

Overview of GST

For the sake of brevity, the Central Goods and Services Act, 2017, Integrated Goods and Services Act, 2017 and Union Territory Goods and Services Act, 2017 has been referred to as “CGST Act”, “IGST Act” and “UTGST Act” respectively in this material.

GST in India-An Introduction

1. GENESIS OF GST IN INDIA

- ☑ It has now been more than a decade since the idea of national Goods and Services Tax (GST) was mooted by Kelkar Task Force in 2004. The Task Force strongly recommended fully integrated ‘GST’ on national basis.
- ☑ Subsequently, the then Union Finance Minister, Shri P. Chidambaram, while presenting the Central Budget (2007-2008), announced that GST would be introduced from April 1, 2010. Since then, GST missed several deadlines and continued to be shrouded by the clouds of uncertainty.
- ☑ The talks of ushering in GST, however, gained momentum in the year 2014 when the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST in the Parliament on 19th December, 2014. The Lok Sabha passed the Bill on 6th May, 2015 and Rajya Sabha on 3rd August, 2016. Subsequent to ratification of the Bill by more than 50% of the States, Constitution (122nd Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became **Constitution (101st Amendment) Act, 2016**, which paved the way for introduction of GST in India.
- ☑ In the following year, on 27th March, 2017, the Central GST legislations - Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were introduced in Lok Sabha. Lok Sabha passed these bills on 29th March, 2017 and with the receipt of the



President's assent on 12th April, 2017, the Bills were enacted. The enactment of the Central Acts is being followed by the enactment of the State GST laws by various State Legislatures. Telangana, Rajasthan, Chhattisgarh, Punjab, Goa and Bihar are among the first ones to pass their respective State GST laws.

- ✓ Government is endeavoring to roll out GST by 1st July, 2017, by achieving consensus on all the issues relating thereto. It is geared to attain July 1 deadline for implementation of GST across India.
- ✓ GST is a path breaking indirect tax reform which will create a common national market by dismantling inter-State trade barriers. GST has subsumed multiple indirect taxes like excise duty, service tax, VAT, CST, luxury tax, entertainment tax, entry tax, etc.
- ✓ France was the first country to implement GST in the year 1954. Within 62 years of its advent, about 160 countries across the world have adopted GST because this tax has the capacity to raise revenue in the most transparent and neutral manner.

2. CONCEPT OF GST



Before we proceed with the finer nuances of Indian GST, let us first understand the basic concept of GST.

- ✓ GST is a value added tax levied on manufacture, sale and consumption of goods and services. **VALUE ADDED TAX**
- ✓ GST offers comprehensive and continuous chain of tax credits from the producer's point/service provider's point upto the retailer's level/consumer's level thereby taxing only the value added at each stage of supply chain. **CONTINUOUS CHAIN OF TAX CREDITS**
- ✓ The supplier at each stage is permitted to avail credit of GST paid on the purchase of goods and/or services and can set off this credit against the GST payable on the supply of goods and services to be made by him. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages. **BURDEN BORNE BY FINAL CONSUMER**



Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system. GST does not differentiate between goods and services and thus, the two are taxed at a single rate.

NO CASCADING OF TAXES

3. NEED FOR GST IN INDIA



Deficiencies in the existing value added taxation

- ✍ In the present regime, a manufacturer of excisable goods charges excise duty and value added tax (VAT) on intra-State sale of goods. However, the VAT dealer on his subsequent intra-State sale of goods charges VAT (as per prevalent VAT rate as applicable in the respective state) on value comprising of (basic value + excise duty charged by manufacturer + profit by dealer).
- ✍ Further, in respect of tax on services, service tax is payable on taxable services provided. W.e.f. 1 July, 2012, service tax is levied on all 'services' other than the Negative list of services as provided under Section 66D of the Finance Act, 1994 or else otherwise exempted vide the Mega Exemption Notification No. 25/2012-ST dated 20 June, 2012 ("the Mega Exemption Notification").
- ✍ Presently, from 1 June, 2016, service tax is levied @ 15% [Service tax @ 14%, Swachh Bharat Cess (SBC) @ 0.5% (w.e.f. November 15, 2015) and Krishi Kalyan Cess (KKC) @ 0.5% (w.e.f. June 1, 2016)] on specified services provided by service providers in India.
- ✍ The existing indirect tax framework in India suffer from various shortcomings. Under the existing indirect tax structure, the **various indirect taxes being levied are not necessarily mutually exclusive**. To illustrate, when the goods are manufactured and sold both central excise duty (CENVAT) and State-Level VAT are levied. Though CENVAT and State-Level VAT are essentially value added taxes, set off of one against the credit of another is not possible as CENVAT is a central levy and State-Level VAT is a State levy. Moreover, CENVAT is applicable only at manufacturing level and not at distribution levels. The existing sales tax regime in India is a combination of origin based (Central Sales Tax) and destination based multipoint system of taxation (State-Level VAT). Service tax is also a value added tax and credit across the service tax and the central excise duty is integrated at the central level.

- Despite the introduction of the principle of taxation of value added in India - at the Central level in the form of CENVAT and at the State level in the form of State VAT - its application has remained piecemeal and fragmented on account of the following reasons:

Non-inclusion of several local levies in State VAT such as luxury tax, entertainment tax, etc.

Cascading of taxes on account of (i) levy of Non-VATable CST and (ii) inclusion of CENVAT in the value for imposing VAT

No CENVAT after manufacturing stage

Non-integration of VAT & service tax

Double taxation of a transaction as both goods and services



GST - A cure for ills of existing indirect tax regime

- A comprehensive tax structure covering both goods and services viz. Goods and Service Tax (GST) would address these problems. Simultaneous introduction of GST at both Centre and State levels would integrate taxes on goods and services for the purpose of set-off relief and will ensure that both the cascading effects of CENVAT and service tax are removed and a continuous chain of set-off from the original producer's point/ service provider's point upto the retailer's level/consumer's level is established.
- In the GST Regime, the major indirect taxes have been subsumed in the ambit of GST. The present concepts of manufacture or sale of goods or rendering of services are no longer applicable since the tax is now levied on "Supply of Goods and/or services".




4. DUAL GST MODEL TO BE INTRODUCED IN INDIA

- India will adopt a dual GST which will be imposed concurrently by the Centre and States, i.e. Centre and States will simultaneously tax goods and services. Centre will have the power to tax intra-State sales & States will be empowered to tax services. **GST will extend to whole of India except the State of Jammu and Kashmir.**
- GST is a destination based tax applicable on all transactions involving supply of goods and services for a consideration subject to exceptions thereof. GST in India will comprise of **Central Goods and Service Tax (CGST)** - levied and collected by Central Government, **State Goods and Service Tax (SGST)** - levied and


Dual GST

CGST/SGST/UTGST/IGST


collected by State Governments/Union Territories with State Legislatures and **Union Territory Goods and Service Tax (UTGST)** - levied and collected by Union Territories without State Legislatures, on **intra-State supplies** of taxable goods and/or services. **Inter-State supplies** of taxable goods and/or services will be subject to **Integrated Goods and Service Tax (IGST)**. IGST will approximately be a sum total of CGST and SGST/UTGST and will be levied by Centre on all inter-State supplies.

