

# SUPPLY UNDER GST



## LEARNING OUTCOMES

**After studying this Chapter, you will be able to –**

- ❑ analyse the taxable event under GST – Supply – its meaning and scope.
- ❑ compare and appreciate the differences between the taxable events under earlier indirect taxes regime and the GST regime.
- ❑ identify the transactions that will amount to supply even without any consideration
- ❑ identify the transactions which will be treated as supply of goods and the transactions which will be treated as supply of services alongwith practical illustration comparing the situation under the earlier regime and the GST regime.
- ❑ pinpoint the transactions which will be neither the supply of goods nor the supply of services.
- ❑ explain the composite and mixed supplies.

## CHAPTER OVERVIEW



### 1. INTRODUCTION

- The incidence of tax is the foundation stone of any taxation system. It determines the point at which tax would be levied, i.e. the taxable event. The earlier framework of taxable event in various statutes was prone to catena of interpretations resulting in litigation since decades.
- Broadly, the controversies related to issues like whether a particular process amounted to manufacture or not, whether the sale was pre-determined sale, whether a particular transaction was a sale of goods or rendering of services etc. The GST laws resolve these issues by laying down one comprehensive taxable event i.e. "Supply" - Supply of goods or services or both.



- ✓ GST Law, by levying tax on the 'supply' of goods and/or services, departs from the historically understood concepts of 'taxable event' under the State VAT Laws, Excise Laws and Service Tax Laws i.e. sale, manufacture and service respectively.



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

## 2. RELEVANT DEFINITIONS



- ✓ **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. [Sec. 2(52) of CGST Act].
- ✓ **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 [Section 2(5) of CGST Act].

 **Business:** includes –

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to (a) above;

(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of 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;


(f) admission, for a consideration, of persons to any premises; and


(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;


(h) services provided by a race club by way of totalisator or a licence to book maker in such club

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

[Section 2(17) of CGST Act].

 **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(88) of CGST Act].

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

 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,

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

However, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. [Section 2(31) of CGST Act].

- 📌 **Actionable claim:** shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882.

As per 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 immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent [Section 2(1) of CGST Act].

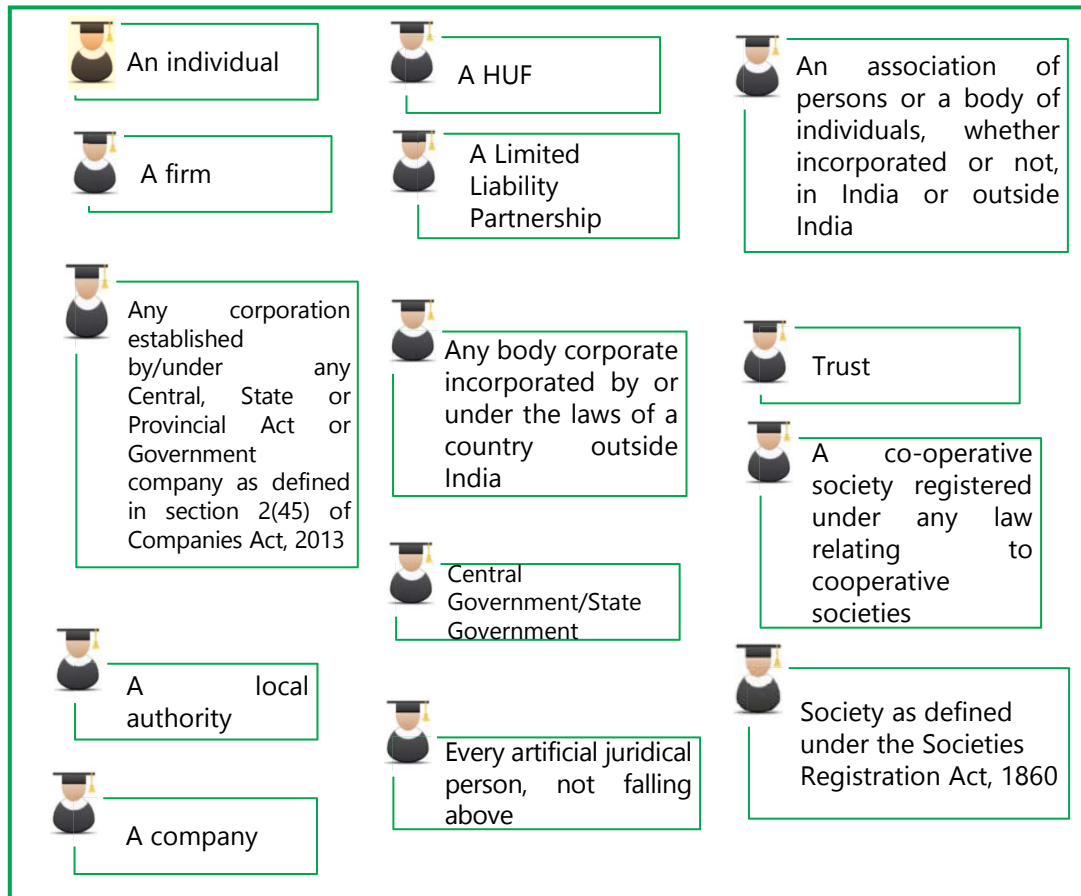
- 📌 **Manufacture:** means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term “manufacturer” shall be construed accordingly [Section 2(72) of CGST Act].


- 📌 **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 Reserve Bank of India 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 [Section 2(75) of CGST Act].

- 📌 **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108) of CGST Act].

- 📌 **Taxable territory:** means the territory to which the provisions of this Act apply [Section 2(109) of CGST Act].

 **Person:** includes [Section 2(84) of CGST Act]-



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

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

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 goods or services or both supplied. [Section 2(93) of CGST Act]



**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. [Section 2(102) of CGST Act].



**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 [Section 2(105) of CGST Act].

Our discussion in this Study Material will principally be confined to the provisions of CGST and IGST laws as the specific State GST laws are outside the scope of syllabus.

### 3. CONCEPT OF SUPPLY [SECTION 7 OF CGST ACT]

The concept of 'supply' is the key stone of the GST architecture. The provisions relating to meaning and scope of supply are contained in Chapter III of the CGST Act read with various Schedules given under the said Act. Therefore, following shall be discussed in this chapter:

<b>Section 7</b>	Meaning and scope of supply
<b>Section 8</b>	Taxability of composite and mixed supplies
<b>Schedule I</b>	Matters to be treated as supply even if made without consideration
<b>Schedule II</b>	Matters to be treated as supply of goods or as supply of services
<b>Schedule III</b>	Matters or transactions which shall be treated neither as supply of goods nor as supply of services.



## STATUTORY PROVISIONS

Section 7		Meaning and Scope of Supply
Sub Section	Clause	Particulars
(1)	<b>Supply includes -</b>	
	(a)	all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a <b>consideration</b> by <b>a person</b> in the <b>course or furtherance of business</b>
	(b)	<b>importation of services</b> , for a consideration whether or not in the course or furtherance of business,
	(c)	the <b>activities</b> specified in <b>Schedule I</b> , made or agreed to be made <b>without a consideration</b> ,
	(d)	the activities to be treated as supply of goods or supply of services as referred to in <b>Schedule II</b> .
(2)	Notwithstanding anything contained in sub-section (1),	
	(a)	activities or transactions specified in <b>Schedule III</b> ; or
	(b)	such activities or transactions undertaken by the Central Government, a State Government 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.	
(3)	Subject to sub-sections (1) & (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.



## ANALYSIS



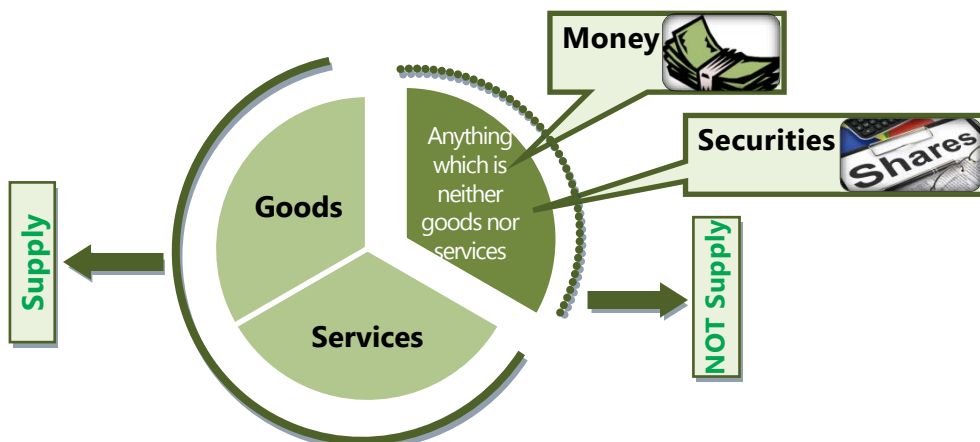
Section 7 of the CGST Act defines the scope of supply in an inclusive manner. The modes of supply mentioned in Section 7(1)(a) are only in the forms of examples and the list is not exhaustive. This is substantiated by the use of words '*such as*' in the definition.

