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mentioned in this scenario to the customer "C" of his client "B" would be intermediary in terms of sub-section (13) of section 2 of the IGST Act.

4.3 Scenario -III:

The supplier of ITeS services supplies back end services, as listed in para 4 above, on his own account along with arranging or facilitating the supply of various support services during pre delivery, delivery and post-delivery of supply for and on behalf of the client located abroad. In this case, the supplier is supplying two set of services, namely ITeS services and various support services to his client or to the customer of the client. Whether the supplier of such services would fall under the ambit of intermediary under sub-section (13) of section 2 of the IGST Act will depend on the facts and circumstances of each case. In other words, whether a supplier "A" supplying ITeS services as well as support services listed in Scenario -II above to his client "B" and / or to the customer "C" of his client is intermediary or not in terms of sub-section (13) of section 2 of the IGST Act would have to be determined in facts and circumstances of each case and would be determined as per section 8 keeping in view which set of services is the principal / main supply.

5. It is also clarified that supplier of ITeS services, who is not an intermediary in terms of sub-section (13) of section 2 of the IGST Act, can avail benefits of export of services if he satisfies the other criteria mentioned in sub-section (6) of section 2 of the other IGST Act.

Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry [Circular No.118/37/2019-GST, dated 11.10.19]

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Issue: Determination of place of supply in case of supply of software/design services by a supplier located in taxable territory to a service recipient located in non taxable territory by using the sample hardware kits provided by the service recipient.

Facts :

1. A number of companies that are part of the growing Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers locate overseas. The client/customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks ("IP blocks", reusable units of software logic and design layouts that can be combined to form newer designs). Based on these, the Indian company digitally integrates the various IP blocks to develop th software and the silicon or hardware design. These designs are communicated abroad (In industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.
2. In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.
3. The required clarification is on whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of "goods required to be made physically available by the recipient to the provider".

Clarification:

1. The provisions relating to determination of place of supply as contained in the IGST Act have been examined.
2. In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the

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contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.

3. Therefore, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

8.7 Special Provision - Supply of Online Information and Database Access or Retrieval Services

SECTION 14 OF IGST ACT, 2017

- (1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a nontaxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely :

- (a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
 - (b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;
 - (c) the intermediary involved in the supply does not authorise delivery; and
 - (d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.
- (2) The supplier of online information and database access or retrieval services referred to in sub-section(1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

Notes :

1. **Who is a Non-Taxable Online Recipient?** : "Non-Taxable Online Recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

sale in primary market, at agricultural farm will be exempt from GST.

- (5) But, charges for such type of processes carried out at some other place, other than agricultural farm, shall be taxable, although such process does not change essential characteristics of agricultural produce.
- (6) Renting of land for "stud farming" is taxable. Because, rearing of horses is not covered under the scope of this entry.
- (7) But, renting of land for poultry farming or for rearing of sheep, shall be exempt from GST, as it is covered under the scope of this entry.
- (8) Rice is not agricultural produce. Paddy is agricultural produce.
- (9) Clarifications regarding applicability of GST on warehousing of agricultural produce [Circular No. 16/ 16/2017-GST, dated 15.11.2017]:


Issue :

Is GST applicable on warehousing of agricultural produce such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc.?

Clarification :

- (i) As per entry no. 54(e) of NN 12/2017-Central Tax (Rate), loading, unloading packing, storage or warehousing of agricultural produce is exempt from GST.
- (ii) Agricultural produce in the notification has been defined to mean "any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market".
- (iii) Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. on green leaf and is the processed output of the same.
- (iv) Thus, green tea leaves and not tea, is the "agricultural produce" eligible for exemption available for loading, unloading, packing, storage or warehousing of agricultural produce. Same is the case with coffee obtained after processing of coffee beans.
- (v) Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce.
- (vi) Pulses commonly known as dal are obtained after de-husking or splitting or both. The process of de-husking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore, pulses (de-husked or split) are also not agricultural produce. However, whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce.
- (vii) In view of the above, it is hereby clarified that processed products such as tea (i.e. black tea, white tea, etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts, etc. fall outside the definition of agricultural produce given in notification No. 11/2017-CT (Rate) and 12/2017-CT (Rate) and corresponding notifications issued under IGST and UGST Acts and therefore, the exemption from GST is not available to their loading, packing, warehousing etc. and that any clarification issued in the past to the contrary in the context of Service Tax or VAT/ Sales Tax is no more relevant

Illustration 3 :