 There is single legislation – CGST Act, 2017 - for levying CGST. Similarly, Union Territories without State legislatures [Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Chandigarh] will be governed by UTGST Act, 2017 for levying UTGST. States and Union territories with their own legislatures [Delhi and Puducherry] have to enact their own GST legislation for levying SGST. Though there would be multiple SGST legislations, the basic features of law, such as chargeability, definition of taxable event and taxable person, classification and valuation of goods and services, procedure for collection and levy of tax and the like would be uniform in all the SGST legislations, as far as feasible. This would be necessary to preserve the essence of dual GST.

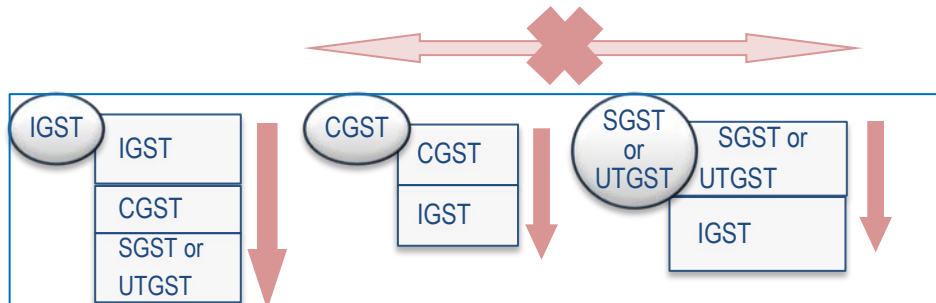
Legislative Framework

 In GST regime, tax (i.e. CGST and SGST/UTGST for intra-State supplies and IGST for inter-State supplies) shall be paid by every taxable person and in this regard provisions have been prescribed in the law. However, for providing relief to small businesses, a simpler method of paying taxes and accounting thereof is also prescribed, known as Composition Scheme. Along with providing relief to small-scale business, the law also contains provisions for granting exemption from payment of tax on specified goods and/or services.



 Input Tax Credit (ITC) of CGST and SGST/UTGST will be available throughout the supply chain, but cross utilization of credit of CGST and SGST/UTGST will not be possible, i.e. CGST credit cannot be utilized for payment of SGST/UTGST and SGST/UTGST credit cannot be utilized for payment of CGST. However, cross utilization will be allowed between CGST/SGST/UTGST and IGST, i.e. credit of IGST can be utilized for the payment of CGST/SGST/UTGST and vice versa.

Manner of utilisation of ITC



Since GST is a **destination based consumption tax**, revenue of SGST will ordinarily accrue to the consuming States. The inter-State supplier in the exporting State will be allowed to set off the available credit of IGST, CGST and SGST/UTGST (in that order) against the IGST payable on inter-State supply made by him. The buyer in the importing State will be allowed to avail the credit of IGST paid on inter-State purchase made by him. Thus, unlike the existing scenario where the credit chain breaks in case of inter-State sales on account of non-VATable CST, under GST regime there is a seamless credit flow in case of inter-State supplies too.

Seamless flow of credit

The revenue of inter-State sale will not accrue to the exporting State and the exporting State will be required to transfer to the Centre the credit of SGST/UTGST used in payment of IGST. The Centre will transfer to the importing State the credit of IGST used in payment of SGST/UTGST. Thus, the inter-State trade of goods and services (IGST) would need a robust settlement mechanism amongst the States and the Centre. A Central Agency is needed which can act as a clearing house and verify the claims and inform the respective Governments to transfer the funds. This is possible only with the help of a strong IT Infrastructure.

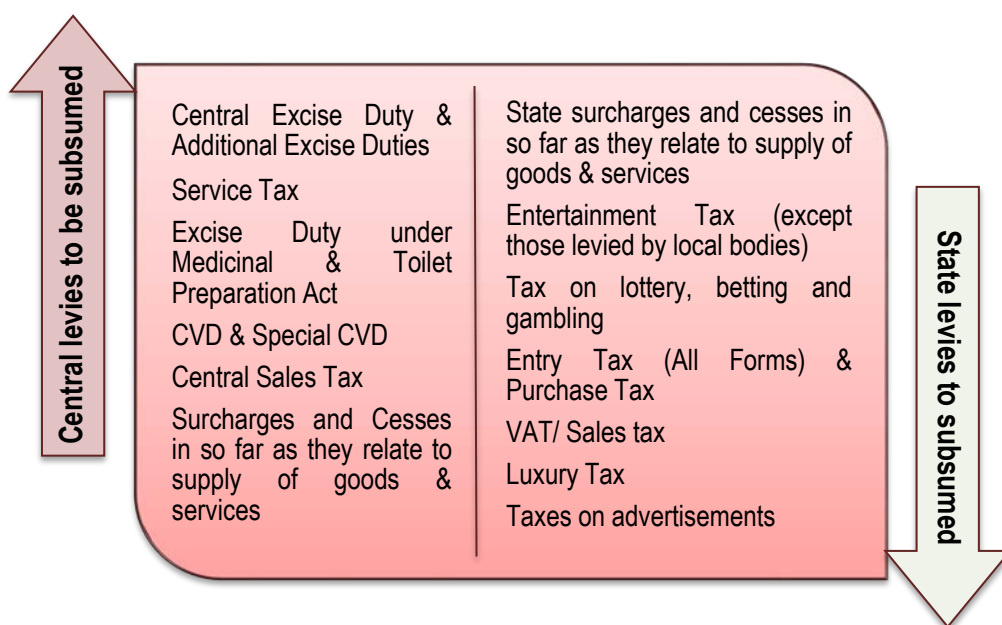
Resultantly, **Goods and Services Network (GSTN)** - a Special Purpose Vehicle – has been set to provide a shared IT infrastructure and services to Central and State Governments, taxpayers and other stakeholders for implementation of GST. The functions of the GSTN, *inter alia*, include:

Goods and Services Network (GSTN)

- ✔ facilitating registration;
- ✔ forwarding the returns to Central and State authorities;
- ✔ computation and settlement of IGST;

- ✔ matching of tax payment details with banking network;
- ✔ providing various MIS reports to the Central and the State Governments based on the taxpayer return information;
- ✔ providing analysis of taxpayers' profile; and
- ✔ running the matching engine for matching, reversal and reclaim of input tax credit.

Taxes to be subsumed in GST



Illustration

Intra-State Supply

In case of local supply of goods/ services, the supplier would charge dual GST i.e., CGST and SGST at specified rates on the supply.

