

# LEVY OF GST

## CHAPTER 02

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

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


Applcability	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) [Sec. 2(114)] (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 <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 [As per Sec. 2(107) <b>"taxable person"</b> means a person who is registered or liable to be registered under section 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"> <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>	
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> </ul>	

**GHUM LO OR JHUM LO...**



	➤ All the provisions of the act shall apply to such recipient as if he is the person liable for paying the tax.
Tax payable by the electronic commerce operator [Sec. 9(5)/5(5)]	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 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.
- As per Sec. 2(105) of the CGST Act, "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

However, a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims; [Proviso inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

### 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)	<b>all forms of supply</b> of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made <b>for a consideration</b> by a person <b>in the course or furtherance of business</b> ;
(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;  [Clause (aa) inserted retrospectively by Finance Act, 2021, w.e.f. 01.07.2017, vide Notification No. 39/2021 – Central Tax, dated 21.12.2021]
(b)	<b>importation of services, for a consideration</b> 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> .
(d)	<del>the activities to be treated as supply of goods or supply of services as referred to in schedule II</del> [omitted retrospectively by CGST (Amendment) Act, 2018, w.e.f. 01.07.2017]
(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> . [sub-section (1A) inserted retrospectively by CGST (Amendment) Act, 2018, w.e.f. 01.07.2017]
(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	Activities to be	Negative list of

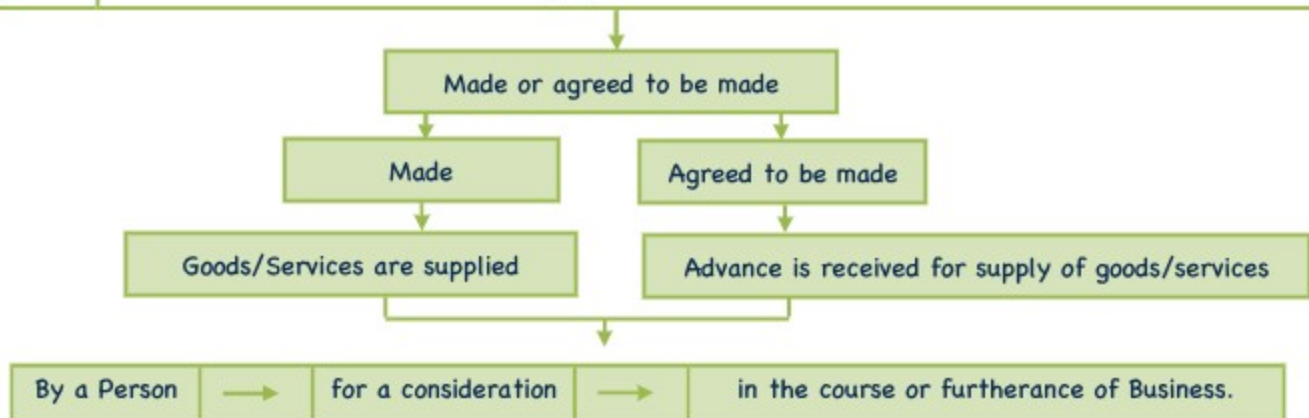
	[Section 7(1)(a)]	treated as supply of goods or supply of services [Section 7(1A)+ Schedule II]	services [Section 7(2) + Schedule III]
2	Activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa [Section 7(1)(aa)]		
3	Importation of services for consideration 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

<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



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




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



(ii) Supply should be made for a consideration.

(iii) Supply should be made in the course or furtherance of business.

**2. Supply of anything other than goods or services does not attract GST. Let us analyse the terms "Goods" and "Services" as defined under the Act**

