

LEVY OF GST

CHAPTER 01

Note : Our discussion in this Book will principally be confined to the provisions of CGST and IGST laws, as the specific State GST laws are outside the scope of syllabus. (Provisions of SGST laws are same as provisions of CGST Act, except few exceptional provisions.)

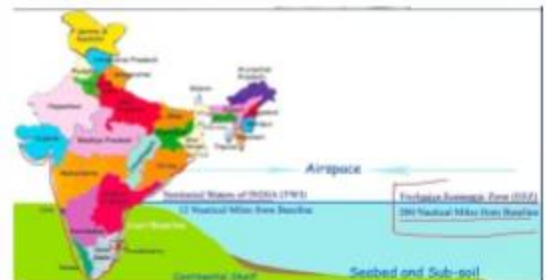
Extent of CGST Act / SGST Act / UTGST Act/ IGST Act (Section 1)

Applicability	CGST	SGST	UTGST	IGST
	Intra-State supply			Inter-State supply
All States of India	✓	✓		✓
Union Territories with Legislature (Delhi, Puducherry and Jammu & Kashmir)	✓	✓		✓
Union Territories without Legislature (UT) (a) the Andaman and Nicobar Islands; (b) Lakshadweep; (c) Dadra and Nagar Haveli and Daman and Diu; (d) Ladakh; (e) Chandigarh; and (f) Other territory.	✓		✓	✓

Definition of India [Sec. 2(56) of CGST Act, 2017] :

"India" means

- the territory of India as referred to in article 1 of the Constitution,
- its territorial waters, sea-bed 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.

Commencement of Acts – 01.07.2017 (J & K – 08.07.2017)

Levy and collection of CGST / IGST

Particulars	CGST [SEC. 9(1)] of CGST Act, 2017	IGST [SEC. 5(1)] of IGST Act, 2017
Levied on	Intra State supplies of goods/services/both	Inter State supplies of goods/services/both
Goods not leviable to GST	Alcoholic liquor for human consumption 	
Value for levy	value u/s 15 of the CGST Act	
Rates	Rates as notified by Government Maximum rate of CGST can be 20%	IGST rate= CGST rate + SGST rate Maximum rate of IGST can be 40%
Collected and paid by	Taxable person ["Taxable Person" means a person who is registered or liable to be registered u/s 22 or 24]	
5 Supplies on which tax would be levied w.e.f. a notified date [Sec. 9(2)/5(2)] [Which is not yet notified]	<ul style="list-style-type: none"> ➤ petroleum crude ➤ high speed diesel ➤ motor spirit (commonly known as petrol) ➤ natural gas and ➤ aviation turbine fuel 	<p>GHUM LO OR JHUM LO...</p> 
Tax payable under reverse charge mechanism (RCM) by recipient of supply	<ul style="list-style-type: none"> ➤ Supply of goods or services or both, notified by the Government. [Sec. 9(3)/5(3)] ➤ Supply of specified categories of goods or services or both by an unregistered supplier to specified class of registered persons. [Sec. 9(4)/5(4)] ➤ All the provisions of the act shall apply to such recipient as if he is the person liable for paying the tax. 	
Tax payable by the electronic commerce operator (ECO) [Sec. 9(5)/5(5)]	The Government may notify categories of services, the tax on supplies of which shall be paid by ECO as if such services are supplied through it and all the provisions of the act shall apply to such ECO as if ECO is the supplier liable for paying the tax. [Eg. Uber, Ola, Swiggy, etc.]	

Person liable to pay tax :

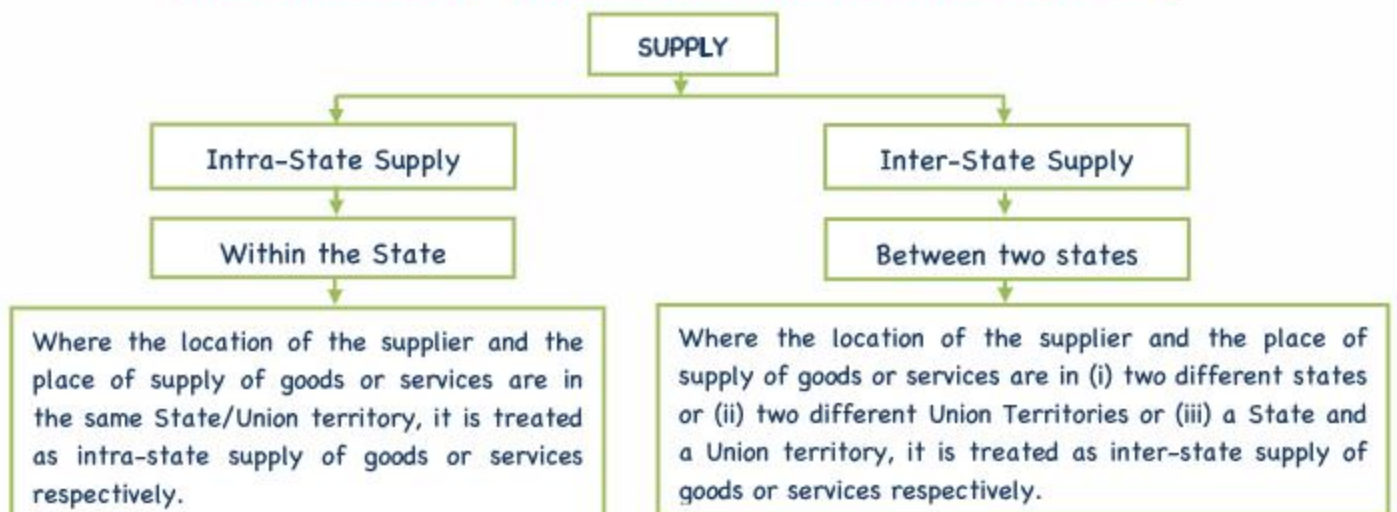
Forward Charge Sec. 9(1) / 5(1)	Supplier of Goods/Service
Reverse Charge Sec. 9(3) / 9(4) / 5(3) / 5(4)	Recipient of Goods/Service
E- Commerce Sec. 9(5) / 5(5)	ECO

Goods or Services Imported in India:

- Import of goods or services are treated as inter-state supplies as per provisions of IGST Act, 2017.
- On import of goods, IGST is levied alongwith Customs duty. But, on import of services, only IGST is levied.
- On the goods imported into India (other than "online money gaming"), IGST shall be levied and collected (as additional duty of customs in addition to basic customs duty) and the value shall also be determined as per the Customs Laws.
- Further, under GST, "online money gaming" is treated as goods on import of which only IGST is levied but Customs duty is not levied.