Provisions of scope of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.



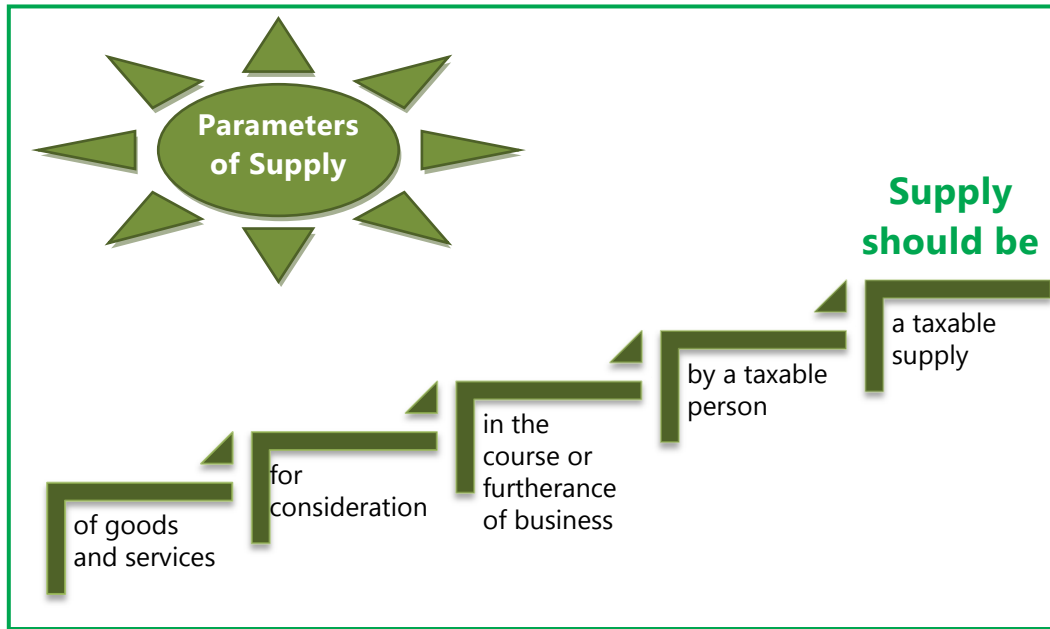
The meaning and scope of supply taxable under GST can be understood in terms of following parameters, which can be adopted to characterize a transaction as supply:

1. Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.



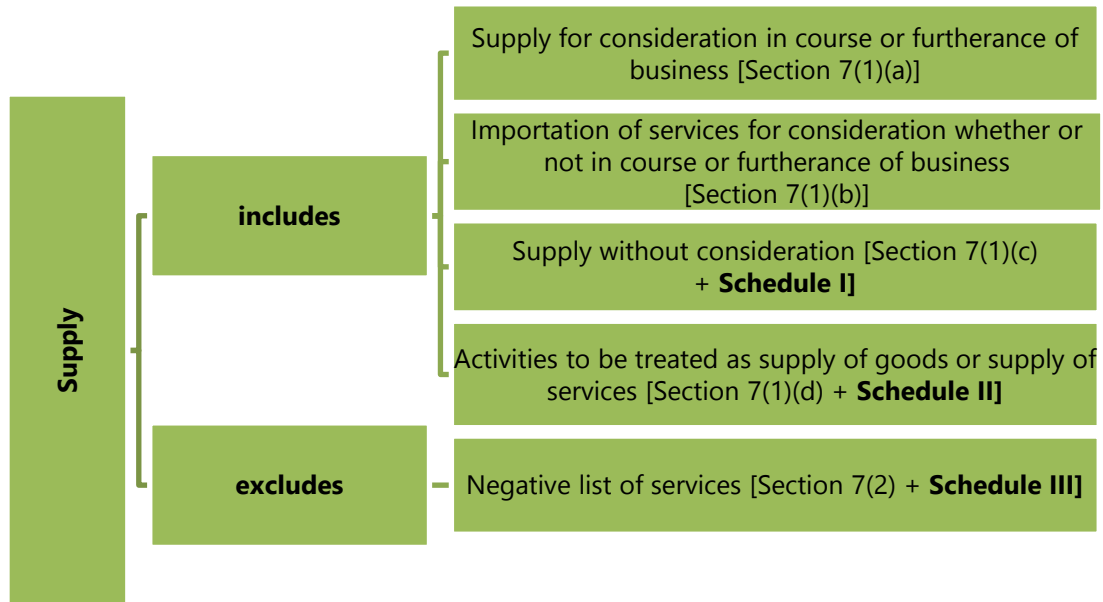
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.

5. Supply should be a taxable supply.



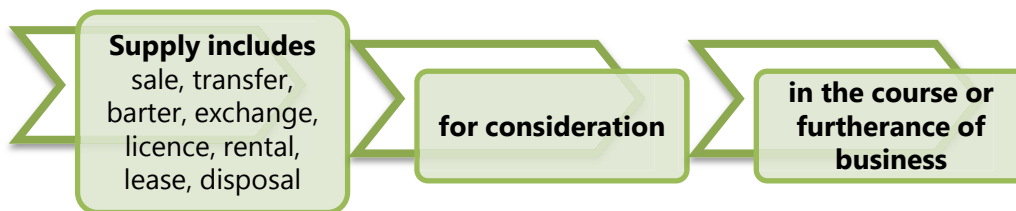
- Aforesaid parameters describe the concept of taxable supply. However, there are a few exceptions to 2<sup>nd</sup> and 3<sup>rd</sup> parameters [the requirement of supply being made for a consideration and in the course or furtherance of business]. Some exceptions have been carved out where a transaction is deemed to be a supply even **without consideration**. Similarly, import of services for a consideration, **whether or not in the course or furtherance of business** is treated as supply.
- Further, there are also cases **where a transaction is kept out of scope of supply despite the existence of the above parameters**, i.e. a list of activities shall be treated as neither supply of goods nor supply of services. In other words, they are outside the scope of GST. Besides, few activities are to be treated either as supply of goods or as supply of services.
- Government is also empowered to notify transactions that are to be treated as a supply of goods and not as a supply of services, or as a supply of services and not as a supply of goods.

In the subsequent paras, the above aspects of Supply have been comprehensively discussed. The discussion is broadly categorised into following:



### Supply for consideration in course or furtherance of business [Section 7(1)(a)]

The definition of supply begins with the term **‘Supply includes’**, thus making it clear that CGST Act intends to give an extensive meaning to the term ‘supply’. The first part of section 7 [Clause (a) of sub-section (1)] includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made **for consideration in the course or furtherance of business**.

