



Refresher Course on

GST

BACKGROUND MATERIAL



BOARD OF STUDIES

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

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This Background Material has been prepared by the Board of Studies. The objective of the Background Material is to impart broad conceptual knowledge of the provisions of GST law, to the students. For detailed and in-depth study of the subject, students are advised to refer to the Study Material on Indirect Taxes/Indirect Tax Laws for Intermediate/Final Course, as the case may be.

All care has been taken to provide interpretations and discussions in a manner useful for the students. However, the Background Material has not been specifically discussed by the Council of the Institute or any of its Committees and the views expressed herein may not be taken to necessarily represent the views of the Council or any of its Committees.

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PREFACE

July 1, 2017 has been etched in the annals of the fiscal history of our country as the date of birth of Goods and Services Tax, the most pathbreaking and radical tax reform in the Indian economy.

GST has brought with it multifarious advantages for the trade and industry; it amalgamates a large number of Central and State taxes into a single tax, it mitigates cascading of taxes, it breaks the artificial trade barriers to create a common national market. It is expected that eventually, the consumers would also benefit from GST in terms of a reduction in the overall tax burden on goods, which was estimated to be around 25%-30% under the earlier indirect taxation regime. GST would also make Indian products competitive in the domestic and international markets and would give a fillip to the economic growth.

You being the future Chartered Accountants have the onerous responsibility to keep yourself abreast with such a tectonic shift in the fiscal space. We, at ICAI, always endeavour to facilitate our students in remaining updated and *au courant* with the economic developments. The Refresher Course on GST has been designed by the Board of Studies to disseminate knowledge on GST amongst students and build their capacities in this new tax regime. To facilitate students further, the Board of Studies has also prepared this Background Material on GST to supplement the knowledge gained through the various sessions of the Course. However, for a detailed and in-depth study of the subject, students are advised to refer to the Study Material on Indirect Taxes/Indirect Tax Laws for Intermediate/Final Course, as the case may be. Further since GST is an evolving law, frequent changes are being made therein. Therefore, students are advised to keep themselves abreast with the updated position of law.

The discussion on the GST law in this Background Material incorporates the various educational material provided by the CBEC on its website www.cbec.gov.in namely,

FAQs on GST, e-fliers issued on various aspects of GST, sectoral FAQs as also the user manuals and FAQs available on the GST common portal www.gst.gov.in, to the extent relevant to such discussion.

The Background Material is divided into fourteen chapters covering all the significant provisions of GST law namely, supply, levy and collection of GST, place of supply, time and value of supply, input tax credit, registration, invoice and records, payment of tax, returns, refunds, assessment, offences & penalties etc.

We are sure that you will make full use of this Background Material on GST and continue increasing your knowledge base in this area.

Happy Reading and Best Wishes!

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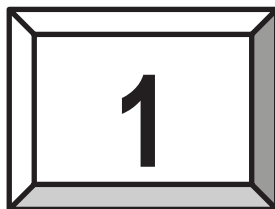
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INTRODUCTION TO GST

1. CONCEPT OF GST

GST stands for Goods and Services Tax, which is a destination based tax levied on the supply of goods or services or both in India. A destination based tax accrues to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply. GST is levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as setoff. In a nutshell, only value addition is to be taxed and burden of tax is to be borne by the final consumer.

2. WHY GST WAS INTRODUCED IN INDIA?

The deficiencies in the earlier value added taxation has led to the introduction of GST. GST is a cure for ills of existing indirect tax regime. In the earlier indirect tax regime, a manufacturer of excisable goods charged excise duty and value added tax (VAT) on intra-State sale of goods. However, the VAT dealer on his subsequent intra-State sale of goods charged VAT (as per prevalent VAT rate as applicable in the respective State) on value comprising of (basic value + excise duty charged by manufacturer + profit by dealer).

Further, in respect of tax on services, service tax was payable on all 'services' other than the Negative list of services or otherwise exempted. The earlier indirect tax framework in India suffered from various shortcomings. Under the earlier indirect tax structure, the various indirect taxes being levied were not necessarily mutually exclusive.

Moreover, CENVAT was applicable only at manufacturing level and not at distribution levels. The erstwhile sales tax regime in India was a combination of origin based (Central Sales Tax) and destination based multipoint system of taxation (State-Level VAT). Service tax was also a value added tax and credit across the service tax and the central excise duty was integrated at the central level.

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

- ❖ Double taxation of a transaction as both goods and services
- ❖ Cascading of taxes on account of (i) levy of Non-VATable CST and (ii) inclusion of CENVAT in the value for imposing VAT
- ❖ Non-integration of VAT & service tax
- ❖ Non-inclusion of several local levies in State VAT such as luxury tax, entertainment tax, etc.
- ❖ No CENVAT after manufacturing stage

A comprehensive tax structure covering both goods and services viz. Goods and Service Tax (GST) addresses these problems. Simultaneous introduction of GST at both Centre and State levels has integrated taxes on goods and services for the purpose of set-off relief and ensures that both the cascading effects of CENVAT and service tax are removed and a continuous chain of set-off from the original producer's point/ service provider's point upto the retailer's level/ consumer's level is established.

3. ADVENT OF GST IN INDIA

The idea of moving towards the GST was first mooted by the then Union Finance Minister in his Budget for 2007-08. Initially, it was proposed that GST would be introduced from 1st April, 2010. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST.

Joint Working Groups of officials having representatives of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies. Based on discussions within and between it and the Central Government, the EC released its First Discussion Paper (FDP) on GST in November, 2009. This spelled out the features of the proposed GST and has formed the basis for discussion between the Centre and the States so far.

The talks of ushering in GST, however, gained momentum in the year 2014 when the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST. The Lok Sabha passed the Bill on 6th May, 2015 and Rajya Sabha on 3rd August, 2016.

Subsequent to ratification of the Bill by more than 50% of the States, Constitution (122nd Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became Constitution (101st Amendment) Act, 2016, which paved the way for introduction of GST in India. In the following year, in April, 2017, the Central GST legislations - Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were enacted followed by the enactment of the State GST laws by various State Legislatures.

4. TAXES SUBSUMED UNDER GST

Central levies to be subsumed

- Central Excise Duty & Additional Excise Duties
- Service Tax
- Excise Duty under Medicinal & Toilet Preparation Act
- CVD & Special CVD
- Central Sales Tax
- Central surcharges and Cesses in so far as they relate to supply of goods & services

State levies to subsumed

- State surcharges and cesses in so far as they relate to supply of goods & services
- Entertainment Tax (except those levied by local bodies)
- Tax on lottery, betting and gambling
- Entry Tax (All Forms) & Purchase Tax
- VAT/ Sales tax
- Luxury Tax
- Taxes on advertisements

5. KEY FEATURES OF GST AS INTRODUCED IN INDIA

In India, GST is levied on all goods and services, except alcoholic liquor for human consumption and petroleum crude, diesel, petrol, ATF and natural gas. **Alcoholic liquor for human consumption**: is outside the realm of GST. The manufacture/production of alcoholic liquor continues to be subjected to **State excise duty** and inter-State/intra-State sale of the same is subject to **VAT/CST** respectively. **Petroleum crude, diesel, petrol, ATF and natural gas**: As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council. Till such date, **central excise duty** continues to be levied on manufacture/production of petroleum crude, diesel, petrol, ATF and natural gas and inter-State/intra-State sale of the same is subject to **VAT/CST** respectively.

Tobacco: Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in India. Resultantly, **tobacco is subject to GST as well as central excise duty**. Further, **real estate sector** has been kept out of ambit of GST, i.e. GST will not be levied on sale/purchase of immovable property.

Key features of GST as introduced in India are as follows:

I. Dual GST:

India is a federal country where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which

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they need to raise resources. A dual GST will, therefore, be in keeping with the Constitutional requirement of fiscal federalism. Consequently, India has adopted a **Dual GST model**. GST extends to whole of India including the State of Jammu and Kashmir.

II. CGST/SGST/UTGST/IGST

GST in India comprises of Central Goods and Service Tax (CGST) - levied and collected by Central Government, State Goods and Service Tax (SGST) - levied and collected by State Governments/Union Territories with State Legislatures and Union Territory Goods and Service Tax (UTGST) - levied and collected by Union Territories without State Legislatures, on intra-State supplies of taxable goods and/or services. Inter-State supplies of taxable goods and/or services are subject to Integrated Goods and Service Tax (IGST). IGST is approximately the sum total of CGST and SGST/UTGST and is levied by Centre on all inter-State supplies.

III. Legislative Framework

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

IV. Classification of goods and services

HSN (Harmonised System of Nomenclature) code is used for classifying the goods under the GST.

A new **Scheme of Classification of Services** has been devised wherein the services of various descriptions have been classified under various sections, headings and groups. Each group consists of various Service Codes (Tariff). Chapters referred are the Chapters of the First Schedule to the Customs Tariff Act, 1975.

V. Seamless flow of credit

Since GST is a destination based consumption tax, revenue of SGST ordinarily accrues to the consuming States. The inter-State supplier in the exporting State is allowed to set off the available credit of IGST, CGST and SGST/UTGST (in that order) against the IGST payable on inter-State supply made by him. The buyer in the importing State is allowed to avail the credit of IGST paid on inter-State purchase made by him. Thus, unlike the earlier scenario where the credit chain used to break in case of inter-State sales on account of non-VATable CST, under GST regime there is a seamless credit flow in case of inter-State supplies too. The revenue of inter-State sale does not

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accrue to the exporting State and the exporting State transfers to the Centre the credit of SGST/UTGST used in payment of IGST.

The Centre transfers to the importing State the credit of IGST used in payment of SGST/UTGST. Thus, the inter- State trade of goods and services (IGST) needed a robust settlement mechanism amongst the States and the Centre. A Common Portal was needed which could act as a clearing house and verify the claims and inform the respective Governments to transfer the funds. This was possible only with the help of a strong IT Infrastructure.

VI. GST Common Portal

Resultantly, Common GST Electronic Portal – www.gst.gov.in – a website managed by Goods and Services Network (GSTN) [a company incorporated under the provisions of section 8 of the Companies Act, 2013] has been set by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States. The GST portal is accessible over Internet (by taxpayers and their CAs/Tax Advocates etc.) and Intranet by Tax Officials etc. The portal is one single common portal for all GST related services. A common GST system provides linkage to all State/ UT Commercial Tax Departments, Central Tax authorities, Taxpayers, Banks and other stakeholders. The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities. Primarily, GSTN provides three front end services to the taxpayers namely registration, payment and return through GST Common Portal.

VII. GSPs/ASPs

GSTN has selected certain IT, ITeS and financial technology companies, to be called GST Suvidha Providers (GSPs). GSPs develop applications to be used by taxpayers for interacting with the GSTN. They facilitate the tax payers in uploading invoices as well as filing of returns and act as a single stop shop for GST related services. They customize products that address the needs of different segment of users. GSPs may take the help of Application Service Providers (ASPs) who act as a link between taxpayers and GSPs.

VIII. Compensation Cess

A GST Compensation Cess at specified rate has been imposed under the Goods and Services Tax (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed on value of taxable supply. Compensation cess is leviable on intra-State supplies and inter-State supplies.

| |
|--------------------------|
| <h2>6. GST BENEFITS</h2> |
|--------------------------|

GST brings benefits to all the stakeholders viz. industry, Government and the citizens. It is expected to lower the cost of goods and services, boost the economy and make our products and services

globally competitive. GST aims to make India a common national market with uniform tax rates and procedures and removes the economic barriers, thereby paving the way for an integrated economy at the national level. GST is expected to bring buoyancy to the Government Revenue by widening the tax base and improving the taxpayer compliance.

GST has subsumed majority of existing indirect tax levies both at Central and State level into one tax i.e., GST which is leviable uniformly on goods and services. This will make doing business easier and will also tackle the highly disputed issues relating to double taxation of a transaction as both goods and services. GST will give a major boost to the 'Make in India' initiative of the Government of India by making goods and services produced in India competitive in the national as well as international market.

GST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level. By subsuming most of the Central and State taxes into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it would mitigate the ill effects of cascading, improve competitiveness and improve liquidity of the businesses.

7. CONSTITUTIONAL PROVISIONS

India has a three-tier federal structure, comprising the Union Government, the State Governments and the Local Government. The power to levy taxes and duties is distributed among the three tiers of Governments, in accordance with the provisions of the Indian Constitution. The Constitution of India is the supreme law of India. It consists of a Preamble, 25 parts containing 448 Articles and 12 Schedules.

Power to levy and collect taxes whether, direct or indirect emerges from the Constitution of India. In case any tax law, be it an act, rule, notification or order is not in conformity with the Constitution, it is called *ultra vires* the Constitution and is illegal and void. Thus, a study of the basic provisions of the Constitution is essential for understanding the genesis of the various taxes being imposed in India. The significant provisions of the Constitution relating to taxation are:

1. Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that “**no tax shall be levied or collected except by authority of law**”. The term “authority of law” means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.
2. Part XI of the Constitution deals with relationship between the Union and States. The power for enacting the laws is conferred on the Parliament and on the Legislature of a State by Article 245 of the Constitution. The said Article provides as under:
 - Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.

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- No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.
3. Article 246 gives the respective authority to Union and State Governments for levying tax. Whereas Parliament may make laws for the whole of India or any part of the territory of India, the State Legislature may make laws for whole or part of the State.
4. Seventh Schedule to Article 246 contains three lists which enumerate the matters under which the Union and the State Governments have the authority to make laws.

| LIST – I | LIST – II | LIST – III |
|--|--|---|
| <ul style="list-style-type: none">• UNION LIST• It contains the matters in respect of which the Parliament (Central Government) has the exclusive right to make laws. | <ul style="list-style-type: none">• STATE LIST• It contains the matters in respect of which the State Government has the exclusive right to make laws . | <ul style="list-style-type: none">• CONCURRENT LIST• It contains the matters in respect of which both the Central & State Governments have power to make laws. |

Entries 82 to 91 of List I enumerate the subjects where the Central Government has power to levy taxes. Entries 45 to 63 of List II enumerate the subjects where the State Governments have the power to levy taxes. Parliament has a further power to make any law for any part of India not comprised in a State even if such matter is included in the State List.

Income tax is levied by virtue of Entry 82 - Taxes on income other than agricultural income and customs duty vide Entry 83 - Duties of customs including export duties of the Union List. Power to levy Goods and Services Tax (GST) has been conferred by Article 246A of the Constitution which was introduced by the Constitution (101st Amendment) Act, 2016. Before discussing the significant provisions of the Constitution (101st Amendment) Act, 2016, let us first understand why there arose a need for such constitutional amendment.

Need for constitutional amendment

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

Introduction of the GST required amendment in the Constitution so as to enable integration of the central excise duty including additional duties of customs, State VAT and certain State specific taxes

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and service tax levied by the Centre into a comprehensive Goods and Services Tax and to empower both Centre and the States to levy and collect it. Consequently, Constitution (101st Amendment Act), 2016 (hereinafter referred to as CAA) was passed. It has 20 sections. Newly inserted Article 279A empowering President to constitute GST Council was notified on 12.09.2016. Remaining provisions were notified with effect from 16.09.2016. CAA also provides for compensation to States for loss of revenue on account of introduction of goods and services tax. Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years.

Significant provisions of Constitution (101st Amendment) Act, 2016

5. **Article 246A: Power to make laws with respect to Goods and Services Tax:** This article grants power to Centre and State Governments to make laws with respect to GST imposed by Centre or such State. It stipulates as follows:

- (1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.
- (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation—The provisions of this article, shall, in respect of goods and services tax referred to in article 279A(5), take effect from the date recommended by the Goods and Services Tax Council.

6. **Article 248 amended-Residuary powers of legislation:** Article 248 grants the residuary powers to Parliament to make laws with respect to any matter not enumerated in the Concurrent List or State List. Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists. This article has been amended. Now, this power has been subjected to Article 246A, namely the power to make laws with respect to goods and service tax to be imposed by the Centre and States.

7. **Power of Parliament to legislate with respect to a matter in the State List, in the national interest/in case of emergency, extended to GST provided under Article 246A:** Article 249 grants the Parliament the power to make laws with respect to a matter in the State list in national interest in a case where the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting on any matter enumerated in the State List. Similarly, Article 250 grants the Parliament the power to make laws with respect to any of the matters enumerated in the State List if a proclamation of Emergency is in operation. Articles 249 and 250 have been amended to grant power to Parliament to make laws with respect to the Goods and Services Tax provided under Article 246A also alongwith the matters in the State list, in the national interest/in case of emergency.

8. **Article 268-Duties levied by the Centre but collected and appropriated by the States:** Article 268 pertains to the duties levied by the Centre but collected and appropriated by the

States. It stipulates that such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected in the case where such duties are leviable within any Union territory, by the Government of India, and in other cases, by the States within which such duties are respectively leviable. The CAA omits “and such duties of excise on medicinal and toilet preparations” from Article 268. Duties of excise on medicinal and toilet preparations have been subsumed into the goods and service tax to be levied by the Centre and States.

9. **Article 268A empowering Union to levy service tax omitted:** Service tax was levied in 1994 under the residual Entry 97 of the Union list. Article 268A was inserted by the Constitution (88th) Amendment Act, 2003 to usher in service tax under a separate entry 92C in the Union List. However, it was not notified ever since. This article has been omitted by the CAA.
10. **Newly inserted Article 269A-Levy and collection of GST on inter-State supply:** (i) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.
 - (ii) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.
 - (iii) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.
 - (iv) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.
 - (v) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.
11. **Article 270-Distribution of the goods and services tax (GST) between the Centre and the States:** Article 270 is amended to provide for distribution of the goods and services tax between the Centre and the States, by order of the President after considering recommendations of the Finance Commission. This applies for those tax amounts apportioned or payable to the Central Government for taxes levied by it under articles 246A(1) and (2) and Clause (1) of 269A.
12. **Article 271 amended:** Article 271 empowers Parliament to increase any of the duties, or taxes referred to in articles 269 or 270. It further provides that such surcharge is not shareable and remains with the Centre. Now this article is amended to exclude GST from its purview.

13. **Definitions of ‘Goods and Services Tax’, ‘Services’ and ‘State’ incorporated under Article 366:** The terms **Goods and Services Tax**, **services** and **State** have been defined under respective clauses of Article 366 as follows:

- **Goods and services tax** means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. Consequently, GST can be levied on supply of all goods and services except alcoholic liquor for human consumption.
- **Services** means anything other than goods.
- **State**, with reference to articles 246A, 268, 269, 269A and article 279A, includes a Union territory with Legislature.

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

14. **Article 286 imposing restrictions as to imposition of tax on the sale or purchase of goods amended:** Article 286 which restrains the States from framing laws for imposition of any tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in course of the import of the goods into, or export of the goods out of, the territory of India. This article has been amended to incorporate the changes arising out of GST by substituting the words “sale or purchase” with “supply” and words “goods” with “goods or services or both”.

Consequently, States have no right to impose GST on inter-State supply of goods or services or both. It will be levied by Union Government under Article 269A as mentioned earlier. Further, clause (3) of Article 286 which stipulates that any law of a State shall, in so far as it imposes, or authorises the imposition, of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subjected to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax, as Parliament may, by law, specify, has been omitted.

15. **GST Council: Article 279A**

- Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
- The provisions relating to GST Council came into force on 12th September, 2016. President constituted the GST Council on 15th September, 2016.
- The GST Council shall consist of the following members, namely:—
 - (a) the Union Finance Minister is the Chairperson;
 - (b) the Union Minister of State in charge of Revenue or Finance is the Member;
 - (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government are the Members.

INTRODUCTION TO GST

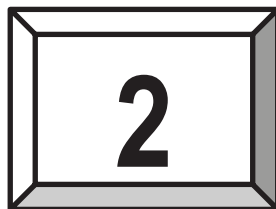
- The Members of the GST Council referred to clause (c) above shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.
- The GST Council shall make recommendations to the Union and the States on—
 - (a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the GST;
 - (b) the goods and services that may be subjected to, or exempted from GST;
 - (c) model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-State trade/commerce under article 269A and principles that govern the place of supply;
 - (d) the threshold limit of turnover below which goods and services may be exempted from GST;
 - (e) the rates including floor rates with bands of GST;
 - (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
 - (g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand [*Such States are referred as Special Category States*]; and
 - (h) any other matter relating to the goods and services tax, as the Council may decide.
- The GST Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.
- While discharging the functions conferred by this article, the GST Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.
- One-half of the total number of Members of the GST Council shall constitute the quorum at its meetings.
- The GST Council shall determine the procedure in the performance of its functions.
- Every decision of the GST Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:
 - (a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and
 - (b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.
- No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of:

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- (a) any vacancy in, or any defect in, the constitution of the Council; or
 - (b) any defect in the appointment of a person as a Member of the Council; or
 - (c) any procedural irregularity of the Council not affecting the merits of the case.
- The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute:
- (a) between the Government of India and one or more States; or
 - (b) between the Government of India and any State or States on one side and one or more other States on the other side; or
 - (c) between two or more States, arising out of the recommendations of the Council or implementation thereof.

16. Article 368 amended

Article 368 has been amended to include Article 279A also within its purview. Consequently, at least two-thirds of the majority in each House of the Parliament and ratification by at least half of the States is specifically required to make any amendment in Article 279A relating to GST Council.



SUPPLY

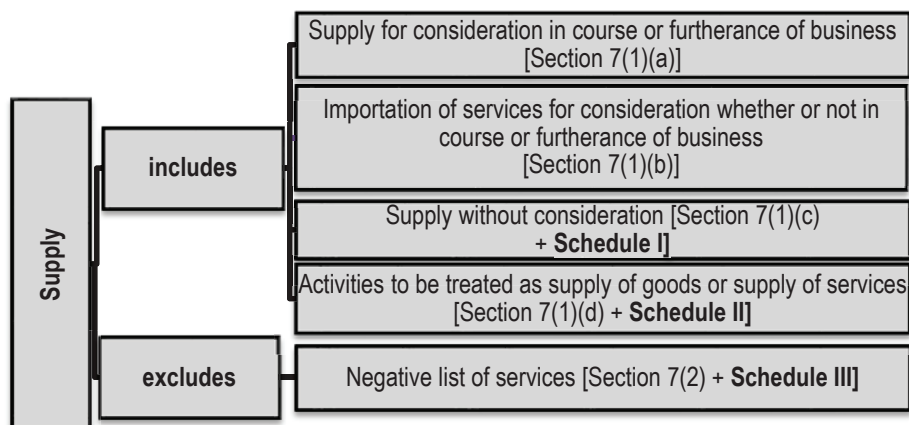
Taxable event under GST is 'supply'. GST Law, by levying tax on the 'supply' of goods and/or services, departs from the historically understood concepts of 'taxable event' under the State VAT Laws, Excise Laws and Service Tax Laws i.e. sale, manufacture and service respectively.

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

The concept of 'supply' is the key stone of the GST architecture. The meaning and scope of supply taxable under GST can be understood in terms of following parameters, which can be adopted to characterize a transaction as supply:

1. Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.
5. Supply should be a taxable supply.

Aforesaid parameters describe the concept of taxable supply. However, there are a few exceptions to 2nd and 3rd parameters [the requirement of supply being made for a consideration and in the course or furtherance of business]. Some exceptions have been carved out where a transaction is deemed to be a supply even **without consideration**. Similarly, 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. a list of activities shall be treated as neither supply of goods nor supply of services. In other words, they are outside the scope of GST. Besides, few activities are to be treated 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 comprehensively discussed. The discussion is broadly categorised into following:



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

The definition of supply begins with the term ‘**Supply includes**’, thus making it clear that CGST Act intends to give an extensive meaning to the term ‘supply’. The first part of section 7 [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**.

A. MODES OF SUPPLY

Supply **includes** all forms of supply of goods or services or both. Supply of anything other than goods or services does not attract GST. Let us analyse the terms goods and services as defined under the CGST Act:

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.

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. Anything supplied other than goods and services is outside the scope of supply.

Now, we will analyse the various illustrative modes of supply mentioned in section 7(1)(a):

- I. **Sale and Transfer:** Earlier, VAT was levied by the State on the sale of goods which was defined under most State VAT laws as transfer of property in goods for consideration. Under the CGST Act, although sale has been treated as a form of supply leviable to GST, the definition of ‘sale’ has not been provided. Further, the term ‘transfer’ which has also been included as a form of supply is also not defined.
- II. **Barter and Exchange:** While barter may deal with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are partly paid

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for in goods and partly in money. When there is a barter of goods or services, same activity constitutes supply as well as consideration. By making a specific inclusion in the definition of supply, all barter and exchanges would be liable to GST.

- III. **Licence, Lease, Rental etc.:** Licenses, leases and rentals of goods were earlier treated as services where the goods were transferred **without** transfer of right to use (effective possession and control over the goods) and were treated as sales where the goods were transferred **with** transfer of right to use. Under the GST regime, 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.

B. CONSIDERATION

One of the essential conditions for the supply of goods and/or services to fall within the ambit of GST is that a supply is made for a consideration. However, consideration does not always mean money. 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.

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

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

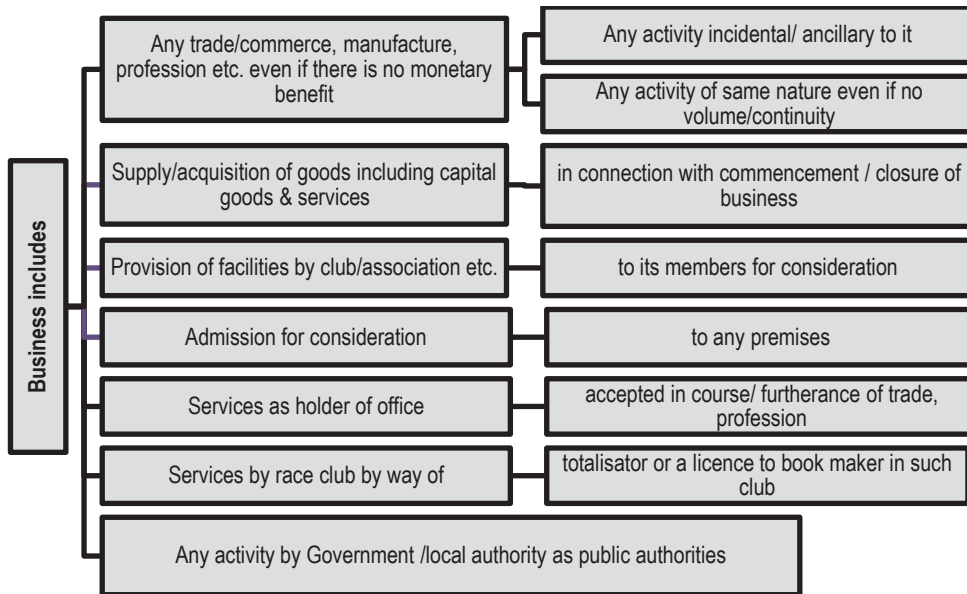
However, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply [Section 2(31) of CGST Act].