Central / State Levies to be Levied after introduction of GST

Goods	(Supply) GST	(Manufacture) ED	(Sale)	
			VAT	CST
Alcoholic Liquor for human consumption	✗	✓	✓	✓
Petroleum crude, High speed diesel, Motor spirit (Petrol), Natural gas, Aviation Turbine fuel	✗	✓	✓	✓
Tobacco & Tobacco products	✓	✓	✗	✗
Opium, Indian Hemp and other Narcotic Drugs	✓	✓	✗	✗
All other Goods & Services	✓	✗	✗	✗

TAXABLE EVENT UNDER GST = SUPPLY [SECTION 7]**सीधी बात...Supply होगा तो GST लगेगा...NO SUPPLY NO GST**

Statutory Provisions	
Sec. 7	Meaning and Scope of Supply
(1)	<p>Supply includes (सिर्फ "तुम ही हो" नहीं... "तुम भी हो" ...)-</p> <p>(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 consideration by a person in the course or furtherance of business;</p> <p>(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;</p> <p>(b) Importation of services, for a consideration whether or not in the course or furtherance of business and</p> <p>(c) the activities specified in Schedule I, made or agreed to be made without a consideration.</p>
(1A)	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 or supply of services as referred to in Schedule II .
(2)	<p>Notwithstanding anything contained in sub-section (1),</p> <p>(a) activities or transactions specified in Schedule III; or</p> <p>(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</p> <p>shall be treated neither as a supply of goods nor a supply of services.</p>
(3)	<p>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 -</p> <p>(a) a supply of goods and not as a supply of services; or</p> <p>(b) a supply of services and not as a supply of goods.</p>

Supply in Brief

SUPPLY SHOULD BE OF GOODS OR SERVICES OR BOTH

	Includes		Excludes
1	Supply for consideration in course or furtherance of business [Section 7(1)(a)]	Activities to be treated as	Negative list of services

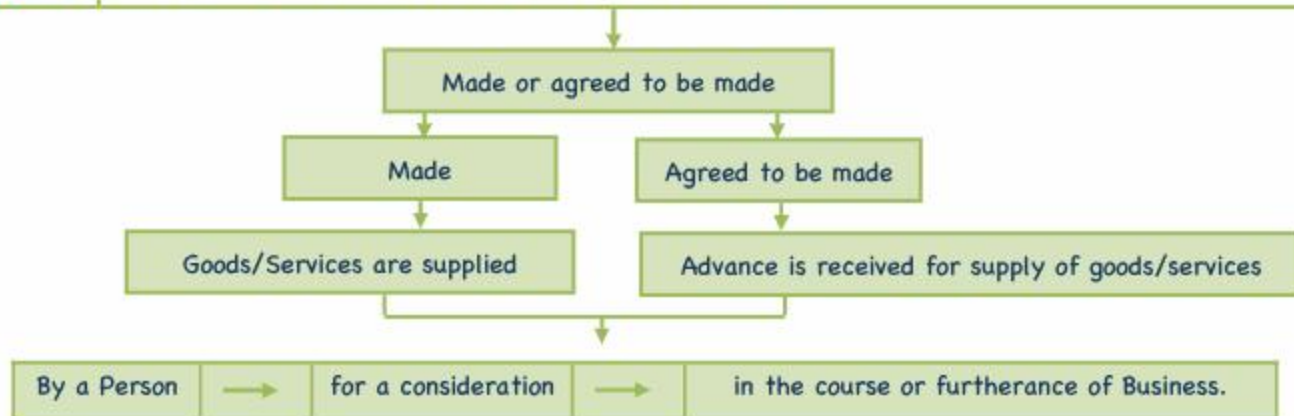
2	Activities or transactions, by AOP/BOI/Club etc. to its members or constituents or vice-versa [Section 7(1)(aa)]	supply of goods or supply of services [Section 7(1A)+ Schedule II]	[Section 7(2) + Schedule III]
3	Importation of services for consideration whether or not in course or furtherance of business [Section 7(1)(b)]		
4	Supply without consideration [Section 7(1)(c) + Schedule I]		

ANALYTICAL DISCUSSIONS

ANALYSIS OF SEC. 7(1)(a)

Supply Includes All forms of supply of goods or services or both such as

Sale	A laptop dealer sells laptop to XYZ
Transfer	A branch transfers goods to another branch
Barter	Mr. XYZ exchanges his laptop with Mr. PQR's camera without cash exchange between the two parties
Exchange	A laptop dealer sells new laptop for Rs. 40,000 along with an exchange of old laptop [Price of new laptop without exchange is Rs. 50,000]
License	A developer (license holder) of information technology software gives license to use the software to his various clients
Rental	Bike is given on rent
Lease	A machinery is given on finance lease or operating lease
Disposal	Sale of Old machineries after expiry of its useful life



1. **Following are the essential ingredients for any transaction to be considered as "Supply" as per Sec. 7(1)(a):**

- (i) Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.
- (ii) Supply should be made for a consideration.
- (iii) Supply should be made in the course or furtherance of business.

2. 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		
	Goods [Sec. 2(52)]	Services [Sec. 2(102)]
Means	Every kind of movable property 	Anything other than goods 
Excludes	Money and securities 	
Includes	(i) actionable claim (ii) growing crops, grass and things attached to/ forming part of the land which are agreed to be severed before supply or under a contract of supply.	Activities relating to : (i) Use of money or (ii) Conversion of money by cash/by any other mode, from one form/currency/ denomination, to another, for which a separate consideration is charged. (iii) facilitating or arranging transactions in securities

3. Analysis of the term "Consideration":

- (i) To be taxable, a supply should be carried out by a person for a 'consideration'.
- (ii) Consideration does not always mean money. It covers anything which may be in money or may be in kind.
- (iii) The Supply must be carried out for a consideration. The concept 'supply for a consideration' involves an element of contractual relationship wherein the person supplying goods or service does so at the desire of the person for whom the supply is made in exchange for a consideration. The supply made without such a relationship i.e. without the express or implied contractual reciprocity of a consideration would not be a 'supply for consideration'. Providing free tourism information, access to free channels on TV, discussion on any topic with friends or family members and large no. of governmental activities for citizens, etc. are some of the examples of supply of services without consideration.
- (iv) Supply made without any consideration like donations, gifts or free charities are therefore outside the ambit of the term "supply" [except if covered by sec. 7(1)(c)].
- (v) There should be a direct link between supply and consideration, and not only any casual link.
- (vi) There should be an immediate connection between supply and consideration, and not only a remote connection. Consideration may actually be payable at a later point of time but linkage should be immediate. If there is no such immediate connection, then there is no supply [except if covered by sec. 7(1)(c)].
- (vii) Condition in a grant stipulating merely proper usage of funds & furnishing of account will not result in making it a supply of service.

