

## CHAPTER

# 2

# SUPPLY UNDER GST



*The section numbers referred to in the Chapter pertain to the CGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2023.*

### LEARNING OUTCOMES

**After studying this Chapter, you will be able to –**

- comprehend 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



### Taxable Event (Supply)

- Meaning of supply - Supply for a consideration in course/ furtherance of business
- Activities/transactions between a person, other than an individual, and its members/ constituents for consideration
- Import of services for a consideration whether or not in course/ furtherance of business treated as supply
- Activities treated as supply even made without consideration
- Activities classified as either Supply of goods or Supply of services
- Activities treated as neither supply of goods nor supply of services
- Concept of Composite and Mixed Supplies



## 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. that existed prior to introduction of GST have been done away with in favour of just one event i.e. **Supply**.

The 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 provision of services 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 provision 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. [Section 2(52)].
  - **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: It is clarified that the expression "services" includes facilitating or arranging transactions in securities [Section 2(102)].
- **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)].
  - **Competent authority:** means such authority as may be notified by the Government [Section 2(29)].

**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)].

**Government:** means the Central Government [Section 2(53)].

**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)].

**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.

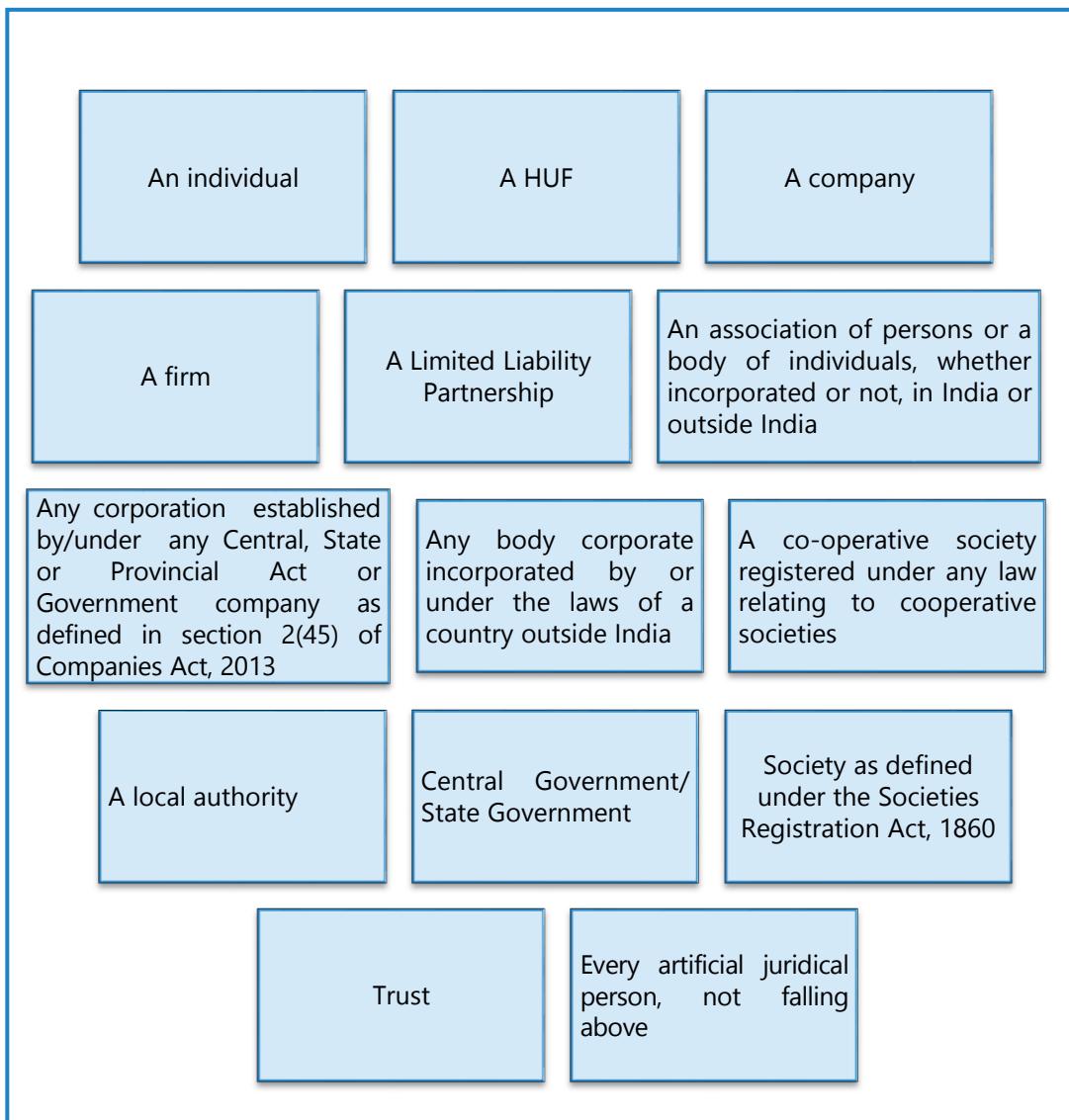
However, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. [Section 2(31)].

- 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)].
- 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)].
- Taxable supply:** means a supply of goods or services or both which is liable to tax under this Act [Section 2(108)].
- Taxable territory:** means the territory to which the provisions of this Act apply [Section 2(109)].

- **Non-taxable territory:** means the territory which is outside the taxable territory [Section 2(79)].
- **India:** means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters. [Section 2(56)].
- **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)].
- **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)].

**Person:** includes [Section 2(84)]-



**Our discussion in this Study Material will principally be confined to the provisions of CGST and IGST laws as the specific State GST laws<sup>1</sup> are outside the scope of syllabus.**

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



### 3. CONCEPT OF SUPPLY [SECTION 7 OF THE CGST ACT]

The concept of 'supply' is the key stone of the GST architecture. The provisions relating to the 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:

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

Provisions of section 7 containing the meaning and scope of supply are as follows:

 STATUTORY PROVISIONS		
<b>Section 7</b>	<b>Meaning and Scope of Supply</b>	
<b>Sub-section</b>	<b>Clause</b>	<b>Particulars</b>
		<b>Supply includes -</b>
(1)	(a)	<i>all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business</i>

	(aa)	<p><b><i>the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment/other valuable consideration.</i></b></p> <p><b><i>Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.</i></b></p>				
	(b)	<p><b><i>importation of services,</i></b> for a consideration whether or not in the course or furtherance of business, and</p>				
	(c)	<p><b><i>the activities specified in Schedule I, made or agreed to be made without a consideration,</i></b></p>				
(1A)	<p><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></p>					
(2)	<p><i>Notwithstanding anything contained in sub-section (1),</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; padding: 5px;"><i>(a)</i></td> <td style="padding: 5px;"><i>activities or transactions specified in Schedule III;</i> <i>or</i></td> </tr> <tr> <td style="width: 15%; padding: 5px;"><i>(b)</i></td> <td style="padding: 5px;"><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></td> </tr> </table>		<i>(a)</i>	<i>activities or transactions specified in Schedule III;</i> <i>or</i>	<i>(b)</i>	<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>(a)</i>	<i>activities or transactions specified in Schedule III;</i> <i>or</i>					
<i>(b)</i>	<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>					
	<p><i>shall be treated neither as a supply of goods nor a supply of services.</i></p>					

(3)

*Subject to the provisions of sub-sections (1), (1A) & (2), Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as —*

(a)

*a supply of goods and not as a supply of services;  
or*

(b)

*a supply of services and not as a supply of goods.*



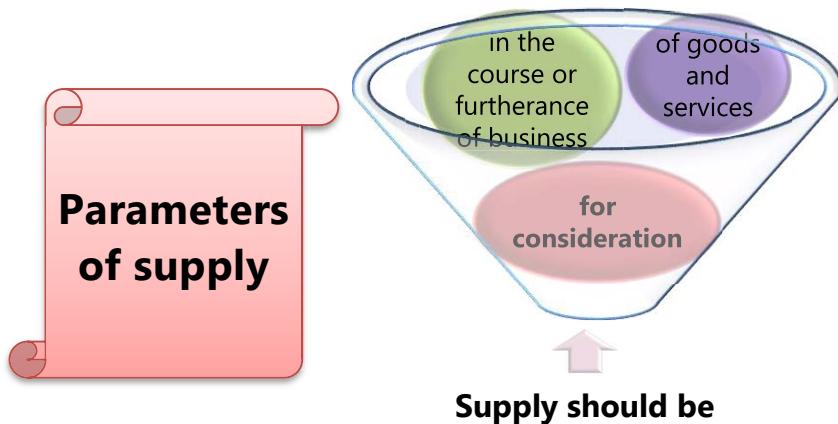
## ANALYSIS

The definition of 'supply' as contained in section 7 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 further 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.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.

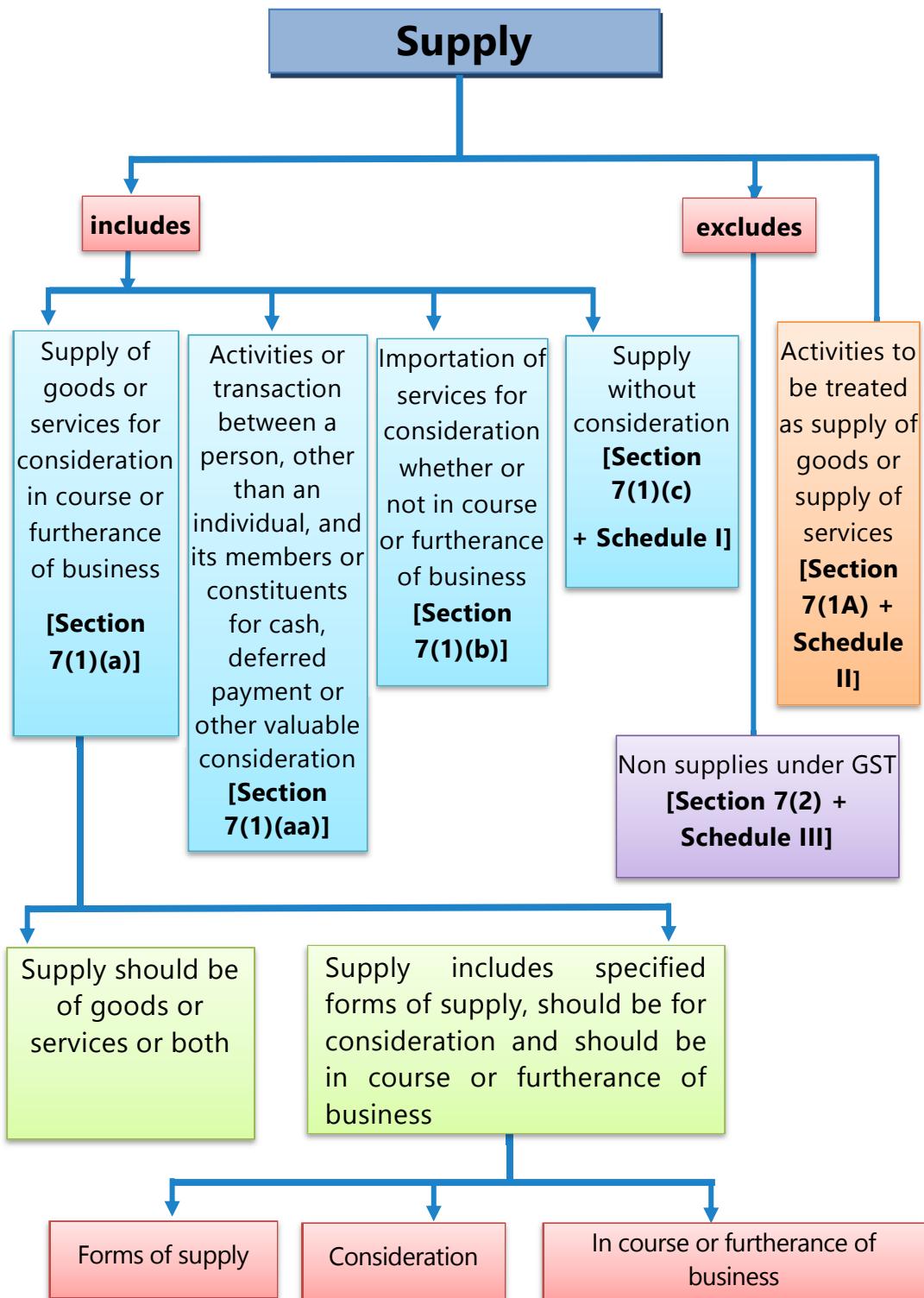


Aforesaid parameters describe the concept of supply. However, there are a few exceptions to 2<sup>nd</sup> and 3<sup>rd</sup> parameters [the requirement of supply being made for a consideration and in the course or furtherance of business] in the GST law. Few exceptions have been carved out where a transaction is deemed to be a supply even **without consideration** [*contained in Schedule I – 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 a supply of goods nor a 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:





