

SUPPLY UNDER GST



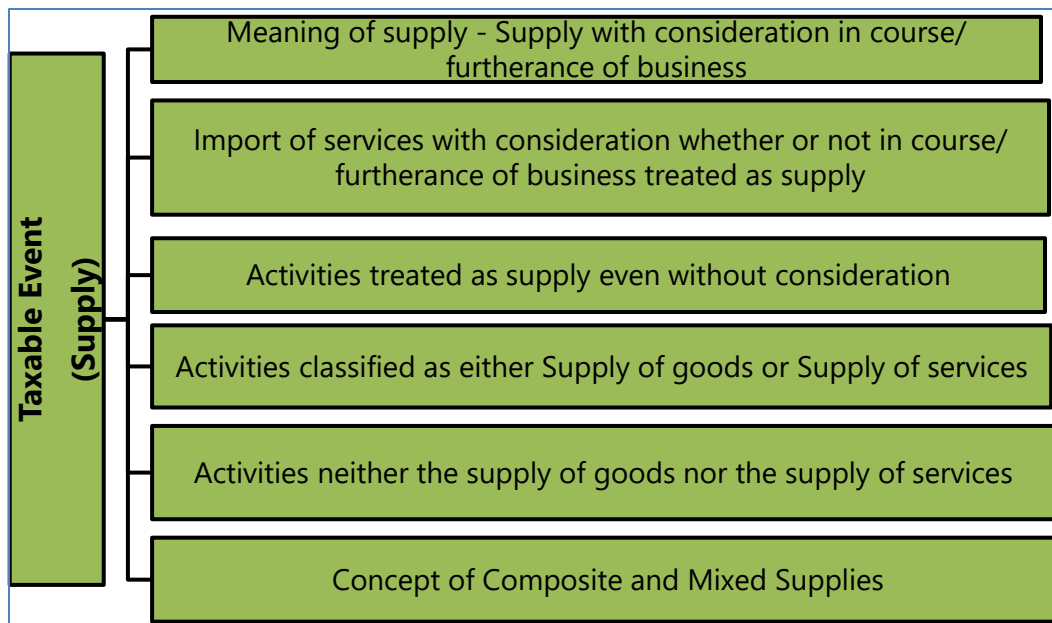
Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 31.10.2020

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- ❑ understand the taxable event under GST
- ❑ analyse the taxable event – Supply – its meaning and scope.
- ❑ identify the transactions that will amount to supply even without any consideration.
- ❑ identify the transactions which will be neither the supply of goods nor the supply of services.
- ❑ classify the specified transactions either as supply of goods or as supply of services.
- ❑ explain the composite and mixed supplies and their taxability under GST.

CHAPTER OVERVIEW



1. INTRODUCTION

A taxable event is any transaction or occurrence that results in a tax consequence. Before levying any tax, taxable event needs to be ascertained. It is the foundation stone of any taxation system; it determines the point at which tax would be levied.

Under the earlier indirect tax regime, the framework of taxable event in various statutes was prone to catena of interpretations resulting in litigation since decades. The controversies largely 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. Various taxable events namely manufacture, sale,



rendering of service, purchase, entry into a territory of State etc. have been done away with in favour of just one event i.e. **Supply**.

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 Law 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.

2. 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].
- ✔ **Principal:** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both [Section 2(88) of CGST Act].
- ✔ **Competent authority:** means such authority as may be notified by the Government [Section 2(29) of the CGST Act].
- ✔ **Family:** means, —
 - (i) the spouse and children of the person, and
 - (ii) the parents, grand-parents, brothers and sisters of the person if they are **wholly or mainly dependent** on the said person [Section 2(49) of the 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) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed 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].



Government: means the Central Government [Section 2(53) of the CGST Act].



Local authority: means —

(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution.

(b) a "Municipality" as defined in clause (e) of article 243P of the Constitution.

- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund.
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006.
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution.
- (f) a Development Board constituted under article 371 and article 371J of the Constitution.
- (g) a Regional Council constituted under article 371A of the Constitution [Section 2(69) of the 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].



Actionable claim: means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent [Section 2(1) of CGST Act read with section 3 of the Transfer of Property Act, 1882].

- ❖ **Manufacture:** means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly [Section 2(72) of CGST Act].
- ❖ **Money:** means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75) of CGST Act].
- ❖ **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108) of CGST Act].
- ❖ **Taxable territory:** means the territory to which the provisions of this Act apply [Section 2(109) 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.

Explanation: For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities [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].
- ❖ **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

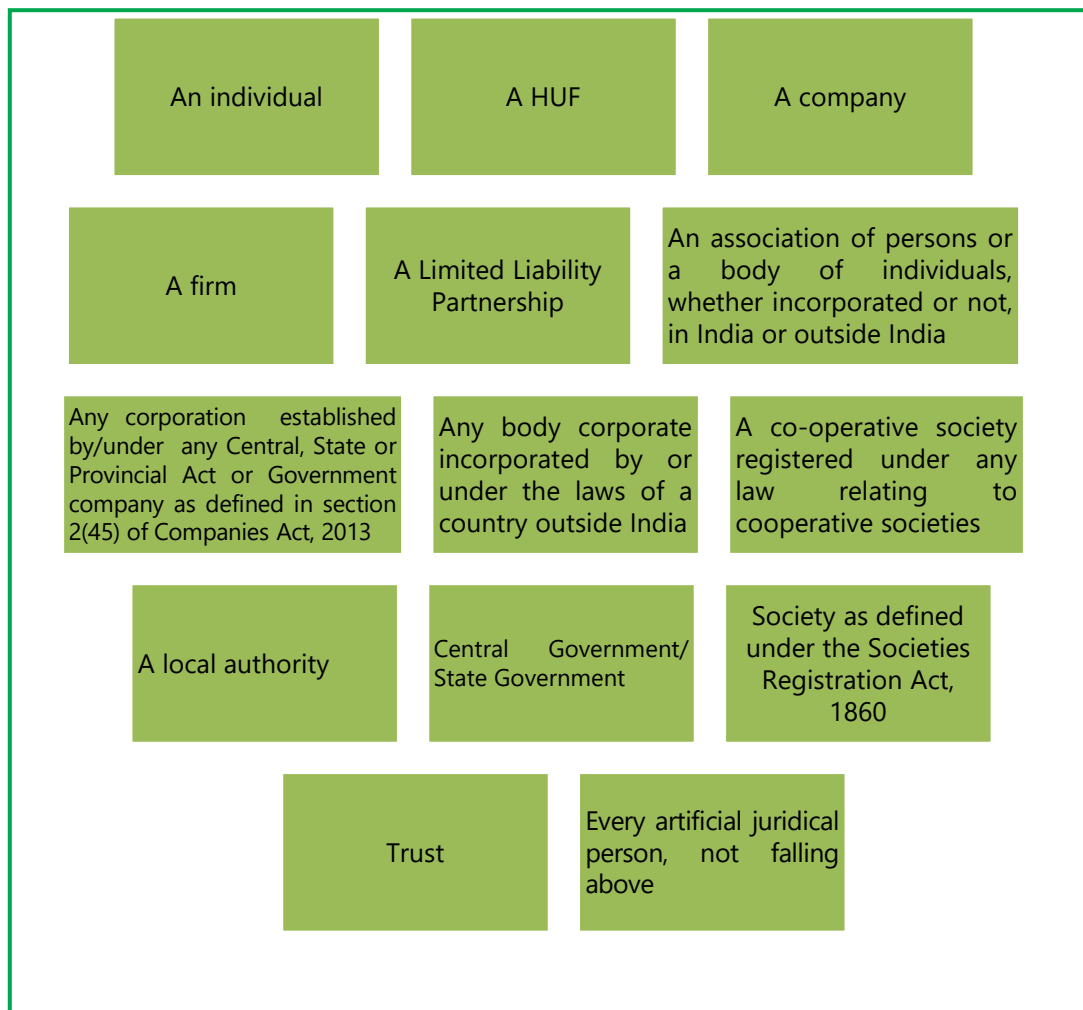
(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

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]



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



Our discussion in this Study Material will principally be confined to the provisions of CGST and IGST laws as the specific State GST laws¹ are outside the scope of syllabus.



3. 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. Following sections and schedules shall be discussed in this chapter to understand the concept of supply:

Section 7	Meaning and scope of supply
Section 8	Taxability of composite and mixed supplies
Schedule I	Activities to be treated as supply even if made without consideration
Schedule II	Activities or transactions to be treated as supply of goods or as supply of services
Schedule III	Activities 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)	<i>all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or</i>

¹ It may be noted that GST laws of all the States and Union Territories are largely based on the CGST Act, 2017.

		<i>disposal made or agreed to be made for a consideration by a person in the course or furtherance of business</i>
	(b)	<i>importation of services, for a consideration whether or not in the course or furtherance of business, and</i>
	(c)	<i>the activities specified in Schedule I, made or agreed to be made without a consideration,</i>
(1A)	<i>where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.</i>	
(2)	<i>Notwithstanding anything contained in sub-section (1),</i>	
	(a)	<i>activities or transactions specified in Schedule III; or</i>
	(b)	<i>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</i>
	<i>shall be treated neither as a supply of goods nor a supply of services.</i>	
(3)	<i>Subject to sub-sections (1), (1A) & (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as —</i>	
	(a)	<i>a supply of goods and not as a supply of services; or</i>
	(b)	<i>a supply of services and not as a supply of goods.</i>



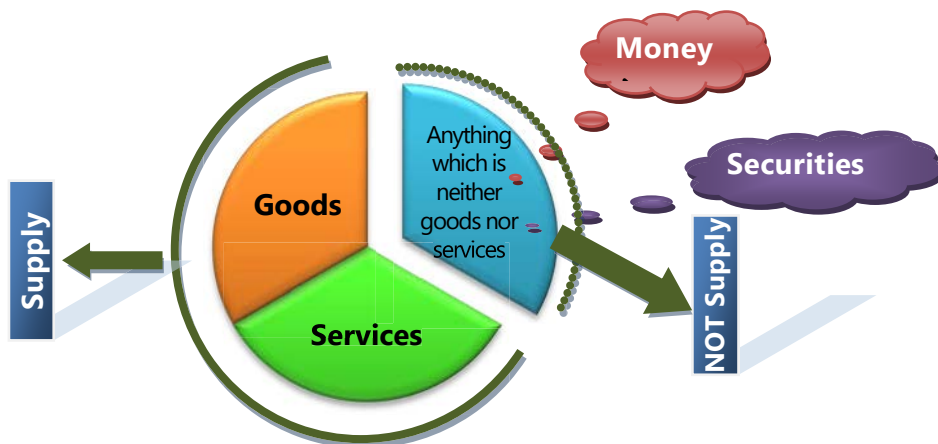
ANALYSIS

The definition of 'supply' as contained in section 7 of the CGST Act is an inclusive definition and does not define the term exhaustively. It defines the scope of supply in an inclusive manner. Clause (a) of sub-section (1) illustrates the forms of supply, but the list is not exhaustive. This is substantiated by the use of words '**such as**' in the definition.

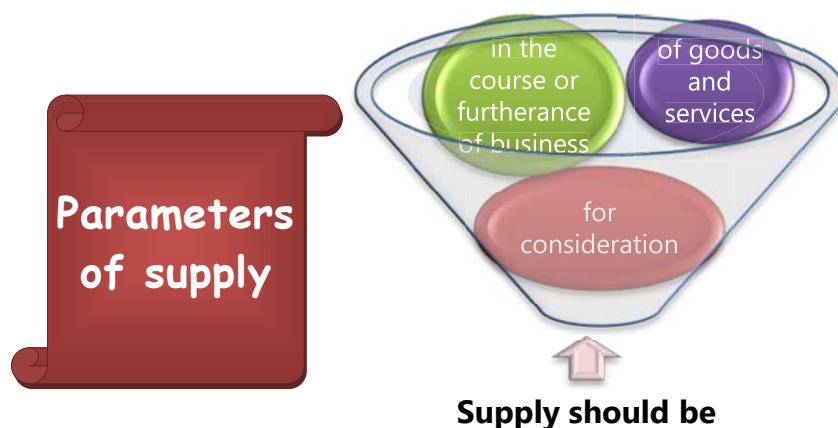
Provisions of scope of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

The meaning and scope of supply in terms of section 7 can be understood in terms of following **parameters**:

1. Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.



2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.