- (viii) Donations to a charitable organization are not consideration unless charity is obligated to provide something in return e.g. display or advertise the name of donor in a specified manner or such that it gives a desired advantage to the donor.
- (ix) **Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors [Circular]**

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, **then**, it can be said that **there is no supply** of service for a consideration (in the form of donation) and hence, donation will **not be chargeable to GST**.

पुण्य का काम पुण्य के लिए किया तो NO GST

Example : "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

But, if **institution is under an obligation for display of name** which is aimed at **giving publicity** to the donor in such manner that it would be an advertising or promotion of his business, **then** it will be **supply of service** for a consideration (in the form of donation) and will be **chargeable to GST**.

पुण्य का काम Publicity के लिए किया तो GST लगेगा

4. Analysis of "In The Course Or Furtherance Of Business" :

- (i) 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.

Example : Deepika padukone buys jewellery for her personal use and after a few years, sells it to a jeweller. Sale of jewellery by Deepika padukone to jeweller is not a supply under CGST Act because supply is not made by Deepika padukone in the course or furtherance of business. But if the same jewellery is supplied by jeweller to any buyer, then it will be covered under the term "supply" because it is made by the jeweller in the course or furtherance of his business.

Example : Mr. Darshan sells a car of his personal use to a any person. Sale of car by Mr. Darshan to any person is not a supply under CGST Act because this supply is not made in the course or furtherance of business. But, in the same case, if Mr. Darshan sells a car which he is been using in his business (as a business asset) to any person, then, it will be covered under the term "supply", although selling car is not his business, but, it will be deemed that this sale is made in the course or furtherance of his business.

- (ii) 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 (whether or not there is volume, frequency, continuity or regularity of such transactions is a supply under GST.

Example : Mr. Kapil, a Chartered Accountant, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust. The sale of paintings by Mr. Kapil qualifies as supply even though it is a one-time occurrence. Further, donating the

consideration does not have any impact while determining the transaction to be treated as supply or not.

Analysis of Sec. 7(1)(aa) [Activities or transactions, by AOP/BOI/Club, etc. to its members or constituents or vice-versa]

1. The Government has included the following clause specifically in the term 'Supply' retrospectively w.e.f. 01.07.2017 through Finance Act, 2021, to remove the prevailing ambiguities in the market:

"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 – 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."

2. Supply of goods or services or both by any person (including Association of Persons or Body of Individuals), other than an individual, to its members or constituents or vice versa, shall also be supply and will be chargeable to GST.

Examples :

(i) Membership fee or any other consideration paid by members to unincorporated AOP/BOI (e.g. Friends Club/Club Mahindra/etc.) for availing various services is Supply of Service and will be chargeable to GST.

(ii) A local club supplies snacks, etc. to its members during its monthly meeting for a nominal payment is supply of goods and will be chargeable to GST.

Clarification regarding taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV [Circular]

1. Supply of goods or services or both by an unincorporated association or body of persons (AOP/BOI) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods or services or both, as AOP/BOI are treated as two separate persons. Hence, GST will be levied on the same. Similarly, GST will be levied on the supply of goods or services or both by member of an unincorporated joint venture (JV) to the JV or to other members of the JV.

2. Contribution from the members of the Joint venture (JV) is called 'Cash Calls'.

(a). 'Cash calls', sometimes, could be in the nature of advance payments made by members towards taxable services received from JV, hence, will be taxable under GST.

(b). 'Cash calls', sometimes, could be in the nature of Capital Contributions made by members to raise the funds for JV and would be considered merely 'a transaction in money', hence, will not be taxable under GST, as it is not in the nature of consideration.

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

Section 7(1)(b) 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.

Example : Mr. Pankaj, has subscribed online videos (TV Shows, Movies, Webseries etc.) for entertainment of his family from www.netflix.com [an Online Information and Database access or retrieval (OIDAR) service supplier from outside India] at an agreed consideration of \$ 100. The import of services by Mr. Pankaj is supply under section 7(1)(b), though it is not in the course or furtherance of business.

Note: Import of goods is governed by Customs Act.

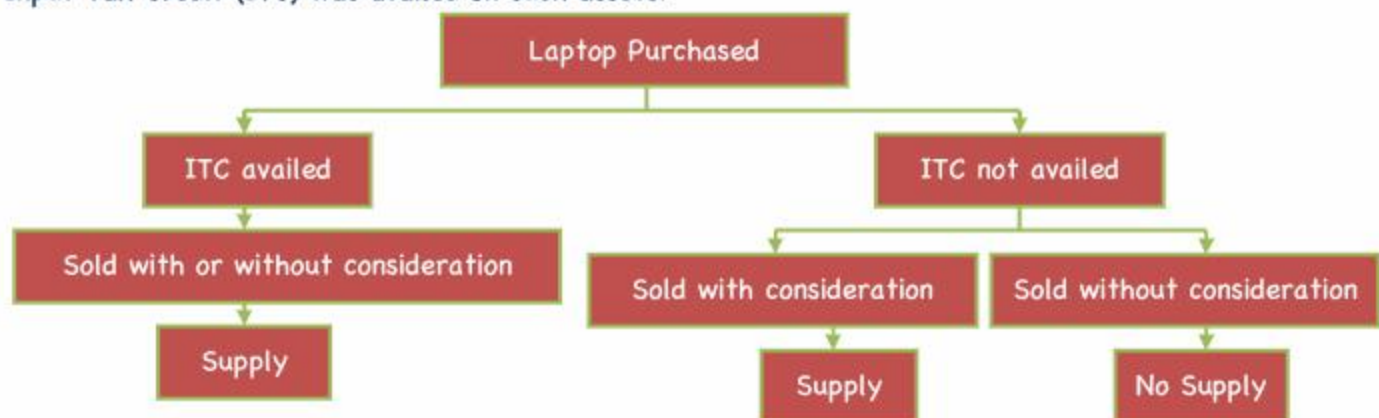
Analysis of Section 7(1)(c) read with schedule I [Supply without consideration - Deemed Supply]

As per Schedule I, in the following cases, supplies made without consideration will be treated as supply u/s 7 of the CGST Act:

Schedule I	
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. However, gifts not exceeding Rs. 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3.	Supply of goods - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal (Agent issuing invoice in his own name); or (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal (Goods procured on behalf of principal are invoiced in agent's name).
4.	Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business ["Taxable person" word substituted by "person" by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019].

Analytical Discussion Of Para 1 To 4 Of Schedule I

PARA 1 - 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, if Input Tax Credit (ITC) was availed on such assets.



Example : Guddu Bhaiya & Co. donates old A.C. to Charitable Schools. This will qualify as supply if input tax credit had been availed by Guddu Bhaiya & Co. on purchase of such A.C.

