
CHARTMASTER'S

Textbook on

INDIRECT TAX LAWS

For

CA | CS | CMA Final
Nov 2024 & May 2025 onwards

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On Indirect Tax Laws

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Laws stated in this book is amended upto 30th April, 2024

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1. GST: Introduction, Overview & Administration

What is Tax?

Tax is

- a compulsory payment made by a person
- under a law to the government
- in order to fund various public expenditures and fulfil the developmental needs like infrastructure, health care, education, security, military, defence etc.

Types of Taxes

Taxes are broadly classified into **direct taxes** and **indirect taxes**.

Let us understand the difference between Direct Taxes and Indirect taxes

Direct taxes	Indirect taxes
Direct tax is imposed directly on the taxpayer and paid directly to the Government by the persons on whom it is imposed. The burden of this tax cannot be shifted by the taxpayer.	Indirect taxes are imposed on goods and services and its incidence is borne by the consumers who ultimately consume the goods/services.
Significant direct tax in India is income tax .	Significant Indirect taxes in India are GST & Customs .
Direct taxes are progressive in nature . Rich pays more taxes compared to poor.	Indirect taxes are regressive in nature because they equally impact the rich or poor.

What is GST – Goods and Services Tax?

As per Article 366: Definitions of Goods and Services Tax

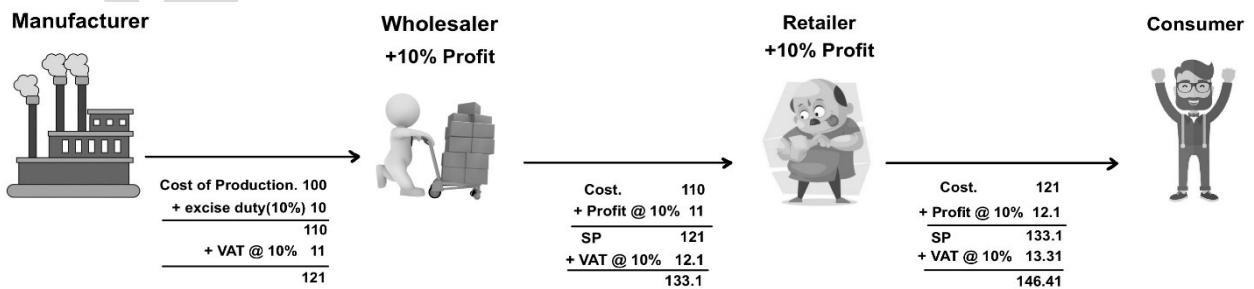
Clause 12A: Goods and services tax means

- any tax on supply of goods, or services or both
- except taxes on the supply of the alcoholic liquor for human consumption.

Author’s comment: Alcoholic liquor for human consumption has always been a major source of revenue for the states & hence all the states disagreed to subsume it into GST and so the government in order to ensure smooth transition into GST, agreed to keep alcoholic liquor for human consumption out of the ambit of GST.

Why is GST Introduced? i.e., Deficiencies in the erstwhile indirect tax regime

1. **Cascading effect (also known as tax on tax) of tax is one of the vital ill of existing Indirect Tax.**



2. **No CENVAT (Central Excise Duty) credit after manufacturing stage to a dealer/trader.**

3. **Being an origin-based tax, CST was another source of distortion in terms of its cascading nature.**

4. **There were several taxes in the States, such as, Luxury Tax, Entertainment Tax, etc. which were not subsumed in the VAT. Hence for a single transaction, multiple taxes in multiple forms were required to be paid.**

Various features of GST are as under:

- **GST is a tax on supply of goods or services or both.**
- **GST is a consumption tax i.e.; burden is shifted to ultimate consumers.**
- **GST is a destination-based tax (DBT).**
- **GST is a Value added tax: VAT as a model is adopted in GST.**

Pre and Post GST Scenario

Tax	Goods/ Service	Taxable Event	Tax Imposed	Taxable person	levied by & paid to
Pre GST					
Excise	Goods	Manufactured	Central Excise duty	Manufacturer	CG
VAT	Goods	Sales - Intrastate	Value added tax	Trader/Dealer	SG
CST	Goods	Sales - Interstate	Central Sales tax	Trader/Dealer	SG
Service tax	Services	Provisioning of service	Service tax	Service provider	CG
Post GST					
GST	Goods/ Services	Supply	Goods and Services tax	Taxable person	CG + SG

Note: **CG:** Central government, **SG:** State government

Dual Model of GST

- India has adopted dual model of GST which is imposed concurrently by the centre and the state i.e., both centre and state will impose tax on a transaction simultaneously.
- GST to be levied by centre will be called CGST & that to be levied by states (incl. states with legislature) will be called SGST. GST to be levied by UTs to be called UTGST (UTs without legislature).

Note: India has adopted GST model from **Canada**.

Nature of supply and types of GST charged on different types of trade and Commerce

Intrastate Supply: Where the Location of supplier and place of supply is within the same state/ union territory **it is known as intrastate supply.**

Interstate Supply: Where the Location of supplier and place of supply are in

- Two different states,
- Two different Union Territories,
- A State and a Union territory

it is known as interstate trade.

In case of Intrastate supply within state/UT: we always charge CGST & SGST/CGST & UTGST.

In case of Interstate supply: we always charge IGST (i.e., CGST & SGST integrated together).

Taxes Subsumed into GST

Central taxes subsumed

- Central Excise duty
- Service tax
- Countervailing duty (CVD) & Special CVD (Special additional duty) levied under Customs
- Central Sales Tax
- Surcharges and Cesses

State taxes subsumed

- State surcharges and cesses in so far as they relate to supply of goods & services
- Entertainment Tax (except those levied by local bodies)
- Tax on lottery, betting and gambling
- Entry Tax (All Forms)
- VAT/Sales tax
- Luxury tax

Taxes not subsumed into GST

- Basic custom duty
- Property tax and stamp duty
- Electricity duty
- Excise duty on Alcoholic liquor for Human consumption
- Excise duty on petrol, diesel etc.
- Entertainment tax charged by local bodies (municipality)

Note: In case of tobacco and tobacco products, the centre alone would have the power to levy excise duty in addition to GST. The levy of excise duty is only in manufacturing stage, GST is leviable on the amount (inclusive of excise duty).

Entertainment tax by local bodies is levied on cinema, video shows, cable T.V. operators, amusement, performance, pageant and game/sports and horse races.

Various Taxes on Goods/Services (Summary)

Goods/Services	SED	CED	VAT/CST	GST
Alcoholic Liquor for Human Consumption	Yes		Yes	
High Speed Diesel, Crude Petroleum, Motor Spirit, Aviation turbine fuel, Natural Gas (HPMAN)		Yes	Yes	
Tobacco and tobacco products		Yes		Yes
Opium Indian hemp & Other narcotic substances	Yes			Yes
Other Goods/Services				Yes

SED: State excise duty **CED:** Central excise duty

Benefits of GST

- **Creation of Unified national market** with common tax rates and procedures.
- **Boost to 'Make in India' initiative** by making goods and services produced in India competitive in the national as well as international market.
- **Enhanced investment and employment** by complete and comprehensive set off of input tax on goods and services and phasing out of CST reduces the cost of locally manufactured goods and services and increases the competitiveness of Indian goods and services in the international market and thus, gives boost to investments and Indian exports. With a boost in exports and manufacturing activity, more employment is generated and GDP is increased.
- **Ease of doing business:** Simpler tax regime along with reduction in multiplicity of taxes.
- **Automated procedures with greater use of Information technology (IT):** Simplified and automated procedures for various processes such as registration, returns, refunds, tax payments.
- **Mitigation of ill effects of cascading** by subsuming most of the Central & State taxes into a single tax and by allowing a set-off of prior-stage taxes.

Genesis of GST (History from origin)

GST is a path breaking indirect tax reform which will create a common national market. GST has subsumed multiple indirect taxes like excise duty, service tax, VAT, CST, luxury tax, entertainment tax, entry tax, etc.

Year	Events
1954	France was the first country to implement GST. At present about 160 countries have adopted GST.
2004	Kelkar Task force strongly recommended fully integrated GST on national basis.
2007-08	Union FM, P. Chidambaram, while presenting the Budget, announced that GST would be introduced from April 1,2010
19.12.14	The Constitution (122nd Amendment) Bill, 2014 introduced in the Lok Sabha
06.05.15	The Lok Sabha passed the Constitution (122nd Amendment) Bill, 2014
2016	The Rajya Sabha passed the Bill on August 03, 2016. <ul style="list-style-type: none"> The Constitution (122nd Amendment) Bill, 2014 received the assent of the President on 08.09.16 & it became the Constitution (101st Amendment) Act, 2016, which paved the way of GST in India
March 17	On 27th March, 2017, the Central GST legislations introduced – CGST Bill, 2017, IGST bill 2017, UTGST bill 2017, (GST compensation to states) bill, 2017 in Lok Sabha & On 29th March, 2017 , Lok Sabha passed these bills.
12.04. 17	President’s assent was given and bills were enacted.
01.07. 17	GST rolled out in India.
08.07. 17	GST law was made applicable to the state of Jammu and Kashmir

Constitutional Provisions

Constitutional Amendment: Introduction of the GST required amendment in the Constitution so as to enable integration of the central excise duty, additional duties of customs, State VAT and certain State specific taxes and service tax into a comprehensive GST and to empower both Centre and the States to levy and collect it. Earlier CG had power to levy taxes on manufacture, whereas state government had power to levy VAT on sale of goods within the state, with the introduction of GST both the government wanted to simultaneously levy and collect the tax, and existing Article 246 does not provide for making taxation laws together by centre and state. Hence the constitution of India had to be amended and Article 246-A is introduced in order to empower the centre & the state to levy and collect the GST simultaneously.

Article 246A: Special provisions with respect to GST

(1)	Notwithstanding anything contained in Articles 246 and 254 , <ul style="list-style-type: none"> ➤ Parliament, and, ➤ subject to clause (2), the Legislature of every State, ➤ have power to make laws with respect to GST imposed by the Union or by such State.
	Author’s comments: This article overrides article 246 and 254, Article 246 distributes power between the parliament & state legislature and 254 deals with situation when there is inconsistency between the law of parliament and law of state legislature, where it says law by parliament shall prevail. Article 246A provides concurrent power to CG & SG to levy GST.
(2)	Parliament has exclusive power to make laws with respect to GST where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.
	Author’s comments: Parliament to make law regarding interstate supply and state will have no power in case of interstate trade.
	Explanation: The provisions of this article, shall, in respect of GST referred to in clause (5) of article 279A, take effect from the date recommended by the GST Council
	Author’s comments: Provisions in respect of petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel shall apply from the date recommended by GST council.

Article 269A: Levy and collection of GST on inter-State supply

(1)	<p>GST on supplies in the course of inter-State trade or commerce (IGST)</p> <ul style="list-style-type: none"> ➤ shall be levied & collected by the government of India (CG) & ➤ such tax shall be apportioned between the Union & the States ➤ in the manner provided by Parliament by law on the recommendations of the GST Council.
	<p>Explanation: for the purpose of this clause, Supply of goods, or of services or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-state trade or commerce</p>

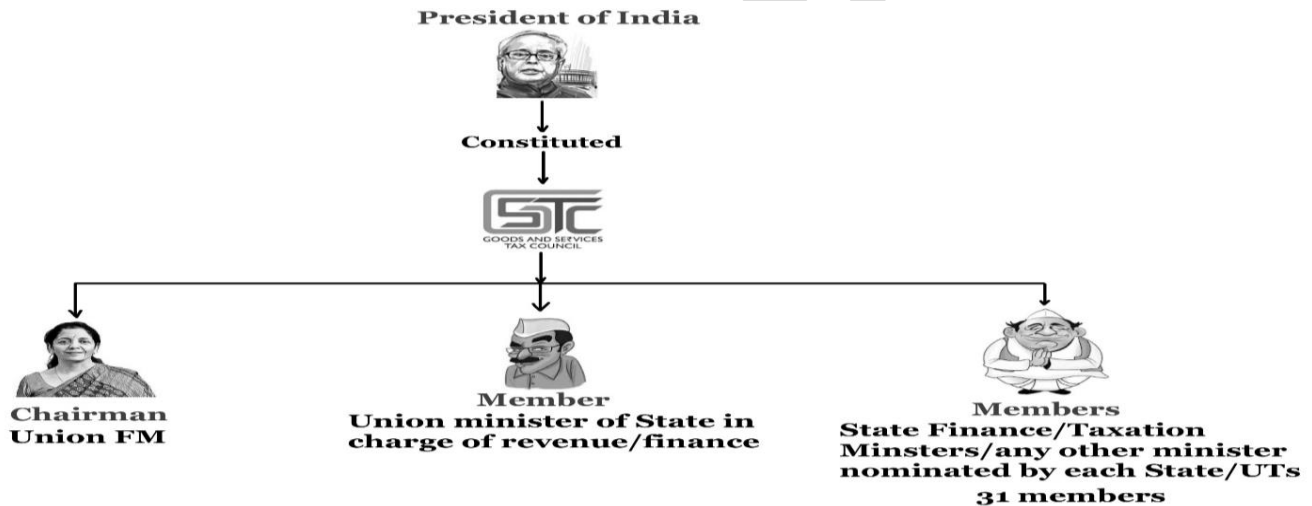
GST (Compensation to states) act 2017

A GST Compensation Cess at specified rate has been imposed under the GST (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed on value of taxable supply. Compensation Cess is leviable on intra-State supplies & inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST. Compensation is to be provided to a State for a period of 5 years from the date on which the State brings its SGST Act into force.

Initially, GST compensation cess was levied for a period of 5 years upto 30th June, 2022. However, its levy and collection has been extended till 31st March, 2026.

Article 279A: GST Council-Constitutional body

Section 2(36): Council means the GST Council established under article 279A of the Constitution.



- (1) Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
- (2) The joint forum of the Centre & States namely, GST Council. President constituted the GST Council on **15th September, 2016.**
- (3) **Members of the GST council-total 33 members**
 - The Union Finance Minister - **Chairman**
 - The Union Minister of State in charge of Revenue or Finance- **Member**
 - Ministers in charge of Finance/Taxation **or** any other Minister nominated by each of the States & UTs with Legislatures - **Members.**
- (4) **The function of the Council is to make recommendations to the Union & States on issues like:**
 - The taxes, cesses and surcharges which may be subsumed in the GST;
 - The Goods and services subjected to/ exempted from GST
 - Model GST laws, principles of levy, apportionment of GST levied on Inter-State supplies & the principles that govern the place of supply;
 - Threshold limit of turnover below which no GST shall be charged on goods/services
 - Rates of GST,

GST: Introduction, Overview & Administration

- Special rates for specified period to raise additional resources during any natural calamity or disaster.
 - Special provisions with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
 - Any other matter relating to the GST, as the Council may decide.
- (5) The GST Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas & aviation turbine fuel.

Common Portal

- GST Portal – www.gst.gov.in – is a website managed by Goods and Services Tax Network.
- **The functions of the GSTN include**
 - facilitating registration;
 - forwarding the returns to Central and State authorities;
 - computation and settlement of IGST;
 - matching of tax payment details with banking network;
 - providing various MIS reports to the CG and the SGs based on the taxpayer return information;
- The portal is one single common portal for all GST related services like obtaining registration, paying tax, filing of returns, etc.
- GSTN provides three front end services to the taxpayers namely registration, payment and return through GST Common Portal.
- The Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in [managed by the National Informatics Centre, Ministry of Electronics & Information Technology, GOI].
- **The Common GST Electronic Portal for e-invoicing**, namely:
 - www.einvoice1.gst.gov.in;
 - www.einvoice2.gst.gov.in;
 - www.einvoice3.gst.gov.in;
 - www.einvoice4.gst.gov.in;
 - www.einvoice5.gst.gov.in;
 - www.einvoice6.gst.gov.in;
 - www.einvoice7.gst.gov.in;
 - www.einvoice8.gst.gov.in;
 - www.einvoice9.gst.gov.in;
 - www.einvoice10.gst.gov.in;

GST Suvidha Providers (GSPs) & Application Service Providers (ASPs)

- GSTN has selected certain IT, ITeS and financial technology companies, to be called GST Suvidha Providers.
- GSPs develop applications to be used by taxpayers for interacting with the GSTN.
- They facilitate the tax payers in uploading invoices as well as filing of returns and act as a single stop shop for GST related services.
- They customize products that address the needs of different segment of users.
- GSPs may take the help of ASPs who act as a link between taxpayers and GSPs.
- **Hence**, we can say that GSPs will act as link between taxpayer and GSTN portal, and ASP will act as link between taxpayer and GSPs.

GST Laws: Act and Rules

Particulars	ACT			
	CGST	IGST	SGST	UTGST
Act	CGST Act, 2017	IGST Act, 2017	SGST Act, 2017	UTGST Act, 2017
Applicable on	Intra-state supply	Inter-state supply	Intra-state supply	Intra-state supply
No of Acts	1 CGST act	1 IGST act	31 SGST acts	1 UTGST act
No of Sections	1 to 174	1 to 25	1 to 174	1 to 26
	Rules			
Rule	CGST rules, 2017 Refer: Section 164 of CGST act	IGST rules, 2017 Refer: Section 22 of IGST act	State wise rules. E.g.: Karnataka GST rules, 2017	NA

2. Supply

Introduction

- A taxable event is any transaction or occurrence that results in a tax consequence.
- Various taxable events that existed under the previous law were manufacture, sale, rendering of service, etc. have been done away with and now the taxable event under GST is supply.
- **Taxable event under GST law is supply** of goods or services or both. Hence no supply no GST.

Goods: Section 2(52):

Goods means every kind of movable property

- **Other than** money and Securities
- **But includes**
 - ◆ actionable claim,
 - ◆ growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Movable property:

Movable property shall mean property of every description, except immovable property

Immovable property

Immovable property shall include

- land,
- benefits to arise out of land, and
- things attached to the earth, or
- permanently fastened to anything attached to the earth;

Author's comment:

Immovable property hence means

- **Land**
- **Benefits to arise out of land:** Transfer of development rights (TDRs), rights to ways, the right to catch away fish, right to collect dues from a fair or market on a land.
- **Things attached to the earth:** Things rooted/embedded in the earth like trees, buildings, walls.
- **Things permanently fastened to anything attached to the earth:** Telecommunication towers, lift, etc.

Money: Section 2(75):

Money means

- the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or
- any other instrument recognised by the RBI
- when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination
- **but shall not include any currency that is held for its numismatic value;**

Notes: Commercial Paper ('CP') and Certificate of Deposit ('CD')

- CPs are issued by highly rated companies, primary dealers & financial institutions at a discount to the face value.
- CDs can be issued by Scheduled Commercial Banks and Financial Institutions permitted by RBI.
- **CP and CD** are in the nature of promissory notes and hence money.
- **However**, the related activity, for which a separate consideration is charged, would be chargeable to GST. Example: issuance charges.

Securities Section 2(101)

As defined in the Securities Contracts (Regulation) Act, 1956; "Securities" include—

- (i) **shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities** of a like nature in or of any incorporated company or other body corporate;
- (ia) **derivative**;
- (ib) **units** or any other instrument issued by any collective investment scheme to the investors;
- (ic) **security receipt**;
- (id) **units** or any other such instrument issued to the investors under any **mutual fund** scheme;
- (ii) **Government securities**;
- (iia) such other instruments as may be declared by the Central Government to be securities; and
- (iii) **rights or interest in securities**.

Notes:

1. **Derivatives** are securities, hence neither goods nor services and not liable to GST.
2. **Future contracts** are in the nature of derivatives, these qualify as securities & thus, are not subject to GST.
However, where the future contracts have a delivery option and the settlement of contract takes place by way of actual delivery of underlying commodity, then such forward contracts would be treated as normal supply of goods and liable to GST.
3. **Forward contract:** An agreement, executed, to purchase or sell a predetermined amount of a commodity or currency at a pre-determined future date at a pre-determined price.
Where the settlement takes place
 - **by way of actual delivery of underlying commodity**, then such forward contracts would be treated as normal **supply of goods and liable to GST**.
 - **by way of net settlement** of differential of the forward rate over the prevailing market rate on the settlement date, the same would be falling within the purview of '**securities**' and thus, are **not chargeable to GST**.
4. **Service charges/service fees/documentation fees/broking charges** charged on the derivatives/future/forward contracts are consideration for provision of service and subject to GST.