5. 	<p><i>Services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.</i></p> <p>[Entry No. 24B of NN 12/2017 CT (R), inserted by NN 21/2019 – CT (R), w.e.f. 01.10.2019]</p>
6.	<p>Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.</p> <p>[Entry No. 55 of NN. 12/2017 CT (R)]</p> <p>Clarification on taxability of custom milling of paddy by Rice Millers [Circular No. 19/19/2017-GST, dated 20.11.2017]:</p> <p>Issue : Whether custom milling of paddy by Rice millers is liable to GST or is exempted under Entry No. 55 of Notification 12/2017 - Central Tax (Rate)</p> <p>Clarification : Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested.</p> <p>Further, processing of paddy into rice is not usually carried out by cultivators, rather it done by rice millers.</p> <p>Milling of paddy into rice also changes its essential characteristics. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.</p> <p>Therefore, in view of the above, it is clarified that milling of paddy into rice is not eligible for exemption under Entry No. 55 of Notification No. 12/2017 - Central Tax (Rate) and corresponding notifications issued under IGST and UTGST Acts.</p> <p>Further, GST will be liable to be paid only on the processing charges charged by millers for milling of paddy into rice on job work basis (and not on the entire value of rice).</p>
7.	<p>Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.</p> <p>[Entry No. 57 of NN. 12/2017 CT (R)]</p>
8.	<p>Services provided by a goods transport agency [GTA], by way of transport in a goods carriage of Agricultural Produce, milk, salt and foodgrain including flour, pulses and rice.</p> <p>[Entry No. 21(c) and 21(d) of NN. 12/2017 CT (R)]</p>
9.	<p>Services by way of transportation by rail or a vessel from one place in India to another of the Agricultural Produce, milk, salt and foodgrain including flour, pulses and rice.</p> <p>[Entry No. 20(e) and 20(f) of NN. 12/2017 CT (R)]</p>
10.	<p>Services by way of artificial insemination of livestock (other than horses).</p> <p>[Entry no. 55A of NN 12/2017 CT(R), inserted by NN 14/2018 CT(R) CT(R) w.e.f. 27.07.2018]</p>
11.	<p>Services by way of slaughtering of animals.</p> <p>[Entry No. 56 of NN. 12/2017 CT (R)]</p>
12.	<p>Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.</p> <p>[Entry No. 63 of NN. 12/2017 CT (R)]</p>

duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law are not exempt from GST.

(7) List of examples of long duration programs recognised under IIM Act, 2017 offered by IIM Ahmedabad [which are exempt from GST]:

- (i) Post-Graduate Programme (PGP) – 2-year program
- (ii) Post-Graduate Programme in Food and Agri-Business Management (PGP-FABM) – 2-year program
- (iii) Fellow Programme in Management (FPM) – 4 to 5-year program
- (iv) Post-Graduate Programme in Management for Executives (PGPX) – 12 months (1 year) full time program
- (v) ePost-Graduate Programme (ePGP) – 2-year online program.

(8) List of examples of short duration executive development programs offered by IIM Ahmedabad which are available to participants [which are not exempt from GST]:

- (i) Armed Forces Programme
- (ii) Faculty Development Programme
- (iii) Executive Education
 - a. Customized Executive Programmes
 - b. Open Enrolment Programme.

Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India – [Circular No. 117/36/2019 – GST, dated 11.10.2019]

Issue : *Applicability of GST exemption to the Directorate General of Shipping approved maritime courses conducted by the Maritime Training Institutes of India.*


1. Under GST Law, vide Sl. No. 66 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, services provided by educational institutions to its students, faculty and staff are exempt from levy of GST. In the above notification, "educational institution" has been defined to mean an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.
2. GST exemption on services supplied by an educational institution would be available, if it fulfils the criteria that the education is provided as part of a curriculum for obtaining a qualification/ degree recognized by law.
3. The Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014. Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST. The exemption is subject to meeting the conditions specified at Sl. No. 66 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017.

	<p>India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;</p> <p>(c) by the Central Civil Services Cultural and Sports Board;</p> <p>(d) as part of national games, by the Indian Olympic Association; or</p> <p>(e) under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.</p> <p>[Entry No. 53 of NN. 12/2017 CT (R)]</p>
8. (A)	<p><i>Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India.</i></p> <p><i>But, this exemption shall be allowed only if Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020.</i></p> <p>[Entry No. 9AA of NN 12/2017 CT (R), inserted by NN 21/2019 - CT (R), w.e.f. 01.10.2019]</p>
9. (A)	<p><i>Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020.</i></p> <p>[Entry No. 82A of NN 12/2017 CT (R), inserted by NN 21/2019 - CT (R), w.e.f. 01.10.2019]</p> <p>Analysis: This service is exempt without any monetary limit.</p>
10.	<p>Services provided by and to Federation Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 World Cup 2017 to be hosted in India.</p> <p>But, this exemption shall be allowed only if Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 World Cup 2017.</p> <p>[Entry No. 9A of NN. 12/2017 CT (R), inserted by NN 21/2017 CT (R), dated 22.08.2017]</p>
11.	<p>Services by way of right to admission to the events organized under FIFA U-17 World Cup 2017.</p> <p>[Entry No. 82 of NN. 12/2017 CT (R), inserted by NN 25/2017 CT (R), dated 21.09.2017]</p> <p>Analysis : This service was exempt without any monetary limit.</p>

Transportation Related Services	
1.	<p>Service of transportation of passengers, with or without accompanied belongings, by -</p> <p>(a) railways in a class other than -</p> <p>(i) first class; or</p> <p>(ii) an air-conditioned coach;</p> <p>(b) metro, monorail or tramway;</p> <p>(c) inland waterways;</p> <p>(d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and</p> <p>(e) metered cabs or auto rickshaws (including e-rickshaws).</p> <p>[Entry No. 17 of NN. 12/2017 CT (R)]</p> <p>Notes :</p>

