

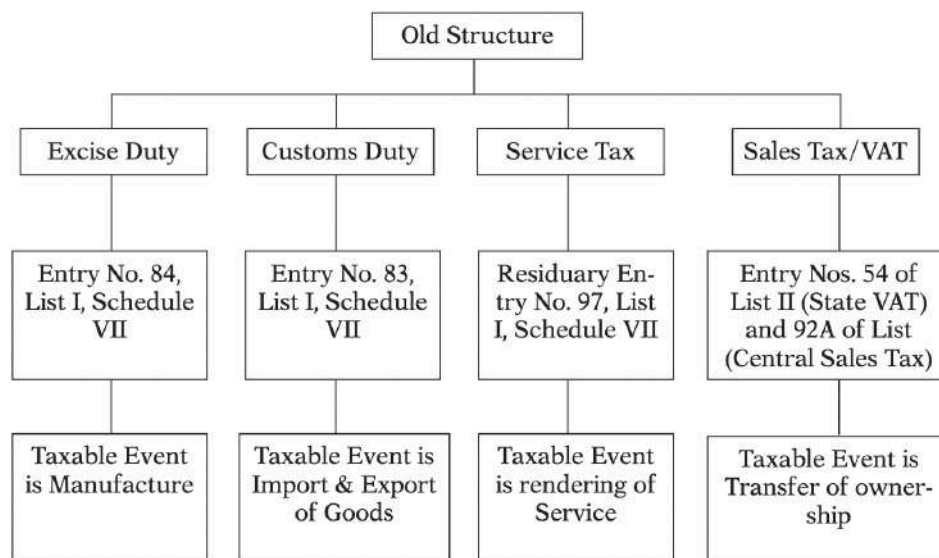
GST Study Material

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All KSLU Questions on GST

1. What is Dual-GST model? Explain its features.
2. Define CGST and SGST. Explain levy and collection of GST on supply.
3. Explain the importance of place of supply under CGST and SGST.
4. Explain the provisions governing Registration under GST.
5. Constitutional Background of GST.
6. Works Contract (GST).
7. What is CGST and SGST? Explain the salient features of GST.
8. Constitutional provisions related to GST.
9. Briefly explain benefits of GST on business and consumers.
10. GST Council.

Old Indirect Tax Structure



Defects in Old System

1. **Cascading Effect:** Both central and state Government levy tax on the same goods. Former levy tax on manufacture of goods and the later levy VAT on sale of very same goods. State Government does not permit credit of excise duty paid by the manufacture to the dealer on sale of goods. Thus, VAT is also payable on excise duty component of the price resulting in cascading effect. Similarly, service tax is payable on rendering of service. No credit of service tax paid on input service used in selling of goods is provided by the state government. So, tax is levied on tax. It boosted inflation.
2. **Multiplicity of Tax/Cess:** Multiple taxes were levied in pre-GST regime like Excise duty, VAT, Entry tax, luxury tax, Entertainment tax, Service tax, Octroi etc. These taxes were in additions to various cesses imposed by State and Central Government like Krishi Kalyan Cess, clean energy cess etc. All this made the tax structure very cumbersome.
3. **Overlapping of Jurisdiction:** Over the years, distinction between goods and services has become hazy, due to which there is overlapping of state VAT and Central Service tax on transactions like works contract, food related services of restaurants, caterers, computer software, SIM cards, renting of movable property etc. In these cases, it was difficult to judge whether the transaction was sale of goods or rendering of service. Therefore, both the central and state Government would impose tax.
4. **Rivalry amongst states:** Pre-GST regime of indirect tax was not destination-based tax but origin-based tax. In that regime taxes are collected and utilized by the state administration where goods/services are transacted/manufactured or supplied. This

would encourage state to provide sales tax/VAT relief to attract industries and at the same time discourage supply of goods from other state by imposing entry tax, octroi, luxury tax etc. on goods coming from other states.

5. **Hindrance to Integrated market system:** India despite being one nation could not develop into a national market due to invisible barriers of Central State tax, VAT, entry tax etc. as mentioned in last point. These invisible barriers were visible in the form of check posts on the boundaries of states.
6. **Loss of Man and Truck hours:** Due to check posts mounted by states on entry point millions of man hours and Truck hours were lost Besides that huge corruption was involved which made logistics management a costly affair.
7. **Difficulty in Compliance for Taxpayers:** As mentioned already pre-GST regime had multiplicity of Tax and consequently tax laws. Moreover, each tax had a different taxable event like manufacture for Excise, VAT for sales etc. Also, there were multiple of Tax authorities. Compliance required voluminous efforts on the part taxpayers. It also promoted Inspector raj.
8. **Difficulty in Cross Verification of Credit availed by Assessee:** Earlier it was difficult for the tax department to get the verification report from supplier of goods to know whether the supplier has issued particular invoice on the basis of which input tax credit has been taken by the purchaser. Due to lack of online data the verification was done offline. Often the report of supplier was not received or received after considerable lapse of time. Many scrupulous dealers exploited this and availed fraudulent credit.
9. **Tax Evasion:** Burden of compliance, multiplicity of tax laws increased the propensity to evade taxes. Fudging of records, concealment of transaction, bribing the tax officials were the tools adopted to remain out of tax net.
10. **Huge Amount of litigation:** With multiple tax laws each having different taxable events result was lot of disputes regarding availment of credit, determining manufacture of goods, value of goods, classification of goods etc. Dispute settlement mechanism is almost choked with such disputes resulting in pendency of tax demands

Basic Concept of GST

1. **Value Added Tax:** GST is a value added tax levied on manufacture, sale and consumption of goods and services.
2. **Chain of Tax Credits:** 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.