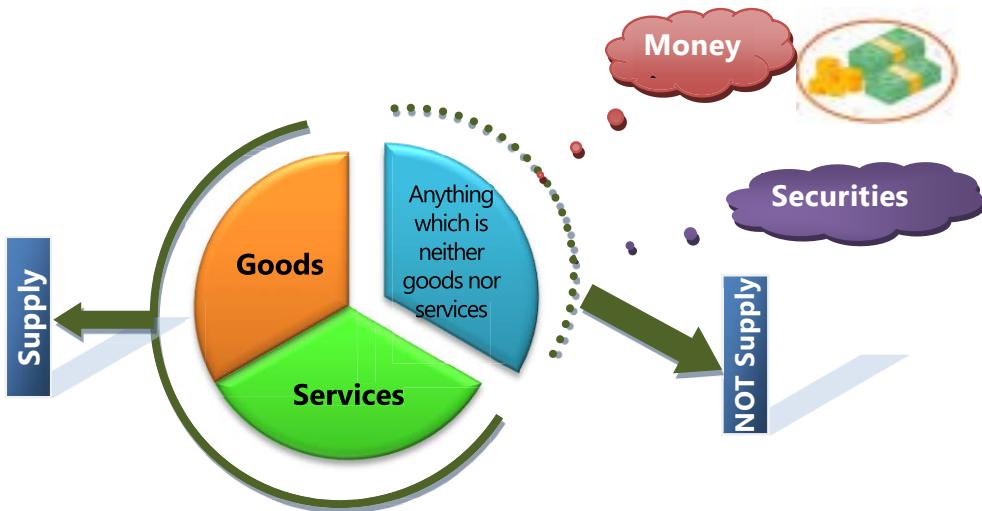
## SUPPLY OF GOODS OR SERVICES FOR CONSIDERATION IN COURSE OR FURTHERANCE OF BUSINESS

### **SUPPLY SHOULD BE OF GOODS OR SERVICES OR BOTH**

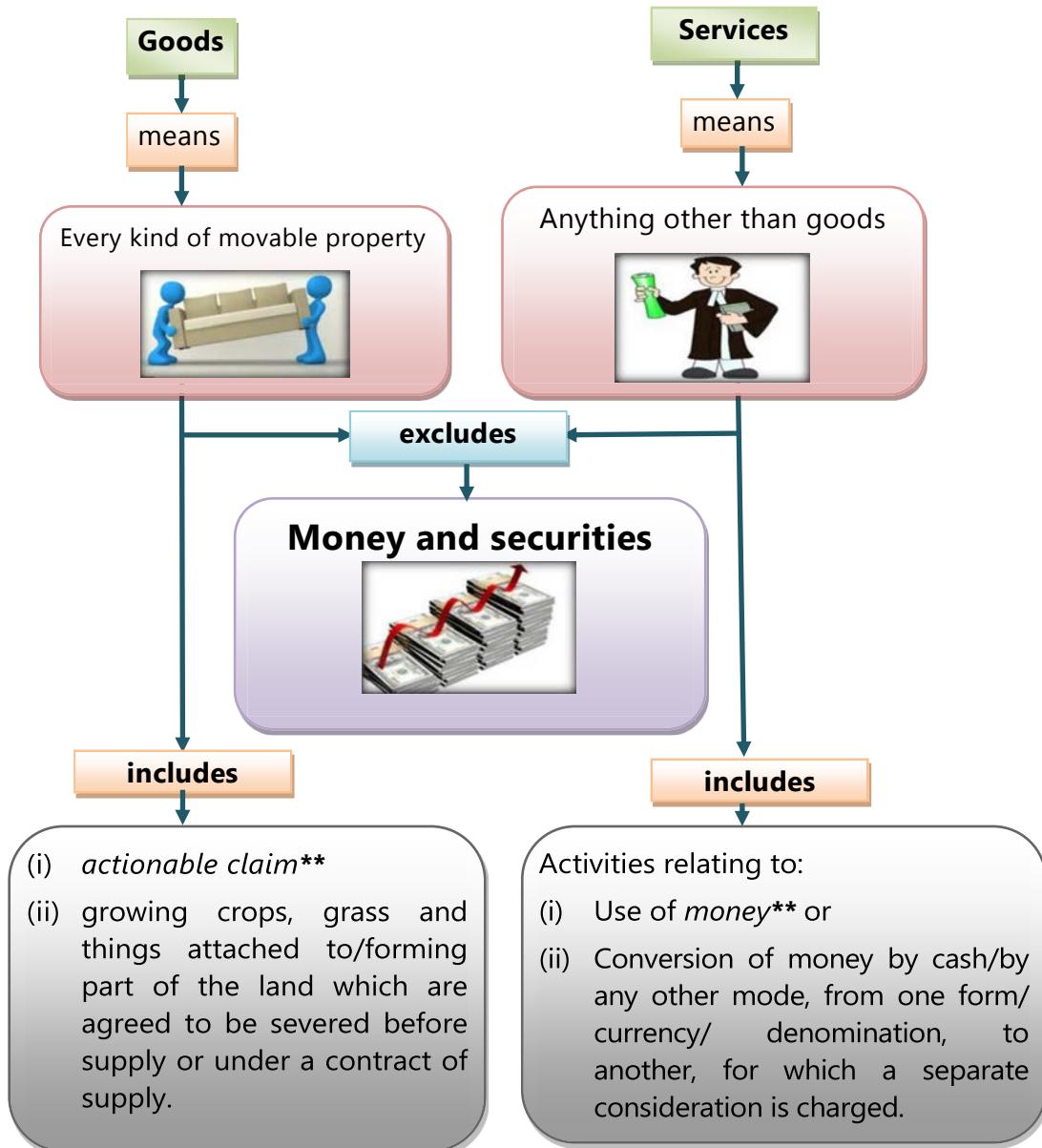
The definition of supply begins with the term '**Supply includes**', thus making it clear that CGST Act intends to give an extensive meaning to the term 'supply'.

Supply **includes** all forms of supply of goods or services or both. Supply of anything other than goods or services like money, securities etc. does not attract GST.

**Section  
7(1)(a)**



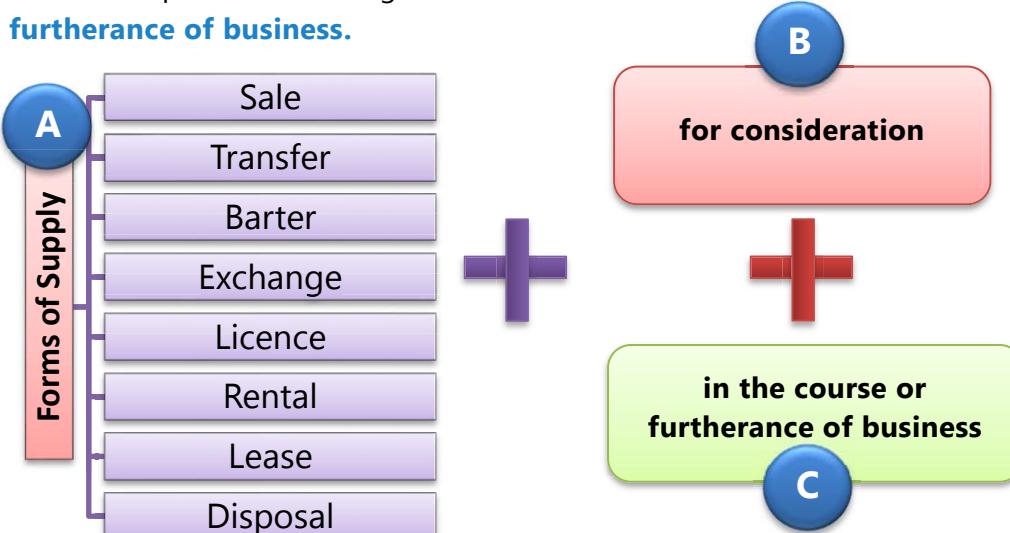
The terms "goods" and "services" as defined under the Act have been analysed by way of a diagram on next page. **Anything supplied other than goods or services is outside the scope of supply.**



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

**SUPPLY INCLUDES SPECIFIED FORMS OF SUPPLY, SHOULD BE FOR CONSIDERATION AND SHOULD BE IN COURSE OR FURTHERANCE OF BUSINESS**

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.**



It is important to note that supply includes ALL forms of supply within its purview, though eight illustrative forms of supply have been enlisted in the definition. Further, supply as contemplated in this first part has two pre-requisites:

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

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

#### A. 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 price<sup>2</sup>. 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.

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 yet 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 money<sup>3</sup>. 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. – **Exchange transaction**



- (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.

<sup>2</sup> [www.merriam-webster.com](http://www.merriam-webster.com)

<sup>3</sup> [www.macmillandictionary.com](http://www.macmillandictionary.com)

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. – **Barter transaction**

**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 unlawful<sup>4</sup>.

The dictionary meaning of 'rental' is an arrangement to rent something, or the amount of money that you pay to rent something<sup>5</sup> 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 time<sup>6</sup>.