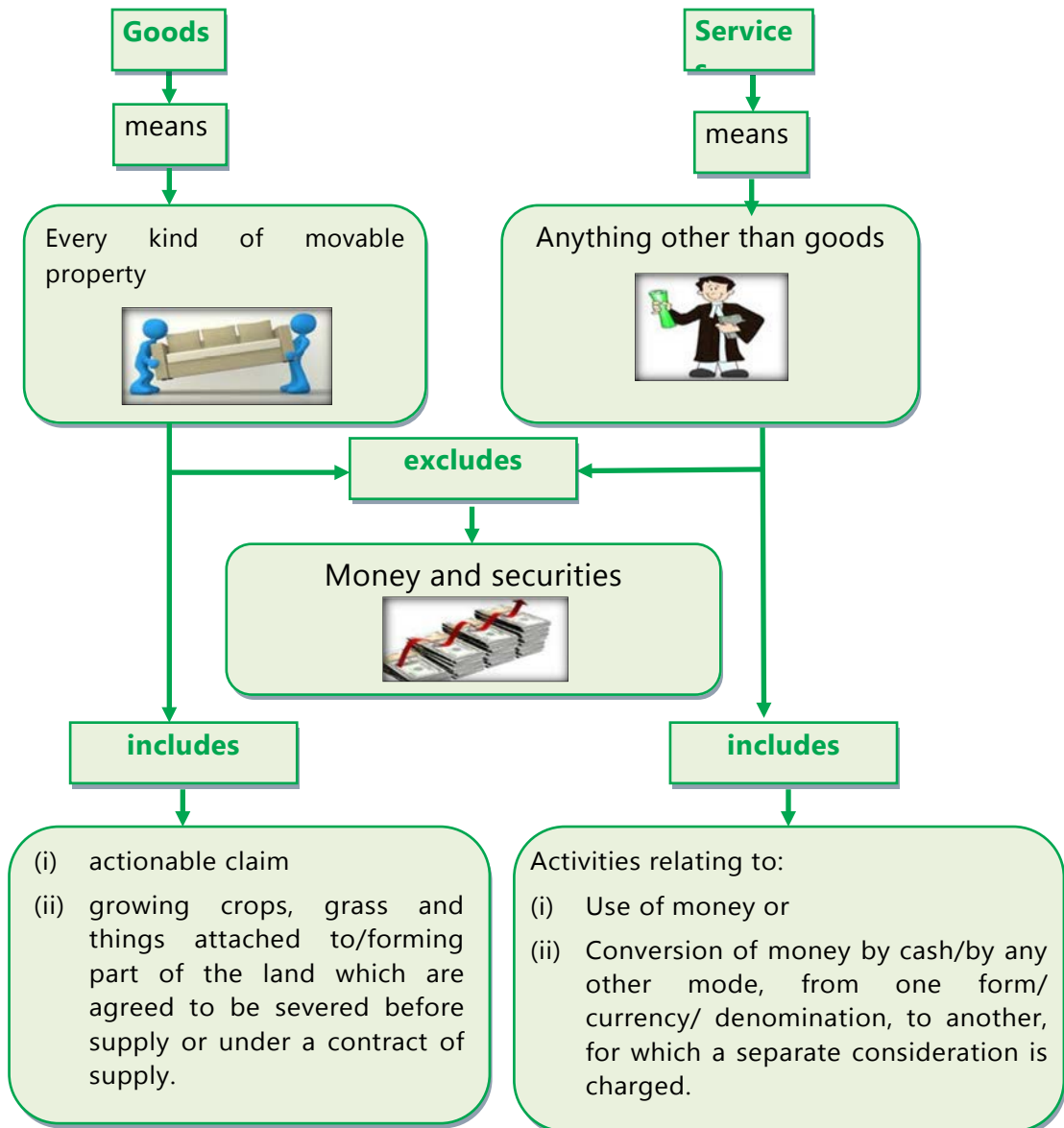


Thus, the forms of supply as contemplated in this first part have two pre-requisites:

- ✓ the supply should be for a consideration; and
- ✓ in the course or furtherance of business.

**A. MODES OF SUPPLY**

Supply **includes** all forms of supply of goods or services or both. Supply of anything other than goods or services does not attract GST. Let us analyse the terms goods and services as defined under the Act:



*Definitions of actionable claims and money are given in S. No. 2. – Relevant Definitions.*

Anything supplied other than goods and services is outside the scope of supply. Now, we will analyse the various illustrative modes of supply mentioned in section 7(1)(a):

- I. **Sale and Transfer:** Earlier, VAT was levied by the State on the sale of goods which was defined under most State VAT laws as transfer of property in goods for consideration. Under the CGST Act, although sale has been treated as a form of supply leviable to GST, the definition of 'sale' has not been provided.

Further, the term 'transfer' which has also been included as a form of supply is also not defined.

- II. **Barter and Exchange:** While barter may deal with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are partly paid for in goods and partly in money. When there is a barter of goods or services, same activity constitutes supply as well as consideration.

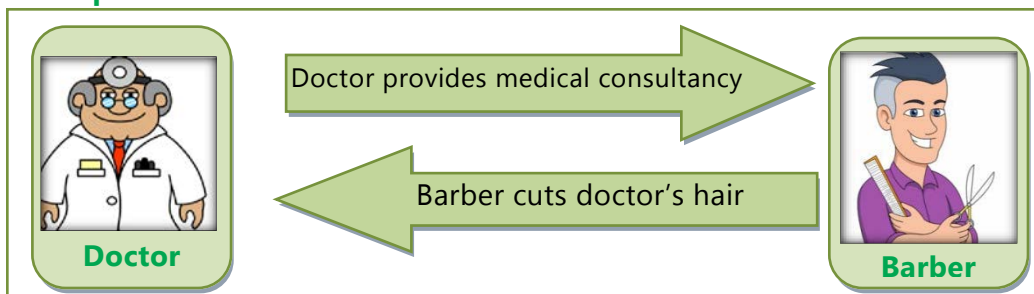
By making a specific inclusion in the definition of supply, all barters and exchanges would be leviable to GST.

#### Example of exchange



When a new car worth ₹ 5,00,000 is purchased in exchange of an old car alongwith the monetary consideration of ₹ 4,00,000 paid for the said purchase.

**Example of barter** is as follows:



**Medical consultancy is a SUPPLY of services by doctor. It is a consideration for the hair cut by the barber.**

- III. **Licence, Lease, Rental etc.:** Licenses, leases and rentals of goods were earlier treated as services where the goods were transferred **without** transfer of right to use (effective possession and control over the goods) and were

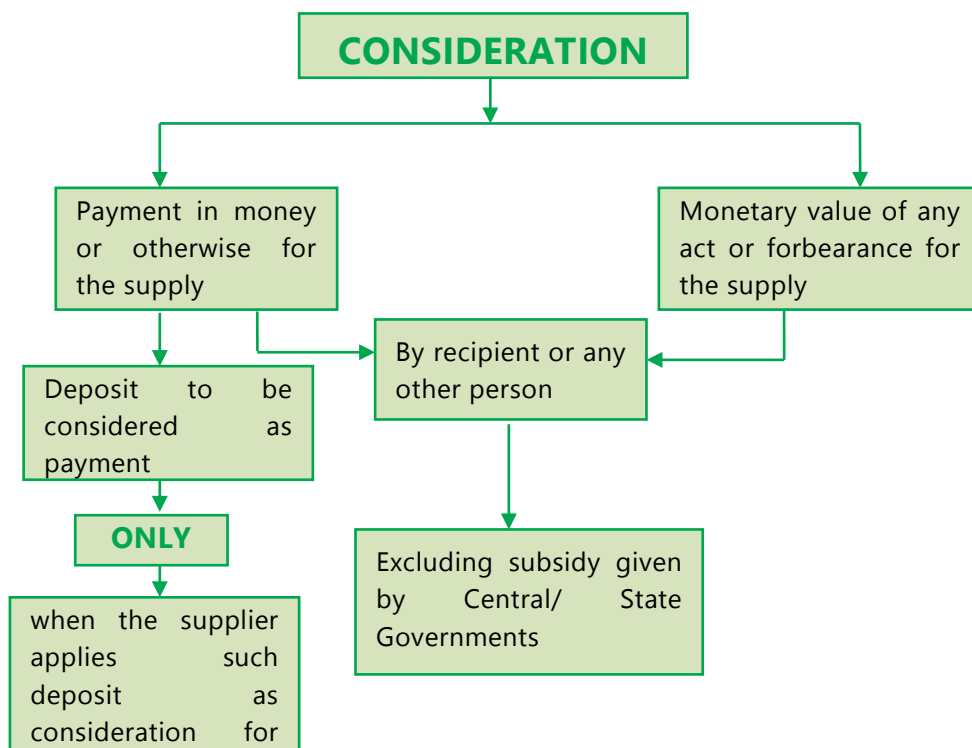
treated as sales where the goods were transferred **with** transfer of right to use.

Under the GST regime, such licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule-II of CGST Act.

### B. CONSIDERATION

One of the essential conditions for the supply of goods and/or services to fall within the ambit of GST is that a supply is made for a consideration. However, consideration does not always mean money. It covers anything which might be possibly done, given or made in exchange for something else. Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person.

The term consideration as been defined under the CGST Act has been summarised in the following diagram:





Any transaction involving supply of goods and/or services without consideration is not a supply unless it is deemed to be a supply under law [as deemed in Schedule I of the CGST Act].

### C. IN COURSE OR FURTHERANCE OF BUSINESS

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.



Rishabh buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Rishabh to car dealer is not a supply under CGST Act because supply is not made by Rishabh in the course or furtherance of business.

**Meaning of supply made in the course or furtherance of business:** In order to understand the term 'in the course or furtherance of business', we need to understand the term 'business'. Business as defined under section 2(17) of the CGST Act, *inter alia*, includes any trade, commerce, manufacture, profession, vocation etc. whether or not undertaken for a monetary benefit.

It also includes any activity or transaction which is incidental or ancillary to the aforementioned listed activities. In addition, any activity undertaken by the Central Govt. or a State Govt. or any local authority in which they are engaged as public authority shall also be construed as business.

The definition of business has been summarised in the diagram below:



Any activity undertaken in course/ for furtherance of business would constitute a supply. Since 'business' includes vocation, sale of goods or service even **as a vocation** is a supply under GST.



Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust – 'Kind Human'. The sale of paintings by the actor qualifies as supply even though it is a one-time occurrence.

Services provided by the club/association to its members for consideration is a supply.



A Resident Welfare Association provides the service of depositing the electricity bills of the residents in lieu of some nominal charges. Provision of service by a club or association or society to its members is treated as supply as this is included in the definition of 'business'.

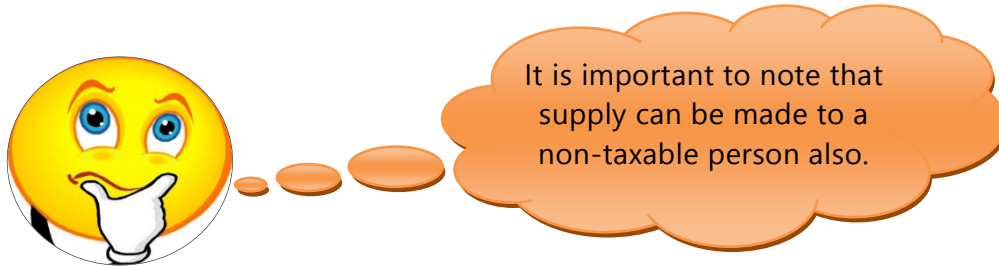


There is one exception to this 'course or furtherance of business' rule i.e., import of services for a consideration.