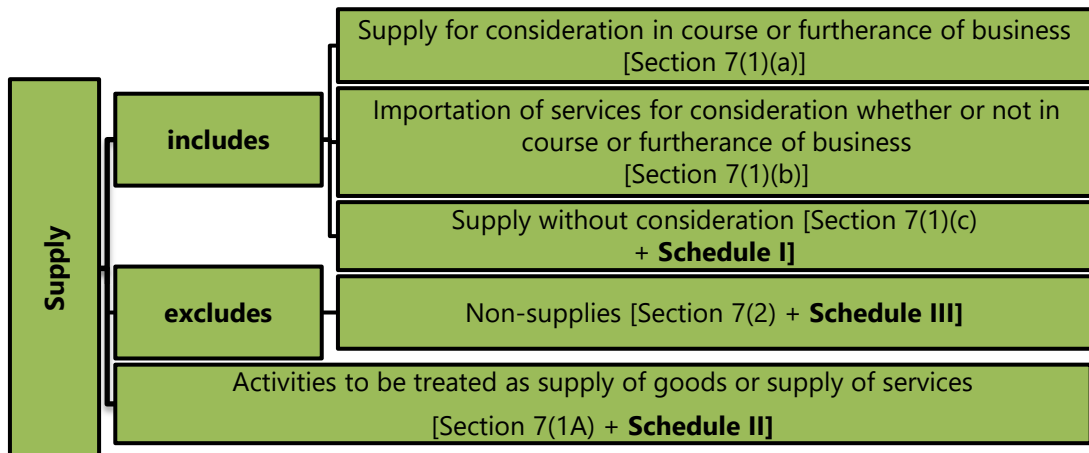
Aforesaid parameters describe the concept of supply. However, there are a few exceptions to 2nd and 3rd parameters [the requirement of supply being made for a consideration and in the course or furtherance of business] in the GST law. Few

exceptions have been carved out where a transaction is deemed to be a supply even **without consideration** [contained in Schedule I of the CGST Act – discussed later in this Chapter]. Similarly, the condition of supply to be made **in the course or furtherance of business** has been relaxed in case of import of services [Import of services for a consideration, whether or not in the course or furtherance of business, is treated as supply].

Further, there are also cases **where a transaction is kept out of scope of supply despite the existence of the above parameters**, i.e. there is a list of activities which are treated neither as supply of goods nor as supply of services. In other words, they are outside the scope of GST.

GST law has classified certain activities/transactions **either as supply of goods or as supply of services**. Government is also empowered to notify transactions that are to be treated as a supply of goods and not as a supply of services, or as a supply of services and not as a supply of goods.

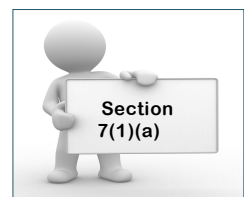
In the subsequent paras, the above aspects of supply have been extensively discussed. The discussion has been broadly categorised into following:



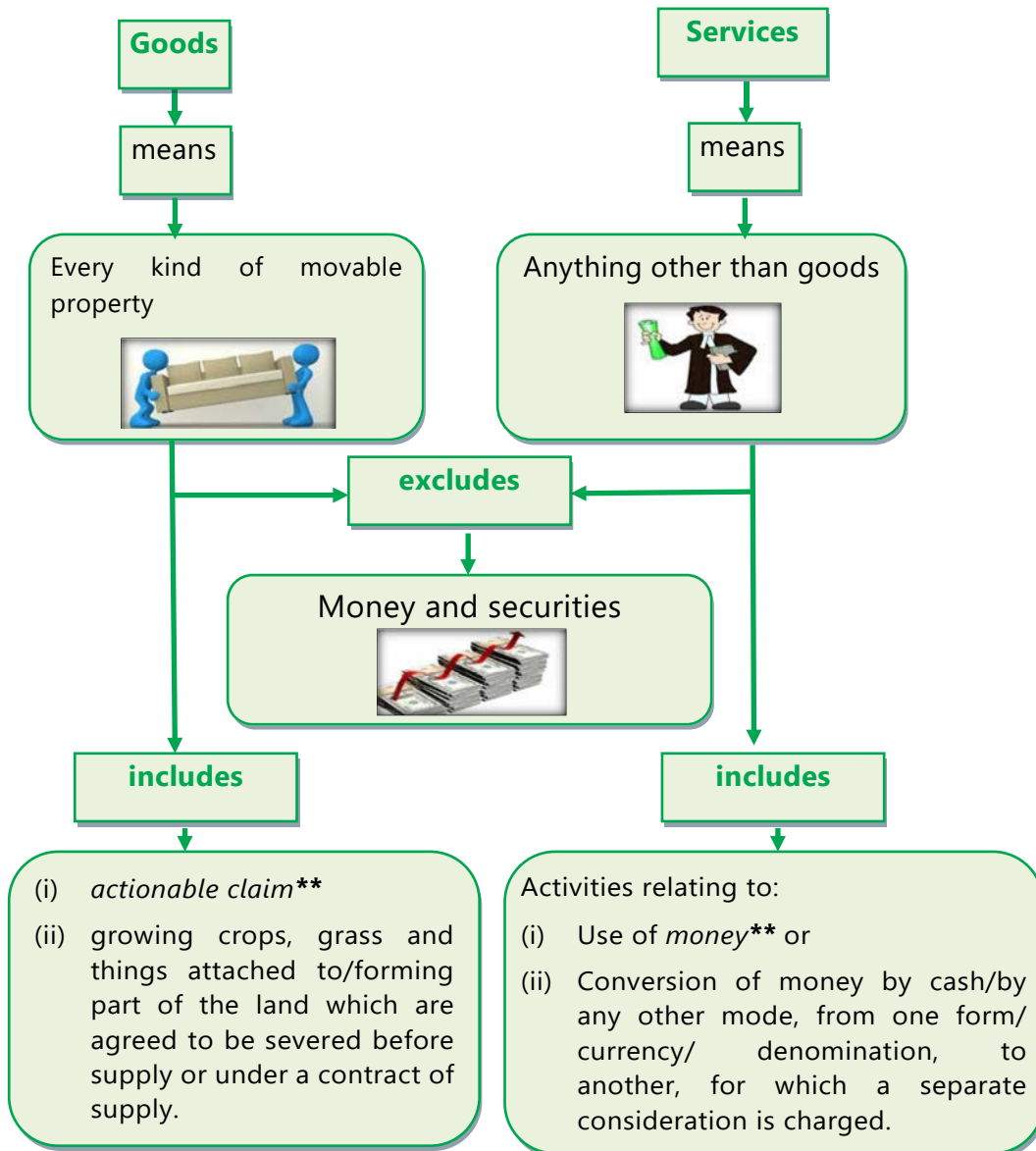
Supply for consideration in course or furtherance of business

SUPPLY SHOULD BE OF GOODS OR SERVICES OR BOTH

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'. Supply **includes** all



forms of supply of goods or services or both. Supply of anything other than goods or services does not attract GST. The terms goods and services as defined under the Act have been analysed by way of a diagram on next page. **Anything supplied other than goods and services is outside the scope of supply.**



****Please refer the definitions of 'actionable claims' and 'money' as provided in heading 2. – Relevant Definitions.**

The first part of section 7 [Clause (a) of sub-section (1)] includes **all forms of supply** of goods or services or both such as sale, transfer, barter, exchange, license, 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 have two pre-requisites:

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

We shall now discuss the various forms of supply as illustrated in section 7(1)(a) in detail:

SUPPLY INCLUDES ALL FORMS OF SUPPLY

Various forms of supply contemplated in section 7(1)(a) are sale, transfer, barter, exchange, licence, rental, lease or disposal. These forms of supply are only illustrative and not exhaustive. However, none of these terms have been defined under the Act. In order to understand their meaning, we have taken recourse to their dictionary meaning or otherwise and have explained them as follows:

- I. **Sale and Transfer:** The dictionary meaning of term 'sale' is the act of selling; specifically: the transfer of ownership of and title to property from one person to another for a price². As per the Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

² www.merriam-webster.com

Further, the term 'transfer' has been defined in the Black's Law dictionary as to convey or remove from one place, person, etc., to another; pass or hand over from one to another; specifically, to make over the possession or control of.



(1) A shopkeeper sells a pen for ₹ 100 to the buyer. After the sale, the pen belongs to the buyer and shopkeeper does not have any right on the pen. This is a transaction of sale.



(2) A company transfers goods from its factory to the depot for sale purposes. This is 'transfer' of goods where the sale has not taken place.

- II. Barter and Exchange:** The dictionary meaning of term 'barter' is to exchange goods or services for other goods or services instead of using money³. Black's Law dictionary defines the term 'exchange' as an act of giving or taking one thing for another.

While barter deals with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are paid for partly in goods and partly in money. When there is a barter of goods or services, same activity constitutes supply as well as consideration.



(3) When a new car worth ₹ 5,00,000 is purchased in exchange of an old car alongwith the monetary consideration of ₹ 4,00,000 paid for the said purchase.



(4) A doctor got his hair cut from a barber and provides him medical consultancy in return. In this transaction, the doctor provided the medical consultancy services to the barber for which consideration was in the form of hair cutting services provided by the barber. Similarly, the barber provided hair cutting services to the doctor for which consideration was in the form of medical consultancy services provided by the doctor.

- III. Licence, lease, rental and disposal:** The dictionary meaning of the term 'licence' is a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful⁴. Black's law

³ www.macmillandictionary.com

⁴ www.merriam-webster.com

dictionary defines disposal as the sale, pledge, giving away, use, consumption or any other disposition of a thing.

The dictionary meaning of 'rental' is an arrangement to rent something, or the amount of money that you pay to rent something⁵ and that of 'lease' is to make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time⁶.

Under GST, such licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule-II of CGST Act [*Schedule-II has been discussed in detail in the subsequent paras*].

As discussed earlier, one of the parameters to qualify as a supply of goods and/or services is that a supply is made for a consideration. This parameter has been explicated in the following paras:

SUPPLY SHOULD BE FOR CONSIDERATION

The dictionary meaning of word 'consideration' is payment. Consideration need not always be in the form of money. It can be in money or in kind. It covers anything which might be possibly done, given or made in exchange for something else. Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person.

However, any subsidy given by the Central Government or a State Government is not considered as consideration.

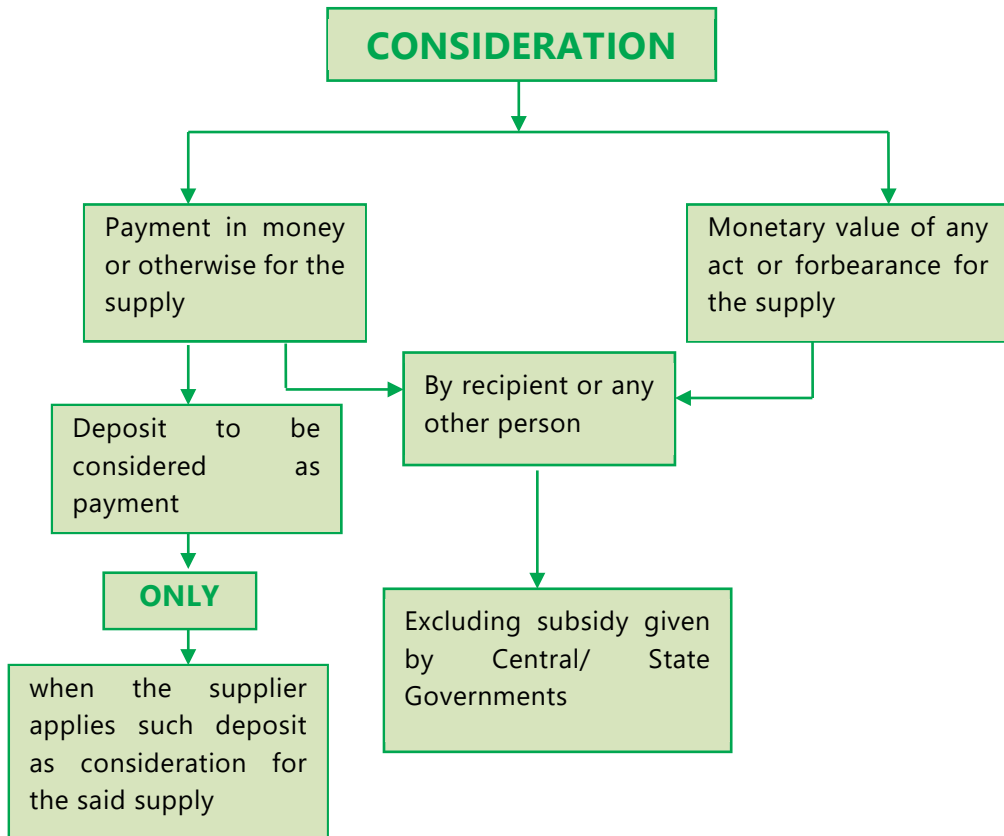
A deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

The term consideration is defined under section 2(31) of the CGST Act [*Refer heading 'Relevant Definitions'*].

⁵ www.dictionary.cambridge.org

⁶ www.dictionary.cambridge.org

The said definition has been depicted in the form of a diagram as follows:



Let us examine the existence of consideration in the following two scenarios:

1. Donations received by charitable institutions from individual donors, without *quid pro quo*
2. Art works sent by artists to galleries for exhibition

1. Donations received by charitable institutions from individual donors, without quid pro quo

An important feature of consideration is quid pro quo [something for something]. Donations received by the charitable organisations are treated as consideration only if there exists, quid pro quo, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).

Generally, institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. receive financial help or any other support in the form of donation or gift from the individual donors.

In order to express the gratitude towards such help/support, the recipient institutions place a name plate or similar such acknowledgement in their premises.

When the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation).

