero Rated Supply	<p>"Zero rated supply" means any of the following supplies of goods or services or both, namely:</p> <p>(a) export of goods or services or both; or</p> <p>(b) supply of goods or services or both for authorised operations to a SEZ developer or a SEZ unit.</p>
(3)	Old Provision	<p>A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:-</p> <p>(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or</p> <p>(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder.</p>
	New Provision (Substituted)	<p>A registered person making zero rated supply shall be</p> <ul style="list-style-type: none"> ➤ eligible to claim refund of unutilised ITC on supply of goods or services or both, ➤ without payment of IGST, ➤ under bond or Letter of Undertaking, <p>in accordance with the provisions of sec 54 of CGST Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.</p> <p>Proviso:- Provided that the registered person making zero rated supply of goods</p> <ul style="list-style-type: none"> ➤ shall, in case of non-realisation of sale proceeds, ➤ be liable to deposit the refund so received under this sub-section ➤ along with the applicable interest u/s 50 of CGST Act <p>within 30 days after the expiry of the time limit prescribed under the FEMA, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.</p>
(4)	Refund of IGST for notified person (without bond) newly inserted	<p>The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify--</p> <p>(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;</p> <p>(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.</p>