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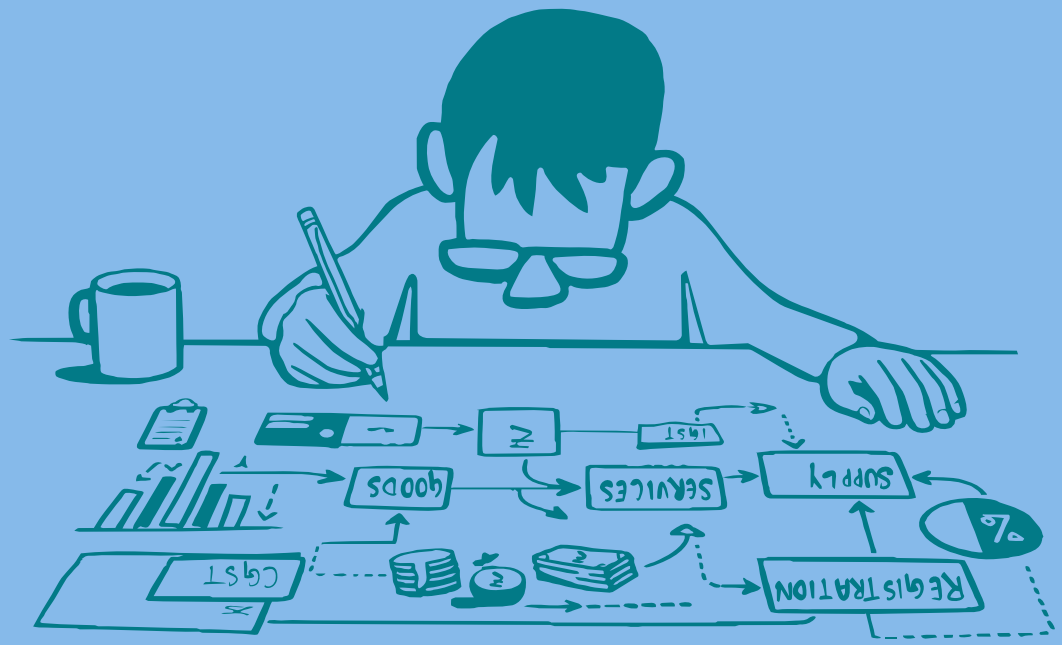
CA Intermediate Taxation – GST

Sep 26/Jan 27 & onwards

Complex ideas

Made visual



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GST FLOW (Index)






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GST in India - An Introduction

Alcoholic liquor for Human Consumption → AL for Hc



Article 366(12A): GST means any Tax on supply of G/S/B except AL for Hc

A Compulsory payment → under an act → to govt → to provide public services

Direct tax	Indirect tax [Features]
• Imposed on Taxpayer	• Imposed on Goods & Services
• Burden is on the person tax is imposed	• Burden is shifted to ultimate Consumer
• Example: Income tax	• Example: GST & Custom duty
• Progressive in nature	• Regressive in nature

Deficiencies in existing tax System

- Cascading effect (tax on tax)
- NO cenvat Credit to dealers / traders
- Double taxation due to non integration of VAT & ST
- Several taxes were not Subsumed: LT, ET, etc.

Benefits of GST

- Creation of Unified national market
- Boost to make in India initiative
- Enhanced investment & Employment
- Mitigation of ill effects of cascading
- Ease of doing business
- Reduction in Compliance cost
- Automated process with greater use of IT
- Elimination of multiple taxes & double taxation
- Benefit to small traders and entrepreneurs

Various features of GST

- It is a tax on Supply of G/S
- It is a consumption tax
- It is a destination based tax
- It is a value added tax

Central taxes Subsumed	State taxes Subsumed	Taxes Not Subsumed into GST
• Central Excise duty	• State surcharges & cesses	• Basic Custom duty
• Service tax	• Entertainment tax except →	• ET levied by local bodies
• CVD & SpI CVD	• Tax on lottery, betting & Gambling	• Property tax & Stamp duty
• Central Sales tax	• Entry tax, purchase tax	• Electricity duty
• Surcharges & cesses	• VAT & Sales tax, Luxury tax	• SED on AL for HC, CED on HPMAN

Dual model of GST: India has adopted dual model of GST which is imposed Concurrently by the centre & the state. GST levied by Centre: CGST, levied by State/UT: SGST/UTGST. Now centre has power to tax intra state & states empowered to tax services. India has adopted its Gst model from Canada.

