

# LEVY OF GST

## CHAPTER 01

### 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 <b>Maximum rate of CGST can be 20%</b>	IGST rate= CGST rate + SGST rate <b>Maximum rate of IGST can be 40%</b>
Collected and paid by	Taxable person [ <b>"Taxable Person"</b> 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"> <li>➤ petroleum crude</li> <li>➤ high speed diesel</li> <li>➤ motor spirit (commonly known as petrol)</li> <li>➤ natural gas and</li> <li>➤ aviation turbine fuel</li> </ul> <div data-bbox="1101 808 1485 1050" style="border: 1px solid red; padding: 5px; text-align: center;"> <b>GHUM LO OR JHUM LO...</b>   </div>	
Tax payable under reverse charge mechanism (RCM) by recipient of supply	<ul style="list-style-type: none"> <li>➤ Supply of goods or services or both, notified by the Government. [Sec. 9(3)/5(3)]</li> <li>➤ 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)]</li> <li>➤ All the provisions of the act shall apply to such recipient as if he is the person liable for paying the tax.</li> </ul>	
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 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)	Supply includes (सिर्फ "तुम ही हो" नहीं... "तुम भी हो"...)-	
(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;	
(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;	
(b)	importation of services, for a consideration whether or not in the course or furtherance	

	of business and
(c)	the activities specified in <b>Schedule I</b> , made or agreed to be made <b>without a consideration</b> .
(1A)	where certain activities or transactions constitute a supply in accordance with the provisions of sub section (1), they shall be treated <b>either as supply of goods or supply of services</b> as referred to in <b>Schedule II</b> .
(2)	Notwithstanding anything contained in sub-section (1),
(a)	activities or transactions specified in <b>Schedule III</b> ; or
(b)	such activities or transactions <b>undertaken by</b> the Central <b>Government</b> , a State Government or any local authority in which they are engaged as public authorities, as may be <b>notified</b> by the Government on the recommendations of the Council
	shall be treated <b>neither as a supply of goods nor a supply of services</b> .
(3)	Subject to sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as –
(a)	a supply of goods and not as a supply of services; or
(b)	a supply of services and not as a supply of goods.

### 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 supply of goods or supply of services [Section 7(1A)+ Schedule II]	Negative list of services [Section 7(2) + Schedule III]
2	Activities or transactions, by AOP/BOI/Club etc. to its members or constituents or vice-versa [Section 7(1)(aa)]		
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

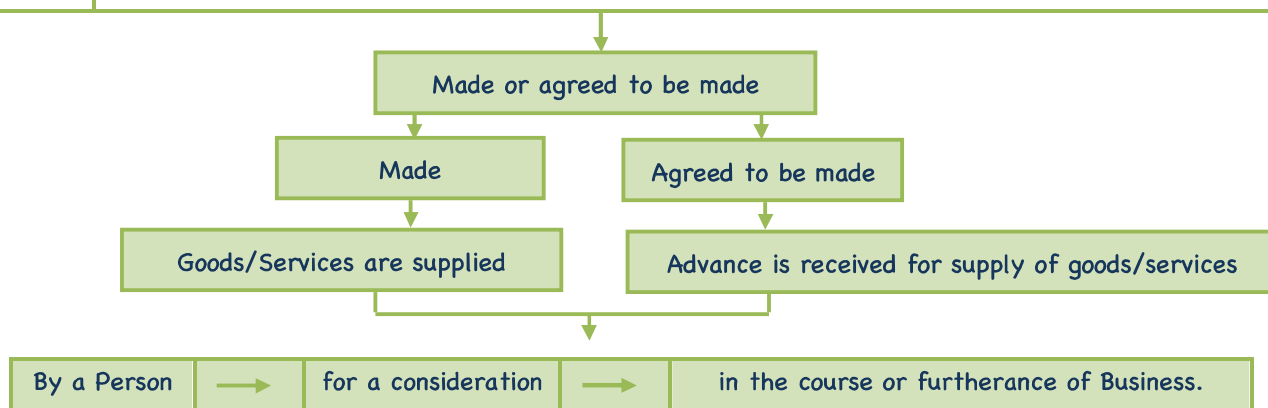
#### ANALYSIS OF SEC. 7(1)(a)

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




<b>Sale</b>	A laptop dealer sells laptop to XYZ
<b>Transfer</b>	A branch transfers goods to another branch
<b>Barter</b>	Mr. XYZ exchanges his laptop with Mr. PQR's camera without cash exchange between the two parties



