

<p>or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person</p>		<p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person registered under GST, located in the taxable territory.</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

However, RCM on GTA service shall **not apply**

(i) to services provided by a GTA to, -

- (a) a Department or Establishment of the Central Government or State Government or Union territory; or
- (b) local authority; or
- (c) Governmental agencies,

which has taken registration under the GST only for the purpose of deducting TDS u/s 51 and not for making a taxable supply of goods or services.

(ii) where, -

(a) the supplier (GTA) has taken registration under GST and exercised the option to pay GST under forward charge mechanism on the services of GTA; and

(b) the supplier (GTA) has issued a tax invoice to the recipient charging GST at the applicable rates and has made following declaration on such invoice issued by him:  
 "I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us from the Financial Year \_\_\_\_\_ under forward charge and have not reverted to reverse charge mechanism." [as amended by NN 08/2023 – CT (R), w.e.f. 27.07.2023]

(c) Further, the option exercised by GTA to itself pay GST on the services supplied by it during a Financial Year shall be deemed to have been exercised for the next and future financial years unless the GTA files a declaration to revert under reverse charge mechanism on or after the 1<sup>st</sup> January of the preceding Financial Year but not later than 31<sup>st</sup> March of the preceding Financial Year. [Proviso inserted by NN 06/2023 – CT (R), w.e.f. 27.07.2023]

(d) Further, a GTA who commences new business or crosses threshold for registration during any Financial Year, may exercise the option to itself pay GST on the services supplied by it during that Financial Year by making a declaration before the expiry of 45 days from the date of applying for GST registration or 1 month from the date of obtaining registration, whichever is later. [Proviso inserted by NN 05/2023 – CT (R), w.e.f. 09.05.2023]

[also refer analysis given at the end of this table]

Not in  
ICAI

**more than 25% of the value** of the said composite supply

- provided to the Central Government, State Government or Union territory or local authority ~~or a Governmental authority or a Government Entity~~
- by way of any activity:
- in relation to any function entrusted to a Panchayat under article **243G** of the Constitution or
- in relation to any function entrusted to a Municipality under article **243W** of the Constitution.

**Clarification on Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments [Circular]**

1. The functions entrusted to Municipalities and Panchayats under articles 243W & 243G of the Indian Constitution also include the activities of Sanitation and conservancy services.
2. If such services are provided to Indian Army or any other Government Ministry/Department, in the same manner as a local authority does for the general public, then, the same will be eligible for aforesaid exemption. Otherwise, it will be chargeable to GST.

**Clarification on whether supply of pure services and composite supplies by way of horticulture / horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to Central Public Works Department (CPWD) are eligible for exemption from GST. [Circular]**

1. Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.
2. Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W of the constitution.
3. Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of NN 12/2017 – CT (R).

33. **Services provided to a Governmental Authority by way of –**

(a) Water supply; (b) Public health; (c) Sanitation conservancy; (d) Solid waste management; and (e) Slum improvement and upgradation.

**Clarification on whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority [Circular]**

DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of

Not in  
ICAI

Not  
in  
ICAI

	<p>medical equipment, etc.</p> <p>These activities are similar to activities that are enlisted in 11<sup>th</sup> Schedule and 12<sup>th</sup> Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, Self Help Groups of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.</p> <p>Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.</p>				
34.	Services provided to the Central Government, State Government or Union territory under any <b>insurance scheme</b> for which <b>total premium is paid by</b> the Central <b>Government</b> , State Government or Union territory.				
35.	Services provided to the Central Government, State Government, Union territory administration under <b>any training programme</b> for which <b>75% or more of the</b> total <b>expenditure</b> is <b>borne by</b> the Central <b>Government</b> , State Government or Union territory.				
36.	Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a <b>Regional Connectivity Scheme airport</b> , against consideration in the form of viability gap funding. However, nothing contained in this entry shall apply on or after the expiry of a period of 3 years from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation.				
37.	Service provided by <b>Fair Price Shops to Central Government, State Government or Union Territory</b> by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System (PDS) against consideration in the form of <b>commission or margin</b> .				
38.	Taxable services, provided or to be provided, by a Technology Business Incubator ( <b>TBI</b> ) or a Science and Technology Entrepreneurship Park ( <b>STEP</b> ) recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or <b>bio-incubators</b> recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India.				
39.	<p>Services provided by an <b>incubatee</b> up to a total turnover of Rs. 50 lakh in a financial year subject to the following conditions, namely :</p> <p>(a) the total turnover had not exceeded Rs. 50 lakh during the preceding financial year; and</p> <p>(b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee.</p> <p><b>Notes :</b></p> <p>(1) '<b>Incubatee</b>' means an entrepreneur located within the premises of a TBI or STEP.</p> <p>(2) <b>Example :</b></p> <table border="1" data-bbox="256 1923 1487 1976"> <thead> <tr> <th>Year</th> <th>Total Turnover</th> <th>Exempted Turnover</th> <th>Taxable Turnover</th> </tr> </thead> </table>	Year	Total Turnover	Exempted Turnover	Taxable Turnover
Year	Total Turnover	Exempted Turnover	Taxable Turnover		