GSPs: IT, ITES, financial tech COs, appointed by GSTN to develop application for taxpayers to interact with GSTN, facilitating tax payers in uploading invoice & filing returns, & customise products according to needs of users. GSPs take help of ASPs, GSPs act as a link b/w taxpayers & GSTN. ASPs act as a link b/w taxpayers & GSPs. GST Suvidha Providers, Application Service Providers (ASPs)

Trade & Commerce

Intrastate Supply
within same state / UT
↓
CGST + SGST CGST + UTGST

India
- 28 states → 31 states (CGST + SGST)
- 8 UTs
  - 3 UTs → Delhi, Pondi, J&K (CGST + UTGST)
  - 5 UTs (CGST + UTGST)
    - Andaman and Nicobar islands
    - Lakshadweep
    - Dadra and Nagar Haveli and Daman and Diu
    - Ladakh
    - Chandigarh

Interstate Supply
- between different State / different UTs
- between 1 state & 1 UT
- between different Countries

↓ IGST

Various G/S	SED	CED	VAT/CST	GST
AL for HC	✓	×	✓	×
HPMAN	×	✓	✓	×
Tobacco	×	✓	×	✓
Opium	✓	×	×	✓
Others	×	×	×	✓

Constitutional Provisions: Articles

→ 265: No tax shall be levied / collected except by authority of law

→ 245: Parliament may make law for whole / any part of the territory of India
State legislature may make law for whole / any part of the state

→ 246 (7th Schedule): Divides power to make law into 3 lists.
List I: Union list: Parliament (CG), List II: State list: State legislature, List III: Concurrent list

→ 246A: Provides power to Parliament and State legislature to levy gst simultaneously
Parliament has exclusive power to make gst law w.r.t. Interstate trade & Commerce

→ 269A: IGST shall be levied & Collected by CG & apportioned b/w Union & State

→ 279A: GST Council: Constituted on 15.09.16, 33 members → 2 UM + 31 SFMs/Minister nominated,
Quorum $\frac{1}{2}$ x no. of members, Majority for decision → $\frac{3}{4}^{th}$ of weighted votes of mem. present & voting.
Weightage of votes – Centre – $\frac{1}{3}$rd, SGs – $\frac{2}{3}$rd of votes cast.
Functions: To make recommendation to Union & States on: taxes, cesses & surcharges to be subsumed, Rate of GST, G/S subject to/exempted from GST, Special provisions w.r.t. special Category states, Date on which GST be levied on HPMAN, Threshold limit of turnover for registration.

Common Portal: www.gst.gov.in, ewaybillgst.gov.in, einvoice1-10.gst.gov.in

Managed by: Goods & Services Tax Network [GSTN], National Informatics Centre

Function of GSTN includes • Facilitating Registration • Computation & settlement of IGST
• Matching of tax payment details with Banking networks • Providing MIS reports
• Forwarding Returns to central & state authorities • Providing analysis of tax payer's profile

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Goods & Services

Goods

Means: Every kind of **Movable** property





Immovable property
- Land, Benefit arising out of Land
- Things attached to the earth/
- Permanently fastened to anything attached

Other than (Excludes)

Money
- Indian Legal tender, Foreign Currency, cheque, demand draft.
- or any instrument recognised by RBI
- when used as a Consideration to settle an obligation

but shall not include currency held for its numismatic value



Securities
- Shares, Stock, bond, debentures, MF
- Government Securities
- Rights in Securities



but Includes

Actionable Claim: Mean a claim to any debt, other than a debt secured/to any beneficial interest in movable property not in the possession of claimant, which the civil Courts recognize as affording ground for relief, whether such debt/beneficial interest be existent, accruing, conditional/contingent.
Eg: Betting, Gambling, Lottery, Right to recover arears of rent, etc.