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. In order to understand the term 'in the course or furtherance of business', we need to understand the term 'business'. Business as defined under section 2(17) of the CGST Act, *inter alia*, includes any trade, commerce, manufacture, profession, vocation etc. whether or not undertaken for a monetary benefit. It also includes any activity or transaction which is incidental or ancillary to the aforementioned listed activities. In addition, any activity undertaken by the Central

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Govt. or a State Govt. or any local authority in which they are engaged as public authority shall also be construed as business. The definition of business has been summarised in the diagram below:



Any activity undertaken in course/ for furtherance of business would constitute a supply. Since 'business' includes vocation, sale of goods or service even **as a vocation** is a supply under GST.

D. SUPPLY BY A TAXABLE PERSON

A supply to attract GST should be made by a taxable person. Hence, a supply between two non-taxable persons does not constitute taxable supply under GST. The restriction of being a taxable person is only on the supplier whereas the recipient can be either taxable or non-taxable. Further, there is no condition that supply needs to be made to another person, i.e. supplies made to self are also taxable. A "taxable person" is a person who is registered or liable to be registered under section 22 or section 24. Hence, even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person.

E. 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. Exemptions may be provided to the specified goods or services or to a specified category of persons/ entities making supply.

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

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 in course or furtherance of business.

Supply without consideration – Deemed supply [Section 7(1)(c) read with Schedule 1]

This includes all supplies made by a taxable person to a taxable/ non-taxable person, **even if the same is without consideration**. These are specifically mentioned in Schedule I appended to the CGST Act. In the past regime, in every tax statute, "consideration" played the most important role for levying taxes. For eg, if any service was provided for free to a person, such service was not subject to service tax. However, under GST, the importance of consideration has been diluted in certain cases – this is an important departure from the earlier indirect tax regime. As per Schedule I, in the following four cases, supplies made without consideration will be treated as supply under section 7 of the CGST Act:

- I. **Permanent Transfer/Disposal of Business Assets:** Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply. This clause is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration. However, it is important to note that this provision would apply only if input tax credit has been availed on such assets.
- II. **Supply between related person or distinct persons:** Supply of goods or services or both between related persons or between distinct persons as specified in section 25, will qualify as supply **provided it is made in the course or furtherance of business**.
 - (i) **Related persons:** As per explanation to section 15, persons shall be deemed to be "related persons" if—
 - (i) such persons are officers or directors of one another's businesses;
 - (ii) such persons are legally recognised partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;

- (vii) together they directly or indirectly control a third person; or they are members of the same family.

Further, persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

- (ii) **Distinct Persons specified under section 25:** A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as **distinct persons**. Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as **establishments of distinct persons**.
 - (iii) **Stock transfers or branch transfers:** In view of the aforesaid discussion, transactions between different locations (with separate GST registrations) of same legal entity (eg., stock transfers or branch transfers) will qualify as 'supply' under GST which is in contrast to the earlier regime.
 - (iv) **Supply of goods or services or both between an employer and employee:** By virtue of the definition of related person given above, employer and employee are related persons. However, services provided by an employee to the employer in the course of or in relation to his employment are not treated as supply of services [Schedule III of CGST Act].
- III. **Principal – Agent:** Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply. Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.
- IV. **Importation of services:** Import of services by a taxable 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".

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



Section 7(1)(d) of the Act refers to Schedule II for determining whether a particular transaction is a supply of goods or supply of service. This helps in mitigating the ambiguities which existed in earlier laws. Schedule II appended to the CGST Act enlists the matters/transactions to be treated as Supply of either goods or services. The matters listed out are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation.

SUPPLY

These are as follows :-

| S.No. | Transaction | Type | Supply of goods/ services |
|-------|---|--|---------------------------|
| 1. | Transfer | Title in goods | Goods |
| | | Right in goods/ undivided share in goods without transfer of title in goods | Services |
| | | Title in goods under an agreement which stipulates that property shall pass at a future date. | Goods |
| 2. | Land and Building | Lease, tenancy, easement, licence to occupy land | Services |
| | | Lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or 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 or disposed off by/under directions of person carrying on the business so as no longer to form part of those assets, whether or not for consideration | Goods |
| | | Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business, whether or not for consideration | Services |
| | | Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person. Exceptions: -Business is transferred as a going concern to another person. -Business is carried on by a personal representative who is deemed to be a taxable person. | Goods |
| 5. | (a) Renting of immovable property | | |
| | (b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after | | |

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|----|---|----------|
| | <p>issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p> <p>The term construction includes additions, alterations, replacements, or remodeling of any existing civil structure.</p> <p>(c) Temporary transfer or permitting use or enjoyment of any intellectual property right</p> <p>(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software</p> <p>(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.</p> <p>(f) Transfer of right to use any goods for any purpose</p> | Services |
| 6. | <p>Following composite supplies :-</p> <p> Works contract services</p> <p> Supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink.</p> | Services |
| 7. | Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration. | Goods |

Negative list under GST [Section 7(2)(a) read with Schedule III]

- I. **Activities/transactions specified under Schedule III in the CGST Act:** Activities specified under Schedule III can be termed "Negative list" under the GST regime. This schedule specifies transactions/ activities which shall be neither treated as supply of goods nor a supply of services.

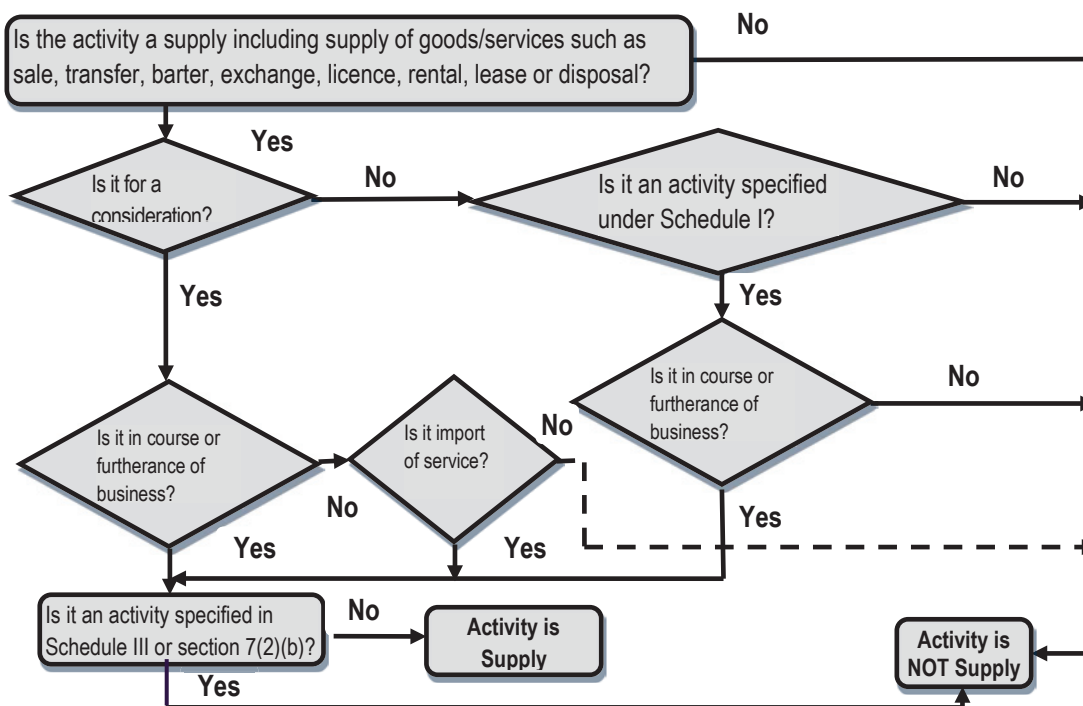
| S.No. | Activities or transactions which shall be treated neither as a supply of goods nor a supply of services |
|-------|--|
| 1. | Services by an employee to the employer in the course of or in relation to his employment. |
| 2. | Services by any court or Tribunal established under any law for the time being in force. The term " Court " includes District Court, High Court and Supreme Court. |
| 3. | (a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities; |

SUPPLY

| | |
|----|--|
| | (b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or (c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause. |
| 4. | Services of funeral, burial, crematorium or mortuary including transportation of the deceased. |
| 5. | Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building. |
| 6. | Actionable claims, other than lottery, betting and gambling. |

II. Activities/transactions notified by the Government: Such activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council shall be treated neither as a supply of goods nor a supply of services. **Notification No. 14/2017 CT (R) dated 28.06.2017** has notified the **services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution** for the said purpose.

Steps to determine whether an activity undertaken is Supply or not



2. COMPOSITE AND MIXED SUPPLIES [SECTION 8]

GST is payable on individual goods or services or both at the notified rates. The application of rates poses no problem if the supply is of individual goods or individual services, which is clearly identifiable and such goods or services are subject to a particular rate of tax. However, in certain cases, supplies are not such simple and clearly identifiable supplies. Some of the supplies are a combination of goods or combination of services or combination of goods and services both and each individual component of such supplies may attract a different rate of tax. In such a case, the rate of tax to be levied on such supplies may be a challenge. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies. In order to determine whether the supplies are 'composite supplies' or 'mixed supplies', one needs to determine whether the supplies are naturally bundled or not naturally bundled in ordinary course of business. The concept and taxability of composite and mixed supplies are discussed hereunder:

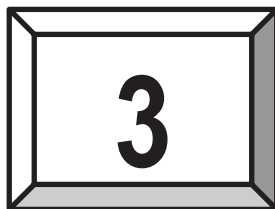
- I. **Composite supply** means a supply made by a taxable person to a recipient and comprises two or more taxable supplies of goods or services or both, or any combination thereof, naturally bundled and supplied in conjunction with each other, in the ordinary course of business, one of which is a principal supply [Section 2(30) of the CGST Act]. This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'.

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

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**.

- II. **Mixed supply** means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply [Section 2(74) of the CGST Act]. The individual supplies are independent of each other and are not naturally bundled.

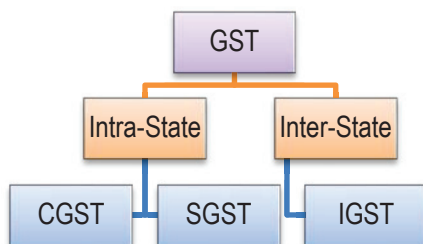
How to determine the tax liability on mixed supplies?: A **mixed supply** comprising of two or more supplies shall be treated as supply of that particular **supply that attracts highest rate of tax**.



LEVY AND COLLECTION OF GST

1. INTRODUCTION

CGST and SGST/UTGST are levied on all **intra-State supplies** of goods and/or services while **IGST** is levied on all **inter-State supplies** of goods and/ or services.



2. EXTENT & COMMENCEMENT OF CGST ACT/ SGST ACT/ UTGST ACT

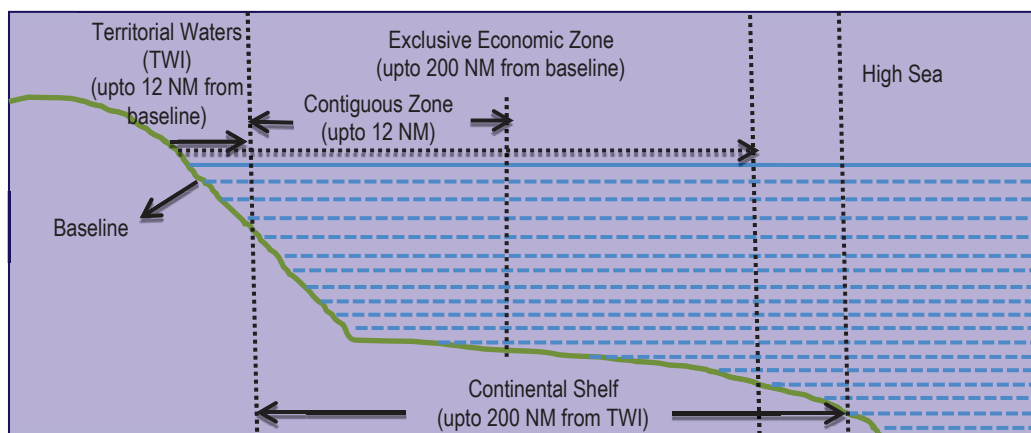
- (i) **Central Goods and Services Tax Act, 2017** extends to the whole of India [Section 1 of the CGST Act]. It is pertinent to note that the CGST Act applies to the State of Jammu and Kashmir also.

India: “India” means-

- territory of India as referred to in article 1 of the Constitution

BACKGROUND MATERIAL

- 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
- the air space above its territory and territorial waters [Section 2(56) of CGST Act].



- (ii) **State GST law** of the respective State/Union Territory with State Legislature [Delhi and Puducherry]** extends to whole of that State/Union Territory.

***State: includes a Union territory with Legislature [Section 2(103) of CGST Act].*

- (iii) **Union Territory Goods and Services Tax Act, 2017** extends to the Union territories of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Chandigarh and other territory, i.e. the Union Territories without State Legislature [Section 1 of the UTGST Act].

Before we go into niceties of leviability of CGST and IGST under respective statutes, let us first understand the terms - inter-State supply, intra-State Supply and supplies in territorial waters.

3. DETERMINATION OF NATURE OF SUPPLY

It is very important to determine the nature of supply – whether it is inter-State or intra-State, as the kind of tax to be paid (IGST or CGST+SGST) depends on the same. Provisions explaining inter-State supply, intra-State supply and supply in territorial waters are contained in sections 7, 8 and 9 of the IGST Act, 2017 respectively. They have been discussed below:

A. Inter-State supply

Subject to the place of supply provisions, where the location of the supplier and the place of supply are in:

- (a) two different States;
- (b) two different Union Territories; or

(c) a State and a Union Territory.

such supplies shall be treated as the supply of goods or services in the course of inter-State trade or commerce.

Any supply of goods or services in the taxable territory, not being an intra-State supply, shall be deemed to be a supply of goods or services in the course of inter-State trade or commerce. Supplies to or by SEZ developers/units are defined as inter-State supply. Further, the supply of goods imported into the territory of India till they cross the customs frontiers of India or the supply of services imported into the territory of India shall be treated as supplies in the course of inter-State trade or commerce. Apart from this, supplies, when the supplier is located in India and the place of supply is outside India shall also be treated as supplies in the course of inter-State trade or commerce. Also, the supplies to international tourists are to be treated as inter-State supplies.

B. Intra-State supply

Subject to the place of supply provisions, any supply where the location of the supplier and the place of supply are in the same State or Union Territory is treated as intra-State supply. Where a person has an establishment in India and any other establishment outside India; or an establishment in a State/UT and any other establishment outside that State or Union territory; or an establishment in a State/UT and any other establishment being a business vertical registered within that State/UT, then such establishments shall be treated as **establishments of distinct persons**. A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

C. Supplies in territorial waters

Notwithstanding anything contained in the IGST Act -

- (a) where the location of the supplier is in the territorial waters, the location of such supplier; or
- (b) where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

After understanding the terms – inter-State supply, intra-State supply and supplies in territorial waters, we shall discuss hereunder the chargeability of CGST and IGST and related provisions.

4. LEVY & COLLECTION OF CGST [SECTION 9 OF THE CGST ACT]

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

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

BACKGROUND MATERIAL

Rates of CGST: Rates for CGST are rates as may be notified by the Government on the recommendations of the GST Council [Rates notified are 0%, 0.125%, 1.5%, 2.5%, 6%, 9% and 14%]. Maximum rate of CGST will be 20%. However, CGST on supply of the following items has not been levied immediately. It shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council:

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

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

CGST shall be paid by the recipient of goods or services or both, on reverse charge basis [*concept of reverse charge has been discussed in detail in subsequent paras*], in the following cases:

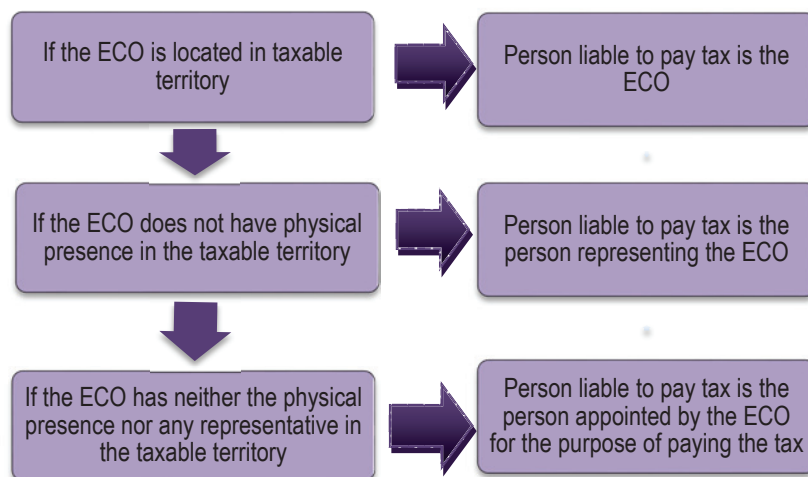
- ❖ Supply of goods or services or both, notified by the Government on the recommendations of the GST Council.
- ❖ Supply of taxable goods or services or both by an unregistered supplier to a registered person (deferred till 31.3.2018).

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

Tax payable by the electronic commerce operator on notified services

- ❖ The Government may notify specific categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator (ECO) if such services are supplied through it. Such services shall be notified on the recommendations of the GST Council.
- ❖ *Notification No. 17/2017 CT (R) dated 28.06.2017* as amended has notified the following categories of services supplied through ECO for this purpose –
 - (a) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;
 - (b) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1) of the CGST Act.
 - (C) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section 22(1) of the CGST Act.
- ❖ All the provisions of the CGST Act shall apply to such ECO as if he is the supplier liable for paying the tax in relation to the supply of above services.

❖ Person liable to pay GST for above specified services when supplied through ECO



Reverse charge mechanism

- Generally, the supplier of goods or services is liable to pay GST. However, in case of certain notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply. There are two type of reverse charge scenarios provided in law.
 - (i) First is dependent on the nature of supply and/or nature of supplier. This scenario is covered by section 9(3) of the CGST/ SGST (UTGST) Act and section 5(3) of the IGST Act.
 - (ii) Second scenario is covered by section 9(4) of the CGST Act and section 5(4) of the IGST Act where taxable supplies by any unregistered person to a registered person are covered (deferred till 31.3.2018).
- It is important to note that GST being an indirect tax, burden of the tax has to be ultimately passed on to the recipient. Under reverse charge also, the burden to pay GST is on the recipient, but the compliance requirements, i.e. to obtain registration under GST, deposit tax, filing returns with the Government, etc. have been shifted from supplier to recipient.
- **Goods and services notified under reverse charge mechanism¹ are as follows:**
 - A. Supplies of goods taxable under reverse charge, i.e. the goods where tax is payable by the recipient:** Goods like cashewnuts [not shelled/peeled], bidi wrapper

¹ The complete list of goods/services supply of which is taxable on reverse charge basis is available on www.cbec.gov.in.

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leaves, tobacco leaves, supply of lottery, silk yarn, etc. are taxable under reverse charge, i.e. recipient is liable to pay tax.

- B. Supply of services taxable under reverse charge, i.e. the services where tax is payable by the recipient:** *Notification No. 13/2017 CT (R) dated 28.06.2017* as amended has notified the categories of supply of services wherein whole of the CGST shall be paid on reverse charge basis by the recipient of services. Supply of services like GTA services, sponsorship services, services by an arbitral tribunal to a business entity, insurance/recovery agent services are taxable under reverse charge, i.e. recipient is liable to pay tax.

GST rates for various goods/services²

- A. GST Rates prescribed for various goods:** Broadly, six rates of CGST have been notified for goods, viz., 0.125%, 1.5%, 2.5%, 6%, 9% and 14%. Some items have been kept at Nil rate. Equivalent rate of SGST/ UTGST will also be levied.
- B. GST Rates prescribed for various services:** Broadly, four rates of CGST have been notified for services, viz., 2.5%, 6%, 9% and 14% vide *Notification No. 11/2017 CT (R) dated 28.06.2017*, subject to the condition(s) specified therein, if any. Equivalent rate of SGST/ UTGST will also be levied. A new **Scheme of Classification of Services³** has been devised wherein the services of various descriptions have been classified under various sections, headings and groups. Each group consists of various Service Codes (Tariff). Chapters referred are the Chapters of the First Schedule to the Customs Tariff Act, 1975.

5. COMPOSITION LEVY [SECTION 10 OF THE CGST ACT]

The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers. Small taxpayers with an aggregate turnover in a preceding financial year up to ₹ 100 lakh shall be eligible for composition levy. Suppliers opting for composition levy need not worry about the classification of their goods or services or both, the rate of GST applicable on the same, etc. They are not required to raise any tax invoice, but simply need to issue a Bill of Supply wherein no tax will be charged from the recipient. At the end of a quarter, the registered person opting for composition levy would pay a certain specified percentage of his turnover of the quarter as tax, without availing the benefit of input tax credit. The provisions relating to composition levy are contained in section 10 of CGST Act, 2017 and Chapter-II [Composition Rules] of Central Goods and Services Tax (CGST) Rules, 2017.

Turnover limit for Composition Levy: The turnover limit for Composition Levy for CGST and SGST purposes for all eligible registered persons is ₹100 lakh. However, the turnover limit for composition levy is ₹ 75 lakh in respect of 9 of the Special Category States namely, Arunachal Pradesh, Mizoram,

² CBEC website may be referred for the complete Schedule of CGST Rates for goods and services.

³ Students may refer the Scheme of Classification of Services from CBEC website.

LEVY AND COLLECTION OF GST

Assam, Nagaland, Manipur, Sikkim, Meghalaya, Tripura and Himachal Pradesh. *In case of **Uttarakhand** and **Jammu and Kashmir**, the turnover limit will be ₹ 100 lakh.

A registered person, opting for composition scheme will pay an amount calculated at the prescribed rates [mentioned in table below]:

| S No. | Category of registered persons | Rate of tax* |
|-------|---|--------------|
| 1 | Manufacturers, other than manufacturers of such goods as may be notified by the Government, i.e. ice cream, pan masala and tobacco. | 1 % |
| 2 | Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II | 2½ % |
| 3 | Any other supplier eligible for composition levy | ½ % |

**These are composition rates specified for CGST. An equivalent amount of SGST/UTGST is also payable.*

Conditions and restrictions for composition levy

Person opting for composition levy has to comply with the following conditions:

- he is neither a casual taxable person nor a non-resident taxable person.
- the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under reverse charge under section 9(4).
- he shall pay tax under section 9(3)/9(4) (reverse charge) on inward supply of goods or services or both.
- he was not engaged in the manufacture of goods as notified under section 10(2)(e), during the preceding FY. For this purpose, ice cream and other edible ice, whether or not containing cocoa, pan masala and tobacco and manufactured tobacco substitutes have been notified vide Notification No. 8/2017 CT dated 27.06.2017.
- he shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him; and
- he shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

Who are not eligible to opt for composition scheme?

Supplier of services other than supplier of food articles.

Supplier of goods which are not taxable under the CGST Act/SGST Act/ UTGST Act.

Supplier of inter-State outward supplies of goods

Person supplying goods through an electronic commerce operator

Manufacturer of icecream, panmasala and tobacco

Other points

The option exercised by a registered person to pay amount under composition levy shall remain valid so long as he satisfies all the conditions mentioned in the said section and these rules. The option to pay tax under composition scheme lapses from the day on which his aggregate turnover during the FY exceeds the specified limit (₹ 100 lakh/₹ 75 lakh). Such person is required to pay normal tax under section 9(1) from the day he ceases to satisfy any of the conditions prescribed for composition levy. He shall issue tax invoice for every taxable supply made thereafter. Further, he is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event.

However, such person shall be allowed to avail the input tax credit (ITC) in respect of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him and on capital goods held by him on the date of withdrawal and furnish a statement, within 30 days of withdrawal of the option, containing the details of such stock held in prescribed form on the common portal. All registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme.

Taxable person opting for the composition scheme shall not collect tax from the recipient on supplies made by him. It implies that a composition scheme supplier cannot issue a tax invoice. Taxable person opting for the composition scheme is not entitled to any credit of input tax. If a taxable person has paid tax under the composition scheme though he was not eligible for the scheme, the person would be liable to penalty and the provisions of section 73 or 74 of the CGST Act shall be applicable for determination of tax and penalty.

Further, where the proper officer has reasons to believe that the registered person was not eligible to pay tax under composition levy or has contravened the provisions of the Act/provisions of this Chapter, he may issue a show cause notice to such person in prescribed form. Upon receipt of the reply to such show cause notice from the registered person in prescribed form, the proper officer shall issue an order in prescribed form within 30 days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under composition levy from the date of the option or from the date of the event concerning such contravention, as the case may be.

6. EXTENT AND COMMENCEMENT OF IGST [SECTION 1 OF IGST ACT]

Integrated Goods and Services Tax Act, 2017 extends to the whole of India. The term 'India' has already been defined in preceding paras. IGST is levied on the inter-State supply of goods or services or both. *It is pertinent to note that the IGST Act applies to the State of Jammu and Kashmir also.*

7. LEVY & COLLECTION OF IGST [SECTION 5 OF THE IGST ACT]

A tax called the Integrated Goods and Services Tax (IGST) shall be levied on all inter-State supplies of goods or services or both. The tax shall be collected in such manner as may be prescribed and shall be paid by the taxable person. However, inter-State supply of alcoholic liquor for human consumption is outside the purview of IGST.

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

Rates of IGST: IGST is approximately the sum total of CGST and SGST/UTGST. Maximum rate of IGST will be 40%.

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

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

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

Goods imported into India: All imports are deemed as inter-State supplies and accordingly IGST shall be levied on imported goods in addition to the applicable custom duties. The integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under the Customs Act, 1962. The integrated tax on goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

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

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

- ❖ Supply of goods or services or both, notified by the Government on the recommendations of the GST Council.
- ❖ Supply of taxable goods or services or both by an unregistered supplier to a registered person (deferred till 31.3.2018).

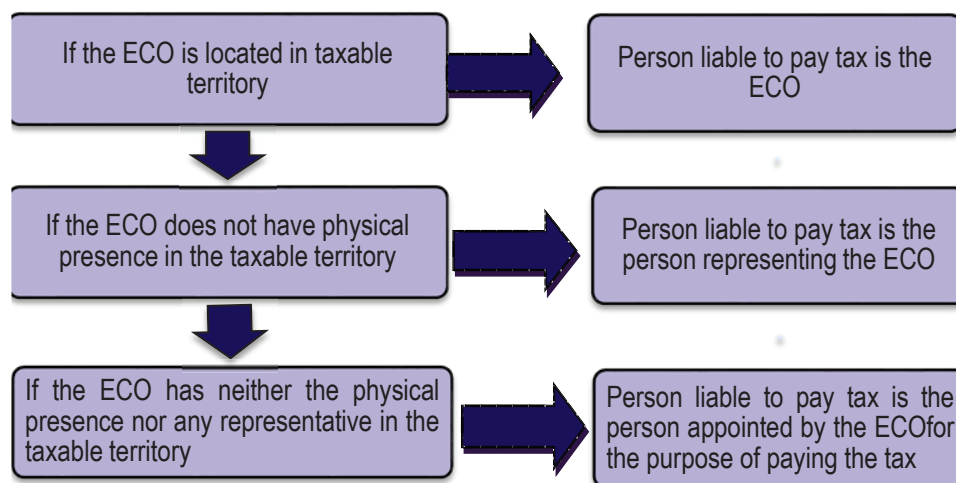
All the provisions of the IGST Act shall apply to the recipient in the aforesaid cases as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Notification No. 10/2017 IT (R) dated 28.06.2017 has notified specified categories of supply of services wherein whole of the IGST shall be paid on reverse charge basis by the recipient of services⁴.