Actionable claim (Section 3 of The Transfer of Property Act, 1882)

Actionable claim means a claim

- **to any debt, other than a debt secured** by mortgage of immoveable property or by hypothecation or pledge of moveable property, **or**
- **to any beneficial interest in moveable property not in the possession**, either actual or constructive, of the claimant,
- **which the Civil Courts recognize as affording grounds for relief**,
- whether such debt or beneficial interest be **existent, accruing, conditional or contingent**.

Examples of Actionable claims are:

- **Lottery, Betting, gambling:** Right to claim the prize or the amount.
- **Claim for arrears of rent:** Right to receive rent
- **Claim for the money due under insurance policy:** Right to receive policy amount



Priority Sector Lending Certificates (PSLCs) [Circular no. 34/8/2018-GST dated 01.03.18]

Issue: Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?

Clarification:

- PSLC are not securities and are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which earlier attracted VAT.
- In GST, there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods.
- GST payable on the certificates would be available as ITC to the bank buying the certificates.
- Nature of supply of PSLC between banks may be treated as a supply of goods in the course of inter-State trade or commerce & IGST shall be payable on the supply of PSLC traded over e-kuber portal (RBI).

Crux:

- PSLCs are goods & not securities,
- Sale of PSLC by bank is supply of goods u/s 7(1)(a) and taxable,
- Nature of supply - interstate & IGST is applicable.

Services: [Section 2(102)]**Services means anything**

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

Explanation - For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities.

Author's comment:

- 1. Services means anything other than goods,** hence we can say that immovable property is not goods but it will fall within the preview of services.
- 2. Activities relating to use of Money:** Even if money is not service but activities relating to use of money is a service, for example lending money and receiving interest.
- 3. Examples for Conversion:**
 - Giving cash to bank and getting DD/traveller's cheque for which bank charges a service charge
 - Converting Dollar to INR for which bank charges conversion charges
 - Getting Rs 2000 converted in Rs 10 notes for which bank charges fees.
- 4. Securities are neither goods nor services** but if stock broker charges a commission/ brokerages charges/ portfolio maintenance charges/Investment management fees/demat charges those will be services.

Section 7: Scope of Supply

Section 7(1): For the purposes of this Act, the expression "supply" **includes—**

Section 7(1)(a):

All forms of supply of goods or services or both such as:

- **Sale** (transfer of property in goods from one person to another person for consideration)
- **Transfer** (where the ownership may not be transferred but the right in the goods is transferred)
- **Barter** (the exchange of goods & services for other goods & services, without the use of money)
- **Exchange** (It is kind of Barter but money is also involved)

- **Licence** (When one person give right to other person to use IPR, software licenses, etc)
 - **Rental** (Periodical payment for use of another's property for a short term generally upto 12 months)
 - **Lease** (A lease is an agreement whereby the lessor conveys to the lessee, the right to use an asset for an agreed period of time, generally > 12 months)
 - **Disposal** (Disposal is a term generally used for selling of old scrap/items unfit for sale)
- ❖ **made or agreed to be made**
 - ❖ for a **consideration** by a person
 - ❖ In the **course or furtherance of business**

Author's comment:

The important things for a transaction to fall in the definition of supply are:

1. **A form of supply** – Example: Sale, transfer, barter, exchange, etc.
2. **Made or agreed to be made**
3. **For a Consideration**
4. **In the Course or furtherance of business.**

Consideration [Section 2(31)]

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

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

- in respect of, in response to, or for the inducement of,
 - ❖ the supply of goods or services or both,
 - ❖ whether by the **recipient or by any other person**
 - ❖ but shall not include any **subsidy** given by the Central Government or a State Government,

(b) the monetary value of any act or forbearance (not to do something),

- in respect of, in response to, or for the inducement of,
 - ❖ the supply of goods or services or both,
 - ❖ whether by the recipient or by any other person
 - ❖ but shall not include any **subsidy** given by the Central Government or a State Government.

Proviso: a deposit given in respect of the supply of g/s/b shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

Author's comments:

Points to be noted in the definition of consideration:

- Payment made for supply - in respect of, in response to or for inducement of
- Payment may be by recipient or any other person (NGO/company doing CSR)
- Somethings which are never consideration: subsidy received from government, security deposits.
- It can be monetary or non-monetary (in kind)
- Forbearance is also consideration.

Examples:

1. A cricket player is offered an Audi as an inducement for him in turn joining the club. Here the car is the consideration for inducing the player to join the club and play for the club.
2. A restaurant offers free meal to a bus driver as an inducement to bring potential clients to his restaurant. Here the consideration is free meal for the service of getting clients to the restaurant owner (basically marketing).

Recipient [Section 2(93)]

Recipient of supply of goods and/or services **means-**

- **where a consideration is payable for the supply of g/s/b**, the person who is liable to pay that consideration,
- **where no consideration is payable for the supply of goods**, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
- **where no consideration is payable for the supply of a service**, the person to whom the service is rendered,

- and **any reference to a person to whom a supply is made** shall be construed as a reference to the recipient of the supply and
- **shall include an agent** acting as such on behalf of the recipient in relation to the g/s/b supplied.

Crux: Who is a Recipient?

1. **A person to whom supply is made** – always means recipient
2. **If consideration payable** – person liable to pay
3. **No consideration payable** – person to whom goods delivered/made available/service rendered
4. **Agent acting on behalf of recipient** – also recipient of supply.

Business [Section 2(17)]

Business includes –

As stated in GST act		Author's comment
(a)	any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.	<p>Trade: Action of buying and selling goods/services</p> <p>Commerce: Buying & selling activity on a large scale.</p> <p>Profession: Profession refers to a career with training and qualification. Example: CA, doctor.</p> <p>Vocation: Job that requires set of skills acquired through training. Example: Plumbing, electrician, mechanic, etc. (skill based).</p> <p>It can also be an innate ability. Example: a poet.</p> <p>Wager: Formal term for bet. Example: Betting, gambling, lottery.</p> <p>Pecuniary benefit: monetary benefit</p>
(b)	any activity or transaction in connection with or incidental or ancillary to (a) above;	<p>In relation to/Incidental activities</p> <p>Example: Disposal of garbage, sale of scrap, sale of old machineries, sale of old newspaper, sale of repossessed items by banks/financial institutions, buying a truck to deliver goods to customer, etc.</p>
(c)	any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;	Volume, frequency, continuity or regularity are irrelevant.
(d)	supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;	Acquisition of goods/CG for commencement of business is also business activity, or sale of goods/CGs on closure also considered as business.
(e)	provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;	<p>When Club receives, membership fees, any other consideration from members, even such transactions shall be considered as business.</p> <p>Link: Entry 77 of Exemption notification no. 12/2017</p>
(f)	admission, for a consideration, of persons to any premises; and	<p>Entry fees for entry into business premises also considered as business</p> <p>Link: Entry 79, 79A, 81 of Exemption notification no. 12/2017</p>
(g)	services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;	A Practicing CS accepting the post of a director in a company, due to his expert knowledge is for the furtherance of his trade or professions and hence a business activity.
(h)	activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and	Supply of license to operate a race club, betting or activities by way of totalizator.
(i)	any activity or transaction undertaken by the	Government activities are also considered as

As stated in GST act	Author's comment
CG/SG/any LA in which they are engaged as public authorities.	business; however, they are not supply. Refer: section 7(2) of supply definition.

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

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

Examples:

1. Ram buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Ram to car dealer is not a supply under CGST Act because said supply is not made by Ram in the course or furtherance of business
2. Reena sold her old gold bangles and earrings to 'Aabhushan Jewellers'. Sale of old gold jewellery by an individual to a jeweler will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual

The view taken in above two examples is based on the view taken in the Departmental FAQs/press release/flyer.

However, as already seen, business includes trade, commerce, or any other similar activity, whether or not there is frequency, volume, continuity or regularity of such transaction. In view of this, it is also possible to take a view in the above examples that sale of car by Ram and sale of old gold jewellery by Reena have been made in the course or furtherance of business and thus will constitute a supply.

Since business includes vocation, therefore sale of goods or service as a vocation is also a supply.

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

Issue: Artists give their work of art to galleries where it is exhibited. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition, is it supply?

Clarification: The same is not a supply. It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place & applicable GST would be payable at the time.



Section 7(1)(aa)

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.- For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;".

Author's Analysis: Earlier there was an ambiguity whether activities or transactions involving supply of goods or services, by any person, other than an individual, to its members or vice-versa fall within the purview of supply or not. Section 7(1)(aa) brings the certainty that said activities or transactions are covered within the scope of supply under GST and ensures GST is levied on such activities or transactions.

Also an explanation has been inserted to section 7(1)(aa), in order to prevent the use of doctrine of mutuality and clarify that the person/ its members/ constituents shall be deemed to be two separate persons and the supply of activities/ transactions inter se shall be deemed to take place from one person to another.

This subsection was inserted to overrules the judgment of the Hon'ble Supreme Court in State of West Bengal v. Calcutta Club Limited wherein it was held that the transactions between a Club and its members cannot be taxed owing to the doctrine of mutuality, i.e., a person cannot make a profit from himself.

Person [Section 2(84)]

Person includes-

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

Section 7(1)(b):

Importation of services,

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

Import of service (Section 2(11) of IGST Act, 2017)

Importation of services means the supply of any service, where-

- (i) The supplier of service is located outside India;
- (ii) The recipient of service is located in India; and
- (iii) The place of supply of service is in India.

Author's comments: Points to be observed while applying this provision

- It should be **importation of services**, not goods (for goods GST is levied & collected under customs)
- Import should be for a **consideration**
- Import may or may not be for in the course or furtherance of **business**

Exemption under IGST (Extract)

Services received from a provider of service located in a non- taxable territory by –

- (a) the CG, SG, UT, a LA, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
- (b) an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities; or

However, the exemption shall not apply to –

- (i) online information and database access or retrieval services (OIDAR) received by persons specified in entry (a) or entry (b);

Online Information Database Access and Retrieval Services (OIDAR Services)

OIDAR services provided to Non Taxable online recipient (NTOR): Not exempt & hence Forward charge mechanism shall apply. OIDAR shall be required to take registration and remit the GST under FCM.

Non - Taxable Online Recipient (NTOR):

Non-taxable online recipient means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation.— For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017;

Examples:**1. Ramesh & Co. received legal services from Lakshman in Malaysia for \$ 1000**

Answer: Transaction covered under 7(1)(b), it is supply and GST leviable. Business entity to pay GST under RCM.

2. Ramesh wanted to construct his house and has taken interior designer service for his residential house from China for Yen 10000.

Answer: Transaction covered under 7(1)(b), it is supply. However, GST is exempt on such transactions (refer exemptions under IGST).

3. Ramesh wants to study abroad and receives some admission consultancy services from London based consultants for 1000 pounds

Answer: Transaction covered under 7(1)(b), it is supply. However, GST is exempt on such transactions (refer exemptions under IGST).

4. Ram in India imported free services from Google and Facebook, without any consideration. Is it supply subject to GST?

Answer: These are not considered as supply and hence not attract GST. GST will be levied only when services are provided with consideration.

5. Ram an Individual took Netflix subscription for personal purpose. Is it supply and subject to GST?

Answer: Yes, this is considered as supply and will attract GST, however OIDAR shall be liable to register in India and pay the GST under FCM.

Section 7(1)(c): Deemed supply (Supply without consideration)

The activities specified in **Schedule I** made or agreed to be made without a consideration.

Activities specified in Schedule I

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

- 1. Permanent transfer or disposal of business assets** where input tax credit has been availed on such assets.
- 2. Supply of goods or services or both between related persons or between distinct persons** as specified in section 25, when made in the course or furtherance of business:
Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
- 3. Supply of goods—**
 - (a) **by a principal to his agent** where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) **by an agent to his principal** where the agent undertakes to receive such goods on behalf of the principal.
- 4. Import of services by a person from a related person** or from any of his other establishments outside India, in the course or furtherance of business.

Let us now analyse each of them one by one:

1. Permanent Transfer/Disposal of Business Assets (PTDOBA) where ITC has been availed on such assets:

Author: Business asset means goods held for sale or used for the purpose of business

Conditions to be satisfied to qualify as supply

1. There must be disposal or transfer of business assets
2. Transfer must be on permanent basis.
3. Input tax credit has been availed on **such** assets.

Hence Permanent transfer or disposal will not cover the following assets

1. Business assets on which ITC is blocked under GST.
2. Business assets though eligible for ITC, ITC has not been availed by the registered person.

Examples:

1. Ram a trader in clothes permanently transfers stock of Rs 1 lakh to a trust free of cost.
2. A coaching institute donated its projector to charity (ITC was taken on the projector).
3. Ramesh has an electronic shop, transfer a TV to his home (ITC was taken on the TV).

Let us understand some examples:

Taxable person	Inward	ITC	Outward	Relevant section	Consequence
Trader of mobile	Mobile	Availed	Gifted mobile	7(1)(c) – Para a - Supply PTOBA	GST payable – value as per valuation rules
Trader of mobile	Capital goods (Machine)	Availed	Sold after 1 year	7(1)(a) – Supply	GST payable on transaction value. (Value as per section 18(6) – discussed in ITC chapter.
Trader of mobile	Capital goods (Car)	Blocked hence not availed	Sold after 2 years	7(1)(a) – Supply	GST payable on Margin i.e., profit (refer discussion below)
Trader of mobile	Capital goods (Car)	Blocked hence not availed	Gifted	Not supply since not covered under any section	GST not payable

Margin scheme made applicable in case of sale of Motor Vehicles [NNo. 8/2018- CT (R)]

- Margin scheme made applicable to all taxpayers on the sale of motor vehicle held as capital asset.
- **where depreciation has been claimed by the taxpayer:** GST has to be paid on the excess of selling price over the written down value as per the Income Tax Act, 1961.
- **Where no depreciation has been claimed:** GST shall be paid on the difference in the selling price and the purchase price.

Note: The relaxation is only in case of sale of old & used motor vehicles.

2. Supply of goods, services or both between related person/ distinct persons as specified in section 25, when made in the course or furtherance of business:

Proviso: Gifts not exceeding Rs 50,000 in value in a FY by an employer to an employee shall not be treated as supply of goods or services or both.

Related persons [Explanation to Section 15]: For the purposes of this Act, -

- (a) Persons shall be deemed to be "related persons" if -
 - (i) Such persons are **officers or directors** of one another's businesses;
 - (ii) Such persons are legally recognised **partners** in business;

- (iii) Such persons are **employer and employee;**
 - (iv) Any third person directly/indirectly owns/controls/holds at least **25% of voting stock/ shares** of both of them;
 - (v) One of them directly or indirectly **controls** the other; (holding-Subsidiary)
 - (vi) Both of them are directly or indirectly **controlled by a third person;** (subsidiaries of 1 holding company)
 - (vii) Together they directly or indirectly **control a third person;** or
 - (viii) They are members of the same **family;**
- (b) The term "person" also includes legal persons;
- (c) Persons who are associated in the business of one another in that one is the **sole agent or sole distributor or sole concessionaire** (trading rights), howsoever described, of the other, shall be deemed to be related.

Section 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.

Author's comments:

- Sole agent means only one agent. If the person has more than one agent, they will not be considered related.
- Parents, Grandparents, brother and sister are related only if dependent.

Examples on Gift

Gift to	Whether supply or not?
1. Employee Rs 45,000	No, it is not supply since within limit of Rs 50,000
2. Employee Rs 55,000	Yes, it is supply since it crosses the limit of Rs 50,000, accordingly Value of supply Rs 55,000 and GST applicable on Rs 55,000
3. All Other (RPs) Rs 5,000	Yes, it is supply, no monetary limit applicable.

Whether the following are related person?

SN	Particulars	Yes or no with reason
1	M/s Ram & Co., holds 40,000 shares in A Ltd. and 25,000 shares in B Ltd. Share Capital of M/s A Ltd: 1,00,000 Equity Shares of Rs 10 each. Share Capital of M/s B Ltd: 80,000 Equity Shares of Rs 10 each.	Yes, Since M/s Ram & Co. directly owns /holds at least 25% of voting stock/shares of both.
2	Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. Hence having effective control over Q Ltd	Yes, since Q Ltd directly controls R Ltd.

Distinct persons (as specified in section 25)

Separate registration makes distinct person:

A person who has obtained or is required to obtain more than one registration, whether in one state/UT or more than one state/UT shall, in respect of each such registration, be treated as distinct person for the purpose of this act.

Examples:

1. Ram has an electronics shop registered in Bangalore (Karnataka) and another electronic shop in Mangalore (Karnataka) and he has obtained separate registration for both the shops. Ram shall be treated as distinct person in respect of both registrations.
2. Ram, a Chartered Accountant, has a registered head office in Karnataka. He has also obtained registration in Delhi in respect of his newly opened branch office. Ram shall be treated as distinct persons in respect of registrations in Karnataka and Delhi.
3. **Stock transfer:** Ram Fabrics transfers 100 shirts from his factory located in Karnataka to his retail showroom in Tamil Nadu. The factory and retail showroom of Ram Fabrics are registered in the States

where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply, since both are distinct person.

Establishment in another state is a separate person:

Where a person 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 purpose of this act.

Example: Ram has electronics shop registered in Bangalore (Karnataka) and a liquor shop in Tamil Nadu. Since supply of alcoholic liquor for human consumption is a non-taxable supply i.e., exempt supply, Ram is not required to obtain registration in the state of Tamil Nadu. **In such a situation** the electronic shop and liquor shop shall be treated as establishment of distinct person.

Summary (Distinct person):

1. Different premises in same state: DP provided separate registration
2. Different premises in different states: DP.

Clarification on Interstate movement of various modes of conveyance, carrying goods or passengers or for repairs & maintenance between distinct persons

Issue: Whether inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance, between distinct persons as specified in section 25(4) of the CGST act, 2017, [except for further supply of the same conveyance is leviable to IGST]?

Clarification: The issue of inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the CGST Act, not involving further supply of such conveyance, including **Trains, Buses, Trucks, Tankers, Trailers, Vessels, Containers, Aircrafts,** (a) carrying goods or passengers or both; or (b) for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] was discussed in GST Council's meeting held on 11th June, 2017 and the Council recommended that **such inter-state movement shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST.**

However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on any repairs and maintenance done for such conveyance.

Crux:

1. **Inter-state movement of conveyances carrying goods/passengers or both in conveyance:** shall be treated 'neither as a supply of goods nor as a supply of service' and therefore not be leviable to IGST.
2. **On Repairs and maintenance or work done:** applicable CGST/SGST/IGST, as the case may be, shall be leviable
3. **If movement is for further supply of conveyance:** Treated as supply and IGST leviable.

Clarification on Interstate movement of rigs, tools & spares and all goods on wheels (like cranes) Circular No. 21/21/2017-GST dated 22.11.2017

Issue: Whether the inter-state movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the CGST Act, 2017, carrying goods or passengers or both; or for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] is leviable to GST?

Clarification: The issue pertaining to inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes] was discussed in GST Council's meeting held on 10th November, 2017 and the Council recommended that the circular 1/1/2017-IGST shall mutatis mutandis apply to inter-state movement of such goods, and except in cases where movement of such goods is for further supply of the same goods,

such inter-state movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements.

In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods.

Crux (same as the above circular):

1. **Inter-state movement rigs, tools & spares and all goods on wheels** shall be treated 'neither as a supply of goods nor as a supply of service' & therefore not be leviable to IGST.
2. **On Repairs and maintenance or work done:** applicable CGST/SGST/IGST, shall be leviable
3. **If movement is for further supply of conveyance:** Treated as supply and IGST leviable.

3. Principal to Agent supply or vice-versa

Supply of goods

- a. **by a principal to his agent**, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.
- b. **by an agent to his principal**, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

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

Section 2(5): Agent means

- a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called,
- who carries on the business of supply or receipt of goods or services or both **on behalf of another.**

Author's comment: Points to be noted:

1. Only supply of goods is covered and not supply of services.
2. This section covers only transactions without consideration.
3. Supply of services between principal and agent will be covered only if for a consideration.

Circular explaining scope of Principal-agent relationship in the context of Schedule I of the CGST Act (Circular No. 57/31/2018-GST dated 04.09.18)

Issue: How to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal i.e., the agent is an agent in terms of Schedule I?

Clarification: The key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not.