I. Supply of goods/ services by A to B

	Amount (in ₹)
Value charged for supply of goods/ services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by A from B for local supply of goods/ services	11,800

The CGST & SGST charged on B for supply of goods/services will be remitted by A to the appropriate account of the Central and State Government respectively.

A is the first stage supplier of goods/services and hence, does not have credit of CGST, SGST or IGST.

II. Supply of goods/services by B to C – Value addition @ 20%

B will avail credit of CGST and SGST paid by him on the purchase of goods/ services and will utilise such credit for being set off against the CGST and SGST payable on the supply of goods/services made by him to C.

	Amount (in ₹)
Value charged for supply of goods/ services(₹ 10,000 x 120%)	12,000
Add: CGST @ 9%	1080
Add: SGST @ 9%	<u>1080</u>
Total price charged by B from C for local supply of goods/ services	<u>14160</u>

Computation of CGST, SGST payable by B to Government

	Amount (in ₹)
CGST payable	1080
Less: Credit of CGST	<u>900</u>
CGST payable to Central Government	<u>180</u>
SGST payable	1080
Less: Credit of SGST	<u>900</u>
SGST payable to State Government	<u>180</u>

Note: Rates of CGST and SGST have been assumed to be 9% each.

Statement of revenue earned by Central and State Government

Transaction	Revenue to Central Government (₹)	Revenue to State Government (₹)
Supply of goods/services by A to B	900	900
Supply of goods/services by B to C	180	180
Total	1080	1080

Illustration**Inter-State Supply**

In case of inter-State supply of goods/ services, the supplier would charge IGST at specified rates on the supply.

I. Supply of goods/services by X of State 1 to A of State 1

	Amount (in ₹)
Value charged for supply of goods/services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	<u>900</u>
Total price charged by X from A for intra-State supply of goods/services	<u>11,800</u>

X is the first stage supplier of goods/services and hence, does not have any credit of CGST, SGST or IGST.

II. Supply of goods/services by A of State 1 to B of State 2 – Value addition @ 20%

	Amount (in ₹)
Value charged for supply of goods/services (₹ 10,000 x 120%)	12,000
Add: IGST @ 18%	<u>2,160</u>
Total price charged by A from B for inter-State supply of goods/services	<u>14,160</u>

Computation of IGST payable to Government

	Amount (in ₹)
IGST payable	2,160
Less: Credit of CGST	900
Less: Credit of SGST	<u>900</u>
IGST payable to Central Government	<u>360</u>

The IGST charged on B of State 2 for supply of goods/services will be remitted by A of State 1 to the appropriate account of the Central Government. State 1 (Exporting State) will transfer SGST credit of ₹ 900 utilised in the payment of IGST to the Central Government.

III. Supply of goods/services by B of State 2 to C of State 2 – Value addition @ 20%

B will avail credit of IGST paid by him on the purchase of goods/services and will utilise such credit for being set off against the CGST and SGST payable on the local supply of goods/services made by him to C.

	Amount (in ₹)
Value charged for supply of goods/ services (₹ 12,000 x 120%)	14,400
Add: CGST @ 9%	1,296
Add: SGST @ 9%	<u>1,296</u>
Total price charged by B from C for local supply of goods/services	<u>16,992</u>

Computation of CGST, SGST payable to Government

	Amount (in ₹)
CGST payable	1,296
Less: Credit of IGST	<u>1,296</u>
CGST payable to Central Government	<u>Nil</u>
SGST payable	1,296
Less: Credit of IGST (₹ 2,160 - ₹ 1,296)	<u>864</u>
SGST payable to State Government	<u>432</u>

Central Government will transfer IGST credit of ₹ 864 utilised in the payment of SGST to State 2 (Importing State).

Note: Rates of CGST, SGST and IGST have been assumed to be 9%, 9% and 18% respectively.

Statement of revenue earned by Central and State Governments

Transaction	Revenue to Central Government (₹)	Revenue to Government of State 1 (₹)	Revenue to Government of State 2 (₹)
Supply of goods/services by X to A	900	900	
Supply of goods/services by A to B	360		
Transfer by State 1 to Centre	900	(900)	
Supply of goods/services by B to C			432
Transfer by Centre to State 2	(864)		864
Total	1,296	Nil	1,296

5. BENEFITS OF GST

GST is a win-win situation for the entire country. It brings benefits to all the stakeholders of industry, Government and the consumer. It will lower the cost of goods and services, give a boost to the economy and make the products and services globally competitive. The significant benefits of GST are discussed hereunder:

- ✍ **Creation of unified national market:** GST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level.
- ✍ **Mitigation of ill effects of cascading:** By subsuming most of the Central and State taxes into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it would mitigate the ill effects of cascading, improve competitiveness and improve liquidity of the businesses.
- ✍ **Elimination of multiple taxes and double taxation:** GST will subsume majority of existing indirect tax levies both at Central and State level into one tax i.e., GST which will be leviable uniformly on goods and services. This will make doing business easier and will also tackle the highly disputed issues relating to double taxation of a transaction as both goods and services.
- ✍ **Boost to 'Make in India' initiative:** GST will give a major boost to the 'Make in India' initiative of the Government of India by making goods and services produced in India competitive in the national as well as international market.
- ✍ **Buoyancy to the Government Revenue:** GST is expected to bring buoyancy to the Government Revenue by widening the tax base and improving the taxpayer compliance.

6. CONSTITUTIONAL AMENDMENT

- 👤 The Constitutional provisions hitherto had delineated separate powers for the Centre and the States to impose various taxes. Whereas the Centre levied excise duty on all goods produced or manufactured in India, the States levied Value Added Tax once the goods entered the stream of trade upon completion of manufacture. Services were exclusively taxed by the Centre together with applicable cesses, if any. Besides, there were State specific levies like entry tax, luxury tax, entertainment tax, lottery and betting tax, local taxes levied by Panchayats etc.
- 👤 With respect to goods imported from outside the country into India, Centre levied basic customs duty and additional duties of customs together with applicable cesses, if any.