In other words, there is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

Some examples of cases where there would be no taxable supply are as follows:-



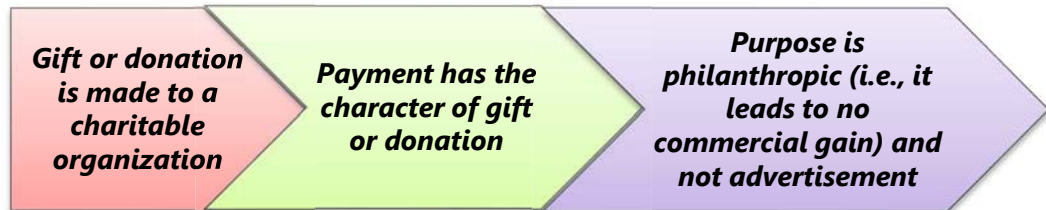
(5) Bhushan donated a blackboard to Yoganisht Sansthan - a charitable yoga institution. Yoganisht Sansthan printed underneath the blackboard so donated - "Good wishes from Mr. Bhushan".



(6) Smt. Durga Devi donated some money to a temple in the memory of her late father. The Temple Trust constructed a room in the temple complex from such donation and wrote "Donated by Smt. Durga Devi in the memory of her father" on the door floor of the room.

In above examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised.

Thus, GST is not leviable where all the following three conditions are satisfied namely:



[Circular No. 116/35/2019 GST dated 11.10.2019]

2. Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists

Artists give their work of art to galleries where it is exhibited for supply. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.



It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply [Circular No. 22/22/2017 GST dated 21.12.2017].



Any transaction involving supply of goods and/or services without consideration is not a supply unless it is deemed to be a supply under Schedule I of the CGST Act**.

***Provisions of Schedule I of the CGST Act have been discussed in detail later in this chapter.*

Another parameter to qualify as supply of goods and/or services is that a supply is made in course or furtherance of business. This parameter has been expounded in the following paras:

SUPPLY SHOULD BE IN COURSE OR FURTHERANCE OF BUSINESS

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Resultantly, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of 'business'.

Meaning of supply made in the course or furtherance of business: Any activity

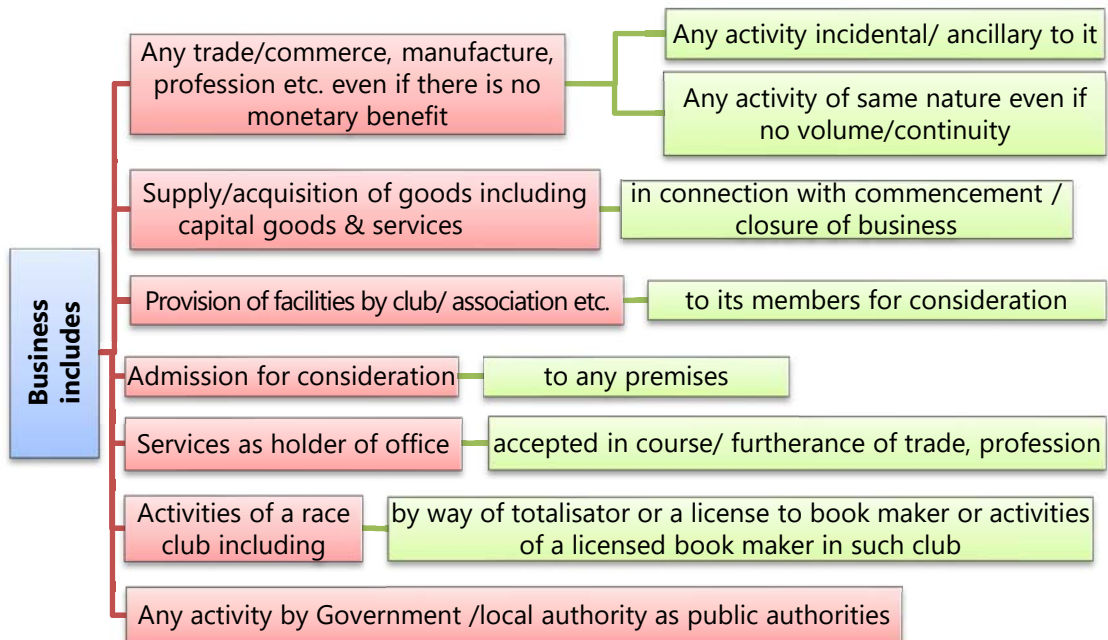


undertaken in course/ for furtherance of business would constitute a supply. In order to understand the term 'in the course or furtherance of business', we need to first understand the term



'business'. Business as defined under section 2(17) of the CGST Act, *inter alia*, includes any trade, commerce, manufacture, profession, vocation etc. whether or not undertaken for a monetary benefit.

The definition of business has been summarised in the diagram below:



Thus, business includes any activity/transaction which is incidental or ancillary to any trade, commerce, manufacture, profession, vocation, adventure, wager [bet] or any other similar activity. In addition, any activity undertaken by the Central Govt. or a State Govt. or any local authority in which they are engaged as public authority

shall also be construed as business. For any trade, commerce, or any other similar activity to qualify as business, **frequency, volume, continuity or regularity of such transaction is not a pre-requisite.**

Some of the examples of supply made/not made 'in the course or furtherance of business' are as follows:



(7) Rishabh buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Rishabh to car dealer is not a supply under CGST Act because said supply is not made by Rishabh in the course or furtherance of business⁷.



(8) Manikarnika sold her old gold bangles and earrings to 'Aabhushan Jewellers'. Sale of old gold jewellery by an individual to a jeweller will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual⁸.

The view taken in above two examples is based on the view taken in the Departmental FAQs/ press release.⁹

Since 'business' includes vocation, therefore, sale of goods or service **as a vocation** is also a supply under GST.



(9) Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust – 'Kind Human'. The sale of paintings by the actor qualifies as supply.

⁷ Clarified vide GST FAQs issued by CBIC

⁸ Clarified by CBIC vide press release dated 13.07.2017

⁹ There is another school of thought according to which since the definition of business includes trade, commerce, or any other similar activity, **whether or not there is frequency, volume, continuity or regularity** of such transaction, the transactions in the above examples can be considered to be made in the course or furtherance of business and thus, will constitute supply. The taxability of such transactions, however, will have to be examined under the provisions of section 9 [Discussed in detail in Chapter 3 – Charge of GST]. This view is based on literal interpretation of the law. However, since this view may not always lead to logical conclusions, it is more prudent to take a purposive approach as followed in Departmental FAQs/press release given above.

Services provided by the club/association to its members for consideration is a supply.



(10) A Resident Welfare Association provides the service of depositing the electricity bills of the residents in lieu of some nominal charges. Provision of service by a club or association or society to its members is treated as supply as this is included in the definition of 'business'.

Admission of persons to any premises for a consideration is also included in business.



(11) Services by way of admission to circus, cinema halls, amusement parks including theme parks, water parks, etc. are considered as supply as these are services by way of admission of persons to any premises for a consideration.

Business includes activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club.



(12) Royal Turf Race Club is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator¹⁰. For providing the service of facilitating wagering transactions, Royal Turf Race Club gets commission which is deducted and retained by the club from the total bet value. Said services amount to supply as the activities of a race club are included in business.



There is one exception to this 'course or furtherance of business' rule i.e., import of services for a consideration.



From the above discussion, it can be inferred that if an activity or transaction satisfies all the above parameters, as discussed in points A., B. and C. above, said activity or transaction qualifies as Supply under GST.

¹⁰ Totalisator is a computerised device that pools the wagers/bets (after deduction of charges and statutory taxes) of various persons placing the bet and also divides the total wager amount to be distributed to the winning persons.

In the subsequent paras, we have discussed the exceptions to the two parameters of supply, *namely*, (i) supply made for consideration, but not in course or furtherance of business and (ii) supply made without consideration.



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.** This is the only exception to the condition of supply being made in course or furtherance of business.



(13) Ramaiyaa, a proprietor, has received the architect services for his house from an architect located in New York at an agreed consideration of \$ 5,000. The import of services by Ramaiyaa is supply under section 7(1)(b) though it is not in course or furtherance of business.



Activities without consideration—Deemed Supply



STATUTORY PROVISIONS

<i>Schedule-I</i>	<i>Activities to be treated as supply even if made without consideration</i>
<i>S. No.</i>	<i>Particulars</i>
1.	<i>Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.</i>
2.	<i>Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business.</i>

	<i>Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.</i>
3.	<p><i>Supply of goods —</i></p> <p>(a) <i>by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or</i></p> <p>(b) <i>by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.</i></p>

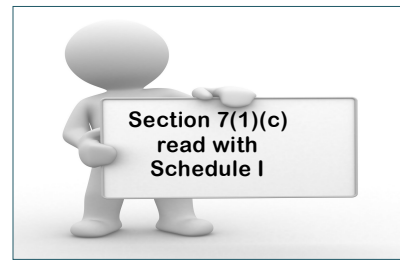


ANALYSIS

There are instances where an activity or transaction is treated as supply, **even if the same is made 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 instance, if any service was provided for free to a person, such service was not subject to service tax. However, under GST, the importance of consideration has been diluted in certain cases – this is an important departure from the earlier indirect tax regime.

As per Schedule I, in the following four cases, activities made without consideration will be treated as supply under section 7 of the CGST Act:



I. Permanent Transfer/Disposal of Business Assets [Para 1. of Schedule I]: Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply. However, it is important to note that this provision would apply only if input tax credit has been availed on such assets.

Therefore, in order to qualify as supply under this para, following conditions need to be satisfied:

- ☐ There must be a disposal or transfer of business assets**.
- ☐ Transfer/disposal must be permanent.

- ❑ ITC must have been availed on such business assets.

In view of the last condition stipulated above, permanent transfer/disposal of following business assets, without consideration, will not be covered within this para and thus will not be deemed as supply:

- (i) Business assets on which ITC is blocked/not available under GST¹¹.
- (ii) Business assets though eligible for ITC, ITC has not been availed by the registered person.

***It is important to note that the term business asset has not been defined under the GST law.*



(14) Dhruv gives old laptops being used in his business to his friend free of cost. This will qualify as supply provided input tax credit has been availed by Dhruv on such laptops.



(15) A dealer of air-conditioners permanently transfers the motor vehicle free of cost. ITC on said motor vehicle is blocked. The transaction will not constitute a supply as the condition of availment of ITC on the business asset transferred is not fulfilled.

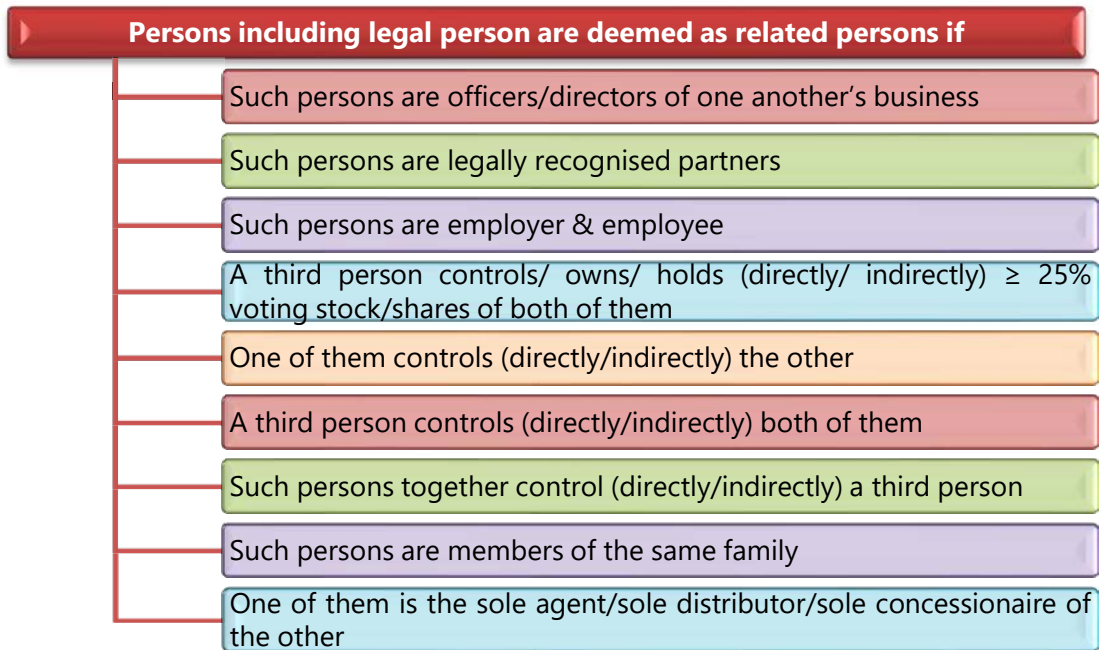
This clause is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.

II. Supply between related person or distinct persons [Para 2. of Schedule I]: Supply of goods or services or both between 'related persons' or between 'distinct persons' as specified in section 25, will qualify as supply even if made without consideration **provided it is made in the course or furtherance of business.**

Let us understand the terms 'related persons' and 'distinct persons'.