DEFINITIONS		
	Goods [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

**3. Definition of Person [2(84)]:**

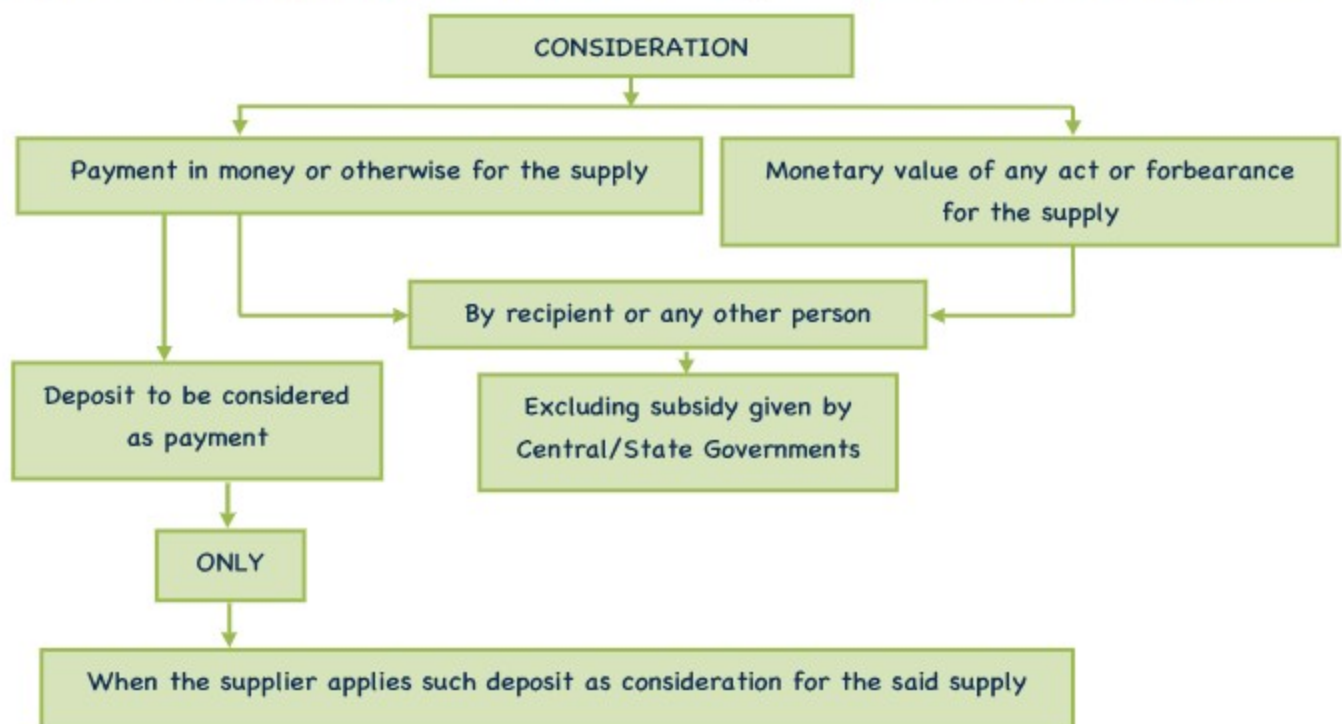
**"person"** includes -

1. an individual;
2. a Hindu Undivided Family;
3. a company;
4. a firm;
5. a Limited Liability Partnership;
6. trust; and
7. a local authority;
8. Central Government or a State Government;
9. an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
10. any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
11. any body corporate incorporated by or under the laws of a country outside India;
12. a co-operative society registered under any law relating to co-operative societies;
13. society as defined under the Societies Registration Act, 1860;
14. every artificial juridical person, not falling within any of the above;

**4. 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). The Supply must be carried out for a consideration. The concept 'supply for a consideration' involves an element of contractual relationship wherein the person supplying goods or service does so at the desire of the person for whom the supply is made in exchange for a consideration. The supply made without such a relationship i.e. without the express or implied contractual reciprocity of a consideration would not be a 'supply for consideration'. Providing free tourism information, access to free channels on TV, discussion on any topic with friends or family members and large no. of governmental activities for citizens, etc. are some of the examples of supply of services without consideration.
- (iv). As per Sec. 2(31), "**Consideration**" in relation to the supply of goods or services or both includes -



- (v). 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)].
- (vi). 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.
- (vii). **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 No. 116/35/2019-GST, dated 11.10.2019]**

When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an **expression of gratitude** and public recognition of donor's act of philanthropy, **then**, it can be said that **there is no supply** of service for a consideration (in the form of donation) and hence, donation will **not be chargeable to GST**.

पुण्य का काम पुण्य के लिए किया तो NO GST



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

पुण्य का काम Publicity के लिए किया तो GST लगेगा

- (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 No. 22/22/2017 GST dated 21.12.2017]**

**Artists give** their work of **art to galleries** where it is exhibited for supply. However, **no consideration flows** from the gallery to the artist **when the art works are sent** to the gallery for exhibition and **therefore**, the same is **not a supply**.

It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

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

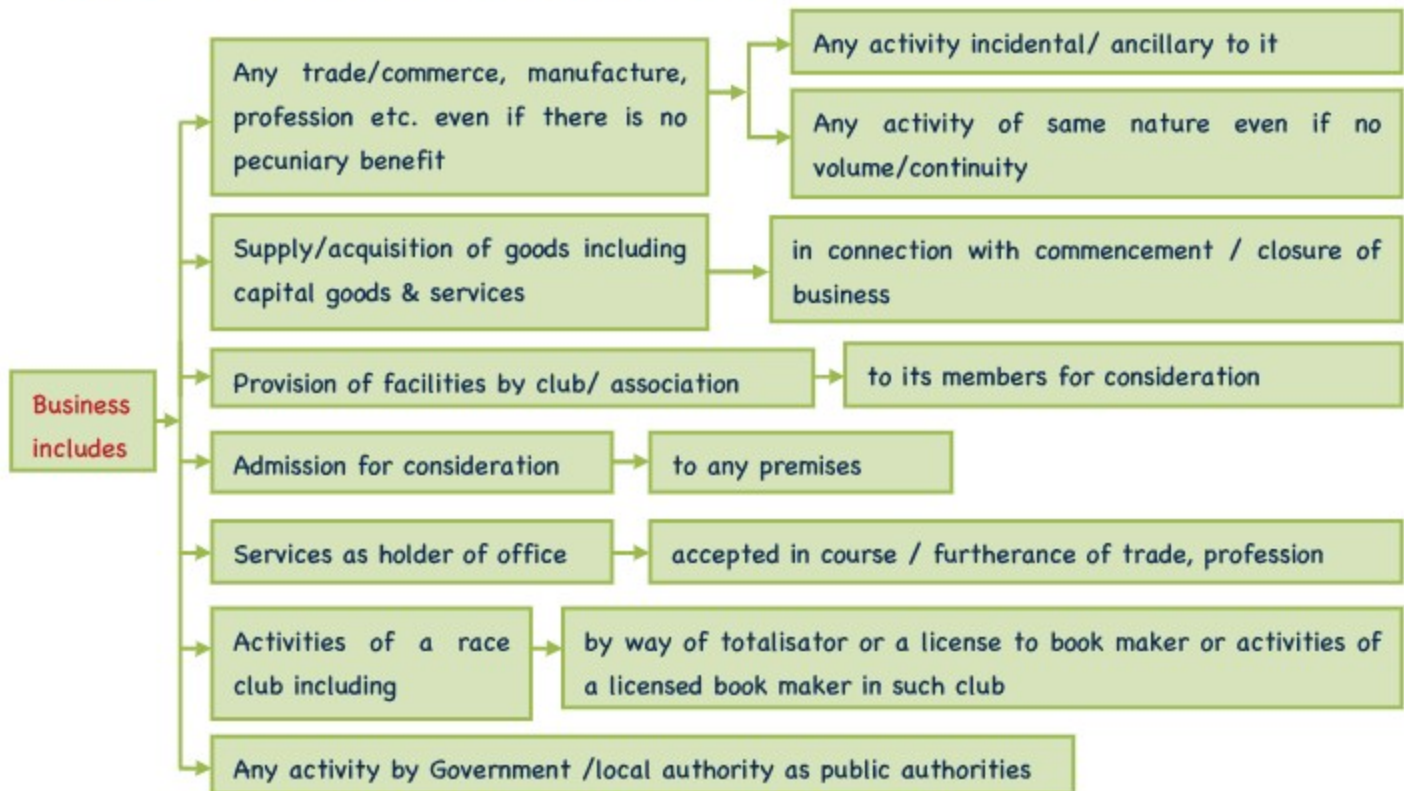
- (i) GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Resultantly, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business.