	<p>Analysis:</p> <p>(1) Transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India is exempt from GST and not only upto first customs station in India. For example, if any aircraft carrying goods from Singapore has arrived at Delhi Customs station, and unloaded certain goods, which are to be transshipped to Mumbai Customs station through another aircraft. Then, in such case, transportation upto Mumbai Customs station shall be exempt from GST, because, Mumbai customs station is the Customs station of clearance in India.</p> <p>(2) Prior to 01.06.2016, this exemption was available to such transport by aircraft as well as vessel. But, now, this exemption is available only in case of transport by aircraft. W.e.f. 01.06.2016, such transport by vessels is made taxable.</p>
6.	<p>Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.</p> <p>Nothing contained in this entry shall apply after the 30.09.2018 30.09.2019 <u>30.09.2020</u> [Exemption extended till 30.09.2020 by NN 21/2019 CT(R) w.e.f. 01.10.2019].</p> <p>[Entry No. 19A of NN 12/2017 CT (R), inserted by NN 02/2018 - CT (R), dated 25.01.2018]</p>
7.	<p>Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.</p> <p>Nothing contained in this entry shall apply after the 30.09.2018 30.09.2019 <u>30.09.2020</u> [Exemption extended till 30.09.2020 by NN 21/2019 CT(R) w.e.f. 01.10.2019].</p> <p>[Entry No. 19B of NN 12/2017 CT (R), inserted by NN 02/2018 - CT (R), dated 25.01.2018]</p>
8.	<p>Services by way of transportation by rail or a vessel from one place in India to another of the following goods -</p> <ol style="list-style-type: none"> relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; defence or military equipments; newspaper or magazines registered with the Registrar of Newspapers; railway equipments or materials; agricultural produce; milk, salt and food grain including flours, pulses and rice; and organic manure. <p>[Entry No. 20 of NN. 12/2017 CT (R)]</p>
9.	<p>Services provided by a goods transport agency, by way of transport in a goods carriage of -</p> <ol style="list-style-type: none"> agricultural produce; goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed Rs. 1,500; goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750; milk, salt and food grain including flour, pulses and rice; organic manure; newspaper or magazines registered with the Registrar of Newspapers; relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or defence or military equipments.

	<p>time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law for the time being in force; or</p> <p>(d) any body corporate established, by or under any law for the time being in force; or</p> <p>(e) any partnership firm whether registered or not under any law including association of persons; and</p> <p>(f) any casual taxable person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act.</p> <p>[Entry No. 21A of NN. 12/2017 CT (R), inserted by NN. 32/2017 CT (R), dated 13.10.2017]</p> <p>Analysis :</p> <p>(1) Any service provided by GTA to persons covered under aforesaid clauses (a) to (f) and to any registered person in GST, are chargeable to GST. Otherwise, it is exempt from GST.</p> <p>(2) Further, if services are provided by GTA to persons covered under aforesaid clauses (a) to (f) and to any registered person in GST, then, it is chargeable to GST under Reverse charge mechanism (RCM), if GTA has opted to pay GST @ 5% (i.e. who has not paid GST at the rate of 12%).</p> <p>(3) It means GST would be payable by GTA only if GTA has opted to pay GST at the rate of 12% and has provided services to persons covered under aforesaid clauses (a) to (f) and to any registered person in GST.</p> <p>(4) Hence, if GTA has opted to pay GST @ 5% on all the services provided by it (if chargeable to GST), then, GTA would not be liable to get itself registered under GST at all. Because, if option to pay GST @ 5% is opted, then, either services are chargeable under RCM (if service is chargeable to GST) or it is exempt from GST.</p>
11.	<p>Services provided by a goods transport agency, by way of transport of goods in a goods carriage, to, -</p> <p>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies,</p> <p>which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax u/s 51 and not for making a taxable supply of goods or services. [Entry No. 21B of NN. 12/2017 CT (R), inserted by NN 28/2018 - CT (R), w.e.f. 01.01.2019]</p>
12.	<p>Supply of services associated with transit cargo to Nepal & Bhutan (landlocked countries). [Entry No. 9B of NN. 12/2017 CT (R), inserted by NN 30/2017 CT (R), dated 29.09.2017]</p>
13.	<p>Services by way of giving on hire -</p> <p>(a) to a state transport undertaking, a motor vehicle meant to carry more than 12 passengers; or</p> <p>(aa) to a local authority, an Electrically operated vehicle meant to carry more than 12 passengers [Explanation.- For the purposes of this entry, "Electrically operated vehicle" means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle.]; or [NN 13/2019 - CT (R), w.e.f. 01.08.2019]</p> <p>(b) to a goods transport agency, a means of transportation of goods; or</p> <p>(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.</p>

	<p>(2) A residential house taken on rent which is used predominantly for commercial or non-residential use would not be covered in this entry and hence, would be taxable.</p> <p>(3) Renting of a residential dwelling which is used partly for residence and partly for non-residential purpose like an office of a lawyer or a clinic of a doctor would be a case of bundled services as renting service is being provided both for residential use and for non-residential use. Taxability of such bundled services has to be determined in terms of the principles laid down in Sec. 8 of the Act. And, since, this is not naturally bundled service, therefore, it is a case of mixed supply and hence, entire rent would be chargeable to GST.</p> <p>(4) If a house is given on rent and the same is used as a hotel or a lodge, such renting transaction is not covered in this exemption entry because the person taking it on rent is using it for commercial purpose. Renting of rooms in a hotel or a lodge let out whether or not for temporary stay would not be covered in this exemption entry because a hotel or a lodge is not a residential dwelling, hence, it is chargeable to GST.</p> <p>(5) Govt. department allotting houses to its employees for residential purpose and charging a license fee for such service would also be covered under this exemption entry and hence, not taxable.</p> <p>(6) Furnished flats (service apartments) given on rent for temporary stay are in the nature of lodges or guest houses and hence, not treatable as a residential dwelling, therefore, it will be taxable.</p> <p>(7) The phrase 'residential dwelling' has not been defined in the GST Acts, 2017. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, campsite, lodge, house boat, or like places meant for temporary stay. However, vide entry No. 14 of NN. 12/2017 CT (R), services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below or equal to Rs. 1,000/- per day or equivalent have been exempted from GST (which is discussed in next entry).</p>
<p>2. </p>	<p>Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff Value of supply of a unit of accommodation <u>below or equal to</u> Rs. 1,000 per day or equivalent. [<u>"or equal to"</u> words inserted by NN 21/2019 - CT (R), w.e.f. 01.10.2019]</p> <p>[Entry No. 14 of NN. 12/2017 CT (R)]</p> <p>Note : As per clause (w) under this notification, 'Declared tariff' includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.</p> <p>Analysis :</p> <p>→ (1) <u>Analysis of amendment of "or equal to" words:</u> If the value of supply is Rs. 1,000/-, then, it is exempt from GST w.e.f. 01.10.2019. Before amendment, it was taxable.</p> <p>(2) If the Value of supply is more than Rs. 1,000 per day, then GST shall be charged on the value of supply.</p> <p>(3) If these services are provided even by a non-commercial entity (i.e. Dharmshala, Ashram, etc.), then also GST is applicable, if value of supply is more than Rs. 1,000.</p> <p>(4) Analysis of amendment: The concept of 'Declared Tariff' is deleted by NN 14/2018 - CT (R), w.e.f. 26.07.2018. Now, actual value of supply (after considering other charges, discounts, etc.) is relevant to determine taxability.</p> <p>(5) Is hostel accommodation provided by Trusts to students covered within the definition of Charitable Activities and thus, exempt under Sl. No. 1 of notification No. 12/2017-CT (Rate).</p> <p>Ans. Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 11/2017-CT (Rate) However, services by a hotel, inn, guest house, club or c by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation upto one thousand rupees per day or equivalent are exempt. Thus,</p>