Tax payable by the electronic commerce operator on notified services

- ❖ The Government may notify specific categories of services the tax on inter-State supplies of which shall be paid by the electronic commerce operator (ECO) if such services are supplied through it. Such services shall be notified on the recommendations of the GST Council.
- ❖ *Notification No. 14/2017 IT (R) dated 28.06.2017* as amended has notified the following categories of services supplied through ECO for this purpose –
 - (a) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;
 - (b) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under section 20(v) of the IGST Act read with section 22(1) of the CGST Act.
 - (c) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act
- ❖ All the provisions of the IGST Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

⁴ The list of services supply of which is taxable on reverse charge basis is available on www.cbec.gov.in.



IGST Rates prescribed for various goods: Broadly, six rates of IGST have been notified for goods, viz., 5%, 12%, 18%, 28%, 3% and 0.25%⁵.

IGST Rates prescribed for various services: Broadly, four rates of IGST have been notified for services, viz., 5%, 12%, 18% and 28%. IGST rates for services can be computed on the basis of the CGST and SGST rates prescribed for such services⁶.

For certain specified goods and services, nil rate of IGST has been notified.

OIDAR Services

Online Information Database Access and Retrieval services (OIDAR) is a category of services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services. Section 2(17) of the IGST Act defines OIDAR as services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated involving minimal human intervention. These include electronic services such as:

- (i) Advertising on the internet
- (ii) Providing cloud services
- (iii) Provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet

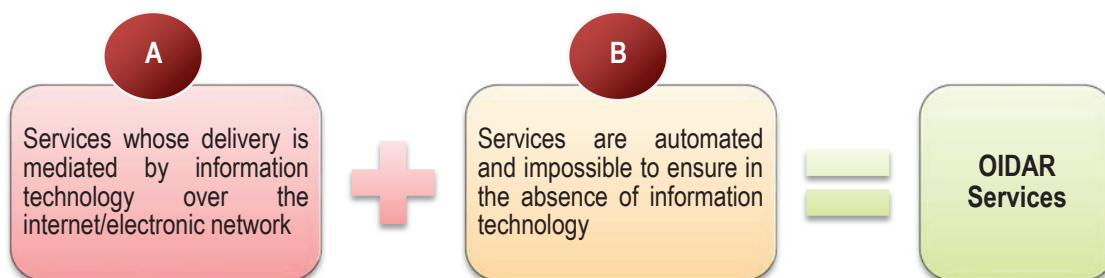
⁵ Students may refer the CBEC website for the complete Schedule of IGST Rates for goods for knowledge purposes.

⁶ Students may refer the CBEC website for the complete Schedule of IGST Rates for services for knowledge purposes.

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- (iv) Providing data or information, retrievable or otherwise, to any person in electronic form through a computer network
- (v) Online supplies of digital content (movies, television shows, music and the like)
- (vi) Digital data storage
- (vii) Online gaming.

The above definition makes it apparent that in order to determine whether a particular service is an OIDAR service, the following tests need to be applied:



Thus, a service qualifies as OIDAR services if above two conditions have been satisfied. The inclusive part of the definition are only indicative and not exhaustive. OIDAR services can be provided online from a remote location outside the taxable territory. A similar service provided by an Indian Service Provider, from within the taxable territory, to recipients in India are taxable. Further, such services received by a registered entity in India from a location outside the taxable territory are also taxable under reverse charge. The overseas suppliers of such services would have an unfair tax advantage if the services provided by them had been left out of the tax net. At the same time, since the service provider is located overseas and may not be having a presence in India, the compliance verification mechanism become difficult. In view of the same, that the Government has come out with a simplified scheme of registration for such service providers located outside India. For any supply to be taxable under GST, the place of supply should be in India. In case, both the supplier of OIDAR Service and the recipient of such service is in India, the place of supply would be the location of the recipient of service [Section 12 of the IGST Act]. Further, where the supplier of OIDAR service is located outside India and the recipient is located in India, the place of supply would be India and the transaction would be amenable to tax [Section 13(12) of the IGST Act].

Special provision for payment of tax by a supplier of OIDAR services located outside India [Section 14 of the IGST Act]: In cases where the supplier of OIDAR service is located outside India and the recipient is a business entity (registered person) located in India, the reverse charge mechanism would get triggered and the recipient in India (registered entity under GST) will be liable to pay GST and undertake necessary compliances. On the other hand where the supplier is located outside India and the recipient in India is an individual consumer, the place of supply would be India and the transaction is amenable to levy of GST. However, the problem arises as to how to collect

such tax? It would be impractical to ask the individual in India to register and undertake the necessary compliances under GST for a one off purchase on the internet. Consequently, special provisions for payment of tax by a supplier of OIDAR services in such cases has been stipulated under section 14 of the IGST Act which have been described as under:

On supply of OIDAR services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.

Non-taxable online recipient means any Government, local authority, governmental authority, an individual or any other person not registered and receiving OIDAR services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

However, if an intermediary located outside India arranges or facilitates supply of such service to a non-taxable online recipient in India, the intermediary would be deemed to be the supplier of the said service, except when the intermediary satisfies the following conditions:

- ❖ The invoice or customer's bill or receipt issued by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory.
- ❖ The intermediary involved in the supply does not authorise the charge to the customer or take part in its charge. This means that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services.
- ❖ The intermediary involved in the supply does not authorise delivery.
- ❖ The general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

The supplier (or intermediary) of OIDAR services shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme in prescribed form. In case there is a person in the taxable territory (India) representing such overseas supplier in the taxable territory for any purpose, such person (representative in India) shall get registered and pay integrated tax on behalf of the supplier. In case the overseas supplier neither has a physical presence nor has a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

8. IMPORT OF GOODS/SERVICES [SECTION 2(10) AND 2(11) OF THE IGST ACT]

While IGST on import of services would be leviable under the IGST Act, the IGST on import of goods would be levied under the Customs Act, 1962 read with the Custom Tariff Act, 1975. We shall now elaborate the provisions relating to import of goods and import of services in detail:

A. Import of goods

- The import of goods has been defined in the IGST Act as bringing goods into India from a place outside India. All import of goods shall be deemed as inter-State supplies and accordingly integrated tax shall be levied in addition to the applicable custom duties.
- Charging section 5 of the IGST Act provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975. Such tax shall be levied at the point when customs duties are levied on the said goods under the Customs Act, 1962. Further, tax will be levied on the value as determined under the Customs Tariff Act, 1975.
- Further, the Customs Act, 1962 provides for removal of goods from a customs station to a warehouse without payment of duty. The said Act has been amended to include 'warehouse' in the definition of "customs area" in order to ensure that an importer would not be required to pay the integrated tax at the time of removal of goods from a customs station to a warehouse.

B. Import of services

- IGST Act defines import of services as supply of any service where the supplier is located outside India, the recipient is located in India, and the place of supply of service is in India.
- Import of services can be considered as supply based on whether there is consideration or not and whether the service is supplied in the course or furtherance of business. The same has been explained in the table below:

| Nature of Service | Consideration | Business Test |
|--|----------------------|----------------------|
| Import of services | Necessarily Required | Not required |
| Import of services by a taxable person from a related person or from a distinct person | Not required | Necessarily Required |

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| 9. EXPORT OF GOODS/SERVICES [SECTION 2(5) AND 2(6) OF THE IGST ACT] |
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Provisions relating to export of goods and export of services have been explained in detail as follows:

A. Export of goods

IGST Act defines export of goods as taking goods out of India to a place outside India [Section 2(5) of the IGST Act].

B. Export of services

- As per section 7 of the IGST Act, supply of services when the supplier of service is located in India and the place of supply of service is outside India is a supply of services in the course of inter-State trade or commerce.
- In order to qualify as an export of service, apart from the above two conditions, following additional conditions need to be satisfied as per the definition of export of services provided under section 2(6) of the IGST Act:
 - Recipient of service is located outside India.
 - Payment for such service has been received by the supplier of service in convertible foreign exchange.
 - Supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

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|--------------------------------|
| 10. EXEMPTIONS FROM GST |
|--------------------------------|

When a supply of goods and/or services falls within the purview of charging section, such supply is chargeable to GST. However, for determining the liability to pay the tax, one needs to further check whether such supply of goods and/or services are exempt from tax. Exempt supply has been defined as supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply. Power to grant exemption from GST has been granted vide section 11 of the CGST Act and vide section 6 of the IGST Act. State GST laws also contain identical provisions granting power to exempt SGST. Under earlier Indirect Tax regime, a larger number of exemptions were enjoyed by the taxpayers. The idea is to prune the exemption list under GST Regime. Area based exemptions have been done away with under GST.

Essential goods/services, i.e. public consumption products/services, have been exempted. Items such as unbranded atta/maida/besan, unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST. Further, essential services like health care services, education services, etc. have also been exempted.

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| I. Specific services exempt from CGST/IGST |
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Notification No. 12/2017 CT (R) dated 28.06.2017/ Notification No. 9/2017 IT (R) dated 28.06.2017 unless otherwise specified, has exempted the following services wholly from CGST/IGST respectively:

1. Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities.

In order to claim exemption under this head, following two conditions must be satisfied:-

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(i) The entity is registered with income tax authorities under section 12AA of the Income tax Act, 1961, and

(ii) The entity carries out one or more of the specified charitable activities.

It implies that tax is payable on any service other than by way of charitable activities to any other person [subject to fulfillment of other conditions of taxability] provided by an entity registered under section 12AA of the Income-tax Act, 1961.

2. Services by way of transfer of a going concern, as a whole or an independent part thereof.
3. Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity:
 - in relation to any function entrusted to a Panchayat under article 243G of the Constitution or
 - in relation to any function entrusted to a Municipality under article 243W of the Constitution
4. Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution are exempt.
5. Services by a Central Government, State Government, Union territory, local authority or Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.
6. Services by the Central Government, State Government, Union territory or local authority excluding the following services—
 - (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;
 - (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport,
 - (c) transport of goods or passengers; or
 - (d) any service, other than services covered under entries (a) to (c) above, provided to business entities
7. Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to ₹ 20 lakh (₹ 10 lakh in case of a Special Category States) in the preceding FY.

Explanation - For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to following services:-

(i) Clauses (a), (b) and (c) of Entry 6 above.

(ii) services by way of renting of immovable property.

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8. Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority.
However, nothing contained in this entry shall apply to services referred in clauses (a), (b) and (c) of Entry 6 above.
9. Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹ 5,000.
However, nothing contained in this entry shall apply to services referred in Clause (a), (b) and (c) of Entry 6 above
Further, in case where continuous supply of service is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a FY.
- 9A. Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 World Cup 2017 to be hosted in India provided the Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 World Cup 2017.
- 9B. Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).
- 9C. Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.
10. Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.
11. Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex.
- 11A. Service provided by Fair Price Shops to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin.
12. Services by way of renting of residential dwelling for use as residence.
13. Services by a person by way of-
 - (a) conduct of any religious ceremony;
 - (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-

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tax Act, 1961 or a trust or an institution registered under section 10(23C)(v) of the Income-tax Act or a body or an authority covered under section 10(23BBA) of the said Income-tax Act.

However, nothing contained in entry (b) of this exemption shall apply to-

- (i) renting of rooms where charges are ₹ 1,000 or more per day;
 - (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹ 10,000 or more per day;
 - (iii) renting of shops or other spaces for business or commerce where charges are ₹ 10,000 or more per month.
14. Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below ₹ 1,000 per day or equivalent.
15. Transport of passengers, with or without accompanied belongings, by –
- (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
 - (b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or
 - (c) stage carriage other than air- conditioned stage carriage.
16. Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a RCS (Regional Connectivity Scheme) airport, against consideration in the form of viability gap funding.
- However, nothing contained in this entry shall apply on or after the expiry of a period of 1 year from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation.
17. Service of transportation of passengers, with or without accompanied belongings, by—
- (a) railways in a class other than—
 - (i) first class; or
 - (ii) an air-conditioned coach;
 - (b) metro, monorail or tramway;
 - (c) inland waterways;
 - (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
 - (e) metered cabs or auto rickshaws (including e-rickshaws).

18. Services by way of transportation of goods-
 - (a) by road except the services of—
 - (i) a goods transportation agency;
 - (ii) a courier agency;
 - (b) by inland waterways.
19. Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.
20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods –
 - (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
 - (b) defence or military equipments;
 - (c) newspaper or magazines registered with the Registrar of Newspapers;
 - (d) railway equipments or materials;
 - (e) agricultural produce;
 - (f) milk, salt and food grain including flours, pulses and rice; and
 - (g) organic manure.
21. Services provided by a goods transport agency, by way of transport in a goods carriage of –
 - (a) agricultural produce;
 - (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹1,500;
 - (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750;
 - (d) milk, salt and food grain including flour, pulses and rice;
 - (e) organic manure;
 - (f) newspaper or magazines registered with the Registrar of Newspapers;
 - (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
 - (h) defence or military equipments.
- 21A. Services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the following recipients, namely: -
 - (a) any factory registered under or governed by the Factories Act, 1948; or

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- (b) any Society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or
 - (c) any Co-operative Society established by or under any law for the time being in force; or
 - (d) any body corporate established, by or under any law for the time being in force; or
 - (e) any partnership firm whether registered or not under any law including association of persons;
 - (f) any casual taxable person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.
22. Services by way of giving on hire –
- (a) to a state transport undertaking, a motor vehicle meant to carry more than 12 passengers; or
 - (b) to a goods transport agency, a means of transportation of goods.
23. Service by way of access to a road or a bridge on payment of toll charges.
- 23A. Service by way of access to a road or a bridge on payment of annuity.
24. Services by way of loading, unloading, packing, storage or warehousing of rice.
25. Transmission or distribution of electricity by an electricity transmission or distribution utility.
26. Services by the Reserve Bank of India.
27. Services by way of—
- (a) 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);
 - (b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.
28. Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013.
29. Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.
30. Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948.
31. Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952.
32. Services provided by the Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999.

33. Services provided by the Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.
34. Services by an acquiring bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Explanation— For the purposes of this entry, “acquiring bank” means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

35. Services of general insurance business provided under following schemes –
- (a) Hut Insurance Scheme;
 - (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
 - (c) Scheme for Insurance of Tribals;
 - (d) Janata Personal Accident Policy and Gramin Accident Policy;
 - (e) Group Personal Accident Policy for Self-Employed Women;
 - (f) Agricultural Pumpset and Failed Well Insurance;
 - (g) premia collected on export credit insurance;
 - (h) Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture;
 - (i) Jan Arogya Bima Policy;
 - (j) Pradhan Mantri Fasal Bima Yojana (PMFBY);
 - (k) Pilot Scheme on Seed Crop Insurance;
 - (l) Central Sector Scheme on Cattle Insurance;
 - (m) Universal Health Insurance Scheme;
 - (n) Rashtriya Swasthya Bima Yojana;
 - (o) Coconut Palm Insurance Scheme;
 - (p) Pradhan Mantri Suraksha BimaYojna;
 - (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.
36. Services of life insurance business provided under following schemes-
- (a) Janashree Bima Yojana;

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- (b) Aam Aadmi Bima Yojana;
 - (c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees;
 - (d) Varishtha Pension BimaYojana;
 - (e) Pradhan Mantri Jeevan Jyoti BimaYojana;
 - (f) Pradhan Mantri Jan DhanYogana;
 - (g) Pradhan Mantri Vaya Vandan Yojana.
37. Services by way of collection of contribution under the Atal Pension Yojana
38. Services by way of collection of contribution under any pension scheme of the State Governments.
39. Services by the following persons in respective capacities –
- (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
 - (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
 - (c) business facilitator or a business correspondent to an insurance company in a rural area.
40. Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory.
41. Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.
42. Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be.
43. Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways.
44. Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a financial year subject to the following conditions, namely:-
- (a) the total turnover had not exceeded ₹ 50 lakh during the preceding financial year; and

- (b) a period of three years has not elapsed from the date of entering into an agreement as an incubatee.
45. Services provided by-
- (a) an arbitral tribunal to –
 - (i) any person other than a business entity; or
 - (ii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹10 lakh in the case of Special Category States) in the preceding financial year;
 - (b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-
 - (i) an advocate or partnership firm of advocates providing legal services;
 - (ii) any person other than a business entity; or
 - (iii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹10 lakh in the case of Special Category States) in the preceding financial year;
 - (c) a senior advocate by way of legal services to-
 - (i) any person other than a business entity; or
 - (ii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹10 lakh in the case of Special Category States) in the preceding financial year.
46. Services by a veterinary clinic in relation to health care of animals or birds.
47. Services provided by the Central Government, State Government, Union territory or local authority by way of-
- (a) registration required under any law for the time being in force;
 - (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.
48. Taxable services, provided or to be provided, by a Technology Business Incubator or a Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or bio- incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India.
49. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India.
50. Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
51. Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax.

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52. Services by an organiser to any person in respect of a business exhibition held outside India.
53. Services by way of sponsorship of sporting events organised -
- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;
 - (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
 - (c) by the Central Civil Services Cultural and Sports Board;
 - (d) as part of national games, by the Indian Olympic Association; or
 - (e) under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.
54. Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of—
- (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
 - (b) supply of farm labour;
 - (c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (e) loading, unloading, packing, storage or warehousing of agricultural produce;
 - (f) agricultural extension services;
 - (g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.
55. Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.
56. Services by way of slaughtering of animals.
57. Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.
58. Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination.

- 59. Services by a foreign diplomatic mission located in India.
- 60. Services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs, the Government of India, under bilateral arrangement.
- 61. Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.
- 62. Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.
- 63. Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.
- 64. Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April, 2016:

However, the exemption shall apply only to tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.

- 65. Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.
- 66. Services provided -
 - (a) by an educational institution to its students, faculty and staff;
 - (b) to an educational institution, by way of,-
 - (i) transportation of students, faculty and staff;
 - (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
 - (iii) security or cleaning or house- keeping services performed in such educational institution;
 - (iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary:

However, nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent

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67. Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme: -
- (a) 2 year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management;
 - (b) fellow programme in Management;
 - (c) 5 year integrated programme in Management
68. Services provided to a recognised sports body by-
- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body;
 - (b) another recognised sports body.
69. Any services provided by, _
- (a) the National Skill Development Corporation set up by the Government of India;
 - (b) a Sector Skill Council approved by the National Skill Development Corporation;
 - (c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;
 - (d) a training partner approved by the National Skill Development Corporation or the Sector Skill Council,
- in relation to-
- (i) the National Skill Development Programme implemented by the National Skill Development Corporation; or
 - (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
 - (iii) any other Scheme implemented by the National Skill Development Corporation
70. Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.
71. Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDUGKY) implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training.
72. Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.

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73. Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.
74. Services by way of-
- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics;
 - (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.
75. Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.
76. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.
77. Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –
- (a) as a trade union;
 - (b) for the provision of carrying out any activity which is exempt from the levy of Goods and Services Tax; or
 - (c) up to an amount of ₹ 5,000 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.
78. Services by an artist by way of a performance in folk or classical art forms of-
- (a) music, or
 - (b) dance, or
 - (c) theatre,
- if the consideration charged for such performance is not more than ₹ 1,50,000.
- However, the exemption shall not apply to service provided by such artist as a brand ambassador.
79. Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo.
- 79A. Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act 1958 or any of the State Acts, for the time being in force.

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80. Services by way of training or coaching in recreational activities relating to-
- (a) arts or culture, or
 - (b) sports by charitable entities registered under section 12AA of the Income-tax Act.
81. Services by way of right to admission to-
- (a) circus, dance, or theatrical performance including drama or ballet;
 - (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;
 - (c) recognised sporting event, where the consideration for admission is not more than ₹ 250 per person as referred to in (a), (b) and (c) above.

Above services have been exempted from both CGST and IGST by virtue of notifications issued under respective Acts. Apart from this, list of services exempt from IGST by *Notification No. 9/2017 IT (R) dated 28.06.2017* as amended also include following three services:

1. Services received from a provider of service located in a non- taxable territory by –
 - (a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
 - (b) an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities; or
 - (c) a person located in a non-taxable territory.

However, the exemption shall not apply to –

- (i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or
 - (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.
2. Services received by the RBI, from outside India in relation to management of foreign exchange reserves.
 3. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.

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| II. OTHER EXEMPTIONS |
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1. Intra-State supplies of goods or services or both received by a registered person from any unregistered supplier, are exempt from the whole of the central tax leviable thereon under section 9(4) of the CGST Act.

However, the said exemption shall not be applicable where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds ₹5,000 in a day. It is important to note that restriction of aggregate value of such supplies of goods and/or services received by a registered person from any or all unregistered suppliers being limited upto ₹5,000 in a day, has been deferred till 31.03.2018 [Notification No.8/2017 CT (R) dated 28.06.2017].

2. Intra-State supplies of goods or services or both received by a deductor under section 51, from any unregistered supplier, is exempt from the whole of the central tax leviable thereon under section 9(4), subject to the condition that the deductor is not liable to be registered otherwise than under section 24(vi) [Notification No.9/2017 CT (R) dated 28.06.2017].
3. All services imported by a unit/developer in the Special Economic Zone (SEZ) for authorised operations are exempt from the whole of the integrated tax leviable thereon under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017 [Notification No. 18/2017 IT (R) dated 05.07.2017].
4. Intra-State supply of taxable goods by a registered supplier to a registered recipient for export, is exempt from so much of the central tax as is in excess of the amount calculated at the rate of 0.05%, subject to fulfilment of the specified conditions [Notification No.40/2017 CT (R) dated 23.10.2017].
5. Inter-State supply of goods or services or both received by a registered person from any unregistered supplier is exempt from the whole of the integrated tax leviable thereon under section 5(4) of the IGST Act. This exemption shall apply to all registered persons till 31.03.2018 [Notification No.32/2017 IT (R) dated 13.10.2017]

11. ZERO RATED SUPPLY [SECTION 16 OF THE IGST ACT]

Section 2(23) of the IGST Act stipulates that “zero-rated supply” shall have the meaning assigned to it in section 16. As per section 16(1):



The above definition makes it clear that supplies to SEZ units or developer shall be zero-rated in the same manner as done for the physical exports. Supplier shall have option to make supplies to SEZ without payment of taxes and claim refunds of unutilized input taxes on such supplies. ITC may be availed on inward supplies for making zero-rated supply, notwithstanding the exempt nature of the zero-rated supply. While computing the taxable supplies for the purpose of allowing input tax credit, zero-rated supplies are included therein. Therefore, ITC is

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available on goods and/ or services used for supplies made in the course of export or to an SEZ unit or SEZ developer.

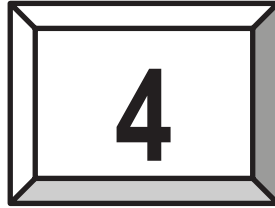
A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely :-

- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or
- (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,

in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder.

Export under Bond/LUT without payment of IGST + Refund of unclaimed ITC

Export on payment of IGST + Refund of such IGST paid



PLACE OF SUPPLY

The basic principle of GST is that it should effectively tax the consumption of such supplies at the destination thereof or as the case may be at the point of consumption. The place of supply provisions determine the place i.e., taxable jurisdiction where the tax should reach. The place of supply and the location of the supplier are the two determinants to ascertain the nature of supply i.e., whether a supply is intra-State or inter-State. In other words, these two factors are required to determine whether a supply is subject to SGST/UTGST plus CGST in a given State/ Union Territory or else would attract IGST if it is an inter-State supply.

If an inter-State transaction is wrongly treated as intra-State or *vice-versa* and tax paid accordingly, the correct tax will need to be paid and refund claimed for tax wrongly paid. Though no interest is levied in such a case, procedural requirements increase and working capital gets blocked where the amount involved is huge. Hence, determining correct place of supply is of paramount importance.

Chapter V of the IGST Act, 2017 [Sections 10 to 13] prescribes the provisions relating to place of supply of goods and services in cross border transactions as well as domestic transactions. Goods being tangible do not pose any significant problems for determination of their place of consumption. Services being intangible pose problems w.r.t determination of place of supply.

Proxies to determine place of supply of services

The various elements involved in a service transaction can be used as proxies to determine the place of supply. An assumption or proxy which gives more appropriate result than others for determining the place of supply, can be used for determining the place of supply. The same are discussed below:

- (a) location of service provider;
- (b) location of service receiver;
- (c) place where the activity takes place/ place of performance;
- (d) place where the service is consumed; and
- (e) place/person to which/whom actual benefit flows

Separate rules for place of supply in respect of B2B and B2C transactions

In respect of B2B (business to business) transactions, the supply is made by a registered person to another registered person and the taxes paid are taken as credit by the recipient so such transactions are just pass through. GST collected on B2B supplies effectively create a liability for the Government and an asset for the recipient of such supplies in as much as the recipient is entitled to use the input tax credit (ITC) for payment of future taxes. For B2B transactions, the location of recipient takes care in almost all situations as further credit is to be taken by recipient. The recipient usually further supplies to another customer.

The supply is consumed only when a B2B transaction is further converted into B2C (business to consumer) transaction. In respect of B2C transactions, the supply is made to an unregistered person who consumes the same and the taxes paid actually reach the Government.

1. RELEVANT DEFINITIONS

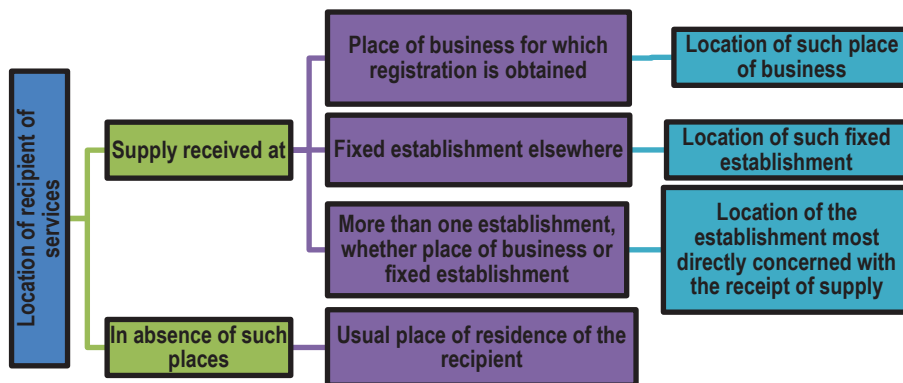
- (i) **Continuous journey** means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation—For the purposes of this clause, the term “stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time.

The term conveyance has been defined in section 2(34) of the CGST Act to include a vessel, an aircraft and a vehicle.

- (ii) **Fixed establishment** means a place other than the place of business which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs.