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

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



(ii) As per Sec 2(17) of the CGST Act, **"Business" includes**



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

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

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

**Example :** A Resident Welfare Association provides the service of lift maintenance to the residents in lieu of some charges. Provision of service by a club or association or society to its members is treated as supply as this is included in the definition of 'business'.

(v) **Important note :** There is one exception to this 'course or furtherance of business' rule i.e., import of services for a consideration. [will be discussed in later paras]

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

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

"activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.



**Explanation** – The person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.”

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

**Examples :**

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

**Clarification regarding taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV [Circular No. 35/9/2018 – GST, dated 05.03.2018].**

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.

**Illustration 1 :** An association has been temporarily constituted, by several members, without being registered. The object of the unregistered association was to render taxable services to its members for a consideration. The association, through its members, argued that the association was not registered and any service rendered to its members constituted service rendered to oneself and therefore the activity of rendering service by the association to its members was not a service at all and hence not liable to GST. Comment on the stand taken by the unregistered association with suitable explanations, if any. On the same analogy, the GST Officer intends to tax capital contributions made by members to the association. Whether the action of the officer is tenable in law ?

**Solution :** According to section 7(1)(aa) of CGST Act, 2017, the expression "supply" includes 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. Further, an explanation is inserted in section 7(1)(aa) which clearly states that "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".



Hence, any service rendered by the association (whether registered or not) to its members for consideration is chargeable to GST.

Further, capital contributions made by members to the Association are not consideration for any supply of goods or service. Capital Contributions are mere transactions in money, hence, not liable to GST.

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

**Section 7(1)(b)** brings within the ambit of 'supply', the importation of services for a consideration whether or not in the course or furtherance of business. This is the only exception to the condition of supply being in course or furtherance of business.

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

Note: Import of goods is governed by Customs Act.

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

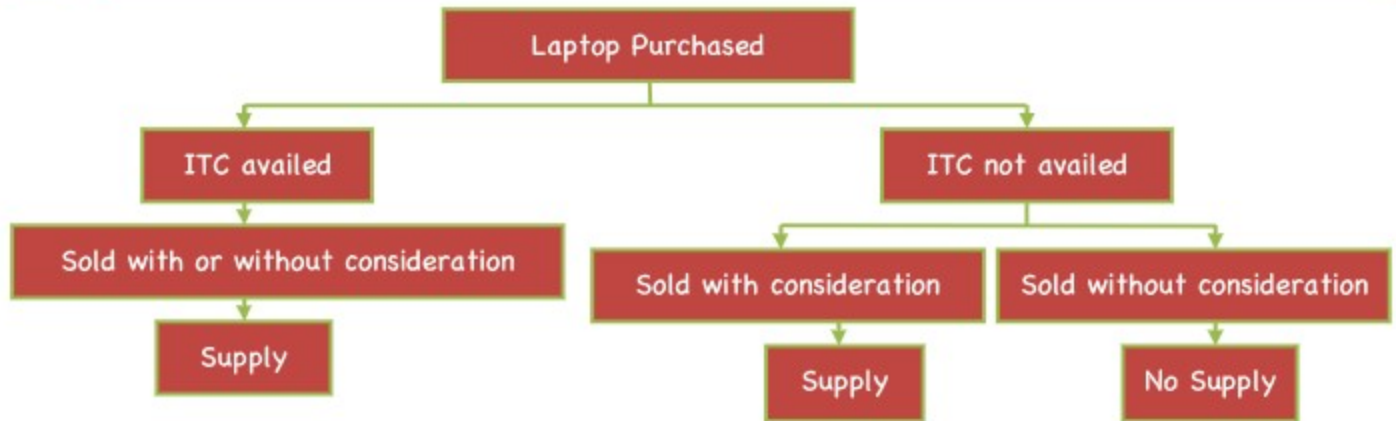
As per Schedule I, in the following four cases, supplies made without consideration will be treated as supply under section 7 of the CGST Act:

<b>Schedule I</b>	
1.	Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2.	Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business: However, gifts not exceeding Rs. 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3.	Supply of goods - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or ( <b>Agent issuing invoice in his own name</b> ) (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal. ( <b>Goods procured on behalf of principal are invoiced in agent's name</b> )
4.	Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business ["Taxable person" word substituted by "person" by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019].