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

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:

## B. 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.

<sup>4</sup> [www.merriam-webster.com](http://www.merriam-webster.com)

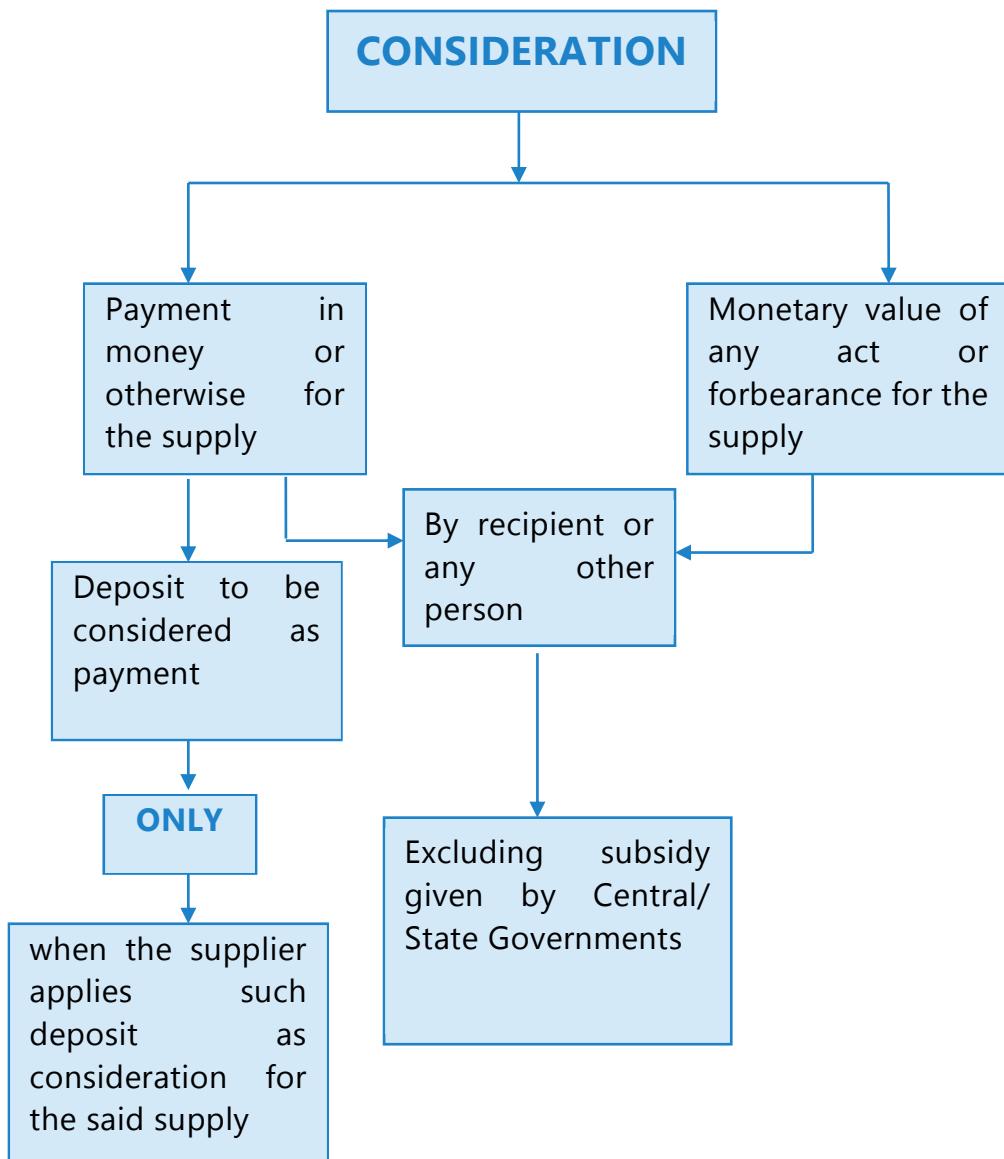
<sup>5</sup> [www.dictionary.cambridge.org](http://www.dictionary.cambridge.org)

<sup>6</sup> [www.dictionary.cambridge.org](http://www.dictionary.cambridge.org)

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) [Refer heading 'Relevant Definitions'].

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



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

1. Donations received by charitable institutions from individual donors, without *quid pro quo*
  2. Art works sent by artists to galleries for exhibition
  3. '**No Claim Bonus' offered by an insurance company to the insured**
- 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 the payment 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 (i.e. supply a service). Therefore, there is no GST liability on such payment made.

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



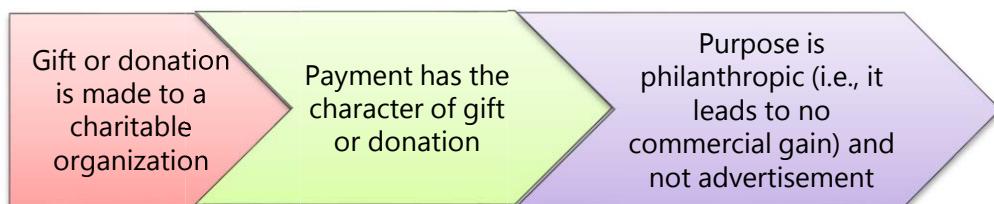
(5) Bhushan donated a blackboard to Yoganisht Sansthan - a charitable yoga institution. Yoganisht Sansthan printed underneath the blackboard so donated - "Good wishes from Mr. Bhushan".



**(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 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].

## 3. No supply of service by the insured to the insurance company in lieu of 'No Claim Bonus' offered by said insurance company to him

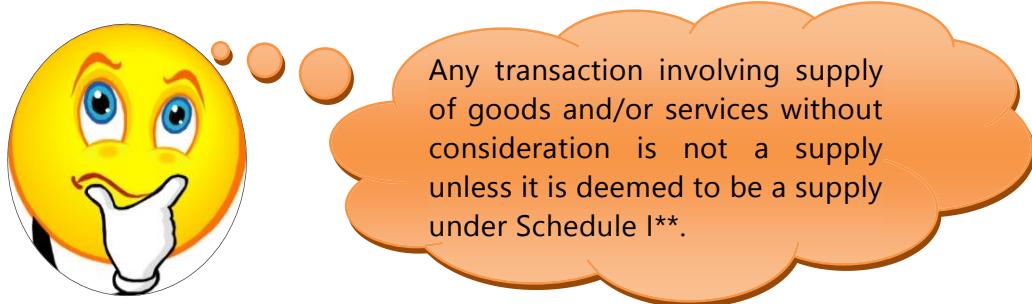
**The issue which arose for consideration was whether the deduction on account of 'No Claim Bonus' (NCB) allowed by the insurance company from the insurance premium payable by the insured, can be considered**

***as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s).***

***As per practice prevailing in the insurance sector, the insurance companies deduct 'No Claim Bonus' from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.***

***It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.***

**[Circular No. 186/18/2022 GST dated 27.12.2022]**



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\*\*.

*\*\*Provisions of Schedule I 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:

### **C. 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

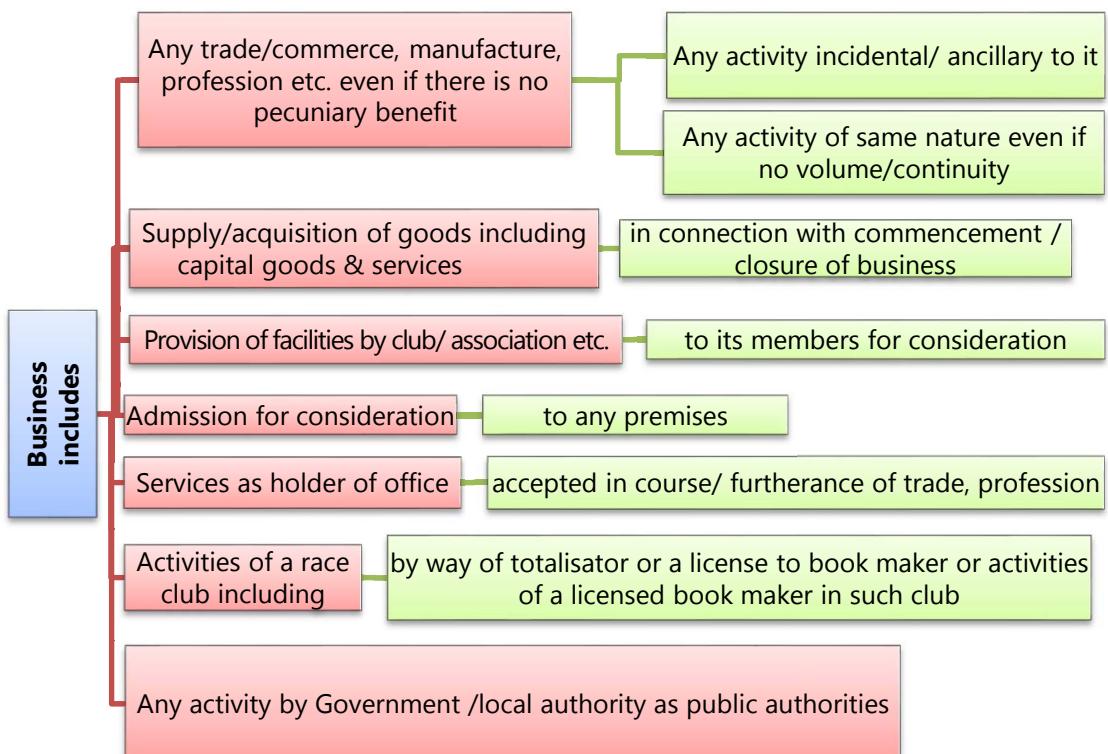


undertaken in course/ for furtherance of business would constitute a supply. In order to understand the term 'in the course or furtherance of



business', we need to first understand the term 'business'. Business as defined under section 2(17), *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 Government or a State Government 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 or obtaining pecuniary benefit from it 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 business<sup>7</sup>.



(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 individual<sup>89</sup>.

Since 'business' includes vocation, therefore, supply 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

<sup>7</sup> Clarified vide GST FAQs issued by CBIC

<sup>8</sup> Clarified by CBIC vide press release dated 13.07.2017

<sup>9</sup> The view taken in Examples 7 & 8 above is based on the view taken in the Departmental FAQs/ press release. 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, on literal interpretation, 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 in this Module of the Study Material]. 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.

Trust – ‘Kind Human’. The sale of paintings by the actor qualifies as supply as it is made in course or furtherance of business.

Facilities provided by the club/association to its members for consideration are provided in course or furtherance of business.



**(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 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<sup>10</sup> 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 totalisator<sup>11</sup>. 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.

<sup>10</sup> Book maker is a person that accepts and pays off bets on sporting and other events at agreed-upon odds.

<sup>11</sup> Totalisator is a device showing the number and amount of bets staked on a race, to facilitate the division of the total among those backing the winner.



*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'.*

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.

Section  
7(1)(b)

 (13) Ramaiyaa, a proprietor, has received the architect services for his personal residence 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

Schedule-I

*Activities to be treated as supply even if made without consideration*

<i>Para 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)	<i>Supply of goods —</i> (a) <i>by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or</i> (b) <i>by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.</i>
(4)	<i>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</i>



## ANALYSIS

As seen earlier, section 7(1)(c) provides that supply includes the activities specified in Schedule I, made or agreed to be made without a consideration. Thus, there are activities or transactions which are treated as supply, **even if they are made without consideration**. These are specifically mentioned in Schedule I appended to the CGST Act. The same has been discussed in the subsequent paras:

**Section 7(1)(c)  
read with  
Schedule I**

In the past indirect tax 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 condition of consideration has been dispensed with 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:

### **I. Permanent Transfer/Disposal of Business Assets [Para 1 of Schedule I]:**

**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 GST<sup>12</sup>.
- (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.

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<sup>12</sup> List of the goods and services in respect of which ITC is blocked has been elaborated in Chapter 8 – Input Tax Credit in Module 2 of this Study Material.