- **Where the invoice for further supply is being issued by the agent in his name** then, any provision of goods from the principal to the agent would fall within the fold of the said entry.
- **Where the invoice is issued by the agent to the customer in the name of the principal**, such agent shall not fall within the ambit of Schedule I of the CGST Act.

Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry.

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

Crux:

- **Where the invoice for further supply is being issued by the agent in his name** then, any provision of goods from the principal to the agent would fall within the fold of the said entry.
- **Where the invoice is issued by the agent to the customer in the name of the principal**, such agent shall not fall within the ambit of Schedule I of the CGST Act.

Let us discuss some scenarios:

- Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A.
In this scenario, Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Schedule I.
- M/s XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s XYZ. The invoice for the supply of the goods is issued by M/s XYZ to the successful bidder.
In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr. B is not an agent of M/s XYZ for the supply of goods in terms of Schedule I.
- Mr. A, an artist, appoints M/s B (auctioneer) to auction his painting. M/s B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder.
In this scenario, M/s B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Schedule I.

A similar situation can exist in case of supply of goods as well where the C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F/commission agent is an agent of the principal for the supply of goods in terms of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.

In scenario 1 and scenario 2, Mr. B shall not be liable to obtain registration in terms of section 24(vii) of the CGST Act. He, however, would be liable for registration if his aggregate turnover of supply of taxable services exceeds the threshold specified in section 22(1) of the CGST Act.

In scenario 3, M/s B shall be liable for compulsory registration u/s 24(vii) of the CGST Act.

4. Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business**Examples:**

- Ram Ltd. of Mumbai imports business support services from its head office located in USA. The head office has rendered such services free of cost to its branch office. Services received by Ram Ltd. will qualify as supply even though the head office has not charged anything from it.
- Ram, a proprietor registered in Karnataka, has sought architect services from his son located in London, with respect to their new home constructed house in Karnataka. Although services have been received by Ram is without any consideration from his son - a related person, still it will not qualify as supply since the same has not been received in course or furtherance of business.

Section 7(1A): Activities or transactions to be treated as supply of goods/supply of services

Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods/services as referred to in Schedule II;

Schedule II is as follows:**1. Transfer**

(a) any transfer of the **title in goods** is a **supply of goods**;

- (b) any transfer of **right in goods/of undivided share** in goods without the transfer of title thereof, is **a supply of services**;
- (c) any transfer of **title in goods under an agreement** which stipulates that **property in goods shall pass at a future date** upon payment of full consideration as agreed, is **a supply of goods**.

Right in goods/Undivided share in goods

Ram and Shyam are co-owner of a JCB machine. Which they give on rent. Shyam sells his share in goods to another person Lakshman. This is also known as transfer of undivided share in goods. In this scenario only, the undivided share is transferred to Lakshman and not the title in goods and hence it is supply of service. However, if both Ram and Shyam transfer the share to Lakshman, it will involve transfer of title also and hence will be termed as Supply of goods.

Example:

- (a) Audi sold a car to Ram for Rs 50 lakhs – **Supply of goods**
- (b) Ram supplied a machine to Shyam on hire purchase basis (i.e., possession given immediately but title to be transferred on payment of last instalment) – **Supply of goods**

2. Land and Building

- (a) any lease, tenancy, easement, licence to occupy land – **Supply of Services**
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly- **Supply of Services**

Circular on Issue related to taxability of 'tenancy rights' under GST, Circular no. 44/18/2018-CGST dated 02.05.2018

Issue:

- Whether Transfer of tenancy rights to a new tenant against consideration would attract GST although stamp duty & registration charges have been levied on such transfer?**
- Whether services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium would be liable to GST?**

About Pagadi system [Tenancy rights against tenancy premium (pagadi)]

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

Clarification:

- The scope of supply includes all forms of supply of goods and services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- The activity of transfer of tenancy right against consideration in the form of tenancy premium is a supply under section 7(1)(a).
- It is a form of lease or renting of property and such activity is specifically declared to be a supply of service in para 2 of Schedule II.
- Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST.
- The transfer of tenancy rights cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus, a consideration for the said activity shall attract levy of GST.

Crux:

- The activity of transfer of 'tenancy rights' is covered under the scope of supply and taxable.

- Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.
- However, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt.
- As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

3. Treatment or Process

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

Example: Varnishing chairs and tables, Heat treatment on glass, printing logo on tees, etc.

Circular No. 34/8/2018-GST dated 01.03.18

Whether rethreading of tyres is a supply of goods or services?

Activity	Supply of Goods or Service
Supplier buys old tyres, does the re-treading and supplies re-treaded tyres.	Supply of re-treaded tyres, where the old tyres belong to the supplier of re-treaded tyres, is a supply of goods.
Supplier only does re-threading on old tyres for customers, using rubber and other material.	Pre-dominant element is process of re-treading which is a supply of service. Rubber used for re-treading is an ancillary supply.

Whether activity of bus body building, is a supply of goods or services?

Activity	Supply of Goods or Service
If the Bus body building entity build a bus by working on the chassis that is owned by him & supplies bus.	Supply of goods
Only building the body of the bus on the chassis provided by a customer and charging fabrication charges (material also used during fabrication)	Fabrication of body on chassis is the principal supply, and it is a supply of service.



4. Transfer of Business Assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is **a supply of goods by the person;**

Author's comment:

- Permanent transfer of business asset with consideration – **supply of goods**
- Permanent transfer of business asset without consideration (ITC availed) – **supply of goods.**
- Permanent transfer of business asset without consideration (ITC not availed) – **Not supply, no GST.**

Examples:

1. Ram sold his office laptop for Rs 50000 – **Supply of goods**
2. Ram a wholesaler of medicines distributed medicines free of cost – **supply of goods**

3. Ram purchased a car for business and sold it for 5 lakhs after a year – **supply of goods**

- (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are
- put to any private use or
 - are used, or made available to any person for use, for any purpose other than a purpose of the business,
 - the usage or making available of such goods **is a supply of services;**

Author's comment: Temporary transfer or use of business assets for non-business purpose: **supply of services.**

Example: M/s Ram Ltd. provided car to one of its directors for his personal purposes and charged Rs 30,000 per month. It is supply of service and the same is taxable under GST.

(c) **where any person ceases to be a taxable person,**

- any goods forming part of the assets of any business carried on by him
- shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person,

unless-

- (i) Business is transferred as a going concern to another person; or
- (ii) Business is carried on by a personal representative who is deemed to be a taxable person.

Examples:

1. Ram-Shyam & Co a partnership firm decided to dissolve the partnership firm. Goods left in stock taken over by the partners. Taking over of goods by partners will be considered as a supply of goods. Since, business is not continued further by the partners.
2. Ram is in the business of running a restaurant. It intends to sell its business as a going concern to Shyam. It would not be required to pay GST on such sale of its business.

5. Supply of Services

(a) Renting of immovable property

Author's comment: Land and building has already been covered under para 2, hence we can say the intention of law under this para is to cover all other immovable property like telecommunication towers, furniture which is attached in a building, etc.

(b) Construction of complex, building, civil structure, etc.

Except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority **or** after its first occupation, whichever is earlier.

Explanation - for the purposes of this clause—

- (1) the expression "**competent authority**" means the Government/any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: -
 - (i) **an architect registered** with the Council of Architecture constituted under the Architects Act, 1972; or
 - (ii) **a chartered engineer registered** with the Institution of Engineers (India); or
 - (iii) **a licensed surveyor** of the respective local body of the city or town or village or development or planning authority;
- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

Author's comment: Construction contract involving labour only is supply of service, however if it involves material and labour both, it shall be classified as works contract under para 6(a).

Valuation: Value of Land shall be considered as 1/3rd of the total consideration and remaining value will be subject to GST. (Refer value of supply chapter).

(c) Temporary transfer or permitting use or enjoyment of any intellectual property right.

Author's comments: IPR means patents, trademarks, copy rights, etc.

(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software

(e) Agreeing to obligation

- to **refrain** from an act, or
- to **tolerate** an act or situation, or
- to do an **act**

Author's comments: **Refrain:** stop oneself from doing something, **Tolerate:** allow the existence, occurrence, or practice of (something that one dislikes or disagrees with) without interference.

(f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite Supplies

The following composite supplies shall be treated as a supply of services, namely: –

- (a) **works contract** as defined in section 2(119); and
- (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

Section 2(119): Works contract services

Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning **of any immovable property** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

Section 7(2): Notwithstanding anything contained in sub-section (1),

(a) Activities or transactions specified in Schedule III or

(b) Such activities or transactions undertaken by the CG, SG, or any local authority in which they are engaged as public authorities,

- as may be **notified** by the Government
- On the recommendations of the Council

shall be treated neither as a supply of goods nor a supply of services.

Schedule III: Activities/transactions shall be treated as neither supply of goods nor supply of services

1. Services by an employee to the employer in the course of or in relation to his employment

SN	Examples	GST applicability
1	Ram is an employee of RSS pro corp ltd receiving salary and perquisites	Neither supply of goods nor supply of services
2	Shyam is appointed as a whole-time director with RSS pro corp ltd	Neither supply of goods nor supply of services
3	Lakshman is a Part time director with RSS pro corp ltd.	GST is applicable on his services since Lakshman is not an Employee of RSS.

SN	Examples	GST applicability
4	Amounts received by an employee from the employer on premature termination of contract of employment	Neither supply of goods nor supply of services, it is treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment.
5	Service provided by casual worker to employer who gives wages on daily basis to the worker	Services provided by the worker in the course of employment. Neither supply of goods nor supply of services

Clarification on perquisite provided by the employer to its employees in terms of contractual agreement [Circular No. 172/04/2022-GST dt. 06.07.22]

Issue: Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?

Clarification: Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

Crux: Any perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.

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

Author's comment: Tribunal means the one established under any law, an Arbitral tribunal is a private tribunal constituted by parties for settlement of any dispute between themselves, services of Arbitral tribunal are services and subject to GST.

Court includes: District court, high court and Supreme Court.

Clarification on levy of GST on amounts/fees charged by Consumer Disputes Redressal Commission. [Circular no. 32/06/2018-GST dated 12.02.2018]

Issue: Whether GST is leviable on fees/penalty/any other amount charged by Consumer Disputes Redressal Commissions (CDRCs)?

Clarification: CDRCs (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a Tribunal. Consequently, fee paid by litigants while registering complaints to said Commissions are not leviable to GST. Any penalty in cash imposed by or amount paid to these Commissions will also not attract GST.

Crux: CDRCs have the characteristics of a Tribunal, Consequently No GST on fees/penalty/any other amount charged by CDRCs.

3. Services by Government officials (name given by author).

(a) Functions performed by the

- Members of Parliament, Members of State Legislature,
- Members of Panchayats, Members of Municipalities and Members of other local authorities;

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

Example: President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner, Comptroller and Auditor General of India, Attorney General of India, in that capacity.

(c) Duties performed by

- any person as a Chairperson or a Member or a Director
- in a body established by the CG/SG/LA and who is not deemed as an employee before the commencement of this clause.

Example: Chairman of Telecom regulatory authority of India (TRAI), Members and directors of finance commission who are not employees.

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

5. Sale of land and, subject to clause (b) of para 5 of schedule II, sale of building

Particulars	Supply of Goods or Service	GST Liability
Sale of Land	Neither supply of goods nor service – Schedule III	No GST
Sale of building – Entire consideration received after issuance of completion certificate or first occupancy (whichever is earlier)	Neither supply of goods nor service – Schedule III	NO GST
Sale of building – where part or full consideration received before issuance of completion certificate or first occupancy (whichever is earlier)	Supply of service (schedule II- Para 5(b))	Liable to GST – Supply of service

Clarifications regarding applicability of GST on sale of land after levelling, laying down of drainage lines etc. [Circular No. 177/09/2022 GST dated 03.08.2022]

Issue: Whether GST is applicable on sale of land after levelling, laying down of drainage lines etc.

Clarification: Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

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

Crux: Sale of developed land is also sale of land and is covered by Para 5 of Schedule III & accordingly, does not attract GST.

6. Actionable claims, other than specified actionable claims.

Actionable claims are goods, supply of actionable claims is supply of goods, however GST shall be leviable only **specified actionable claims**.

Definitions

Section 2(102A): Specified actionable claim means the actionable claim involved in or by way of—

- betting;
- casinos;
- gambling;
- horse racing;
- lottery; or
- online money gaming;

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

Section 2(80B): Online money gaming means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital 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;

Section 2(105): 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;

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

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

Section 2(47A) of Income tax act: Virtual digital asset means—

- (a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically;
- (b) a non-fungible token or any other token of similar nature, by whatever name called;
- (c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify:

7. Supply of goods from a place in the non-taxable territory (NTT) to another place in the non-taxable territory without such goods entering into India. (Merchant trading/Out & Out supplies)

Example: Ram purchased goods from China and sold it to Shyam in USA without bringing the goods in India. This transaction is neither supply of goods nor supply of services.

8. High seas sale or Bond to bond transfer (In Bond sales)

(a) Supply of warehoused goods to any person before clearance for home consumption;

Example: Ram imported some goods in India but kept the goods in custom bonded warehouse without clearing it for home consumption. In the meantime, Ram sold these goods to Shyam while they were in warehouse. This transaction between Ram & Shyam is neither supply of goods nor supply of services.

(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.

Examples: (ICAI study material)

1. Mr. X imported some goods in India but kept the goods in custom bonded warehouse without clearing it for home consumption. In the meantime, Mr. X sold these goods to Mr. Y while they were in warehouse. This transaction between Mr. X and Mr. Y is neither supply of goods nor supply of services.

2. Mr. P of India imported some goods from Japan. While the goods were in high seas, Mr. P sold the goods to Mr. Q in India by way of endorsement of documents of title of goods. This transaction between Mr. P and Mr. Q is neither supply of goods nor supply of services.

Notified services under section 7(2)(b)

- Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution. [NNo. 14/2017 CT (R)]
- Services by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called. [NNo. 25/2019-CT(R)]

Clarification: Circular No. 121/40/2019 GST dated 11.10.2019**Issue: Whether in case of all other licenses and privileges for a fee in other situations also no GST is payable?**

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

Crux: Supply of service by way of grant of Alcoholic liquor license by the SG is out of scope of supply, any other services by way of grant of mining right, natural resources against fees/royalty are taxable.

Section 7(3): Power of Government to notify transaction as SOG and not SOS/vice versa**Subject to sub-sections (1), (1A) and (2)**

- The Government may, on the recommendations of the Council, specify, by notification
- The transactions that are to be treated as —
 - (a) **a supply of goods and not as a supply of services; or**
 - (b) **A supply of services and not as a supply of goods.**

Section 8 - Tax liability on Composite & Mixed Supply**Composite supply [Section 2(30)]**

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

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

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

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

- **The perception of the consumer** or the service recipient (expectation of consumer).
- **Majority of service providers** in a particular area of business provide similar bundle of services.
- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.
- **Other illustrative indicators, not determinative but indicative of bundling of services in the ordinary course of business are:**
 - The elements are normally **advertised** as a package.

- The **different elements are not available separately.**
- The **different elements are integral** to one overall supply. If one or more is removed, the nature of the supply would be affected.

Principal supply

Principal supply means the supply of goods/services

- which constitutes the predominant element of a composite supply and
- to which any other supply forming part of that composite supply is ancillary;

Section 8(a): Composite supply

A composite supply comprising two or more supplies, one of which is a principal supply,

- **shall be treated as a supply of such principal supply.**

Mixed supply Section 2(74)

Mixed supply means

- **two or more individual supplies** of goods or services, or any combination thereof,
- **made in conjunction** with each other by a taxable person
- **for a single price** where such supply does not constitute a composite supply.

Illustration — A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks 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;

Section 8(b): Mixed Supply

A mixed supply comprising of

- two or more supplies
- shall be **treated as supply of that particular supply which attracts highest rate of tax.**

Some Examples:

SN	Supply	Are they naturally bundled	Is there a principal supply	Composite or Mixed supply?	Treated as supply of?
1	Air transport along with meal on board. The meal is included in the ticket.	Yes	Yes	CS	Principal supply
2	Hotel-stay along with complimentary breakfast.	Yes	Yes	CS	Principal supply
3	Gift package consisting of sweets, chocolates, candles, perfume, and crackers.	No	No	MS	That supply attracting highest rate
4	Buying a new bike along with insurance and free maintenance service for a year.	Yes	Yes	CS	Principal supply
5	Hotel facility along with free laundry service and airport pickup included in the hotel package.	Yes	Yes	CS	Principal supply
6	Cosmetic package with Hair oil, lotion, cream, comb, shampoo, and face wash.	No	No	MS	That supply attracting highest rate
7	Buying a laptop along with laptop bag for Rs 40,000	Yes	Yes	CS	Principal supply

SN	Supply	Are they naturally bundled	Is there a principal supply	Composite or Mixed supply?	Treated as supply of?
8	Buying a computer and a printer together for Rs 50,000	No	No	MS	That supply attracting highest rate
9	Booking a trip with make my trip for Rs 20000, services provided travel, guide, hotel and food.	Yes	Yes	CS	Principal supply
10	Buying a TV with free installation and getting one-year free warranty	Yes	Yes	CS	Principal supply

Circulars

Clarification on taxability of supply of food and beverages at cinema halls.

Issue: Whether supply of food and beverages at cinema halls is taxable as restaurant service which attract GST at the rate of 5% or not.

Clarification: It is clarified that supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:

- (a) the food or beverages are supplied by way of or as part of a service, and
- (b) supplied independent of the cinema exhibition service.

Further clarified that 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.

Crux: If food & beverages at cinema halls are supplied independently: taxable as restaurant service but if sale of cinema ticket and supply of food & beverage are clubbed & satisfying the test of composite supply, then rate of principal supply i.e. exhibition of cinema will apply.

Clarification on servicing of cars involving both supply of goods (spare parts) & services (labour) [Circular no. 47/21/2018-GST dated 08.06.18]

Issue: Servicing of cars involving both supply of goods (spare parts) & services (labour), where the value of goods and services are shown separately, to be treated under GST?

Clarification: The taxability of supply would have to be determined on a **case-to-case basis** looking at the facts and circumstances of each case. Where a supply involves supply of both goods & services & the value of such goods and services supplied are shown separately, the goods & services would be liable to tax at the rates as applicable to such goods & services separately.

Clarification on taxability of printing contracts [circular no. 11/11/17-GST dated 20.10.17]

Issue: whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods or supply of services.

Clarification: 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.

Activity	Supply of Goods or Service
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	Supply of printing [of the content supplied by the recipient of supply] is the principal supply

Activity	Supply of Goods or Service
usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer,	and therefore such supplies would constitute supply of service.
In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the printer using its physical inputs including paper to print the design, logo etc. (supplied by the recipient of goods).	Predominant supply is supply of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods

Clarification on taxability of shares held in a subsidiary company by holding company

Issue: Whether the activity of 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.

Clarification: Securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined u/s 7.

It cannot be said that a service is being provided by the holding company to the subsidiary company solely on the basis that there is a specific entry 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.", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7.

Crux: The activity of holding of shares of subsidiary co. by the holding co. per se cannot be treated as a supply of services by a holding co. to the said subsidiary co. and cannot be taxed.

Clarification on various doubts related to treatment of sales promotion schemes under GST [Circular No. 92/11/2019-GST dated 07.03.2019]

There are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products.

Taxability of two such schemes has been clarified as under:

A. Free samples and gifts:

- It is a common practice among certain sections of trade & industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.
- The samples which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the CGST Act).
- Further, section 17(5)(h) of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration.
- However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC. (to be discussed in detail in Input tax credit chapter)

Crux:

- **Where activity of distribution of gifts/free samples does not falls within the scope of supply:** that ITC shall not be available.
- **Where activity of distribution of gifts/free samples falls within the scope of supply (schedule I):** ITC would be available.

B. Buy one get one free offer: Example, "buy one soap and get one soap free"/ "Get one tooth brush free along with the purchase of tooth paste".

As per section 7(1)(a), the goods/services which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the CGST Act).

- It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration.
- In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.
- Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the CGST Act.
- It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.
(To be discussed in Input tax credit chapter)

Crux: Buy One, Get One Free is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply, it can either composite or mixed supply.

ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

Clarification on Taxability of Cost Petroleum [Circular No. 32/06/18-GST dated 12.02.18]

Production Sharing Contract

- When an oil exploration & production contractor gets a license/lease to explore/mine the petroleum crude and/or natural gas from the Government, it enters into a Production Sharing Contract (PSC) with the Government.
- The relationship of the contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee.
- As per these PSCs, when a contractor discovers oil/gas, he is at first entitled to recover the contract cost [expenses incurred in exploration, development, production and payment of royalty] involved in the extraction of oil/gas from the total sale proceeds and thereafter, he is expected to share with the Government the profit from his venture [known as profit petroleum], as per the PSC.
- **The value of petroleum which the contractor is entitled to take in a year for recovery of the contract costs is called the cost petroleum.**
- **Further, the total value of petroleum produced and saved from the contract area in a particular period, as reduced by cost petroleum, is called the profit petroleum.**
- The Government's share of profit petroleum which is the consideration paid by the contractor to the Central Government for the services of grant of license/lease to explore/mine petroleum crude and/natural gas **is exempt from GST (refer exemption below).**
- The cost petroleum is not a consideration received by the contractor for the services provided to Government and thus not taxable per se. The reason for the same is that the contractors carry exploration and production of petroleum for themselves and not as a service to Government.
- They had acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum.

Crux:

- Government grants license/lease to explore/mine the petroleum crude and/or natural gas in consideration for profit petroleum, which is exempted from GST.
- The cost petroleum is not a consideration received by the contractor for the services provided to Government and thus not taxable.

Exemption: Central Government's share of profit petroleum exempted

The CG has exempted the intra-State/inter-state supply of services by way of grant of license/lease to explore/mine petroleum crude/natural gas/both, from so much of the central tax/integrated tax as is leviable on the consideration paid to the CG in the form of CG's share of profit petroleum as defined in the contract entered into by the CG in this behalf.

Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organizations receiving donation or gifts from individual donors [Circular No. 116/35/2019 GST dated 11.10.2019]

Issue: whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.

About donations to Charitable organisation: Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy (generosity) and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

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

- (i) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.
- (ii) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus, where all the three conditions are satisfied namely

- the gift or donation is made to a charitable organization,
- the payment has the character of gift or donation and
- the purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement,
- **GST is not leviable.**

Crux:

- 1. If three tests satisfied** (donation to charitable organisation, payment has character of donation and no commercial gain) – **Activity will not fall within scope of supply hence no GST.**
- 2. All other cases** – Where the name plate is basically for promoting business of donor – **Activity will fall in supply and GST is leviable.**

Clarification on Joint Venture (JV) - taxable services provided by the members of JV to the JV & vice versa & inter se between the members of the JV-reg (cir. no. 35/9/2018-GST)

Supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services.

JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of inter se agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV. **Thus,** whether a cash call is merely a transaction in money and hence not

in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case.

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

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

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

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

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

GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law [Circular No. 178/10/2022-GST dated 03.08.22]

In certain cases/instances, questions have been raised regarding taxability of an activity or transaction as the supply of service of **agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.**

Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at para 5 (e) of Schedule II of CGST Act in this context has been examined in the following paragraphs.

"Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5(e) of Schedule II of CGST Act if the same constitutes a "supply" within the meaning of the Act. The said expression has following three limbs: -

a. Agreeing to the obligation to refrain from an act-

Examples of activities that would be covered by this part of the expression would include

- **Non-compete agreements**, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.
- **a builder refraining from constructing more than a certain number of floors, even though permitted** to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or
- **An industrial unit refraining from manufacturing activity during certain hours** against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

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

Some Examples would include activities such as

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

c. Agreeing to the obligation to do an act-

This would include the case

- Where an industrial unit agrees to install equipment for zero emission or discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even

though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

The description "agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" was intended to cover services such as described above. However, over the years doubts have persisted regarding various transactions being classified under the said description.

Some of the important examples of such cases are Service Tax/GST demands on –

- (i) Liquidated damages paid for breach of contract;
- (ii) Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;
- (iii) Cheque dishonor fine/penalty charged by a power distribution company from the customers;
- (iv) Penalty paid by a mining company to State Government for unaccounted stock of river bed material;
- (v) Bond amount recovered from an employee leaving the employment before the agreed period;
- (vi) Late payment charges collected by any service provider for late payment of bills;
- (vii) Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity;
- (viii) Cancellation charges recovered by railways for cancellation of tickets, etc.

In some of these cases, tax authorities have initiated investigation and in some advance ruling authorities have upheld taxability.

A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises the aforementioned three different sets of activities viz. (a) the obligation to refrain from an act, (b) obligation to tolerate an act or a situation and (c) obligation to do an act.

Above three activities must comply with the following conditions:

1. There must be an expressed or implied agreement or contract must exist

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

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

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

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

2. Consideration must flow in return to this contract/agreement

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

Taxability of these transactions is discussed in greater detail in the following paragraphs.

Liquidated Damages

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

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

It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments

for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not reconstitute the aggrieved person. A contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party. Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are merely a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

Examples of such cases are:

- (1) damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,
- (2) penalty stipulated in a contract for delayed construction of houses,
- (3) forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.

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

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

On the contrary, consider the following examples:

- (1) A contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty.
- (2) A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up.
- (3) A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer.
- (4) A contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty.
- (5) Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period.

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

Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt.

Cheque dishonour fine/ penalty

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

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

Penalty imposed for violation of laws

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

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

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

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

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

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

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

Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

Late payment surcharge or fee

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

Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply. However, the same cannot be said of cheque dishonour fine or penalty as discussed earlier.

Fixed charges for power

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

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

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

Cancellation charges

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

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

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

All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.

The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply.

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

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

However, as discussed earlier, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

Crux: Schedule II: Para 5(e) considers: Agreeing to the obligation

- to refrain from an act, to tolerate an act or a situation or to do an act as a supply of service.

To be considered as supply of service, above three activities must comply with the following conditions:

- There must be an expressed or implied agreement or contract must exist to fall within Para 5(e)
- Consideration must flow in return to this contract/agreement.

3. Nature of Supply

Relevant definitions

India: Section 2(56) of CGST act

India means

- **the territory of India** as referred to in article 1 of the Constitution,
- **its territorial waters,**
- **seabed and sub-soil** underlying such waters,
- **continental shelf,**
- **exclusive economic zone** or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and
- **the air space** above its territory and territorial waters

State: Section 2(103) of CGST act

State includes a Union territory with Legislature

Union territory: Section 2(114) of CGST act

Union territory means the territory of –

- the Andaman and Nicobar Islands;
- Lakshadweep;
- Dadra and Nagar Haveli and Daman and Diu;**
- Ladakh**
- Chandigarh; and
- other territory.

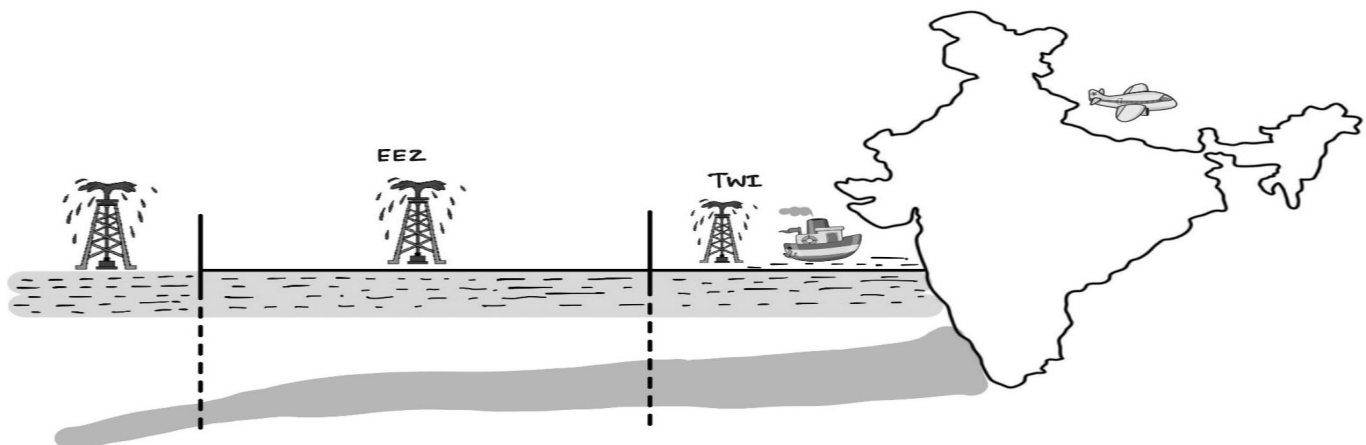
Explanation - for the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;

Other territory: Section 2(81) of CGST act

Other territory includes

- territories other than those comprising in a State and
- those referred to in sub-clauses (a) to (e) of clause (114);

India



Section 9 of IGST act: Supplies in territorial waters

Notwithstanding anything contained in this Act, –

(a)	where the location of the supplier is in the territorial waters,	the location of such supplier; or	shall, for the purposes of this Act, be deemed to be in the coastal State or UT where the nearest point of the appropriate baseline is located.
(b)	where the place of supply is in the territorial waters,	the place of supply,	

Section 7 of IGST act: Inter-State supply

(1)	Supply of goods between different states/UTS
	Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in— (a) two different States; (b) two different Union territories; or (c) a State and a Union territory, shall be treated as a supply of goods in the course of inter-State trade or commerce.
(2)	Import of goods be treated as inter-state
	Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade/commerce.
(3)	Supply of services between different states/UTS be treated as inter-state
	Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in— (a) two different States; (b) two different Union territories; or (c) a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce.
(4)	Import of services be treated as be treated as inter-state
	Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.
(5)	Following to be treated as Inter-state supply
	Supply of goods or services or both, – (a) when the supplier is located in India and the place of supply is outside India; (b) to or by a SEZ developer or a SEZ unit; or (c) 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.

Section 8 of IGST act: Intra-State supply

(1)	Supply of goods within same state/UT- intrastate supply
	Subject to the provisions of section 10, <ul style="list-style-type: none"> supply of goods where the LOS and the POS of goods are in the same State or same UT shall be treated as intra-State supply: Provided that the following supply of goods shall not be treated as intra-State supply, namely: (i) supply of goods to or by a SEZ developer or a SEZ unit; (ii) goods imported into the territory of India till they cross the customs frontiers of India; or (iii) supplies made to a tourist referred to in section 15.
(2)	Supply of services within same state/UT- intrastate supply
	Subject to the provisions of section 12, <ul style="list-style-type: none"> supply of services where the LOS and the POS of services are in the same State or same UT shall be treated as intra-State supply: Provided that the intra-State supply of services shall not include supply of services to or by a SEZ developer/a SEZ unit.

Explanation 1. — For the purposes of this Act, where a person has, —

- (i) an establishment in India and any other establishment outside India;
 - (ii) an establishment in a State or UT and any other establishment outside that State or UT; or
 - (iii) an establishment in a State or UT and any other establishment registered within that State/UT,
- then such establishments shall be treated as establishments of distinct persons.**

Explanation 2. — A person carrying on a business through a branch/an agency/a representational office in any territory shall be treated as having an establishment in that territory.

Circular**Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/SEZ unit – whether to be treated as an inter-State supply or an intra-State supply**

Issue: Services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as Intrastate or Interstate supply.

Clarification & Analysis:

- **As per section 7(5)(b)** of the IGST Act, the supply of goods or services or both to a SEZ developer/unit shall be treated to be a supply in the course of inter-State trade or commerce.
- **However, as per section 12(3)(c)** of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State.
- **It is an established principle** of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.
- In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.
- **It is therefore, clarified that** services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

Crux: Services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

Relevant definition**Export of goods – Section 2(5) of IGST act**

Export of goods, means taking goods out of India to a place outside India;

Export of services – Section 2(6) of IGST act

Export of services means the supply of any service when, —

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Note: Section 10, 11, 12, 13 of IGST act to be discussed later in the chapter Place of supply.

Section 16: Zero rated supply

(1)	Zero rated supply (ZRS) means export and supply to SEZ
	ZRS means any of the following supplies of goods or services or both, namely: (a) export of goods or services or both; or (b) supply of goods or services or both for authorised operations to a SEZ developer/unit.
(2)	ITC may be availed for making ZRS, even if such supply is an exempt supply
	Subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
(3)	ZRS under bond/LUT and don't pay IGST
	A registered person making zero rated supply shall be eligible to claim refund of unutilised ITC on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed: Provided that <ul style="list-style-type: none"> • the registered person making ZRS of goods 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 the CGST Act • within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.
(4)	ZRS on IGST payment
	The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify– (i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid; (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.

Notification: Class of persons who may make zero-rated supply or notified class of goods or services which may be exported on payment of IGST and claim refund thereof notified.

Following goods/services/suppliers have been notified:

- (i) all goods or services (except specified goods – list of goods not required for exams) as the class of goods or services which may be exported on payment of IGST and on which the supplier of such goods/services may claim the refund of tax so paid; and
- (ii) all suppliers to a Developer or a unit in SEZ undertaking authorised operations as the class of persons who may make supply of goods or services (except specified goods) to such Developer or a unit in SEZ for authorised operations on payment of IGST and on which the said suppliers may claim the refund of tax so paid

Specified goods: Tobacco, Pan masala containing tobacco, essential oil of peppermint, spearmint, etc.

4. Charge of GST

Section 9 of the CGST act: Levy & collection of CGST

Section 9 is the charging provision of the CGST Act. It provides the maximum rate of tax that can be levied on supplies leviable to tax under this law, the manner of collection of tax & the person responsible for paying such tax.

Section 9(1): CGST levied on Intra-state supply of g/s/b (except AL) on value (u/s 15) @ max 20%

Subject to the provisions of sub-section (2),

- there shall be levied a tax called the **CGST**
- on all **intra-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
- at such **rates, not exceeding 20%,**
- as may be **notified by the Government on the recommendations of the Council (NG-RC)**
- collected in such manner as may be prescribed
- and shall be **paid by the taxable person.**

Notification no. 1/2017, 11/2017-Central Tax (Rate): Notifying the rates applicable.

Section 9(2): CGST on 5 specified petro products (HPMAN) to be levied from notified date

The central tax on the supply of

- ◆ **High speed diesel,**
- ◆ **Petroleum crude,**
- ◆ **Motor spirit (commonly known as petrol),**
- ◆ **Aviation turbine fuel**
- ◆ **Natural gas and**

(a) shall be levied with effect from such date as may be **notified by the Government on the recommendations of the Council (NG-RC)**

Author's comment: Presently central excise duty and VAT/CST is levied on Manufacture and sale of Petroleum products; however, we can expect that in future GST may be levied on recommendation of GST council.

Reverse charge

Section 2(98): Reverse Charge means the liability to pay tax by the recipient of supply of g/s/b instead of the supplier of such g/s/b.

- under u/s 9(3)/ (4), or
- under u/s 5(3)/ (4) of the IGST act.

Section 9(3): Reverse charge on notified goods & services

The Government may, on the recommendations of the Council, by notification,

- specify categories of supply of goods or services or both,
- the tax on which shall be paid on RCM by the recipient of such g/s/b and
- all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Notification: Notified categories of goods on which 100% GST to be paid by recipient:

SN	Description of supply of goods	Supplier of goods	Recipient (liable to Pay)
1	Cashew nuts, not shelled or peeled	Agriculturist	Any Registered Person (RP)
2	Bidi wrapper leaves (tendu)	Agriculturist	Any RP
3	Tobacco leaves	Agriculturist	Any RP
3A	Following essential oils other than those of citrus fruit namely: - a) Of peppermint; b) Of other mints: Spearmint oil (exmentha spicata), Water mintoil (exmentha aquatic), Horsemint oil (exmentha sylvestries), Bergament oil (exmentha citrate), Mentha arvensis.	Any Unregistered Person	Any RP
4	Silk yarn	Any person who: Manufactures silk yarn from raw silk or Silk worm cocoons for supply of silk yarn	Any RP
4A.	Raw cotton	Agriculturist	Any RP
5	Supply of lottery	SG/UT/LA	Lottery distributor or selling agent
6	Used vehicles, seized & confiscated goods, old & used goods, waste & scrap	CG excluding Ministry of Railways (Indian Railways), SG/UT/LA	Any RP
7	Priority Sector Lending Certificate (PSLC)	Any registered person	Any RP

Author's comment: Mnemonic CROPS BETS

Cashew nuts, Raw cotton, Old and used scraps, PSLC, Silk yarn, Bidi leaves, Essential Oils, Tobacco leaves, Supply of lottery.

Notified categories of services on which 100% GST to be paid by recipient of services [Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017]

	Category of Supply of Services	Supplier of service	Recipient (liable)
1	Supply of Services by a goods transport agency (a) Any factory registered under by the Factories Act, 1948 (b) Any society registered under the Societies Registration Act, 1860/any other law for the time being in force (c) Any co-operative society established by/under any law (d) Any person registered under GST act (e) Any body-corporate established by/under any law; (f) Any partnership firm (reg/un-reg) including AOPs; (g) Any Casual taxable person Proviso: RCM is not applicable if: Services provided by a GTA to— (a) a Department/Establishment of CG/SG/UT;	Goods Transport Agency	Person mention under (a) to (g), but located in taxable territory (TT).

Category of Supply of Services	Supplier of service	Recipient (liable)
(b) Local authority; or (c) Govt agencies, which has taken registration under the CGST act only for the purpose of deducting tax under section 51 & not for making a taxable supply of goods or services. Proviso: RCM is not applicable if: i. the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge; and ii. the supplier has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has made a declaration as prescribed in Annexure III on such invoice issued by him.		

Explanation: the person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification;

Crux: GTA has the following two options:

- **If it opts to pay GST under FCM:** 12% GST under FCM (with ITC) & 5% GST under FCM (Without ITC).
- **If it does not opt to pay GST under FCM:** Recipient pays 5% RCM.

GTA means

- any person who provides services in relation to **transport of goods by road** and
- issues consignment note, by whatever name called (Consignment note means bilty)
- It is only the services of such GTA, who assumes agency functions, that is being brought into GST net.
- If a consignment note is issued, it indicates that the lien on the goods has been transferred (to the transporter) & the transporter becomes responsible for the goods till its safe delivery to the consignee.
- Individual truck operators do not issue any consignment note are not covered within the meaning of GTA.

