

# **TOPIC EXCLUDED BY ICAI FROM CA FINAL IDT SYLLABUS FOR MAY 2024 EXAMS**

**Please note that ICAI has excluded below attached certain circulars & topics from CA Final indirect tax laws syllabus for May 2024 exams and onwards.**

**Kindly remove this from your material also.**

	<p>India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under GST; 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>(c) any <b>co-operative society</b> established by or under any law; or</p> <p>(d) any <b>person registered</b> under GST; or</p> <p>(e) any <b>body corporate</b> established, by or under any law; or</p> <p>(f) any <b>partnership firm</b> whether <b>registered or not</b> under any law <b>including association of persons</b>; or</p> <p>(g) any <b>casual taxable person</b> registered under GST located in the taxable territory.</p>
<p>A</p>	<p>However, RCM on GTA service shall <b>not apply</b></p> <p>(i) to services provided by a GTA to, -</p> <p>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies, which has taken registration under GST only for the purpose of deducting TDS u/s 51 and not for making a taxable supply of goods or services.</p> <p>(ii) where, -</p> <p>(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</p> <p>(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>"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."</i> [as amended by NN 08/2023 - CT (R), w.e.f. 27.07.2023]</p> <p>(c) <i>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]</i></p> <p>(d) <i>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]</i></p> <p>[also refer analysis given at the end of this table]</p>		
2.	<p>Services provided by an individual <b>advocate</b> including a senior advocate or firm of advocates by way of legal services, directly or indirectly</p> <p>Explanation.- "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any</p>	<p>An individual advocate including a senior advocate or firm of advocates</p>	<p>Any <b>business entity</b> located in the taxable territory.</p>

	<p>to GST.</p> <hr/> <p><b>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 under Sr. No. 3 and 3A of NN 12/2017 - CT (R) [Circular No. 206/18/2023 - GST, dated 31.10.2023]</b></p> <hr/> <ol style="list-style-type: none"> <li>Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD. <i>NOT in ICAI</i></li> <li>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.</li> <li>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).</li> </ol>
33A	<p>Services provided <u>to a Governmental Authority</u> by way of -</p> <p>(a) Water supply; (b) Public health; (c) Sanitation conservancy; (d) Solid waste management; and (e) Slum improvement and upgradation. [Entry No. 3B of NN. 12/2017 CT (R), inserted by NN. 13/2023 - CT (R), w.e.f. 20.10.2023]</p> <hr/> <p><b>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 No. 206/18/2023 - GST, dated 31.10.2023]</b></p> <hr/> <p>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 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. <i>Not in ICAI</i></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.	<p><del>Services of <b>leasing of assets</b> (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways. [Entry No. 43 of NN. 12/2017 CT (R), omitted by NN 07/2021 - CT (R), w.e.f. 01.10.2021]</del></p>
35.	<p><del>Services provided by the Goods and Services Tax Network [GSTN] to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax. [Entry No. 51 of NN. 12/2017 CT (R), omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022]</del></p>
36.	<p>Services provided to the Central Government, State Government, Union territory under any <b>insurance scheme</b> for which <b>total premium is paid by the Central Government, State Government, Union territory.</b> [Entry No. 40 of NN. 12/2017 CT (R)]</p> <p><b>Clarifications regarding applicability of GST [Circular No. 16/16/2017-GST, dated 15.11.2017]</b></p> <p><b>Issue:</b> Is GST leviable on General Insurance policies provided by a State Government to employees of the State government/Police personnel, employees of Electricity Department or students of colleges/ private schools, etc.</p> <ol style="list-style-type: none"> <li>where premium is paid by State Government and</li> <li>where premium is paid by employees, students, etc.?</li> </ol> <p><b>Clarification:</b></p> <ol style="list-style-type: none"> <li>It is hereby clarified that services provided to the Central Government, State Government, Union territory</li> </ol>

	<p>5. How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7,500/- per month per member? Is the GST payable only on the amount exceeding Rs. 7,500/- or on the entire amount of maintenance charges?</p>	<p>The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7,500/- per month per member. In case the charges exceed Rs. 7,500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9,000/- per month per member, GST @ 18% shall be payable on the <b>entire amount</b> of Rs. 9,000/- and not on [Rs. 9,000 - Rs. 7,500] = Rs. 1,500/- .</p>									
<p>7.</p> <p><span style="border: 1px solid blue; border-radius: 50%; padding: 2px;">A</span></p>	<p>Services provided by an <b>unincorporated body or a non-profit entity</b> registered under any law for the time being in force, engaged in,-</p> <p>(i) activities relating to the welfare of <b>industrial or agricultural labour or farmers</b>; or</p> <p>(ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of one thousand rupees (<b>Rs 1000/- per member per year</b>).</p> <p>[Entry no. 77A of NN 12/2017 CT(R), inserted by NN 14/2018 CT(R) w.e.f. 27.07.2018]</p> <hr/> <p><b>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 No. 206/18/2023 - GST, dated 31.10.2023]</b></p> <hr/> <p><b>Issue:</b> <i>Applicability of GST on supply of electricity by the real estate companies, malls, airport operators, etc., to their lessees or occupants.</i></p> <p style="text-align: center;"><i>ICAI → X</i></p> <p><b>Clarification:</b> <i>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.</i></p> <p><i>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.</i></p>										
<p><b>Illustration 30 : Services Provided by Unincorporated Association</b></p> <p>Compute value of taxable services from the following receipts (exclusive of GST) of an unincorporated association for the financial year 20XX-XY :</p> <ol style="list-style-type: none"> <li>1. Collections from members for medical camp Rs. 12 lakhs.</li> <li>2. Collections from 100 members @ Rs. 8,000 per month per members for maintenance of residential complex.</li> <li>3. Collections from 80 members @ Rs. 7,500 per month per members in a commercial complex for maintenance of commercial complex.</li> </ol> <p><b>Answer :</b> [Refer Entry No. 77 of NN. 12/2017 CT (R)]</p> <table border="1" data-bbox="203 1680 1469 1963"> <thead> <tr> <th>S.N.</th> <th>Particulars</th> <th>Rs.</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Collection from members for medical camp (since, medical services are exempt, hence medical camp by such association is also exempt)</td> <td>Exempt</td> </tr> <tr> <td>2.</td> <td>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 × 12 months) [Circular No. 109/28/2019 - GST, dated 22.07.2019]</td> <td>96,00,000</td> </tr> </tbody> </table>			S.N.	Particulars	Rs.	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 × 12 months) [Circular No. 109/28/2019 - GST, dated 22.07.2019]	96,00,000
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**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 -

