

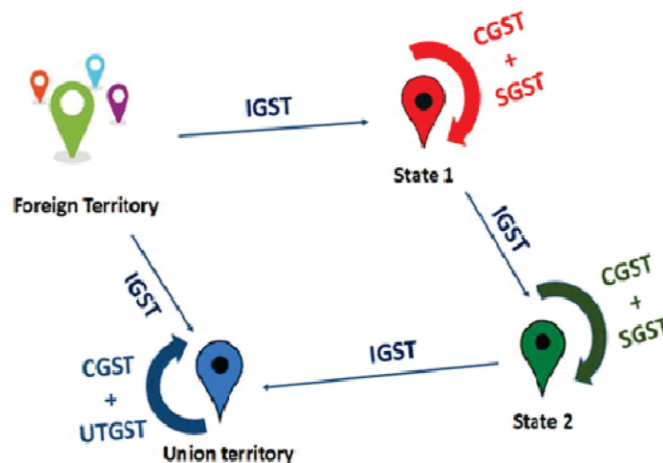
LEVY OF GST

CHAPTER

02

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)] :

“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 under section 15 of the CGST Act	
Rates	Rates as notified by Government Maximum rate of CGST can be 20%	IGST rate= CGST rate + SGST rate Maximum rate of IGST can be 40%
Collected and paid by	Taxable person [As per Sec. 2(107) " taxable person " means a person who is registered or liable to be registered u/s 22 or section 24;]	
Five Supplies on which tax would be levied w.e.f. a notified date [Sec. 9(2)/5(2)] [Which is not yet notified]	<ul style="list-style-type: none"> ➤ petroleum crude ➤ high speed diesel ➤ motor spirit (commonly known as petrol) ➤ natural gas and ➤ aviation turbine fuel 	
Tax payable under RCM by recipient of supply	<ul style="list-style-type: none"> ➤ Supply of goods or services or both, notified by the Government. [Sec. 9(3)/5(3)] ➤ Supply of specified categories of goods or services or both by an unregistered supplier to specified class of registered persons. [Sec. 9(4)/5(4)] ➤ All the provisions of the act shall apply to such recipient as if he is the person liable for paying the tax. 	
Tax payable by the electronic commerce	The Government may notify categories of services, the tax on supplies of which shall be paid by electronic commerce operator (ECO) as if such services are supplied through it and all the provisions of the act shall apply	



operator [Sec. 9(5)/5(5)]	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.
- Further, under GST, "online money gaming" is treated as goods on import of which only IGST is levied but Customs duty is not levied.

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 Schedule I, made or agreed to be made without a consideration.
(1A)	where certain activities or transactions constitute a supply in accordance with the provisions of sub section (1), they shall be treated either as supply of goods or supply of services as

	referred to in Schedule II .
(2)	Notwithstanding anything contained in sub-section (1),
(a)	activities or transactions specified in Schedule III ; or
(b)	such activities or transactions undertaken by the Central Government , a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council
	shall be treated neither as a supply of goods nor a supply of services .
(3)	Subject to sub-sections (1), (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 a person, other than an individual, 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]		