Difference between GTA and Courier agency

GTA	Courier
Engaged in transportation of goods by road only	Engaged in transportation of goods/docs & articles by any mode
RCM is applicable	No RCM – always FCM
GTA issues consignment number which contains the registration number of the Motor vehicle used for transportation.	Courier services are generally door to door + time sensitive + any item (goods, articles or documents)

Body Corporate has the same meaning as assigned to it in section 2(11) of the Companies Act, 13;

As per section 2(11) of the Companies Act, 2013, body corporate or corporation includes a company incorporated outside India, but does not include—

- (i) a co-operative society registered under any law relating to cooperative societies; and
- (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

	Category of Supply of Services	Supplier of service	Recipient (liable)
Exemption: Entry No. 21A: Services provided by a GTA to an unregistered person			
<p>Services provided by a GTA to an unregistered person, including an unregistered casual taxable person, other than the following recipients:</p> <p>(a) any factory/registered under or governed by the Factories Act, 1948; or</p> <p>(b) any Society registered under the Societies Registration Act, 1860/under any other law</p> <p>(c) any Co-operative Society established by or under any law for the time being in force; or</p> <p>(d) any body corporate established, by or under any law for the time being in force; or</p> <p>(e) any partnership firm whether registered/not under any law including association of persons;</p> <p>(f) any CTP registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act are exempt.</p>			
Exemption: Entry No. 21B:			
<p>Services provided by a GTA, by way of transport of goods in a goods carriage, to, –</p> <p>(a) a Department or Establishment of the CG/SG/UT; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies,</p> <p>which has taken registration for the purpose of deducting tax u/s 51 & not for making a taxable supply of goods/services.</p>			
Exemption: Entry No. 21: Transportation of Goods – GTA			
<p>Services provided by a goods transport agency, by way of transport in a goods carriage of:</p> <p>(a) Agricultural produce;</p> <p>(b) ... (omitted)</p> <p>(c) ... (omitted)</p> <p>(d) milk, salt and food grain including flour, pulses and rice;</p> <p>(e) organic manure;</p> <p>(f) newspaper or magazines registered with the Registrar of Newspapers;</p> <p>(g) relief materials meant for victims of natural/man-made disasters, calamities, accidents/mishap; or</p> <p>(h) defence or military equipments.</p>			
2	Services provided by an individual advocate including a senior advocate/firm of advocates by way of legal services, directly or indirectly.	Individual advocate/ a senior advocate/ firm of advocates.	Any business entity located in the taxable territory.
<p>1. Legal service means any service provided in relation to advice, consultancy/ assistance in any branch of law, in any manner & includes representational services before any court, tribunal or authority.</p> <p>2. LLP formed & registered under the provisions of the LLP Act, 2008 shall also be considered as a partnership firm or a firm.</p> <p>3. The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification;</p>			
Exemption Entry no. 45: Legal services			
<p>a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-</p> <p>(i) an advocate or partnership firm of advocates providing legal services;</p> <p>(ii) any person other than a business entity; or</p> <p>(iii) a business entity with an ATO up such amount in the PFY as makes it eligible for exemption from registration under the CGST act; or</p>			

	Category of Supply of Services	Supplier of service	Recipient (liable)
	(iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity a senior advocate by way of legal services to- (i) any person other than a business entity; or (ii) a business entity with an ATO up such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST act; or (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity		
3	Services supplied <ul style="list-style-type: none"> by an arbitral tribunal to a business entity 	An arbitral tribunal	Any business entity located in TT
Exemption: Entry no. 45			
Services provided by an arbitral tribunal to – (i) any person other than a business entity; or (ii) a business entity with an ATO up such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST act; or (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.			
4	Services provided <ul style="list-style-type: none"> by way of sponsorship to any body corporate or partnership firm. 	Any person	Any Body corporate or partnership firm located in TT
Example: <ul style="list-style-type: none"> Sponsorship services by Shyam to Ram ltd – RCM Sponsorship services by Shyam ltd to Ram – FCM 			
5	Services supplied by the CG, SG, UT, LA to a BE excluding- (1) renting of Immovable Property, and (2) services specified below- (i) Services by Department of Posts and the Ministry of Railways (Indian Railways) ; (ii) Services in relation to an aircraft/a vessel, inside/outside the precincts of a port/an airport; (iii) Transport of goods or passengers.	CG, SG, UT, LA	Any business entity located in TT
5A	Services supplied by the Central Government [excluding the Ministry of Railways (Indian Railways)] , State Government, Union territory or local authority <ul style="list-style-type: none"> by way of renting of immovable property to a person registered under the CGST act 2017 	CG, SG, UT or LA	Any person registered under the CGST act 2017
Explanation: Provisions of this notification, in so far as they apply to the Central Government and State Governments, shall also apply to the Parliament and State Legislatures, Courts and Tribunals.			
Author's comment: RCM applicable in respect of taxable services supplied by Courts and Tribunals such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers, etc.			

	Category of Supply of Services	Supplier of service	Recipient (liable)
5AA	Service by way of renting of residential dwelling to a registered person.	Any person	Any registered Person

Exemption Entry No. 12: Renting of Residential house

Services

- by way of renting of residential dwelling
- for use as residence
- **except where the residential dwelling is rented to a registered person.**

Explanation. - For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, -

- (i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and
- (ii) such renting is on his own account and not that of the proprietorship concern.

Illustration on Entry 5AA: Service by way of renting of residential dwelling to a registered person.

Ram has rented out his residential property for various purposes, Examine the various scenarios and state whether GST shall be payable under FCM/RCM/Exempt.

SI No.	Property rented out for	Additional information	Property rented to	Tenant - RP/URP	GST applicability
1	Residence of the proprietor	Rent is shown as drawings in books of accounts	Shyam a Sole Proprietor	Unregistered Person	Exempt
2	Residence of the proprietor	Rent is shown as drawings in books of accounts	Shyam a Sole Proprietor	Registered Person	Exempt
3	Residence of employees of the proprietorship firm	Rent is shown as business expense in books of accounts	Shyam a Sole Proprietor	Unregistered Person	Exempt
4	Residence of employees of the proprietorship firm	Rent is shown as business expense in books of accounts	Shyam a Sole Proprietor	Registered Person	RCM
5	Residence of the directors	-	Shyam limited - a company	Unregistered Person	Exempt
6	Residence of the directors	-	Shyam limited - a company	Registered Person	RCM
7	Commercial purpose - for office	-	Shyam & Co.	Unregistered Person	FCM applicable and Ram to charge GST if he is registered.
8	Commercial purpose - for office	-	Shyam & Co.	Registered Person	RCM

5B	Services supplied <ul style="list-style-type: none"> • by any person • by way of transfer of development rights/Floor Space Index (FSI) (including additional FSI) • for construction of a project by a promoter. 	Any person	Promoter
5C	Long term lease of land (30 years/more) <ul style="list-style-type: none"> • by any person against consideration • in the form of upfront amount (called as 	Any person	Promoter

	Category of Supply of Services	Supplier of service	Recipient (liable)
	premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.		
6	Services supplied <ul style="list-style-type: none"> by a director of a Company/ Body Corporate to the said company or the body corporate 	A Director (non-executive director)	The Co/Body Corporate in TT
Examples:			
<ul style="list-style-type: none"> Ram is a director (non-executive director), charges sitting fees to company – RCM, CO liable Ram is a director (Executive director) – out of supply of supply, since he is an employee. 			
7	Services supplied <ul style="list-style-type: none"> by an Insurance agent to any person carrying on insurance business 	An insurance agent	Any person carrying on insurance business in TT- life/ general insurance
Insurance agent means an insurance agent licensed under Insurance Act,			
<ul style="list-style-type: none"> who receives/agrees to receive payment by way of commission/other remuneration. in consideration of his soliciting/procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance. 			
8	Services supplied <ul style="list-style-type: none"> by a recovery agent to Banking Co/FI/NBFC in TT 	A recovery agent	Banking Co/ Financial institution/ NBFC in TT
9	Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a, music company, producer or the like.	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.
9A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered u/s 13(1)(a) of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	Publisher located in the taxable territory:
<p>Provided that nothing contained in this entry shall apply where—</p> <p>(i) the author has taken CGST registration, &</p> <ul style="list-style-type: none"> filed a declaration with the jurisdictional CGST/SGST Commissioner, as the case may be, that he exercises the option to pay CT under forward charge & to comply with all the provisions of CGST Act, as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option; <p>(ii) the author makes a declaration on the invoice issued by him in GST INV-I to the publisher.</p> <p>Crux: Authors have been given an option to pay tax under FCM. If Author Choses to pay tax under FCM: he shall:</p> <ol style="list-style-type: none"> File declaration in prescribed form with Jurisdictional CGST/SGST commissioner that he is opting to pay tax under FCM. Make declaration as prescribed on the invoice issued by him in form GST INV-I to the publisher. 			
10	Supply of services by members of overseeing committee to Reserve Bank of India	Members	RBI

	Category of Supply of Services	Supplier of service	Recipient (liable)
11	Services supplied <ul style="list-style-type: none"> by individual Direct Selling Agents (DSAs) other than a body corporate, partnership/ LLP to bank or NBFCs. 	Individual DSAs other than a body corporate, partnership or LLP.	A banking company/a NBFC in TT
<p>Direct selling agents</p> <ul style="list-style-type: none"> A DSA is a person who works as a referral agent for a Bank. Their main job is to find potential customers who want to take a loan. Government banks appoint Agents to bring business to Banks certain percentage is given by banks to DSAs. <p>Note: RCM is applicable only if DSA is an Individual, and hence bank will be liable to pay. However, if DSA is another entity (company /body corporate /partnership Firm) FCM will be applicable.</p>			
12	Services provided <ul style="list-style-type: none"> by business facilitator (BF) to a banking company 	Business facilitator (BF)	A banking company, located in the TT.
13	Services provided <ul style="list-style-type: none"> by an agent of business correspondent to business correspondent (BC) 	An agent of business correspondent (BC)	A business correspondent, located in the TT
<p>Exemption: Entry No. 39: Services by business facilitator</p> <p>Services by the following persons in respective capacities –</p> <p>(a) business facilitator/a business correspondent to a banking company with respect to accounts in its rural area branch;</p> <p>(b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or</p> <p>(c) business facilitator or a business correspondent to an insurance company in a rural area.</p>			
14	Services provided by way of supply of security personnel to a RP: Proviso: this entry shall not apply to, – (i) a Department or Establishment of the CG/SG/UT; or LA/Governmental agencies; registered as TDS deductor & not for making a taxable supply of g/s; or (ii) A RP paying tax under section 10	Any person except a body corporate	A registered person, located in the TT.
15	Services provided by way of renting of a motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person other than a body corporate, who supplies the service to a body corporate and does not issue an invoice charging CT at the rate of 6 % (CGST) to the service recipient	Any body corporate located in the taxable territory.
<p>Author's comment:</p> <p>There are two rates applicable on the service of renting of vehicles,</p> <ul style="list-style-type: none"> 5% with limited ITC (ITC only of input service in the same line of business) and 12% with full ITC. <p>RCM shall be applicable only, If the supplier fulfils all the following conditions: –</p> <p>(a) Supplier of service is other than a body-corporate;</p> <p>(b) does not issue an invoice charging GST @12% from the service recipient; and</p> <p>(c) supplies the service to a body corporate.</p>			

	Category of Supply of Services	Supplier of service	Recipient (liable)
16	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended.	Lender i.e., a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme	Borrower i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI.

Illustration on Reverse Charge Mechanism (RCM) on renting of motor vehicles (fuel cost is included in consideration charged):

Case	Supplier	Invoice/Document issued	Recipient	Whether RCM is applicable?
1	Ram a registered person (RP)	Tax Invoice with GST @ 5%	Shyam (an individual)	NO RCM
2	Ram a RP	Tax Invoice with GST @ 5%	Shyam limited	RCM applicable
3	Ram limited a RP	Tax Invoice with GST @ 5%	Shyam limited	NO RCM
4	Ram an Unregistered person	Does not issue tax Invoice, however issues a commercial Invoice	Shyam limited	Shyam ltd to pay GST @ 5 % under RCM.
5	Ram a RP under composition scheme – section 10(2A)	Bill of supply	Shyam limited	Shyam ltd liable to pay GST @ 5 % under RCM.

Circular No: 140/10/2020 – GST dated 10.06.20 - Clarification in respect of levy of GST on Director's remuneration

Issue: Whether the remuneration paid by companies to their directors falls under the ambit of entry in Schedule III i.e., "services by an employee to the employer in the course of or in relation to his employment" or whether the same are liable to be taxed in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 (entry no.6).

The issue of remuneration to directors has been examined under following two different categories:

- (i) **leviability of GST on remuneration paid by companies to the independent directors** defined in terms of section 149(6) of the Companies Act, 2013 **or those directors who are not the employees** of the said company; and
- (ii) **leviability of GST on remuneration paid by companies to the whole-time directors** including managing director who are employees of the said company.

Clarification: Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

The primary issue to be decided is whether or not a "Director" is an employee of the company. In this regard, from the perusal of the relevant provisions of the Companies Act, 2013, it can be inferred that:

- a. **the definition of a whole time-director** u/s 2(94) of the Companies Act, 2013 is an inclusive definition, and thus he may be a person who is not an employee of the company.
- b. **the definition of independent director** u/s 149(6) of the Companies Act, 2013, read with Rule 12 of Cos Rules, 2014 makes it amply clear that such director should not have been an employee/proprietor/a partner of the said company, in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.

Therefore, in respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are

clearly outside the scope of Schedule III and are therefore taxable. In terms of entry at Sl. No. 6 to NNo. 13/2017 CT(R) dt. 28.06.17, the recipient of the said services i.e., the Company, is liable to discharge the applicable GST on it on reverse charge basis.

Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company

Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e., a "contract of service") or is there any element of "contract for service". The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e., under a contract of service (employment) entered into with the company.

It is also pertinent to note that similar identification and treatment of the Director's remuneration is also present in the Income Tax Act, 1961 wherein the salaries paid to directors are subject to Tax Deducted at Source ('TDS') under Section 192 of the Income Tax Act, 1961. However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction u/s 194J of the IT Act.

Accordingly, it is clarified that the part of Director's remuneration which are declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

It is further clarified that the part of employee Director's remuneration which is declared separately other than **salaries** in the Company's accounts and subjected to TDS u/s 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III, and is therefore, taxable. Further, in terms of NNo. 13/2017 - CT (Rate) dt. 28.06.17, the recipient of the said services i.e., the Company, is liable to discharge the applicable GST on it on reverse charge basis.

Crux:

Independent Director - Not an employee, GST payable by Company under RCM.

Whole time director/Whole time director - as per definition under companies' act, he may be a person who is not an employee

- If Director is working in the capacity of an employee + amount accounted as salary & TDS u/s 192 of IT act is deducted: then the same is falling in schedule III - Not a supply, hence no GST.
- If Director is not working in the capacity of an employee + amount paid is in the nature of professional fees and not salary and TDS u/s 194J of the IT Act is deducted - Supply, GST payable by co. under RCM.

Clarification on Taxability of services supplied by director of a company in his personal capacity such as renting of immovable property to the company/body corporate.

Only those services supplied by director in the capacity of director shall be taxable under RCM & other services supplied in his private/personal capacity are not taxable under RCM.

Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997 [Circular No. 119/38/2019 GST dated 11.10.2019]

Issue: Trade has requested clarification on whether the supply of securities under Securities Lending Scheme, 1997 ("Scheme") by the lender is taxable under GST.

Securities Lending Scheme, 1997:

- **Under the Scheme,** lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed.

- The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India.
- There is anonymity between the lender and borrower since there is no direct agreement between them. The lenders earn lending fee for lending their securities to the borrowers. The security lending mechanism is depicted in the diagram below: -

Clarification:

- **A transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.**
- The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. The Scheme under the Securities Lending Scheme, doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.
- The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lendable securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST.
- **Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.**
- The nature of supply shall be interstate and tax payable shall be IGST.

Crux:

1. Transaction of securities where there is disposal of securities is not supply & hence not taxable.
2. Supply of services by lending securities – GST applicable
3. RCM applicable and borrower liable to pay tax
4. Nature of Supply: Always treat as interstate and always IGST shall be payable.

Clarification: Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers [Circular No. 177/09/2022]**Issue: Whether RCM is applicable on service of transportation of passengers or on renting of motor vehicle designed to carry passengers.**

Clarification: Where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under service of transportation of passengers and the body corporate shall not be liable to pay GST on the same under RCM.

Crux:

- Where body corporate hires the motor vehicle for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the body corporate shall be liable to pay GST on the same under RCM.
- where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under service of transportation of passengers and the body corporate shall not be liable to pay GST on the same under RCM.

Section 9(4): RCM on specified class of registered person w.r.t specified supplies from unregistered supplier.

The Government may, on the recommendations of the Council, by notification,

- ♦ **specify a class of registered persons** who shall,
- ♦ in respect of supply of **specified categories** of goods or services or both

- ◆ received from an **unregistered supplier**,
- ◆ **pay the tax on reverse charge basis** as the recipient of such supply of goods/services/both,
- ◆ and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

SN	Category of supply of goods and services	Supplier	Recipient
1	Supply of such g/s/b [other than services by way of grant TDR, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (incl. additional FSI)] which constitute the shortfall from the minimum value of g/s/b required to be purchased by a promoter for construction of project, in a FY (or part of the FY till the date of issuance of CC/FO, whichever is earlier)	Supplier of goods/service	Promotor
2	Cement	Cement	Promoter
3	Capital goods supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed.	Supplier of CGs	Promotor

Section 5 of the IGST act: Levy and Collection of IGST

Section 5(1): IGST is levied on Inter-state supply of g/s/b (except AL) on value (u/s 15) @ max 40%

Subject to the provisions of sub-section (2),

- there shall be levied a tax called the **IGST**
- 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 CGST Act and
- at such rates, **not exceeding forty per cent**, 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**:

Provided that

- **the IGST 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 the provisions of section 3 of the Customs Tariff Act, 1975**
- **on the value** as determined under the said Act
- **at the point** when duties of customs are levied on the said goods u/s 12 of the Customs Act, 1962.

NOTIFICATION No. 03/2023 –Integrated Tax

In exercise of powers conferred under proviso to section 5(1) of the IGST Act, 2017, the Government, on the recommendations of the Council, notifies the supply of online money gaming as the goods on import of which the proviso to section 5(1) shall not apply, but on which IGST shall be levied and collected under section 5(1) of the said Act.

Author's comments:

- **Difference in IGST act from CGST:** Intra-state – Interstate, Rate of tax - 20% - 40%
- Import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.

Section 5(2): IGST on 5 petroleum products (HPMAN)

The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

Section 5(3): Reverse charge under IGST on notified goods & services

SN	Category of Supply of Services	Supplier	Recipient (liable)
1	<p>Any services supplied</p> <ul style="list-style-type: none"> • by any person located in a non-taxable territory (NTT) • to any person other than Non-taxable online recipient (NTOR) <p>Non-taxable online recipient (NTOR) NTOR means any unregistered person receiving online information and database access or retrieval 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) i.e. a TDS deductor.</p>	Any person located in an NTT	Any person located in the TT Other than NTOR

Section 5(4): RCM on specified class of registered persons w.r.t specified supplies from unregistered supplier.

The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

Author's comment: Services notified under 9(4), also notified here.

Section 9(5) of CGST act & Section 5(5) of IGST act: Discussed in Chapter of ECO.

5. Composition Levy

Introduction

The Composition levy scheme is a very simple, hassle free compliance scheme for small taxpayers (traders, manufacturers and service providers). It is a voluntary and optional scheme.

Relevant definitions

Turnover in State or Turnover in Union territory

Means

- the aggregate value of **all taxable supplies**
- **(excluding the value of inward supplies** on which tax is payable by a person on reverse charge basis) &
- **exempt supplies** made within a State or Union territory by a taxable person,
- **exports of goods** or services or both and
- inter-State supplies of g/s/b made from the State or UT by the said taxable person but
- **excludes** central tax, State tax, Union territory tax, integrated tax and cess;

Author's comment: Same as ATO, only difference word aggregate is missing. Hence, we do not aggregate All India under same PAN.

Section 2(92): Quarter

Quarter shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;

Objective of Composition

To bring simplicity and to reduce the compliance cost on the small taxpayers.

Section 10: Composition levy

(1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9,

- a RP, whose ATO in the PFY did not exceed 50 lakh rupees, **may opt (rule 3)** to pay, in lieu of the tax payable by him **under section 9(1),**
- an amount of tax calculated at **such rate as may be prescribed,** (rule 7) but not exceeding, —
 - (a) **one per cent** of the turnover in State or turnover in Union territory in case of a manufacturer,
 - (b) **two and a half per cent** of the turnover in State or turnover in UT in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
 - (c) **half per cent** of the turnover in State or turnover in UT in case of other suppliers,**subject to such conditions and restrictions as may be prescribed: (rule 5)**

Provided that the Government may, **by notification,**

- increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore and fifty lakh rupees, as may be recommended by the Council:

Author's comment: The rates as per the above provisions are the maximum rate, for the applicable rate we should refer to the rates prescribed by the rule 7. Rule 7 is given below.

Notification: (Notification No. 14/2019 CT dated 07.03.2019.)

An eligible RP, whose **aggregate turnover** in the PFY did not exceed 1.5 crores, may opt to pay, under composition, **an amount of tax as prescribed under rule 7** of the CGST Rules, 2017:

Composition levy

Provided that the said **aggregate turnover** in the preceding financial year (PFY) shall be Rs 75 lakh in the case of an eligible registered person, registered u/s 25 of the said Act, in any of the following States, namely:

- | | | |
|------------------------|---------------|---------------------|
| (i) Arunachal Pradesh, | (iv) Mizoram, | (vii) Tripura, |
| (ii) Manipur, | (v) Nagaland, | (viii) Uttarakhand: |
| (iii) Meghalaya, | (vi) Sikkim, | |

Note: RP shall not be eligible to opt for composition levy u/s 10(1) if such person is a **manufacturer** of the goods stated below:

SN	Description
1	Ice cream and other edible ice, whether or not containing cocoa.
2	Pan masala.
2A	Aerated Water
3	All goods, i.e., Tobacco and manufactured tobacco substitutes.
4	Fly ash bricks or fly ash aggregates; Fly ash blocks
5	Bricks of fossil meals or similar siliceous earths
6	Building bricks
7	Earthen or roofing tiles ¹

Provided further that (2nd proviso)

- a person who opts to pay tax under clause (a)/(b)/(c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II),
- of value not exceeding **10% of turnover in a State/UT in the PFY or Rs 5 lakhs, whichever is higher.**

Explanation. — For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.