Example : Transfer of business assets (in respect of which ITC was availed) from holding to subsidiary company for NIL consideration, will qualify as supply.

Example : 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.

PARA 2 - Supply between related person or distinct persons when made in the course or furtherance of business:

(a) Supply of goods or services or both by a person to his related persons will be considered as supply even if made without consideration but it should be made in the course or furtherance of his business.

(b) **Related persons:** Person (Includes Legal person) deemed as related person, if :

- Such persons are officers/directors of one another's business
- Such persons are legally recognised partners
- Such persons are employer & employee
- A third person controls/own/holds (directly/indirectly) at least 25% voting stock/shares of both
- One of them controls (directly/indirectly) other
- A third person controls (directly/indirectly) both of them
- Such person together control (directly/indirectly) a third person
- Such persons are member of the same family
- One of them is the sole agent/sole distributor/sole concessionaire of the other.

ये है GST में हमारे रिश्तेदार
(Related Persons)

(c) **Family** means :

- (i) the spouse and children of the person, and
- (ii) the parents, grandparents, brothers and sisters of the person if they are wholly or mainly dependent on the said person. **[ATTENTION : ये लोग Dependent होंगे तो ही Related होंगे]**

(d) **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)].
- But, any of the goods or services supplied by the employer to the employee (in the course or furtherance of business) will be covered under the scope of the term "supply" although it is supplied without consideration.
- **Gifts by employer to employee :** Further, Schedule I provides that gifts **upto Rs. 50,000** in value in a financial year by an employer to an employee shall not be treated as supply of goods or

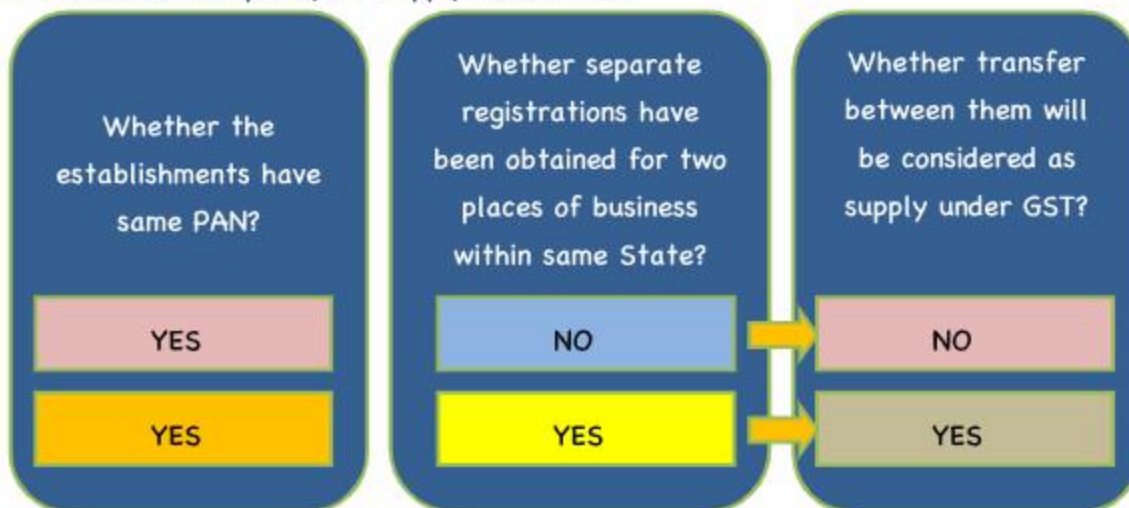
services or both. However, gifts of value more than Rs. 50,000 made without consideration are subject to GST, when made in the course or furtherance of business.

- (e) **Distinct Persons specified u/s 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.

Example : Mr. Ram, has a registered head office in Mumbai. He has also obtained registration in the State of Punjab in respect of his newly opened branch office. Mr. Ram shall be treated as distinct persons in respect of registrations in Maharashtra and Punjab.



- (f) **Stock transfers or branch transfers**: In view of the aforesaid discussion, transactions between different locations (with separate GST registrations) of same legal entity (e.g., stock transfers or branch transfers) will qualify as 'supply' under GST.



Example : Raghur 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 Raghur 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, as factory located in Lucknow and retail showroom in Delhi are distinct persons.

Circulars regarding transactions between Distinct Persons:

1. GST is leviable on inter-state branch transfer of aircraft engines, parts and accessories for use by their own airlines. Further, Input Tax Credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST liability on inter-state supply of such aircraft engines, parts & accessories by way of inter-state stock transfers between distinct persons
[Circular]
2. Inter-state movement of various modes of conveyance for transportation of goods or passengers (Ex. Trucks, Tankers, Buses, Cars, Trailers, Trains, Vessels, Aircrafts, etc.), between distinct persons, may not be treated as supply [except in cases where such movement is for further

supply of same conveyance] and consequently, IGST will not be payable on such mode of conveyance.

However, applicable GST shall be leviable on repairs and maintenance done by distinct person for such conveyance. **[Circular]**

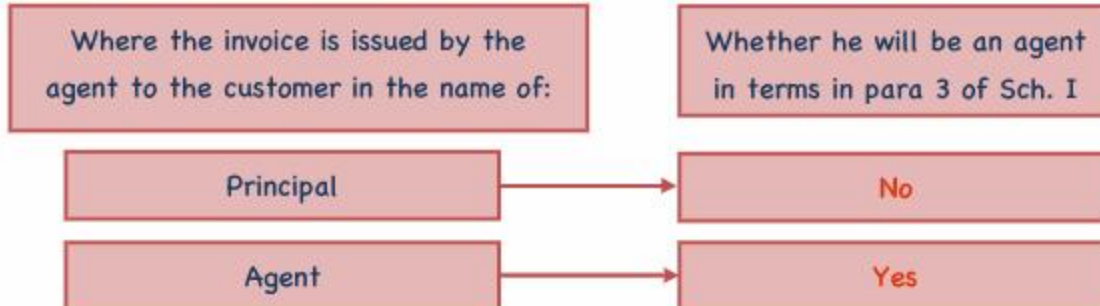
- Inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes, etc.], between distinct persons is not leviable to IGST [except in cases where such movement is for further supply of these goods] **[Circular]**

PARA 3 : Supply of Goods between Principal and Agent:

- Where the Invoice for further supply is being issued by the agent in his own name, then, any provision of goods from the principal to the agent would fall within the scope of para 3 above and GST will be levied on provision of goods from the principal to the agent.

However, where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the scope of para 3 above and no GST will be levied on provision of goods from the principal to the agent.