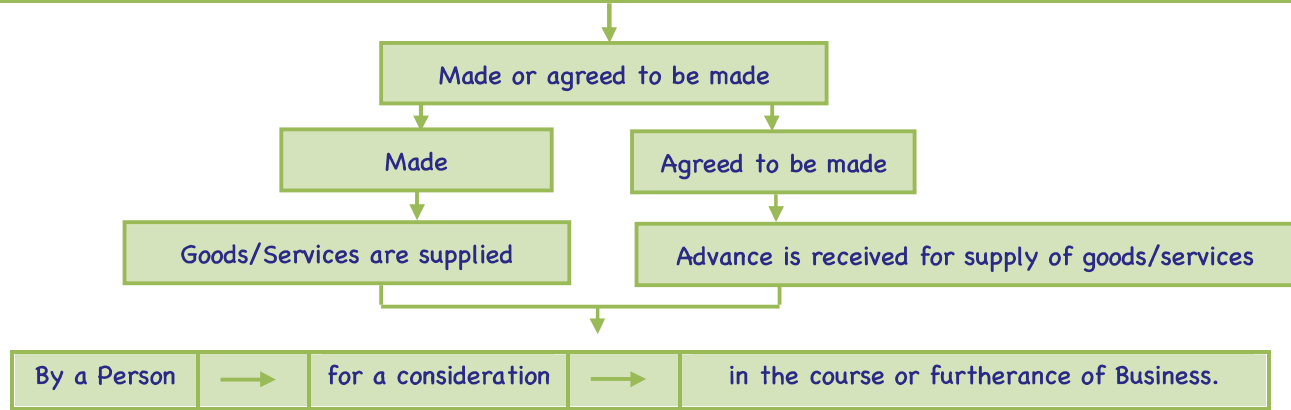
ANALYTICAL DISCUSSIONS

ANALYSIS OF SEC. 7(1)(a)




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

Sale	A laptop dealer sells laptop to XYZ
Transfer	A branch transfers goods to another branch
Barter	Mr. XYZ exchanges his laptop with Mr. PQR's camera without cash exchange between the two parties
Exchange	A laptop dealer sells new laptop for Rs. 40,000 along with an exchange of old laptop [Price of new laptop without exchange is Rs. 50,000]
License	A developer (license holder) of information technology software gives license to use the software to his various clients

Rental	Bike is given on rent
Lease	A machinery is given on finance lease or operating lease
Disposal	Sale of Old machineries after expiry of its useful life



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

- Analysis of the term "Consideration":

- (i) To be taxable, a supply should be carried out by a person for a 'consideration'.
- (ii) Consideration does not always mean money. It covers anything which may be in money or may be in kind.
- (iii) 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) Donations to a charitable organization are not consideration unless charity is obligated to provide something in return e.g. display or advertise the name of donor in a specified manner or such that it gives a desired advantage to the donor.
- (v) 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]

पुण्य का काम पुण्य के लिए किया तो NO GST

पुण्य का काम Publicity के लिए किया तो GST लगेगा

- (vi) Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists [Circular]

Since, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition. Therefore, the same is not a supply. But, if a buyer selects and buys a particular art work, then, the actual supply takes place and GST would be payable.

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 GST. But, if the same jewellery is supplied by jeweller to any buyer, then it will be covered under the term "supply".

- (ii) Any activity undertaken in course/for furtherance of business would constitute a supply. Since, 'business' includes vocation, sale of goods or service even as a vocation (whether or not there is volume, frequency, continuity or regularity of such transactions is a supply under GST.

Analysis of Sec. 7(1)(aa) [Activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa]

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

Examples :

- (i) Membership fee or any other consideration paid by members to unincorporated AOP/BOI (e.g. Friends Club/Club Mahindra/etc.) for availing various services is Supply of Service and will be chargeable to GST.
- (ii) A local club supplies snacks, etc. to its members during its monthly meeting for a nominal payment is supply of goods and will be chargeable to GST.

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

1. Supply of goods or services or both by an unincorporated association or body of persons (AOP/BOI) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods or services or both. Hence, GST will be levied on the same. Similarly, GST will be levied on the supply of goods or services or both by member of an unincorporated joint venture (JV) to the JV or to other members of the JV.
2. Contribution from the members of the Joint venture (JV) is called 'Cash Calls'.
 - (a). 'Cash calls', sometimes, could be in the nature of advance payments made by members towards taxable services received from JV, hence, will be taxable under GST.
 - (b). 'Cash calls', sometimes, could be in the nature of Capital Contributions made by members to raise the funds for JV and would be considered merely 'a transaction in money', hence, will not be taxable under GST, as it is not in the nature of consideration.