### D. SUPPLY BY A TAXABLE PERSON

**A supply to attract GST should be made by a taxable person.** Hence, a supply between two non-taxable persons does not constitute taxable supply under GST.



The restriction of being a taxable person is only on the supplier whereas the recipient can be either taxable or non-taxable. Further, there is no condition that supply needs to be made to another person, i.e. supplies made to self are also taxable.

**Meaning of taxable person:** A "taxable person" is a person who is registered or liable to be registered under section 22 or section 24 *[The said sections and the concept of taxable person thereto have been discussed in detail in Chapter 7 – Registration]*.

Hence, even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person.

### E. TAXABLE SUPPLY

For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the GST Law *[Discussed in detail in Chapter-3: Charge of GST]*. Exemptions may be provided to the specified goods or services or to a specified category of persons/ entities making supply *[Discussed in detail in Chapter-4: Exemptions from GST]*.



**Importation of services for consideration whether or not in course or furtherance of business [Section 7(1)(b)]**

The connotation of 'supply' gets expanded significantly through the second part of section 7 i.e. 7(1)(b) which brings within the ambit of 'supply', the importation of services for a consideration whether or not in the course or furtherance of

business. This is the only exception to the condition of supply being in course or furtherance of business.



Ramaiyaa, a proprietor, has received the architect services for his house from an architect located in New York at an agreed consideration of \$ 5,000. The import of services by Ramaiyaa is supply under section 7(1)(b) though it is not in course or furtherance of business.



### Supply without consideration - Deemed Supply [Section 7(1)(c) read with Schedule I ]

This includes all supplies made by a taxable person to a taxable/ non-taxable person, **even if the same is without consideration**. These are specifically mentioned in Schedule I appended to the CGST Act. The same has been discussed in the subsequent paras:

In the past regime, in every tax statute, "consideration" played the most important role for levying taxes. For eg, if any service was provided for free to a person, such service was not subject to service tax. However, under GST, the importance of consideration has been diluted in certain cases – this is an important departure from the earlier indirect tax regime.

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:

- I. Permanent Transfer/Disposal of Business Assets:** Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply. This clause is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.

However, it is important to note that this provision would apply only if input tax credit has been availed on such assets.



XYZ & Co. donates old laptops to Charitable Schools when new laptops are purchased by business will qualify as supply provided input tax credit has been availed by XYZ & Co. on such laptops.



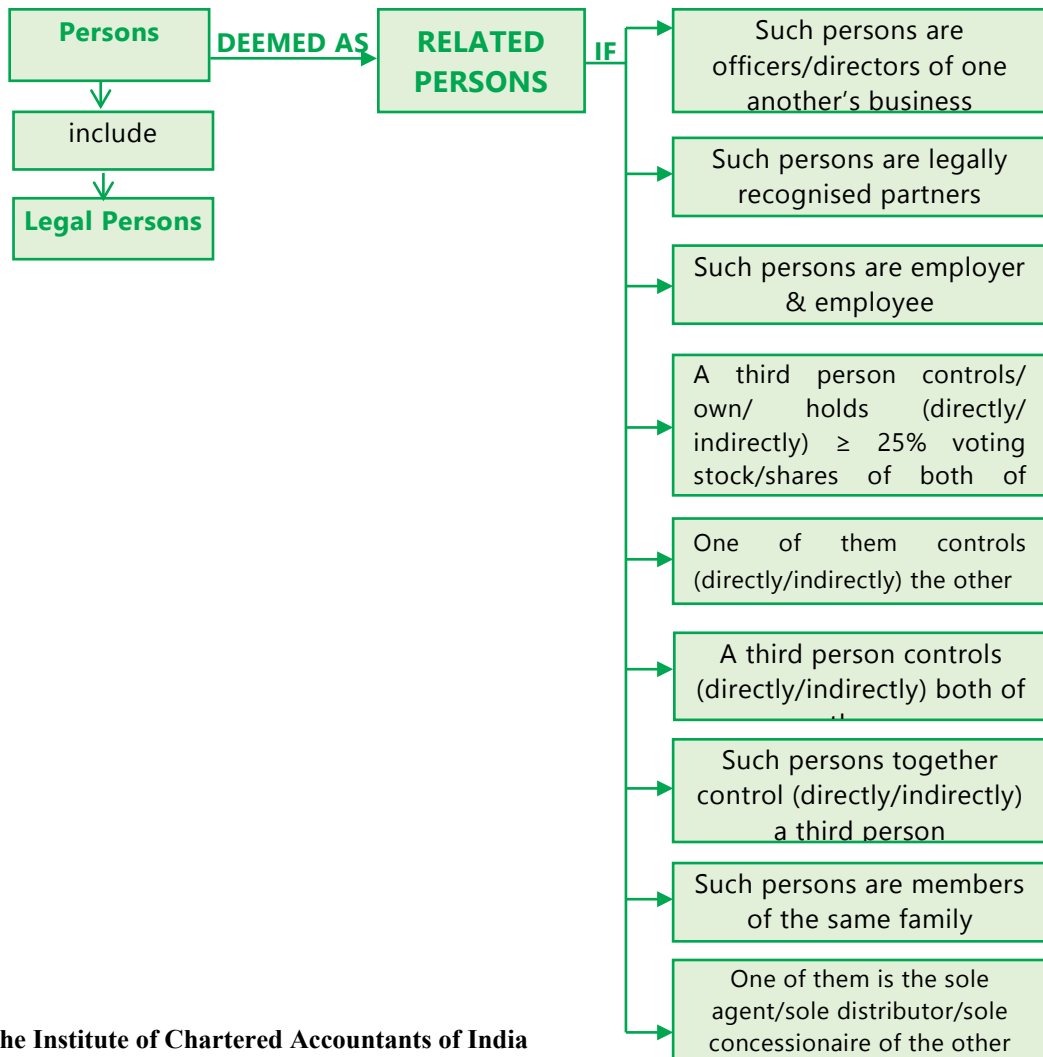
A cloth retailer gives clothes from his business stock to his friend free of cost. In this case, transfer of business stock would amount to 'supply' if he had claimed input tax credit on his purchase of the business asset.



A dealer of air-conditioners permanently transfers an air conditioner from his stock in trade, for personal use at his residence. The transaction will constitute a supply as it is a permanent transfer/ disposal of business assets. The only condition is that input tax credit should have been availed on such assets.

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

(i) **Related persons:** As per explanation to section 15, related persons have been defined as follows:



## (ii) Distinct Persons specified under section 25\*

A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as **distinct persons**. Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as **establishments of distinct persons**.



Mohan, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of West Bengal in respect of his newly opened branch office. Mohan shall be treated as distinct persons in respect of registrations in West Bengal and Delhi.

*\*Provisions of section 25 stipulating procedure for registration have been discussed in Chapter – 7: Registration.*

**(iii) Stock transfers or branch transfers:** In view of the aforesaid discussion, transactions between different locations (with separate GST registrations) of same legal entity (eg., stock transfers or branch transfers) will qualify as 'supply' under GST which is in contrast to the earlier regime.



Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir 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.

**(iv) Supply of goods or services or both between an employer and employee:**

By virtue of the definition of related person given above, employer and employee are related persons. However, services provided by an employee to the employer in the course of or in relation to his employment are not treated as supply of services [Schedule III of CGST Act (*discussed in subsequent paras*)].

### **Gifts by employer to employee**

Further, Schedule I provides that gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. However, gifts of value more than ₹ 50,000 made without consideration are subject to GST, when made in the course or furtherance of business.



The term 'gift' has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift.

As already mentioned that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services).

It follows therefrom that supply 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.

Further, the Input Tax Credit (ITC) Scheme under GST does not allow ITC of membership of a club, health and fitness centre [Section 17(5)(b)(ii) – *Discussed in detail in Chapter – 6: Input Tax Credit*].

It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer.

The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to company (C2C)<sup>1</sup>.

**III. Principal – Agent:** Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.

Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

Points which merit consideration, in this regard, are as follows:

- ② Only supply of goods is covered here.
- ② Supply of goods between principal and agent without consideration is also supply.



ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. For the purpose, ABC Manufacturers Ltd. has supplied the goods to Raghav & Sons located in Haryana. Supply of goods by ABC Manufacturers Ltd. to Raghav & Sons will qualify as supply even though Raghav & Sons has not paid any consideration yet.

**IV. Importation of services:** Import of services by a taxable person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as “supply”.



ABC Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office. Since ABC Associates and the branch office are related persons, services received by ABC Associates will qualify as supply even though the head office has not charged anything from it.

<sup>1</sup> As clarified in a Press Release on 10.07.2017 by Ministry of Finance



Sumedha, a proprietor registered in Delhi, has sought architect services from his brother located in US, with respect to his newly constructed house in Delhi. Although services have been received by Sumedha without consideration from a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.