9)	Express parcel post services (Liable to GST)	5,20,000
10)	Speed post services (Liable to GST)	1,00,000
	Value of taxable supply	14,70,000

<p>2.</p> <p>(A)</p>	<p>Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to Rs. 20 lakhs (Rs. 10 lakhs, in case of a Special Category States) in the preceding Financial Year <i>such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017 [as amended by NN 21/2019 - CT (R), w.e.f. 01.10.2019].</i></p> <p>Explanation : For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to following services :</p> <p>(i) Clauses (a), (b) and (c) of Entry 6 above.</p> <p>(ii) Services by way of renting of immovable property.</p> <p>[Entry No. 7 of NN. 12/2017 CT (R)]</p> <p>Analysis :</p> <p>(1) Since, all the services by government or local authority to a business entity are taxable (further, these are chargeable under Reverse Charge Mechanism), therefore, by making this entry in exemption list, Government has excluded small business from the purview of GST.</p> <p>(2) As per clause (zy) under this notification, 'Renting in relation to immovable property' means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;</p>
<p>3.</p>	<p>Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed Rs. 5,000.</p> <p>However, nothing contained in this entry shall apply to services referred in Clause (a), (b) and (c) of Entry 6 above.</p> <p>Further, in case where continuous supply of service* is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed Rs. 5,000 in a F.Y.</p> <p>[Entry No. 9 of NN. 12/2017 CT (R)]</p> <p>Analysis : *As per Sec. 2(33) of the CGST Act, 2017, "continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.</p>
<p>4.</p>	<p>Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority.</p> <p>However, nothing contained in this entry shall apply to services referred in clauses (a), (b) and (c) of Entry 6 above.</p> <p>[Entry No. 8 of NN. 12/2017 CT (R)]</p>
<p>5.</p>	<p>Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.</p> <p>[Entry No. 61 of NN. 12/2017 CT (R)]</p>

<p>6.</p> <p>(A)</p>	<p>Services provided by the Central Government, State Government, Union territory or local authority by way of -</p> <p>(a) registration required under any law for the time being in force;</p> <p>(b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.</p> <p>[Entry No. 47 of NN. 12/2017 CT (R)]</p> <p>GST applicability on Seed Certification Tags [Circular No. 100/19/2019-GST, dated 30.04.2019]</p> <p><i>Seed testing and certification is a multi-stage process, the charges for which are collected from the seed producers at different stages. Supply of seed tags to the seed producer is nothing but an element of the one integrated supply of seed testing and certification. All the charges, including those for issue of seed certificates/tags by the Seed Certification Agency of Tamil Nadu, Uttarakhand or any other state to the seed producing organization / companies are collected for the composite supply of seed testing and certification, which is exempt under NN 12/2017 - CT (R) - Entry No. 47.</i></p> <p><i>Author's Note: This activity is also covered under NN 12/2017 - CT (R) - Entry No. 54(a) [Agriculture Related Exemption], which is also exempt from GST.</i></p>
7.	<p>Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.</p> <p>[Entry no. 47A of NN 12/2017 CT(R), inserted by NN 14/2018 CT(R) w.e.f. 27.07.2018]</p>
8.	<p>Services by the Employees' State Insurance Corporation [ESIC] to persons governed under the Employees' State Insurance Act, 1948.</p> <p>[Entry No. 30 of NN. 12/2017 CT (R)]</p>
9.	<p>Services provided by the Employees Provident Fund Organisation [PF] to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952.</p> <p>[Entry No. 31 of NN. 12/2017 CT (R)]</p>
10.	<p>Services by Coal Mines Provident Fund Organisation to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948).</p> <p>[Entry No. 31A of the NN 12/2017, inserted by NN 14/2018, w.e.f. 26.07.2018]</p>
11.	<p>Services by National Pension System (NPS) Trust to its members against consideration in the form of administrative fee.</p> <p>[Entry No. 31A of the NN 12/2017, inserted by NN 14/2018, w.e.f. 26.07.2018]</p>
12.	<p>Services provided by the Insurance Regulatory and Development Authority [IRDA] of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999.</p> <p>[Entry No. 32 of NN. 12/2017 CT (R)]</p>
13.	<p>Services provided by the Securities and Exchange Board of India [SEBI] set up under the Securities and Exchange Board of India Act, 1992 by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.</p> <p>[Entry No. 33 of NN. 12/2017 CT (R)]</p>
14.	<p>Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Co-operation and Farmer's Welfare by way of cold chain knowledge dissemination.</p> <p>[Entry No. 58 of NN. 12/2017 CT (R)]</p>
15.	<p>Services by way of providing information under the Right to Information Act, 2005 (RTI). [Entry No. 65A of NN 12/2017 CT (R), inserted by NN 02/2018 CT (R), dated 25.01.2018]</p>
16.	<p>Services by Central Government, State Government, Union territory, local authority or governmental</p>