<b>Exchange</b>	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]
<b>License</b>	A developer (license holder) of information technology software gives license to use the software to his various clients
<b>Rental</b>	Bike is given on rent
<b>Lease</b>	A machinery is given on finance lease or operating lease
<b>Disposal</b>	Sale of Old machineries after expiry of its useful life



- Following are the essential ingredients for any transaction to be considered as "Supply" as per Sec. 7(1)(a):
  - Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.
  - Supply should be made for a consideration.
  - Supply should be made in the course or furtherance of business.
- 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)]
<b>Means</b>	Every kind of movable property 	Anything other than goods 
<b>Excludes</b>	Money and securities 	
<b>Includes</b>	(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	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

	a contract of supply.	charged.
		(iii) facilitating or arranging transactions in securities

**Note :** Money shall not include any currency that is held for its numismatic value.

### 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 means money. It covers anything which may be in money or may be in kind.
- (iii) 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)].
- (iv) There should be a direct link between supply and consideration, and not only any casual link.
- (v) Donations to a charitable organization are not consideration unless charity is obligated to provided 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.
- (vi) 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]

If the recipient 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. Otherwise, donation will not be chargeable to GST, as it is not a consideration.

पुण्य का काम पुण्य के लिए किया तो NO GST

पुण्य का काम Publicity के लिए किया तो GST लगेगा

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

- (i) Only those supplies that are in the course or furtherance of business qualify as supply under GST.

**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.

- (ii) Any activity undertaken in the 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]

Supply of goods or services or both by any person [including 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 AOP/BOI to the AOP/BOI or to other members of the AOP/BOI.

**Example:** 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.

### 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]

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]

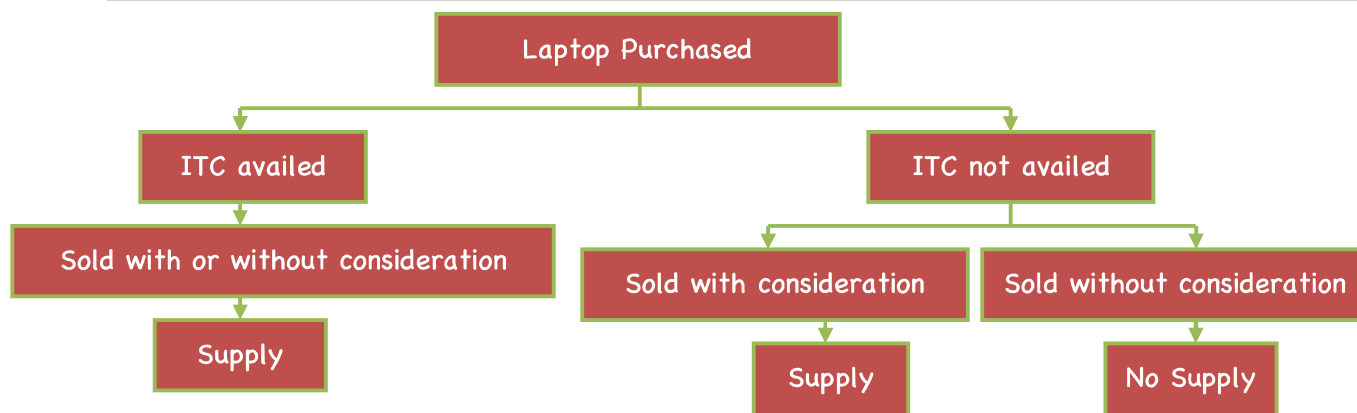
**Example :** Mr. Pankaj, has subscribed online videos (TV Shows, Movies, Webseries etc.) for entertainment of his family from www.netflix.com [an Online Information and Database access or retrieval (OIDAR) service supplier from outside India] at an agreed consideration of \$ 100. The import of services 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]

**PARA 1 - Permanent Transfer / Disposal of Business Assets :** Any kind of disposal or transfer of business assets made by an entity on basis even though without consideration qualifies as supply, if Input Tax Credit (ITC) was 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 or distinct 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 :**