Growing Crops, Grass & things attached to/forming Part of the Land which are agreed to be Severed before Supply/ under a Contract of Supply

Services

Means: Anything



Other than: Goods Money & Securities

But Includes: Activities relating to the use of Money/ Its Conversion by Cash/any other mode
↓ from
One form, Currency/ denomination
↓ to
Another form, Currency/ denomination
↓
For which Seperate Consideration is charged



Explanation:
Services includes facilitating/ arranging transactions in Securities
Eg: Demat charges, brokerage, Portfolio maintenance charges, Commission, etc

Discuss the applicability of gst in the following Cases:
1. Sale of debentures: Neither goods nor Services: no GST
2. Sale of Plot of Land: Its a service, but no gst as per sec 7(2)(a) read with Schedule III
3. Cash deposit into bank: Transaction in money: money is neither goods nor service: No GST
4. Housing loan: Transaction in money: money is neither goods nor service: No GST
5. Interest on loan: Activity relating to use of money, it is a service.

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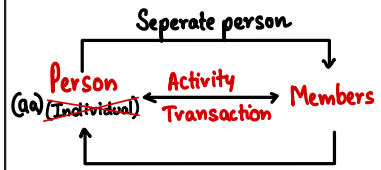
Section 7: Scope of Supply

The Taxable event

Note: For circulars refer next Page

7(1): Includes

(a) All forms of Supply of G|S|B
Such as: Sale, Transfer, Barter, Exchange, lease, Rental, License Disposal [STB ELR LD]
- Made/agreed to be made
- For a Consideration
- in the course/furtherance of business



(b) Importation of Services (IOS)
For a Consideration
- Business → Supply → Taxable (RCM)
- Non Business Purpose → Supply → Taxable but Exempted

(c) Activities specified in Schedule I
- made/agreed to be made
- without a Consideration

(1) Permanent Transfer/disposal of Business Asset (where ITC availed on such assets)

(2) Supply between related person/distinct person in the course/furtherance of business
Exception: Gift to employee upto Rs. 50,000 per annum per employee.
[Refer Circular on interstate movement of conveyance/between distinct person]

(3) Supply of goods b|w Principal & Agent
[Refer Circular on Principal Agent relationship]

(4) IOS → RP/own establishment outside India → in the course/furthevance of business.
→ Taxable (RCM)

Related Person (RP)
SCOPE ⊕ Family ⊕ Sole agent/distributor
Stock/Shares ≥ 25% in both of them,
Control (Direct/Indirect)
Officer/Directors of one another's businesses,
Partners in business,
Employer & Employee
Family: Spouse & children (SC) Only if dependent
Parents, Grandparents, Brother & Sister (PGBS)

7(1A): SOG|SOS (Schedule II)

(1) Transfer of
- (a) Title in goods (Ownership): SOG
- (b) Right in goods/Undivided Share: SOS
- (c) Title in future (Hire purchase): SOG

(2) (a) Lease, tenancy, easement to occupy land: SOS
(b) Lease, letting out of building: SOS
[Refer circular on Pagadi System]

(3) Treatment/process applied on another person's goods: SOS
[Refer circular on Rethreading & bus bodybuilding]

(4) Transfer of Business Asset
(a) Permanent transfer/disposal: SOG
(b) Put to pvt use/made available for non business use: SOS
(c) At the time of closure of business: Deemed SOG
Exception: Business transferred as going concern
Business carried on by a personal representative (TP)

(5) SOS: (a) Renting of Immovable property
(b) Construction of Complex, building, etc. (Consideration received before CC/FO(E))
(c) Temporary transfer/Use of IPR
(d) Development, Upgradation, etc. of IT Software
(e) Agreeing to the obligation to RTA
Refrain/tolerate/to do an act
[Refer Circular on RTA]
(f) Transfer of right to use goods

(6) Following Composite Supplies: SOS
(a) Works Contract (Immovable property)
(b) Restaurant/Catering

7(2) → Excludes → Neither SOG Nor SOS

(a) Activities/transactions specified in Schedule III

1. Services by Employee to the Employer (in the course/relation to employment)
[Refer circular on Perquisities]
2. Services by Court/tribunal established under Law
3. Functions performed by: MPs, MLA, MLC, etc.
Duties performed by: Constitution post holder
Duties performed by: chairperson/member/Director (CMD) of body established by govt (~~Employees~~).
4. Services of Mortuary/Burial/Funeral (incl. transportation)
5. Sale of Land & Completed Building
6. Actionable claims except Specified actionable claims
Specified actionable claims: Betting, Casinos, lottery, gambling, horse racing Online money gaming.
9. Activity of apportionment of Co-insurance premium by insurer to co-insurer for insurance services jointly supplied, Condition being lead insurer pays GST on entire premium paid by the insured.
10. Services by the insurer to re-insurer for which Ceding/re-insurance commission is deducted from re-insurance premium paid by the insurer to reinsurer, Condition being the GST is paid by reinsurer on the gross reinsurance premium payable by insurer to reinsurer.