Author's comment:

1. RP shall be eligible to opt for the composition scheme provided:

- either he is not at all engaged in supply of services other than restaurant services **or**
- in case he supplies services other than restaurant services, value of such services does not exceed 10% of the turnover in a State/UT in the PFY or Rs. 5 lakh, whichever is higher.

2. Value of turnover in a State/UT shall exclude interest/discount.

Rule 3: Intimation for composition levy

(1)..... not useful now (migration related)

(2) **Fresh registration**

Any person who applies for registration under of rule 8(1)

- may give an **option to pay tax u/s 10 in Part B of FORM GST REG-01**, which shall be considered as an intimation to pay tax under the said section.

Note: Rule 4:

- Option to pay tax under composition will be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date.
- Where an application for registration has been submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration

(3) **Already registered person switching to composition**

- **Electronically file an intimation in FORM GST CMP-02**, prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and

¹ Inserted vide NNo. 04/2022-Central Tax w.e.f. 01.04.2022

- shall furnish the statement in **FORM GST ITC-03** in accordance with rule 44(4) within a period of **sixty days** from the commencement of the relevant financial year.

Note: Rule 4: The option to pay tax u/s 10 shall be effective from the beginning of the FY.

(4)..... not useful now (migration related)

(5) Any intimation under sub-rule (1) or sub-rule (3) in respect of any place of business in any State/UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

Rule 7: Rate of tax of the composition levy (under CGST)

SN	Section under which composition levy is opted	Category of registered persons	Rate of tax
1	Sub-sections (1) and (2) of section 10	Manufacturers, other than manufacturers of such goods as may be notified by the Government	1/2 % of the turnover in the State/UT
2	Sub-sections (1) and (2) of section 10	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	2 1/2 % of the turnover in the State/UT
3	Sub-sections (1) and (2) of section 10	Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10	1/2 % of the turnover of taxable supplies of goods & services in the State/UT
4	Sub-section (2A) of section 10	Registered persons not eligible under the composition levy under sub-sections (1) and (2), but eligible to opt to pay tax u/s 10 (2A)	3 % of the turnover of supplies of goods and services in the State or Union territory.

Author's comment: Total rate shall be double the above percent, since it will be CGST + SGST.

Rule 5: Conditions and restrictions for composition levy

(1) Compliance by person opting for composition scheme

The person exercising the option to pay tax under section 10 shall comply with the following conditions, namely: -

- he is **neither a CTP/NRTP**;
- **migration cases**, not applicable now
- not applicable now
- he shall **pay tax under section 9(3)/(4) on inward supply** of goods or services or both;
- he was **not engaged in the manufacture of goods as notified** u/s 10(2)(e), during the PFY;
- he shall mention the words "**composition taxable person, not eligible to collect tax on supplies**" at the top of the bill of supply issued by him; and
- he shall mention the words "**composition taxable person**" on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

(2) RP not required to file fresh intimation every year

The registered person paying tax u/s 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the Act and these rules.

Section 10(2): Person ineligible to opt for composition

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

- save as provided in sub-section (1), he is not engaged in the supply of services;

- (b) he is **not** engaged in making **any supply of goods or services which are not leviable** to tax under this Act;
- (c) he is **not** engaged in making **any inter-State outward supplies of goods or services**;
- (d) he is **not** engaged in making **any supply of services through an ECO** who is required to collect tax at source under section 52;
- (e) he is not **a manufacturer of such goods as may be notified** by the Government on the recommendations of the **Council**; and

Author's comment: Manufacturer is ineligible, trader is eligible.

- (f) **he is neither a CTP nor a NRTP.**

Multiple registered units to opt together for composition scheme

Provided that where more than one RPs are having the same PAN, the RP shall not be eligible to opt for the scheme under sub-section (1) unless all such RPs opt to pay tax under that sub-section.

Section 10(2A):

Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9,

- **a RP, not eligible to opt to pay tax under sub-section (1) and sub section (2),**
- whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees,
- may opt to pay, in lieu of the tax payable by him under section 9(1),
- an amount of tax calculated at such rate as may be prescribed, but not exceeding 3% of the turnover in State or turnover in Union territory,
- if he is not—
 - (a) engaged in making any supply of goods/services which are not leviable to tax under this Act;
 - (b) engaged in making any inter-State outward supplies of goods or services;
 - (c) engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52;
 - (d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
 - (e) a casual taxable person or a non-resident taxable person:

Provided that where more than one registered person are having the same Permanent Account Number, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.

Section 10(3): Composition levy shall lapse with effect from the day RP crosses ATO.

The option availed of by a RP **under sub-section (1)/sub-section (2A)**, as the case may be, shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1)/(2A), as the case may be.

Rule 6: Validity of composition levy

(1) RP paying tax under composition valid till he satisfies all the conditions

The option exercised by a registered person to pay tax under section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said section and under these rules.

(2) If RP ceases to satisfy conditions, issue tax invoice, file intimation in CMP-04 in 7 days

The person referred to in sub-rule (1) shall be liable to pay tax u/s 9(1) from the day he ceases to satisfy any of the conditions mentioned in section 10 or the provisions of this Chapter and shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM GST CMP-04 within seven days of the occurrence of such event.

(3) RP intending to withdraw file CMP 04 before the date of such withdrawal

The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04, duly signed or verified through electronic verification code, electronically on the common portal.

(4) PO has reason to believe RP not eligible/has contravened, issue SCN in CMP 05

Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 or has contravened the provisions of the Act or provisions of this Chapter, he may issue a notice to such person in FORM GST CMP-05 to show cause within fifteen days of the receipt of such notice as to why the option to pay tax under section 10 shall not be denied.

(5) Upon receipt of notice RP to reply in CMP 06, PO to issue order in CMP 07 within 30 days

Upon receipt of the reply to the show cause notice issued under sub-rule (4) from the registered person in FORM GST CMP-06, the proper officer shall issue an order in FORM GST CMP-07 within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.

(6) RP ceases/withdrawal filed/PO passed a withdrawal order – RP to file GST ITC 01 within 30 days

Every person who has furnished an intimation under sub-rule (2) or filed an application for withdrawal under sub-rule (3) or a person in respect of whom an order of withdrawal of option has been passed in FORM GST CMP-07 under sub-rule (5), may electronically furnish at the common portal, either directly or through a Facilitation Centre notified by the Commissioner, a statement in FORM GST ITC-01 containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, within a period of thirty days from the date from which the option is withdrawn or from the date of the order passed in FORM GST CMP-07, as the case may be.

(7) Intimation/application for withdrawal/denial shall be deemed to be an intimation in respect of all other places of business registered on the same PAN

Any intimation or application for withdrawal under sub-rule (2) or (3) or denial of the option to pay tax under section 10 in accordance with sub-rule (5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

Denial of composition option by tax authorities and effective date thereof [Circular No. 77/51/2018-GST dated 31.12.18]

Issue/Doubts:

- **Doubts have been raised as to the date from which withdrawal from the composition scheme shall take effect in a case where the composition taxpayer has exercised such option to withdraw.**
- **Doubts have also been raised regarding the effective date of denial of the option to pay tax under the composition scheme where action has been initiated by the tax authorities to deny such option to the composition taxpayer.**
- **Clarification has been sought regarding the follow up action to be taken by the tax authorities when the composition option is denied to the taxpayer retrospectively.**

Clarification:

It is clarified that in a case where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation/application filed in GST CMP-04 but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed. If at any stage it is found that he has contravened any of the provisions of the CGST Act or the CGST Rules, action may be initiated for recovery of tax, interest and penalty.

In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules. In such cases, as provided u/s 10(5) of the CGST Act, the proceedings would have to be initiated under the provisions of section 73/74 for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in FORM GST CMP-07.

It is also clarified that the registered person shall be liable to pay tax under section 9 of the CGST Act from the date of issue of the order in FORM GST CMP-07. Provisions of section 18(1)(c) of the CGST Act shall apply for claiming credit on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order.

Section 10(4): A taxable person (under composition) not to collect tax, nor take ITC

A taxable person to whom the provisions of sub-section (1) **or, as the case may be, sub-section (2A)** apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

Section 10(5): TP pays tax under compo even if ineligible, he shall be liable to penalty

If the PO has reasons to believe that a taxable person has paid tax under sub-section (1) **or sub-section (2A), as the case may be,** despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or 74 shall, mutatis mutandis, apply for determination of tax and penalty.

Explanation 1.— For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression **aggregate turnover** shall

- **include** the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act,
- **but shall not include** the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Explanation 2. — For the purposes of determining the tax payable by a person under this section, the expression **turnover in State or turnover in Union territory shall not include** the value of following supplies, namely: —

- (i) supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and
- (ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Author's comment:

- **For the purpose of Checking eligibility:** ATO shall include supplies from 1st April upto date of becoming liable for registration but exclude interest/discount.
- **For the purpose of paying tax:** TO in state/UT shall exclude supplies from 1st April upto date of becoming liable for registration and interest/discount.

Returns and Statement to be furnished by Person under Composition

GST CMP-08 Quarterly: Furnish a statement, every quarter or, as the case may be, part thereof, containing the details of payment of self-assessed tax in GST CMP-08, till the 18th day of the month succeeding such quarter; and

GSTR-4 by 30th day of April following the end of such FY: Furnish a return for every FY or, as the case may be, part thereof in GSTR-4, till the 30th of April following the end of such FY.

6. Registration

Relevant definitions

Section 2(94): Registered person (RP)

Registered person means a person who is registered under section 25

- but does not include a person having a Unique Identity Number.

Section 2(107): Taxable person (TP)

Taxable person means a person

- Who is registered or
- liable to be registered under section 22 or section 24.

Section 2(108): Taxable Supply (TS)

Taxable supply means a supply of goods or services or both which is leviable to tax under this Act;

Section 2(78): Non- taxable Supply (NTS)

Non-taxable supply means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

Non Taxable Supply: Supply of AL for human consumption and 5 petroleum products (HPMAN).

Section 2(47): Exempt supply

Exempt supply means supply of any goods or services or both

- which attracts nil rate of tax or
- which may be wholly exempt from tax under section 11, or under section 6 of the IGST Act, and
- includes non-taxable supply;

Section 2(6): Aggregate Turnover (ATO)

Aggregate turnover means

- the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis),
- exempt supplies,
- exports of goods or services or both and
- inter-State supplies of persons having the same Permanent Account Number,
- to be computed on all India basis
- but excludes central tax, State tax, Union territory tax, integrated tax and cess;

Author's comments:

1. ATO means **PAN-wise turnover**
2. **ATO is relevant for knowing**
 - Whether a person requires registration u/s 22(1) (threshold limit of up to 40/20/10 lakhs)
 - If a person is eligible for composition scheme
3. Activities which are out of scope of supply, will not form part of ATO. Since they are not supply at all.
For example: Salary received for rendering service to employer will not be supply at all.
4. Outward supplies on which tax payable under RCM to be included.

Section 2(89): Principal place of business (PPOB)

PPOB means the place of business specified as the PPOB in the certificate of registration;

Section 22 - Persons liable for registration**Section 22(1): Registration on crossing applicable aggregate turnover**

Every supplier shall be liable to be registered under this act in state/UT, (other than special category states) **from where he makes taxable supply of goods or services or both**, if his **aggregate turnover (ATO) in a FY exceeds 20 lakh rupees**:

Provided that where such person makes **taxable supplies** of goods or services or both from any of the **special category states (SCS)**, he shall be liable to be registered if his aggregate turnover in a financial year **exceeds ten lakh rupees**:

Provided further that The Government may, at the request of a SCS & on the recommendation of the council, **enhance the ATO** referred to in the first proviso **from ten lakh rupees** to such amount, **not exceeding twenty lakh rupees** and subject to such conditions and limitations, as may be so notified:

Provided also that The Government may, at the request of a State & on the recommendations of the Council, enhance the aggregate turnover from 20 lakh rupees to such amount not exceeding 40 lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.

Explanation. - For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Author's comment:

- Power to increase the threshold limit for registration from Rs 20 to 40 lakhs on request of a state & on the recommendations of the Council by notification has been incorporated u/s 22(1), however no notification has been issued using this power yet. Currently, NN. 10/2019 issued u/s 23(2) exempts exclusive supplier of goods in some states from registration upto Rs 40 lacs.
- A person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services where consideration is interest or discount.

Explanation. — For the purposes of this section, —

- (i) ATO shall include all supplies made by the taxable person (TP), whether on his own account or made on behalf of all his principals;

Example on calculating ATO of Agent

Supplier	Nature of supply	Invoice in	Value	ATO
Mr Ram	Sale on own account	Tax invoice in own name	10 lakhs	15 lakhs
	Sale on behalf of Principal	Tax invoice in own name	5 lakhs	
Mr Shyam	Sale on own account	Tax invoice in own name	10 lakhs	10 lakhs
	Sale on behalf of Principal	Tax invoice raised by Principal	5 lakhs	

- (ii) the supply of goods, after completion of job work, by a **registered job worker** shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.
- (iii) the expression "**special category States**" shall mean the States as specified 279A(4)(g) of the Constitution **except the State of Jammu & Kashmir** and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.

Crux: SCS for section 22 means the states of Manipur, Mizoram, Nagaland and Tripura (M²NT).

Author's analysis: Steps for calculating if registration is required

1. Compute the Aggregate turnover.
2. Check applicable Aggregate turnover. **Note:** ATO limit applicable will be Rs 10 lakhs if person making **TAXABLE SUPPLIES** from SCS.
3. If ATO > 40/20/10 lacs, registration in all states/UT from where **TAXABLE SUPPLIES** are made

Notification No. 10/2019 CT dated 07.03.2019:

In exercise of the powers conferred by section 23(2) of the CGST Act, 2017, the CG, on the recommendations of the Council, hereby specifies the following category of persons, as the category of persons exempt from obtaining registration under the said Act, **namely:**

Any person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed forty lakh rupees, except,

- (a) persons required to take compulsory registration u/s 24;
- (b) persons engaged in making supplies of the goods, the description of which is specified in the Table below:

SI No.	Description
1	Ice cream and other edible ice, whether or not containing cocoa
2	Pan masala
3	All goods, i.e., Tobacco and manufactured tobacco substitutes
4	Fly ash bricks or fly ash aggregates; Fly ash blocks
5	Bricks of fossil meals or similar siliceous earths
6	Building bricks
7	Earthen or roofing tiles

- (c) persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and
- (d) persons exercising voluntary registration u/s 25(3), **or** such RPs who intend to continue with their registration.

**State-wise registration limit - Crux:**

Turnover Limit	States	Mnemonic
10 Lacs for Both SOG/SOS	Manipur, Mizoram, Nagaland, Tripura	M²NT
20 Lacs for Both SOG/SOS	Puducherry, Uttarakhand, Meghalaya, Arunachal Pradesh, Sikkim, Telangana	PUMAS of Telangana
40 Lacs - SOG, 20L - SOS	Other states, Assam, J&K, HP	OAK of HP

Illustration on Registration requirement and Applicable ATO:

Supplier	State	Turnover (in lakhs)	ATO	ATO applicable	Remarks
Ram	Assam	Sale of Goods: 38 Interest Income: 5	43 lakhs	40 lakhs	ATO shall include interest/discount income, but such income cannot make him ineligible for higher limit of Rs 40 lacs. Ram shall be deemed to be exclusive supplier of goods even if he is engaged in exempt supply of services where consideration is interest or discount. He shall be required registration

Supplier	State	Turnover (in lakhs)	ATO	ATO applicable	Remarks
Shyam	Assam	Sale of Goods: 38 Interest Income: 1	39 lakhs	40 lakhs	Shyam shall not be required registration since ATO did not exceed Rs 40 lacs.

Circular/Clarification [Circular No. 177/09/2022 GST dated 03.08.2022]

Issue: Whether GST is applicable on payment of honorarium to the Guest Anchors.

Clarification: Yes GST is applicable. It's a supply of service. However, guest anchors whose aggregate turnover in a financial year does not exceed Rs. 20 lakh (Rs. 10 lakh in case of specified Special Category States) shall not be liable to take registration and pay GST.

Section 22(2): Under old Law (existing law) registered persons:

Every person who, on the day immediately preceding the appointed day, is registered/holds a license under an **existing law**, shall be liable to be registered under this Act with effect from the **appointed day**.

Author's comment: As a result of this provision, all the persons registered under pre-GST law were mandatorily required to migrate to GST & then the option for cancellation of registration was provided if Aggregate Turnover was less than registration limit.

Section 2(48): Existing law means any law, notification, order, rule/regulation relating to levy and collection of duty/tax on goods/services/both passed/made before the commencement of this Act by Parliament/any Authority/person having the power to make such law, notification, order, rule/regulation;

Sec 2(10): Appointed day means the date on which the provisions of this Act shall come into force;

Author's comments: Provisions relating to registrations under GST were made effective from 22.06.2017, hence 22.06.2017 is the appointment date with respect to registration under GST.

Example: Ram ltd a manufacturer was registered under VAT & Excise, now with the coming of GST on appointment day, Ram ltd is liable to register. Ram ltd is required to migrate from OLD to GST.

Section 22(3): Transfer/Succession of business as going concern:

Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession/otherwise, to another person as a going concern, the transferee/the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

Author's comment:

- CBIC has clarified that transfer or change in the ownership of business will include transfer/change in the ownership of business due to death of the sole proprietor.
- Unutilized ITC in the transferor e-credit ledger to get transferred to transferee/successor.

Example: Ram registered under GST transfers his business as going concern to Shyam, Shyam is liable to be registered from the date of such transfer without considering any threshold limit for registration.

Section 22(4): Amalgamation/Demerger pursuant to a court/tribunal order:

Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise,

- the transferee shall be liable to be registered,
- with effect from the date on which the Registrar of Companies (ROC) issues a certificate of incorporation (COI) giving effect to such order of the High Court or Tribunal.

Author's comment: If the court/tribunal order takes effect from a date earlier than the date of the order, now even though legally the companies stand merged from a back date, however it is not possible to issue back date GST registration, hence section 22(4) provides that such entity shall be liable to take GST registration only w.e.f. the date on which the ROC issues a COI giving effect to court/tribunal/NCLT order.

Example: Ram Ltd and Shyam Ltd wanted to amalgamate into Radheshyam Ltd.

- The board of the companies approved the amalgamation on 1st Jan 18, 1st March 18 they approached NCLT for amalgamation,
- NCLT approved amalgamation on 25th June 18.
- NCLT issued order on 25th June 2018 allowing merger from retrospective date i.e., 1st March 18.
- Now they approached ROC for issue of certificate of Incorporation of Radheshyam Ltd.
- ROC issued certificate of Incorporation on 1st July by ROC.
- Hence the two companies will be liable from 1st July, i.e., the date on which ROC issued COI.

Crux: Transferee liable register, with effect from the date on which the ROC issues a COI giving effect to court/tribunal order.

Section 23 – Persons not liable for registration

Section 23(1): The following persons shall not be liable to registration, namely:

- (a) **any person engaged exclusively** in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the IGST Act;
- (b) **an agriculturist**, to the extent of supply of produce out of cultivation of land

Author's comments:

- **Person** supplying **exclusively** Nil rated, wholly exempt or non-taxable supplies are not liable.
- **Agriculturist** supplying **anything which is cultivation of land**, he will not be liable
- **Agricultural Land** can be own land, leased land or taken on rent, important to note is it should be produced out of cultivation of land and supplier should be agriculturist.

Section 2(7): Agriculturist means an individual/HUF who undertakes cultivation of land—

- by own labour/labour of family, or
- by servants on wages payable in cash/kind or by hired labour
- under personal supervision/the personal supervision of any member of the family.