Related persons: A person who is under influence of another person is called a related person like members of the same family [See definition of family under 'Relevant Definitions'] or subsidiaries of a group company etc. Under GST law various categories of related persons have been specified. The term 'related person' has been defined in explanation to section 15. The said definition has been depicted by way of a diagram as follows:

¹¹ List of the goods in respect of which ITC is blocked has been elaborated in Chapter 6 – Input Tax Credit.



(16) Ms. Priya holds 30% shares of ABC Ltd. and 35% shares of XYZ Ltd. ABC Ltd. and XYZ Ltd. are related.

(17) Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. It can be said that Q Ltd. controls R Ltd. Thus, Q Ltd. and R Ltd. are related.

Distinct Persons specified under section 25: Before we go through the statutory provisions of 'distinct persons', let us first have an overview of the registration provisions for better understanding of the concept of distinct persons. *Detailed and in-depth analysis of the registration provisions is contained in Chapter 7 – Registration.*

Under GST law, a supplier is required to obtain State-wise registration. He has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit. Thus, he is not required to obtain registration from a State/UT from where he makes a non-taxable supply.

Since registration in GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates [and makes a taxable supply] under the same PAN. Further, he is normally required to obtain single registration in a State/UT. However, where he has multiple places of business in a State/UT, he has the option either to get a single registration for said State/UT or to get separate registrations for each place of business in such State/UT.

Now, let us understand the concept of distinct persons in simple terms:

The establishments of a person with separate registrations whether within the same State/UT or in different States/UTs are considered as **distinct persons**. Where a person having one registered establishment in a State/UT has another establishment in a different State/UT [not necessarily registered], these establishments are considered as **establishments of distinct persons**.

Statutory provisions relating to 'distinct persons' are contained in sub-sections (4) and (5) of section 25. They have been discussed as follows:

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** [Section 25(4) of the CGST Act].



(18) 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 newly opened branch office. Mohan shall be treated as distinct persons in respect of registrations in West Bengal and Delhi.

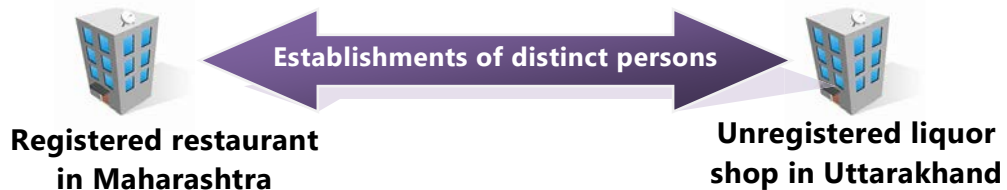


Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments

shall be treated as **establishments of distinct persons** [Section 25(5) of the CGST Act].



(19) Rishabh Enterprises, a registered supplier, owns an air-conditioned restaurant in Virar, Maharashtra. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption. Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Rishabh Enterprises is not required to obtain registration with respect to the same in Uttarakhand. In this case, air-conditioned restaurant in Maharashtra and liquor shop [though unregistered] in Uttarakhand shall be treated as establishments of distinct persons. Supply by Maharashtra restaurant to Uttarakhand shop, in course or furtherance of business, even without consideration will qualify as supply.



Stock transfers or branch transfers qualify as supply: It is a common practice in business that one branch supplies services to another branch of same entity without consideration. Similarly, goods are transferred among different units of same entity free of cost, for instance, distribution of samples manufactured in a factory to different branches or transfer of goods from factory to depot/showroom for sale therefrom, from one warehouse to another warehouse, from one branch to another branch where the demand of the goods is higher. These transactions are termed as self-supplies. Under GST, these transactions undertaken, without consideration, will also qualify as supply, provided the transfer of goods or services is between:

- (i) different locations (with separate GST registrations) of same legal entity as these are transactions between distinct persons, or
- (ii) establishments of distinct persons.



(20) Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir Fabrics are registered in the States where they are located. Although no

consideration is charged, supply of goods from factory to retail showroom constitutes supply.



**Registered Lucknow
factory**



Stock Transfer - Deemed Supply



**Registered Delhi
showroom**

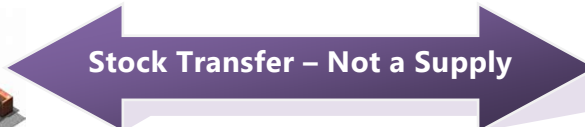
However, transfer between two units of a legal entity under single registration (apparently within same State) will not be considered as supply. This can be understood with the help of the following example:



(21) Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Kanpur so that the same can be sold from there. It has taken one registration in the State of Uttar Pradesh declaring Lucknow factory as its principal place of business and Kanpur showroom as its additional place of business. Since no consideration is charged, supply of goods from factory to retail showroom in same State under single registration does not constitute supply.



Lucknow factory



Stock Transfer – Not a Supply



Kanpur showroom



Single registration in UP

However, in the above example, if Raghubir Fabrics obtains separate registrations for Lucknow factory and Kanpur showroom, stock transfer between the Lucknow factory and Kanpur showroom will constitute supply.

Supply of goods or services or both between an employer and employee: In terms of the definition of related person given above, 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

are not treated as supply [Schedule III of CGST Act (*discussed subsequently in this chapter*)].

Gifts by employer to employee

Further, proviso to Para 2. of Schedule I provides that gifts upto ₹ 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. However, gifts of value more than ₹ 50,000 made without consideration are supply and are subject to GST, when made in the course or furtherance of business.



The term 'gift' has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift.

Perquisites by employer to employee

As already discussed, services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services).

It follows therefrom that payment made by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.

Ministry of Finance has clarified in a *Press Release on 10.07.2017* that if services such as membership of a club, health and fitness centre etc. are provided free of charge to all the employees by the employer, the same will not be subjected to GST. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the

employer and employee and is part and parcel of the cost-to company (C2C)¹².

III. Principal– Agent [Para 3. of Schedule I]: 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 and not supply of services** is covered here.
- Supply of goods between principal and agent **without consideration** is also supply.

Thus, the **supply of services** between the principal and the agent and vice versa would therefore require “consideration” to be considered as supply and thus, to be liable to GST.



In order to determine whether a particular principal-agent relationship falls within the ambit of the Para 3. of Schedule I as discussed above or not, the deciding factor is **whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not?** In other words, the crucial

¹² It is possible to take an alternative view in this regard. This scenario, i.e. the employer providing services (free of charge) to the employee in lieu of the services provided by the employee to the employer in the course of employment, is an exchange transaction. In an exchange transaction, both the parties independently assess their transaction status. Thus, while service provided by employee to the employer being covered under Schedule III to the CGST Act is not a supply, service provided by employer to employee may constitute a supply in terms of section 7(1)(c) read with para 2 of the Schedule I since employer and employee are related persons as per explanation to section 15. Provisions of section 15 have been discussed in detail in Unit 2 of Chapter 5 – Time and Value of Supply.

point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

- ❑ Where the **invoice for further supply is being issued by the agent in his name** then, any provision of goods from the principal to the agent would fall within the fold of Para 3. above.
- ❑ However, where the **invoice is issued by the agent to the customer in the name of the principal**, such agent shall not fall within the ambit of Para 3. above.
- ❑ Similarly, where the goods being procured by the agent on behalf of the principal are **invoiced in the name of the agent** then further provision of the said goods by the agent to the principal would be covered by Para 3. above *[Circular No. 57/31/2018 GST dated 04.09.2018]*.

Invoice for further supply to customer be issued in the agent's name.

Goods procured on behalf of principal are invoiced in the agent's name.

The above clarification can be understood with the help of following scenario based examples:



(22) Anmol appoints Bholu to procure certain goods from the market. Bholu identifies various suppliers who can provide the goods as desired by Anmol and asks the supplier (Golu) to send the goods and to issue the invoice directly to Anmol.

In this scenario, Bholu is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Bholu is not an agent of Anmol for supply of goods in terms of Para 3. of Schedule I.



(23) M/s Tintin, a banking company, appoints Mandaar (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders.

The highest bid is accepted and the goods are sold to the highest bidder by M/s Tintin. The invoice for the supply of the goods is issued by M/s Tintin to the successful bidder.

In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mandaar is

not an agent of M/s Tintin for the supply of goods in terms of Para 3. of Schedule I.



(24) Gautam, an artist, appoints Gambhir (auctioneer) to auction his painting. Gambhir arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder.

The invoice for the supply of the painting is issued by Gambhir on the behalf of Gautam but in his own name and the painting is delivered to the successful bidder.

In this scenario, Gambhir is not merely providing auctioneering services, but is also supplying the painting on behalf of Gautam to the bidder, and has the authority to transfer the title of the painting on behalf of Gautam. This scenario is covered under Para 3. of Schedule I.



(25) A C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F commission agent is an agent of the principal for the supply of goods in terms of Para 3. of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.



(26) Ravi sells agricultural produce by utilizing the services of Kavi who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Kavi identifies the buyers and sells the agricultural produce on behalf of Ravi for which he charges a commission from Ravi.

As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

In cases where the invoice is issued by Kavi to the buyer, the former is an agent covered under Para 3. of Schedule I¹³. However, in cases where the invoice is issued directly by Ravi to the buyer, the commission agent (Kavi) doesn't fall under the category of agent covered under Para 3.

¹³ It is important to note that services provided by the commission agent for sale or purchase of agricultural produce are exempt from GST.

Clarification of issues pertaining to Del-credere agent (DCA)

A question was posed by the industry - whether supply between a principal and a Del-credere agent would also get covered under Schedule I. The Government clarified the doubt of the industry by way of following clarification:

Before going through the clarification, let us first understand what is meant by a DCA? In commercial parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the **DCA guarantees the payment to the supplier.**



Del-credere agent

In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent.

In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer.

Circular No. 73/47/2018 GST dated 05.11.2018 has clarified the following issues in this regard:

Sl. No.	Issue	Clarification
1	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the	As already clarified vide <i>Circular No. 57/31/2018 GST</i> (discussed above), whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios:

	CGST Act?	<p><input type="checkbox"/> In case where the <u>invoice</u> for supply of goods is issued <u>by the supplier to the customer</u>, either himself or through DCA, the DCA <u>does not fall</u> under the ambit of agent.</p> <p><input type="checkbox"/> In case where the <u>invoice</u> for supply of goods is issued <u>by the DCA in his own name</u>, the DCA <u>would fall</u> under the ambit of agent.</p>
2	Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?	<p>In such a scenario, following activities are taking place:</p> <ol style="list-style-type: none"> 1. Supply of goods from supplier (principal) to recipient; 2. Supply of agency services from DCA to the supplier or the recipient or both; 3. Supply of extension of loan services by the DCA to the recipient. <p>It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply¹⁴.</p> <p>Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.</p>

¹⁴ Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempt vide Entry 27 of Notification No. 12/2017 CT(R) dated 28.06.2017 [Discussed in detail in Chapter 4 – Exemptions under GST].

3.	Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?	<p>In such a scenario following activities are taking place:</p> <ol style="list-style-type: none"> 1. Supply of goods by the supplier (principal) to the DCA; 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient. <p>It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.</p> <p>It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per section 15(2)(d) of the CGST Act¹⁵.</p>
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IV. Importation of services [Para 4. of Schedule I]: Import of services by a person from a related person or from his establishments located outside

¹⁵ Section 15 of the CGST Act, 2017 has been discussed in detail in Chapter 5 – Time and Value of Supply.

India, without consideration, in the course or furtherance of business shall be treated as “supply”.



(27) Jhumroo 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 Jhumroo Associates and the head office are related persons, services received by Jhumroo Associates will qualify as supply even though the head office has not charged anything from it.



(28) Chakmak, a proprietor registered in Delhi, has sought architect services from his son located in US, with respect to his newly constructed house in Delhi. Although services have been received by Chakmak without consideration from his son - a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.

In the preceding paras, we have discussed the provisions of Schedule-I which enumerates the cases where an activity is treated as supply even though it is undertaken free of cost. Let us now examine whether the items given free of cost in case of some of the sales promotion schemes qualify as supply or not.

Clarification on Sales promotion schemes



A number of sales promotion schemes are commonly employed by the businesses to increase sales volume or to encourage the use or trial of a product or service so that new



customers get attracted towards their products. For instance, certain sections of trade and industry, such as, pharmaceutical companies often provide drug samples to their stockists, dealers, medical practitioners, etc., or sometimes, companies announce offers like ‘Buy One, Get One free’ - buy one soap and get one soap free or get one tooth brush free along with the purchase of tooth paste.



As we have already seen that as per section 7(1)(a), the **goods or services which are supplied free of cost (without any consideration) shall not be treated as “supply” except in case of activities mentioned in Schedule I**

of the CGST Act. In view of the same, few sales promotion schemes have been examined as under:



Free samples and gifts: Samples which are supplied free of cost, without any consideration, do not qualify as “supply” under GST¹⁶, except where the activity falls within the ambit of Schedule I of the CGST Act.