Constitution (101st Amendment) Act, 2016

- Consequently, a Constitutional amendment was needed to enable integration of the central excise duty including additional duties of customs, State VAT, CST and certain State specific taxes and service tax levied by the Centre into a comprehensive goods and service tax.
- Constitution (101st Amendment) Act, 2016 was enacted on 8th September, 2016. Significant amendments made by the Constitution (101st Amendment) Act, 2016 are as follows:

Significant amendments

- Concurrent powers on Parliament and State Legislatures to make laws governing goods and services.
- Levy of IGST on inter-State transactions of goods and services to be levied and collected by the Central Government and apportioned between the Union and the States in the manner provided by Parliament by Law as per the recommendation of the GST Council.
- Principles for determining the place of supply and when a supply takes place in the course of inter-State trade or commerce shall be formulated by the Parliament, by law.
- GST will be levied on all supply of goods and services except alcoholic liquor for human consumption.
- On the following products, GST shall not be levied till a date to be notified on the recommendations of the GST Council:
 - Petroleum Crude
 - High Speed Diesel
 - Motor Spirit (commonly known as Petrol)
 - Natural Gas
 - Aviation Turbine Fuel
- The Union Government shall retain the power to levy duties of excise on the aforesaid products besides tobacco and tobacco products manufactured or produced in India.
- Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (**GST Council**).
 - ☑ The provisions relating to GST Council came into force on 12th September, 2016. President constituted the GST Council on 15th September, 2016.
 - ☑ The Union Finance Minister is the Chairman of this Council and Ministers in charge of Finance/Taxation or any other Minister nominated by each of the States & UTs with Legislatures are its members.

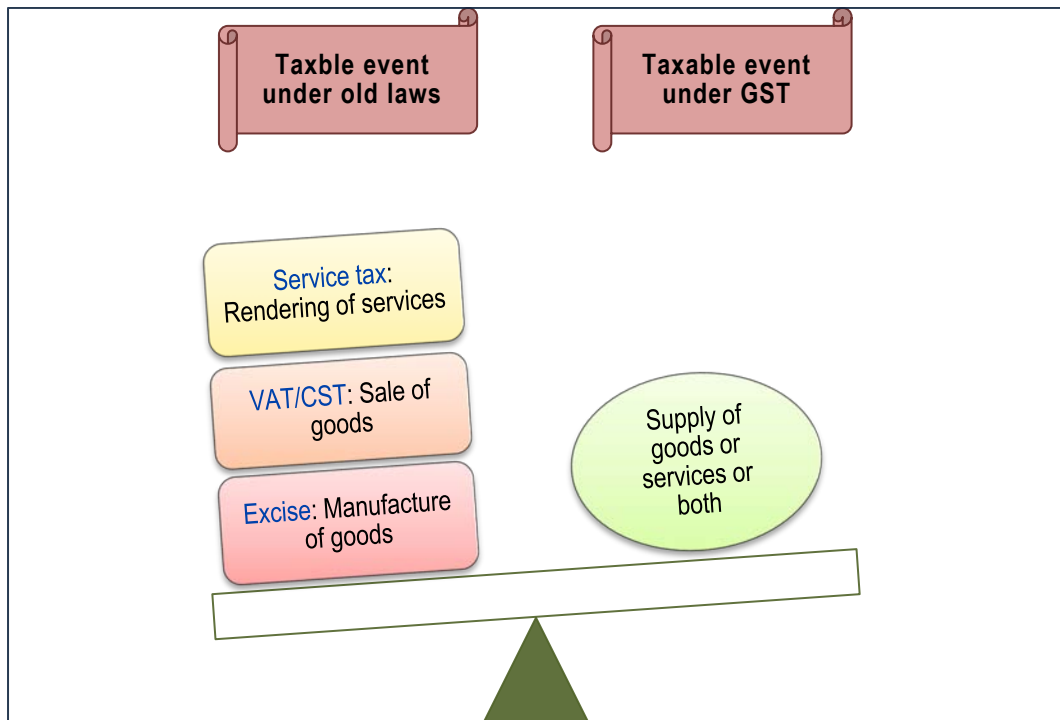


Besides, the Union Minister of State in charge of Revenue or Finance is also its member.

- ☑ The function of the Council is to make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc. The GST Council has decided the threshold exemption, composition threshold, GST rates, GST legislations including rules and notifications.

Taxable event - Supply

- ☑ The incidence of tax is the foundation stone of any taxation system. It determines the point at which tax would be levied, i.e. the taxable event. The existing framework of taxable event in various statutes is prone to catena of interpretations resulting in litigation since decades.
- ☑ Broadly, the controversies relates to issues like whether a particular process amounts to manufacture or not, whether the sale is pre-determined sale, whether a particular transaction is a sale of goods or rendering of services etc. [The GST laws seek to resolve these issues by laying down one comprehensive taxable event i.e: "Supply".](#)



- ✓ GST Law, by levying tax on the 'supply' of goods and/or services, will depart from the historically understood concepts of 'taxable event' under the State VAT Laws, Excise Laws and Service Tax Laws i.e. sale, manufacture and service respectively.



- ✓ In the GST regime, the entire value of supply of goods and / or services will be taxed in an integrated manner, unlike the existing indirect taxes, which are charged independently either on the manufacture or sale of goods, or on the provisions of services.

7. RELEVANT DEFINITIONS



- ✓ **Goods:** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Sec. 2(52) of CGST Act].
- ✓ **E-Commerce operator:** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. [Section 2(45) of CGST Act]
- ✓ **Exempt supply:** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply [Section 2(47) of CGST Act].



 **Business:** includes –

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to (a) above;
- (c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;
- (f) admission, for a consideration, of persons to any premises; and
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities















[Section 2(17) of CGST Act].

 **Consideration:** in relation to the supply of goods or services or both includes:

- ✓ any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government,
- ✓ the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

However, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. [Section 2(31) of CGST Act].

✔ **Person:** includes [Section 2(84) of CGST Act]-

 An individual	 A Hindu undivided family
 A company	 A firm
 A Limited Liability Partnership	 An association of persons or a body of individuals, whether incorporated or not, in India or outside India
 any corporation established by/under any Central, State or Provincial Act or Government company as defined in section 2(45) of Companies Act, 2013	 Any body corporate incorporated by or under the laws of a country outside India
 A co-operative society registered under any law relating to cooperative societies	 A local authority
 Central Government or a State Government	 Society as defined under the Societies Registration Act, 1860
 Trust	 Every artificial juridical person, not falling within any of the above

✔ **Principal supply:** means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. [Section 2(90) of CGST Act]