- 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 agent to the principal would be covered by para 3 above and GST will be levied on provision of goods from the agent to the principal **[Circular]**.



The Above Clarification can be understood with the help of following scenario based examples :

Scenario 1 : Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by 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.

Scenario 2 : 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.

Scenario 3 : 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.

Scenario 4 : Mr. A sells agricultural produce by utilizing the services of Mr. B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr. B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

In cases where the invoice is issued by Mr. B to the buyer, then, he is an agent covered under Schedule I. However, in cases where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) doesn't fall under the category of agent covered under Schedule I.

Circular regarding transactions between Principal & Del-Creder Agent [Circular]:

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

Issues have been raised regarding the valuation of supplies from Principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself.

So, it is clarified that if the transactions between principal and Del-Creder Agent (DCA) is covered under Sch. I – Para 3, then, the interest charged by DCA to his customers will form part of value of supply by DCA to customers & hence, GST will be charged on entire value including interest.

But, if the transaction between Principal & DCA does not fall in Sch. I – Para 3, then, the interest charged by DCA to customer is merely an interest charged for extending loans or advances to customer which is exempt from GST. Hence, interest will not be chargeable to GST

Example : Mr. Handsome, del-credere agent (DCA) of Charm Limited, agrees to raise invoices in his own name and also guarantees for the realization of payments from customers to Charm Limited. In order to realize the payments from customers on time, he extends short-term transaction-based loans to them and charges interest for the same.

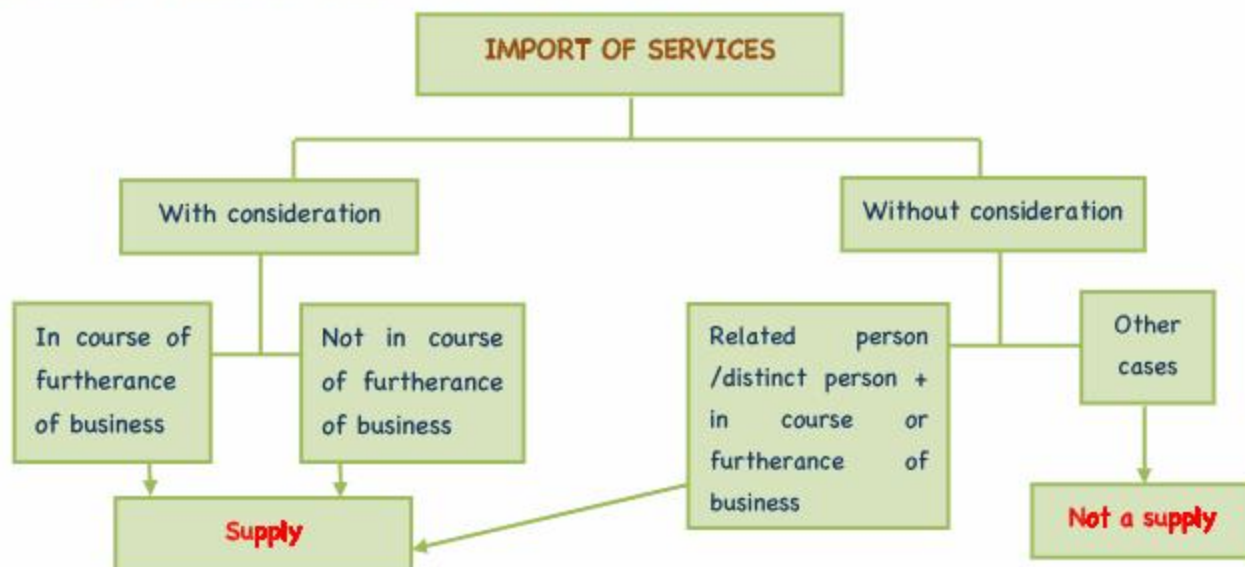
For the month of March, sale of goods by Mr. Handsome in his DCA capacity is Rs. 2,80,000 and interest earned from the said customers for short term credit facility provided for timely payment of dues is Rs. 20,000. Further, commission charged from Charm Limited in respect of DCA services provided is Rs. 30,000. The value of supply of goods to customers is Rs. 3,00,000 and value of supply of agency services to Charm Limited is Rs. 30,000.

PARA 4 : Importation of services :

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

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

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



Analysis of Section 7(1A) read with schedule II [Activities or Transactions to be treated as supply of goods or 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 or supply of services as referred to in Schedule II. [**ATTENTION :** Schedule II में वही transactions आएंगे जो Already Supply है as per Sec. 7(1)]

Schedule II

Activities or transactions to be treated as supply of Goods or supply of services

Sl.	Transaction	Type	Nature of Supply
1	Transfer	(a) Title in goods [Example : Sale of goods]	Supply of Goods
		(b) Right in goods/undivided share in goods without transfer of title in goods [Example : Renting of machinery]	Supply of Services
		(c) 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. [Example : Hire Purchase]	Supply of Goods
2	Land and Building	(a) Lease, tenancy, easement , licence to occupy land Example : Lease agreement for land	Supply of Services
		(b) Lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly. Example : A shop let out in a busy market area	Supply of Services
3	Treatment or Process	Applied to another person's goods Example : "Job Work" performed by a job worker like dyeing of fabric in various colours.	Supply of Services
4	Transfer of Business Assets	(a) Goods forming part of assets of a business are transferred or disposed off by or under the directions of the person carrying on the business so as no longer to form part of those assets. Example : ABC & Co. donates old A.C. to Charitable Schools. This will qualify as supply of goods, if input tax credit had been availed by ABC & Co. on such A.C.	Supply of Goods
		(b) Goods held/used for business are put to private use or are made available to any person for use, for any purpose other than a purpose of the business, by/under the direction of a person carrying on the business. Example : A director using car provided by the company for personal travels.	Supply of Services
		(c) 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	Supply of Goods

	<p>furtherance of his business, immediately before he ceases to be a taxable person.</p> <p>Example : Mr. 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>Exceptions:</p> <ul style="list-style-type: none"> • Business is transferred as a going concern to another person. • Business is carried on by a personal representative who is deemed to be a taxable person. 	
5	<p>(a) Renting of immovable property</p> <p>Analysis :</p> <p>(i) As per this clause, renting of immovable property for any commercial activity, permitting use of immovable property for placing vending/ dispensing machines, allowing erection of communication tower on a building for consideration, renting of land or building for entertainment or sports and renting of theatres by owners to film distributors are all chargeable to GST.</p> <p>(ii) Halls, rooms, etc. let out by hotels/restaurants for a consideration for organizing social, official or business functions or letting out of halls for cultural functions are covered within the scope of renting of immovable property and would be taxable.</p>	Supply of Services
	<p>(b) Construction of complex, building, civil structure, etc.: 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> <p>The term construction includes additions, alterations, replacements, or remodelling of any existing civil structure.</p> <p>The expression competent authority 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> <p>(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or</p> <p>(ii) a chartered engineer registered with the Institution of Engineers (India); or</p>	Supply of Services