3. **Borne by Final Consumer:** 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.
4. **No Cascading Effect:** 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.

Benefits of GST

GST is a consumption and “destination based” tax system, unlike the earlier System which were based on origin of sale or manufacture. This feature reduces the regressive impact of indirect taxes. So, GST brings benefits to all the stakeholders namely industry, Government and consumer.

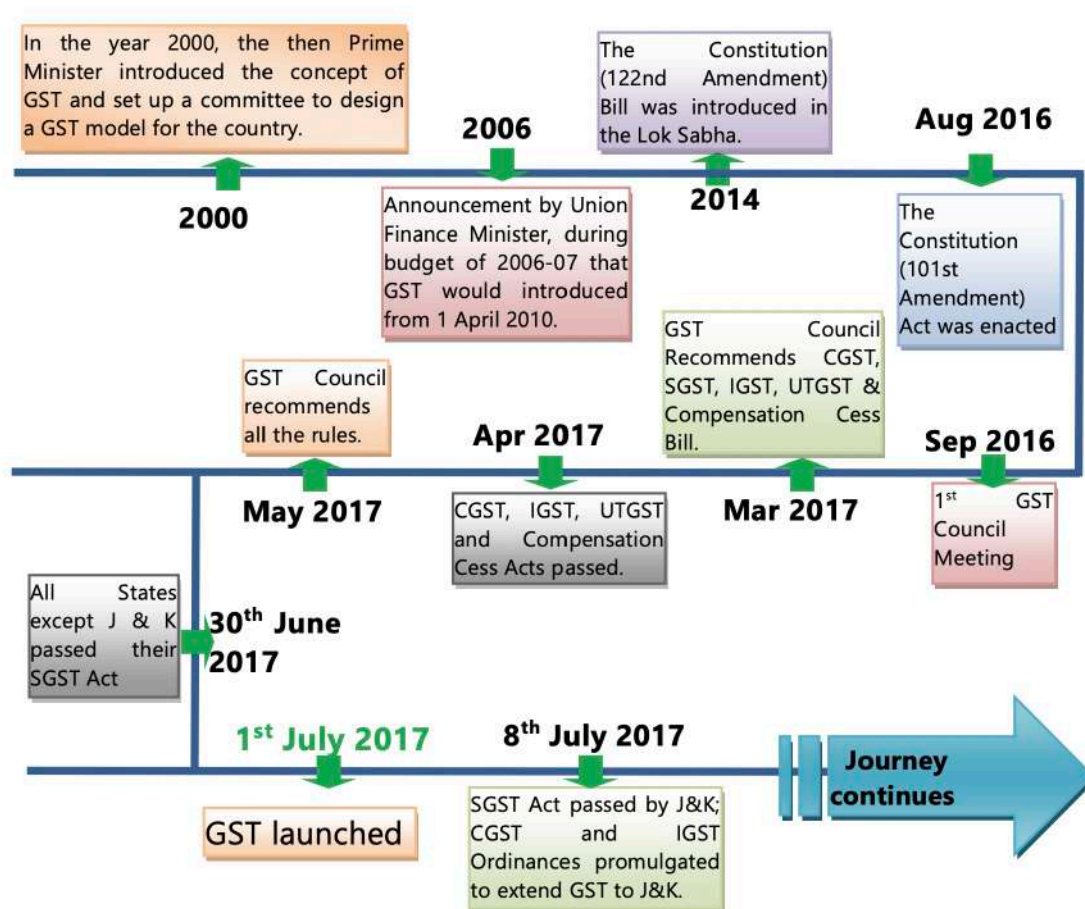
1. **Integrated National Market:** GST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level. This will ensure seam less and smooth movement of goods and service across the nation.
2. **Elimination of Cascading Effect:** Cascading of tax occurs when each successive transfer is being taxed inclusive of previous tax levied. At certain occasions, a particular activity is taxed by both Center and State Government which leads to duality of taxes. This results in cascading effects of Taxes. GST will overcome the problem of tax cascading through Input Tax Credit Mechanisms and ultimate burden of taxes to be paid would be on the consumer of Goods and Services.
3. **Removal of Multiplicity of Taxes:** GST will remove all the multiple taxes which are levied in the present regime. Duties & Taxes like Excise Duty, Value Added Tax, Entry Tax, Luxury Tax, Entertainment Tax, Octroi, and Services Tax shall subsume under GST. There shall remain only one tax called GST. It will bring transparency and ease of doing business in India.
4. **Increase in GDP:** GST will certainly bring ease of doing business in India. It is expected that the Ease of Doing Business Index of India which remains around 140 shall fall to double figures. It will certainly bring trust and faith in the taxation regime, leading to huge capital inflow from Foreign Investors. There shall be boom in the manufacturing as well as service sector leading to GDP Growth.

5. **Efficient Administration by Government:** GST is a fully automated tax regime. From filing of returns to refunds to assessment proceedings everything shall be online. There shall be least physical interaction between the taxpayer and the revenue authorities. Online System is set to bring transparency, lower corruption and better administration by the Government.

Benefits of GST:

To trade	To Consumers	
· Reduction in multiplicity of taxes	· Simpler Tax system	· Create unified common national market for India, giving a boost to Foreign investment and "Make in India" campaign
· Mitigation of cascading/ double taxation	· Reduction in prices of goods & services due to elimination of cascading	· Boost export and manufacturing activity and leading to substantive economic growth
· More efficient neutralization of taxes especially for exports	· Uniform prices throughout the country	· Help in poverty eradication by generating more employment
· Development of common national market	· Transparency in taxation system	· Uniform SGST and IGST rates to reduce the incentive for tax evasion
· Simpler tax regime	· Increase in employment opportunities	
· Fewer rates and exemptions		
· Distinction between Goods & Services no longer required		

Evolution of GST in India



Constitutional Background of GST

Power to levy and collect taxes whether, direct or indirect emerges from the Constitution of India. In case any tax law, be it an act, rule, notification or order is not in conformity with the Constitution, it is called ultra vires the Constitution and is illegal and void.

Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that “no tax shall be levied or collected except by authority of law”. The term “authority of law” means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.

Power to levy Goods and Services Tax (GST) has been conferred by Article 246A of the Constitution which was introduced by the Constitution (101st Amendment) Act, 2016.

Need for 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.

In the case of inter-State sales, the Centre had the power to levy a tax (the Central Sales Tax), but the tax was collected and retained entirely by the States. Services were exclusively taxed by the Centre together with applicable cesses, if any.

Besides, there were State specific levies like entry tax, Octroi, 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.

Introduction of the GST required amendment in the Constitution so as to enable integration of the central excise duty including additional duties of customs, State VAT and certain State specific taxes and service tax levied by the Centre into a comprehensive Goods and Services Tax and to empower both Centre and the States to levy and collect it. Consequently, Constitution (101st Amendment Act), 2016 (hereinafter referred to as Constitution Amendment Act) was passed. It has 20 sections. Newly inserted Article 279A empowering President to constitute GST Council was notified on 12.09.2016. Remaining provisions were notified with effect from 16.09.2016.

Provisions of Constitution of India Dealing with GST

- **Article 246A:** Power to make laws with respect to Goods and Services Tax
This article grants power to Centre and State Governments to make laws with respect to GST imposed by Centre or such State. Centre has the exclusive power to make laws with respect to GST in case of inter-State supply of goods and/or services.
- **Article 269A:** Levy and collection of GST on inter-State supply
Article 269A stipulates that GST on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. In addition to above, import of goods or services or both into India will also be deemed to be supply of goods and/ or services in the course of Inter-State trade or Commerce.
- **Article 366:** Definitions of 'Goods and Services Tax', 'Services' and 'State'
Goods and services tax means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. Consequently, GST can be levied on supply of all goods and services except alcoholic liquor for human consumption.

Services means anything other than goods.

Definition of “goods”: The term goods has already been defined under clause (12) of Article 366 in an inclusive manner to provide that “goods include all materials, commodities, and articles”.

- **Article 279A: GST Council**

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 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. It shall also recommend the date on which GST be levied on petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel.

Every decision of the GST Council is taken by a majority of not less than three-fourths of the weighted votes of the members present and voting. Vote of the Centre has a weightage of one-third of total votes cast and votes of all the State Governments taken together has a weightage of two-thirds of the total votes cast, in that meeting.

Structure of GST

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 comprises of:

- Central Goods and Service Tax (CGST) - levied and collected by Central Government,
- State Goods and Service Tax (SGST) - levied and 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 are subject to Integrated Goods and Service Tax (IGST). IGST is approximately the sum total of CGST and SGST/UTGST and is levied by Centre on all inter-State supplies.

CGST has replaced the central taxes, such as central excise duty (also known as central value added tax or CENVAT) additional excise duty, excise duty on medicinal and toilet preparations, services tax, additional customs duty (known as countervailing duty (CVD)), special additional duty of customs (SAD) and surcharges and cesses. As for the state taxes that SGST replaced, they include VAT, purchase tax, entertainment tax (other than that levied by local bodies), advertisement tax, luxury tax, taxes on lotteries, betting and gambling, octroi and entry tax, and state cesses and Alcoholic beverages and petroleum products are kept outside of GST.

GST is implemented in India on a “concurrent dual” basis where the Centre and the States shall have concurrent powers to levy, collect, and administer GST. The GST regime has two components - Central GST and State/Union Territory GST. These are imposed simultaneously on every transaction of supply that takes place within state/union territory. For interstate supply transactions, Integrated Goods and Services Tax is imposed and collected by the Centre accordingly. In GST regime following taxes will be levied as per their corresponding acts:

1. **CGST** - GST levied by Centre on *intra-state* transactions of supply as per CGST Act, 2017 which is applicable to all states and union territories in India.
2. **SGST** - GST levied by the States on *intra-state* transactions of supply. For this purpose, states include those union territories that have their own legislature i.e. Delhi and Puducherry. Respective states and UTs having own legislature have their own State Goods and Services Tax Acts.
3. **UTGST** - GST levied by territories administered by the Union for transaction of supply within the territory. There is one Union Territory Goods and Services Tax Act, 2017 applicable to 5 union territories of Andaman and Nicobar Island, Lakshadweep, Dadra and Nagar Haveli, Daman Diu, and Chandigarh.

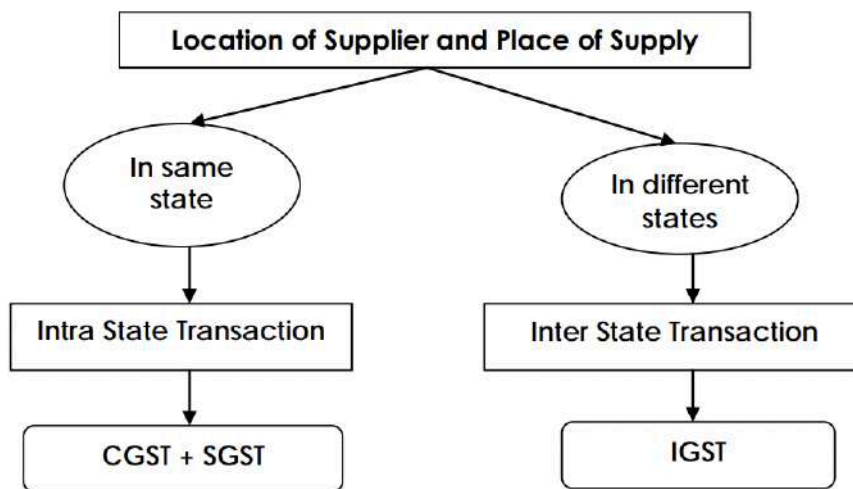
4. **IGST** - On every *inter-state* transaction of supply, Integrated Goods and Services Tax shall be imposed by Centre as per IGST act 2017. This IGST shall be imposed and collected by the Centre and shall be apportioned between Centre and the States in the manner provided by GST Council. IGST rate shall be sum of CGST + SGST.
5. **State Compensation Cess** - The Central Government promised to compensate the States for any loss of revenue due to new regime for a certain period and to a certain extent. To gather resources for this, a compensation cess has been imposed on notified goods or services or both by the Centre.