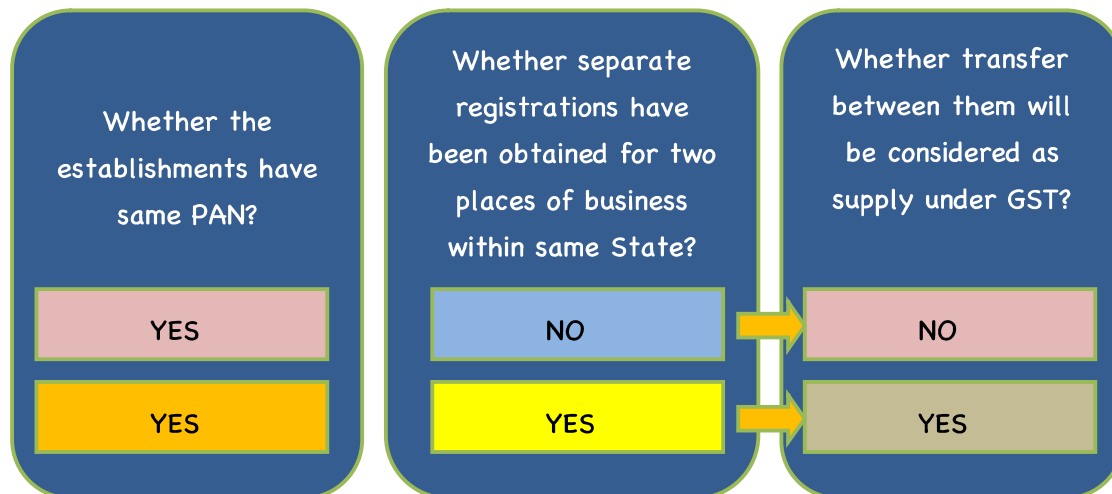
- the spouse and children of the person, and
- the parents, grandparents, brothers and sisters of the person if they are wholly or mainly dependent on the said person. **[ATTENTION : ये लोग Dependent होंगे तो ही Related होंगे]**

(d) **Gifts by employer to employee:** 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 means** different GST registration numbers on same PAN.



(f) **Stock transfers or branch transfers:** Transactions between Distinct Persons (e.g., stock transfers or branch transfers) will qualify as 'supply' under GST.



### 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 (ITC) of GST paid on purchase of aircraft engines, parts & accessories will be available to the transferor. [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.

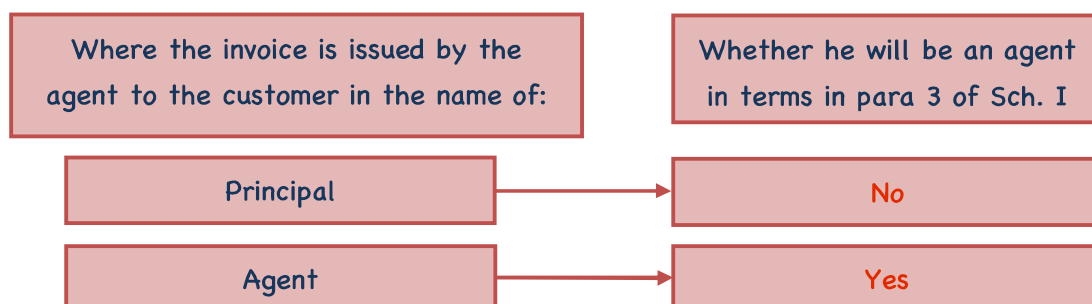
However, applicable GST shall be leviable on repairs and maintenance done by distinct person for such conveyance. [Circular]

3. 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 to the customer is being issued by the agent in his own name, then, any removal of goods from the principal to the agent would fall within the scope of term "Supply".

However, where the invoice is issued by the agent to the customer in the name of the principal, then, any removal of goods from the principal to the agent would not fall within the scope of term "Supply" [Circular].