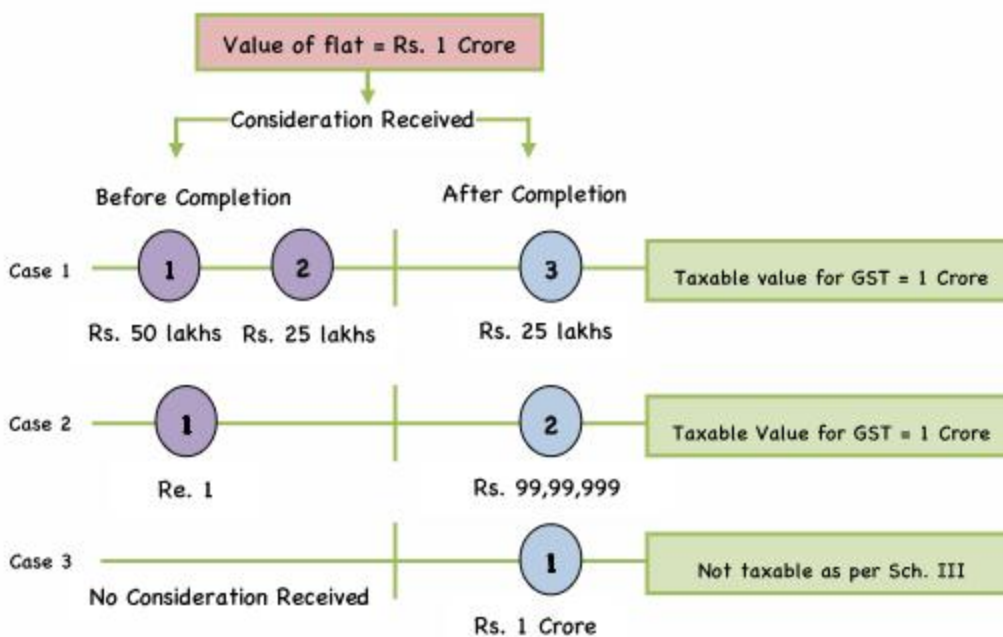


(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.


Analysis :

If the builder/developer is constructing flats, offices, etc. in a complex, and then booking them against advance payment before grant of completion certificate from competent authority, then, the value of the flats, offices, etc. (which are booked before grant of completion certificate) shall be chargeable to GST under the heading of "construction service".

Alia Bhatt, Kiara Advani Flat Booking... याद है ना...



(c) Temporary transfer or permitting use or enjoyment of any Intellectual Property Right (IPR)	Supply of Services
Example : Temporary transfer of copyright of any book by author.	
(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of Information Technology Software.	Supply of Services
Example : Supply of customised software to run video classes for smooth processing, encryption and decryption of videos is a supply of service.	
(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.	Supply of Services
Analysis : In non-compete agreement, where one party agrees, for consideration, not to compete with the other in any specified products, services, geographical location or in any other manner, such action on	

	<p>the part of one person is also a supply of service for consideration and will be covered by this clause.</p> <p>Example : Cable operator – Sakham has entered into an agreement with Cable operator – Aatmaram that Sakham will not provide cable connections in the specified areas where Aatmaram is providing the connections. Non –compete agreements constitute supply of service.</p>	
	<p>(f) Transfer of right to use any goods for any purpose</p> <p>Example : Machinery given on finance lease</p>	Supply of Services
6	<p>Following composite supplies :</p> <p>(a) Works contract</p> <p>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.</p> <p>Analysis:</p> <p>(i) If the construction, repairs, etc. contract is a composite contract of labour plus material (i.e. material is also supplied by service provider along with construction, repairs, etc. service), then, it is a supply of service and GST would be charged on such contract under the heading of "Works Contract Service".</p> <p>(ii) If the construction, repairs, etc. contract is a pure labour contract (i.e. no materials are supplied by service provider), then, GST would be charged on such service under the heading of "construction service" or "repairing, etc. service".</p>	Supply of Services
	<p>(b) Restaurant and Outdoor Catering Services - 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.</p> <p>Analysis: The activities of supply of food or drinks in a restaurant, etc. and supply of foods and drinks by an outdoor caterer are covered in this clause.</p>	 <p>Supply of Services</p>

Clarification regarding Issue related to taxability of 'tenancy rights' under GST [Circular]

Doubts:

- (i) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium ?
- (ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?

Clarification:

1. The transfer of tenancy rights against tenancy premium which is also known as "pagadi system" is prevalent in some States. In this system the tenant acquires, tenancy rights in the property from landlord against payment of tenancy premium. Alternatively, Sometimes the landlord pays to tenant the prevailing tenancy premium to get the property vacated.
2. Any lease/tenancy/easement/license, to occupy land is supply of service (Para-2 Schedule II).
3. Transfer of tenancy rights will not be treated as sale of land/building even if stamp duty and registration charges is levied on the said premium.
4. Hence, the activity of transfer of 'tenancy rights' is covered under the scope of supply and is taxable under GST.
5. Renting of residential dwelling for use as a residence to an unregistered person is Exempt under GST.
6. Hence, grant of tenancy rights by landlord in a residential dwelling for use as residence to an unregistered person against tenancy premium or periodic rent or both is also exempt.
7. 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 always liable to GST.
8. Merely because a transaction/supply involves execution of documents (requiring registration and payment of fees and/or stamp duty), would not preclude them from scope of supply.

Clarification regarding taxability of goods imported under lease [Circular]

Goods like aircrafts, aircraft engines, other aircraft parts, rigs & ancillary items for oil / gas exploration / production, etc. which are imported into India on temporary basis are the transactions of "supply of services" which are covered by item 1(b) or 5(f) of Schedule II and are liable to pay IGST. Further, these are exempted from Customs duty as per notifications issued under Customs Act, subject to certain conditions.

Analysis of Section 7(2)

1. Activities/transactions specified under Schedule III of the CGST Act [Section 7(2)(a)] [Negative List under GST]:

Activities specified under schedule III can be termed as "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.

