

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.

Sl.	Notified Category of goods and services u/s 9(4)
1	*If value of inputs and input services purchased from registered supplier is less than 80%, promoter has to pay GST on reverse charge basis, under section 9(4) of the CGST Act, at the applicable rate of GST on all such inward supplies (to the extent it is short of 80% of the inward supplies from registered supplier)
2	Cement purchased from an unregistered person
3	Capital goods purchased from an unregistered person

Section 9(3) of the CGST Act, 2017

The Government may, on the recommendations of the council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

List of services taxable under reverse charge, i.e. the services where tax is payable by the recipient:

S. N.	Category of Supply of Service	Supplier of Service	Recipient of Service
1.	Supply of services by a Goods Transport Agency (GTA) in respect of transportation of goods by road to - (a) any factory registered under or governed by the Factories Act, 1948; or (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the GST; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person	Goods Transport Agency (GTA)	(a) any factory registered under or governed by the Factories Act, 1948; or (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under GST; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person registered under GST located in the taxable territory.
	<p>However, RCM on GTA service shall not apply</p> <p>(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 CGST Act, 2017 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, - (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 -</p>		

(A)

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<p style="text-align: center;">(A)</p>	<p>CT (R), w.e.f. 27.07.2023]</p> <p>(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 1st January of the preceding Financial Year but not later than 31st March of the preceding Financial Year. [Proviso inserted by NN 06/2023 - CT (R), w.e.f. 27.07.2023]</p> <p>(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]</p> <p>[also refer analysis given at the end of this table]</p>	<p>ICAI → X</p>	
2.	<p>Services provided by an individual advocate 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 court, tribunal or authority."</p>	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory.
3.	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.
4.	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
5.	<p>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, -</p> <p>(1) renting of immovable property, and</p> <p>(2) Services specified below -</p> <p>(i) services by the Department of Posts and the Ministry of Railways (Indian Railways); [As amended by NN. 14/2023 - CT (R), w.e.f. 20.10.2023]</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers.</p> <p>[Provisions of RCM, in so far as they apply to the CG and SG, shall also apply to the Parliament, State Legislatures, Courts and Tribunals (Words 'Courts and Tribunals' inserted by NN 02/2023 - CT (R), w.e.f. 01.03.2023)]</p>	Central Government, State Government or Union territory or local authority;	Any business entity located in the taxable territory.
5A.	<p>Services supplied by the Central Government excluding the Ministry of Railways (Indian Railways), State Government, Union territory or local authority by way of renting of immovable property to a person registered under GST. [As</p>	Central Government, State Government, Union Territory or	Any person registered under GST

	<p>Note: As per clause (zzf) under this notification, 'Specified organisation' shall mean, -</p> <ul style="list-style-type: none"> ◆ Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking; or ◆ 'Committee' or 'State Committee' as defined in section 2 of the Haj Committee Act, 2002.
32.	<p>Pure services provided to Government:</p> <ul style="list-style-type: none"> ◆ Pure services (excluding works contract service or other composite supplies involving supply of any goods) ◆ provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity [omitted words, omitted by NN 16/2021 - CT(R), w.e.f. 01.01.2022] ◆ by way of any activity: <ul style="list-style-type: none"> ■ 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
33.	<p>Composite supply provided to Government:</p> <ul style="list-style-type: none"> ◆ Composite supply of goods and services in which the value of supply of goods constitutes not 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 [omitted words, omitted by NN 16/2021 - CT(R), w.e.f. 01.01.2022] ◆ by way of any activity: <ul style="list-style-type: none"> ◆ 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. <p>Note:</p> <ul style="list-style-type: none"> • [Circular No. 51/25/2018 GST, dated 31.07.2018] Service provided by private service providers to the State Governments by way of transportation of patients on behalf of the State Governments against consideration in the form of fee or otherwise charged from the State Government, would be exempt. • [Circular No. 153/09/2021 - GST, dated 17.06.2021] Public Distribution is specifically covered under the scope of the activities that may be entrusted to a Panchayat under Article 243G of the Constitution. Hence, said entry No. 3A would apply to composite supply of milling of wheat and fortification (adding vitamins & minerals to increase nutritional value) thereof by miller, or of paddy into rice, provided that value of goods supplied in such composite supply (goods used for fortification, packing material, etc.) does not exceed 25% of the value of composite supply. It is a matter of fact as to whether the value of goods in such composite supply is up to 25% and requires ascertainment on case-to-case basis. • [Circular No. 177/09/2022 - GST, dated 03.08.2022] The functions entrusted to Municipalities and Panchayats under articles 243W & 243G of the Indian Constitution also include the activities of Sanitation and conservancy services. 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 exemption under Sl. No. 3 and 3A of the exemption notification no. 12/2017 - CT (R). Otherwise, it will be chargeable to GST. • [Circular No. 206/18/2023 - GST, dated 31.10.2023] Public parks in government residential colonies, government offices and other public areas are developed and maintained by Central Public Works Department (CPWD). 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. <p>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).</p> <p style="text-align: center;">ICAI → X</p>
33A	<p>Services provided to a Governmental Authority by way of - (a) Water supply; (b) Public health; (c) Sanitation</p>