#### Analytical Discussion Of Para 1 To 4 Of Schedule I

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





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

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

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

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

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

(b) **Related persons:** 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 है 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) **Supply of goods or services or both between an employer and employee:**

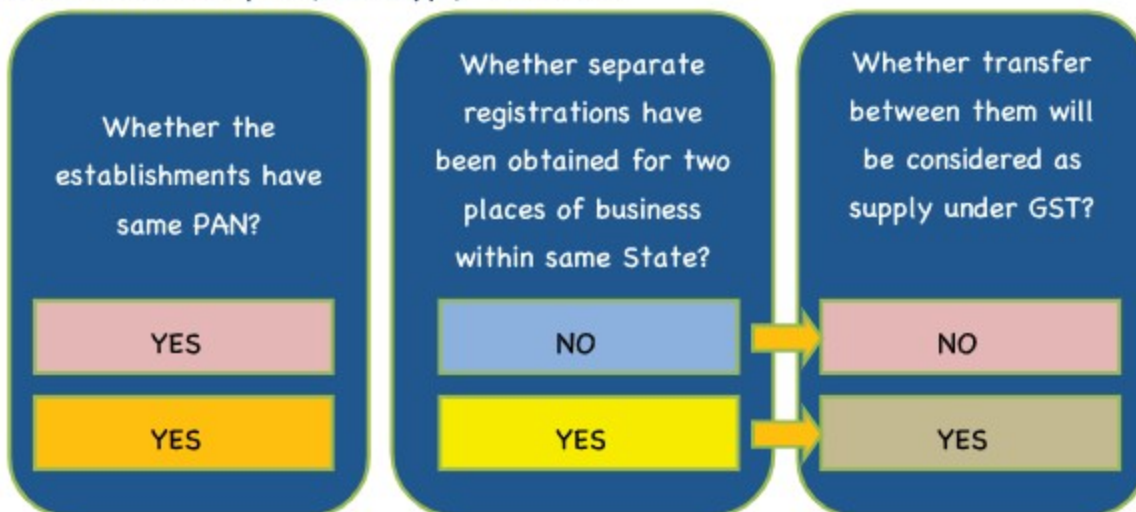


- By virtue of the definition of related person given above, employer and employee are related persons. However, services provided by an employee to the employer in the course of or in relation to his employment are not treated as supply of services [Schedule III of CGST Act (discussed in subsequent paras)].
  - But, any of the goods or services supplied by the employer to the employee (in the course or furtherance of business) will be covered under the scope of the term "supply" although it is supplied without consideration.
  - **Gifts by employer to employee** : Further, Schedule I provides that gifts 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 specified under section 25** : A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as distinct persons. Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons.

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



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



**Illustration 2** : Does inter-state branch transfer of the goods without any consideration amounts to Supply of goods?



**Solution :** Yes, inter-state branch transfer of the goods without any consideration amounts to Supply of goods.

Because, movement of goods in the course or furtherance of business without any consideration to a 'distinct person' as specified in section 25(4) of the CGST Act, 2017 is deemed to be a supply in terms of Para 2 of Schedule I of the said Act.

As per section 25(4) of the CGST Act, 2017, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'.

**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.

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#### **Circulars regarding transactions between Distinct Persons:**

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1. GST is leviable on inter-state branch transfer of aircraft engines, parts and accessories for use by their own airlines. Further, Input Tax Credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST liability on inter-state supply of such aircraft engines, parts & accessories by way of inter-state stock transfers between distinct persons **[Circular No. 16/ 16/2017-GST, dated 15.11.2017].**

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 No. 1/1/2017 IGST dated 07.07.2017]**

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 No. 21/21/2017 IGST dated 02.11.2017]**

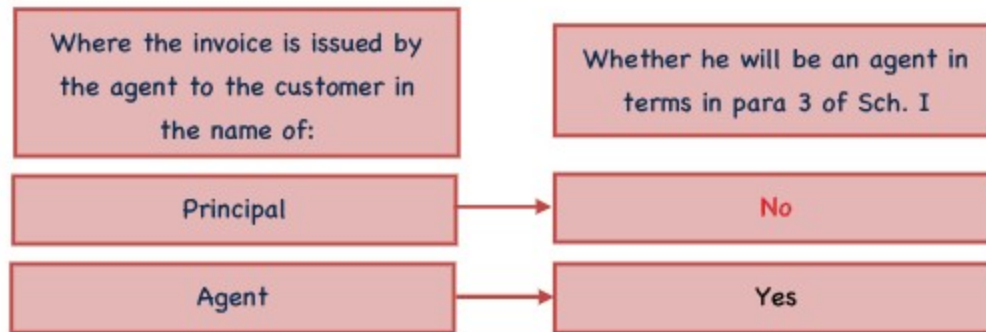
#### **PARA 3 : Supply of Goods between Principal and Agent:**

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

However, where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the scope of para 3 above.

- Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by agent to the principal would be covered by para 3 above **[Circular No. 57/31/2018 GST Dated 04.09.2018].**





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

**Example 1 :** Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this scenario, Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Schedule I.

**Example 2 :** M/s XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s XYZ. The invoice for the supply of the goods is issued by M/s XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr. B is not an agent of M/s XYZ for the supply of goods in terms of Schedule I.

**Example 3 :** Mr. A, an artist, appoints M/s B (auctioneer) to auction his painting. M/s B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Schedule I.

A similar situation can exist in case of supply of goods as well where the C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F/commission agent is an agent of the principal for the supply of goods in terms of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.

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

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



**Circular regarding transactions between Principal & Del-Creder Agent [Circular No. 73/47/2018 – GST, dated 05.11.2018]:**