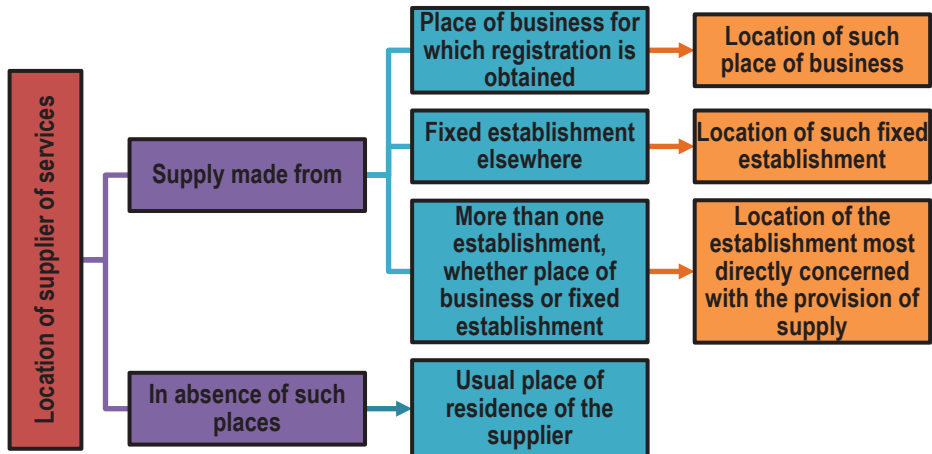
- (iii) **Location of the recipient of services**



PLACE OF SUPPLY

The above definition relates only to services. The term 'location of recipient of goods' has not been defined in the Act.

(iv) Location of the supplier of services means:



(v) Place of business includes

Where a person has,—

- (a) an establishment in India and any other establishment outside India;
- (b) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (c) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

2. PLACE OF SUPPLY OF GOODS OTHER THAN IMPORT AND EXPORT [SECTION 10 OF IGST ACT, 2017]

| S. No. | Nature of Supply | Place of Supply |
|--------|--|--|
| 1. | Where the supply involves the movement of goods, whether by the supplier or the recipient or by any other person | Location of the goods at the time at which, the movement of goods terminates for delivery to the recipient |
| 2. | Where the goods are delivered to the recipient or any person on the direction of the third | Principal place of business of such third person |

BACKGROUND MATERIAL

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| | person by way of transfer of title or otherwise, it shall be deemed that the third person has received the goods | |
| 3. | Where there is no movement of goods either by supplier or recipient | Location of such goods at the time of delivery to the recipient |
| 4. | Where goods are assembled or installed at site | Place where the goods are assembled or installed |
| 5. | Where the goods are supplied on-board a conveyance like a vessel, aircraft, train or motor vehicle | Place where such goods are taken on-board the conveyance |
| 6. | Where the place of supply of goods cannot be determined in terms of the above provisions | It shall be determined in such manner as may be prescribed |

3. PLACE OF SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA [SECTION 11 OF IGST ACT, 2017]

| S. No. | Nature of Supply of Goods | Place of Supply |
|--------|---------------------------|------------------------|
| 1. | Import | Location of importer |
| 2. | Export | Location outside India |

4. PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER AND RECIPIENT IS IN INDIA [SECTION 12 OF IGST ACT, 2017]

- (i) In respect of the following 12 categories of services, the place of supply is determined with reference to a proxy; rest of the services are governed by the default provision.

| S. No. | Nature of Service | Place of Supply |
|--------|--|--|
| 1. | Immovable property related-services including accommodation in | ❖ Location at which the immovable property or boat or vessel is located or intended to |

PLACE OF SUPPLY

| | | |
|-----|---|--|
| | hotel/boat/vessel | <p>be located</p> <ul style="list-style-type: none"> ❖ If located outside India: Location of the recipient |
| 2. | Restaurant and catering services, personal grooming, fitness, beauty treatment and health service | Location where the services are actually performed |
| 3. | Training and performance appraisal | <ul style="list-style-type: none"> ❖ B2B: Location of such registered person ❖ B2C: Location where the services are actually performed |
| 4. | Admission to an event or amusement park | Place where the event is actually held or where the park or the other place is located |
| 5. | Organisation of an event including ancillary services and assigning of sponsorship to such events | <ul style="list-style-type: none"> ❖ B2B: Location of such registered person ❖ B2C: Location where the event is actually held <p>If the event is held outside India: Location of the recipient</p> |
| 6. | Transportation of goods, including mails or courier | <ul style="list-style-type: none"> ❖ B2B: Location of such registered person ❖ B2C: Location at which such goods are handed over for their transportation |
| 7. | Passenger transportation | <ul style="list-style-type: none"> ❖ B2B: Location of such registered person ❖ B2C: Place where the passenger embarks on the conveyance for a continuous journey |
| 8. | Services on board a conveyance | Location of the first scheduled point of departure of that conveyance for the journey |
| 9. | Banking and other financial services including stock broking | <ul style="list-style-type: none"> ❖ Location of the recipient of services on the records of the supplier ❖ Location of the supplier of services if the location of the recipient of services is not available |
| 10. | Insurance services | <ul style="list-style-type: none"> ❖ B2B: Location of such registered person ❖ B2C: Location of the recipient of services |

BACKGROUND MATERIAL

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| | | on the records of the supplier |
| 11. | Advertisement services to the Government | <ul style="list-style-type: none"> ❖ Each of States/Union Territory where the advertisement is broadcasted/displayed/run ❖ Proportionate value in case of multiple States |
| 12. | Telecommunication services | <ul style="list-style-type: none"> ❖ Services involving fixed line, circuits, dish antenna etc: Location of such fixed equipment ❖ Post-paid mobile/ internet services: Location of billing address of the recipient ❖ Sale of pre-paid voucher: Place of sale of such vouchers In case payment is made through internet banking: Location of recipient as per the record of the supplier ❖ Other cases: Address of the recipient in records If such address is not available: Location of supplier |
| If the immovable property related services specified at point (1), event related services specified at point (5), & installation of leased circuit specified at point (12) are supplied in more than one State or Union Territory | | Each such State or Union Territory in proportion to the value of services provided in each State or Union Territory |

- (ii) For the rest of the services other than those specified above, the default provision has been prescribed as under:

| Default rule for the services other than the 12 specified services | | |
|--|-----------------------|--|
| S. No. | Description of Supply | Place of Supply |
| 1. | B2B | Location of such registered person |
| 2. | B2C | <ul style="list-style-type: none"> ❖ Where the address on record exists: Location of the recipient ❖ Other cases: Location of the supplier of services |

5. PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA [SECTION 13 OF IGST ACT, 2017]

- (i) In respect of the following categories of services, the place of supply is determined with reference to a proxy; rest of the services are governed by the default provision.

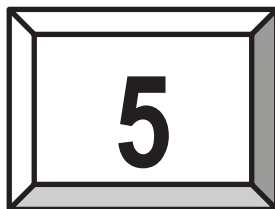
| S. No. | Nature of Service | Place of Supply |
|--|---|---|
| 1. | Services supplied in respect of goods which are required to be made physically available | Location where the services are actually performed |
| | Services supplied in respect of goods but from a remote location by way of electronic means | Location where the goods are situated at the time of supply of services |
| | <i>Above provisions are not applicable in case of goods that are temporarily imported into India for repairs and exported after repairs</i> | |
| 2. | Services which require the physical presence of the recipient or the person acting on his behalf with the supplier of services | Location where the services are actually performed |
| 3. | Service supplied directly in relation to an immovable property including accommodation in hotel/ boat/ vessel | Place where the immovable property is located or intended to be located |
| 4. | Admission to or organisation of an event | Place where the event is actually held |
| If the above services are supplied at more than one location i.e., (i) Goods & individual related (ii) Immovable property-related (iii) Event related | | |
| At more than one location, including a location in the taxable territory | | Location in the taxable territory |
| In more than one State | | Each such State in proportion to the value of services provided in each State |
| 5. | Services supplied by a banking company, or a financial institution, or a NBFC to account holders | Location of the supplier of services |

BACKGROUND MATERIAL

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| | Intermediary services | |
| | Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month | |
| 6. | Transportation of goods, other than by way of mail or courier | Place of destination of such goods |
| 7. | Passenger transportation | Place where the passenger embarks on the conveyance for a continuous journey |
| 8. | Services provided on-board a conveyance | First scheduled point of departure of that conveyance for the journey |
| 9. | Online information and database access or retrieval services | Location of recipient of service |

- (ii) For the rest of the services other than those specified above, a default provision has been prescribed as under:

| Default rule for the cross-border supply of services other than nine specified services | | |
|---|-----------------------|---|
| S. No. | Description of supply | Place of Supply |
| 1. | Any | <ul style="list-style-type: none"> ❖ Location of the recipient of service ❖ Location of the supplier of service, if location of recipient is not available in the ordinary course of business |



TIME AND VALUE OF SUPPLY

A. TIME OF SUPPLY

In order to calculate and discharge tax liability, it is important to know the date when the tax liability arises i.e., the date on which the charging event has occurred. In GST law, it is known as time of supply. The GST law has provided separate provisions to determine the time of supply of goods and time of supply of services. Sections 12, 13 & 14 of the Central GST Act, 2017 (CGST Act) deal with the provisions related to time of supply and by virtue of section 20 of the Integrated GST Act, 2017 (IGST Act) these provisions are also applicable for the IGST Act.

1. Point of time when supplier receives the payment or date of receipt of payment

The phrase “the date on which supplier receives the payment” or “the date of receipt of payment” means the date on which payment is entered in his books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

2. Time of supply where tax is payable under forward charge

| Time of supply of goods [Section 12(2) of CGST Act] | Time of supply of services [Section 13(2) of CGST Act] |
|---|---|
| <p><u>Earliest of the following:</u></p> <p>(a) Date of issue of invoice by the supplier or the last date on which he is required, to issue the invoice under section 31(1) of CGST Act with respect to the supply</p> <p>(b) Date on which the supplier receives the payment (entering the payment in books of</p> | <p>(a) Invoice issued within the time period prescribed under section 31(2) of CGST Act</p> <p><u>Earliest of the following:</u></p> <p>→ Date of issue of invoice by the supplier</p> <p>→ Date of receipt of payment (entering the payment in</p> |

BACKGROUND MATERIAL

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| <p>account or crediting of payment in bank account, whichever is earlier) with respect to the supply</p> <p><i>Note: Registered person who did not opt for the composition levy shall pay CGST on the outward supply of goods on issuance of invoice or the last date on which the invoice is required to be issued including in the situations attracting the provisions of section 14 of the said Act [Notification No. 66/2017 CT dated 15.10.2017]</i></p> | <p>books of account or crediting of payment in bank account, whichever is earlier)</p> <p>(b) Invoice not issued within the time period prescribed under section 31(2) of CGST Act</p> <p><u>Earliest of the following:</u></p> <ul style="list-style-type: none"> → Date of provision of service → Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier) <p>(c) When the above events are unascertainable</p> <ul style="list-style-type: none"> → Date on which the recipient shows the receipt of services in his books of account |
| <p>Although tax is payable on any advance received for a supply of goods or services (except as given above in case of goods), for the convenience of trade, it is provided that if a supplier of taxable goods or services receives an amount upto ₹ 1000/- in excess of the amount indicated on the tax invoice, then the supplier has an option to take the date of issue of invoice in respect of such supply as the time of supply.</p> | |

3. General time limit for raising invoices

| Supply of goods [Section 31(1) of CGST Act] | Supply of services [Section 31(2) of CGST Act] |
|--|--|
| <p>Before or at the time of,-</p> <p>(a) removal of goods for supply to the recipient, where the supply involves movement of goods, or</p> <p>(b) delivery of goods or making available thereof to the recipient, in any other case</p> | <p>Before or after the provision of service but within 30 days [45 days in case of insurance cos./banking and financial institutions including NBFCs] from the date of supply of services</p> |

4. Time of supply where tax is payable under reverse charge

| Time of supply of goods [Section 12(3) of CGST Act] | Time of supply of services [Section 13(3) of CGST Act] |
|---|--|
| <p><u>Earliest of the following:</u></p> <p>(a) Date of receipt of goods, or</p> <p>(b) Date of payment as entered in the books of account of the recipient or the date on which the payment is debited to his bank account, whichever is earlier, or</p> <p>(c) 31st day from the date of issue of invoice</p> | <p><u>Earliest of the following:</u></p> <p>(a) Date of payment as entered in the books of account of the recipient or the date on which the payment is debited to his bank account, whichever is earlier, or</p> <p>(b) 61st day from the date of issue of invoice</p> |
| <p>Where the above events are not ascertainable, the time of supply shall be the date of entry in the books of account of the recipient of supply</p> | |
| | <p><u>Import of service from associated enterprise</u> Date of entry in the books of account of the recipient or the date of payment, whichever is earlier</p> |

5. Time of supply of vouchers exchangeable for goods and services

| Supply of vouchers exchangeable for goods and services [Sections 12(4) and 13(4) of CGST Act] |
|--|
| <p>(a) Supply of goods or services is identifiable at the time of issue of voucher → Date of issue of the voucher</p> <p>(b) Other cases → Date of redemption of the voucher</p> |

6. Time of supply of goods and services in residual cases

| Supply of goods and services in residual cases [Sections 12(5) and 13(5) of CGST Act] |
|---|
| <p>(a) Where a periodical return is required to be filed → Due date of filing such return</p> <p>(b) Other cases → Date of payment of tax</p> |

7. Time of supply for addition in value by way of interest/ late fee/penalty for delayed payment of consideration

| |
|--|
| Addition in value by way of interest, late fee/penalty for delayed payment of consideration Time of Supply → Date on which the supplier receives such addition in value |
|--|

8. Change in rate of tax

In case of change in rate of tax, determination of rate of tax depends upon three events namely, -

- ❖ Date of supply of goods or services,
- ❖ Date of invoice; and
- ❖ Date of receipt of payment

If any two of the above events occur before the change of rate, the time of supply is before the change of rate. If any two of them occur after the change of rate, the time of supply is after the change of rate and the new rate becomes applicable to the supply. Using this principle, time of supply, in case of change in rate of tax, can be determined as under:

| Supply | Issue of invoice | Receipt of payment | Time of supply |
|--------|------------------|--------------------|--|
| BEFORE | BEFORE | AFTER | Date of issue of invoice |
| BEFORE | AFTER | BEFORE | Date of receipt of payment |
| BEFORE | AFTER | AFTER | Date of issue of invoice or date of receipt of payment, whichever is earlier |
| AFTER | AFTER | BEFORE | Date of issue of invoice |
| AFTER | BEFORE | AFTER | Date of receipt of payment |
| AFTER | BEFORE | BEFORE | Date of issue of invoice or date of receipt of payment, whichever is earlier |

9. Date of receipt of payment in case of change in rate of tax

Normally the date of receipt of payment is the date of credit in the bank account of the recipient of payment or the date on which the payment is entered into his books of account, whichever is earlier. However, in cases of change in rate of tax, the date of receipt of payment is the date of credit in the bank account if such credit is after four working days from the date of change in rate of tax.

B. VALUE OF SUPPLY

Every fiscal statute makes provision for the determination of value as tax is normally payable on ad-valorem basis. In GST also, tax is payable on ad-valorem basis i.e., percentage of value of the supply of goods or services. Thus, it becomes important to know how to arrive at the value on which tax is to be paid. Provisions relating to 'value of supply' set out the mechanism to compute such value basis which CGST and SGST/UTGST (intra-State supply) and IGST (inter-State supply) should be paid.

Section 15 of the CGST Act supplemented with the Chapter IV: Determination of Value of Supply of CGST Rules, 2017 prescribes the provisions for determining the value of supply of goods and services made in different circumstances and to different persons. Such provisions are also applicable to IGST Act.

1. Transaction Value

Under GST law, taxable value is the transaction value i.e. price actually paid or payable, provided the supplier & the recipient are not related and price is the sole consideration. In most of the cases of regular normal trade, the invoice value will be the taxable value. However, when value cannot be determined under section 15, the value is determined using Chapter IV: Determination of Value of Supply of CGST Rules.

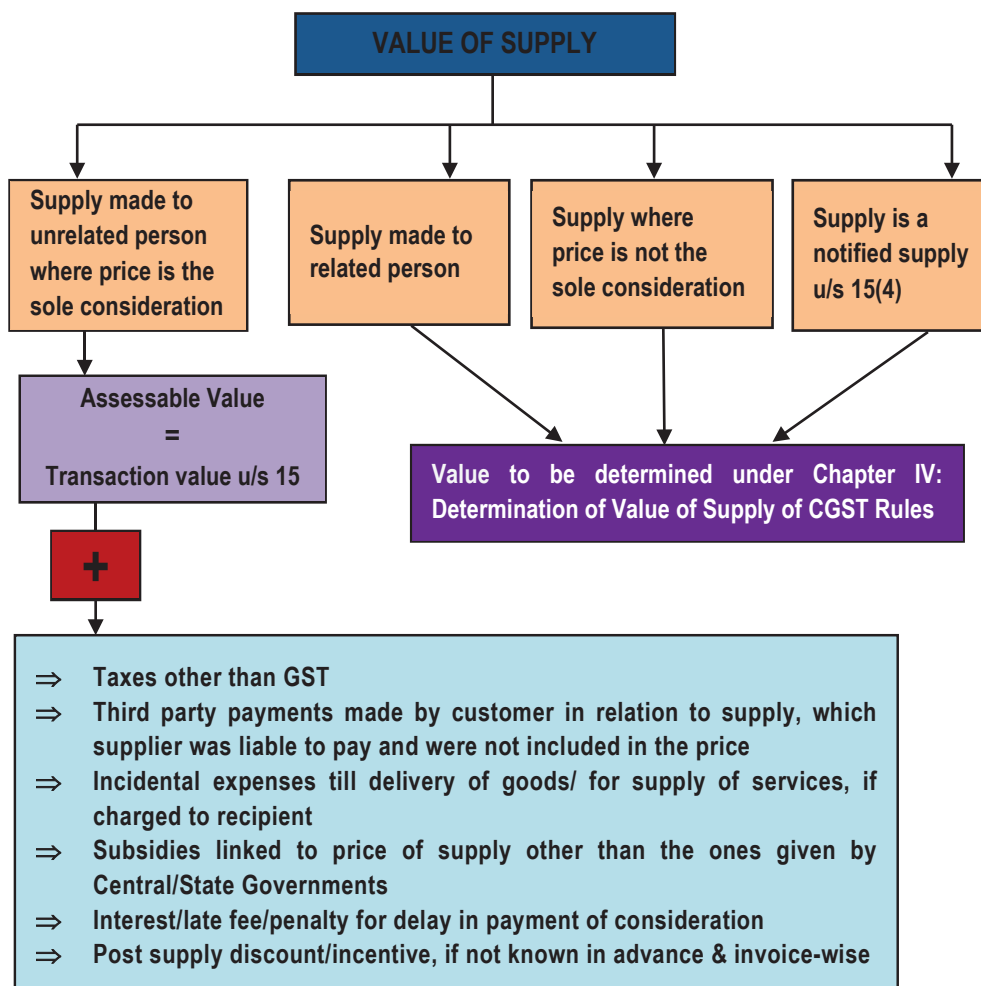
Compulsory inclusions

Any taxes, fees, charges levied under any law other than GST law, expenses incurred by the recipient on behalf of the supplier, incidental expenses like commission & packing incurred by the supplier, interest or late fees or penalty for delayed payment and direct subsidies (except government subsidies) are required to be added to the price (if not already added) to arrive at the taxable value.

Exclusion of discounts

Discounts like trade discount, quantity discount etc. are part of the normal trade and commerce. Therefore, pre-supply discounts i.e. discounts recorded in the invoice have been allowed to be excluded while determining the taxable value. Discounts provided after the supply can also be excluded while determining the taxable value, provided two conditions are met, namely:

- (a) discount is established in terms of a pre-supply agreement between the supplier & the recipient and such discount is linked to relevant invoices
- (b) input tax credit attributable to the discounts is reversed by the recipient



2. Valuation Rules

(i) Taxable value when consideration is not solely in money [Rule 27 of CGST Rules, 2017]

In some cases, where consideration for a supply is not solely in money, taxable value has to be determined as prescribed in the rules. In such cases, following values have to be taken sequentially to determine the taxable value:

- i. Open Market Value of such supply
- ii. Total money value of the supply i.e. monetary consideration plus money value of the non-monetary consideration
- iii. Value of supply of like kind and quality

- iv. Money value of the supply plus money value of non-monetary consideration computed on the basis of cost of supply plus 10% mark up (Cost based valuation) or by other reasonable means consistent with principles & general provisions of GST law (Best Judgement method)

Open Market Value means the full value of money excluding taxes under GST laws, payable by a person to obtain such supply at the time when supply being valued is made, provided such supply is between unrelated persons and price is the sole consideration for such supply.

Supply of like kind & quality means any other supply made under similar circumstances that is same or closely resembles in respect of characteristics, quality, quantity, functionality, reputation to the supply being valued.

Illustration:

- (1) Where a new phone is supplied for ₹ 20000/- along with the exchange of an old phone and if the price of the new phone without exchange is ₹ 24000/-, the open market value of the new phone is ₹ 24000/-.
- (2) Where a laptop is supplied for ₹ 40000/- along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is ₹ 4000/- but the open market value of the laptop is not known, the value of the supply of laptop is ₹ 44000/-.

(ii) Value of supply between distinct and related persons (excluding agents) [Rule 28 of CGST Rules, 2017]

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 and as relation may influence the price between two related persons therefore special valuation rule has been framed to arrive at the taxable value of transactions between related persons. In such cases following values have to be taken sequentially to determine the taxable value: -

- i. Open Market Value
- ii. Value of supply of like kind and quality.
- iii. Value of supply based on cost i.e. cost of supply plus 10% mark-up.
- iv. Value of supply determined by using reasonable means consistent with principles & general provisions of GST law. (Best Judgement method)

However, if the recipient is eligible for full input tax credit, the invoice value will be accepted as taxable value. It has also been provided that where the goods being supplied are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer.

(iii) Value of supply of goods made or received through an agent [Rule 29 of CGST Rules]

- (a) Open market value of goods being supplied, or, at the option of the supplier, 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer.

Illustration:

Where a principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of ₹ 5000/- per quintal on the day of supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of ₹ 4550/- per quintal. The value of the supply made by the principal shall be ₹ 4550/- per quintal or where he exercises the option the value shall be 90% of the ₹ 5000/- i.e. is ₹ 4500/- per quintal.

- (b) In case, value cannot be determined under (a) then following values have to be taken sequentially to determine the taxable value:
- i. Value of supply based on cost i.e. cost of supply plus 10% mark-up
 - ii. Value of supply determined by using reasonable means consistent with principles & general provisions of GST law. (Best Judgement method)

(iv) Value of supply of goods or services or both based on cost [Rule 30 of CGST Rules, 2017]

If the value of a supply of goods and/or services cannot be worked out by the foregoing methods, its value will be 110% of the cost of production/ manufacture/acquisition of such goods or cost of provision of such services.

(v) Residual method for determination of value of supply of goods or services or both [Best Judgement Method – Rule 31 of CGST Rules, 2017]

The supplier of goods needs to sequentially follow rules 27 to 30 before valuing goods as per this residual rule 31. Service providers, however, have the option of valuing services as per rule 30 or rule 31 after sequentially following rules 27 to 29.

The residual method consists of determination of value by using reasonable means consistent with the principles and general provisions of section 15 and these rules.

(vi) Determination of value in respect of few specific supplies [Rule 32 of CGST Rules, 2017]

Methods to determine taxable value of following five specific supplies have also been prescribed under valuation Rules. These can be used by the supplier if he so desires.

- (a) Purchase or sale of foreign currency including money changing
- (b) Booking of tickets for air travel by an air travel agent
- (c) Life insurance business
- (d) Value of supply of second hand goods
- (e) Value of redeemable vouchers/stamps/coupons/tokens

The special provisions related to determination of these supplies are as below:

(a) Value of service of purchase or sale of foreign currency including money changing

Option-1

Case 1: Transaction where one of the currencies exchanged is Indian Rupees

Taxable value is difference between buying rate or selling rate of currency and RBI reference rate for that currency at the time of exchange multiplied by total units of foreign currency. However, if RBI reference rate for a currency is not available then taxable value is 1% of the gross amount of Indian Rupees provided/ received by the person changing the money.

Case 2: Transaction where neither of the currencies exchanged is Indian Rupees

Taxable value will be 1% of the lesser of the two amounts the person changing the money would have received by converting (at RBI reference rate) any of the two currencies in Indian Rupees.

Option-2

The person supplying the service may also exercise the following option to ascertain the taxable value, however, once opted then he cannot withdraw it during the remaining part of the financial year:

| S. No. | Currency exchanged | Value of supply |
|--------|---|---|
| 1. | Upto ₹ 1,00,000 | 1% of the gross amount of currency exchanged OR ₹ 250 whichever is higher |
| 2. | Exceeding ₹ 1,00,000 and upto ₹ 10,00,000 | ₹ 1,000 + 0.50% of the (gross amount of currency exchanged - ₹ 1,00,000) |
| 3. | Exceeding ₹ 10,00,000 | ₹ 5,500 + 0.1% of the (gross amount of currency exchanged - ₹ 10,00,000) OR ₹ 60,000 whichever is lower |

(b) Value of service of booking of tickets for air travel by an air travel agent

Taxable value is 5% of basic fare in case of domestic travel and 10% of basic fare in case of international travel. Basic fare means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

(c) Value of service in relation to life insurance business

Taxable value varies with nature of insurance policy. The details are as follows:

- Where policy has dual benefits of risk coverage and investment – Taxable value is gross premium charged less amount allocated for investments or savings if such allocation is intimated to the policy holder at the time of collection of premium.
- Single premium annuity policy where allocation for investments and savings is not intimated to the policy holder – taxable value is 10% of the single premium charged from the policy holder.
- Other cases- 25% of premium charged from the policy holder in the 1st year and 12.5% of premium charged for subsequent years.

However, where insurance policy has benefit of risk coverage only, then taxable value is entire premium charged from the policy holder.

(d) Value of second hand goods [Margin Scheme]

The taxable value of supply of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of goods shall be the difference between the purchase price and the selling price, provided no input tax credit has been availed on purchase of such goods. However, if the selling price is less than purchase price, that negative value will be ignored.

Persons who purchase second hand goods after payment of tax to supplier of such goods will be governed by this valuation rule only when they do not avail input tax credit on such input supply. If input tax credit is availed, then such supply will be governed by normal GST valuation.

Intra-State supplies of second hand goods by an unregistered supplier to registered second hand goods dealer exempt from CGST

It may be noted that w.e.f. July 1, 2017, the CGST leviable on intra-State supplies of second hand goods received by a registered second hand goods dealer [who pays CGST on the value of outward supply of such second hand goods under margin scheme] from any unregistered supplier, has been exempted vide **Notification No. 10/2017 CT (Rate) dated 28.06.2017**.

Value of supply of goods repossessed from a defaulting borrower

If the defaulting borrower is not a registered person, the purchase value will be purchase price in the hands of such borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession. However, if the defaulting borrower is registered, the repossessing lender agency will discharge GST at the supply value without any reduction from actual/notional purchase value.

(e) Value of redeemable vouchers/stamps/coupons/tokens

The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

(f) Value of taxable services provided by a notified class of service providers as referred to in Para 2 of Schedule 1 between the distinct persons.

The taxable value is deemed to be Nil wherever input tax credit is available.

(viii) Value of supply of services in case of a Pure Agent [Rule 33 of CGST Rules, 2017]

Subject to fulfilment of certain conditions, the expenditure and costs incurred by the supplier as a pure agent of the recipient of supply of service, has to be excluded from the value of supply.