Name of Act	No. of Act	Name of Tax
The Central Goods and Services Tax Act, 2017	1	CGST
State Goods and Services Tax Act, 2017 [29 State + 2 UTs]	31	SGST
The Union Territory Goods and Services Tax Act, 2017 (For Five UTs)	1	UTGST
The Integrated Goods and Services Tax Act, 2017	1	IGST
The Goods and Services Tax (Compensation to States) Act, 2017	1	GST Compensation Cess

And these are to be imposed as follows.

* *Intra-State supply* - CGST will be levied in combination of UTGST or SGST as per applicability and cess will be levied additionally if applicable.

* *Inter-State supply* - Only IGST will be levied and cess will be imposed additionally if applicable.



6. Import is treated as inter-States supply and IGST will be chargeable along with basic Customs duty.
7. GST is calculated on value of supply of goods and services, which is transaction value (explained below).

Supply Under GST

Supply will be discussed in following points:

1. Meaning and scope of supply
2. Composite supply and mixed supply
3. Time of supply
4. Value of supply
5. Place of supply

1. Meaning and Scope of 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. A taxable event is that event which, on its occurrence, attracts tax liability. In case of GST, **supply** of goods or services or both, as the case may be, is the taxable event. It is important to note here that supply is not the same as sale or manufacture.

	<i>Taxable event in pre-GST regime</i>	<i>GST</i>	<i>Taxable event in GST</i>
Excise duty	Manufacture of goods	} GST is applicable in lieu of taxes mentioned in <i>Column 1</i>	} Taxable event is supply of goods or services or both
Central sales tax	Inter-State sale of goods		
State VAT	Intra-State of goods		
Service tax	Provision of service		
Countervailing duty (CVD)	Import of goods		
Special CVD	Import of goods		
Entertainment tax	Provision of entertainment		
Luxury tax	Provision of luxury		
Entry tax	Entry of goods into specific local area		

Broadly, the controversies related to issues like whether a particular process amounted to manufacture or not, whether the sale was pre-determined sale, whether a particular transaction was a sale of goods or rendering of services etc. The GST laws resolve these issues by laying down one comprehensive taxable event i.e.: “Supply” - Supply of goods or services or both.

GST Law, by levying tax on the ‘supply’ of goods and/or services, departs 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 is taxed in an integrated manner, unlike the earlier indirect taxes, which were charged independently either on the manufacture or sale of goods, or on the provisions of services.

Provisions related to supply in CGST Act.

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.

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.

Section 7 (1) - The expression “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.

Sale	Transferring the property in goods from one to another, upon valuable consideration.
Transfer	Any transfer of goods or right in goods or of undivided share in goods without transfer of title thereof.
Barter	To exchange one commodity for another without use of money.
Exchange	To swap, to part with, give or transfer for an equivalent with the use of money.
Licence	Permission granted by competent authority to exercise certain privileges without such authorization the activity would have constituted as an illegal act.
Rental	Periodical payment for the use of another property.
Lease	Contractual agreement by which one party conveys an estate in property to another party, for a limited period, subject to various conditions, in exchange for something of value, but still remain ownership.
Disposal	To pass or into the control of someone else; to alienate, bestow, or part with.

b) import 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; and

d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

Section 7 (2) provides a negative list i.e., the activities which are neither supply of goods or supply of services.

Section 7 (3) states that the Central Government on the recommendation of GST Council can notify the transactions that are to be treated as supply of goods and not supply of services or supply of services and not supply of goods or neither supply of goods or supply of services.

The definition of supply in S.7 (1) is very inclusive. Any supply of goods or services would get covered even if not specified in any of the subsections of section 7 subsection one of CGST act.

Overview of Supply:

Inclusions	Exclusions
<ul style="list-style-type: none">✓ Supply for consideration in course or furtherance of business {Section 7(1)(a)}✓ Importation of services for consideration whether or not in course or furtherance of business {Section 7(1)(b)}✓ Supply without consideration {Section 7(1)(c)+ Schedule I}✓ Activities to be treated as Supply of goods or Supply of services {Section 7 (1)(d) + Schedule II}	Activities to be treated neither as Supply of goods nor Supply of services {Section 7(2) + Schedule III}

The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

1. Supply of goods or services.
2. Supply of anything other than goods or services does not attract GST.
3. Supply should be made for a consideration.
4. Supply should be made in the course or furtherance of business.
5. Supply should be made by a taxable person.
6. Supply should be a taxable supply.
7. Supply should be made within the taxable territory

Exceptions:

1. Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration.
2. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

2. Composite Supply and Mixed Supply

Not all supplies are simple and clearly identifiable supplies. Some of the supplies will be a combination of goods or combination of services or combination of goods and services both. Each individual component in a given supply may attract different rate of tax. The rate of tax to be levied on such supplies may pose a problem in respect of classification of such supplies. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.