7(2)(b) Notified activities/transactions Undertaken by CG|SG|LA as Public Authorities: Neither SOG nor SOS.
- Activity in relation to function entrusted to panchayat under 243G/municipality under 243W
- Grant of Alcoholic liquor licence against license/application fees. [Refer Circular on licenses]

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Interstate movement of Conveyance/Cranes between distinct person



- On Conveyance/Rigs/Cranes: No GST (NSoG, NSoS)
- On passenger & goods transportation: GST Leviable
- On Repairs & Maintenance work: GST Leviable
- Movement for further Supply: GST Leviable.

Circular on Scope of Principal Agent relationship

- Agent is further supplying in his name i.e. invoice is issued by agent in his name
- Agent is procuring in his name i.e. goods procured are invoiced in his name

} Then the agent is an agent as Schedule I Para 3.

Pagadi: Transfer of tenancy rights against tenancy Premium: SoS

- Exempt if granted for residential house to unregistered person.
- Further Sale/Surrendering by outgoing tenant for Consideration: GST.

Rethreading of tyres



- Supplier does rethreading for Customer: SoS
- Supplier sells rethreaded tyres: SoG

Bus bodybuilding i.e. fabrication on:



- chassis provided by Customer: SoS
- Own chassis & Supplying bus: SoG.

Clarification on agreeing to the obligation to RTA

- Agreement to Refrain, tolerate, or do an act ⊕ Consideration: SoS

Examples of Agreeing to the obligation to refrain from an act

- Non-Compete agreements.
- A builder refraining from Constructing more floors against a Compensation paid by neighbouring housing project.
- A manufacturing unit refraing from manufacturing activity during Certain hours against an agreed sum by neighbouring School.

Examples of agreeing to the obligation to tolerate an act/a situation

- A Shopkeeper allowing a hawker to operate from the pavement infront of his shop against a monthly payment.

CIRCULARS

- An resident welfare association (RWA) tolerating the use of loudspeakers for prayers by School against an agreed Sum.

Examples of agreeing to the obligation to do an act

- An industrial unit agrees to install equipment for zero emission even though the emission was within permissible limit, at the request of a RWA against a Consideration paid.

Perquisities provided by employer to employee:

Perquisities provided in terms of Contractual agreement between employer & employee: No GST.

Grant of other licenses & Previlages by govt (Except AL License)

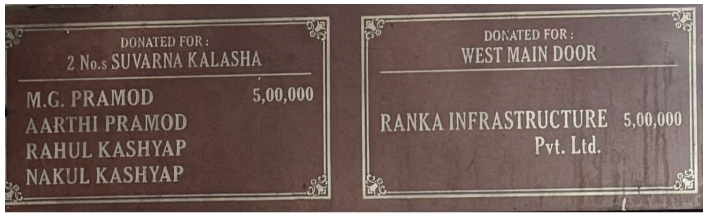
Grant of other previlages, licenses, mining rights against Consideration in form of fees/royalty: Taxable (GST).

Treatment of Sales promotion Schemes under GST

- Goods/Services/both Supplied free of cost/as gift: If activity falls in 7(1)(c), its a Supply & ITC available/else ITC blocked.
- Buy 1 get 1 free: It is not an individual Supply of free goods, but 2/more individual Supplies for price of one, it Can either be Composite or mixed Supply.

GST on display of name/name plate of donor by charitable Organisation

3 tests to be satisfied: Donation is made to charitable organisation, payment has the character of gift/donation, the purpose is philanthropic & not advertisement: GST not leviable.



Sec 8: Taxability of Composite Supply (CS) & Mixed Supply (MS)

(a) CS: Treated as Supply of Principal Supply

(b) MS: Treated as Supply of that Supply attracting highest rate

CS: 2/more TS + Naturally bundled + Supplied together in Ordinary Course + One is principal Supply

MS: 2/more Individual Supplies + Supplied together for a single price + not a Composite Supply [Refer Circular below]

Servicing of Car involving SoG (parts) & SoS (Labour) & value of Goods & services shown seperately: GST at the rates applicable to such goods/Service Sepavately.