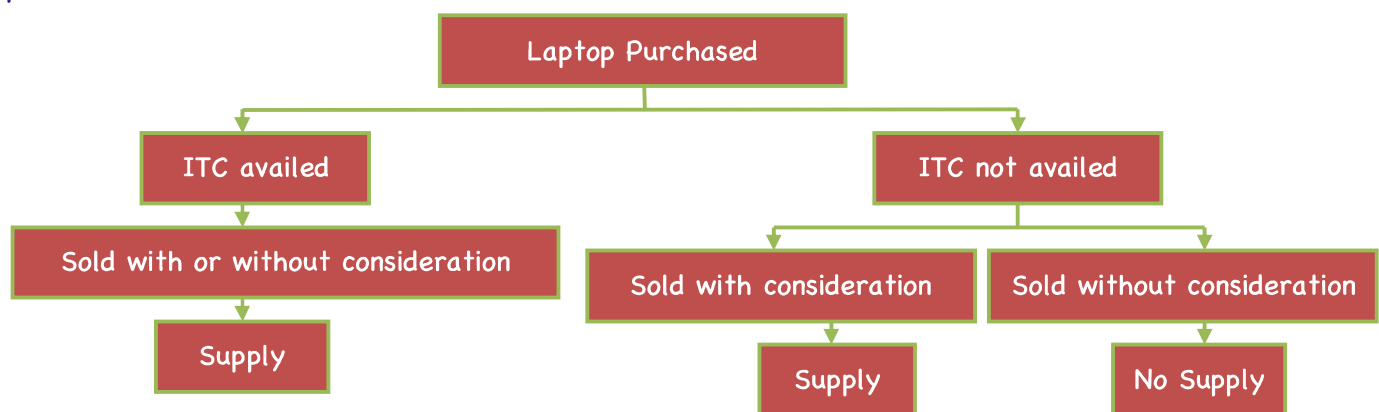
Analysis of Sec. 7(1)(b) [Importation of services for consideration whether or not in course or furtherance of business]

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 permanent 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:** As per explanation to section 15, related persons have been defined as follows:

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 हैं GST में हमारे रिश्तेदार
(Related Persons)

(c) **Family** : As per sec. 2(49) of the CGST Act, 2017, "Family" means -

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

(d) **Gifts by employer to employee** : Further, Schedule I provides that gifts not **exceeding Rs. 50,000** in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. 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 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.

Example : inter-state branch transfer of the goods without any consideration amounts to Supply of goods.

Example : Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir Fabrics are registered in the States where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.

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].

- 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".

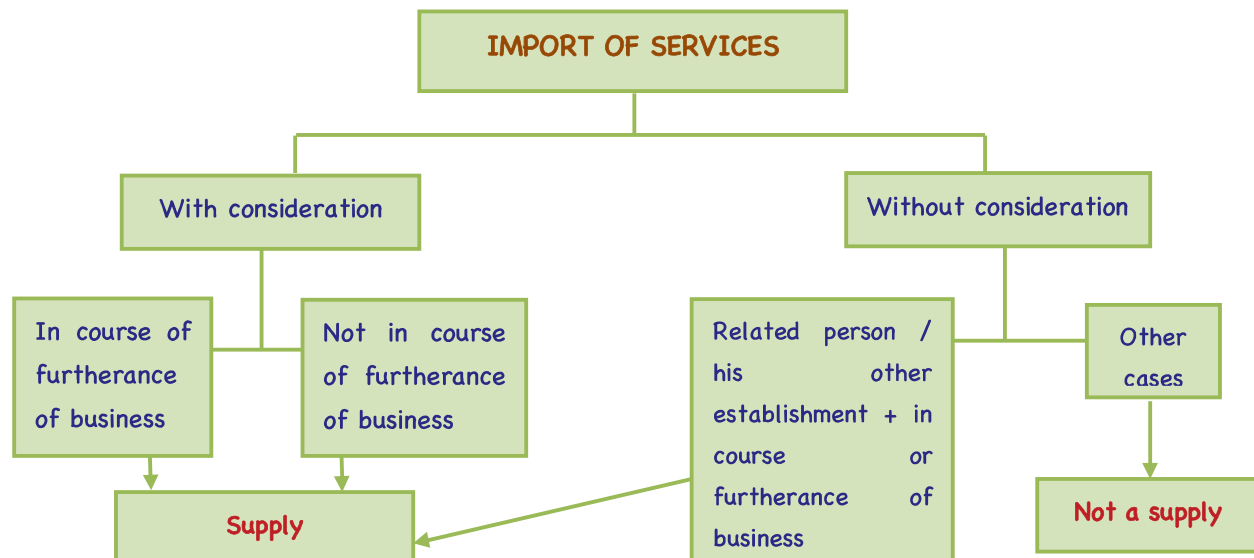
However, where the invoice is issued by the agent to the customer in the name of the principal, then, any removal of goods from the principal to the agent would not fall within the scope of term "Supply" [Circular].