### Activities to be treated as Supply of goods or Supply of services [Section 7(1)(d) read with Schedule II]

Section 7(1)(d) of the Act refers to Schedule II for determining whether a particular transaction is a supply of goods or supply of service. This helps in mitigating the ambiguities which existed in earlier laws.



Under earlier laws, the restaurants used to charge both service tax and VAT on the value of food served. This so because both sale of goods and provision of service were involved and therefore taxable event under both the Statutes i.e. respective VAT law and service tax law got triggered.

Under GST, the supply by a restaurant is treated as composite supply [discussed in detail in subsequent paras] as food and service is naturally bundled in ordinary course of business. However, Entry 6(b) of Schedule II to the CGST Act specifically provides that such composite supply shall be treated as supply of service. Hence, the entire value of invoice shall be treated as value of service and leviable to GST accordingly.

This can be explained with the help of an example in the following table:

Position under earlier Laws		Position under GST	
Food Value = ₹ 100		Food Value = ₹ 100	
Service Charges = ₹ 10		Service Charges = ₹ 10	
VAT @ 14% on food value = ₹ 14	VAT was charged on full value of food	GST @ 18% = ₹ 19.8	The entire supply would be treated as a single




Service Tax @ 6% on food value = ₹ 6 Service Tax @ 15% on service charges = ₹ 1.5	Service tax at abated rate was charged on food value.		composite supply under GST.  The same is taxable as per supply of service @ 18% on the entire value of supply assuming it is an air-conditioned restaurant.
Total Taxes paid VAT = ₹ 14 Service Tax = ₹ 7.5 Total = ₹ 21.5	In nutshell, food was taxed twice under VAT laws and service tax laws and service tax was levied on service charges.		




Schedule II appended to the CGST Act enlists the matters/transactions to be treated as Supply of either goods or services. The matters listed out are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation.



These are as follows :-



S.No.	Transaction	Type	Nature of Supply
1.	Transfer	Title in goods	Supply of Goods
		Right in goods/ undivided share in goods without transfer of title in goods	Supply of Services
		Title in goods under an agreement which stipulates that property shall pass at a future date.	Supply of Goods



2.	Land and Building	Lease, tenancy, easement, licence to occupy land	Supply of Services
		<p>Lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly</p> <p> Lease rentals collected shall be taxable as supply of services under GST.</p>	Supply of Services
3.	Treatment or Process	<p>Applied to another person's goods</p> <p> 'Job Work' performed by a job worker like dyeing of fabric in various colours.</p>	Supply of Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred or disposed off by/under directions of person carrying on the business so as no longer to form part of those assets, whether or not for consideration	Supply of Goods
		<p>Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business, whether or not for consideration</p> <p> A director using car provided by the company for personal travels.</p>	Supply of Services
		Goods forming part of assets of any business carried on by a person who ceases to be a taxable person,	Supply of Goods

		<p>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.</p> <p> A, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him and GST shall be payable.</p> <p><b>Exceptions:</b></p> <ul style="list-style-type: none"> <li> Business is transferred as a going concern to another person.</li> <li> Business is carried on by a personal representative who is deemed to be a taxable person.</li> </ul>	
5.	(a) Renting of immovable property		Supply of Services
	<p><b>(b) Construction of complex, building, civil structure, etc.</b></p> <p>Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p>		
	The term <b>construction</b> includes additions, alterations, replacements, or remodeling of any existing civil structure.		

	<p>The expression <b>competent authority</b> means the Government or 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:—</p> <ul style="list-style-type: none"> <li>(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or</li> <li>(ii) a chartered engineer registered with the Institution of Engineers (India); or</li> <li>(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.</li> </ul> <p><b>(c)</b> Temporary transfer or permitting use or enjoyment of any intellectual property right</p> <p><b>(d)</b> Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software</p> <div style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> <p>Supply of GST related software to businesses for smooth processing of returns and accounts is supply of service.</p> </div> </div> <p><b>(e)</b> Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.</p> <p><b>(f)</b> Transfer of right to use any goods for any purpose</p>	
<p><b>6.</b></p>	<p>Following <b>composite supplies</b> :-</p> <p> Works contract services.</p> <p><b>Works contract:</b> means a contract for building, construction, fabrication, completion, erection,</p>	<p>Supply of Services</p>

	<p>installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of <b>any immovable property</b> wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(119) of CGST Act].</p> <p> 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.</p>	
7.	<p>Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.</p> <p> A local club supplies snacks etc. to its members during its monthly meeting for a nominal payment.</p>	Supply of Goods



### Negative list under GST [Section 7(2)(a) read with Schedule III]

#### I. Activities/transactions specified under Schedule III in the CGST Act:

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

S.No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	Services by an employee to the employer in the course of or in relation to his employment.
2.	<p>Services by any court or Tribunal established under any law for the time being in force.</p> <p>Explanation – The term "<b>Court</b>" includes District Court, High Court and Supreme Court.</p>

3.	(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 (c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.
6.	Actionable claims, other than lottery, betting and gambling.


## II. Activities/transactions notified by the Government:

Such activities/transactions undertaken by the Central Government, a State Government 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. **Notification No.**

**14/2017 CT (R) dated 28.06.2017** has notified the **services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution** for the said purpose.



#### 4. COMPOSITE AND MIXED SUPPLIES [SECTION 8]

 <b>STATUTORY PROVISIONS</b>	
<b>Section 8</b>	<b><i>Tax liability on composite and mixed supplies</i></b>
<b>Clauses</b>	<b><i>Particulars</i></b>
	<i>The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-</i>
<b>(a)</b>	<b><i>a composite supply</i></b> comprising two or more supplies, one of which is a principal supply, shall be treated as a <b><i>supply of such principal supply</i></b> ; and
<b>(b)</b>	<b><i>a mixed supply</i></b> comprising of two or more supplies shall be treated as supply of that particular <b><i>supply that attracts highest rate of tax.</i></b>



#### ANALYSIS

GST is payable on individual goods or services or both at the notified rates. The application of rates poses no problem if the supply is of individual goods or individual services, which is clearly identifiable and such goods or services are subject to a particular rate of tax.

However, in certain cases, supplies are not such simple and clearly identifiable supplies. Some of the supplies are a combination of goods or combination of services or combination of goods and services both and each individual component of such supplies may attract a different rate of tax.

In such a case, the rate of tax to be levied on such supplies may be a challenge. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.

In order to determine whether the supplies are 'composite supplies' or 'mixed supplies', one needs to determine whether the supplies are naturally bundled or not naturally bundled in ordinary course of business.



## Composite Supplies

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

- comprises two or more taxable supplies of goods or services or both, or any combination thereof.
- are naturally bundled and supplied in conjunction with each other, in the ordinary course of business
- one of which is a principal supply [Section 2(30) of the CGST Act].

This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'.



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

**How to determine the tax liability on composite supplies?:** A **composite supply** comprising of two or more supplies, one of which is a principal supply, shall be treated as a **supply of such principal supply**.



Suvarna Manufacturers entered into a contract with XYZ Ltd. for supply of readymade shirts packed in designer boxes at XYZ Ltd.'s outlet. Further, Suvarna Manufacturers would also get them insured during transit. In this case, supply of goods, packing materials, transport & insurance is a composite supply wherein supply of goods is principal supply.



When a consumer buys a television set and he also gets warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance services are ancillary.



A travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, and the use of airport lounge. In this case, the transport of passenger, constitutes the pre-dominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary.

Works contract and restaurant services are classic examples of composite supplies. However, the GST law identifies both as supply of services and such services are chargeable to specific rate of tax mentioned against such services (works contract and restaurants).

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

Whether the services are bundled in the ordinary course of business, would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:

- ❑ **The perception of the consumer or the service receiver** - If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.
- ❑ **Majority of service providers in a particular area of business provide similar bundle of services.**





For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

- ❑ 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.

**For example**, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- ❑ **Other illustrative indicators**, not determinative but indicative of bundling of services in the ordinary course of business are:



-  There is a single price or the customer pays the same amount, no matter how much package they actually receive or use.
-  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.

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above. The above principles explained in the light of what constitutes a naturally bundled service can be gainfully adopted to determine whether a particular supply constitutes a composite supply under GST and if so what constitutes the principal supply so as to determine the right classification and rate of tax of such composite supply.



## Mixed Supplies

**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 [Section 2(74) of the CGST Act].

The individual supplies are independent of each other and are not naturally bundled.



**How to determine if a particular supply is a mixed supply?:** In order to identify if the particular supply is a mixed supply, the first requisite is to rule out that the supply is a composite supply.

A supply can be a mixed supply only if it is not a composite supply. As a corollary it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business then it would be a mixed supply.

Once the amenability of the transaction as a composite supply is ruled out, it would be a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.

**How to determine the tax liability on mixed supplies?:** A **mixed supply** comprising of two or more supplies shall be treated as supply of that particular **supply that attracts highest rate of tax.**



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



A shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold independently and are not naturally bundled. So, such supplies are mixed supplies.