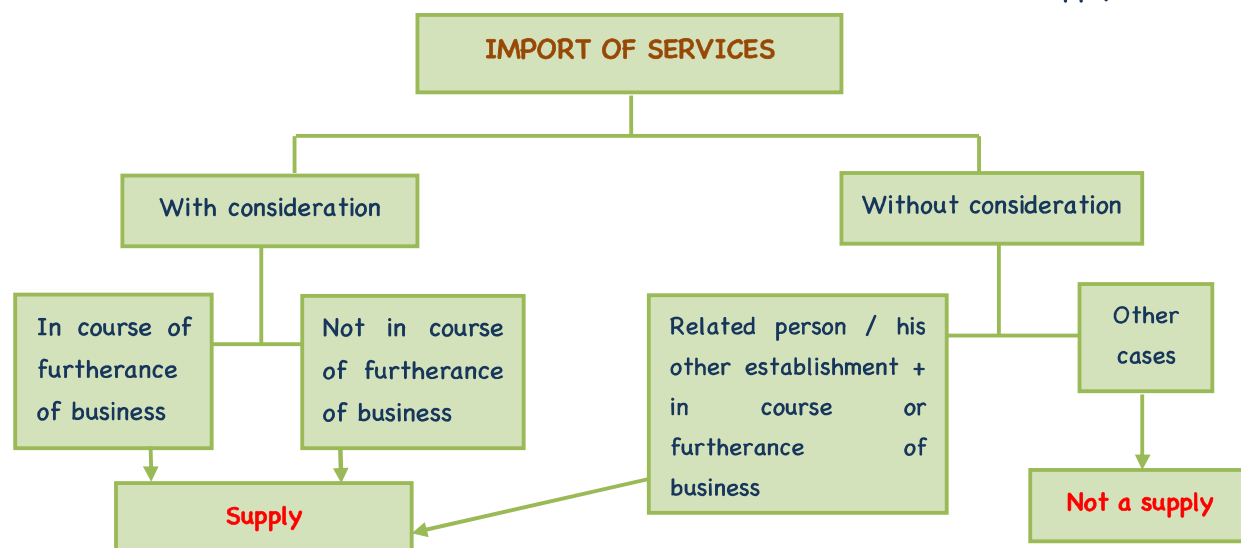
- Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent, then, further removal of the said goods by agent to the principal would fall within the scope of term "Supply" [Circular].
- On the same lines, if the transactions between principal 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 [Circular].

**Example :** Mr. Handsome, Del-Creder 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".



Analysis of Section 7(1A) read with schedule II [Activities or Transactions to be treated as supply of goods or Supply of Services] [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	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.	Supply of Services
3	Treatment or Process	Applied to another person's goods. [Example: "Job Work"]	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.	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.	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 furtherance of his business, immediately before he ceases to be a taxable person.  <b>Exceptions:</b> <ul style="list-style-type: none"> <li>• Business is transferred as a going concern to another person.</li> <li>• Business is carried on by a personal representative who is deemed to be a taxable person.</li> </ul>	Supply of Goods
5	(a) Renting of immovable property		Supply of Services
	(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		Supply of Services

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.

The term construction includes additions, alterations, replacements, or remodelling of any existing civil structure.

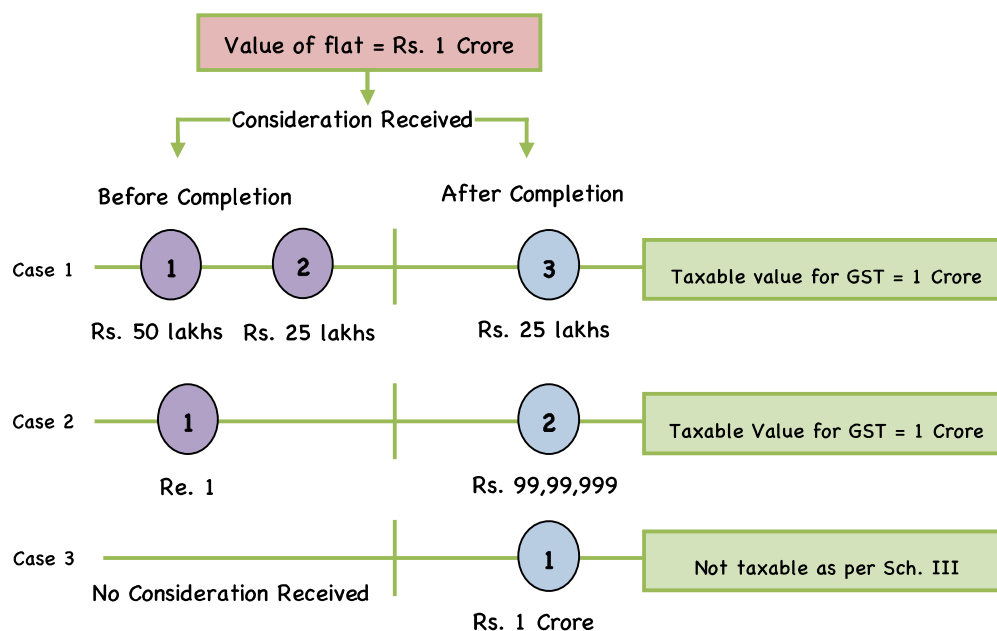
The expression competent authority means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:

- (i) an architect; or
- (ii) a chartered engineer; or
- (iii) a licensed surveyor.