Taxability of Printing contacts

- In case of printing where: Content is supplied by person who owns the IPR while physical input including paper belongs to printer: Printing Service: SoS.
- Supply of printed envelops, letter cards, tissues, with logo/design of recipient: SoG.

Supply of food & beverages in cinema hall

- If bundled together & Satisfies test of Composite Supply, then taxable @ Principal Supply i.e. Supply of Service of exhibition of Cinema.
- If it is Supplied independently: it is restaurant service

Students notes...

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Charge of GST (Sec 9 of CGST/ Section 5 of IGST act)

9(1) - Normal Levy

- → CGST Shall be levied
- → On Intrastate
- → Supplies of G/S/B
- → Except: AL for HC and Undenatured extra neutral alcohol or rectified Spirit used for manufacture of AL for HC,
- → On Value determined U/s 15
- → @ Maximum rate 20% NG - RC
- → Collect in manner prescribed & paid by taxable person

9(2): HPMAN

CGST on HPMAN Shall be levied w.e.f. date NG, RC

FBSCOOP (Specified Person)

- F: Factory reg under factories act.
- B: Body Corporate est. under any law.
- S: Society reg. under Societies reg^n act/any law
- COO: Co-operative Society est. under any law
- P: Partnership firm (Reg./Unreg.) incl. AoP

Note: LLP is considered as Partnership firm.

Applicable to Entry no. 9 & 9A

Services by way of transfer/ Permitting the use/enjoyment of a Copyright relating to original dramatic, musical, artistic, Original literary work

Applicable to Entry no. 9A

FCM applicable if: (i) Author has taken Registration & filed a declaration that he exercises to pay gst under FCM & Comply with all provisions as they apply to a person liable for paying the tax & that he shallnot withdraw the said option within a period of 1yr from the date of exercising.
(ii) He also makes a declaration on invoice issued to publisher.

Circular: Delhi Development Authority (DDA) Cannot be treated as local authority under GST.

9(3): RCM on Notified Services

1. GTA (opts for 57 RCM) → RP(GST): TDS deductor: Exempt
   Others (Normal/compo/CTP/NRTP, etc): RCM
   URP(GST): FBSCOOP (A/UR + LLP + AOP): RCM
   Other URP/Unreg CTP: Exempt

RCM is not applicable if: (i) Supplier has taken registration & opts to pay GST under FCM.
(ii) Supplier has issued tax invoice charging GST & also makes a declaration on invoice issued by him.

2. Advocate/firm/Senior → Business entity (Taxable territory) + ATO in PFY > Registration Limit
3. Arbitral tribunal → Business entity (Taxable territory) + ATO in PFY > Registration Limit
4. AP (~~BC~~) → sponsorship services → Body Corporate/ Partnership firm (incl. LLP) [Taxable territory]
5. CG/SG/UT/LA excl. PAIIT → Business entity (Taxable territory) + ATO in PFY > Registration Limit
5A. CG (excluding Indian Railways)/ SG/UT/LA → Renting of Immovable property to RP.
5AA. Any Person: Renting of Residential dwelling → Registered Person
5AB. Any URP: Renting of any immovable property except Residential property: to RP (except Compo)
6. Director → Company/ Body Corporate (TT) [Refer circular on Directors]
7. Insurance agent → Insurance Co. (TT)
8. Recovery agent → Bank/FI/NBFC (TT)




9. Music Composer/photographer/artist/like → Music Company/producer/like (TT)
9A. Author (unregistered/RP not exercising option of FCM) → Publisher (TT)
10. Members of Overseeing Committee → RBI
11. Direct Selling agents (Individual) → Bank/NBFC (TT)
12. Business facilitator → Banking Company (TT)
13. Agent of Business Correspondent → Business Correspondent
    Exempt: Services by BF/BC & intermediary w.r.t. a/Cs in rural area branch
14. Security Services (Supply of Security Personnel): AP (~~BC~~) → RP (TT)
    RCM NA: CG/SG/LA/GA (Registered as TDS deductor) & Composition dealer: FCM
15. Renting of MV (designed to carry passenger): AP (~~BC~~) who doesnot → Body Corporate (TT)
    Fuelcost is included in consideration charged issue invoice charging GST @ 12% [Refer Circular]
16. Services of lending of Securities → Borrower (under Securities lending Scheme of SEBI)

9(4): NA to CA Inter

9(5): ECO: Electronic Commerce operator

Notified Category of Services

Intra state Supply

Tax payable by Eco & all provisions applicable to such Eco as if he is the Supplier liable to pay tax

(i) Transportation of Passengers (Eg: Ola, Uber)
→ by Radio taxi, motor/maxi cab, motor cycle, or any other motor vehicle except Omnibus.