service fees or broking charges, normally charged for various transactions in money or for transfer of title in goods including charges for making drafts, letter of credit issuance charges, service charges relating to issuance of Commercial Paper (CP) or Certificates of Deposit (CD) or transactions in securities or forward contract or future contracts, etc.

- (13) Repos and reverse repos transactions entered into by bank are having the characteristics of loans and deposits for interest, therefore, they are covered under this entry and hence, exempt from GST.
- (14) As per clause (zaa) under this notification, "financial institution" has the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934. [clause (zaa) inserted by NN 28/2018 - CT (R), w.e.f. 01.01.2019]
- (15) **Clarification regarding applicability of GST on additional / penal interest - [Circular No. 102/21/2019, dated 28.06.2019]**

(A)

1. Various representations have been received from the trade and industry regarding applicability of GST on delayed payment charges in case of late payment of Equated Monthly Instalments (EMI). An EMI is a fixed amount paid by a borrower to a lender at a specified date every calendar month. EMIs are used to pay off both interest and principal every month, so that over a specified period, the loan is fully paid off along with interest. In cases where the EMI is not paid at the scheduled time, there is a levy of additional / penal interest on account of delay in payment of EMI.
2. Doubts have been raised regarding the applicability of GST on additional / penal interest on the overdue loan i.e. whether it would be exempt from GST in terms of Sl. No. 27 of notification No. 12/2017-Central Tax (Rate) dated 28th June 2017 or such penal interest would be treated as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"]. In order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarification.
3. Generally, following two transaction options involving EMI are prevalent in the trade:-
 - Case - 1: X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-.
However, X gives Y an option to pay in installments, Rs 11,000/- every month before 10th day of the following month, over next four months (Rs 11,000/- *4 = Rs. 44,000/-). Further, as per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/penal interest amounting to Rs. 500/- per month for the delay. In some instances, X is charging Y Rs. 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional / penal interest amounting to Rs. 500/- per month for each delay in payment.
 - Case - 2: X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s ABC Ltd. The terms of the loan from M/s ABC Ltd. allows Y a period of four months to repay the loan and an additional / penal interest @ 1.25% per month for any delay in payment.
4. As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the value of supply shall include "interest or late fee or penalty for delayed payment of any consideration for any supply". Further in terms of Sl. No. 27 of notification No. 12/2017- Central Tax (Rate) dated the 28.06.2017 "services by way of (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services)" is exempted. Further, as per clause 2 (zk) of the notification No. 12/2017-Central Tax (Rate) dated the 28th June, 2017, "'interest' means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;".
5. Accordingly, based on the above provisions, the applicability of GST in both cases listed in para

3 above would be as follows:

- Case 1: As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the amount of penal interest is to be included in the value of supply. The transaction between X and Y is for supply of taxable goods i.e. mobile phone.

Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.

(A)

- Case 2: The additional / penal interest is charged for a transaction between Y and M/s ABC Ltd., and the same is getting covered under Sl. No. 27 of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017. Accordingly, in this case the 'penal interest' charged thereon on a transaction between Y and M/s ABC Ltd. would not be subject to GST, as the same would not be covered under notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. The value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST.

6. It is further clarified that the transaction of levy of additional / penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional / penal interest satisfies the definition of "interest" as contained in notification No. 12/2017- Central Tax (Rate) dated 28.06.2017. It is further clarified that any service fee/charge or any other charges that are levied by M/s ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, and accordingly will not be exempt.

4. Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY). [Entry No. 27A of NN. 12/2017 CT (R), inserted by NN 28/2018 - CT (R), w.e.f. 01.01.2019]

Illustration 28 : (Banking Service)

X Bank Ltd., furnishes the following information relating to services provided and the gross amount received:

Particulars	Rs. in lakhs
Merchant Banking Services	8
Asset Management (including portfolio management)	3
Service charges for services to the Government of India	1.5
Interest on Overdraft and Cash credits	2
Banker to the issue	5
Locker rent	2

Compute the value of taxable service and the GST liability of X Bank Ltd., assuming all figures are exclusive of GST.

Answer :

Calculation of Value of Taxable Services of X Bank Ltd.