Schedule III

Sl.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services						
1.	<p>Services by an employee to the employer in the course of or in relation to his employment.</p> <p>Analysis:</p> <p>(i) Any amount paid to an independent director of a company for attending board of director's meeting, etc., shall be chargeable to GST, because it is not paid in the capacity of an employee. But, if any amount is paid to whole time director in the capacity of employee, then, no GST will be charged on the same.</p> <p>(ii) Further, GST on the services provided by a director (not in the capacity of employee) to the company or body corporate is chargeable to GST under Reverse Charge Mechanism u/s 9(3) of the CGST Act, 2017 (i.e. company or body corporate will be liable to pay GST to the government directly on the amount paid to director).</p> <p>(iii) Non compete fees received by an employee from employer is taxable as it is not in the course of or in relation to employment.</p>						
2.	<p>Services by any Court or Tribunal established under any law for the time being in force.</p> <p>Explanation : The term "Court" includes District Court, High Court and Supreme Court.</p>						
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; or</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.	<p>Services of funeral, burial, crematorium or mortuary including transportation of the deceased.</p> <div style="text-align: center; background-color: #e91e63; color: white; padding: 5px; margin-top: 10px;"> जाने वाले से कौन GST ले सकता है... </div>						
5.	<p>Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tbody> <tr> <td style="width: 50%;">Rental, leasing, licensing of land and building</td> <td>Treated as supply of service [GST is applicable]</td> </tr> <tr> <td>Sale of flats, etc. in a building before completion certificate or 1st occupancy, whichever is earlier</td> <td>Treated as supply of service under para 5(b) of Sch. II [GST is applicable]</td> </tr> <tr> <td>Sale of land and building</td> <td>Not treated as supply as per para 5 of Sch. III [GST is not applicable]</td> </tr> </tbody> </table>	Rental, leasing, licensing of land and building	Treated as supply of service [GST is applicable]	Sale of flats, etc. in a building before completion certificate or 1 st occupancy, whichever is earlier	Treated as supply of service under para 5(b) of Sch. II [GST is applicable]	Sale of land and building	Not treated as supply as per para 5 of Sch. III [GST is not applicable]
Rental, leasing, licensing of land and building	Treated as supply of service [GST is applicable]						
Sale of flats, etc. in a building before completion certificate or 1 st occupancy, whichever is earlier	Treated as supply of service under para 5(b) of Sch. II [GST is applicable]						
Sale of land and building	Not treated as supply as per para 5 of Sch. III [GST is not applicable]						
6.	Actionable claims, other than specified actionable claims.						

Note: "specified actionable claim" means the actionable claim involved in or by way of betting, casinos, gambling, horse racing, lottery or online money gaming. Further, the applicable rate of GST on specified actionable claims is 28%.

जुआ खेलोगे तो GST देना पड़ेगा... 🙄

Illustration : M/s Rohit ASREC Ltd. procured a portfolio of NPAs (of Rs. 50 crores) from Pankaj Bank Ltd. for a consideration of Rs. 7 crores (under the provisions of SRFAESI Act, 2002). Whether GST is leviable on Rs. 7 crores ?

Solution : A transaction of procurement of a portfolio of NPAs is a transaction in actionable claim and is covered under para 6 of Schedule III of the CGST Act, 2017. Therefore, no GST would be charged on this transaction.

7.	Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8(a).	Supply of warehoused goods (as per Customs Act) to any person before clearance for home consumption.
8(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.

Clarification in respect of levy of GST on Director's remuneration [Circular]

1. **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 respect of independent directors or those directors who are not the employees of the 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 of the CGST Act and are therefore taxable. Further, in this case, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

2. **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 part of Director's remuneration which are declared as "Salaries" in the books of a company and subjected to TDS u/s 192 of the Income Tax 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.

Further, 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 Income Tax Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in this case, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

Clarifications regarding applicability of GST on Perquisites provided by employer to the employees as per contractual agreement [Circular]

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. [Examples of perquisites: company car, fuel reimbursement, interest-free loan, medical facilities, credit cards, rent free accommodation, etc.]

Clarifications regarding applicability of GST on Sale of Land after levelling, laying down of drainage lines, etc. [Circular]

- (i) As per Sl. no. 5 of Schedule III of the CGST Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.
- (ii) 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 Sl. No. 5 of Schedule III and accordingly does not attract GST.
- (iii) 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.

Clarification on GST chargeable on the amount payable to Consumer Disputes Redressal Commission office and its subordinate offices [Circular]

Services by any court or Tribunal established under any law for the time being in force is neither a supply of goods nor services. Consumer Disputes Redressal Commissions (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 having regard to their functioning.

Having regard to their functioning & characteristics, it is hereby clarified that fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.

2. Activities/Transactions notified by the Government [Sec. 7(2)(b)]

Such activities/transactions undertaken by the central Government, a state government or union territory 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 supply of goods nor supply of services.

Using this power, following activities have been notified which shall be treated neither as supply of goods nor supply of services:

- (i) Services provided by Central Government, State Government, Union territory or any local authority 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.
- (ii) Service provided by State Government by way of **grant of alcoholic liquor license**, against consideration in the form of license fee or application fee or by whatever name it is called.

[Circular]: This special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

Note: Further, Government has power to grant exemption to any goods or services or both from the GST leviable u/s 11 of the CGST and u/s 6 of the IGST. And, by using this power, Government has exempted many goods and services from GST, which will be discussed in later chapters of this book.