✔ **Recipient:** of supply of goods and/or services means-

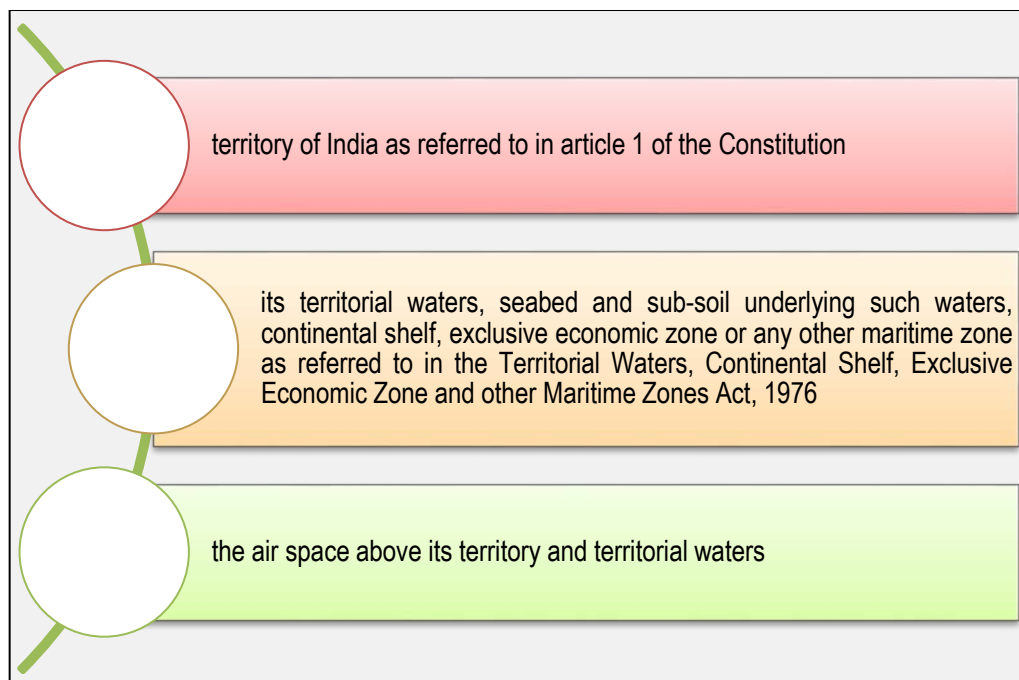
- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration,

- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,


and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply

and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied. [Section 2(93) of CGST Act]

 **India:** "India" means-



[Section 2(56) of CGST Act]

 **Reverse charge:** means the liability to pay tax by the recipient of supply of goods or services **or** both instead of the supplier of such goods or services or both under section 9(3)/9(4), or under section 5(3)/5(4) of the IGST Act [Section 2(98) of CGST Act].


 **Services:** means anything other than goods, money and securities

but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. [Section 2(102) of CGST Act]

- ✔ **Supplier:** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied. [Section 2(105) of CGST Act]
- ✔ **Taxable supply:** means a supply of goods and/or services which is chargeable to tax under CGST Act. [Section 2(108) of CGST Act]
- ✔ **Non-taxable supply:** means a supply of goods or services or both which is not leviable to tax under CGST Act or under IGST Act. [Section 2(78) of CGST Act]
- ✔ **Taxable person:** means a person who is registered or liable to be registered under section 22 or section 24. [Section 2(107) of CGST Act]

Section 22 enumerates the persons liable to be registered under CGST/IGST law and section 24 lists the persons liable to be registered compulsorily under the said laws.

8. CONCEPT OF SUPPLY [SECTION 7 OF CGST ACT]

 The concept of 'supply' is the key stone of the GST architecture. The provisions relating to meaning and scope of supply are contained in Chapter III of the CGST Act read with various Schedules given under the said Act. Therefore, following shall be discussed herein:

Section 7	Meaning and scope of supply
Section 8	Taxability of composite and mixed supplies
Schedule I	Matters to be treated as supply even if made without consideration
Schedule II	Matters to be treated as supply of goods or as supply of services
Schedule III	Matters or transactions which shall be treated neither as supply of goods nor as supply of services.




STATUTORY PROVISIONS

Section 7	Meaning and Scope of Supply	
Sub Section	Clause	Particulars


1	Supply includes -	
	(a)	all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business
	(b)	importation of services , for a consideration whether or not in the course or furtherance of business,
	(c)	the activities specified in Schedule I , made or agreed to be made without a consideration ,
2	(d)	the activities to be treated as supply of goods or supply of services as referred to in Schedule II .
	Notwithstanding anything contained in sub-section (1),	
	(a)	activities or transactions specified in Schedule III ; or
3	(b)	such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.
	Subject to sub-sections (1) & (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as —	
	(a)	a supply of goods and not as a supply of services; or
	(b)	a supply of services and not as a supply of goods.



ANALYSIS

-  Section 7 of the CGST Act defines the scope of supply in an **inclusive** manner. The modes of supply mentioned in Section 7(1)(a) are only in the forms of examples and the list is not exhaustive. This is substantiated by the use of words 'such as' in the definition.

Provisions of scope of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act and UTGST Act vide section 21 of the UTGST Act.

-  Discussion with regard to scope of supply has been categorized into following broad headings:

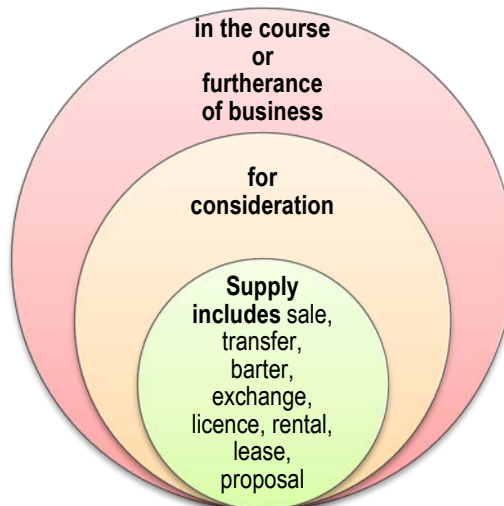
- (i) Supply for consideration in course or furtherance of business.
- (ii) Importation of services for consideration whether or not in course or furtherance of business.
- (iii) Supply without consideration
- (iv) Activities to be treated as supply of goods or supply of services
- (v) Negative list of services

Each of the aforesaid categories have been discussed in detail below:



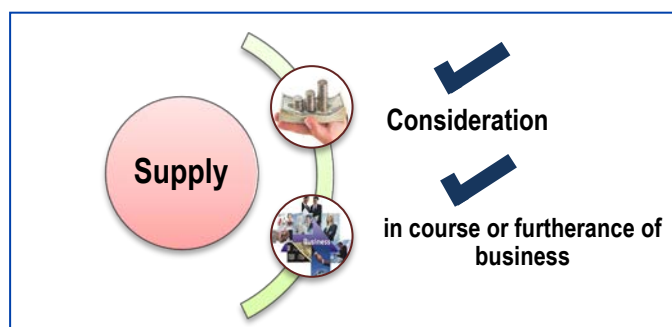
Supply for consideration in course or furtherance of business

The definition of supply begins with the term 'Supply includes', thus making it clear that CGST Act intends to give an extensive meaning to the term 'supply'. The first part of section 7 includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for consideration in the course or furtherance of business.




Thus, the forms of supply as contemplated in this first part appear to have two pre-requisites


- ✓ the supply should be for a **consideration**; and
- ✓ in the **course or furtherance of business**.



Now, we will analyse the various modes of supply mentioned herein:

 **Sale and Transfer:** Presently, VAT is levied by the State on the sale of goods which has been defined under most State VAT laws as transfer of property for consideration. Under the CGST Act, although sale has been treated as a form of supply leviable to GST, the definition of 'sale' has not been provided.