- 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].

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]

Schedule II

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

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

	<p>(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.</p> <p>Example : Mr. A, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him and GST shall be payable.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> • Business is transferred as a going concern to another person. • Business is carried on by a personal representative who is deemed to be a taxable person. 	Supply of Goods
5	<p>(a) Renting of immovable property</p>	Supply of Services
	<p>(b) Construction of complex, building, civil structure, etc.: Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p> <p>The term construction includes additions, alterations, replacements, or remodelling of any existing civil structure.</p> <p>The expression competent authority means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:</p> <p>(i) an architect; or</p> <p>(ii) a chartered engineer; or</p> <p>(iii) a licensed surveyor.</p> <p>Analysis :</p> <p>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".</p>	Supply of Services
<p>Alia Bhatt, Kiara Advani Flat Booking... याद है ना...</p>		

	<p style="text-align: center;">Value of flat = Rs. 1 Crore</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Consideration Received</p> <p style="text-align: center;">↓</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 30%; text-align: center;">Before Completion</th> <th style="width: 10%;"></th> <th style="width: 30%; text-align: center;">After Completion</th> <th style="width: 15%;"></th> </tr> </thead> <tbody> <tr> <td>Case 1</td> <td style="text-align: center;"> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>1</p> <p>Rs. 50 lakhs</p> </div> <div style="text-align: center;"> <p>2</p> <p>Rs. 25 lakhs</p> </div> </div> </td> <td style="text-align: center;"> </td> <td style="text-align: center;"> <div style="text-align: center;"> <p>3</p> <p>Rs. 25 lakhs</p> </div> </td> <td style="text-align: center; border: 1px solid black; padding: 5px;">Taxable value for GST = 1 Crore</td> </tr> <tr> <td>Case 2</td> <td style="text-align: center;"> <div style="text-align: center;"> <p>1</p> <p>Re. 1</p> </div> </td> <td style="text-align: center;"> </td> <td style="text-align: center;"> <div style="text-align: center;"> <p>2</p> <p>Rs. 99,99,999</p> </div> </td> <td style="text-align: center; border: 1px solid black; padding: 5px;">Taxable Value for GST = 1 Crore</td> </tr> <tr> <td>Case 3</td> <td style="text-align: center;"> <p>No Consideration Received</p> </td> <td style="text-align: center;"> </td> <td style="text-align: center;"> <div style="text-align: center;"> <p>1</p> <p>Rs. 1 Crore</p> </div> </td> <td style="text-align: center; border: 1px solid black; padding: 5px;">Not taxable as per Sch. III</td> </tr> </tbody> </table>		Before Completion		After Completion		Case 1	<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>1</p> <p>Rs. 50 lakhs</p> </div> <div style="text-align: center;"> <p>2</p> <p>Rs. 25 lakhs</p> </div> </div>		<div style="text-align: center;"> <p>3</p> <p>Rs. 25 lakhs</p> </div>	Taxable value for GST = 1 Crore	Case 2	<div style="text-align: center;"> <p>1</p> <p>Re. 1</p> </div>		<div style="text-align: center;"> <p>2</p> <p>Rs. 99,99,999</p> </div>	Taxable Value for GST = 1 Crore	Case 3	<p>No Consideration Received</p>		<div style="text-align: center;"> <p>1</p> <p>Rs. 1 Crore</p> </div>	Not taxable as per Sch. III	
	Before Completion		After Completion																			
Case 1	<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>1</p> <p>Rs. 50 lakhs</p> </div> <div style="text-align: center;"> <p>2</p> <p>Rs. 25 lakhs</p> </div> </div>		<div style="text-align: center;"> <p>3</p> <p>Rs. 25 lakhs</p> </div>	Taxable value for GST = 1 Crore																		