Composite Supply

Under GST, a composite supply would mean a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

How to determine as to whether a particular supply is naturally bundled in the ordinary course of business and what constitutes principal supply in such composite supplies?

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors.

Illustration: A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:

- Accommodation for the delegates
- Breakfast for the delegates
- Tea and coffee during conference
- Access to fitness room for the delegates
- Availability of conference room
- Business centre

As is evident a bouquet of services is being provided, many of them chargeable to different effective rates of tax. None of the individual constituents are able to provide the essential character of the service. However, if the service is described as convention service it is able to

capture the entire essence of the package. Thus, the service may be judged as convention service and chargeable to full rate. However, it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.

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

- The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.
- Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.
- For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.
- Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –
 - There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
 - The elements are normally advertised as a package.
 - The different elements are not available separately.
 - The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.

The above principles explained in the light of what constitutes a naturally bundled service can be gainfully adopted to determine whether a particular supply constitutes a composite supply under GST and if so what constitutes the principal supply so as to determine the right classification and rate of tax of such composite supply.

Mixed Supply

Under GST, a 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.

Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks 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.

In order to identify if the particular supply is a Mixed Supply, the first requisite is to rule out that the supply is a composite supply. A supply can be a mixed supply only if it is not a composite supply. As a corollary it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business then it would be a Mixed Supply. Once the amenability of the transaction as a composite supply is ruled out, it would be a mixed supply, classified in terms of a supply of goods or services attracting highest rate of tax.

Example - A house is given on rent one floor of which is to be used as residence and the other for housing a printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property.

Determination of tax liability of Composite and Mixed Supplies

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 two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

3. Time of Supply

The point in time when the goods or services are deemed to be supplied. The liability to pay GST arises upon the time of supply.

CGST/SGST or IGST must be paid at the time of supply. Goods and services have a separate basis to identify their time of supply.

Time of Supply of Goods

Time of supply of goods is earliest of:

- Date of issue of invoice
- Last date on which invoice should have been issued
- Date of receipt of advance/ payment

Example: A supplies goods to B on 5th July and issues the invoice on the same date. B pays by cheque on 20th July and the cheque is credited to A's account on 22nd July. A records the receipt of payment on 23rd July after receiving confirmation that the cheque has been cleared. The point of supply of the goods shall be 5th July. However, in the same case, if B pays half of the consideration in advance on 2nd July, then in respect to such amount the point of taxation shall be the date of receipt of such payment as recorded in his books of accounts or the date on which it is credited to his bank account, whichever is earlier, in this case to be July 22.

Time of Supply for Services

Time of supply of services is earliest of:

- Date of issue of invoice
- Date of receipt of advance/ payment.
- Date of provision of services (if invoice is not issued within prescribed period)

The provision in respect to services is more or less similar to that in respect to goods. However, in case of goods, where the supplier does not issue the invoice, the last date on which he is required to issue the same under the law is to be considered, whereas in case of services, the date of provision of services is to be considered.

Further, the provision in respect to service provides for an additional provision which states that in case it is still not possible to determine the time of supply on the basis of the date of issue of invoice or the date of provision of the service or the date of receipt of the payment, the date of receipt of services as reflected in the book of accounts of the recipient of service shall be considered.

4. Value of Supply

The amount of GST payable is calculated by applying the rate of GST to the value of the supply. The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related, and the price is the sole consideration for the supply.

The value of supply shall include:

- a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
- b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

- c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

5. Place of Supply

CGST and SGST is payable in case of intra-state trade or commerce i.e. intra-state supply of goods and services.

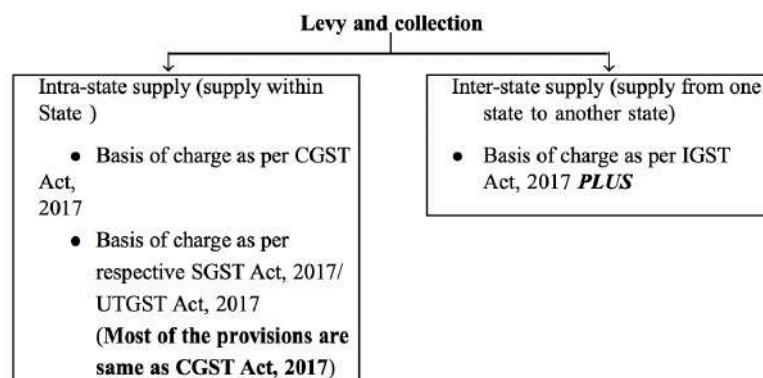
IGST is payable in case of inter-state trade or commerce i.e. intra-state supply of goods and services.

Provisions to determine whether the transaction is intra-state or inter-state are contained in IGST Model Law. Export and import of goods and services are also covered under IGST provisions.

Principle behind the provisions - The basic principle behind provisions relating to place of supply is that GST is destination based tax. Thus, tax is finally payable where goods and services are consumed. This issue is relatively easy in case of goods, but not so easy in case of services. Hence, in many cases, location of person receiving the service is relevant. If he is registered under GST, that is taken as criteria. Even if he is not registered, address on record of recipient is taken as criteria to determine place of supply in some cases. However, this is not so in case of services relating to immovable property and some performance based services.

See this article for practical examples and provisions related to place of supply - <https://www.charteredclub.com/gst-place-of-supply/>

Levy and Collection of GST on Supply



CGST along with SGST / UTGST is leviable on intra-State supplies. The maximum rate at which Government can levy CGST is 20%.

Alcoholic liquor for human consumption is outside the ambit of GST. Further petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel is also kept outside GST for the time being, but can be brought under its regime from such date as may be notified.