Further, the term 'transfer' which has also been included as a form of supply is also not defined.


 **Barter and Exchange:** While barter may deal with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are partly paid for in goods and partly in money.

By making a specific inclusion in the definition of supply, all barter and exchanges would be leviable to GST.



Buying a new car in exchange of old car

 **Licence, Lease, Rental etc. :** Licenses, leases and rentals of goods are presently treated as *services* where the goods are transferred without effective possession and control and treated as *sales* where the goods are transferred with effective possession and control. Under the GST regime, such licenses, leases and rentals of goods with or without transfer of right to use would be covered under the *supply of service* as per Schedule II to the CGST Act.

 **Consideration :** It includes any sum paid or payable for supply of goods and/or services.



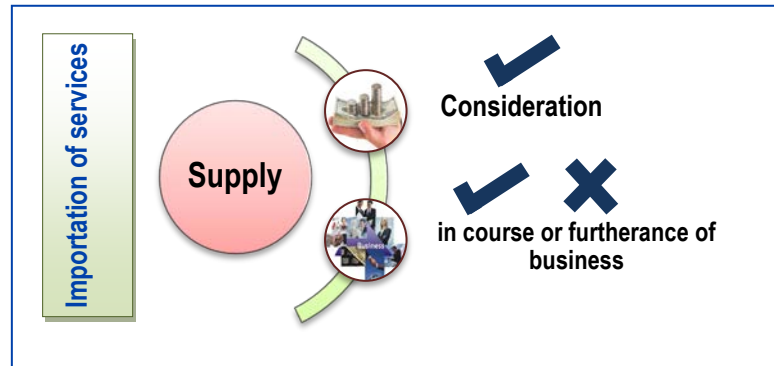
Advances paid, payments made by third person as well, amounts paid as contractual penalties, deposits etc.

Any transaction involving supply of goods and/or services without consideration is not a supply unless it is deemed to be a supply under law [as deemed in Schedule I of the CGST Act, 2017].



Importation of services for consideration whether or not in course or furtherance of business

The connotation of 'supply' gets expanded significantly through the second part of section 7 i.e. 7(1)(b) which brings within the ambit of 'supply', the importation of services for a consideration whether or not in the course or furtherance of business.



Supply without consideration

This includes all supplies by a taxable person to a taxable or non-taxable person, **even if the same is without consideration**. These are specifically mentioned in Schedule I appended to the CGST Act. The same has been discussed in the subsequent paras:

In the past regime, in every tax statute, “consideration” played the most important role for levying taxes. For eg, if any service has been provided for free to a person, such service is not subject to service tax. However, in the CGST Act, the importance of consideration has been diluted in certain cases – this is an important departure from the current indirect tax regime.



Permanent Transfer/Disposal of Business Assets: Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration. This clause is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.

However, it is important to note that this provision would apply if input tax credit has been availed on such assets.



XYZ & Co. donates old laptops to Charitable Schools when new laptops are purchased by business will qualify as supply provided input tax credit has been availed by XYZ & Co. on such laptops.



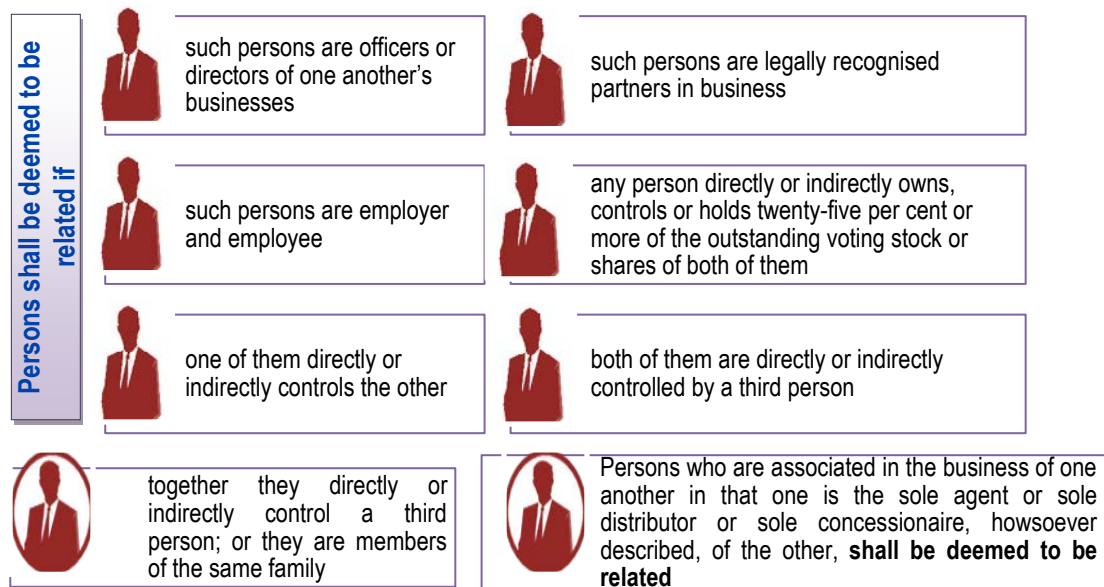
A cloth retailer gives clothes from his business stock to his friend free of cost. In this case, transfer of business stock would amount to ‘supply’ if he had claimed

input tax credit on his purchase of the business asset.



Supply between related person or distinct persons: Supply of goods or services or both between related persons or between distinct persons as specified in section 25, will qualify as supply provided it is **made in the course or furtherance of business**.

(i) Related persons



(ii) Distinct Persons specified under section 25

A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as **distinct persons**. Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as **establishments of distinct persons**.



Mohan, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of West Bengal in respect of his branch office. Mohan shall be treated as distinct persons in respect of registrations in West Bengal and Delhi.

Stock transfers or branch transfers: In view of the aforesaid discussion, transactions between different locations (with separate GST registrations) of same legal entity (eg., stock transfers or branch transfers) will qualify as 'supply' under GST which is in contrast to the existing regime.

Supply of goods or services or both between an employer and employee: By virtue of aforesaid definition of related person, employer and employee are related persons. However, services provided by an employee to the employer in the course of or in relation to his employment shall not be treated as supply of services [Schedule III (discussed in subsequent paras)].

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



An employer gives Diwali Gifts to employees worth ₹ 55,000/-. Since an employee and employer are considered to be related persons, such supply would be leviable to GST.



Principal – Agent: Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply. Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

Points which merit consideration, in this regard, are as follows:

- ❓ Only supply of goods is covered here
- ❓ Supply of goods between principal and agent without consideration is also supply.