2.	Is the RWA entitled to take ITC of GST paid on goods and services used by it for making taxable supplies to its members ?	RWAs are <b>entitled to take ITC</b> of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), inputs (taps, pipes, other sanitary/hardware fittings etc.) and input services (such as repair and maintenance services).
3.	Where a person owns 2 or more flats in the housing society, whether the ceiling of Rs. 7500/- per month per member shall be applied per residential apartment or per person?	The ceiling of <b>Rs. 7500/-</b> per month per member shall be <b>applied separately for each residential apartment</b> owned by him.
4.	How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/- per month per member?	In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST shall be payable on the <b>entire amount</b> of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/- .

7. Services provided by an **unincorporated body or a non-profit entity** registered under any law for the time being in force, engaged in,-
- (i) activities relating to the welfare of **industrial or agricultural labour or farmers**; or
  - (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of one thousand rupees **(Rs 1000/-) per member per year.**

Clarification on whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators, etc. from their lessees / occupants [Circular]

Issue: Applicability of GST on supply of electricity by the real estate companies, malls, airport operators, etc., to their lessees or occupants. *Not in ICAI*

Clarification: It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise and the supply of electricity is an ancillary supply. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise would be applicable.

However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State

Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

#### **Illustration 14 : Services Provided by Unincorporated Association**

Compute value of taxable services from the following receipts (exclusive of GST) of an unincorporated association for the financial year 2022-23 :

1. Collections from members for medical camp Rs. 12 lakhs.
2. Collections from 100 members @ Rs. 8,000 per month per members for maintenance of residential complex.
3. Collections from 80 members @ Rs. 7,500 per month per members in a commercial complex for maintenance of commercial complex.

**Answer :**

Sl.	Particulars	Amount
1.	Collection from members for medical camp (since medical services are exempt, hence medical camp by such association is also exempt)	Exempt
2.	Collection from 100 members @ Rs. 8,000 per month per members for maintenance of a residential complex [since amount upto Rs. 7,500 per month per member is exempt. Hence, entire Rs. 8,000 per month per member is taxable] (100 members x Rs. 8,000 x 12 months) [Circular No. 109/28/2019 - GST, dated 22.07.2019]	96,00,000
3.	Collections from 80 members @ Rs. 7,500 per month per member in a commercial complex (since, it is a case of 'Commercial Complex'. Hence, exemption is not available. GST liability shall arise) (Rs. 7,500 x 12 month x 80 members)	72,00,000
<b>Taxable Value</b>		<b>1,68,00,000</b>

8. Services by an **intermediary of financial services located in a multi services SEZ** with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR).

**Explanation.** - For the purposes of this entry, the intermediary of financial services in IFSC is a person,-

- (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or
- (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or
- (iii) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or
- (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.

**Important Note :** Blocking of e-waybill generation facility means disabling a taxpayer from generating the e-way bill. Blocking of GSTIN for e-way bill generation would only be for the defaulting supplier GSTIN and not for the defaulting Recipient or Transporter GSTIN. Suspended GSTIN cannot generate e-way bill as supplier. However, the suspended GSTIN can get the e-way bill generated as recipient or as transporter.

**Example :** Mr. A, a registered person paying tax under regular scheme in Delhi, has not filed Form GSTR-1 for last 2 months. Mr. B, Haryana, (a regular return filer) wants to generate an e-way bill for goods to be supplied to Mr. A.

Here, there will be no restriction in generating e-way Bill for Mr. B who is making outward movement of goods, as he is a regular return filer.

Mr. A wants to generate an e-way bill in respect of an outward supply of goods to Mr. H. E-way bill generation is blocked in this case as it's an outward movement of goods of Mr. A who has not filed GSTR-1 for past 2 months.

**Rule 138F : Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof**

(1) Where -

ICAI → X

- (a) a particular state government or union territory mandates furnishing of information regarding intra-State movement of gold, precious stones, etc. specified against serial numbers 4 and 5 in the Annexure appended to rule 138(14), and
- (b) the consignment value of such goods exceeds Rs. 2,00,000 or any other higher limit, as may be notified by the respective states or union territories,



then, notwithstanding anything contained in Rule 138, every registered person who causes intra-State movement of such goods, -

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an un-registered person,

shall, before the commencement of such movement within that State or Union territory, furnish information relating to such goods electronically, as specified in Part A of FORM GST EWB-01, against which a unique number shall be generated.

However, where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(2) Further, the information as specified in PART B of FORM GST EWB-01 shall not be required to be furnished in respect of movement of these goods and after furnishing information in Part-A, the e-way bill shall be generated in FORM GST EWB-01, electronically on the common portal.