Illustration:

Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies. The fees charged by the Registrar of the Companies for registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

A "pure agent" means a person who:

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or provided as pure agent of the recipient of supply
- (c) does not use for his own interest such goods or services so procured
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for the supply he provides on his own account

The supplier would have to satisfy the following conditions (in addition to the condition required to be satisfied to be considered as a pure agent) for exclusion from value:

- (i) The supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient
- (ii) The payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service
- (iii) The supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account In

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case the conditions are not satisfied, such expenditure incurred shall be included in the value of supply under GST.

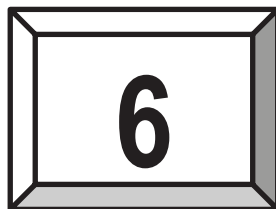
Some examples of pure agent are port fees, port charges, custom duty, dock dues, transport charges etc. paid by customs broker on behalf of owner of goods; expenses incurred by C&F agent and reimbursed by principal such as freight, godown charges.

(viii) Rate of exchange of currency, other than Indian rupees, for determination of value [Rule 34 of CGST Rules, 2017]

The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 on the date of time of supply of such goods in terms of section 12 of the CGST Act. The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the CGST Act.

(ix) Value of supply inclusive of IGST/ CGST/ SGST/ UTGST [Rule 35 of CGST Rules, 2017]

Where the value of supply is inclusive of GST, the tax amount shall be determined in the following manner, Tax amount = (Value inclusive of taxes x GST tax rate in %) / (100 + sum of GST rates in %) For example: If the value inclusive of tax is ₹ 100/- and applicable GST tax rate is 18% then, tax amount = $(100 \times 18) / (100 + 18) = 1800 / 118 = ₹ 15.25$



INPUT TAX CREDIT

Uninterrupted and seamless chain of input tax credit (hereinafter referred to as, “ITC”) is one of the key features of GST. ITC is a mechanism to avoid cascading of taxes. Cascading of taxes, in simple language, is ‘tax on tax’. Under the earlier system of taxation, credit of taxes being levied by Central Government was not available as set-off for payment of taxes levied by State Governments, and *vice versa*. One of the most important features of the GST system is that the entire supply chain would be subject to GST to be levied by Central and State Government concurrently. As the tax charged by the Central or the State Governments would be part of the same tax regime, the credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage with some exceptions like supplies charged to tax under composition scheme and supply of exempted goods and/or services.

Chapter V of the CGST Act [Sections 16 to 21] & Chapter V: Input Tax Credit of the CGST Rules, 2017 [Rules 36-45] prescribe the provisions relating to ITC. State GST laws also prescribe identical provisions in relation to ITC. Provisions of ITC under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Some of the technical aspects of the scheme of ITC are as under:

1. CONDITIONS FOR AVAILING INPUT TAX CREDIT

1. Any registered person can avail credit of tax paid on the inward supply of goods or services or both, which is used or intended to be used in the course or furtherance of business.
2. The pre-requisites for availing credit by registered person are:
 - a. He is in possession of tax invoice or any other specified tax paying document.
 - b. He has received the goods or services. “Bill to ship to” scenarios also included.
 - c. Tax is actually paid by the supplier.
 - d. He has furnished the return.
 - e. If the inputs are received in lots, he will be eligible to avail the credit only when the last lot of the inputs is received.

BACKGROUND MATERIAL

- f. He should pay the supplier, the value of the goods or services along with the tax within 180 days from the date of issue of invoice, failing which the amount of credit availed by him would be added to his output tax liability, with interest. Interest will be paid @ 18% from the date of availing credit till the date when the payment is made to the supplier. However, once the amount is paid, the recipient will be entitled to avail the credit again without any time limit. In case part-payment has been made, proportionate credit would be allowed. The condition of payment of value of supply plus tax within 180 days does not apply in the following situations:
- ◆ Supplies on which tax is payable under reverse charge
 - ◆ Deemed supplies without consideration
3. Documents on the basis of which credit can be availed are:
- a. Invoice issued by a supplier of goods or services or both
 - b. Invoice issued by recipient alongwith proof of payment of tax
 - c. A debit note issued by supplier
 - d. Bill of entry or similar document prescribed under Customs Act
 - e. Revised invoice
 - f. Document issued by Input Service Distributor
4. ITC on invoices pertaining to a financial year cannot be availed beyond September of the following FY or date of filing of annual return, whichever is earlier.
5. If the person taking the ITC on capital goods and plant and machinery has claimed depreciation on the tax component of the cost of the said items under the Income-tax Act 1961, the ITC on the said tax component shall not be allowed.

| |
|---|
| <h2>2. APPORTIONMENT OF INPUT TAX CREDIT AND BLOCKED CREDITS</h2> |
|---|

1. Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business. Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.
2. A banking company or a financial institution including a NBFC, which accepts deposits, or extends loans or advances, has the option to limit its availment of ITC to 50% of the eligible ITC on inputs, capital goods and input services each month and the remaining ITC shall lapse.

INPUT TAX CREDIT

The restriction of availing 50% ITC shall not apply to the tax paid on supplies procured from another registration within the same entity i.e., 100% credit of such tax can be availed. The option once exercised cannot be changed during the remaining part of the financial year.

3. ITC is not available in some cases as mentioned in section 17(5) of CGST Act, 2017. The list is given hereunder:

(a) Motor vehicles and conveyances, **EXCEPT WHEN USED**

- ◆ For transportation of goods
- ◆ For making the following taxable supplies:
 - Further supply of such vehicles or conveyances; or
 - Transportation of passengers; or
 - Imparting training on driving, flying, navigating such vehicles or conveyances.

(b) Foods and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, **EXCEPT WHEN** an inward supply of these is used for making an outward taxable supply of the same category or as an element of a taxable composite or mixed supply.

(c) Membership of a club, health and fitness centre

(d) Rent-a-cab, life insurance and health insurance, **EXCEPT WHERE**

- ◆ The Government has made it obligatory for an employer to provide any of these services to its employees; or
- ◆ Inward supply of these services is used for making an outward taxable supply of the same category or as an element of a taxable composite or mixed supply.

(e) Travel benefits to employees on vacation such as LTC or home travel concession

(f) Works contract services for construction of an immovable property **EXCEPT WHEN**

- ◆ It is input service for further supply of works contract service
- ◆ Immovable property is plant and machinery

(g) Inward supplies received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account even when such supplies are used in the course or furtherance of business

(h) Inward supplies on which tax has been paid under the composition scheme

(i) Inward supplies received by a non-resident taxable person except goods imported by him

(j) Goods and / or services used for personal consumption

(k) Goods that are lost, stolen, destroyed, written off or disposed of by way of gift or free samples

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- (l) Tax paid under sections 74, 129 and 130. (These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances.)

| |
|--|
| 3. INPUT TAX CREDIT UNDER CERTAIN SPECIAL CIRCUMSTANCES |
|--|

1. A person who has applied for registration within 30 days of becoming liable for registration is entitled to ITC of input tax in respect of goods held in stock (inputs as such and inputs contained in semi-finished or finished goods) on the day immediately preceding the date from which he becomes liable to pay tax.
2. A person who has taken voluntary registration under section 23(3) of the CGST Act, 2017 is entitled to ITC of input tax in respect of goods held in stock (inputs as such and inputs contained in semi-finished or finished goods) on the day, immediately preceding the date of registration.
3. A person switching over to normal scheme from composition scheme under section 10 is entitled to ITC in respect of goods held in stock (inputs as such and inputs contained in semi-finished or finished goods) and capital goods (subject to 5% reduction for every quarter/part of quarter for earlier usage) on the day immediately preceding the date from which he becomes liable to pay tax as normal taxpayer.
4. Where an exempt supply of goods or services or both become taxable, the person making such supplies shall be entitled to take ITC in respect of goods held in stock (inputs as such and inputs contained in semi-finished or finished goods) relating to exempt supplies. He shall also be entitled to take credit on capital goods used exclusively for such exempt supply, subject to 5% reduction for every quarter/part of quarter for the earlier usage.
5. ITC, in all the above cases, is to be availed within 1 year from the date of issue of invoice by the supplier.
6. In case of change of constitution of a registered person on account of sale, merger, demerger etc. the unutilised ITC shall be allowed to be transferred to the transferee.
7. A person switching over from normal scheme to composition scheme under section 10 or where a taxable supply becomes exempt, the ITC availed in respect of goods held in stock (inputs as such and inputs contained in semi-finished or finished goods) as well as capital goods (reduced by 5% for every quarter/part of quarter for remaining useful life) will have to be paid.
8. In case of supply of capital goods or plant and machinery, on which ITC is taken, an amount equivalent to ITC availed minus the reduction as prescribed in rules (5% for every quarter or part thereof) shall have to be paid. In case the tax on transaction value of the supply is more, the same would have to be paid.

4. INPUT TAX CREDIT AND JOB WORK

1. The principal (a person supplying taxable goods to the job worker) shall be entitled to take the credit of input tax paid on inputs sent to the job-worker for the job-work. The principal can take the credit even when the goods have been directly supplied to the job-worker without being brought into the premises of the principal. The principal need not wait till the inputs are first brought to his place of business.
2. Inputs and capital goods after processing should be returned to principal within 1 year or 3 years respectively of their being sent out. Further, the provision of return of goods is not applicable in case of moulds and dies, jigs and fixtures or tools supplied by the principal to job-worker.

5. INPUT SERVICE DISTRIBUTOR

1. The Input Service Distributor (ISD) may distribute the credit available for distribution in the same month in which, it is availed. It is important to note that the ISD mechanism is meant for distributing the credit on common invoices pertaining to input services only and not goods (inputs or capital goods). ISD shall issue an invoice in accordance with the provisions made under rule 54(1) of Invoice Rules.
2. ITC of CGST and SGST/UTGST in respect of recipient located in the same State shall be distributed as CGST and SGST/UTGST respectively. ITC of CGST and SGST/UTGST shall in respect of a recipient located in a different State/ Union territory be distributed as IGST (total of ITC of CGST and SGST/UTGST that qualifies for distribution to such recipient). ITC of IGST shall be distributed as IGST.
3. The credit has to be distributed only to the unit to which the supply is directly attributable to. If input services are attributable to more than one recipient of credit, the distribution shall be in the *pro-rata* basis of turnover in the State/Union Territory. However, if a particular input service pertains exclusively to only one unit and the bill is raised in the name of ISD, the ISD can distribute the credit only to that unit and not to other units. If the input services are common for all units, then it will be distributed according to the ratio of turnover of all the units.

6. AVAILMENT AND UTILISATION OF INPUT TAX CREDIT

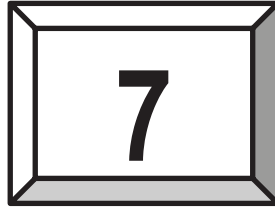
In terms of section 49(5) of the CGST Act, 2017-

- ITC of IGST can be used to pay IGST, CGST and SGST/UTGST in that order.

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- ITC of CGST can be used to pay CGST and IGST in that order.
- ITC of SGST/UTGST can be used to pay SGST/UTGST and IGST in that order.
- ITC of CGST cannot be utilized towards payment of SGST/UTGST and *vice versa*.

Hence cross-utilization of credit is available only between CGST and IGST and SGST/UTGST and IGST. The main restriction is that the CGST credit cannot be utilized for payment of SGST/UTGST and SGST/UTGST credit cannot be utilized for payment of CGST.



REGISTRATION

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

1. NATURE OF REGISTRATION

The registration in GST is PAN based and State specific. Supplier has to register in each of such State or Union territory from where he effects supply. In GST registration, the supplier is allotted a 15-digit GST identification number called “GSTIN”, and a certificate of registration incorporating therein this GSTIN is made available to the applicant on the GSTN common portal. The first 2 digits of the GSTIN is the State code, next 10 digits are the PAN of the legal entity, the next two digits are for entity code, and the last digit is check sum number. Registration under GST is not tax specific, which means that there is single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses.

A given PAN based legal entity would have one GSTIN per State, that means a business entity having its branches in multiple States will have to take separate State wise registration for the branches in different States. But within a State, an entity with different branches would have single registration wherein it can declare one place as principal place of business and other branches as additional place of business. However, a business entity having separate business verticals (as defined in section 2 (18) of the CGST Act, 2017) in a state may obtain separate registration for each of its business verticals.

2. LIABILITY TO REGISTER

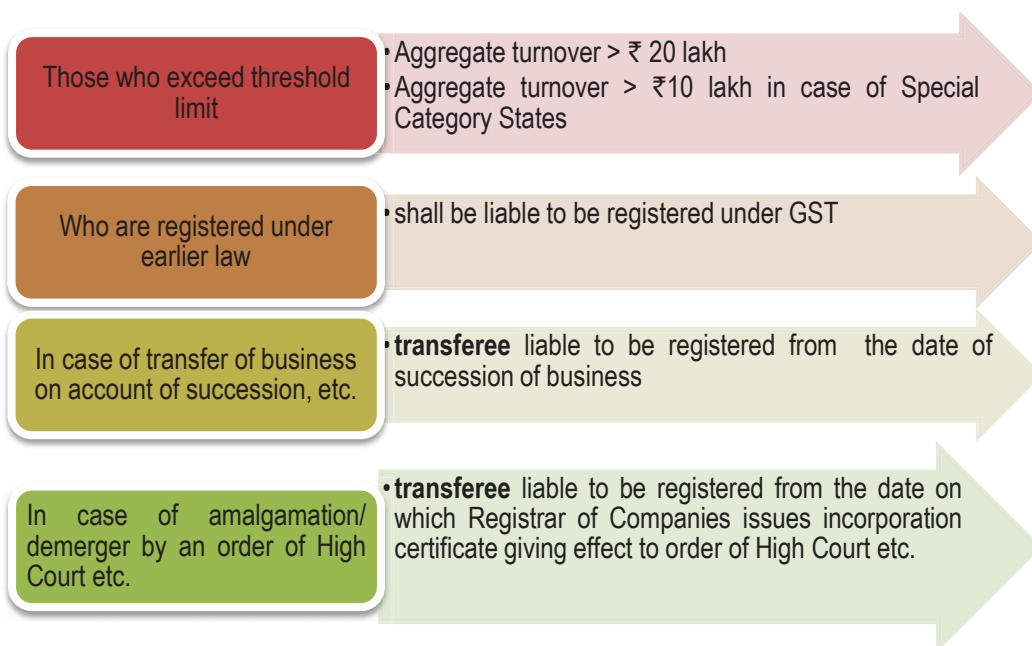
GST being a tax on the event of “supply”, every supplier needs to get registered. However, small businesses having all India aggregate turnover below ₹ 20 lakh in a financial year (₹ 10 lakh if

BACKGROUND MATERIAL

business is in special category states i.e. Assam, Arunachal Pradesh, Himachal Pradesh, Uttarakhand, Manipur, Mizoram, Sikkim, Meghalaya, Nagaland or Tripura) need not register. The small businesses, having turnover below the threshold limit can, however, voluntarily opt to register.

The expression “**aggregate turnover**” includes all supplies made by the taxable person, whether on his own account or made on behalf of all his principals but the supply of goods, after completion of job work, by a registered job worker is treated as the supply of goods by the principal referred to in section 143, and the value of such goods is not included in the aggregate turnover of the registered job worker

3. PERSONS LIABLE TO REGISTRATION



4. COMPULSORY REGISTRATION IN CERTAIN CASES

Some of such suppliers who need to register compulsorily irrespective of the size of their turnover are:

- (i) casual taxable persons making taxable supply;
- (ii) persons who are required to pay tax under reverse charge;
- (iii) person who are required to pay tax under sub-section (5) of section 9;
- (iv) non-resident taxable persons making taxable supply;

REGISTRATION

- (v) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
- (vi) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- (vii) Input Service Distributor, whether or not separately registered under this Act
- (viii) every electronic commerce operator;
- (ix) every person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person; and
- (x) such other person or class of persons as may be notified by the Government on the recommendations of the Council

5. PERSONS NOT LIABLE FOR REGISTRATION

The following persons shall not be liable to registration, namely:—

- (a) any person engaged exclusively in the business of supplying goods and/or services that are not liable to tax or wholly exempt from tax under CGST/IGST Act .
- (b) an agriculturist, to the extent of supply of produce out of cultivation of land
- (c) specified category of persons notified by the Government. For instance, persons making only reverse charge supplies have been notified as being exempted from obtaining registration under GST law.

6. WHERE AND BY WHEN TO APPLY FOR REGISTRATION?

| Particulars | Where | When |
|--|--|---|
| Person who is liable to be registered | in every such State/UT in which he is so liable | within 30 days from the date on which he becomes liable to registration |
| A casual taxable person or a non-resident taxable person | | at least 5 days prior to the commencement of business |
| Every person who makes a supply from the territorial waters of India | in the coastal State/UT where the nearest point of the appropriate base line is located. | within 30 days from the date on which he becomes liable to registration |

7. PROCEDURE FOR REGISTRATION

The procedure for registration has been depicted by way of a diagram as follows:

Part I

Every person liable to get registered and person seeking voluntary registration shall, before applying for registration, declare his Permanent Account Number (PAN), mobile number, e-mail address, State/UT in **Part A of FORM GST REG-01** on GST Common Portal.

PAN, mobile number and e-mail address are validated

PAN validated online by Common Portal from CBDT database

Mobile number and email verified through one time password sent to it.

Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address.

Using TRN, applicant shall electronically submit application in Part B of application form, along with specified documents at the Common Portal.

On receipt of such application, an acknowledgement in the prescribed form shall be issued to the applicant electronically. A **Casual Taxable Person (CTP)** applying for registration gets a TRN for making an advance deposit of tax in his electronic cash ledger and an acknowledgement is issued only after said deposit.*

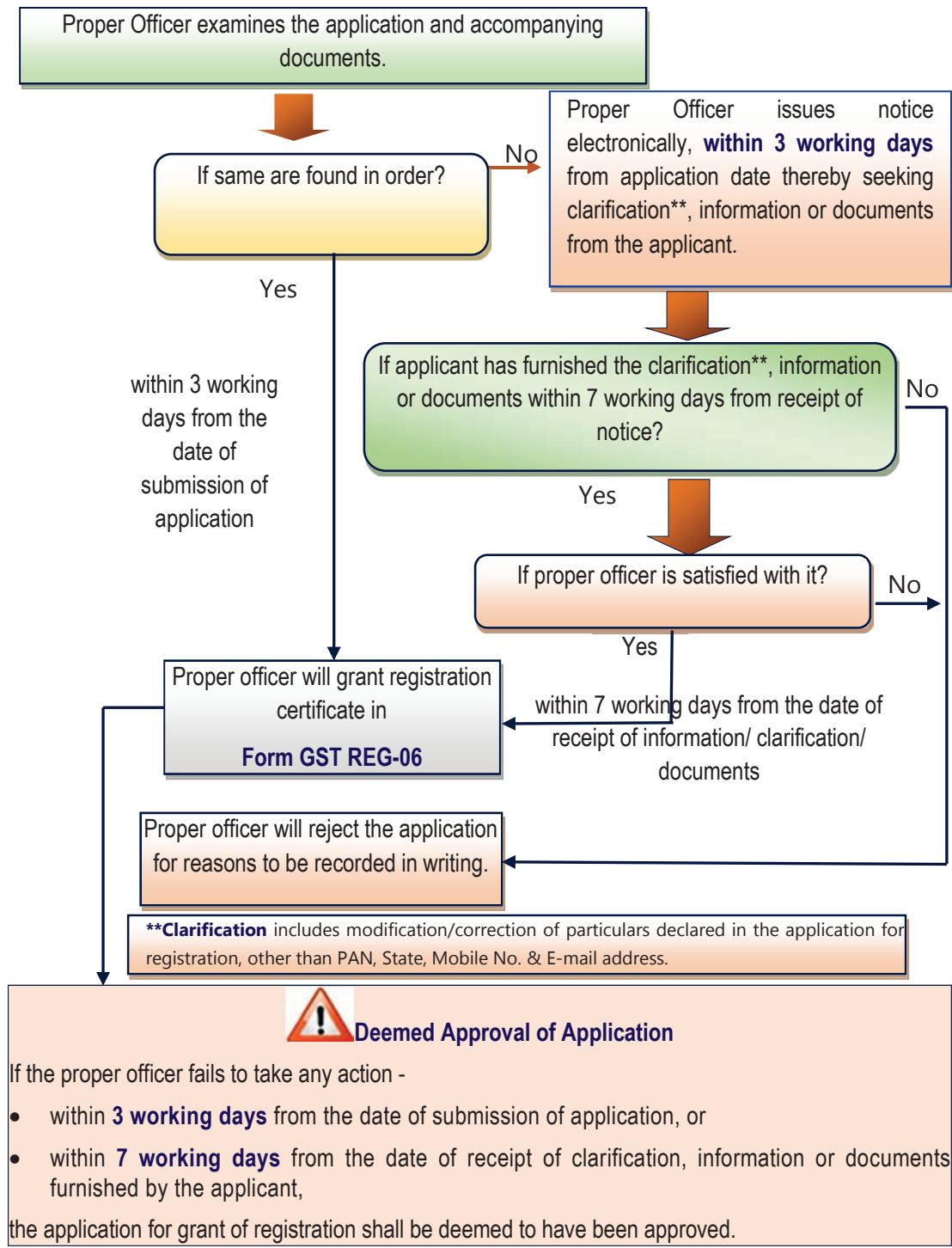
Application shall be forwarded to the Proper Officer.

The procedure after receipt of application by the Proper Officer is depicted in Part II of the diagram.

** Discussed in detail in subsequent paras.*

REGISTRATION

Part II



8. ISSUANCE OF REGISTRATION CERTIFICATE

Where the application for grant of registration has been approved, a certificate of registration [duly signed or verified through EVC by the proper officer] in prescribed form showing the principal place of business (PPoB) and additional place(s) of business (APoB) is made available to the applicant on the Common Portal and a Goods and Services Tax Identification Number ("GSTIN") i.e. the GST registration no. is communicated to applicant, within 3 days after the grant of registration.

9. EFFECTIVE DATE OF REGISTRATION

| Where an applicant submits application for registration | effective date of registration is |
|---|---|
| <u>within</u> 30 days from the date he becomes liable to registration | the date on which he becomes liable to registration |
| <u>after</u> 30 days from the date he becomes liable to registration | date of grant of registration |

10. SPECIAL PROVISIONS FOR GRANT OF REGISTRATION IN CASE OF NON-RESIDENT TAXABLE PERSON (NRTP) AND CASUAL TAXABLE PERSON (CTP)

A Casual taxable person is one who has a registered business in some State in India, but wants to effect supplies from some other State in which he is not having any fixed place of business. Such person needs to register in the State from where he seeks to supply as a Casual taxable person. A Non-Resident taxable person is one who is a foreigner and occasionally wants to effect taxable supplies from any State in India, and for that he needs GST registration. GST law prescribes special procedure for registration, as also for extension of the operation period of such Casual or Non-Resident taxable persons. They have to apply for registration at least 5 days in advance before making any supply. Also, registration is granted to them or period of operation is extended only after they make advance deposit of the estimated tax liability.

In respect of supplies to some notified agencies of United Nations organisation, multinational financial institutions and other organisations, a unique identification number (UIN) is issued.

The Special provisions for grant of registration has also been prescribed in case of persons required to deduct tax at source under section 51 or to collect tax at source under section 52 as well as person supplying online information and data base access or retrieval services (OIDAR services) from a place outside India to a non-taxable online recipient .

11. AMENDMENT OF REGISTRATION

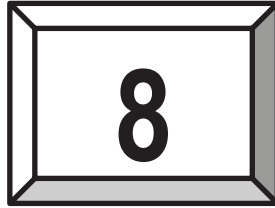
Except for the changes in some core information in the registration application, a taxable person shall be able to make amendments without requiring any specific approval from the tax authority. In case the change is for legal name of the business, or the State of place of business or additional place of business, the taxable person will apply for amendment within 15 days of the event necessitating the change. The Proper Officer, then, will approve the amendment within the next 15 days. For other changes like the name of day-to-day functionaries, e-mail IDs, mobile numbers etc. no approval of the Proper Officer is required, and the amendment can be affected by the taxable person on his own on the common portal.

12. CANCELLATION OF REGISTRATION

The GST law provides for two scenarios where cancellation of registration can take place; the one when the taxable person no more requires it (voluntary cancellation), and another when the Proper Officer considers the registration liable for cancellation in view of certain specified defaults (Suo-motu cancellation) like when the registrant is not doing business from the registered place of business or if he issues tax invoice without making the supply of goods or services. The taxable person desirous of cancellation of registration will apply on the common portal within 30 days of the event warranting cancellation. He will also declare in the application, the stock held on the date with effect from which he seeks cancellation. He will also work out and declare the quantum of dues of payments and credit reversal, and the particulars of payments made towards discharge of such liabilities. In case of voluntary registration (taken despite not being liable for), no cancellation is allowed until expiry of one year from the effective date of registration. If satisfied, the Proper Officer has to cancel the registration within 30 days from the date of application or the date of reply to notice (if issued, when rejection is concluded by the officer).

13. REVOCATION OF CANCELLATION

In case where registration is cancelled suo-motu by the Proper Officer, the taxable person can apply within 30 days of service of cancellation order, requesting the officer for revoking the cancellation ordered by him. However, before applying, the person has to make good the defaults (by filing all pending returns, making payment of all dues and so) for which the registration was cancelled by the officer. If satisfied, the proper officer will revoke the cancellation earlier ordered by him. However, if the officer concludes to reject the request for revocation of cancellation, he will first observe the principle of natural justice by way of issuing notice to the person and hearing him on the issue.



INVOICE AND RECORDS

Invoicing is very crucial aspect for ensuring tax compliance under any indirect taxation system. Significance of invoices has enhanced manifolds under GST regime. The reason behind the same is the invoice matching mechanism that has been introduced under GST. For the purpose of claiming the input tax credit, the invoice matching needs to be done. The inwards supplies of the person claiming the credit (recipient) should match with the outward supplies of the supplier(s). Thus, a registered person cannot avail Input Tax Credit unless he is in possession of a tax invoice or a debit note. Further, every registered person shall keep and maintain all records at his principal place of business. Responsibility has been casted on the owner or operator of warehouse or godown or any other place used for storage of goods and on every transporter to maintain specified records. It is not mandatory to maintain the accounts in electronic form. Accounts and records may be maintained either electronically or manually. Further, there is no prescribed format for maintaining the accounts.

1. TAX INVOICE [SECTION 31 OF THE CGST ACT]


The provisions relating to Tax Invoice are provided under section 31 of the CGST Act as well as Chapter-VI: Tax Invoice, Credit and Debit Notes of Central Goods and Services (CGST) Rules, 2017. There is no format prescribed for the Tax Invoice. Only certain fields have been prescribed as mandatory fields. Invoices may be issued manually or electronically. Issuance of electronic invoices is not mandatory.

A. TAX INVOICE ISSUED BY A SUPPLIER OF TAXABLE GOODS/ TAXABLE SERVICES

A tax invoice shall be issued by a registered person supplying taxable goods or taxable services or both. Such tax invoice shall show the prescribed particulars.