## 5. LET US RECAPITULATE



The taxable event under GST is supply. The scope of supply under GST can be understood in terms of following parameters:

Supply should be of goods or services

Supply should be made for a consideration

Supply should be made in the course or furtherance of business

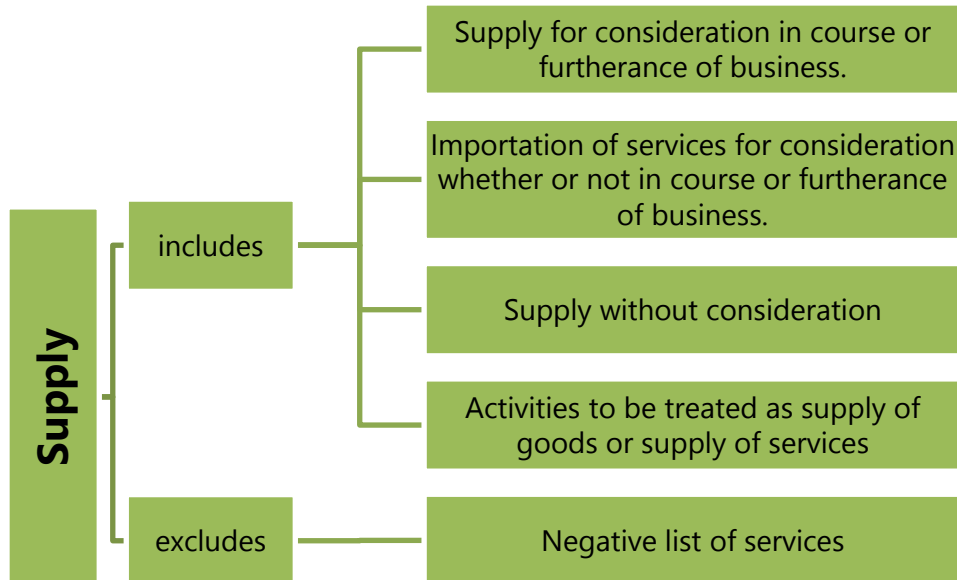
Supply should be made by a taxable person

Supply should be a taxable supply

While these parameters describe the concept of supply, under certain circumstances, transactions have been deemed as supply even when the supply is made without consideration or not in the course or furtherance of business. Activities specified in Schedule I are deemed to be a supply even without consideration. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

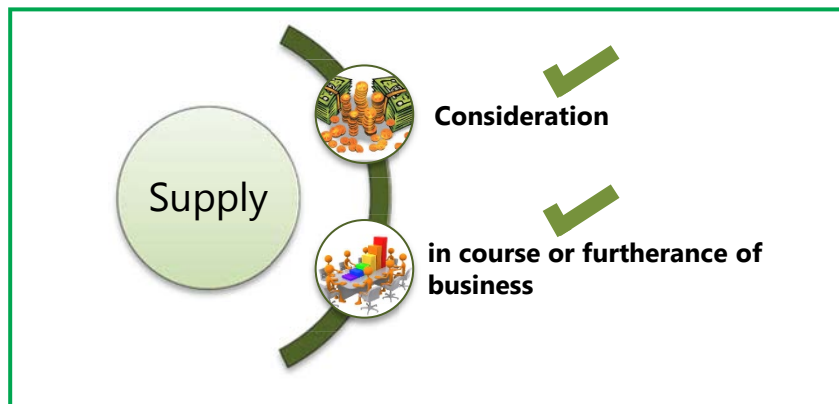
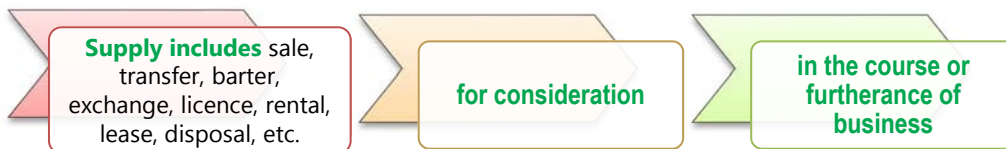
Besides, some specified transactions/ activities are neither treated as supply of goods nor a supply of services. Furthermore, certain activities have been categorised as supply of goods or as supply of services.

The discussion with respect to supply is broadly categorised into following:



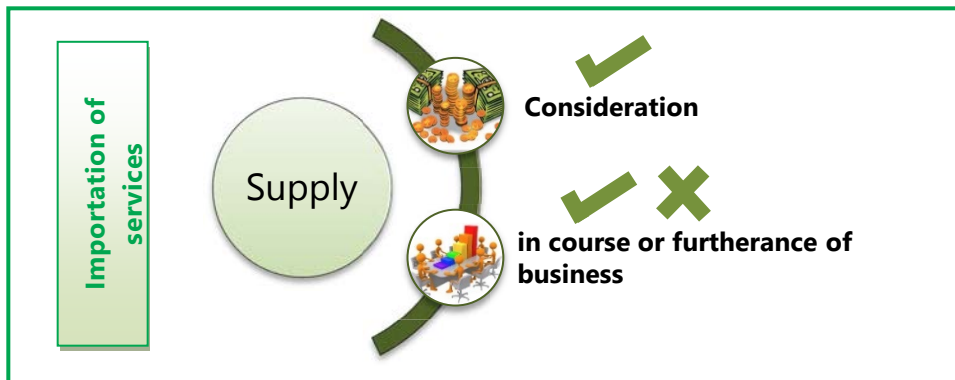
Sub-sections of section 7 alongwith related Schedules has been summarised as follows:

### 1. Supply for consideration in course or furtherance of business [Section 7(1)(a)]



## 2. Importation of services for consideration whether or not in course or furtherance of business [Section 7(1)(b)]

Supply should be in course or furtherance of business. The exception to said rule is import of services is deemed as supply even if the same has been imported not in course/furtherance of business.

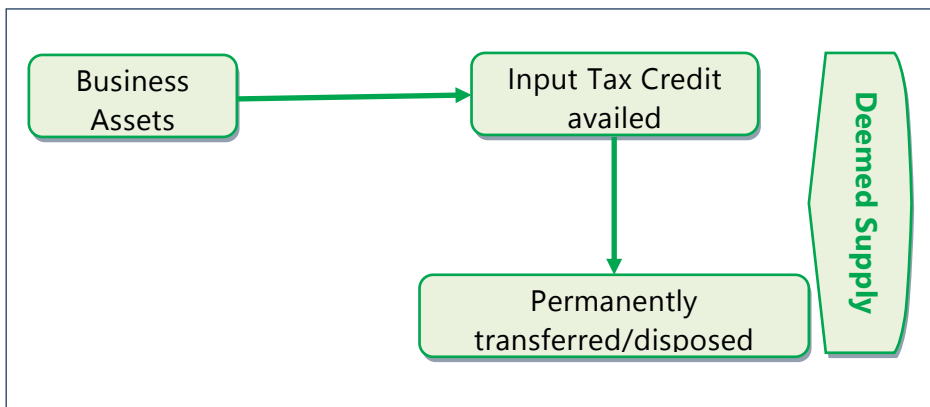


## 3. Supply without consideration - Deemed Supply [Section 7(1)(c) read with Schedule I]

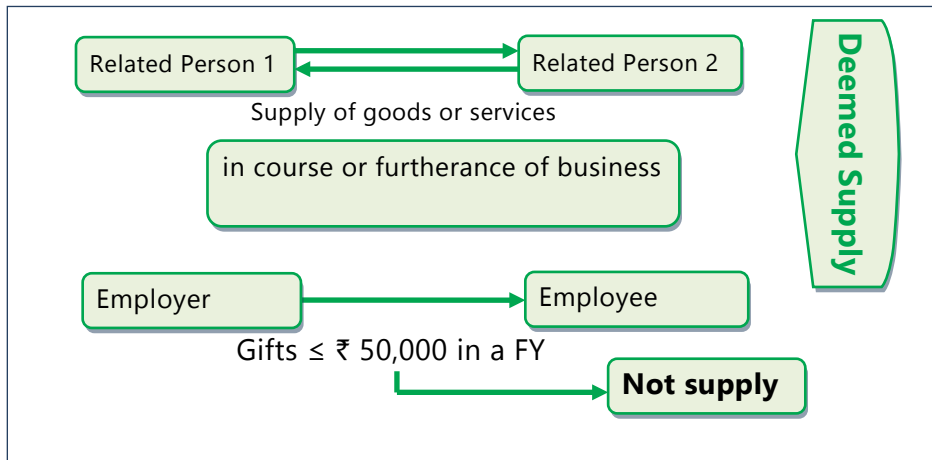
This includes all supplies made to a taxable or non-taxable person, even if the same is without consideration. These are specifically mentioned in Schedule I appended to the CGST Act.