#### 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) [Example : Copyright]

Supply of Services

(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of Information Technology

Supply of Services

	<b>Software.</b> [Example : Customised software]	
	(e) <b>Agreeing to obligation</b> to refrain from an act, or to tolerate an act or situation, or to do an act. [Example : Non-Compete Agreements]	Supply of Services
	(f) Transfer of <b>right to use any goods</b> for any purpose [Example : Finance Lease]	Supply of Services
6	<b>Following composite supplies :</b> (a) <b>Works contract</b> <b>Analysis:</b> (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". (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".	Supply of Services
	(b) <b>Restaurant and Outdoor Catering Services</b>	Supply of Services

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

1. 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.
2. Hence, the activity of transfer of 'tenancy rights' is covered under the scope of supply and is taxable under GST.
3. 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 exempt.
4. 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.

#### 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.

#### Analysis of Section 7(2)

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

### Schedule III

Sl.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services					
1.	<p><b>Services by an employee</b> to the employer in the course of or <b>in relation to his employment</b>.</p> <p><b>Analysis:</b></p> <p>(i) <b>[Circular]</b> Director’s remuneration which are declared as <b>“Salaries”</b> in the books of a company and subjected to TDS u/s 192 of the Income Tax Act, are not taxable under GST (being services provided in the capacity of an employee) <b>(Example : whole time director)</b>.</p> <p>Further, the Director’s remuneration which is declared as 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 <b>professional or Technical services</b> (not in the capacity of an employee) and is therefore, taxable under GST. 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 <b>(Example : independent director)</b>.</p> <p>(ii) <b>[Circular]</b> <b>Perquisites</b> provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will <b>not be subjected to GST</b> when the same are provided in terms of the contract between the employer and employee.</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 <b>Court or Tribunal</b> established under any law for the time being in force.</p> <p><b>Explanation :</b> The term “Court” includes District Court, High Court and Supreme Court.</p> <p><b>[Circular]</b> Having regard to the functioning &amp; characteristics of the Consumer Disputes Redressal Commissions, it is hereby clarified that the fee paid by litigants are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.</p>					
3.	<p>(a) Functions performed by the <b>Members of Parliament</b>, 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 <b>any post</b> in pursuance of the provisions of the <b>Constitution</b> in that capacity; or</p> <p>(c) Duties performed by any person as a <b>Chairperson or a Member</b> or a Director in a body established by the <b>Central Government or a State Government or local authority</b> and who is not deemed as an employee before the commencement of this clause.</p>					
4.	<p>Services of <b>funeral</b>, burial, crematorium or mortuary including transportation of the deceased.</p> <div>जाने वाले से कौन GST ले सकता है...</div>					
5.	<p><b>Sale of land</b> and, subject to paragraph 5(b) of Schedule II, sale of <b>building</b>.</p> <table><tr><td>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</td><td>Treated as supply of service under para 5(b)</td></tr></table>		Rental, leasing, licensing of land and building	Treated as supply of service [GST is applicable]	Sale of flats, etc. in a building before	Treated as supply of service under para 5(b)
Rental, leasing, licensing of land and building	Treated as supply of service [GST is applicable]					
Sale of flats, etc. in a building before	Treated as supply of service under para 5(b)					

	completion certificate or 1 <sup>st</sup> occupancy, whichever is earlier	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]
	<p><b>[Circular]</b> 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 accordingly does not attract GST.</p> <p>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.</p>	
6.	<p><b>Actionable claims, other than specified actionable claims.</b></p> <p>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%.</p> <div style="text-align: right; border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> <b>जुआ खेलोगे तो GST देना पड़ेगा...</b> 🙄         </div> <p><b>Illustration :</b> 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 ?</p> <p><b>Solution :</b> 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.</p>	
7.	Supply of goods from a place in the <b>non-taxable territory</b> to another place in the <b>non-taxable territory</b> without such goods entering into India.	
8(a).	Supply of <b>warehoused goods</b> (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 <b>endorsement of documents</b> of title to the goods, after the goods have been dispatched from the port of origin located outside India but <b>before clearance for home consumption</b> .	