Levy and collection as per CGST Act, 2017

- 1) U/s 9(1) of CGST Act, 2017 there shall be levied a tax –
 - Called the Central Goods and Services Tax (CGST);
 - On all the intra-state supplies of goods or services or both, except on supply of alcoholic liquor for human consumption;
 - On the value determined u/s 15; and
 - At such a rate (maximum 20%,) as notified by the Central Government on recommendation of GST Council; and
 - Collected in such a manner as may be prescribed; and
 - Shall be paid by the taxable person.
- 2) GST is normally payable by the supplier of goods or services. However when the same is payable by the recipient of goods/services, it is called reverse charge. The term —reverse charge is defined under section 2 (98) of CGST Act.
- 3) U/s 9(3), CGST is to be paid on reverse charge basis by the recipient on notified goods/ services or both (liability to pay tax by the recipient of supply of goods / services rather than supplier of goods/ services under forward charge)
- 4) U/s 9(4), CGST on taxable supply of goods/ services to registered supplier from unregistered supplier is to be paid on reverse charge basis by the recipient.
- 5) U/s 9(5), E-Commerce operator is liable to pay CGST on notified intra-state supplies.

Levy and collection as per IGST Act, 2017

- 1) U/s 5(1) of IGST Act, 2017 there shall be levied a tax –
 - Called the Integrated Goods and Services Tax (IGST);
 - On all the inter-state supplies of goods or services or both, except on supply of alcoholic liquor for human consumption;
 - On the value determined u/s 15 of CGST Act, 2017; and z At such a rate (maximum 40%,) as notified by the Central Government on recommendation of GST Council; and
 - Collected in such a manner as may be prescribed; and z Shall be paid by the taxable person. Provided further that IGST will be imposed on goods/ services imported into India.

- 2) U/s 5(2) of IGST Act, 2017, the CGST of following supply shall be levied with the effect from such date as notified by the Central Government on recommendation of GST Council
- Petroleum crude
 - High speed diesel
 - Motor spirit (commonly known as petrol)
 - Natural gas
 - Aviation turbine fuel
- 3) U/s 5(3), IGST is to be paid on reverse charge basis by the recipient on notified goods/ services or both (liability to pay tax by the recipient of supply of goods / services rather than supplier of goods/ services under forward charge).
- 4) U/s 5(4), IGST on taxable inter-state supply of goods/ services to registered supplier from unregistered supplier (agriculturist) is to be paid on reverse charge basis by the recipient.
- 5) U/s 5(5), E-Commerce operator is liable to pay CGST on notified inter-state supplies.

Registration Under GST

In any tax system registration is the most fundamental requirement for identification of tax payers ensuring tax compliance in the economy. Registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail Input tax credit for the taxes on his inward supplies. Without registration, a person can neither collect tax from his customers nor claim any input tax credit of tax paid by him.

Need and Advantages of Registration

Registration will confer the following advantages to a taxpayer:

- He is legally recognized as supplier of goods or services.
- He is legally authorized to collect tax from his customers and pass on the credit of the taxes paid on the goods or services supplied to the purchasers/ recipients.
- He can claim input tax credit of taxes paid and can utilize the same for payment of taxes due on supply of goods or services.
- Seamless flow of Input Tax Credit from suppliers to recipients at the national level.

The provision of GST registration has been prescribed under chapter VI of the CGST Act, 2017 and Section 22 to Section 30 of the CGST Act, deals with the registration by the every supplier of goods and services.

Liability to Register

As per Section 22 of the CGST Act, every supplier¹ (GST being a tax on the event of “supply”) needs to get registered. However, small businesses having all India aggregate turnover² below Rupees 20 lakh (10 lakh if business is in Assam, Arunachal Pradesh, Himachal Pradesh, Uttarakhand, Manipur, Mizoram, Sikkim, Meghalaya, Nagaland or Tripura) need not register. The small businesses, having turnover below the threshold limit can, however, voluntarily opt to register.

Persons not liable for GST Registration

Section 23 of the CGST Act, specifies that the following persons shall not be liable to registration, namely:

- (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

¹ Section 2 (105) of the CGST Act, defines “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.

² The aggregate turnover includes supplies made by him on behalf of his principals, but excludes the value of job-worked goods if he is a job worker. But persons who are engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax or an agriculturist, to the extent of supply of produce out of cultivation of land are not liable to register under GST. Also, if all the supplies being made by a supplier are taxable under reverse charge, there is no requirement for such a supplier to register in light of Notification No. 5/2017-Central Tax dated 19.06.2017.

- (b) an agriculturist, to the extent of supply of produce out of cultivation of land.

The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration.

Compulsory Registration in Certain Cases

Section 24 of the CGST Act, specified that the following categories of persons compulsorily shall be required to take registration under GST:

- a) persons making any inter-State taxable supply;
- b) casual taxable persons³ making taxable supply;
- c) persons who are required to pay tax under reverse charge⁴;
- d) person who are required to pay tax under sub-section (5) of section 9;
- e) non-resident taxable persons making taxable supply;
- f) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
- g) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- h) Input Service Distributor⁵, whether or not separately registered under this Act;
- i) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;
- j) every electronic commerce operator;
- k) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and
- l) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Manner of Registration Under GST

Section 25 of the CGST Act, specified the manner of registration by the various taxable person as under:

³ “Casual taxable person” means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business.

⁴ Normally, the supplier of goods or services pays the tax on supply. In the case of Reverse Charge, the receiver becomes liable to pay the tax, i.e., the chargeability gets reversed.

⁵ Input Service Distributor (ISD) means an office of the supplier of goods or services or both which receives tax invoices towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax (CGST), State tax (SGST)/ Union territory tax (UTGST) or integrated tax (IGST) paid on the said services to a supplier of taxable goods or services or both having same PAN as that of the ISD.