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:

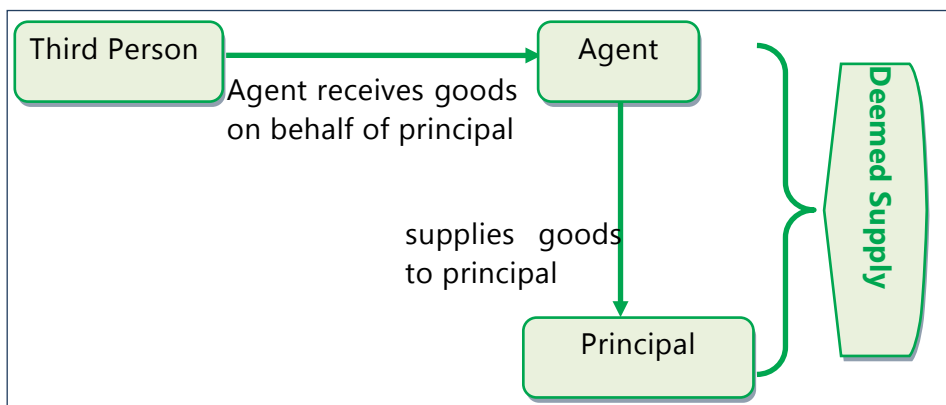
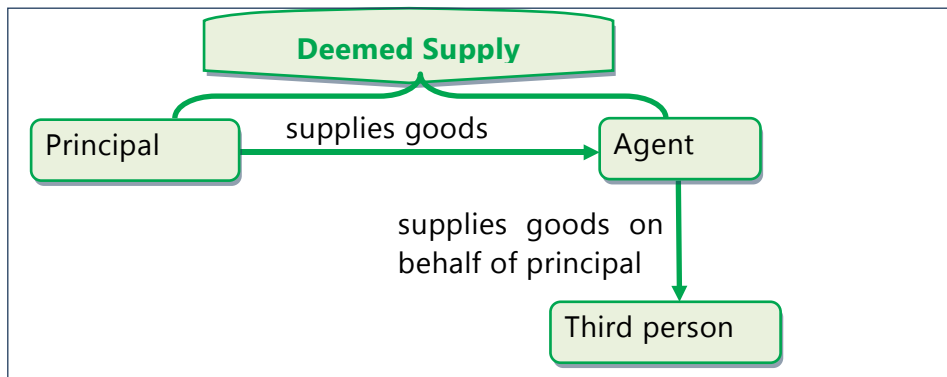
### I. Permanent Transfer/Disposal of Business Assets



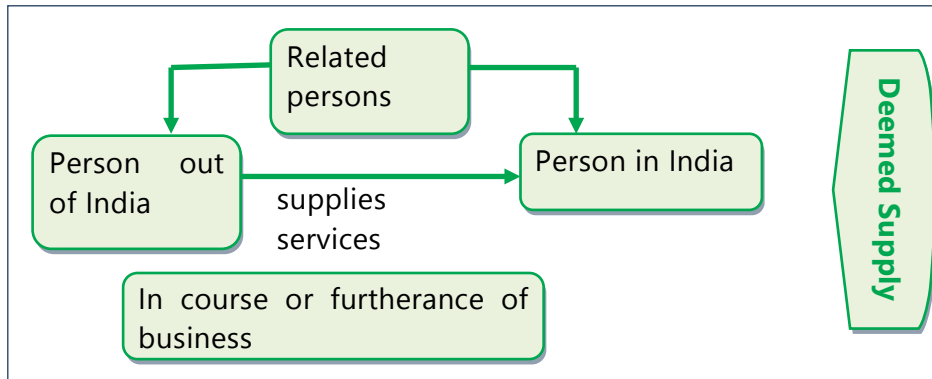
## II. Supply between related persons or distinct persons



## III. Supply between principal and agent

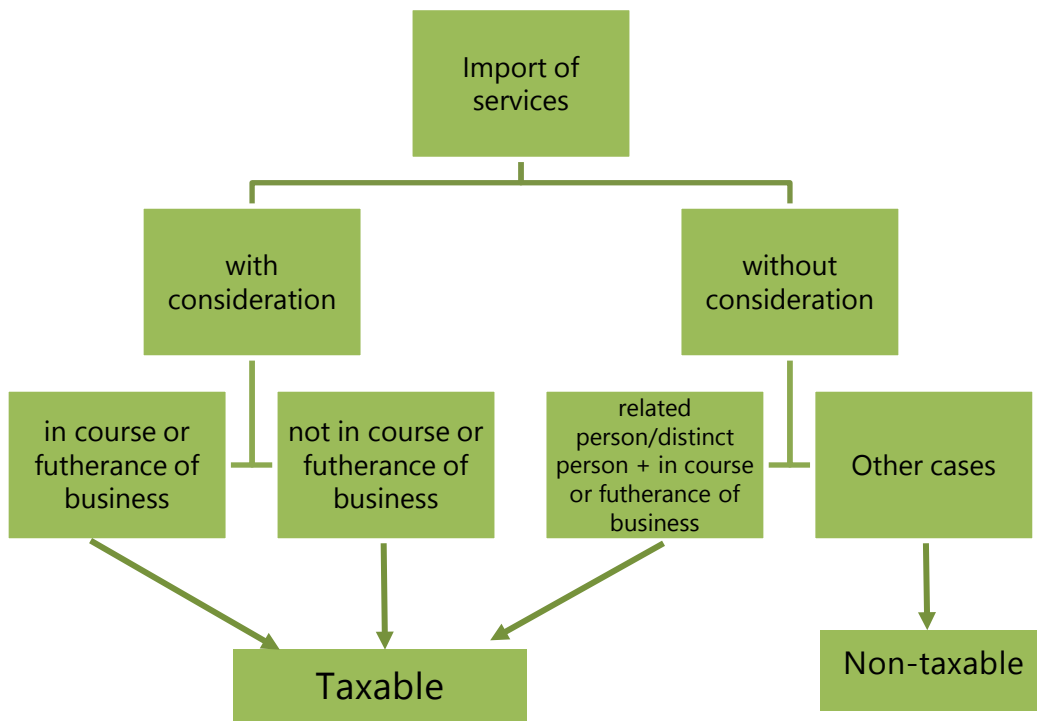


#### IV. Importation of services







The combined provisions of taxability of import of services [Section 7(1)(b) and Section 7(1)(c) read with Schedule I] have been depicted in the below mentioned diagram:

#### Taxability of import of services



**4. Activities to be treated as Supply of goods or Supply of services [Section 7(1)(d) read with Schedule II]**

S.No.	Transaction	Type	Supply of goods/ services
1.	Transfer	(i) Title in goods (ii) Title in goods under an agreement that property shall pass at a future date.	Goods
		Right/undivided share in goods without transfer of title in them	Services
2.	Land and Building	Lease, tenancy, easement, licence to occupy land	Services
		Lease/letting out of building including a commercial/ industrial/ residential complex for business/ commerce, wholly/ partly.	Services
3.	Treatment or Process	Applied to another person's goods	Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred/disposed off by/under directions of person carrying on business so as no longer to form part of those assets, whether or not for consideration	Goods
		Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business, whether or not for consideration	Services

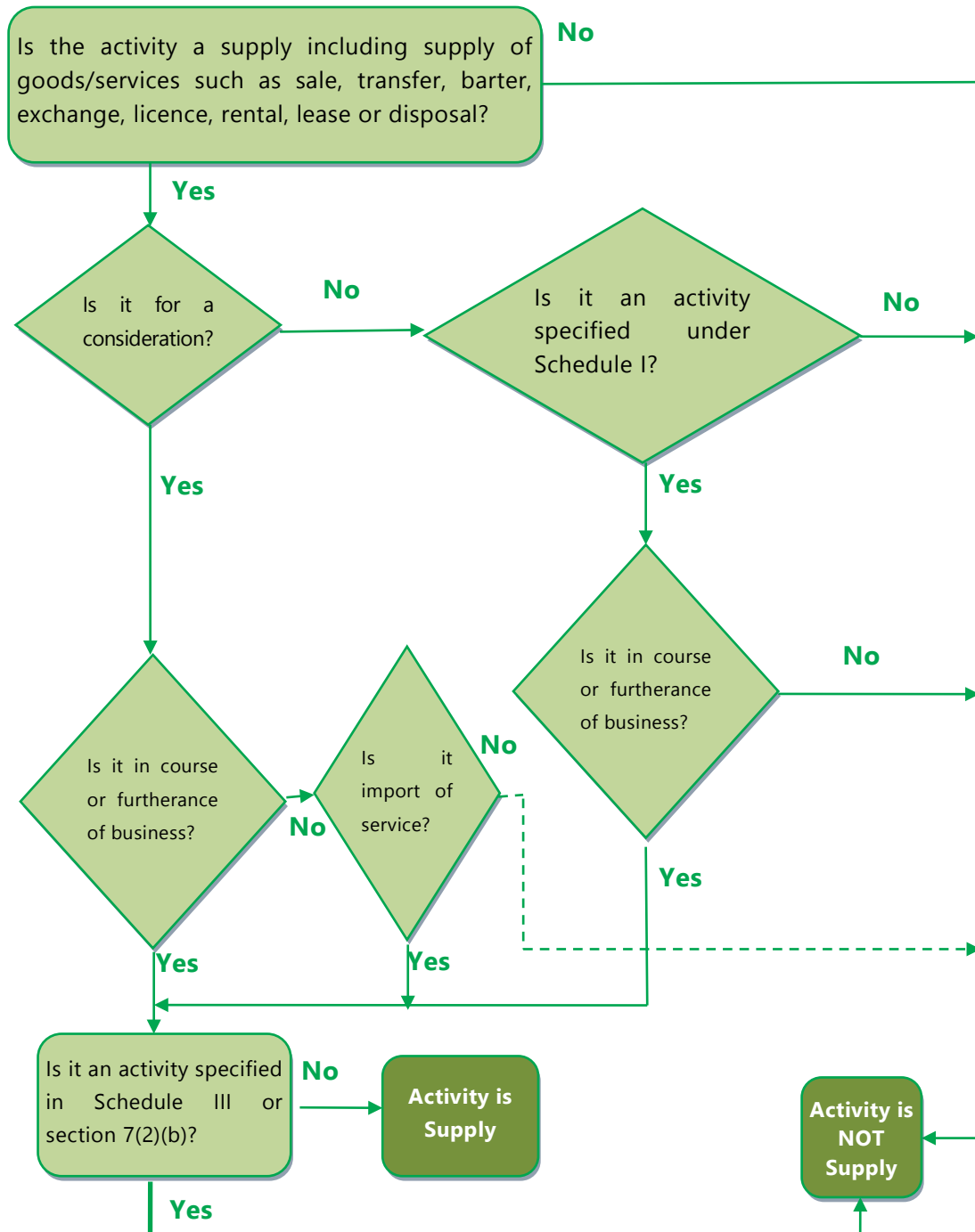
		<p>Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person.</p> <p><b>Exceptions:</b></p> <ul style="list-style-type: none"><li> Business transferred as a going concern.</li><li> Business carried on by a personal representative who is deemed to be a taxable person.</li></ul>	Goods
5.	Renting of immovable property	Services	
	Construction of complex, building, civil structure, etc.		
	Temporary transfer or permitting use or enjoyment of any intellectual property right		
	Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software		
	Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.		
	Transfer of right to use any goods for any purpose		
6.	<p>Following <b>composite supplies</b>:-</p> <ul style="list-style-type: none"><li> Works contract services.</li><li> Supply of goods, being food or any other article for human consumption or any drink.</li></ul>	Services	
7.	Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.	Goods	