Buy one get one free offer: It may appear at first glance that in case of offers like “Buy One, Get One Free”, one item is being “supplied free of cost” without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

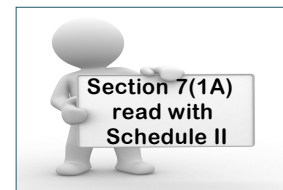


Taxability of such supply will be dependent upon as to **whether the supply is a composite supply or a mixed supply** and the rate of tax shall be determined accordingly – *Concept of composite and mixed supply has been discussed subsequently in this chapter. [Circular 92/11/2019 GST dated 07.03.2019]*



Activities/transactions to be treated as Supply of goods or Supply of services

Section 7(1A) of the CGST Act classifies certain activities/ transactions constituting supply, either as supply of goods or supply of services. Schedule II to the CGST Act contains the list of activities or transactions which have been classified either as supply of goods or supply of service.



¹⁶ ITC on inputs, input services and capital goods to the extent they are used in relation to the gifts/free samples shall be available to the supplier only where the activity of distribution of gifts/free samples falls within the scope of supply - Discussed in detail in Chapter 6 – Input Tax Credit.

This helps in mitigating the ambiguities which existed in earlier laws.










(29) Under earlier tax regime, the restaurants used to charge both service tax and VAT on the value of food served. This so because both sale of goods and provision of service were involved and therefore taxable event under both the Statutes i.e. respective VAT law and service tax law got triggered.

Under GST, the supply by a restaurant is treated as composite supply [*concept of composite supply is discussed subsequently in this chapter*] since food and service is naturally bundled in ordinary course of business. Further, Entry 6(b) of Schedule II [*refer table below*] 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 accordingly.



The matters listed out in Schedule II are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation.

These are as follows :-

S.No.	Activity/ Transaction	Type	Nature of Supply
1.	Transfer	Any transfer of title in goods.  (30) Shivaji sells ready-made garments to its customers.	Supply of Goods
		Any transfer of right in goods/undivided share in goods without transfer of title in goods.  (31) Genius Equipments Ltd. gives a machinery on rent to Suhaasi Manufacturers.	Supply of Services
		Any transfer of title in goods under an agreement which stipulates that property shall pass at a future date upon payment of full consideration as agreed.	Supply of Goods

		 (32) Dhruva Capitals supplied goods on hire purchase basis to customers.  (33) Optima Manufacturers supplies toys to retailers on 'sale or return basis'.	
2.	Land and Building	Any lease, tenancy, easement, licence to occupy land ¹⁷ .  (34) Lease agreement for land.	Supply of Services
		Any lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly.  (35) A shop let out in a busy market area.	Supply of Services
3.	Treatment or Process	Any treatment or process which is applied to another person's goods  (36) Damani Dying House dyes the clothes given by Shubham Textiles Ltd. on job work basis.	Supply of Services
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 so as no longer to form part of those assets.	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,	Supply of Services

¹⁷ Refer Circular No.44/18/2018 CGST dated 02.05.2018 discussed subsequently.

		by/ under directions of person carrying on the business.	
		<p>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.</p> <p> (37) Arun, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Business is transferred as a going concern to another person¹⁸. 	Supply of Goods
		<ul style="list-style-type: none"> <input type="checkbox"/> Business is carried on by a personal representative who is deemed to be a taxable person. 	
5.	<p>(a) Renting of immovable property</p> <p> (38) Renting of a commercial complex.</p> <p>(39) Renting of precincts of a religious place.</p> <p>(40) Renting of property to an educational institution.</p> <p>(41) Permitting use of immovable property for placing vending/dispensing machines.</p>		Supply of Services

¹⁸ Services by way of transfer of a going concern, as a whole or an independent part thereof are exempt from GST [Discussed in detail in Chapter 4 – Exemptions from GST].

(b) Construction of complex, building, civil structure, etc.

Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.







(42) Rathi Builders has constructed individual residential units for agreed consideration of ₹ 1.2 crore per unit. ₹ 90 lakh per unit were received before issuance of completion certificate by the competent authority and balance after completion.


The term **construction** includes additions, alterations, replacements, or remodeling of any existing civil structure.

The expression **competent authority** means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
- (ii) a chartered engineer registered with the Institution of Engineers (India); or
- (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.

Supply of
Services

	<p>(c) Temporary transfer or permitting use or enjoyment of any intellectual property right</p> <p> (43) Temporary transfer of patent.</p>	
	<p>(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software</p> <p> (44) Suvidha Solutions develops an accounting software for a business.</p>	
	<p>(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.</p> <p> (45) Cable operator - Sakham has entered into an agreement with Cable operator - Aatmaram that Sakham will not provide cable connections in the specified areas where Aatmaram is providing the connections. Non-compete agreements constitute supply of service.</p> <p>(46) Late delivery charges recovered from supplier for non-fulfilment of contract within stipulated time.</p> <p>(47) Notice pay recovered from employee for leaving the job before agreed period of notice for leaving a job.</p>	Supply Services of
	<p>(f) Transfer of right to use any goods for any purpose</p> <p> (48) Machinery given on hire.</p>	
6.	<p>Following composite supplies :-</p> <p><input type="checkbox"/> Works contract services.</p> <p>Works contract: means a contract for building, construction, fabrication, completion, erection,</p>	Supply Services of

	<p>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 [Section 2(119) of CGST Act].</p> <p><input type="checkbox"/> Supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink.</p>	
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> (49) Resident Welfare Association (RWA) of Sanskriti Society supplies air-conditioners to its members at a concessional price.</p>	Supply of Goods

CBIC has clarified **Taxability of 'tenancy rights' under GST** as under:

Pagadi system, i.e. transfer of tenancy rights against tenancy premium, is prevalent in some States. In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.



It has been clarified that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST.

It is a form of lease or renting of property and such activity is specifically declared to be a service in Para 2. of Schedule II as discussed in table above i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.



The transfer of tenancy rights cannot be treated as sale of land/ building in para 5. of Schedule III. Thus, it is not a negative list activity [*this concept is discussed under next heading*] and consequently, a consideration for the said activity shall attract levy of GST.

To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable *per-se*. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.

However, renting of residential dwelling for use as a residence is exempt [*Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017 – Discussed in Chapter 4 – Exemptions from GST*]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST [*Circular No. 44/2018 CT dated 02.05.2018*].

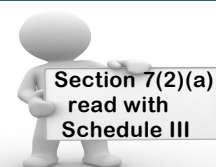


Non-supplies under GST

I. **Activities/transactions specified under Schedule III of the CGST Act:**

Schedule III specifies transactions/ activities which shall be neither treated as supply of goods nor as supply of services. Thus, the activities/transactions specified under this schedule can be termed as Non-Supplies under the GST regime. In other words, it is a "Negative list" for the purposes of taxation in GST.

It is important to note that apart from the activities specified in Schedule III, some activities have been notified by the Government vide different notifications, which are also to be considered as non-supplies. Further, some









clarifications have been issued clarifying that certain transactions are to be considered as non-supplies.

Hence, our discussion under this heading will revolve around the following:



- A. Non-supplies listed in Schedule III
- B. Non-supplies notified vide notification
- C. Non-supplies clarified by way of clarification

A. NON-SUPPLIES LISTED IN SCHEDULE III

S.No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	<p>Services by an employee to the employer in the course of or in relation to his employment.</p> <div style="display: flex; align-items: flex-start;"> <div style="margin-right: 10px;">  </div> <div> <p>(50) Amounts received by an employee from the employer on premature termination of contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment.</p> <p>(51) Services provided by casual worker to employer who gives wages on daily basis to the worker are services provided by the worker in the course of employment.</p> <p>(52) Casual workers employed by a construction contractor for execution of a building contract for him are services in the course of employment. Similarly, casual workers employed by a security services agency for provision of security services to a client are also services in the course of employment.</p> </div> <div style="margin-left: 10px; text-align: right;">  </div> </div> <div style="text-align: right; margin-top: 10px;">  </div> <p>Only services that are provided by the employee to the employer in the course of employment are outside the realm of supply. However, services provided outside the ambit of employment for a consideration would qualify as supply.</p>

	 <p>(53) Services provided on contract basis by a person to another i.e. principal-to-principal basis are not services provided in the course of employment¹⁹.</p> <p>(54) Any amount paid by employer to employee for not joining a competing business is paid for providing the service of forbearance to act and cannot be considered for providing services in the course of employment.</p>
<p>2.</p>	<p>Services by any court or Tribunal established under any law for the time being in force.</p> <p>Explanation – The term "Court" includes District Court, High Court and Supreme Court.</p>
<p>3.</p>	<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.</p> <div data-bbox="471 788 1279 937">   </div> <p>(55) Duties performed by President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner, Comptroller and Auditor General of India, Chairman of Union Public Service Commission, Attorney General of India, in that capacity.</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>

¹⁹ Discussion based on Service Tax Education Guide issued under erstwhile under service tax law.

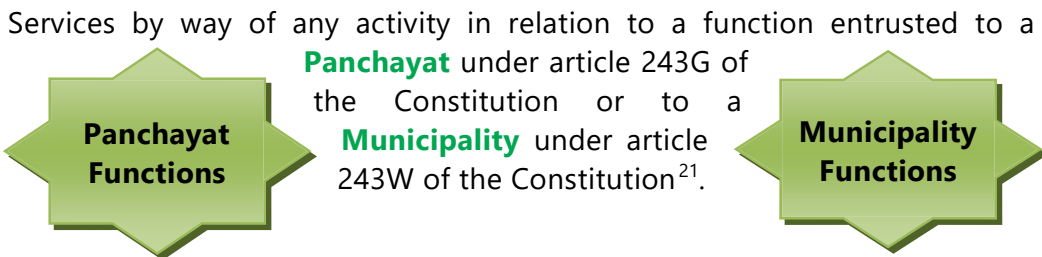
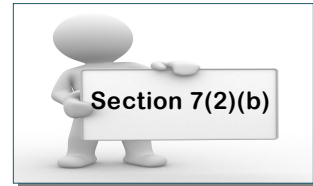
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building. 
6.	<p>Actionable claims, other than lottery, betting and gambling. 'Actionable claims' are specifically included in the definition of goods under section 2(52) of the CGST Act [Refer the definitions of 'actionable claims' and 'goods' given under heading 'Relevant Definitions'].</p> <p>However, this para of Schedule III specifically excludes actionable claims, other than lottery, betting and gambling from the ambit of definition of supply. Co-joint reading of said provisions implies that only lottery, betting and gambling are treated as supply. All other actionable claims are outside the ambit of definition of supply.</p> <p> (56) Some of the other examples of actionable claims are: Right to recover insurance money, claim for arrears of rent, claims for future rents (if these can be assigned), unsecured loans, unsecured debentures, bills of exchange, promissory notes, bank guarantee, Fixed Deposit Receipt, right to the benefit of a contract, etc. ²⁰</p>

²⁰ Schedule III has two more entries - Entry 7 and 8 [as enumerated below]. These entries are covered in the syllabus of Paper 8: Indirect Tax Laws at Final Level.

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8. (a) Supply of warehoused goods to any person before clearance for home consumption.
(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

B. NON-SUPPLIES NOTIFIED VIDE NOTIFICATION

Government is empowered to notify the activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as the activities/transactions which shall be treated neither as a supply of goods nor a supply of services. Till now, following two activities/transactions have been notified under said clause:



C. NON-SUPPLIES CLARIFIED BY WAY OF CLARIFICATION

CBIC has clarified that following three activities/transactions are non-supplies:

(i) Grant of alcoholic liquor licence: Services by way of grant of alcoholic liquor licence by the State Governments are treated



neither as a supply of goods nor a supply of service²². Such licence is granted against consideration in the form of licence fee or application fee or by whatever name it is called.



This special dispensation is applicable only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States. Hence, this is not applicable/has no precedence value in relation to grant of

²¹ notified vide Notification No. 14/2017 CT (R) dated 28.06.2017/ Notification No. 11/2017 IT (R) dated 28.06.2017 as amended

²² notified vide Notification No. 25/2019 CT (R) dated 30.09.2019/ Notification No. 24/2019 IT (R) dated 30.09.2019

other licenses and privileges for a fee in other situations, where GST is payable.

It may be noted that services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Tax is required to be paid by the business entities on such services under reverse charge²³.

(ii) Inter-State movement of various modes of conveyance

Inter-State movement of various modes of conveyance, between distinct persons including-

- Trains,
 - Buses,
 - Trucks,
 - Tankers,
 - Trailers,
 - Vessels,
 - Containers,
 - Aircrafts,
- (a) carrying goods or passengers or both; or
- (b) for repairs and maintenance,

[except in cases where such movement is for further supply of the same conveyance] was discussed in GST Council's meeting held on 11th June, 2017 and the Council recommended that such inter-State movement shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST.

Thus, above activity may not be treated as supply and consequently IGST will not be payable on such supply. However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017**].

²³ Circular No. 121/40/2019 GST dated 11.10.2019

(iii) Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes]

****Above circular shall *mutatis mutandis* apply to inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes],** [except in cases where movement of such goods is for further supply of the same goods], such **inter-State movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements.** In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods [Circular No. 21/21/2017-GST dated 22.11.2017].