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

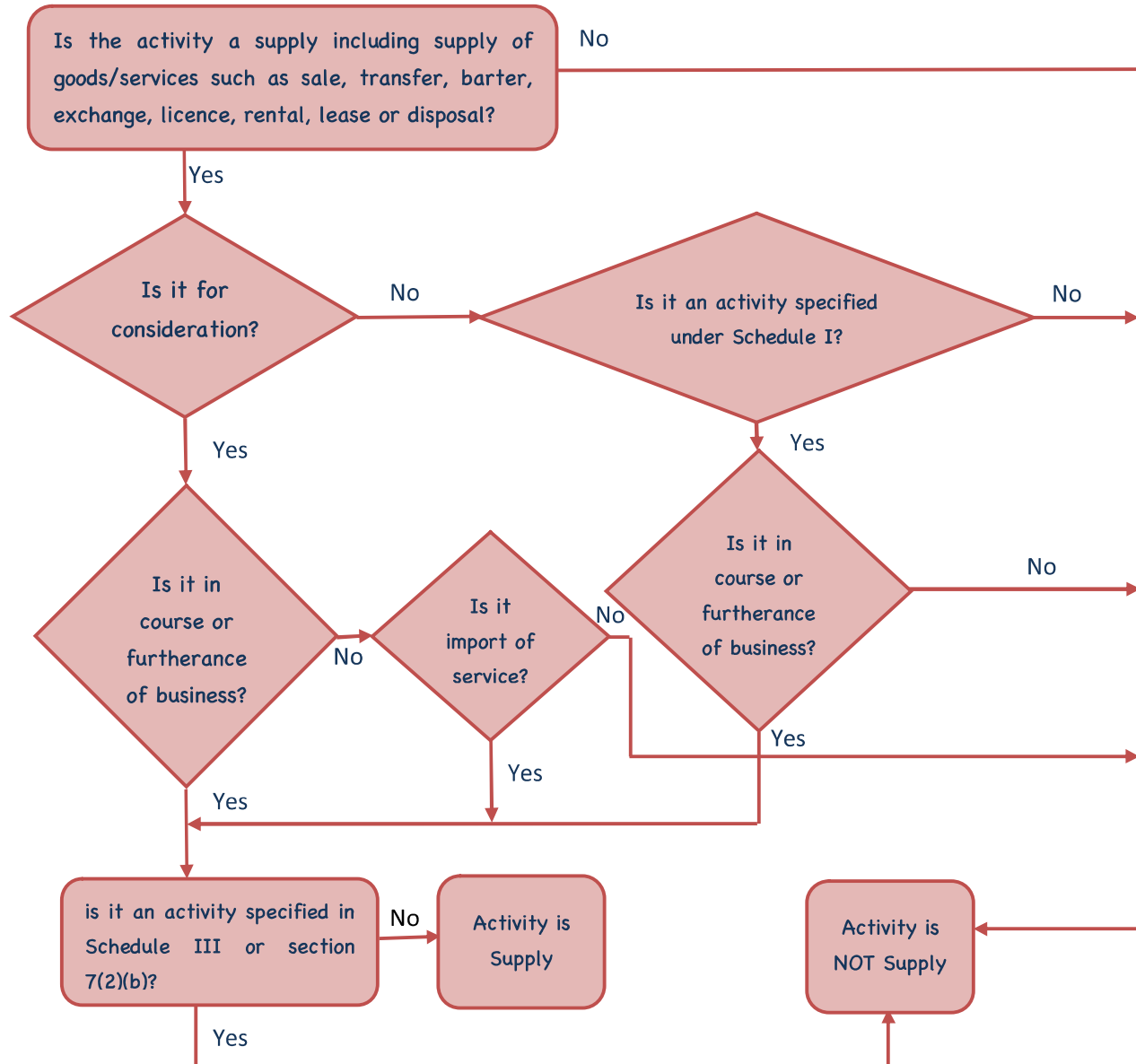
Following activities have been notified which shall be treated neither as supply of goods nor supply of services:

- (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.

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

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





## Composite And Mixed Supplies [Section 8]

Sec. 8	Tax liability on Composite and Mixed Supplies	
	The tax liability on a composite or a mixed supply shall be determined in the following manner, namely :	
(a)	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>Composite Supply</p> <p>Rate of Principal supply will be applicable</p>
(b)	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>Mixed Supply</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.
- 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 :** 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.
- 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.