**5. Negative list under GST [Section 7(2)(a) read with Schedule III]**

S. No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	Services by an employee to the employer in the course of or in relation to his employment.
2.	Services by any court or Tribunal established under any law for the time being in force.
3.	<p>(a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;</p> <p>(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or</p> <p>(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.</p>
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.
6.	Actionable claims, other than lottery, betting and gambling.

**The diagram on the next page summarises the steps to determine whether an activity undertaken is Supply or not.**



## 6. Composite and mixed supplies



### Composite Supply

- Consist of two or more supplies
- Naturally bundled
- In conjunction with each other
- One of which is principal supply
- Tax liability shall be rate of principal supply
- **Example:** Charger supplied alongwith mobile phones.



### Mixed Supply

- Consist of two or more supply
- Not naturally bundled
- Though can be supplied independently, still supplied together
- Tax liability shall be the rate applicable to the supply that attracts highest rate of tax
- **Example:** A gift pack comprising of chocolates and sweets.

## 6. TEST YOUR KNOWLEDGE

- Which of the following is not a supply as per section 7 of the CGST Act?
  - Management consultancy services not in course or furtherance of business
  - Import of service for consideration not in course or furtherance of business
  - Both (a) and (b)
  - None of the above
- \_\_\_\_\_ specifies the activities to be treated as supply even if made without consideration.
  - Schedule I of CGST Act

- ...
- (b) *Schedule II of CGST Act*
- (c) *Schedule III of CGST Act*
- (d) *All of the above*
3. Which of the following activity is outside the scope of supply and not taxable under GST?
- (a) *Services by an employee to the employer in the course of or in relation to his employment*
- (b) *Services of funeral*
- (c) *Actionable claims, other than lottery, betting and gambling.*
- (d) *All of the above*
4. Which of the following supplies are naturally bundled?
- (a) *Rent deed executed for renting of two different floors of a building-one for residential and another for commercial purpose to same person*
- (b) *Pack of watch, tie and belt*
- (c) *Package of canned food such as burger, chocolates, sweets, cake etc.*
- (d) *None of the above*
5. A \_\_\_\_\_ supply comprising of two or more supplies shall be treated as the supply of that particular supply that attracts highest rate of tax.
- (a) *Composite*
- (b) *Mixed*
- (c) *Both (a) and (b)*
- (d) *None of the above*
6. Which of the following activities is a supply of services?
- (a) *Transfer of right in goods/ undivided share in goods without transfer of title in goods*
- (b) *Transfer of title in goods*
- (c) *Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.*
- (d) *All of the above*

...

7. *What is the taxable event under GST?*
8. *What is the tax treatment of composite supply and mixed supply under GST?*
9. *Supply of all goods and/or services is taxable under GST. Discuss the validity of the statement.*
10. *Whether transfer of title and/or possession is necessary for a transaction to constitute supply of goods?*
11. *Examine whether the following activities would amount to supply under section 7 of the CGST Act:*
  - (a) *Damodar Charitable Trust, a trust who gets the eye treatment of needy people done free of cost, donates clothes and toys to children living in slum area.*
  - (b) *Sulekha Manufacturers have a factory in Delhi and a depot in Mumbai. Both these establishments are registered in respective States. Finished goods are sent from factory in Delhi to the Mumbai depot without consideration so that the same can be sold.*
  - (c) *Raman is an Electronic Commerce Operator in Chennai. His brother who is settled in London is a well-known lawyer. Raman has taken legal advice from him free of cost with regard to his family dispute.*
  - (d) *Would your answer be different if in the above case, Raman has taken advice in respect of his business unit in Chennai?*
12. *State whether the following supplies would be treated as supply of goods or supply of services as per Schedule II of the CGST Act:*
  - (a) *Renting of immovable property*
  - (b) *Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business, whether or not for consideration.*
  - (c) *Transfer of right in goods without transfer of title in goods.*
  - (d) *Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.*
13. *Determine whether the following supplies amount to composite supplies:*
  - (a) *A hotel provides 4 days-3 nights package wherein the facility of breakfast and dinner is provided alongwith the room accommodation.*

...

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

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

## 7. ANSWERS/HINTS

1. (a) 2. (a) 3. (d) 4. (d) 5. (b) 6. (a)
7. Taxable event under GST is **supply of goods or services or both**. CGST and SGST/ UTGST will be levied on intra-State supplies. IGST will be levied on inter-State supplies.
8. Composite supply shall be treated as supply of the principal supply. Mixed supply would be treated as supply of that particular goods or services which attracts the highest rate of tax.
9. The statement is incorrect. Supplies of all goods and services are taxable except alcoholic liquor for human consumption. Supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be taxable with effect from a future date. This date would be notified by the Government on the recommendations of the GST Council.
10. Title as well as possession both have to be transferred for a transaction to be considered as a supply of goods. In case title is not transferred, the transaction would be treated as supply of service in terms of Schedule II(1)(b) of the CGST Act. In some cases, possession may be transferred immediately but title may be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods.
11. (a) Section 7 of the CGST Act, *inter alia*, provides that supply must be made for a consideration except the activities specified in Schedule I and in course or furtherance of business. Since, both these elements are missing, donation of clothes and toys to children living in slum area would not amount to supply under section 7 of the CGST Act.  
 (b) Schedule I of CGST Act, *inter alia*, stipulates that supply of goods or services or both between related persons or between distinct persons as specified in section 25, is supply even without consideration provided it is made in the course or furtherance of business. Further, where a person

...

who has obtained or is required to obtain registration in a State in respect of an establishment, has an establishment in another State, then such establishments shall be treated as establishments of distinct persons [Section 25 of the CGST Act]. In view of the same, factory and depot of Sulekha Manufacturers are establishments of two distinct persons. Therefore, supply of goods from Delhi factory of Sulekha Manufacturers to Mumbai Depot without consideration, but in course/furtherance of business, is supply under section 7 of the CGST Act.

- (c) Schedule I of CGST Act, *inter alia*, stipulates that import of services by a taxable person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. In the given case, Raman has received legal services from his brother free of cost in a personal matter and not in course or furtherance of business. Hence, services provided by Raman's brother to him would not be treated as supply under section 7 of the CGST Act.
  - (d) In the above case, if Raman has taken advice with regard to his business unit, services provided by Raman's brother to him would be treated as supply under section 7 of the CGST Act as the same are provided in course or furtherance of business though received from a related person.
12. (a) Supply of services  
(b) Supply of goods  
(c) Supply of services  
(d) Supply of goods
13. Under composite supply, two or more taxable supplies of goods or services or both, or any combination thereof, are naturally bundled and supplied in conjunction with each other, in the ordinary course of business, one of which is a principal supply [Section 2(30) of the CGST Act]. In view of the same,
- (a) since, supply of breakfast and dinner with the accommodation in the hotel are naturally bundled, said supplies qualify as 'composite supply'.
  - (b) since supply of toothbrush alongwith the toothpaste are not naturally bundled, said supplies do not qualify as 'composite supply'.
14. Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a future date.