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(i) Time limit for issuance of invoice

| In case of taxable supply of goods | | In case of taxable supply of services | |
|--|--|--|---|
| Invoice shall be issued before or at the time of,— | | Invoice shall be issued before or after the provision of service, but within a period of 30 days* from the date of supply of service. | |
| (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or | | *45 days in case of an insurer or banking company or financial institution, including a non- banking financial company (NBFC) | |
| (b) delivery of goods or making available thereof to the recipient, in any other case. | | <p>An insurer or a banking company or a financial institution, including NBFC, or a telecom operator, or any other class of supplier of services as may be notified by the Government, making taxable supplies of services between distinct persons as specified in section 25</p> <p style="text-align: center;"> may issue the invoice</p> <p>before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made</p> | |
| In case of continuous supply of goods | | In case of continuous supply of services | |
| Where successive statements of accounts/successive payments are involved, the invoice shall be issued before/at the time each such statement is issued or each such payment is received. | Where | | the invoice shall be issued |
| | (a) due date of payment is ascertainable from the contract | | on or before the due date of payment |
| | (b) due date of payment is not ascertainable from the contract | | before or at the time when the supplier of service receives the payment |
| | (c) payment is linked to the completion of an event | | on or before the date of completion of that event. |

- (ii) **Where supply of services ceases before its completion:** In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of

INVOICE AND RECORDS

the supply made before such cessation.

(iii) Goods sent on sale or return basis: Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before/at the time of supply or 6 months from the date of removal, whichever is earlier.

(iv) Particulars of a tax invoice: As discussed earlier, there is no format prescribed for an invoice, but rules make it mandatory for an invoice to have the following fields (only applicable fields are to be filled):

| | | |
|------------|--|--|
| (a) | Name, address and GSTIN of the supplier; | |
| (b) | A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets/numerals/special characters hyphen or dash and slash, and any combination thereof, unique for a FY; | |
| (c) | Date of its issue; | |
| (d) | If recipient is registered - Name, address and GSTIN or UIN of recipient | |
| (e) | If recipient is unregistered and value of supply is | Particulars of invoice |
| | ₹ 50,000 or more | Name and address of the recipient and the address of delivery, along with the name of State and its code |
| | less than ₹ 50,000 | unregistered recipient may still request the aforesaid details to be recorded in the tax invoice |
| (f) | HSN code for goods or services; | |
| (g) | Description of goods or services; | |
| (h) | Quantity in case of goods and unit or Unique Quantity Code thereof; | |
| (i) | Total value of supply of goods or services or both; | |
| (j) | Taxable value of supply of goods or services or both taking into account discount or abatement, if any; | |
| (k) | Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess); | |
| (l) | Amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess); | |
| (m) | Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce; | |

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| | |
|-----|---|
| (n) | Address of delivery where the same is different from the place of supply; |
| (o) | Whether the tax is payable on reverse charge basis; and |
| (p) | Signature or digital signature of the supplier or his authorized representative |

(v) Number of HSN digits required on tax invoice and class of registered person not required to mention HSN: Board may, on the recommendations of the Council, by notification, specify -

- the number of digits of HSN code for goods or services, that a class of registered persons shall be required to mention, for such period as may be specified in the said notification.
- the class of registered persons that would not be required to mention the HSN code for goods or services, for such period as may be specified in the said notification.

In this regard, **Notification No. 12/2017 CT dated 28.06.2017** has notified the following:

| S.No. | Annual Turnover (AT) in the preceding FY | Number of Digits of HSN Code |
|-------|--|------------------------------|
| 1. | AT ≤ ₹ 1.5 crores | Nil |
| 2. | ₹ 5 crores ≥ AT > ₹ 1.5 crores | 2 |
| 3. | AT > ₹ 5 crores | 4 |

Above provisions are also applicable to Bill of Supply *[The concept of Bill of Supply is discussed in subsequent paras]*.

(vi) Manner of issuing the invoice

| In case of taxable supply of goods | In case of taxable supply of services |
|---|--|
| Invoice shall be prepared in TRIPLICATE | Invoice shall be prepared in DUPLICATE |

(vii) Invoice in case of export of goods or services: In the case of the export of goods or services, the invoice shall carry an endorsement **“SUPPLY MEANT FOR EXPORT/ SUPPLY TO SEZ UNIT/SEZ DEVELOPER FOR AUTHORISED OPERATIONS ON PAYMENT OF INTEGRATED TAX”** or **“SUPPLY MEANT FOR EXPORT / SUPPLY TO SEZ UNIT/SEZ DEVELOPER FOR AUTHORISED OPERATIONS UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX”**, as the case may be.

Particulars of an Export Invoice are same as a Tax Invoice. However, where recipient is unregistered and value of supply is ₹ 50,000 or more, instead of name of State and its

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code, in case of an export invoice, **name of the country of destination** is to be mentioned.

B. SPECIAL CASES

(i) Revised Tax Invoice

Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices. Such invoices shall be issued within 1 month from the date of issuance of certificate of registration. This provision is necessary, as a person who becomes liable for registration has to apply for registration within 30 days of becoming liable for registration. When such an application is made within the time period and registration is granted, the effective date of registration is the date on which the person became liable for registration. Thus there would be a time lag between the date of grant of certificate of registration and the effective date of registration. For supplies made by such person during this intervening period, the law enables the issuance of a revised invoice, so that ITC can be availed by the recipient on such supplies.

A registered person may issue a Consolidated Revised Tax Invoice in respect of all taxable supplies made to an unregistered recipient **during such period**. However, **in case of inter-State supplies**, a consolidated Revised Tax Invoice cannot be issued in respect of all unregistered recipients if the value of a supply exceeds ₹ 2,50,000. Particulars of the Debit and Credit Notes are also same as revised tax invoices. Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 shall prominently contain the words "INPUT TAX CREDIT NOT ADMISSIBLE".

(ii) No Tax Invoice required to be issued if value < ₹ 200 – A consolidated Tax Invoice can be issued

A registered person may not issue a Tax Invoice if value of the goods/services/both supplied < ₹200, recipient is unregistered; and recipient does not require such invoice. Instead such registered person shall issue a **Consolidated Tax Invoice** for such supplies at the close of each day in respect of all such supplies.

(iii) Bill of Supply: A registered person supplying exempted goods or services or both or paying tax under composition levy shall issue a bill of supply instead of a tax invoice. Bill of Supply issued by such persons does not contain the details pertaining to rate of tax and amount of tax. Further, value to be mentioned in the Bill of Supply is not also taxable value. Any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as bill of supply for the purposes of the Act.

(iv) Invoice-cum-bill of supply: Where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies.

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- (v) Receipt Voucher:** A registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a Receipt Voucher evidencing receipt of such payment. **Where at the time of receipt of advance, rate of tax/ nature of supply is not determinable**

| Where at the time of receipt of advance | |
|---|--|
| (i) rate of tax is not determinable | tax shall be paid at the rate of 18% |
| (ii) nature of supply is not determinable | same shall be treated as inter-State supply |

- (vi) Refund Voucher:** Where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a **Receipt Voucher**, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a **Refund Voucher** against such payment.

- (vii) Invoice and Payment Vouchers to be issued by recipient of supply liable to pay tax under reverse charge:** Recipient is liable to pay tax on reverse charge basis where he receives supply of such goods/services/both which are notified for reverse charge purposes. Such supplies can be received from a registered or an unregistered supplier. Further, recipient [who is registered] is also liable to pay tax where taxable goods/services/both have been received from an unregistered supplier [Section 9(4)]. A registered person who is liable to pay tax under reverse charge [under section 9(3)/9(4) of the CGST Act] shall issue an **Invoice** in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both. Thus, a recipient liable to pay tax by virtue of section 9(3) has to issue invoice only when supplies have been received from an unregistered supplier. Besides, a registered person who is liable to pay tax under reverse charge [under section 9(3)/9(4) of the CGST Act] shall issue a **Payment Voucher** at the time of making payment to the supplier.

- (viii) Supplier permitted to issue any document other than tax invoice:** Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—

- (a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or
- (b) tax invoice may not be issued.

Further, Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed. Following suppliers may issue a tax invoice, but they are also permitted to issue any other document in lieu of tax invoice, by whatever name called:

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| Supplier of taxable service | Document in lieu of the tax invoice | |
|--|--|---|
| | Optional information | Mandatory information |
| Insurer/Banking company/Financial institution, including NBFC | <ul style="list-style-type: none"> Serial number Address of the recipient of taxable service | <p>Other information as prescribed for a Tax Invoice, under rule 46</p> <p>Supplier may issue a consolidated tax invoice or any other document in lieu thereof, by whatever name called for the supply of services made during a month at the end of the month.</p> |
| Goods Transport Agency (GTA) supplying services in relation to transportation of goods by road in a goods carriage | | Gross weight of the consignment |
| | | Name of the consignor and the consignee |
| | | Registration number of goods carriage in which the goods are transported |
| | | Details of goods transported |
| | | Details of place of origin and destination |
| | | GSTIN of the person liable for paying tax whether as consignor, consignee or GTA |
| | | Other information as prescribed for a tax invoice, under rule 46 |
| Supplier of passenger transportation service | <ul style="list-style-type: none"> Serial number Address of the recipient of taxable service | <p>Other information as prescribed for a tax invoice, under rule 46</p> <p>Tax invoice shall include ticket in any form, by whatever name called.</p> |

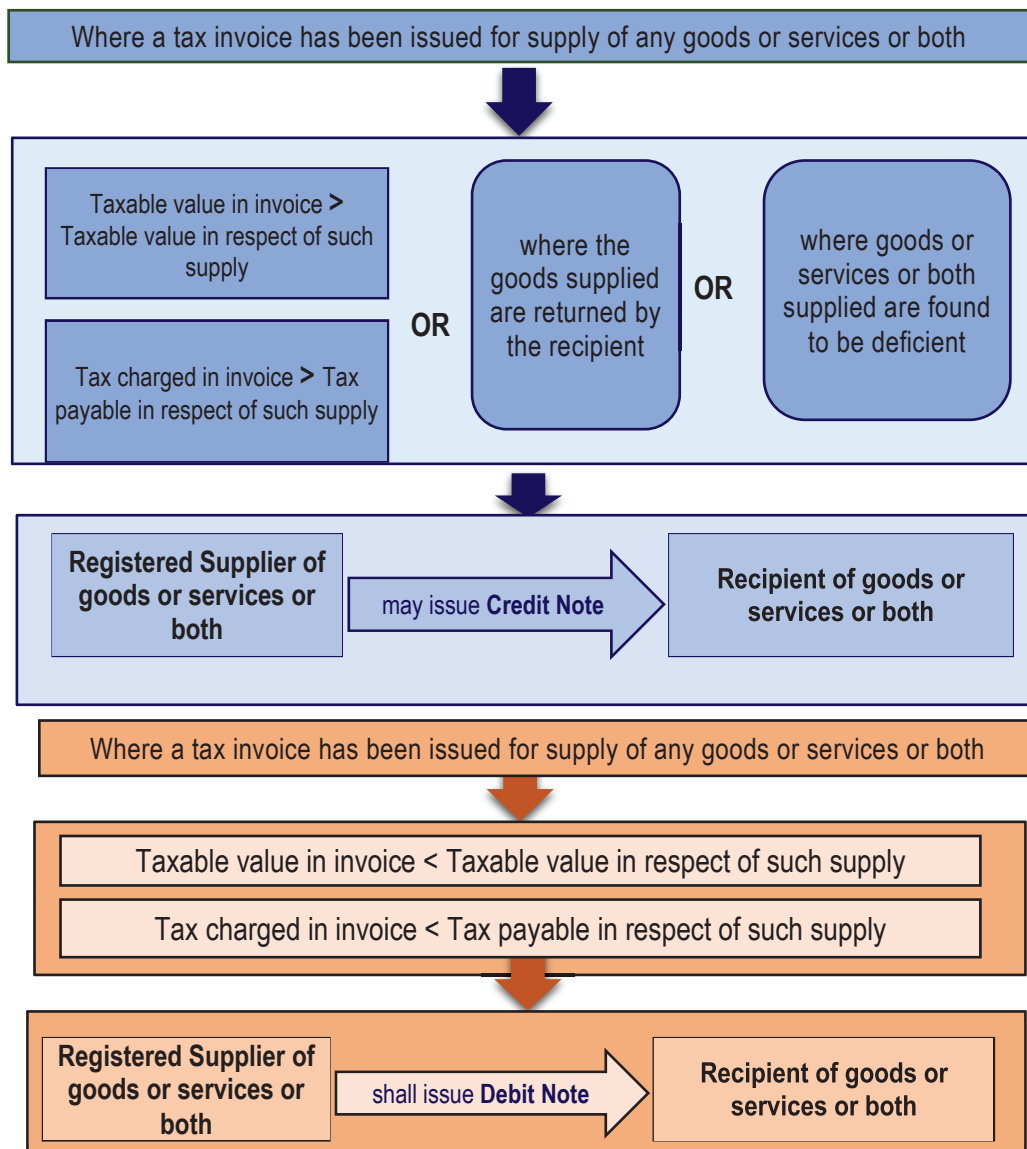
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Delivery challan: In the following cases, goods may be removed on delivery challan and invoice may be issued after delivery:

| Nature of supply | Deliver challan to be issued | Particulars of Delivery Challan |
|--|--|--|
| <p>(1) Supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,</p> <p>(2) Transportation of goods for job work,</p> <p>(3) Transportation of goods for reasons other than by way of supply, or</p> <p>(4) Such other supplies as may be notified by the Board</p> | <ul style="list-style-type: none"> serially numbered not exceeding 16 characters in one or multiple series at the time of removal of goods for transportation | Date and number of the delivery challan |
| | | Name, address and GSTIN of the consigner, if registered |
| | | Name, address and GSTIN or UIN of the consignee, if registered |
| | | HSN code and description of goods, |
| | | Quantity (provisional, where the exact quantity being supplied is not known) |
| | | Taxable value |
| | | Tax rate and tax amount – central tax, state tax, integrated tax, union territory tax or cess, where the transportation is for supply to the consignee |
| | | Place of supply, in case of inter-state movement |
| | | Signature |

(ix) Tax invoice by Input Service Distributor (ISD): An ISD invoice or, as the case may be, an ISD credit note issued by an Input Service Distributor containing specified particulars. However, where the ISD is an office of a banking company or a financial institution, including NBFC, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as mentioned above.

2. CREDIT AND DEBIT NOTES [SECTION 34 OF THE CGST ACT]



There is no prescribed format for credit/debit note issued by a supplier. However, it must contain certain prescribed particulars. Particulars of the Debit and Credit Notes are same as the particulars of Revised Tax Invoices. Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in

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the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier. The tax liability shall be adjusted in such manner as may be prescribed. However, no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person. Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued. The tax liability shall be adjusted in such manner as may be prescribed.

3. PROHIBITION OF UNAUTHORISED COLLECTION OF TAX [SECTION 32 OF THE CGST ACT]

A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act. No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

4. AMOUNT OF TAX TO BE INDICATED IN TAX INVOICE AND OTHER DOCUMENTS [SECTION 33 OF THE CGST ACT]

Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

5. ACCOUNTS AND OTHER RECORDS [SECTION 35 OF THE CGST ACT]

Every registered person shall keep and maintain, his books of accounts at his **principal place of business** and books of account relating to additional place of business [as mentioned in the certificate of registration]. Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business. Unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.

(i) **Accounts and records required to be maintained:** A true and correct account of following is to be maintained:

(a) production or manufacture of goods;

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- (b) inward and outward supply of goods or services or both;
- (c) stock of goods;
- (d) input tax credit availed;
- (e) output tax payable and paid
- (f) such other particulars as may be prescribed.

A. Records prescribed by CGST Rules, 2017: A registered person is required to maintain a true and correct account of the goods/services imported/exported, supplies attracting payment of tax on **reverse charge** along with relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers, separate account of advances received, paid and adjustments made thereto. He is required to keep the particulars of:

- (a) names and complete addresses of suppliers **from whom he has received** the goods or services chargeable to tax under the Act;
- (b) names and complete addresses of the persons **to whom he has supplied** goods or services, where required under the provisions of this Chapter.

He is required to keep the particulars of the complete address of the **premises where goods are stored** by him, including goods stored during transit along with the particulars of the stock stored therein. However, if any taxable goods are found to be stored at any place(s) other than those so declared without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.

B. Records which are not to be maintained by a supplier opting for composition levy:

Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof. Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

C. Records to be maintained by agent: Every agent shall maintain accounts depicting the-

- (a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;
- (b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
- (c) particulars including description, value and quantity (wherever applicable) of goods

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or services supplied on behalf of every principal;


(d) details of accounts furnished to every principal; and


(e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.


D. Records to be maintained by a manufacturer: Monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.

E. Records to be maintained by a supplier of services: Accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.


F. Separate accounts to be maintained by a registered person executing works contract

 the names and addresses of the persons on whose behalf the works contract is executed;

 description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;

 description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;

 the details of payment received in respect of each works contract; and

 the names and addresses of suppliers from whom he received goods or services.

G. Records to be maintained by owner or operator of godown or warehouse and transporters: Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed. If such persons are not already registered, they shall obtain a unique enrollment number by applying electronically at the GST Common Portal. The person so enrolled in any other State or Union territory shall be deemed to be enrolled in the State or Union territory. Such person may also amend the details furnished in the prescribed form. Records of goods transported, delivered and goods stored in transit by him alongwith GSTIN of the registered consignor and consignee for each of his branches.

Records to be maintained by an owner/operator of a warehouse/ godown: Books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt, and disposal of such goods. The owner or the operator of the godown shall store the goods in such manner that they can be identified item-wise and owner-wise and shall facilitate any physical

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verification or inspection by the proper officer on demand.

H. Records to be maintained by a custodian/clearing and forwarding agent: Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.

I. The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.

J. Where the Commissioner considers that any class of taxable persons is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

(iii) **How the accounts and records will be maintained?:** The registered person may keep and maintain such accounts and other particulars in electronic form stored on any electronic device and record so maintained shall be authenticated by means of a digital signature. Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time. The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.

Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files. Any entry in registers, accounts and documents shall not be erased, effaced or overwritten. All incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and there after correct entry shall be recorded. Where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.

Each volume of books of account maintained manually by the registered person shall be serially numbered. Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force. Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.

- (iv) **Audit of accounts:** Every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a FY exceeds ₹ 2 crores. Such registered person is required to furnish electronically through the common portal alongwith Annual Return a copy of audited annual accounts and a **Reconciliation Statement**, duly certified, in prescribed form. **Reconciliation Statement** will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement and such other particulars, as may be prescribed.
- (v) **Failure to maintain the accounts:** Where the registered person fails to account for the goods or services or both in accordance with the provisions of section 35, the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

6. PERIOD OF RETENTION OF ACCOUNTS [SECTION 36 OF THE CGST ACT]

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of section 35(1) shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records. However, a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

7. ELECTRONIC WAY BILL [SECTION 68 READ WITH RULE 138, 138A, 138B, 138C AND 138D OF THE CGST ACT]

The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed. The details of such prescribed documents required to be carried shall be validated in such manner as may be prescribed. Where any conveyance referred above is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the prescribed documents and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods. Consequently, E-way Bills have been prescribed for such purpose. Chapter XVI – E-way Rules of

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CGST Rules, 2017 stipulates the provisions pertaining to E-way Bills¹. These are as follows:

(A) Information to be furnished prior to commencement of movement of goods and generation of e-way bill [Rule 138]

(1) Every registered person who causes movement of goods of consignment value exceeding ₹ 50,000:

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods in Part-A of a prescribed form, electronically, on the common portal.

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or by railways or by air or by vessel, the said person or the **recipient may generate the e-way bill** electronically on the common portal after furnishing information in Part-B of such prescribed form.

(3) Where the e-way bill is not so generated and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter in Part B of the prescribed form on the common portal and the **e-way bill shall be generated by the transporter** on the said portal on the basis of the information furnished by the registered person in Part A of the prescribed form. However, the registered person or, as the case may be, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than ₹ 50,000.

Further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in prescribed form on the common portal in the manner specified in this rule. Moreover, where the goods are transported for a distance of less than 10 km within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in Part B of the prescribed form.

Explanation 1– Where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

¹ Provisions relating to E-Way Bills have not yet been made effective.

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Explanation 2-The information in Part A of the prescribed form shall be furnished by the consignor or the recipient of the supply as consignee where the goods are transported by railways or by air or by vessel.

- (4) **Unique E-Way Bill Number:** Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.
- (5) **Any transporter transferring goods from one conveyance to another in the course of transit** shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in prescribed form. However, where the goods are transported for a distance of less than 10 km within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of conveyance may not be updated in the e-way bill.
- (6) **Multiple consignments transported in one conveyance:** After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill may be generated by him on the said common portal prior to the movement of goods.
- (7) **Where the consignor or the consignee has not generated E-Way Bill** in accordance with the provisions of sub-rule (1) and the value of goods carried in the conveyance is more than ₹ 50,000, the transporter shall generate E-way Bill on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a Consolidated E-Way Bill on the common portal prior to the movement of goods.
- (8) The information furnished in Part A of the prescribed form shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in FORM GSTR-1. However, when the information has been furnished by an unregistered supplier in prescribed form, he shall be informed electronically, if the mobile number or the email is available.
- (9) **Cancellation of E-way bill:** Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within 24 hours of generation of the e-way bill. However, an e-way bill cannot be cancelled if it has been verified in transit.
- (10) **Validity of E-way bill:** An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in Table below from the relevant date, for the distance the goods have to be transported.

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| Distance | Validity |
|---|--------------------|
| Upto 100 km | One day |
| For every 100 km or part thereof thereafter | One additional day |

However, the Commissioner may, by notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein. Further where, under circumstances of an exceptional nature, the goods cannot be transported within the validity period of the e-way bill, the transporter may generate another e-way bill after updating the details in Part B of prescribed form.

Explanation—The “**relevant date**” shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as 24 hours.

- (11) **Acceptance/rejection of E-way bill:** The details of e-way bill generated shall be made available to the recipient, if registered, on the common portal, who shall communicate his acceptance or rejection of the consignment covered by the e-way bill.
- (12) Where the recipient does not communicate his acceptance or rejection within 72 hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.
- (13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State shall be valid in every State and Union territory.
- (14) **E-way bill not required to be generated:** Notwithstanding anything contained in this rule, no e-way bill is required to be generated—
- (a) where the goods being transported are specified in Annexure*;
 - (b) where the goods are being transported by a non-motorised conveyance;
 - (c) where the goods are being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs; and
 - (d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the GST Rules of the concerned State.

Explanation - The facility of generation and cancellation of e-way bill may also be made available through SMS.

**Annexure contains a list of items where E-way bill is not required to be generated.*

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(B) Documents and devices to be carried by a person-in-charge of a conveyance

- (1) The person in charge of a conveyance shall carry the invoice or bill of supply or delivery challan, as the case may be; and a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.
- (2) A registered person may obtain an **Invoice Reference Number** from the common portal by uploading, on the said portal, a tax invoice issued by him in a prescribed form and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of 30 days from the date of uploading.
- (3) Where the registered person uploads the invoice, the information in Part A of the form prescribed for E-way Bill shall be auto-populated by the common portal on the basis of the information furnished in prescribed form.
- (4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.
- (5) Where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill-
 - (a) tax invoice or bill of supply or bill of entry; or
 - (b) a delivery challan, where the goods are transported for reasons other than by way of supply.

(C) Verification of documents and conveyances

- (1) The Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intraState movement of goods.
- (2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.
- (3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf. However, on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

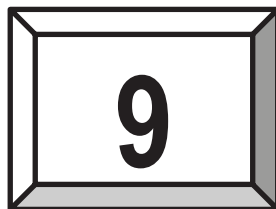
INVOICE AND RECORDS

(D) Inspection and verification of goods

- (1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of a prescribed form within 24 hours of inspection and the final report in Part B of such form shall be recorded within three days of such inspection.
- (2) Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless a specific information relating to evasion of tax is made available subsequently.

(E) Facility for uploading information regarding detention of vehicle

Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in prescribed form on the common portal.



PAYMENT OF TAX

1. PAYMENT OF TAX, INTEREST, PENALTY AND OTHER AMOUNTS

The introduction of E-ledgers is a unique feature under the GST regime. Electronic Ledgers or E-Ledgers are statements of cash and input tax credit in respect of each registered taxpayer. In addition, each taxpayer shall also have an electronic tax liability register. The statutory provisions relating to payment of tax, interest, penalty and other amounts are covered in section 49 of CGST Act, 2017, which stipulates as under:-

1. Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.
2. The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.
3. The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made there under in such manner and subject to such conditions and within such time as may be prescribed.
4. The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
5. The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

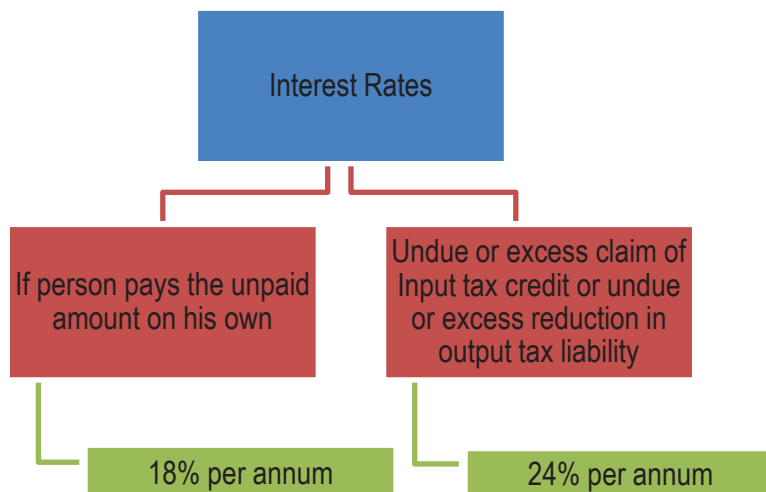
BACKGROUND MATERIAL

- (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
 - (b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
 - (c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
 - (d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
 - (e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and
 - (f) the State tax or Union territory tax shall not be utilised towards payment of central tax.
6. The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.
7. All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.
8. Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—
- (a) self-assessed tax, and other dues related to returns of previous tax periods;
 - (b) self-assessed tax, and other dues related to the return of the current tax period;
 - (c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74;
9. Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

The following points may be noted in this regard:—

- (a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;
- (b) the expression “tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made there under.

2. INTEREST ON DELAYED PAYMENT OF TAX



3. TAX DEDUCTION AT SOURCE

Tax Deduction at Source (TDS) is a system, initially introduced by the Income Tax Department. It is one of the modes/methods to collect tax, under which, certain percentage of amount is deducted by a recipient at the time of making payment to the supplier. It facilitates sharing of responsibility of tax collection between the deductor and the tax administration. It acts as a powerful instrument to prevent tax evasion and expands the tax net, as it provides for the creation of an audit trail.

Under the GST regime, section 51 of the CGST Act, 2017 prescribes the authority and procedure for 'Tax deduction at source', which stipulates as under:-

1. The Government may mandate,—

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,

to deduct tax at the rate of 1% from the payment made or credited to the supplier of taxable goods or services or both, where the total value of such supply, under a contract, exceeds ₹ 2,50,000.

BACKGROUND MATERIAL

No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient. For the purpose of deduction of tax, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

The provisions of section 51(1) have come into effect from 18.09.2017 with respect to Central and State Government as well as Local authority, liable to deduct tax at source and following persons have been notified to deduct tax at source by the Central Government:

- (a) an authority or a board or any other body, -
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government,with 51% or more participation by way of equity or control, to carry out any function;
- (b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;
- (c) public sector undertakings:

However, the said persons shall be liable to deduct tax from the payment made or credited to the supplier of taxable goods or services or both with effect from a date to be notified subsequently, on the recommendations of the Council, by the Central Government **[Notification No. 33/2017 CT dated 15.09.2017]**.