(ia) Transportation of Passengers by an Omnibus except where the supplier is a Company.

(ii) Accomodation Services in hotel, inns, guest house, etc.

(iii) House Keeping Services like plumbing, Carpenting, etc.

(iv) Restaurant Services except those at Specified premises
(a) a premises from where Supplier has provided in PFY, hotel accomodation service having value of Supply of any Unit above Rs. 7,500 per Unit per day or equivalent or
(b) a premises for which a RP has filed a declaration, on or after 1st Jan & not later than 31st March of PFY, declaring the said premises to be specified premises (SP) or
(c) a premises for which a person applying for registration has filed a declaration, within 15 days of obtaining acknowledgement for regn, declaring premises as SP.

(v) Services by way of local delivery.

Note: In housekeeping, accomodation & local delivery services: Eco not liable, if Supplier liable for reg^n U/s 22(1).

Proviso: Eco has physical presence in TT?

- Yes → Eco liable
- No → Representative in TT liable
- No Representative → Appoint person in TT for the purpose of paying tax & he shall be liable

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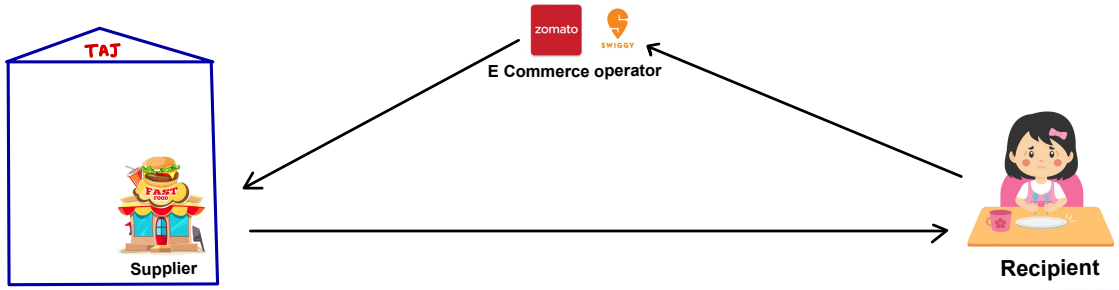
CIRCULARS

① GST on Director's remuneration
- Independent Director: not employee, GST Payable by Company under RCM.
- Whole time Director: employee + paid Salary + TDS u/s 192 of Income tax act: Not Supply, No GST
- Whole time Director: not employee + paid professional fees + TDS u/s 194J of IT act: Supply, RCM

② Services supplied by director of a Company / body Corporate in his personal Capacity to the Co./body Corporate.
- Services supplied by a director of a Company to the Company in his personal/private Capacity: No RCM
- Only Services Supplied in the capacity of director of that Company/body Corporate: Taxable under RCM.

③ GST on renting of Motor vehicle (MV) designed to carry passengers to body Corporate (BC).
- Where BC hires MV for a period of time during which MV is at its disposal: RCM
- Where BC avails passenger transportation Service for Specific journeys & doesnot take it on rent: No RCM.

④ Services supplied by restaurant through E-Commerce Operator (ECO)
- Since eco is liable to pay GST, it is not required to collect TCS. But on other GIs not notified u/s 9(5): Eco will collect TCS
- Eco is not required to take seperate registration to pay tax on restaurant Service u/s 9(5).
- Eco will be liable to Pay GST on Supplies made by unregistered restaurants through it (Eco).
- ATO of restaurant shall include value of Supplies made through Eco.
- Eco shall pay GST in Cash on restaurant Services. ITC can be utilised for discharging liability w.r.t. Services on own a/c.
- If restaurant Service & other GIS are sold by a restaurant to customer under Same order: Advisable eco raise Separate bill for restaurant Service. On other GIs Supplier to raise invoice & Eco to collect TCS.