### Analysis of Mixed Supplies

- Mixed supply means:
  - two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person;
  - for a **single price** where such supply does not constitute a composite supply.
- The individual supplies are independent of each other and are not naturally bundled.
- 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.

#### Clarification regarding Transportation services provided by GTA

If any intermediary and ancillary services (like loading/unloading, packing/unpacking, transshipment, temporary warehousing, etc.) are provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the Goods Transport Agency (GTA), then, such services 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]

- Retreading of tyres (in which Rubber is also used in the process) is a composite supply, in which the pre-dominant element is the process of retreading which is a supply of service.
- 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]

Printing Contracts 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]

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]**

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.**



## CHAPTER

## 02

## TIME OF SUPPLY



## Time of supply of goods where tax is payable under forward charge

## Time of supply of goods [Section 12(2)]

- ➡ Date of issue of invoice (date of actual issue or last date when it should be issued u/s 31); or Date of receipt of payment (to the extent payment is received), whichever is earlier.

**No GST on advances received for supply of goods:** The registered person who did not opt for the composition levy u/s 10, has been notified as the class of persons who shall pay GST on the outward supply of goods on the date of issue of invoice or last date when it should be issued u/s 31, irrespective of the actual receipt of payment in respect of such supply.

**[In Simple Words, Forward Charge में Goods के Case में TOS निकालते Time सिर्फ Date of invoice ही देखना है]**

- ➡ However, in respect of supply of "specified actionable claims", time of supply shall be earlier of Date of issue of invoice (date of actual issue or last date when it should be issued u/s 31) or Date of receipt of payment (to the extent payment is received), whichever is earlier. In nut shell, GST will be required to be paid on advances received in respect of supply of "specified actionable claims".

## Time of supply of services [Section 13(2)]

- (a) Invoice issued within the time period prescribed u/s 31

**Earlier of the following:**

- ➡ Date of issue of invoice by the supplier
- ➡ Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier)

- (b) Invoice not issued within the time period prescribed u/s 31

**Earlier of the following:**

- ➡ Date of provision of service
- ➡ Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier)

- (c) When the above events are unascertainable

Date on which the recipient shows the receipt of services in his books of account.

**Note:** If Advance payment received is upto Rs. 1,000, the supplier can choose to take date of invoice issued with respect to such excess amount as the time of supply of services of such excess value.

## Time limit for issue of invoices [Sec. 31]

Supply of goods

Supply of services

**Before or at the time of,-**

(a) **removal of goods** for supply to the recipient, where the supply involves movement of goods, or

(b) **delivery of goods or making available thereof to the recipient**, in any other case

➡ In case of continuous supply of goods, the invoice should be issued before or at the time of issuance of periodical statement or receipt of periodical payment.

➡ "Continuous supply of goods" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis.

➡ In case of goods sent or taken on approval for sale or return, invoice should be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier.

➡ **Before or after the provision of service** but within 30 days [45 days in case of insurance companies/banking and financial institutions including NBFCs] from the date of supply of services

➡ In case of cessation of supply of services before completion of supply, the invoice (to the extent of supply made before such cessation) should be issued at the time when the supply ceases.

➡ In case of continuous supply of services, the invoice should be issued either (i) on/ before the due date of payment or (ii) before/ at the time when the supplier of service receives the payment (iii) on/ before the date of completion of the event when the payment is linked to completion of an event.

➡ "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.

➡ In case of insurance companies/ banking companies/ financial institutions including NBFCs/ telecom companies/ notified supplier of services making taxable supplies between distinct persons as specified in section 25 (like inter-branch transaction), invoice may be issued before or at the time of recording such supply in the books of account or before the expiry of the quarter during which the supply was made.