2. The amount deducted as tax under this section shall be paid to the Government by the deductor within 10 days after the end of the month in which such deduction is made, in the prescribed manner.
3. The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and other particulars in the prescribed manner.
4. If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within 5 days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of ₹ 100/day from the day after the expiry of such 5 day period until the failure is rectified, subject to a maximum amount of ₹ 5,000.
5. The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under section 39(3), in the prescribed manner.
6. If any deductor fails to pay to the Government the amount deducted as tax, he shall pay interest as per section 50(1), in addition to the amount of tax deducted.
7. The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.

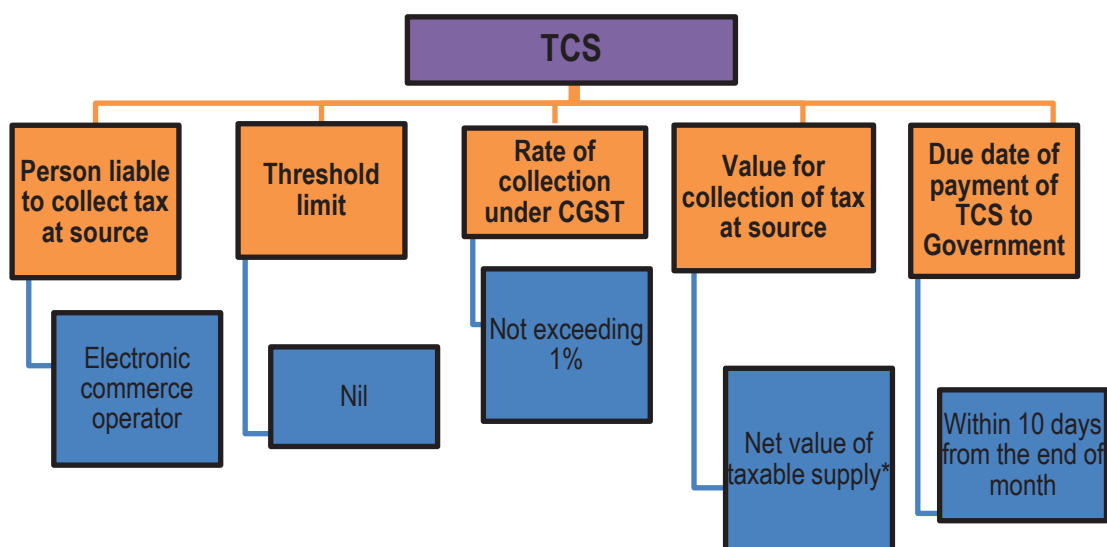
PAYMENT OF TAX

8. The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:

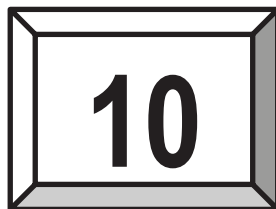
However, no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

4. TAX COLLECTION AT SOURCE (TCS)

TCS refers to the tax which is collected by the electronic commerce operator when a supplier supplies some goods or services through its portal and the payment for that supply is collected by the electronic commerce operator. Section 52 provides for collection of tax at source in certain circumstances, which stipulates as under:-



** "Net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.*



RETURNS

In any tax law, “filing of returns” constitutes the most important compliance procedure which enables the Government/ tax administrator to estimate the tax collection for a particular period and determine the correctness and completeness of the tax compliance of the taxpayers.

The basic features of the returns mechanism in GST include electronic filing of returns, uploading of invoice level information and auto-population of information relating to input tax credit (ITC) from returns of supplier to that of recipient, invoice-level information matching and auto- reversal of Input Tax Credit in case of mismatch.

All the returns are to be filed online. Returns can be filed using any of the following methods:

- ❖ GSTN portal (www.gst.gov.in)
- ❖ Offline utilities provided by GSTN
- ❖ GST Suvidha Providers (GSPs)

1. LIST OF RETURNS UNDER GST LAW

| Return | Description | Who Files? | Date for filing |
|--------|--|-------------------|------------------------|
| GSTR-1 | Monthly Statement of Outward supplies of Goods or Services | Registered Person | 10th of the next month |
| GSTR-2 | Monthly Statement of Inward supplies of Goods or Services | Registered Person | 15th of the next month |
| GSTR-3 | Monthly Return for a normal taxpayer | Registered Person | 20th of the next month |

BACKGROUND MATERIAL

| | | | |
|---------|---|--|---|
| GSTR-4 | Quarterly Return | Taxable Person opting for Composition Levy | 18th of the month succeeding the quarter |
| GSTR-5 | Monthly Return for a non-resident taxpayer | Non-resident Taxpayer | 20th of the month succeeding the tax period or within 7 days after expiry of registration, whichever is earlier |
| GSTR-6 | Monthly Return for an Input Service Distributor (ISD) | Input Service Distributor | 13th of the next month |
| GSTR-7 | Monthly Return for authorities deducting tax at source | Tax Deductor | 10th of the next month |
| GSTR-8 | Monthly Statement for E-Commerce Operator depicting supplies effecting through it | E-Commerce Operator | 10th of the next month |
| GSTR-9 | Annual Return | Registered Person other than an ISD, TDS/TCS Taxpayer, Casual Taxable Person and Non-resident Taxpayer | 31st December of next Financial Year |
| GSTR-10 | Final Return | Taxable Person whose registration has been surrendered or cancelled | Within three months of the date of cancellation or date of order of cancellation, whichever is later. |

Returns to be filed by a normal taxpayer

1. **GSTR-1-Statement of Outward Supplies**-This Statement signifies the tax liability of the supplier for the supplies effected during the previous month.
2. **GSTR-2-Statement of Inward Supplies**-This Statement signifies accrual of ITC (Input Tax Credit) from the inputs received during the previous month. It is auto-populated from the GSTR-1s filed by the corresponding suppliers of the Taxpayer except for a few fields like imports, and purchases from unregistered suppliers.

3. GSTR-3-Return-This is a consolidated return. It consolidates the following details

- Outward Supplies (Auto-Populated from GSTR-1)
- Inward Supplies (Auto-Populated from GSTR-2)
- ITC availed
- Tax Payable
- Tax Paid (Using both Cash and ITC)

Annual Return

This return needs to be filed by 31st December of the next Financial Year. In this return, the taxpayer needs to furnish details of expenditure and income for the entire Financial Year.

Revision of Returns

The mechanism of filing revised returns for any correction of errors/omissions has been done away with. The rectification of errors/omissions is allowed in the subsequent returns. However, no rectification is allowed after furnishing the return for the month of September following the end of the financial year to which, such details pertain, or furnishing of the relevant annual return, whichever is earlier.

2. PENAL PROVISIONS RELATING TO RETURNS

Any registered person who fails to furnish form GSTR-1, GSTR-2, GSTR-3 or Final Return within the due dates, shall be liable to pay a late fee of ₹ 100 per day, subject to a maximum of ₹ 5,000.

3. ITC MATCHING AND AUTO-REVERSAL

1. It is a mechanism to prevent revenue leakage.
2. The process of ITC matching begins after the due date for filing of the return (20th of every month). This is carried out by GSTN.
3. The details of every inward supply furnished by the taxable person (i.e. the “recipient” of goods and/or services) in form GSTR-2 shall be matched with the corresponding details of outward supply furnished by the corresponding taxable person (i.e. the “supplier” of goods and/or services) in his valid return. A return may be considered to be a valid return only when the appropriate GST has been paid in full by the taxable person, as shown in such return for a given tax period.

BACKGROUND MATERIAL

4. In case the details match, then the ITC claimed by the recipient in his valid returns shall be considered as finally accepted and such acceptance shall be communicated to the recipient. Failure to file valid return by the supplier may lead to denial of ITC in the hands of the recipient.
5. In case the ITC claimed by the recipient is in excess of the tax declared by the supplier or where the details of outward supply are not declared by the supplier in his valid returns, the discrepancy shall be communicated to both the supplier and the recipient. Similarly, in case, there is duplication of claim of ITC, the same shall be communicated to the recipient.
6. The recipient will be asked to rectify the discrepancy of excess claim of ITC and in case the supplier has not rectified the discrepancy communicated in his valid returns for the month in which the discrepancy is communicated, then such excess ITC as claimed by the recipient shall be added to output tax liability of recipient in the succeeding month.
7. Similarly, duplication of ITC claimed by the recipient shall be added to the output tax liability of recipient in the month in which such duplication is communicated.
8. The recipient shall be liable to pay interest on the excess ITC or duplicate ITC added back to output tax liability of recipient from the date of availing of ITC till the corresponding additions are made in their returns.
9. Re-claim of ITC refers to taking back the ITC reversed in the Electronic Credit Ledger of the recipient by way of reducing the output tax liability.
 - Such re-claim can be made by recipient only if supplier declares details of the Invoice and/or Debit Notes in his valid return within prescribed timeframe.
 - In such case, interest paid by recipient shall be refunded to him by way of crediting the amount to his Electronic Cash Ledger.



REFUNDS

Timely refund mechanism is essential in tax administration, as it facilitates trade through the release of blocked funds for working capital, expansion and modernisation of existing business.

The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures under GST regime. Under the GST regime, there will be a standardised form for making any claim for refunds. The claim and sanctioning procedure will be completely online and time bound, which is a marked departure from the earlier time consuming and cumbersome procedure. Further, provisions relating to refund are more transparent as compared to provisions contained in the earlier indirect tax regime.

1. REFUND OF TAX [SECTION 54 OF THE CGST ACT]

A. Situations leading to refund claims:

- (i) Goods or services or both are exported or, goods or services or both supplied to an SEZ developer/unit, on payment of IGST and refund of such IGST paid on goods or services or both supplied is claimed.
- (ii) A registered person may claim refund of any unutilised input tax credit (ITC) at the end of any tax period in the following cases:
 - (a) **Zero rated supplies:** Supply of goods/services/both to an SEZ developer/unit or export of goods or services or both, and
 - (b) **Accumulated ITC on account of inverted duty structure:** Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council. Supply of services specified in item 5(b) of Schedule II of the CGST Act, i.e. construction services are notified for said purpose. However, refund of unutilized ITC shall **NOT** be allowed if:
 - ❖ the goods exported out of India are subjected to export duty;

BACKGROUND MATERIAL

- ❖ the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.
- (iii) Tax paid on the supply of goods regarded as deemed exports may be claimed by recipient.
- (iv) Refund of any balance in the electronic cash ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be claimed.
- (v) Refund on account of issuance of refund vouchers for taxes paid on advances against which goods or services have not been supplied, may be claimed.
- (vi) Refund of tax wrongly collected and paid to the Government [i.e. CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa.
- (vii) The IGST paid by tourist leaving India on any supply of goods taken out of India by him.
- (viii) Tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court.
- (ix) On finalization of provisional assessment, if any tax becomes refundable to assessee (on account of assessed tax on final assessment being less than the tax deposited by the assessee).
- (x) Refund of taxes on purchase made by UN bodies or embassies etc.

B. Refund claim can be filed

Any person claiming refund of any tax, interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of **2 years from the 'Relevant Date'** in such form and manner as may be prescribed. A registered person may claim refund of any unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure can be claimed at the end of any tax period.

C. Meaning of 'Relevant Date'

'Relevant Date' means:-

| Cases | Relevant Date |
|---|---------------|
| In case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods and | |

REFUNDS

| | |
|---|---|
| (i) Goods are exported by sea or air | Date on which the ship or the aircraft in which such goods are loaded, leaves India |
| (ii) Goods are exported by land | Date on which such goods pass the frontier |
| (iii) Goods are exported by post | Date of dispatch of goods by the Post Office concerned to a place outside India |
| In case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods | Date on which the return relating to such deemed exports is furnished |
| In case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, and | |
| (i) the supply of services had been completed prior to the receipt of such payment | Date of receipt of payment in convertible foreign exchange |
| (ii) payment for the services had been received in advance prior to the date of issue of the invoice | Date of issue of Invoice |
| Where tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court | Date of communication of such judgment, decree, order or direction |
| In case of refund of unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure | End of the Financial Year in which such claim for refund arises |
| In the case where tax is paid provisionally under this Act or the rules made thereunder | Date of adjustment of tax after the final assessment thereof |
| In the case of a person, other than the supplier | Date of receipt of goods or services or both by such person |

BACKGROUND MATERIAL

| | |
|----------------|------------------------|
| Any other case | Date of payment of tax |
|----------------|------------------------|

D. Application for refund of tax, interest, penalty, fees or any other amount

Application may be filed in Form GST RFD-01 electronically through GST common portal. However, a registered person claiming refund of any balance in the electronic cash ledger in accordance with the provisions of section 49(6), instead of claiming the same in Form GST RFD-01, may claim such refund in the return furnished for the relevant tax period under section 39 in Form GSTR-3/Form GSTR-4/Form GSTR-7, as the case may be. Such return furnished shall be deemed to be a refund claim filed under section 54.

The amount of advance tax deposited by a casual taxable person or a non-resident taxable person under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39. Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

In respect of supplies regarded as deemed exports, the application shall be filed by (a) the recipient of deemed export supplies, or (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

In respect of supplies to a SEZ unit/developer, the application for refund shall be filed by the -

- (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone.
- (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of SEZ.

E. Documents for filing refund claim

The applicant needs to file elaborate documents along with the refund claim. Standardised and easy to understand documents have been prescribed. Thus, for every claim, the main document prescribed is a statement of relevant invoices (NOT THE INVOICES ITSELF) pertaining to the claim. In case refund is on account of export of services, apart from the statement of invoices, the relevant bank realisation certificates evidencing receipt of payment in foreign currency is also required to be submitted. If it is a claim made by the supplier to the SEZ unit, an endorsement from the Proper Officer evidencing receipt of such goods/services in the SEZ also needs to be submitted. Further, a declaration is also required from the SEZ unit to the effect that they have not availed ITC of the taxpaid by the supplier. If the claim is for refund of accumulated ITC, only a statement containing invoice details as prescribed in the CGST Rules, 2017 need to be given.

REFUNDS

In case of claim of refund on account of any order or judgment of appellate authority or court, the reference number of the order giving rise to refund should also be given. For crossing the bar of unjust enrichment, if the refund claim is less than ₹ 2 lakh, then a self-declaration by the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim. For refund claims exceeding ₹ 2 lakh, a certificate from a Chartered Accountant/Cost Accountant will have to be given. It is to be noted that such document need not be given if it is a claim arising on account of zero rated supplies or claim of accumulated ITC or payment of wrong tax (integrated tax instead of central tax and state tax and vice versa) or a claim where supply is not done or a refund voucher has been issued.

F. Amount to be claimed as refund in case of zero rated supply of goods or services and on account of inverted duty structure

In the case of **zero-rated supply of goods or services or both** without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

$$\text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

where,-

- A. **“Refund amount”** means the maximum refund that is admissible;
- B. **“Net ITC”** means ITC availed on inputs and input services during the relevant period;
- C. **“Turnover of zero-rated supply of goods”** means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond/LUT;
- D. **“Turnover of zero-rated supply of services”** means the value of zero-rated supply of services made without payment of tax under bond or LUT, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period.

- E. **“Adjusted Total turnover”** means the turnover in a State or a Union territory, as defined under section 2(112), excluding the value of exempt supplies other than zero-rated supplies, during the relevant period;
- F. **“Relevant period”** means the period for which the claim has been filed.

In the case of refund on account of **inverted duty structure**, refund of ITC shall be granted as per the following formula -

BACKGROUND MATERIAL

$$\begin{array}{rcl} \text{Maximum} & & \text{Turnover of inverted rated supply of goods} \\ \text{Refund} & = & \times \text{Net ITC} \\ \text{Amount} & & \hline & & \text{Adjusted Total Turnover} \end{array} - \begin{array}{l} \text{Tax payable on} \\ \text{such inverted} \\ \text{rated supply of} \\ \text{goods} \end{array}$$

where,-

- A. **“Refund amount”** means the maximum refund that is admissible;
- B. **“Net ITC”** means input tax credit availed on inputs and input services during the relevant period;
- C. **“Adjusted Total turnover”** means the turnover in a State or a Union territory, as defined under section 2(112), excluding the value of exempt supplies other than zero-rated supplies, during the relevant period.

Where the application relates to refund of ITC, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

G. Acknowledgment of refund claim

- I. **Where the application relates to a claim for refund from the electronic cash ledger:** An acknowledgment in prescribed form shall be made available to the applicant through the Common Portal electronically, clearly indicating the date of filing of the claim for refund.
- II. **Where the application relates to a refund claim other than claim for refund from the electronic cash ledger:** The application shall be forwarded to the proper officer who shall, within a period of 15 days of filing of the said application, scrutinize the application for its completeness. Where the application is found to be complete, an acknowledgement in prescribed form shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund.
- III. **Deficiencies in refund claim:** Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in prescribed form through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies. Where deficiencies have been communicated to applicant under the SGST Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under CGST Rules, 2017.

H. Order of refund

- ❖ If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund [discussed in detail in subsequent paras]. Refund order shall be issued by the proper officer within 60 days from the date of receipt

of application complete in all respects. The time limit of 60 days shall be counted from the date of filing claim for refund as mentioned in the acknowledgment received for refund claim.

- ❖ Where, upon examination of the application, the proper officer is satisfied that a refund is due and payable to the applicant, he shall make an order in Form GST RFD-06 sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis in case of zero rated supplies [discussed in subsequent paras], amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable.
- ❖ Amount of refund completely adjusted against any outstanding demand: In cases where the amount of refund is completely adjusted against any outstanding demand, an order giving details of the adjustment shall be issued.
- ❖ Amount of refund liable to be withheld: Where the proper officer/Commissioner is of the opinion that the amount of refund is liable to be withheld [discussed in detail later in this chapter], he shall pass an order informing the applicant the reasons for withholding of such refund.
- ❖ Where the proper officer is satisfied that the amount refundable is payable to the applicant, he shall make an order in Form GST RFD-06 and issue a payment advice for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.
- ❖ Where the proper officer is satisfied that the amount refundable is not payable to the applicant, he shall make an order in Form GST RFD-06 and issue an advice for the amount of refund to be credited to the Consumer Welfare Fund.

I. Grant of provisional refund

The proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, 90% of the total amount so claimed, excluding the amount of ITC provisionally accepted in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order for final settlement of the refund claim after due verification of documents furnished by the applicant.

J. Principal of Unjust Enrichment

Theory of unjust enrichment postulates that only the person who has NOT passed the incidence of tax will be eligible to claim the refund. Under GST law, related provisions are contained under section 54(8). Under unjust enrichment, a presumption is always drawn that the businessman will shift the incidence of tax to the final consumer. This is because GST is an indirect tax whose incidence is to be borne by the consumer. It is for this reason that every refund claim if sanctioned is first transferred to the Consumer Welfare Fund.

BACKGROUND MATERIAL

If the refund claim of refund (barring specified exceptions) passes the test of unjust enrichment, it is paid to the applicant. The GST law makes this test inapplicable in case of refund of accumulated ITC, refund on account of exports, refund of payment of wrong tax (IGST instead of CGST + SGST and vice versa), refund of tax paid on a supply, which is not provided or when refund voucher is issued or if the applicant shows that he has not passed on the incidence of tax to any other person. In all other cases, the test of unjust enrichment needs to be satisfied for the claim to be paid to the applicant.

For crossing the bar of unjust enrichment, if the refund claim is less than ₹ 2 lakh, then a self-declaration of the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim.

For refund claims exceeding ₹ 2 lakh, a certificate from a Chartered Accountant/Cost Accountant will have to be given.

K. Issue of SCN and rejection of refund claim

Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice to the applicant. Applicant will be required to furnish a reply within 15 days of the receipt of such notice. The proper officer shall, after considering the reply furnished by applicant and after giving him an opportunity of being heard, make an order in Form GST RFD-06, sanctioning the amount of refund in whole or part, or rejecting the said refund claim. No application for refund shall be rejected without giving the applicant an opportunity of being heard.

L. Withholding of refund claim

GST law provides that where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine. However, it has been adequately safeguarded by provision for payment of interest @ 6% p.a. if, as a result of appeal, or further proceedings, the applicant becomes eligible for refund.

M. Minimum refund claim

No refund shall be paid to an applicant, if the amount is less than ₹ 1,000.

N. Credit of the amount of rejected refund claim

Where any deficiencies in refund claim have been communicated, the amount earlier debited shall be re-credited to the electronic credit ledger. Where any amount claimed as refund is rejected, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the

electronic credit ledger by an order made in prescribed form. For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.

O. Refund of integrated tax paid on goods exported out of India

- ❖ The shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:
 - (a) the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
 - (b) the applicant has furnished a valid return in Form GSTR-3/Form GSTR-3B.
- ❖ The details of the relevant export invoices contained in Form GSTR-1 shall be transmitted electronically by the GST common portal to the system designated by the Customs. The said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.
- ❖ Upon the receipt of the information regarding the furnishing of a valid return in Form GSTR-3/Form GSTR-3B from the common portal, the system designated by the Customs shall process the claim for refund and an amount equal to the integrated tax paid in respect of each shipping bill/bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.
- ❖ The claim for refund shall be withheld where a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming; or the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.
- ❖ Where refund is so withheld, the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.
- ❖ Upon transmission of said intimation, the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in prescribed form. Where the applicant becomes entitled to refund of the amount withheld, the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order.
- ❖ The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

P. Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking (LUT)

- ❖ Any registered person availing the option to supply goods/services for export without payment of IGST shall furnish, prior to export, a bond/LUT in prescribed form to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest @ 18% p.a. within a period of:
 - (a) 15 days after the expiry of 3 months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India; or
 - (b) 15 days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.
- ❖ The details of the export invoices contained in Form GSTR-1 furnished on the GST common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.
- ❖ Where the goods are not exported within the specified time and the registered person fails to pay the specified amount, the export as allowed under bond/LUT shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.
- ❖ The export as allowed under the bond/LUT withdrawn shall be restored immediately when the registered person pays the amount due.
- ❖ The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.

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| <h2>2. REFUND TO UN BODIES, EMBASSIES, ETC. [SECTION 55 READ WITH SECTION 54(2) OF CGST ACT]</h2> |
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Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption has been operationalized by way of a refund mechanism. So, a taxable person making supplies to such bodies would charge the tax due and remit the same to Government account. However, the UN bodies and other entities notified under section 55 of the CGST Act, 2017 can claim refund of the taxes paid by them on their purchases. United Nations or a specified international organisation; and Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein, have been notified for the purpose of section 55. The claim has to be made before the expiry of 6 months from the last day of the quarter in which such supply was received.

3. INTEREST ON DELAYED REFUNDS [SECTION 56 OF CGST ACT]

Where any tax ordered to be refunded to any applicant is **not refunded within 60 days** from the date of receipt of application, interest shall be payable to the applicant **@ 6% p.a.** from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund of such tax. Where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court which has attained finality and the same is **not refunded within 60 days from the date of receipt of application** filed consequent to such order, interest shall be payable on such refund **@ 9% p.a.** from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund.

Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice in prescribed form. Such order shall specify therein, the **amount of refund** which is delayed, the **period of delay** for which interest is payable and the **amount of interest** payable. Such interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

4. CONSUMER WELFARE FUND

Consumer Welfare Fund was created to promote and protect the welfare of consumer, create consumer awareness and strengthen consumer movement in the country, particularly in rural areas. Amount of refund which is not payable to the applicant is credited to the Consumer Welfare Fund. As already discussed in this chapter, amount of refund is paid to the applicant in case where there is no unjust enrichment; i.e. the incidence of tax has not been passed by the supplier to the recipient as also in the circumstances where the principle of unjust enrichment is not applicable. Otherwise, the said amount is credited to the Consumer Welfare Fund. All sums credited to the Consumer Welfare Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.