IGST – Sec 5 : Difference

5(1): Intra → Inter, 20% → 40%

5(2): IGST on Interstate Supply of HPMAN

5(3): Additional Services notified:

Any Services (Any Person in NTT) → Any person in TT

5(4) & 5(5): Same as 9(4) & 9(5): Just Intra → Inter

PAIIT (applicable to Entry no. 5)

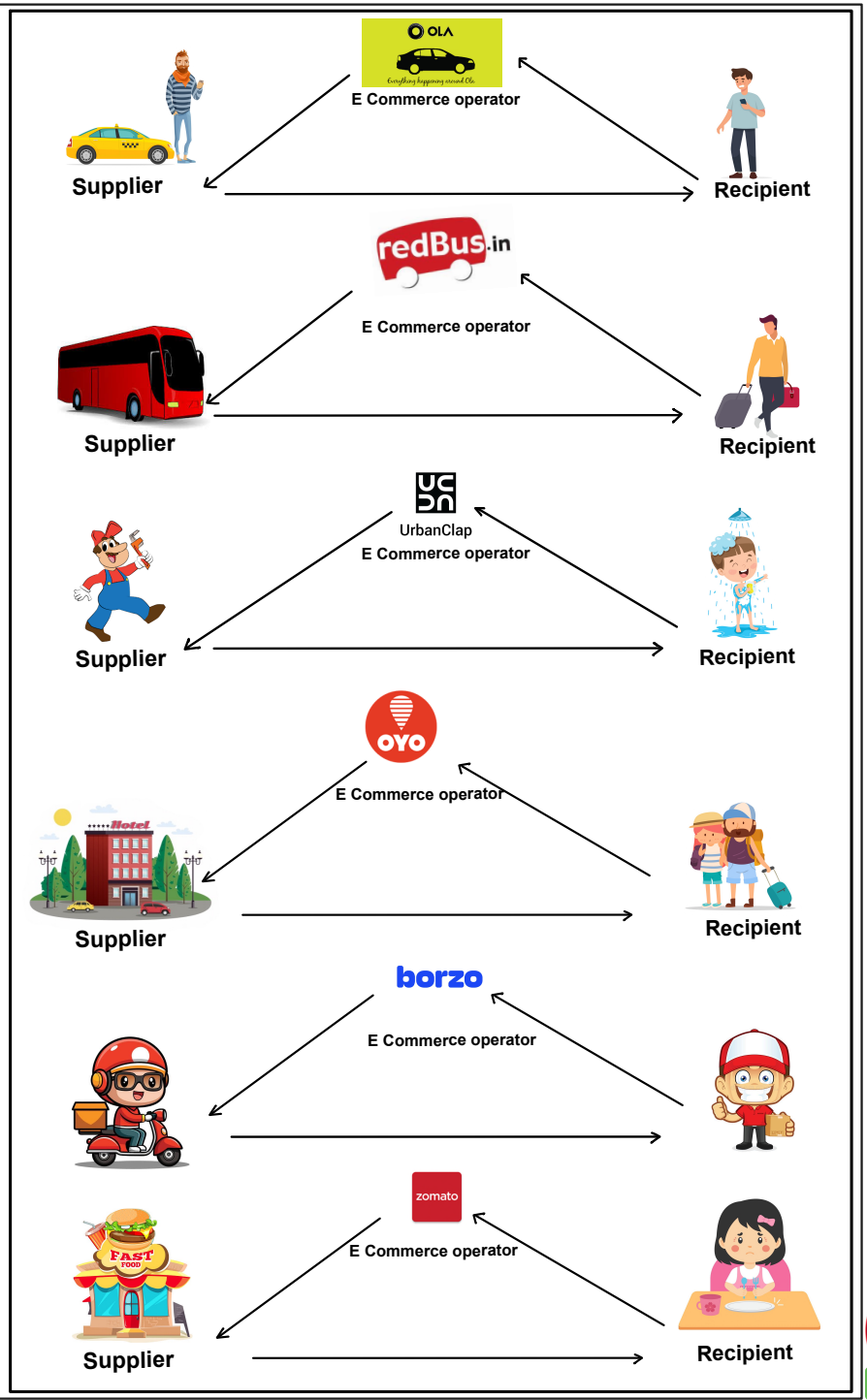
P: Services by department of post.

A: Services in relation to aircraft/vessel.

I: Services by way of renting of immovable property

I: Indian Railways [Ministry of Railways]

T: Transportation of goods/passengers.



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