Particulars	Rs. in lakhs
Merchant Banking Services - Taxable	8
Asset Management (including portfolio management) - Taxable	3
Service charges for services to the Government of India - Taxable	1.5
Interest on Overdraft and Cash Credits - Not Taxable [Since, it is specifically covered	

<p>(A)</p>	<p>Bold words by NN 21/2017 - CT (R), dated 22.08.2017];</p> <p>(i) Jan Arogya Bima Policy;</p> <p>(j) Pradhan Mantri Fasal Bima Yojana (PMFBY); [earlier, it was "National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana)", which is replaced by Bold words by NN 21/2017 - CT (R), dated 22.08.2017];</p> <p>(k) Pilot Scheme on Seed Crop Insurance;</p> <p>(l) Central Sector Scheme on Cattle Insurance;</p> <p>(m) Universal Health Insurance Scheme;</p> <p>(n) Rashtriya Swasthya Bima Yojana;</p> <p>(o) Coconut Palm Insurance Scheme;</p> <p>(p) Pradhan Mantri Suraksha Bima Yojana;</p> <p>(q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.</p> <p>(r) Bangla Shasya Bima [item (r) inserted by NN 21/2019 - CT (R), w.e.f. 01.10.2019] [Under this scheme, the West Bengal Government will provide crop insurance coverage to farmers, especially for the Kharif season crops]</p> <p>[Entry No. 35 of NN. 12/2017 CT (R)]</p>
<p>2.</p>	<p>Services of life insurance business provided under following schemes -</p> <p>(a) Janashree Bima Yojana;</p> <p>(b) Aam Aadmi Bima Yojana;</p> <p>(c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of Rs. 50,000/- Rs. 2,00,000/- [Rs. 50,000/- is substituted by Rs. 2,00,000/- by NN 02/2018 - CT(R), dated 25.01.2018]</p> <p>(d) Varishtha Pension Bima Yojana;</p> <p>(e) Pradhan Mantri Jeevan Jyoti Bima Yojana;</p> <p>(f) Pradhan Mantri Jan Dhan Yojana;</p> <p>(g) Pradhan Mantri Vaya Vandan Yojana.</p> <p>[Entry No. 36 of NN. 12/2017 CT (R)]</p>
<p>3.</p>	<p>Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory.</p> <p>[Entry No. 40 of NN. 12/2017 CT (R)]</p>
<p>4.</p>	<p>Services by way of reinsurance of the insurance schemes specified in entries 35 or 36 or 40.</p> <p>[Entry No. 36A of NN 12/2017 CT (R), inserted by NN 02/2018 - CT (R), dated 25.01.2018], [as amended by NN 14/2018 CT(R), w.e.f. 27.07.2018]</p>
<p>5.</p>	<p>Services by way of collection of contribution under the Atal Pension Yojana.</p> <p>[Entry No. 37 of NN. 12/2017 CT (R)]</p>
<p>6.</p>	<p>Services by way of collection of contribution under any pension scheme of the State Governments.</p> <p>[Entry No. 38 of NN. 12/2017 CT (R)]</p>
<p>7.</p>	<p>Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013.</p> <p>[Entry No. 28 of NN. 12/2017 CT (R)]</p>
<p>8.</p>	<p>Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force</p>

	Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government. [Entry No. 29 of NN. 12/2017 CT (R)]
9.	Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government. [Entry No. 29A of NN 12/2017 CT (R), inserted by NN 02/2018 – CT (R), dated 25.01.2018]
10. (A)	<i>Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.</i> [Entry No. 29B of NN 12/2017 CT (R), inserted by NN 21/2019 – CT (R), w.e.f. 01.10.2019]
11.	Services by the Employees' State Insurance Corporation [ESIC] to persons governed under the Employees' State Insurance Act, 1948. [Entry No. 30 of NN. 12/2017 CT (R)]
12.	Services provided by the Insurance Regulatory and Development Authority [IRDA] of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999. [Entry No. 32 of NN. 12/2017 CT (R)]
13.	Services by the business facilitator or a business correspondent to an insurance company in a rural area. [Entry No. 39(c) of NN. 12/2017 CT (R)]

	Miscellaneous Services
1.	<p>Services by way of transfer of a going concern, as a whole or an independent part thereof. [Entry No. 2 of NN. 12/2017 CT (R)]</p> <p>Analysis :</p> <p>(i) Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business. Such sale of business as a whole is not only a transfer of goods or immovable property, but it comprises a comprehensive sale of immovable property, goods, transfer of unexecuted orders, employees, goodwill, etc.</p> <p>(ii) Since, the transfer of a going concern is not merely a transfer of title in either the immovable property or goods, therefore, it may amount to service. Hence, to provide exemption to such transactions, this exemption is provided for.</p>
2.	<p>Services provided by-</p> <p>(a) an arbitral tribunal to -</p> <p>(i) any person other than a business entity; or</p> <p>(ii) a business entity with an aggregate turnover up to Rs. 20 lakh (Rs. 10 lakh in the case of Special Category States) in the preceding financial year <i>such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017 [as amended by NN 21/2019 – CT (R), w.e.f. 01.10.2019].;</i> or</p> <p>(iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;</p> <p>(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to -</p> <p>(i) an advocate or partnership firm of advocates providing legal services;</p> <p>(ii) any person other than a business entity; or</p> <p>(iii) a business entity with an aggregate turnover up to Rs. 20 lakh (Rs. 10 lakh in the case of Special Category States) in the preceding financial year <i>such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017 [as amended by NN</i></p>

21/2019 - CT (R), w.e.f. 01.10.2019].; or

- (iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;
- (c) a senior advocate by way of legal services to -
- (i) any person other than a business entity; or
- (ii) a business entity with an aggregate turnover up to Rs. 20 lakh (Rs. 10 lakh in the case of Special Category States) in the preceding financial year *such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017 [as amended by NN 21/2019 - CT (R), w.e.f. 01.10.2019].;* or
- (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.