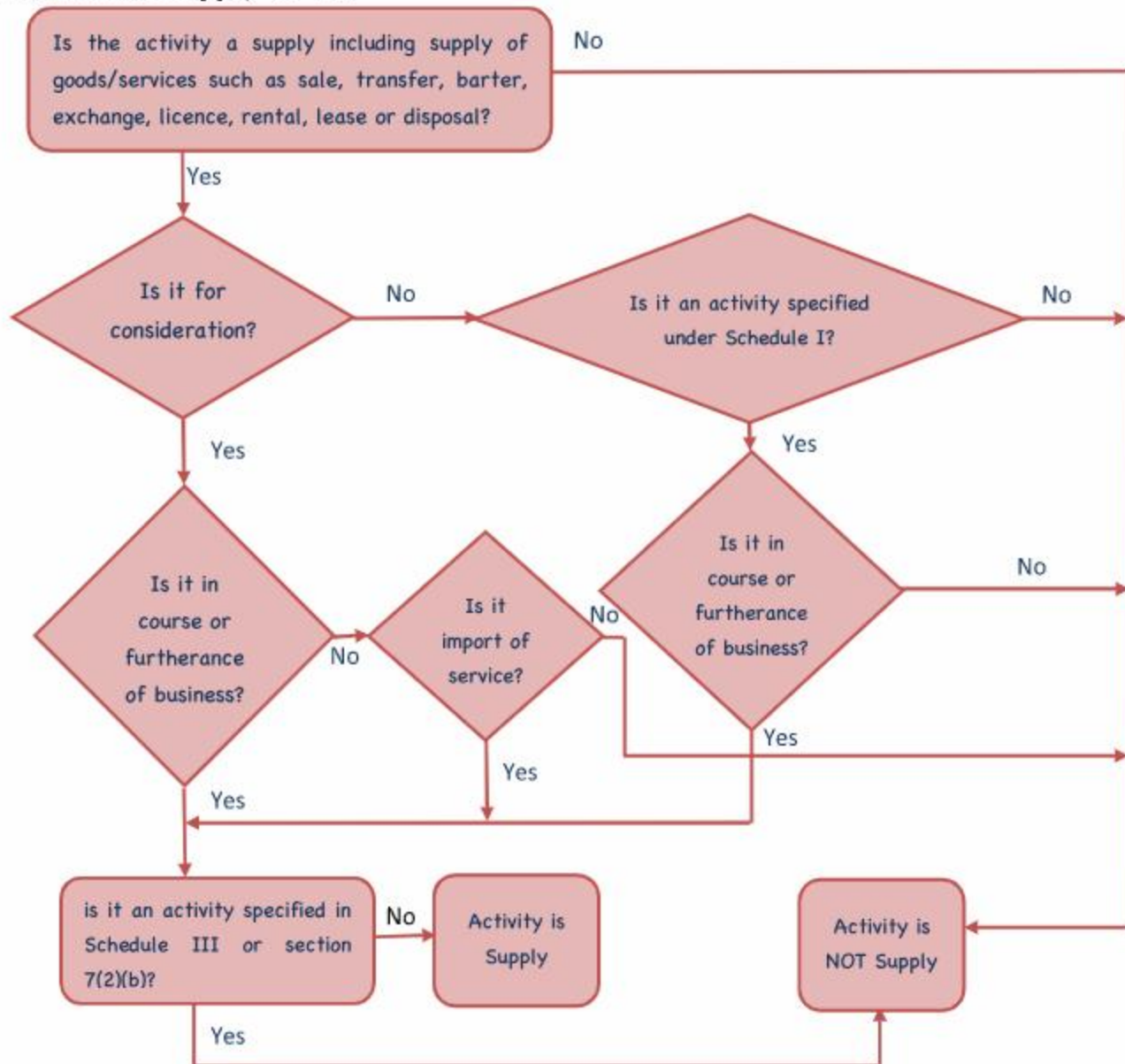
Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997 [Circular]

- (i) The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities.
- (ii) The lenders earn lending fee for lending their securities to the borrowers. The security lending mechanism is depicted in the diagram below: -





- (iii) 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 lended 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.
- (iv) Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.
- (v) Further, the borrower of securities shall be liable to discharge GST [under reverse charge mechanism (RCM)].
- (vi) The nature of GST to be paid shall be IGST under RCM.

The Following Diagram summaries the steps to determine whether an activity undertaken is supply or not



Composite And Mixed Supplies [Section 8]

- GST is payable on individual goods or services or both at the notified rates. 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 a 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.

Statutory Provisions	
Section 8	Tax liability on composite and mixed supplies
Clauses	Particulars
	The tax liability on a composite or a mixed supply shall be determined in the following manner, namely :
(a)	<p>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; and</p>  <p>Rate of Principal supply will be applicable</p>
(b)	<p>a mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax.</p>  <p>Highest Rate of GST will be applicable</p>

Analysis of 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,
 - Which are naturally bundled and supplied in conjunction with each other, in the ordinary course of business,
 - One of which is a principal supply.
- 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 and services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.
- Composite supply shall be treated as a supply of such principal supply for the purpose of taxability.

Example : 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.

Example : 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.

Example : 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.

5. 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 service and restaurant service).
6. 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.

Example : Service of stay in hotel is often combined with a restaurant service. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in ordinary course of business.

Analysis of Mixed Supplies

1. 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.
2. The individual supplies are independent of each other and are not naturally bundled.
3. How to determine if a particular supply is a mixed 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, If single price is charged by supplier for a bundled supply.
4. A mixed supply shall be treated as supply of that particular supply that attracts highest rate of tax for the purpose of taxability.

Example : 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.

Example : 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.

Clarification regarding Transportation services provided by GTA

The Goods Transport Agency (GTA) provides various intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.

Goods Transport Agency



In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply. However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.

Clarification regarding Retreading of Tyres [Circular]

Issue 1 : Whether retreading of tyres is a supply of goods or services?

Clarification : Retreading of tyres is a composite supply, in which the pre-dominant element is the process of retreading which is a supply of service. Further, rubber used for retreading is just an ancillary supply. Since, in retreading of tyres, pre-dominant element is the supply of service of processing of retreading, therefore, retreading of tyres is a supply of services.



Issue 2 : Whether supply of retreaded tyres is a supply of goods or services?

Clarification : Where owner of the retreaded tyre sells the retreaded tyres, then, it is a supply of goods (i.e. retreaded tyres).

Clarification regarding activity of bus body building

In the case of bus body building, there is supply of goods as well as services. This is composite supply of goods and services. The principal supply in this case is "Supply of Service".

Clarification regarding Taxability of Printing Contracts [Circular]

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 : In the above context, it is clarified that the above mentioned supplies are composite supplies.



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

In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc., printed with design, logo, etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods.

Clarification regarding servicing of cars involving both supply of goods (spare parts) and services (labour) [Circular]

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 and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.



Clarification regarding betting / gambling [Circular]

- GST will be levied on the admission charge or entry fee charged for admission into casino [Supply of Service].
- GST will be levied on betting / gambling services being provided by casinos [Supply of Service].
- GST is leviable at 28% on the transaction value of betting/gambling, i.e. the total bet value. For example, If entire bet value is Rs. 100, GST leviable will be Rs. 28/-.
- GST will be levied on horse racing [Supply of Service]. Further, GST is leviable at 28% on the transaction value of betting, i.e. the total bet value i.e. total of face value of any or all bets paid into the totalisator or placed with licensed book makers, as the case may be. For example, If entire bet value is Rs. 100, GST leviable will be Rs. 28/-.



Clarification on Taxability of Cost Petroleum [Circular]

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.

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.

Clarification on Taxability of Priority Sector Lending Certificates (PSLCs) [Circular]

In Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity u/s 6(1) of the Banking Regulation Act, 1949.

PSLC are not securities. PSLC are akin to freely tradable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT in pre-GST regime.

In GST, there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods. Further, GST payable on the certificates would be available as ITC to the bank buying the certificates.

Further, nature of supply of PSLC between banks is supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI.

Clarification on taxability of shares held in a subsidiary company by the holding company [Circular]

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 are considered neither goods nor services under GST. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

Clarification on food or beverages supplied in a cinema hall [Circular]

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.

It is 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.

CA means

Challenge it, Achieve it, Loop it.

I Will be a Chartered Accountant.