In the preceding paras, we have discussed, how to determine whether a given activity or transaction constitutes a supply. Once an activity or transaction qualifies as supply, one needs to determine whether the same is leviable to GST or not. Though the provisions relating to levy and collection of GST have been discussed at length in Chapter 3 – Charge of GST, a brief idea of the same is provided hereunder.

Supply leviable to GST

For a supply to attract GST, primarily two additional conditions need to be satisfied. These are – (i) supply must be made by a taxable person and (ii) supply must be a taxable supply. These two additional conditions have been discussed hereunder:

(i) Supply by a taxable person

A supply to attract GST should be made by a taxable person. Hence, a supply between two non-taxable persons does not constitute taxable supply under GST.



A supply attracting GST can be made **TO** a non-taxable person also.

The restriction of being a taxable person is only on the supplier whereas the recipient can be either taxable or non-taxable.


Meaning of taxable person: A “taxable person” is a person who is registered or liable to be registered under section 22 or section 24 [The said sections and the concept of taxable person thereto have been discussed in detail in Chapter 7 – Registration].

Hence, a person who is liable to be registered but does not take a registration and remains an unregistered person shall be construed as a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person.

(ii) Taxable supply

For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the GST Law [Refer Chapter-3: Charge of GST for detailed discussion on leviability of GST]. Exemptions may be provided to the specified goods or services or to a specified category of persons/ entities making supply [Refer Chapter-4: Exemptions from GST for detailed discussion].

4. COMPOSITE AND MIXED SUPPLIES [SECTION 8]

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



ANALYSIS

GST is payable on individual goods or services or both at the notified rates. The application of rates poses no problem if the supply is of individual goods or individual services, which is clearly identifiable and such goods or services are subject to a particular rate of tax.

However, in certain cases, supplies are not such simple and clearly identifiable supplies. Some of the supplies are a combination of goods or combination of services or combination of goods and services both and each individual component of such supplies may attract a different rate of tax.

In such a case, the rate of tax to be levied on such supplies may be a challenge. 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.

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. The concept of 'naturally bundled' supplies is emanating from the definition of 'composite supply'.



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
- one of which is a principal supply [Section 2(30) of the CGST Act].

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'.



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]



(57) Works contract and restaurant services are classic examples of composite supplies.

How to determine whether the services are bundled in the ordinary course of business?

Whether the 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 recipient** - If large number of service recipient 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.



(58) Mobile phone is always sold with battery.

- ❑ **Majority of service providers in a particular area of business provide similar bundle of services.**




(59) 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.



(60) Service of stay in a hotel is often combined with provision of breakfast and dinner provided free of cost during the stay. 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 the ordinary course of business are:
- ✓ 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.

 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 some of which are outlined above.

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.

Some of the examples of composite supplies have been given below:



(61) Poshak Manufacturers entered into a contract with Cheeku Ltd. for supply of readymade shirts packed in designer boxes at Cheeku Ltd.'s outlet. Further, Poshak 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.



(62) When a consumer buys a television set and he also gets mandatory 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.



(63) A travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, and the use of airport lounge. In this case, the transportation of passenger, constitutes the pre-dominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary.

Supplies given in the below mentioned table are the composite supplies. CBIC has clarified as to what constitutes the principal supply in the given composite supplies:

Activity/ transaction	Principal supply
Supply of printed books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such printed goods	<p>In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.</p> <p>In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the printer using its physical inputs including paper to print the design, logo etc. supplied by the recipient of goods, predominant supply is supply of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods. [Circular No. 11/11/2017 GST dated 20.10.2017]</p>
Activity of bus body building	The principal supply may be determined on the basis of facts and circumstances of each case [Circular No. 34/8/2018-GST dated 01.03.2018].
Retreading of tyres	<p>Pre-dominant element is process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply.</p> <p>Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods [Circular No. 34/8/2018-GST dated 01.03.2018].</p>

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**. Accordingly, the entire

value of composite supply (i.e. main supply + ancillary supplies) shall be classified under the category of main supply and shall be taxed at the GST rate applicable to the main supply. This can be better understood with the help of following example:



(64) Rati Computers supplies laptop (worth ₹ 52,000) alongwith laptop bag (worth ₹ 3,000) to a customer for ₹ 55,000. Being naturally bundled, supply of laptop bag along with the laptop is composite supply which is treated as the supply of the principal supply [viz. laptop]. Assuming that the rate of tax applicable on laptop is 18% and on laptop bag is 28%, in the given case, rate of principal supply, i.e. laptop @ 18% will be charged on the entire value of ₹ 55,000.



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 [Section 2(74) of the CGST Act].

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



How to determine if a particular supply is a mixed supply?: 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, and a single consideration is charged for the entire supply of different components, it would be a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.



(65) 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.



(66) A shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold independently and are not naturally bundled. So, such supplies are mixed supplies.



(67) A house is given on rent through a single rent deed - one floor of which is to be used as residence and the other for housing a printing press, at a lump sum rent amount. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Said supplies are mixed supply.

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.**



(68) Sringer Enterprises supplies 10,000 kits (at ₹ 50 each) amounting to ₹ 5,00,000 to Raghav General Store. Each kit consists of 1 shampoo, 1 face wash and 1 kajal pencil. It is a mixed supply and is treated as supply of that particular supply which attracts highest tax rate. Assuming that the rate of tax applicable on shampoo is 18%, on face wash is 28% and on kajal pencil is 12%, in the given case, highest tax rate [viz. face wash] @ 28% will be charged on the entire value of ₹ 5,00,000.

More than one supply made together and taxed at the individual rates

There can be a case where an activity/transaction involves more than one supply of goods or services or both, but neither they are composite supplies nor can be categorised as mixed supplies, that is, all supplies carry independent significance. In such a case, if separate consideration is indicated against each supply, each such supply shall be charged at the respective rate applicable to that particular supply.



(69) In case of servicing of cars involving supply of both goods (spare parts) and services (labour) where the value of goods and services are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately [Circular No. 47/21/2018 GST dated 08.06.2018].



5. LET US RECAPITULATE

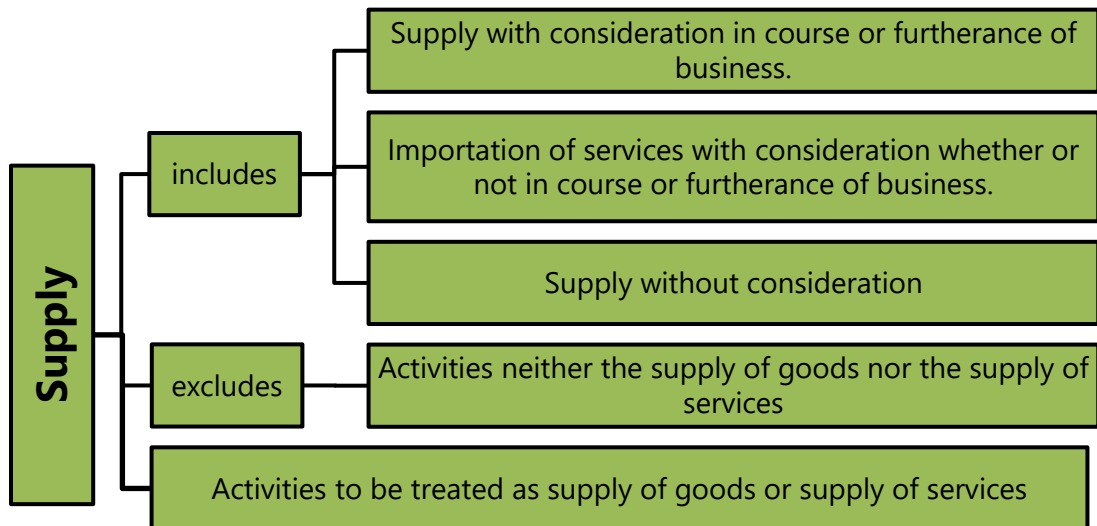
- ❑ The taxable event under GST is supply. The scope of supply under GST can be understood in terms of following parameters:

Supply should be of goods or services

Supply should be made for a consideration

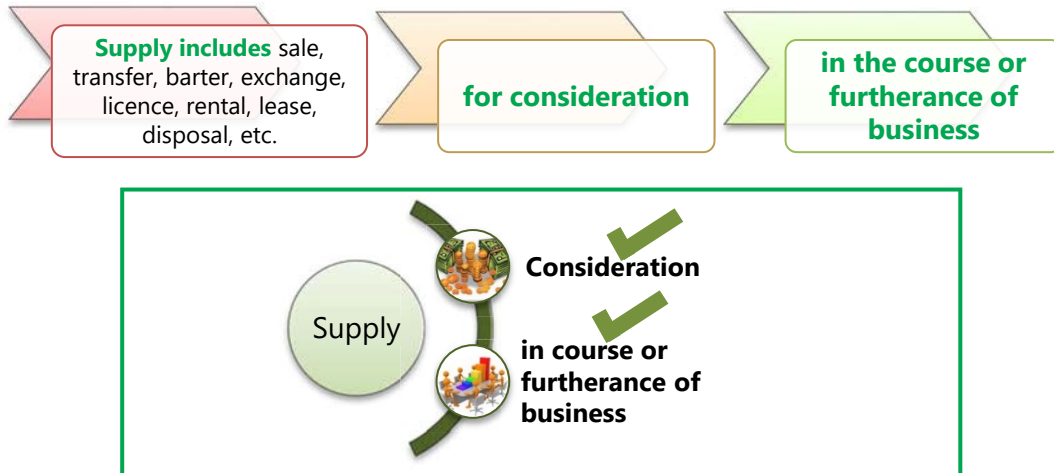
Supply should be made in the course or furtherance of business

- ❑ While these parameters describe the concept of supply, under certain circumstances, transactions have been deemed as supply even when the supply is made without consideration or not in the course or furtherance of business. Activities specified in Schedule I are deemed to be a supply even without consideration. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.
- ❑ Besides, some specified transactions/ activities are neither treated as supply of goods nor a supply of services. Furthermore, certain activities have been categorised as supply of goods or as supply of services.
- ❑ The discussion with respect to supply is broadly categorised into following:



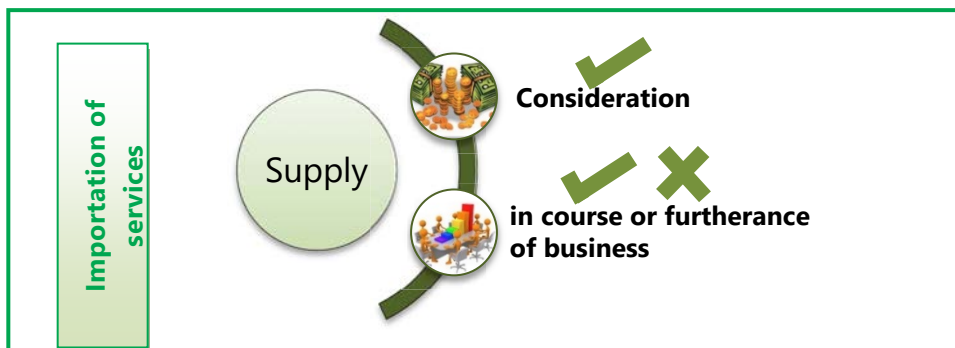
Sub-sections of section 7 alongwith related Schedules have been summarised as follows:

1. Supply for consideration in course or furtherance of business [Section 7(1)(a)]



2. Importation of services for consideration whether or not in course or furtherance of business [Section 7(1)(b)]

Supply should be in course or furtherance of business. The exception to said rule is import of services is deemed as supply even if the same has been imported not in course/furtherance of business.

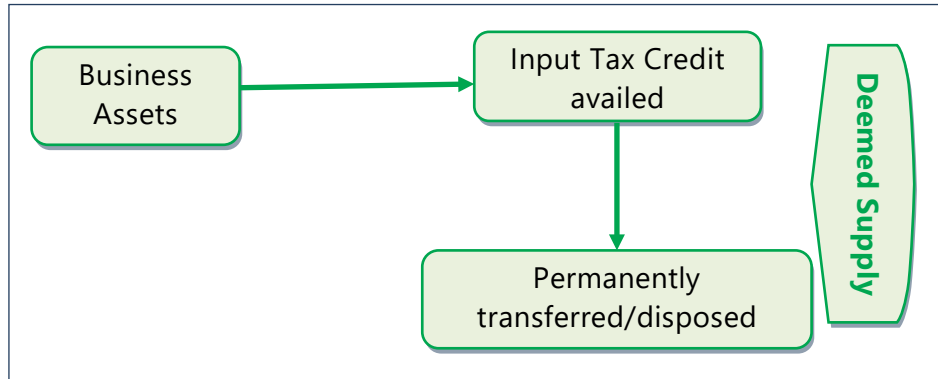


3. Supply without consideration - Deemed Supply [Section 7(1)(c) read with Schedule I]

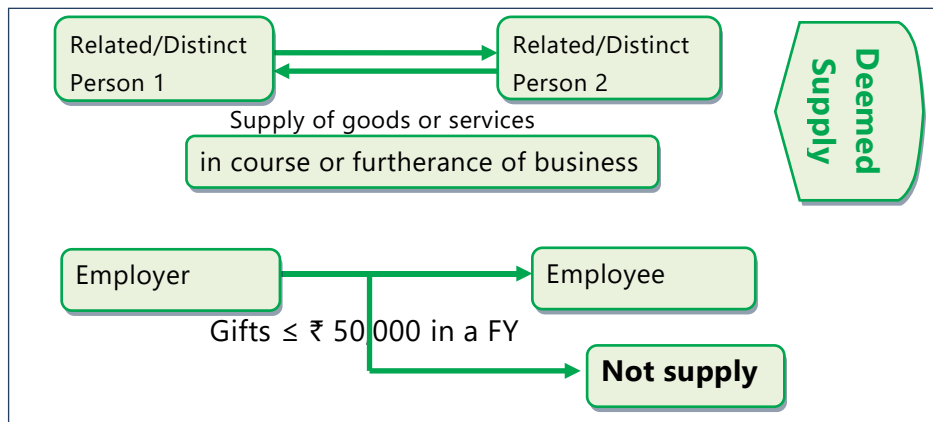
This includes all supplies made to a taxable or non-taxable person, even if the same is without consideration. These are specifically mentioned in Schedule I appended to the CGST Act.