**Time of supply where tax is payable under Reverse Charge****Time of supply of goods [Section 12(3)]****Earliest of the following:**

➡ Date of **receipt of goods**, or

➡ Date of **payment** as entered in the books of account of the recipient or the date on which the payment is debited from his bank account, whichever is earlier, or

➡ **31<sup>st</sup> day from the date of issue of invoice by**

**Time of supply of services [Section 13(3)]****Earlier of the following:**

➡ Date of **payment** as entered in the books of account of the recipient or the date on which the payment is debited from his bank account, whichever is earlier, or

➡ **61<sup>st</sup> day from the date of issue of invoice by the supplier**



the supplier	
Where the above parameters are not ascertainable, the time of supply shall be the date of entry in the books of account of the recipient of supply	
-	<u>Import of service from associated enterprise</u> Date of entry in the books of account of the recipient or the date of payment, whichever is earlier

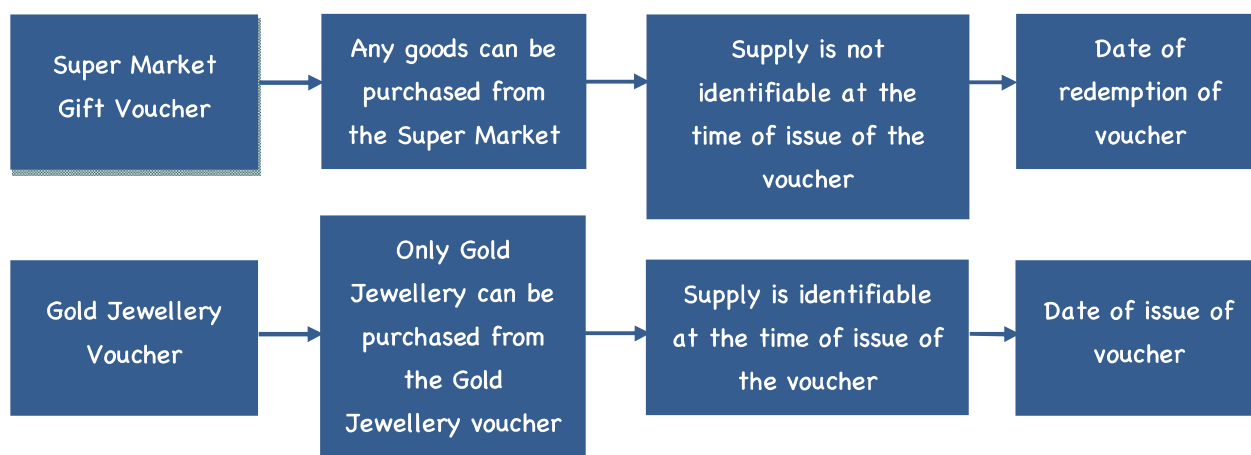
### Time of supply of vouchers exchangeable for goods and services [Sections 12(4) and 13(4)]

(a) Supply of goods or services is identifiable at the time of issue of voucher

➡ Date of issue of the voucher

(b) Other cases

➡ Date of redemption of the voucher



### Time of supply of goods and services in residual cases [Sections 12(5) and 13(5)]

If the Situation is not covered by any of the provisions discussed above, the time of supply shall be determined in the following manner :

(a) Where a periodical return is required to be filed :- Due date of filing such return

(b) Other cases :- Date of payment of tax

**Time of supply for addition in value by way of interest/ late fee/penalty for delayed payment of consideration [Section 12(6)/13(6)]**



**Date on which the supplier receives such addition in value**

### Sec. 14 – Change in Rate of Tax in Respect of Supply of Goods or Services

Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:

	Goods / Services Supplied	Invoice Issued	Payment Received	Time of Supply
Before change in Rate of tax	Yes (Before change in rate)	No (After change in rate)	No (After change in rate)	Date of issue of invoice or Receipt of payment, whichever is earlier
	Yes (Before change in rate)	Yes (Before change in rate)	No (After change in rate)	Date of issue of invoice
	Yes (Before change in rate)	No (After change in rate)	Yes (Before change in rate)	Date of payment
	Goods / Services Supplied	Invoice Issued	Payment Received	Time of Supply
After change in Rate of tax	Yes (After change in rate)	No (Before change in rate)	No (Before change in rate)	Date of issue of invoice or Receipt of payment, whichever is earlier
	Yes (After change in rate)	Yes (After change in rate)	No (Before change in rate)	Date of issue of invoice
	Yes (After change in rate)	No (Before change in rate)	Yes (After change in rate)	Date of payment

**Date of Payment:** For the purposes of Time of Supply, the "Date of Payment" means the date on which the payment is entered in the books of account or the date on which the payment is credited to the bank account, whichever is earlier.

But, if the credit in the bank account is after 4 working days from the date of change in the rate of tax, then, the date of receipt of payment shall be the date of credit in the bank account.