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

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

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

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

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

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

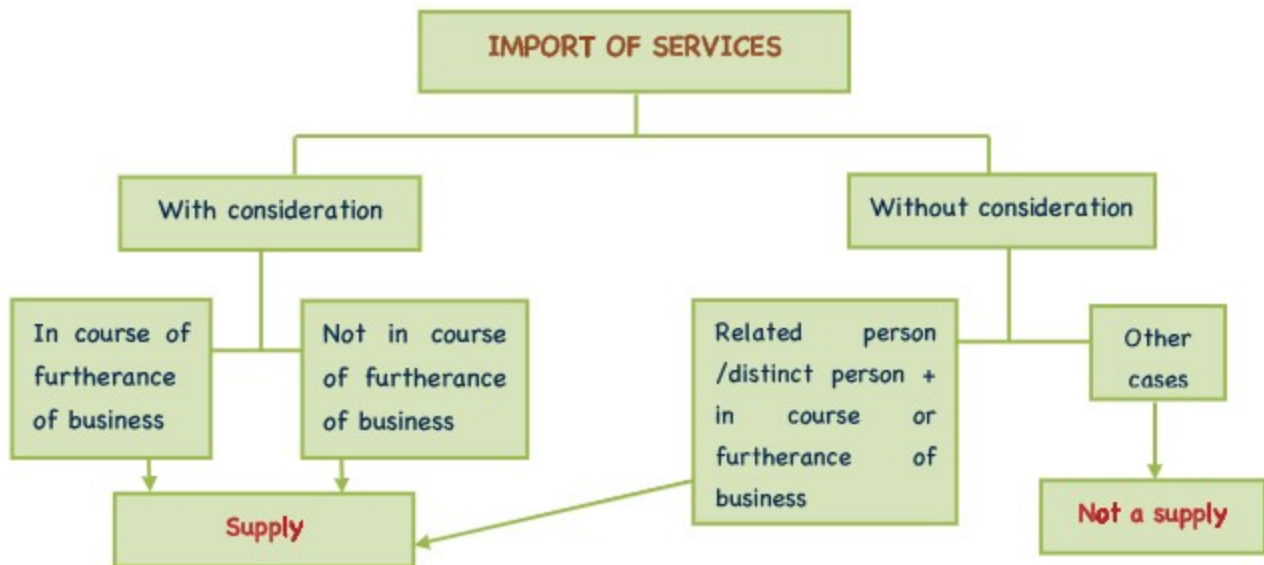
#### **PARA 4 : Importation of services :**

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

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



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



**Analysis of Section 7(1A) read with schedule II [Activities or Transactions to be treated as supply of goods or Supply of Services]**

Where certain activities or transactions constitute a supply in accordance with the provisions of sub section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

## Schedule II

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

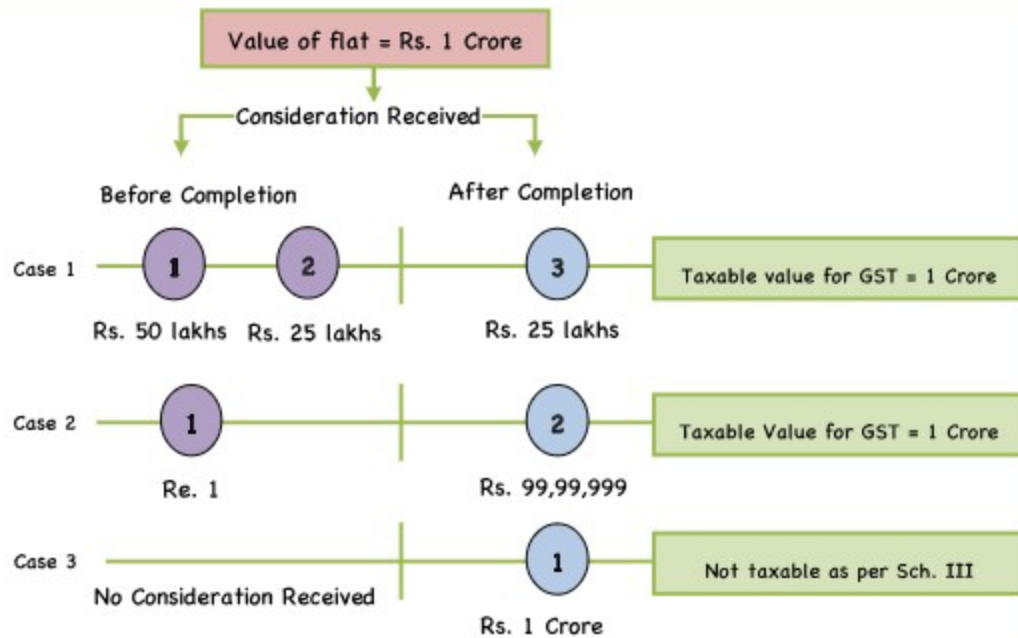
Sr. No.	Transaction	Type	Nature of Supply
1	<b>Transfer</b>	(a) Title in goods [Example : Sale of goods]	Supply of Goods
		(b) Right in goods/undivided share in goods without transfer of title in goods [Example : Renting of machinery]	Supply of Services
		(c) Title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed. [Example : Hire Purchase]	Supply of Goods
2	<b>Land and Building</b>	(a) Lease, tenancy, <b>easement</b> , licence to occupy land Example : Lease agreement for land	Supply of Services
		(b) Lease or letting out of the building including a	Supply of Services

		commercial, industrial or residential complex for business or commerce, either wholly or partly. <b>Example :</b> A shop let out in a busy market area	
3	<b>Treatment or Process</b>	Applied to another person's goods <b>Example :</b> "Job Work" performed by a job worker like dyeing of fabric in various colours.	Supply of Services
4	<b>Transfer of Business Assets</b>	(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, <del>whether or not for a consideration</del> [Omitted words, omitted by Finance Act, 2020, retrospectively w.e.f. 01.07.2017 to remove ambiguity in the scope of the term 'Supply']. <b>Example :</b> 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, <del>whether or not for a consideration</del> [Omitted words, omitted by Finance Act, 2020, retrospectively w.e.f. 01.07.2017 to remove ambiguity in the scope of the term 'Supply']. <b>Example :</b> A director using car provided by the company for personal travels.	Supply of Services
		(c) Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person. <b>Example :</b> 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. <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	<p><b>(a) Renting of immovable property</b></p> <p><b>Analysis :</b></p> <p>(i) As per this clause, renting of immovable property for any commercial activity, permitting use of immovable property for placing vending/ dispensing machines, allowing erection of communication tower on a building for consideration, renting of land or building for entertainment or sports and renting of theatres by owners to film distributors are all chargeable to GST.</p> <p>(ii) Halls, rooms, etc. let out by hotels/restaurants for a consideration for organizing social, official or business functions or letting out of halls for cultural functions are covered within the scope of renting of immovable property and would be taxable.</p>	Supply of Services
	<p><b>(b) Construction of complex, building, civil structure, etc.:</b> Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p> <p>The term construction includes additions, alterations, replacements, or remodelling of any existing civil structure.</p> <p>The expression competent authority means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:</p> <p>(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or</p> <p>(ii) a chartered engineer registered with the Institution of Engineers (India); or</p> <p>(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.</p> <p><b>Analysis :</b></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