- 1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is also liable within 30 days from the date on which he becomes liable to registration.
 - In case of a casual taxable person or a non-resident taxable person shall apply for registration at least 5 days prior to the commencement of business.
 - In case of any person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.
- 2) Any person who is seeking registration under GST shall be granted a single registration in a State or Union territory.
 - In case a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical.
- 3) A person, though not liable to be registered under section 22 or section 24 of the CGST Act, may get himself voluntarily and comply the all provisions of GST Act as applicable to a registered person.
- 4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of the GST Act.
- 5) 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 for the purposes of the GST Act.
- 6) Every person shall have a Permanent Account Number issued under the Income-tax Act, 1961 in order to be eligible for grant of registration.
- 7) Where an eligible person fails to obtain registration, the proper officer may take suitable action as per law.
- 8) Any specialized agency of the UNO or any other organisation as notified by the commissioner shall be granted Unique Identity Number for all purposes including refund of taxes.
- 9) The registration or Unique Identity Number shall be issued as per procedure or shall be deemed to have been granted within period of 7 days.

Amendment of GST Registration

Section 28 of the CGST Act, specified the provision of amendment of **GST registration**, every registered person or a person to whom a Unique Identity Number has been issued shall inform the proper officer of any changes in the information of registration within 15 days of the said changes.

The proper office may approve or reject the amendment in the registration of such particulars but the proper officer shall not reject the application for registration without giving the person an opportunity of being heard.

Cancellation of GST Registration

- 1) Section 29 of the CGST Act, provides the procedure for cancellation of **GST registration** either by the proper officer or an application filed by the registered person or by his legal heirs in the following circumstances where,-
 - a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
 - b) there is any change in the constitution of the business; or
 - c) the taxable person, other than the person registered as voluntarily , is no longer liable to be registered under section 22 or section 24.
- 2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—
 - a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
 - b) a person paying tax under section 10 (composition levy scheme) has not furnished returns for three consecutive tax periods; or
 - c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
 - d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
 - e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:
 - f) Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.
- 3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.
- 4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.
- 5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:
- 6) Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the

transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

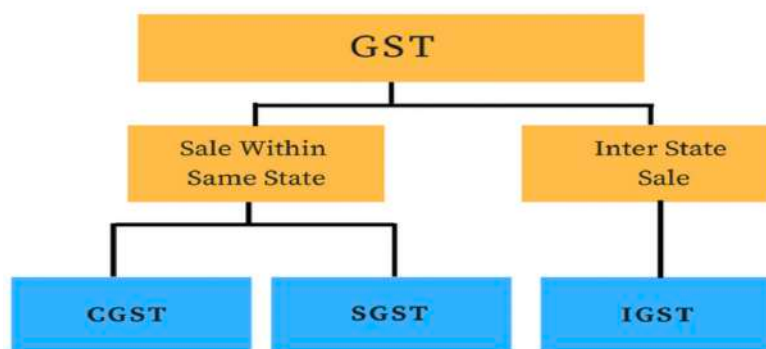
- 7) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

Revocation of Cancellation of GST Registration

Section 30 of the CGST Act, specified the provision of revocation of cancellation of registration as per the following conditions:

- 1) Any registered person whose registration is cancelled by the proper officer, he can apply to such officer for revocation of cancellation of the registration within 30 days from the date of service of the cancellation order.
- 2) The proper officer either revokes cancellation of the registration or rejects the application, but before rejection of application the proper officer should be given an opportunity of being heard by the applicant.
- 3) The revocation of cancellation of registration under SGST Act, and UTGST Act, as the case may be shall be deemed to be a revocation of cancellation of registration under section 30 of the CGST Act.

Integrated Goods and Services Tax (IGST)



GST is a multi-stage value added tax on consumption of goods or services or both. A “dual GST” model has been adopted in view of the federal structure of our country. Centre and States will simultaneously levy GST on every supply of goods or services or both which takes place within a State or Union territory.

Rationale for IGST

Before discussing the IGST Model and its features it is important to understand how inter-state trade or commerce was regulated in the previous indirect tax system. The Central Sales Tax Act, 1956 regulated the inter-state trade or commerce (hereinafter referred to as “CST”) the authority for which was constitutionally derived from Article 269 of the Constitution.

Further as per article 286 of the Constitution of India, no State could levy sales tax on any sales or purchase of goods that takes place outside the State or in the course of the import of the goods into, or export of the goods out of, the territory of India. Only Parliament could levy tax on such transaction.

The Central Sales Tax Act was enacted in 1956 to formulate principles for determining when a sale or purchase of goods takes place in the course of interstate trade or commerce. The Act also provided for the levy and collection of taxes on sale of goods in the course of interstate trade.

The CST suffered from following shortcomings:

- CST was collected and retained by the origin state, which is an aberration. Any indirect tax, by definition is a consumption tax, the incidence of which is borne by the consumer. Logically, the tax should accrue to the destination state having jurisdiction over such consumer.
- Input Tax Credit (ITC) of CST was not allowed to the buyer which resulted in cascading of tax (tax on tax) in the supply chain.
- Various accountal forms are required to be filed in CST viz., C Form, E1, E2, F, I, J Forms etc. which added to the compliance cost of the business and impeded the free flow of trade.

The IGST model is designed to remove all these deficiencies. IGST is a mechanism to monitor the inter-state trade of Goods and services and further to ensure that the SGST component accrues to the consumer state. It would maintain the integrity of Input Tax Credit (hereinafter referred to as “ITC”) chain in inter-state supplies. The IGST rate would broadly be equal to CGST rate plus SGST rate. IGST would be levied by the Central Government on all inter-State transactions of taxable goods or services.

$$IGST\ rate = CGST\ rate + SGST\ rate\ (\ more\ or\ less)$$

Nature of Supply

It is very important to determine the nature of supply – whether it is inter-state or intra state, as the kind of tax to be paid (IGST or CGST+SGST) depends on that.