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]:**

**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**'.

- (i) **Related persons:** A person who is under influence of another person is called a related person like members of the same family 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:



**Related persons**



\*See the definition of 'family' as provided in heading 2. – Relevant Definitions.



**(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.

- (ii) 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 9 – Registration in Module 2 of this Study Material.*

**Distinct persons**

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 can get a single registration for said State/UT. He may also get separate registration for any place(s) 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 explained with examples 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)].



**(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's registrations under GST under same PAN in West Bengal and Delhi shall be treated as distinct persons.



**Registered head  
office in Delhi**



**Registered branch  
office in West Bengal**

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)].



**(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



(iii) **Stock transfers or branch transfers qualify as supply:** It is a common practice in business to transfer goods transferred amongst different units of same entity, 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. Since the transfer is within the same business, the transferor unit would not charge any amount to the transferee unit. Similarly, it is also possible that one branch supplies services to another branch of the same entity without consideration. These transactions are termed as self-supplies. Under GST, these transactions though 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)** Raghbir 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 Raghbir 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.



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



**(21)** Raghbir 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.



However, in the above example, if Raghbir Fabrics obtains separate registrations for Lucknow factory and Kanpur showroom, stock transfer between the Lucknow factory and Kanpur showroom will constitute supply. The concept arising from the above discussion is summarised in below diagram (assuming a case where there are two places of business in a State):



**(iv) 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 outside the scope of GST (treated as neither supply of goods nor as supply of services) as per Schedule III to the 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**

Since services by an employee to the employer in the course of or in relation to his employment are outside the scope of GST, supply 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.

***Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment.***



***It follows therefrom that perquisites provided 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.***

Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre<sup>13</sup>. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then 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)<sup>15</sup>

<sup>13</sup> Complete list of the goods and services in respect of which ITC is blocked has been elaborated in Chapter 8 – Input Tax Credit in Module 2 of this Study Material.

<sup>14</sup> Circular No. 172/04/2022 GST dated 06.07.2022 read with Ministry of Finance's Press Release on 10.07.2017

<sup>15</sup> 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 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 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 Chapter 7 – Value of Supply in this Module of the Study Material.

**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 require "consideration" to be present so as to be considered as supply and thus, making it 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 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.

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

- 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*].

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

**Where the invoice is issued by the agent to customer in the name of:**

**Whether he will be an agent in terms of Para 3 of Schedule I?**

Principal

No

Agent

Yes

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)** Manimani Bank, 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 Manimani Bank. The invoice for the supply of the goods is issued by Manimani Bank 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 Manimani Bank 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, then he is an agent covered under Para 3 of Schedule I<sup>16</sup>. 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.

#### 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:



Del-credere agent

Before going through the clarification let us first understand what is meant by a DCA? In commercial trade 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**.

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.

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<sup>16</sup> It is important to note that services provided by the commission agent for sale or purchase of agricultural produce are exempt supply under GST. Said exemption has been discussed in detail in Chapter 5 - Exemptions from GST in this Module of the Study Material.

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

SI. No.	Issue	Clarification
1	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I?	<p>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 depends on the following possible scenarios:</p> <ul style="list-style-type: none"> <li><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.</li> <li><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.</li> </ul>
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?	<p>In such a scenario, following activities are taking place:</p> <ol style="list-style-type: none"> <li>1. Supply of goods from supplier (principal) to recipient;</li> <li>2. Supply of agency services from DCA to the supplier or the recipient or both;</li> </ol>

		<p>3. Supply of extension of loan services by the DCA to the recipient.</p> <p>It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I, 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 supply<sup>17</sup>.</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>
3.	Where DCA is an agent under Para 3 of Schedule I 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"> <li>1. Supply of goods by the supplier (principal) to the DCA;</li> <li>2. Further supply of goods by the DCA to the recipient;</li> <li>3. Supply of agency services by the DCA to the supplier or the recipient</li> </ol>

<sup>17</sup> 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 supply vide Entry 27 of Notification No. 12/2017 CT(R) dated 28.06.2017 [Discussed in detail in Chapter 5 – Exemptions under GST in this Module of the Study Material].

- or both;
4. Extension of credit by the DCA to the recipient.

It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I, 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.

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)<sup>18</sup>.

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<sup>18</sup> Section 15 has been discussed in detail in Chapter 7 – Value of Supply in this Module of the Study Material.



**Quiz  
Time!**

1

Mr. Handsome, del-credere agent (DCA) of Charm Limited, agrees to raise invoices in his own name and also guarantees for the realization of payments from customers to Charm Limited. In order to realize the payments from customers on time, he extends short-term transaction-based loans to them and charges interest for the same.

For the month of March, sale of goods by Mr. Handsome in his DCA capacity is ₹ 2,80,000 and interest earned from the said customers for short term credit facility provided for timely payment of dues is ₹ 20,000. Further, commission charged from Charm Limited in respect of DCA services provided is ₹ 30,000. The value of supply of goods to customers is \_\_\_\_\_ and value of supply of agency services to Charm Limited is \_\_\_\_\_.

(a) ₹ 2,80,000;  
₹ 30,000

(b) ₹ 20,000; Nil

(c) ₹ 3,00,000;  
₹ 30,000

(d) ₹ 20,000;  
₹ 30,000

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



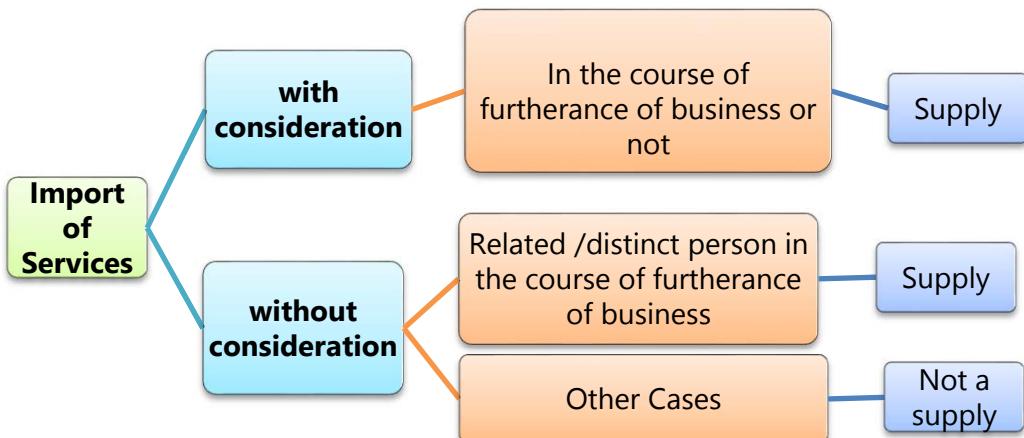
**(27)** Jhumroo Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such consultancy services free of cost to its branch office.

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.



In this backdrop, 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'



– i.e. 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.**

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 GST<sup>19</sup>, except where the activity falls within the ambit of Schedule I.



**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]*

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<sup>19</sup> 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. The same has been discussed in detail in Chapter 8 – Input Tax Credit in Module 2 of this Study Material.



**Quiz  
Time!**

**2**

Mr. Venkat hired a professional firm based in UK to receive the legal consultancy services for his family dispute. The services received by Mr. Venkat \_\_\_\_\_ in case such services are received by Mr. Venkat (I) free of cost; or (II) for a consideration of US\$ 1,000.

(a) (I) amount to supply; (II) amount to supply

(b) (I) do not amount to supply; (II) amount to supply

(c) (I) amount to supply; (II) do not amount to supply

(d) (I) do not amount to supply; (II) do not amount to supply

***There has always been an ambiguity as to whether activities/ transactions involving supply of goods/ services, by any person, other than an individual, to its members or vice-versa fall within the purview of supply or not. Clause (a) to section 7(1) brings in the certainty that said activities/ transactions are covered within the scope of supply under GST and ensures the levy of GST on such activities/transactions. This has been discussed as under:***



### **ACTIVITIES/TRANSACTIONS BETWEEN A PERSON, OTHER THAN AN INDIVIDUAL, AND ITS MEMBERS/ CONSTITUENTS FOR CONSIDERATION**

***The activities or transactions (involving supply of goods or services) between a person, other than an individual, (i.e. association, club, etc.) and its members or constituents, for cash, deferred payment or other valuable consideration are covered within the ambit of 'supply' as per section 7(1)(aa).***

**Section  
7(1)(aa)**

***Further, explanation to clause (aa) to section 7(1) clarifies that for the purpose of this clause, such person (association, club, etc.) and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions between them shall be deemed to take place from one such person to another. The explanation starts with a non-obstante clause and shall therefore, shall have an overriding effect over anything contained in***

**any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority.**

**The aforesaid explanation prevents the application of doctrine of mutuality by such person(s)<sup>20</sup>.**



**(29) Resident Welfare Association (RWA) of Sanskriti Society supplies air-conditioners to its members at a concessional price.**

**(30) A Resident Welfare Association collects maintenance charges from its members for services provided.**

**Here, in both the aforesaid examples, it shall be deemed that the Resident Welfare Association (RWA) and its members are two separate persons and it shall be deemed that the supply has taken place from Resident Welfare Association (RWA) to its members.**



### **ACTIVITIES/TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

Section 7(1A) 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.

**Section 7(1A)  
read with  
Schedule II**

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



**(31) Under earlier tax regime, the restaurants used to charge both service tax and VAT on the value of food served. This is 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.**

<sup>20</sup> Section 7(1)(aa), in effect, overrules the judgment of the Hon'ble Supreme Court in State of West Bengal v. Calcutta Club Limited wherein it was held that the transactions between a Club and its members cannot be taxed owing to the doctrine of mutuality, i.e., a person cannot make a profit from himself.

Under GST, the supply by a restaurant is treated as composite supply [*concept of composite supply is discussed subsequently in this chapter*] since supply of 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 :-

Para No.	Activity/ Transaction	Type	Nature of Supply
1.	Transfer	Any transfer of title in goods.  <b>(32)</b> 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 thereof.  <b>(33)</b> 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 in goods shall pass at a future date upon payment of full consideration as agreed.  <b>(34)</b> Dhruva Capitals supplied goods on hire purchase basis to customers. <b>(35)</b> Optima Manufacturers supplies toys to retailers on 'sale or return basis'.	Supply of Goods

2.	Land and Building	<p>Any lease, tenancy, easement, licence to occupy land<sup>21</sup>.</p> <p><b>(36)</b> Lease agreement for land.</p>	Supply of Services
		<p>Any lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly.</p> <p><b>(37)</b> A shop let out in a busy market area.</p>	Supply of Services
3.	Treatment or Process	<p>Any treatment or process which is applied to another person's goods</p> <p><b>(38)</b> Damani Dying House dyes the clothes given by Shubham Textiles Ltd. on job work basis.</p>	Supply of Services
4.	Transfer of Business Assets	<p>Goods forming part of business assets are transferred or disposed off by or under directions of person carrying on the business so as no longer to form part of those assets.</p>	Supply of Goods
		<p>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.</p> <p><b>(39)</b> A person manufacturing and selling wooden furniture takes one chair manufactured by him for use at his house.</p>	Supply of 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,</p>	Supply of Goods

<sup>21</sup> Refer Circular No. 44/18/2018 CGST dated 02.05.2018 discussed subsequently.