(c) Temporary transfer or permitting use or enjoyment of any Intellectual Property Right (IPR)

**Example :** Temporary transfer of copyright of any book by author.

Supply of Services

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

**Example :** Supply of customised software to run video classes for smooth processing, encryption and decryption of videos is a supply of service. encryption and decryption of videos is a supply of service.

Supply of Services

(e) **Agreeing to obligation** to refrain from an act, or to tolerate an act or situation, or to do an act.

**Analysis :** In non-compete agreement, where one party agrees, for consideration, not to compete with the other in any specified products, services, geographical location or in any other manner, such action on the part of one person is also a supply of service for consideration and will be covered by this clause.

**Example :** Cable operator - Sakharam has entered into an agreement with Cable operator - Aatmaram that Sakharam will not provide cable connections in the specified areas where Aatmaram is providing the connections. Non-compete agreements constitute supply of service.

Supply of Services

(f) Transfer of **right to use any goods** for any purpose

**Example :** Machinery given on finance lease

Supply of Services

6 **Following composite supplies :**

(a) **Works contract** as defined u/s 2(119)

Supply of Services



<p>As per sec. 2(119) of the CGST Act, 2017, Works contract: means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any <b>immovable property</b> wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.</p> <p><b>Analysis:</b></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>	
<p>(b) <b>Restaurant and Outdoor Catering Services</b> - Supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.</p> <p><b>Analysis:</b> The activities of supply of food or drinks in a restaurant, etc. and supply of foods and drinks by an outdoor caterer are covered in this clause.</p>	 <p>Supply of Services</p>
<p>7 <del>Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration. [Omitted by Finance Act, 2021 retrospectively w.e.f. 01.07.2017, as it is specifically included in the term 'Supply' u/s 7(1)(aa)]</del></p>	<p>Supply of Goods</p>

**Clarification regarding Issue related to taxability of 'tenancy rights' under GST [Circular No.44/18/2018-CGST, dated 02.05.2018]**

**Doubts:**

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

**Clarification:**



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

**Clarification regarding taxability of goods imported under lease [Circular No. 113/32/2019-GST, dated 11.10.2019]**

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 as per notifications issued under Customs Act, subject to certain conditions.

**Analysis of Section 7(2)**

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

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

**Schedule III**

Sl.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	<p><b>Services by an employee</b> to the employer in the course of or in relation to his employment.</p> <p><b>Analysis:</b></p> <p>(i) Any amount paid to an independant director of a company for attending board of director’s meeting, etc., shall be chargeable to GST, because it is not paid in the capacity of an</p>



**employee.** But, if any amount is paid to whole time director in the capacity of employee, then, no GST will be charged on the same.

(ii) Further, GST on the services provided by a director (not in the capacity of employee) to the company or body corporate is chargeable to GST under Reverse Charge Mechanism u/s 9(3) of the CGST Act, 2017 (i.e. company or body corporate will be liable to pay GST to the government directly on the amount paid to director). It means, every company or body corporate paying any amount to director, not in the capacity of employee, shall be compulsorily required to get themselves registered under GST law and consequentially, all the provisions of GST law would be attracted.

(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.

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.

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.

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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 <sup>st</sup> occupancy, whichever is earlier	Treated as supply of service under para 5(b) of Sch. II [GST is applicable]
Sale of land and building	Not treated as supply as per para 5 of Sch. III [GST is not applicable]

6. Actionable claims, other than ~~lottery, betting and gambling~~ specified actionable claims. [As amended by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

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**Note:** As per Sec. 2(102A), "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%.



As per Sec. 2(80A) "online gaming" means offering of a game on the internet or an electronic network and includes online money gaming; [inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

As per Sec. 2(80B) "online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force; [inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

As per Sec. 2(117A) "virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961; [inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

**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 of the CGST Act, 2017. Therefore, no GST would be charged on this transaction.

#### Clarification In respect of levy of GST on Director's remuneration [Circular No: 140/10/2020-GST, dated 10.06.2020]

##### 1. **Levability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company**

The primary issue to be decided is whether or not a "Director" is an employee of the company. In respect of independent directors or those directors who are not the employees of the company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. Further, in this case, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

##### 2. **Levability of GST on remuneration paid by companies to the directors, who are also an employee of the said company**

Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service".



The part of Director's remuneration which are declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the Income Tax Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

Further, the part of employee Director's remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the Income Tax Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in this case, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

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**Clarifications regarding applicability of GST on Perquisites provided by employer to the employees as per contractual agreement [Circular No. 172/04/2022 - GST, dated 06.07.2022]**

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**Issue:** Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?

**Clarification:** Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee. [Examples of perquisites: company car, fuel reimbursement, interest-free loan, medical facilities, credit cards, rent free accommodation, etc.]