Case 2	<div style="text-align: center;"> <p>1</p> <p>Re. 1</p> </div>		<div style="text-align: center;"> <p>2</p> <p>Rs. 99,99,999</p> </div>	Taxable Value for GST = 1 Crore																		
Case 3	<p>No Consideration Received</p>		<div style="text-align: center;"> <p>1</p> <p>Rs. 1 Crore</p> </div>	Not taxable as per Sch. III																		
	(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 Software.	Supply of Services																				
	(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act. [Example : Fees paid under non-compete agreement]	Supply of Services																				
	(f) Transfer of right to use any goods for any purpose Example : Machinery given on finance lease	Supply of Services																				
6	<p>Following composite supplies :</p> <p>(a) Works contract</p> <p>Analysis:</p> <p>(i) If the construction, repairs, etc. contract is a composite contract of labour plus material (i.e. material is also supplied by service provider along with construction, repairs, etc. service), then, it is a supply of service and GST would be charged on such contract under the heading of "Works Contract Service".</p> <p>(ii) If the construction, repairs, etc. contract is a pure labour contract (i.e. no materials are supplied by service provider), then, GST would be charged on such service under the heading of "construction service" or "repairing, etc. service".</p>	Supply of Services																				
	(b) Restaurant and Outdoor Catering Services	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 of the CGST Act, 2017 and are liable to pay IGST leviable u/s 5(1) of the IGST Act, 2017. 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>Services by an employee to the employer in the course of or in relation to his employment.</p> <p>Analysis:</p> <p>(i) [Circular] Director's remuneration which are declared as "Salaries" in the books of a company and subjected to TDS u/s 192 of the Income Tax Act, are not taxable under GST (being services provided in the capacity of an employee) (Example : whole time director).</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 professional or Technical services (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 (Example : independent director).</p> <p>(ii) [Circular] Perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.</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. Services by any Court or Tribunal established under any law for the time being in force.
Explanation : The term "Court" includes District Court, High Court and Supreme Court.
[Circular] Having regard to the functioning & 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.

3. (a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
 (b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
 (c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

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

जाने वाले से कौन GST ले सकता है...

5. Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.

Rental, leasing, licensing of land and building	Treated as supply of service [GST is applicable]
Sale of flats, etc. in a building before completion certificate or 1 st occupancy, whichever is earlier	Treated as supply of service under para 5(b) of Sch. II [GST is applicable]
Sale of land and building	Not treated as supply as per para 5 of Sch. III [GST is not applicable]

[Circular] 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.

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.

6. Actionable claims, other than specified actionable claims.

जुआ खेलोगे तो GST देना पड़ेगा...

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%.

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

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

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.