		<p>immediately before he ceases to be a taxable person.</p> <p> <b>(40)</b> Arun, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him.</p> <p><b>Exceptions:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Business is transferred as a going concern to another person<sup>22</sup>.</li> <li><input type="checkbox"/> Business is carried on by a personal representative who is deemed to be a taxable person.</li> </ul>	
5.	<p><b>(a) Renting of immovable property</b></p> <p> <b>(41)</b> Renting of a commercial complex.</p> <p><b>(42)</b> Renting of precincts of a religious place.</p> <p><b>(43)</b> Renting of property to an educational institution.</p> <p><b>(44)</b> Permitting use of immoveable property for placing vending/dispensing machines.</p> <p><b>(b) Construction of complex, building, civil structure, etc.</b></p> <p>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, <b>except</b> where the <u>entire</u> consideration has been received <u>after</u> issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p> <p> <b>(45)</b> 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</p>	Supply of Services	

<sup>22</sup> Services by way of transfer of a going concern, as a whole or an independent part thereof are exempt supply under GST [Discussed in detail in Chapter 5 – Exemptions from GST in this Module of the Study Material].

competent authority and its first occupation, and balance after completion.

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

The term **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.

**(c)** Temporary transfer or permitting use or enjoyment of any intellectual property right



**(46)** Temporary transfer of patent.

**(d)** Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software



**(47)** Suvidha Solutions develops an accounting software for a business firm.

**(e)** Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.



**(48)** Cable operator - Sakharam has entered into an agreement with Cable operator - Aatmaram that Sakharam will not provide cable connections in the specified areas where Aatmaram

Supply of Services

	<p>is providing the connections. Non-compete agreements constitute supply of service.</p> <p><b>(49)</b> Security deposit forfeited in the event of cancellation of tour package by the customer.</p> <p><b><i>Please refer the detailed discussion on this para of Schedule-II given at the end of the Table.</i></b></p>	
	<p><b>(f)</b> Transfer of right to use any goods for any purpose (whether or not for specified period) for cash, deferred payment or other valuable consideration.</p> <p> <b>(50)</b> Machinery given on hire.</p>	
6.	<p>Following <b>composite supplies</b>:-</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Works contract <b>Works contract:</b> means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of <b>any immovable property</b> 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)].</li> <li><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 (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.</li> </ul>	Supply of Services

In this regard, following issues have been clarified by the CBIC:

#### 1. **Taxability of 'tenancy rights' under GST**

CBIC has clarified the 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 proceeds 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 **to an unregistered person** is exempt [Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017 – Discussed in Chapter 5 – Exemptions from GST in this Module of the Study Material]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both (to an unregistered person) 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<sup>23</sup>.

## 2. **Applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law**

**CBIC has clarified issues with respect to GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law.**

**Clarification:** “Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5(e) of Schedule II if the same constitutes a “supply” within the meaning of the CGST Act.

Expression “**Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act**” has three limbs

Agreeing to the obligation to **refrain** from an act

Agreeing to the obligation to **tolerate** an act or a situation

Agreeing to the obligation to **do** an act

### a. **Agreeing to the obligation to REFRAIN from an act**



(51) Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

<sup>23</sup> Circular No. 44/2018 CT dated 02.05.2018



**(52) Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.**

**b. Agreeing to the obligation to tolerate an act or a situation**

*This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.*

**c. Agreeing to the obligation to do an act**

*This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.*

**Above three activities must comply with the following conditions:**

**(1) There must be an expressed or implied agreement or contract must exist**

*Above three activities must be under an "agreement" or a "contract" (whether express or implied) to fall within the ambit of para 5(e) of Schedule II. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain or (b) tolerate or (c) do.*

*Such contractual arrangement must be an independent arrangement in its own right. Such arrangement/agreement can take the form of an independent stand-alone contract or may form*

*part of another contract.*

*Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.*

*Such a contract cannot be imagined or presumed to exist just because there is a flow of money from one party to another. There must be an expressed or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him.*

## (2) *Consideration must flow in return to this contract/agreement*

*Some "consideration" must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing.*

*Taxability of some of the transactions has been discussed in detail as under:*

### (A) *Liquidated Damages*

*It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Black's Law Dictionary defines 'Liquidated Damages' as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.*



*The taxability or otherwise of liquidated damages is clarified as under:*

*It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment*

*of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.*

*Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not constitute the aggrieved person.*

*A contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.*

*Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are merely a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.*



**Examples of such cases are:**

- (53) damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,
- (54) penalty stipulated in a contract for delayed construction of houses,
- (55) forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.

*The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' irrespective of by what name it is called, otherwise it is not a "supply".*

*If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'.*



*On the contrary, consider the following examples:*

**(56) A contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty.**

**(57) A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up.**

**(58) A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer.**

**(59) A contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty.**

**(60) Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period.**

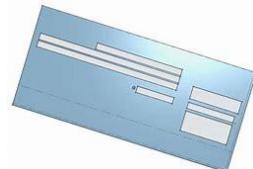
*In the above examples, amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of prepayment of loan and of making arrangements for the intended supply by the tour operator respectively.*

**Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable.**

**Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt.**

**(B) Cheque dishonor fine/ penalty**

**The supplier wants payment to be received on time and does not want cheque to be dishonoured. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty.**



**The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.**

**(C) Penalty imposed for violation of laws**

**Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable.**



**Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit.**

**Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration.**

**In short, fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to tax.**

- (D) Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period**

**The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment.**

**The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation.**

**Further, the employee does not get anything in return from the employer against payment of such amounts.**

**Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.**

**(E) Late payment surcharge or fee**

*The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc.*



*Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty.*

*Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply.*

*Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.*

*However, the same cannot be said of cheque dishonor fine or penalty as discussed earlier.*

**(F) Fixed charges for power**

*The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge.*



*The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for*

***tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.***

***Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.***

#### **(G) Cancellation charges**

***It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee.***

***Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.***

***Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal.***



***All services such as making available an online portal or convenient booking counters with basic facilities at the***



***transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in***



*the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.*

*The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business. Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply.*



**(61) Cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.**

*Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.*

*However, as discussed earlier, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money.*

*Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a*

**compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable<sup>24</sup>.**



Which of the following activities/transactions qualify as supply of goods?

3

(a) Dhruvtara Electronics supplies washing machines to its customers.	(b) Bigbang Steels Ltd. supplies a machinery on rent to Jigayasa Manufacturers.	(c) Larsen Technicians retreads the tyres given by Deendayal Automobiles on job work basis.	(d) Vigyaan Technologies develops a customised software for a business school.
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## NON-SUPPLIES UNDER GST

### I. Activities/transactions specified under Schedule

**III:** Section 7(2)(a) provides activities or transactions specified in **Schedule III** shall be treated neither as a supply of goods nor a supply of services. 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 a way, it is a "Negative list" for the purposes of taxation in GST.

Section 7(2)(a)  
read with  
**Schedule III**

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

<sup>24</sup> Circular No. 178/10/2022 GST dated 03.08.2022

circulars 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 circular

#### A. NON-SUPPLIES LISTED IN SCHEDULE III

Para 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> <p><b>(62)</b> 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><b>(63)</b> 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> <p><b>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.</b></p> <p><b>(64)</b> Services provided on contract basis by a person to another i.e. principal-to-principal basis are not services provided in the course of employment<sup>25</sup>.</p> <p><b>(65)</b> Any amount paid by employer to employee for not joining a competing business is paid for providing the service of forbearance</p>

<sup>25</sup> Discussion based on Service Tax Education Guide issued under erstwhile service tax law.

	<p>to act and cannot be considered for providing services in the course of employment.</p>
2.	<p>Services by any court or Tribunal established under any law for the time being in force.</p> <p>Explanation – The term "<b>Court</b>" includes District Court, High Court and Supreme Court.</p>
3.	<p>(a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.</p> <p>(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity.</p> <p>(c) 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>(66) 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>(d) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.</p>
4.	<p>Services of funeral, burial, crematorium or mortuary including transportation of the deceased.</p>
5.	<p>Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building. (i.e. in case, where entire consideration for sale of building received after issuance of completion certificate or after its first occupation, whichever is earlier)</p>

**6.**

Actionable claims, other than lottery, betting and gambling. '**Actionable claims'** are specifically included in the definition of goods under section 2(52) [Refer the definitions of 'actionable claims' and 'goods' given under heading 'Relevant Definitions']. 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.**



**(67) 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.<sup>26</sup>

## 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 supply of goods nor as supply of services. Till now, following activities/

**Section 7(2)(b)**

---

<sup>26</sup> 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.

transactions have been notified under said clause:

**(i) Activity in relation to Panchayat/Municipality functions:** Services



Panchayat  
Functions

by way of any activity in relation to a function entrusted to a **Panchayat** under article 243G of the Constitution or to a **Municipality** under article 243W



Municipality  
Functions

of the Constitution are treated neither as a supply of goods nor as a supply of service<sup>27</sup>.

**(ii) 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 as a supply of service<sup>28</sup>.



Such licence is granted against consideration in the form of licence fee or application fee or by whatever name it is called.



Grant of  
licence for  
alcoholic  
liquor

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 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 charge<sup>29</sup>.

<sup>27</sup> notified vide Notification No. 14/2017 CT (R) dated 28.06.2017/ Notification No. 11/2017 IT (R) dated 28.06.2017 as amended

<sup>28</sup> notified vide Notification No. 25/2019 CT (R) dated 30.09.2019/ Notification No. 24/2019 IT (R) dated 30.09.2019

<sup>29</sup> Circular No. 121/40/2019 GST dated 11.10.2019

### C. NON-SUPPLIES CLARIFIED BY WAY OF CIRCULAR

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

#### (i) 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] shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST.

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\*\**].

**(ii) 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*].



Which of the following activities are considered neither as supply of goods nor supply of services?

(a) Inter-State movement of trucks between distinct persons for repairs and maintenance.

(b) Grant of mining rights by the Governments to businesses.

(c) Services provided by an employer to the employee.

(d) Lottery

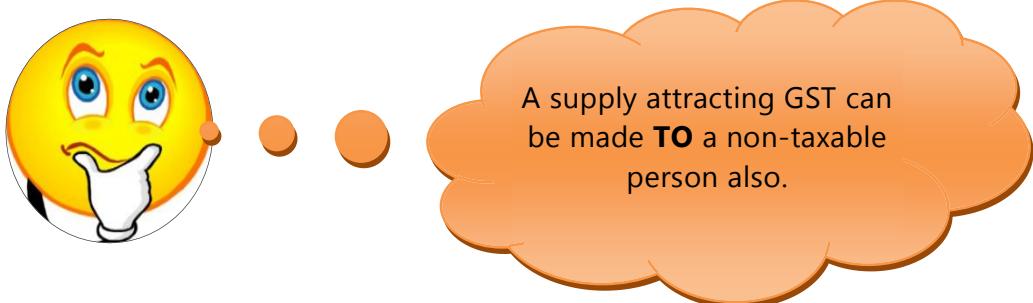
In the preceding paras, we have discussed, how to determine whether a given activity or transaction constitutes a supply. Once an activity or transaction qualifies as supply, one needs to determine whether the same is leviable to GST or not. Though the provisions relating to levy and collection of GST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



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 9 – Registration in Module 2 of the Study Material*].

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 got himself registered by taking a voluntary registration and 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 [Section 2(108)] [Refer Chapter-3: Charge of GST in this Module of the Study Material for detailed discussion on leviability of GST].