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**Clarifications regarding applicability of GST on Sale of Land after levelling, laying down of drainage lines, etc. [Circular No. 177/09/2022 - GST, dated 03.08.2022]**

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- (i) As per Sl. no. (5) of Schedule III of the CGST Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.
- (ii) Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the CGST Act, 2017 and accordingly does not attract GST.
- (iii) However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

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**Clarification on GST chargeable on the amount payable to Consumer Disputes Redressal Commission office and its subordinate offices [Circular No. 32/06/2018-GST, dated 12.02.2018]**

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Services by any court or Tribunal established under any law for the time being in force is neither a supply of goods nor services. Consumer Disputes Redressal Commissions (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a tribunal having regard to their functioning.

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

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

Such activities/transactions undertaken by the central Government, a state government or union territory or any local authority in which they are engaged as public authorities, as may be notified by the government on the recommendations of the Council shall be treated neither as supply of goods nor supply of services.

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

- (i) Services provided by Central Government, State Government, Union territory or any local authority by way of any activity in relation to a function entrusted to a Panchayat under **article 243G** of the constitution or to a Municipality under **article 243W** of the constitution.
- (ii) Service provided by State Government by way of **grant of alcoholic liquor license**, against consideration in the form of license fee or application fee or by whatever name it is called.

**Circular No. 121/40/2019-GST, dated 11.10.2019** : This special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

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

## Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997 [Circular No. 119/38/2019-GST, dated 11.10.2019]

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





- (iii). The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lended securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01.07.2017.
- (iv). Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.
- (v). Further, the borrower of securities shall be liable to discharge GST [under reverse charge mechanism (RCM)].
- (vi). The nature of GST to be paid shall be IGST under RCM.

#### **Circular No. 76/50/2018-GST, dated 31.12.2018**

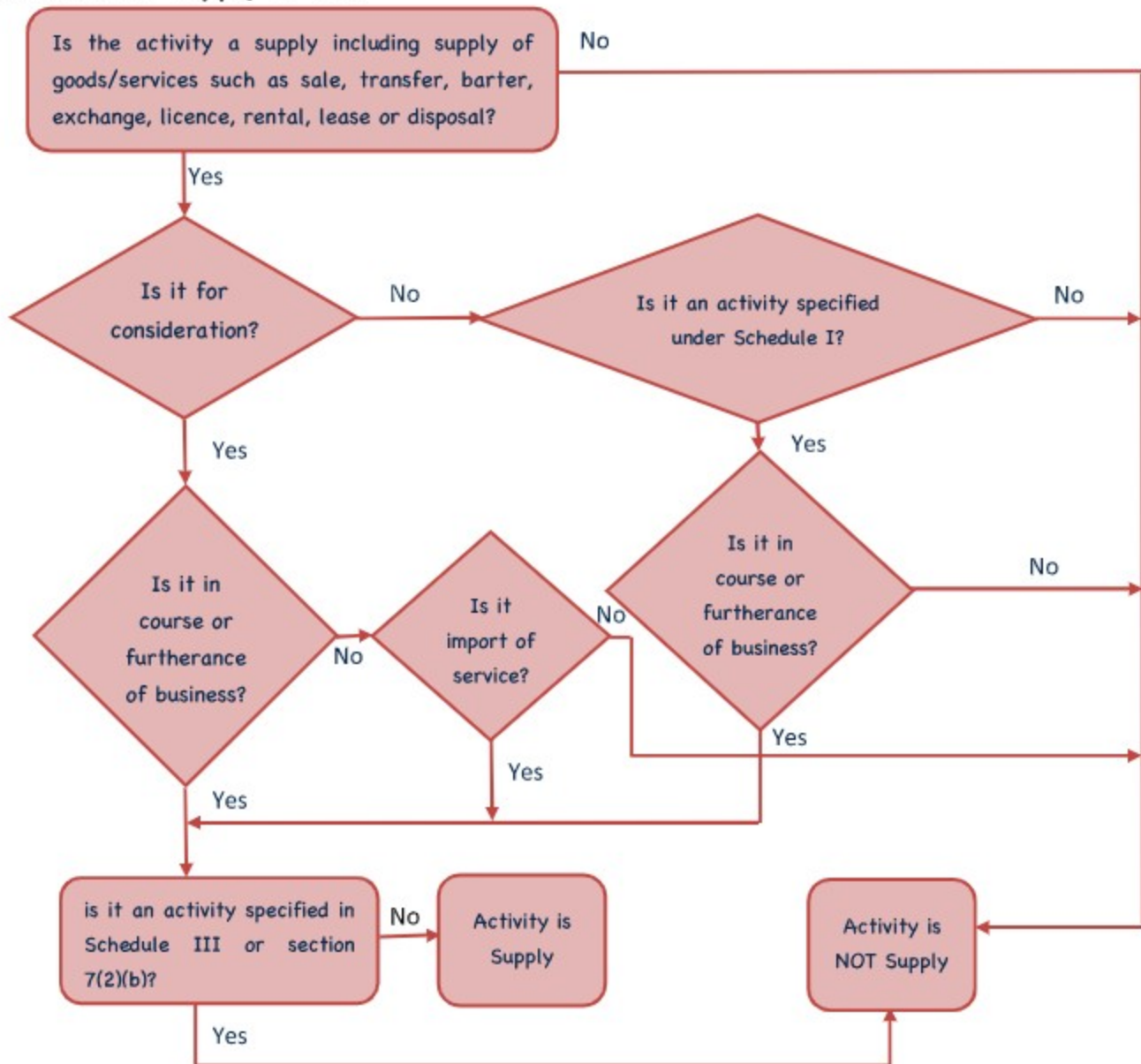
**Issue:** Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?

#### **Clarification:**

1. It may be noted that 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.
2. It has been notified that by RCM notification that supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Central Government, State Government, Union territory or a local authority to any registered person, would be subject to GST on reverse charge basis as per which tax is payable by the recipient of such supplies.
3. A doubt has arisen about taxability of 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 to an unregistered person.
4. It was noted that such supply to an unregistered person is also a taxable supply under GST but is not covered under RCM notification.
5. In this regard, it is clarified that the respective Government departments (i.e. Central Government, State Government, Union territory or a local authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an unregistered person subject to the provisions of sections 22 and 24 of the CGST Act.