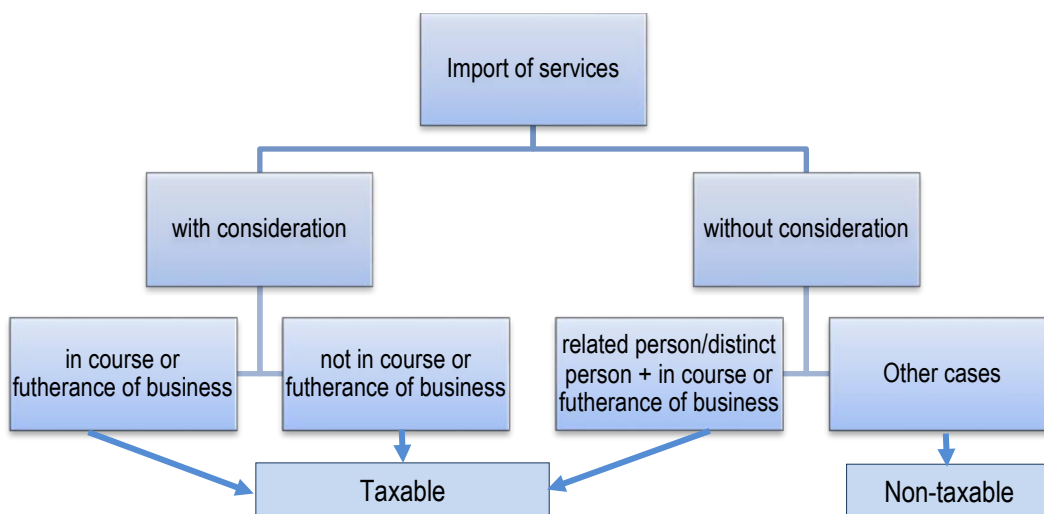
ABC Motors Ltd. engages Asian Cars Ltd. as an agent to sell cars on its behalf. For the purpose, ABC Motors Ltd. has supplied 20 cars to the showroom of Asian Cars Ltd. located in Haryana. Supply of cars by ABC Motors Ltd. to Asian Cars Ltd. will qualify as supply.



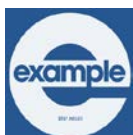
Importation of services: Import of services by a taxable person from a related person or from his establishments located outside India, **in the course or furtherance of business** shall be treated as "supply".



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

Taxability of import of services**Activities to be treated as Supply of goods or Supply of services**

Section 7(1)(d) of the Act refers to Schedule II for determining whether a particular transaction is a supply of goods or service. This helps in mitigating ambiguities in existing laws.



Under existing laws, the restaurants charge both service tax and VAT on the value of food served. This is so because both sale of goods and provision of service is involved and therefore taxable event under both the Statutes i.e. respective VAT law and service tax law gets triggered.

Under GST, the supply by a restaurant shall be treated as composite supply [discussed in subsequent paras] as food and service is naturally bundled in ordinary course of business. However, Entry 6(b) of Schedule II to the CGST Act specifically provides that such composite supply shall be treated as supply of service. Hence, the entire value of invoice shall be treated as value of service and leviable to GST.




This can be explained by way of the example in the following table:





Position under existing Laws		Position under GST	
Food Value = ₹100		Food Value = ₹100	
Service Charges = ₹10		Service Charges = ₹10	
VAT @ 14% on food value = ₹14	VAT is charged on full value of food	GST @ 18% = ₹19.8	The entire supply would be treated






Service Tax @ 6% on food value = ₹ 6 Service Tax @ 15% on service charges = ₹ 1.5	Service tax at abated rate is charged on food value.		as a single composite supply under GST. The same would be taxable as per supply of service @ 18% on the entire value of supply.
Total Taxes paid VAT = ₹14 Service Tax = ₹7.5 Total = ₹21.5	In nutshell, food is taxed twice under VAT laws and service tax laws and service tax is levied on service charges		

Schedule II appended to the CGST Act lists the matters/transactions to be treated as Supply of either goods or services. The matters listed out are generally those which had been entangled in litigation in the existing regime owing to their complex nature and susceptibility to double taxation.

These are as follows :-

S.No.	Transaction	Type	Nature of Supply
1.	Transfer	Title in goods	Supply of Goods
		Right in goods/ undivided share in goods without transfer of goods	Supply of Services
		Title in goods under an agreement which stipulates that property shall pass at a future date.  An agreement to sell ascertained goods at a future date.	Supply of Goods
2.	Land and Building	Lease, tenancy, easement, licence to occupy land	Supply of Services
		Lease or letting out of building wholly or partly  Lease rentals collected shall be taxable as supply of services under GST.	Supply of Services
3.	Treatment or Process	 Applied to other person's goods 'Job Work' performed by a job worker	Supply of Services

		like dyeing of fabric in various colours.	
4.	Transfer of Business Assets	Goods forming part of business assets are transferred or disposed off by/under directions of person carrying on the business, whether or not for consideration	Supply of Goods
		Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business, whether or not for consideration  A director using car provided by the company for personal travels	Supply of Services
		Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person  A, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him and GST shall be payable. Exceptions: <ul style="list-style-type: none"> Business is transferred as a going concern to another person. Business is carried on by a personal representative who is deemed to be a taxable person.	Supply of Goods
5.	Renting of immovable property		
	Construction of complex, building, civil structure, etc.		
	Temporary transfer or permitting use or enjoyment of any intellectual property right		
	Development, design, programming, customisation, adaptation,		

	<p>upgradation, enhancement, implementation of IT software</p> <p> Supply of GST related software to businesses for smooth processing of returns and accounts.</p> <p>Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.</p> <p> Payment of liquidated damages under a contract for non performance/ short performance of obligation under a contract.</p> <p>Transfer of right to use any goods for any purpose</p>	Supply of Services
6.	<p>Following composite supplies :-</p> <p> Works contract services;</p> <p> Supply by way of or as part of any other service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink</p>	Supply of Services
7.	<p>Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.</p> <p> A local club supplies snacks etc. to its members during its monthly meeting for a nominal payment.</p>	Supply of Goods



Negative list under GST

Schedule III in the CGST Act is akin to the negative list under the service tax regime. This schedule specifies transactions/ activities which shall be neither treated as supply of goods nor a supply of services.

S.No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	Services by an employee to the employer in the course of or in relation to his employment.
2.	Services by any court or Tribunal established under any law for the time being in force.

3.	<p>(a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;</p> <p>(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or</p> <p>(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.</p>
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II , sale of building.
6.	<p>Actionable claims, other than lottery, betting and gambling.</p> <p>Explanation - For the purposes of paragraph 2, the term "Court" includes District Court, High Court and Supreme Court.</p>

9. COMPOSITE AND MIXED SUPPLIES [SECTION 8]



STATUTORY PROVISIONS

Section 8	Tax liability on composite and mixed supplies
Clauses	Particulars
	The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-
(a)	a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply ; and
(b)	a mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax .



ANALYSIS



In many cases, the transactions that fall within the scope of GST may consist of more than one element. These elements may be a mix of goods, or services, or both. Sometimes these elements, if supplied separately, may have different GST liabilities depending upon the rates, applicability of time of supply and place of supply provisions. To avoid disputes about whether the supplier is making a single supply with one liability, or multiple supplies with different liabilities, it has to be determined whether the supply is one of goods, or of services, or it is a supply constituted of both goods and services (composite supplies/ mixed supplies).

In order to determine whether the supplies are 'composite supplies' or 'mixed supplies', one needs to determine whether the supplies are **naturally bundled or not naturally bundled** in ordinary course of business.



Composite Supplies

Composite supply means a supply made by a taxable person to a recipient and:

-  comprises two or more taxable supplies of goods or services or both, or any combination thereof.
-  are naturally bundled and supplied in conjunction with each other, in the ordinary course of business.

This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'.

How to determine the tax liability on composite supplies?: A **composite supply** comprising of two or more supplies, one of which is a principal supply, shall be treated as a **supply of such principal supply**.



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





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



Mixed Supplies

Mixed supply means:

-  two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person
-  for a single price **where such supply does not constitute a composite supply**.

The individual supplies are independent of each other and are not naturally bundled

How to determine the tax liability on mixed supplies?: A **mixed supply** comprising of two or more supplies shall be treated as supply of that particular **supply that attracts highest rate of tax**.



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



A shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold separately. So, such supplies are mixed supplies.

Charge of Tax

The very basis for the charge of tax in any taxing statute is the taxable event i.e the point on which the levy of tax gets attracted. As discussed earlier, under GST, the taxable event is **SUPPLY**. **CGST Act/SGST Act/UTGST Act** levies tax on all **intra-State supplies** of goods and/or services while **IGST Act** levies tax on all **inter-State supplies** of goods and/ or services.



Intra-State supply


Where the **location of the supplier** and the **place of supply** of goods or services are **in the same State/Union territory**, it is treated as **intra-State supply** of goods or services respectively.



Inter-State supply

Where the **location of the supplier** and the **place of supply** of goods or services are in (i) **two different States** or (ii) **two different Union Territories** or (iii) **a State and a Union territory**, it is treated as **inter-State supply** of goods or services respectively.

10. LEVY & COLLECTION OF CGST/IGST/SGST/UTGST


 A tax called the Central Goods and Services Tax (CGST)/ Union Territory Goods and Services Tax (UTGST)/ State Goods and Services Tax (SGST) shall be levied on all intra-State supplies of goods or services or both and shall be collected in such manner as may be prescribed and shall be paid by the taxable person. However, intra-State supply of alcoholic liquor for human consumption is outside the purview of CGST/UTGST/SGST.






Similarly, Integrated Goods and Services Tax (IGST) shall be levied on all inter-State supplies of goods or services or both with the exception of alcoholic liquor. However, IGST on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

Value for levy: Transaction value under section 15 of the CGST Act

Rates of CGST/IGST/SGST/UTGST: Rates for CGST/UTGST/SGST are rates as may be notified by the Government on the recommendations of the GST Council [Rates notified are 5%, 12%, 18% and 28%]. IGST will be approximately the sum total of CGST and SGST/UTGST.



Maximum rate of CGST will be 20% while for IGST, maximum rate will be 40%.

 However, CGST/UTGST/SGST/IGST on supply of the following items has not been levied immediately. It shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council:

-  petroleum crude
-  high speed diesel
-  motor spirit (commonly known as petrol)
-  natural gas and
-  aviation turbine fuel

 **Reverse charge - Tax payable by recipient of supply of goods or services or both**

CGST/UTGST/SGST/IGST shall be paid by the recipient of goods or services or both, on reverse charge basis, in the following cases:

-  Supply of goods or services or both, notified by the Government on the recommendations of the GST Council.
-  Supply of taxable goods or services or both by an unregistered supplier to a registered person

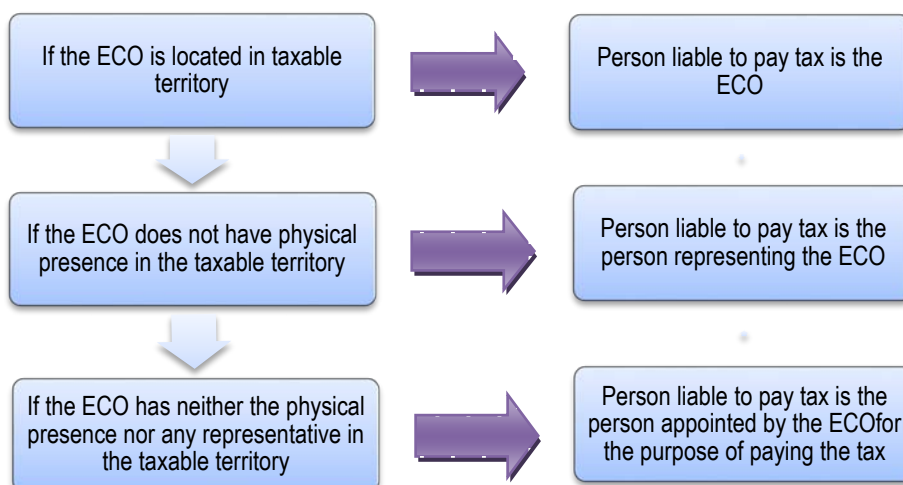
All the provisions of the relevant GST law shall apply to the recipient in the aforesaid cases as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Tax payable by the electronic commerce operator on notified services

- ✓ The Government may notify specific categories of services the tax on intra-State supplies (inter-State supplies in case of IGST) of which shall be paid by the **electronic commerce operator (ECO)** if such services are supplied through it. Such services shall be notified on the recommendations of the GST Council.



- ✓ All the provisions of the relevant GST law shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:



11. QUESTIONS (KNOWLEDGE & COMPREHENSION BASED)

1. Explain the 'taxable event' under Central Goods and Service Tax Act, 2017. Briefly bring out the difference between 'taxable event' under GST and taxable event under the previous indirect tax laws viz. excise, service tax and VAT.
2. What do you mean by 'composite supplies'? How does it differ from a 'mixed supply'? List the 'composite supplies' that shall be treated as supply of service only.
3. Explain the term 'business'.
4. List the activities to be treated as supply even if made without consideration.

5. Under GST, why is it important to determine if a transaction amounting to supply is between two related persons or distinct persons. List out the parameters to determine if two persons are related or not.
6. Enumerate the activities or transactions which shall be treated neither as a supply of goods nor a supply of services.
7. Explain with the help of an example how GST resolved the double taxation dichotomy under previous indirect tax laws.
8. Enumerate the deficiencies of the existing indirect taxes which led to the need for ushering into GST regime.
9. Discuss the dual GST model to be introduced in India.
10. List the central and State levies which will be subsumed in GST in India.