(3) Further, remaining all other provisions of e-way bill rules, as they apply in case of other goods, shall also apply in respect of these goods also.

#### Tax Invoice or bill of supply to accompany transport of goods [Rule 55A]

The person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.

**Illustration 2 :** In case of transportation of goods by railways, whether goods can be delivered even if the e-way bill is not produced at the time of delivery?

**Solution :** As per proviso to rule 138(2A) of the CGST Rules, 2017, the railways shall not deliver the goods unless the e-way bill is produced at the time of delivery. [Circular]

**Illustration 3 :** Whether e-way bill is required in the following cases (assuming value of goods exceeding Rs. 50,000) -

- (i) Where goods transit through another State while moving from one area in a State to another area in the same State.
- (ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State.

**Answer :** [Circular]

- (i) It may be noted that e-way bill generation is not dependent on whether a supply is inter-State or not, but on whether the movement of goods is inter-State or not. Therefore, if the goods transit through a second State while moving from one place in a State to another place in the same State, an e-way bill is required to be generated.
- (ii) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, there is no requirement to generate an e-way bill, if the same has been exempted u/r 138(14)(d) & if it is not exempted u/r 138(14)(d), then, the e-way bill will be required to be generated.

**"CA means Can do Attitude.  
I may fail, but  
I would not give up  
because I believe I can."**

## Latest Selected Circulars issued under GST

**Clarification on taxability of shares held in a subsidiary company by the holding company [Circular No. 196/08/2023 – GST, dated 17.07.2023]**

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 regarding applicability of GST on certain services [Circular No. 201/13/2023 – GST, dated 01.08.2023]**

Clarification 1: Services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate.

Clarification 2: 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.

**Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST [Circular No. 204/16/2023 – GST, dated 27.10.2023]**

Issue 1: Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not.

Clarification:

Not in  
ICAI



1. As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons. As per section 7(1)(c) of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Accordingly, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration.
2. Rule 28 of CGST Rules prescribes value of the supply between related parties, which is the open market value of such supply.
3. As per mandate provided by RBI, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits.
4. Therefore, there is no question of such supply/ transaction having any open market value. Accordingly, the open market value of the said transaction/ supply may be treated as zero and therefore, no tax is payable on such supply of service by the director to the company.

**Issue 2:** Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.

**Clarification:**

1. Where the corporate guarantee is provided by a company (say, holding company) to the bank/financial institutions for providing credit facilities to the other company (say, subsidiary company), where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.
2. The taxable value of such supply of services, will be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not.

**Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period [Circular No. 195/07/2023 - GST, dated 17.07.2023]**

S.N.	Issue	Clarification
1	Whether GST would be payable on such replacement of parts or supply of repair services by original equipment manufacturer, without any consideration from the customer, as part of warranty?	The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. Therefore, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period. However, if any additional consideration is charged by the

		<p>manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.</p>
2	<p>Whether in such cases, the manufacturer is required to reverse the ITC in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?</p>	<p>In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period.</p> <p>Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer is not required to reverse the ITC in respect of the said replacement parts or on the repair services provided.</p>
3	<p>Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?</p>	<p>In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer.</p> <p>However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.</p>
4	<p>In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the ITC in respect of such replacement of parts?</p>	<p>a. There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor and the manufacturer would be entitled to avail the ITC of the same. In such case, no reversal of ITC by the distributor is required in respect of the same.</p> <p>b. There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty.</p> <p>In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be</p>

		<p>made by the manufacturer in respect of the parts so replaced by the distributor under warranty.</p> <p>c. There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of section 34(2) of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.</p>
5	Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?	Yes, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the ITC of the same.
6	Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	<p>a. If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.</p> <p>b. However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)</p>

Clarification regarding Place of supply in case of supply of services in respect of advertising sector  
[Circular]

**Issue:** Advertising companies are often involved in procuring space on hoardings/ bill boards erected and mounted on buildings/land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:

**Case 1:** There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?

**Case 2:** There may be another case where the advertising company wants to display its advertisement on hoardings/ billboards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertising company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?

**Clarification:**

**Place of supply in Case 1:** The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding /structure is located.

**Place of supply in Case 2:** In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is infact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) of IGST Act.

**Clarification regarding Place of supply in case of supply of the "co-location services" [Circular]**

**Issue:** Co-location is a data center facility in which a business/company can rent space for its own servers and other Computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure.

A business/company who avails the co-location services primarily seek security and up keep of its server/s, storage and network hardware; operating systems, system software and may require to

interact with the system through a web-based interface for the hosting of its websites or other applications and operation of the servers.

In this respect, various doubts have been raised as to

- i. whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping /storing company's hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located; or
- ii. whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire

**Clarification:**

It is clarified that the Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services" (S.No. 3 of Explanatory notes of SAC- 998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of co-location services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.

In such cases, supply of co-location services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the co-location services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service.

However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.