	<p>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> <p>[Circular No. 206/18/2023 – GST, dated 31.10.2023] District Mineral Foundations Trusts (DMFTs) set up by the State Governments 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 11th Schedule and 12th 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 style="text-align: center;">ICAI → X</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 of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways . [Omitted by NN 07/2021 - CT (R), w.e.f. 01.10.2021]
35.	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. [omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022]
36.	Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory.
37.	Services provided to the Central Government, State Government, Union territory administration under any training programme for which 75% or more of the total expenditure is borne by the Central Government, State Government, Union territory administration.
38.	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 Regional Connectivity Scheme airport , against consideration in the form of viability gap funding . However, the said exemption shall not 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.
39.	Service provided by Fair Price Shops to Central Government, State Government or Union Territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System (PDS) against consideration in the form of commission or margin .
40.	Taxable services, provided or to be provided, by a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or bio-incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India.
41.	Services provided by an incubatee up to a total turnover of Rs. 50 lakh in a financial year subject to the following conditions, namely : (a) the total turnover had not exceeded Rs. 50 lakh during the preceding financial year; and (b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee.
42.	Services by way of giving on hire - (a) to a state transport undertaking , a motor vehicle meant to carry more than 12 passengers ; or (aa) to a local authority , an Electrically operated vehicle meant to carry more than 12 passengers ; or (b) to a goods transport agency , a means of transportation of goods; or

	2. Is the RWA entitled to take ITC of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500/- per month per member?	RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), inputs (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.
	3. Where a person owns 2 or more flats in the housing society, the exemption ceiling of Rs. 7,500/- to be available shall be applied per residential apartment or per person?	The ceiling of Rs. 7,500/- per month per member shall be applied separately for each residential apartment owned by him.
	4. How should the RWA calculate GST payable where the maintenance charges 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 entire amount of Rs. 9,000/- and not on [Rs. 9,000 - Rs. 7,500] = Rs. 1,500/- .
7.	<p>Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in-</p> <p>(i) activities relating to the welfare of industrial or agricultural labour or farmers; 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 (Rs. 1,000/-) per member per year.</p> <p>Issue: Applicability of GST on supply of electricity by the real estate companies, malls, airport operators, etc., to their lessees or occupants.</p> <p>Clarification [Circular No. 206/18/2023 – GST, dated 31.10.2023]: 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.</p> <p>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.</p>	
8.	<p>Services received from a provider of service located in a non-taxable territory by –</p> <p>(a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;</p> <p>(b) an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities; or</p> <p>(c) a person located in a non-taxable territory.</p> <p>However, the exemption shall not apply to –</p> <p>(i) online information and database access or retrieval (OIDAR) services received by persons specified in entry (a) or entry (b); or</p> <p>(ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry. [as amended by NN 12/2023 – IT (R), w.e.f. 01.10.2023]</p>	

- (c) being a person other than a person specified in clause (a), has **not furnished the statement of outward supplies for any 2 months or quarters**, as the case may be; or
- (d) being a person, whose **registration has been suspended** under the provisions of sub-rule (1) or sub-rule (2) or sub-rule (2A) of rule 21A.

However, the Commissioner may, on receipt of an application from a registered person in FORM GST EWB-05, on sufficient cause being shown and for reasons to be recorded in writing, by order in FORM GST EWB-06, allow furnishing of the said information in PART A of FORM GST EWB 01, subject to such conditions and restrictions as may be specified by him:

Further, no order rejecting the request of such person to furnish the information in PART A of FORM GST EWB 01 under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

Furthermore, the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

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.

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.

E-way bill in case of Storing of Goods in Godown of Transporter [Circular No. 61/35/2018-GST, dated 04.09.2018]

1. In case the consignee/recipient taxpayer stores his goods in the godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. In such cases, mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice. Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's additional place of business). Therefore, e-way bill validity in such cases will not be required to be extended.
2. Further, whenever the goods are transported from the transporter's godown, which has been declared as the additional place of business of the recipient taxpayer, to any other premises of the recipient taxpayer then, the relevant provisions of the e-way bill rules shall apply.
3. Further, the obligation of the transporter to maintain accounts and records as specified in section 35 of the CGST Act read with rule 58 of the CGST Rules shall continue as a warehouse-keeper. Furthermore, the recipient taxpayer shall also maintain accounts and records as required under rules 56 and 57 of the CGST Rules. Furthermore, as per rule 56(7) of the CGST Rules, books of accounts in relation to goods stored at the transporter's godown (i.e., the recipient taxpayer's additional place of business) by the recipient taxpayer may be maintained by him at his principal place of business.

**Jise haarne ka darr nahi,
jeet usse door nahi!**

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:

- 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.
- 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?	<p>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.</p> <p>Therefore, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period.</p> <p>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.</p>
2	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>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	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>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	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	<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</p>

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	<p>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>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 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>
<p>5</p>	<p>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?</p>	<p>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.</p>
<p>6</p>	<p>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>	<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 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]

S.N.	Issues	Clarification
<p>1.</p>	<p>Whether HO can avail the ITC in respect of common input services procured from a</p>	<p>HO has an option to distribute ITC in respect of such common input services by following ISD mechanism. It is not</p>

Clarification: The place of supply of services of transportation of goods, other than through mail and courier, will be determined by the default rule u/s 13(2) of IGST Act and not as performance based services u/s 13(3) of IGST Act.

Further, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act.

Matter 2: Place of supply in case of supply of services in respect of advertising sector

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 in fact 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"

ICAI - 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.