Inter-State Supply - Subject to place of supply provisions, where the location of the supplier and the place of supply are in— a) two different States; a) two different Union territories; or a) a State and a Union territory, Such supplies shall be treated as a supply of goods or services in the course of inter-State trade or commerce.

Any supply of goods or services in the taxable territory, not being an intra-State supply shall be deemed to be a supply of goods or services in the course of inter-State trade or commerce.

Supplies to or by SEZ are defined as inter-State supply. Further supply of goods imported into territory of India till they cross the customs frontiers of India or supply of services imported

into the territory of India shall be treated as supplies in the course of inter-State trade or commerce. Even supplies to international tourists are to be treated as inter-state supplies.

Intra state supply	Interstate supply
<ul style="list-style-type: none"> ➤ Supply of goods within the state or union territory. ➤ Supply of services within the state or union territory 	<ul style="list-style-type: none"> ➤ Supply of goods from one state or union territory to other state or union territory. ➤ Supply of service from one state or union territory to other state or union territory. ➤ Import of goods till they cross customs frontier ➤ Import of service. ➤ Export of goods or service. □ Supply of goods/services to/by SEZ. ➤ Supplies to international tourists ➤ Any other supply in the taxable territory which is not intra state supply

Intra-State supply: It has been defined as any supply where the location of the supplier and the place of supply are in the same State or Union territory. Thus, the nature of the supply depends on the location of the supplier and the place of supply. Both these terms have been defined in the IGST Act.

Compensation Cess in GST

Goods and Services Tax (Compensation to States) Act, 2017 was enacted to levy Compensation cess for providing compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force (01/07/2017), for a period of five years or for such period as may be prescribed on the recommendations of the GST Council.

The compensation cess on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

Compensation Cess will not be charged on goods exported by an exporter under bond and the exporter will be eligible for refund of input tax credit of Compensation Cess relating to goods exported. In case goods have been exported on the payment of Compensation Cess the exporter will be Transition Provisions under eligible for refund of Compensation Cess paid on goods exported by him. Compensation cess shall not be leviable on supplies made by a taxable person who has decided to opt for composition levy.

Works Contract in GST

What is a Works Contract?

Simply put, a works contract⁶ is essentially a contract of service which may also involve supply of goods in the execution of the contract. It is basically a composite supply of both services and goods, with the service element being dominant in the contract between parties.

In a general sense, a contract of works, may relate to both immovable and movable property. E.g. if a sub-contractor, undertakes a sub-contract for the building work, it would be a works contract in relation to immovable property. Similarly, if a composite supply in relation to movable property such as fabrication/painting/annual maintenance contracts etc. is undertaken, the same would come within the ambit of the broad definition of a works contract.

Position under GST

Under GST laws, the definition of “Works Contract” has been restricted to any work undertaken for an “Immovable Property” unlike the existing VAT and Service Tax provisions where works contracts for movable properties were also considered.

Thus, from the definition, it can be seen that the term works contract has been restricted to contract for building construction, fabrication etc of any immovable property only. Any such composite supply undertaken on goods say for example a fabrication or paint job done in automotive body shop will not fall within the definition of term works contract per se under GST. Such contracts would continue to remain composite supplies, but will not be treated as a Works Contract for the purposes of GST.

As per Para 6 (a) of Schedule II to the CGST Act, 2017, works contracts as defined in section 2(119) of the CGST Act, 2017 shall be treated as a supply of services. Thus, there is a clear demarcation of a works contract as a supply of service under GST.

Place of Supply in Respect of Works Contract

Works Contract under GST would necessarily involve immovable property. In view of the same, the place of supply would be governed by Section 12(3) of the IGST Act, 2017, where both the supplier and recipient are located in India. The place of supply would be where the immovable property is located.

In case the immovable property is located outside India, and the supplier as well as recipient both are located in India, the place of supply would be the location of recipient as per proviso to Section 12(3) of the IGST Act, 2017.

As per Section 13(4) of the IGST Act, 2017, in cases where either the Supplier or the Recipient are located outside India, the place of supply shall be the place where the immovable property is located or intended to be located.

⁶ Works Contracts has been defined in Section 2(119) of the CGST Act, 2017 as “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.”

Conclusion

A works contract is treated as supply of services under GST. Under the previous indirect taxes dispensation, there were issues in tax treatment of works contract. Both the Central Government (on the services component of a works contract) & the State Governments (on the sale of goods portion involved in the execution of a works contract) used to levy tax. Thus the same contract was subject to taxation by both Central and State Government. GST aims to put at rest the controversy by defining what will constitute a works contract (applicable for immovable property only), by stating that a works contract will constitute a supply of service and specifying a uniform rate of tax applicable on same value across India. Thus, under GST, taxation of works contract will be simpler and easier to administer.

GST Council

- 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.
- It shall also recommend the date on which GST be levied on petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel.
- Every decision of the GST Council is taken by a majority of not less than three-fourths of the weighted votes of the members present and voting. Vote of the Centre has a weightage of one-third of total votes cast and votes of all the State Governments taken together has a weightage of two-thirds of the total votes cast, in that meeting.

GST Council – Constitution (Article 279A of the Constitution)



- Chairperson – Union FM
- Vice Chairperson - to be chosen amongst the Ministers of State Government
- Members - MOS (Finance) and all Ministers of Finance / Taxation of each State
- Quorum is 50% of total members
- Decision by 75% majority
- States - 2/3 weightage and Centre - 1/3 weightage
- Council to make recommendations on everything related to GST including laws, rules and rates etc.