As per Schedule I, in the following four cases, supplies made without consideration will be treated as supply under section 7 of the CGST Act:

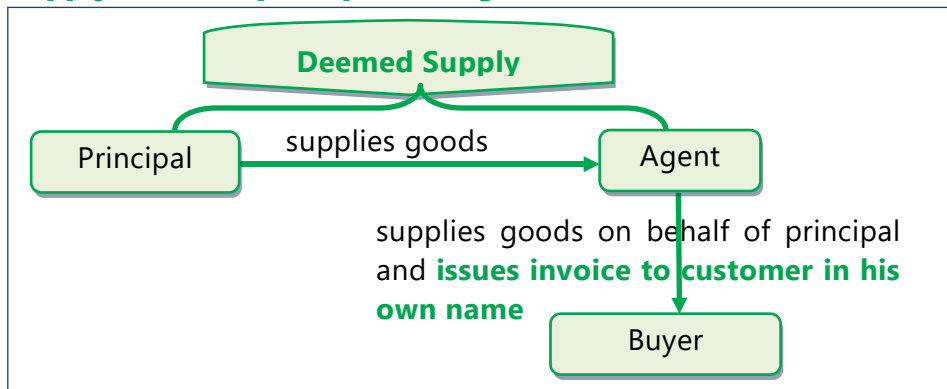
I. Permanent Transfer/Disposal of Business Assets

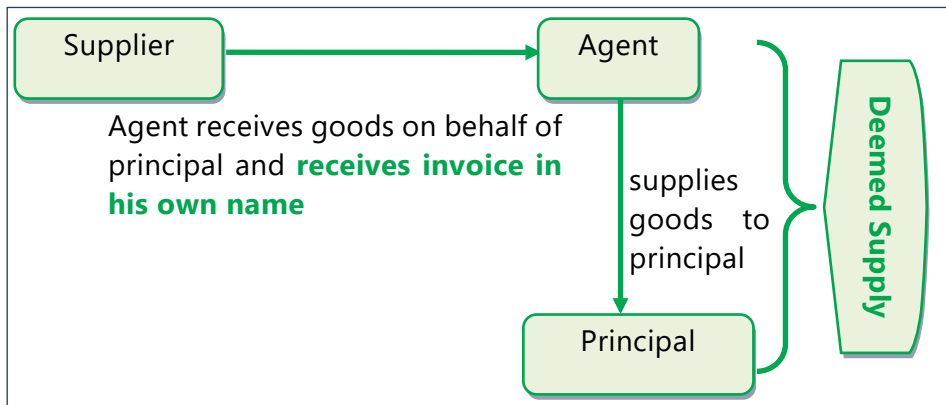


II. Supply between related persons or distinct persons

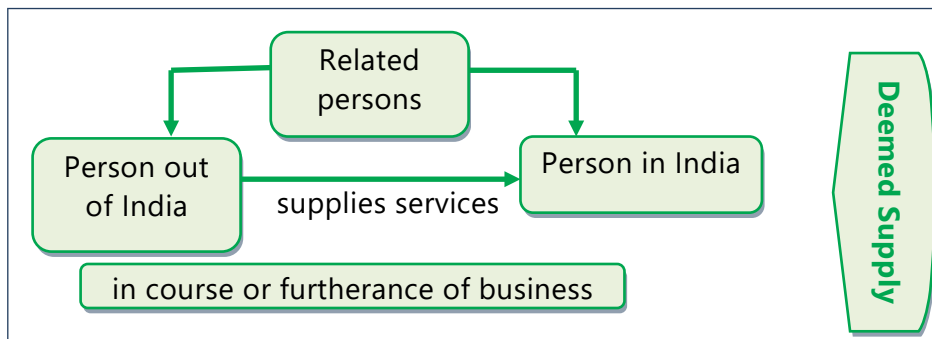


III. Supply between principal and agent



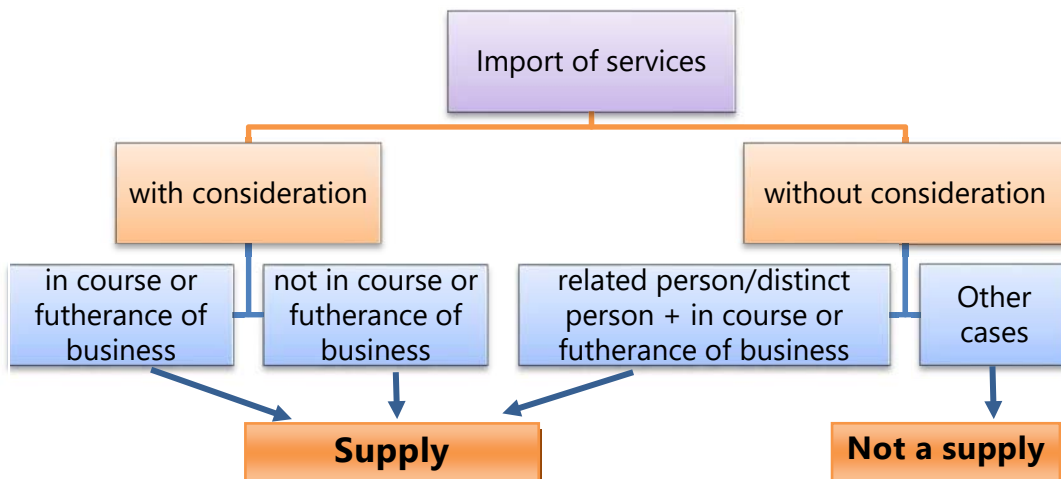


IV. Importation of services



The combined provisions of relating to import of services [as stipulated under section 7(1)(b) and section 7(1)(c) read with Schedule I] have been depicted in the below mentioned diagram:

Import of services



4. Activities or transactions to be treated as Supply of goods or Supply of services [Section 7(1A) read with Schedule II]

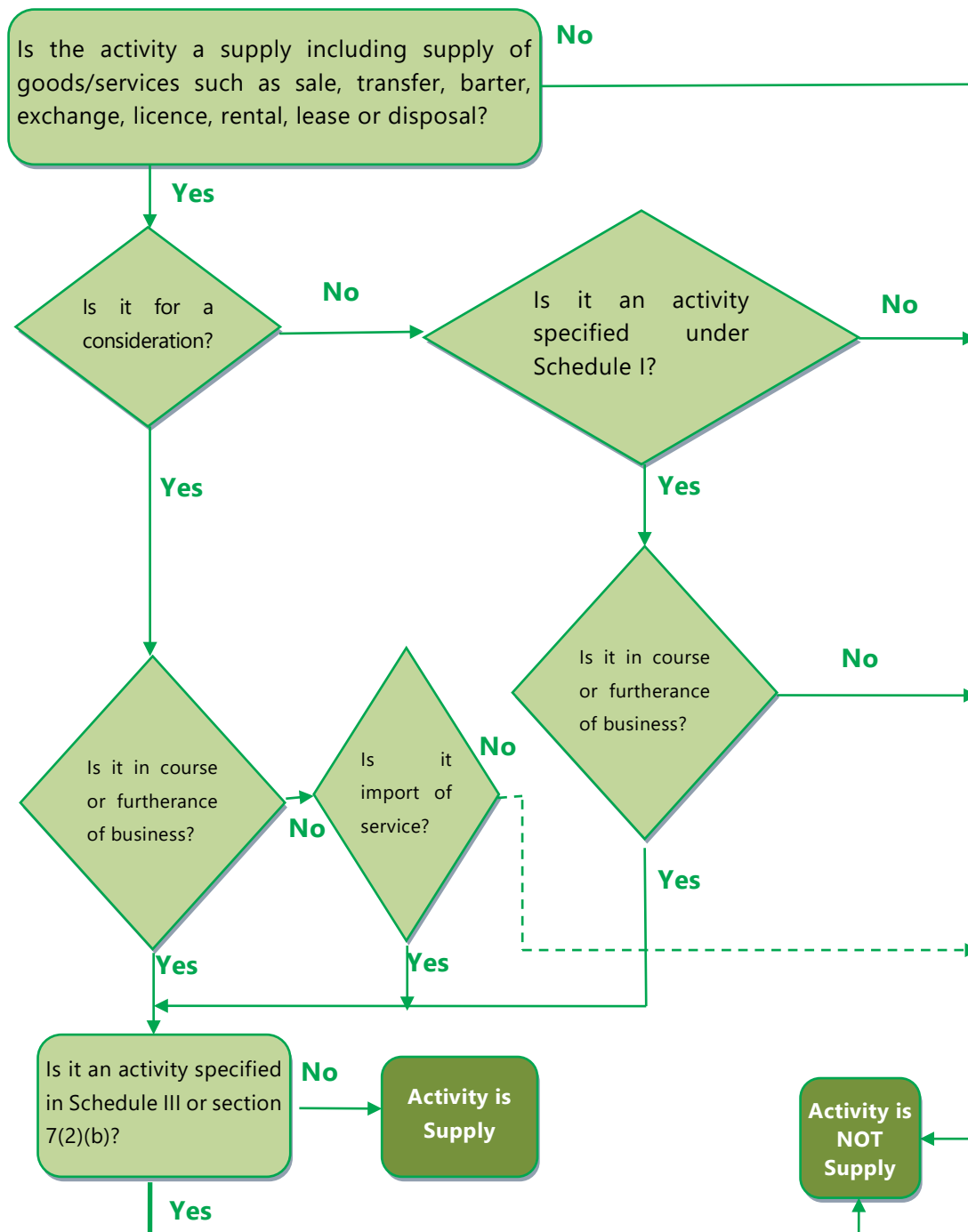
S.No.	Activity/ Transaction	Type	Supply of goods/ services
1.	Transfer	(i) Title in goods (ii) Title in goods under an agreement that property shall pass at a future date.	Goods
		Right/undivided share in goods without transfer of title in them	Services
2.	Land and Building	Lease, tenancy, easement, licence to occupy land	Services
		Lease/letting out of building including a commercial/ industrial/ residential complex for business/ commerce, wholly/ partly.	Services
3.	Treatment or Process	Applied to another person's goods	Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred/disposed off by/under directions of person carrying on business so as no longer to form part of those assets.	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.	Services

	<p>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.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Business transferred as a going concern. <input type="checkbox"/> Business carried on by a personal representative who is deemed to be a taxable person. 	Goods
5.	<p>Renting of immovable property</p> <p>Construction of complex, building, civil structure, etc.</p> <p>Temporary transfer or permitting use or enjoyment of any intellectual property right</p> <p>Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software</p> <p>Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.</p> <p>Transfer of right to use any goods for any purpose</p>	Services
6.	<p>Following composite supplies:-</p> <ul style="list-style-type: none"> <input type="checkbox"/> Works contract services. <input type="checkbox"/> Supply of goods, being food or any other article for human consumption or any drink. 	Services
7.	Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.	Goods


5. Non-supplies under GST [Section 7(2)(a) read with Schedule III]

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.	(a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities; (b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or (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.
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.	Actionable claims, other than lottery, betting and gambling.

The diagram on the next page summarises the steps to determine whether an activity undertaken is Supply or not.



6. Composite and mixed supplies

	
<p style="text-align: center;">Composite Supply</p> <ul style="list-style-type: none"> • Consist of two or more supplies • Naturally bundled • In conjunction with each other • One of which is principal supply • Tax liability shall be rate of principal supply • Example: Charger supplied along with mobile phones. 	<p style="text-align: center;">Mixed Supply</p> <ul style="list-style-type: none"> • Consist of two or more supplies for a single price • Not naturally bundled • Though can be supplied independently, still supplied together • Tax liability shall be the rate applicable to the supply that attracts highest rate of tax • Example: A gift pack comprising of chocolates, candies, sweets and balloons.