[Entry No. 45 of NN. 12/2017 CT (R)] [sub-item (iii) of item (a), sub-item (iv) of item (b) and sub-item (iii) of item (c), inserted by NN 02/2018 - CT (R), dated 25.01.2018]

Analysis :

- (1) As per clause (b) under this notification, '**Advocate**' has the same meaning as assigned to it in clause (a) of subsection (1) of section 2 of the Advocates Act, 1961.
- (2) As per Sec. 2(1)(a) of the Advocates Act, 1961, **Advocate** means an advocate entered in any roll under the provisions of the Advocates Act, 1961.
- (3) As per clause (i) under this notification, '**Arbitral tribunal**' has the same meaning as assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996.
- (4) As per Sec. 2(d) of the Arbitration and Conciliation Act, 1996, **Arbitral tribunal** means a sole arbitrator or a panel of arbitrators.
- (5) As per clause (zzc) under this notification, '**Senior advocate**' has the same meaning as assigned to it in section 16 of the Advocates Act, 1961.
- (6) As per sec. 16 of the Advocates Act, 1961, an advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction. Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.
- (7) As per clause (zl) under this notification, '**Legal service**' means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.
- (8) Services provided by an arbitral tribunal and legal services provided by partnership firms of advocates or an individual as an advocate are taxable only if such services are provided to business entities with an aggregate turnover exceeding such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017. However, in respect of these services provided by such service providers to such business entities, GST is required to be paid on reverse charge basis by such business entities.
Therefore, in any case, arbitral tribunal or partnership firm of advocates or an individual as an advocate is not required to get itself registered under GST.
- (9) Further, legal services provided by partnership firms of advocates or an individual as an advocate (except senior advocate) to another advocate or partnership firm of advocates providing legal services are exempt from GST irrespective of the aggregate turnover of the recipient advocate or partnership firm of advocates during preceding financial year.
- (10) But, legal services provided by senior advocate to another advocate or partnership firm of advocates providing legal services are not separately exempt from GST. Therefore, legal services provided by senior advocate to another advocate or partnership firm of advocates providing legal services with an aggregate turnover exceeding such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017 are taxable under GST.
- (11) Further, any service provided by an arbitral tribunal, or any legal service provided by any individual

4.	Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material. [Entry No. 50 of NN. 12/2017 CT (R)]
5.	Services by an organiser to any person in respect of a business exhibition held outside India . [Entry No. 52 of NN. 12/2017 CT (R)] Analysis : (i) The organiser is a person who arranges for holding of the exhibition and carries out various activities like booking of area of land for holding exhibition, approaching various prospective participants for selling the stall to be established at exhibition, advertising for holding of exhibition, etc. (ii) The amount received will be the amount charged by the organiser for allotting the stall or space in the exhibition centre to the participants (i.e. business exhibitors), which is a taxable service. (iii) But, if such amount is received for holding business exhibition outside India, then, it will be exempt from GST under this entry. (iv) The exemption is available to the organiser even if the amount is received in Indian currency, as this clause does not provide that amount must be received by organiser in foreign currency. (v) The participants of business exhibition may be from India or outside India.
6.	Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of Goods and Services Tax; or (c) up to an amount of Rs. 5,000 Rs. 7,500 [Rs. 5,000 is substituted by Rs. 7,500 by NN 02/2018 CT (R), dated 25.01.2018] per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex. [Entry No. 77 of NN. 12/2017 CT (R)] Analysis: (i) Since, AOP/BOI and its members are two different persons. Therefore, membership fees (i.e. reimbursement of charges or share of contribution) of any club (AOP/BOI) are chargeable to GST. However, this entry covers few cases where GST would be exempt on such membership fees (i.e. reimbursement of charges or share of contribution). (ii) Membership fee (i.e. reimbursement of charges or share of contribution) charged from members of any AOP/BOI for carrying out an activity which is already exempt from GST, is also exempt from the levy of GST (e.g. holding camps to provide health care services which are exempt from GST). But, if contribution is for carrying out an activity which is taxable, then, GST would be required to be paid on such membership fees also. (iii) Service of Resident Welfare Association (RWA) to its own members upto an amount of Rs. 7,500/- per member per month by way of reimbursement of charges or share of contribution is exempt from GST. But, if the membership fees is more than Rs. 7,500/- (say, Rs. 8,000/-), then, GST would be charged on entire membership fees (i.e. Rs. 8,000/-). (iv) Where any club (AOP/BOI) is working just as a pure agent of its members for sourcing of goods or services from a third person, then, the amount collected by such club (AOP/BOI) from its members will be excluded from the value of taxable service in terms of Rule 33 of CGST Rules, 2017, subject to compliance with the specified conditions.

A

Issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members [Circular No. 109/28/2019 - GST, dated 22.07.2019]

Sl. No.	Issue	Clarification

A

1.	Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?	Supply of service by RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST. Prior to 25th January 2018, the exemption was available if the charges or share of contribution did not exceed Rs 5000/- per month per member. The limit was increased to Rs. 7500/- per month per member with effect from 25th January 2018. [Refer clause (c) of Sl. No. 77 to the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 as amended vide notification No. 2/2018- Central Tax (Rate), dated 25.01.2018]													
2.	A RWA has aggregate turnover of Rs.20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?	<p>No. If aggregate turnover of an RWA does not exceed Rs.20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7500/- per month per member.</p> <p>RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more.</p> <table border="1"> <thead> <tr> <th>Annual turnover of RWA</th><th>Monthly maintenance charge</th><th>Whether exempt?</th></tr> </thead> <tbody> <tr> <td rowspan="2">More than Rs. 20 lakhs</td><td>More than Rs. 20 lakhs</td><td>No</td></tr> <tr> <td>Rs. 7500/- or less</td><td>Yes</td></tr> <tr> <td rowspan="2">Rs. 20 lakhs or less</td><td>More than Rs. 7500/-</td><td>Yes</td></tr> <tr> <td>Rs. 7500/- or less</td><td>Yes</td></tr> </tbody> </table>	Annual turnover of RWA	Monthly maintenance charge	Whether exempt?	More than Rs. 20 lakhs	More than Rs. 20 lakhs	No	Rs. 7500/- or less	Yes	Rs. 20 lakhs or less	More than Rs. 7500/-	Yes	Rs. 7500/- or less	Yes
Annual turnover of RWA	Monthly maintenance charge	Whether exempt?													
More than Rs. 20 lakhs	More than Rs. 20 lakhs	No													
	Rs. 7500/- or less	Yes													
Rs. 20 lakhs or less	More than Rs. 7500/-	Yes													
	Rs. 7500/- or less	Yes													
3.	Is the RWA entitled to take input tax credit of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500/- per month per member?	RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.													