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(a) a Commissioner of State tax or Union territory tax 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), in accordance with rule 138F(1) of the SGST/UTGST Rules, and

(b) the consignment value of such goods exceeds such amount, not below Rs. 2,00,000, as may be notified by the Commissioner of State tax or Union territory tax, in consultation with the jurisdictional Principal Chief Commissioner or Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorised by him,

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) The information as specified in PART B of FORM GST EWB-01 shall not be required to be furnished in respect of movement of goods referred to in the sub-rule (1) and after furnishing information in Part-A of FORM GST EWB-01, the e-way bill shall be generated in FORM GST EWB-01, electronically on the common portal.

(3) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1.

(4) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-waybill, the e-way bill may be cancelled, electronically on the common portal, within 24 hours of generation of the e-way bill.

However, an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

(5) Notwithstanding anything contained in this rule, no e-way bill is required to be generated -

(a) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

(b) where the goods are being transported -

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal.

(6) The provisions of sub-rule (10), sub-rule (11) and sub-rule (12) of rule 138, rule 138A, rule 138B, rule 138C, rule 138D and rule 138E shall, mutatis mutandis, apply to an e-way bill generated under this rule.

Consignment Value of Rs. 50,000 includes GST amount also.

For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State tax or Union territory tax charged in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

**Illustration 2 :**





3. In respect of such supply of services by a person to another related person or by a holding company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value will be determined as per rule 28 of CGST Rules.
4. Sub-rule (2) has been inserted in rule 28 of CGST Rules, for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee. Accordingly, in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value of such supply of services, will henceforth 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.
5. It is clarified that the sub-rule (2) of Rule 28 shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in issue no. 1 above.

**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]**

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1. As a common trade practice, the original equipment manufacturers /suppliers offer warranty for the goods / services supplied by them. During the warranty period, replacement goods /services are supplied to customers free of charge and as such no separate consideration is charged and received at the time of replacement. Clarification is required in respect of GST liability as well as liability to reverse ITC against such supplies of replacement of parts and repair services during the warranty period without any consideration from the customers.
2. The matter has been examined and CBIC hereby clarifies as follows:

S.N.	Issue	Clarification
1	There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services.  Whether GST would be payable on such replacement of parts or supply of repair services, 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.  As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, 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 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.
2	Whether in such cases, the manufacturer is required to reverse the input tax credit 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?	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.  Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.
3	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	There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer.

	<i>behalf of the manufacturer?</i>	<p><i>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.</i></p> <p><i>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.</i></p>
4	<i>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 input tax credit in respect of such replacement of parts?</i>	<p><i>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 on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same.</i></p> <p><i>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.</i></p> <p><i>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 made by the manufacturer in respect of the parts so replaced by the distributor under warranty.</i></p> <p><i>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 sub-section (2) of section 34 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.</i></p>
5	<i>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?</i>	<p><i>In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017.</i></p> <p><i>Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.</i></p>
6	<i>Sometimes companies provide offers of Extended warranty to the customers which can be availed at</i>	<p><i>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</i></p>

<p><i>the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?</i></p>	<p><i>value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.</i></p> <p><i>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)</i></p>
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**Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons [Circular No. 199/11/2023 – GST, dated 17.07.2023]**

- Various representations have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons u/s 25 of the CGST Act.*
- Let us consider a business entity which has Head Office (HO) located in State-1 and a branch offices (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).*
- The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act are being clarified in the Table below: -*

S.N.	Issues	Clarification
1.	<p><i>Whether HO can avail the ITC in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices u/s 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor ('ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?</i></p>	<p><i>It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism. However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such ITC by ISD mechanism. HO can also issue tax invoices u/s 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act.</i></p> <p><i>In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act.</i></p> <p><i>Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices u/s 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for or on behalf of a BO, only if the said services have actually been provided to the concerned BOs.</i></p>
2.	<p><i>In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for</i></p>	<p><i>The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules. The second proviso to rule 28 of CGST Rules provides</i></p>



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.

**Matter 3:** Place of supply in case of supply of the "co-location services" — ICAT → X

**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:**

3.1 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.

3.2 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.

3.3 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.