Examples:

SN	Particulars	Registration?
1	Petrol bunks selling only petrol & diesel	Not required
2	Petrol pumps selling Engine oil or food items along with petrol.	Required
3	Shops supplying Alcoholic liquor for human consumption	Not required
4	Shops supplying Alcoholic liquor for human consumption plus snacks	Required
5	Agriculturist owns land and does cultivation	Not required
6	Agriculturist takes land on rent and does cultivation	Not required
7	Agriculturist takes land on rent & cultivation done by servants on wages	Not required
8	Agriculturist does cultivation plus also runs a dairy.	Required

Example: Deshbandhu is an agriculturist engaged in cultivation of wheat in his field in the State of Punjab. He was exclusively engaged in supply of wheat cultivated in his field in the previous year. Thus, he was not liable to registration as he was exclusively engaged in supply of produce out of cultivation of

land. In the current year, he decides to start trading in rice apart from supplying his wheat produce. His turnover in the current year is Rs 32 lakh from supply of wheat produced and Rs 9 lakh from trading of rice. Since he is engaged in trading of rice also, he is not covered under section 23 above. The threshold limit for registration applicable to a person exclusively engaged in supply of goods in the State of Punjab is Rs 40 lakh. The ATO of Deshbandhu in the current year is Rs 41 lakh [Rs 32 + 9 lakh] which exceeds the threshold limit. Thus, he will be liable to registration.

Section 23(2): Notified category of persons exempted from obtaining registration:

Notwithstanding anything to the contrary contained in section 22(1) or section 24, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act.

Note: There are various notifications issued under this section which has been explained along with section 22 and Section 24.

Circular: Registration requirement of a commission agent selling agricultural produce on behalf of agriculturist. (Circular No. 57/31/2018-GST dated 04.09.18)

Query: Registration requirement of a commission agent selling agricultural produce on behalf of agriculturist.

Clarification:

- Services by any APMC or board or services provided by the commission agents for sale or purchase of agricultural produce are exempted from GST.
- Thus, the services provided by the commission agent for sale or purchase of agricultural produce is exempted. Such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered according to section 23(1)(a) of the CGST Act, if the supply of the agricultural produce, and /or other goods or services supplied by them are not liable to tax or wholly exempt under GST.
- Further, according to section 24(vii) of the CGST Act, a person is liable for mandatory registration if he makes taxable supply of goods/services/both on behalf of other taxable persons
- Accordingly, the requirement of compulsory registration for commission agent, under the said clause shall arise when both the following conditions are satisfied, namely: -
 - the principal should be a taxable person; and
 - the supplies made by the commission agent should be taxable.
- Generally, a commission agent under APMC Act makes supplies on behalf of an agriculturist.
- Further, as per provisions of section 23(1)(b) of the CGST Act an agriculturist who supplies produce out of cultivation of land is not liable for registration and therefore does not fall within the ambit of the term "taxable person".
- Thus, a commission agent who is making supplies on behalf of such an agriculturist, who is not a taxable person, is not liable for compulsory registration under section 24(vii) of the CGST Act.
- However, where a commission agent is liable to pay tax under reverse charge, such an agent will be required to get registered compulsorily u/s 24 (iii) of the CGST Act.

Crux:

- A commission agent who is making supplies on behalf of such an agriculturist, who is not a taxable person, is not liable for compulsory registration under section 24.
- Services provided by the commission agent for sale or purchase of agricultural produce is exempted, hence such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered according to section 23(1)(a) of the CGST Act.

Section: 24 – Compulsory Registration in certain cases

Notwithstanding anything contained in section 22(1), the following categories of persons shall be required to be registered under this Act,

(i) Persons making any inter-State taxable supply;

Notification u/s 23(2): Following categories of person exempted u/s 23(2) if ATO upto 20/10 lacs (SCS)

1. **Interstate supplier of notified handicraft goods & notified craftsmen products** when **made by craftsmen predominantly by hand** even though some machinery may also be used in the process: However, such persons have obtained a PAN and have generated an e- way bill.
2. Interstate supplier of taxable services. [NNo. 10/2017 IT dated 13.10.2017]

(ii) Casual taxable persons making taxable supply;**Section 2(20): Casual taxable person means**

- a person who occasionally undertakes transactions involving supply of g/s/b
- in the course or furtherance of business,
- whether as principal, agent or in any other capacity,
- in a State/UT where he has no fixed place of business.

Notification u/s 23(2): CTPs making inter-State taxable supplies of notified handicraft/craftsmen goods exempted up to Rs 20/10 lakhs. However, they should have obtained a PAN & have generated an e- way bill.

(iii) Persons who are required to pay tax under reverse charge;

Notification No. 5/2017-CT: The persons who are only engaged in making supplies of taxable goods/services/both, the total tax on which is liable to be paid on reverse charge basis by the recipient u/s 9(3) of the said Act as the category of persons exempted from obtaining registration under the aforesaid Act.

Example: If RS Ltd is registered under GST and it pays an amount to its directors, on which RCM is applicable, since it is already registered no new registration required.

(iv) Person who are required to pay tax u/s 9(5);**(v) Non-resident taxable persons making taxable supply;****Section 2(77): Non-resident taxable person means:**

- any person who occasionally undertakes transactions involving supply of g/s/b,
- whether as principal or agent or any other capacity,
- but who has no fixed place of business or residence in India.

(vi) Persons who are required to deduct tax u/s 51, whether or not separately registered under this Act;**(vii) Persons who make taxable supply of g/s/b on behalf of other taxable persons whether as an agent or otherwise;**

Author's comment: Agent supplying on behalf of principals, and if the principal is a taxable person, agent is required to take compulsory registration.

(viii) Input Service Distributor, whether or not separately registered under this Act;

Input service distributor means

- an office of the supplier of goods or services or both which
- receives tax invoices issued towards the receipt of input services, &
- issues a prescribed document for the purposes of distributing the credit of tax paid on services
- to a supplier of taxable g/s/b having the same PAN as that of the said office.

(ix) Persons who supply g/s/b, other than supplies specified u/s 9(5), through such ECO who is required to collect tax at source under section 52;

NOTIFICATION No.34/2023-Central Tax: Issued in exercise of power u/s 23(2):

The CG, on the recommendations of the Council, hereby specifies the persons making supplies of goods through an ECO who is required to collect tax at source u/s 52 and having an aggregate turnover in the preceding FY and in the current FY not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State/UT in accordance with the provisions of section 22(1), as the category of persons exempted from obtaining registration under the said Act, subject to the following conditions, namely:—

- such persons shall not make any inter-State supply of goods;
- such persons shall not make supply of goods through ECO in more than one State/UT;
- such persons shall be required to have a PAN issued under the Income Tax Act, 1961;
- such persons shall, before making any supply of goods through ECO, declare on the common portal their PAN, address of their place of business and the State/UT in which such persons seek to make such supply, which shall be subjected to validation on the common portal;
- such persons have been granted an enrolment number on the common portal on successful validation of the PAN declared as per clause (iv);
- such persons shall not be granted more than one enrolment number in a State/UT;
- no supply of goods shall be made by such persons through electronic commerce operator unless such persons have been granted an enrolment number on the common portal; and
- where such persons are subsequently granted registration under section 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration.

Notification No. 65/2017 – Central Tax dated 15.11.17

In exercise of the powers conferred by section 23(2) of the CGST act, the Central Government, on the recommendations of the Council, hereby specifies

- the persons making supplies of services, other than supplies specified u/s 9(5) through an ECO who is required to collect tax at source u/s 52, and having an ATO, to be computed on all India basis, not exceeding an amount of twenty lakh rupees in a financial year,
- as the category of persons exempted from obtaining registration under the said Act:

Provided that the aggregate value of such supplies, to be computed on all India basis, should not exceed an amount of ten lakh rupees in case of **“special category States”** as specified in the first proviso to section 22(1), read with clause (iii) of the Explanation to the said section.

Crux: Supplier of goods through ECO (who is required to collect TCS) are required compulsory registration, whereas supplier of services (intra/interstate) through an ECO (who is required to collect TCS) exempt upto ATO Rs 20/10 lakhs.

(x) Every electronic commerce operator who is required to collect tax at source u/s 52.

(xi) Every person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person;

(xia) Every person supplying online money gaming from a place outside India to a person in India; and

(xii) Such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Registration procedures - Part II**Section 25: Procedure for Registration****Section 25(1): Person liable to be registered shall apply within 30 days**

Every person who is **liable to be registered u/s 22/24** shall apply for registration in every such State/UT in which he is so liable **within thirty days** from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be **prescribed**.

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least 5 days prior to commencement of business

Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005, in **a SEZ or being a SEZ developer shall have to apply for a separate registration**, as distinct from his place of business located outside the SEZ in the same State or Union territory.

Explanation: Every person who makes a supply from the TWI shall obtain registration in the coastal State/UT where the nearest point of the appropriate base line is located.

Example: Casino Rummy located in TWI off the coast of Goa conducting betting and gambling business, needs to get registered in Goa.

Rule 8: Application for registration

(1) Every person who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant"), except–

- (i) a non-resident taxable person;
- (ii) a person required to deduct tax at source under section 51;
- (iii) a person required to collect tax at source under section 52;
- (iv) a person supplying OIDAR services from a place outside India to a non-taxable online recipient referred to in section 14 **or** a person supplying online money gaming from a place outside India to a person in India referred to in section 14A under the IGST Act, 2017,

shall, before applying for registration, declare his Permanent Account Number, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner

Provided that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

(2) (a) The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes and shall also be verified through separate one-time passwords sent to the mobile number and e-mail address linked to the Permanent Account Number.

(3) **On successful verification** of PAN, mobile no and Email - a temporary reference number (TRN) shall be generated and Communicated to the applicant on the said mobile no. & e-mail address.

(4) Submission of Application using TRN

Using the reference number generated under sub-rule (3), the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(4A) Date of submission of application in case person opts for Aadhaar authentication

Where an applicant, other than a person notified under section 25(6D), opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be

- the date of authentication of the Aadhaar number, or
- 15 days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.

Provided that every application made under sub-rule (4) by a person, **other than** a person notified under section 25(6D), who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified u/s 25(6C) where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso.

(4B) CG empowered to notify states/UT where biometric based aadhaar authentication shall apply

The CG may, on the recommendations of the Council, by notification specify the States or Union territories wherein the proviso to sub-rule (4A) shall not apply.

Notification No. 27/2022-Central Tax dt. 26.12.22:

In pursuance of the powers conferred by rule 8(4B) of the CGST Rules, 2017, the CG, on the recommendations of the Council, hereby specifies that the proviso to rule 8(4A) of the said rules **shall not apply in all the States and Union territories except the States of Andhra Pradesh, Gujarat and Puducherry.**

(5) Acknowledgement in GST REG 02 on receipt of application

On receipt of an application under sub-rule (4) or sub-rule (4A), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

(6) CTP shall be given TRN for advance deposit of Tax

A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-rule (5) shall be issued electronically only after the said deposit.

Rule 9 - Verification of the application and approval

(1) The Application shall be forwarded to PO - PO to examine application & accompanying documents – if found to be in order, approve the grant of registration to the applicant within **seven WDs** from submission.

Provided that where-

- (a) a person, other than a person notified under section 25(6D), fails to undergo authentication of Aadhaar number as specified rule 8(4A)/does not opt for authentication of Aadhaar number; or
- (aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or
- (b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the registration shall be granted within thirty days of submission of application, after physical verification of the place of business, in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit.

(2) PO to Issue notice to seek clarification in case of deficiency in application by issuing a notice in GST REG-03 within a **seven** working days (WDs) & applicant shall furnish **clarification, information or documents (CID)** electronically, in GST REG-04, within 7 working days (WDs) from the date of the receipt of notice.

Provided that where-

- (a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or
- (aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or
- (b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the notice in FORM GST REG-03 may be issued not later than thirty days from the date of submission of the application.

Explanation - For the purposes of this sub-rule, the expression "**clarification**" includes modification/correction of particulars declared in the application for registration, other than PAN, State, mobile number and e-mail address declared in Part A of GST REG-01.

(3) PO Satisfied, approve grant of registration within 7 WDs from date of receipt of such **CID**.

(4) No reply/PO not satisfied - he **may** record reasons & reject application & inform applicant in GST REG 05.

(5) If the proper officer fails to take any action, -

- (a) within a period of 7 working days from the date of submission of the application in cases where the person is not covered under proviso to sub-rule (1); or
- (b) within a period of thirty days from the date of submission of the application in cases where a person is covered under proviso to sub-rule (1); or
- (c) within a period of 7 working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2), the application for grant of registration shall be deemed to have been approved.

Rule 10 - Issue of registration certificate

(1) Application approved under rule 9 – a certificate of registration in GST REG-06 showing Principal place of Business (PPOB) & additional place or places of Business (APOB) shall be made available to the applicant on the common portal & a Goods and Services Tax Identification Number (GSTIN) shall be assigned (15 characters) namely:

2	9	C	C	B	P	S	7	7	0	0	R	1	Z (default)	1			
State code		PAN/TAN										No. of Reg. in State (1-9)		Code for regular reg.		checksum character (1-9)	

- (2) If application submitted **within 30 days of becoming liable**, it is effective from date person becomes liable.
- (3) If registration applied **after 30 days of becoming liable**, it is effective from date of the grant.
- (4) Every registration certificate to be duly signed/verified through electronic verification code by PO
- (5) Where the registration has been granted under rule 9(5), the applicant shall be communicated the registration number, and the certificate of registration under sub-rule (1), duly signed or verified through EVC, shall be made available to him on the common portal, within a period of three days after the expiry of the period specified in rule 9(5).

Rule 25: Physical verification of business premises in certain cases

- (1) Where the PO is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal **within a period of fifteen working days following the date of such verification.**
- (2) Where the physical verification of the place of business of a person is required before the grant of registration in the circumstances specified in the proviso to sub-rule (1) of rule 9, the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal at **least five working days prior to the completion of the time period specified in the said proviso.**

Form GST Reg 30: Form for field visit report.

Crux:

- **Physical Verification after grant of registration:** Verification report to be uploaded within 15 working days post verification and
- **Physical Verification before grant of registration:** report to be uploaded at least five working days prior to the completion of 30 days.

Rule 10A: Furnishing of Bank Account Details

After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a GSTIN has been assigned,

- the registered person, **except** those who have been granted registration under rule 12/16, shall
 - within a period of thirty days from the date of grant of registration, or
 - before furnishing the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using invoice furnishing facility, **whichever is earlier,**
- furnish information with respect to details of bank account on the common portal.

Rule 12: Grant of registration to persons required to deduct tax at source or to collect tax at source

Rule 16: Suo moto registration by PO

Crux: Time limit to furnish bank account details: Earlier of

- (i) within 30 days from date of grant of registration or
- (ii) before furnishing GSTR 1/using IFF.

Rule 10B: Aadhaar authentication for registered person

The registered person, other than a person notified under section 25(6D), who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu undivided family, or of the Managing Director or any whole time Director, in the case of a company, or of any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorized signatory, in order to be eligible for the purposes as specified in column (2) of the Table below:

SN	Purpose
(1)	(2)
1.	For filing of application for revocation of cancellation of registration in GST REG-21 under Rule 23
2.	For filing of refund application in FORM RFD-01 under rule 89
3.	For refund under rule 96 of the integrated tax paid on goods exported out of India

Provided that if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –

(a) her/his Aadhaar Enrolment ID slip; and

(b)

(i) Bank passbook with photograph; or

(ii) Voter identity card issued by the Election Commission of India; or

(iii) Passport; or

(iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988:

Provided further that such person shall undergo the authentication of Aadhaar number within a period of thirty days of the allotment of the Aadhaar number.”;

Rule 18: Display of RC and GSTIN on the name board

(1) Every RP shall display his **certificate of registration** in a prominent location at his principal place of business (**PPOB**) & at every additional place of business (**APOB**)/APOBs.

(2) Every RP shall display his Goods and Services Tax Identification Number (**GSTIN**) on the name board exhibited at the entry of his PPOB & at every APOB/APOBs.

Section 25(2): A person seeking registration under this Act shall be granted a single registration in a State or Union territory

Provided that a person having **multiple place of business (POB)** in a State/UT may be granted a separate registration for each such POB, subject to such conditions as may be prescribed.

Section 2(85): Place of business includes

- a place from where the business is ordinarily carried on, &
- includes a warehouse/a godown/any other place where a taxable person (**TP**) stores his goods, supplies/receives g/s/b; or
- a place where a taxable person maintains his books of account; or
- a taxable person is engaged in business through an agent, by whatever name called.

Rule 11: Separate registration for multiple POBs within a State/UT.

(1) Person having Multiple POBs within ST/UT requiring separate registration may obtain separate registration and shall be granted separate registration subject to the following conditions:

(a) such person has more than one POBs (warehouse/godown/place where books are maintained etc.);

(b) such person shall not pay tax under composition for any of his POB if he is paying tax under normal levy for any other POBs;

(c) Pay tax on supply made between registered POBs & issue a tax invoice/ a bill of supply (**BOS**), for such supply.

Explanation. - For the purposes of clause (b), it is hereby clarified that where any POB of a RP that has been granted a separate registration becomes ineligible to pay tax u/s 10, all other registered places of business of the said person shall become ineligible to pay tax under the said section.

(2) Separate application in FORM GST REG-01 in respect of such place of business.

(3) Rule 9 & 10 relating to the verification & the grant of registration shall apply mutatis mutandis.

Section 25(3): Voluntary registration (VR)

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

Section 25(4): Distinct person

Person who has obtained/required to obtain multiple Registration, in one state/multiple states – Such person w.r.t each registration be treated as distinct person

Section 25(5): Distinct person

Person who has obtained/required to obtain registration in 1 state/UT in respect of an establishment, has establishment in another state/UT then such establishments shall be treated as establishments of distinct persons.

Section 25(6): PAN is mandatory for grant of Registration

Every person shall have a PAN issued under the IT Act, 1961 in order to be eligible for grant of registration:

Proviso: TDS deductor may have a Tax Deduction and Collection Account No. (TAN) in order to be eligible for grant of registration.

Rule 12: Grant of registration to TDS deductor/TCS collector

(1) **Submit an application**, in Form GST REG-07,

(1A) Physical premises not necessary in all states for ECO to obtain registration

A person applying for registration to **deduct** or **collect** tax in accordance with the provisions of section 51, or, **as the case may be, section 52**, in a State/UT where he does not have a physical presence, shall

- mention the name of the State/U in PART A of the application in FORM GST REG-07 and
- mention the name of the State/UT in PART B thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in PART A.

(2) **After due verification** – PO may grant within 3 working days from the date of submission.

(3) Cancellation of registration

Where, **on a request made in writing by a person to whom a registration has been granted under sub-rule (2) or** upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in FORM GST REG-06 has been issued is no longer liable to deduct tax at source under section 51 or collect tax at source under section 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person electronically in FORM GST REG-08:

Provided that the PO shall follow the procedure as provided in rule 22 for the cancellation of registration.

Author's comment: If TDS deductor/TCS collector is required to take registration in a state/UT where he doesn't have physical presence, they may mention in

- **Part A of Form GST REG 07:** State/UT name where the registration is sought
- **Part B of Form GST REG 07:** State/UT name where the principal place of business is located.

Section 25(6A):

Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Provided that if an Aadhaar number is not assigned to the registered person,

- such person shall be offered **alternate and viable means of identification**

- in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification,

- **registration allotted to such person shall be deemed to be invalid** and
- the other provisions of this Act shall apply as if such person does not have a registration.

Section 25(6B):

On and from the date of notification,

- **every individual** shall, in order to be eligible for grant of registration,
- undergo authentication, or furnish proof of possession of Aadhaar number,
- in such manner as the Govt may, on the recommendations of the Council, specify in the said notification:

Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

Notification No. 18/2020 – Central Tax dated 23.03.2020 (Effective 01.04.20)

In exercise of the powers conferred by section 25(6B) of the CGST Act, 2017, the CG, on the recommendations of the Council, hereby notifies **the date of coming into force of this notification as the date, from which an individual shall undergo authentication,** of Aadhaar number, as specified in rule 8 of the CGST Rules, 2017, in order to be eligible for registration:

Provided that if Aadhaar number is not assigned to the said individual, he shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said rules.

Section 25(6C):

On and from the date of notification,

- **every person, other than an individual,**
- shall, in order to be eligible for grant of registration,
- undergo authentication, or furnish proof of possession of Aadhaar number of the
 - Karta,
 - Managing Director,
 - whole time Director,
 - such number of partners,
 - Members of Managing Committee of Association,
 - Board of Trustees,
 - authorised representative,
 - authorised signatory and
 - such other class of persons,
- in such manner, as the Government may, on the recommendation of the Council, specify in the said notification:

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Govt may, on the recommendations of the Council, specify in the said notification.