4.	Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of Rs. 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?	<p>As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of Rs. 7500/- per month per member shall be applied separately for each residential apartment owned by him.</p> <p>For example, if a person owns two residential apartments in a residential complex and pays Rs. 15000/- per month as maintenance charges towards maintenance of each apartment to the RWA (Rs. 7500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.</p>						
5.	How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member? Is the GST payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges?	<p>The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/-.</p>						
7.	<p>Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,-</p> <p>(i) activities relating to the welfare of industrial or agricultural labour or farmers; or</p> <p>(ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of one thousand rupees (Rs 1000/-) per member per year.</p> <p>[Entry no. 77A of NN 12/2017 CT(R), inserted by NN 14/2018 CT(R) w.e.f. 27.07.2018]</p>							
<p><u>Illustration 32 : Services Provided by Unincorporated Association</u></p> <p>Compute value of taxable services from the following receipts (exclusive of GST) of an unincorporated association for the financial year 2018-19 :</p> <p>1. Collections from members for medical camp Rs. 12 lakhs.</p> <p>2. Collections from 100 members @ Rs. 8,000 per month per members for maintenance of residential complex.</p> <p>3. Collections from 80 members @ Rs. 7,500 per month per members in a commercial complex for maintenance of commercial complex.</p> <p><u>Answer :</u></p> <p>[Refer Entry No. 77 of NN. 12/2017 CT (R)]</p>								
<table><tr><th>Sr. No.</th><th>Particulars</th><th>Amount in Rs.</th></tr><tr><td>1</td><td>Collection from members for medical camp (since medical services are exempt, hence medical camp by such association is also exempt)</td><td>Exempt</td></tr></table>			Sr. No.	Particulars	Amount in Rs.	1	Collection from members for medical camp (since medical services are exempt, hence medical camp by such association is also exempt)	Exempt
Sr. No.	Particulars	Amount in Rs.						
1	Collection from members for medical camp (since medical services are exempt, hence medical camp by such association is also exempt)	Exempt						

	<p>(ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or</p> <p>(iii) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or</p> <p>(iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.</p> <p>[Entry No. 39A of NN 12/2017 CT (R), inserted by NN 02/2018 - CT (R), dated 25.01.2018]</p>
11.	<p>Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons in accordance with Explanation 1 in section 8 of the IGST Act, 2017.</p> <p>Provided the place of supply of the service is outside India in accordance with section 13 of IGST Act, 2017. [Entry No. 10F of NN. 09/2017 - IT (R), inserted by NN 15/2018 - IT (R), w.e.f. 27.07.2018]</p>
12.	<p>Import of services by United Nations or a specified international organisation for official use of the United Nations or the specified international organisation.</p> <p>Explanation. - For the purposes of this entry, unless the context otherwise requires, "specified international organisation" means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply.</p> <p>[Entry No. 10G of NN. 09/2017 - IT (R), inserted by NN 15/2018 - IT (R), w.e.f. 27.07.2018]</p>
13.	<p>Import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein.</p> <p>Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein shall be entitled to exemption from integrated tax leviable on the import of services subject to the conditions, -</p> <p>(i) that the foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein, are entitled to exemption from integrated tax, as stipulated in the certificate issued by the Protocol Division of the Ministry of External Affairs, based on the principle of reciprocity;</p> <p>(ii) that the services imported are for official purpose of the said foreign diplomatic mission or consular post or for personal use of the said diplomatic agent or career consular officer or members of his or her family;</p> <p>(iii) that in case the Protocol Division of the Ministry of External Affairs, after having issued a certificate to any foreign diplomatic mission or consular post in India, decides to withdraw the same subsequently, it shall communicate the withdrawal of such certificate to the foreign diplomatic mission or consular post;</p> <p>(iv) that the exemption from the whole of the integrated tax granted to the foreign diplomatic mission or consular post in India for official purpose or for the personal use or use of their family members shall not be available from the date of withdrawal of such certificate.</p> <p>[Entry No. 10H of NN. 09/2017 - IT (R), inserted by NN 15/2018 - IT (R), w.e.f. 27.07.2018]</p>
14.	<p>(A) <i>Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory.</i></p> <p><i>However, to avail this exemption, following documents shall be maintained for a minimum duration of 5 years:</i></p> <p>(i) <i>Copy of Bill of Lading</i></p> <p>(ii) <i>Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods</i></p> <p>(iii) <i>Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in non-taxable territory</i></p> <p>(iv) <i>Copy of certificate of origin issued by service recipient located in non-taxable territory</i></p> <p>(v) <i>Declaration letter from an intermediary service provider in taxable territory on company letter</i></p>