On the other hand, exempt supply means supply of any goods or services or both which attract **nil rate of tax** or which may be **wholly exempt from tax\*** under section 11 of the CGST Act, or under section 6 of the IGST Act, and includes **non-taxable supply** [Section 2(47)]

*\*Exemptions may be provided to the specified goods or services or to a specified category of persons/ entities making supply [Refer Chapter-5: Exemptions from GST in this Module of the Study Material for detailed discussion].*



## 4. COMPOSITE AND MIXED SUPPLIES [SECTION 8]



### STATUTORY PROVISIONS

Section 8	Tax liability on composite and mixed supplies
Clauses	Particulars
	<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 comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and</i>
(b)	<i>a mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax.</i>



### ANALYSIS

GST is payable on goods or services or both at the notified rates. Classification of any supply (whether as goods or services, the category of goods or services) is

essential to determine the applicable rate of GST on the particular supply. 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. Sometimes 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.
- which 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)].

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)].

Works contract and restaurant services are classic examples of composite supplies, but the GST law identifies both as supply of services [*as you would have seen in the discussion on Schedule II to the CGST Act earlier in this Chapter*] and chargeable to specific rate of tax mentioned against each of such services (works contract or restaurant).

However, in respect of other composite supplies (i.e. other than the two categories mentioned above), the need to determine the supply as a composite one, will arise, so as to determine the appropriate classification of such supply as supply of goods or supply of services as also the appropriate rate of tax.

It will be necessary to determine as to whether a particular supply is naturally bundled in the ordinary course of business and what constitutes principal supply in such composite supplies.

#### **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 or not, 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.  
 **(68)** Mobile phone is always sold with battery.
- Majority of service providers in a particular area of business provide similar bundle of services.**  
 **(69)** Bundle of services of catering on board and services of 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, then it would be treated as services bundled in the ordinary course of business.



**(70)** 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:
  - ✓ There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
  - ✓ The elements are normally advertised as a package.
  - ✓ The different elements are not available separately.
  - ✓ The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected.



*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:



- (71)** A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:
- Accommodation for the delegates

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

As is evident a bouquet of services is being provided, many of them are chargeable to different effective rates of tax. If the principal service is described as convention service it is able to capture the entire essence of the package. Thus, the principal service may be judged as convention service and charged to tax accordingly.

However, it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.



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



**(73)** 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.



**(74)** 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.

**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 supply(ies)] 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:



**(75)** 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.

CBIC, in the following cases, has clarified issues as to whether the given supplies are composite supply and if yes, what constitutes the principal supply in the given composite supply:

### 1. Printing industry issues

The printing industry in India in particular faced a dilemma in determining whether the nature of supply provided was that of goods or services. Another doubt was whether in case where certain contracts involved both supply of goods and services, whether the same would constitute a supply of goods or services or if it would be a composite supply and in case it is, then what would constitute the principal supply.



Thus, it is clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

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**.

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<sup>30</sup>.

## 2. Food supplied to the patients

Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of health care and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable<sup>31</sup>.

## 3. Activity of bus body building

In the case of bus body building, there is supply of goods and services. Thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case<sup>32</sup>.

## 4. Retreading of tyres

In retreading of tyres, which is a composite supply, the pre-dominant element is process of retreading which is a **supply of service**. Rubber used for retreading is an ancillary supply.

Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a **supply of goods**<sup>33</sup>.

*Retread tyres are revamped tyres on which the worn out tread (the part of the tire that makes contact with the surface of the road) is replaced using new tread.*

<sup>30</sup> Circular No. 11/11/2017 GST dated 20.10.2017

<sup>31</sup> Circular No. 32/6/2018 GST dated 12.02.2018

<sup>32</sup> Circular No. 34/8/2018-GST dated 01.03.2018

<sup>33</sup> Circular No. 34/8/2018-GST dated 01.03.2018

## 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)].

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 the possibility of it being a mixed supply needs to be checked.

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 treated as a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.



**(76)** 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 or separate prices are charged.



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



**(78)** 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**.



**(79)** Sringaar 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 also 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.



**(80)** 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<sup>34</sup>.

<sup>34</sup> Circular No. 47/21/2018 GST dated 08.06.2018



**Quiz  
Time!**

**5**

Jaskaran supplies gift packages at ₹ 30 each to its customers. Each package consists of 2 chocolates, 2 fruit juice bottles and a packet of toy balloons. Rates of GST applicable on chocolates, fruit juice bottles and toy balloons are 18%, 12% and 5% respectively. Jaskaran is liable to pay GST @ \_\_\_\_\_.

(a) 18%, 12% and 5% separately on value of supply of chocolates, fruit juice bottles and toy balloons respectively

(b) 18% on the price charged for the gift package

(c) 12% on the price charged for the gift package

(d) 5% on the price charged for the gift package



## LET US RECAPITULATE

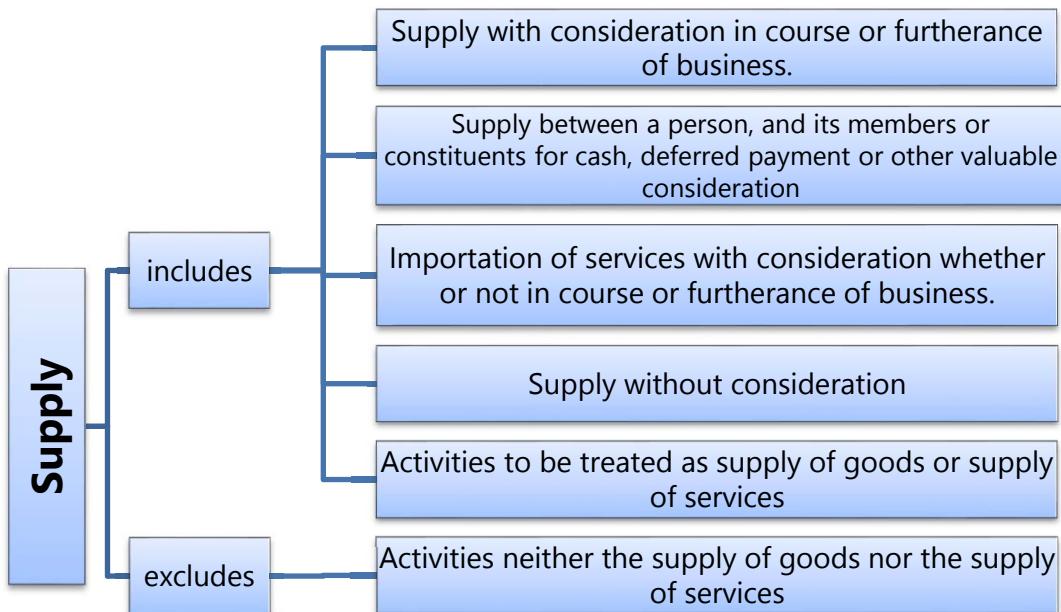
- The taxable event under GST is supply. The scope of supply under GST can be understood in terms of following parameters:

Supply should be of goods or services

Supply should be made for a consideration

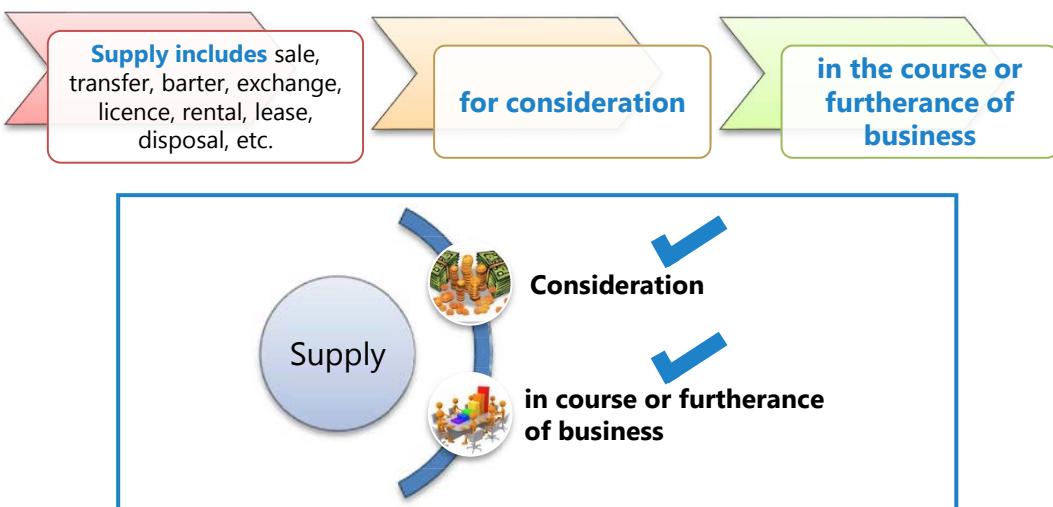
Supply should be made in the course or furtherance of business

- 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:

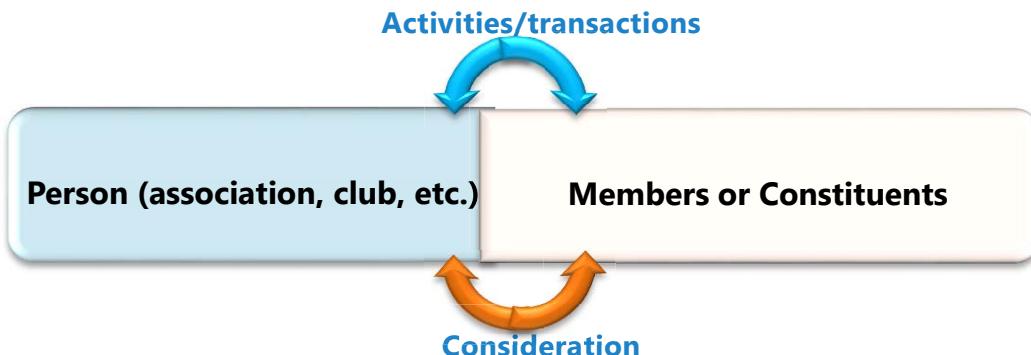


Sub-sections of section 7 alongwith related Schedules has been summarised as follows:

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

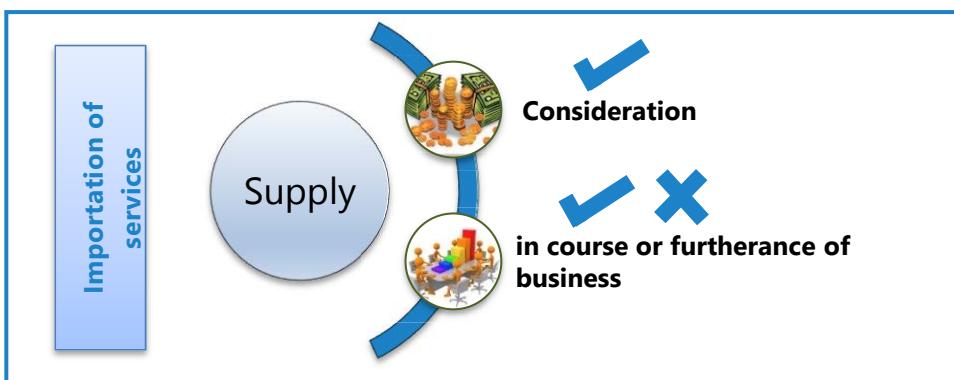


- 2. Activities/transactions between a person, other than an individual, and its members or constituents for valuable consideration [Section 7(1)(aa)]**



- 3. 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.