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



**Illustration :** Fifty persons, each contributing Rs. 2,000 per month, have come together to organise a chit for a period of 50 months. At the end of each month, an amount of Rs. 1,00,000 (2,000 x 50) is available in the kitty of the Chit Fund. Rs. 1,00,000 is put to auction and subscribers who are interested in drawing the money early because of their needs may participate in the auction. The auction is organised by a 'Key Member' who manages and conducts the proceedings. The successful bidder who is normally the person who offers the highest interest/discount is given that chit amount. From this interest/discount amount, after deducting a fixed amount representing the commission payable to the 'Key Member', balance becomes the dividend which is distributed among all the subscribers. The auction is repeated in the subsequent months and the same procedure is followed. Explain briefly if GST could be levied on the services rendered in connection with the Chit Fund Business.

**Solution :** The services carried out by a foreman of chit fund for conducting or organising a chit in any manner for a consideration (commission) qualifies to be covered under the scope of the term “supply” and will not be considered as “merely a transaction in money or actionable claim”. Hence, it is chargeable to GST. Therefore, the commission payable to the “key member (i.e. foreman of chit fund)” is taxable. Further, interest/discount earned by each person is exempt under GST as per entry no. 27 of Notification No. 12/2017 CT (R), dated 28.06.2017.

## 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)	<p>a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and</p>  <p>Rate of Principal supply will be applicable</p>
(b)	<p>a mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax.</p>  <p>Highest Rate of GST will be applicable</p>

### ANALYTICAL DISCUSSIONS

- GST is payable on individual goods or services or both at the notified rates. Some of the supplies are a combination of goods or combination of services or combination of goods and services both and each individual component of such supplies may attract a different rate of tax.
- In such a case, the rate of tax to be levied on such supplies may be a challenge. It is for a reason, that the GST law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.
- In order to determine whether the supplies are ‘Composite supplies’ or ‘mixed supplies’, one needs to determine whether the supplies are naturally bundled or not naturally bundled in ordinary course of business.

### Analysis of Composite Supplies

1. As per Section 2(30) of the CGST Act, 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.



2. This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'.
3. As per Section 2(90) of the CGST Act, 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.
4. How to determine the tax liability on composite supplies?

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

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

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

5. Works contract and restaurant services are classic examples of composite supplies. However, the GST law identifies both as supply of services and such services are chargeable to specific rate of tax mentioned against such services (works contract service and restaurant service).
6. How to determine whether the services are bundled in the ordinary course of business?

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

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

#### Analysis of Mixed Supplies

1. As per Sec. 2(74) of the CGST Act, Mixed supply means:
  - two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person;
  - for a single price where such supply does not constitute a composite supply.
2. The individual supplies are independent of each other and are not naturally bundled.
3. How to determine if a particular supply is a mixed supply?



- A supply can be a mixed supply only if it is not a composite supply. As a corollary it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business, then, it would be a mixed supply.
- Once the amenability of the transaction as a composite supply is ruled out, it would be a mixed supply, If single price is charged by supplier for a bundled supply.

#### 4. How to determine the tax liability on mixed supplies?

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

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

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

#### Clarification regarding Transportation services provided by GTA

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

#### Goods Transport Agency



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

#### Clarification regarding Retreading of Tyres [Circular No. 34/8/2018 – GST, dated 01.03.2018]

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

**Clarification :** Retreading of tyres is a composite supply, in which the pre-dominant element is the process of retreading which is a supply of service. Further, rubber used for retreading is just an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply. Since, in retreading of tyres, pre-dominant





element is the supply of service of processing of retreading, therefore, retreading of tyres is a supply of services. [Circular No. 34/8/2018 – GST, dated 01.03.2018]

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

**Clarification :** Where owner of the retreaded tyre sells the retreaded tyres, then, it is a supply of goods (i.e. retreaded tyres) [Circular No. 34/8/2018 – GST, dated 01.03.2018].

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#### **Clarification regarding activity of bus body building**

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**Clarification :** 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”, as per explanation added in NN. 11/2017 – C.T. (R), by NN. 26/2019 – C.T. (R), dated 22.11.2019. [Circular No. 34/8/2018 – GST, dated 01.03.2018]

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#### **Clarification regarding Taxability of Printing Contracts [Circular No. 11/11/2017 – GST dated 20.10.2017]**

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**Issue :** Whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods or supply of services?

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

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

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

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#### **Clarification regarding supply of books [Circular No. 27/01/2018 – GST dated 04.01.2018]**

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##### **Issues :**

- (i) The books are printed/ published/ sold on procuring copyright from the author or his legal heir. [e.g. White Tiger Procures copyright from Ruskin Bond]
- (ii) The books are printed/ published/ sold against a specific brand name. [e.g. Manorama Year Book]
- (iii) The books are printed/ published/ sold on paying copyright fees to a foreign publisher for publishing Indian edition (same language) of foreign books. [e.g. Penguin (India) Ltd. pays fees to Routledge (London)] The books are printed/ published/ sold on paying copyright fees to a foreign publisher for publishing Indian language edition (translated). [e.g. Ananda Publishers Ltd. pays fees to Penguin (NY)].



**Clarifications :** 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 No. 47/21/2018 – GST, dated 08.06.2018]

**Clarification :** 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. [Circular No. 47/21/2018 – GST, dated 08.06.2018]

**Clarification regarding betting / gambling** [Circular No. 27/01/ 2018 – GST, dated 04.01.2018]

- 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/-.



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