Notification No. 19/2020 – Central Tax dated 23.03.20 (Effective 01.04.20)

In exercise of the powers conferred by section 25(6C) of the CGST Act, 2017, the CG, on the recommendations of the Council, hereby notifies the date of coming into force of this notification as the date, from which the –

- (a) authorised signatory of all types;
- (b) Managing and Authorised partners of a partnership firm; and

(c) Karta of a Hindu undivided family, **shall undergo authentication of possession of Aadhaar number**, as specified in rule 8 of the CGST Rules, 2017, in order to be eligible for registration under GST:

Provided that if Aadhaar number is not assigned to the said persons, they shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said rules.

Section 25(6D):

The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, **specify by notification**.

Notification no. 03/2021 CT dated 23.02.21 issued in suspension of NNo. 17/2020

The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) of section 25 of the said Act shall not apply to a person who is, -

- (a) not a citizen of India; or
- (b) a Department or establishment of the Central Government or State Government; or
- (c) a local authority; or
- (d) a statutory body; or
- (e) a Public Sector Undertaking; or
- (f) a person applying for registration under the provisions of section 25(9) of the said Act.

Section 25(7): NRTP

Notwithstanding anything contained in sub-section (6), a NRTP may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

Rule 13: Grant of registration to NRTP

- (1) **Application in GST REG 09**, along with a self-attested copy of his valid passport, at least 5 days prior to the commencement of business
Proviso: If business entity incorporated outside India, the application shall be submitted along with its tax identification number/unique no. on the basis of which the entity is identified by Govt. of that country/its PAN, if available.
- (2) **He shall be given a temporary reference number for making an advance deposit of tax** & after deposit of tax acknowledgement shall be issued.
- (3) **The provisions of rule 9 & 10 shall apply mutatis mutandis.**
- (4) The application for registration made by a NRTP shall be duly signed/verified through EVC by his authorized signatory who shall be a person resident in India having a valid PAN.

Section 25(8): If a person liable but fails, PO may proceed to register

Where a person who is liable to be registered under this Act fails to obtain registration,

- the PO may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force,
- proceed to register such person in such manner as may be prescribed.

Rule 16: Suo-moto registration (by PO)

- (1) PO during survey/enquiry/inspection/search, finds that a person liable has failed to apply for registration, PO may register the said person on a temporary basis & issue an order in GST REG-12.
- (2) **The registration granted under sub rule (1) shall be effective** from the date of such order granting registration.
- (3) Every person to whom a temporary registration has been granted under sub rule (1) **shall within 90 days of grant of such registration,**

- **Submit an application** for registration in the form and manner provided in rule 8/12: **or**
- **File an appeal against** such temporary registration

In appeal case the application for registration shall be submitted **within 30 days** from the date of the issuance of the order upholding the liability to registration by the Appellate Authority.

(4) The provisions of rule 9 & 10 shall apply mutatis mutandis.

(5) **The GSTIN assigned shall be effective** from the date of the order (GST Reg 12) granting registration under sub-rule (1).

Section 25(9): Specialised Agency of UNO, MFIO, Consulate and Embassy

Notwithstanding anything contained in sub-section (1),—

(a) any specialised agency of the UNO/any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; **and**

(b) any other person or class of persons, as may be notified by the Commissioner, shall be granted a **Unique Identity Number (UIN)** in such manner and for such purposes, including refund of taxes on the notified supplies of g/s/b received by them, as may be prescribed.

Rule 17: Assignment of Unique Identity Number to certain special entities

(1) **Submit an application** electronically in FORM GST REG- 13,

(1A) UIN granted to a person shall be applicable to the territory of India.

(2) **The PO**, upon submission of an application/receiving a recommendation from the Ministry of External Affairs, Government of India, **assign a UIN & issue a RC within a period of 3 working days** from the date of the submission of the application.

Section 25(10): The registration or the UIN shall be granted/rejected after due verification in such manner & within such period as may be prescribed. (rule 9)

Section 25(11): A certificate of registration shall be issued in such form (GST Reg 06) and with effect from such date as may be prescribed. (rule 10).

Section 25(12): A registration or a UIN shall be deemed to have been granted after the expiry of the period prescribed (rule 9) under sub-section (10), if no deficiency has been communicated to the applicant within that period.

Rule 14. Grant of registration to a person supplying online information and database access or retrieval (OIDAR) services from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India-

(1) Any person supplying OIDAR services from a place outside India to a non-taxable online recipient or any person supplying online money gaming from a place outside India to a person in India shall electronically submit an application for registration, duly signed/verified through electronic verification code, in GST REG-10, at the common portal, either directly/through a Facilitation Centre notified by the Commissioner.

(2) The applicant referred to in sub-rule (1) shall be granted registration, in FORM GST REG-06, subject to such conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council.

Crux: GST REG-01 not applicable to OIDAR or a person supplying online money gaming from outside India instead for them GST REG 10 shall be applicable to them.

Section 26: Deemed Registration

(1) Grant of RC/UIN under SGST/UTGST act - deemed grant of Registration/UIN under CGST act

(2) Any Rejection of application under SGST/UTGST act -Deemed rejection of application under CGST act.

Section 27: Special provisions relating to CTP and NRTP

(1) The certificate of registration issued to CTP/NRTP shall be valid for period specified in the application for registration/ 90 days from the effective date of registration, **whichever is earlier** & such person shall make taxable supplies only after the issuance of the certificate of registration:

Proviso: The PO may extend the said period of 90 days by a further period not exceeding 90 days.

(2) A CTP/a NRTP shall, at the time of application to deposit estimated tax liability in advance.

Proviso: In case of extension, additional estimated advance tax liability to be deposited.

(3) Amount of tax deposited, to be credited to E-cash ledger.

Rule 15: Extension in period of operation by CTP/NRTP

(1) Application in FORM GST REG-11 before the end of the validity of registration granted to him.

(2) The application shall be acknowledged only on payment of additional estimated tax liability.

Note: CTP will submit the application for registration in the normal form for application for registration i.e., Form GST REG 01 and his registration of CTP will be a PAN based registration.

Clarifications of issues under GST related to CTP [Circular No. 71/45/18 GST dt. 26.10.18]

Issue: Whether the amount required to be deposited as advance tax while taking registration as a casual taxable person (CTP) should be 100% of the estimated gross tax liability or the estimated tax liability payable in cash should be calculated after deducting the due eligible ITC which might be available to CTP?

Clarification:

- It has been noted that while applying for registration as a CTP, the FORM GST REG-01 seeks information regarding the "estimated net tax liability" only and not the gross tax liability.
- It is accordingly clarified that the amount of advance tax which a CTP is required to deposit while obtaining registration should be calculated after considering the due eligible ITC which might be available to such taxable person.

Crux: CTP pays "Net estimated tax liability" in advance at the time of taking registration.

Issue: As per section 27, period of operation by CTP is 90 days with provision for extension of same by the PO for a further period not exceeding 90 days. Various representations have been received for further extension of the said period beyond the period of 180 days, as mandated in law.

Clarification:

- In case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person.
- While applying for normal registration, the said person should upload a copy of the allotment letter granting him permission to use the premises for the exhibition & the allotment letter/consent letter shall be treated as the proper document as a proof for his place of business.
- In such case he would not be required to pay advance tax for the purpose of registration.
- He can surrender such registration once the exhibition is over.

Crux: After 180 days TP cannot be treated CTP, obtain registration as normal RP and surrender such registration once the exhibition is over.

Section 28: Amendment of registration

- (1) Every RP and UIN holder shall inform PO of any changes in form GST REG-14 and within 15 days of change.
- (2) PO may, on the basis of information furnished approve/reject amendments in the registration particulars in such manner and within a period of 15 WDs.

Proviso:

1. Approval of the PO shall not be required in respect of amendment of such particulars as may be prescribed.
 2. PO shall not reject the application for amendment in the registration particulars without giving OBH
- (3) Any rejection/approval of amendments under SGST/UTGST shall be deemed to be a rejection/approval under CGST Act.

Rule 19: Amendment of registration

- (1) Where there is any change in any of the particulars furnished in the application for registration in **FORM GST REG-01 or FORM GST REG-07 or FORM GST REG-09 or FORM GST REG-10** or
- for Unique Identity Number in FORM GST REG-13,
 - either at the time of obtaining registration or Unique Identity Number or as amended from time to time, the RP shall, within a period of 15 days of such change, submit an application in GST REG-14 along with the documents relating to such change at the common portal.

Provided that:**(a) Where: Change relates to core fields**

- (i) Legal name of business;
- (ii) Address of the PPOB/APOBs or
- (iii) Addition/deletion/retirement of partners/directors, Karta, Managing Committee, Board of Trustees, CEO/equivalent, responsible for the day-to-day affairs of the business –

which does not warrant cancellation of registration,

- the PO shall, after due verification, approve amendment within 15 working days from date of receipt of application in GST REG-14 &
- Issue an order in GST REG-15 electronically &
- Such amendment shall take effect from the date of the occurrence of the event warranting such amendment;

- (b)** the change relating to sub-clause (i) and (iii) of clause (a) in any State/UT shall be applicable for all registrations of the registered person obtained under the provisions of this Chapter on the same PAN;

(c) Change in non-core areas, PO approval not required

where the change relates to any particulars other than those specified in clause (a), the certificate of registration shall stand amended upon submission of the application in FORM GST REG-14 on the common portal;

(d) Change in PAN, amendment not possible - fresh registration to be obtained

where a change in the constitution of any business results in the change of the PAN of a registered person, the said person shall apply for fresh registration in FORM GST REG-01

Proviso: Any change in mobile no./e-mail address of the authorised signatory, shall be carried out only after online verification through OTP.

(1A) Amendment to be prospective unless specific orders from commissioner**Notwithstanding anything contained in sub-rule (1),**

Any particular of the application for registration shall not stand amended with effect from a date earlier than the date of submission of the application in FORM GST REG-14 except with the order of the Commissioner for reasons to be recorded in writing and subject to such conditions as the Commissioner may, in the said order, specify.

Author's comment: Retrospective amendment only if specifically permitted by commissioner.

- (2) **PO is of the opinion that the amendment is either not warranted/documents furnished are incomplete/incorrect**
- he may, within 15 WDs from the date of the receipt of the application,
 - serve a notice in **FORM GST REG-03** requiring the RP to show cause, within 7 WDs of the service of notice, as to why the application submitted shall not be rejected.
- (3) The RP shall furnish a reply in **FORM GST REG-04** within 7 WDs from the date of the service of the said notice.
- (4) Where the reply furnished is found to be not satisfactory/no reply, PO shall reject the application & pass an order in **FORM GST REG-05**.
- (5) **If the proper officer fails to take any action, -**
- (a) **within 15 WDs** from the date of submission of the application, or
 - (b) **within 7 WDs** from the date of the receipt of the reply to the SCN under sub-rule (3),
- the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

Section 29: Cancellation or Suspension of registration

Section 29(1): The PO may, either

- on his own motion (Suo-moto) **or** on an application filed by the RP/by his legal heirs, in case of death of RP,
- cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances

where, -

- (a) the business has been discontinued, transferred fully for any reason including death/amalgamation/demerger or otherwise disposed of; or
- (b) there is any change in the constitution of the business; or
- (c) the taxable person, is no longer liable to be registered under section 22 or section 24 or intends to optout of the registration voluntarily made under section 25(3).

Provided that during pendency of the proceedings relating to cancellation of registration filed by the RP, the registration may be suspended for such period and in such manner as may be prescribed.

Rule 20 - Application for cancellation of registration – RP seeking

A RP, (other than TDS Deductor/TCS collector or a person holding a UIN) seeking cancellation of registration **u/s 29(1)** shall electronically

- **submit an application** in FORM GST REG-16, including therein
 - the details of inputs held in stock /inputs contained in SFGs/FGs held in stock and of capital goods held in stock
 - on the date from which the cancellation of registration is sought,
 - liability thereon, the details of the payment, if any, made against such liability &
 - **may furnish, along with the application,** relevant documents in support thereof,
 - within a period of 30 days of the occurrence of the event warranting the cancellation.

Section 29(2): The PO may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, --

- (a) a RP has contravened **such** (rule 21) provisions of the Act/the rules made thereunder as may be prescribed; or

Rule 21-Registration to be cancelled in certain cases

The registration granted to a person is liable to be cancelled, if the said person, -

- (a) does not conduct any business from the declared place of business; or

- (b) issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder; or
- (c) violates the Anti profiteering provisions.
- (d) violates the provision of rule 10A (furnishing of Bank account details on portal)
- (e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or
- (f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or
- (g) violates the provision of rule 86B.
- (h) being a registered person required to file return under section 39(1) for each month or part thereof, has not furnished returns for a continuous period of six months;
- (i) being a registered person required to file return under proviso to sub-section (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.

- (b) a person paying tax under section 10 (Composition supplier) has not furnished **the return for a financial year beyond three months from the due date of furnishing the said return**; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for **such continuous tax period as may be prescribed**; or
- (d) any person who has taken voluntary registration u/s 25(3) has not commenced business within 6 months from the date of registration; or
- (e) Registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the PO shall not cancel without giving opportunity of being heard.

Provided further that during pendency of cancellation, the PO may suspend the registration for such period and in such manner as may be prescribed.

Rule-22: Cancellation of registration – PO has reason to believe that registration is liable to be cancelled

- (1) **PO shall issue a notice in REG-17, to show cause, within 7 WDs** from the date of the service of notice, as to why his registration shall not be cancelled.
- (2) **Reply to SCN shall be furnished in Form REG-18 within 7 WDs.**
- (3) **Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled,**
 - the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days
 - from the date of application submitted under rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1), **or under sub-rule (2A) of rule 21A**
 - cancel the registration, with effect from a date to be determined by him and notify the taxable person,
 - directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub section (5) of section 29.
- (4) Where the reply furnished under sub-rule (2), **or in response to the notice issued under sub-rule (2A) of rule 21A** is found to be satisfactory, PO shall drop the proceedings & pass an order Form REG – 20.

Proviso: the PO shall drop the proceedings & pass an order in REG 20

Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b)/(c) of section 29(2), furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in GST REG 20.

- (5) The provisions of sub-rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

Section 29(3): Person liable to pay dues relating to prior period even if registration cancelled.

The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

Section 29(4): Cancellation of registration under SGST/UTGST act, deemed cancellation under CGST Act.

Section 29(5): Payment of liability upon cancellation of registration

Every RP whose registration is cancelled shall pay an amount, by way of debit in e-credit/e-cash ledger, **Equivalent to**

- the ITC in respect of inputs held in stock & inputs in SFs/FGs held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation **or**
- the output tax payable on such goods,

whichever is higher, calculated in such manner as may be prescribed.

Proviso: in case of capital goods or plant and machinery,

- the taxable person shall pay an amount equal to the ITC taken on the said CGs or p & m,
 - reduced by such percentage points as may be prescribed or
 - the tax on the transaction value

whichever is higher.

Section 29(6): The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed (rule 44).

Rule 44: Manner of reversal of credit under special circumstances

- (1) The amount of ITC relating to inputs held in stock, inputs contained in SFGs & FGs held in stock, & CGs held in stock shall, be determined in the following manner, namely, —
- (a) for inputs held in stock & contained in SFGs & FGs held in stock, the ITC shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;
- (b) for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro rata basis, taking the useful life as five years.

Illustration:

Capital goods have been in use for 4 years, 6 month and 15 days.

The useful remaining life in months= 5 months ignoring a part of the month

Input tax credit taken on such capital goods= C

Input tax credit attributable to remaining useful life= C multiplied by 5/60

- (2) The amount shall be determined separately for ITC of CT, ST, UT tax and IT.
- (3) **Where the tax invoices related to the inputs held in stock are not available**, the RP shall
- Estimate the amount under sub-rule (1) based on the prevailing market price of the goods on the effective date of the occurrence of the events.
- (4) The amount determined under (1) shall form part of the output tax liability of the RP and the details of the amount shall be furnished and in FORM GSTR-10(final return).
- (5) The details furnished under sub-rule (3) shall be duly certified by a practicing-chartered accountant/cost accountant.

Rule 21A: Suspension of registration

- (1) Where a RP has applied for cancellation – Pending cancellation, the registration shall be deemed to be suspended:
- from the date of submission of the application **or**
 - the date from which the cancellation is sought,
whichever is later.

- (2) **Where the PO has reason to believe that registration is liable to be cancelled, he may,** suspend the registration with effect from a date to be determined by him, pending the completion of the proceedings for cancellation.

(2A) Where,-

- (a) a comparison of the returns furnished by a registered person under section 39 with
- the details of outward supplies furnished in FORM GSTR-1; or
 - the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,
 - or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, or
- (b) there is a contravention of the provisions of rule 10A by the registered person,

the registration shall be suspended and the said person shall be intimated in Form GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences, anomalies **or non-compliances** and asking him to explain, within a period of 30 days, as to why his registration shall not be cancelled.

- (3) A RP, whose registration has been suspended under sub-rule (1) or sub-rule (2), **or sub-rule (2A)** shall not make any taxable supply & shall not be required to furnish any return u/s 39.

Explanation. - For the purposes of this sub-rule, the expression "**shall not make any taxable supply**" shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.

(3A) A RP, whose registration has been suspended under sub-rule (2) or (2A), shall not be granted any refund u/s 54, during the period of suspension of his registration.

- (4) The suspension of registration under sub-rule (1) or sub-rule (2) or sub-rule (2A) shall be deemed to be revoked upon completion of the cancellation proceedings by the PO & such revocation shall be effective from the date on which the suspension had come into effect.

Provided that the suspension of registration under this rule may be revoked by the PO, anytime during the pendency of the proceedings for cancellation, if he deems fit.

Provided further that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29 and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

Provided also that where the registration has been suspended under sub-rule (2A) for contravention of provisions of rule 10A and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon compliance with the provisions of rule 10A.

- (5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

Section 30: Revocation of cancellation of registration

- (1) Subject to such conditions as may be prescribed, any RP, whose registration is cancelled by the PO on his own motion, may apply to such officer for revocation of cancellation of the registration in **such manner, within such time and subject to such conditions and restrictions, as may be prescribed.**

- (2) The PO in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

- (3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

Rule 23: Revocation of cancellation of registration

- (1) A RP, whose registration is cancelled by the PO on his own motion, subject to the provisions of rule 10B, may submit an application in REG-21, to such PO, within a period of **ninety days** from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner/Joint Commissioner, as the case may be, for a further period **not exceeding 180 days:**

Provided further that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns:

Provided also that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of 30 days from the date of order of revocation of cancellation of registration:

Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration

- (2) (a) If PO is satisfied, that there are sufficient grounds for revocation, he shall revoke the cancellation by an order in REG-22 within a period of 30 days from the date of the receipt of the application.
(b) The PO may, for reason in writing, by an order in REG- 05, reject the application for revocation of cancellation.

- (3) The PO shall, before passing rejection order, issue a notice in GST Reg 23 requiring the applicant to show cause as to why the application submitted for revocation should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in FORM GST REG-24.

- (4) Upon receipt of the information or clarification in FORM GST REG-24, the proper officer shall proceed to dispose of the application in the manner specified in sub-rule (2) within a period of thirty days from the date of the receipt of such information or clarification from the applicant.

Rule 26: Method of authentication

- (1) All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Board in this behalf:

Provided that a registered person registered under the provisions of the Companies Act, 2013 shall furnish the documents or application verified through digital signature certificate.

(2) Each document including the return furnished online shall be signed or verified through electronic verification code-

- (a) **in the case of an individual, by the individual himself** or where he is absent from India, by some other person duly authorised by him in this behalf, and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
 - (b) **in the case of a HUF, by a Karta** and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorised signatory of such Karta;
 - (c) **in the case of a company, by the CEO** or authorised signatory thereof;
 - (d) **in the case of a Government/any Governmental agency/local authority, by an officer authorised** in this behalf;
 - (e) **in the case of a firm, by any partner** thereof, not being a minor/authorised signatory thereof;
 - (f) **in the case of any other association, by any member of the association** or persons or authorised signatory thereof;
 - (g) **in the case of a trust, by the trustee** or any trustee or authorised signatory thereof; or
 - (h) **in the case of any other person, by some person competent to act on his behalf**, or by a person authorised in accordance with the provisions of section 48.
- (3) **All notices, certificates and orders** under the provisions of this Chapter shall be issued electronically by the PO or any other officer authorised to issue such notices/certificates or orders, through digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Board in this behalf.