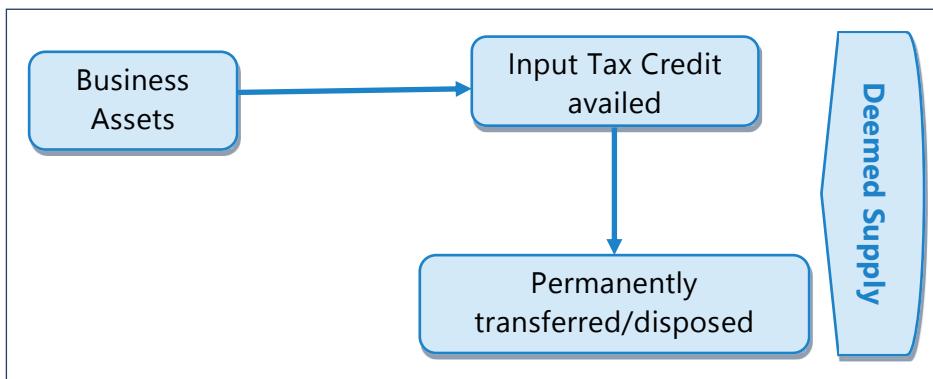


- 4. Supply without consideration - Deemed Supply [Section 7(1)(c) read with Schedule I]**

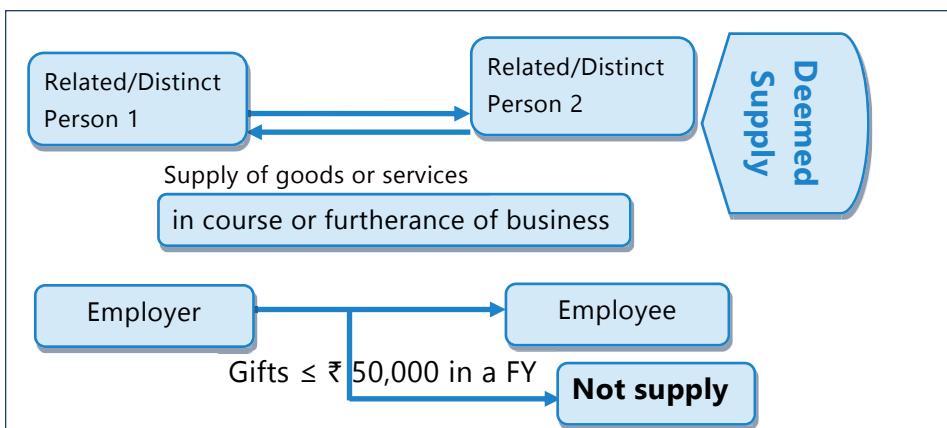
This includes all supplies made to a taxable or non-taxable person, even if the same is without consideration. These are specifically mentioned in Schedule I appended to the CGST Act.

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

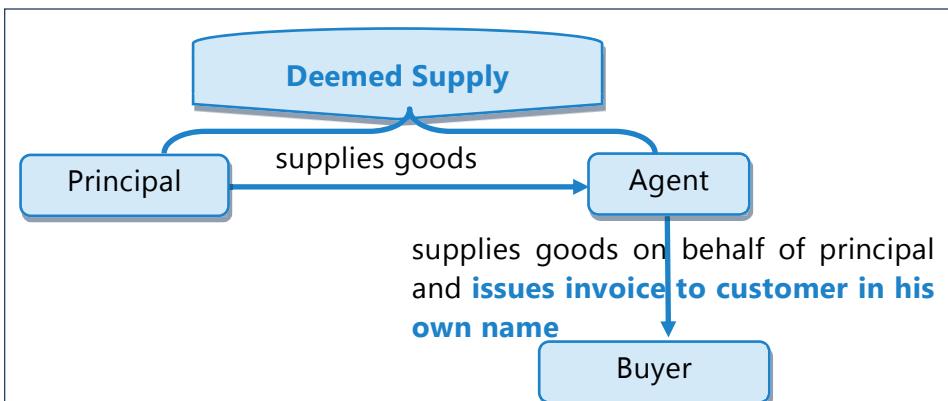
## I. Permanent Transfer/Disposal Of Business Assets

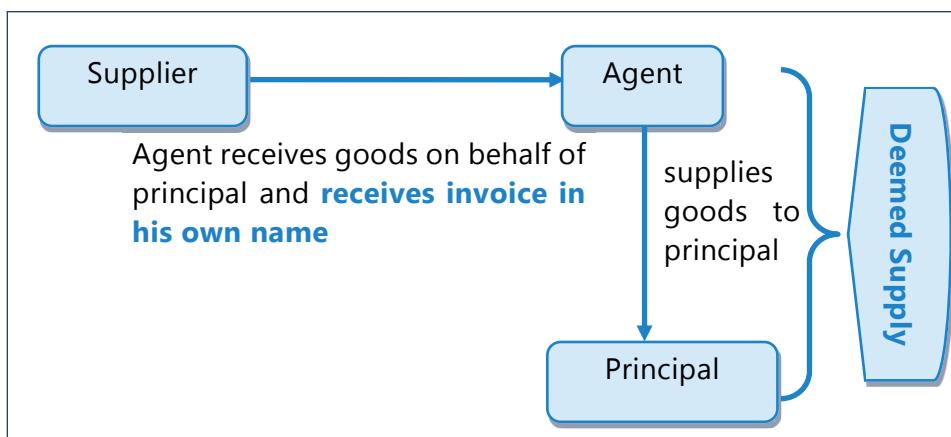


## II. Supply Between Related Persons Or Distinct Persons

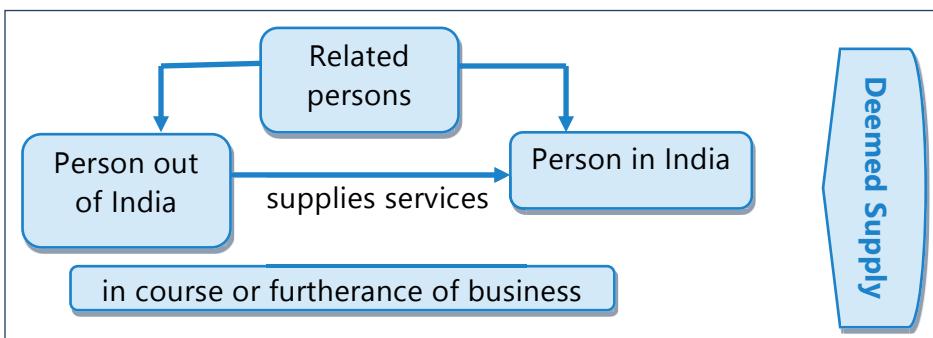


## II. Supply Between Principal And Agent

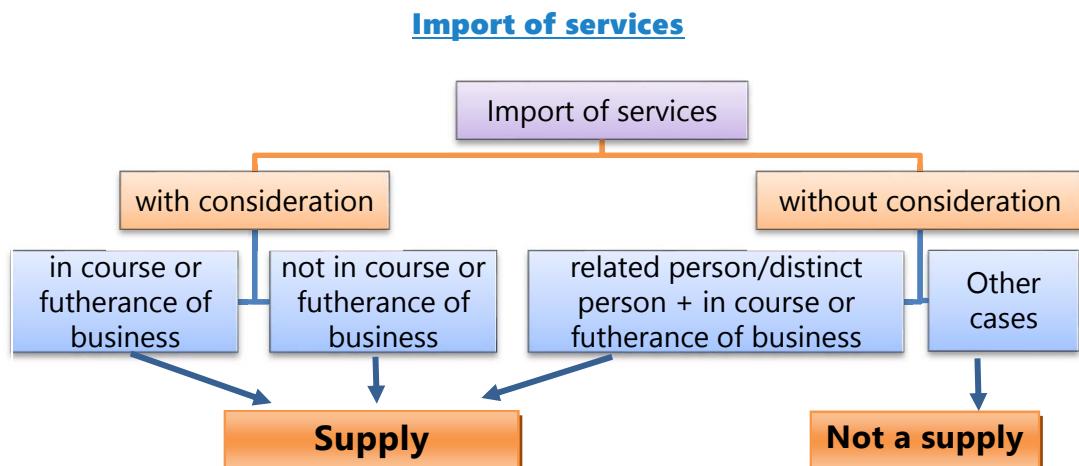




#### IV. Importation of services



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:



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

Para 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 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

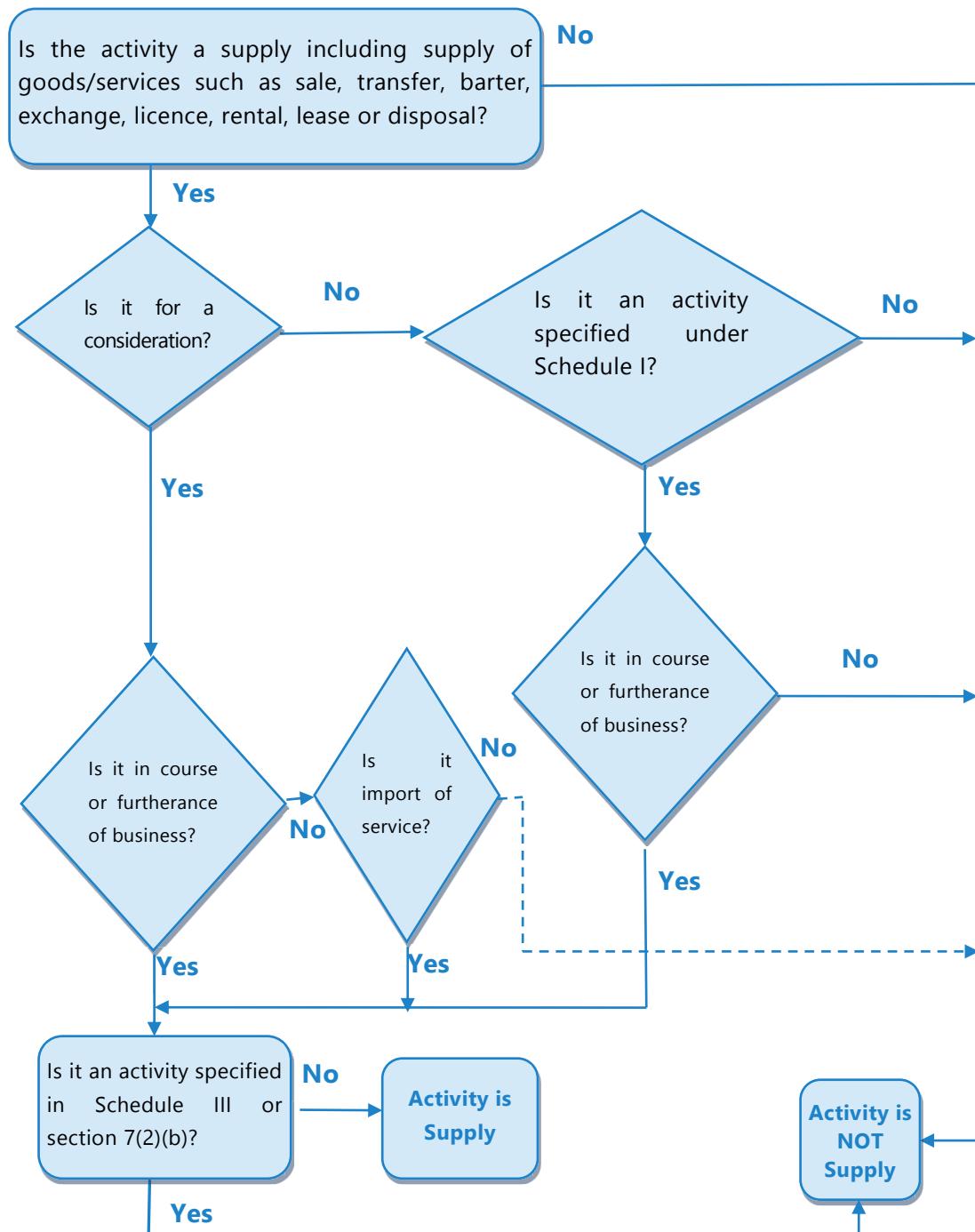
		<p>Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person.</p> <p><b>Exceptions:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Business transferred as a going concern.</li> <li><input type="checkbox"/> Business carried on by a personal representative who is deemed to be a taxable person.</li> </ul>	Goods
5.		<p>Renting of immovable property</p> <p>Construction of complex, building, civil structure, etc.</p> <p><b>Exception:</b> Entire consideration received after issuance of completion certificate or after its first occupation, whichever is earlier.</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 <b>composite supplies</b>:-</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Works contract</li> <li><input type="checkbox"/> Supply of goods, being food or any other article for human consumption or any drink.</li> </ul>	Services
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## 5. Non-supplies under GST [Section 7(2)(a) read with Schedule III]