5. REFUND OF INTEGRATED TAX PAID ON SUPPLY OF GOODS TO TOURIST LEAVING INDIA [SECTION 15 OF IGST ACT]

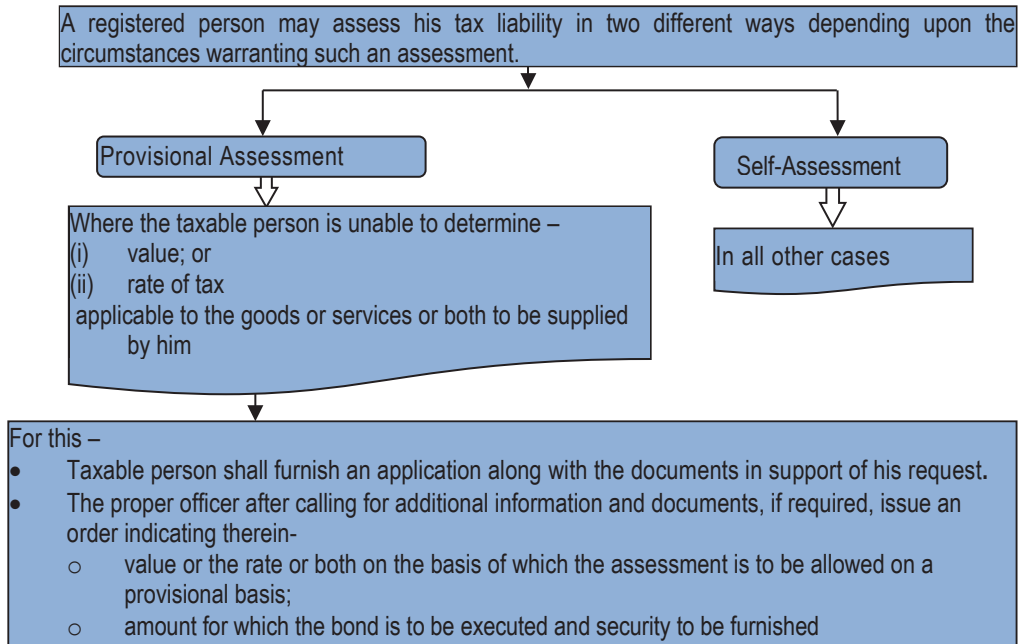
The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed. The term "tourist" means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

ASSESSMENT

A supplier will come to know the extent of his tax liability which has to be discharged on a continuous and regular basis only after assessment. Assessment means determination of tax liability and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

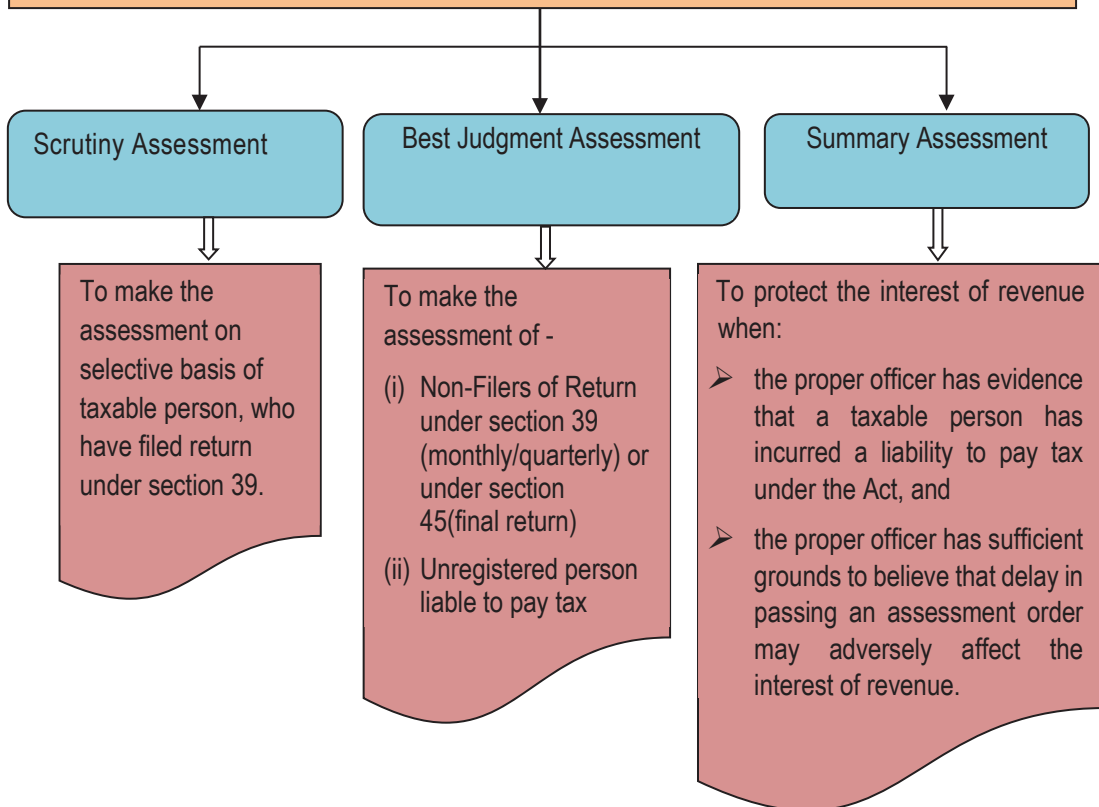
The provisions relating to assessment has been summarised by way of diagrams to help students remember and retain the provisions in a better and effective manner :-

1. DIFFERENT WAYS TO ASSESS THE TAX LIABILITY BY A REGISTERED PERSON

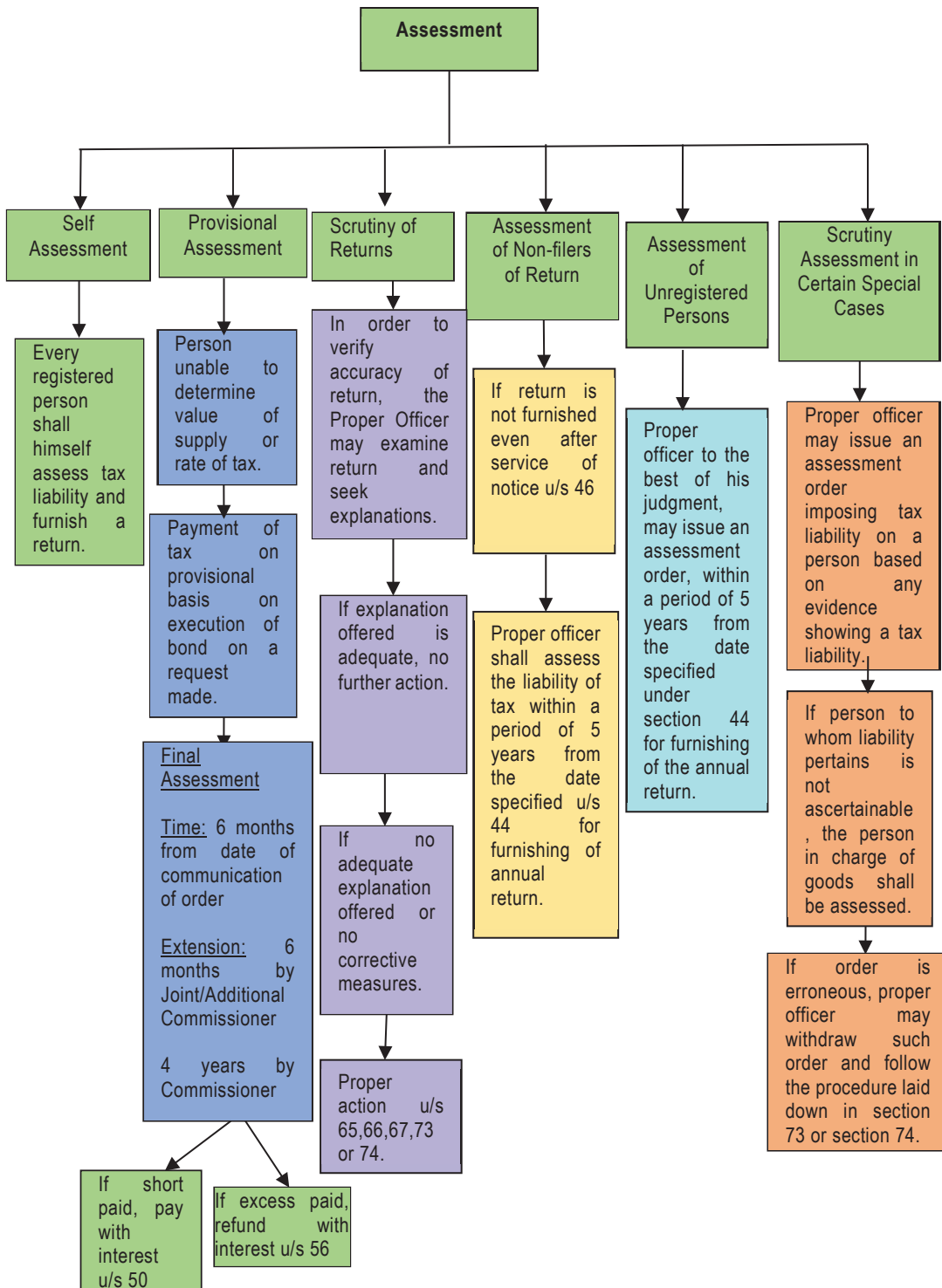


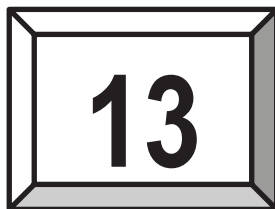
2. DIFFERENT TYPES OF ASSESSMENTS WHICH MAY BE CONDUCTED BY THE DEPARTMENT AGAINST THE TAXABLE PERSON

There are three different type of assessments, which may be conducted by Tax Authorities



ASSESSMENT





OFFENCES & PENALTIES

The word “penalty” has not been defined in the CGST Act but judicial pronouncements and principles of jurisprudence have laid down the nature of a penalty as:

- ❖ a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;
- ❖ a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.

‘Prosecution’ is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines “prosecution” as the institution and carrying on of the legal proceedings against a person.

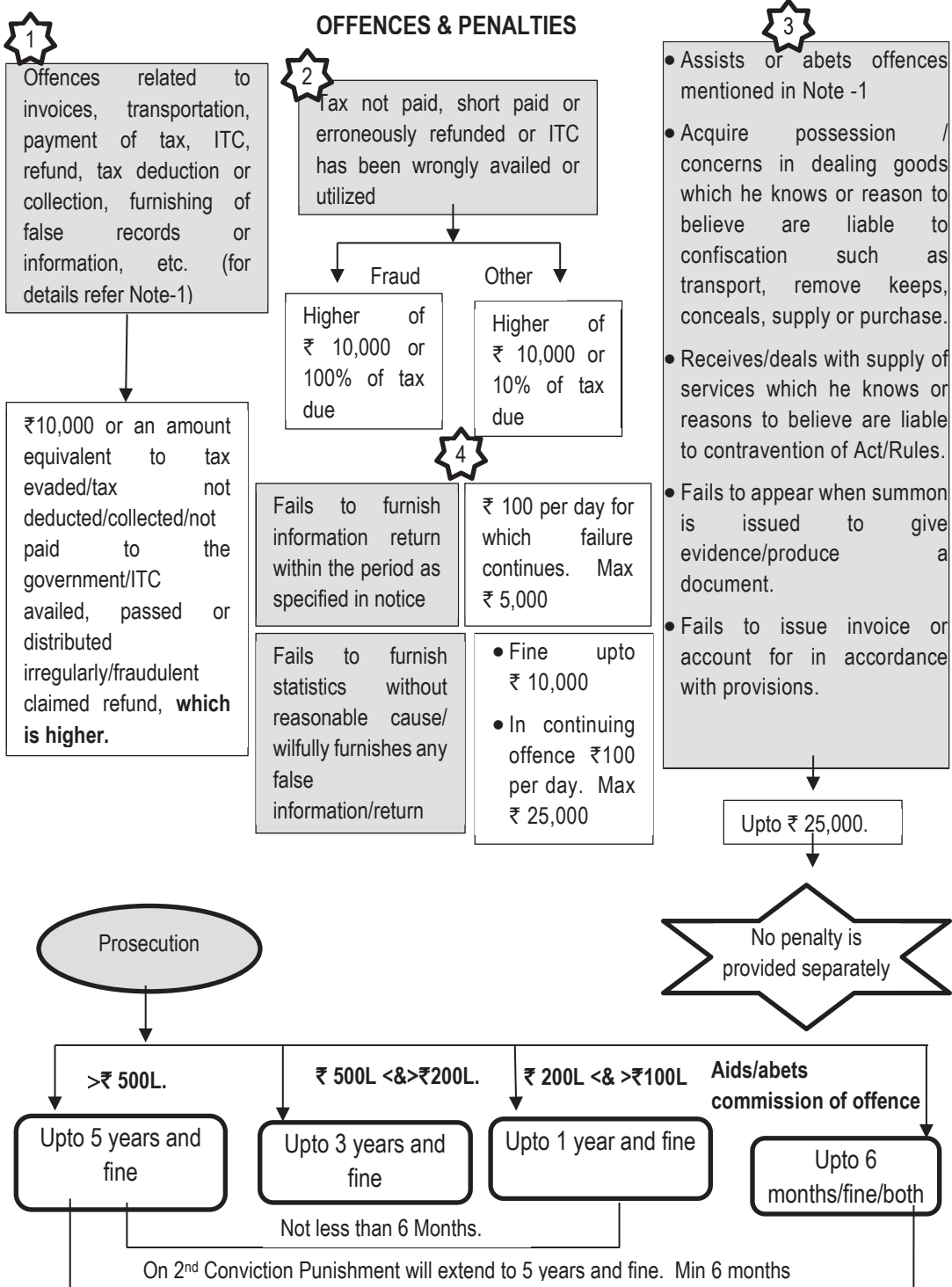
Whereas amount of penalty to be leviable will depend upon intention of person committing the offence, a person with fraudulent intention to evade payment of taxes will be subjected to higher amount of taxes, a relatively less amount of penalty will be levied for non-fraudulent offences.

Likewise, to institute the prosecution, offences will be classified into Cognizable (serious category of offences) and non-cognizable offences (Relatively less serious category of offences). Whereas former will be non-bailable, latter will be bailable offence.

1. OVERVIEW OF OFFENCES AND PENALTIES

The provisions relating to offences and penalties have been summarised by way of a diagram to help students remember and retain the provisions in a better and effective manner:-

BACKGROUND MATERIAL





Note-1

1. Supplies of goods/services made without invoice/ false invoice, invoices or bills issued without any supply of goods/services, transports taxable goods without document cover.
2. Collects tax, but fails to pay to Government within 3 months from due date of payment.
3. Fails to deduct any tax or collect tax, deduct or collect lesser amount of tax, failed to pay the same to Government.
4. Takes or utilizes ITC or distributes ITC in contravention of the Act.
5. Obtains refund fraudulently.
6. Falsifies or substitutes financial records/ produces fake accounts/ furnishes false information with an intention to evade tax/ suppresses the turnover in order to evade tax.
7. Fails to obtain registration/ furnishes false particulars with regard to registration/ issues invoices using registration number of another person.
8. Obstructs or prevents officer in discharge of his duties.
9. Fails to keep, maintain or retain books of accounts.
10. Fails to furnish information or documents/ furnishes false information during any proceedings.
11. Supplies, transports or stores goods which person has a reason to believe are liable for confiscation.
12. Tampers with or destroys any material evidence or document. Disposes off or tampers any goods that have been detained, seized or attached.
13. Transporting any taxable goods without cover of documents



MISCELLANEOUS & TRANSITIONAL PROVISIONS

A. MISCELLANEOUS PROVISIONS

1. Job work

Section 2(68) of the CGST Act, 2017 defines job-work as 'any treatment or process undertaken by a person on goods belonging to another registered person'. The one who does the said job would be termed as 'jobworker'. The ownership of the goods does not transfer to the job-worker but it rests with the principal. The jobworker is required to carry out the process specified by the principal on the goods.

Certain facilities with certain conditions are offered in relation to job-work, some of which are as under:

- a) A registered person (Principal) can send inputs/ capital goods under intimation and subject to certain conditions without payment of tax to a job-worker and from there to another job-worker and after completion of job-work bring back such goods without payment of tax. The principal is not required to reverse the ITC availed on inputs or capital goods dispatched to job-worker.
- b) Principal can send inputs or capital goods directly to the job-worker without bringing them to his premises and can still avail the credit of tax paid on such inputs or capital goods.
- c) However, inputs and/or capital goods sent to a jobworker are required to be returned to the principal within 1 year and 3 years, respectively, from the date of sending such goods to the job-worker.
- d) After processing of goods, the job-worker may clear the goods to-
 - (i) Another job-worker for further processing
 - (ii) Dispatch the goods to any of the place of business of the principal without payment of tax

- (iii) Remove the goods on payment of tax within India or without payment of tax for export outside India on fulfilment of conditions.

The facility of supply of goods by the principal to the third party directly from the premises of the jobworker on payment of tax in India and likewise with or without payment of tax for export may be availed by the principal on declaring premise of the job-worker as his additional place of business in registration. In case the job-worker is a registered person under GST, even declaring the premises of the job-worker as additional place of business is not required.

The inputs or capital goods shall be sent to the jobworker under the cover of a challan issued by the principal. The challan shall be issued even for the inputs or capital goods sent directly to the job-worker. The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

As per the explanation provided in section 143 of the CGST Act, 2017, where certain process is carried out on the input before removal of the same to the jobworker, such product after carrying out the process is to be referred as the intermediate product. Such intermediate product can also be removed without the payment of tax. Therefore, both input and intermediate product can be cleared without payment of tax to job-worker. Pursuant to Section 143 (5) of the CGST Act, 2017, waste generated at the premises of the job-worker may be supplied directly by the registered job-worker from his place of business on payment of tax or such waste may be cleared by the principal, in case the job-worker is not registered.

2. Anti-profiteering Measure

The burden of indirect taxation ultimately falls on the consumers. It is expected that the GST regime will result in an increased flow of input tax credit. In such a scenario, the concern that benefit of such increased input tax credit may not be passed on by certain entities to the consumers is not unreasonable. Section 171 of CGST Act makes it mandatory that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed to the recipient by way of commensurate reduction in prices.

National Anti-profiteering Authority is therefore being constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him. The National Anti-Profiteering Authority shall be a five member committee consisting of a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and four Technical Members who are or have been Commissioners of State tax or central tax for at least one year or have held an equivalent post under earlier laws. The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the GST Council recommends otherwise.

Duties of the Authority: It shall be the duty of the authority-

- (i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices

- (ii) to identify the taxpayer who has not passed on the benefit
- (iii) to order
 - (a) reduction in prices
 - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be. If the eligible person does not claim return of the amount or is not identifiable, the amount must be deposited in the Consumer Welfare Fund;
 - (c) imposition of penalty
 - (d) cancellation of registration
- (iv) to furnish a performance report to the GST Council by the 10th of the month succeeding each quarter

Application to the Authority: All applications from interested parties on issues of local nature shall first be examined by the State Level Screening Committee. On being satisfied that the supplier has not passed on the benefit, the Screening Committee will forward the application with its recommendations to the Standing Committee on Anti-profiteering. If the Standing Committee is satisfied that there is a *prima facie* evidence to show that the supplier has not passed on the benefit, it shall refer the matter to the Director General of Safeguards for a detailed investigation.

Investigation: The Director General of Safeguards shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter). The evidence or information presented to the Director General of Safeguards by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided will be kept confidential and the provisions of section 11 of the Right to Information Act, 2005, shall apply *mutatis mutandis* to the disclosure of any information which is provided on a confidential basis.

The Director General of Safeguards can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Director General of Safeguards, or an officer authorised by him will have the power to summon any person either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding. The Director General of Safeguards will complete the investigation within a period of 3 months or within such extended period not exceeding a further period of 3 months for reasons to be recorded in writing as allowed by the Standing Committee. Upon completion of the investigation, the Director General of Safeguards will furnish to the Authority, a report of its findings along with the relevant records.

Order of the Authority: Where the Authority determines that a registered person has not passed on the benefit, the Authority may order-

- (a) reduction in prices;
- (b) return to the recipient, the benefit amount not passed on along with interest;
- (c) imposition of penalty as specified under the Act; and
- (d) cancellation of registration under the Act.

Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount. The Authority will pass order within 3 months from the date of the receipt of the report from the Director General of Safeguards. An opportunity of being heard will be given, if the interested parties request for it in writing. Period of interest will be calculated from the date of collection of higher amount till the date of return of such amount. If the eligible person (i.e., the buyer) does not claim the return or the person is unidentifiable then the amount must be deposited to the Consumer Welfare Fund along with applicable interest.

3. Rectification of errors apparent on the face of record

Section 161 of CGST Act, 2017 provides that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

No such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. The said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission. If such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

4. Power to make rules & regulations and issue instructions or directions

Section 164 of the CGST Act, 2017 empowers the Government to make rules on the recommendations of the GST Council for carrying out the provisions of the Act. The rules may also be issued with retrospective effect but not from a date earlier than the date on which the provisions of the Act have come into force. The rules may provide for a penalty not exceeding Rs. 10,000/- for committing breach of any rule. Section 165 of CGST Act, 2017 empowers the Board to make regulations consistent with the Act and the rules made thereunder to carry out the provisions of the Act. The Central Government and the Board have been vested with the similar powers of making rules and regulations respectively under sections 22 & 23 of the IGST Act also.

Section 167 empowers the Board (CBEC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the Act. All officers and all other persons employed in the implementation of the Act shall observe and follow such orders, instructions or directions.

5. Deemed Exports

Section 147 of CGST Act lays down the provisions for deeming certain supplies as exports, so as to extend the benefit of export to such supplies. Supplies may be notified as deemed exports if they meet the following conditions:

- ❖ Goods supplied do not leave India
- ❖ Payment for such supplies is received either in Indian rupees or in convertible foreign exchange
- ❖ Such goods are manufactured in India

The following supplies have been notified as deemed exports:

1. Supply of goods by a registered person against Advance Authorisation
2. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3. Supply of goods by a registered person to Export Oriented Unit
4. Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation

It may be noted that this provision is applicable only in case of supply of goods, and not supply of services.

6. GST compliance rating

As per section 149, every registered person shall be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall not be permanent and will be revised from time to time. The ratings shall be intimated to the taxable person and will also be placed in the public domain. A prospective client will be able to see the compliance ratings of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons.

7. Service of notice in certain circumstances

Section 169 of CGST Act provides that a notice, decision, order, summons, or any other communication can be served by any one of the following methods:

- (a) By giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
- (b) By registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

- (c) By sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- (d) By making it available on the common portal; or
- (e) By publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
- (f) If none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

Every decision/order/summons/notice/communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed. When a decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

B. TRANSITIONAL PROVISIONS

As GST seeks to consolidate multiple taxes into one, it is very essential to have transitional provisions to ensure that the transition to the GST regime is very smooth and hassle-free and no ITC (Input Tax Credit)/benefits earned in the earlier regime are lost. The transition provisions can be categorised under three heads namely,

- (i) relating to ITC,
- (ii) continuance of earlier procedures such as job work for a reasonable period without any adverse consequence under GST law, and
- (iii) all claims (pending as well as future) pertaining to earlier laws filed before, on or after the appointed day.

Section 2(10) of the CGST Act defines “appointed day” as the date on which the provisions of CGST Act shall come into force.

1. Transitional arrangements for ITC

Elaborate provisions have been made to carry forward the ITC earned under the earlier law. Such credit should be permissible under the GST law. However, the taxable person opting for composition scheme would not be eligible for carry forward of the earlier ITC. ITC of various taxes under the earlier laws (CENVAT credit, VAT etc.) would be carried forward as under:

- (a) **Closing balance of the credit in the last returns:** The closing balance of the CENVAT credit/VAT in the last returns filed under the earlier law can be taken as credit in electronic credit ledger. Such credit would be available only when returns for the previous last six months

have been filed under the earlier law. In order to claim this credit, declaration in form GST TRAN 1 is required to be furnished on the common portal within ninety days from the appointed day i.e. the day on which the GST law would come into force. The due date for furnishing the TRAN-1 has been extended to 27th December, 2017.

- (b) **Unavailed credit on capital goods:** The balance instalment of unavailed credit on capital goods credit can also be taken by filing the requisite declaration in the GST TRAN 1.
- (c) **Credit on duty paid stock:** A registered person, who was not liable to be registered under the earlier law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—ST dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:—

 - (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
 - (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
 - (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs;
 - (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
 - (v) the supplier of services is not eligible for any abatement under this Act:
- (d) **Credit on duty paid stock when registered person does not possess the document evidencing payment of excise duty/VAT:** For traders who do not have excise or VAT invoice, there is a scheme to allow credit to them on the duty paid stock. The features of this scheme are as under:

 - (i) The scheme is operative only for six months from the appointed day. It is not available to manufacturer or supplier of service. It is available to traders only.
 - (ii) Credit @ 60% on such goods which attract central tax @ 9% or more and @ 40% for other goods of GST paid on the stock cleared after the appointed day would be allowed. However, such goods should not be unconditionally exempted goods or taxed at nil rate under the earlier law. It has also been provided that where integrated tax is paid on such goods, the amount of credit shall be allowed at @ 30% and 20% respectively of the said tax.
 - (iii) Credit would be allowed after the GST is paid on such goods subject to the condition that the benefit of such credit is passed on to the customer by way of reduced prices.
 - (iv) The statement of supply of such goods in each of the six tax periods has to be submitted.

- (v) Stocks stored should be easily identifiable.
- (e) **Input/input services in transit:** There might be a scenario where input or input services are received on or after the appointed day but the duty or tax on the same was paid by the supplier under the earlier law. Registered person (RP) may take credit of eligible duties and taxes, provided the invoice has been recorded in the books within 30 days from the appointed day. The period can be extended by the Commissioner GST by another 30 days. A statement of such invoices have to be furnished. ISD can also distribute such credit.
- (f) **Tax paid under the earlier law under composition scheme:** Those taxpayers who paid tax at fixed rate or fixed amount in lieu of the tax payable under the earlier law but are working under normal scheme under GST can claim credit on their input stock, semi-finished and finished stock on the appointed date, subject to the following conditions:
- (i) Such input stock used for taxable supply under this Act
 - (ii) Registered person is not covered under section 10 (composition scheme) of this Act
 - (iii) Registered person is eligible for ITC under this Act
 - (iv) Registered person is in possession of the invoice or other duty payment documents
 - (v) Such invoices are not more than twelve months old on the appointed day
- (g) **ITC in case of centralised registration under service tax:** Such registered person can take credit of the amount of CENVAT credit carried forward in a return, furnished under the earlier law by him, in respect of the period ending with the day immediately preceding the appointed day. I
- If the registered person furnishes his return for such period within 3 months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier. Such credit may be transferred to any of the registered persons having the same PAN for which the centralised registration was obtained.
- (h) **Reclaim the reversed ITC:** CENVAT credit reversed on account of non-payment of consideration within three months can be reclaimed if the payment is made to the supplier of service within 3 months from the appointed day
- (i) **Where any goods or capital goods belonging to the principal are lying at the premises of the agent on the appointed day:** This provision is specific to SGST law. In such cases, agent shall be entitled to take credit, subject to the following conditions:
- (i) The agent is a registered taxable person
 - (ii) Both the principal and the agent declare the details of stock
 - (iii) The invoices are not older than twelve months
 - (iv) The principal has either reversed or has not availed the input tax credit

2. Transition provisions relating to job work, goods returned/sent on approval etc.

- (a) **Job work:** Inputs, as such, or partially processed inputs which are sent to a job-worker prior to introduction of GST under the provisions of central excise law and if such goods are returned within 6 months from the appointed day no tax would be payable. The GST Commissioner can extend this period by another two months. If such goods are not returned within prescribed time, the input tax credit availed on such goods will be liable to be recovered.

If the manufactured goods are removed, prior to the appointed day, without payment of duty for testing or any other process which does not amount to manufacture, and such goods are returned within 6 months from the appointed day, then no tax will be payable. For the purpose of these provisions during the transitional period, the manufacturer and the job-worker are required to declare the details of such goods sent/received for job-work in prescribed format GST TRAN-1.

- (b) **Goods removed within 6 months prior to the appointed day but returned within 6 months from the appointed day:** If such goods are returned by an unregistered person, refund of the duty/VAT paid under the earlier law can be claimed. If returned by a registered person, then the return of goods shall be treated as supply of goods (ITC can be claimed).
- (c) **Goods sent on approval basis within 6 months prior to the appointed day but returned within 6 months from the appointed day:** No tax is payable by the person returning the goods. Commissioner may extend the period by 2 months. If returned after that, tax is payable if the supply is taxable under GST (by the recipient). If not returned, tax is payable by the person who sent the goods on approval basis.
- (d) **TDS deducted in VAT:** Where a supplier has made any sale of goods, and tax was required to be deducted under VAT Act, and invoice was issued before the appointed day. However, the payment was made on or after the appointed day. In such cases, no TDS under GST is to be deducted.
- (e) **Price revision in respect of existing contracts:** In case of upward price revision, a registered person will issue a supplementary invoice or debit notes within 30 days from the date of revision and such revision shall be treated as supply under GST, and tax is payable under this Act. In case of downward revision, registered person may issue credit note within 30 days from such revision and credit note shall be deemed to have been issued in respect of outward supply made under this Act. A registered person will reduce his tax liability for such credit note, subject to reversal of credit by the recipient.

3. Proceedings under the earlier laws

GST law has become operational from July 1, 2017 and earlier laws have been repealed. Elaborate provisions have been made to save the pending as well future claims relating to earlier law made before, on or after the appointed day. Such proceedings may pertain to refund claims of CENVAT

BACKGROUND MATERIAL

credit/VAT or export related rebate of excise duty/service tax, and the proceedings may either result in recovery of duty/tax or refund.

All such cases would be disposed of under the earlier law. If any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse. If approved, refund of CENVAT credit shall be paid in cash. There will be no refund of CENVAT, if the balance of CENVAT has already been carried forward. If any amount becomes recoverable, the same shall be recovered as arrear of tax under GST Act.

Statutory provisions relating to transition are contained in Chapter XX [Sections 139 to 142] of the CGST Act and Chapter XIV [Rules 117 to 121] of the CGST Rules, 2017. The same may be referred to for understanding the provisions in greater detail.



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