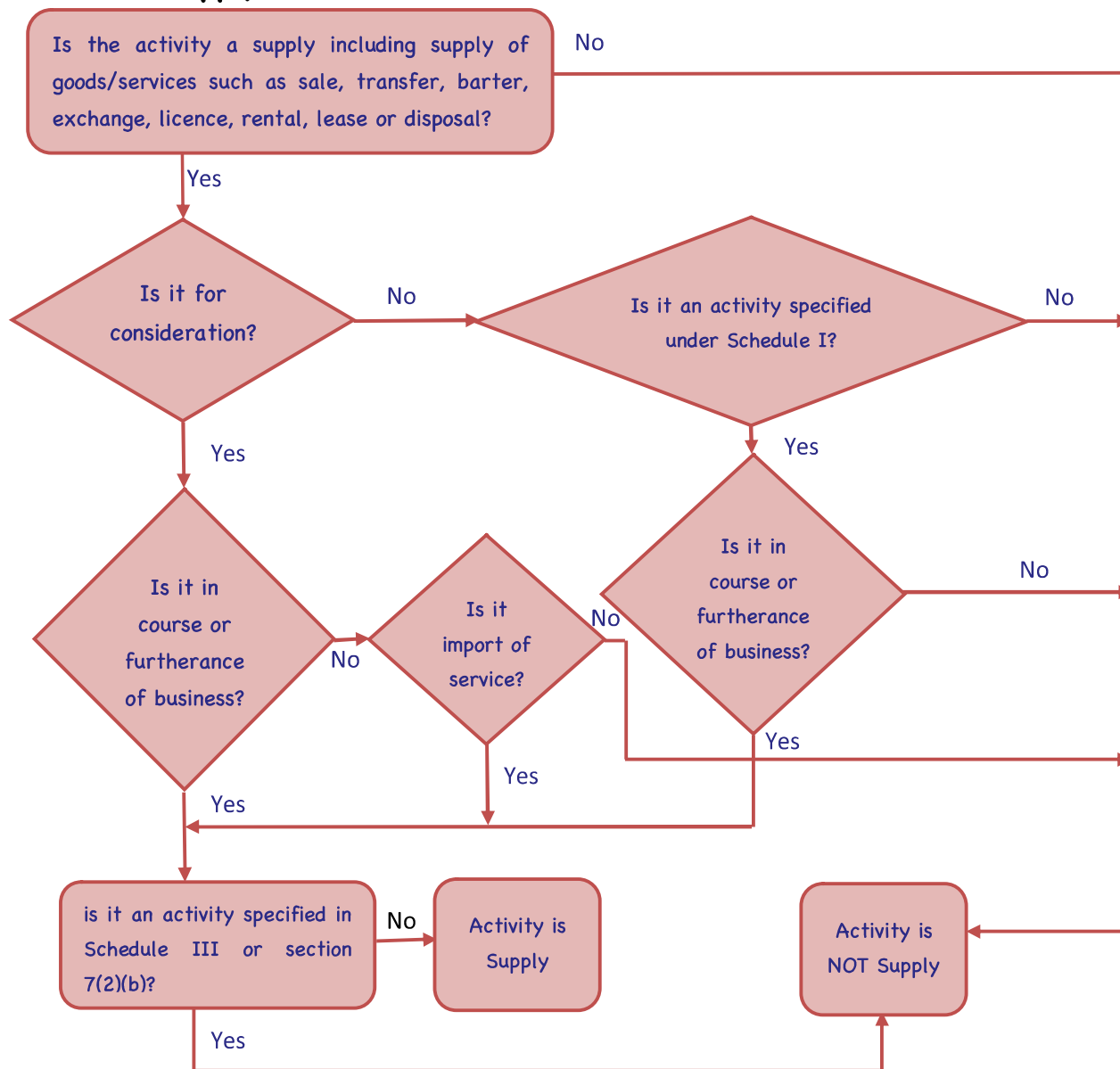
Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997 [Circular]

- (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.

[Circular]

Supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST.

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



Composite And Mixed Supplies [Section 8]

Statutory Provisions	
Section 8	Tax liability on composite and mixed supplies
Clauses	Particulars
	The tax liability on a composite or a mixed supply shall be determined in the following manner, namely :
(a)	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

- (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.

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 comprising of two or more supplies, one of which is principal supply, shall be treated as a supply of such principal supply.



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

- 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.

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.
- A mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax.



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 supply of books [Circular]

The supply of books shall be treated as supply of goods as long as the supplier owns the books and has the legal rights to sell those books on his own account.

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].
- 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 shares held in a subsidiary company by the holding company [Circular]

Issue: Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not.

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

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

Supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:

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

It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

**जीत कर दिखाओ उनको
जो तुम्हारी हार का इंतजार कर रहे हैं**