S. No.	<b>Activities or transactions which shall be treated neither as a supply of goods nor a supply of services</b>
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.	<ul style="list-style-type: none"> <li>(a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;</li> <li>(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or</li> <li>(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.</li> </ul>
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



### Composite Supply

- 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 alongwith mobile phones.

### Mixed Supply

- 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.



## 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 leviability of CGST, SGST/UTGST and IGST on the same?
2. Damodar Private Ltd., registered in Delhi, is planning to transfer some goods to its branch, registered in West Bengal, without any consideration, so that the goods can be sold from the branch. The company believes that the transaction that will be undertaken by it would not qualify as supply as no consideration is involved. Ascertain whether the transfer of goods by Damodar Private Ltd. to its branch office would qualify 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 GST law. You are required to 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, for the purpose of considering tax liability. 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:*
  - (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 from the depot.*
  - (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:*
  - (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 so as no longer to form part of those assets.*
  - (c) *Transfer of right in goods without the transfer of title in such goods.*
  - (d) *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.*

8. Determine whether the following supplies would be treated as supply of goods or supply of services as per Schedule II:
  - (a) Temporary transfer or permitting use or enjoyment of any intellectual property right.
  - (b) Any treatment or process which is applied to another person's goods.
  - (c) 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:
  - (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?
11. 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.*

12. *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:*

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

13. *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 leviability 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.*

14. *Sarvanna & Sons wishes to start supplying alcoholic liquor for human consumption in the State of Tamil Nadu. Therefore, it applies for license to the Tamil Nadu Government for selling liquor for which the State Government 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.*



## ANSWERS/HINTS

1. Taxable event under GST is the supply of goods or services or both made for consideration in the course or furtherance of business. CGST and SGST will be levied on intra-State supplies. IGST will be levied on inter-State supplies.
2. As per Schedule I read with section 7(1)(c), 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 would qualify as supply.
3. Section 7(1)(a) stipulates that the supply should be for a consideration and should be in the course or furtherance of business. However, section 7(1)(c) read with Schedule I 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 ₹ 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.
  - (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. For considering tax liability, 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 need 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).

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 in terms of Schedule II.

6. (a) Schedule I read with section 7(1)(c), *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)].

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.

- (b) Schedule I read with section 7(1)(c), *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), 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 so, 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.

- (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 read with Schedule I as although the same are provided in course or furtherance of business, but are provided without consideration and 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 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, *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, *inter alia*, stipulates that import of services by a taxable person from a **related person** located outside India, without consideration is treated as supply only 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), 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 Shrini has taken interior decoration services for her residence and not in course or furtherance of business. Consequently, services provided by Miss Shrini's brother to her would not be treated as supply under section 7 read with Schedule I.

- (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 read with Schedule I, as the same are provided in course or furtherance of business.
11. In the given case, the items supplied by Dum dum 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, Dum dum 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.

12. As per section 2(74), 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), 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 ( $20,000 \times ₹ 30$ ) is 18%.

13. As per section 25(4)<sup>35</sup>, 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, as per CBIC circular, the inter-State movement of various modes of conveyance including, *inter alia*, trucks, carrying goods or passengers or both or for repairs and maintenance, between 'distinct persons' as specified in section 25(4), not involving further supply of such conveyance, may be treated 'neither as a supply of goods nor supply of service' and therefore, will not be leviable to IGST. Applicable CGST/SGST/IGST, however, shall be leviable on

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<sup>35</sup> Provisions of section 25(4) have been discussed in detail in Chapter 9 – Registration in Module 2 of this Study Material

repairs and maintenance done for such conveyance [*Circular No. 1/1/2017 IGST dated 07.07.2017*].

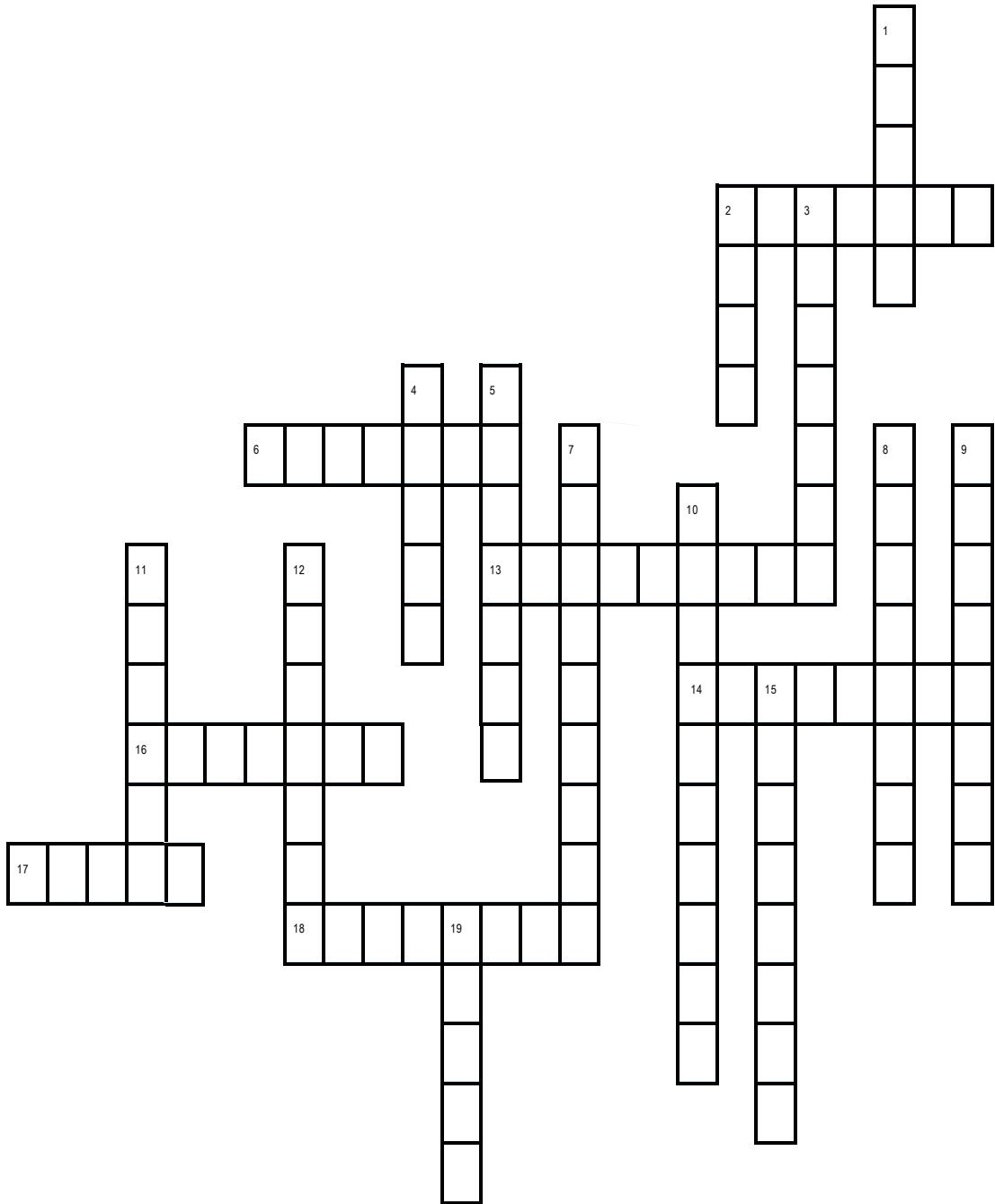
Thus, in the given case, inter-State movement of trucks from the workshop of Gagan Engineering Pvt. Ltd. located in Haryana to its repair centres located in other States is 'neither a supply of goods nor supply of service'.

14. 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.

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.



## CROSSWORD PUZZLE



**ACROSS**

2. Actionable claims, other than \_\_\_\_\_, betting and gambling is neither supply of goods nor supply of services.
6. Non-taxable territory means the territory which is \_\_\_\_\_ the taxable territory.
13. \_\_\_\_\_ transfer or permitting use or enjoyment of any intellectual property right is supply of services.
14. Business includes \_\_\_\_\_.
16. Persons shall be deemed to be \_\_\_\_\_ if they are legally recognised partners.
17. Services means anything other than goods, \_\_\_\_\_ and securities.
18. Taxable supply means a supply of goods or services or both which is \_\_\_\_\_ to tax under CGST Act.

**DOWNTWARDS**

1. \_\_\_\_\_ supply means two or more individual supplies made in conjunction with each other for a single price where such supply does not constitute a composite supply.
2. Sale of \_\_\_\_\_ is neither supply of goods nor supply of services.
3. Any lease, \_\_\_\_\_, easement, licence to occupy land is supply of services.
4. Any transfer of \_\_\_\_\_ in goods is supply of goods.
5. \_\_\_\_\_ of immovable property is supply of services.
7. \_\_\_\_\_ supply means a supply comprising of two or more taxable supplies naturally bundled and supplied in conjunction with in the ordinary course of business.
8. Manufacture means processing of raw material in any manner that results in emergence of a new product having a \_\_\_\_\_ name and character.
9. Admission of persons to any premises for a consideration is also included in\_\_\_\_\_.

10. Taxable territory means the territory to which the \_\_\_\_\_ of CGST Act apply.
11. Supply should be made in the \_\_\_\_\_ or furtherance of business.
12. Government means the \_\_\_\_\_ Government.
15. Any \_\_\_\_\_ that is held for its numismatic value is not money.
19. Principal-agent relationship falls within the ambit of the Para 3 of Schedule I of the CGST Act, 2017 if invoice is issued in the name of \_\_\_\_\_.

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**Scan the following QR code for accessing the answers to MCQs in Quiz Time and Cross word puzzle of this chapter.**



# NOTES