6. TEST YOUR KNOWLEDGE

1. Meghraj & Co. wishes to commence the business of supplying ready-made garments within Punjab and in the neighbouring States of Delhi and Haryana. Kindly state as to what is the taxable event under GST and levability of CGST, SGST/UTGST and IGST on the same?
2. Damodar Private Ltd., registered in Delhi, has transferred some goods to its branch, registered in West Bengal, so that the goods can be sold from the branch. The goods have been transferred without any consideration. The company believes that the transaction undertaken by it does not qualify as

supply as no consideration is involved. Ascertain whether the transfer of goods by Damodar Private Ltd. to its branch office qualifies as supply.

3. *Prithvi Associates is engaged in supply of taxable goods. It enquires from its tax advisor as to whether any activity can be treated as supply even if made without consideration in accordance with the provisions of the CGST Act. Enumerate such activities, if any.*
4. *Composite supply is treated as supply of that particular goods or services which attracts the highest rate of tax. Examine the validity of the statement.*
5. *Transfer of title and/or possession is necessary for a transaction to constitute supply of goods. Examine.*
6. *Examine whether the following activities would amount to supply under section 7 read with Schedule I of the CGST Act:*
 - (a) *Sulekha Manufacturers have a factory in Delhi and a depot in Mumbai. Both these establishments are registered in respective States. Finished goods are sent from factory in Delhi to the Mumbai depot without consideration so that the same can be sold.*
 - (b) *Raman is an architect in Chennai. His brother who is settled in London is a well-known lawyer. Raman has taken legal advice from him free of cost with regard to his family dispute.*
 - (c) *Would your answer be different if in the above case, Raman has taken advice in respect of his business unit in Chennai?*
7. *State whether the following supplies would be treated as supply of goods or supply of services as per Schedule II of the CGST Act:*
 - (a) *Renting of immovable property.*
 - (b) *Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business.*
 - (c) *Transfer of right in goods without transfer of title in goods.*
 - (d) *Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.*
8. *Determine whether the following supplies would be treated as supply of goods or supply of services as per Schedule II of the CGST Act:*
 - (a) *Temporary transfer or permitting use or enjoyment of any intellectual property right.*

- (b) *Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.*
 - (c) *Any treatment or process which is applied to another person's goods.*
 - (d) *Transfer of title in goods.*
9. *The goods supplied on hire purchase basis will be treated as supply of services. Examine the validity of the statement.*
10. *Examine whether the activity of import of service in the following independent cases would amount to supply under section 7 of the CGST Act, 2017:*
- (i) *Miss Shriniti Kaushik received interior decoration services for her residence located at Bandra, Mumbai from Mr. Racheal of Sydney (Australia). The amount paid for the said service is 5,000 Australian dollar.*
 - (ii) *Miss Shriniti Kaushik received interior decoration services for her residence located at Bandra, Mumbai from her brother, Mr. Varun residing in Sydney (Australia) [wholly dependent on Miss Shriniti]. Further, Miss Shriniti did not pay any consideration for the said service.*
 - (iii) *Will your answer change if in the above case, if Miss Shriniti has taken interior decoration services with regard to her business premises and not her residence?*
- Note: Any specific exemption by way of notification needs to be ignored.*
11. *Determine whether the following supplies amount to composite supplies:*
- (a) *A hotel provides 4 days-3 nights package wherein the facility of breakfast and dinner is provided alongwith the room accommodation.*
 - (b) *A toothpaste company has offered the scheme of free soap alongwith the toothpaste.*
12. *Dumdum Electronics has sold the following electronic items to Akbar Retail Store.*
- (i) *Refrigerator (500 litres) taxable @ 18%*
 - (ii) *Stabilizer for refrigerator taxable @ 12%*
 - (iii) *LED television (42 inches) taxable @ 12%*

(iv) Split air conditioner (2 Tons) taxable @ 28%

(v) Stabilizer for air conditioner taxable @12%

Dumdum Electronics has issued a single invoice, indicating price of each of the above items separately in the same. Akbar Retail Store has given a single cheque of ₹ 1,00,000/- for all the items as a composite discounted price. State the type of supply and the tax rate applicable in this case.

13. *Manikaran, a registered supplier of Delhi, has supplied 20,000 packages at ₹ 30 each to Mukhija Gift Shop in Punjab. Each package consists of 2 chocolates, 2 fruit juice bottles and a packet of toy balloons. Determine the rate(s) of GST applicable in the given case assuming the rates of GST to be as under:*

Goods/services supplied	GST rate
Chocolates	18%
Fruit juice bottles	12%
Toy balloons	5%

14. *Gagan Engineering Pvt. Ltd., registered in Haryana, is engaged in providing maintenance and repair services for heavy steel machinery. For carrying out the repair work, Gagan Engineering Pvt. Ltd. sends its container trucks equipped with items like repair equipments, consumables, tools, parts etc. from Haryana workshop to its own repairing centres (registered under GST law) located in other States across India where the clients' machinery are being brought and are being repaired.*

Discuss the levability of GST on the inter-State movement of trucks from the workshop of Gagan Engineering Pvt. Ltd. in Haryana to its own repairing centres located in other States across India.

15. *PTL Pvt. Ltd. is a retail store of merchandise located in 25 States/UTs in the country. For the purpose of clearance of stock of merchandise and to attract consumers, PTL Pvt. Ltd. launched scheme of "Buy One Get One Free" for the same type of merchandise, for instance, one shirt to be given free with purchase of one shirt. Determine how the taxability of the goods supplied under "Buy One Get One Free" scheme is determined.*

16. *Sarvanna & Sons wishes to start supplying liquor in the State of Tamil Nadu. Therefore, it applies for license for selling liquor to the Tamil Nadu Government for it has charged specified fee from it. Examine whether the grant of alcoholic liquor license by the Tamil Nadu Government to Sarvanna & Sons qualifies as supply.*



7. ANSWERS/HINTS

1. Taxable event under GST is supply of goods or services or both. CGST and SGST/ UTGST will be levied on intra-State supplies. IGST will be levied on inter-State supplies.
2. As per Schedule I of the CGST Act, supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business, is deemed as supply even if made without consideration. In the given case, since the Damodar Private Ltd. and its branch located in another State are distinct persons, supply of goods between them qualifies as supply.
3. Section 7 stipulates that the supply should be for a consideration and should be in the course or furtherance of business. However, Schedule I of the CGST Act enumerates the cases where an activity is treated as supply, even if the same is without consideration. These are as follows:
 - (i) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
 - (ii) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business.
 However, gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
 - (iii) Supply of goods —
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

- (iv) Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.
4. The statement is not correct. Composite supply is treated as supply of the principal supply. It is the mixed supply that is treated as supply of that particular goods or services which attracts the highest rate of tax.
5. Title as well as possession both have to be transferred for a transaction to be considered as a supply of goods. In case title is not transferred, the transaction would be treated as supply of service in terms of Schedule II(1)(b) of the CGST Act. In some cases, possession may be transferred immediately, but title may be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods.
6. (a) Schedule I of CGST Act, *inter alia*, stipulates that supply of goods or services or both between related persons or between distinct persons as specified in section 25, is supply even without consideration provided it is made in the course or furtherance of business. Further, a person who has obtained 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** [Section 25(4) of the CGST Act].

In view of the same, factory and depot of Sulekha Manufacturers are distinct persons. Therefore, supply of goods from Delhi factory of Sulekha Manufacturers to Mumbai Depot without consideration, but in course/furtherance of business, is supply under section 7 read with Schedule I of the CGST Act.

- (b) Schedule I of CGST Act, *inter alia*, stipulates that import of services by a taxable person from a **related person** located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. Explanation to section 15, *inter alia*, provides that persons shall be deemed to be **“related persons”** if they are **members of the same family**. Further, as per section 2(49) of the CGST Act, 2017, family means, —
- (i) the spouse and children of the person, and
 - (ii) the parents, grand-parents, brothers and sisters of the person **if they are wholly or mainly dependent on the said person.**

In the given case, Raman has received free of cost legal services from his brother. However, in view of section 2(49)(ii) above, Raman and his brother cannot be considered to be related as Raman's brother is a well-known lawyer and is not wholly/mainly dependent on Raman. Further, Raman has taken legal advice from him in personal matter and not in course or furtherance of business. Consequently, services provided by Raman's brother to him would not be treated as supply under section 7 read with Schedule I of the CGST Act.

- (c) In the above case, if Raman has taken advice with regard to his business unit, services provided by Raman's brother to him would still not be treated as supply under section 7 of the CGST Act read with Schedule I as although the same are provided in course or furtherance of business, such services have not been received from a related person.
7. (a) Supply of services
(b) Supply of goods
(c) Supply of services
(d) Supply of goods
8. (a) Supply of services
(b) Supply of goods
(c) Supply of services
(d) Supply of goods
9. The statement is not correct. Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a future date.
10. (i) Supply, under section 7 of the CGST Act, 2017, *inter alia*,
☐ includes import of services for a consideration
☐ even if it is not in the course or furtherance of business.

Thus, although the import of service for consideration by Miss. Shriniti Kaushik is not in course or furtherance of business [as the interior decoration services have been availed in respect of residence], it would amount to supply.

- (ii) Schedule I of CGST Act, *inter alia*, stipulates that import of services by a taxable person from a **related person** located outside India, without

consideration is treated as supply if it is provided in the course or furtherance of business. Explanation to section 15, *inter alia*, provides that persons shall be deemed to be **“related persons”** if they are **members of the same family**. Further, as per section 2(49) of the CGST Act, 2017, family means, —

- (i) the spouse and children of the person, and
- (ii) the parents, grand-parents, brothers and sisters of the person **if they are wholly or mainly dependent on the said person.**

In the given case, Miss Shriniti Kaushik has received interior decoration services from her brother. In view of section 2(49)(ii) above, Miss Shriniti and her brother shall be considered to be related as Miss Shriniti's brother is wholly dependent on her.

However, Miss Shriniti has taken interior decoration services for her residence and not in course or furtherance of business. Consequently, services provided by Miss Shriniti's brother to her would not be treated as supply under section 7 read with Schedule I of the CGST Act.

- (iii) In the above case, if Miss Shriniti has taken interior decoration services with regard to her business premises, services provided by Miss Shriniti's brother to her would be treated as supply under section 7 of the CGST Act read with Schedule I of the CGST Act, 2017.

11. Under composite supply, 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, one of which is a principal supply [Section 2(30) of the CGST Act]. In view of the same,
 - (a) since, supply of breakfast and dinner with the accommodation in the hotel are naturally bundled, said supplies qualify as 'composite supply'.
 - (b) since supply of soap alongwith the toothpaste are not naturally bundled, said supplies do not qualify as 'composite supply'.
12. In the given case, the items supplied by Dumdum Electronics are not naturally bundled in the ordinary course of business. Therefore, such supply is not a composite supply. Further, although Akbar Retail Store has paid a composite discounted price for these goods, Dumdum Electronics has not charged a single price for the said supply. Therefore, said supply is also not a mixed supply.

Supply of these goods is, therefore, supply of individual items which are taxable at the respective rates applicable to them.

- 13.** As per section 2(74) of the CGST Act, 2017, 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.

Supply of a package containing chocolates, fruit juice bottles and a packet of toy balloons is a mixed supply as each of these items can be supplied separately and is not dependent on any other. Further, as per section 8(b) of the CGST Act, 2017, the mixed supply is treated as a supply of that particular supply which attracts the highest rate of tax. Thus, in the given case, supply of packages is treated as supply of chocolates [since it attracts the highest rate of tax] and the rate of GST applicable on the package of ₹ 6,00,000 (20,000 × ₹ 30) is 18%

- 14.** As per section 25(4)²⁴, a person who has obtained 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'.

Schedule I to the CGST Act specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between 'distinct persons' as specified in section 25, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

However, in view of the GST Council's recommendation, it has been clarified that the inter-State movement of various modes of conveyance between 'distinct persons' as specified in section 25(4), not involving further supply of such conveyance, including trucks carrying goods or passengers or both; or for repairs and maintenance, may be treated 'neither as a supply of goods nor supply of service' and therefore, will not be leviable to IGST [Circular No. 1/1/2017 IGST dated 07.07.2017].

²⁴ Provisions of section 25(4) of the CGST Act have been discussed in detail in Chapter 7 – Registration

Thus, in the given case, inter-State movement of trucks from the workshop of Gagan Engineering Pvt. Ltd. located in Haryana to its repair centres located in other States is 'neither a supply of goods nor supply of service'.

- 15.** As per section 7(1)(a), the goods or services which are supplied free of cost (without any consideration) are not treated as "supply" except in case of activities mentioned in Schedule I of the CGST Act. Under "Buy One Get One Free" scheme, it may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. However, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly.

- 16.** Services by way of grant of alcoholic liquor license by the State Governments have been notified to be treated neither as a supply of goods nor as a supply of service. Such licence is granted against consideration in the form of licence fee or application fee or by whatever name it is called. This special dispensation is applicable only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and is not applicable/has no precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

Thus, in the given case, the grant of alcoholic liquor license by the Tamil Nadu Government to Sarvanna & Sons is neither a supply of goods nor a supply of service.